



Mark Scheme (Results)

January 2021

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

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Unit 3: Applying the Law

General marking guidance

- All learners must receive the same treatment. Examiners must mark the first learner in exactly the same way as they mark the last.
- Mark grids should be applied positively. Learners must be rewarded for what they have shown they can do rather than be penalised for omissions.
- Examiners should mark according to the mark grid, not according to their perception of where the grade boundaries may lie.
- All marks on the mark grid should be used appropriately.
- All the marks on the mark grid are designed to be awarded. Examiners should always award full marks if deserved. Examiners should also be prepared to award zero marks, if the learner's response is not rewardable according to the mark grid.
- Where judgement is required, a mark grid will provide the principles by which marks will be awarded.
- When examiners are in doubt regarding the application of the mark grid to a learner's response, a senior examiner should be consulted.

Specific marking guidance

The mark grids have been designed to assess learners' work holistically.

Rows in the grids identify the assessment focus/outcome being targeted. When using a mark grid, the 'best fit' approach should be used.

- Examiners should first make a holistic judgement on which band most closely matches the learner's response and place it within that band. Learners will be placed in the band that best describes their answer.
- The mark awarded within the band will be decided based on the quality of the answer in response to the assessment focus/outcome and will be modified according to how securely all bullet points are displayed at that band.
- Marks will be awarded towards the top or bottom of that band depending on how they have evidenced each of the descriptor bullet points.

Mark GRID, Applied Law Unit 3: Applying the Law
Total Marks for external task 72 - this grid will be applied twice

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Selection and understanding of legal principles relevant to context	0 No rewardable material.	1-2 <ul style="list-style-type: none"> • Selection of some basic legal principles. • Little understanding of the law relevant to the context. • Limited use of relevant authorities in the context of the scenario. 	3-4 <ul style="list-style-type: none"> • Selection of some appropriate legal principles. • Some understanding of the law relevant to the context. • Uses some relevant authorities in the context of the scenario. 	5-6 <ul style="list-style-type: none"> • Selection of appropriate legal principles. • Clear understanding and linkage to the law and context. • Uses a variety of appropriate authorities in the context of the scenario. 	7-8 <ul style="list-style-type: none"> • Selection of appropriate legal principles. • Thorough understanding relevant to the context, showing a detailed knowledge and understanding of the relevant law. • Uses a wide variety of appropriate authorities in the context of the scenario.

Mark GRID, Applied Law Unit 3: Applying the Law
Total Marks for external task 72 - this grid will be applied twice

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Application of legal principles and research to information provided	0 No rewardable material.	1-2 <ul style="list-style-type: none"> Demonstrates limited application of the relevant law to the scenario. Limited use of precedents/ authorities in the context, drawing on research. 	3-4 <ul style="list-style-type: none"> Demonstrates some application of the relevant law to the scenario. Selects and applies some relevant precedents/ authorities in context, drawing on research. 	5-6 <ul style="list-style-type: none"> Demonstrates competent application of the relevant law to the scenario. Selects and applies relevant precedents /authorities in context, drawing on research. 	7-8 <ul style="list-style-type: none"> Demonstrates detailed and thorough application of the relevant law to the scenario. Selects and applies relevant precedents/ authorities throughout in context, drawing on research.

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Total Marks for external task 72 - this grid will be applied twice

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
To be used with both Activity 1 and Activity 2					
Analysis of legal authorities, principles and concepts	0	1-2	3-4	5-6	7-8
	No rewardable material.	<ul style="list-style-type: none"> Analysis is limited. Analysis lacks a grasp of the concepts in the context of the scenario. Alternatives are stated but with no supporting evidence. 	<ul style="list-style-type: none"> Some analysis. Analysis demonstrates a basic grasp of the concepts and their relevance in this scenario. Alternatives are stated with some supporting evidence. 	<ul style="list-style-type: none"> Linked statements provide a logical analysis of the evidence in the scenario. Analysis demonstrates a good grasp of the concepts and their relevance in this context. Alternatives are detailed, making use of supporting evidence. 	<ul style="list-style-type: none"> Detailed and coherent statements provide a clear and logical analysis of a wide range of relevant evidence in the scenario. Analysis demonstrates a thorough grasp of the concepts and their relevance in this context. Alternatives are considered in depth, using appropriate supporting evidence.

Mark GRID, Applied Law Unit 3: Applying the Law
Total Marks for external task 72 - this grid will be applied twice

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

Mark GRID, Applied Law Unit 3: Applying the Law
Total Marks for external task 72 - this grid will be applied twice

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

Activity 1 - Indicative Content

Activity 1: Homicide

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

Unlawful act manslaughter as set out in *R v Goodfellow*

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

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

- Causes death - ordinary rules of causation used here
- factual causation (‘but for’ test from *R v White*)
- legal causation - D must be a more than minimal cause (*R v Paggett/R v Kimsey*). Note: switching off life-support does not break the chain of causation (*R v Malcherek and Steel*)

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

Apply the law to Emma

- Emma has committed an unlawful act; arson is a criminal act and it does not matter that the unlawful act was directed at property (the shop) as it is still an unlawful act
- She has committed an objectively dangerous act – the sober and reasonable person would recognise that setting fire to a building would subject another person to at least the risk of at least some harm
- Emma has caused Jake’s death as ‘*but for*’ her throwing the petrol bomb at the shop, Jake would not have died. Emma is also the substantial cause of death as switching off life-support does not break the chain of causation
- Emma has the *mens rea* for arson as she intended to set fire to the shop so that she could stop them from selling cosmetics tested on animals

Analyse the likely outcomes of the case

- Given the considerations above, the most likely outcome is that Emma will be guilty of unlawful act manslaughter as all the elements of the offence are established

Credit any evaluative points

Credit alternative lines of reasoning where properly supported.

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

- A detainee has the right to have someone informed of their arrest (s56 Police and Criminal Evidence Act 1984). A delay is only permitted where individual is detained for an indictable offence and a senior officer has authorised it. The delay is only permitted where it is believed that telling a person of the arrest will lead to interference with evidence, will lead to alerting other suspects or will hinder the recovery of any property. The police must try and contact a parent, guardian or carer for anyone who is under the age of 18 or a vulnerable adult
- A detainee has the right to privately consult a legal advisor (s58 PACE 1984). This must be within 36 hours and a delay is only permitted where the individual being detained for an indictable offence and this must be authorised by a senior officer. The delay is only permitted where it is believed that access to a particular solicitor (not just any solicitor) will lead to interference with evidence, will lead to alerting other suspects or will hinder the recovery of any property (*R v Samuel*)
- Where the police interview a child or young person (aged 10 – 17) or a vulnerable adult, an appropriate adult must be present (s57 PACE 1984 Code C and s38 Crime and Disorder Act 1998, *R v Aspinall*)

Apply the law to Emma

- Emma should have had someone informed of her arrest. Whilst a delay may be permitted in her circumstances as she has been arrested on suspicion of an indictable offence (unlawful act manslaughter), this will only be lawful if it has been authorised by a senior officer. The fact that she is 16 and has not had anyone informed may mean that the police have acted unlawfully
- Preventing access to a solicitor for the first 24 hours of her detention is not of itself illegal, provided that this has been authorised by a senior officer as she has been detained for an indictable offence. To be **lawful** it would have to be proven that access to a specific solicitor would have led to interference with evidence, alerting suspects or would have hindered recovery of property – **route A**. If this cannot be established, her treatment will be **unlawful** – **route B**
- As Emma is aged 16, she is entitled to an appropriate adult when being detained and interviewed. This aspect of her detention is therefore unlawful

Analyse the likely outcomes

- It is likely that the police will have behaved unlawfully as they did not permit Emma to have someone informed of her arrest and did not allow her access to a solicitor for 24 hours. Furthermore, they did not allow her access to an appropriate adult which is a fundamental safeguard for a young person.

Activity 2- Indicative Content

Activity 2: Offences Against Property

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

Burglary is defined in s9(1) Theft Act 1968

There are two types of burglary: s9(1)(a) burglary and s9(1)(b) burglary

The common elements of the *actus reus* of 9(1)(a) and 9(1)(b) are entry, building and trespasser:

- Entry – not defined in the Act. The leading case of *R v Ryan* states that the jury decides whether entry is 'effective'
- Building/Part of a building – not defined in the Act but there must be some degree of permanence
- Trespasser – trespass is a tort and means to enter property without permission or legal right. If D has permission he is not a trespasser (*R v Collins*), however he may be a trespasser if he goes beyond his permission (*R v Jones and Smith*)

For 9(1)(a), the *mens rea* is the intention on entry to commit one of the ulterior offences. D's intention can be specific or conditional (*AGs Ref 1&2 1979*). D also needs to knowingly or recklessly trespass.

For 9(1)(b), D must additionally either steal or inflict GBH. The *mens rea* is the *mens rea* for the offence committed. D also needs to knowingly or recklessly trespass

Apply the law to Christopher

For entering his father's house to steal the television and then injuring his step-mother, Christopher may be liable for *both* 9(1)(a) *and* 9(1)(b) burglary

- There is effective entry as he is inside the house
- The house is clearly a building
- Christopher would be classed as a trespasser because despite having permission to enter the house at any time (he was given a key), he has gone beyond that permission by using the key to enter with the intent to steal the television
- When Christopher entered the house with the intention to steal, this would be a s9(1)(a) burglary as we are told that he wants to steal the television. Therefore, Christopher has entered the house with the intention of stealing (the television) which is sufficient for 9(1)(a)
- When Christopher broke Moira's jaw, this would be a s9(1)(b) burglary. We know that he has entered the building as a trespasser. Breaking Moira's jaw with the frying pan would be GBH which is sufficient for a 9(1)(b) burglary
- Christopher has knowingly trespassed as he knew he would not have permission to enter the house for the purpose of stealing property

Analyse the likely outcome of the case

- Christopher is likely to be found guilty of burglary under both s9(1)(a) and 9(1)(b) Theft Act 1968 for entering the house to steal the television and then injuring Moira whilst he was inside the house

Credit any evaluative commentary

Credit any alternative lines of reasoning where properly supported,

Identify the relevant defence for the scenario (self-defence) and demonstrate an understanding of the law relating to self-defence. Recognise any relevant authorities.

In order to plead self-defence, two things need to be established:

- Necessity of force – force will not be justified if it is not necessary. It does not matter if the defendant's belief in the use of force was mistaken (*R v Gladstone Williams/s76 Criminal Justice and Immigration Act 2008*). The defendant will be able to defend himself even if the attack has not taken place (*R v Bird*). The court will take into account whether there was a possibility that the defendant could have retreated (s76 Criminal Justice and Immigration Act 2008)
- Reasonableness of force – the force used must be reasonable in the circumstances and proportionate to the threat. The defendant will therefore be judged on whether he is doing what he honestly and instinctively thought was necessary (s76 Criminal Justice and Immigration Act 2008). Where the force used is excessive, there is no defence (*R v Clegg*)

Application of the law to Christopher

- Christopher will have thought that the force was necessary as Moira was lunging at him with a knife so that he thought she was about to attack him with it
- Christopher will need to show that the force that he used was proportionate to the threat and was not excessive. It is likely that the jury will decide that hitting someone in the face with a frying pan was proportionate to the threat of potentially getting stabbed by the knife

Analyse the likely outcomes

- It is likely that Christopher will be able to use the defence of self-defence for the s9(1)(b) burglary but not for the 9(1)(a) this is because when he injured Moira, Christopher was doing so in response to the threat of the knife as he thought that Moira was going to attack him with it.



Llywodraeth Cymru
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