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
SPRING 2018

LAW 221
CRIMINAL LAW

Section 4
Professor Harris

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS and 10 minutes
reading time

NOTE:

1. The examination is closed book, but students
   may bring to the exam two double sided, or four single
   sided, pages with notes, and a tabbed unannotated
   Criminal Code.

2. THIS EXAMINATION CONSISTS OF 3
   QUESTIONS. PLEASE ANSWER ALL 3
   QUESTIONS.
Question 1 (60 Marks)

Alan Accused is charged with:

i. the murder of Vince Victim contrary to section 229(a) of the Criminal Code; and,

ii. assault causing bodily harm of Harry Hurt contrary to section 267(b) of the Criminal Code.

Accused and Victim used to play on the same rugby team, and a group of the former players got together once a month for a poker game. Accused and Victim were good friends, as Victim had played the role of a "bodyguard" on the team for smaller skilled players like Accused. At one of the poker games, Accused, Victim and four other former players attended. Accused and Victim were sitting beside each other and started arguing about whether an oil pipeline should be built. Accused, who was drinking a lot of beer, started slurring his words and seemed to be forgetting which side of the debate he was on. Accused then started making fun of Victim, and Accused said that Victim was making no sense in his arguments because Victim probably could not think right due to Victim's many concussions from the big hits he made in rugby games. Victim roughly pushed Accused to the ground and then Victim started reaching toward Accused. Victim was intending to help Accused get up, but Accused thought Victim was going to continue the attack. Accused jumped up, grabbed a steak knife which was on the poker table, and stabbed Victim twice in the stomach.

Accused saw Victim motionless on the ground and started trying to wake Victim up. Victim was unresponsive and Accused started crying frantically. Accused grabbed a bottle of whiskey from the table and started drinking as fast as he could. One of the poker players, Harry Hurt, phoned 911 while others attempted to assist Victim who was still breathing. A few minutes later, Hurt went over to Accused, and he noticed that Accused seemed completely incoherent and that his eyes were dull. Accused then suddenly punched Hurt very hard in the ribs. Accused then collapsed onto the ground. Hurt was angry that Accused had hit him, so he decided to try and get Accused in even more trouble. When no one was looking, Hurt went and stabbed Victim two more times in the stomach, and Hurt planned to tell the police that Accused had stabbed Victim four times. The paramedics arrived five minutes later, and pronounced that Victim was dead due to a loss of blood.

Do you think that Accused will likely be found guilty of any offences? Please set out your reasons why or why not, and include an analysis of each element of the offences and any relevant defences. Please assume that section 229(a) and section 267(b) of the Criminal Code are constitutional.
**Question 2 (30 Marks)**

Constable Carrie Cop’s work for many years was policing an area of downtown Vancouver which had a high level of drug dealing. One day when Cop was patrolling this area, Peter Poll came up to her and said that he thought that Jim Jimmer had killed his friend, Sally Smith. Cop was immediately suspicious because she knew Poll and Jimmer were rival drug dealers, and knew that dealers sometimes tried to get rid of their competition by sending the police after a rival with a made-up story. However, Poll started describing in great detail how a week ago he saw Smith in a car with Jimmer, and that Smith looked really scared. Poll said he had tried to contact Smith through phoning, texting, email and going to her apartment, but he had not heard from her. Cop told Poll she would keep an eye out for Smith and would talk to Jimmer if she saw him. The next day, Cop was patrolling the same area, and decided to check inside a busy pub because it commonly served minors and she also thought it might be a place that Smith or Jimmer would be hanging out. When Cop went to the very back of the pub, she was shocked to see Poll and Smith sitting together at a table clinking glasses and laughing. Cop arrested Poll for violating section 140(1)(a) of the *Criminal Code*. Cop told Poll that he had the immediate right to contact a lawyer, and Poll stated he wished to call a lawyer. Cop told Poll he could make the call from the police station which was couple of minutes away. Cop then handcuffed Poll and went through his pockets. Cop noticed that there was a paper bag on the table where Poll was sitting. She went through the bag and found a packet of cocaine. Cop asked Poll if the cocaine was his and Poll said he was not sure.

Please analyse whether Cop violated any rights of Poll. Please specify what the rights are and whether they were likely breached. Please assume that section 140(1)(a) of the *Criminal Code* is constitutional.

**Question 3 (10 Marks)**

Suppose Parliament, after a substantial increase in assaults of police officers, made the offence of assaulting a police officer in section 270(1)(a) of the *Criminal Code* subject to a one year minimum sentence. You are a defence lawyer, and an offender comes to see you. The offender has pled guilty to this offence and the one year minimum would apply to him. The offence occurred when a friend of the offender was being arrested, and the offender thought the arresting officer was being quite rough with his friend. The offender then pushed the officer to the ground. You research the case law on sentences for this type of assault on an officer before the minimum sentence was established, and you find out that the general range for this type of offence was six to nine months imprisonment.

Do you think that a constitutional challenge could be made to this minimum sentence? Please also set out any further information you would want to gather for considering a constitutional challenge.

**END OF EXAMINATION**