THIS EXAMINATION CONSISTS OF 3 PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 221

Criminal Law & Procedure

Sections 3 and 4

Professor Benjamin Perrin

**TOTAL MARKS**: 100

**TIME ALLOWED:** One (1) HOUR

and 15 minutes reading time

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**NOTE**: This is an open book examination, meaning that you can refer to the required course materials (including Criminal Code), materials posted on the course Canvas website, and your notes. The following course books are permitted:

* Benjamin Perrin, *Criminal Law & Procedure Readings* (Vancouver: UBC, 2022)
* Harold R. Johnson, *Peace and Good Order: The Case for Indigenous Justice in Canada* (McClelland & Stewart, 2019)
* *Pocket Criminal Code*

Other books or materials are not permitted. You may use your “reading time” anyway you see fit and can begin writing your answer at any time during the allotted time.

THIS EXAMINATION CONSISTS OF 2 QUESTIONS

**QUESTION 1 – FACT PATTERN (70 MARKS)**

Asery Construction Ltd. was hired by the owner of Davie Towers (an apartment building in Vancouver, BC constructed in 1985) to restore the degrading exterior concrete structure of the building. Asery hired Jacques Lafleur as project supervisor for the job, offering him a 5% bonus if the project was completed on-time.

To complete the project, workers use a “swing stage” to work on the exterior of the building. A swing stage is “a work platform that is raised and lowered by manual or powered hoisting equipment, supported by 2 or more suspension lines” (BC *Occupational Health and Safety Regulations*, s. 13.1). Swing stages are commonly used for window washing and construction projects. Workers on a swing stage wear a safety harness attached to a “life-line” so that if the swing stage were to tilt or fall, the worker would be prevented from falling to the ground.

Lafleur purchased four swing stages from Burnaby Scaffolding Ltd. They were each rated for a maximum weight of 1,500 lbs and each had two life-line attachments, meaning two workers at a time could work on each swing stage. The manual accompanying the swing stage delivery said: “…all workers on swing stages must wear a harness and be tied to a lifeline at all times including when they get on and off to prevent injury or death”. Lafleur made photocopies of the manual that he shared with the workers, telling them all to “read it on your own time”.

Bad weather delayed the project. On September 5, 2022, Lafleur was notified by Asery that he had just one week to finish the Davie Towers project to secure his 5% bonus. But Lafleur estimated he needed another two weeks to finish the project. The next morning, Lafleur removed the stickers from the swing stages that indicated the maximum rated capacity of 1,500 lbs. He also instructed the workers that instead of two workers per swing stage to instead use four workers per swing stage to “speed things up”. He told them to “figure out how to attach the lifelines to make sure they’re safe.” He promised each worker a $500 bonus if they completed the project within the week.

On September 7, 2022, while four workers were on one of the swing stages working outside the third storey of Davie Towers, suddenly the swing stage tilted violently and all four workers slid off and fell to the ground, each suffering serious injuries including broken bones. While all four workers were wearing harnesses, none of them had been attached to a lifeline. The four workers weighed a total of 900 lbs. Their equipment on the swing stage (which also all fell to the ground) weighed a total of 300 lbs.

**Lafleur has been charged with causing bodily harm by criminal negligence, contrary to section 221 of the *Criminal Code*, in relation to this incident. You are a law student assisting Defence counsel to Lafleur in this case. She has asked you to write a legal memorandum setting out the essential elements of this offence and assess the strength of the Crown’s case in relation to each of them. Be sure to cite all relevant legal authorities. Refer to the statutory provisions below.**

**STATUTORY PROVISIONS**

***Criminal Code* (R.S.C., 1985, c. C-46)**

Causing bodily harm by criminal negligence

221 Every person who by criminal negligence causes bodily harm to another person 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.

***Workers Compensation Act* (B.C.)**

***Occupational Health and Safety Regulation*, B.C. Reg. 296/97**

General Duty

2.2 Despite the absence of a specific requirement, all work must be carried out without undue risk of injury or occupational disease to any person. […]

Standards

13.20   (1)The following equipment must be clearly marked with a rated capacity: […]

(d) a swing stage

**QUESTION 2 – SHORT ESSAY (30 MARKS)**

Please choose **ONE** of the following questions to answer in a short essay format. Be sure to refer to specific course content and materials in your response (e.g. readings, guest lectures, lectures by instructor, class discussion, talking circle, etc.). Please clearly indicate which question you are answering.

**Option A**: At the outset of this term, Professor Perrin cautioned that the criminal law is “dangerous”. Provide three specific examples of the ways in which criminal law is dangerous to specific marginalized groups in our society.

**OR**

**Option B**: In his book *Peace and Good Order: The Case for Indigenous Justice in Canada*, Harold Johnson writes that everything that has been done against Indigenous peoples in Canada has been “legal”. What does Johnson mean? What are the implications of this?

**END OF EXAMINATION**