



June 2018

**Level 3 National in Applied Law
20170k - Applying the Law**

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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.

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Unit 3: Applying the Law.

Grade	Unclassified	Level 3			
		N	P	M	D
Boundary Mark	0	11	21	31	42

Introduction

This was the first external assessment of this unit. In this series, as with the Sample Assessment Materials (SAMs) and Additional Sample Assessment Materials (AddSAMs), the Part A pre-release element of the assessment would require learners to base their research on two news reports, one on homicide and another on property offences. These news reports would indicate the potential homicide and property offences that they would be given further details of in Part B. In this series it was gross negligence manslaughter and criminal damage. The pre-release materials would not, however, indicate which police power and general defence learners would be presented with in Part B, nor which of the elements of each of the offences would require the fullest discussion.

For Part B this series, Activity 1 (homicide) required learners to include within their discussion the police power of arrest and Activity 2 (property offences) required an examination of the general defence of intoxication. Completing relevant research was therefore essential in preparation for Part B as learners would be required to use their research to select and apply the appropriate facts and legal principles from the further information they were provided within and present their work in a professional format. It is evident in this series that learners did complete a vast amount of research, however it would appear that this was not perhaps as focused as it could have been. For example, many learners provided details of the range of homicide and property offences within their work, as opposed to explaining and applying the law of gross negligence manslaughter and criminal damage.

This unit is synoptic to the Extended Certificate in Applied Law. Learners are therefore expected to draw on the skills, knowledge and understanding acquired from the units they have studied across the specification in the completion of both activities within the Task. For example, learners will have been introduced to the concept of precedent in Unit 1 and will therefore understand that the courts will have to follow any precedents set by a higher court when determining a defendant's criminal liability. Unit 2 is also of fundamental importance as learners will be familiar with the concepts of *actus reus* and *mens rea* when determining criminal liability. Furthermore, throughout all units learners will have been encouraged to apply their learning to realistic contexts through the use of case studies. Learners are therefore expected to draw upon their skills of application and selection of relevant laws when completing the activities within this Unit.

In this assessment, learners complete two activities which are each marked out of 36. The assessment of each activity is based on 5 assessment focuses, four of which are worth 8 marks each and the fifth worth 4 marks. The assessment focuses are applied separately to each activity and attract the same weighting, bringing the overall total of the paper to 72 marks.

Learners were required to produce their work using a computer. A minority of centres submitted work without including the signed authentication form and/or the learner record sheet to record the marks for each activity. Centres are revised to review the Administrative Support Guide for Unit 3 prior to submitting the work to ensure that all administrative requirements are met.

Introduction to the Overall Performance of the Unit

As expected, only a small number of centres entered their learners for this assessment, as it is expected that many centres are treating the Extended Certificate in Applied Law as a two year course and will therefore enter learners next academic year. The work produced was, on the whole, quite strong with the majority of learners achieving over 30 marks out of 72. It was evident that learners had collected a great deal of research towards Part B, however, it appears this research was not as focused as it could have been. For instance, it was commonplace for learners to reproduce their notes within their work, explaining all of the relevant homicide and property offences, before specifying that in activity 1 the offence was gross negligence manslaughter and in activity 2 the offence was criminal damage. Learners are encouraged to pay attention to the clues that are given within the Part A pre-release material as this will indicate which offence they will be presented with in the further information in Part B. Carrying out more focused research on the potential offences is invaluable as it will enable learners to produce a more detailed analysis of the offences, with the additional benefit that they will be able to spend more time researching the unseen elements of police powers and potential defences.

It appears that learners were able to balance their time well between activity 1 and activity 2 and did produce an even amount of work for each activity. It is, however, of particular interest that several learners scored lower on activity 2 in this first series. This is due to the fact that many learners either failed to identify intoxication as the appropriate defence, listing all of the potential defences and briefly explaining them. Where intoxication was identified, learners who did not explain the key requirements for a successful plea and applying these to the facts of the case study scored lower marks.

Overall, the majority of learners were able to complete work towards all of the assessment focuses in both activities, producing work in a generally professional format and structure. Learners demonstrated that they were able to relate the law to the contexts given, with few learners treating the law in isolation to the facts of the case studies provided in Part B. It should be noted, however, that many learners scored lower marks on the evaluation and justification of decisions element of the assessment in both activity 1 and activity 2. This assessment focus required learners to produce a detailed evaluation of the outcomes of both cases, reaching fully justified conclusions. It was, however, common for learners to reach either a bald or single supported conclusion on liability, with some learners not reaching any definitive conclusion. These learners scored lower marks on this assessment focus. Learners should be encouraged during preparation for assessment ensure that they conclude throughout their application on the liability of the defendants, the lawfulness of the exercise of any police powers and whether the potential defence raised it likely to be successful on the basis of the case facts provided.

Assessment Focus One: Selection and Understanding of Legal Principles Relevant to the Context

Marks gained for this assessment focus required learners to correctly identify the potential offences that had been committed in each of the activities. For activity 1 this was gross negligence manslaughter and for activity 2 this was both basic and aggravated criminal damage.

Activity 1

To attract the higher mark bands within this assessment focus, learners were to identify *R v Adomako* as the leading authority on gross negligence manslaughter and then explain the elements of this offence, with reference to supporting case law.

For instance, the learner in the following example has achieved a mark in band 3 because they have provided the correct legal precedent of *R v Adomako* and listed how this offence is established. They have also referred to an additional precedent of *R v Wacker* to illustrate duty of care, as well as explaining that the defendant's actions must be so bad in all the circumstances to amount to a crime. Only a handful of learners were able to explain the meaning of gross negligence in this manner. The work could have been improved by explaining each of the elements in more detail, such as what is meant by a breach of duty, or referring to the fact that there must be a "risk of death" in order to establish gross negligence manslaughter. In fact, very few learners mentioned risk of death within their responses.

In *R v Adomako* gross negligence has to be established by proving four things. The four things are;

- Did the defendant owe a duty of care
- Did they breach their duty
- Did the breach of duty caused death
- The defendant's actions were so bad in all circumstances as to amount in a jury's opinion to a crime

In the case of *R v Wacker* the defendant 60 immigrants in the back of a truck and there was one air vent and he closed the air vent to make sure he did not get caught and as a result they all suffocated. The defendant owed them a duty of care as they were his passengers; he breached the duty of care which resulted in death.

A limiting factor for many learners within this assessment focus was that there was a tendency to explain the other homicide offences, such as murder, leading to a superficial explanation of gross negligence manslaughter. The learner in the above example, whilst they did achieve band 3, could have achieved band 4 had they dealt solely with gross negligence manslaughter as this would have provided them with enough time to give a detailed examination of the offence. Explaining all of the offences will have led to learners simply not having enough time within the two hour period to provide the detail required.

Activity 2

In activity 2, the majority of learners were able to identify that both basic and aggravated criminal damage was relevant to the facts of the case study. However, only a limited number of learners were able to explain each of these offences in detail. In the following example, the learner has achieved marks in band 1 as, despite correctly identifying the offence, they have not explained the *actus reus* and *mens rea* of both forms of criminal damage with reference to a range of supporting case law. The learner has not specified that basic criminal damage is found in s1(1) Criminal Damage Act 1971 and that aggravated criminal damage is found in s1(2). An appropriate case for aggravated criminal damage is included, however, its relevance to the offence is not explored. For example, the learner could have explained that this case is a precedent that states that, there is no requirement that life is actually endangered in aggravated criminal damage.

Although, Mr. Mozul can be charged with damage to property, under the criminal damage act 1971. Damage of property is when damage is done to real or individual's assets by another's carelessness, wilful damage or through a performance of environment. Also, Fredrick Mozul would be found guilty of illegal destruction as he deliberately or recklessly abolished or damaged possessions belonging to his wife, devoid of legal reason. Additionally, Mr. Mozul is possibly to be charged with aggravated criminal damage, where the criminal damage puts life in danger and that's what Fredrick Mozul did when interfered with the breaks of his wife's car, applying R v Dudley. Although, it could be raised that Fredrick Mzul could have possibly wanted to kill himself, that's why he interfered with breaks and that could have been the reason behind the intention to steal the car.

When dealing with the property offences, learners should be encouraged to set out the *actus reus* and *mens rea* of these offences and explain the meaning of each key element. For example, in relation to basic criminal damage, after stating the *actus reus* is where a person destroys or damages property belonging to another, a learner could go onto state that something is classed as being damaged where it takes time, money and effort to rectify it as in *Hardman v CC of Avon*.

It was common for many learners to explain the law of theft, despite the clues pointing towards criminal damage in both Parts A and B. In Part A they are told Frederick has been arrested for tampering with someone's car, and in Part B they are further told that he has scratched the car and tampered with its brakes, both of which are clear indicators of damage. Again, due to focusing on other property offences, learners limited their marks by not giving themselves enough time to

explain criminal damage in detail. This could be improved through encouraging learners to look closely for the hints provided in Part A as to the offence committed.

Assessment Focus Two: Application of Legal Principles and Research to Information Provided

Within this assessment focus, marks were gained by learners on the basis of their ability to utilise their research effectively, so that they may select and explain the appropriate police power and general defence from the further information provided in Part B.

Activity 1

In this series, police powers were attached to the homicide article, with the information provided in Part B raising the issue of whether there had been a lawful arrest and the majority of learners were able to identify this. To achieve marks within the higher bands, it was necessary for learners to explain when an arrest is lawful under s24 Police and Criminal Evidence Act 1984, as amended by s110 Serious Organised Crime and Police Act 2005. Learners were then required to state the requirements for a lawful arrest, where necessary including relevant case law. Very few learners were to state where the legal power of arrest comes from and that to be lawful an arrest must be both necessary and reasonable.

In the following example, the learner has achieved a band 3 response as they have stated several of the requirements for a lawful arrest, referred to the necessity and reasonableness test, although not explicitly and included an appropriate authority to support their explanation. To improve their response, the learner could have referred to the fact that since s110 SOCPA 2005, the police may arrest anyone who they believe has, is or is about to commit an offence, as well as detailing when an arrest may be necessary. They could also have referred to the meaning of reasonable grounds and that under s117 PACE 1984 the police are permitted to use reasonable force to detain a suspect.

Police Powers: An Arrest occurs when the suspect loses their liberty (freedom). The person arrested must be cautioned which the police officers failed to do to Gino for the arrest to be lawful it must meet the two main criteria. The person being arrested must be involved or suspected of involvement or attempted involvement in committing a crime. The police officer must have reasonable grounds for believing that it's necessary to arrest that person.

For an arrest to be legal the officers making the arrest must state their badge number the police station they work for and why they are arresting the person and if the officer has a warrant he is allowed to search Gino of anything that can cause harm. Applying the powers to this case it shows that the police officers have made an illegal arrest and have used brutal force even though Gino has not refused or attempted to flee from the scene. In *Castorina v Chief Constable of Surrey* HOL looked at three questions. Did the arresting officer suspect that the person arrested (Gino) was guilty of an offence? Also was there reasonable cause for the suspicion? If the answer to the previous question is affirmative, the officer has discretion to make an arrest.

There was a temptation for many learners to examine the police powers of stop and search despite the fact there was no reference to a search within the Part B information. The information included within Part B with explicitly direct learners towards which element of police powers they should explain and apply. For example, in this series, the Part B information states “Gino has alleged that he was not treated fairly by the police when they arrested him”, clearly indicating that arrest is the relevant police power. Once again, during preparation for assessment, learners should be encouraged to look for cues within the further information as indicators of the specific police power they are required to discuss.

Activity 2

Marks for this assessment focus in activity 2 tended to be lower than in activity 1, with few learners achieving above band 3. Whilst many learners identified that the appropriate defence was intoxication, the majority failed to examine the key requirements for its successful plea. For example, learners needed to state that a successful plea of intoxication requires all *mens rea* to be removed. They also needed to explain that where intoxication is voluntary the law makes a distinction between specific and basic intent crimes. Many learners failed to explain how the law distinguishes between these types of crime, nor refer to appropriate supporting case law, such as *R v Majewski* and *R v Richardson and Irwin*.

There was confusion in some instances between the general defences and the partial defences of loss of control and diminished responsibility. A minority of learners stated that Frederick could plead loss of control due to his wife’s infidelity, whilst others confused the issue of intoxication in diminished responsibility with the general defence of intoxication. Loss of control and diminished responsibility may only be used as a partial defence to murder and not for any of the property offences and therefore should not be confused with the general defences. Other learners stated that Frederick could use the general defences of either insanity or duress, for instance stating that because Frederick’s wife has left him this could be duress by circumstances. Where incorrect defences were raised, this limited the marks that learners could achieve.

Furthermore, as has been a common theme within this series for the assessment focuses above, many learners simply stated each of the potential defences that appear within the specification, rather than focusing on the defence that is identified in Part B.

Assessment Focus Three: Analysis of Legal Authorities, Principles and Concepts

Learners were awarded marks within this assessment focus for their ability to apply the law as explained within assessment foci 2 and 3 to the facts of the further information within Part B. This assessment focus therefore required learners to apply the information they had applied to both the potential offences and the relevant police power/potential defence.

Activity 1

Learners who had correctly identified both the correct offence and relevant police power and applied both of these elements were able to score highly, however few were able to do so. For instance, there were many learners who were unable to state why Gino had a duty of care towards Janet, or how he had breached that duty. The majority of learners were also unable to state whether Gino had behaved in a manner than could be said to be grossly negligence or whether there was a risk of death from his breach of duty. Similarly, few learners were able to explain why the police would have had reasonable grounds for believing an arrest was necessary on the basis of the facts presented. Furthermore, a disappointing number of learners were able to explain that the police had potentially not used reasonable force when they forced him against the wall and handcuffed him.

On the other hand, there were a handful of learners who achieved lower marks simply due to the fact that they had not explained either all of the key elements of gross negligence manslaughter or the police power of arrest and therefore were unable to apply the law.

When learners explain the relevant laws, whether for homicide or the relevant police power, they should ensure that they relate all elements of the law back to the facts of the case study to determine whether the law has been broken.

Activity 2

For activity 2, there were few learners who were able to apply the *actus reus* and *mens rea* of both basic and aggravated criminal damage to the facts of the scenario in enough detail. To achieve higher marks, they needed to apply the concept of damage to both the scratching of the car and the tampering of the brakes. Many also did not explore Frederick's *mens rea* for the aggravated offence when he tampered with the brakes. Some learners also incorrectly concluded that, as life was not actually endangered, then there was no aggravated criminal damage, rather than explaining that the essential aspect of this offence is the intention or recklessness as to whether life is in danger. Others also incorrectly stated that there was no basic criminal damage and therefore did not apply its elements to the scenario.

Lower marks were also attracted by learners who had not identified and explained the appropriate defence as they were unable to apply their knowledge of the law to the facts of the scenario adequately. To achieve higher marks within this assessment focus, learners were required to apply with the law of criminal damage and the appropriate defence. Therefore, whilst they may have attracted marks for their application of criminal damage, they were unable to achieve higher marks if they had not explained intoxication. In addition to this, there were many learners who had failed to explain the key requirements for a successful plea of intoxication and were therefore unable to provide an analysis of them.

In the following example, the learner has achieved a band 2 response for analysis as for criminal damage they have only applied the *mens rea* element of the offence, stating that Frederick was not aware of the risk as he has been drinking. The learner then, however, went on to state that Frederick did have subjective recklessness. The learner was able to explain that Frederick would not be able to claim involuntary intoxication due to the fact that he had drunk the bottle of whisky before going to the solicitor's office, however, they have not gone on to explore whether he would be able to claim any defence for becoming voluntarily intoxicated. The work could have been improved by the learner fully exploring the *actus reus* and *mens rea* elements of both basic and aggravated criminal damage, using the facts of the scenario more effectively. For example, the learner could have stated that it could be suggested that Frederick did have the *mens rea* for aggravated criminal damage as he had been heard muttering that he was going to "settle the score" and then went to tamper with the brakes of the car, suggesting he wanted to endanger life. Similarly, the learner could have stated that as criminal damage is a basic intent crime, Frederick may not have a defence according to the rule in *R v Majewski* as getting drunk is a reckless course of conduct, unless it can be proven that he would not have committed the offence had he been sober (*R v Richardson and Irwin*).

In Section 1 of the Criminal Damage Act 1971 the *actus reus* is explained as damaging or destroying property belonging to another. In *R v G* the conviction was quashed as the subjective test was used to establish recklessness, they had to be aware of the risk of the criminal damage. Frederick didn't know the risk as he was drinking. The *mens rea* is intending to destroy or damage property or being reckless. Section 2 Aggravated Criminal Damage is intending or being reckless as to life being endangered. *R v Dudley* the defendant did intend to endanger the residents' lives. In *R v Cunningham* subjective recklessness was applied as he saw the risk and still carried on to do so. Duress by threats is being forced to commit a crime due to fear however duress by circumstances is where fear is caused by the actual circumstances. In *R v Willer* the Court of Appeal agreed that his actions were driven by the circumstances. This can therefore apply to Frederick.

Intoxication is mostly to apply to Frederick as he has been drinking. Intoxication is being under the influence of alcohol, drugs or even glue. In *R v Limpham* voluntary intoxication is reckless so it is adequate *mens rea* for manslaughter. Involuntary intoxication is the defendant did not knowingly take an intoxicating substance. This doesn't apply as he drank a bottle of whisky and then walked to the solicitor's office. In *R v Kingston* the *mens rea* was formed before he got drunk and could not use involuntary intoxication as a defence. In *R v Majewski* voluntary intoxication is a defence to specific intent crimes.

Assessment Focus Four: Evaluation and Justification of Decisions

This assessment focus requires learners to produce an evaluation of the outcomes of the case, using legal principles and authorities in order to reach a conclusion in each activity. In both activity 1 and activity 2, many learners did not achieve beyond band 2 as it was common for many to produce either a bald or single supported conclusion on the defendant's liability and either the powers of the police, or the application of the defence.

In order to attract the higher bands within this assessment focus, learners are required to evaluate the outcomes of the case using authorities in order to reach their conclusion. Similar to assessment focus 3, it would have been difficult for learners who had not fully addressed the issue of police powers or the defence of intoxication to reach a fully justified conclusion as they would not have fully addressed the legal principles to help them reach that conclusion.

In this example from activity 1, the learner has achieved a band 2 response as they have concluded on the basis of their explanation that Gino is likely to be guilty of gross negligence manslaughter and that the police have not carried out the arrest properly.

The case would therefore most likely end in with the defendant guilty of committing involuntary homicide which was the result of gross negligence. On the other hand the police officers would also be guilty of not carrying out a proper arrest which could possibly end with consequences for the officers that have conducted the arrest; this would not affect Gino's trial in any way although he could potentially be entitled to some form of compensation.

In order to score marks within band 4 in both activities, learners should link each of the elements of the offences and police powers or defences to the case facts, referring to a range of appropriate legal authorities. Learners could be encouraged to make interim conclusions throughout the work, either on whether the potential offence has been committed, on whether the police have acted lawfully or on whether the defence may succeed. This will be beneficial for learners when they draw together their application of the law to the case facts to reach an overall conclusion which demonstrates an awareness of the implications of liability being established and the outcome of either an unlawful exercise of police powers or successfully pleading a defence.

Assessment Focus Five: Presentation and Structure

Within this Assessment Focus, marks are gained by presenting the work using clear language and presenting their work in a clear and professional format. It was common for many learners to achieve band 3 for this assessment focus, as many did present their work in a logical format using generally clear and professional format. However, it was common for many to lay their work out as an essay, without paying attention to the format suggesting within Part B. Learners who were able to achieve band 4 had presented their work in the appropriate manner for the audience, in this series, learners were to produce two reports for a barrister. In the following examples, both learners have headed their work as if they are completing file notes, before going on to produce well-structured and professionally written pieces of work.

Defendant: Gino Romano who is accused of manslaughter.

Victim: Janet Churchill who's death was caused by anaphylactic shock.

Homicide: can be any kind of unlawful killing.

To: Barrister

From: [REDACTED]

Date: 15/05/18

Title: Offences against property

Summary

Based on the performance of learners during this series, Centres should consider the following when preparing for the January 2019 series:

- Encourage learners to pay attention to the clues given within the Part A pre-release material on the potential offences that may be raised, so that their research may be more focused.
- It should be emphasised that learners should use their notes to inform their responses, but should not reproduce their notes in Part B.
- Ensure that learners are only including relevant information within Part B, for example, if the information suggests that the offence is gross negligence manslaughter this is the only offence they need to discuss, reference to all homicide offences will not leave them with enough time to adequately examine the offence that is the main focus of the question.
- Where Part B states that the relevant police power is arrest, learners need only focus on this police power and do not need to explain all of the relevant police powers.
- Refer only to the defence raised within Part B – as with the above comments, not all defences need to be mentioned, only those which are relevant to the question.
- Learners should ensure that they fully lay out the key elements of the offences, police powers and defences and ensure that they refer to supporting authority within their explanation.
- Practice responses to Part B materials so that learners are able to practice their analysis and evaluation – learners should be encouraged to apply and conclude throughout their work. Learners should also be encouraged to use the information in Part B effectively within their work and ensure that they refer back to this materials throughout their response.
- Encourage learners to pay attention to the format requested in Part B, for example where it states that it is a file note, learners should attempt to head it in this format.
- Fully prepare for the unit, ensuring that they have completed other relevant units first, as this is a synoptic unit.

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