

THIS EXAMINATION CONSISTS OF 5 PAGES  
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2022

LAW 221  
Criminal Law & Procedure

Section 3  
Professor Perrin

TOTAL MARKS: 100

TIME ALLOWED: THREE (3) HOURS

\*\*\*\*\*

NOTE: This is an open book examination, meaning that you can refer to the course materials (including Harold R. Johnson, *Peace and Good Order: The Case for Indigenous Justice in Canada* (McClelland & Stewart, 2019) and *Pocket Criminal Code*) and your notes. Other books or materials are not permitted.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS

**MARKS****50 QUESTION 1: FACT PATTERN**

The Vancouver Modern Art Gallery hosted an exhibition of a dozen paintings by Kansky, a Copenhagen-based street artist, which opened on May 10, 2021. Kansky's paintings are valued at approximately \$100,000 each.

Bill Evans, 69 years of age, is one of two night-time guards at the gallery. His spouse is elderly, frail and retired. Evans is overweight and has arthritis. He continues to work to financially support himself and his spouse. The couple have no savings or assets.

The second night-time gallery guard is Victor Plank, 21 years of age. Plank also earns income as an Uber driver. Plank is a temporary foreign worker from Germany. He is fit and practices Mixed Martial Arts. Evans is Plank's supervisor at the gallery.

Unbeknownst to Evans or Plank, an international syndicate of art thieves, known as "Red Portrait", have targeted the Kansky exhibition in Vancouver. Their goal is to steal 6 Kansky paintings and destroy the remaining 6 paintings by fire at the gallery. They hope that this will conceal evidence and drive up the value of the stolen 6 paintings.

In the opening days of the Vancouver Kansky exhibition, Red Portrait members planted hidden cameras in the gallery to determine weaknesses in security. They recorded Evans and Plank both routinely falling asleep on the job as night-time guards, and Evans drinking alcohol on the job. They would soon use this information to blackmail the two guards to perpetrate their scheme.

On June 18, 2021 at 9:00 pm, a member of Red Portrait approached Evans and Plank while they were out together getting coffee before starting their shift at the gallery. The unknown Red Portrait member handed them a brown envelope and walked away. Inside the envelope Evans and Plank found dozens of photographs, with date and time stamps, showing both of them sleeping on the job and Evans drinking on the job. There was also a note that read as follows: *"To keep these photos from being shared with your employer, you will do what we say. Tonight at exactly 1:35 a.m., you will turn off the security cameras. Start a fire in the utility room of the gallery. Remove 6 paintings from the Kansky exhibit and place them outside the West emergency exit of the building. Walk away. Make up your own cover story."*

Evans and Plank were shocked at being blackmailed. They went to the gallery together at 10 pm to begin their shift. Neither spoke about the brown envelope. Over the next several hours, Evans sat in the utility room as he drank from a bottle of hard liquor from his bag. Plank meanwhile paced around the gallery. Evans passed out several times. At one point, Evans vomited due to excessive alcohol consumption. It is agreed that Evans was in a state of advanced intoxication.

(Question 1 continued)

At 1:35 am, Evans was conscious and watched as Plank ignited a box of alcohol-based cleaning products and paper on fire in the utility room, setting off the fire alarm. The fire quickly spread and the flames went up the walls of the room. Plank grabbed 6 Kinsky paintings off the wall and began making his way to the West emergency exit. As Plank neared the West emergency exit, Evans blocked his path.

“What do you want, old man?” asked Plank. “Get out of my way!”

“We gotta talk about this,” said Evans as he slurred his words. “What are we gonna do?”

Plank pushed past Evans, causing him to fall over. As Plank walked past Evans to exit the building, Evans threw an empty liquor bottle that he was carrying at Plank, striking him in the head. Plank turned back towards Evans, just as a firefighter opened the West emergency exit door from the other side. Plank and Evans froze as the firefighter called for police, who quickly attended. Plank and Evans were arrested at the scene.

**On August 15, 2021, Evans and Plank were both charged with (1) arson, contrary to s. 434 of the *Criminal Code*, (2) theft (over \$5,000), contrary to s. 334(a)(i) of the *Criminal Code*, and (3) assault, contrary to s. 266(b) of the *Criminal Code*.**

**You are a law student working for Evans’ Defence Counsel. She has asked you to prepare a memorandum with your legal analysis of the strength of the Crown’s case against Evans in respect of each charge and to propose a strategy for defending Evans. She also mentioned to look at s. 322(2) of the *Criminal Code* as it is relevant. Be sure to cite all relevant legal authorities.**

**STATUTORY PROVISIONS**

***Criminal Code* (R.S.C., 1985, c. C-46)**

**Assault**

**266** Every one who commits an assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.

\* \* \* \* \*

**Punishment for theft**

**334** Except where otherwise provided by law, every one who commits theft

(Question 1 continued)

- (a) if the property stolen is a testamentary instrument or the value of what is stolen is more than \$5,000, is guilty of
- (i) an indictable offence and liable to imprisonment for a term of not more than 10 years, or
  - (ii) an offence punishable on summary conviction; [...]

\* \* \* \* \*

**Arson – damage to property**

**434** Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

**MARKS**

**25 QUESTION 2: SENTENCING QUESTION**

This question is a continuation of Question 1: Fact Pattern (above). Assume that Evans has been found guilty of arson, contrary to s. 434 of the *Criminal Code*, and not guilty of theft (over \$5,000), contrary to s. 334(a)(i) of the *Criminal Code*. The assault charge was withdrawn. The Crown is seeking a term of imprisonment of 2 years less a day, while the defence is seeking a suspended sentence of 2 years probation.

The Vancouver Modern Art Gallery submitted a Victim Impact Statement that the damage caused by the fire was \$35,000, of which they had to pay a \$10,000 insurance deductible. The gallery was closed for 2 months and lost \$125,000 in revenue during repairs.

Both Evans and Plank were fired from their positions. Evans entered into a recovery program for his alcohol use and has been sober since the incident. He has yet to find another job. In separate proceedings, Plank pled guilty to both arson and theft, and was sentenced to a term of 4 years imprisonment for each offence to be served concurrently (for a global sentence of 4 years). The assault charge against Plank was withdrawn.

Six of the twelve Bansky paintings on exhibition at the gallery were ruined, but the other 6 survived intact. Bansky also salvaged pieces of burnt wood from the incident and made a series of 6 art pieces from them that each sold for \$500,000. His other previous works have doubled in value since the incident.

The sentencing options for arson, contrary to s. 434 of the *Criminal Code* are: suspended sentence; fine; fine and probation; prison; prison and probation; prison and fine;

(Question 2 continued)

intermittent sentence; and fine, probation and intermittent prison. Note that a conditional sentence of imprisonment is not an option.

**You are a law clerk assisting the sentencing judge. She has asked you to write a legal memorandum setting out your recommendation for Evans' sentence and your legal analysis supporting it. Be sure to cite all relevant legal authorities.**

### **MARKS**

#### **25 QUESTION 3: SHORT ESSAY**

Please choose **ONE** of the following questions to answer in a short essay format. Be sure to refer to specific course content and materials in your response (e.g. readings, guest lectures, lectures by instructor, class discussion, talking circle, etc.). Be sure to clearly state which question you are addressing:

- A) How does criminal law and the criminal justice system perpetuate the following (choose two to focus on – either individually or intersectionally): racism, sexism, homophobia, classism, and/or stigma against people who use substances or are living with mental health conditions. What are the consequences of this? What approaches could be taken to address this?
- B) Summarize a range of different alternatives to the existing criminal justice that have been explored in our course and what promise they might hold.

**END OF EXAMINATION**