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# **GCE AS MARKING SCHEME**

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**SUMMER 2018**

**AS  
LAW - COMPONENT 1  
The Nature of Law and the English Legal System  
B150U10-1**

## **INTRODUCTION**

This marking scheme was used by WJEC for the 2018 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.

## GCE AS LAW

### SUMMER 2018 MARK SCHEME

#### COMPONENT 1: The Nature of Law and the English Legal System

##### 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 what is meant by intrinsic aids to statutory interpretation. [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 the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining what is meant by intrinsic aids to interpretation, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying aids to 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:

- Role of the judge in interpreting statutes
- Aids available include intrinsic aids – internal aids (within the statute itself)
- Examples of intrinsic aids – the long title, the short title (e.g. Theft Act 1968), headings, schedules, interpretation sections.
- Rule of language – ejusdem generis, expressio unius est exclusio alterius, noscitur a sociis.

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

**2. Explain the stages a Bill must go through in order to become an Act of Parliament.**

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

In explaining the stages a Bill must go through in order to become an Act of Parliament candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the stages a Bill must go through in order to become an Act of Parliament. 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 legislation.

The response might consider issues such as:

- House of Commons, House of Lords
- Green Paper, White Paper
- Bills
- Legislative process:
  - First Reading
  - Second Reading
  - Committee Stage
  - Report Stage
  - Third Reading
  - House of Lords
  - Royal Assent

<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 stages a Bill must go through in order to become an Act of Parliament. 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 the stages a Bill must go through in order to become an Act of Parliament. 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 stages a Bill must go through in order to become an Act of Parliament. Response includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

### Question 3

Read the text below and answer part (a).

“Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some certainty upon which individuals can rely in the conduct of their affairs as well as, a basis for the development of legal rules. The Practice Statement says their Lordships nevertheless recognize that to rigid adherence to precedence may lead to injustice in a particular case and also unduly restrict the proper development of the law.”

The Practice Statement 1966

(a) Explain the terms *ratio decidendi* and *obiter dicta*.

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

In explaining the terms *ratio decidendi* and *obiter dicta*, 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 focus on the specific nature of the question and not simply give a general answer on judicial precedent. The response might consider issues such as:

- an explanation of both *ratio decidendi* and *obiter dicta* and how they can be seen as
- binding and persuasive precedent respectively
- relationship of the court hierarchy in relation to precedent
- relevant case examples to illustrate the operation of *ratio decidendi* and *obiter dicta*
- within a judgement

#### Assessment grid for Question 3 (a)

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

### Question 3 (b)

On May 18th 2010 an emergency application was made to the High Court by a hospital in respect of a refusal of treatment by an adult pregnant woman to undergo an emergency Caesarian section. Both she and her husband refused consent to the operation on religious grounds. The hospital is seeking a declaration that the operation can be performed lawfully even without the mother's consent. The issue of the mother's consent to an operation on her own body was left open in a previous case called Re-X (Adult: Refusal of Treatment) where it was held in the Court of Appeal that where the unborn child's life is at risk, the hospital can perform the operation without the mother's consent. In this case, however, the husband had wanted the operation to go ahead.

**(b) Using the scenario above and applying the doctrine of judicial precedent, advise the hospital on the possible outcomes.**

**[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 the 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 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-X (Adult 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 husband in this case did not want the operation to go ahead. 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 (b)

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

## Question 4

Read the text below and answer part (a).

The Environment Department has recently become concerned by the increase in un-cleared dog mess across the country. Parents have also started to become quite vocal about the mess and a small group descended upon the Parliament to make a complaint and to stage a protest.

**(a) Explain, with examples, what is meant by 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 the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining what is meant by delegated legislation, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying delegated legislation. 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 legislation. The response might consider issues such as:

- Nature of delegated legislation – secondary legislation. Law created by a person or body other than Parliament but with the authority of Parliament.
- Purpose and importance of the enabling Act. Relevant example.
- Main sources of delegated legislation, with examples:
  - Orders in Council
  - Statutory Instruments
  - Bye laws

### Assessment Grid for Question 4 (a)

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

## Question 4 (b)

Read the scenario below and answer part (b).

The Environment Department would like to pass a Statutory Instrument imposing a £5000 fine for any dog owners who do not clean up their dog mess.

- (b) Using the scenario above and applying your understanding of delegated legislation, advise the Environment Department on the ways in which their delegated powers could be controlled.** [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 the 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 the Environment Department, candidates are expected to apply the full range of legal rules and principles that affect the control of delegated powers. In this case, candidates may apply legal rules and principles in relation to both judicial and parliamentary controls to the given scenario in order to present a legal argument using legal terminology. The response may consider issues such as:

- Why control of delegated legislation is necessary – to maintain Parliamentary Sovereignty and so that devolved bodies do not exceed their powers
- Control by Parliament:
  - Scrutiny committee
  - Enabling Act
  - Negative resolution
  - Affirmative resolution
  - Super Affirmative Resolution
  -
- Control by courts:
  - Judicial review
  - *Ultra vires* – substantive - Strickland
  - *Ultra vires* - procedural - Aylesbury Mushroom
  - Unreasonableness – Wednesbury, *R (on the application of Rogers) v Swindon NHS Primary Care Trust 2006*

### Assessment Grid for Question 4 (b)

Band	Marks	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology</b>
4	15-18	<ul style="list-style-type: none"> <li>• Excellent application of legal rules and principles to The Environment Department's situation.</li> <li>• Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the controls on delegated powers. 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 The Environment Department's situation.</li> <li>• Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the controls on delegated powers. The legal argument is generally detailed, developed and persuasive.</li> </ul>
2	5-9	<ul style="list-style-type: none"> <li>• Adequate application of legal rules and principles to The Environment Department's situation.</li> <li>• Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the controls on delegated powers. 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 The Environment Department's situation.</li> <li>• Basic presentation of a legal argument using minimal legal terminology relating to the controls on delegated powers. The legal argument includes minimal detail.</li> </ul>
	0	Response not creditworthy or not attempted.

## Section B

5. (a) Explain the role of the Crown Prosecution Service.

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

In explaining the role of the CPS candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the role of the CPS. In demonstrating this knowledge and understanding candidates are required to give an answer which is focused on the role of the CPS and not other issues. The response might consider issues such as:

- CPS – Established by the Prosecution of Offences Act 1985.
- Three main roles:
  - Charging offenders – Criminal Justice Act 2003. Threshold test
  - Deciding whether to prosecute offenders – Prosecution of Offences Act 1985. Full Code Test.
  - Prosecuting in Court – Prosecution of Offences Act 1985.

### Assessment Grid for Question 5 (a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<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 the CPS. Response is clear, detailed and fully developed.</li> </ul>
2	3-4	<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 the CPS. Response is generally clear, detailed and developed.</li> </ul>
1	1-2	<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 the CPS. Response includes minimal detail.</li> </ul>
	0	Response not credit worthy or not attempted.

**(b) Analyse and evaluate the success of the Crown Prosecution Service. [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 the 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 CPS, the criminal process and the English legal system. For example, a response may include reference to the role of the CPS within the criminal justice system, and the need to balance the prosecution of suspects on suitable grounds with obligation of the criminal justice system to protect the public.*

Candidates will offer an analysis and evaluation of the legal rules, principles and concepts in order to evaluate the success of the CPS. In order to analyse and evaluate these aspects, candidates may understand that the CPS uses the Full Code test to determine if prosecution should ensue and that this involves balancing a number of factors. In order to fully analyse and evaluate the issue, the response might consider aspects such as:

- analysis and evaluation of several issues in relation to the CPS e.g.
  - Downgrading charges
  - Discontinuing cases
  - Cracked / ineffective trials
  - Judge ordered acquittals
  - Objectivity in the CPS
  - Racism in the CPS
  - Lack of clarity for, e.g. assisted suicide and historic sex abuse cases
- Analysis and evaluation of some of the reforms to the CPS e.g.
  - Glidewell report
  - Narey report
  - The Public Prosecution Service – ‘Setting the Standard’
  - CPS Annual Reports

### Assessment Grid for Question 5 (b)

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 success of the CPS. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the success of the CPS, 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 success of the CPS. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the success of the CPS, 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 success of the CPS. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the success of the CPS, 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 success of the CPS. Analysis includes minimal detail.</li> <li>• Basic evaluation of the success of the CPS.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
	0	Response not creditworthy or not attempted.

**6. (a) Explain the main methods of Alternative Dispute Resolution (ADR). [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 the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining how magistrates are appointed, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the main methods of ADR. In demonstrating this knowledge and understanding, candidates are required to be aware of the differences between the main methods of ADR. The response might consider issues such as:

- Definition of ADR – alternative to litigation. Aimed at getting parties to settle dispute without the need for court action
- 4 main forms of ADR though candidates may mention others such as Ombudsmen
  - Negotiation – informal. With or without a solicitor
  - Mediation – third party mediator helps parties reach a solution. Third party plays a facilitative role. Examples of mediation – Mediation, Information and Assessment Meetings (MIAMs), small claims mediation, etc.
  - Conciliation – third party conciliator plays a more active role and will suggest areas of compromise. Examples of conciliation – ACAS, pre-claim conciliation
  - Arbitration – governed by the Arbitration Act 1996. Formal, binding decision known as an ‘award’. Adjudicative – arbitrator imposes decision on the parties. Scott v Avery clauses. Examples of arbitration – sports arbitration

**Assessment Grid for Question 6(a)**

<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 main methods of ADR. 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 main methods of ADR. 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 main methods of ADR. Response includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

**(b) Analyse and evaluate the advantages and disadvantages of the main methods of Alternative Dispute Resolution (ADR). [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 the 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 judiciary, legal personnel and the English legal system. For example, a response may include reference to the increase in the use of ADR following the Woolf reforms. Overall, candidates will offer a debate and come to a substantiated judgement regarding the advantages and disadvantages of the main methods of ADR.*

Candidates will offer an analysis and evaluation of the legal rules, principles and concepts in order to evaluate the advantages and disadvantages of the main methods of Alternative Dispute Resolution (ADR). In order to analyse and evaluate these aspects, candidates may understand that most methods of ADR are consensual rather than adjudicative. In order to fully analyse and evaluate the issue, the response might consider issues such as:

- Definition of ADR – alternative to litigation. Aimed at getting parties to settle dispute without the need for court action. Cheaper and quicker, in general.
- Increased use of ADR since the Woolf reforms, particularly with Rule 1.4 of the Civil Procedure Rules.
- 4 main forms of ADR though candidates may mention others such as Ombudsmen
  - Negotiation
    - Advantages:**
      - Informal; with or without a solicitor
      - Costs reduced
      - Less intimidating
      - Quick resolution
      - Private and confidential
    - Disadvantages:**
      - Not binding
      - Can take longer if lawyers are involved
      - Can be costly if lawyers are involved

- Mediation
  - Advantages:**
    - Third party helps parties reach a solution
    - Based on compromise and not strict application of the law
    - Relationships can be maintained
    - Avoids adversarial conflict of court
    - CEDR claims over 80% of cases are settled at mediation
    - Cheaper than litigation
  - Disadvantages:**
    - Mediator's role is only facilitative
    - Parties have to want to reach a compromise
    - Not normally legally binding
    - If mediation fails, court may be necessary anyway, increasing delay and overall cost
    - Amounts paid in mediated settlements often lower than amounts agreed in other settlements; weaker party can be forced into a settlement
    - More accessible than litigation
  
- Conciliation
  - Advantages:**
    - third party conciliator plays a more active role and will suggest areas of compromise
    - Can avoid further action – e.g. 'Early conciliation in employment disputes
    - Cheaper and quicker
    - Private and usually informal
    - More accessible than litigation
  - Disadvantages**
    - Parties have to want to reach a compromise
    - If conciliation fails, court may be necessary anyway, increasing delay and overall cost
    - Not normally legally binding
  
- Arbitration
  - Advantages:**
    - Formal, binding decision known as an 'award'
    - Adjudicative – arbitrator imposes decision on the parties
    - *Scott v Avery* clauses
    - The parties may choose their own arbitrator
    - Can use experts in the field
    - The hearing, time and place can be arranged to suit both parties
    - The procedure is flexible
    - More informal and relaxed hearing than in court.
  - Disadvantages:**
    - Parties may not be on an equal footing with regards to legal representation
    - Legal aid is not available
    - An unexpected legal point may arise
    - Fees can be expensive for professional arbitrators and formal hearings
    - The rights of appeal are limited
    - Delays for commercial and international arbitration
  
- the nature of law: role of ADR as a method of resolving disputes outside of the court.

### Assessment Grid for Question 6(b)

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 advantages and disadvantages of the main methods of ADR. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the advantages and disadvantages of the main methods of ADR, 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 advantages and disadvantages of the main methods of ADR. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the advantages and disadvantages of the main methods of ADR, 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 advantages and disadvantages of the main methods of ADR. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the advantages and disadvantages of the main methods of ADR, including a valid 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 advantages and disadvantages of the main methods of ADR. Analysis includes minimal detail.</li> <li>• Basic evaluation of the advantages and disadvantages of the main methods of ADR.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
	0	Response not creditworthy or not attempted.