

L3 Lead Examiner Report 1906

June 2019

**L3 Qualification in Applied Law
20170K - Applying the Law**

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What is a grade boundary?

A grade boundary is where we set the level of achievement required to obtain a certain grade for the externally assessed unit. We set grade boundaries for each grade, at Distinction, Merit and Pass.

Setting grade boundaries

When we set grade boundaries, we look at the performance of every learner who took the external assessment. When we can see the full picture of performance, our experts are then able to decide where best to place the grade boundaries – this means that they decide what the lowest possible mark is for a particular grade.

When our experts set the grade boundaries, they make sure that learners receive grades which reflect their ability. Awarding grade boundaries is conducted to ensure learners achieve the grade they deserve to achieve, irrespective of variation in the external assessment.

Variations in external assessments

Each external assessment we set asks different questions and may assess different parts of the unit content outlined in the specification. It would be unfair to learners if we set the same grade boundaries for each assessment, because then it would not take accessibility into account.

Grade boundaries for this, and all other papers, are on the website via this link:

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Unit 3: Applying the Law 20170K

Grade	Unclassified	Level 3			
		N	P	M	D
Boundary Mark	0	9	19	35	52

Introduction

This was the third external assessment for Unit 3 of the new BTEC Level 3 Extended Certificate in Applied Law and the second June series of the qualification. The Extended Certificate comprises of four units, three of which are mandatory and one optional. Unit 3 forms one of the two mandatory externally assessed units on the qualification.

Unit 3 is assessed twice yearly, in January and May/June and follows an established format consisting of Part A pre-release followed a week or so later by Part B which is the assessment itself consisting of a 2-hour session consisting of two tasks, each worth 36 marks. The Part B assessment is taken under supervised and controlled conditions on a date timetabled by Pearson (please refer to the Administrative Support Guide for Unit 3 for further information). It should be noted, that learners are encouraged to split their time equally across the two tasks.

The Part-A pre-release is intended to act as a catalyst for further research for learners, taking the now familiar format of two news reports, one based on homicide, and the other on offences against property. The Part A pre-release will indicate which offences learners will be required to explain and apply to the additional information provided in Part B. As such, learners should ensure that they are effectively using the Part A materials in planning their research, as they will be permitted to take these notes into the Part B controlled assessment. In Part B, learners are provided with additional material for the relevant homicide and property offences, as well as information on police powers and general defences. In this series, the relevant homicide offence was unlawful act manslaughter and the relevant property offence was robbery.

In preparing for the assessment, the candidates will have benefited from accessing the 1806 and 1901 papers, mark schemes and Lead Examiners report, which have reinforced key issues, such as the fact that the additional issues of police powers and defences will only appear in one activity each. As such, learners should not expect to discuss police powers or defences in both activity 1 and activity 2. For the 1906 series, as with previous series, the activity 1 (homicide) was linked to police powers and activity 2 (property offences) was linked to defences. As such, learners do not receive credit for discussing defences in activity 1 and police powers in activity 2 as neither are relevant to each question. The Additional Sample Assessment Materials (AddSAMs), Sample Marked Learner Work and online and face-to-face training provided by Pearson also seeks to reinforce this point.

This unit is synoptic to the Extended Certificate in Applied Law, meaning that learners are required to draw on skills, knowledge and understanding acquired from the three other units they have studied within the specification when completing both of the set tasks. For example, in unit 1 learners have studied the concept of precedent and will

therefore understand that the caselaw they are referring to when determining the criminal liability of the defendants in both activities are examples of precedents set by the higher courts that lower courts are bound to follow in future, similar cases. In addition to this, the fact that learners are required to apply their learning to realistic contexts in all units is a skill that they are able to draw on when completing the tasks for this unit.

The assessment of both tasks in the unit is based around five assessment *foci* which are distributed across the 36 marks as follows:

- **AF1:** Selection and understanding of legal principles relevant to context (8 marks)
- **AF2:** Application of legal principles and research to information provided (8 marks)
- **AF3:** Analysis of legal authorities, principles and concepts (8 marks)
- **AF4:** Evaluation and justification of decisions (8 marks)
- **AF5:** Presentation and structure (5 marks)

During the Part B controlled assessment, learners are required to produce their work using a computer. The two tasks, along with a candidate declaration of authenticity are then submitted along with a learner record and centre register. The declaration of authenticity and the learner authentication and record forms are all available on the Pearson website within the Administrative Support Guide.

The majority of centres submitted hard copies of the learner work, with a few choosing to submit their work electronically. There were relatively few centres who submitted their work without including the signed authentication sheets and/or learner record sheets. In addition to this, a small minority of centres chose to submit handwritten learner work. Once again, centres are advised to review the Administrative Support Guide which can be found on the course materials section of the BTEC Nationals Applied Law (2017) page, under the external assessments tab, in order to ensure that all administrative requirements are met.

Introduction to the Overall Performance of the Unit

There are some limitations on the comments that can be made on the performance of the paper in comparison to previous series as, although this was the second June sitting, last summer's paper covered a relatively small cohort. As such, the January paper (1901) provides a realistic comparison, as there were relatively similar number of entries, with only slightly fewer in the current series. When drawing comparisons, it should be borne in mind that the current paper did include learners who were resitting, as well as a number of year 12 learners sitting the paper for the first time,

whereas there were no Year 12 learners in the January series. The overall performance of both papers was positive, with learners accessing the entire breadth of marks available. In the current series, learners were achieving between 0 and 70 marks out of 72.

There were significantly more learners achieving higher marks than in the 1901 paper, with a significant proportion achieving over 50 marks out of 72. This is possibly due to the fact that by sitting the paper in June, the Year 13 learners have been enabled to develop their knowledge and understanding of the law, so that they are better equipped to undertake the external assessment. Centres are, of course, free to enter candidates for either the January or June paper to suit both their institutional needs and the needs of their learners, for instance maximising resit opportunities. It would, however, appear that learners do benefit from sitting the paper in June as they have a greater appreciation of the law and legal system gained from studying the other three units, particularly as Unit 3 is a synoptic unit.

In this series, there was clear evidence of:

- Accurate citation of appropriate and relevant legal authorities
- Good levels of preparation by learners demonstrating detailed and thorough subject knowledge, particularly for the property offences in Activity 2
- Centres who had prepared their candidates well, through clear use of the Lead Examiner's reports from the previous two series. For example, many learners were including evaluative commentary on both the homicide and property offences which is important when awarding marks for AF4.
- More focused application of the police powers
- Thoughtful and accurate selection of the key facts from the case study in their application. For example, relatively few learners were including reference to police powers in activity 2, or attempting to include a general defence in activity 1. This shows that learners are focusing more on the information provided rather than including irrelevant information

As with the January series, it is pleasing to note that there were, once again, relatively few timing issues reported. The vast majority of learners were able to complete both tasks within the allotted time and in a generally professional format and structure. Furthermore, learners continue to be able to distribute their time effectively between both tasks, producing an even amount of work for both activities.

Overall, the standard of the work produced by learners was very good and demonstrated a good understanding of the relevant law and its application.

Areas requiring improvement include:

- Encouraging learners to be more selective in the use of their notes during the assessment. This point is particularly relevant regarding homicide in activity 1 and defences in activity 2 (more details to follow)
- Discouraging learners from restating the case facts from Part B at the start of their discussion. This does not attract any marks and simply wastes time that could be spend more valuably in applying and analysing the additional information presented.
- Making even more selective use of the information presented in Part B and reading it more carefully. In this series, it was common for learners to refer to the offence of murder and loss of control in activity 1, despite the fact that the case facts did not provide sufficient evidence of intention for murder, or a sufficient qualifying trigger for the purposes of loss of control. Learners should therefore be encouraged to read the information more carefully.
- Developing the skill of learners to reach a fully justified conclusion as many learners scored lower marks on the evaluation and justification of assessment decisions in both activity 1 and 2.
- Encouraging learners to make more effective preparatory notes during the Part A element of the assessment.

A particular point to note

For many of the candidates who performed less well, this was due to the fact that in both activity 1 and activity 2, the worked lack a clear structure. For example, some of these learners failed to clearly lay out the *actus reus* and *mens rea* of the relevant offences, or lay out the requirements of the specific general defence, making their discussion confused and difficult to identify whether the key elements have been described accurately.

There were, however, some centres (a small proportion) who have prepared candidates by providing them with templates or other rehearsed patterns of work. It should be emphasised that learners should prepare for the assessment independently. This is made clear within the Part A pre-release, the specification and within the Administrative Support Guide. Using identical and formulaic templates relevant to the nature of the task may raise the issue of malpractice.

Individual Questions

The following section will consider both activities within the paper and provide examples of where learners have scored well, or where improvements could have been made. As has been noted in previous series, there is no cross-credit between the two assessment tasks. Creditworthy material included in the wrong task is not credited to the other task. Whilst this was not an issue that was particular to this series as it has been in the past, it is still a relevant point to note.

Activity 1 (Homicide and Police Powers)

Assessment Focus 1: Selection and understanding of legal principles relevant to the context

There were a high proportion of learners who did not score highly on this assessment focus. In this series, the relevant homicide offence was unlawful act manslaughter. To access the top of the mark range, learners were to explain each of the elements of unlawful act manslaughter, with accurate supporting authority. Unfortunately, many learners incorrectly identified that the relevant homicide offence was murder with the partial defence of loss of control. Learners could not attract credit for this point owing to the fact that, on the basis of the facts provided, there was nothing to suggest that the defendant had either express malice aforethought (either direct or oblique) or implied malice aforethought. Furthermore, the facts presented in the additional material in Part B did not provide adequate evidence to support a discussion of loss of control, since it was simply stated that a comment had been made about the defendant's boyfriend. This was not enough to be classed as "things said or done or an extremely grave character" as learners were not told what the comments were so could not make an assessment if they were of an extremely grave character.

Many learners did recognise that there was a causation issue presented within the facts, however, as this was examined within the context of murder and not unlawful act manslaughter, it did not attract credit.

Learners who attracted full marks in this assessment focus were therefore able to state that the relevant offence was unlawful act manslaughter and state the four elements of the offence (unlawful act, dangerous, causing death and *mens rea* for the unlawful act. These learners would have included a relevant supporting authority, such as ***R v Church*** or ***R v Goodfellow***.

In the following example, it can be said that the learner has fully explained the elements of unlawful act manslaughter, with reference to accurate supporting authority:

Candidate Example

Meaning of unlawful act manslaughter

The first element depicts the clear definition of the criminal offence. The act of unlawful act manslaughter must be based on a criminal act. Therefore, if the prosecution cannot establish a criminal act on the part of the defendant, the defendant will not be liable for the unlawful act of manslaughter, (R V Lamb 1967).

The act must be dangerous

The act committed by Zahraa must convey a sense of danger in the sense that the average person would recognise that it could cause "some harm" to another person, (R V Church 1965). An objective test is used to determine this in regards to what a sober person would regard as giving some rise to some form of harm. From the case of R V Watson (1989), it was further emphasised that the test is used as if the reasonable person were observing the act at the present time, giving no interest to any special factors that may be involved with the parties.

Must cause death

Law has suggested that the unlawful act must expose the victim to the risk of some bodily harm and it must be aimed at the victim, (R V Balby 1982). This element also highlights the rules of causation. To satisfy this element, Zahraa must successfully meet factual causation, in which the 'but for' test is used to determine whether her actions caused the death, (R V White 1910), as well as legal causation in which Zahraa's actions were the substantial and operating cause of Tina's death.

Mens Rea

The final element of unlawful act manslaughter is the mens rea. This requires the defendant needing to realise that there is a risk of causing some harm to the victim. As long as the reasonable man in his position would have so realised, this is sufficient mens rea, (DPP V Newbury 1977). Simply put, the defendant merely needs to profess the mens rea for their criminal act, which was assault and battery, not to cause the death.

Comment: it can be seen here that this learner has fully explained the offence of unlawful act manslaughter. This learner has included more than adequate authority to support their explanation, as they were only required to provide a supporting authority for each element, which they have done so, in some cases providing more than one authority.

There were a few learners who wasted time explaining all of the relevant homicide offences before focusing specifically on unlawful act manslaughter as the relevant appropriate offence. Learners should ensure that they are fully focusing their discussion on the relevant offence, rather than including all potential offences.

In addition to this, other common issues included:

- Stating that the doctors and paramedics could be charged with gross negligence manslaughter for their actions towards Tina and therefore going on to explain the elements of this offence. This was not creditworthy as the activity was clearly centred around the actions of Zahraa, the defendant, which pointed to the offence of unlawful act manslaughter
- Many learners neglected to discuss the final element of unlawful act manslaughter, which is that the *mens rea* of the unlawful act is required, thus capping their mark.

Helpful tips for future papers:

- Learners should ensure that they are effectively using the Part A pre-release materials as these are intended to act as the trigger for further research on a particular offence. In the present series, there was clearly a flag to the potential of unlawful act manslaughter as the article states that Zahraa “assaulted” her housemate at the top of the stairs. This clearly pointed to the potential of unlawful act manslaughter as reference to an “assault” indicates that an unlawful act has been committed, but not one that would amount to grievous bodily harm as that would provide evidence for the offence of murder
- Learners should also be encouraged to read the information in Part B more carefully so that they are able to identify from the facts what the most relevant area of law is. Where learners are told that “comments” have been made by the victim, but have not been told what these comments are, this will not point to loss of control. Were loss of control a specific issue within the paper, this would have been made explicit. As such, the facts pointed to unlawful act manslaughter as opposed to loss of control
- Do not include areas of law that have no relevance to the scenario. Learners should be encouraged to pick the most relevant homicide offence and discuss this, rather than including all of the homicide offences within the specification. There will be one clear offence that requires examination, with the exception of voluntary manslaughter which does require a mention of the offence of murder
- Do not include an exhaustive account of the facts of the cases used as supporting authority – the legal principle arising from the case is sufficient

Assessment Focus 2: Application of legal research and principles to information provided

Learners appear to continue to perform well on this assessment focus as they are able to attract marks for the application of the law even where they have not fully stated the law itself. As was the case in the 1901 series, many learners did attract higher marks in AF2 in comparison to AF1.

In order to attract a band 4 response, learners were required to apply each of elements of unlawful act manslaughter, and, as was the case in 1901, to attract the top mark within each of the bands, specific reference to the source materials was required where they made effective use of the facts.

It would appear that where learners did select the appropriate offence, they were able to apply the law effectively to the facts, the only real issue being where learners neglected to mention the *mens rea* element of the offence and consequently failed to apply this to the scenario. The following response is a good example of effective

application of the law, where the learner has made specific reference to the case facts:

Candidate example

In the case, it can be seen that Zahraa committed a criminal act of assault and battery that consequently led to Tina falling down the stairs, in which she later died in hospital. However, as discussed it was the intervening acts that substantially caused her death, but ultimately Zahraa satisfies this element of unlawful act manslaughter.

Using the objective test of a reasonable man, it can be argued that the act committed by Zahraa was dangerous as it could be seen as causing some form of harm. It is rather unjust to declare whether Zahraa caused "some harm", as law does not clearly define what amounts to "some harm", however, Zahraa slapping Tina near the staircase could cause foreseeable harm in the eyes of an objective observer, therefore the act Zahraa committed can be seen as dangerous.

Law has suggested that the unlawful act must expose the victim to the risk of some bodily harm and it must be aimed at the victim, (R V Balby 1982). This element also highlights the rules of causation. To satisfy this element, Zahraa must successfully meet factual causation, in which the 'but for' test is used to determine whether her actions caused the death, (R V White 1910), as well as legal causation in which Zahraa's actions were the substantial and operating cause of Tina's death.

From the evidence provided in the case, it seems that Zahraa does not satisfy this element. The operating cause of Tina's death seems to be the fault of the combination of her falling off the stretcher and not receiving the proper medical treatment at the hospital she should have. From the moment Tina fell of the stretcher due to the paramedic not securing her properly there was a break in the 'chain of causation' as this new intervening act (Novus Actus Interveniens) contributed to Tina's death. Therefore, as Zahraa does not fully meet the standards of factual and legal causation due to the intervening acts, she does not complete the elements of unlawful act manslaughter.

This requires the defendant needing to realise that there is a risk of causing some harm to the victim. As long as the reasonable man in his position would have so realised, this is sufficient mens rea, (DPP V Newbury 1977). Simply put, the defendant merely needs to profess the mens rea for their criminal act, which was assault and battery, not to cause the death.

Comment: it can be seen here that this learner has fully applied each of the elements of unlawful act manslaughter, making full use of the facts of the scenario. As such, this learner received full marks for their application. It should be noted that it does not matter that the learner has concluded that there has been a break in the chain of causation, as they have supported their this with reference to the facts presented in Part B.

Common issues within this assessment focus in this series include:

- Incorrectly identifying the unlawful act as assault as opposed to a battery, leading to the focus of the application being on fear of violence as opposed to the actual slap. In the example above the learner has correctly identified the offence as a battery, mentioning assault in addition.
- Many learners continue to simply restate the facts of the scenario as opposed to applying the law to the facts.
- Focusing the application of the law on the actions of the paramedics and doctors and suggesting that they may be liable for gross negligence manslaughter, when this was included to encourage a discussion of potential breaks in the chain of causation

Helpful tips for future papers:

- Learners should be discouraged from simply restating the facts of the scenario as this will be classed as narrative. Learners should ensure that they are focusing their application of the law to the facts, being selective in their use of the facts
- Learners should be encouraged to read the instructions in the activity carefully. Where the activity focuses on a specific individual, it is not necessary to discuss the potential liability of other individuals as they are not the focus of the activity

Assessment Focus 3: Analysis of legal authorities, principles and contexts

This assessment focus requires learners to “think on their feet”, analysing the additional information presented in Part B relevant to police powers which was not indicated in Part A, and applying the law to the given facts. Learners performed better on this assessment focus in this exam series as compared to the 1806 and 1901 papers, with the majority of learners focusing on key issues raised within the additional information presented within Part B. It therefore appears that Centres have been making effective use of the materials published by Pearson, such as the previous Lead Examiner’s Reports and Sample Marked Learner Work. Relatively few learners included reference to irrelevant points such as arrest, recognising that detention and samples were the focus of the activity and where these were included, learners did focus their application on the issues raised within the activity.

There were three key issues that learners were required to explain and apply in this exam series:

1. The fact that detainees have certain rights that the custody officer is required to guarantee, including the right to medical treatment where they feel unwell. The fact that the custody officer in the scenario failed to grant the defendant access

- to medical treatment is unlawful
2. Detainees may only be kept for 24 hours without charge, after which they must be released unless they are granted an extension by a senior officer (for up to 36 hours) or by the magistrates (for up to 96) in the case of indictable offences. The fact that Zahraa has been detained for 72 hours is therefore potentially not unlawful as long as the above procedures have been followed
 3. Non-intimate samples (such as fingerprints) may be taken by force and without consent, whereas intimate samples such as blood cannot be taken by force. Therefore the taking of the fingerprints was lawful whereas the blood sample was unlawful

On the whole, this assessment focus was completed well by candidates, with many recognising that the refusal of medical treatment was unlawful, whereas the 72 hours and taking of fingerprints was potentially lawful.

The main issue that learners had in this series was recognising the distinction between intimate and non-intimate samples. Many learners incorrectly concluded that blood samples can be taken by force and without the consent of the individual.

Candidate Example:

The police powers were set out in the Police and Criminal Evidence Act 1984. These are codes and practices – PACE. As Zahraa is in Detention, we would have to go through the police powers for Detention. Detention falls under Code C of police powers. For most offences that are committed the police can only keep you in detention for 24 hours and then they can either charge you with an offence or release you. For serious offences, they can only keep you for 36 hours to 96 hours that's only with permission of the magistrates court, the person must then be charged with an offence or released. For Zahraa they should have kept her for a maximum of 24 hours if not then a maximum of 36 hours for the offence that she has committed. They should have charged her by then or if not they should have released her and not kept her in detention for 72 hours. The custody officers are there to protect the individual – the officer makes sure that they are being looked after and that they are also safe. The custody officer also keeps records of interviews of that individual, the custody officer must also release the individual if no grounds for continuing the detention. In Zahraa's case the custody officer should have looked after Zahraa and not ignore her, this shows that the officer is not doing his job properly as he/she should be there for the individual, looking after them and making sure they are safe.

Comment: This is a band 2 response as, whilst the learner has identified that permission is required to detain Zahraa for up to 96 hours, they have incorrectly concluded that she should have been released after 72 hours. The learner has identified that it is the role of the custody officer to look after the individual and not ignored her requests for medical treatment, however, they have not dealt with the lawfulness or otherwise of the taking of the fingerprints and blood samples by force.

Helpful tips for future papers

- Encourage learners to be selective in the use of their notes, making sure that they read the additional information in Part B carefully so that they are only including reference to the appropriate police power. Restating all of the relevant police powers within their notes will not attract marks; learners only receive marks for explaining and applying the most appropriate police power and discussing whether its exercise is lawful

Assessment Focus 4: Evaluation and justification of decisions

For activity 1 in the current series, learners performed poorly in comparison with the previous series. The assessment focus requires learners to produce an evaluation of the likely outcomes of the case, using legal principles and authorities in order to reach a conclusion. Given that this assessment focus is inextricably linked to assessment *foci* 1 and 2, it was difficult for learners who had chosen the incorrect offence to perform well here.

Where learners had chosen the correct offence, it was once again common for learners to provide only a partially justified conclusion, applying an element of unlawful act manslaughter, or simply providing a bald conclusion in which they stated "Zahraa is guilty of unlawful act manslaughter". Answers such as this could not progress beyond band 2.

In order to achieve a band 4 response, learners were required to conclude on all elements of unlawful act manslaughter, reaching an overall conclusion on the potential guilt or otherwise of the defendant. The discriminator within each band was, as with previous series linked to the ability of learners to provide some evaluative commentary or proposals for reform on the problems with unlawful act manslaughter. There did appear to be many Centres who had taken on board this advice from the 1806 and 1901 Lead Examiner's Report and encouraged their learners to include such within their work.

Helpful tips for future papers:

- Encourage learners to conclude on each element of the offence, stating that it has been committed and then ensure that they draw this together at the end to reach an overarching conclusion on whether the defendant has committed the offence – this will ensure that they have made a justified conclusion
- Discourage learners from making "conditional conclusions", such as the

defendant “might have” committed the offence – encourage them to be more definite.

- Encourage learners to make reference to evaluative commentary relevant to the specific area of law within their discussion – this acts as a discriminator within the bands and, as such, will ensure they reach top of any of the bands

Assessment Focus 5: Presentation and structure

As with all previous series, this assessment focus relates to the quality of presentation and structure. It is not a judgment on the quality of the work and focuses on the structure, presentation and appropriateness of the work for a person reading it. It was most common for learners to achieve a band 4 response on this assessment focus as they had attempted both the unlawful act manslaughter and police powers aspects of the activity. Exceptions to the full mark scores were due to:

- Incomplete responses, where learners had not explored both unlawful act manslaughter and police powers
- Responses that included fundamental errors that convey incomplete or inappropriate information to the reader, such as stating that the defendant would be guilty of murder or able to claim loss of control
- Purely anecdotal answers that do not convey any of the information required by the task

Activity 2 (Property Offences and General Defences)

Assessment Focus 1: Selection and understanding of legal principles relevant to the context

Learners in this series performed significantly better on this assessment focus in activity 2 than they had done so in activity 1. There were relatively few learners who were unable to correctly identify that the defendant (Joel) had committed a robbery when he pushed the security guard out of the way after running out of the shop wearing trainers he had not paid for. There was little trouble in learners providing accurate authority in terms of the relevant sections of the Theft Act 1968 for both the initial theft and consequent robbery, as well as providing accurate supporting case law. It was pleasing to note that the vast majority of learners were referring to the amendments to the **Ghosh** test made by **Ivey v Genting Casinos**, stating that the subjective element of the test has now been removed.

For activity 2, there were relatively few learners who included reference to irrelevant property offences and had clearly picked up on the clues provided within the Part A materials when completing their research.

Whilst on the whole this assessment focus was completed well, there were a few issues:

- Some learners failed to explain that the force must be used in order to steal
- Some learners focused too heavily on the issue of theft and failed to discuss that by pushing the security guard, a robbery had been committed
- Some learners tended to explain all of the elements of theft, referring to issues such as **Oxford v Moss** or items that cannot be stolen under s4(3) and (4) Theft Act 1968
- A small minority of learners identified that there has been a burglary as the theft took place within a shop, this neglecting the issue of robbery and focusing on theft and burglary
- A small minority of learners referred to the potential of there being a GBH on the bodyguard, despite this being outside the scope of the unit specification

Helpful tips for future papers:

- Encourage learners only to include information that is within the unit specification – remind them that the non-fatal offences are only relevant to Unit 2, not Unit 3 and so reference to these will not attract credit, particularly when the activity is relevant to property offences
- As with activity 1, learners should be selective in their explanation of the law. They should only include information that is relevant to the case facts provided.

Assessment Focus 2: Application of legal research and principles to information provided

This assessment focus was not dealt with quite as well as in the previous 1901 series. Whilst there was evidence of application of the elements of theft, this was quite patchy in areas, with many learners preferring to treat the activity as an essay on theft with very little application of the law to the scenario. In some instances, learners neglected to apply robbery at all and therefore, whilst they would attract marks for their application of theft, they would be limited at a band 2 response for failing to apply the law relating to robbery.

Further issues with this assessment focus include:

- Incorrectly concluding that as the force happened after he had appropriated the trainers that the force used by Joel could not be classed as being used at the time or in order to steal, ignoring the principles from **R v Hale** and **R v Lockley**. This was the case for some learners even where they had stated the

principles from these cases

- Some learners, despite recognising that force can be as little as a mere push, as per ***R v Dawson and James***, incorrectly concluded that the push that Joel gave to the security guard was not enough to amount to force
- Failing to recognise that the force used by Joel was part of a robbery and incorrectly classifying it as amounting to ABH or GBH
- Despite recognising that the ***Ghosh*** test has been modified so that the subjective element is no longer relevant, many learners continued to apply both the objective and subjective elements of the test

That being said, there was evidence from learners of detailed application of the law to the facts of the scenario. These learners were able to accurately apply both the *actus reus* and *mens rea* elements of theft and the force aspect of robbery, in terms of the force used and the timing of the force.

Candidate Example

However, in Joel's case, he pushed a security guard, forcefully suggesting that he intended to use force to prohibit his capture. This shows he had the mens rea to commit robbery which is defined by the parent Act as robbery requires the defendant to use force or the fear of force immediately before, or at any time to carry out theft. The law surrounding robbery has been shown to be problematic as the force may be carried out after the offence has been committed as in both Joel's case and that of R v Lockley, 1995. In this case, force was used on a shop assistant by a defendant who was stealing cans of beer. This indicated that force must be used in order to aid the theft and that it can be a continuing act after the theft has occurred, as in Joel's case. Although he has carried out the theft by wearing the trainers, he continues his act of robbery by assaulting the guard who attempts to apprehend him. Thus, this suggests that Joel is likely to be convicted of robbery under s8 of The Theft Act 1968.

Comment: in this example, it is evident that the learner has fully applied the force aspect of robbery. They have stated that the defendant has used force on the security guard and that as he was still wearing the trainers when he pushed the guard, this would be enough for the offence of robbery. As this learner has similarly applied all elements of the *actus reus* and *mens rea* of theft (which are not shown here), they received a band 4 response for their

Helpful tips for future papers:

- Learners should be encouraged to apply the law to the facts presented in Part B at each stage. For example, after stating the definition of force from ***R v Dawson and James***, learners could then have gone on to explain whether the push in the scenario could amount to force for the purposes of robbery. This

will prevent them from neglecting the apply the law and should ensure that they are attracting marks within the higher bands.

Assessment Focus 3: Analysis of legal authorities, principles and contexts

Learners did not perform well on this assessment focus, which requires learners to identify, explain and apply the appropriate defence that the defendant may raise on the basis of the additional material provided in Part B. In the current series, the relevant defence was automatism and learners potentially did not score as highly on this as the previous series due to the fact that insanity/automatism were the relevant defences presented in the 1901 series. Therefore, earners potentially had not prepared themselves as well for the potential for this specific defence. Centres should try and shy away from attempting to predict patterns of specific defences that could appear. The skill in this assessment focus is (as is the case in activity 1) for learners to “think on their feet” and apply their knowledge to the additional information provided in Part B. Learners should make effective use of their notes that they are able to bring into the assessment as a prompt for their explanation/application of the potential defences.

Many learners did not progress beyond a band 1 response. Issues that arose in this assessment focus include:

- Similar to previous series, many learners were simply stating all of the defences on the specification, without linking it specifically to the facts
- Many learners confused insanity with automatism and chose to discuss this offence instead of automatism
- Some of the learners who did identify that automatism was the relevant defence, incorrectly concluded that the defendant would be unable to use it as it was self-induced due to the fact that he had been involved in a boxing match

In order to attract marks, learners were required to explain the defence of automatism and apply to the facts of the additional information provided in Part B. Those who were able to do this and provide supporting authority and a conclusion as to the success of the defence would attract the top of band 4.

That being said, those who did raise the defence automatism did appear to explain it extremely well, identifying the two key aspects of the defence (that the defendant must be acting involuntary and due to an external factor), providing a relevant authority and applying accurately to the facts of the scenario. These learners were able to reach a conclusion as to the success or otherwise of the defence.

There was little evidence of learners attempting to include the issue of police powers within activity 2, which is an issue only for activity 1. Again, this demonstrates that Centres have been making effective use of the previous Lead Examiner's Reports and have prepared their learners well, getting them to focus on what the activity is requiring learners to include within their discussion.

Helpful tips for future papers:

Candidate Example

Automatism on the other hand, caused by external factors may be the most applicable to Joel's case. This refers to anything such as a blow to the head, or drugs such as anaesthetics, painkillers or soporific drugs which alter the mental state of a person, causing them to do something out of character. Within automatism loss of voluntary control can also occur as a result of circumstance. This refers to a lack of *mens rea* because an outside factor caused the person to lose voluntary control of themselves. This was seen in Attorney General (No 2 of 1992) 1993, whereby a lorry driver blamed a continuous period of driving on a straight road to cause him to lose control, crash and kill 2 people. External automatism was seen in R v Quick, 1973. In this case a nurse attacked a patient, blaming an excess of insulin on the reason behind the action. In this case, an external factor caused the crime which can be applied to Joel's case. The blows to the head he has allegedly received during boxing, could have permanently or temporarily altered his mental state causing him to be unaware of his actions and commit the robbery.

Comment: it can be seen here that this candidate has accurately stated the elements of the defence with authority and applied these to the facts of the scenario. Whilst the learner has stated that automatism is a denial of the *mens rea* when it is actually a denial of the *actus reus*, the overall explanation of the defence is good.

As has been stated earlier, learners should only include the most relevant defence and resist the urge to state all of the general defences. Learners should be selective in the use of their notes they have produced as a result of Part A and read the additional information carefully that is presented in Part B so that the accurate defence is selected .

Assessment Focus 4: Evaluation and justification of decisions

As on Activity 1, learners are required to produce an evaluation of the outcomes of the case, using legal principles and authorities in order to reach a conclusion on the property offence. Despite the majority of learners identifying the correct offence, learners did not perform well on this assessment focus, with many not progressing beyond band 1. Once again, it was common for learners to produce either a bald or partially justified conclusion, failing to conclude on each of the aspects of the offence and reach an overarching concluding at the end.

As with activity 1, learners should be reminded that they need to conclude on liability as they go along, drawing each of these conclusions together at the end. Once again, the ability to raise some evaluative commentary was a discriminator within the bands. Learners should be encouraged to discuss any potential problems with the relevant law throughout their explanation. It was interesting to note, that some students did provide some evaluative commentary on theft and robbery however, as they had provided either bald or partially justified conclusions, they could not progress beyond bands 1 or 2.

Assessment Focus 5: Presentation and structure

As was the case in activity 1, this assessment focus was awarded marks on the basis of the quality of presentation and structure and was not a judgment on the quality of the work. Again, the majority of learners achieved a band 4 response on this assessment focus as they had attempted both the property offences and defences aspects of the activity. Exceptions to the full mark scores were due to the same reasons are identified in Activity 1.

Summary

Based on the performance of learners during this series, Centres should consider the following when preparing for the January 2020 series:

- Learners should ensure that they make effective use of the Part A pre-release as these are intended to act as the trigger, which will flag the potential offences that will be presented in Part B
- Learners should read the information presented in Part B carefully and ensure that they are only including the relevant elements of an area of law. Every aspect of a certain offence will not always be relevant, for instance in the present series there was no need to discuss what cannot be stolen under s4(3) and (4) Theft Act 1968
- Once again, learners should ensure that they are only including offences that are covered within the Unit 3 Essential Content. They will not attract marks for information outside of the unit content.
- As was raised in the 1901 series, where Part B raises a relevant police power or defence, learners only need to explain those specific police powers or defences, they do not need to explain all of them.
- Learners should be encouraged to apply the law to the facts presented in Part B at each stage
- Practice responses to Part B materials so that learners are able to practice their evaluation – learners should be encouraged to apply and conclude throughout their work. Learners should, however, be discouraged from making “conditional conclusions”, such as the defendant “might have” committed the offence – they should be encouraged to be more definite in their conclusion
- Encourage learners to make more effective notes for the Part A pre-release and remind them that any potential defence could arise in Part B

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