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# **GCE AS MARKING SCHEME**

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**SUMMER 2018**

**AS (NEW)  
LAW - UNIT 1  
THE NATURE OF LAW AND THE WELSH AND  
ENGLISH LEGAL SYSTEMS  
2150U10-1**

## **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**

#### **UNIT 1: The Nature of Law and the Welsh and English Legal Systems**

##### **Marking guidance for examiners**

##### **Summary of assessment objectives for Unit 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, concepts and issues.

##### **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 main sources of delegated legislation.

[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 main sources of delegated legislation, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the main sources of 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 the role of secondary legislation.

The response might consider issues such as:

- Definition of delegated legislation/secondary legislation
- Purpose of the enabling Act
- Main sources:
  - Statutory Instruments
  - Orders in Council
  - Bye Laws
  - Devolution
- Credit for any relevant citation

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	9-10	<ul style="list-style-type: none"><li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the main sources of delegated legislation.</li></ul>
3	6-8	<ul style="list-style-type: none"><li>• Good knowledge and understanding of legal rules and principles relating to the main sources of delegated legislation.</li></ul>
2	3-5	<ul style="list-style-type: none"><li>• Satisfactory knowledge and understanding of legal rules and principles relating to the main sources of delegated legislation.</li></ul>
1	1-2	<ul style="list-style-type: none"><li>• Basic knowledge and understanding of legal rules and principles relating to the main sources of delegated legislation.</li></ul>
	0	Response not creditworthy or not attempted.

**2. Explain the role of pressure groups in reforming the law.**

**[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 role of pressure groups, candidates are expected to demonstrate knowledge and *understanding* of legal rules and principles underlying the role of pressure groups. 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 the methods of law reform.

The response might consider issues such as:

- Examples of different pressure groups e.g. those concerned with particular subjects, charities e.g. Child Poverty Action Group; Shelter, Age UK
- Other professional organisations such as the Law Society and the British Medical Association; business organisations such as Confederation of British Industry
- Role of JUSTICE in promoting law reform in general
- Other pressure groups such as Greenpeace; CND; Friends of the Earth; Fathers Justice; Liberty ; Welsh Language Society
- Methods by which they campaign for a change in the law: publicity; petition;, lobbying; demonstrations etc.
- Examples of areas where they have helped reform the law e.g. Friends of the Earth – the House Waste Recycling Act 2003 and the Climate Change Bill in 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 legal rules and principles</b>
<b>4</b>	<b>9-10</b>	<ul style="list-style-type: none"><li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the role of pressure groups,</li></ul>
<b>3</b>	<b>6-8</b>	<ul style="list-style-type: none"><li>• Good knowledge and understanding of legal rules and principles relating to the role of pressure groups.</li></ul>
<b>2</b>	<b>3-5</b>	<ul style="list-style-type: none"><li>• Satisfactory knowledge and understanding of legal rules and principles relating to the role of pressure groups.</li></ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"><li>• Basic knowledge and understanding of legal rules and principles relating to the role of pressure groups.</li></ul>
	<b>0</b>	Response not creditworthy or not attempted.

3. Read the scenario below, and answer the question that follows.

In 1998 a case was heard in the Civil Division of the Court of Appeal. In the case, a husband and wife had tried to enter into a binding contract together where she agreed to pay him £100 a month in return for him cleaning their marital home. The Civil Division of the Court of Appeal held that married couples are not able to enter into binding contracts of this nature together.

Next month, the High Court is due to hear a case involving Tom and Dan who have a civil partnership. They have been separated, living apart for 2 years. Tom wishes to enter into a binding contract with Dan for him to do the gardening in Tom's new home.

**Using the doctrine of judicial precedent, advise Tom as to the possible outcomes of this case. [28]**

### **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 Tom, candidates are expected to demonstrate knowledge and understanding of the options available to a judge when deciding a case for which there appears to be a binding precedent. Candidates are expected to apply the full range of legal rules and principles that affect the way that judges decide the outcome of a case. In this case they will apply the main options available to a judge to the given scenario in order to present a legal argument, using appropriate legal terminology.

The response might consider issues such as:

- Explanation of the operation of judicial precedent.
  - Stare decisis
  - Ratio decidendi
  - Obiter dicta
  - Operation within the court hierarchy
- Options available to the judge and how each of them might apply to Tom's case:
  - Follow – judge follows the 1998 case and applies the law in the same way, reaching the same conclusion.
  - Distinguish – judge identifies facts which are different and reaches a different conclusion
  - Overrule – judge in a higher court (or appeal court of same level) overrules the precedent from the court below. Does not apply in this case – student to explain why.
  - Reverse – used when a case is heard on appeal. Does not apply in this case – student to explain why.
- Credit for any relevant citation.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>4</b>	<ul style="list-style-type: none"> <li>Excellent, detailed knowledge and understanding of the operation of judicial precedent.</li> </ul>
<b>3</b>	<b>3</b>	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the operation of judicial precedent.</li> </ul>
<b>2</b>	<b>2</b>	<ul style="list-style-type: none"> <li>Satisfactory knowledge and understanding of the operation of judicial precedent.</li> </ul>
<b>1</b>	<b>1</b>	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the operation of judicial precedent.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

<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>18-24</b>	<ul style="list-style-type: none"> <li>Excellent, detailed application of legal rules and principles to Tom's situation.</li> <li>Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the ways in which judicial precedent operates.</li> </ul>
<b>3</b>	<b>12-17</b>	<ul style="list-style-type: none"> <li>Good application of legal rules and principles to Tom's situation.</li> <li>Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the ways in which judicial precedent operates.</li> </ul>
<b>2</b>	<b>7-11</b>	<ul style="list-style-type: none"> <li>Satisfactory application of legal rules and principles to Tom's situation.</li> <li>Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the ways in which judicial precedent operates.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Tom's situation.</li> <li>Basic presentation of a legal argument, using minimal legal terminology relating to the ways in which judicial precedent operates.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

4. Read the fictitious statute and the scenario below, and answer the question that follows.

Following concerns raised in Parliament about the disruption to local inhabitants from outdoor events, Parliament passed the Prevention of Noise Pollution (Fictitious) Act 2016. Jon Jones, MP, commented during the passage of the Bill that a quiet and serene home environment was crucial to overall wellbeing and, for reasons such as this, outdoor noise should be controlled.

### **The Prevention of Noise Pollution (Fictitious) Act 2016**

Section 1 of the Act states: “This Act applies to a gathering on land in the open air in which a crowd of persons or more play amplified music during the night hours which by reason of its loudness and the time at which it is played is likely to cause serious distress to local inhabitants.”

Section 2 defines a crowd as meaning “more than ten persons”.

Section 3 defines ‘land in the open air’ as an outdoor space exposed to the air by nature of its design.

Rhiannon is a solicitor and she holds a party in an open-sided gazebo in her garden. Nine people are invited but fifteen turn up. Rhiannon is using her MP3 player connected to speakers in the gazebo to play classical music for four hours from 8pm. At 1am a group of holiday makers who have parked their caravan in a lay-by close to Rhiannon’s house, complain that they are suffering severe mental and physical distress as a result of the music and noise. A Police Constable orders Rhiannon to shut down the party and she is arrested on the basis that she has committed an offence under section 1 of the Act

**Using the rules of statutory interpretation, advise Rhiannon as to whether an offence has been committed in this situation. [28]**

### **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 Rhiannon candidates are expected to demonstrate knowledge and understanding of statutory interpretation. Candidates are expected to apply the full range of legal rules and principles that affect the application of the rules of statutory interpretation to Rhiannon’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, using appropriate legal terminology.

The response might consider issues such as:

- Applying the four rules of statutory interpretation to the scenario:
  - **Literal:** gives words the 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: for instance, would a group of holiday makers be classed as local inhabitants? Was the party in the open air?

- **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: for instance, are there any absurdities or repugnancies when the statute is interpreted?
- **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: for instance, how would the Act be interpreted if it was introduced with the purpose of filling a gap in the Common Law?
- **Purposive:** looks at the ‘spirit of the law’ and looks to see what Parliament intended, favoured approach of interpretation of EU Law – *Magor v St Mellons, Quinaville, Jones v Tower Boot Company*. Application of the approach to the scenario: for instance, are there any indications as to the intention of Parliament?
- 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

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	4	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of statutory interpretation.</li> </ul>
3	3	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of statutory interpretation.</li> </ul>
2	2	<ul style="list-style-type: none"> <li>• Satisfactory knowledge and understanding of statutory interpretation.</li> </ul>
1	1	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of statutory interpretation.</li> </ul>
	0	Response not creditworthy or not attempted.

<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>18-24</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed application of legal rules and principles to Rhiannon's situation.</li> <li>• Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the rules of statutory interpretation.</li> </ul>
<b>3</b>	<b>12-17</b>	<ul style="list-style-type: none"> <li>• Good application of legal rules and principles to Rhiannon's situation.</li> <li>• Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the rules of statutory interpretation.</li> </ul>
<b>2</b>	<b>7-11</b>	<ul style="list-style-type: none"> <li>• Satisfactory application of legal rules and principles to Rhiannon's situation.</li> <li>• Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the rules of statutory interpretation.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>• Basic application of legal rules and principles to Rhiannon's situation.</li> <li>• Basic presentation of a legal argument, using minimal legal terminology, relating to the rules of statutory interpretation.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

## Section B

5. (a) Explain the education and training of solicitors and barristers in Wales and England. [8]

### 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 education and training of solicitors and barristers in Wales and England, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the education and training of solicitors and barristers. In demonstrating this knowledge and understanding candidates are required to give an answer which is focused on the education and training of barristers and solicitors and not issues such as regulation, complaints or fusion.

The response might consider issues such as:

- Different routes to qualifying as a solicitor or barrister , with a degree and without
- Introduction of the LNAT test in 2004 ( Law degree)
- One year Legal Practice Course ( solicitors); One year Bar Professional Training Course ( barristers)
- Changes to the requirement to undertake the two year training contract in 2014 ( solicitors) ; one year pupillage ( barristers)
- Qualified Lawyers Transfer Scheme
- Continuing Professional Development
- Queen's Counsel

Band	Marks	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>3</b>	<b>6-8</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the education and training of solicitors and barristers in Wales and England</li> </ul>
<b>2</b>	<b>3-5</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of legal rules and principles relating to the education and training of solicitors and barristers in Wales and England</li> </ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of legal rules and principles relating to the education and training of solicitors and barristers in Wales and England.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

**5. (b) Analyse and evaluate the independence of the judiciary.**

**[24]**

**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.*

Candidates will offer an analysis and evaluation of the legal rules, principles concepts and issues in order to analyse and evaluate the independence of the judiciary. In order to analyse and evaluate these aspects, candidates must understand that the independence of the judiciary is a key feature of the Welsh and English legal system but is not without criticism. Overall candidates will offer a debate and come to a substantiated judgement regarding the independence of the judiciary in the legal system of Wales and England.

The response might consider aspects such as:

- Reasons for judicial independence. Judicial independence is of paramount importance, it is a necessary condition of impartiality and, therefore, of a fair trial. Judges should be independent from: Executive, interest groups and litigants.
- Independence from the legislature – the main reason for the creation of the Supreme Court was to separate the judiciary from the legislature
- Judicial independence is now guaranteed under s.3 of the Constitutional Reform Act 2005
- Security of tenure of superior judges – 1701 Act of Settlement; Senior Courts Act 1981; Constitutional Reform Act 2005. Superior judges can only be removed by the monarch following a petition presented to both Houses of Parliament
- Have an independent pay review. Have no other paid appointment or profession or business.
- Not sit on a case where has or appears to have personal interest/bias - e.g. Lord Hoffmann in *Re Pinochet Urdarte* (1999)
- Immunity from prosecution - judges are given immunity from prosecution for any acts they carry out in performance of their judicial function. They also have immunity from being sued in a civil case for actions taken or decisions made in the course of their judicial duties and being sued in a civil cases
- *Gina Miller* Brexit challenge case 2017 – Supreme Court held that the government could not start the process of leaving the EU without consulting Parliament – this decision upholds the right of the judiciary to be independent
- Threats to judicial independence from: Supremacy of Parliament – judges subordinate to the will of Parliament.
- Threats to independence from political bias - Judges have been seen to show political bias, see - *McIlkenny v Chief Constable of the West Midlands*(1980); *R v Ponting* (1985); As well as political bias these cases tend to show a bias towards the right wing of the political spectrum, see – *Bromley London Borough Council v Greater London Council* (1982);*Council of Civil Service Union v Minister for the Civil Service* (1984);*Thomas v NUM* (1985)

<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</b>
<b>4</b>	<b>18-24</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the independence of the judiciary in Wales and England.</li> <li>• Excellent evaluation of the independence of the judiciary in Wales and England, including a valid and substantiated judgement.</li> <li>• Excellent use of supporting case law and legal authorities.</li> </ul>
<b>3</b>	<b>12-17</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to the independence of the judiciary in Wales and England.</li> <li>• Good evaluation of the independence of the judiciary in Wales and England , including reference to a judgement.</li> <li>• Good use of supporting case law and legal authorities.</li> </ul>
<b>2</b>	<b>7-11</b>	<ul style="list-style-type: none"> <li>• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the independence of the judiciary in Wales and England.</li> <li>• Satisfactory evaluation of the independence of the judiciary in Wales and England , including reference to a judgement.</li> <li>• Satisfactory use of supporting case law and legal authorities.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the independence of the judiciary in Wales and England.</li> <li>• Basic evaluation of the independence of the judiciary in Wales and England.</li> <li>• Basic use of supporting case law and legal authorities.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

**6. (a) Explain the composition and role of tribunals.**

**[8]**

**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 main forms of Tribunals, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the main forms of Tribunals. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the forms of Tribunals and not ADR or the civil courts, for example.

The response might consider issues such as:

- Definition of tribunal – alternative to litigation in court. Relevant example.
- Overseen by HMCTS
- Administrative and domestic tribunals
- First-tier and Upper-tier tribunals – examples of Chambers.
- Composition – Tribunals often sit as a panel, incorporating a legally qualified tribunal judge, as well as panel members with specific areas of expertise
- Credit for any relevant citation

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>3</b>	<b>6-8</b>	<ul style="list-style-type: none"><li>• Excellent, detailed knowledge and understanding of the legal rules and principles relevant to the composition and role of tribunals.</li></ul>
<b>2</b>	<b>3-5</b>	<ul style="list-style-type: none"><li>• Good knowledge and understanding of the legal rules and principles relevant to the composition and role of tribunals.</li></ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"><li>• Basic knowledge and understanding of the legal rules and principles relevant to the composition and role of tribunals.</li></ul>
	<b>0</b>	Response not creditworthy or not attempted.

6. (b) Analyse and evaluate the advantages and disadvantages of the main methods of Alternative Dispute Resolution (ADR). [24]

**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.*

Candidates will offer an analysis and evaluation of the advantages and disadvantages of the main methods of ADR. In order to reach a substantiated judgement about this issue, candidates may argue that ADR plays a central role in providing claimants in dispute with an avenue for redress outside of formal litigation. Candidates might consider challenging this by arguing that the informality and lack of binding judgment can prove difficult to enforce. Overall, candidates will offer a debate and come to a substantiated judgement regarding the advantages and disadvantages of 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. 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

<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</b>
<b>4</b>	<b>18-24</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the advantages and disadvantages of ADR.</li> <li>• Excellent evaluation of the advantages and disadvantages of ADR, including a valid and substantiated judgement.</li> <li>• Excellent use of supporting case law and legal authorities.</li> </ul>
<b>3</b>	<b>12-17</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to the advantages and disadvantages of ADR.</li> <li>• Good evaluation of the advantages and disadvantages of ADR, including reference to a judgement.</li> <li>• Good use of supporting case law and legal authorities.</li> </ul>
<b>2</b>	<b>7-11</b>	<ul style="list-style-type: none"> <li>• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the advantages and disadvantages of ADR.</li> <li>• Satisfactory evaluation of the advantages and disadvantages of ADR, including reference to a judgement.</li> <li>• Satisfactory use of supporting case law and legal authorities.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the advantages and disadvantages of ADR.</li> <li>• Basic evaluation of the advantages and disadvantages of ADR.</li> <li>• Basic use of supporting case law and legal authorities.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.