

THIS EXAMINATION CONSISTS OF 3 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

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

MID-TERM EXAMINATION – DECEMBER 2021

LAW 221
Criminal Law & Procedure

Section 3
Professor Benjamin Perrin

TOTAL MARKS: 100

TIME ALLOWED: One (1) HOUR
and 15 minutes reading time

NOTE: This is an open book examination, meaning that you can refer to the required course materials (including Criminal Code), materials posted on the course Canvas website, and your notes. Other books or materials are not permitted.

THIS EXAMINATION CONSISTS OF 2 QUESTIONS

QUESTION 1 – FACT PATTERN (70 MARKS)

Gregory Eben is 22 years of age and lives in Westmorsley, BC. Every year at Halloween for the last ten years he has set off a large number of fireworks (the Oxford dictionary defines a firework as “a device containing gunpowder and other combustible chemicals that causes a spectacular explosion when ignited, used typically for display or in celebrations”). However, after approximately \$250,000 in damage caused by fireworks across Westmorsley in 2020, City Council enacted a bylaw prohibiting the sale and use of fireworks within city limits, punishable by a fine of up to \$2,000.

Undeterred by the inability to purchase fireworks locally, Eben was able to do so online. On October 31, 2021 at 11:00 PM, Eben brought a large box with 35 different fireworks to the gravel schoolyard at Westmorsley Secondary School. He invited a dozen friends to attend the fireworks release, but they in turn invited others and it was posted by one of them on social media, such that some 500 people were in attendance.

Eben made sure that everyone was 25 feet away from where he was setting off the fireworks (this was the “safe distance” that the manufacturer had recommended on the packaging). Eben also had a large five-gallon bucket of water and household-sized fire extinguisher with him. It had lightly rained the day before.

At 11:15 PM, Eben began igniting the fireworks one at a time, starting with the smaller ones and moving on to the larger ones. The crowd cheered. When it was time to ignite the final firework, Eben heard the sound of police sirens. Fearing that they were coming to “get him”, he quickly lit the fuse to the final firework and began to run away. The crowd began to panic as well. The final firework did not ignite, however. An unknown member of the crowd went to the firework and relit it. At this point, the large crowd was running all around and someone kicked the firework over. When it went off, it injured four people causing burn injuries that required treatment in hospital and left permanent scarring on their bodies.

The police are recommending that Eben be charged with breach of duty (explosive), contrary to section 80(b) of the *Criminal Code*, in relation to this incident. You are a law student assisting the Crown prosecutor in this case. She has asked you to write a legal memorandum with your analysis and recommendation on whether this charge should be laid. Be sure to cite all relevant legal authorities.

NOTE: Do not consider any potential *Charter* arguments/claims that the accused may bring forward. Another lawyer will be conducting that analysis.

(Question 1 continued)

STATUTORY PROVISIONS

Duty of care re explosive

79 Every one who has an explosive substance in his possession or under his care or control is under a legal duty to use reasonable care to prevent bodily harm or death to persons or damage to property by that explosive substance.

Breach of duty

80 Every one who, being under a legal duty within the meaning of section 79, fails without lawful excuse to perform that duty, is guilty of an indictable offence and, if as a result an explosion of an explosive substance occurs that

(a) causes death or is likely to cause death to any person, is liable to imprisonment for life; or

(b) causes bodily harm or damage to property or is likely to cause bodily harm or damage to property, is liable to imprisonment for a term not exceeding fourteen years.

QUESTION 2 – SHORT ESSAY (30 MARKS)

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.).

Option A: What is systemic racism and how is it manifested in Canada's criminal justice system?

OR

Option B: Why are there calls for a trauma-informed approach to criminal law and the criminal justice system?

OR

Option C: The term "justice is blind" has been historically idealized in the common law legal tradition, referring to justice that is fair, impartial and objective. Critique this notion of "justice is blind" in relation to the criminal justice system's treatment of Indigenous peoples.

END OF EXAMINATION