



## **NATIONAL COMMITTEE ON ACCREDITATION**

### **SAMPLE EXAMINATION**

## **CRIMINAL LAW**

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**CRIMINAL LAW**

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**INSTRUCTIONS:**

- (a) You have three hours to complete this examination.
- (b) Answer questions with full sentences.
- (c) This is an open book examination. You are permitted to bring into the examination and to consult any material you choose.
- (d) There are six questions. The value of each is indicated above the question. You are expected to answer all of the questions in their entirety as the value of all questions together is 100. A pass on the examination is 50.



**15 marks**

1. Bosny is charged with the first degree murder of his wife, contrary to section 231(2) of the *Criminal Code of Canada*. A preliminary inquiry is being conducted. The Crown's allegation is that Bosny strangled her. Evidence showed that Mrs. Bosny was found, barely alive, floating in the backyard swimming pool by the family housekeeper at 9:00 on a Wednesday morning. An ambulance was immediately dispatched, and the paramedics attempted to resuscitate her. A tracheal tube was forced into her throat to open her airways and she was given CPR. In spite of the efforts, Mrs. Bosny died. During the preliminary inquiry the Crown called this background evidence, as well as a pathologist, Dr. Curran. Dr. Curran testified that on his examination he discovered that Mrs. Bosny had contusions or bruising on the left side of her brain as well as a matching external bruise to her forehead. Together the bruises were consistent with her having received a strong blow to the head. He also determined that she had damage to the inside of her throat, which in his opinion could have been caused by manual strangulation. He did not observe any petechial haemorrhages, nor was the hyoid bone fractured - two positive but not indispensable indicia of strangulation. There was only a moderate amount of water in her lungs, and this did not, in the opinion of the pathologist, cause her death. Defence counsel produced a significant amount of medical literature during the cross-examination of the pathologist to show that according to generally accepted standards of practice, pathologists will not identify strangulation as a cause of death without two of three symptoms – external bruising on the neck, petechial haemorrhages, and fractures in the small bones of the neck, none of which were present. Dr. Curran agreed that the injuries inside the neck could be caused by the insertion of a tracheal tube, but he did not think so here, although he had never seen the kind of damage such a tube could make if used aggressively. A representative of the Regional Bank was called to testify. He gave evidence that Bosny's business was in money trouble. A representative of Hart Insurance testified that around the time of Mrs. Bosny's death, he could not be sure exactly when because he did not keep any notes, Bosny called to check on the status of their insurance policies because he was "thinking of taking his book of business elsewhere." The representative testified that he told Bosny that his life and the life of his wife were each insured for \$1,000,000. A police officer testified that when he visited Bosny to tell him about the death of Mrs. Bosny he did not seem shocked, and said, "I hope you don't think I have anything to do with that because of our fight this morning." The defence called one witness, Bosny's daughter, who testified that her Mom and Dad used the word "fight" to describe verbal disagreements, and that her Dad was a caring husband. Will Bosny be committed to stand trial on first degree murder?

**10 marks**

2. Assume that Bosny was committed to stand trial and that the trial is now being held. All of the evidence that was led at the preliminary inquiry has been presented at the trial. In addition, evidence has been presented to the effect that Mr. Bosny admitted to having been home shortly before Mrs. Bosny's death, and that the two had been arguing near the pool. Mr. Bosny admitted that he struck out at Mrs. Bosny, hitting her near the temple. She seemed dazed but said she was O.K. so he left for work. A friend of Mrs. Bosny testified that was on the telephone with Mrs. Bosny around 8:50 in the morning, and that Mrs. Bosny sounded confused. Mrs. Bosny said told her either that Bosny "was hitting her" or "had hit her," the friend could not be clear. During the conversation Mrs. Bosny stopped responding. The friend ultimately hung up and called the police. A defence pathologist testified that Mrs. Bosny was not strangled, but had in fact asphyxiated. She showed that Mrs. Bosny had none of the classic indicators of strangulation, and offered the opinion that Mrs. Bosny, who was already oxygen deprived from having fallen into the pool, suffocated due to improper resuscitation techniques. The tracheal tube is a sharp plastic device that is literally forced into the throat, and the tube that was used, which the defence pathologist reviewed, had collapsed and had human tissue on it. This accounted both for her neck injuries and the asphyxiation. What verdict is likely to render on all of the evidence, explaining your answer fully.

**15 marks**

3. Carl, a twenty-seven year old single father of two, has been charged with three counts of criminal negligence causing injury, contrary to section 221 of the *Criminal Code of Canada* arising out of a car accident in which his two daughters and a driver of another vehicle were seriously injured. The accident happened the day after Carl learned that his wife had died suddenly at work. Feeling distraught, Carl begun to drive to his mother's home, in a small town fifty kilometers from the City. He had the children with him. He did not know how he was going to care for her children with his wife gone. Carl does not know why he did it, but he stopped at a restaurant-bar for a drink on the way to his mother's home. Carl had three beers and then left the restaurant. Just past the bar, a Dodge Dart vehicle proceeding ten or so kilometers over the speed limit was easily passed by Carl's vehicle. Carl pulled his vehicle in front of the Dodge Dart so suddenly after he passed it that the driver worried for a second that Carl would clip the front of his car. Carl's vehicle sped around the curve and the Dodge Dart lost sight of it. On a straight stretch the driver of the Dodge Dart could see Carl's vehicle passing another vehicle, even though there appeared to be an oncoming vehicle that was too close for comfort. Carl's vehicle passed successfully, and disappeared again around the curve. When the Dodge Dart rounded that curve, the driver heard a violent collision down the road and could see cars spinning in a cloud of dust and debris. Carl's vehicle had collided with another vehicle head on. Skid marks and debris at the scene show that the collision happened on a straight stretch of road, but in Carl's lane. An expert accident reconstructionist testified that there is a syndrome called "fake left" where a driver, seeing a vehicle coming at him in his own lane, will move into the lane that the oncoming vehicle should be in, in a desperate attempt to avoid a collision. Where this happens, the

collision occurs in the wrong lane, making it appear as if the “innocent” driver was responsible. While the accident reconstructionist could not say what happened here based on the debris and skid marks, that syndrome does exist. Will Carl be convicted? Explain your answer fully.

**20 marks**

4. Assume that Carl has been convicted of the offences charged. The sentencing judge learns, in addition to the foregoing facts, that at the time of the accident Carl was a recovering alcoholic. He is an aboriginal, although he has never lived on a reserve, having been adopted by a white family when he was three years old. He is a gainfully employed millwright working at a factory. As a recovering alcoholic Carl knew better than to drive after drinking, particularly given his two prior impaired driving convictions. Carl explained that he began to feel better after two beers and decided to order a third beer which he drank while his children played around the video games in the corner. While drinking the third beer he became increasingly disconsolate. He knew that between the alcohol and his grief he was in no condition to drive, but he reasoned that, although he did not want it to happen, if he and the children were to die in a crash, they could be with his wife and would certainly be no worse off. He “just wasn’t thinking right.” Carl left the bar after promising the server that he was not going to drive, and immediately piled the children into the car. Both of Carl’s children were seriously hurt. His youngest daughter, Emma, remains in a coma and is unlikely to recover. Brigitte has largely recovered from serious leg fractures and head injuries. The other driver, Sam, is recovered but he too suffered head injuries and has no memory of the accident. Carl, who was released on bail, is caring for Brigitte, and she is very close to her father. He has resumed attendance at Alcoholics Anonymous and has not had a drink since. He is overwrought with guilt for what happened to Emma and he has told the court that he has to remain strong for his girls, particularly Emma, for he needs to be there when she wakes up. You are the sentencing judge. Impose a reasoned sentence on Carl for his offences.

**20 marks**

5. Parent is a corrections officer at a federal penitentiary. When the institutional head is absent, he is designated to be the acting head, to attend to any matters that arise. Last November there was an incident in the cafeteria. An inmate, Carter, was causing a disturbance and had to be restrained. While he was being held he continued to resist and a guard, Molitor, used a truncheon or club to slap Carter’s legs in an effort to subdue him. Parent happened to be in the room at the time, and he summoned a health care worker to inspect Carter’s legs when he had settled down. The nurse noted redness and swelling and said, “this will bruise up good but nothing more.” She told Carter to keep an eye on things. The next day Carter began to complain about intense pain in his leg. That evening he collapsed. He had a pulmonary embolism, caused by a blood clot, and he almost died. He has since recovered. Parent learned that Carter had collapsed, and learned a week later that Carter had had an embolism, but he did not connect this in his mind to the clubbing incident. At no time were the police notified of the incident, and no report was ever submitted to the regional head. This failing was discovered when Carter tried to sue the

Ministry of Corrections. He has laid a complaint against Parent, contrary to section 73(2) of the *Corrections and Conditional Release Act Regulations*. The relevant provisions are as follows:

73(1) Where a person suffers an injury or death in a penitentiary as a result of the use of force, any staff member who has knowledge of the incident shall immediately call health care staff to the scene and notify the institutional head of a staff member designated by the institutional head.

73(2) Where the institutional head or staff member designated by the institutional head is notified pursuant to subsection (1) of a serious personal injury or a death, the institutional head or staff member shall, as soon as practicable

- (a) notify the head of the region and the appropriate police department, and
- (b) submit a report to the regional head that details all of the circumstances that led to the injury or death.

111. Any person who contravenes any provision of this Act is guilty of an offence punishable on summary conviction.<sup>1</sup>

You are clerking with the Crown Attorney who has to decide whether to stay the charges that Parent has laid, or whether to proceed with them. Parent's lawyer has written to you asking that the charges be stayed because, among other things, section 73(2) is triggered only when the designated staff head is notified under section 73(1) and Parent was never "notified" as he had seen the attack himself; that Parent did not know about any serious injuries arising from the attack, and that Parent did not intentionally omit to fulfill his duty. Provide a memo indicating your opinion as to whether there is a reasonable prospect that Parent has committed the offence charged, giving a complete analysis of the appropriate legal standards.

## 20 marks

6. Stetson was an inmate in a provincial jail, serving a one year sentence for drug trafficking. While inside he continued to traffic drugs that were smuggled into the jail by his street gang. Last June he had promised to supply drugs to an inmate named Jimbo. He was afraid of Jimbo because Jimbo had been in a rival gang on the outside, and Stetson tried to stay clear of him but he was put on the spot. Unfortunately, the drugs Stetson supplied to Jimbo turned out to be bad and Jimbo became ill and died. No-one could trace the drugs to Stetson, although there was word in the jail that Stetson was responsible, and Stetson heard rumblings that he had poisoned Jimbo on purpose. Stetson, who had a history of anxiety disorders, with schizoid tendencies and some history of breaking with reality, was becoming increasingly afraid. He found that he

<sup>1</sup> Please be advised that in actual fact, it is not a prosecutable offence to violate section 73(1) or 73(2). These are mere administrative duties. Section 111 has been created by the evaluator for the purposes of this exam. Please answer the question on the assumption that section 111 exists in the form you have been provided, and that section 73(1) and 73(2) are indeed prosecutable infractions.

would become paranoid when consuming drugs, which he continued to do on regular occasions. One day one of his fellow inmates, Clayton, told him that word on the street was that Stetson was going to be killed as soon as he was released from jail. After that, Stetson would intentionally break prison rules in order to be placed in solitary confinement. In late July he was back in the general prison population when he bumped into a man named Adam, who looked familiar to Stetson. Adam said something and Stetson punched at him. As the two men were pulled apart, Adam told Stetson his time would come. Stetson was put in solitary confinement overnight. The next day Adam and Stetson ended up in the television room together. Adam said, “enjoy your last day?” Adam intended it to be a reference to Stetson’s time in solitary, but Stetson interpreted it as threat that this was going to be his last day on earth. He reached into his waste and pulled out a sharp piece of metal he had been carrying and stabbed Adam in the neck twice. Adam barely survived. Stetson was shaking uncontrollably when he was overpowered and disarmed by the guards. He was unable to speak. After an hour in the infirmary, he told the doctor that he does not recall what happened other than that Adam was going to kill him. Stetson has been charged with attempted murder. You have been retained by Stetson. Prepare a memo to the file indicating whether he will be able to use the defences of self-defence, provocation, and/or mental disorder.

