

Mark Scheme (Results)

June 2018

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 - Indicative Content

Activity 1: Involuntary Manslaughter

Identify the relevant form of involuntary manslaughter (gross negligence manslaughter) and demonstrate an understanding of the legal principles relating to gross negligence manslaughter

- Duty of care
- Breach of that duty
- The breach of duty is characterised as gross negligence
- The breach has caused death

Recognise relevant legal authorities

Gross negligence manslaughter established in *R v Adomako*

Duty of care:

- Originally from *Donoghue v Stevenson* (neighbour principle); other duty situations that have been developed – *R v Wacker* (duty through criminal enterprise); *R v Evans* (duty to summon medical assistance).

NB – Credit any other duty situations

Breach of duty of care: ordinary rules of negligence apply - would the reasonable man with the same skills have done the same in the same situation – *R v Holloway*. It is an objective test and is based on the defendant's position at the time of the breach. An unqualified person will not be judged at a lower standard than a qualified person (as in *Nettleship v Weston*).

Gross negligence:

- *R v Bateman* "such disregard for the life and safety of others as to amount to crime against the state deserving of punishment."
- *R v Misra and Srivastava* – the breach of duty must be so bad that it risked death, not just the health and safety of the victim.

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*); if there are intervening acts these must be so independent of the actions of the defendant (*R v Cheshire*); there must be no intervening acts such as unreasonable acts of the victim (*R v Williams*); the defendant must take their victim as they find them (*R v Blaue* and *R v Hayward*).

Apply the law to Gino

Gino has a duty of care towards Janet

- Gino has a duty of care towards Janet as a customer of his restaurant using the general neighbour principle (*Donoghue v Stevenson*).
- This duty of care is heightened due to the fact that Janet had told Gino about her peanut allergy when she was ordering her food.

Gino is likely to have breached that duty

- Gino would be judged against the standard of the reasonable restaurant owner.
- Gino has fallen below the standard of the reasonable restaurant owner who would have checked the ingredients of the cake.
- Janet has identified that she has a nut allergy and therefore she has special characteristics that require him to exercise a higher standard of care because of this (based on the civil law case of *Paris v Stepney Borough Council*), in addition he also

knew of the risk as she has told him about it (based on the civil law *Roe v Minister of Health*).

The breach of duty is likely to be characterised as gross negligence

- Gino was aware that Janet had the peanut allergy. Not checking the ingredients of the cake when he was aware of the allergy has shown disregard for the health and safety of the victim (under the test from *R v Bateman*).
- By not checking the ingredients this did expose Janet to more than a risk to her health and safety but to a risk of death (*R v Misra and Srivastava*).

The breach of duty has caused death

- 'But for' Gino serving the cake containing peanuts to Janet, she wouldn't have suffered an allergic reaction and died.
- The serving of the cake containing peanuts to Janet was the operating and substantial cause of death as it is the allergic reaction that killed her.
- There are no intervening acts that would break the chain of causation.
- Gino must take his victim (Janet) as he finds her – she has a severe peanut allergy that would make her reaction to the nuts worse.

Analyse the likely outcome for Gino

- Gino is likely to be found guilty of the gross negligence manslaughter of Janet.
- Gino owed Janet a duty of care based on precedent from *Donoghue v Stevenson*.
- He breached that duty of care because, after being told about Janet's peanut allergy, Gino did not check whether the cake he served her contained peanuts. The reasonable restaurant owner would have checked this when told by a customer.
- Gino has been grossly negligent as there was a risk of death to Janet and he has shown such disregard for her health and safety by not checking the ingredients of the cake.
- This breach of duty of care caused Janet's death. But for Janet being served a cake containing peanuts, she wouldn't have died. Gino was the operating and substantial cause of Janet's death as it was his serving of the cake containing peanuts that led to her severe allergic reaction. There are no intervening acts that would break the chain of causation.

Credit any evaluative comments

- Gross negligence manslaughter is problematic as it mixes the civil concepts of negligence and duty of care with criminal liability.
- The test in *Adomako* is circular in that it requires the jury to convict the defendant of the crime if they believe it was criminal.

Credit any other alternative lines of reasoning

- Alternative outcomes where properly supported.

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

Police power of arrest

- Police can arrest without a warrant anyone who has, is, or is about to commit an offence.
- Police officer must have reasonable grounds for believing the arrest is necessary (under Code G).
- Police may use reasonable force to carry out an arrest.

Recognise relevant legal authorities

- Arrest without a warrant is contained in 24 Police and Criminal Evidence Act 1984 as amended by Serious Organised Crime and Police Act 2005.
- Under Code G, reasonable grounds must be based on known facts or information and must be an honest belief that would lead an ordinary cautious person to suspect that the suspect has, may have, or is about to commit an offence.
- Under s24 and Code G, an arrest will only be necessary if it is:
 - to enable the person's name and address to be ascertained;
 - to prevent the person:
 - causing physical injury to himself or any other person;
 - suffering physical injury;
 - causing loss or damage to property;
 - committing an offence against public decency;
 - causing unlawful obstruction to the highway.
 - to protect a child or a vulnerable person;
 - to allow the prompt and effective investigation of the offence or of the conduct of the person;
 - to prevent any prosecution for the offence being hindered by the disappearance of the person in question.

(NB not all elements of the necessity test need be explained.)

- Police must inform the suspect that they are being arrested and the reason for arrest (s28 PACE) – *Taylor v Chief Constable of Thames Valley Police*.
- Take the suspect to the police station as soon as is practicable (s30 PACE 1984).
- Use only reasonable force (if necessary), e.g. handcuffs – *Wood v DPP*.
- Give the suspect the caution.

Apply the law to Gino

- The police have arrested Gino on the basis of a crime they think he has committed (gross negligence manslaughter) and one which the police would not require a warrant for.
- The police will have known facts or information based on the fact that Janet died as a result of anaphylactic shock from eating something at Gino's restaurant.
- The arrest will be necessary in order to either ensure the prompt and effective investigation of the offence or to prevent any prosecution for the offence being hindered by the disappearance of Gino.
- The police have not told Gino that he is being arrested nor the reason he is being arrested, which they are required to do.
- The police do not appear to have read Gino the caution.
- The police should only use reasonable force, such as handcuffs, when arresting Gino. Gino did not appear to be presenting a threat to the police and therefore forcing him against the wall could be said to be excessive force.
- Gino must be taken to the police station as soon as is practicable, which has been done according to the facts of the scenario.

Analyse the likely outcome for Gino

- Gino has been correctly arrested without a warrant on the basis of a crime that the police think that he has committed. This would be lawful.
- The arrest was reasonable as the police knew that Janet had died as a result of eating food at Gino's restaurant.

- The arrest was necessary as the police would be arresting him in order to ensure prompt and effective investigation of the offence.
- The conduct of the arrest appears to be unlawful and they haven't followed the procedure for arrest set out in Code G.
- The use of handcuffs would be classed as reasonable force, however forcing him against the wall could be said to be excessive force.

Credit any evaluative commentary

- Reasonable force can be used when the suspect is not complying with the arresting officer, 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.
- The necessity test is very wide and arrests are easy to justify.

Credit any other alternative lines of reasoning

- Alternative outcomes where properly supported.

Activity 2- Indicative Content

Activity 2: Offences Against Property

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

Basic criminal damage

- *Actus reus* – damage or destroy; property; belonging to another; without lawful excuse.
- *Mens rea* – intention or subjective recklessness as to whether property is destroyed or damaged.

Aggravated criminal damage

- *Actus reus* – damage or destroy; property; belonging to himself or another; without lawful excuse.
- *Mens rea* - intention or subjective recklessness as to whether property is destroyed or damaged; intention or subjective recklessness as to whether life would be endangered by the destruction of property.

Recognise the relevant legal authorities

Basic criminal damage

Section 1(1) Criminal Damage Act 1981: “a person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage such property or being reckless as to whether such property would be destroyed or damaged, shall be guilty of an offence.”

Actus reus

- Destroys or damages – property will be damaged if it takes time, money and effort to rectify it (*Roe v Kingerlee*); the court will take into consideration the purpose of the property when deciding whether it has been damaged (*Morphitis v Salmon*).
- Property – section 10(1) Criminal Damage Act 1971 defines property as property of a tangible nature, including real, personal, money, tamed wild animals.
- Belonging to another – under s10 Criminal Damage Act 1981 property will belong to another where someone has custody or control of the property or has a proprietary right, interest or charge on it.

Mens rea

- Intention to destroy or damage property belonging to another. If they believe that it belongs to them they do not have intention (*R v Smith*).
- Subjective recklessness as to whether property belonging to another is destroyed or damaged. The defendant must be aware of the risk and take it anyway (*R v G and R*).

Aggravated criminal damage

Section 1(2) Criminal Damage Act 1971 “a person who without lawful excuse destroys or damages any property, whether belonging to himself or another

- a) *intending to destroy or damage any property, or being reckless as to whether any property would be destroyed or damaged; and*
- b) *intending by the destruction or damage to endanger life of another or being reckless as to whether the life of another would be thereby endangered.”*

Actus reus

- Destroys or damages – same legal principles as above.
- Property – same legal principles as above.

- Belonging to himself or another the key distinction is that a person is liable for aggravated criminal damage where they destroy or damage their own property.

Mens rea

- Intention or subjective recklessness as to whether property destroyed or damaged.
- Intention or subjective recklessness as to whether life is endangered by the destruction or damage of the property. Danger to life must be as a consequence of the damage or destruction to the property (*R v Steer*).

Application of the law to Frederick

For scratching the side of the car, this is likely to come under s1(1) Criminal Damage Act 1971 – basic criminal damage.

- Scratching the side of the car would take time, money and effort to repair and so would constitute damage.
- The car would be classed as personal property.
- The car appears to belong to another as it is found in the solicitor's car park.
- He intended to scratch the car as he was seen muttering that he was going to 'settle the score'. It could therefore be inferred that he wanted to damage the car.

Tampering with the brakes is likely to come under s1(2) Criminal Damage Act 1971 – aggravated criminal damage. **(NB: a discussion of basic criminal damage will be credited as a lesser alternative.)**

- Tampering with a car's brakes would take time, money and effort to repair as the car would need to be taken to a garage to have them repaired.
- As above, the car constitutes property.
- The car can either belong to Frederick or to another, from the facts of the case the car appears to belong to another.
- As Frederick has said he wanted to settle the score, it is safe to infer that he intended to damage the brakes by tampering with them.
- By tampering with someone's brakes, this would endanger a person's life. As already stated, Frederick has commented that he wanted to settle the score as the solicitor is having an affair with his wife. That and the fact he has tampered with the brakes shows that he most likely intended to endanger the life of the individual driving the car and the other road users and pedestrians.

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

As there is a police report that states that Frederick has been drinking, he could be able to rely on the defence of intoxication.

In order to plead intoxication:

- There is a distinction between voluntary and involuntary intoxication.
- For voluntary intoxication, the court will make a distinction between specific intent crimes (those whose *mens rea* is intention only) and basic intent crimes (those whose *mens rea* is intention or recklessness). To successfully plead the defence of voluntary intoxication, all *mens rea* must be removed. A successful plea of intoxication for a specific intent crime will lower the conviction to the basic intent equivalent of the crime; if there is no basic intent equivalent the defendant is found not guilty. For basic intent crimes, the defence cannot always be relied on.
- For involuntary intoxication, the court will treat specific and basic intent crimes the same and will allow it as a complete defence as long as all *mens rea* is removed.

Recognise the relevant legal authorities

- Dutch courage will never be a defence (*Attorney General for Northern Ireland v Gallagher*).
- In order to rely on the defence where the intoxication is voluntary, all *mens rea* must be removed (*DPP v Beard*).
- Where the intoxication is voluntary, and the crime committed is a specific intent crime, the conviction for the specific intent crime will be lowered to its basic intent equivalent (*R v Sheehan and Moore*).
- Where the intoxication is voluntary and the crime committed is a basic intent crime, there are two competing authorities: *R v Majewski* states that intoxication can never be a defence for basic intent crimes as the defendant has acted recklessly by drinking or taking drugs in the first place; *R v Richardson and Irwin* states that it can be a defence if it can be shown that the defendant would not have acted in the same way if he had been sober.
- Intoxication will not be classed as involuntary just because the defendant does not know the strength of the alcohol (*R v Allen*).
- Where the defendant takes a non-dangerous drug and there is an abnormal reaction, the intoxication will be classed as involuntary (*R v Hardie*).
- Involuntary intoxication will treat specific and basic intent crimes the same and allow the defence to be relied on as long as all *mens rea* is completely removed (*R v Kingston*).

Application of the law to Frederick

- Frederick has become voluntarily intoxicated as we are told that he has drunk a bottle of whisky.
- Criminal damage is a basic intent crime. According to the case of *R v Majewski*, Frederick is unable to use the defence because the act of getting drunk is a reckless course of conduct. Even if the case of *R v Richardson and Irwin* was applied, he would still not be able to rely on the defence as it can be shown that he would have done it had he been sober as he was very upset about his wife leaving him.

Analyse the likely outcome for Frederick

- Frederick is likely to be found guilty of both basic criminal damage for the scratch to the car and aggravated criminal damage for tampering with the brakes.
- By scratching the car he has damaged property belonging to another as it will take time, money and effort to remove the scratch and the car is not his. He cannot be shown to have a lawful excuse and it is clear that he intended to scratch the car.
- By tampering with the brakes, Frederick has damaged property that belongs to another. Again he intended to damage the property and intended by damaging the brakes to endanger the life of the solicitor that he thinks his wife has left him for.
- Frederick is unlikely to be able to plead the defence of intoxication as, according to *R v Majewski*, he cannot rely on it for a basic intent crime and according to *R v Richardson and Irwin* it would appear that he would have done it had he been sober.

Credit any evaluative points

- The definition of damage can include even temporary damage where the victim will incur any cost, which does not seem fair.

- For intoxication, the distinction between specific intent and basic intent crimes is not very clear and the terms are misleading.
- The availability or not of this defence is based on public policy.

Credit any other alternative lines of reasoning

- Alternative outcomes where properly supported.

Ofqual



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