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THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION — APRIL 2018

LAW 221
CRIMINAL LAW & PROCEDURE

Section 3
Professor Benjamin Perrin

TOTAL MARKS: 100
TIME ALLOWED: 3 HOURS

NOTE: This is an open book examination. Students may refer to course materials (Casebook, Criminal Code (Annotated or otherwise), handouts, additional assigned readings) and notes that they have personally brought into the examination room. Students are not permitted to share materials.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS
QUESTION #1: Fact Pattern (60% of final exam mark)

"Delta Kappa Moo" is a men’s fraternity at the University of Southern British Columbia in Abbotsford, B.C. Every September, first year undergraduate students commencing their studies at the university are eligible to apply to join the fraternity (referred to as "pledging"). The legal drinking age in B.C. is 19 years. It is illegal under provincial law to provide alcohol to anyone under that age, punishable with up to a $575 fine.

William J. Leader III (24 years of age) is the President of Delta Kappa Moo. Under the fraternity's bylaws, he has full authority over fraternity activities and has the sole power to admit, suspend or revoke individual fraternity membership.

Patrick Hazer (21 years of age) has been a member of Delta Kappa Moo for three years, and was appointed on September 1, 2017 by Leader as responsible for the "induction" of prospective members ("pledges"). Induction is a series of acts that pledges must perform in order to be considered for membership.

Joe Member (20 years of age) has been a member of Delta Kappa Moo for two years. He purchases all alcohol for pledging events with fraternity funds, but does not attend or participate in them in any other manner.

Jeremy Patsy and Mike Excess (both 18 years of age) are first-year undergraduate students at the university who have applied to join the fraternity. They both provided a copy of their identification, showing their actual age, to the fraternity. Their identifications were seen by Leader, Hazer and Member.

On September 7, 2017, Hazer told Patsy and Excess to come at midnight to the Delta Kappa Moo house. Leader also attended, but stood motionless without speaking the entire time. Member was not present at any time. Hazer seated Patsy and Excess at a long table. There were two rows of shot glasses, with ten whisky shots in each row. "Bottoms up" said Hazer, "You each drink 10 shots, then we'll talk." Patsy and Excess drank the 10 whisky shots each.

Hazer continued, saying the following to Patsy and Excess: "Tonight will test your commitment to this brotherhood. Not all of you are expected to pass this test. To be considered for membership, you must bring me the Hellenic Games Trophy from the house of our rival fraternity, Alpha Beta Omega. Oh, and you must drink 10 whisky shots every hour until you bring me the trophy. 3, 2, 1, go!" Patsy and Excess were each then given a large bottle of whisky and a shot glass.

"Let's give 'er!" said Excess, running outside, with Patsy following. Excess drove Patsy in his truck to Excess' home. Excess went inside his garage and returned with a crow-bar (a flattened metal bar that is slightly bent at one end) and two black balaclavas (a close-fitting garment covering the whole head and neck,
except for the eyes and mouth). Since it had been an hour since they left the Delta Kappa Moo house, Excess and Patsy each drank 10 more whisky shots.

Excess then drove for another hour with Patsy to an alleyway behind the Alpha Beta Omega house. Excess parked, turned his truck and all of its lights off. Excess and Patsy then drank another 10 whisky shots each, bringing the total each had consumed to 30 whisky shots in just over a two-hour period. "It's go time," said Excess. Patsy, who weighed 140 pounds, began vomiting.

"I dunno if I can do this," said Patsy. "Besides, there's probably people in there."

"Chicken. If you see anyone, honk the horn," said Excess. Patsy nodded and stayed in the pickup truck.

Excess put on a balaclava and took the crow-bar he had brought with him as he left the truck. Excess broke into the Alpha Beta Omega house through a basement window. Using his cellphone as a flashlight, Excess searched the dark house. Excess found the Hellenic Games Trophy in the games room, took it, and was on his way down to the basement to leave through the same window he had used to break into the house when he was kicked in the legs from behind by Jeremy Rival, a member of Alpha Beta Omega. "Thief! Help!" yelled Rival.

Excess lay sprawled out on the ground. Rival hit Excess hard on the shoulder (breaking Excess' collar bone). Excess then swung at Rival with the crowbar and it struck Rival's face, lacerating his check. Rival fell to the ground screaming.

The police attended within minutes and found Patsy unconscious with vomit all over him, lying beside Excess' pickup truck in the alley behind the Alpha Beta Omega house. Patsy and Excess were taken to hospital. An emergency room physician found that Excess was so heavily intoxicated that while he was aware and in control of his bodily movements, he had no capacity to foresee the consequences of his actions. The same physician found that Patsy was in a state of unconsciousness due to severe alcohol poisoning. It took several hours for Patsy to regain consciousness. Rival required six stiches to his check and has a permanent scar from where Excess struck him with the crowbar.

The police are recommending that Leader, Hazer, Member, Excess and Patsy each be charged with robbery, contrary to section 344(1)(b) of the Criminal Code, and assault causing bodily harm, contrary to section 267(b) of the Criminal Code.

Please answer BOTH of the following two questions:

PART 1 (worth 50% of final examination mark): You are the junior Crown Prosecutor assigned to this case. Write a legal memorandum for the senior Crown Prosecutor assigned to this case recommending whether Leader, Hazer, Member, Excess and Patsy should each be charged with robbery,
contrary to section 344(1)(b) of the Criminal Code, and assault causing bodily harm, contrary to section 267(b) of the Criminal Code (the senior Crown Prosecutor has told you that if assault causing bodily harm charges are laid, she would proceed summarily). As part of your memorandum, for each individual and each potential charge, you should identify and analyze the most relevant basis or mode of liability and the strength of any potential legal defences that each individual is likely to raise if charged. Be sure to cite any relevant legal authorities.

PART 2 (worth 10% of final examination mark):

Assume that prior to any charges being laid in relation to the above incident, Leader attended the police station with his lawyer and offered to fully cooperate with the investigation. Leader gave a statement describing in detail all that he observed at the Delta Kappa Moo house the evening of September 7, 2017. The police subsequently charged Leader with robbery, contrary to section 344(1)(b) of the Criminal Code, and assault causing bodily harm, contrary to section 267(b) of the Criminal Code. Leader pleaded guilty to robbery, contrary to section 344(1)(b) of the Criminal Code, and the Crown withdrew the charge of assault causing bodily harm, contrary to section 267(b) of the Criminal Code.

Prior to sentencing, Leader voluntarily paid $25,000 to Rival to cover the full cost of obtaining plastic surgery to minimize his scar from the incident, and gave Rival a full written apology for his role in the incident. Leader also resigned as President of Delta Kappa Moo, and successfully completed a twelve-week Alcoholics Anonymous program. He voluntarily completed 100 hours of community service with BC Crime Prevention, cleaning up graffiti around Abbotsford. Leader is not employed, but has a $2 million trust fund from his family's fortune that he is able to access at will. Leader has no criminal record and has never had any prior negative interactions with police. He has been accepted to attend Harvard Business School in September 2018.

The Prosecutor is seeking a term of six months imprisonment for Leader, arguing that his wealth and privilege has enabled him to “lawyer up” and manufacture the best possible set of mitigating factors. In short, he should not be given much credit for all of the voluntary measures he has taken. A strong message is needed to denounce and deter hazing, focused on the leaders of fraternities.

The Defence argues that there is no reason to doubt the genuineness of Leader's actions and he should not be discriminated against for being wealthy. He should not be made a scapegoat for hazing. The Defence is asking for an absolute discharge.

You are a law clerk to the sentencing judge who has asked you to write a brief legal memorandum recommending what sentence to give Leader and why. Be sure to cite relevant legal authorities in your response.
STATUTORY PROVISIONS

Criminal Code, R.S.C., 1985, c. C-46

Assault with a weapon or causing bodily harm

267 Every one who, in committing an assault,

(a) carries, uses or threatens to use a weapon or an imitation thereof, or

(b) causes bodily harm to the complainant,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

* * * * *

Robbery

343 Every one commits robbery who

(a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;

(b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person;

(c) assaults any person with intent to steal from him; or

(d) steals from any person while armed with an offensive weapon or imitation thereof.

Robbery

344 (1) Every person who commits robbery is guilty of an indictable offence and liable [...] 

(b) in any other case, to imprisonment for life.
QUESTION #2: Development of the Law (20% of final exam mark)

In what ways did R. v. Ryan, 2013 SCC 3 change the law of duress? Are the remaining differences between the defence of duress for principal offenders versus parties to an offence sound? What legislative reforms, if any, are needed to the defence of duress? Why?

Your answer should cite specific legal authorities as well as relevant policy considerations.

QUESTION #3: Policy Question (20% of final exam mark)

The Canadian Bar Association is hosting a conference entitled “Challenges Facing the Criminal Justice System” and has invited you to submit a paper that you will present at this event on ONE of the following topics of your choice:

(A) Indigenous people and the criminal justice system,
(B) Victims of sexual offences and the criminal justice system, or
(C) Delays and inefficiencies in the criminal justice system.

Your paper for this event should include each of the following components: (1) describe the challenge facing the criminal justice system with respect to your chosen topic, (2) discuss measures that have already been taken to address the issue (i.e. either through legislation, case law or policy), and (3) propose additional measures that should be taken to ameliorate the situation.

Your paper should cite relevant legal authorities as well as relevant policy considerations and literature from our course materials.

END OF EXAMINATION