

**THIS EXAMINATION CONSISTS OF 4 PAGES
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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION - APRIL 2022

**LAW 476
EVIDENCE**

**Section 2
Professor Harris**

TOTAL MARKS: 100

**TIME ALLOWED: 3 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 is facing a jury trial for the murder of Vince Victim. Accused has a criminal record from two years ago for assault causing bodily harm based on a fight he had with a store owner over their mask policy. The theory of the Crown is that Accused shot Victim over an unpaid loan. Accused gave a short-term loan of \$300 000 to Victim so Victim could start up a restaurant.

Victim was found dead on the morning of June 25, 2021 in his restaurant, shot three times in the chest. Neighbours to the restaurant will testify that they heard something sounding like gunshots coming from the restaurant at about 11:30 p.m. on June 24, 2021. The main Crown witness is Willy Witness. Witness came to the attention of the police when a surveillance camera showed his car very near Victim's restaurant at 11:20 p.m. on June 24, 2021, and Witness has a criminal record for gun offences and robbery. The police contacted Witness and told him that they suspected that he did the shooting. Witness said he was not involved, but that he knew who did the shooting. Witness is now a Crown witness in Accused's trial, and his anticipated testimony is as follows:

I know Alan Accused and Vince Victim, as we all used to run a drug operation together. In late June of 2021, Accused said asked me if I could drive him to Victim's restaurant the following evening so he could have a private meeting with Victim. I had seen Accused beat up Victim a couple of times over the past month, so I phoned Victim and asked him why Accused wanted to meet with him. Victim started crying and hung up the phone. The next night I drove Accused to the Victim's restaurant and Accused went inside the restaurant. Accused came out a couple of minutes later and got in my car and he started tapping his hands together. Every time I have seen Accused be very nervous about something he has just done, he taps his hands together. I asked him how the meeting went, and Accused was mumbling a lot but I think he said that he had shot Victim three times because Victim owed him lots of money and was refusing to pay. I told Accused that I understood his situation because Victim also owed me a lot of money. Accused then pulled out some special cream and put it all over his hands. I know from my extensive knowledge of firearms that this cream removes all traces of gunshot residue from skin.

1(A) Can any reasonable arguments be made to exclude any parts of the anticipated testimony of Willy Witness, and do you think those arguments would be successful? Further, would it be necessary to provide the jury with any instructions regarding Witness's testimony? Assume that Witness is going to provide this evidence as a witness in court. (40 marks)

1(B) How can, and should, defence counsel cross-examine Witness about his criminal record? (10 Marks)

Question 2 (40 Marks)

Jake Jar worked at an investment firm and was charged with theft after millions of dollars were electronically taken from a client account on December 23, 2020. The defence has made an admission in the case that the money was taken from the client on December 23, 2020 through the work computer of Jake Jar. Jar's theft trial began on March 1, 2022. Part of the Crown evidence came from the head of the firm, Bessy Boss, who testified:

Jake Jar and I carpooled to and from work together. On December 23, 2020, Jar and I came to the office together at 8:00 a.m. and we both left the office together at 6:00 p.m. Each employee sets their own password on their work computers and that password is not accessible to anyone else, including our technical staff.

The defence cross-examined Boss and suggested to her she had not seen Jar on his computer on December 23, 2020 and that there were a lot of other employees in the office that day. Boss agreed with those suggestions.

Six months before Jar's trial, Fred Fuller, who works in the office, sent an email to Jar's defence lawyer which stated as follows:

I am a co-worker of Jar and we worked closely on the same projects. I remember about a month before the theft we had a company party that everyone attended and Jar got really drunk and wanted to show us something on his computer, and everyone could see him typing in his password.

I was in the office at around 11:00 p.m. on the evening on December 23, 2020 and I saw a fellow employee Billy Ball sitting in Jar's chair and Jar's computer was open in front of him. Ball was deeply in debt and I know he had received a couple of his pay-cheques early to pay emergency expenses.

Jar's defence lawyer tried to get Fuller to come to her office to do an interview. Fuller refused, but did say he would come and testify at the trial.

Fuller was called as a defence witness at Jar's theft trial on March 3, 2022. After setting out that he was now a manager of the firm, Fuller testified as follows:

In December of 2020, Jar said he was broke and kept asking me to lend him money. I told him I could not, and he told me he was getting desperate. I saw Jar in the office working on his computer very late on the evening of December 23, 2020.

The defence is shocked at Fuller's testimony. What steps can the defence take to deal with this unexpected testimony and to try and get into evidence what he had said in the email? Do you think the defence will be successful in these efforts?

Question 3 (10 Marks)

Please comment on the accuracy of the following statement:

An accused who:

-testifies that he was involved in an offence as a witness, and then testifies that he never involved in that same offence when he is on trial as an accused; or

-lies about narrative matter in his examination-in-chief in a trial,

will not have these lies exposed at his trial or suffer any negative consequences for the lies.

END OF EXAMINATION