

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

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

FINAL EXAMINATION – APRIL 2022

**LAW 221
CRIMINAL LAW AND PROCEDURE**

**Section 4
Professor Brian Bird**

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS and 10 minutes reading time

NOTES:

- 1. This is an open book examination, meaning that you can refer to your own class notes/outlines, lecture slides, the required textbooks, and any other required readings.**
- 2. This examination consists of 3 (THREE) questions. Answer all three questions.**

Question 1 (50 Marks)

Alan Accused is charged with the second degree murder of Vince Victim contrary to section 229(a) of the *Criminal Code*. Section 229(a) says that culpable homicide is murder “where the person who causes the death of a human being (i) means to cause his death, or (ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not”.

Alan Accused and Vince Victim both had small pizza restaurants right beside each other in West Vancouver, B.C. Accused’s restaurant was losing money. Accused was convinced that his restaurant would be profitable if he could buy Victim’s restaurant, take over that space to expand his restaurant, and become the only pizza place in the area. Accused approached Victim about selling his restaurant, but Victim told Accused he was not interested. Accused kept asking Victim, and Victim got more and more angry each time and finally told Accused never to ask again.

A week later, Accused was at a party and met Jake Jar who told Accused that he provided loans to desperate people at very high interest rates. Jar said that many people tried to not pay him back, and that he was an expert at applying pressure to ensure he was repaid. During their conversation it came up that Victim owed Jar a lot of money and could not pay it back. Accused told Jar that he was desperate to buy Victim’s business. Jar suggested they visit Victim and demand that he sell his business to Accused, and then Victim would have the money to pay off his debt to Jar.

Late the next evening, Accused and Jar met outside Victim’s restaurant. Accused saw that Jar had a baseball bat. Accused thought Jar would only use the bat to threaten Victim. Victim was alone in his restaurant. As soon as Accused and Jar entered, Jar hit Victim in the stomach with the bat. Victim backed up, grabbed a gun from underneath a counter, and shot a number of times at Jar and Accused but missed. Accused lunged at Victim and managed to take the gun from him. At this point, Accused and Jar were about two metres from Victim, and Victim suddenly started moving towards Accused. Accused shot Victim in the stomach and Victim fell to the ground. Jar told Accused that Accused had to “finish Victim off” and Accused hesitated. Jar then raised the bat and started swinging it close to Accused’s head. Accused then shot Victim in the chest.

The autopsy performed on Victim found that he was instantly killed by the shot to the stomach due to a combination of that bullet and the prior hit to the stomach with the bat.

Do you think Alan Accused will likely be found guilty of any offences? Please set out your reasons why or why not, and include an analysis of each element of the offences and any relevant defences. Please not address any issues of sentencing.

Question 2 (30 Marks)

Frank Fuller is charged with arson contrary to section 434 of the *Criminal Code*. Section 434 reads, in part, as follows: “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”.

Frank Fuller co-owned a boat with his father and Fuller decided to sell it. Fuller was having trouble finding a buyer and was getting increasingly desperate because he needed the money and the boat cost a lot to maintain. Fuller had an insurance policy on the boat which gave him and his father a large cash payment if the boat was seriously damaged.

One day, Fuller decided to take the boat for a ride and he brought some gas in a cannister to the boat dock because the boat’s gas tank was empty. While driving to the dock, Fuller realized that he could use the gas to burn his boat and get the insurance money. When he got to his boat, he took off the boat cover and was going to pour some gas on the boat and light it on fire. However, he suddenly he received a text message stating someone was very interested in buying the boat and would come to see it the next day. Fuller was relieved that he could probably sell his boat. He saw a bottle of whiskey in the boat, and to celebrate he drank the entire bottle in 30 minutes.

Willy Witness was walking by the dock after Fuller had consumed the whiskey, and he saw Fuller stumbling around with a gas cannister in his hands. Witness asked Fuller what he was doing and Fuller’s response did not make any sense. Witness then saw Fuller start to pour gas on a boat, and Witness decided he should leave the area. The next morning, Fuller’s boat had burn marks on its deck.

Fuller claims to have no memory of events after drinking the whiskey. He has hired a respected expert who says that given that Fuller drank an entire bottle of whiskey in a short amount of time, it is possible that he was not controlling and directing his actions after consuming the whiskey.

Do you think Frank Fuller will likely be found guilty of any offences? Please set out your reasons why or why not, and include an analysis of each element of the offences and any relevant defences. Please do not address any issues of sentencing.

Question 3 (20 Marks)

Comment on the accuracy of the following statement:

With most defences, the accused will bear the evidentiary burden and the Crown will bear the persuasive (legal) burden. These burdens ensure that weak defences are not left with the trier of fact and that the Crown must disprove viable defences.

END OF EXAMINATION