THIS EXAMINATION CONSISTS OF 4 PAGES

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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION - DECEMBER 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 (60 Marks)**

Alan Accused was charged with the theft of a valuable painting called “The Light” from the Downtown Art Gallery in Vancouver, B.C. on August 15, 2021. The main Crown witness is Stan Security who is a security guard at the Gallery, and Security was convicted of a fraud 5 years ago. Security gave the following statement to the police on the day of the incident:

I know Alan Accused well because he is a regular visitor to the Gallery. On the afternoon of August 15, 2021, I saw Alan Accused standing near the “The Light” painting for a long time and then I saw him suddenly lift the painting off the wall. I started running towards Accused, but I fell and broke my arm. When I was able to get up, I saw that the painting was missing and Accused was gone.

There is a video camera outside the back entrance of the Gallery. The video footage shows that on the afternoon of August 15, 2021, Accused left the Gallery with a large package covered in gift wrapping which resembled the shape of the missing painting.

Accused was charged with the theft of the painting on the day after it went missing. A month after the charge, defence counsel received through the mail a handwritten letter, dated September 15, 2021, signed by a “Willy Witness”, which stated as follows:

I work in the gift shop of the Downtown Art Gallery and often see Alan Accused there as he is a regular visitor. I do not like Accused because I caught him once stealing some pens from the gift shop a year ago, but I feel it is important to tell you that he is innocent of the theft of the painting. I was working on the day the painting went missing and I took a late lunch break that afternoon. I saw Stan Security holding something very large under a blanket and he was running with it toward an exit door. Also, Accused is a regular customer at the gift shop, and almost every time he visits the Gallery he buys a large framed print. Also, Accused has sometimes asked us to gift wrap the print he is buying. I have looked at the video of Accused leaving the building, and the size of the object he is carrying is very similar to the size of the framed prints in our shop. Finally, a couple of days ago, I received an email from Security which I printed out and is attached to this letter.

Attached to the letter was a document which looks like an email from Security to Witness which has a picture of Security wearing a brand new $10,000 watch.

Accused’s trial began on August 15, 2022. The Crown presented the video evidence, and called Stan Security who testified as is set out in his police statement. Security was cross-examined by the defence, and it was suggested to Security that he was not a credible or reliable witness due to his prior fraud and due to the fact that he did not see what happened because he fell during the events.

**(Question 1 Continued)**

The defence then called Willy Witness as a witness. The week before the trial, Witness had fallen off his bike and received a concussion. Witness testified that he worked at the gift shop at the Gallery and that he remembered sending a letter to Accused’s defence counsel with an email from Stan Security attached to it. However, he said he had no memory of events at the Gallery. Defence counsel asked some more questions about Accused and Security, but Witness said he could not remember anything else.

**What steps can the defence take to try and get into evidence the version of events in the letter to the defence lawyer, and do you think the defence will be successful in these attempts? Please also comment on whether you think the document attached to the letter will be admissible. (60 marks)**

**Question 2 (30 Marks)**

Pete Puck drove Jake Jar to a bank, and then Jar robbed the bank of a large amount of cash. Puck was called as a witness in Jar’s robbery trial, and Puck testified that he drove Jar to the bank because he thought Jar was going there to get a loan. Puck testified that Jar had called him in the morning and asked for a ride to the bank, and he did not want to drive him because Jar lived quite far away. However, Jar kept asking him, so he did go to Jar’s house and give him a ride to the bank.

After Jar’s trial, Puck hired Sara Smith as a personal fitness trainer. During one of their sessions, Smith noticed Puck was not concentrating and seemed sad. Smith took Puck into an office at the gym, and asked Puck what was wrong. Puck started weeping uncontrollably and Smith recalls him saying something to do with feeling bad about some money he had.

Smith told the police that she thought Puck may have stolen some money, and the police were aware that Puck was a friend of Jar who had been convicted of a bank robbery. The police interviewed Jar, and Jar told them that Puck was involved with him in the robbery of the bank, and that they split the money. The police also found out that Puck has a criminal record for a number of assaults.

Puck is now charged with the robbery from the bank. Puck is planning to testify in his trial that on the day of the robbery, Jar phoned him in the afternoon for a ride to a bank, and he did not want to give Jar a ride because Jar is often involved in criminal things and Puck avoids criminal conduct. Puck says he refused to give Jar a ride to the bank and that he had nothing to do with the robbery.

**(Question 2 Continued)**

**2.A Do you think Puck’s statement to Smith will likely be admissible in evidence in Puck’s trial? (15 marks)**

**2.B Are there any risks or possible consequences of Puck testifying as he intends to testify in his trial? (15 Marks)**

**Question 3 (10 Marks)**

**Comment on the accuracy of the following statement**:

If a police officer is involved in an investigation of an accused, or works in the same police force as the officers investigating the accused, that police officer will not be a qualified expert witness to testify in the accused’s trial which is based on that investigation.

**END OF EXAMINATION**