THIS EXAMINATION CONSISTS OF 3 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION - FALL 2014

LAW 400
ADVANCED CRIMINAL PROCEDURE

Section 1
Professor Harris

TOTAL MARKS: 100

TIME ALLOWED: 2.5 HOURS and 5 minutes reading time

Note: This is a closed book examination, and students can only bring to the exam two double sided pieces of paper (or 4 single sided pages) with notes and an unannotated Criminal Code with tabs.

THIS EXAMINATION CONSISTS OF 4 QUESTIONS. ANSWER ALL 4 QUESTIONS.
Question 1 (40 Marks)

The accused, Billy Brock, is on trial for possession of firearms after a number of large automatic rifles were discovered in his house during a police search. A month before the search, the police received an anonymous tip that Brock had a number of automatic rifles in his house. The police investigated and found out that Brock often associated with a number of persons who had been convicted of drug trafficking. The police conducted surveillance for a week from a building across the street from Brock's house, and twice recorded on video Brock taking a long object covered in a blanket out of the trunk of his car and walking with the covered object towards his house.

The lead police investigator on Brock's file, Janice Jones, prepared an application for a search warrant to look for firearms in Brock's house. The application described the anonymous tip, stated that Brock associated with a number of persons who had been convicted of drug trafficking, and described the findings from the surveillance. A judge granted the search warrant, and the police officers found a number of automatic rifles in Brock's living room during the search.

Brock was charged and granted bail. A month after the charge, the Crown sent defence counsel disclosure, including the application for the search warrant. Defence counsel phoned the Crown and asked if there was any more information the defence did not have about the search. The Crown stated that the lead investigator Jones had just told him that the persons who associated with Brock had been convicted of drug trafficking 10 years ago, and that Jones told him that the information on the timing of the convictions had not been provided to the judge who granted the search warrant. The Crown sent the defence the criminal records of the associates which set out that their convictions were 10 years old.

Defence counsel is planning to bring a motion for the following:

- to call as witnesses on the voir dire lead investigator Jones and the officers who did surveillance of Brock's house,

- to have the trial judge rule that there were Charter violations relating to the search application in this case.

Do you think that defence counsel will be successful in these objectives? Please state why or why not.
Question 2 (20 Marks)

Jack Jar and three other accused are charged with aggravated assault, and are being tried together in provincial court. The victim was beat by four persons, and the evidence against all the accused comes from the victim. Jar was not granted bail because he was on probation for an assault at the time of the group assault. Jar's defence will be that it was actually his brother who participated in the group assault, and that the victim misidentified him because he looks a lot like his brother. Jar's brother has not been charged. It is now 6 months after the charges, and the proceedings are going very slowly because the three other accused just fired their lawyers because these lawyers just admitted to their clients that they have no experience in criminal law. The three new defence counsel say that they will only be available for a trial date which will be 14 months after the charges.

Is there anything that counsel for Jar can do in response to the slow pace of the proceedings?

Question 3 (20 Marks)

The accused Gary Grape is charged with robbery under the following indictment:

Gary Grape, on the 15th day of January, 2014 in the City of Vancouver in the Province of B.C., did commit robbery with a firearm contrary to section 343(c) of the Criminal Code by hitting Janice Johnson while armed with a handgun.

There is a video tape which shows Grape sitting in his car outside the apartment complex where Johnson lived. Grape and Johnson were business partners in a restaurant which was failing, and had been fighting about whether or not to sell the business. As soon as Johnson came out of the complex, Grape exited his car and he was holding something small in his right hand. Johnson looked at what was in Grape’s hand and immediately lifted her hands into the air. Grape then kicked Johnson and then Grape appeared to reach toward her purse. At that point, another person started approaching them, and Grape ran away.

Will Grape likely be convicted of an offence? Please explain why or why not.

Question 4 (20 Marks)

Please comment on the accuracy of the following statement:

It is not unusual for an error of fact to be present in a trial judge’s reasons for conviction, but this error can only lead to a new trial for an accused.

END OF EXAMINATION
ADVANCED CRIMINAL PROCEDURE 400.001
COURSE OUTLINE – 2014 FALL SEMESTER

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Office: Room 344, UBC Faculty of Law at Allard Hall

Required Materials
Case Book (e-mailed to students)
Carswell 2015 Pocket Criminal Code

Recommended Text
Stuart et. al. Learning Canadian Criminal Procedure, Carswell, 10th edition

Evaluation
100% Final 2.5 Hour Closed Book Examination. Student may bring two double sided pages of notes to the exam.

E-Mails Re Course Material
Should be in reasonable proximity to the relevant lecture. No e-mails regarding course materials after the last lecture.

Lecture Recording
Lectures may not be recorded without prior permission from Professor Harris.

Hand Held Devices
No hand-held devices, including cellar phones, may be used in class.

Week I
Charge Approval
R. v. Nixon
R. v. Malik, Bagri and Reyat
Excerpt 1 from Cowper Report

Week I / II
The Indictment
R. v. Saunders
R. v. R.(G.)
R. v. J.B.M.
R. v. Moore
R. v. Harris
R. v. Irwin
R. v. Heaney
Criminal Code sections 581-587, 601, 660-662 683(1)(g)
Week III
Bail and Counsel
*Toronto Star Newspapers Ltd. v. Canada*
*R. v. Parsons*
*R. v. Sanghera*
*R. v. Tremblay*
*Criminal Code* sections 469, 496-499, 515, 679, *Charter* section 11(e)

Week IV
Disclosure
*R. v. Baxter*
*R. v. Bjelland*
*R. v. Salame*
*R. v. McNeil*
*Charter*, section 7

Week V
Severance
*R. v. Suzack*
*R. v. McEwan*
*R. v. Last*
*Criminal Code* sections 589, 591

Week VI
Rulings
Section 8 of the *Constitutional Question Act*, RSBC, c. 68
*R. v. Sipes*
*R. v. Vukelich*
*R. v. Bains*
*R. v. Hooites-Meursng*

Week VII
Powers of Search and Arrest
*R. v. Juan*
*R. v. Mann*
*R. v. Jones*
*Hunter v. Southam*
*R. v. Wilson*
*R. v. Whitaker*
*Criminal Code* section 495; *Charter*, sections 8, 9

Weeks VIII-IX
Class of Offences
*R. v. Dudley*
Hand-Out
Juries
Role of Trial Judge
R. v. Gunning
R. v. Krieger

Closing Address
R. v. Rose
Criminal Code, section 651

Choosing Jurors
R. v. Yumnu
Criminal Code, sections 634-640

Week X
Unreasonable Delay
R. v. Morin
R. v. Godin
Charter, section 11(b)
Excerpt 2 from Cowper Report

Weeks XI-XII
Powers of Appellate Court: Criminal Code sections 675-678, 683, 686, 812, 813

Errors of Fact and Law
R. v. Grouse

Reversible Error
R. v. Austin
R. v. Sarrazin

Miscarriages of Justice
R. v. Lohrer

Unreasonable Verdict
R. v. Dell
R. v. Peers
R. v. Sinclair

Week XIII
Preliminary Inquiries and Direct Verdicts
R. v. Arcuri
Criminal Code sections 535, 540, 541, 548
### SUMMARY CONVICTION OFFENCES

**Trial:**
before Provincial Court Judge — Part XXVII

**Appeal:**
1. to Supreme Court Judge, following same procedure as in Court of Appeal (ss 813, 822(1))
   - or -
2. by Trial de Novo before Supreme Court Judge, by order of same (ss 813, 822(4))
   - or -
3. on transcript or agreed statement of facts to Supreme Court Judge on ground of law or jurisdiction only (s.830(1) & (2))

**Further Appeals:**
to Court of Appeal on question of law only, with leave (s.839)
  - and -
to Supreme Court of Canada on question of law or jurisdiction, with leave (S.C.A., s.40(1), (3))

**Note:** ss 675(1.1), 676(1.1) permit appeals, with leave, directly to the Court of Appeal with an indictable appeal arising out of the same trial

### INDICTABLE OFFENCES

**Trial:**
before Provincial Court Judge — Part XIX

**Appeal:**
1. to Supreme Court Judge following same procedure as in Court of Appeal (s.109(1))
   - or -
2. by Trial de Novo before Supreme Court Judge, by order of same (s.109(3))
   - or -
3. to Supreme Court Judge, by Stated Case, on ground of law or jurisdiction only (s.115(1))

**Further Appeals:**
to Court of Appeal on question of law alone with leave (s.124)
  - and -
to Supreme Court of Canada — ss 691 — 693

**Procedure found in Offence Act (B.C.)**

### PROVINCIAL OFFENCES

**Trial:**
before a “Justice” (Judicial J.P., or Provincial Court Judge)

**Appeal:**
1. to Supreme Court Judge following same procedure as in Court of Appeal (s.109(1))
   - or -
2. by Trial de Novo before Supreme Court Judge, by Order of same (s.109(3))
   - or -
3. to Supreme Court Judge, by Stated Case, on ground of law or jurisdiction only (s.115(1))

**Further Appeals:**
to Court of Appeal on question of law alone with leave (s.124)
  - and -
to Supreme Court of Canada on questions of law or jurisdiction, with leave (S.C.A., s.40(1), (3))

### SUMMARY PROVINCIAL CONVICTION INDICTABLE OFFENCES

<table>
<thead>
<tr>
<th>Offences on which Crown has an option to proceed by Summary Conviction or Indictment:</th>
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<tbody>
<tr>
<td>1. If Crown opts to proceed by Summary Conviction, procedure is identical to column on left in all respects; or</td>
</tr>
<tr>
<td>2. If Crown opts to proceed by Indictment, procedure is identical to “Indictable Offences” above in all respects.</td>
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