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Mark Scheme (Results)

January 2019

BTEC Level 3 Nationals in Applied Law

Unit 3: Applying the Law (20170K)



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Unit 3: Applying the Law

General marking guidance

- All learners must receive the same treatment. Examiners must mark the first learner in exactly the same way as they mark the last.
- Mark grids should be applied positively. Learners must be rewarded for what they have shown they can do rather than be penalised for omissions.
- Examiners should mark according to the mark grid, not according to their perception of where the grade boundaries may lie.
- All marks on the mark grid should be used appropriately.
- All the marks on the mark grid are designed to be awarded. Examiners should always award full marks if deserved. Examiners should also be prepared to award zero marks, if the learner's response is not rewardable according to the mark grid.
- Where judgement is required, a mark grid will provide the principles by which marks will be awarded.
- When examiners are in doubt regarding the application of the mark grid to a learner's response, a senior examiner should be consulted.

Specific marking guidance

The mark grids have been designed to assess learners' work holistically.

Rows in the grids identify the assessment focus/outcome being targeted. When using a mark grid, the 'best fit' approach should be used.

- Examiners should first make a holistic judgement on which band most closely matches the learner's response and place it within that band. Learners will be placed in the band that best describes their answer.
- The mark awarded within the band will be decided based on the quality of the answer in response to the assessment focus/outcome and will be modified according to how securely all bullet points are displayed at that band.
- Marks will be awarded towards the top or bottom of that band depending on how they have evidenced each of the descriptor bullet points.

To be used twice, once for each activity in Unit 3 – marks 36 (x2)
Total Marks for external Task is 72

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Selection and understanding of legal principles relevant to context	0	1–2	3–4	5–6	7–8
	No rewardable material.	<ul style="list-style-type: none"> • Selection of some basic legal principles. • Little understanding of the law relevant to the context. • Limited use of relevant authorities in the context of the scenario. 	<ul style="list-style-type: none"> • Selection of some appropriate legal principles. • Some understanding of the law relevant to the context. • Uses some relevant authorities in the context of the scenario. 	<ul style="list-style-type: none"> • Selection of appropriate legal principles. • Clear understanding and linkage to the law and context. • Uses a variety of appropriate authorities in the context of the scenario. 	<ul style="list-style-type: none"> • Selection of appropriate legal principles. • Thorough understanding relevant to the context, showing a detailed knowledge and understanding of the relevant law. • Uses a wide variety of appropriate authorities in the context of the scenario.

To be used twice, once for each activity in unit 3 – marks 36 (x2)
Total Marks for external Task is 72

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Application of legal principles and research to information provided	0	1-2	3-4	5-6	7-8
	No rewardable material.	<ul style="list-style-type: none"> • Demonstrates limited application of the relevant law to the scenario. • Limited use of precedents/ authorities in the context, drawing on research. 	<ul style="list-style-type: none"> • Demonstrates some application of the relevant law to the scenario. • Selects and applies some relevant precedents/ authorities in context, drawing on research. 	<ul style="list-style-type: none"> • Demonstrates competent application of the relevant law to the scenario. • Selects and applies relevant precedents/authorities in context, drawing on research. 	<ul style="list-style-type: none"> • Demonstrates detailed and thorough application of the relevant law to the scenario. • Selects and applies relevant precedents/ authorities throughout in context, drawing on research.

To be used twice, once for each activity in Unit 3 – marks 36 (x2)

Total Marks for external Task is 72

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Analysis of legal authorities, principles and concepts	0	1–2	3–4	5–6	7–8
	No rewardable material.	<ul style="list-style-type: none"> • Analysis is limited. • Analysis lacks a grasp of the concepts in the context of the scenario. • Alternatives are stated but with no supporting evidence. 	<ul style="list-style-type: none"> • Some analysis. • Analysis demonstrates a basic grasp of the concepts and their relevance in this scenario. • Alternatives are stated with some supporting evidence. 	<ul style="list-style-type: none"> • Linked statements provide a logical analysis of the evidence in the scenario. • Analysis demonstrates a good grasp of the concepts and their relevance in this context. • Alternatives are detailed, making use of supporting evidence. 	<ul style="list-style-type: none"> • Detailed and coherent statements provide a clear and logical analysis of a wide range of relevant evidence in the scenario. • Analysis demonstrates a thorough grasp of the concepts and their relevance in this context. • Alternatives are considered in depth, using appropriate supporting evidence.

To be used twice, once for each activity in Unit 3 – marks 36 (x2)

Total Marks for external Task is 72

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Evaluation and justification of decisions	0	1–2	3–4	5–6	7–8
	No rewardable material.	<ul style="list-style-type: none"> • Interpretation of some legal principles/authorities but is generic, lacking detail and relevance to the context. • Limited evaluation of the outcome of the case using legal principles, coming to a basic conclusion. 	<ul style="list-style-type: none"> • Interpretation of some principles/authorities relevant to the context. • Some evaluation of the outcomes of the case using legal principles/authorities, coming to a conclusion that is justified in part. 	<ul style="list-style-type: none"> • Interpretation of main principles/authorities relevant to the context. • Evaluation of the outcomes of the case using principles/authorities, coming to a conclusion that is mostly but not wholly justified. 	<ul style="list-style-type: none"> • Detailed interpretation of the main principles/authorities relevant to the context. • Detailed evaluation of the outcomes of the case using principles/authorities and coming to a fully justified conclusion.

To be used twice, once for each activity in Unit 3 – marks 36 (x2)
Total Marks for external Task is 72

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Presentation and structure	0	1	2	3	4
	No rewardable material.	<ul style="list-style-type: none"> Lacks professional format and structure, leading to lack of clarity. Language is inappropriate for audience. 	<ul style="list-style-type: none"> Has a basic professional format and structure. Language is sometimes appropriate for audience. 	<ul style="list-style-type: none"> Has a logical structure and format that is generally clear and professional. Language is appropriate for audience. 	<ul style="list-style-type: none"> Is well written, uses clear language, has a logical and professional format and structure. Language is appropriate for audience throughout.

Activity 1: Homicide – Indicative Content

Identify the relevant homicide offence (murder) and demonstrate an understanding of the legal principles relating to murder

Actus reus

- Unlawful killing of a reasonable creature in being under a time of the Queen's peace

Mens rea

- Express malice aforethought (intention to kill, either direct or oblique)
- Implied malice aforethought (intention to cause GBH)

Recognise relevant legal authorities

Common law offence

Actus reus

Unlawful killing:

- can either be a positive act or an omission (*Gibbons and Proctor*)
- will be unlawful if not in self-defence

Causation: Causing death: ordinary rules of causation used here:

- factual causation ('but for' test from *R v White* or *R v Pagett*)
- legal causation – substantial and operating cause of death (*R v Smith*) (**reference to intervening acts not required as not relevant to the question**)

Mens rea

Express malice aforethought:

- direct intention to bring about death – (*R v Mohan*)
- oblique intention – realising that death is a virtual certainty and carrying on – (*R v Woollin*)

Implied malice aforethought:

- intention to cause GBH – (*R v Vickers*)

Apply the law to Anne

Anne has unlawfully killed Lisa

Anne has repeatedly hit Lisa with a cricket bat – this is a positive act

Anne is the cause of Lisa's death

There are no questions of causation as Anne is both the factual and legal cause of Lisa's death. If Anne hadn't beaten Lisa with the cricket bat, she wouldn't have died and there are no intervening acts that break the chain of causation

Anne has direct intention to kill Lisa

As Anne would probably have been angry at the comments made by Lisa criticising her batting technique, and she is seen on the CCTV repeatedly hitting Lisa with the bat, this would seem to demonstrate that she wanted to kill Lisa

Identify the relevant partial defence to murder (diminished responsibility) and demonstrate an understanding of the legal principles relating to that partial defence

- abnormality of mental functioning
- from a recognised medical condition
- that substantially impairs D's ability to form a rational judgement; exercise self-control; or understand the nature of their conduct
- this provides an explanation for the D's acts or omissions in being party to the killing

Recognise the relevant legal authorities

Diminished responsibility comes from s52 Coroners and Justice Act 2009 (CJA) which amended s2 Homicide Act 1957. It reduces a conviction of murder to one of voluntary manslaughter, attracting a discretionary life sentence.

Abnormality of mental functioning:

- the defendant must be suffering from an abnormality of mental functioning
- *R v Byrne* (although pre-CJA) states that an abnormality of mental functioning is a state of mind so different from that of the ordinary human being that the reasonable man would term it abnormal

From a recognised medical condition:

- D's abnormality must be as a result of a recognised medical condition
- no examples of recognised medical conditions are provided in the CJA, however previous case law suggests that pre-menstrual tension (*R v Smith*); depression (*R v Gittens*); battered woman's syndrome (*R v Ahluwalia*); epilepsy (*R v Campbell*) and mental deficiency (*R v Speake*) would be included (must be recognised by World Health Organisation)
- medical evidence is needed to support the claim
- it is up to the jury to decide whether they believe the abnormality of mental functioning arose from a recognised medical condition

That substantially impairs D's ability to do one of three things:

- the abnormality of mental functioning needs to have substantially impaired D's ability to understand the nature of their conduct; form a rational judgement; exercise self-control
- substantial does not mean total (*R v Lloyd*); meaning that the impairment must be significant but not necessarily total

Provides an explanation for D's acts and omissions

- The abnormality of mental functioning must provide an explanation for the killing
- Under s52(1B) an explanation is provided if the abnormality was a significant contributory factor in causing the defendant to carry out the conduct. There must be a significant link between the mental functioning and the conduct that resulted in death

Apply the law to Anne

Anne has an abnormality of mental functioning

- We are told that Anne has become increasingly irrational and has been receiving treatment from a psychiatrist. It is likely the jury would see this as being a state of mind so different from that of the ordinary human being as most people are not irrational

Anne's abnormality is from a recognised medical condition

- We are told that Anne has been suffering from severe depression for a number of years and is seeing a psychiatrist. Depression is a recognised medical condition and in line with

R v Gittens. She will need to provide medical evidence from two doctors that she was suffering from depression

The abnormality of mental functioning has substantially impaired Anne's ability to form a rational judgement or exercise self-control

- Anne's ability to form a rational judgement has been impaired as we are told that she is behaving irrationally and arguing with Lisa. It could be that she feels that when Lisa is criticising her batting technique she is being purposefully nasty and therefore does not release that she could simply be providing her with help to improve her technique
- It could also be suggested that Anne's ability to exercise self-control has been impaired as she attacked Lisa when she was criticising her batting technique. It could be that this made Anne so angry that she could not exercise self-control and attacked Lisa

Provide a reason for the killing

- There appears to be a significant causal factor in leading Anne to carry out the killing of Lisa. We know that the treatment for depression has not been effective and she was continuing to behave irrationally. We are also told that it is her condition that has led her to behave irrationally

Analyse the likely outcome for Anne

- Anne is likely to be found guilty of murder as she has both the *actus reus* and *mens rea* of the offence. This will attract a mandatory life sentence
- It is likely that Anne will be able to plead the partial defence of diminished responsibility for the death of Lisa. Successfully pleading this defence means that her conviction of murder will be reduced to voluntary manslaughter, which attracts a discretionary life sentence
- She has an abnormality of mental functioning as she is known to behave irrationally
- It is likely the jury will agree that she has a recognised medical condition as she is suffering from depression and, as long as she can provide evidence in the form of two medical reports, it is likely the jury will agree that her abnormality is a result of her depression
- Her ability to form a rational judgement has been impaired as we are told she is behaving irrationally and so the criticism from Lisa could have affected her badly. It would appear that she could also have had her ability to exercise self-control impaired if she reacted badly to the criticism from Lisa
- It seems likely that the jury will agree that there is a direct causal link between the depression and the murder as the treatment she was receiving was not working and had affected her personality

Credit any evaluative comments

- The partial defence of diminished responsibility was reformed by the CJA because the previous law was not clear about what could constitute an abnormality of mental functioning. The new law states that a recognised medical condition must cause the abnormality of mental functioning
- The law is now more reflective of medical terminology and can be more easily understood by jurors/ordinary people
- The fact that the burden of proof is on the defendant is a criticism as it breaches Art 6 ECHR (the right to a fair trial) which includes the doctrine that D is innocent until proven guilty

- Juries are said to have insufficient knowledge to determine whether someone's medical condition is "recognised" and whether it has impaired the D's ability to do one of the three specified things
- The partial defence is not allowed for developmental immaturity

Credit any other alternative lines of reasoning

- Alternative outcomes where properly supported

Identify the relevant police power that is being exercised (stop and search) and demonstrate an understanding of the legal principles relevant to stop and search

Police power of stop and search

- Police can stop and search a person or their vehicle in a public place where there are reasonable grounds for suspecting that they have stolen or prohibited articles
- The police must have reasonable grounds of suspicion (Code A)

Recognise the relevant legal authorities

- The power to stop and search is contained in s1 Police and Criminal Evidence Act 1984
- Under Code A, reasonable grounds for suspicion depend on the circumstances of each case, however there must be an objective basis for that suspicion, based on facts, information and/or intelligence
- Under Code A, reasonable suspicion cannot be supported on the basis of personal factors, therefore it cannot be based on the suspect's appearance unless the police have a physical description of the suspect
- **S2** – officer must state name, police station, purpose of search and grounds of suspicion (see also *Osman v DPP*)
- The prohibited articles can include offensive weapons
- **S2 (9)** – Limited to outer clothing and cannot be required to remove any article other than a jacket, outer clothes or gloves. (If they want a more thorough search must be done out of public view)
- Must give the suspect (S) a copy of the search record
- S can refuse to answer questions asked by a police officer (*Rice v Connolly*), but S can only refuse politely (*Ricketts v Cox*)
- They may use reasonable force to detain you – s117 PACE and *Kenlin v Gardiner*
- Think GO WISELY under Code A for the search they must tell S:
 - Grounds for the search
 - Object of the search (what is being looked for)
 - Warrant card (they must show S this if plain clothed)
 - Identity – the officer's name and collar number
 - Station – they must tell S the station they are from
 - Entitlement – S is entitled to a copy of the search record
 - Legal power – they must explain to S the legal power being exercised
 - You are detained – they must instruct S that he/she is detained for the search

Apply the law to Anne

- The police have stopped and searched Anne in a public place (close to Whiteacre Cricket Ground)

- They may have had reasonable suspicion that she was carrying the murder weapon. This would have to be judged objectively so that others would have thought she had stolen or prohibited articles. They are not allowed to base their stop and search on her appearance alone, however as there are reports that someone matching her description was seen beating another woman to death with a cricket bat, it would appear that they have reasonable grounds
- When stopping Anne, the police should have identified themselves, told her why they were searching her and what they were looking for. They have told her they wish to search her, however it does not appear that they have identified themselves and what station they are attached to and the purposes of the search
- Anne should also receive a copy of the search, which, according to the information, she was not
- Under s1 PACE, the police are only allowed to ask Anna to remove her jacket, coat and gloves. The fact she has been asked to strip down to her underwear would be unlawful
- They are allowed to use reasonable force on Anne to search her, however it seems unlikely that the force used in Anne's situation would be said to be reasonable

Analyse the likely outcome for Anne

- The police have correctly stopped and searched Anne in a public place and it would seem, on the basis of the facts, they would have reasonable grounds for suspecting she has on her either stolen or prohibited articles because they have received reports that a woman matching her description has beaten another woman to death
- The conduct of the stop and search appears to be unlawful as despite telling her they wished to search her, they have not identified themselves, the station they were from and what the purpose of the search is. We are also not told whether she received a copy of the search. In addition, the fact she was asked to remove more than her jacket, coat or gloves is unlawful
- Forcing her to the floor would likely be judged to be excessive force

Credit any evaluative commentary

- Reasonable force can be used when the suspect is not complying with the officer stopping and searching the individual, however it is not stated what can be considered reasonable. What is considered reasonable is subjective and the courts are more likely to believe the officer than the suspect

Credit any other alternative lines of reasoning

- Alternative outcomes where properly supported.

Activity 2: Offences against Property – Indicative Content

Activity 2: Offences against Property

Identify the relevant property offence for the scenario (burglary) and demonstrate an understanding of the law relating to burglary

There are two types of burglary: s9(1)(a) burglary and s9(1)(b) burglary

The common elements of both are that a person must have entered a building, or part of a building, as a trespasser

The difference is that for 9(1)(a) burglary, the person must enter a building or part of a building as a trespasser with intention to steal, inflict GBH or cause criminal damage. They do not have to actually commit these offences

For a 9(1)(b) burglary, after having entered the building as a trespasser, the person steals or inflicts GBH

Recognise the relevant legal authorities

Burglary is defined in s9(1) Theft Act 1968

The common elements of the *actus reus* of 9(1)(a) and 9(1)(b) are entry, building, and trespasser:

- Entry – not defined in the Act. The leading case of *R v Ryan* states that the jury decides whether entry is 'effective'. Previously in *R v Collins*, it had to be effective and substantial then in *R v Brown*, when D only had his arm in the building, it only had to be effective
- Building/Part of a building – not defined in the Act but there must be some degree of permanence. It is a structure of considerable size designed to be permanent or at least endure (*Stevens v Gourley*). S9(4) states it includes inhabited vehicles and vessels. It also includes part of a building. This applies when D enters a building with permission but then goes into a part of it he has no right to (*R v Walkington*)
- Trespasser – trespass is a tort and means to enter property without permission or legal right. If D has permission he is not a trespasser (*R v Collins*), however he may be a trespasser if he goes beyond his permission (*R v Jones and Smith*)

For 9(1)(a), the *mens rea* is intention to commit one of the ulterior offences. D's intention can be specific or vague (*AGs Ref 1&2 1979*). D also needs to knowingly or recklessly trespass

For 9(1)(b), D must additionally either steal or inflict GBH. The *mens rea* is the *mens rea* for the offence committed. D also needs to knowingly or recklessly trespass

Application of the law to Michelle

For being seen forcing entry into the jewellery shop, Michelle may be liable for both 9(1)(a) and 9(1)(b) burglary

- There is effective entry as she is inside the shop
- A shop is clearly a building

- She would be classed as a trespasser as whilst she would have permission to be in the shop during the day, she does not have permission to force entry to the shop door in the evening
- When she entered the shop this would be 9(1)(a) burglary as we are told that she has seen watches in the shop window that she believed she could sell online. This suggests that she went into the shop with the intention of stealing the watches, which is sufficient for 9(1)(a)
- When Michelle broke George's leg, this would be a 9(1)(b) burglary. We know that she has entered the building as a trespasser. Breaking George's leg would be GBH, which is sufficient to form a 9(1)(b) burglary
- She has knowingly trespassed as she knows she is not allowed to go in the shop

Identify the relevant defence and demonstrate an understanding of the law relating to that defence.

As we are told that Michelle suffers from epilepsy, it could be that she is able to claim the defence of insanity

In order to plead insanity, it must be proven that there is:

- a defect of reason
- caused by a disease of the mind
- so that the defendant does not know the nature and quality of the act, or he does not know he is doing that which is wrong

In order to plead automatism, it must be proven that the defendant:

- was acting involuntarily
- due to an external factor

Recognise the relevant legal authorities

Insanity comes from the M'Naghten rules, and if successful will result in the special verdict of not guilty by reason of insanity.

- Defect of reason – the powers of reasoning must be impaired, absentmindedness will not count (*R v Clarke*)
- Disease of the mind – this is a legal and not a medical term, the court is concerned with the mind and not the brain (*R v Kemp*), the source of the disease is irrelevant, it can be temporary or permanent state as long as it exists at the time of the act (*R v Sullivan*), however it must be due to an internal factor (*R v Hennessy*)
- Not knowing the nature and quality of the act or not knowing the defendant is doing that which is wrong. Wrong in this instance means legally wrong (*R v Windle*)

The case of *Bratty v AG for NI* defined automatism as an act done by the muscles without any control by the mind, such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing such as an act done while suffering from concussion or while sleep-walking'

There are two aspects to the defence of automatism. It must be:

1. involuntary
2. due to an external factor

1) Involuntary

Reduced or partial control of one's actions is not sufficient to constitute non-insane automatism. In *AG's Reference (No. 2 of 1992)* (1993) the Court of Appeal held that there must be 'total destruction of voluntary control'

2) Due to an external factor

The cause of the automatism must be external. Examples of external causes include:

- a blow to the head
- an attack by a swarm of bees
- sneezing
- hypnotism
- the effect of a drug

See *Hill v Baxter*

In *R v T* it was accepted that exceptional stress can be an external factor that may cause automatism. In this case the defendant suffered post-traumatic stress disorder after being raped

Application of the law to Michelle

Insanity

- Michelle's powers of reasoning seem to be impaired as we are told she had an epileptic fit.
- We are told that Michelle has epilepsy. This would be a disease of the mind as it is due to an internal factor. It also appears to exist at the time she has committed the 9(1)(b) burglary as she attacked George after he challenged her
- It does not seem that Michelle knows the nature and quality of her act as we are told that during epileptic fits epileptics are unaware of what they are doing

Automatism

- Michelle appeared to be acting involuntarily when she kicked George as we are told that during fits epileptics are unaware of what they are doing. Therefore, it would appear that when she kicked George she was acting involuntarily as, due to her epilepsy she did not know what she was doing had no control over her actions.
- As we are told that she suffered an epileptic fit after George challenged her, suggesting that he is the external factor.

Analyse the likely outcome for Michelle

- Michelle is likely to be found guilty of burglary under both 9(1)(a) and s9(1)(b) Theft Act 1968 for entering the shop to steal the watches and injuring George when she was inside the shop

- By going into the shop in the middle of the night with the intention to take the watches, she has entered a building as a trespasser with the intention of committing an ulterior offence – this would be 9(1)(a)
- Injuring George would amount to the ulterior offences required for a 9(1)(b) burglary
- Michelle had the *mens rea* for GBH and she knew that she was a trespasser as she has broken into the shop in the middle of the night
- **For the defence of insanity:** The defence that Michelle is able to plead is the defence of insanity, due to the internal factor of her epilepsy. A successful plea of insanity provides a special verdict of not guilty by reason of insanity and she may be given an absolute discharge or a hospital order
- **For the defence of automatism:** The defence that Michelle is able to plead is the defence of automatism, due to her acting in an involuntary manner when she kicked George, due to the external factor of him challenging her. This is a full defence and will result in a verdict of not guilty.

Credit any evaluative points

- It has been commented that GBH should be removed as it is an offence against the person and should be replaced within the Offences Against the Person Act 1861. The offence of rape used to be included with the offence of burglary but was removed because it was a sexual offence
- The overlap between the law of insanity and automatism is unfair and leads to arbitrary distinctions

Credit any other alternative lines of reasoning

- Alternative outcomes where properly supported.

Ofqual



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