

THIS EXAMINATION CONSISTS OF **7 PAGES** (INCLUDING THIS TITLE PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – FALL 2021

LAW 476.003 / 507.003
Evidence

Bruce Elwood

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

This is an open book examination, meaning you may refer to your notes, the PowerPoint slides, the syllabus distributed at the start of the term and the cases and statutes listed in the syllabus.

You may also bring other written materials in the examination room; however, the examination has been designed based on the class materials so as not to require reference to textbooks or any other materials that were not reviewed in class. No marks will be given for authorities or legal principles not covered in class.

THIS EXAMINATION CONSISTS OF 5 QUESTIONS.

ANSWER ALL 5 QUESTIONS.

Marks**Fact Pattern**

Charles Montgomery Plantagenet Schicklgruber Burns is Canada's richest and most powerful citizen. He lives at Burns Manor, located high on a hill overlooking Springfield, British Columbia.

Mr. Burns holds a PhD in Chemistry. He wrote his thesis on the social and environmental benefits of burning fossil fuels. After graduation, he established a scientific research facility called the Burns Institute for Truth in Science.

Mr. Burns asserts that global warming is a naturally occurring phenomena caused by plants and animals. He is the author of many well-known books on the subject, including *Climate Change is CockyPop* and *Clean Coal is E-e-e-xcellent*.

In *Climate Change is CockyPop*, Mr. Burns writes that scientists disagree about whether the earth is warming due to human influence. He states that cows are the primary source of greenhouse gasses, and that emissions from burning fossil fuels are a scientifically insignificant contributor to climate change.

Mr. Burns owns the Burns Coal Plant, located near Springfield. The Burns Coal Plant burns coal to generate electricity. It operates under permits issued by the Ministry of Environment.

In *Clean Coal is E-e-e-xcellent*, Mr. Burns writes that his power plant uses a proprietary clean coal technology that captures all of the carbon released when the coal is burned and converts it to nutrient-rich soil, which he donates to local organic farmers.

Based on his reputation as a scientist and clean coal visionary, Mr. Burns enjoys an excellent relationship with many important politicians.

Each year, Mr. Burns puts on a holiday party at Burns Manor. The party is attended by a "who's who" of mining and oil and gas industry leaders and regulators. Employees of the Burns Coal Plant and their families are also invited to attend.

The summer of 2021 was the hottest on record in Springfield. In June 2021, a devastating forest fire destroyed much of historic Springfield. Burns Manor and the Burns Coal Plant were undamaged in the conflagration.

The annual holiday party at Burns Manor was a subdued affair in 2021. Mr. Burns sought to assure his guests that the fire in June had nothing to do with the Burns Coal Plant and "so-called global warming". The fire, he said, was likely caused by faulty electrical wiring in the old industrial buildings.

Waking up the morning after the party, Mr. Burns was shocked to find a bloody herring head wrapped in a sheet in his bed. Rushing downstairs, he was even more alarmed to find his valuable art collection thrown in a pile and burned, with the words "Now you know how we feel" written on the living room wall.

Marks

Greta Thunberg is a Swedish environmental activist. She is known for challenging world leaders to act on climate change.

Ms. Thunberg asserts that humanity is facing an existential crisis because of global warming. She holds the current generation of adults responsible for creating the problem.

In 2022, Ms. Thunberg traveled by sailboat and bicycle to attend the UN Climate Change Conference (“COP27”) in Vancouver. At COP27, Ms. Thunberg gave the keynote speech and published an article that went viral on the Internet. In her speech and in her article, Ms. Thunberg said and wrote:

Mr. Burns is one of the most dangerous spokespersons for climate change denial. He spreads misinformation about the connection between fossil fuels and climate change. His research is phony and his books are all lies. Mr. Burns and his lies are responsible for the fire that destroyed Springfield. The response of the Ministry of Environment has been just more blah, blah, blah.

Following Ms. Thunberg’s speech, the Ministry of Environment cancelled the permits for the Burns Coal Plant.

Mr. Burns has now sued Ms. Thunberg for defamation. Ms. Thunberg is defending the action on the basis of justification and fair comment. The pleadings raise the following issues:

1. Does Mr. Burns spread lies about climate change?
2. Are Mr. Burns and his lies responsible for the fire that destroyed historic Springfield?
3. Did Ms. Thunberg’s speech cause the Ministry of Environment to cancel the permits for the Burns Coal Plant?
4. Did Ms. Thunberg act with malice toward Mr. Burns?

You may assume this to be a complete and accurate list of the substantive legal issues in the case.

Burns v. Thunberg is proceeding to trial in B.C. Supreme Court before a judge and jury.

You are a law clerk. The trial judge has asked you to assist her with the evidentiary issues in the case. (You need not concern yourself with the law of defamation or damages.)

Marks**25 Question 1.**

Mr. Burns hired a private investigator named Clancy Wiggum to look into the vandalism at Burns Manor and Ms. Thunberg's speech at COP27. Mr. Wiggum is the retired chief of police of Springfield.

As part of his investigation, Mr. Wiggum interviewed Lisa Simpson.

Lisa is eight years old. She is the middle child and most accomplished of the Simpson family. Her father, Homer, works at the Burns Coal Plant. Lisa is a member of Survival International, a group that advocates for indigenous peoples around the world.

Mr. Wiggum videotaped the interview with Lisa. Her parents were not present. Before the interview began, Mr. Wiggum told Lisa that it is a crime to lie to a licensed private detective.

During the interview, Lisa said:

It is well-known in the activist community that Ms. Thunberg thinks Mr. Burns is an evil and greedy man. Ms. Thunberg frequently says this about Mr. Burns.

Ms. Thunberg once told Lisa that Mr. Burns bought and destroyed all of the herring in Sweden, just because he was mad he could not put together an Ikea bookcase. As a result, Ms. Thunberg told Lisa, Ms. Thunberg and her family missed out on an entire holiday season of cherished traditions, for which Ms. Thunberg told Lisa she would one day have her revenge.

Ms. Thunberg also told Lisa that she enjoys the fame and profile her work as an environmentalist has brought her, and often takes airplane flights to attend climate protests around the world.

With the recent lifting of travel restrictions, Lisa and her mother Marge have left on a long-planned trip to Brazil. Lisa is now somewhere in the Amazon rainforest, and cannot be contacted or called as a witness for the trial of *Burns v. Thunberg*.

Mr. Burns seeks to introduce the video statement by Lisa into evidence.

Is the statement by Lisa Simpson admissible?

Marks**25 Question 2.**

Mr. Burns seeks to enter into evidence a document disclosed to him by the Ministry of Environment from the Report All Poachers and Polluters (“RAPP”) Hotline database.

The RAPP Hotline is a web-based tip line for members of the public to report known or suspected violations of fisheries, wildlife or environmental protection laws, anonymously and without risk of confronting the offender.

Unlike programs like Crime Stoppers, the RAPP Hotline does not provide an express promise of confidentiality on its website.

The document disclosed to Mr. Burns from the RAPP Hotline database says this:

Date:	April 1, 2021.
Complainant:	Greta Thunberg.
Contact Information:	123 Ikea Road, Stockholm, Sweden.
Report:	“Mr. Burns is a greedy and evil man. Everything in his books is a lie.”

On a *voir dire*, Ms. Thunberg testifies that:

1. In late March 2021, she called the Ministry of Environment and spoke to a man who introduced himself as a conservation officer.
2. She told the conservation officer she wanted to make a complaint about a polluter in British Columbia, but she was concerned about possible repercussions.
3. The conservation officer told her she could make an anonymous complaint on the RAPP website, but it is important for law enforcement purposes that people who make reports on the RAPP website provide their names and contact information.
4. She relied on this statement when she made the complaint about Mr. Burns.

Ms. Thunberg has not been able to identify the conservation officer with whom she spoke. There is no written record of her conversation with him.

How should the judge decide the evidentiary issues raised by Ms. Thunberg’s complaint to the RAPP Hotline and her evidence about her complaint?

Marks**15 Question 3.**

Ms. Thunberg seeks to tender the following documents as part of her case:

1. Data logs maintained by the Ministry of Environment that record emissions levels in the vicinity of the Burns Coal Plant.
2. Emails by employees of the Ministry of Environment interpreting the emissions levels of the Burns Coal Plant, noting that they exceed the permit levels and recommending that the permits be cancelled.
3. A fire cause report dated July 2021, by the chief firefighter who responded to the Springfield fire, which states:
 - a. The fire was caused by the combined effect of a lightening strike and the extreme heat during the heat dome weather event of June 2021;
 - b. All other causes of the fire were ruled out during the investigation on the scene, including arson and industrial accident; and
 - c. The permits for the Burns Coal Plant should be cancelled because it is contributing to extreme heat conditions in the vicinity.

Discuss the evidentiary issues raised by these documents.

15 Question 4.

Ms. Thunberg seeks to rely on a report by the Intergovernmental Panel on Climate Change (“IPCC”). The IPCC was established by the United Nations for the purpose of assessing the science related to climate change. Through its assessments, the IPCC determines the state of knowledge on climate change. It identifies where there is agreement in the scientific community, and where further research is needed. IPCC reports are drafted and reviewed in several stages by scientists from around the world. The IPCC does not conduct its own research.

The Fifth Synthesis Report of the IPCC, on which Ms. Thunberg relies, identifies a scientific consensus that:

Human influence on the climate system is clear. Recent emissions of greenhouse gasses from burning fossil fuels are the highest in history. Recent climate changes have had widespread impacts on human and natural systems, including extreme weather events, flooding and forest fires.

In *Urgenda v. The State of the Netherlands*, 2015 C/09/456689/HA, the District Court of the Hague relied on the Fifth Synthesis Report of the IPCC to find that climate change is a real and present danger, and in ordering the Dutch government to reduce greenhouse gasses 25% from their 1990 levels by 2020.

Discuss the evidentiary issues raised by the IPCC report.

Marks**20 Question 5.**

Ms. Thunberg also seeks to rely on an expert report by Al Gore.

Mr. Gore is an American politician and environmentalist. From 1993 to 2001, he served as the 45th vice president of the United States under president Bill Clinton.

Mr. Gore attended Harvard University. He developed an enthusiasm for science after he took an astronomy class from Carl Sagan. However, he did not do well in science or math classes. He reportedly spent much of his time at Harvard watching television, shooting pool and occasionally smoking marijuana. He wrote his thesis on the invention of the Internet, and graduated with a Bachelor of Arts.

Mr. Gore has been interested in environmental issues since the 1960s. As a young politician, he made environmental protection a central plank of his platform. As a senator, he held the first congressional hearings on climate change. As vice president, he met with leading climate scientists from around the world.

Following his unsuccessful campaign for president in 2000, Mr. Gore became a prominent author and environmental activist.

Mr. Gore is the author of *An Inconvenient Truth*, a best-selling book and popular movie that predicted the current climate crisis. His work on climate change earned him the Nobel Peace Prize in 2007.

Mr. Gore is the founder and current chair of The Climate Reality Project, a political action committee that seeks to stamp out climate change denial. He is also a partner in a venture capital firm that specializes in renewable energy solutions. He is an investor in a wind turbine farm in British Columbia.

Mr. Gore prepared an expert report for Ms. Thunberg free of charge.

In his expert report, Mr. Gore writes:

Not one of Mr. Burns' books, not one paragraph, not one sentence in any of them, can be taken as accurate or true. All of them are completely worthless because Mr. Burns cannot be trusted to give a reliable account of any scientific research into the causes or effects of climate change.

Not one of the many scientists I have spoken to agrees with Mr. Burns's theories about climate change. They all agree there is no verifiable evidence that clean coal technology actually works.

Ms. Thunberg delivered Mr. Gore's report to Mr. Burns with proper notice prior to the trial. You may assume the report complies with all of the formal requirements for expert evidence under the Rules of Court. The issue is admissibility.

Should the judge admit Al Gore's expert report into evidence?

***** END OF EXAMINATION *****