



Examiners' Report Lead Examiner Feedback

January 2021

Pearson BTEC Nationals
In Applied Law (20170K)
Unit 3: Applying the Law

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January 2021

Publications Code 20170K_2101_ER

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Introduction

Entries for this session were slightly smaller than previous session due to COVID-19 situation. Student performance was, however, very consistent with previous sessions, with evidence of good understanding of the assessment methods and content for this unit. This was the fifth external assessment of the BTEC Level 3 Extended Certificate in Applied Law and the third January series of the qualification.

Unit 3 (20170K) forms one of the two mandatory externally assessed units on the qualification. In Unit 3, candidates learn about the homicide offences of murder, voluntary manslaughter, involuntary manslaughter and corporate manslaughter, and a range of property offences, such as theft, robbery and burglary. They also study police powers and general defences.

Unit 3 is assessed twice yearly, in January and May/June. In this series, as with the previous series and the Sample Assessment Materials (SAMs) and Additional Sample Assessment Materials (AddSAMs), the assessment continues to be based on two key points; a 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 A pre-release follows the standard format of two news reports, one on homicide and one on property offences, upon which learners are to base their research ahead of the Part B 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. As has become standard practice, in the Part B assessment, police powers will always be tied to Activity 1 (homicide) and general defences will always be tied to Activity 2 (property offences). In this series, the focus of Activity 1 was loss of unlawful act manslaughter, accompanied by the police power of detention with the specific focus on detention of minors, and for Activity 2 it was burglary with the general defence of self-defence.

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 record which is found within the Administrative Support Guide. There were some centres who submitted the incorrect learner record sheet; it is strongly advised that centres locate the most up-to-date learner record, can be found on the course materials section of the BTEC Nationals Applied Law (2017) page, under the external assessments tab and then General Support. The Administrative Support Guide also contains all of the relevant information and guidance to ensure that all administrative requirements are met:

<https://qualifications.pearson.com/en/qualifications/btec-nationals/applied-law-2017.coursematerials.html#%2FfilterQuery=category:Pearson-UK:Category%2FExternal-assessments>

Introduction to the Overall Performance of the Unit

The performance during this session was remarkably consistent with the four previous sessions (1806, 1901, 1906, 2001). Despite this session being projected as the largest cohort of learners sitting the paper, numbers did decrease due to the COVID-19 situation, with many centres opting not to enter their learners for the January session. The current situation seems to have had little to no adverse impact on performance, with a similar proportion of learners achieving over 50 of the 72 available marks in this session as compared to previous sessions. The work produced by learners was quite strong across both the activities, with there being no real discernible distinction between marks awarded for the homicide offence and that of the property

offence. As has been the case in previous sessions, learners appear to perform slightly better in explaining and applying police powers in activity 1, than they did when explaining and applying the general defence in activity 2. Most specifically, the defence of self-defence did pose and issue for many learners this series, as it would appear that many centres did not prepare for the possibility that this defence would arise.

Areas of good practice:

As this is the fifth sitting of the paper, Centres have continued to make full and effective use of the materials available to them, such as the previous examiners reports and Sample Assessment Materials. As such, the following was common:

- Evidence of good use of preparatory notes, demonstrated through effective research into the areas of law alluded to in Part A in the form of wide-ranging and accurate citation of appropriate and relevant authorities.
- Evidence of thorough preparation by centres and candidates, specifically demonstrating an awareness of the comments made in the previous LE reports – it was not common in this session to see learners attempt a discussion of police powers within activity 2 for example. As such, there was very little evidence of learners referring to irrelevant information.
- Detailed explanation of the law, particularly as regards the issue of causation, given that this is something which is central to all homicide offences. A clearer understanding of the impact of intervening actions was evident, although some confusion was shown as regards the issue of switching off life support.

Candidates demonstrated relatively few timing issues, completing both activities within the allotted time, with there appearing to be even distribution of time between both activities.

In all, the standard of work produced by the candidates was very good, demonstrating a real understanding of the relevant areas of law in both activities.

Areas requiring improvement

Whilst the work was, on the whole, very good, there are a few matters requiring addressing:

- It appears that many centres attempted to predict which defence would arise in activity 2 and, as such, the treatment of self-defence was not as in depth as it could have been. Centres should be aware that any of the defences could appear in activity 2 and, whilst there are some defences that naturally fit with certain offences, learners should be prepared to discuss any of the general defences.
- Although this has been emphasised in previous Lead Examiners Reports, it should be made explicit to candidates that only offences within the Unit 3 specification will be assessed. As such, even where there appears to be a grievous bodily harm (which there was in this situation), this will be tied to a property offence. Many learners discussed GBH in depth due to the head injury in the scenario, despite the fact that GBH does not appear in the unit 3 essential content, however it does appear in unit 2. Whilst Unit 3 is a synoptic unit, this is only in so far as it requires learners to draw on the skills gleaned from the other units and not the content. Information from other aspects of the specification, or outside of the specification will not attract marks.
- Learners should be encouraged to go straight for the relevant homicide offence where it is involuntary manslaughter, rather than raising and disregarding murder due to the lack of *mens rea*. This will simply waste time for learners and they do not attract credit for the discussion of murder, but only for the relevant homicide offence, as stated in the instructions to the task.
- When discussing an offence such as unlawful act manslaughter whereby liability is constructed from another offence, learners should be reminded that they do not need to fully explore the unlawful act. They simply need to state what the relevant unlawful act is, but do not need to discuss its *actus reus* and *mens rea* in full. In the current session, many learners provided a full discussion of arson, which was unnecessary. Furthermore, full discussion of property offences only attracts credit in activity 2.

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. It should be noted that there is no cross-credit between the two assessment tasks. Creditworthy material included in the wrong task is not credited to the other task. This issue was not as prevalent in this series as in previous ones, however there were still

some instances of learners including police powers in both activity 1 and 2, despite the fact that this is an issue which appears only in activity 1. Where learners have explained general defences in Activity 1 and police powers in Activity 2, they will not receive marks for this.

Activity 1 (Homicide and Police Powers)

In this session, the relevant homicide offence was that of unlawful act manslaughter, based on the offence of arson. A central issue was that of causation, focusing on the relevance of switching off life support to the chain of causation. The relevant police power was that of the detention and interview of minors.

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

For assessment focus 1, candidates are required to explain the relevant homicide offence. Most candidates performed well here, being able to accurately identify unlawful act manslaughter as the relevant homicide offence. At the top of the mark range, was a requirement that candidate explained each of the relevant elements of unlawful act manslaughter. Therefore, to achieve full marks here it was not enough to simply to state the elements of unlawful act manslaughter as “unlawful act”, “dangerous”, “causing death” and “*mens rea* for the unlawful act”, rather there need to be some expansion on the meaning of each of these respective elements. For example, if discussing dangerous, a learner would need to indicate that an act is dangerous where “all sober and reasonable people would inevitably recognise must subject the other person to, at least, the risk of some harm, albeit not serious harm”, to have fully explained that element.

Furthermore, in order to achieve full marks, it was also necessary for candidates to recognise the relevance of the switching off of the life support machine, indicating that this would not break the chain of causation.

Whilst the unlawful act manslaughter was based on the unlawful act of arson, it was not necessary to provide a full explanation of the *actus reus* and *mens rea* of that offence. Many learners wasted a lot of time in discussing the offence of arson in great detail and did not attract credit for this. When explaining the offence of UAM, it is only necessary to state that an unlawful act has been committed and that the *mens rea* of UAM is that of the unlawful act.

Candidate Example

The first element of the Actus Reus is that an unlawful act must have been committed. As set out in the case of Franklin 1883 a civil wrong covered by tort is insufficient and would not be enough to create liability for Involuntary Act Manslaughter. In the case of R v Mitchell 1983 the appeal was dismissed as there was no requirement that unlawful act be directed at the victim. An unlawful act does not just have to be directed at a person but can also be directed at property. Goodfellows 1986 states that the defendant set fire to his flat in order to gain money but killed 3 people in the fire. The unlawful act committed was dangerous and physical against property as it killed these 3 people. Emma would satisfy this element as it states 'she threw a petrol bomb into the doorway of the shop which quickly spread into a fire'. She has committed an unlawful act of Arson under s1(3) of The Criminal Damage Act 1971 which has ended up killing a man.

The second element of the Actus Reas is that an dangerous act must have been committed. An objective test is used in order to decide whether the act committed is dangerous. The objective test is where there is only need for a sober and responsible person to believe that the unlawful act made is dangerous. This is explained in the case of R v Ball 1989. The defendant nor reasonable person needed to foresee any serious harm or the exact type of harm to be guilty of this offence. This is stated in the case of R V JM and SM 2012. Emma is likely to satisfy this offence as she has committed a dangerous act of arson even though she did not foresee any serious harm to Jake Taylor.

The final element of the Actus Reas is that the act committed must be the substantial cause of death. This can be proven in two ways through factual and legal causation. Factual causation includes the but for test which is where the courts look at if 'but for' her actions, the person would still be alive. This is shown in the case of R v Pagett

1983, the defendant was convicted of manslaughter as she would have not died 'but for' his actions as using her as a gun shield. Legal Causation is shown in the case of Smith 1959. In this case the act committed was not the only consequence of death, but was a substantial and operating cause of death. Sometimes an intervening act can break the chain of causation as seen in the case of Carey 2006. Jake Taylor was taken to hospital with severe burns and was put on a life support machine but the decision was made to turn it off and Jake was declared dead. It appears to me that there was no break in the chain of causation as nothing further happened at the hospital which contributed to his death. Emma Lopez satisfies this final element as the act committed is the substantial cause of death of Jake Taylor. She satisfies the factual and legal causation of this element as 'but for' her actions, Jake Taylor would still be alive and his severe burns from her arson attack are more than the minimal and substantial cause of death.

Mens Reas

In order for her to be guilty of the Mens Reas she has to have the same Mens Reas for the unlawful act and in this case she satisfies this element as it states that 'Emma had been posting on her social media account her concerns about that the shop sold cosmetics that had been tested on animals, making it clear she intended to do something about it'. This shows that Emma had been thinking about committing this arson attack for some time and therefore she has the mens reas of this offence as she had intent to do it.

Comment: this is a band 4 response as all elements of the offence of unlawful act manslaughter has been identified and explained. The candidate has acknowledged arson as the unlawful act and has not included irrelevant material on this offence. The meaning of both dangerousness and causation have both been examined, with the candidate explaining that intervening actions can break the chain of causation. The candidate did need to explain a little more clearly that only the *mens rea* for the unlawful act and not the death was required. They also did need to explain causation more accurately in the context of switching off life support, but this did not prevent the candidate from

The majority of learners were able to identify unlawful act manslaughter as the relevant homicide offence, and did not, on the whole, refer to a

range of irrelevant homicide offences before settling on UAM. It would appear that learners had been full prepared in identifying that the rubric of the question instructs learners only to discuss the relevant offence and that previous Lead Examiners Reports have made it clear that irrelevant material will not attract credit. It was also pleasing to note that learners are beginning to fully expand on the law, rather than simply listing the elements of the relevant offence. For example, it was common to see learners examine the meaning of unlawful act, referring to points such as the fact that it must be a criminal act and not a tort, and it must be a positive voluntary act and not an omission.

Despite the fact that learners did perform well on this assessment focus, there were a few common issues:

- Many learners were keen to discuss murder, before explaining why it would not apply in the present situation due to lack of *mens rea* – where the offence is that of involuntary manslaughter, a discussion of murder is not relevant and will simply waste valuable time. Learners will only attract credit for their explanation of the law relating to UAM.
- There was some difficulty with the causation issue of switching off life support. Many learners referred to this as actions of a third party in the form of poor medical treatment, missing out the important legal principle from ***R v Malcherek and Steel***.
- Many learners, whilst identifying that the defendant need only the *mens rea* for the unlawful act, did not then additionally explain that the defendant did not require the *mens rea* for the death.
- It was common to provide an in depth discussion of arson, referring to its *actus reus* and *mens rea*, which is not how UAM should be explained. Whilst arson was a key component of the offence in this situation, the learners needed only to identify arson as the unlawful act and state that the defendant requires the *mens rea* for arson and not the death. Where learners discussed arson in depth, many missed this important point that the *mens rea* for the death is not required.

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

For this assessment focus, candidates are awarded marks for their ability to apply the offence of unlawful act manslaughter to the facts provided in Part B. As is commonplace in each exam series, in order to attract higher marks within each of the bands, learners were required to make specific reference

to the source materials in their application, making effective use of the facts. As such merely stating “Emma has committed an unlawful act” or “Emma has committed the unlawful act of arson”, whilst demonstrating application of the unlawful act aspect of UAM has not made specific enough reference to the source. To attract full marks it is essential that learners make reference to what they are told in the source materials. For example, “Emma committed the unlawful act of arson when she threw the petrol bomb into the shop doorway” demonstrates a clear awareness of the link between the law and the facts of the scenario. This point can be illustrated in the candidate example below:

Candidate Example

Act committed was deliberate and criminally unlawful

If there is no unlawful act present in a case there can be no conviction for involuntary act manslaughter (R v Lam (1967)). in this case the unlawful act would be set out as arson. To prove this the case must meet all the requirements for the actus reau and men’s rea for criminal damage.

Actus reus of criminal damage

Under the criminal damage act 1971, the actus reus of criminal damage is: destroys and damages, property and belonging to another. ‘destroys or damages’ in CDA 1971 definition comes from case law, as slight damage s sufficient as seen in Gaylord v Chouler (1898). Destroy suggests that the property is rendered completely useless in Roe v Kimberley. When looking at the case facts it is apparent that the petrol bomb thrown into the cosmetic store, started a fire which spread quickly throughout the store. This would be classified as the store being destroyed as a result of Emma’s actions. Property belonging to another under section 10 CDA 1971 states that property shall be treated for the purpose of the act belonging to any person. In this case the property was not in control or possession of the property and did not have the right to committed criminal damage in the form of Arson on the store.in conclusion I believe that this case meets all the needs for the actus reus for criminal damage.

Comment: it can be seen here that initially, the candidate has stated “the unlawful act would be set out as arson”, which is a basic application. However, when the candidate goes on to reference the source, mentioning the petrol bomb, this is an application which makes full use of the facts presented to them in Part B. This candidate was awarded marks for this application despite including a heavy discussion of arson as it is clear that they understand that Emma has committed an unlawful act and how she has committed it in the context of the scenario.

Candidates should, however, be cautious of simply restating the facts of the scenario without making any link to the law as this will not count as application. This will be merely narrative.

The majority of candidates did perform quite well in applying the law, and were able to recognise the fact that the doctors switching off the life support machine would not break the chain of causation. Unfortunately, there were some who were confused regarding this point and, incorrectly, stated that the chain of causation was broken, with the effect that Emma was not guilty of the offence of unlawful act manslaughter.

It should be noted that learners are still able to attract marks for application of the law even where they have not fully stated that law itself, meaning that many did attract higher AF2 marks in comparison to AF1.

Candidate Example

Following the case of Emma Lopez we must discuss arson and police powers. We must be sure that arson was an unlawful killing to do this we must use go through the three elements of the actus Reus for Unlawful act manslaughter. Firstly, we must be sure that there was an unlawful act which is a criminal offence (Franklin) in the case of Emma we can see that there was an unlawful act as she 'she threw a petrol bomb into the doorway of the shop, before speeding away from the scene.' This in turn led to 'The petrol bomb exploded, setting fire to some cardboard boxes'. This means that Emma did in fact commit the unlawful act of arson as she deliberately threw a petrol bomb to set fire to the cosmetics shop. The second thing we must be sure of is that the act was dangerous we can in fact conclude that the act Emma committed was dangerous as it was likely foreseeable that harm would occur to someone if they were in the shop or if the fire spread beyond the shop. If Emma did not realise that her act would cause harm then the reasonable man test would have been used however it seems like Emma is fully aware of the act she did as she 'had been posting on her social media about how concerned she was that the shop sold cosmetics that had been tested on animals, making it clear that she was intending to do something about it'. Lastly, we must consider if there was a cause of death which in Emma's case we can see there was as Jake was a local homeless man sleeping in the doorway of the shop under the cardboard boxes. After being taken to hospital he died of his injuries as they were very serious. Emma is not able to escape liability as there is no break in the causation as nothing had been able to break them by an intervening act such as self-injection of drugs (Kennedy). For the next part of this report we must discuss the men's rea for unlawful killing. It states that D must have shown the men's rea which is based upon the liability of the act.

Now that we have talked about the unlawful act we must talk about the act of arson and how this is linked to Emma's case. Section 1 (3) of the Criminal Damage Act 1971 creates the offence of arson which is defined as destroying or damaging property with the use of fire. For the actus Reus of arson it states that there must be damage or destruction of property with the use of fire which we can see has been done in Emma's case as she has used a petrol bomb to start a fire within the shop. The men's rea for arson states that there must be intention or recklessness as to damaging property belonging to another by fire. For Emma's case we can see that intention to do this act was there as she made it clear that she was going to do something to the shop by posting on social media. We can also see that recklessness was there as she would have been unsure if anyone was in the shop at the time she arrived to throw the petrol bomb in. Concluding this information we can see that Emma

Comment: It can be seen from the example above that the candidate has fully applied all aspects of unlawful act manslaughter, achieving band 4:

- **Unlawful act was fully applied when reference was made to throwing the petrol bomb**
- **Dangerousness was applied with full reference to the facts when it was stated that it was foreseeable that harm would occur to someone if they were in the shop or if the fire spread. (it should be noted that whilst there was a slight inaccuracy in the application of the Church Test, making reference to what Emma foresaw, this did not greatly impact the overall application of the law and the mark awarded)**
- **The application of causation was a basic application as there was a mere statement that there was no break in the chain of causation, In order to have full source support, reference would need to have been made to the life support machine**
- **The *mens rea* for the unlawful act has been applied well, making reference to the fact that Emma clearly has intention when she posted on social media.**

It can therefore be seen here that this candidate has made reference to the wording used in the Part B materials, making a clear link to the offence itself. The candidate has not merely retold the story, but they have indicated how the facts illustrate that the elements of the offence have been committed.

Helpful tips for future papers:

- Discourage learners from simply retelling the story as this will not attract marks for application. It is best practice to train learners to explain the law and then apply at each stage.
- Emphasise the distinction between actions that do break the chain of causation and those which do not. Ensure that learners do not confuse issues relating to life support machines with that of medical treatment, so that when they are applying the law, they are able to accurately apply whether the defendant is the legal cause or not.

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

As with each series, this assessment focus assesses the ability of learners to analyse the additional information presented in Part B relating to police powers. In the current session, the relevant police power was that relating to the detention and interview of minors.

There were three key issues that candidates were required to explain and apply:

1. Right to legal advice: under s58 Police and Criminal Evidence Act 1984, individuals have the right to legal advice. This right can be delayed for up to 36 hours for an indictable offence if authorised by a senior officer where it is believed that access to that specific solicitor would impact on the investigation. (***R v Samuel***)
2. Right to have someone informed: under s56 Police and Criminal Evidence Act 1984, a suspect has the right to have someone informed of their arrest. Once again, in an indictable offence this can be delayed for up to 36 hours if it is suspected that this would impede the investigation.
3. Right to an appropriate adult: under s57 Police and Criminal Evidence Act 1984 a minor or a vulnerable person has the right to and appropriate adult to help them understand the procedure (***R v Aspinall***).

This assessment focus was done very well by the majority of learners, who recognised that given the defendant's age, she should have been entitled to an appropriate adult and that the delay in access to a solicitor and to have someone informed may only be delayed in certain circumstances.

There were, however, a few common issues:

- Referring to all of the potential police powers such as detention, despite the fact that these were not referred to within the additional information in Part B. This is something which has been a perennial problem since the first external assessment of unit 3. Candidates should be encouraged to read the facts of the scenario in Part B carefully to identify the relevant police power and then only discuss this.
- Applying the law to the facts of the scenario, without explaining the law. Many were able to identify that the police breached their powers, but did not explain what those powers were.

In order to attract Band 4, as is usual learners were required to state each of the relevant elements of stop and search raised by the Part B information, apply these to the facts with either reference to authority, or a conclusion that the treatment was unlawful.

Candidate Example

Emma said in her first interview with her solicitor that she was treated unfairly by the police when she was detained and interviewed. Under the Police and Criminal Evidence Act 1984 (PACE), the police are permitted to follow very strict rules when carrying out and form of police power. In this case Emma was detained and interviewed. Following detention PACE 1984 CODE H, the custody officer must take any possessions the suspect has on them when they first arrive, this can be used as evidence or to just log what they had when they first arrived, the ideal response would be to release or charge the suspect within the first 24 hours of the arrest, if they need the time to be extended by 12 hours, up to 36 hours, they must get permission from their supervisors and then if that is still not long enough, they will need to get a warrant from the Magistrates Court which gives them permission to hold the suspect for up to 96 hours. The rights of a detained person, they have the right to a legal advisor, 8 hours continuous rest every 24 hours and because Emma is 16 and is under 18, an appropriate adult must be informed of her arrest (CODE G). Therefore, breach of PACE (R v Khan 1996) was committed by the police because they did not allow Emma to contact anyone to inform them and was refused a solicitor in the first 24 hours of her detention. It also states that Emma was interviewed by the police, and when being interviewed; if under 18 the suspect is permitted to have an appropriate adult with them, Emma is alleged to this but was refused one, which again is a breach of PACE, they should be taped and have 3 tapes made; one sealed and only opened on trial day, one to be worked with and the last one to be given to the suspect as a record. They are also permitted to a legal advisor and again Emma was refused this, also being a breach of PACE and right to silence (adverse inference). Therefore, within Emma's time at the police station, there was a lot of known breaches of PACE, meaning that her detention and interview was unlawful.

Candidate Example

hours continuous rest every 24 hours and because Emma is 16 and is under 18, an appropriate adult must be informed of her arrest (CODE G). Therefore, breach of PACE (R v Khan 1996) was committed by the police because they did not allow Emma to contact anyone to inform them and was refused a solicitor in the first 24 hours of her detention. It also states that Emma was interviewed by the police, and when being interviewed; if under 18 the suspect is permitted to have an appropriate adult with them, Emma is alleged to this but was refused one, which again is a breach of PACE, they should be taped and have 3 tapes made; one sealed and only opened on trial day, one to be worked with and the last one to be given to the suspect as a record. They are also permitted to a legal advisor and again Emma was refused this, also being a breach of PACE and right to silence (adverse inference). Therefore, within Emma's time at the police station, there was a lot of known breaches of PACE, meaning that her detention and interview was unlawful.

Commentary: as you can see, this candidate has included irrelevant police powers, which would have wasted their time. They have, however, identified the relevant police powers that have been breached and applied these to the facts of the scenario. This candidate has not merely repeated the scenario, but has explained why the exercise of the police powers were unlawful.

Assessment Focus 4: Evaluation and justification of decisions

In assessment focus 4, learners are required to produce an evaluation of the outcomes of the case, using legal principles and authorities in order to reach a conclusion. Reference to supporting authority is a necessary vehicle for enabling learners to reach a justified conclusion, and also ensures that they produce some evaluation as they can make some commentary on the cases they have referred to.

This assessment focus is one which learners traditionally perform poorly on, it being common for them not to reach fully justified conclusions and very rarely to include any reference to evaluative commentary. Learner should ensure that in both activity 1 and 2, no matter what the offence, they are making some evaluative statement. This could be as small as indicating that UAM is an offence in which liability is imposed despite the defendant being unaware of the risk of the consequences.

In order to achieve a band 4 response, candidates were required to refer to a range of case law in order to reach a justified conclusion on the defendant's liability.

Helpful tips for future papers:

- Although this has been indicated in previous examiners reports, learners should be encouraged to conclude on each element of the relevant offence as this is evidence of a justified conclusion
- Encourage learners to include even one small piece of evaluative commentary, as this would enable them to reach band 4.

Assessment Focus 5: Presentation and structure

As is the norm, 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. The majority of learners achieved 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.
- Purely anecdotal answers that do not convey any of the information

required by the task.

Activity 2 (Property Offences and General Defences)

In this session, the relevant property offence was that of burglary, both 9(1)(a) and 9(1)(b). The 9(1)(a) burglary was based on an intention to steal, whereas the 9(1)(b) was based on the offence of GBH. The general defence for this session was that of self-defence, which would be applied to the 9(1)(b) burglary.

Both Activity 1 and Activity 2 are assessed on the basis of the same assessment focuses.

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

Here, learners were required to correctly identify that the defendant (Christopher) has committed both a 9(1)(a) and 9(1)(b) burglary when he entered his father's home with the intention to steal the expensive television and then broke his step-mother's jaw.

The vast majority of learners were able to identify that burglary was the relevant property offence and, on the whole, explained both forms of burglary well, providing an in depth explanation of the common elements of both offences. As with Activity 1, candidates are required to expand upon all of the elements and not merely list these to be placed in band 4.

Candidate Example

Following the facts given we can assume that Christopher may be guilty of burglary. Burglary has 2 subsections these are, and can be defined as: Section 9(1)(a) – if he enters a building or any part of a building, as a trespasser, with intent to either: steal anything in the building, inflict GBH on any person within the building, or do unlawful damage. Section 9(1)(b) – if having entered as a trespasser, he steals, attempts to steal anything or inflict/attempts to inflict GBH on any person therein.

The actus reus of this offence is entry, in a building or part of a building, as a trespasser. Firstly, entry was further outlined in the case of *R v Collins [1972]*, in which it was established that the jury must be satisfied that the defendant made effective and substantial entry (*R v Brown [1985]*). Christopher entered the house through the back door in the kitchen, this is clearly substantial and effective entry. Next, we must establish that the defendant entered into a building or part of a building, in the Theft Act 1968 it states that a building may include inhabited places such as houseboats and caravans and may even include sheds and outbuildings (*B and S v Leathley [1979]*). It is obvious that the kitchen within Christopher's father's house would count as a building. Lastly, we must establish that the defendant entered as a trespasser. If a person has permission then they are not a trespasser (*R v Collins [1972]*). Although Christopher has stated that he had been told he was

always welcome in the house when given a house key, it may be found that by entering the house late in the night when both his father and stepmother were asleep is exceeding the amount of permission he was given.

Next step: *interview Christopher's father to confirm the above statement*

If it is found that by doing this he was exceeding the permission his father had given him he will be clarified as a trespasser, if not however he will not be guilty of burglary.

The mens rea of burglary is S.9 (1)(a) – intention at the point of entry to commit theft, criminal damage or GBH. S.9 (1)(b) – mens rea of theft or GBH. Based on the facts, it is my submission that this case would fall under Section 9(1)(a) and Section 9(1)(b) as Christopher had intent to commit theft before entering the building and he committed GBH while in the building. It is obvious that Christopher had intent (*Woollin [1999]*) to commit theft as he stated so to his girlfriend and planned a time to do so. Moreover, I believe that Christopher may be guilty of GBH s.18 due to the fact that he intentionally hit her with a very heavy frying pan, the reasonable person would be able to assume that by hitting someone round the face with such a heavy

Candidate Example

object would result in really serious injury.

However, it is my submission that Christopher will be able to successfully use the defence of self-defence due to the fact that he honestly believed that Moira was about to attack him with a knife. I believe that this defence would be successful due to the fact that she was lunging towards him with the knife, he did not voluntarily want to cause harm to her it was simply an act to protecting himself. 31

In conclusion, it is under my submission that Christopher would be guilty of burglary under Section 9(1)(a) with the intention of theft before entering; I believe that Christopher will be successful with a defence of self-defence and will therefore, not be guilty of GBH. 1

Commentary: as can be seen here, the candidate has fully explained the key elements of both forms of burglary. There is a full explanation of the common elements of entry, builing and trespasser and they have full explained that a 9(1)(a) is committed when D enters a building as a trespasser with intention to commit one of the ulterior offences; whereas 9(1)(b) is where D enters and then steals or attempts to steal, inflicts or attempts to inflict GBH. The candidate has not referred to any irrelevant information in the form of other property offences. This is a clear

There was a small proportion of learners who chose to discuss the offence of theft, despite a completed theft never taking place, and others who discussed the offence of robbery due to the injuries inflicted on the victim. Once again, this was despite the fact that a completed theft never took place and therefore there could be no robbery.

There was a common mistake made by many centres when discussing both forms of burglary, in that candidates would explain that a 9(1)(b) burglary was committed when intention was formed once the defendant was inside the building. Whist this is technically true, it misses the key point that what makes a 9(1)(b) burglary is the attempt to commit or actually committing either theft or GBH. As such, candidates who stated that the offence was based on when the intention was formed missed the key essence of the offence and could not attract marks for their explanation of 9(1)(b).

[Assessment Focus 2: Application of legal research and principles to information provided](#)

This assessment focus caused many candidates some issues as there were many who failed to recognise that both forms of burglary had been committed. There were many who believed that only 9(1)(b) had been committed, asserting that this occurred when Christopher stole the TV, despite the fact that he did not actually get to the TV in the scenario. There were others who applied the fact that 9(1)(a) had clearly been committed, fully explaining that there was clear intention to steal upon entry and then missed the fact that 9(1)(b) had also been committed when Moira was injured.

Another issue many learners encountered was discussing whether Christopher was a trespasser. Many (incorrectly) asserted that he was not a trespasser due to the fact that he had permission to enter the house and even had a key, missing the legal principle from ***R v Jones & Smith***.

Candidate Example

There are three elements to burglary. The first one is Entry. This consists of how they were in the building. For this case we will use R V Ryan to show the meaning. This case was a man attempting to enter a building. Whilst doing so he was stuck on the window. It was agreed that this still counts as attempted burglary as he was partially in the building. This applies to this case as Chris has come in from the back door with the intention to steal. The second element is building. This can also be any part of your body. This was created in the case of R V . This case showed that a man was in a shop and he had seen that a till register was left open. He went around the till to see if anything was inside, there wasn't. Although he didn't steal anything because he had the mens rea to steal he was charged with burglary. This applies to this case due to there being mens rea for Chris to steal his dad's TV. The third element is trespasser. This is having permission to be inside the building but exceeding it. This was shown in the case of R V Jones and Smith. This showed that they were doing something they weren't invited to do. Chris would be a trespasser due to there being mens rea for stealing the TV. They must know that they are a trespasser or be reckless to whether they are one. Chris knew that he was welcome inside of the property as he had been given a key, but he wasn't welcome to steal the TV.

In terms of mens rea Chris would be shown to have it. For this I will be using section 9(1A) and section 9(1B). 9(1A) they must enter as a trespasser, have intention to steal, inflict GBH and create unlawful damage. The main thing is they must enter with intention to steal. 9(1B) they must attempt to steal, attempt/inflict GBH and the intention must be formed at the time of entry. From this it is likely that Chris will fall under section 9(1A). This is due to him entering as a trespasser as he knows he will exceed his permission, had the intention to steal and he inflicted GBH as he broke her jaw. This shows overall that he will be charged with burglary. The actus reus of this is the entry and part of the building. It is clear that he has entered as a trespasser and has entered unknowingly from the back door showing that he also has actus reus.

Commentary: this is an example of a band 4 response:

- **Entry is applied with reference to the source materials when it is stated “he has come in from the back door”**
- **The candidate has indicated he was a trespasser as he was not welcome in the house to steal the TV**
- **9(1)(a) was only applied in basic form as the statement is simply that he entered with intention to steal; had the learner indicated that the intention was to steal the TV this would be application with source support**
- **The candidate has explained that Christopher has inflicted GBH when he broke Moira’s jaw**

As such, there is application of all of the key elements of burglary, placing this response firmly in band 4.

Helpful tips for future papers:

- Where the offence of burglary is present in the scenario, learners should be prepared to apply both forms as it will not always be the case that only one offence will be committed.
- When discussing trespassing, it should be emphasised that someone who has initial permission to be in a building may become a trespasser if they exceed their permission. Therefore learners should be prepared to identify what the initial terms of their visit was and whether these had been exceeded.

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

AF3 in activity 2 will always be centred around the relevant general defence. In this session, it was self-defence. This was the first time that this defence has been assessed. The defence itself is relatively straight forward in terms of explanation and application, as learners are only required to determine whether the force used was necessary and whether it was reasonable. Unfortunately, it appears that many candidates were unprepared for this defence, with many seeing it as a duress issue and, as such, many candidates performed poorly.

A key issue for learners was the confusion on the application of the offence to both forms of burglary. As was the case in the 1901 session, where burglary was in issue, where there are two offences, the general defence that is raised does not necessarily have to apply to both offences. In the current series, it could only apply to the GBH.

As such, learners were more likely to stumble across the defence with passing comments such as “Chris only acted because he felt he was about

to be attacked". There was also some confusion with many learners who, whilst they did identify self-defence, they did so in the context of the victim acting in self-defence, as opposed to the defendant.

As such, many learners did not progress beyond band 2. Those who did explain it well, were apply to provide an explanation of the meaning of necessity and reasonableness, include relevant case law and conclude on the applicability of the defence.

Candidate Example

General Defences

Christopher has acted in self defence when he hit his step mother around the head with a saucepan leaving her with a broken jaw after fearing imminent danger of her holding a knife. It was reasonable for christopher to think danger was imminent because his step mother was holding a knife and did not know who it was so couldve striked at any moment with no remorse and even if she did it is stated he does not have a very good relationship with his stepmother. To prove the defence of self defence it must be proven force was proportionate and it was needed. In this case, it is likely christopher honeslty believed force was needed because it was imminent and he was feared for his life as she was holding a knife. He did not already have a weapon but picked one up showing he was in fear and believed he need to be protected. Moira is a house owner so the judge is more leanient about proportionate force. In this case, force is proportionate because Moira has a knife which is as if not more dangerous than a saucepan. It wouldnot be considered dangerouys is Moira was going to punch Christopher and he shot her.

Commentary: this is a band 3 response. The candidate has explained and applied both necessity of force and reasonableness of force. Unfortunately, the lack of referene to case lw for either element of the defence means that the learner could not progress to band 4. Candidates should be encouraged to make full use of supporting case law thoroughout their work.

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 it was uncommon to see reference to evaluative commentary and learners tended to reach bald conclusions, simply stating “Chris would be guilty of burglary” as opposed to fully justified conclusions on liability.

Learners should be reminded that they need to conclude on liability as they go along, drawing each of these conclusions together at the end. In order for the conclusion to be fully justified, they would have needed to have recognised that there were two forms of burglary and, with reference to their application, conclude that Christopher could be liable for both of these.

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 next exam series.

- Remind learners that where the offence is that of involuntary manslaughter, learners are not required to raise, then dismiss the offence of murder as this will simply waste time within the exam.
- When explaining and applying unlawful act manslaughter, candidates are not required to fully examine the *actus reus* and *mens rea* of the unlawful act, they simply need to state it.
- When discussing causation, candidates should clearly distinguish between acts which break the chain of causation (such as acts of a third party) and those which do not (such as switching off life support).
- Candidates should be encouraged only to discuss the relevant police power, as opposed to referring to all of them.
- When preparing learners for assessment, they should be prepared to discuss both forms of burglary within a scenario where it is relevant, as quite often the two offences go hand in hand,
- Centres should prepare candidates for all potential defences and emphasise that it will not always be the case that the defence will be available for all offences raised within the question.



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Welsh Assembly Government

Pearson Education Limited. Registered company number 872828
with its registered office at 80 Strand, London, WC2R 0RL, United Kingdom

