



a place of mind
THE UNIVERSITY OF BRITISH COLUMBIA

Peter A. Allard School of Law
University of British Columbia

LAW 525.001
Canadian Criminal Law & Procedure

Final Examination – April 2022

Adjunct Professor P. Mann

Exam Code _____ Date: _____ 2022

This exam consists of 8 pages in total, including the cover pages.

Please check to be sure that you have received a complete exam.

THIS EXAMINATION IS TO BE COMPLETED IN A MAXIMUM OF THREE (3.0) HOURS.

THIS EXAMINATION CONSISTS OF TWO (2) PARTS.

ANSWER ALL FOUR (4) QUESTIONS IN PART I – FACT PATTERN (40 MARKS)

ANSWER TWO (2) QUESTIONS IN PART II – SHORT ANSWER (20 MARKS)

TOTAL MARKS: 60

Special Instructions:

Candidates are permitted to bring FIVE (5) pages of typed and/or handwritten notes into the exam with them. The pages must be 8.5 x 11 inches in size (standard letter) and the notes may fill both sides of the pages.

Candidates are permitted to bring in ONE (1) unmarked English (non-legal) pocket-book dictionary.

Laptops are only permitted for the use of ExamSoft. Candidates should ensure that their phones (and any other electronic devices) are turned off. No other materials are permitted.

Read the questions carefully and understand what you are being asked to do before you begin your answer. Support your answers by referring to relevant common law/case law and/or statutory authority where appropriate. If you need more facts to reach a more definitive conclusion, please indicate what those facts might be.

LAW 525.001

At the end of this examination, you must return this exam cover sheet and any Examination Booklets used. NOTE: Examination Booklets and ExamSoft submissions should be identified by your exam code.



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Rules governing formal examinations

1. Each examination candidate must be prepared to produce, upon the request of the invigilator or examiner, his or her UBC card for identification.
2. Examination candidates are not permitted to ask questions of the examiners or invigilators, except in cases of supposed errors or ambiguities in examination questions, illegible or missing material, or the like.
3. No examination candidate shall be permitted to enter the examination room after the expiration of one-half hour from the scheduled starting time, or to leave during the first half hour of the examination.
4. Examination candidates must conduct themselves honestly and in accordance with established rules for a given examination, which will be articulated by the examiner or invigilator prior to the examination commencing. Should dishonest behaviour be observed by the examiner(s) or invigilator(s), pleas of accident or forgetfulness shall not be received.
5. Examination candidates suspected of any of the following, or any other similar practices, may be immediately dismissed from the examination by the examiner/invigilator, and may be subject to disciplinary action:
 - i. speaking or communicating with other examination candidates, unless otherwise authorized;
 - ii. purposely exposing written papers to the view of other examination candidates or imaging devices;
 - iii. purposely viewing the written papers of other examination candidates;
 - iv. using or having visible at the place of writing any books, papers or other memory aid devices other than those authorized by the examiner(s); and,
 - v. using or operating electronic devices including but not limited to telephones, calculators, computers, or similar devices other than those authorized by the examiner(s)—(electronic devices other than those authorized by the examiner(s) must be completely powered down if present at the place of writing).
6. Examination candidates must not destroy or damage any examination material, must hand in all examination papers, and must not take any examination material from the examination room without permission of the examiner or invigilator.
7. Examination candidates must follow any additional examination rules or directions communicated by the examiner(s) or invigilator(s).

PART I – TOTAL: 40 MARKS

ANSWER ALL FOUR (4) QUESTIONS IN PART 1. ASSUME THAT ALL OF THE FACTS DESCRIBED BELOW ARE TRUE AND PROVABLE IN COURT.

SUGGESTED TIME: 90 MINUTES

On March 2, 2022, while on his day off at home, Dev was informed by his boss (via a virtual meeting) that he was being dismissed from his long-standing employment as a Hotel Supervisor for the Happy Hotel in Vancouver. Dev was shocked as he had received excellent performance reviews. During the five years he had worked with the hotel, he had been consistently recognized as the top employee. The dismissal related to his unwillingness to comply with the employer's mandate to return to the office five days a week. (During the previous two years, given the circumstances of the pandemic, he had been allowed to work from home on average three times a week). He was quite upset and when he told the news to his partner Angela, they ended up arguing about their financial situation.

Dev left home and drove to the Happy Hotel to speak to his boss in person. As he was driving, he reflected on how poorly the day had started, with his mechanic leaving a voice mail message on his cell-phone, advising Dev that his vehicle required some "serious repairs" and that he would forward a Mechanical Inspection Report via email at the end of the day. (Dev had taken his vehicle to the mechanic's shop as over the previous week, he had observed that his brakes were making a strange noise. He was concerned that they may not be working at 100% or would stop working altogether.) As Dev was approaching a curve, he was thinking about what to say to his boss and did not see the parked transit bus with its emergency flashing lights on until he was about 50 metres within the bus. He swerved towards the right shoulder of the road and slammed on his brakes to avoid hitting the bus but in doing so, his vehicle collided with a horse and its rider, Taylor. The horse died instantly. Taylor was fortunately, thrown off into the nearby bushes. Dev called 911 right away and stayed with Taylor until an ambulance arrived. Taylor was treated at the hospital and apparently suffered several bruises, a mild concussion and a broken left leg.

The police also attended the scene of the accident and towed the vehicle as evidence in relation to the investigation. They did not arrest the accused at the time as they were undertaking further investigative steps including speaking to the mechanic the next day. The mechanic provided a statement that he told the accused that the vehicle required some “serious repairs”. The mechanic also forwarded a completed copy of the Mechanical Inspection Report. The police asked an expert in vehicle suspension, electrical, electronics and brakes to review the Inspection Report. The expert confirmed that the brakes were operating at 90% efficiency. The expert will be examining the vehicle at a later point in time.

Question 1: (15 MARKS)

The police are recommending that Dev be charged with dangerous operation of a conveyance (a conveyance means “vehicle”) as per the following section under the **Criminal Code, RSC, 1985, c. C-46:**

320.13 (2) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public and, as a result, causes bodily harm to another person.

*You are the **Crown Counsel** assigned to the file. Do you approve the charge? Explain with reference to the charge approval standard that needs to be met by the prosecution to prove its case.*

Question 2: (15 MARKS)

With regard to the same scenario, the relevant sentencing provision is:

320.19 (5) Every person who commits an offence under subsection 320.13(1) or...is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or
- (b) an offence punishable on summary conviction.

*You are the **Crown Counsel** assigned to the file. Assume that you have decided to lay a charge of dangerous operation of a conveyance pursuant to s.320.13(3). How do you proceed with the charge (via indictment or summary)? Explain.*

What is your sentencing position given the following:

Assume that Dev is convicted at trial. At the sentencing hearing, defence counsel provides the court with Dev's background circumstances. Dev is 39 years old and has been married to Angela for 6 years. Dev has a criminal conviction for when he was 17 years old, with a charge under the *Youth Criminal Justice Act* of failing to comply with a youth sentence for which he served the equivalent of a probation period of 6 months and completed 25 community work service hours. It was because of that interaction with the justice system that Dev went on to obtain a college diploma in Criminology. He pursued the degree when he was in his 20s and was supporting himself. He has been a volunteer at the local food bank for the past 5 years, in the shipping-receiving of goods department where he organizes food items in the storage area. Dev has no prior driving infractions. Up until March 2, 2022, Dev had been employed as a Hotel Supervisor for the Happy Hotel in Vancouver. Dev is currently applying for new jobs and has attended two promising job interviews. He regrets the harm that resulted from his actions but wanted to pursue his right to a trial on its merits.

Question 3: (8 MARKS)

Assume the same scenario is unfolding but with some additional facts for consideration:

Taylor believes in a holistic approach to medicine. As part of her recovery plan, she starts attending sessions with an experienced naturopath, Dr. Helps for treatment of back and neck muscle spasms relating to the accident that occurred a month prior. She agrees to the proposed plan of nutrient supplement injections. After her first nutrient injection, she falls ill and is admitted into the hospital where she sadly, dies. An autopsy report reveals that the injection was actually contaminated with a specific type of bacteria culture, which in turn, caused Taylor to experience an allergic reaction.

Dr. Helps has a Science undergraduate degree and various certificates in naturopathy. In addition to receiving training in administering injections, Dr. Helps had been providing injections routinely to patients for over ten years of his practice. However, he administered injections to his clients without being legally authorized to do so as he is not a “medical doctor” as required under the provincial *Health Act*.

Dr. Helps is charged with criminal negligence causing death under **s.219** of the **Criminal Code, RSC, 1985, c. C-46**:

- 219 (1)** Every one is criminally negligent who
- (a)** in doing anything, or
 - (b)** in omitting to do anything that it is his duty to do,
- shows wanton or reckless disregard for the lives or safety of other persons.
- (2)** For the purposes of this section, **duty** means a duty imposed by law.

*You act as **defence counsel** for Dr. Helps. Dr. Helps asks you if he will be convicted. What do you advise him?*

Question 4: (2 MARKS)

The sections of the **Criminal Code RSC, 1985, c. C-46** defining unlawful act manslaughter include:

- 222 (1)** A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.
- ...
- (4)** Culpable homicide is murder or manslaughter or infanticide
- (5)** A person commits culpable homicide when he causes the death of a human being,
- (a)** by means of an unlawful act;
 - (b)** by criminal negligence;
- ...

Can Dr. Helps be charged with unlawful act manslaughter under s. 222(5)? Can the unlawful act manslaughter charge be laid in addition to the charge of criminal negligence? Explain.

PART 2 – TOTAL: 20 MARKS.

ANSWER QUESTION 1 (10 MARKS) AND QUESTION 2 (10 MARKS)

Question 1: (10 MARKS)

ANSWER ONLY ONE (1) OF THE TWO (2) QUESTIONS. (In your answer, refer to specific case law).

SUGGESTED TIME: 45 MINUTES

Discuss the interplay of Section 91(27) and Section 92 of the Constitution Act, 1867 (“division of powers”) and explain how the courts have resolved constitutional challenges to federal/provincial legislation.

OR

Discuss the development of the common law confessions rule and the relationship of the common law confessions rule to the Charter right to silence.

Question 2: (10 MARKS)

ANSWER ONLY ONE (1) OF THE FOLLOWING TWO (2) QUESTIONS. (In your answer, refer to specific case law).

SUGGESTED TIME: 45 MINUTES

The “air of reality” test is an important feature of a criminal trial. Discuss the “air of reality” test in relation to the role of a judge in charging the jury. Does the test arise in relation to all criminal offences? Explain.

OR

What is the function of mens rea (sometimes referred to as the “guilty mind”) in criminal law? Do you think objective tests of mens rea should be abandoned when determining criminal responsibility in Canada? Explain.

END OF EXAMINATION - Good luck and have a wonderful summer!