Legal Studies Assessment Support Material

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| **Unit standard** | 27838 | | | | |
| **Title** | Describe concepts of justice | | | | |
| **Level** | 1 | **Credits** | 4 | **Version** | 3 |

Assessor Guidelines

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| **Notes** 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 ākonga/learners may have access to the assessment schedule or ākonga/learner exemplar material. Use of this assessment resource without modification may mean that ākonga/learners' 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. Consider the benefits of using different assessment approaches.  See [Gathering evidence of learner achievement](https://www2.nzqa.govt.nz/tertiary/assessment-and-moderation-of-standards/assessment/resources/gathering-evidence-of-learner-achievement/) and [Online Assessor Support](https://www2.nzqa.govt.nz/ncea/ncea-for-teachers-and-schools/assessor-support/catalogue/online-workshops-courses-and-modules/)  Assessors should use innovative, valid and fair ways of recognising achievement, without overburdening themselves or the ākonga/learner with too much assessment. |

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# **Context/Setting**

In this activity, ākonga/learners will describe two concepts of justice which underpin our legal system.

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

Ākonga/learners will select and apply relevant supporting detail, refer to actual examples and draw clear conclusions.

# **Award of Grades**

* For award with ***Achieved***, two concepts of justice are described, in relation to their application.
* For award with ***Merit***, the description of concepts of justice in relation to their application is demonstrated by selecting and applying relevant supporting detail that may include but is not limited to any one of:
  + particular facts and legislation;
  + past or present events from New Zealand and overseas;
  + case law;
  + news media reports.
* For award with ***Excellence***, the description of two concepts of justice in relation to their application is demonstrated by:
  + referring to actual examples;
  + selecting and applying a range of relevant supporting detail;
  + drawing clear conclusions.

# **Conditions of Assessment**

Assessors will set the conditions of assessment as appropriate.

# **Assessment activity**

The assessment activity has two tasks.

The ākonga/learners will be provided with a total of two examples related to concepts of justice over two separate occasions. The ākonga/learners must use these scenarios as the basis for their description. For Excellence, ākonga/learners need to use actual examples.

# **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 <https://www.legislation.govt.nz/>
* New Zealand Bill of Rights Act 1990 sections 5 and 25 available at <https://www.legislation.govt.nz/>

Name Suppression

* Law Commission: ‘Supressing Laws and Evidence’ Report 109, October 2009, Wellington. <https://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 <https://seniorsecondary.tki.org.nz/Social-sciences/Legal-studies>

# **Assessment Schedule**

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| --- | --- | --- | --- | --- | --- |
| **Unit standard** | 27838 | | | | |
| **Title** | Describe concepts of justice | | | | |
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# **Assessment Criteria**

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| --- | --- | --- |
| **Achievement** | **Achievement with Merit** | **Achievement with Excellence** |
| Two concepts of justice are described, in relation to their application. | The description of concepts of justice in relation to their application is demonstrated by selecting and applying relevant supporting detail that may include but is not limited to any one of:   * particular facts and legislation; * past or present events from New Zealand and overseas; * case law; * news media reports. | The description of two concepts of justice in relation to their application is demonstrated by:   * referring to actual examples; * selecting and applying a range of relevant supporting detail; * drawing clear conclusions. |

| ****Task**** | ****Achievement**** | ****Achievement with Merit**** | ****Achievement with Excellence**** |
| --- | --- | --- | --- |
| ONE  Outcome 1  PC 1.1 | Sample **part** answer for coercive power  *Coercive power is* [*authority*](http://www.businessdictionary.com/definition/authority.html) *or* [*power*](http://www.businessdictionary.com/definition/power.html) *that* [*depend*](http://www.businessdictionary.com/definition/dependent.html)*s on fear, suppression of* [*free*](http://www.businessdictionary.com/definition/free.html) *will, and/or use of* [*punishment*](http://www.businessdictionary.com/definition/punishment.html) *or* [*threat*](http://www.businessdictionary.com/definition/threat.html)*, 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 then sentence the offender to imprisonment for any period not exceeding three months or sentence him to pay a fine not exceeding $1,000.*  *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.*  ***Specific Example – Juries and Contempt of Court:*** *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.* | Sample **part** answer for coercive power including supporting detail  ***Particular legislation:*** *The law of contempt was originally developed through the common law but in more recent times it has been supplemented with legislation enacted by Parliament. Section 401 of the Crimes Act 1961 states that it will amount to contempt of court if any person:*   1. *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* 2. *wilfully interrupts or obstructs the proceedings of the court or otherwise misbehaves in court; or* 3. *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 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."* |  |
| TWO  Outcome 1  PC 1.1 | Sample **part** answer for balancing competing claims *Balancing competing claims is one of the foundational concepts that underpin our judicial system.*  ***Specific Example:*** *This challenge of balancing competing claims can clearly be seen in relation to name suppression laws.*  ***What is name suppression?*** *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 defendants the opportunity to inform family, friends or their employers of their situation.*  ***Example****: 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.* | Sample **part** answer for balancing competing claims including supporting detail ***Particular legislation:*** *The law relating to name suppression was significantly changed by the Criminal Procedure Act 2011 which came into force on 5 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”.*  **Note** – some further detail related to the legislation would be required for a Merit grade.  ***Example:*** 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. | Sample **part** answer showing **links** between foundational concept of balancing competing claims and specific example of name suppression  *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.*  *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 was discussed in a case which explored 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.* |

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