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# **GCE AS MARKING SCHEME**

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**SUMMER 2023**

**AS  
LAW – COMPONENT 1  
B150U10-1**

## **INTRODUCTION**

This marking scheme was used by WJEC for the 2023 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

It is hoped that this information will be of assistance to centres but it is recognised at the same time that, without the benefit of participation in the examiners' conference, teachers may have different views on certain matters of detail or interpretation.

WJEC regrets that it cannot enter into any discussion or correspondence about this marking scheme.

## EDUQAS GCE AS LAW

### COMPONENT 1 - THE NATURE OF LAW AND THE ENGLISH LEGAL SYSTEM

#### SUMMER 2023 MARK SCHEME

#### Marking guidance for examiners

##### Summary of assessment objectives for Component 1

The questions in Section A and Section B assess all three assessment objectives - AO1, AO2 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology, and the ability to analyse and evaluate legal rules, principles and concepts.

##### 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 parliamentary controls on delegated legislation. [6]

### 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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining the parliamentary controls, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying delegated legislation and parliamentary controls. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the specific nature of the question, parliamentary controls only. Reference to judicial controls will be disregarded.

Candidates would not be expected to discuss all these controls for 6 marks, but a range would be required. The response might consider issues such as:

- **Affirmative Resolution** – This means that the Statutory Instrument will not become law unless it has been approved by Parliament. The need for an affirmative resolution will be included in the enabling Act.
- **Negative Resolution** – This means that the Statutory Instrument will become law unless it is rejected by Parliament within 40 days.
- **Super affirmative resolution** – This process is used to review legislative reform orders made under the Legislative and Regulatory Reform Act 2006. Reports must be produced and each House of Parliament must expressly approve the order before it can be made
- **Scrutiny Committee** – This Committee reviews all Statutory Instruments and, where necessary, will draw the attention of both Houses of Parliament to points that need further consideration. The Committee is known as the Joint Select Committee on Statutory Instruments.
- **Consultation** – the enabling act could require consultation with interested parties or those who would be affected by the delegated legislation.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.</b>
<b>3</b>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to parliamentary controls of delegated legislation.</li> <li>• Response is clear, detailed and fully developed.</li> </ul>
<b>2</b>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to parliamentary controls of delegated legislation.</li> <li>• Response is generally clear, detailed and developed.</li> </ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to parliamentary controls of delegated legislation.</li> <li>• Response includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

**2. Explain the extent to which the Court of Appeal is bound by its own decisions. [6]**

**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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining the extent to which the Court of Appeal is bound by its own decisions, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying judicial precedent. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the specific nature of the question, Court of Appeal only and not other aspects of judicial precedent or avoidance techniques.

The response might consider issues such as:

- The Court of Appeal is bound by the Supreme Court and the Court of Appeal binds all courts below it in the hierarchy.
- Despite attempts by Lord Denning in *Davis v Johnson* (1979), the Court of Appeal does not have the power under the Practice Statement as the Supreme Court and is therefore bound by its own decisions.
- The Civil Division and the Criminal Division within the Court of Appeal are not binding on each other.
- Decisions within Divisions are binding, but there are limited exceptions as outlined in *Young v Bristol Aeroplane Co* (1944):
  - *Where there are two conflicting previous decisions;*
  - *Where a previous decision has been overturned by the Supreme Court;*
  - *Where the previous decision was made ‘per incurium’*
- The Criminal Division of the Court of Appeal also has an extra exception where they feel the law in the previous case was “misapplied or misunderstood”.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.</b>
<b>3</b>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the Court of Appeal being bound by its own decisions.</li> <li>• Response is clear, detailed and fully developed.</li> </ul>
<b>2</b>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to the Court of Appeal being bound by its own decisions.</li> <li>• Response is generally clear, detailed and developed.</li> </ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the Court of Appeal being bound by its own decisions.</li> <li>• Response includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

Either,

### Question 3

Read the text below and answer part (a).

‘So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.’

Source: s3 Human Rights Act 1998

- (a) **Explain the impact of the Human Rights Act 1998 on the interpretation of statutes.** [6]

#### 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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining the impact of the Human Rights Act 1998, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying statutory interpretation. In demonstrating this knowledge and understanding, candidates are required to give an answer which focuses on the Human Rights Act 1998 only.

The response might consider issues such as:

- Statutory Interpretation is the means by which judges interpret statutes to avoid ambiguity, to respect changes in language, to allow for new developments and also to clarify broad terms.
- S3 Human Rights Act 1998 means legislation must be interpreted in a way which is compatible with human rights.

Candidates should not be given too much credit for citing s3 Human Rights Act 1998 as this is already in the question.

- If the judge feels that this is not possible, he can issue a declaration of incompatibility under s4 Human Rights Act 1998. This means that he cannot interpret the legislation as it currently stands in a way which is compatible with the European Convention on Human Rights.
- Under s10 Human Rights Act 1998, there is a fast-track parliamentary procedure which enables the law to be changed to make it compatible with human rights.
- Examples where this has been used include: *R v A* (2002), *A and others v Secretary of State for the Home Department* (2004) and *Blood and Tarbuck v Secretary of State for Health* (2003)

Candidates may talk about these cases in some detail, highlighting why they were deemed to be incompatible with the European Convention on Human Rights.



<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.</b>
<b>3</b>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the impact of the Human Rights Act 1998 on statutory interpretation.</li> <li>• Response is clear, detailed and fully developed.</li> </ul>
<b>2</b>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to the impact of the Human Rights Act 1998 on statutory interpretation.</li> <li>• Response is generally clear, detailed and developed.</li> </ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the impact of the Human Rights Act 1998 on statutory interpretation.</li> <li>• Response includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

Read the fictitious statute and the scenario below and answer part (b).

### **The Influenza (Flu) Health Protection (fictitious) Regulations 2020**

These Regulations were passed to try and restrict people mixing and socialising in response to scientific advice which suggested that the flu spreads more easily when people from different households were mixing with each other.

#### **Section 1:**

- (1) A person responsible for carrying on a business, or providing a service, may only sell the following for consumption off the premises—

food and drink between the hours of 09:00 and 18:00, by any method permitted by paragraph (2)(i) to (iii).

- (2) The methods of sale permitted under this paragraph are—

- (i) by making deliveries in response to orders received through a website, by telephone or by post
- (ii) to a purchaser who collects food or drink that has been pre-ordered by a means mentioned in sub-paragraph (i) or
- (iii) to a purchaser who collects the food or drink in a vehicle, and to whom the food or drink is passed without the purchaser or any other person leaving the vehicle.

#### **Section 2:**

No person may participate in a gathering which—

- (i) takes place in a public outdoor place and consists of more than two people, or
- (ii) takes place in any other outdoor place (including any outdoor part of a private dwelling) and consists of two or more people.

Ahmed runs Coffee Cab, a converted caravan situated in a lay-by of a busy road, out of which he sells tea, coffee and other hot and cold beverages. Anthony purchases a coffee from Coffee Cab on his lunch hour after ordering online beforehand. While he is queuing, he bumps into Bradley who has driven up to Coffee Cab to order a hot chocolate. They have not seen each other for a long time and so decide to sit on a nearby bench to drink their drinks and have a catch-up before returning home.

- (b) **Using your knowledge of statutory interpretation, advise Ahmed, Anthony and Bradley as to whether their actions are lawful. [18]**

#### **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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

*This is an extended response question. In order to achieve the highest marks, a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.*

In advising Ahmed, Anthony and Bradley, candidates are expected to apply the full range of rules of statutory interpretation. In this case, candidates may apply the literal, golden and mischief rules as well as the purposive approach, to the given scenario in order to present a legal argument using legal terminology.

The response might consider issues such as:

Candidates should identify and explain the four rules of statutory interpretation, with some case illustration to support.

- **Literal Rule:** gives words the natural and grammatical meaning, even if the result is absurd – *Whiteley v Chappel*, *Lees v Secretary of State*, *Fisher v Bell*, *London LNER v Berriman*.
- **Golden Rule:** 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*. Candidates should explain the narrow approach and the broad approach.
- **Mischief Rule:** 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*.
- **Purposive Approach:** looks at the ‘spirit of the law’ and what Parliament intended; favoured approach of interpretation of EU Law. Used in *Magor v St Mellons*, *Quinaville*, *Jones v Tower Boot Company*.

Candidates will also be credited for making reference to other aids to interpretation, such as intrinsic aids (title, preamble, interpretation sections and rule of language) and extrinsic aids (dictionary, *Hansard*, international conventions)

In applying to Ahmed, Anthony and Bradley, candidates could identify that:

- Under the Literal Rule, Ahmed has not committed any offences as he has provided the hot drinks lawfully under s1(a) and Anthony has purchased it lawfully under s1(2)(ii) and Bradley lawfully under s1(2)(iii). Literally, when they drunk their drinks together on the bench they have not committed an offence as the statute stipulates “2 or more people”.
- Under the Golden Rule, there may also be some discussion over what is meant by a “gathering” – given that Bradley and Anthony bumped into each other, is it absurd to find them guilty of an offence as they merely bumped into each other? Candidates may explore ways of modifying the statute to introduce an element of intention or purpose to the “gathering”.
- Under the Mischief Rule, it is clear from the preamble that the Regulations were passed in response to people mixing from different households and transmitting the virus. Therefore, Anthony and Bradley, even though they only bumped each other were still contravening the mischief of the Regulations.
- The purpose of the Regulations is to stop household mixing and encourage people to stay at home, so any extra time away from home than is necessary would go against the purpose of the Regulations, so Anthony and Bradley have contravened this. Though looking at the ‘spirit of the law’, there is an argument to suggest that because they accidentally bumped into each other and did not arrange to meet, then they should not be found guilty under the Regulations.

<b>Band</b>	<b>Marks</b>	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.</b>
<b>4</b>	<b>15-18</b>	<ul style="list-style-type: none"> <li>• Excellent application of legal rules and principles to Ahmed, Anthony and Bradley's situation.</li> <li>• 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.</li> </ul>
<b>3</b>	<b>10-14</b>	<ul style="list-style-type: none"> <li>• Good application of legal rules and principles to Ahmed, Anthony and Bradley's situation.</li> <li>• 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, fully developed and persuasive.</li> </ul>
<b>2</b>	<b>5-9</b>	<ul style="list-style-type: none"> <li>• Adequate application of legal rules and principles to Ahmed, Anthony and Bradley's situation.</li> <li>• Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to statutory interpretation. The legal argument includes some detail which is developed in places.</li> </ul>
<b>1</b>	<b>1-4</b>	<ul style="list-style-type: none"> <li>• Basic application of legal rules and principles to Ahmed, Anthony and Bradley's situation.</li> <li>• Basic presentation of a legal argument using minimal legal terminology relating to statutory interpretation. The legal argument includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

Or,

#### Question 4

Read the text below and answer part (a).

'Political influence is not simply fixed by the political process but can be expanded by expenditures of time and money on campaign contributions ... and in other ways that exert political pressure.'

Source: *The Quarterly Journal of Economics*, August 1983

(a) Explain the role of pressure groups in bringing about law reform. [6]

#### 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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining the role of pressure groups, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying law reform. In demonstrating this knowledge and understanding, candidates are required to give an answer which focuses on pressure groups only and not other methods of law reform.

The response might consider issues such as:

- Types of pressure groups:  
**Interest groups:** represent the interests of their members and are groups that represent a particular section of society. Examples include: British Medical Association, the Law Society, the National Union of Teachers.  
**Cause groups:** groups that represent shared values or beliefs, rather than the interests of its members. Examples include: Greenpeace, Friends of the Earth, Amnesty International, Allergy UK.
- Tactics used by pressure groups. Candidates may explore a range of tactics used, both legal and illegal. Examples of legal tactics may include: protests, demonstrations, charity events, leaflets and illegal tactics may include direct action, criminal damage, violence and even acts of terrorism. Candidates may use examples such as Extinction Rebellion to illustrate the difference in tactics between groups.
- Candidates may explore the role of pressure groups as both an influential body and a consultative body.
- Examples of areas where they have helped reform the law – Friends of the Earth – the House Waste Recycling Act 2003 and the Climate Change Bill 2008; Welsh Language Society – The Welsh Language Act 1993 and the Welsh Language (Wales) Measure 2011. Snowdrop Petition (Dunblane) managed to persuade the Government to ban most types of handguns.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.</b>
<b>3</b>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to pressure groups.</li> <li>• Response is clear, detailed and fully developed.</li> </ul>
<b>2</b>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to pressure groups.</li> <li>• Response is generally clear, detailed and developed.</li> </ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to pressure groups.</li> <li>• Response includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

Read the scenario below and answer part (b).

Raheen and Elizabeth were due to get married in 2020 but their wedding was postponed. They would now like to get married in 2023 during the Glastonbury Festival but the current rules on marriage licensing mean they cannot get married outdoors; it has to be in a 'place of worship' or 'licensed venue'. Raheen and Elizabeth believe these laws to be out of date, unnecessarily restrictive and not in keeping with changes in society.

- (b) Advise Raheen and Elizabeth on the ways in which they could try to promote reform of the law on marriage in England and Wales. [18]**

### 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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

*This is an extended response question. In order to achieve the highest marks, a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.*

In advising Raheen and Elizabeth, candidates are expected to apply the full range of law reform methods to this situation. In this case, candidates may apply pressure groups, e-petitions, judicial change, Private Members' Bills and media campaigns to the given scenario in order to present a legal argument using legal terminology.

The response might consider issues such as:

- **Judicial change** – judges can change law through the creation of original precedent as seen in the case of *R v R* (1991), where the House of Lords ruled marital rape to be illegal. This is unlikely to be successful though as judicial law making is perceived as unconstitutional and undemocratic. There have been lots of attempts to change the law, for example, on assisted suicide in cases such as Noel Conway, Tony Nicklinson and Diane Pretty, but they have all failed to bring about law reform.
- **Online petitions** – any resident of the UK can start an online petition on the Parliament website. If the petition gets 10,000 signatures, the House of Commons will issue a response, if it gets 100,000 signatures, the House of Commons will debate the issue. The chances of success here for Raheen and Elizabeth are also quite slim because a recent petition to revoke Article 50 got over 6 million signatures, but still did not bring about a change in the law.
- **Media campaigns** – attracting the attention of a national newspaper or media outlet can be a way of putting pressure on Parliament to change the law and has been successful in cases such as Sarah's Law, Clare's Law, Finn's Law and most recently Natasha's Law in relation to the publication of allergens on pre-packaged food. However, the chances of success are quite small as it requires the support of a national newspaper whose reporting methods may be biased or sensational.

- **Private Members' Bills** – this is where an individual MP can propose a change in the law in the House of Commons. To do this, he or she will have to win a ballot and will get just 10 minutes to present the proposal. There have been successful Acts passed in this way, including the Abortion Act 1961, the Marriage Act 1994 and more recently laws relating to the position of letterboxes on new houses and the criminal offence of 'upskirting'. However, it is often the case that Private Members' Bills do not get cross party support and they usually highlight an issue that may be prevalent in that MP's constituency only and not a national issue.
- **Pressure Groups** – pressure groups are divided into interest groups and cause groups. Examples include Greenpeace, Fathers 4 Justice and Amnesty International. These groups use tactics such as lobbying, demonstrations, protests and leaflet campaigns to put pressure on Parliament to change the law. Pressure groups are often consulted at the Green Paper stage by Parliament to help shape the law. However, problems occur with pressure groups when they use Direct Action and illegal tactics, such as those employed recently by Extinction Rebellion and Occupy London.
- **Law Commission** – candidates may also consider the Law Commission as a method if there are any current projects that candidates are aware of that may fit with this area of law. This area of marriage is an area that the Law Commission are currently looking at so credit would be given if this was discussed.

It is expected that candidates support all methods of law reform with examples, where appropriate and discuss reasons why they may or may not be effective or appropriate for Raheen and Elizabeth.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	15-18	<ul style="list-style-type: none"> <li>• Excellent application of legal rules and principles to Raheen and Elizabeth's situation.</li> <li>• Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to law reform methods. The legal argument is detailed, fully developed and persuasive.</li> </ul>
3	10-14	<ul style="list-style-type: none"> <li>• Good application of legal rules and principles to Raheen and Elizabeth's situation.</li> <li>• Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to law reform methods. The legal argument is generally detailed, fully developed and persuasive.</li> </ul>
2	5-9	<ul style="list-style-type: none"> <li>• Adequate application of legal rules and principles to Raheen and Elizabeth's situation.</li> <li>• Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to law reform methods. The legal argument includes some detail which is developed in places.</li> </ul>
1	1-4	<ul style="list-style-type: none"> <li>• Basic application of legal rules and principles to Raheen and Elizabeth's situation.</li> <li>• Basic presentation of a legal argument using minimal legal terminology relating to law reform methods. The legal argument includes minimal detail.</li> </ul>
	0	Response not creditworthy or not attempted.



## Section B

Either,

5. (a) Explain the aims of sentencing of adults in England and Wales. [6]

### 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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining the aims of sentencing, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying sentencing. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the aims of sentencing of adults and not youths.

The response might consider issues such as:

S142A Criminal Justice Act 2003 –the court should also have regard to the following aims of sentencing:

- **Retribution** – this is based on the idea of punishment and that the punishment should be in proportion to the offence committed.
- **Denunciation** – this enforces the moral boundaries of acceptable conduct and moulds society's views on the conduct.
- **Protection of the public** – this is where the public is protected by virtue of the fact that the offender is incapacitated and unable to commit a further crime, for example by having a driving ban for drink driving.
- **Deterrence** – this can be **individual deterrence** or **general deterrence**. General deterrence prevents other potential offenders from committing the crime by setting an example; this has the aim of reducing crime statistics. Individual deterrence can be achieved through imprisonment where the offender is deterred from committing further offences through fear of further punishment.
- **Rehabilitation** – the main aim here is to reform the offender and rehabilitate them back into society. This can be achieved through the issue of community orders or drug rehabilitation orders.
- **Reparation** – this is where the offender must “pay back” to society, or compensate the victim in some way, for example by returning stolen property, carrying out unpaid work or paying financial compensation.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.</b>
<b>3</b>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the aims of sentencing.</li> <li>• Response is clear, detailed and fully developed.</li> </ul>
<b>2</b>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to the aims of sentencing.</li> <li>• Response is generally clear, detailed and developed.</li> </ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the aims of sentencing.</li> <li>• Response includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

- (b) **Analyse and evaluate the extent to which granting bail to a suspect adequately protects the public.** [18]

### 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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

*This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks, candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured. They must also demonstrate their ability to draw together details from areas including bail, the criminal process and the English legal system.*

Candidates will offer an analysis and evaluation of the legal rules, principles and concepts in order to evaluate the concept of bail. To analyse and evaluate these aspects, candidates may understand and consider the bail criteria applied by a court and the police.

In order to fully analyse and evaluate the issue, the response might consider issues such as:

- Candidates may explore the concept of bail and cite some sections of the relevant statutes – Bail Act 1976, particularly s4 which is the presumption in favour of bail, Criminal Justice Act 2003 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- S38 Police and Criminal Evidence Act 1984 is the power of the custody officer to grant bail from the police station following charge. There are time limits of police bail which may protect the public under the Courts and Police Act 2017.
- Circumstances in which bail need not be granted are contained in Schedule 1 Bail Act 1976 – if there are substantial grounds for believing that the defendant, if released would: commit further offences, interfere with witnesses or not answer to his bail conditions. This ensures that the public are protected from the most dangerous of criminals.
- There are also provisions under the Coroners and Justice Act 2009 which deal with suspects charged with murder. These can be explored in support of the refusal of bail protecting the public, as there are only exceptional circumstances where a defendant charged with murder can be granted bail.
- Factors taken into account when granting bail – for example the family ties of the defendant, the strength of the evidence, the seriousness of the offence. All of these factors could go towards protecting the public.
- To further protect the public, the prosecution may appeal against the granting of bail under the Bail Amendment Act 1993.
- The police and the courts can attach conditions to any granting of bail to further protect the public: these can include curfews, electronic tags, injunctions, residence at a bail hostel and surrender of passport. The police also have the power to arrest someone for breaching bail conditions.
- Candidates may follow this up with some evaluation of whether it is appropriate to refuse bail, for example bail bandits, cases such as Hogans and Weddell illustrating that the balance is not always struck and that sometimes the public are put at risk.

- Candidates may also refer to the 28 day time limit imposed on police bail under the Policing and Crime Act 2017 after the Hookway (2011) case. This rule is quite restrictive on the police and so the police instead release suspects under investigation (RUI) which means that **the suspect has been interviewed under caution** and has been allowed to leave the police station while the police officers continue to investigate the crime. The police will conduct their investigation and inform the suspect at some point in the future as to the outcome – this means that there are potentially dangerous suspects released without bail and not being monitored by the police, for an indefinite amount of time.

Band	Marks	AO3: Analyse and Evaluate legal rules, principles and concepts.
4	15-18	<ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles and concepts relevant to the concept of bail. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of how bail adequately protects the public, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	10-14	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles and concepts relevant to the concept of bail. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of how bail adequately protects the public, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	5-9	<ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles and concepts relevant to the concept of bail. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of how bail adequately protects the public, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</li> </ul>
1	1-4	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles and concepts relevant to the concept of bail. Analysis includes minimal detail.</li> <li>• Basic evaluation of how bail adequately protects the public.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
	0	Response not creditworthy or not attempted.

Or,

6. (a) **Explain the role of solicitors and barristers in the English legal system.** [6]

### **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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining the role of solicitors and barristers, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the legal profession. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on solicitors and barristers and not other roles in the legal profession.

The response might consider issues such as:

**Role of a solicitor:** A solicitor is known as the “general practitioner” of the law and can therefore deal with a wide range of legal matters, though it is common for a solicitor to specialise. Solicitors are the first port of contact for anyone seeking legal advice. They usually work in private practice but can also work as part other organisations such as the CPS. Firms also vary in terms of their composition – solicitors can work as sole practitioners or in bigger firms with over a hundred partners. Solicitors are regulated by The Law Society.

Under the Access to Justice Act 1999, a solicitor automatically has rights of audience in the Magistrates Court. Level 1 allows advocacy in the Magistrates Court and then they can progress to Level 2 after an assessment which allows them to conduct less serious trials in the Crown Court. Higher levels can be achieved with further assessment.

**Role of a barrister:** Traditionally, a barrister is accessed through a solicitor and is the person who would be responsible for advocacy – that is, standing up in court and representing a person. Barristers have full rights of audience meaning that they can present cases in any court in the UK. Barristers are traditionally self-employed and work out of a chambers where they get the support of a clerk. They operate on a ‘cab rank rule’ basis, which means that they have to take the next case that comes along, so long as it is within their specialism.

Barristers are known as junior barristers unless they have ‘taken silk’ – this means that they become Queen’s Counsel (QC). To qualify as a QC, you must have worked as a junior barrister for at least 10 years. QCs are eligible to take on more complicated and high-profile cases than a junior barrister.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.</b>
<b>3</b>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the role of solicitors and barristers.</li> <li>• Response is clear, detailed and fully developed.</li> </ul>
<b>2</b>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to the role of solicitors and barrister.</li> <li>• Response is generally clear, detailed and developed.</li> </ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the role of solicitors and barrister.</li> <li>• Response includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

- (b) **Analyse and evaluate the extent to which juries are representative of society.** [18]

### 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 indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

*This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks, candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured. They must also demonstrate their ability to draw together details from areas including jury trial, the extent to which it is representative of society and ideas for reform.*

Candidates will offer an analysis and evaluation of the extent to which jury trial is representative of society. In order to analyse and evaluate these aspects, candidates may make reference to current newsworthy issues and recent reports into jury eligibility and jury trials.

In order to fully analyse and evaluate the issue, the response might consider issues such as:

- Candidates may explore the eligibility criteria to be on a jury – this is relevant where it is then developed into a legal argument to show how much of the population qualifies for jury service and therefore how representative it potentially is.

To qualify for jury service under the Criminal Justice and Courts Act 2015, a person must be:

- Aged between 18 and 75
- Registered as a parliamentary voter
- Resident in the UK for 5 years since their 13<sup>th</sup> birthday.

People are exempt from jury service if they:

- Are currently on bail
- Are receiving treatment for a recognised mental disorder
- Have served more than 5 years in prison.

You are also excluded for 10 years if you have served any period in prison or had some other community sentence extended upon them.

- Since the amendments to the Juries Act 1974, the jury has become much more representative as the pool of potential jurors has grown. This means that previously excluded police officers, solicitors, barristers and even judges can now serve on a jury. Whilst this has improved the representativeness, it has led to allegations of bias as was brought up in the Hanif & Khan v UK case, where the judge held that there could be perceived prosecution bias where police evidence was being questioned.

- Juries are particularly difficult to research and so it is difficult to know whether they are representative. Racial representation is also an issue – since the case of R v Ford, there is no entitlement to a multi racial jury. However, a defendant is entitled to a non-racist jury. The judge in the case of Sander v UK ordered a re-trial because a juror had passed a note to the judge indicating racist views.
- The processes of vetting and challenging can sometimes be perceived as a threat to the representativeness of the jury. If a jury is challenged because of suitability (extremism, political views) or because of incapacity to serve, this has been criticised in R v Crown Court at Sheffield ex. parte Brownlow as being unconstitutional and a ‘serious invasion of privacy’.

Candidates may discuss in detail here the vetting and challenging process and may make reference to the Romford Jury as an example of unrepresentativeness because of a challenge to the array.

- Reforms under the Juries Act 1974 mean that jury service is now more difficult to get out of – indeed, prior to this, there was the so called ‘middle class opt out’ where the same groups of people were being excused from jury service, making juries very unrepresentative. This was changed and now it is only possible to defer your service, rather than opt out altogether.
- The random selection of juries means that it should be fairly representative and a 2007 report entitled Diversity and Fairness in the Jury System found that juries were representative in terms of gender, age and race. The only under representation the study found was of people on lower incomes and those who were unemployed.

Candidates should be credited positively for citation and reference to any current legal research or academic opinion.



<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and Evaluate legal rules, principles and concepts.</b>
<b>4</b>	<b>15-18</b>	<ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles and concepts relevant to the representativeness of juries. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the representativeness of juries, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
<b>3</b>	<b>10-14</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles and concepts relevant to the representativeness of juries. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the representativeness of juries, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
<b>2</b>	<b>5-9</b>	<ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles and concepts relevant to the representativeness of juries. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the representativeness of juries, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</li> </ul>
<b>1</b>	<b>1-4</b>	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles and concepts relevant to the representativeness of juries. Analysis includes minimal detail.</li> <li>• Basic evaluation of the representativeness of juries.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.