



Mark Scheme (Pre-standardisation)

January 2020

BTEC Level 3 Nationals in Applied Law

Unit 3: Applying the Law

## **BTEC Qualifications from Pearson**

BTEC qualifications from Pearson, the world's leading learning company. We provide a wide range of qualifications including academic, vocational, occupational and specific programmes for employers. For further information visit our qualifications websites at [www.btec.co.uk](http://www.btec.co.uk) for our BTEC qualifications.

### **Pearson: helping people progress, everywhere**

Our aim is to help everyone progress in their lives through education. We believe in every kind of learning, for all kinds of people, wherever they are in the world. We've been involved in education for over 150 years, and by working across 70 countries, in 100 languages, we have built an international reputation for our commitment to high standards and raising achievement through innovation in education. Find out more about how we can help you and your students at: [www.pearson.com/uk](http://www.pearson.com/uk)

January 2020

Publications Code 20170K

All the material in this publication is copyright

© Pearson Education Ltd 2019

# 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)**

<b>Assessment focus</b>	<b>Band 0</b>	<b>Band 1</b>	<b>Band 2</b>	<b>Band 3</b>	<b>Band 4</b>
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"> <li>• Selection of some basic legal principles.</li> <li>• Little understanding of the law relevant to the context.</li> <li>• Limited use of relevant authorities in the context of the scenario.</li> </ul>	<ul style="list-style-type: none"> <li>• Selection of some appropriate legal principles.</li> <li>• Some understanding of the law relevant to the context.</li> <li>• Uses some relevant authorities in the context of the scenario.</li> </ul>	<ul style="list-style-type: none"> <li>• Selection of appropriate legal principles.</li> <li>• Clear understanding and linkage to the law and context.</li> <li>• Uses a variety of appropriate authorities in the context of the scenario.</li> </ul>	<ul style="list-style-type: none"> <li>• Selection of appropriate legal principles.</li> <li>• Thorough understanding relevant to the context, showing a detailed knowledge and understanding of the relevant law.</li> <li>• Uses a wide variety of appropriate authorities in the context of the scenario.</li> </ul>

**Total Marks for external Task is 72**

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

<b>Assessment focus</b>	<b>Band 0</b>	<b>Band 1</b>	<b>Band 2</b>	<b>Band 3</b>	<b>Band 4</b>
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"> <li>• Demonstrates limited application of the relevant law to the scenario.</li> <li>• Limited use of precedents/ authorities in the context, drawing on research.</li> </ul>	<ul style="list-style-type: none"> <li>• Demonstrates some application of the relevant law to the scenario.</li> <li>• Selects and applies some relevant precedents/ authorities in context, drawing on research.</li> </ul>	<ul style="list-style-type: none"> <li>• Demonstrates competent application of the relevant law to the scenario.</li> <li>• Selects and applies relevant precedents/authorities in context, drawing on research.</li> </ul>	<ul style="list-style-type: none"> <li>• Demonstrates detailed and thorough application of the relevant law to the scenario.</li> <li>• Selects and applies relevant precedents/ authorities throughout in context, drawing on research.</li> </ul>

**Total Marks for external Task is 72**

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

**Total Marks for external Task is 72**

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

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

**Total Marks for external Task is 72**

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

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



## Activity 1: Homicide

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

Definition of murder was set out by Lord Coke.

### Actus reus

- Unlawful killing – can either be a positive act or an omission (*R v Gibbons and Proctor*).
- Causation ordinary rules of causation used here:
  - factual causation ('but for' test *R v White*)
  - legal causation – must be a more than minimal cause (*R v Pagett/R v Kimsey*); only unreasonable acts of the victim will break the chain of causation (*R v Williams*), refusing to seek medical advice will not be judged as an unreasonable action of the victim and will not break the chain of causation (*R v Dear*).

### Mens rea

- Express malice aforethought (intention to kill, either direct (*R v Mohan*) or oblique (*R v Woollin/R v Matthews and Alleyne*)).
- Implied malice aforethought (intention to cause GBH – *R v Vickers/R v Cunningham*).

### Apply the law to Colin

- Colin has stabbed Thomas with a pocket knife – this is a positive act.
- Colin is the cause of Thomas's death:
  - Issues of factual causation ('but for' test)
  - Issues of legal causation – Thomas's actions of not immediately seeking medical attention were not unreasonable and therefore do not break the chain of causation.
- Colin has intention to kill Thomas:
  - Direct intention – was there intention to kill? – the fact that he had been heard telling fellow fans that he would stab any fan from the other team who taunted him about losing suggests an intention to kill
  - Implied intention – intention to cause GBH – more likely to be direct intention in this case given his comments.

### Analyse the likely outcome for Colin

- Colin will be found guilty of murder since it was the stabbing that was the substantial cause of Thomas's death. Thomas's actions in not going to hospital would not be judged as unreasonable. There is clearly an intention to kill, given Colin's comments that he would stab any rival fan. Therefore, it can be said that Colin has both the *actus reus* and *mens rea* of murder.

### Credit any evaluative comments

- Colin will be guilty of murder even if he only intended serious harm.

- Difficulties with the meaning and scope of oblique intention.

### **Credit any other alternative lines of reasoning**

- Alternative outcomes where properly supported.

### **Identify the relevant police power that is being exercised (interviews) and demonstrate an understanding of the legal principles relevant to interviews. Recognise the relevant legal authorities.**

#### Police powers relating to interviews

- Police have the right to interview a suspect they have arrested.
- Under Codes E & F (revised) a record of the interview should be made. There should be two copies, one sealed.
- Under Code F interviews can be video-taped.
- Solicitor will usually be present, unless a senior officer has delayed access.
- S34 – 39 Criminal Justice and Public Order Act 1994 – the suspect has the right to silence.
- S76 and S78 Police and Criminal Evidence Act 1984 – the court shall not allow statements which have been obtained through oppression to be used as evidence (*R v Miller*); the court will exclude evidence obtained unfairly.
- Under PACE Code C, the suspect has the right to breaks. Meal breaks should last 45 minutes and shorter breaks after 2 hours should last at least 15 minutes, subject to the interviewer's discretion to delay a break if there are reasonable grounds.

#### **Apply the law to Colin**

- Police are entitled to question Colin as they suspect he has murdered Thomas.
- Colin is entitled to access to a lawyer and there is no evidence in this case of any reason for delay.
- The interview must be tape-recorded and two copies made, one sealed. Here, the police have not tape-recorded the full interview.
- The suspect must be given rest breaks during interviews, they cannot continuously interview him as this may be classed as oppression.
- There is no evidence to suggest there are reasonable grounds to delay a break in the interview.

#### **Analyse the likely outcome for Colin**

- The police were entitled to question Colin as he was arrested for being a suspect in a crime.
- It was unlawful for the police to deny Colin access to a lawyer.
- The conduct of the interview appears to have been unlawful as they have not taped the whole of the interview. We are not told whether they have made two copies of the tape.

- The police should not have interviewed him continuously as this is likely to be classed as oppressive.

### **Credit any other alternative lines of reasoning**

- Alternative outcomes where properly supported.

### **Activity 2: Offences against Property**

**Identify the relevant property offence for the scenario (fraud by false representation) and demonstrate an understanding of the law relating to fraud. Recognise the relevant legal authorities.**

Fraud by false representation is found under s2 Fraud Act 2006

#### Actus reus

- Defendant (D) makes a representation:
  - Representation can be as to fact, law or state of mind
  - Representation can be made to a machine – s2(5)
  - It can be express (*Barnard*) or implied (*DPP v Ray, Lambie*).
- That is false:
  - 'False' means untrue or misleading.

#### Mens rea

- Dishonesty – *Ghosh Test* as modified by *Ivey v Genting Casinos/DPP v Patterson* – would the reasonable man find D's actions dishonest?
- Intention to make a gain or cause a loss
- D knows it is, or might be, untrue or misleading

### **Application of the law to Aaliyah**

- Aaliyah has made a representation as to the fact that the text was from the bank.
- The representation was made to a machine (customers' mobile phones).
- It was an express representation as the text message stated that it was a message from the bank.
- It was untrue as the message was not from the bank and customers did not need to change their passwords.
- The reasonable man would find her actions dishonest in pretending to be from the bank in order to gain access to customers' bank accounts.
- She intended to make a gain of money from customers' bank accounts, it does not matter that nothing has been taken.
- She knew when she sent the text that it was untrue.

### **Analyse the likely outcomes of the case**

- Aaliyah will be found guilty of fraud by false representation for sending the text messages to customers as she intended to gain access to their bank accounts.

### **Credit any evaluative points**

- The fact that in order to be guilty of fraud someone must know that their representation 'is or might be untrue or misleading' is very vague.

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

The defence of duress by threats is a full defence and the test comes from the case of *R v Graham*. It is a two-stage test.

- 1) Was D compelled to act as she did because of threats of death or serious injury?
  - The threat must be of death or serious injury.
  - It must be towards D or someone she has responsibility for.
  - It must be a threat to commit a specific offence (*R v Cole*).
  - There must be no safe avenue of escape (*R v Gill*), but the threat must be effective at the moment the crime is committed (*Hudson and Taylor*).
- 2) Would the reasonable man sharing D's characteristics have responded in the same way?
  - The jury can only take into consideration age, sex, pregnancy, serious physical disability, recognised mental illness or psychiatric disorder (*R v Bowen*).

### **Application of the law to Aaliyah**

- There was a threat of death or at the very least serious injury when Rick said to her that he would make her mother suffer. Her mother is someone whom she is close to.
- She has been threatened to commit a specific offence as she has been told to send the messages out in order to gain access to customers' bank accounts.
- The threat was operating on her mind when she committed the offence as we are told that Rick was following her and had sent her several messages saying he was watching her and her family. This would mean she may have felt that she had no safe avenue of escape.
- It is likely that a female of her age would also have acted the same way she did.

### **Analyse the likely outcome for Aaliyah**

- Aaliyah is likely to be able to claim the defence of duress due to the fact that Rick has threatened to make her elderly mother 'suffer' suggesting she will be subjected to serious injury. It is therefore likely that she was compelled to act as she did due to threats of death/serious injury that were directed at

someone she was close to and it seems likely that a woman of her age would have acted in the way she did.

- Therefore as the defence will be successful, Aaliyah will be found not guilty of fraud due to the fact that duress is a complete defence.

**Credit any other alternative lines of reasoning**

- Alternative outcomes where properly supported.

Ofqual



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government



Pearson Education Limited. Registered company number 872828  
with its registered office at Edinburgh Gate, Harlow, Essex CM20