



GCE A LEVEL MARKING SCHEME

SUMMER 2024

**A LEVEL
LAW – COMPONENT 1
A150U10-1**

About this marking scheme

The purpose of this marking scheme is to provide teachers, learners, and other interested parties, with an understanding of the assessment criteria used to assess this specific assessment.

This marking scheme reflects the criteria by which this assessment was marked in a live series and was finalised following detailed discussion at an examiners' conference. A team of qualified examiners were trained specifically in the application of this marking scheme. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners. It may not be possible, or appropriate, to capture every variation that a candidate may present in their responses within this marking scheme. However, during the training conference, examiners were guided in using their professional judgement to credit alternative valid responses as instructed by the document, and through reviewing exemplar responses.

Without the benefit of participation in the examiners' conference, teachers, learners and other users, may have different views on certain matters of detail or interpretation. Therefore, it is strongly recommended that this marking scheme is used alongside other guidance, such as published exemplar materials or Guidance for Teaching. This marking scheme is final and will not be changed, unless in the event that a clear error is identified, as it reflects the criteria used to assess candidate responses during the live series.

GCE A LEVEL LAW

COMPONENT 1 – THE NATURE OF LAW AND THE ENGLISH LEGAL SYSTEM

SUMMER 2024 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component 1

Component 1 assesses all three assessment objectives: AO1, AO2 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of, the English legal system and legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology; and the ability to analyse and evaluate legal rules, principles, concepts and issues respectively..

The structure of the mark scheme

The mark scheme for both Section A and Section B has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1, AO2 and AO3.

Stage 1 - Deciding on the band

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance, if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band.
- The second stage is to decide how firmly the characteristics expected for that band are displayed.
- Thirdly, a mark for the question is awarded.

Stage 2 - Deciding on the mark

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner. Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

Section A

1. Explain the use of Hansard in statutory interpretation.

[5]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining what is meant by Hansard and its role in statutory interpretation candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the use of Hansard in statutory interpretation. In demonstrating this knowledge and understanding candidates are required to focus on the specific nature of the question and not simply give a general answer on statutory interpretation.

The response might consider issues such as:

- Hansard is the official daily report of parliamentary debates and a record of what was said during the introduction of legislation.
- Originally the courts were unable to use this (***Davis v Johnson 1979***) but this rule was relaxed in 1993 in ***Pepper v Hart***.
- Judges are only able to use these as an aid to interpretation where the following conditions are met, laid down by Lord Browne-Wilkinson.
 - The legislation is ambiguous or obscure or leads to an absurdity; and
 - The material relied on consists of one or more statements by a minister or other promoter of the Bill; and
 - The statements relied on are clear.
- ***Wilson v Secretary of State for Trade and Industry (2003)***, the House of Lords held that the rules in *Pepper v Hart* were still sound, that is, that ministerial statements made in Parliament can be used to ascertain the *mischief* or intention of Parliament, but that sometimes it was not necessary to question what has been said in Parliament and that Hansard is not always indicative of the intention of Parliament and can just in fact be used to look for the meaning of words as they were said in Parliament. This seems to suggest that Hansard can be used for any rules, but for cases concerning Human Rights compatibility, Hansard is more likely to be useful for the Literal Rule.
- Credit for any other relevant citation regarding the use of Hansard.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	4-5	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the use of Hansard in statutory interpretation. • Response is clear, detailed and fully developed.
2	2-3	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the use of Hansard in statutory interpretation. • Response is generally clear, detailed and developed.
1	1	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the use of Hansard in statutory interpretation. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

2. Explain the nature of the UK constitution.

[5]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the nature of the UK constitution, candidates are expected to demonstrate knowledge and understanding of the unwritten nature of the constitution. In demonstrating this knowledge and understanding candidates are required to focus on the specific nature of the question and not simply give a general answer.

The response might consider issues such as:

- **Britain is unusual** in that it has an **‘unwritten’ constitution**. It has a **Constitutional monarchy** – the Monarch is the Head of State, but the power to pass laws resides with an elected Parliament. The Monarch still “governs” but it is according to the rules of the Constitution and not according to his or her own free will.
- There are three main principles underpinning the UK constitution (briefly explain):
 - **The separation of powers**
 - **Parliamentary sovereignty**
 - **The rule of law**
- In addition, there is the **Royal Prerogative**.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	4-5	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the nature of the UK constitution. • Response is clear, detailed and fully developed.
2	2-3	• Good knowledge and understanding of the English legal system and legal rules and principles relating the nature of the UK constitution. • Response is generally clear, detailed and developed.
1	1	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the nature of the UK constitution. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

Question 3

Read the scenario below and answer the question that follows.

On December 12th 2023, an emergency application was made to the High Court by a hospital in respect of a refusal of treatment by the parents of a 14-year-old girl with learning difficulties, to undergo an emergency blood transfusion following a car accident. The girl's parents both refused consent to the operation on religious grounds. The girl herself is too young and lacks capacity to provide consent but indicated to doctors that she would like the operation to go ahead. The hospital is seeking a declaration that the operation can be performed lawfully even without parental consent. The issue of the consent to an operation on a minor was decided in the Court of Appeal in a previous case called *Re (Parental refusal of Treatment)* where it was held that the hospital cannot perform the operation without the parents' consent. In this case, however, the child also did not want the operation to go ahead and also had capacity.

3. **Using the scenario above and applying the doctrine of judicial precedent, advise the hospital on the possible outcomes.** [15]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising the hospital, candidates are expected to apply the full range of legal rules and principles that affect the application of the doctrine of judicial precedent to this situation. In this case candidates may consider the application of precedent within the court hierarchy and may also consider ways of avoiding precedent such as distinguishing, departing, overruling and reversing, applying these to the given scenario in order to present a legal argument using legal terminology.

The response might consider issues such as:

- An explanation of judicial precedent and its operation within the court hierarchy.
- Meaning of key terms – ratio decidendi, obiter dicta, binding precedent, persuasive precedent, original precedent.
- Applying this to the hospital's case, on the face of it, the High Court is bound by the Court of Appeal decision in *Re M (Parental refusal of treatment)* if sufficiently similar. Identification of the ratio.
- An explanation of overruling, reversing and distinguishing.
- Relevant case examples to illustrate the operation of overruling, reversing and distinguishing.
- Applying this to the hospital's scenario – distinguishing - the child in this case did want the transfusion to go ahead but lacks capacity. Overruling – not applicable as case would need to reach the Court of Appeal or Supreme Court. Reversing – not applicable as not an appeal case.
- The nature of law; study of the different sources of law.

Assessment Grid for Question 3

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	12-15	• Excellent application of legal rules and principles to the situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the operation of judicial precedent. • The legal argument is detailed, fully developed and persuasive.
3	8-11	• Good application of legal rules and principles to the situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the operation of judicial precedent. • The legal argument is generally detailed, developed and persuasive.
2	4-7	• Adequate application of legal rules and principles to the situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the operation of judicial precedent. • The legal argument includes some detail which is developed in places.
1	1-3	• Basic application of legal rules and principles to the situation. • Basic presentation of a legal argument using minimal legal terminology relating to the operation of judicial precedent. • The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

Question 4

Read the text below and answer the question that follows

Defacement of Property (Fictitious) Act 2023

Following an increase in graffiti, especially that involving racist and abusive language, Parliament passed the Defacement of Property (Fictitious) Act 2023.

During the second reading of the Bill, John Jones, the Minister introducing the Bill, stated that Parliament's intention was not to prevent artistic expression but to stop graffiti that uses foul language and slurs.

Section 1:

"Any person who leaves anything whatsoever for the purposes of defacement in such circumstances as to cause or contribute to or tend to lead to the damage of any place to which this section applies and without consent, shall be guilty of an offence."

One of the categories to which this section applies is a public open space, which is defined in section 2.

Section 2:

"Public open space means a place in the open air to which the public are entitled or permitted to have access without payment; and any covered place open to the air on at least one side and available for public use shall be treated as a public open space."

Gina, a local graffiti artist, painted (using temporary paint) eight glass panes of a high street bus shelter with floral artwork for the upcoming 'Flower Week' in her local town. She did not obtain consent but feedback from local residents has been overwhelmingly positive.

The bus shelter was enclosed on three sides. Gina is facing prosecution under the Act.

4. Using your knowledge of statutory interpretation, advise Gina as to the possible outcomes of the case. [15]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising Gina, candidates are expected to apply the full range of legal rules and principles that affect the application of the rules of statutory interpretation to Gina's situation. In this case candidates may apply the literal, golden, mischief and purposive rules, plus other aids of interpretation, including both intrinsic and extrinsic aids, to the given scenario in order to present a legal argument.

The response might consider issues such as:

- Applying the four rules of statutory interpretation to the scenario:
 - Literal: gives words their natural and grammatical meaning, even if the result is absurd – *Whitely v Chappel*, *Lees v Secretary of State*, *Fisher v Bell*, *London LNER v Berriman*. Application of the rule to the scenario. Bus shelter box meets the description of a 'public open space'. Gina has 'defaced property' as she has left something 'whatsoever' for this purpose.
 - Golden: allows words in a statute to be modified in order to avoid an absurdity or repugnant result – *Sweet v Parsley*, *Adler v George*, *Re Sigsworth*, *R v Allen*. Application of the rule to the scenario. Identification of absurd result under literal – artwork of a floral nature is not necessarily 'defacement'. The temporary paint is

also not 'damage'. Golden rule could therefore remedy the absurdity caused by the literal.

- Mischief: looks at the gap in the law Parliament intended to fill. Established in Heydon's Case. Used in Smith v Hughes, Royal College of Nursing v DHSS, Pepper v Hart. Application of the rule to the scenario. Reference to comments regarding the purpose of the Act and the fact that the Act is intended to prevent foul language and slurs rather than limit artistic expression.
- Purposive: looks at the 'spirit of the law' and looks to see what Parliament intended– Magor v St Mellons, Quinataville, Jones v Tower Boot Company. Application of the approach to the scenario. As above for mischief.
- Applying other methods of interpretation:
 - Intrinsic aids (short title, long title, preamble interpretation sections, margin notes)
 - Rules of Language
 - Extrinsic aids (Hansard, dictionaries, textbooks, Human Rights Act 1998, international conventions)
 - Presumptions

Assessment Grid for Question 4

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	12-15	• Excellent application of legal rules and principles to Gina's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to statutory interpretation. • The legal argument is detailed, fully developed and persuasive.
3	8-11	• Good application of legal rules and principles to Gina's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to statutory interpretation. • The legal argument is generally detailed, developed and persuasive.
2	4-7	• Adequate application of legal rules and principles to Gina's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating statutory interpretation. • The legal argument includes some detail which is developed in places.
1	1-3	• Basic application of legal rules and principles to Gina's situation. • Basic presentation of a legal argument using minimal legal terminology relating to statutory interpretation. • The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

Section B

Question 5(a)

Explain the aims of sentencing adult offenders.

[10]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

The response might consider aspects such as:

The 5 main penal theories are:

- retribution or 'just deserts'
 - reparation, restoration, compensation
 - deterrence: individual and general
 - rehabilitation
 - incapacitation
-
- Section 142(1) Criminal Justice Act 2003 which has now been replaced by s57 Sentencing Act 2020.

Section 142(1) Criminal Justice Act 2003 states:

(1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing (which mirror the penal theories).

- a. the punishment of offenders,
 - b. the reduction of crime (including its reduction by deterrence),
 - c. the reform and rehabilitation of offenders,
 - d. the protection of the public, and
 - e. the making of reparation by offenders to persons affected by their offences.
-
- The Sentencing Council and CJA 2003 state that the judge or magistrates must next consider the seriousness of the crime, whether the offender has any previous convictions and whether a prison, community or other sentence is most appropriate. **Section 143(1) CJA 2003**

Assessment Grid for Question 5 (a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
4	8-10	- Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the aims of sentencing adult offenders. - Response is clear, detailed and fully developed.
3	5-7	- Good knowledge and understanding of the English legal system and legal rules and principles relating to the aims of sentencing adult offenders. - Response is generally clear, detailed and developed.
2	3-4	- Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the aims of sentencing adult offenders. - Response includes some detail which is developed in places.
1	1-2	Basic knowledge and understanding of the English legal system and legal rules and principles relating to the aims of sentencing adult offenders. Response includes minimal detail.
	0	Response not credit worthy or not attempted.

Question 5(b)

Analyse and evaluate the options available for sentencing young offenders in England and Wales. [15]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In order to achieve the highest marks, candidates must demonstrate their ability to draw together details from pervasive areas including the rule of law, the English legal system and the nature of law.

Candidates will offer an analysis and evaluation of the legal rules, principles concepts and issues in order to analyse and evaluate the options available for sentencing young offenders in England and Wales. In order to analyse and evaluate these aspects, candidates must understand that sentencing of young offenders has a different aim to adult offenders. Overall candidates will offer a debate and come to a substantiated judgment regarding the options available for sentencing young offenders in Wales and England.

The response might consider aspects such as:

- Young offender - offenders aged between 10 and 17 usually tried in the **youth court**, unless the case is so serious that it is tried in the Crown Court.
- Youths can also be tried in the Crown Court if they are being tried alongside an adult offender.
- Consider case of **Thompson and Venables v UK (1999)**, where the ECtHR held that it was a breach of **Article 6 ECHR** to have youths tried in an adult court because it was perceived as intimidating and daunting for them.
- Explanation of youth court features.
- Young offenders are also entitled to have an **appropriate adult** with them at all times - **s57 Police and Criminal Evidence Act 1984** and **Code C PACE**.
- Primary aim of youth sentencing, according to **s58 Sentencing Act 2020**, is to prevent reoffending and to rehabilitate the offender so that they change their behaviour while compensating, or 'repairing', society for the damage that has been caused.

Pre-court sentencing:

- **Youth restorative disposal (YRD)** – 10–17-year-old offenders for minor crimes. Offender must admit fault. Must have option to apologise or put right the harm.
- **Youth caution** - Youth cautions and youth conditional cautions were introduced by the **Legal Aid, Sentencing and Punishment of Offenders Act 2012** in April 2013, to replace police reprimands and final warnings.
- **Youth conditional caution** - For more serious first offence or for a subsequent offence. It is a caution with conditions attached to it that the young person must adhere to. Young people who receive a youth conditional caution will be referred to Youth Offending Service (YOS).

Sentence options:

- **Youth rehabilitation order (YRO)** - **s173 Sentencing Act 2020**. They are a type of community sentence imposed by the court, a flexible order that aims to reduce reoffending and the number of youths in custody. The order can last for a maximum of three years and can be applied to any criminal offence that has been committed by an individual under the age of 18. Can attach requirements such as activity, unpaid work, curfew, etc. (**s174 Sentencing Act 2020**).
- Supervision of the youth will be carried out by the **Youth Offending Team (YOT)**, and the youth will be required to visit their case worker who will work out a **Youth Rehabilitation Order Plan** with them, to address their behaviour and help them move forward. If a youth

offender breaches the order three times, they will have to return to court and could face a period in custody.

- **Youth fines** - Youth fines should reflect the offender's ability to pay. If the youth is under 16, paying the fine is the responsibility of a parent or guardian, and it is their ability to pay that is taken into consideration when the level of fine is being set.
- **First tier sentencing** - These are community sentences that are designed to act as a **deterrent** from committing further crime and provide a way in which the offender can attempt to rehabilitate and prevent reoffending in the future.
 - **Referral order - s83 Sentencing Act 2020.** This is given for a first offence, when the offender pleads guilty. The young person will be referred to a youth offender panel, which will draw up a contract which will last between three and twelve months, aiming to address the causes of the offending behaviour and giving the offender an opportunity to repair the damage they have caused.
 - **Reparation order - s109 Sentencing Act 2020.** This allows the offender to take responsibility for their behaviour and express their remorse to society by repairing the harm caused by the offence. For example, they may be required to meet their victim, clean up graffiti or undertake some form of unpaid work.
 - **Parenting order - s23 Police and Justice Act 2006.** These can be given to parents for up to a year. Conditions attached may be having to attend counselling sessions and the order will contain a list of things their offending child must and must not do, for example attend school or be at home between certain hours. They are intended to support the parents in dealing with their child's behaviour. If a parent breaches the order, they can be fined up to £1,000. The aim is to prevent reoffending, and the order will only be granted if the court is satisfied that it will help prevent further crime.
- **Discharges** - Discharges are the same for adults and youth offenders.
 - **Conditional discharge – s80 Sentencing Act 2020:** This sentence is rarely used but is a way of giving the offender a 'cooling off' period. The youth will receive no punishment on the condition that they do not reoffend.
 - **Absolute discharge – s79 Sentencing Act 2020:** an offender is released without punishment and nothing further is done.
- **Custody** - Custody will only be granted to a youth in very serious cases.
 - **Detention and Training Order - s233 Sentencing Act 2020.** This is a period in custody for a youth offender, and the length can vary between four months and two years. The first half of the sentence is served in custody, and the second half is served in the community under the supervision of the Youth Offending Team. During this community element, the offender will have to undertake reparation work and adhere to any targets contained in the training and supervision plan which will have been agreed with their youth offending team worker.

These orders are only given to those youths who are a particularly high risk, or are persistent offenders, or have committed a particularly serious offence, because custody is not usually the most appropriate solution for a youth offender. Any breach of the order at any stage of the process could result in a fine or continued detention in custody.

- **Detention for Life – s258 Sentencing Act 2020.** If the conviction is for one of the serious offences outlined in Schedule 19, the court will impose a sentence for life under s250. Examples of offences under this Schedule 19 include manslaughter, kidnapping and s18 Offences Against the Person Act 1861.
- **Sentence of detention: offender convicted of certain serious offences – s.250 Sentencing Act 2020.** This section deals with youths who have committed offences for which an adult offender would serve at least 14 years. The length of the sentence can be anywhere up to the adult maximum, life imprisonment. The young offender can be released automatically at the halfway point and can be released up to a maximum of 135 days early on a home detention curfew. The offender, once released, will also be subject to a supervisory licence until their sentence expires. This is a sentence that can only be given by the Crown Court. This is usually given for offences such as sexual assault, child sex offences and offences related to firearms.

Assessment Grid for Question 5(b)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	12-15	- Excellent analysis of legal rules, principles and concepts relevant to the options available for sentencing young offenders in England and Wales. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. - Excellent evaluation of the options available for sentencing young offenders in England and Wales, including a valid and substantiated judgement. - Excellent citation of supporting case law and legal authorities.
3	8-11	- Good analysis of legal rules, principles and concepts relevant to the success of the options available for sentencing young offenders in England and Wales. Analysis is generally detailed with appropriate range of supporting evidence. - Good evaluation of the success of the options available for sentencing young offenders in England and Wales, including a valid judgement. - Good citation of supporting case law and legal authorities.
2	4-7	- Adequate analysis of legal rules, principles and concepts relevant to the success of the options available for sentencing young offenders in England and Wales. Analysis includes some detail with some supporting evidence. - Adequate evaluation of the success of the options available for sentencing young offenders in England and Wales, including reference to a judgement. - Adequate citation of supporting case law and legal authorities.
1	1-3	- Basic analysis of legal rules, principles and concepts relevant to the success of the options available for sentencing young offenders in England and Wales. Analysis includes minimal detail. - Basic evaluation of the success of the options available for sentencing young offenders in England and Wales. - Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

Question 6(a)

Explain the appointment of senior judges.

[10]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the appointment of senior judges, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the appointment of the judiciary. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the appointment of senior judges.

The response might consider issues such as:

Supreme Court

- For new appointments, judges for this Court (apart from the President) are selected according to the method set out in **sections 23-31 of the Constitutional Reform Act (as amended by the Judicial Appointments Regulations 2013)**. This states that when there is a vacancy the Lord Chancellor must convene a selection commission, the membership of which will include:
 - Chairman: President of the UK Supreme Court;
 - A senior UK judge nominated by the President of the Supreme Court; and one member of each of the following bodies:
 - The Judicial Appointments Commission (JAC),
 - The Judicial Appointments Board for Scotland (JABS) and
 - The Northern Ireland Judicial Appointments Commission (NIJAC).
- At least two of the three members from the three Judicial Appointments Commission must be non-legally qualified.
- This selection commission determines the selection process to be applied and when that process has been completed, reports its selection to the Lord Chancellor.
- The Lord Chancellor then undertakes further consultation with the First Minister in Scotland, the First Minister for Wales and the Northern Ireland Judicial Appointments Commission and can accept and notify the selection to the Prime Minister, reject it, or ask the selection commission to reconsider.
- This can only be done if the Lord Chancellor is of the opinion that the person selected is not suitable for the office or that there is evidence that the person is not the best candidate on merit. The Lord Chancellor must give written reasons for rejecting a candidate or asking the commission to reconsider.
- Once the Lord Chancellor has accepted the commission's nomination, he then notifies the prime minister, and the prime minister must recommend to the King that he appoints that person. The prime minister cannot recommend another person for appointment.

Appointments to other Senior Roles in the Judiciary

- The Judicial Appointments Commission is involved in the selection of the Lord Chief Justice, Heads of Division and the Lords Justices of Appeal. Under **the Constitutional Reform Act 2003**, the JAC's role is to convene a **selection panel**, which will be a committee of the Commission. The members are specified in the relevant sections of the Constitutional Reform Act, as amended by **the Judicial Appointments Regulations 2013** and it is for the panel to determine the selection process and make a recommendation.

Assessment Grid for Question 6(a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
4	8-10	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the appointment of senior judges. • Response is clear, detailed and fully developed.
3	5-7	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the appointment of senior judges. • Response is generally clear, detailed and developed.
2	3-4	• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to appointment of senior judges. • Response includes some detail which is developed in places.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the appointment of senior judges. • Response includes minimal detail.
	0	Response not credit worthy or not attempted.

Question 6(b)

Analyse and evaluate the independence of the judiciary.

[15]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In order to achieve the highest marks, candidates must demonstrate their ability to draw together details from pervasive areas including the rule of law, the English legal system and the nature of law. For example, a response may include reference to the importance of the judiciary in the separation of powers, and their role in upholding justice.

Candidates will offer an analysis of the legal rules, principles, concepts and issues in order to evaluate the independence of the judiciary. In order to reach a substantiated judgement about this issue, candidates may argue that judges must be independent from the executive and legislature. Candidates might consider challenging this judgment by arguing judges may be biased and are not necessarily representative of society. Overall candidates will offer a debate and come to a substantiated judgement regarding the independence of the judiciary.

The response might consider aspects such as:

- Importance of independence of the judiciary.
- Principles of natural justice – e.g. Pinochet case.
- Role of the judiciary in the separation of powers:
 - Independence from the legislature – creation of Supreme Court – CRA 2005.
 - Independence from the executive – security of tenure. CRA 2005. Reformed role of the Lord Chancellor.
- Freedom from pressure:
 - Financial independence – salary.
 - Immunity from being sued – *Sirros v Moore* (1975).
 - Security of tenure.
- Independence from political bias. Arguments of e.g. Griffith regarding potential bias pro-establishment and right-wing bias.
- Examples of pro-government decisions – e.g. GCHQ case. Credit for any relevant citation.
- Examples of anti-government decisions – e.g. Greenham common protest, Gina Miller. Credit for any relevant citation.
- Role in judicial review and protection of independence.
- Role in human rights – e.g. *A V Others* (2004). Credit for any relevant citation.
- Reform of the role of the Lord Chancellor to promote independence.

Assessment Grid for Question 5(b)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	12-15	- Excellent analysis of legal rules, principles and concepts relevant to the independence of the judiciary. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. - Excellent evaluation of the success of the independence of the judiciary, including a valid and substantiated judgement. - Excellent citation of supporting case law and legal authorities.
3	8-11	- Good analysis of legal rules, principles and concepts relevant to the independence of the judiciary. Analysis is generally detailed with appropriate range of supporting evidence. - Good evaluation of the independence of the judiciary, including a valid judgement. - Good citation of supporting case law and legal authorities.
2	4-7	- Adequate analysis of legal rules, principles and concepts relevant to the independence of the judiciary. Analysis includes some detail with some supporting evidence. - Adequate evaluation of the independence of the judiciary, including reference to a judgement. - Adequate citation of supporting case law and legal authorities.
1	1-3	- Basic analysis of legal rules, principles and concepts relevant to the independence of the judiciary. Analysis includes minimal detail. - Basic evaluation of the independence of the judiciary. - Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.