



GCE AS MARKING SCHEME

SUMMER 2022

**AS
LAW – COMPONENT 1
B150U10-1**

INTRODUCTION

This marking scheme was used by WJEC for the 2022 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

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

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

EDUQAS GCE AS LAW

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

SUMMER 2022 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component 1

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

The structure of the mark scheme

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

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

Stage 1 - Deciding on the band

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

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content.

Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

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

Stage 2 - Deciding on the mark

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

Examiners should mark the examples and compare their marks with those of the Principal Examiner.

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

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

Section A

1. Explain how judges can avoid an awkward precedent.

[6]

Indicative content

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

In explaining the avoidance techniques, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying precedent. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the specific nature of the question; avoidance techniques only.

The response might consider issues such as:

- **Overruling** – When the earlier precedent was made in a lower court, the senior judges can overrule that **earlier decision** if they disagree with it. The outcome of the earlier decision stays the same but will not be followed.
- **Reversing** – If the decision of a lower court is appealed to a higher one, the higher court may change it if they feel the lower court has wrongly interpreted the law.
- **Distinguishing** – The judge finds the material cases of the two cases sufficiently different to avoid following the precedent.
- **Practice Statement 1966** – this is a power unique to the Supreme Court where they can overrule their own previous decisions where it “*appears right to do so*”.
- **Young v Bristol Aeroplane** – this is where the Court of Appeal can overrule its own previous decisions subject to the exceptions laid down in this case.

Candidates would not be expected to discuss all these techniques for 6 marks, but a range would be required with supporting case illustration.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

2. Explain the role of Hansard in the interpretation of statutes.

[6]

Indicative content

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

In explaining the role of Hansard, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying statutory interpretation and the use of Hansard. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused the specific nature of the question; Hansard only and not other aids to statutory interpretation.

The response might consider issues such as:

- Hansard is a daily record of Parliamentary debates and is considered an extrinsic aid to statutory interpretation.
- It was ruled in Davis v Johnson (1979) that Hansard was not permitted in the interpretation of statutes, and Lord Scarman deemed Hansard “unreliable...promoting confusion, not clarity”. This was despite Lord Denning in the same case, admitting that he had used Hansard to help him interpret the Domestic Violence and Matrimonial Proceedings Act 1976.
- This decision was later overruled in Pepper v Hart (1993), with Lord Browne-Wilkinson ruling that Hansard could be consulted in certain circumstances, including where:
 - *Legislation is ambiguous or obscure, or leads to an absurdity;*
 - *The material relied on consists of one or more statements by a minister or other promoter of the Bill together if necessary with such other parliamentary material as is necessary to understand such statements and their effect;*
 - *The statements relied on are clear.*

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

3. Read the text below and answer part (a).

“Provisions in subordinate legislation must be intra vires. This means they must be within the scope of the enabling power. To the extent that they are ultra vires (outside the scope) they are invalid, even if the remainder of the instrument is valid”

Source:

(a) Explain the types of delegated legislation.

[6]

Indicative content

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

In explaining the types of 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 give an answer which focuses on delegated legislation only.

The response might consider issues such as:

Delegated Legislation is law made by bodies other than Parliament but with the authority of Parliament. The power is usually granted via a Parent or enabling act.

- **Statutory Instruments** – these are usually in the form of Regulations, passed by the relevant Government Minister in their area of specialism. Nearly 2,000 of these are passed on average each year.
- **By-Laws** – these are made by the local councils under the Local Government Act 1972 and are useful to respond to local needs, such as parking restrictions, traffic control and dog fouling.
- **Orders in Council** – these are made by the Privy Council and are useful for passing laws in emergencies, giving effect to European Directives and transferring responsibility between government departments. An Order in Council was recently published to prorogue Parliament, though this was subsequently deemed to be unlawful.
- **Assembly Orders** – this is a source of delegated legislation created by the National Assembly for Wales but is decreasing as a source of law since the primary legislative powers of the National Assembly for Wales has increased under the Wales Act 2017, where a reserved powers model is now the basis for law making.

Candidates should support each of the types of delegated legislation with examples to reach the higher bands.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

(b) Protection of the Environment Act 2017

Section 93(3):

- (a) the appropriate Minister may, by such Regulations as are necessary, provide that local authorities should increase their plastic recycling by 45% by 2023.
- (b) enforcement authorities may issue penalty notices up to £1,000 for non-compliance with any Regulations made under this section.
- (c) Regulations made under this section shall be subject to the affirmative resolution method and consultation of relevant local authorities.

The Environment Minister has subsequently published The Plastic Pollution Monitoring Regulations 2018, which stipulate that every resident of the UK has to be supplied with plastic recycling facilities, to be collected by their local authority on a weekly basis.

Joseph has recently been fined £5,000 by his local council for not recycling his plastic in the correct bag. When he appealed against this to his local council, they claimed the fine had to be paid citing the Regulations, yet his MP knew nothing of the new rules.

Using your knowledge of delegated legislation, advise Joseph as to whether the actions of the council are lawful. [18]

Indicative content

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

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

In advising Joseph, candidates are expected to apply the full range of controls that affect delegated legislation to this situation. In this case, candidates may apply parliamentary controls and judicial controls, to the given scenario in order to present a legal argument using legal terminology.

The response might consider issues such as:

Candidates should first of all identify that power has been delegated to the Environment Minister under the Protection of the Environment Act 2017, which is the enabling Act.

Candidates should then go on to explain all the **parliamentary controls** to which the Regulations could be subject, including:

- Negative resolution
- Affirmative resolution (which is provided for in this scenario)
- Enabling Act
- Joint Committee on Statutory Instruments
- Super affirmative resolution

Candidates will then go on to explain all the **judicial controls** to which the Regulations could be subject, including a definition of judicial review and the concept of *ultra vires*.

- Procedural *ultra vires*
- Substantive *ultra vires*.

It is expected that candidates define all the key controls and support with case law, where appropriate.

In applying to Joseph, candidates could identify that:

- The Minister has acted **substantively ultra vires**, by creating a fine that exceeded that which Parliament intended. The parent Act stipulated a fine of no more than £1,000 yet the Environment Minister enforced a fine of £5,000 for offenders.
- The Minister could also have arguably acted **procedurally ultra vires** as Joseph's MP was not aware of the new rules, so it could be implied that the affirmative resolution method was not followed and the Regulations were not laid before Parliament for approval.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	15-18	• Excellent application of legal rules and principles to Joseph's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the controls on delegated legislation. The legal argument is detailed, fully developed and persuasive.
3	10-14	• Good application of legal rules and principles to Joseph's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the controls on delegated legislation. The legal argument is generally detailed, fully developed and persuasive.
2	5-9	• Adequate application of legal rules and principles to Joseph's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the controls on delegated legislation. The legal argument includes some detail which is developed in places.
1	1-4	• Basic application of legal rules and principles to Joseph's situation. • Basic presentation of a legal argument using minimal legal terminology relating to the controls on delegated legislation. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

4. Read the text below and answer part (a).

“Law Reform is about generating much broader benefits for society and the economy.....and formulating laws which improve the daily lives of citizens”

Source: Law Commission Annual Report – 2018-2019

(a) Explain the purpose of the Law Commission.

[6]

Indicative content

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

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

The response might consider issues such as:

- Role of the Law Commission under s3 Law Commission Act 1965.
- Repeal, Create, Consolidate and Codification – with examples.
- Composition of the Law Commission
- Process of reform undertaken by the Law Commission.
- Examples of current projects.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to avoidance techniques. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

- (b) A report recently published in the media claims that 23% of 18-24 year olds crash their car within two years of passing their test.

Luke is a 19-year-old student who has recently passed his driving test and feels strongly that a change in the law could reduce this statistic. He proposes that it should be law that new drivers should display a P plate for two years and that for the first two years, new drivers should not be permitted to carry more than one passenger between the hours of 8pm and 6am.

Advise Luke on the ways in which he could try to promote reform of the law on the use of P plates for learner drivers in England and Wales. [18]

Indicative content

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

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

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

The response might consider issues such as:

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

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

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

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	15-18	• Excellent application of legal rules and principles to Luke's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to law reform methods. The legal argument is detailed, fully developed and persuasive.
3	10-14	• Good application of legal rules and principles to Luke's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to law reform methods. The legal argument is generally detailed, fully developed and persuasive.
2	5-9	• Adequate application of legal rules and principles to Luke's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to law reform methods. The legal argument includes some detail which is developed in places.
1	1-4	• Basic application of legal rules and principles to Luke's situation. • Basic presentation of a legal argument using minimal legal terminology relating to law reform methods. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

Section B

5. (a) Explain the role of magistrates in the criminal courts of England and Wales. [6]

Indicative content

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

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

The response might consider issues such as:

- concept of magistrates established with the Justices of the Peace Act 1361. Magistrates are lay people who volunteer to hear cases in the Magistrates' Court.
- current role of magistrates is governed by the Justice of the Peace Act 1997 and the Courts Act 2003.
- Criminal jurisdiction –
 - deal with 95% criminal cases – summary and triable either way. Summary cases could include minor assault, theft and motoring offences.
 - role is to decide whether defendant is guilty or not guilty and to sentence them if found guilty.
 - magistrates also issue warrants for arrest and decide on bail applications.
 - magistrates can also hear appeals in the Crown Court.
 - sentencing powers are limited to 6 months imprisonment (or 12 months for consecutive sentences) and in most cases unlimited powers to fine.
- Youth Court – there is a special Youth Court for defendants aged between 10-17 who are accused of all criminal offences and the magistrates' role here is to decide whether they are guilty or not guilty and also to sentence them with an appropriate youth sentence.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the role of magistrates. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the role of magistrates. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the role of magistrates. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

(b) Analyse and evaluate the extent to which trial by jury is reliable. [18]

Indicative content

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

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

Candidates will offer an analysis and evaluation of the legal rules, principles and concepts in order to evaluate the reliability of jury trial. In order to analyse and evaluate these aspects, candidates may understand and consider the eligibility criteria to sit on a criminal jury and the risk of contempt issues.

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

- Candidates may briefly explore the role of the jury by way of an introduction before discussing issues of reliability.
- Candidates may consider analysing and evaluating the following issues when looking at how the **reliability** of jury trial may be **strengthened**:
 - ✓ eligibility criteria under the Criminal Justice and Courts Act 2015 mean that the pool of potential jurors is now wider and also more difficult to avoid.
 - ✓ research has shown that jury trial is fair, effective and efficient – Prof Cheryl Thomas.
 - ✓ research produced by the Lammy Review also found that juries were not generally biased and were consistent in their decision making regardless of the ethnicity of the defendant.
 - ✓ jury trial is an ancient institution, supported by the Magna Carta and referred to as the “*bulwark of our liberties*” by Professor Blackstone.
 - ✓ the system of vetting and challenging seeks to exclude those who have extremist views or who cannot sit because of bias in terms of an obvious prejudice or being familiar with someone involved in the case – R v Gough (1993), Romford Jury (1993) or R v Mason (1980).
 - ✓ juries can protect against harsh and unjust laws, and come to a fair verdict rather than one which may be legally correct – R v Owen (1992)
 - ✓ the concept of jury equity means that juries can make common sense decisions without influence from the judge, as seen in the case of R v Ponting (1985).
 - ✓ decisions made by the jury during deliberations are secret, and no reasons are needed to be given for verdicts. This means the jury is offered some protection, which has been further strengthened by the Criminal Justice and Courts Act 2015.

- Candidates may consider analysing and evaluating the following issues when looking at how the **reliability** of jury trial may be **weakened**:
 - ✗ The Criminal Justice and Courts Act 2015 created new offences of contempt which put jurors at risk of committing criminal offence if they use the internet or social media, or share any information that they research – R v Fraill (2011), R v Banks (2011) and R v Smith and Deane (2016).
 - ✗ Research has shown that juries do not always understand the legal proceedings – R v Pryce (2013).
 - ✗ Since the changes in eligibility criteria introduced by the Criminal Justice and Courts Act 2015, there have been concerns that jurors could be biased as illustrated by R v Abdroikof and R v Hanif and Khan.
 - ✗ There is also a risk of juries being influenced by external agencies:
 - i) jury tampering – R v Twomey & others (2009)
 - ii) media coverage of high-profile cases – R v Taylor and Taylor (1993) which can also affect the defendant's **Article 6 right to a fair trial**.
 - ✗ Some jurors find the process of sitting on a jury very distressing due to the harrowing evidence - R v West.
 - ✗ Jurors may sometimes be too easily impressed and swayed by the appearance and manner of the “theatre” of the court room and the legal professionals. This was seen in the ‘amorous juror’ case – R v Alexander and Steen (2004).
 - ✗ Juries are very difficult to research and so it is difficult to know whether they have understood the case or what has happened in the jury deliberation room, though again tighter controls introduced by the Criminal Justice and Courts Act 2015 make sure that misconduct in the jury deliberation room can be reported to the judge.
- Candidates may also analyse and evaluate the alternatives to the jury:
 - a single judge sitting alone
 - a bench of judges
 - a specially trained jury
 - a mixed panel of judges and lay members.

Band	Marks	AO3: Analyse and Evaluate legal rules, principles and concepts.
4	15-18	• Excellent analysis of legal rules, principles and concepts relevant to the reliability of jury trial. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the reliability of jury trial, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	10-14	• Good analysis of legal rules, principles and concepts relevant to the reliability of jury trial. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the reliability of jury trial, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	5-9	• Adequate analysis of legal rules, principles and concepts relevant to the reliability of jury trial. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the reliability of jury trial, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-4	• Basic analysis of legal rules, principles and concepts relevant to the reliability of jury trial. Analysis includes minimal detail. • Basic evaluation of the reliability of jury trial. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

6. (a) **Explain conditional fee arrangements as a source of legal funding in personal injury cases.** [6]

Indicative content

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

In explaining the role of conditional fee arrangements, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying legal funding and conditional fee arrangements. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on conditional fee arrangements and not other sources of funding.

The response might consider issues such as:

- Conditional Fee Arrangements were first introduced by the Courts and Legal Services Act 1990 and later introduced more widely in the Access to Justice Act 1999.
- Conditional Fee Arrangements are only available for personal injury cases and since the cutbacks to legal funding, is the only option for lots of people with a personal injury case.
- Conditional Fee Arrangements are a purely private agreement between a client and their legal representative.
- Under s44 Legal Aid, Sentencing and Punishment of Offenders Act 2012, the losing side no longer has to pay the costs of the winning party.
- The legal representative is entitled to charge an 'uplift' or 'success' fee which can exceed no more than 25% of the damages, excluding damages for future care and loss. This will protect claimants' damages and will ensure that any damages for future care and loss are protected.
- Candidates may also make reference to Damages Based Agreements but is not a requirement of the answer.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to conditional fee arrangements. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to conditional fee arrangements. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to conditional fee arrangements. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

- (b) Analyse and evaluate the extent to which there is still a lack of funding to meet legal needs. [18]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks, candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured. They must also demonstrate their ability to draw together details from areas including civil and criminal legal funding, the recent legislative changes introduced and the impact these cuts have had on English legal system. For example, the response may include reference to the system of civil and criminal legal aid as well as an outline of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Candidates will offer an analysis and evaluation of criminal and civil legal aid and the provisions of the legislation. In order to analyse and evaluate these aspects, candidates may make reference to current newsworthy issues and recent reports into the success of the reforms.

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

Civil Legal Aid

- Under s8 of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 lists the cases that will now qualify for civil legal aid under Schedule 1. These include: clinical negligence in infants, special educational needs, domestic violence, forced marriage and immigration.
- s10 LASPO 2012 provides that “additional funding” can be granted where a failure to provide funding would be a breach of the European Convention on Human Rights.
- Personal Injury cases no longer qualify for legal aid.
- Only those solicitors’ firms with a contract with the Legal Aid Agency can offer civil legal aid services. This encourages high standards and competition between firms.
- A telephone gateway service has also been introduced for clients who need advice over the phone.
- The provision of civil legal aid will be subject to both means and merits tests.

Criminal Legal Aid

- Under s16 of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, a defendant is entitled to criminal legal aid but in order to gain a **representation order**, they will need to satisfy a means and merits test.
- Under s58 Police and Criminal Evidence Act 1984, suspects have the right to a duty solicitor at the police station, but this can be delayed by a superintendent or above if there is reasonable belief that access to a solicitor will lead to the alerting of other suspects.
- There are other agencies that can provide criminal legal aid, including Defence Solicitor Call Centre, Criminal Defence Direct or the Public Defender Service. Candidates may discuss some or all of these in varying detail.

- Candidates may consider analysing and evaluating the following issues when looking at how there are **still unmet legal needs**:
 - ✓ Many people have to pay privately for their case or represent themselves, leading to an increase in the number of litigants in person.
 - ✓ Some solicitors' firms are going out of business because there are not enough publicly funded cases.
 - ✓ The telephone gateway service has been criticised for a lack of public awareness as well as fewer referrals than expected for a face to face meeting.
 - ✓ Criminal legal aid introducing a means and merits test has implications for undermining the rule of law.
 - ✓ The case of S v Director of Legal Aid Casework and Lord Chancellor (2014) shows how restrictive the allocation of funding can be. This case shows a successful judicial review of the funding guidance and was deemed to be wrong in law and too restrictive.
 - ✓ Significant changes introduced by the Welfare Reform Act 2012, including changes to the disability benefits system have meant there is an increase in demand for legal services as people appeal against decisions made by the DWP.

- Candidates may consider analysing and evaluating the following issues when looking at how there are **no unmet legal needs**:
 - ✗ Alternatives to court have seen a huge increase in business.
 - ✗ Civil legal aid is now only available in a limited number of cases, so that the government saves money that can be put into other services.
 - ✗ There are now a wide range of services available for clients in both civil and criminal legal aid, meaning standards have had to increase and competition is healthy between firms.
 - ✗ Successes such as the Heather Ilott case have raised the profile of the Bar Pro Bono Unit to cope with the increased demand.

There are a number of reports and articles which contain current and up to date knowledge, which will all be credited positively.

Band	Marks	AO3: Analyse and Evaluate legal rules, principles and concepts.
4	15-18	• Excellent analysis of legal rules, principles and concepts relevant to the unmet legal needs. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the unmet legal needs, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	10-14	• Good analysis of legal rules, principles and concepts relevant to the unmet legal needs. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the unmet legal needs, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	5-9	• Adequate analysis of legal rules, principles and concepts relevant to the unmet legal needs. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the unmet legal needs, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-4	• Basic analysis of legal rules, principles and concepts relevant to the unmet legal needs. Analysis includes minimal detail. • Basic evaluation of the unmet legal needs. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.