Note:

This is a limited open book examination. Students may bring only the following items into the examination room:

1. A clean copy of the Pocket Criminal Code.
2. Four 8 ½ X 11 standard sheets of paper containing notes of the student's choice.
Shake Shock

Henrik, Finn, Archie and Betty are law students at the Ella T. Draper School of Law in Burnaby, BC. They have been selected to compete in the Niklas Moot Competition in Stockholm, Sweden.

Henrik goes to the passport office to renew his passport in advance of the trip. Along the way he picks up his photos from the passport photo counter of a nearby drugstore. The line at the passport office is long, and when he finally reaches the counter, the clerk rejects his photo because of a shadow in the background. This is a big problem for Henrik, who needs a "rush" renewal to have a passport ready in time to fly to Sweden. The passport office is closing in 15 minutes and there is no time to get new photos. Henrik asks if he can use a photo of his identical twin brother Daniel as a replacement. He has picked up Daniel's photos at the same time as his own. The clerk agrees and accepts the replacement photo. The clerk's supervisor discovers the switch when she realizes the name on the application and the name on the photo do not match. She calls the police.

Archie has spent the entire day drinking vodka milkshakes at his apartment. He is joined by Betty, who consumes two of the drinks with him. Archie, who is quite intoxicated by this point in the afternoon, confesses to Betty that he hates Finn because Finn knows that Archie cheated on his first year Criminal Law exam. Finn is demanding that Archie drop out of law school or else he will report the cheating. Archie tells Betty that he has acquired a gun with the intention of killing Finn, but is trying to work up the nerve to go through with it.

Betty tells Archie that she loves him and that she will make sure that everything works out the way he wants it. She asks him where the gun is kept, and he tells her that it is in the drawer of his desk. While Archie is in the bathroom, Betty takes the gun from the desk. Angered by Finn's treatment of Archie, she plans to confront Finn and thinks the presence of the gun will prevent him from becoming physically aggressive with her. Finn is much larger and stronger than she is. She does not check to see if it is loaded since she has no intention of actually shooting it.

When Archie stumbles out of the bathroom, Betty is gone. Feeling uneasy about their conversation, Archie looks for the gun and sees it is missing. Before passing out on the sofa he texts Betty: "OMG Pls dont do nything stupi. Nver shd got gun frst placeee." (Translation: "Please don't do anything stupid. I never should have got a gun in the first place [sadface].")

Betty tracks Finn down in the Law Library. She tells him to leave town and never come back. Finn tells her he has already told everyone what her scumbag boyfriend has done. Finn sees the gun, which is pointing at the ground. He tells Betty to drop the gun. She has never handled a gun before and is feeling the effects of the vodka milkshakes. Betty begins to raise the gun as Finn lunges toward her. Betty
squeezes the trigger. The bullet hits Finn in the leg. The bullet shatters his femur and leaves him with a permanent limp.

Based on the above facts, answer ALL of the following questions. Assume that all of the facts above are true and provable in court.

A1. Henrik is charged with making a false statement in relation to a passport, contrary to s. 57(2) of the *Criminal Code*. You are Henrik's lawyer. What arguments will you make/defences will you raise on his behalf and are they likely to succeed? (25 marks)

A2. Archie is charged with careless storage of a firearm contrary to s. 86(1) of the *Criminal Code*. You are Archie's lawyer. Outline the case that the Crown will have to prove and identify the arguments/defences you will make on Archie's behalf. Will he be convicted? (Assume that the gun is a "firearm"). (24 marks)

A3. Betty is charged with the attempted murder of Finn, contrary to s. 239(1)(a.1) of the *Criminal Code*. You are an articling student to the Crown counsel assigned to this case. She asks you if there is a likelihood of conviction on this charge or if it would be more appropriate to charge Betty with aggravated assault contrary to s. 268(2). What do you tell her? (40 marks)

A4. The Crown is also considering charging Archie either (i) as a party to Betty's offence or (ii) as a principal offender for the attempted murder of Finn. What do you advise? Will he be convicted? (30 marks)

Part B: This Part is worth 30 marks and the recommended time for this Part is 30 minutes. Answer ALL of the following 3 questions. Each question is worth 10 marks. For each question, identify whether the statement is true or false and explain your answer.

B1. There are no longer any differences between the statutory defence of duress and the common law defence of duress.

B2. Automatism is only available as a defence where the cause of the dissociative state is internal to the accused.

B3. *Lavallee* would be decided the same way under the current s. 34 of the *Criminal Code*.

Part C. This Part is worth 30 marks and the recommended time for this Part is 30 minutes. Answer ONE of the following 2 questions. Do NOT answer both questions.

C1. Why was s. 718.2(e) added to the *Criminal Code*? What are some of the challenges that the criminal justice system faces in applying this provision?
C2. Why was s. 33.1 added to the Criminal Code? Was it an appropriate response to the problem it is trying to solve?

Part D: This Part is worth 1 mark and the recommended time for this part is 1 minute. Please make sure your answer is in your answer booklet/computer response and not on the question paper.

D1: When considering additional facts during sentencing, which of the following is true:

a) Aggravating facts must be proven beyond a reasonable doubt and mitigating facts on a balance of probabilities.
b) Both aggravating and mitigating facts must be proven beyond a reasonable doubt.
c) Both aggravating and mitigating facts must be proven on a balance of probabilities.
d) No additional facts other than those found at trial can be considered at sentencing.

END OF EXAMINATION