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# **GCE A LEVEL MARKING SCHEME**

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**AUTUMN 2021**

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

## **INTRODUCTION**

This marking scheme was used by WJEC for the 2021 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 A LEVEL LAW**  
**COMPONENT 1 - THE NATURE OF LAW AND THE ENGLISH LEGAL SYSTEM**  
**AUTUMN 2021 MARK SCHEME**

**Marking guidance for examiners**

**Summary of assessment objectives for Component 1**

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

**The structure of the mark scheme**

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

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

**Stage 1 - Deciding on the band**

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

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

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

## **Stage 2 - Deciding on the mark**

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

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

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

## Section A

**0 1** Explain the process a Bill goes through to become an Act of Parliament. [5]

### Indicative content

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

In explaining the stages a Bill must go through to become an Act of Parliament, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the procedure for enacting a statute. 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 Parliament.

The response might consider issues such as:

- The different types of Bill – Public, Private and Private Members'
- The stages a Bill goes through to become an Act. House of Commons – first reading, second reading, committee stage, report stage, third reading, House of Lords, Royal Assent, Commencement
- 'Ping pong' between the two Houses of Parliament
- Relevant example to demonstrate – e.g. the Parliament Acts 1911-1949, the Hunting Act

### Assessment Grid for Question 1

| Band | Marks | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles                                                                                                                                                                        |
|------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3    | 4-5   | <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 goes through to become an Act of Parliament. Response is clear, detailed and fully developed.</li></ul> |
| 2    | 2-3   | <ul style="list-style-type: none"><li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to stages a Bill goes through to become an Act of Parliament. Response is generally clear, detailed and developed.</li></ul>      |
| 1    | 1     | <ul style="list-style-type: none"><li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to stages a Bill goes through to become an Act of Parliament. Response includes minimal detail.</li></ul>                        |
|      | 0     | Response not creditworthy or not attempted.                                                                                                                                                                                                                                    |

**0 2** Explain the main methods judges use to avoid an awkward precedent.

[5]

### Indicative content

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

In explaining what is meant by the techniques used to avoid an awkward precedent, 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 precedent.

The response might consider issues such as:

- an explanation of overruling, reversing and distinguishing
- relationship of the court hierarchy in relation to precedent
- relevant case examples to illustrate the operation of overruling, reversing and distinguishing

### Assessment Grid for Question 2

| Band | Marks | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles                                                                                                                                                                    |
|------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3    | 4-5   | <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 judges use to avoid an awkward precedent. Response is clear, detailed and fully developed.</li></ul> |
| 2    | 2-3   | <ul style="list-style-type: none"><li>• Good knowledge and understanding of the English legal system and legal rules and principles relating the main methods judges use to avoid an awkward precedent. Response is generally clear, detailed and developed.</li></ul>     |
| 1    | 1     | <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 judges use to avoid an awkward precedent. Response includes minimal detail.</li></ul>                    |
|      | 0     | Response not creditworthy or not attempted.                                                                                                                                                                                                                                |

Read the scenario below and answer the question that follows.

The UK Government recently commissioned a report into wasteful petrol consumption following increased awareness of climate change. They concluded that there would be heightened pressure to reduce wasteful consumption of substances that are harmful to the environment.

In 1956 the House of Lords (now Supreme Court) heard a (fictional) case relating to the misuse of petrol by a motor car. The defendant was found guilty of the offence after it was discovered he left his car running all night while he slept in it after a night out. The House of Lords ruled that it was an offence to 'waste petrol while in a motor car'. They added, obiter, that this would not be the case for a diesel car as (in 1956) they were considered less harmful to the environment.

The Court of Appeal is currently deciding a case where a defendant, Joshua, having just filled up his diesel car, drove down his local high street and revved his engine to show off to his friends. He also left his engine running while waiting an hour for his friend to finish work.

Using your knowledge of judicial precedent, advise the Court of Appeal of the possible outcomes for Joshua's case [15]

### Indicative content

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

In advising the court, candidates are expected to demonstrate knowledge and understanding of judicial precedent. Candidates are expected to apply the full range of legal rules and principles that affect the application of judicial precedent to Joshua's situation. In this case candidates may consider the application of following, distinguishing, departing, overruling and reversing, to the given scenario in order to present a legal argument, using appropriate legal terminology.

The response might consider issues such as:

- Operation of precedent within the court hierarchy. Position of Joshua's case in the Court of Appeal and the precedent case in the Supreme Court. Ratio – an offence to waste petrol by a motor car. Obiter (not binding, only persuasive) – that this would not be the case for a diesel car.
- Follow – if a judge follows the 1956 case, Joshua's case will be interpreted in the same way provided the judge feels the cases are sufficiently similar therefore guilty. Court of Appeal is bound by the Supreme Court.
- Distinguish – Court of Appeal could argue that Joshua's case is different in some way and reach a different conclusion. Authority – Balfour v Balfour, Merrit v Merrit. Diesel car (they could use the obiter), car was moving rather than stationary.
- Overruling – As the Court of Appeal is below the Supreme Court, Joshua's case would need to be appealed to the Supreme Court for the 1956 decision to be overruled using the 1966 Practice Statement. Credit for examples of when this has been used. E.g. R v R (1991).
- Reversing – Not available as it is not the 1956 case on appeal.
- Departing.
- Conclusion.

### Assessment Grid for Question 3

| Band | Marks | AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology                                                                                                                                                                                                                              |
|------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4    | 12-15 | <ul style="list-style-type: none"> <li>Excellent application of legal rules and principles to the 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    | 8-11  | <ul style="list-style-type: none"> <li>Good application of legal rules and principles to the 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    | 4-7   | <ul style="list-style-type: none"> <li>Adequate application of legal rules and principles to the 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    | 1-3   | <ul style="list-style-type: none"> <li>Basic application of legal rules and principles to the 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.                                                                                                                                                                                                                                                                                                                    |

*Read the text below and answer part the question that follows.*

Gertrude, 14, is a young environmental campaigner who wants to raise awareness in her local community of the importance of taking immediate and radical action on climate change. She organised a pupil strike day where pupils in support of her campaign picketed outside the school. The local paper became aware of the story and published an article highlighting her cause. Her local MP, Bob Thunder has read the article and would like to take Gertrude's campaign forward. Gertrude is clearly very passionate about the subject and would like to see stricter laws requiring the Government to take tougher action on climate change. Gertrude has asked your advice on the main ways in which she could influence this change in the law.

Using your knowledge of the influences on Parliament, advise Gertrude as to the methods she could use to try to influence Parliament to change the law. [15]

### **Indicative content**

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

In advising Gertrude, candidates are expected to apply the full range of legal rules and principles that affect the reform of the law. In this case, candidates may apply legal rules and principles in relation to pressure groups, the media, judges and Royal Commissions to the given scenario in order to present a legal argument using legal terminology.

The response may consider issues such as:

- advising Gertrude that she could set up a pressure group to bring about reform of the law;
- advising Gertrude of the role that Parliament and her MP can play in reforming the law of plastic reduction: the majority of law reform is carried out by Parliament through repealing, creating, consolidating and codifying. This may be in pursuit of party political agendas or may be the outcome of a Private Member's Bill on plastic reduction
- advising Gertrude that, with regard to judicial change, judges can reform the law through the creation of original precedent and Gertrude may wish to begin a legal action. This is not common as judges need to be mindful of their constitutional position. Notable examples include the cases of Diane Pretty, Debbie Purdy and Daniel James
- members of the public such as Gertrude can sometimes bring about law reform by using the media as a vehicle. Notable examples include the Dangerous Dogs Act 1991
- if a newspaper gets behind Gertrude's campaign of law reform, this can be very successful to gain Parliament's attention; for example, the passing of 'Sarah's Law' which came about as a result of a campaign by the News of the World calling for the public to have access to the sex offender's register
- a successful campaign by Gertrude may help to establish the setting up of a Royal Commission on climate change.
- the nature of law: the reform of criminal and civil law.

#### Assessment Grid for Question 4

| Band | Marks | AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology                                                                                                                                                                                                                                        |
|------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4    | 12-15 | <ul style="list-style-type: none"> <li>Excellent application of legal rules and principles to Gertrude'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>       |
| 3    | 8-11  | <ul style="list-style-type: none"> <li>Good application of legal rules and principles to Gertrude'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, developed and persuasive.</li> </ul>             |
| 2    | 4-7   | <ul style="list-style-type: none"> <li>Adequate application of legal rules and principles to Gertrude's situation.</li> <li>Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating statutory interpretation. The legal argument includes some detail which is developed in places.</li> </ul> |
| 1    | 1-3   | <ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Gertrude'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>                                                                             |
|      | 0     | Response not creditworthy or not attempted.                                                                                                                                                                                                                                                                                                                              |

## Section B

- |   |   |
|---|---|
| 0 | 5 |
|---|---|

 (a) Explain the routes of appeal available from the Crown Court. [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 eligibility criteria required to become a judge, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the appeal routes. In demonstrating this knowledge and understanding candidates are required to give an answer which is focused on the routes of appeal from the Crown Court in criminal cases and not appeals in general.

The response might consider issues such as:

- Appeal to the Court of Appeal Criminal Division. Appeal made within 28 days and leave to appeal must be granted. Criminal Appeal Act 1995.
- Appeal by way of case stated to the Queen's Bench Division of the High Court.
- Options available to the judge – uphold conviction, quash or order a retrial.
- Further appeal – leapfrog from QBD to Supreme Court or Court of Appeal to Supreme Court on point of law of general public importance. Leave to appeal must be given.

### Assessment Grid for Question 5(a)

| Band | Marks | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles                                                                                                                                                           |
|------|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4    | 8-10  | <ul style="list-style-type: none"> <li>Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the appeal routes from the Crown Court. Response is clear, detailed and fully developed.</li> </ul>           |
| 3    | 5-7   | <ul style="list-style-type: none"> <li>Good knowledge and understanding of the English legal system and legal rules and principles relating to the appeal routes from the Crown Court. Response is generally clear, detailed and developed.</li> </ul>            |
| 2    | 3-4   | <ul style="list-style-type: none"> <li>Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the appeal routes from the Crown Court. Response includes some detail which is developed in places.</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 appeal routes from the Crown Court. Response includes minimal detail.</li> </ul>                              |
|      | 0     | Response not credit worthy or not attempted.                                                                                                                                                                                                                      |

- (b) Analyse and evaluate the importance of a jury being representative of society. [15]

### Indicative content

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

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

Candidates will offer an analysis of the legal rules, principles, concepts and issues in order to evaluate how representative the jury is. In order to reach a substantiated judgement about this issue, candidates may argue that the CJA 2003 has made the jury more representative but issues remain. Overall candidates will offer a debate and come to a substantiated judgement regarding jury representativeness

- Candidates will offer an analysis and evaluation of the legal rules, principles concepts and issues in order to analyse and evaluate whether trial by jury is representative. In order to analyse and evaluate these aspects, candidates must understand that trial by jury is a feature of the English legal system but is not without criticism regarding its representativeness.
- Overall candidates will offer a debate and come to a substantiated judgement regarding the representativeness of jury trial in the justice system of Wales and England.

The response might consider aspects such as:

- Trial by jury mentioned in Magna Carta.
- History of jury eligibility Juries Act 1974, Auld Review, etc.
- Jury representativeness strengthened by increasing those eligible – Criminal Justice Act 2003. However, cases such as R v Abdroidof and R v Khan question whether this increased eligibility (police officers, CPS, judges) is appropriate.
- Possible consideration of some of the advantages and disadvantages of trial by jury.
- Candidates are summoned at random though much depends upon where they live as the electoral role is used as part of this process
- Eligibility – discussion and candidates will be rewarded for accurate and appropriate citation
- Effects on jury representation by jury vetting with relevant citation
- Effects on jury representation by challenging – challenging for cause and stand by
- Effects of judge alone trials on jury representation as introduced by the CJA 2003; R v Twomey
- No requirement for a racially balanced jury e.g. R v Ford
- Discussion of reforms that could improve how representative the jury is of society e.g. choose names from National insurance number register; lower the eligibility age to 16

### Assessment Grid for Question 5(b)

| Band | Marks | AO3: Analyse and evaluate legal rules, principles and concepts                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4    | 12-15 | <ul style="list-style-type: none"> <li>Excellent analysis of legal rules, principles and concepts relevant to the representativeness of the jury. 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 representativeness of the jury, including a valid and substantiated judgement.</li> <li>Excellent citation of supporting case law and legal authorities.</li> </ul> |
| 3    | 8-11  | <ul style="list-style-type: none"> <li>Good analysis of legal rules, principles and concepts relevant to the success of the representativeness of the jury. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>Good evaluation of the success of the representativeness of the jury, including a valid judgement.</li> <li>Good citation of supporting case law and legal authorities.</li> </ul>                                                                  |
| 2    | 4-7   | <ul style="list-style-type: none"> <li>Adequate analysis of legal rules, principles and concepts relevant to the success of the representativeness of the jury. Analysis includes some detail with some supporting evidence.</li> <li>Adequate evaluation of the success of representativeness of the jury, including reference to a judgement.</li> <li>Adequate citation of supporting case law and legal authorities.</li> </ul>                                                                    |
| 1    | 1-3   | <ul style="list-style-type: none"> <li>Basic analysis of legal rules, principles and concepts relevant to the success of the representativeness of the jury. Analysis includes minimal detail.</li> <li>Basic evaluation of the success of representativeness of the jury.</li> <li>Basic citation of supporting case law and legal authorities.</li> </ul>                                                                                                                                            |
|      | 0     | Response not creditworthy or not attempted.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

- 0 6** (a) Explain the sources of funding available to access justice in England and Wales. [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 different sources of funding in Wales and England, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying access to justice and funding. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the different sources of funding not on access to justice in general.

The response might consider issues such as:

- Role of the Legal Aid Agency and the means test including, for example the challenges in respect of criminal legal aid
- Civil and Criminal Legal Aid
- The various advice schemes
- Alternative methods of funding
- Conditional fee arrangements

### Assessment Grid for Question 6(a)

| Band | Marks | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles                                                                                                                                                                                              |
|------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4    | 8-10  | <ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the sources of funding available to access justice in England and Wales. Response is clear, detailed and fully developed.</li> </ul>           |
| 3    | 5-7   | <ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to the sources of funding available to access justice in England and Wales. Response is generally clear, detailed and developed.</li> </ul>            |
| 2    | 3-4   | <ul style="list-style-type: none"> <li>• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the sources of funding available to access justice in England and Wales. Response includes some detail which is developed in places.</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 sources of funding available to access justice in England and Wales. Response includes minimal detail.</li> </ul>                              |
|      | 0     | Response not credit worthy or not attempted.                                                                                                                                                                                                                                                         |

**Indicative content**

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates. In order to achieve the highest marks, candidates must demonstrate their ability to draw together details from areas including civil courts, the English legal system and the nature of law.

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues in order to evaluate the importance of conditional fee agreements. In order to analyse and evaluate these issues, candidates may argue that conditional fee agreements have widened access to justice and have contributed to lessening the problems with unmet legal need. Candidates might consider challenging this by arguing the range of key issues and concerns with conditional fee agreements, such as the uplift fee and the unavailability of these arrangements for certain areas of civil law. Overall candidates will offer a debate and come to a substantiated judgement regarding the importance of conditional fee agreements.

The response might consider issues such as:

- the unmet need for legal services – litigants cannot afford their own legal fees because of the tight civil legal aid budget. ‘No win, no fee’ arrangements are important because they offer an alternative for those who would not otherwise have access to justice as per Dicey’s Rule of Law – everyone is equal before the law
- the background legal context including the Courts and Legal Services Act 1990 which introduced the concept of conditional fee arrangements
- the Access to Justice Act 1999 which introduced concept of uplift fee and success fees
- the Legal Aid, Sentencing and Punishment of Offenders Act 2012 – success fee is no longer recoverable by losing party, limited categories of cases eligible for civil legal aid. Under this Act there are now two types of ‘no win no fee’ agreements: Conditional Fee Arrangements, and Damages Based Agreements. Both of these are important because they give litigants alternatives to court and reduce the number of litigants in person
- access to justice to those who cannot otherwise afford it; abolition of success fee
- pressure to settle out of court – is this a “second best” resolution; lawyers will not take on high risk cases; pressure from insurance companies; winning litigants will be left with hardly any damages after paying fees
- considerations of law and justice include the meaning of ‘justice’ and the extent to which ‘no win no fee’ arrangements achieve justice or create barriers to justice. There can be different strengths between a claimant and a defendant and, without help for financially weaker parties, justice might not be achieved.

### Assessment Grid for Question 6(b)

| Band | Marks | AO3: Analyse and evaluate legal rules, principles and concepts                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4    | 12-15 | <ul style="list-style-type: none"> <li>Excellent analysis of legal rules, principles and concepts relevant to the importance of conditional fee arrangements. 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 importance of conditional fee arrangements, including a valid and substantiated judgement.</li> <li>Excellent citation of supporting case law and legal authorities.</li> </ul> |
| 3    | 8-11  | <ul style="list-style-type: none"> <li>Good analysis of legal rules, principles and concepts relevant to the success of the importance of conditional fee arrangements. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>Good evaluation of the success of the importance of conditional fee arrangements, including a valid judgement.</li> <li>Good citation of supporting case law and legal authorities.</li> </ul>                                                                  |
| 2    | 4-7   | <ul style="list-style-type: none"> <li>Adequate analysis of legal rules, principles and concepts relevant to the success of the importance of conditional fee arrangements. Analysis includes some detail with some supporting evidence.</li> <li>Adequate evaluation of the success of the importance of conditional fee arrangements, including reference to a judgement.</li> <li>Adequate citation of supporting case law and legal authorities.</li> </ul>                                                                |
| 1    | 1-3   | <ul style="list-style-type: none"> <li>Basic analysis of legal rules, principles and concepts relevant to the success of the importance of conditional fee arrangements. Analysis includes minimal detail.</li> <li>Basic evaluation of the success of the importance of conditional fee arrangements.</li> <li>Basic citation of supporting case law and legal authorities.</li> </ul>                                                                                                                                        |
|      | 0     | Response not creditworthy or not attempted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |