

## **INTRODUCTION TO CRIMINAL LAW AND PROCEDURE: TAKE-HOME TEST**

You have to answer **5 questions/tasks in total**. **Make sure you choose, at least, one question/task from each section**. Each question/task is worth 20% of the test. This take-home test evaluates your ability to apply the theories, methods, and principles that we discussed in class. Thus, **you have to apply the law as we discussed in class**, even if that is a simplification of the existing Canadian law. For example, if we discussed a certain rule with no exceptions, then you have to apply that rule as seen in class, even if there is an exception to that rule in Canada. Clarity and precision are essential. Please follow the required format. In all your answers, you must refer only to sources (topics, theories, elements, examples, readings, cases, etc.) that we discussed in class. Unless otherwise instructed, **no outside sources may be referred to or included in your answers**. You are not permitted to consult with anyone about this test. Please do not ask me questions about the test after the review class. As a matter of fairness, I do not want to give answers to some students that others do not have the benefit (or detriment) of hearing. You will simply have to use your own judgment about how to handle any possible difficulties, including the interpretation of the questions and tasks. **Submission:** You need to **submit this evaluation to the Algoma University Moodle platform for this course by the deadline, i.e., October 26, 2022 by 10 pm EST**. We will not meet in class on Oct. 19 so that you can work on this test.

### **Format and organization of your answers**

#### **Section A and B**

You don't need to answer in essay form. You can use charts, bullet points, and conceptual maps. Please precede every idea or point you make by its corresponding heading.

#### **Section C: Short essay questions**

#### **Purpose**

The purpose of your essay is to state and prove your thesis. In general, this is the answer to the question or task from the test, e.g., explain and illustrate a quote, analyze a text, etc.

## **Introduction**

The introduction acquaints the reader with the topic. You will need to summarize in your own words the quote or text you need to explain and analyze and place it into a larger context. The introduction should be short, simple, and clear. The most important aspect of your introduction is your thesis, i.e., the point you want to make.

## **Thesis development.**

You need to divide your short essay into sections. Each section should include only one idea, major point, or argument. Generally speaking, each section should have only one paragraph. The section must be preceded by a heading, which must capture the main idea of the section. Also, each paragraph must contain a topic sentence, which must be similar to the heading. The rest of the section must provide examples, explanations, and evidence to prove the topic sentence. Please address the opposing arguments that others could have about your own arguments.

## **Conclusion**

The purpose of the conclusion is to bring the essay to a satisfying close. You should avoid bringing up a new point in your conclusion. You should avoid a lengthy and excessive summary. Simply, summarize your thesis and main arguments. The most successful conclusions are thoughtful and reflective. Go back to the context. After having presented your topic and proven your thesis, you want to be able to make an overarching statement based on that information. Just as the introduction sought to place the essay in the larger context about the topic, so should the conclusion insist on returning the reader to that ongoing conversation.

## **Citation Format**

The *Chicago Manual of Style* (author-date) or the **Canadian Guide to Uniform Legal Citation (aka The McGill Guide)**.

## **Example of format and organization**

Please have a look at Tetley's article on Mixed Jurisdictions Part 2, widely available online, for an example of the required format.

## Section A

1. Analyze each element of the definitional terms of the following offences. In your analysis, include, where appropriate, all the relevant issues discussed and practiced in class.

Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years, who is bound to comply with a university professor order and who fails, without lawful excuse, to comply with that order.

Every one commits an offence who having at any time been convicted of an aviation related offence is found loitering in or near an airport, train station, bus terminal, aviation school or subway station.

Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

## Section B

2. Make-up an offence, i.e., one that does not exist in the Canadian Criminal Code or any other penal code. Write the definitional terms of the offence, which must fulfill all of the following conditions:
  - The offence respects the principles of Criminal Law, i.e., it is a valid offence.
  - The voluntary act is single.
  - The actus reus must be susceptible of being committed by omission.
  - Social harm is definitional.
  - Social harm is expressed as a wrongful result and as a wrongful conduct. It also contains, at least, two attendant circumstances.
  - Mens rea is subjective.
  - Mens rea is general.
  - Mens rea is multiple.
  - Mens rea includes, at least, intention.
  - There is perfect symmetry between mens rea and every material element of the offence.

3. Find, at least, two examples that meet the following conditions in the Canadian Criminal Code and explain why they do so.
  - a. Crimes with no strong actus reus (other than conspiracy and benefitting from criminal activity).
  - b. Crimes where there is no symmetry between every element of the actus reus and the mens rea.
  - c. Crimes which prohibit everyday activities (other than sexual assault, destruction of computer data, and destruction of property).
  - d. Crimes with no clear social harm.
  
4. Make up a scenario of a crime, including the facts of the case and the definitional terms of the offence. There must be 100% concurrence between the facts of the case and the elements of the definitional terms of the offence. The mens rea of your crime has to comply with the following conditions: mens reas has to be specific and multiple. The type of mens rea in your scenario must include knowledge.

### **Section C**

5. Explain and analyze the following quote. Use examples to illustrate your explanation.

One of the most prevalent crimes in Canada is the breach of a court order. Accused individuals may be subject to imprisonment if they breach a court order, even if they are never ultimately convicted of any crimes for which they were initially charged. In many cases, an accused person faces criminal sanctions for conduct which, but for the stipulated court order, would be a lawful exercise of personal freedom. Usually, court orders lack a clear mens rea element. This is problematic, as the fault element of a court order has far-reaching implications for civil liberties and the fair and efficient functioning of court orders, and there is a direct link between what court orders may prescribe and Parliament's intent in criminalizing their breach.

6. Explain and analyze the following quote. Use examples to illustrate your explanation.

In effect, through constitutional analysis, the Court gave its blessing to a large margin of policy discretion for Parliament in the arena of criminal fault. When combined with a very low standard

for causation, which has also received constitutional approval, the result is a substantive criminal law that casts the net of liability very broadly, indeed. A gap has opened up between the wisdom reflected in the Criminal Law principle of fault and the governing constitutional principles. Crucially, in constitutional matters, such a gap is really a warrant, comforting a legislature that the only standard with which it needs to concern itself is the bare constitutional threshold.

7. Discuss if the notion of criminally protected legal goods may act as a limit to the punitive power of the state and, if so, how. Give, at least, two examples to illustrate your point, where you define the crime (actual or made up) and the facts of two made-up cases.
8. Explain and analyze the following quote. Use examples to illustrate your explanation.

In discussing the element of knowledge in the context of criminal liability, Assistant Professor Julian Hermida at Algoma University, states:<sup>[8]</sup>

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The concept of knowledge entails an awareness that defendant is committing an act that is considered an offence. It does not require any knowledge of the unlawfulness of such act or omission. A person acts knowingly when the person is aware of the nature of his conduct or that the circumstances then surrounding the conduct exist; or when he is aware that the conduct is reasonably certain to cause the result. The main distinction between intention and knowledge is that the former entails a conscious desire to cause a particular result by one's conduct and the latter entails an awareness that the result is practically certain to follow from such conduct.