



NZQA Assessment Support Material

Unit standard	27849				
Title	Evaluate a law making process in relation to a significant legal issue				
Level	3	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 evaluate a law making process, with supporting detail, in relation to a significant legal issue. A significant legal issue is a matter over which there is debate or disagreement which derives from a law making process at local, national or international level.

Supporting detail includes – background, relevant names, dates, describing differing viewpoints, describing one strength and one weakness of the process.

The context for this particular assessment is the creation of the laws which established the crimes, courts, and procedures for the Nuremburg Trials at the conclusion of World War II.

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



- For award with **Achieved**, candidates must be able to evaluate aspect(s) of the law making process that prompted debate or disagreement, with supporting detail, in relation to the significant legal issue. The supporting detail includes: background, relevant names, dates, describing differing viewpoints, describing one strength and one weakness of the process.
- For award with **Merit**, the evaluation of the aspect(s) of the law making process that prompted debate or disagreement is developed by:
 - discussing one strength and one weakness of the law making process; and
 - discussing a range of differing viewpoints about the law making process.
- For award with **Excellence**, the evaluation of the aspect(s) of the law making process is fully developed by considering actual and/or possible consequences. Consequences may be for any one of, but are not limited to – future law making, societal development, civic engagement, economic development, environmental development.

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

This involves the students evaluating the key controversial features of the process through which laws defining war crimes and crimes against humanity were created for the Nuremburg Trials.

The evaluation should:

- include supporting detail such as background details, relevant names, dates;
- discuss one strength, and one weakness of the process, and a range of differing viewpoints about the law making process;
- consider actual and/or possible consequences derived from the process through which the laws were created for the Nuremburg Trials.

Sources of information should be cited, however the standard does not require this, and rather it is good academic practise.

Resource requirements

The students will require access to research facilities such as the library and the internet as well as notes from a unit of work on this context completed in class.

Assessment Schedule

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Judgements for achievement		Judgements for achievement with merit	Judgements for achievement with excellence
<p>Aspect(s) of the law making process that prompted debate or disagreement are evaluated, with supporting detail, in relation to the significant legal issue.</p> <p>Supporting detail includes – background, relevant names, dates, describing differing viewpoints describing one strength and one weakness of the process.</p>		<p>The evaluation of the aspect(s) of the law making process that prompted debate or disagreement is developed by:</p> <ul style="list-style-type: none"> discussing one strength and one weakness of the law making process; a range of differing viewpoints about the law making process. 	<p>The evaluation of the aspect(s) of the law making process is fully developed by considering actual and/or possible consequences. The consequences may be for any one of, but not limited to – future law making, societal development, civic engagement, economic development, environmental development.</p>
Task	Evidence for achievement	Evidence for achievement with merit	Evidence for achievement with excellence
One Outcome 1 PC 1.1	<p>The evaluation includes consideration of the aspects of the law making process that prompted debate or disagreement, in relation to the laws concerning the Nuremburg Trials.</p> <p>A part answer that includes consideration of the aspects of the law making process that prompted debate or disagreement could read:</p>	<p>A part answer that includes discussion of one weakness through differing viewpoints could read:</p>	<p>A part answer considering consequences could read:</p>

“The laws and procedures by which the Nuremburg Trials were going to be conducted were agreed between the “big three” wartime powers (UK, USA, and USSR) in the London Charter of 1945. This charter set out the procedure of the Tribunal and identified the Crimes that the Nuremburg defendants would be charged with. None of the defendants and no other country had any input into the process.

The key controversial features include the list of crimes such as ‘war crimes’, ‘crimes against peace’, and ‘crimes against humanity’. Arguably no such crime existed in international law, thus the generally accepted common law prohibition on “ex post facto” laws was broken. The supporters of the London Charter attempted to refute this criticism by arguing that such crimes had already been established through international Treaties that Germany had signed such as the Kellogg-Briand Pact.”

A part answer that includes background detail could read:

“World War II lasted from 1939-1945. As the war went on the actions of the Nazis and the atrocities committed against the Jewish people in concentration camps such as Auschwitz and Dachau came to the

“Associate Justice of the United States Supreme Court William Douglas accused the Allies of ‘substituting power for principle’ at Nuremburg. ‘I thought at the time and still think that the Nuremburg trials were unprincipled...Law was created ex post facto to suit the passion and clamour of the time.’ The viewpoint of this jurist supports the argument that what happened at Nuremburg was a ‘victor’s trial’. He believes that by creating ex post facto law (law created after the crime has been committed) the allies were taking advantage of the power they had over the Nazis to put them on trial despite the fact that no legal basis existed to do so. This is a clear weakness of the process used.

Other jurists oppose the view that the trial was unjust merely because it was imposed by the victors. A.L. Goodhart, Professor at Oxford comments that if it were true that no court could be appointed by the victors then no spy could ever be convicted by an enemy country. He argues that a prisoner has a right to argue that his judges be fair but not that they be neutral. He argues that a burglar cannot complain if he is being tried by honest citizens. “

“The use of ex post facto law in the Nuremburg Trials had widespread implications for future law making in society. The precedent created by the Nuremburg Trials justified later trials such as the Tokyo War Crimes Trial in which...

In the long term the enhanced legitimacy of law-making in this style to create new crimes and processes to deal with them led to an entirely new area of law called “transitional law”. This deals with how societies emerging from periods of injustice or dictatorship deal with the people responsible. Procedures such as ‘Truth and Reconciliation Commissions’ as well as war crimes tribunals...

attention of the allied leaders. These atrocities included...

Faced with the task of organising post-war Europe the allied leaders also had to arrive at a plan for how to deal with those responsible for those atrocities. While the idea of releasing those responsible on the grounds that they had broken no laws in their own land was unthinkable, the prospect of arbitrary shootings (as recommended by Stalin) or creating new laws and courts to enforce them was also uncomfortable for many people. The process eventually arrived at is an attempt to reconcile the need to bring justice to those guilty of the some of the worst crimes in history and the need to do so in a just manner.”

A **part answer** that describes a weakness could read:

“The fact that the law making process was carried out by the victors in a war and imposed on the vanquished exposed the Nuremburg Trials to the criticism that they were a “victor’s” trial. This weakness was exploited by Herman Goering when he conducted his own defence...”

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