

Mark Scheme (Results)

Summer 2019

BTEC Level 3 Nationals in Applied Law

Unit 3: Applying the Law (20170K)



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June 2019

Publications Code 20170K_1906_MS

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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)

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)

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)

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)

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.

Activity 1: Homicide

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

Identify the relevant homicide offence (unlawful act manslaughter) and demonstrate an understanding of the of the legal principles relating to unlawful act manslaughter. Recognise the relevant authorities:

1) Unlawful act – **any one of the below**

- The unlawful act must be an **act** and not an omission (*R v Lowe*)
- The unlawful act must be a criminal act and not a civil one (*R v Franklin*)
- The unlawful act does not need to be directed at the victim (*R v Mitchell*)
- The unlawful act does not need to be directed at the person (*R v Goodfellow*)
- All of the elements of the unlawful act must be present in order for a defendant to be guilty of unlawful act manslaughter (*R v Lamb*)

2) Objectively dangerous act

- Dangerous was defined in *R v Church* as the sober and reasonable person would recognise that it would subject the victim to at least some harm, albeit not serious harm

3) Causes death - ordinary rules of causation used here

- factual causation (but for test from *R v White* or *R v Pagett*)
- legal causation - D must be a more than minimal cause substantial and operating cause of death (*R v Smith*). Note issues around medical intervention (*R v Cheshire/R v Jordan*)

4) *Mens rea* for the unlawful act

- D needs to have the *mens rea* for the unlawful act (*R v Newbury and Jones*)

Apply the law to Zahraa

Zahraa has committed an unlawful act

- Slapping Tina would be an unlawful act of battery

Zahraa has committed a dangerous act

- Zahraa has committed an objectively dangerous act - the sober and reasonable person would realise that slapping Tina across the face at the top of the stairs would subject her to at least some harm

Zahraa has caused Tina's death

- 'but for' Zahraa slapping Tina across the face she would not have lost her footing and fell down the stair to her death.
- The actions of the paramedics and the doctor could potentially break the chain of causation from Zahraa slapping Tina to her eventual death, however this is unlikely. The original injuries are likely to be seen as operating and substantial at the time of death.

Zahraa has the mens rea for the unlawful act of assault

- Zahraa clearly has the *mens rea* of a battery as intends to slap Tina

Analyse the likely outcome for Zahraa

- Given the considerations above, the most likely conclusion is that Zahraa will be guilty of unlawful act manslaughter. However, candidates who offer supported alternative reasoning to suggest that Zahraa is not the legal cause of death will be credited

Credit any evaluative comments

- The Law Commission have stated that it is wrong in principle for a person to be liable for a death which he did not intend or foresee

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

- A detainee has certain rights, including medical help, the right to food and drink, rest breaks and access to the Codes of Practice.
- There are certain time-limits that have to be adhered to. The general rule is that police may detain a person for up to 24 hours without charge. If they wish to keep them for a further 12 hours then this must be done with the permission of a senior officer. Finally, if the police wish to keep a suspect for up to 96 hours, then they are required to seek the permission of the magistrates. This can only be done for indictable offences

- non-intimate samples can be taken without consent. Non-intimate samples include fingerprints
- Intimate samples such as blood can be taken if a senior officer authorises it and consent is given. These must be taken by a doctor or nurse

Apply the law to Zahraa

- As Zahraa complained of feeling unwell she should have been given access to medical help as this is a right under Code C
- Zahraa's detention for 72 hours is not of itself illegal as she has committed an indictable offence (manslaughter), however, the police will need to have first obtained permission from the senior officer and the magistrates. If this hasn't been done then the extended detention will be illegal.
- The fact that she has had fingerprints taken by force is lawful as she has been arrested for a recordable offence, as unlawful act manslaughter is punishable with a prison sentence
- The blood sample must have been authorised by a senior officer in order to be lawful, however, it should not have been taken by force.

Activity 2: Offences Against Property

Identify the relevant property offence for the scenario (theft) and demonstrate an understanding of the law relating to theft. Recognise the relevant legal authorities

The offence of theft is found in s1 Theft Act 1968 and is defined as a dishonest appropriation of property belonging to another with the intention to permanently deprive the other of it

Actus reus

- Appropriation
 - defined in s3 Theft Act as any assumption of the rights of the owner. (case references can include *R v Morris* and *Pitham v Hehl*)
- Property

- from s4, is money, real and personal property, things in action and other intangible things. **NB – learners do not have to explain all the elements of property as not all are relevant to the scenario**
- Belonging to another
 - from s5, means property belongs to anyone with possession, control or a proprietary interest in it

Mens rea

- Dishonesty
 - *Ghosh* test as amended by *Ivey v Genting Casinos* and *DPP v Patterson*, was D dishonest by objective standards?
- Intention to permanently deprive
 - from s6, there does not have to be a permanent deprivation in fact, D just needs to treat the thing as his own to dispose of regardless of the rights of the owner.

Application of the law to Joel

- Putting the trainers on and removing the labels is likely to be theft under s1 Theft Act 1968
- Removing the labels is an appropriation under s3 as removing the label is something only the owner can do. He has therefore appropriated one of the rights of the owner (*Morris*)
- Trainers would be classed as personal property under s4
- The property belongs to another as it is the property of the shop
- The reasonable person is likely to find that Joel is being dishonest, and it is likely that he realises he is being dishonest.
- Joel intends to permanently deprive the owner of the property as he has removed the price labels, suggesting he is treating the thing as his own to dispose of regardless of the owner's rights. It is clear he has no intention to give the trainers back.

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

Recognise the relevant legal authorities:

Robbery is found under s8 Theft Act 1968 which states:

'A person is guilty of robbery if he – steals, - and immediately before or at the time of doing so, - he uses force on any person – or seeks to put any person in fear of being – then and there – subject to force

- completed theft
- force/threat of force
 - Force is an ordinary word and it is up to the jury to decide whether there has been force (*Dawson and James*).
- force used immediately before or at the time and in order to steal
 - This is interpreted widely, this includes the concept of the appropriation as a continuing act *R v Hale*

Application of the law to Joel

- We have already established that there is a completed theft of the trainers.
- Joel has used force upon the security guard when he pushed him out of the way and it is likely that the jury will decide that there has been force, particularly as the push was forceful.
- The force has been used in order to steal as the appropriation is a continuing act, therefore despite it happening after he initially changed the labels, the jury will class this as being in order to steal. This is particularly because he pushed the security guard out of the way when he caught up with him, this suggests that it is in order to allow him to get away with the property.

Analyse the likely outcome for Joel

- Joel is likely to be found guilty of theft for removing the labels from the trainers and running out of the shop with them.
- By removing the labels from the trainers has appropriated them as this is something only the owner can do. The trainers are classed as property and they belong to another as they are the property of the shop. He has been both dishonest and has an intention to permanently deprive, therefore all of the elements of theft are present.
- As he forcefully pushed the security guard out of the way when he caught up with him, this could be a robbery as he has used force in order to steal. A theft has been established and, despite the fact that the force was used after taking the labels off the trainers, the fact he pushed the security guard out of the way when he caught up with him suggests that the force was used in order to steal.

Credit any evaluative points

- The level of force required for robbery is very low and so it can be robbery even where there is the slightest push.
- The Criminal Law Revision Committee feels that the force required for robbery should be higher

Credit any other alternative lines of reasoning

- Alternative outcomes where properly supported.

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

- We are told that Joel has sustained a blow to his head that morning during boxing training and claims he did not know what he was doing. For this, he may be able to claim the defence of automatism.
- In claiming automatism, the defendant must be able to show he was acting involuntarily and due to an external factor.
- An involuntary act – Lord Denning described an involuntary act in *R v Bratty* as “an act done by the muscles without the control of the mind, such as any spasm, reflex action or convulsion.” The defendant has to have a total lack of awareness in order to be acting involuntarily (*AGs Ref No 2 of 1992*)
- Due to an external factor – the automatism must be due to an external factor and not an internal one, such as a disease (*R v Quick and Hill v Baxter*).

Application of the law to Joel

- As Joel states that he was unaware of what he was doing, it is likely that he was acting involuntarily.
- The blow to the head would be classed as an external factor as this would not be due to an internal factor such as a disease, but the external factor of the blow to the head in boxing.

Analyse the likely outcome for Joel

- It is likely that Joel will be able to claim the defence of automatism. He will, however, have to prove that he had a total destruction of self-control to claim that he was acting in an involuntary manner.
- The jury are more than likely going to agree that the blow to the head during boxing was an external factor.

Credit any other alternative lines of reasoning

- Alternative reasoning where properly supported.

Ofqual



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