



NZQA Assessment Support Material

Unit standard	27838				
Title	Demonstrate understanding of foundational concepts of justice				
Level	1	Credits	4	Version	2

Note

The following guidelines are supplied to enable assessors to carry out valid and consistent assessment using this internal assessment resource.

Assessors must manage authenticity for any assessment from a public source, because students may have access to the assessment schedule or student exemplar material. Use of this assessment resource without modification may mean that students' work is not authentic. The assessor will need to change figures, measurements or data sources or set a different context or topic.

While this ASM lends itself to written assessments, there are other activities and approaches that could be taken.

See Generic Resources and Guidelines at <https://www.nzqa.govt.nz/providers-partners/assessment-and-moderation/assessment-of-standards/generic-resources/>

Assessor guidelines

Context/setting

In this activity, students will explore a selection of the foundational principles of justice which underpin our legal system.

It is expected that teachers/tutors would pre-teach a selection of at least two of the foundational principles of justice prior to the assessment. This will include a discussion of recent cases/examples which students can use in their assessment. Students could also be given research time to find their own examples.

Students will describe two foundational concepts of justice, with supporting detail, in relation to their application. The foundational concepts include: coercive power, balancing competing claims, impartiality, equity.

A W A R D O F G R A D E S



- For award with **Achieved**, foundational concepts of justice are described, with supporting detail, in relation to their application.
- For award with **Merit**, the description of foundational concepts demonstrates clear understanding by including relevant supporting detail. Supporting detail may include but is not limited to any one of:
 - particular facts and/or events;
 - particular legislation;
 - case law, media reports.
- For award with **Excellence**, the description demonstrates thorough understanding of the foundational concepts of justice by making links between each concept and its specific example.

C O N D I T I O N S O F A S S E S S M E N T

Assessors will set the conditions of assessment as appropriate.

Assessment activity

The assessment activity has two tasks.

The students will be provided with a total of two scenarios related to the foundational concepts over two separate occasions. The students must use these scenarios as the basis for their description.

Resource requirements

Assessors may find the following resources useful in gathering information on the specific examples of foundational concepts of justice which are explored in this assessment.

Contempt of Court

- Crimes Act 1961 sections 9 and 401 available at www.legislation.govt.nz.
- New Zealand Bill of Rights Act 1990 sections 5 and 25 available at www.legislation.govt.nz.
- Tunna, Jennifer, "Contempt of court: divulging the confidences of jury room" [2003] CanterLawRw 3; (2003) 9 Canterbury Law Review 79.

Name Suppression

- Article: 'The complex issue of name suppression' Andrew Geddis, Associate professor of law, University of Otago, 9 January 2010 <http://www.odt.co.nz/opinion/opinion/88483/the-complex-issue-name-suppression>.
- Law Commission: 'Suppressing Laws and Evidence' Report 109, October 2009, Wellington. http://img.scoop.co.nz/media/pdfs/1002/Suppressing_Names_and_Evidence.pdf.



Additional information

Teaching and learning guidelines that inform legal studies as it is taught in New Zealand can be found at <http://seniorsecondary.tki.org.nz/Social-sciences/Legal-studies>.

Assessment Schedule

Unit standard		27838			
Title	Demonstrate understanding of foundational concepts of justice				
Level	1	Credits	4	Version	2

Judgements for achievement		Judgements for achievement with merit	Judgements for achievement with excellence
<p>Foundational concepts of justice are described, with supporting detail, in relation to their application.</p> <p>Foundational concepts include two of – coercive power, balancing competing claims, impartiality, equity.</p> <p>Supporting detail includes – identifying specific examples of actual events from New Zealand or overseas, past or present.</p>		<p>The description of foundational concepts demonstrates clear understanding by including relevant supporting detail such as:</p> <ul style="list-style-type: none"> • particular facts and/or events; • particular legislation; • case law, media reports. 	<p>The description demonstrates thorough understanding of the foundational concepts of justice by making links between each concept and its specific example.</p>
Task	Evidence for achievement	Evidence for achievement with merit	Evidence for achievement with excellence
One Outcome 1 PC 1.1	<p>Sample part answer for coercive power</p> <p><i>Coercive power is authority or power that depends on fear, suppression of free will, and/or</i></p>	<p>Sample part answer for coercive power including supporting detail</p> <p><i>Particular legislation:</i> <i>The law of contempt was originally developed through the common law but in more recent times it has been supplemented with legislation enacted by</i></p>	

use of punishment or threat, for its existence.

Specific Example: The concept of coercive power can be seen in relation to the law of contempt.

What is contempt of court?

Contempt of court is behaviour that opposes or defies the authority, justice, and dignity of the court. Contempt charges may be brought against parties to proceedings; lawyers, jurors; witnesses; or people who get involved in a case such as protesters outside a courtroom.

The law of contempt prohibits a broad range of conduct. Various misbehaviours in the court-room are covered by the law of contempt such as egg throwing and swearing at a judge.

The law of contempt also extends to cases where individuals interfere with the process of a fair trial while the case is still before the courts.

Characteristics: The most distinctive feature of the contempt jurisdiction is that it is summary, meaning that the judge is able to intervene immediately when he/she considers that a person has acted in contempt. The person may immediately be taken into custody and the judge may

Parliament. Section 401 of the Crimes Act 1961 states that it will amount to contempt of court if any person:

- (a) assaults, threatens, intimidates, or wilfully insults a Judge, or any Registrar, or any officer of the court, or any juror, or any witness, during his sitting or attendance in court, or in going to or returning from the court; or
- (b) wilfully interrupts or obstructs the proceedings of the court or otherwise misbehaves in court; or
- (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings.

Unlike the majority of New Zealand's criminal law which is found in statute law rather than common law, Parliament made it clear in section 9 of the Crimes Act 1961, that notwithstanding section 401 of the Crimes Act, the High Court maintains an inherent jurisdiction to punish for contempt of court.

Specific Examples – Juries and Contempt of Court: One feature of the jury system which is seen as fundamental to the administration of justice is the rule of 'jury secrecy'. This means that jurors are prohibited from talking to the media about what goes on in the jury room during the course of their deliberations. If jurors are seen to break this rule they may be found guilty of contempt. This was shown recently in relation to the Bain case when it was reported that a juror from the David Bain retrial wrote to Justice Minister Simon Power urging him not to grant compensation. Auckland University's Dr Bill Hodge said "The juror is right on the edge of

	<p><i>then sentence the offender to imprisonment for any period not exceeding 3 months, or sentence him to pay a fine not exceeding \$1,000.</i></p> <p><i>It is this ability for the judge to act quickly that has led to difficulties with the law of contempt when considered against some of the rights guaranteed by the New Zealand Bill of Rights Act 1990 (NZBORA). The procedures when someone is charged with contempt are so swift that there is a risk that some of the safeguards, such as the ability of an accused person to have a jury trial or a preliminary hearing, are missing or in other ways compromised.</i></p> <p>Specific Example – Juries and Contempt of Court: <i>Contempt of court cases can involve juries because in New Zealand jurors are not allowed to talk to the media about the case which they were involved in. An example of this was when a juror in the Bain retrial wrote to Justice Minister Simon Power saying that he didn't believe Bain should be given any compensation. A law expert said that this could amount to contempt of court.</i></p>	<p><i>what we'll call contempt of court. The deliberations, the internal debates in the jury room, they're meant to be a sanctified place that we don't enquire into."</i></p>	
Two	Sample part answer for balancing competing claims	Sample part answer for balancing competing claims including supporting detail	Sample part answer showing links between foundational concept of balancing competing

<p>Outcome 1</p> <p>PC 1.1</p>	<p><i>Balancing competing claims is one of the foundational concepts that underpin our judicial system.</i></p> <p>Specific Example: <i>This challenge of balancing competing claims can clearly be seen in relation to name suppression laws.</i></p> <p>What is name suppression? <i>If a person has been charged with a criminal offence and is awaiting trial or sentencing, they may apply to the court for an order suppressing publication of their name. If an order is granted all publication of the defendant's name, address or occupation is prohibited. A person who breaches the order faces a fine of up to \$1,000. An order for permanent name suppression is difficult to get. It is used sparingly as there is a strong presumption by the court that it is in the public interest to publish the defendant's name. The court may, however, grant a temporary order preventing publication of the defendant's name for a limited period of time (say, 48 hours). Where temporary orders are granted, it is usually to give</i></p>	<p>Particular legislation: <i>The law relating to name suppression was significantly changed by the Criminal Procedure Act 2011 which came into force on the 5th March 2012. The Act sets out a clear set of criteria for the courts to use when deciding whether suppression is appropriate or not. It is now more difficult for defendants to be granted name suppression. Previously defendants could be granted name suppression in situations where publication of their name may have resulted in 'undue' hardship to them or others. However, under the new law the test for granting name suppression has now been raised to 'extreme' hardship".</i></p> <p>Note – some further detail related to the legislation would be required for a merit grade.</p> <p>Example <i>An example of a case where name suppression was given to protect the victim involved a former Olympian who was charged with sexual violence against his wife. He was granted name suppression to protect the identity of his wife. The decision to grant name suppression was based on the fact that publishing the identity of the alleged attacker would inevitably tell the world what his wife had suffered.</i></p>	<p>claims and specific example of name suppression</p> <p><i>In any situation where name suppression is sought by an offender, a range of competing principles must be balanced. On the one hand there is the principle of freedom of expression which supports the right of the media to report on court proceedings, including the name of the offender. Freedom of expression helps to advance one of the most important features of our justice system: open justice. Reporting on court proceedings provides transparency which in turn fosters public faith in the judicial system as they see that the law is fair and impartially applied.</i></p> <p><i>However, freedom of expression comes up against rights to privacy for both the accused, who may not be guilty of anything at all, and the victim of crime. It is also necessary to consider the ability to find a fair and impartial jury where there is media frenzy because of the accused identity. This challenge of balancing competing claims is discussed in the article 'The Secret Side of Open Justice' (http://www.stuff.co.nz/taranaki-daily-news/news/73314217/the-secret-side-of-open-justice) which explores the difficulties for judges in weighing up the interests of the accused, the victim/s and the public. It is these competing claims which lie at the heart of the debate over name suppression and when, if ever, it should be granted.</i></p>
--------------------------------	--	--	--

	<p><i>defendants the opportunity to inform family, friends or their employers of their situation.</i></p> <p>Example: <i>An example of a case where name suppression was granted to an ex All Black who pleaded guilty to assaulting his son. The decision sparked debate over whether celebrities should be granted name suppression when other defendants who do not have a high public profile are named.</i></p>		
--	---	--	--

Final grades will be decided using professional judgement based on a holistic examination of the evidence provided against the criteria in the unit standard.