

# **L3 Lead Examiner Report 2001**

January 2020

**BTEC L3 Nationals in Applied Law  
20170K - Unit 3: Applying the Law**

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## Grade Boundaries

### 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: 20170K – Applying the Law

Grade	Unclassified	Level 3			
		N	P	M	D
Boundary Mark	0	15	28	41	54

## Introduction

This Lead Examiner Report should be read in conjunction with the question paper and the published mark scheme. This report will attempt to provide insight and examples of good responses and ones which require improvement. Centres could use this with learners to ensure they understand how marks were awarded in this series.

This was the fourth external assessment for Unit 3 of the BTEC Level 3 Extended Certificate in Applied Law and the second January series of the qualification. This series witnessed an increase in the number of learners sitting the qualification, a pattern which is expected to be followed in future series due to the move of many Centres away from the QCF. Student performance in this series was consistent with previous sessions, with Centres clearly benefitting from making use of the previous series papers, mark schemes and Lead Examiners report, as well as the Additional Sample Assessment Materials (AddSAMs), Sample Marked Learner Work and online and face-to-face training provided by Pearson. It was pleasing to see that many learners were achieving higher marks and accessing the full range of the mark scheme.

The assessment follows the now 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.

As has been identified in previous Lead Examiners Reports, 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. In this series, the relevant homicide offence was murder, with a specific focus on causation and the relevant property offence was fraud by false representation.

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. 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

It would appear that learners in the current series have performed better than previous sessions, with many learners with learners accessing the entire breadth of marks available. There were significantly more learners achieving higher marks than in the 1901 paper, however performance of the candidates in this series is comparable with the 1906 paper. There are several reasons for learners performing well in this paper:

- 1) Well prepared learners: as stated earlier, this session was the fourth sitting of the paper, meaning that Centres have access to three previous papers, mark schemes and Lead Examiners Reports. In addition to this, there are two sets of sample assessment materials, as well as Sample Marked Learner Work to help in preparing learners for assessment. There is clear evidence of Centres making full use of the Lead Examiner's Reports to support learners in preparing for assessment. For example, learners appeared to be more focused in their discussion of the additional material presented to them in Part B, with relatively few learners simply listing all police powers and all potential defences, as had been a common theme in previous sessions. Furthermore, as regards Activity 2, the fact that the offence of fraud was the property offence would mean that the defence of duress would seem one of the most logical defences to pair with this offence, especially given the context of the offence being committed by a bank worker. Whilst the defence of duress will not always be linked to the offence of fraud, the facts of the scenario in the current series made this the most logical choice of defence. Furthermore, given that the Part A

pre-release materials are very brief and the hints to the relevant property and homicide offences were minimal, this demonstrates that learners are preparing themselves for fully in terms of determining which offences could be raised in Part B.

- 2) The focus of the paper: in Activity 1, the focus was on murder, with a requirement that learners specifically discuss the issue of causation. In previous sessions where murder was the relevant homicide offence, there was a partial defence of either loss of control or diminished responsibility. This was therefore unusual for learners, but as they would be required to explain murder prior to an explanation of loss of control, this could account for learners performing well on Activity 1. In Activity 2, the fact that fraud by false representation is an area of law which is statutory in nature, as opposed to being mainly based in common law makes it a more logical offence and one which learners grasp well and can explain and apply its key elements well.

**In this series, there was therefore clear evidence of:**

- Thorough preparation by Centres and students (as discussed above)
- Effective use of preparatory notes, with accurate citation of appropriate and relevant legal authorities
- Thoughtful and accurate selection of the key facts from the case study in their application.

Overall, the standard of the work produced by learners was very good and demonstrated a good understanding of the relevant law and its application. The standard of work produced was clearly comparable to other Level 3 Law qualifications.

**Areas requiring improvement include:**

As the qualification matures, the assessment team are starting to see consistent practices which, if addressed, would improve student performance and outcomes. To improve learner responses, Centres should be:

- 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. This is something that has occurred consistently in previous series
- Encouraging learners to utilise the given facts presented in Part B. The real skill in this paper is recognising the issues within the given facts presented in the additional information and applying only law which is relevant. This is mainly relevant to Activity 1 as many learners appear to have a tick list of what they believe should be covered in a

homicide question and are of the opinion that where murder is the relevant offence, this will naturally be placed with voluntary manslaughter. Learners therefore explain and apply law which is not relevant to the scenario and attract few marks for this

- Encouraging learners to reach fully justified conclusions. Learners should be encouraged to draw interim conclusions throughout their response before drawing these together to reach an overarching conclusion at the end
- Discouraging learners from using a “pre-learned” template as this undermines proper engagement with the additional material in Part B
- Encouraging learners to include evaluative commentary when

## 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.

### Activity 1 (Homicide and Police Powers)

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

The homicide in this series was murder, with a particular focus on the issue of causation, notably whether the victim’s own actions of refusing medical treatment would break the chain of causation. This was a different approach to previous series, as usually when the issue of murder is raised, it is accompanied with either loss of control or diminished responsibility, therefore it was common for many candidates to discuss loss of control, despite the fact that there was no evidence to support this claim as there was no qualifying trigger present. Centres should ensure that they prepare their learners to discuss any one of the range of homicide offences and make more effective use of the facts presented in the additional information in Part B. It should therefore be emphasised to learners that murder will not always be accompanied with voluntary manslaughter and may be presented as a form of homicide on its own, whether this related to the *actus reus* and causation or to the *mens rea* issue within the offence.

It should be noted that learners who did choose to discuss loss of control did receive some credit, but this was only on the lower bands.

Most candidates did perform well here, the reason for this clearly being that as murder is a pre-requisite for voluntary manslaughter, learners will have prepared themselves fully to discuss murder. At the top of the mark range was the requirement that in addition to explaining the *actus reus* and *mens rea* of murder, learners were to explain the relevance of legal causation, most specifically in terms of discussing that the victim’s own actions in refusing medical treatment do

not break the chain of causation, as per the ruling in **R v Dear**. Alternatively, learners could have referred to the general rule that the victim's own actions do not break the chain of causation where they are reasonable and foreseeable, as stated in **R v Roberts**. Learners could also achieve a band 4 response by explaining that there must be no break in the chain of causation and that D's actions must be the operation and substantial cause from **R v Smith**.

Those learners who did not refer to legal causation were unable to achieve a band 4 response.

### Candidate Example

#### Causation

An act or omission that causes death must satisfy both factual and legal causation for the murder charge to be applicable. Firstly, factual causation defines the defendant as the factual cause of the death. This is established by the 'but for' test whereby the consequence that the victim faced would not have happened 'but for' the defendant's conduct, which is demonstrated in the case of R v White since the heart attack was the factual cause of death. In Mr Rogers's case, 'but for' him stabbing the victim twice, the defendant would not have faced the consequence of death. Mr Rogers; case does satisfy all the elements required for factual causation within a murder charge.

Legal causation relates to the 'De Minimis Rule' whereby the defendant must be more than the minimal cause of the victim's death and therefore needs to be the



substantial cause of the victim's death and this is highlighted in the case of *R v Smith* since the defendant was still the operating cause of death. *Novus Actus Interveniens* indicates a new operating cause of death. This can be through, for example, the defendant's own act or medical treatment like in the case of *R v Jordan*. In the case of *Mr Rogers*, the victim's own act of going home instead of receiving medical treatment does not break the causal link between the defendant and the victim highlighted in the case of *R v Dear*. This is further supported with the Thin Skull Rule whereby the defendant has to 'take your victim as you find them'. In the case of *Mr Rogers*, the defendant was not prepared to seek medical treatment and this does not make the defendant the new operating cause of his own death. There is the proposal of the 'daftness test' where 'if of course the victim does something so daft that no reasonable man could be expected to foresee it, that would break the causal chain'. However, in the defendant's case, the act of going home does not break the causal link. Therefore, *Mr Rogers* satisfies all elements relating to the legal causation for murder.

**Comment: it can be seen that here the learner has fully explained the law relating to causation, referring to both factual and legal causation. Reference to legal causation clearly explains the relevance of the principle from *R v Dear*. Although not reproduced here, this candidate had also explained the *actus reus* and *mens rea* of murder with reference to more than adequate legal authority. Had the learner not explained these elements but had referred to legal causation, they would not have been able to achieve the band 4 response as legal causation was used as the discriminator in this series.**

Therefore, on the whole, learners did not struggle with the relevant homicide offence, with relatively few referred to incorrect homicide offences, such as unlawful act manslaughter.

**Helpful tips for future papers:**

- Learners should be encouraged to use the Part B materials more effectively, reading the facts carefully to determine what the most appropriate offence is. Learners should be discouraged from assuming that there will be a pattern to the homicide offence where the offence is murder. Murder will not necessarily always be paired with voluntary manslaughter and may appear on its own, as was the case in the present series.

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

Learners performed well on this assessment focus as was expected. This is due to the fact that the focus here was on the application of the law of murder to the facts of the scenario. As learners performed well on assessment focus 1, they naturally performed well here.

As with assessment focus 1, learners achieved a band 4 response here where they had applied all elements of murder (the *actus reus* and *mens rea*) and made specific reference to legal causation.

To achieve the top of each band, learners were required to make specific reference to the source materials, meaning that they selected key facts from the source materials and referred to these when discussing the law.

**Candidate Examples**

*“the unlawful killing when by the defendant as Mr Rogers was seen on CCTV persuing the victim and stabbing him twice, which led to his death”*

*“factual causation is established in this case as but for Mr Rogers stabbing Mr Craig he would not have died”*

*“the actions of Mr Craig failing to seek medical treatment did not break the chain of causation as it was the stab wound that was the operating and substantial cause of death”*

**Comment: the above examples are clearly making specific reference to the source materials, making clear links of the law with the facts of the scenario.**

Common issues within this assessment focus in this series include:

- Many learners simply restated the facts presented to them in Part B without attempting

to demonstrate how the law would apply

- Failing to apply all elements of the law, most specifically the issue of unlawful killing. Many learners failed to apply that the unlawful killing was committed through the positive voluntary act of stabbing
- Many learners focusing their application on the issue of loss of control, their focus being the fact that the case facts stated that Mr Rogers was heard saying he would stab any rival fan who taunted him about his team losing. Learners who did this stated that Thomas was heard making comments that Mr Rogers team were awful and deserved to lose. There was no evidence on the case facts that would amount to either of the qualifying triggers and so the partial defence of loss of control would fail.

### Helpful tips for future papers:

- As indicated in the previous Lead Examiner Report, it is essential that learners are discouraged from simply restating the facts of the scenario as this will be classed as narrative. Learners should be selective in their use of the facts of the scenario

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

As with the previous session, this assessment focus was used to assess the ability of learners to “think on their feet” and analyse the additional information presented to them in Part B, relevant to the issue of police powers. The relevant police power to be discussed was not indicated in Part A and so learners were required to identify the most relevant powers that had potentially been breached, apply these to the facts of the scenario and reach a conclusion on the lawfulness or otherwise of the exercise of police powers.

Performance in this assessment focus was on par with the performance of learners in the 1906 series, which was good. Learners were, on the whole, able to accurately identify the relevant police powers requiring discussion.

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

1. Refusal of access to a solicitor: detainees have the right to access to a solicitor when in police custody, however, this right may be delayed for up to 36 hours in the case of indictable offences where access to a particular solicitor would impact on the case. Therefore, the fact that the suspect was denied access to a solicitor may not potentially be unlawful
2. Tape-recording of interviews: interviews must be tape-recorded and two copies made. The fact that the interview was not recorded from the beginning is therefore unlawful
3. Rest breaks: suspects are entitled to rest breaks every few hours when being interviewed and cannot be interviewed continuously as this may amount to oppression. Therefore, the fact that the suspect was not provided with rest breaks is unlawful.

The main issue that learners had with this assessment focus was confusing the issue of rest breaks during interviews with the fact that suspects are to be checked on every few hours by the custody officer and therefore concluded that the length of time he was interviewed for was lawful. Others failed to explain and apply the issue of rest breaks.

### Candidate Example

The defendant Mr Rogers has indicated that there were some concerns towards the treatment he received from police officers. Firstly, he raises the issue that when he initially requested for a lawyer, his request was refused. However, under section 58 PACE 1984, right to independent legal advice can be delayed by up to 36 hours for an indictable offence if authorised by a senior officer. The Set Task Information does

not suggest that a senior officer did not authorise this delay and therefore I will assume that this delay was authorised. This means that the police were within their right to refuse Mr Rogers access to a lawyer due to his offence and acted lawfully.

Secondly, Mr Rogers indicated that the police began the recording of the interview when they were already an hour into recording. Interviews are governed under PACE 1984 (Codes of Practice C and F) and the Criminal Justice and Public Order Act. The act of the police beginning the recording when they were an hour into the recording was not lawful and the police should have had two full copies of the interview (with the master copy sealed). Therefore, the police did not act lawfully when they made the decision to begin the tape recordings an hour into the interview, if what the defendant said can be proven.

Lastly, the defendant indicated that he was interviewed for over an eight-hour period. The defendant had the right to a rest break of 15 minutes every two hours. However, the police officers failed to provide this for the defendant and therefore it can be established that they acted unlawfully.

**Comment: here, it is clear that this is a band 4 response as the learner has fully explained each of the relevant areas of police powers and applied these fully to the facts of the scenario. Reference has been made to the relevant sections of PACE and a conclusion has been reached as to whether the exercise of the police powers were unlawful.**

#### Assessment Focus 4: Evaluation and justification of decisions

As with the 1906 series, learners performed poorly in comparison to the 1901 and 1806 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. Unfortunately, the

pattern of learners providing either a bald or a partially justified conclusion continued. Again, these answers could not progress beyond band 2 for this assessment focus.

A band 4 response would require learners to conclude on all elements of the *actus reus*, *mens rea* and causation relevant to murder reaching an overall conclusion on the potential guilt or otherwise of the defendant. Learners were also required to provide some evaluative commentary or proposals for reform on the problems. A disappointing number of learners did not include reference to evaluative commentary, despite this being emphasised in previous Lead Examiner's Reports.

### Helpful tips for future papers:

The helpful tips for future papers in this series are the same as previous sessions

- 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
- Encourage learners to make reference to evaluative commentary relevant to the specific area of law within their discussion

### Assessment Focus 5: Presentation and structure

As with all previous series, this assessment focus relates to the quality of presentation and structure. Therefore, the commentary here will echo session. 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 murder and police powers aspects of the activity. Exceptions to the full mark scores were, as usual 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 performed similarly well on this assessment focus on activity 2 as they had in activity 1. Learners were able to correctly identify that fraud by false representation was the relevant property offence and explained it in detail, with reference to appropriate cases to support each element. Given that this is a statutory offence, as opposed to being based on common law, it is a logical offence for learners to explain.

It was interesting to note that, unlike the previous session, there were relatively few learners referring to the case of *Ivey v Genting Casinos* for the definition of dishonesty, with many learners instead opting for *R v Ghosh*. This did not limit marks awarded, but Centres should be mindful that up-to-date cases should be referred to.

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

- Some learners included reference to irrelevant offences that are not on the specification, such as offences under the Computer Misuse Act or the offence of fraud by abuse of position
- Some learners incorrectly concluded that there had been a theft, despite the fact that the additional information in Part B making it clear that no money was gained from the customers through the text message scam.

### Candidate Example

Fraud Act 2006 provides a definition in s.2, a person is in breach of this section if they

dishonestly make a false representation which is untrue or misleading; and intend, by making the representation, to make a gain for themselves or another or to cause a loss to another or to expose another to a risk of loss. This can be used as she has falsely sent text messages claiming to be the bank.

She had the mens rea and the actus reus of this offence.

The mens rea being that she had the intention of using the fake text messages to receive her customers bank details so she could get money for Rick. She also had the actus reus as she actually sent the text messages.

**Comment: this was a band 2 response as the learner has identified that fraud by false representation is the appropriate offence, and identified the key elements of the offence. What limited the marks here was that the only piece of authority referred to was s2 Fraud Act 2006. Learners should get in the habit of including case law and/or statute law for each of the elements of the offences.**

### Helpful tips for future papers:

Once again, the tips for future papers really echo what has been stated in the previous Lead Examiner Report

- Learners should only use information that is contained within the unit specification – whilst the Part A materials are intended to act as a catalyst for research into the relevant area of law, that area of law will only be what is contained within the unit specification. Credit will not be given for materials that are not on the specification
- As with Activity 1, learners should be encouraged to read the case facts more carefully so that they are able to identify what the relevant area of law is requiring discussion. For theft, there needs to be an appropriation, which there was not in the current scenario.

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

This assessment focus was dealt with relatively well in comparison to previous series. Learners, on the whole, were able to ensure that each of the relevant elements of fraud by false representation were applied fully to the facts of the scenario. Learners were able to explain that the representation was false due to the fact that the text messages were not from the bank as they purported to be. They were able to identify that the representation was express and applied the *mens rea* elements clearly and coherently.

Where mistakes were made, these tended to be where learners incorrectly applied dishonest, stating that she was not being dishonest due to the fact she was only committing the offence after being threatened by her friend Rick.

Other issues included where learners incorrectly applied that a theft had taken place, despite there being no appropriation of property.

Furthermore, there was the common theme of learners simply restating the facts of the scenario without any attempt to apply the law and this could not be credited.

As with activity 1, to achieve the top of each band, learners were required to make specific reference to the source materials, meaning that they selected key facts from the source materials and referred to these when discussing the law.



**Candidate Example**

In this case, it shows that Aaliyah has made an implied statement by claiming she's from the bank, when she sent out messages to customers which "stated that they need to change there passwords to their online banking". Therefore the statement is untrue as well as misleading as it's directing the customers to a fake website, which Aaliyah would be able to gain access to their accounts.

**Comment: the above example demonstrates a detailed appliation of the law to the facts of the scenario. The learner has correctly explained that the representation was when the texts were sent out claiming to be from the bak and concluded that this was therefore untrue or misleading.**

**Helpful tips for future papers:**

- As with Activity 1, learners should be discouraged from simply restating the facts of the scenario as this will not attract credit and will merely be seen as narrative.

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

Performance on this assessment focus was variable. As with Activity 1, learners are required to explain and apply the relevant law that they were not given an indication on in Part A. In Activity 2, this is the issue of defences. The defence in the current series was that of duress by threats.

Duress by threats is a relatively complex defence, with some learners confusing it with that of duress by circumstances. Where duress by threats was correctly identified, there was no issue in identifying that the threats must be of death or serious injury. There were, however, many learners who did not correctly set out the key elements of the defence. This required explaining that there must be threats of death or serious injury, no safe avenue of escape, threats to commit a specific offence and the objective test. Many learners missed several of these elements, in particular it was common for learners to forget to explain that the threat must be to commit a

specific offence. Alternatively, many learners failed to explain and apply the issue relating to no safe avenue of escape.

### Candidate Example

Aaliyah may be able to rely on the defence of duress. This is where the defendant has committed the offence but should be excused liability as they were unable to resist the threats made against them. The threat must be of death or serious injury, directed against the defendant, his immediate family, or a person for whose safety the defendant would reasonably regard themselves as responsible for. In this case, Aaliyah admitted to sending out those text messages, but had stated that "she was forced into doing this by Rick ( a friend), that she borrowed money from). The threat is of serious injury as Rick said to Aaliyah "unless she set up the text message scam to get him some money, he would make her elderly mother ("suffer") ". Here the threat is directed against Aaliyah immediate family, which in this case is " her elderly mother". (R v Conway).

The threat must have been on immediate harm (R v Abdul-Hussein), any delay between threat and it being carried out, could be used as an opposing statement to argue that the defendant could have taken evasive action but had choose not to. In this case, the threat was of immediate harm due to Rick "following her and sending her text messages on a daily basis saying he was watching her and her family". Eventhough Aaliyah had, the time to contact the police she was still unable to due to immediate harm as Rick was constantly following her and texting her, which mean she was unable to take evasive aciton. A sober person of reasonable firmness, sharing he defendant's characteristics, must have responded to the defendant's beliefs in the same way. (R v Horne). In this case, it's likely that a sober person would have reacted in the same way due to threat of immediate family being harmed. However, the defence is not available if the defendant had voluntarily placed himself in such a situation, that he risks being threatened with violence to commit a crime. (R v Fitzpatrick).

**Comment: this was a band 3 response because, even though the learner has explained and applied in great detail the elements of the defene of duress, they failed to include the fact that there must be a threat to commit a specific offence. This meant they could not get into band 4 as an element of the defence was missing.**

It was pleasing to note that in this series, relatively few learners chose the incorrect defence. There was also less evidence of learners including all of the relevant defences, with a more concerted effort being made by learners to only pick the defence that was relevant to the facts of the scenario.

However, whilst many learners did identify duress as the correct defence, some did confuse duress by threats with duress by circumstances, with some learners stating (incorrectly) that the Aaliyah hasn't been threatened into committing a specific offence and therefore the only offence available was duress by circumstances. Learners were credited for the mention of duress by circumstances but this was only at band 1.

#### 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. Once again, fully justified conclusions were rare, with learners seemingly being out of the habit of making interim conclusions before drawing it all together to make a final conclusion at the end. This had been common in previous series, but it is now more common to see the bald or partially justified conclusions.

There was even less evidence of evaluative commentary within Activity 2, with relatively few learners making an attempt to address any problems with the offence. This could be, in part, due to the fact that the Fraud Act 2006 was of itself a reforming Act and improved the law greatly when it was created. That being said, there are some issues with the Fraud Act 2006, such as discussing whether the Fraud Act extends criminal liability too far, to the extent that it criminalises lying.

#### Helpful tips for future series:

- The tips here will be the same as for Activity 1: encourage learners to include reference to evaluative commentary and make interim conclusions throughout their work to draw together in an overarching conclusion at the end of the activity.

#### Assessment Focus 5: Presentation and structure

Once again, as with 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.

Band 4 responses remained common, as learners had attempted both the fraud and duress 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 June 2020 series:**

Many of the comments below echo comments from previous Lead Examiners reports and addressing these will develop the quality of learner responses.

- Learners should be discouraged from restating the facts of the Part B materials and instead have their skills of application developed. They should be encouraged to adopt an approach in which they state the relevant law and then select the relevant facts of the scenario and apply these as they go along
- Once again, learners should ensure that they are only including offences that are covered within the Unit 3 Essential Content. Whilst the Part A pre-release is intended as a catalyst for further research, this research will not be outside the scope of the offences, defences and police powers referred to within the Unit 3 specification. Therefore, reference to issues such as the Computer Misuse Act and fraud by abuse of position are not within the specification
- Centres need to continue to work with learners to develop their skills of evaluation and justification of decisions. As has been emphasized previously, learners should be directed to making interim conclusions throughout their work and drawing this together to make an overarching conclusion as to liability at the end
- Centres should be discouraged from determining a pattern to the questions as regards the homicide offences. The emphasis should be on selecting the appropriate law on the basis of a combination of what is alluded to in the Part A pre-release and what offence is presented fully in Part B. It should be noted that it will not always be the case that murder will necessarily appear alongside the partial defences. Therefore, learners skills of selecting the appropriate defences from the materials will require some development.

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