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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION - FALL 2021

**LAW 400
ADVANCED CRIMINAL PROCEDURE**

**Section 1
Professor Harris**

TOTAL MARKS: 100

**TIME ALLOWED: 2.5 HOURS and 10 minutes
reading time**

Note:

- 1. This is an open book examination. Students may use course materials and their own notes but not other materials including other persons notes or CANS and non-course texts.**
- 2. Answer all questions.**

THIS EXAMINATION CONSISTS OF 3 QUESTIONS

Question 1 (50 Marks)

Alan Accused was charged on July 15, 2021 with arson contrary to section 434 of the *Criminal Code* with the following charging sheet:

Alan Accused, on or about January 15, 2021, did contravene section 434 of the *Criminal Code* by damaging a BMW car owned by Vince Victim.

The case was tried in Provincial Court on December 15, 2021 and the trial judge provided the following reasons for judgment:

I would first note that Alan Accused made an application before the trial to have this proceeding halted until a defence lawyer was provided to him. Accused led clear evidence in that application that he was laid off from his accounting job, is completely broke, and that he has no prospect of raising money from any source. However, I decided given that Accused seems intelligent and that this a very simple proceeding, the appointment of counsel was not necessary and Accused represented himself.

All parties agree that on January 15, 2021, Vince Victim parked a BMW car in front of his house, went inside his house, and a short time later the paint on the hood of the car was damaged. Footage from a security camera was admitted at trial which showed that after Victim went inside his house someone approached the BMW, put liquid on the hood of the car and then appeared to light a match near the hood of the car. The person who did this looks like Alan Accused, but the footage did not show a clear view of the person's face.

Victim testified that he and Accused used to work together at an accounting firm, and that on January 14, 2021 it was announced that Victim got a promotion. Victim said that Accused was very angry that he did not get the promotion, and Victim said Accused shouted at him that "something might happen" to the fancy BMW car that Victim's dad had lent to Victim. Victim was cross-examined by Accused, and Accused started showing that Victim had made various prior statements to the police about these events which were very different from his testimony. However, Accused chose to focus his cross-examination on making personal attacks on Victim which I did not find all that useful.

Accused then testified, and said he did not do anything to the BMW. Accused said he was surprised that he did not get the promotion at the accounting firm, but was relieved because it would have meant a lot of extra work. Accused said he left for Alberta on the evening of January 14, 2021 and that he returned two weeks later. Accused entered into evidence what appears to be a boarding pass in his name for a flight on the evening of January 14, 2021. During his cross-examination Accused was generally quite evasive and combative.

(Question 1 continued)

I had some concerns about Victim's testimony, but find his evidence on the whole to be credible. I did not find Accused to be credible in any part of his evidence, and someone with accounting skills could easily create a document which looks like a real boarding pass. I find that the person in the video looks like Accused. Further, I find that the Accused did threaten to damage the car, and Accused also admitted in his testimony that he was upset that he did not get the promotion.

I find beyond a reasonable doubt that Accused was the one who caused the damage to the BMW car outside of Victim's residence.

The only potential issue is whether the damage to the paint on the hood was caused by fire or just by the liquid put on the car. I find the damage was caused by a fire because a match was lit on the video, but in any case, there is an included offence of mischief under 430(1)(a) of the *Criminal Code* of causing damage to property. I also find the accused guilty of that offence, and therefore enter convictions for both the arson and mischief.

Accused wishes to appeal his convictions. Please describe any potential grounds of appeal, and provide an opinion on whether or not you think any of those grounds will be successful. Assume that the car was damaged and that the car comes within the definition of property in the *Criminal Code*.

Question 2 (30 Marks)

Suppose Parliament passed this new law which came into force on July 1, 2021:

The rules for severance in the *Criminal Code* are amended so that where co-accused are on the same indictment, there can be no severance of the co-accused where there would be substantial inconvenience to witnesses and it would be more efficient for the justice system to have the co-accused tried together.

An accused and a co-accused are charged on the same indictment for a murder alleged to have occurred on July 1, 2017, and they were charged with the offence on June 15, 2019. Their trial is set to being on November 15, 2021, two years and five months after the charge. The main evidence is from two witnesses who say they saw the two accused shoot the victim. There are also some witnesses who provide a bit of motive evidence.

The two accused are informed by the Crown a month before the start of the trial that Willy Witness, one of the two main witnesses, gave a written statement to the police at the start of the investigation that someone else did the murder. The Crown says that the police just informed them about this statement, and the Crown says they have now decided not to call Willy Witness at trial.

(Question 2 continued)

- 2a. Are there any steps that defence counsel for the accused might take to attempt to have the trial adjourned or not proceed at all? If you need more information please set out what that information would be. (20 marks)**
- 2b. If the accused applied for severance, is there any argument the accused could make that the new severance amendment should not be used for determining their application, and do you think they would be successful in any of those arguments? (10 marks)**

Question 3 (20 Marks)

Please comment on the accuracy of the following statement:

A court should not impose bail conditions which require the accused to engage in beneficial activities or behaviours, but should impose bail conditions which require an accused to not be present in the area where the alleged offence occurred and require them not to speak with Crown witnesses. (20 marks)

END OF EXAMINATION