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# **GCE AS MARKING SCHEME**

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**SUMMER 2024**

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

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## About this marking scheme

The purpose of this marking scheme is to provide teachers, learners, and other interested parties, with an understanding of the assessment criteria used to assess this specific assessment.

This marking scheme reflects the criteria by which this assessment was marked in a live series and was finalised following detailed discussion at an examiners' conference. A team of qualified examiners were trained specifically in the application of this marking scheme. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners. It may not be possible, or appropriate, to capture every variation that a candidate may present in their responses within this marking scheme. However, during the training conference, examiners were guided in using their professional judgement to credit alternative valid responses as instructed by the document, and through reviewing exemplar responses.

Without the benefit of participation in the examiners' conference, teachers, learners and other users, may have different views on certain matters of detail or interpretation. Therefore, it is strongly recommended that this marking scheme is used alongside other guidance, such as published exemplar materials or Guidance for Teaching. This marking scheme is final and will not be changed, unless in the event that a clear error is identified, as it reflects the criteria used to assess candidate responses during the live series.

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## WJEC GCE AS LAW

### UNIT 1: THE NATURE OF LAW AND THE WELSH AND ENGLISH LEGAL SYSTEMS

#### SUMMER 2024 MARK SCHEME

#### 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 advantages and disadvantages of judicial precedent [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 advantages and disadvantages of judicial precedent, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying judicial precedent. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question and not simply give a general answer on judicial precedent.

The response might consider issues such as:

### Advantages

- Consistency/Predictability
- Like cases are treated alike – ie cases of similar fact will end with the same result based on previous decisions made.
- Judges cannot make random decisions they have to follow existing law. This promotes fairness and ideas of justice.
- Additionally, because cases are treated alike, lawyers are able to advise clients with certainty as to how to deal with their case allows judges to be flexible through the use of the methods of avoiding precedent to for example overrule out of date precedents. This allows the law to develop to reflect the times, like for example when *BRB v Herrington* changed the law on occupiers liability by overruling *Addie v Dumbreck* and recognised that society had changed in 50 years.
- Precedent allows for new 'original' precedents to be created where there is a situation where no precedent exists or in a situation that there is no legislation – *Gillick v North West HA*; *Donoghue v Stephenson*.

### Disadvantages

- Complexity: Legal judgements are complex, and it is difficult to find or decide what the relevant ratio is.
  - In appeal cases there is often more than one judge, and each judge will give a reason for their decision with a common ratio being difficult to find.
- Volume: It is difficult for anyone to read the law due to the huge volume of judgements made. Hundreds are made every year and the precise nature of the law on one matter may be made up of multiple aspects.
- Uncertainty: The ability of judges to avoid following a binding precedent can create uncertainty within the law on how a case will be resolved. Until a case is heard, this uncertainty will not be resolved.
- Rigidity: Precedents are hard to change which means that an unjust precedent could be in existence and not easily changed until a case of similar facts comes through the appeal process.
- Unconstitutional/Undemocratic; Judges are seen to be creating law rather than applying it. It is undemocratic as it is not the role of the judiciary to make law, rather this is for Parliament to do as they are the elected law-making body within the legal system. Judges are unelected and should not be engaging in law

making in this way.

- Retrospective Effect: Law created by judges is backward-looking. It applies to events that occurred before the case came to court and at a time when the parties involved would rightly have considered themselves to be acting within the law.

<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 advantages and disadvantages of precedent</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 advantages and disadvantages of precedent</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 advantages and disadvantages of precedent</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 advantages and disadvantages of precedent</li></ul>
	<b>0</b>	Response not creditworthy or not attempted.

2. Explain the extrinsic aids available to a judge when interpreting a statute

[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 what is meant by extrinsic aids candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying statutory interpretation. In demonstrating this knowledge and understanding candidates are required to focus on the specific nature of the question and not simply give a general answer on the rules or all the aids to interpretation.

The response might consider issues such as:

With both the mischief and purposive approach, the judge is directed to use external or extrinsic aids. These are found outside of the Act and include:

- Dictionaries & textbooks
- Reports e.g. Law Commission
- Historical setting
- Treaties
- Previous case law
- Hansard - Davis v Johnson (1979); Pepper v Hart (1993); Three Rivers District Council v Bank of England (No. 2) (1996). Wilson v Secretary of State for Trade and Industry (2003)
- Human Rights Act 1998

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 extrinsic aids available to a judge when interpreting a statute.</li></ul>
3	6 - 8	<ul style="list-style-type: none"><li>• Good knowledge and understanding of legal rules and principles relating to extrinsic aids available to a judge when interpreting a statute</li></ul>
2	3 - 5	<ul style="list-style-type: none"><li>• Satisfactory knowledge and understanding of legal rules and principles relating to extrinsic aids available to a judge when interpreting a statute</li></ul>
1	1 - 2	<ul style="list-style-type: none"><li>• Basic knowledge and understanding of legal rules and principles relating to extrinsic aids available to a judge when interpreting a statute</li></ul>
	0	Response not creditworthy or not attempted.

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

Jacob, a young man, was struck on the head with a ball whilst playing cricket, he was rendered unconscious and was rushed to hospital in an ambulance. At the hospital, he received several scans which showed a blood clot on his brain, he was rushed to surgery where he underwent a life-saving operation to remove the blood clot and relieve the pressure on his brain, but the operation left him with severe irreversible brain damage. His mother, Claire is convinced that Jacob will never recover and that the only way to end his suffering would be to end his life. Claire is aware that euthanasia is against the law but wishes to campaign for reform to the law.

Using your knowledge of the methods of law reform advise Claire as to the other ways, apart from the Law Commission, in which she could try to promote reform of the law on euthanasia in Wales and England. [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 Simon candidates are expected to demonstrate knowledge and understanding of the full range of legal rules and principles that affect the reform of the law. 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 might consider issues such as:

- Advising Claire that she could set up a pressure group to bring about reform of the law; there may be a reference to the success of other groups that have specific interests or causes, such as the Law Society, Greenpeace, Fathers 4 Justice, Amnesty International.
- Advising Claire of the role that Parliament and her MP can play in reforming the law of euthanasia: 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 euthanasia.
- Advising Claire that, with regard to judicial change, judges can reform the law on euthanasia through the creation of original precedent and Claire 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 Claire 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 Claire'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 Claire may help to establish the setting up of a Royal Commission on euthanasia.

<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 methods of law reform</li> </ul>
<b>3</b>	<b>3</b>	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the methods of law reform</li> </ul>
<b>2</b>	<b>2</b>	<ul style="list-style-type: none"> <li>Satisfactory knowledge and understanding of the methods of law reform</li> </ul>
<b>1</b>	<b>1</b>	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the methods of law reform</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 Claire's situation.</li> <li>Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the agencies of law reform</li> </ul>
<b>3</b>	<b>12 - 17</b>	<ul style="list-style-type: none"> <li>Good application of legal rules and principles to Claire's situation.</li> <li>Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the agencies of law reform</li> </ul>
<b>2</b>	<b>7 - 11</b>	<ul style="list-style-type: none"> <li>Satisfactory application of legal rules and principles to Claire's situation.</li> <li>Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the agencies of law reform</li> </ul>
<b>1</b>	<b>1 - 6</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Claire's situation.</li> <li>Basic presentation of a legal argument, using minimal legal terminology relating to the agencies of law reform</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 rise in crimes committed online Parliament passed the **Police Online Surveillance Powers Act 2020**

**Section 1** “If the police suspect an individual to be, about to be or to have been involved in the commission of a crime, they can use surveillance techniques to monitor all of the online accounts of the suspect.”

**Section 2** “If the police uncover incriminating evidence against the individual on their online accounts, they may be granted a warrant to arrest that person and/or search their property.”

Kate was convicted of theft of a pair of designer shoes 5 years ago. She paid a fine for the offence and carried out community service. She has been searching online for a new pair of designer shoes to buy and has contacted Saffron, a fashion blogger, via social media, asking her advice on which shoes to ‘grab before they’re gone’. The police have arrested Kate on suspicion of planning another theft and have applied for a warrant to search her property.

Using your knowledge of statutory interpretation, advise Kate as to whether the actions of the police are lawful.

[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 Kate 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 Kate’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, interpretation of ‘grab before they are gone’.
  - **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*, *Quinatown*, *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.

<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 statutory interpretation.</li> </ul>
<b>3</b>	<b>3</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of statutory interpretation.</li> </ul>
<b>2</b>	<b>2</b>	<ul style="list-style-type: none"> <li>• Satisfactory knowledge and understanding of statutory interpretation.</li> </ul>
<b>1</b>	<b>1</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of statutory interpretation.</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 Kate'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 Kate'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 Kate'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 Kate'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 aims of sentencing where the defendant is a young offender. [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 aims of sentencing where the defendant is a young offender, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the sentencing process. In demonstrating this knowledge and understanding, candidates are required to be aware of the main aims of sentencing outlined in the Criminal Justice Act 2003.

The response might consider issues such as:

- Offenders aged between 10 and 17 are classed as youth offenders and are usually tried in the Youth Court unless the case is so serious that it is tried in the Crown Court.
- Several types of sentences are available for youths, but the primary aim of youth sentencing stated in s.142 Criminal Justice Act 2003 is to prevent reoffending and to rehabilitate.
- S, 142 CJA 2003 outlines five main aims of sentencing:
  - Retribution.
  - Deterrence, individual and general.
  - Protection of society.
  - Rehabilitation.
  - Reparation.
- Candidates may refer to cases such as *Thompson and Venables v UK* (1999).

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	<ul style="list-style-type: none"><li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the aims of sentencing where the defendant is a young offender</li></ul>
2	3 - 5	<ul style="list-style-type: none"><li>• Good knowledge and understanding of legal rules and principles relating to the aims of sentencing where the defendant is a young offender</li></ul>
1	1 - 2	<ul style="list-style-type: none"><li>• Basic knowledge and understanding of legal rules and principles relating to the aims of sentencing where the defendant is a young offender</li></ul>
	0	Response not creditworthy or not attempted.

- (b) Analyse and evaluate whether the right to jury trial is a fundamental part of the criminal justice system in Wales and England. [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 whether the right to jury trial is a fundamental part of the criminal justice system in Wales and England. In order to analyse and evaluate these aspects, candidates must understand that trial by jury is a feature of the Welsh and English legal system but is not without criticism. Overall candidates will offer a debate and come to a substantiated judgment regarding whether jury trial is a fundamental part of our criminal justice system or whether it should be replaced with an alternative method of deciding the innocence or guilt of a suspect.

The response might consider aspects such as:

Arguments in favour of the jury being a fundamental part of the criminal justice system include:

- Ancient institution. Lord Devlin – “lamp that shows freedom lives”.
- Ordinary person participating in justice system. Magna Carta – right to be tried by one’s peers.
- Representative of society – should include members of the defendant’s class and race.
- Fair verdict rather than legally correct – R v Owen (1992); R v Kronlid & Others (1997).
- Common sense decisions, impartial and based on fact.
- 12 opinions are better than 1 single judge.
- Discussions within the jury room are secret, so protected from outside influence.
- Jury not case hardened.
- Less prosecution minded.
- Concept of jury equity means that juries cannot be influenced by the judge – R v Wang (2005), R v Ponting (1985), Bushell’s Case (1670).
- Criminal Justice and Courts Act 2015 – new offences may be more of a deterrent for contemptuous behaviour.

Arguments against the jury being a fundamental part of the criminal justice system include:

- Jurors may not understand case presented to them – research by Middlesex University – 43% of jurors understood everything. e.g. R v Pryce (2013).
- Dominance by strong individuals. R v Alexander and Steen – “amorous juror case”
- May be taken in by experts and the appearance of legal personnel.
- Dr Penny Derbyshire – age, gender, socio economic status will affect jury verdict.
- Members of the jury can be very distressed at the evidence and in some cases may need counselling – R v West (1996).

- Difficult to research because of Contempt of Court 1981 – R v Mirza (2004).
- Contempt – R v Banks (2011), R v Frail (2011), A-G v Davey & Beard (2013). Influence of media/internet.
- Risk of bias where police officers or legal professionals are serving on a jury – R v Abdroikov (2007), R v Khan (2008).
- We don't know how juries reach their verdicts – R v Young.
- Media Influence is a strong disadvantage – R v Taylor & Taylor (1993); R v Frail; R v Davey & Beard.
- Danger of Jury Tampering – R v Twomey and others – more reliable to have judge only trial?
- Reforms / Alternatives to the jury system.

<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 whether the right to jury trial is a fundamental part of the criminal justice system in Wales and England.</li> <li>• Excellent evaluation of whether the right to jury trial is a fundamental part of the criminal justice system 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 whether the right to jury trial is a fundamental part of the criminal justice system in Wales and England.</li> <li>• Good evaluation whether the right to jury trial is a fundamental part of the criminal justice system 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 whether the right to jury trial is a fundamental part of the criminal justice system in Wales and England.</li> <li>• Satisfactory evaluation of whether the right to jury trial is a fundamental part of the criminal justice system 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 whether the right to jury trial is a fundamental part of the criminal justice system in Wales and England.</li> <li>• Basic evaluation whether the right to jury trial is a fundamental part of the criminal justice system 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 reasons for the use of alternative dispute resolution in civil cases 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 reasons for the use of alternative dispute resolution in civil cases in Wales and England, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the need for ADR. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on why ADR may be a more appropriate means of solving a dispute rather than a court based resolution.

The response might consider issues such as:

- Court action, litigation, is not always the most appropriate means of resolving a dispute, this can be for many reasons such as:
  - complexity of legal procedures.
  - delay it causes in resolution.
  - cost of taking a case to court.
  - intimidating atmosphere of the courts.
  - public nature of court action.
  - adversarial nature of court action, which can result in a deterioration of the relationship between parties.
  - ADR encouraged by the Civil Procedure Rules 1998.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of the legal rules and principles relevant to the reasons for the use of alternative dispute resolution in civil cases in Wales and England</li> </ul>
2	3 - 5	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the legal rules and principles relevant to the reasons for the use of alternative dispute resolution in civil cases in Wales and England</li> </ul>
1	1 - 2	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the legal rules and principles relevant to the reasons for the use of alternative dispute resolution in civil cases in Wales and England</li> </ul>
	0	Response not creditworthy or not attempted.

- (b) Analyse and evaluate the effectiveness of the main methods of alternative dispute resolution. [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 evaluate the effectiveness of the main methods of alternative dispute resolution. In order to analyse and evaluate these issues, candidates should discuss the various methods of ADR and their advantages and disadvantages. Overall candidates will offer a debate and come to a substantiated judgment regarding the effectiveness of the main methods of alternative dispute resolution.

The response might consider issues such as:

- 4 main forms of ADR
  - **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 a decision on the parties; Scott v Avery clause; 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 effectiveness of the main methods of alternative dispute resolution</li> <li>• Excellent evaluation of the effectiveness of the main methods of alternative dispute resolution, 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 effectiveness of the main methods of alternative dispute resolution</li> <li>• Good evaluation of the effectiveness of the main methods of alternative dispute resolution, 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 effectiveness of the main methods of alternative dispute resolution</li> <li>• Satisfactory evaluation of the effectiveness of the main methods of alternative dispute resolution, 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 effectiveness of the main methods of alternative dispute resolution</li> <li>• Basic evaluation of the effectiveness of the main methods of alternative dispute resolution</li> <li>• Basic use of supporting case law and legal authorities.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.