Cambridge Assessment International Education

Example Candidate Responses – Paper 1

Cambridge International AS & A Level Law 9084

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Introduction

The main aim of this booklet is to exemplify standards for those teaching Cambridge International AS & A Level Law, and to show how different levels of candidates' performance (high, middle and low) relate to the syllabus requirements. This document helps teachers to assess the standards required to achieve marks beyond the guidance of the mark scheme.

In this booklet candidate responses have been chosen from the June 2023 exam series to exemplify a range of answers.

For each question, the response is annotated with examiner comments about where and why marks were awarded or omitted. This is followed by comments on how the answer could be improved. There is also a list of common mistakes and guidance for candidates.

Please refer to the June 2023 Examiner Report for further details and guidance.

The mark scheme is available on the School Support Hub

9084 June 2023 Question Paper 12

9084 June 2023 Mark Scheme 12

Past exam resources and other teaching and learning resources are available on the School Support Hub

How to use this booklet

This booklet goes through the paper one question at a time, showing you the high-, middle- and low level response for each question. In the left-hand column are the candidate responses, and in the right-hand column are the examiner comments.

Example Candidate Response – high	Examiner comments
Moral beliefs are things believed by a society to be right or wrong and these beliefs are then responsible for creating rules and regulations. An example of a moral belief is that (1) murder is wrong, it should be punished at all costs. Hence originating from this ~~the~~ murder became an offence by law. Similarly, theft is also morally believed to be an incorrect act and hence it is also a punishable often.	(1) The candidate provides two examples of moral belief, which would be considered objective moral beliefs and therefore can be credited with full marks. **Total mark awarded = 2 out of 2**

Answers are by real candidates in exam conditions. These show you the types of answers for each level. Discuss and analyse the answers with learners in the classroom to improve their skills.

Examiner comments are alongside the answers. These explain where and why marks were awarded. This helps you to interpret the standard of Cambridge exams so you can help your learners to refine their exam technique.

How the candidate could improve their answer

The candidate did not need to provide a detailed explanation of the moral beliefs. Where the command word is ‘Identify’, a list is acceptable as it may use up valuable exam time to provide too much unnecessary detail.

This section explains how the candidate could have improved each answer. This helps you to interpret the standards of Cambridge exams and helps your learners to refine their exam technique.

Common mistakes and guidance

- For questions where the command word is ‘Identify’, a list will suffice.
- For moral beliefs, candidates should consider objective common moral beliefs only and not religious or societal norms.
- One mark is awarded per ‘belief’, so if a candidate lists r creditable.

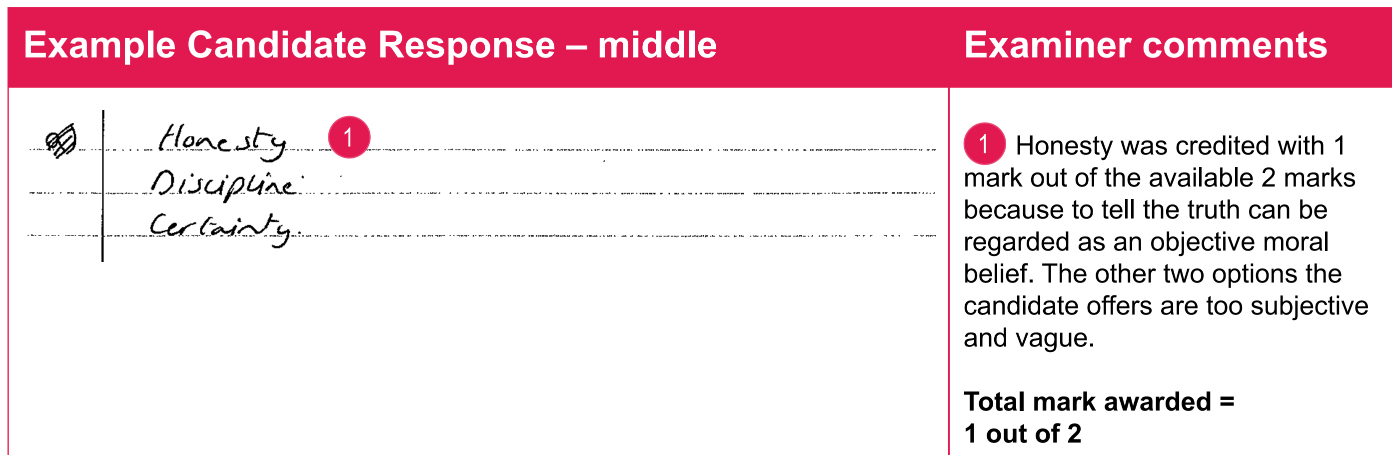
This section lists common mistakes as well as helpful guidance from the examiner. This will help your learners to avoid these mistakes. You can use this alongside the relevant Examiner Report to guide your learners.

Question 1

Example Candidate Response – high	Examiner comments
Moral beliefs are things believed by a society to be right or wrong and these beliefs are then responsible for creating rules and regulations. An example of a moral belief is that (1) murder is wrong, it should be punished at all costs. Hence originating from this ~~the~~ murder becar an offence by law. Similarly, theft is also morally believed to be an incorrect act and hence it is also a punishable often.	(1) The candidate provides two examples of moral belief, which would be considered objective moral beliefs and therefore can be credited with full marks. **Total mark awarded = 2 out of 2**

How the candidate could improve their answer

The candidate did not need to provide a detailed explanation of the moral beliefs. Where the command word is 'Identify', a list is acceptable as it may use up valuable exam time to provide too much unnecessary detail.



Example Candidate Response – middle	Examiner comments
Honesty (1) Discipline Certainty.	(1) Honesty was credited with 1 mark out of the available 2 marks because to tell the truth can be regarded as an objective moral belief. The other two options the candidate offers are too subjective and vague. **Total mark awarded = 1 out of 2**

How the candidate could improve their answer

These low tariff questions needed to remain focused on the question and the nature of morality is that the answers need to be objective and focused on the common morality.

Example Candidate Response – low	Examiner comments
Two examples of a moral belief could be respect elders, (1) and no drinking. (2)	(1) This is not credited because this is not objective and rather vague. Respecting elders could be regarded as a societal norm, rather than a moral belief. (2) This is not credited because of the lack of objectivity again. This could be perceived as a religious belief rather than a common moral belief. **Total mark awarded = 0 out of 2**

How the candidate could improve their answer

For these answers, candidates needed to focus on the question and provide objective moral beliefs in line with common morality.

Common mistakes and guidance

- For questions where the command word is ‘Identify’, a list will suffice.
- For moral beliefs, candidates should consider objective common moral beliefs only and not religious or societal norms.
- One mark was awarded per ‘belief’, so if a candidate listed more than two, the examiner took the two that are most creditable.

Question 2

Example Candidate Response – high	Examiner comments
Barristers are a type of lawyer or a legal professional that deals with law. The role of a barrister is first and foremost, advocacy. (1) Barristers are trained to present cases in front of Judges in courts (and juries as well). They are their to argue cases whether from the prosecution or the defence. Barristers can also draft documents and advice their clients for appeals and in some cases where they think it is suitable, they submit the appeals as well.	1 The candidate is awarded full marks here as these are two roles of a barrister. It is pleasing to see candidates using the correct legal terminology, such as 'advocacy, rather than 'representing clients in court'. Where the command word is 'Identify', succinct use of the correct legal terminology is preferred. **Total mark awarded = 2 out of 2**

How the candidate could improve their answer

This candidate wrote a detailed explanation of the roles. Where the command word is 'Identify', only a list is needed. The candidate could have been briefer to have more time for higher tariff questions on the paper.

Example Candidate Response – middle	Examiner comments
(1) Barrister is an advocate. ~~He~~ He represents defendants and victims. His role is to represent them (2) and try to win the case. He has his confendentiality to his clients. (3)	(1) The candidate indicates one role of a barrister for 1 mark out of the available 2. Instead of explaining this, the candidate would have been better placed to offer a second role. (2) Maintaining confidentiality is a quality of a good barrister, rather than a role and so the candidate would not have been awarded a mark for this. (3) Overall, this is quite a succinct answer and the right length for this type of question, therefore the candidate has used their exam time well. **Total mark awarded = 1 out of 2**

How the candidate could improve their answer

Candidates should keep their answer focused on the question, in this case the role of barristers, rather than the qualities of a barrister.

Example Candidate Response – low	Examiner comments
(1) A barrister has many roles in which brief reading of the case is involved where the barrister has to briefly read and describe the case with a understanding. Secondly a barrister is like a solicitor but an upgraded version of it.	(1) This answer is repetitive with the candidate talking about the barrister 'briefly reading' a couple of times – there is clear confusion here and no use of legal terminology or any convincing knowledge that the candidate knows the role of a barrister. **Total mark awarded = 0 out of 2**

How the candidate could improve their answer

There was no use of legal terminology here, such as 'advocacy', or 'representing' or 'drafting' so the candidate could have improved their answer by including such legal terminology and keeping the answer focused on the specific nature of the question.

Common mistakes and guidance

- The correct use of legal terminology is key in the low tariff questions. To help with this, candidates could produce a glossary of terms, or their own legal dictionary to practise these terms whilst revising.
- Low tariff questions are likely to be very narrow in their focus and candidates should be encouraged to focus their answer on the question being posed.

Question 3

Example Candidate Response – high	Examiner comments
The parliament is the body responsible for making laws aka the main lawmaking body. The parliament has 2 houses, house of commons (HOC) and House of Lords (HOL) where 5 stages take place before ~~the~~ an Act is passed. After the bill is drafted it ~~go~~ enters the HOC where the bill has it's first reading. **(1)** In the first reading of the bill, it's objectives are introduced to the parliament and no debate takes place. This ensures that there is time for the MPs to research regarding the bill themselves. Followed by the first reading, the bill reaches it's second reading **(2)** where the main debate takes place. This debate counts for amendments or changes for the bill as well and is recorded in Hansard. A vote orally is taken by the MPs or formally if the oral vote is not clear. If the votes are enough the bill reaches comittee stage **(3)** where each and every clause of the bill is discussed by a ~~me~~ comittee chosen through expertise from the parliament. If any amendments are proposed the bill reaches report stage **(4)** where the amendments are debated in the HOC otherwise it directly goes to the 3rd **(5)** reading which is the final stage for voting. The Bill then goes to the HOL where these stages are repeated again and lastly it reaches the royal assent which is the official stamp by the Monarch and then the bill becomes law. **(6)**	**1** First Reading. **2** Second Reading. **3** Committee Stage. **4** Report Stage. **5** '3rd' Reading. It is better practice to write Third in full. **6** Even though the candidate provides five stages to this point, they do then go on to discuss the remaining stages of the process with some detail on the stages being repeated in the House of Lords and finally gaining Royal Assent. Both of these stages would also have been creditworthy in the absence of stages earlier in the process. **Total mark awarded = 5 out of 5**

How the candidate could improve their answer

This candidate achieved full marks for this answer for correctly identifying the five stages a Bill must go through. The candidate need not have provided so much detail for the answer. The command verb used in this question is ‘Identify’, so no more than a list is required. Whilst the narrative around each stage is accurate, it attracts no more marks than merely listing five of the stages.

Example Candidate Response – middle

(1) The fire stage are:- the first is first reading (2) in any of the House of the parliment either house of common or house of lords, the second stage is second reading in the house (3) there will be discussion and voting at this stage that if the bill doesnt required amendment and pass this stage it will (4) be sent to the community stage where amendment will be made after this there will be third reading where parliment will vote. Then the bill will be (5) sent to other house and if it get pass from there it will be sent to the queen for sign and make it official law then sent back to the parliment to decide a date then this law will come in force (6)

Examiner comments

1. The candidate accurately provides three of the stages of the legislative process.
2. First Reading.
3. Second Reading.
4. The candidate inaccurately writes Community Stage as opposed to the correct term Committee Stage.
5. Royal Assent.
6. Some definitions are inaccurate, but due to the command word in the question, a list of accurate stages is sufficient for the marks awarded.

Total mark awarded =
3 out of 5

How the candidate could improve their answer

This is generally a good answer with some good use of legal terminology, though there are some inaccuracies which prevented higher marks. Where the command word is 'Identify', a list is sufficient as long as the correct terminology is used.

Example Candidate Response – low	Examiner comments
There are five stages a bill goes through before becoming a act of the parliament which are first stage, 1 1 second stage 2 committee stage, play stage and third stage. It either goes to HoC or HoL 3	1 'First stage' and 'Second stage' are inaccurate. The correct terminology is 'First Reading' and 'Second Reading'. Due to the narrow focus of the question and the need to 'Identify' the stages of the legislative process, incorrect use of terminology cannot be credited. 2 Identification of the 'Committee Stage' is credited with 1 mark. 3 It is not good practice to use acronyms, especially in this type of question where the term has not been written in full at its first occurrence. There is also no context around what the candidate means by this. The stage the candidate is referring to is that the Bill would go through a similar procedure in the House of Lords if the Bill started in the House of Commons, but this is not made clear by the candidate. **Total mark awarded = 1 out of 5**

How the candidate could improve their answer

It is imperative that candidates use the correct terminology and provide knowledge of the legislative process accurately, and preferably in the correct order. Although there was a correct use of 'Committee Stage', this was the only stage correctly identified by the candidate.

Common mistakes and guidance

- Many candidates used incorrect legal terminology, for example, referring to 'Second stage', instead of 'Second Reading'. This will affect marks significantly, as there was 1 mark available for each stage.
- This question only attracted 5 marks, yet candidates wrote quite extensively about the legislative process. Whilst in most cases, this was done accurately, it is not a good use of examination time which would be better spent on the higher tariff questions in Section B.

Question 4

Example Candidate Response – high

(1) There are 3 classifications for criminal offences. The first one being (2) summary offences where the offences are usually considered minor and their sentences are also very minor. These offences can be tried in the magisterate court and some of the examples include; common assault and shoplifting etc. Theft under £200 pounds is also considered a summary offence.

(3) A triable either way offence is an offence that can be towards the summary or the indictable side (most serious). These offences are dealt in magistrate courts and sometimes crown courts as well depending upon the facts which describe it's nature for eg theft is an triable either way offence where theft less than £200 can be considered summary whereas theft of lets say £200,000 would be considered indictable or more serious and the sanction depends on it's nature.

Lastly, (4) indictable offences are offences that are most serious in nature for eg murder or rape. These offences have harsher punishments for eg life sentences and are always dealt with in the crown court even though the first hearing is done in the magistrates court.

Examiner comments

1 This example attracts full marks for talking about the three categories of criminal offence with some detail for up to 2 marks per classification of offence. This answer is well structured and well written.

2 Summary offences are identified (1 mark) with some narrative about the court in which they are tried as well as some examples (1 mark).

3 Triable either way offences are correctly identified (1 mark) with some commentary about the courts in which they are tried and some examples (1 mark).

4 Indictable offences are identified (1 mark) as the most serious and again an explanation is offered in relation to examples and courts (1 mark).

Total mark awarded = 6 out of 6

How the candidate could improve their answer

The candidate could have provided a little more detail in terms of how the decision about which court a triable either way offence case is made – that it is the defendant who chooses. However, in this case, the full marks were awarded because the candidate provided enough narrative in terms of examples for the additional 1 mark that the explanation attracted.

Example Candidate Response – middle

There are three classifications of criminal offences. The first one is the most least serious offence which will be held in ~~cou~~ magistrates court (1) The second is a serious offence ~~withi~~ in which the case can be held both in magistrates court and crown court (2) The third offence is the most serious offence in which the case has to be held in crown court. (3)

Examiner comments

(1) The candidate does not explicitly identify 'Summary offence' and instead refers to them as the 'least serious'. This would not be credited. However, the explanation that came with it would be given 1 mark.

(2) Triable either way offences are also not identified, so no mark is awarded for that. However, the candidate provides the relevant commentary that these cases can be heard in either the Magistrates' or Crown Courts.

(3) Credit is given here for the implication that the 'most serious' offences are heard in the Crown Court but again no citation of 'indictable offences', as the question requires.

Total mark awarded =
3 out of 6

How the candidate could improve their answer

This candidate could have gained an extra 3 marks taking their total to the full 6 marks, had they identified the three classifications of offence and used legal terminology correctly.

Example Candidate Response – low	Examiner comments
1 either-way offence, ~~[illegible]~~ triable offence and punishable offence	1 This is clearly a very brief answer, so the 1 mark was given for reference to 'triable either way', and even though this was slightly in the wrong order, the benefit of the doubt was given in order to positively credit the candidate. Reference to 'punishable offence' is not credited as it is not clear what the candidate means here. **Total mark awarded = 1 out of 6**

How the candidate could improve their answer

The suggested structure for this question was to identify the three classifications of criminal offence and offer some explanation or narrative about each category. The explanation required was not explicit, so it could have ranged from examples of the types of offences in each category, the courts involved with each category and even the level of seriousness, but these were missing from this answer.

Common mistakes and guidance

- As with other low tariff questions, there was a lack of the use of key legal terminology, such as 'summary', 'triable either way' and 'indictable'.
- There was also some confusion between the Crown Court and the County Court. Candidates should be reminded that the Crown Court is a criminal court, and the County Court is a civil court.
- Candidates need to be reminded of the time allocation with this question – it is worth only 6 marks, so the length of the answer should reflect that and pages of writing are not necessary to access the full range of marks so long as the candidate writes succinctly and uses the correct terminology.

Question 5

Example Candidate Response – high	Examiner comments
1 (sec A) magistrates have been part of the justice system since the Justices of Peace Act 1361 as well as jury. These two ~~lay personnel~~ roles provide a lay personnel input to the ~~cas~~ case to ensure justice. However, since they are unexperienced there may be disadvantages as seen in this answer.	1 This candidate focuses their answer solely on the disadvantages of both juries and magistrates rather than considering laypeople as a whole entity, which is the correct way to approach this question.
~~As~~ magistrates are trained and appraised for a few years but there is always a risk of magistrate being pro-prosecution as seen in the case of R v Bingham Justice 1974. ~~Additionally~~ 2	2 This is an excellent example of how the AO2 and AO3 marks work because the candidate provides a disadvantage of magistrates – '*pro prosecution*' (AO3) and then supports it with a relevant case for the AO2 marks.
3 Additionally, due to their lack of expertise the lay personnel may take absurd decisions and not be able to keep a ~~neut~~ neutral mindset and focus upon the law. In R v Kronlid the jury had ~~resulted~~ ~~to~~ come with a not guilty verdict even though the defendant was clearly guilty and in the case of R v Young ~~they~~ the jury used an Ouija Board to come up with a verdict.	3 The candidate then does the same, but this time with a disadvantage of juries, again with the use of a relevant case to support the point being made.
Even though the cost of a magistrate court is less, ~~and the jury~~ the magistrate has the legal clerk to advise them in the matter of law to ensure justice. However, this doesn't disregard the fact that the magistrate sitting	

Example Candidate Response – high, continued

in court are of older age and are (4) mostly retired men who have no knowledge of the judiciary and the system.

~~Addition~~ Even though juries are selected through a computer generated system there may be lack of representation atleast racially as seen in the case of R v Fraser 1989 and R v Ford, thus leading to miscarriage of justice.

To add on, ~~the jury also can be bribed or~~ the jury nobbling may also (5) take place and since jury takes its decisions privately ~~they~~ the court and 2 parties are unaware of the discussion taking places in the chambers which can lead to unfair verdicts if there was jury tampering.

Even though the jury and magistrate ~~system~~ has been part of the system for several years and can lead to a unbiased view of an ~~outside~~ outside party, it doesn't change the fact that the lay personnel are inexperienced and may have no knowledge of the law leading to unfair decisions of what they think is right or wrong but not the legal view of it.

Examiner comments

4 This is a valid point, but the candidate could have supported this with some diversity statistics of magistrates. The candidate does, however, use cases to support the point about representation of juries.

5 Jury tampering and the impact of this is another relevant disadvantage of juries which the candidate explains – that is, it can lead to unfair verdicts. This development is sufficient to award the AO2 marks.

Mark for AO2 = 6 out of 6
Mark for AO3 = 4 out of 4

Total mark awarded = 10 out of 10

How the candidate could improve their answer

This was an excellent answer which clearly showed reasoned analysis, effective use of relevant examples and clearly focused evaluation which means this answer hits the criteria for the top bands for both assessment objectives. The inclusion of relevant case law showed a clear understanding of the topic, though there was a missed opportunity for the inclusion of some diversity statistics.

Example Candidate Response – middle	Examiner comments
5 The role of ~~[crossed out]~~ Jurors and magistrates in criminal justice system is critisised for its disadvantages. Magistrates and specifically lay magistrates are not legally qualified. This is why it can be hard for them to solve more technical issues which can lead to wrongful and unjust decisions. ~~[crossed out]~~ Secondly they can rely too much on the court clerk which can cloud their own judgement and thought process. Lay magistrates convict most of the offenders the ratio is very disproportionate to higher courts. Lastly the conviction rate in different areas is different this can put people in disadvantage. As for jurors they are not legally qualified so they might find it difficult to handle complicated cases. Secondly they can make absurd decisions as once reported in a case jurors used the ouija board to come to a decisions. Jurors can also need councelling as graphic images might frighten them. Jurors can easily be intimidate. Jurors can also be bribed easily which could lead to injustice.	1 The candidate correctly identifies that magistrates and juries are not legally qualified, which is a disadvantage and there is some development on the impact of this which is a good approach to take. 2 The candidate refers to "*they*" here – it is not clear whether this refers to juries or magistrates and so the candidate hasn't convincingly shown a clear understanding of the difference between them. There is also a missed opportunity for case law here which would have illustrated the point well. 3 Here, the candidate refers to the case *R v Young*, but they do not directly cite it. This means that there is no citation of legal authority at all throughout the whole answer – this will significantly affect the candidate's AO2 marks. Therefore, this answer only achieves half of the marks available for AO2. 4 From here, the candidate provides three conclusive disadvantages which are all correct and can be credited as AO3. Without development or supporting legal authority, they would not gain the corresponding AO2 marks. Mark for AO2 = 3 out of 6 Mark for AO3 = 3 out of 4 **Total mark awarded = 6 out of 10**

How the candidate could improve their answer

- Rather than discussing juries and magistrates together, candidates who accessed the higher bands were more likely to have discussed juries and magistrates separately with their distinct disadvantages.
- This answer was rather generic in nature and also lacked supporting legal authority or further development for the top of the band for AO2.

Example Candidate Response – low	Examiner comments
Using lay person as jurors and magistrate in the criminal justice system has numerous disadvantages as it causes alot of confussion to ordinary claimed. The first disadvantage is that lay People can be biased as jurors (1) and magistrates in the criminal justice system. They have alot of legal knowledge and since (2) they can sometimes provide evidence they would totally know wheather the defendent is guilty or not. The second disadvantage is competition. lay People might compete with other less expert juriors and disagree with then as they might think they are higher then them. Thirdly, Magistrate court handles simple criminal cases ~~and this supposed to attack~~ as this fact is known to all citizens so some defendents might have low confidence to get a small fine and be imposed up to six month improsenment when a lay person handles the case rather then a normal magistrate. Lastly, some might think its an advantage to have lay People like barristers, solicitors or legal workers as a juror or magistrate in the criminal justice system as they have high knowledge, qualification (3) and expertise while some ~~might find~~ might find it unusual and irritating as it might create competition and being biased.	(1) The candidate provides a disadvantage (bias) but does not support this with any development or legal authority or any indication as to the impact this may have on the criminal justice system. (2) This paragraph is almost totally inaccurate, as the point of laypeople is that they have no legal knowledge. (3) The candidate seems confused here as competition is not seen as a disadvantage of laypeople – in fact quite the opposite – jury service is seen as a civic obligation. Mark for AO2 = 1 out of 5 Mark for AO3 = 2 out of 5 **Total mark awarded = 2 out of 10**

How the candidate could improve their answer

There is very little focus on the question overall here and the candidate produced a wholly inaccurate answer with no legal authority or development of the one accurate disadvantage that has been provided. The point about bias was repeated and showed that the candidate had very little knowledge about juries or magistrates.

Common mistakes and guidance

- The best answers to this question provided a balanced answer where both magistrates and juries were considered equally. This shows that the candidate has considered the question and attempted to focus their response on answering the question.
- In questions such as this, legal authority is of vital importance. Remember legal authority can take many forms: most commonly cases and statutes, but also statistics, newspaper reports, academic opinion or generic examples.
- A list of disadvantages is unlikely to attract high AO2 marks if they are not supported with development or legal authority.
- Some answers considered only juries or magistrates and although at times, this was done very well, without addressing the full demands of the question, were unlikely to achieve full marks.

Question 6

Example Candidate Response – high

a The court of appeal (CoA) is the main appellate court for both civil and criminal cases in the legal system of the UK. The workload is higher in this court than in the supreme court hence it is argued, more by lord Denning than others that this court should not be bound by precedent of the supreme court or its own previous decisions.

There are a number of ways in which a binding precedent can be avoided by this court. The guidelines for being able to depart from its own previous decisions were set out in the case of Young v Bristol airplanes. It is stated that the CoA can depart from its own previous decisions if there are two previous decisions that are conflicting with each other. In this case, the judge is free to choose which decision they stand by. They can also depart if a previous CoA decision is conflicting with a supreme court / house of lords decision that came after it. In this case, the supreme court decision is to be followed. The last exception is if a decision was made per incuriam, this is when a decision is made in error and all the law or case precedent is not taken into consideration.

For per incuriam cases, it was pointed out in Rickards v Rickards that this exception is only to be used in rare circumstances and the bases for it were widened in the case of R v Cooper where it was said that

Examiner comments

1 The candidate provides a good introduction here which puts the Court of Appeal into context in terms of its place in the hierarchy. Doing this helps focus the answer on the question and helps the candidate to avoid wandering into irrelevant content.

2 The inclusion of *Young v Bristol Aeroplane Co* here immediately focuses on the question.

3 These are the exceptions in *Young* which are stated and explained in relevant detail.

4 The candidate further explores the *per incurium* exception with some excellent use of legal authority in the form of two cases to support its use.

Example Candidate Response – high, continued

the decision could be considered to be made in error if all material considerations were not taken into account as in this case the Safeguarding of Vulnerable Persons Act 2006 was about to be introduced but not yet enacted. This is broader than only existing legislation and case law not being taken into account. In criminal cases, since the liberty of the subject is under threat even the law being misapplied or misinterpreted is considered valid grounds for a case being per incuriam. **5**

Another way in which the CoA may depart from a binding precedent is if the previous decision is incompatible with the European Convention of Human Rights or the European Court of Human rights has given a different decision. This is allowed under section 2(1)(a) of the European convention of human rights. It was done in the case of Re Medicaments when the court of appeal refused to follow the previous judgement of the HOL in R v Cooper since it was incompatible with the European Convention. **6**

Additional ways in which the court can move away from precedent are by overruling, distinguishing or reversing. Overruling is when a ~~per~~ previous decision is changed and a new decision is given. Since binding precedent is mostly by higher courts, overruling **7**

Examiner comments

5 Further credit is given here for knowledge that the Court of Appeal has an additional exception for criminal cases where the law has been misapplied or misunderstood.

6 The candidate discusses the Human Rights considerations that the Court of Appeal has to take into account, and specifically implies the power to issue a declaration of incompatibility. This is a sophisticated point and shows an excellent, focused knowledge of the Court of Appeal.

7 The candidate then concludes with some explanation of ‘other’ avoidance techniques with some accurate definitions and supporting cases when discussing distinguishing.

Example Candidate Response – high, continued	Examiner comments
cannot be done except in cases of per incuriam through the human rights exception. Reversing is when a decision appealed from a lower court is reversed (quashed) but this can also not be practiced for binding precedent which is from higher courts. Distinguishing may be an effective method in which the facts of the case are separated from a previous case which would otherwise form a binding precedent. This was done in the case of Balfour v Balfour and Merritt v Merritt which were both about contract disputes between spouses but in Balfour the intent to sue was not established whereas in Merritt it was established due to the existence of a written contract. In the case of R v Simpson, a panel of 5 judges overruled a previous decision of a panel of 3 judges and it was believed that a larger bench could depart from decisions of a smaller bench but it was emphasized in R v Magro that this was not the case and departing from decisions could especially not be done when it ~~affect~~ ~~disag~~ disadvantages the defendant. 8	8 Overall, an excellent answer which remains focused on the Court of Appeal throughout with a logical, coherent structure and supporting legal authority. Mark for (a) = 10 out of 10 Mark for AO1 = 10 out of 10

Example Candidate Response – high, continued

b) The idea of consistency in judicial decisions has been propagated by the judges involved in the judiciary many times. For example in the case of London Street Tramways it was stated that the need for certainty trumps individual hardship.

The court of appeal has tried to depart from the decisions of the supreme court many times but has mostly been unsuccessful especially in the time of Lord Dennings. In the case of Miliangos v George Frank, Dennings overruled Havana Railway and said that damages could be awarded in ~~euro~~ sterling. ~~This was reversed by~~ the Supreme Court ~~and~~ it was commented that it was not within the CoA's powers to depart from decisions of the Supreme court (SC) as they deemed appropriate. However, when the case was appealed ~~by~~ to the SC they sided with Dennings reasoning and gave the same decision themselves. **9**

10 In the case of Davis v Johnson (1979) on the matter of the interpretation of the Violence and Matrimonial Proceedings Act 1976, ~~it~~ the CoA again tried to overrule a SC decision but was strictly reprimanded and it was stated that the rules set out in the Young v Bristol case were to be followed in all cases.

Examiner comments

9 Lord Denning is an excellent place to start this evaluation – his attempts to allow the Court of Appeal to depart from decisions of the Supreme Court is a key aspect. This candidate explains that argument, with some supporting cases which immediately focuses the answer.

10 The candidate then discusses *Davis v Johnson* which is a key case where Lord Denning refused to follow a decision of the Supreme Court. Crucially, the candidate then develops this by explaining the impact of this case and the rules of *Young* are to be followed by the Court of Appeal without exception. This is excellent context for the candidate's evaluation.

Example Candidate Response – high, continued

There are numerous reasons for why the CoA should be allowed to depart from SC decisions.

(11) The first being the fact that more cases are heard by the CoA since they are mostly the final court of appeal hence they should be able to depart from absurd decisions so that fairness in the law can be maintained.

(12) This is because usually the cost of taking a case to the SC is so high that most cases will end in the CoA hence if they are not given the flexibility of judicial creativity, the law will fail to develop according to the social and economic changes since a case rarely reaches the SC for them to depart from old and unfair decisions.

(13) Moreover, the CoA creates precedent for lower courts hence its decision need to be fair and deliver justice to those whose rights have been infringed but since they cannot depart from SC decision, this becomes difficult. Many SC decisions are also old and irrelevant to the current age but these still have to be followed since they form binding precedent which can only be surpassed in a limited number of exceptions hence not being able to depart leads to rigidity in the law.

(14) Reasons for why the CoA should NOT be able to depart from these decisions are also plenty. The major one being that the English legal system follows a structure

Examiner comments

11 The candidate writes about reasons why the Court of Appeal should be able to depart from the Supreme Court's decisions. For those supporting AO2 marks, this is done well by the candidate as they explain the reason and then develop it further by talking about the impact.

12 The candidate uses excellent connectives here to show how they are developing their point, so uses words and phrases such as 'This is because….', 'If….then…', 'Moreover…'.

13 The candidate starts their next evaluative point using a new paragraph which is good practice.

14 The candidate then talks about why the Court of Appeal should not be able to depart from the Supreme Court's decisions.

Example Candidate Response – high, continued	Examiner comments
hierarchy and if the CoA can depart from decisions of the SC then the SC will no longer be considered higher in hierarchy and subsequently the need for this court to exist will be reduced. (15) It is also that judges in the SC are to be given utmost respect due to their seniority hence their legal decisions are to be followed and stood by and if the CoA is allowed to surpass these decisions, this system of respect will be disturbed. It is also true that this will lead to the CoA becoming the final appellate court and the law may become to complicated due to conflicting decisions of the SC and CoA which leads to inconsistency. This makes it difficult for lawyers to advise their clients and a general state of confusion is created. (16)	(15) Credit is given here for a further evaluation point (AO3) and a development point on the impact of this (AO2). (16) The candidate provides a concluding paragraph which can be credited as a further evaluation point. Candidates should be advised that this is fine as a concluding paragraph and as a rule, it is advisable for conclusions to add more value to the answer than simply be a repetition of what has already been said. Mark for (b) = 14 out of 15 Mark for AO2 = 7 out of 8 Mark for AO3 = 7 out of 7 **Total mark awarded = 24 out of 25**

How the candidate could improve their answer

- Overall, this is an excellent answer. Full marks would have been awarded if there had been cases to support some of the avoidance techniques, such as overruling and reversing.
- **(a)** The answer clearly showed a thorough knowledge and understanding of the Court of Appeal and the role it played in precedent. It is good practice to immediately focus the answer and using the wording of the question in these introductory statements can help this.
- **(b)** The answer showed a 'mostly focused and reasoned evaluation' and there was very little, if any, evidence of the candidate wandering into irrelevant or unnecessary content. The answer remained focused and was well written in a logical and coherent way with good use of connectives, which showed the examiner the thought process in terms of a balanced and supported evaluation of the question posed.

Example Candidate Response – middle

a The Court of Appeal (COA) from past decision through distinguishing, reversing, overruling, and the Young v Bristol Aeroplane Co. Case. **1**

2 First, by using distinguishing, when facts of present case is singificantly different from past case, the COA can choose to not follow precedent of past cases. Example case is Balfour v Balfour and Merritt v Meritt which are sufficiently different.

3 Two, by appealing to the Supreme Court (SC), the decision made by the COA can be reversed by court with higher hierarchy. Example is the Pepper v Hart case that allows use of Hansard, as it overruled the Davis v Johnson case.

4 Three is overruling, where a later case decides that past case made was wrong.

Four is the Young's case.
This case allows the COA to depart from their own previous decision by 4 circumstances, with the first 3 being able to applied in criminal and civil cases, and last one only applies to criminal cases. They may depart from own decision, when,

5
- One, there are two conflicting COA decisions.
The court can choose one to follow, previous.
- Two, a later SC decision overruled the CoA decision.
The court will then have to follow the SC's decision.
- Three, the decision was made per incurium,
As decision was made in mistaken, the COA does not have to follow the decision.

6
- Four, where the law was misunderstood or misapplied.
As this is a wrong decision, CoA may depart from such decision, as liberty is involved in criminal cases.

In conclusion, by using distinguishing, reversing, overruling, and the Young v Bristol Aeroplane Company case, the CoA may depart from the past precedents.

Examiner comments

1 This answer starts well with a mention of *Young v Bristol Aeroplane* and a list of avoidance techniques and so it is expected that they will then go on to discuss these in more detail.

2 This is a good explanation of distinguishing which is relevant with some good supporting case law.

3 This is good explanation of reversing and some appropriate case law support.

4 This is not really an accurate definition of overruling.

5 These are the *Young* exceptions, but they offer no explanation.

6 There is implication here that the candidate knows the additional exception in the Criminal Division, though this is not explained in any detail.
Overall, part (a) of this answer had good potential to get into Band 4, but there was a lack of detail which suggested the answer was 'mostly accurate but may not be detailed in relevant areas', so was placed in Band 3.
Mark for (a) = 7 out of 10

Mark for AO1 = 7 out of 10

Example Candidate Response – middle, continued

b The Court of Appeal (COA) can depart from decision made by the Supreme Court (SC) in very limited situation, where by overruling, distinguishing, and reversing. Normally, according to the hierarchy of courts, the CoA must follow decision made by the SC.

If the COA is allowed to departe from SC decisions, this can lead to uncertainty and inconsistency in law, as similar cases might not be dealt in similar way, and this can make law less accessible as people are not able to predict the outcome of the cases. Moreover, the use of precedent allows judges to reduce lengthy paperwork and procedures, as they may follow the case. If the act of COA departing from SC is justified, and being widly use, this can cause more administrative inconvinience, cost of time and court resources, as they have to check whether the case can depart from the precedent. Furthermore, this can make the procedure of trial even more complex, and makes the time lag and cost even greater, result in court reasources not efficiently used.

On the other hand, if the CoA are allowed to depart from the SC, this allows flexibility in law, where there will always be exceptional circumstances. (and the Young v Bristol Aeroplane Co. Case), This allows more justice to be achieved and avoids wrong decisions to be carried on. Furthermore, with the present system, the changes and development of law is slow, as only SC can change its own decision. This can result in many cases not being able to reach the SC for changes, due to limitations of appeals, or the time and financial cost that has to be borned by the parties. And, even if CoA judges found law that has to be corrected, they are not allowed to do so because of the precedent, unless for the avoidance techniques mentioned at the start. Allowing the COA to depart from the SC can solve this issue, and makes development of law faster, and gain more public reliance in the legal system, as there are more ways of getting the result they wishes.

In conclusion, following SC decision brings consistency, certainty and continuity in law, but can lead to several side effects. Whether the CoA should be allowed to depart from SC can be discussed as development of law and suggestion of the departing basis are developed, slowly, according to the needs of the society.

Examiner comments

7 There is quite a strong start here in terms of evaluation where the candidate talks about uncertainty and inconsistency so would be credited AO3 here, but the answer lacks AO2 development or support as the rest of the paragraph is inaccurate, with little focus on the question.

8 Reference to the law being slow to change is credited as another AO3 point and here there is some AO2 development.

9 This paragraph is a little repetitive and does not really add any additional creditworthiness to the answer.

10 Overall, this candidate has been awarded more for AO3 because there was evidence of 'some evaluation' which was 'reasoned at times', but the AO2 analysis was 'supported by some partially developed use of legal concepts'.
Mark for (b) = 8 out of 15

Mark for AO2 = 3 out of 8
Mark for AO3 = 5 out of 7

Total mark awarded = 15 out of 25

How the candidate could improve their answer

- **(a)** Although reversing, distinguishing and overruling were relevant avoidance techniques that could have been used by the Court of Appeal, the focus of this question should have been on the exceptions in *Young v Bristol Aeroplane* and the additional exception afforded to the Criminal Division of the Court of Appeal. Candidates are unlikely to achieve higher than a Band 3 without mention of specific Court of Appeal powers to depart from their decisions.
- **(b)** There needed to be a wider range of evaluation points supported with relevant authority or argument. This could have been in the form of cases, or some development of the principles or impact of the point being made. There was also very little balance in the answer with the candidate not making clear balanced reasons why the Court of Appeal should have been able to depart from the House of Lords decisions and reasons why they should not; the focus of the answer was solely on why the Court of Appeal should not be able to depart from the House of Lords decisions.

Example Candidate Response – low	Examiner comments
(a) The Court of Appeal is an Appealeate court. It is above all courts exept the supreme court in the Hierarchy of courts. The lower courts and the High court may appeal to the court of appeal in which the verdict decision is further taken place. The court of Appeal must follow the precedents of the supreme court but may have some exceptions.	1 This shows the candidate puts the Court of Appeal into the context of the court hierarchy.
There can be a departion from the Court of Appeal from a binding precedent due to the Human Rights Act. 1996. The Human Rights Act 1996 was an Act of parliment which allowed the court of Appeal to depart from a binding precedant due to the case being about the information of Human Rights.	2 Credit is given here for reference to how the Human Rights Act can affect the ability of the Court of Appeal to have to be bound by their own decisions. The candidate could have improved this by citing some case support or relevant sections of the Human Rights Act 1998.
The Court of Appeal may also distinguish. It can further examine the case an may distinguish it from the Binding Precedent. The Court of Appeal departed from an otherwise binding precedent in the case of Young V Bristol Aeroplane Company Ltd, in this the decision was known as per incuriam (in error)	3 There is passing reference to *Young v Bristol Aeroplane* here and *per incurium* but there is no reference to the other exceptions or any explanation. Mark for (a) = 4 out of 10 Mark for AO1 = 4 out of 10

Example Candidate Response – low, continued	Examiner comments
(b) The Supreme Court and the Court of Appeal are Appealate courts and the highest courts in the heirarchy of courts. The Appeal of the lower courts and the High court, ~~then~~ then the case is taken to the court of Appeal. The Court of Appeal can appeal to the supreme court. The precedents of the supreme court are biding for all courts including the court of Appeal. But the supreme court can overule its own decisions. (4) The Supreme Court is the highest court. Its precedent are binding for all courts lower than it. The Court of Appeal must follow the binding precedent of the supreme court as it is the highest court in the hierarchy of courts. But in some situations, the Court of Appeal ~~must~~ can depart from the binding of the supreme court if the decision made by the supreme court is	4 This first paragraph repeats what was discussed in part (a) in terms of the powers of the Court of Appeal to be able to depart from the Supreme Court.

Example Candidate Response – low, continued	Examiner comments
recognised as per incuriam which means in error. A case example of this can be Young v Bristol Aeroplane company Ltd. Other than those situations, all the majority of precedents of the supreme court must be binding for the other courts as supreme court's decision should always be recognised as the final and best decision. (5) The Court of Appeal should be able to depart from decisions of the supreme court on some matters for example if the decision was seen as per incuriam (in error). Other than those matters, the Court of Appeal should not be able to depart from the supreme courts decisions as it is the highest court in the Hierarchy of courts. (6)	(5) The second paragraph once again mentions the availability of *Young* as an avoidance technique but there are no points of evaluation or application here – this is knowledge and understanding of precedent and the Court of Appeal in general and as there are no AO1 marks available in part (b), this cannot be credited. (6) If the candidate develops this with reasons why, then there may be scope for higher AO2 marks. Mark for (b) = 4 out of 15 Mark for AO2 = 2 out of 8 Mark for AO3 = 2 out of 7 **Total mark awarded = 8 out of 25**

How the candidate could improve their answer

- **(a)** The candidate needed to explain all three exceptions from the *Young v Bristol Aeroplane* case as well as some reference to other avoidance techniques that could be relevant, such as distinguishing, reversing and overruling. Overall credit was given for some passing reference to the key case of *Young* and some brief mention of the impact of the Human Rights Act, so was deemed to have 'some accuracy but lacks detail'.
- **(b)** Repeating what has already been said in part **(a)** cannot be credited again and the candidate needed to provide balanced reasons here as to why the Court of Appeal should and should not be able to depart from decisions of the House of Lords. Overall, this was deemed to be a 'limited' answer with limited use of legal concepts and limited relevant evaluation.

Common mistakes and guidance

- **(a)** Some candidates approached this question as an appeals question which was irrelevant. Those who did focus on precedent often missed the focus of the Court of Appeal and provided a general answer on the mechanics of precedent with no mention of the specific powers of the Court of Appeal. There were also inaccuracies in relation to the Court of Appeal being able to use the Practice Statement, which is not the case.
- **(b)** The focus of this question needed to be on the Court of Appeal and a general answer discussing the advantages and disadvantages of precedent would not have scored very highly. Answers needed to be focused and specific. Moreover, the part **(b)** answers should not be a repeat of part **(a)** and should instead focus on the skills of analysis and application. Another common misconception about this answer was that it was in fact a question on appeals, so candidates need to take care to read the question carefully and focus on the key terms.

Question 7

Example Candidate Response – high	Examiner comments
a The rights of a suspect detained at a police station are given under the Police and Criminal Evidence Act 1984. Code C of this Act deals with the treatment of suspects during their detention. (1) There are three basic rights that suspects have which include right to inform someone of the arrest, right to legal advice and right to consult the codes of practice. Right to inform someone of the arrest is set out in S56 of the act and the detainee is free to nominate any person who may be concerned with their welfare to be contacted by the police and told of the reasons for the arrest along with the place where they are (2)	(1) This is a strong start as the candidate immediately identifies the Police and Criminal Evidence Act 1984 Code C as the relevant Act and Code of Practice with the correct year and written in full. Identifying this in the introductory statements focuses the answer. (2) The right to inform someone is the first right of the suspect to be discussed and this is done with the correct supporting section of the Act. The right is also explained with some supporting detail, including reasons why the right may be withheld, rather than just being listed, which shows a good knowledge and understanding of a suspect's rights.

Example Candidate Response – high, continued	Examiner comments
being held. They also have the right to talk on the phone for a reasonable amount of time. However the police has the power to not allow the contacting of someone in cases of indictable or other serious offences when it is believed that this may lead to interference with witnesses or evidence linking to the offence.	
3 Detainees have the right to legal advice under s 58 of the act and it is emphasised that they be given free legal advice or their solicitor is contacted. This is made sure by the custody officer when a person is being brought to the police station and asked to sign the custody record they are asked if they desire legal advice and posters for this right are posted all over the police station. This right may be delayed for upto 36 hours if by alerting the solicitor, interference is expected but there should be real reasons for this. For example in the case of R v Samuel, a 24 year old man's mother was informed of the arrest but the right to legal advice was delayed hence evidence collected during the detention was inadmissable.	**3** The candidate explains the right to legal advice and supports this with the relevant section of the Police and Criminal Evidence Act 1984. There is also a supporting case provided as an example of where this right was delayed and the impact this had on the case.
4 A detainee has to be kept in a well lit room, properly ventilated and be given appropriate breaks to eat, sleep and use the bathroom since basic human rights are guaranteed under the Human Rights act of 1998. If the person is under	**4** The next right concerns the environment in which the suspect needs to be kept, including the cell conditions and the right to refreshments.
5 18 or mentally disturbed, an appropriate adult has to be present during the interview as well as in the case of R v Aspinall for a schizophrenic patient even though they could understand what was being said.	**5** The right to an appropriate adult is considered, again with a suitable case.
6 Under S76 of PACE, oppression by means of physical and mental torture can also not be used to force a confession out of the detainee since this will not be admissable in court.	**6** The candidate concludes with a short explanation as to what the impact of the police not giving these rights will be. Overall, this answer is a good example of quality over quantity because there have only been four rights considered but because these have been explained well with some detail and legal authority, it convinces the examiner that there is 'thorough knowledge and understanding' for Band 4. Mark for (a) = 9 out of 10 Mark for AO1 = 9 out of 10

Example Candidate Response – high, continued

b The rights given to the suspect during detention under PACE 1984 are aimed at (7) balancing the rights of the suspect along-side the right of the police to conduct investigations in a faithful manner.

(8) Under S76 of PACE, confessions obtained through oppression are inadmissable which protects the right of the individual to not be physically or mentally harmed. Under S78 any evidence obtained through a breach of PACE is also not admissable.

(9) The right of the detainee are also protected since they can consult PACE and have the right to legal advice hence they are cautioned before interviews and they have a right to (10) remain silent and if this is upon instruction from a solicitor it cannot be used against them by a jury as stated in the case of R v Beckles.

Their rights are also protected since they are kept in humane conditions and the custody officer is responsible for their welfare and a record is maintained of all their interactions to prevent malpractice by the police however this is not as effective since around 60% of the records are falsified. However evidence being inadmissable means right to fair trial under Article 6 of the convention is protected.

As it is also true that a senior officer may authorise in a delay for legal advice being given to the suspect or in the suspect being held in custody for longer time (upto 96 hours) in indictable offences. They may also be refused bail which infringes upon their right to liberty and is unfair to many innocent suspects. It is also true that all these rights are not generally given since it may be considered (11) necessary by the police to use reasonable force to get confessions out of defendants.

Examiner comments

(7) The candidate provides an excellent introduction which immediately explains about the balance necessary for these rights – these useful introductory statements put the answer into context and focuses the answer for the ensuing paragraphs.

(8) The candidate immediately cites Section 76 which is a key section that protects the suspect from oppression as it makes any evidence obtained in this way inadmissible in court. This is an excellent approach to take and shows good AO3 evaluation with some AO2 development.

(9) Repeating the wording from the question in the answer is excellent practice as it keeps the answer focused and ensures that the candidate explains why the particular right does or does not protect the suspect.

(10) This is another evaluation point that is made by stating the right and then using connective language to explain how that right protects the suspect.

(11) The candidate starts to talk about how the rights may not protect the suspect because the police may use reasonable force.

Example Candidate Response – high, continued	Examiner comments
This is also an upheaval of rights since detainees are not fully protected. There may also be intimate and strip searches conducted of detainees upon authorisation of a senior officer which even though are to be done by a high rank police officer or medical practitioner, may be invading of the person's personal space. In this way the rights given to detainees protect them to a certain extent however in practicality most of these rights are infringed by the police. 12	12 Overall, the candidate attempts to evaluate rather than just repeat the rights. Mark for (b) = 13 out of 15 Mark for AO2 = 6 out of 8 Mark for AO3 = 7 out of 7 **Total mark awarded = 22 out of 25**

How the candidate could improve their answer

- **(a)** The candidate could have considered more rights, such as time limits and maybe some detail about searches and the recording of interviews but this was not necessary as they had considered a reasonable range of rights with a good level of detail, showing an excellent knowledge of detention rights.
- **(b)** There was a slight imbalance in this answer in favour of how the detention rights do protect the suspect, but there was less detail on how they may not have protected the suspect and left the suspect vulnerable. Such points could have included the delay that sometimes comes with waiting for a duty solicitor. Research also shows that some custody records are falsified and that there are still some examples of miscarriages of justice because of police corruption. Candidates could have explored these further. There were also some missed opportunities for case law here, where candidates could have given examples of where, for example, the police have delayed a suspect having a phone call or legal advice, or cases where the suspect was denied his right to an appropriate adult.

Example Candidate Response – middle

a ~~tt~~ At the time of detaining the rights of the suspect are essential or else the entire conviction can be quashed and a possible criminal may get away. (1)

Rights of the suspect include right to call someone and right to a lawyer. However, if one right is given another can be denied. In the case of R v Samuel where there was suspicion of robbery on the suspect the right to call someone was approved but not that of a solicitors thus quashing the conviction. (2)

Additionally, ~~if detain~~ ~~the~~ the suspect must ~~ha~~ have a private conversation with their solicitor. ~~two~~ ~~bu~~ Nevertheless in the case of R v Grant the police officers had recorded the suspects (3)

Examiner comments

1. Overall, this answer provides some good use of legal authority, but these cases are not developed with an explanation of how these cases show whether the detention rights protect the suspect (or otherwise).

2. The candidate correctly identifies *R v Samuel* here, but it is not clear how this case shows the suspect's rights are protected, though it is implied where the candidate mentions the quashed conviction. This AO2 development needs to be more explicit and a good technique for this is to repeat the wording of the question.

3. *R v Grant* is cited in a similar vein with no further conclusion other than the conviction was quashed.

Example Candidate Response – middle, continued	Examiner comments
conversation with their solicitor, again resulting in the conviction to be quashed. The suspect must be in a well lit, ventilated room and have decent water, food, and washroom breaks. **4** Additionally, if the ~~&~~ suspect ~~is~~ is a minor or ~~a~~ someone with a mental disability, they must have an appropriate adult present with them which was not the case in R v Aspinall where the suspect was schizophrenic and had admitted to the crime, without an adult, leading to conviction being quashed. If the individual does have to be in custody for more than 24 hours then approval than the police officer must go to court with a defense present and get approval of the court - ~~there~~ But, only 1% stay after 24 hours in custody and 5% after 18 hours. **5** It is also ~~essent~~ mandatory for **6** custody officer to do regular checks with suspect to ensure ~~not~~ no breaking of the law or injustice is being done.	**4** This is just a repetition of the rights stated in (a) and does not develop into an AO2 point, and whilst credited as an implicit AO3 point, it is not convincing. **5** Good use of supporting statistics here. **6** This is a good point because the candidate has discussed why it is important that regular checks of the suspect are carried out. Mark for (a) = 7 out of 10 Mark for AO1 = 7 out of 10

Example Candidate Response – middle, continued	Examiner comments
b. The Police and Criminal Evidence Act 1984 contains codes of practice that can ensure the process and respect of ~~arrest~~ arresting someone or even searching them is rightfully done and in line with human rights so that the right of the individual is protected. ~~to avoid mis~~ However, when an individual is detained they must be kept in a situation where they aren't uncomfortable. Staying in a well lit, ventilated room is essential so that individual can feel safe within the legal system. If an individual has been detained before charge & arrest it is unlawful as seen in the case of ~~R v In~~ R v Inward which isn't fair and the right to liberty Article 5 is being violated. Having a mentally unfit or a minor ~~is~~ ~~in custody or~~ detained must be with an appropriate adult in order to stop the detainee to ~~stay~~ be forced to or unmindfully say something that may be held against them as seen in R v Aspinall. Additionally, even if the rights of the suspect do have to be stopped income of any security concerns, it is essential it is done with the approval of court or else the rights of the individual won't be protected.	**7** The candidate correctly identifies the Police and Criminal Evidence Act 1984 as the relevant Act. **8** There is some reference to the detention environment here, though it could benefit from a little more detail on what this means and what the suspect is entitled to. **9** This is an inaccurate point as it is lawful to detain an individual before charge, so long as the police adhere to the custody time limits. **10** Correct identification of the right to an appropriate adult here, along with a supporting case which is creditworthy and there is also some development as to when these rights could be delayed.

Example Candidate Response – middle, continued

Conclusively, even though the rights to protect a suspect are there and are in the favour of the suspect they may not always be ~~there or even~~ granted ~~as~~ leading to miscarriage of justice ~~as~~ ~~ots~~ seen in R v Samuel. (11) The police does have greater authority and may find loopholes in the law as well as break the law and ~~disru~~ disregard these rights. (12)

Examiner comments

(11) There is citation of *R v Samuel* which is also accurate, but it is not clear that the candidate understands the context of this case.

(12) Overall, there is good discussion of a small range of detention rights, which is 'not detailed in all areas'.
Mark for (b) = 8 out of 15

Mark for AO2 = 4 out of 8
Mark for AO3 = 4 out of 7

Total mark awarded = 15 out of 25

How the candidate could improve their answer

- **(a)** The candidate could have addressed the question, by repeating back the wording to show how the points that are being made answer the question posed. Overall, the discussion of some impact of rights not being granted with case law showed this candidate to have 'some reasoned analysis and evaluation', but because of the partial development and focus on how these points address the question, the candidate achieved Band 2.
- **(b)** The candidate needed to discuss a wider range of detention rights or provide more detail on the ones that they did include. This could have come in the form of section numbers from the Police and Criminal Evidence Act 1984 or case law, or simply further explanation.

Example Candidate Response – low

(1) The PACE act gives powers to the police for stop and search, detention and arrest. (2) They can stop a suspect and search them. They can detain them in a police station and even arrest them. But all of this has to be on reasonable grounds. The powers cannot be used because of their personal vendetta, the appearance of an individual, or their belonging to a race of a group. Public also have their rights to move freely. There need to be reasonable ground, for the police to consider someone a suspect. An example is that for stop and search the officer needs to have a description or a physical appearance to stop someone and search them. Even in stop and search people have their rights which shouldn't be violated.

(3) If the search results in 3 the intimate parts being exposed then it shouldn't be done until the same gender is not present. It shouldn't be done in the general public. The religious beliefs should be respected of the suspect.

Examiner comments

1. It is good practice to write out an acronym in full the first time it is used.

2. The candidate mentions stop and search and arrest which, although correct in places, is not relevant to the question and is not credited.

3. This whole paragraph is not relevant to the question and is confused with stop and search.

Example Candidate Response – low, continued	Examiner comments
If a suspect has been detained at a police station there are certain rights, that needs protection. First of all the detention should be done on reasonable grounds. If there is a high suspect that the person is dangerous to roam around freely they should be detained. If he or she has done something or are going to do only then they should be detained in a police station. When they are detained they have some rights. These are that they should be (4) kept in safe and clean environment. They should be provided with good food and water. They shouldn't be physically hurt unless they have a physical remand. They should be allowed to (5) meet with a lawyer and if they don't have one they should be provided with one. There shouldn't be any research and if there is should be done by the (6) same gender. They have a right to legal advice. But the question is that are these rights even protect the suspect.	4 This is the first point at which the candidate focuses on the question, where the environment in which a suspect should be kept is discussed. This is brief and lacks detail. 5 This is a good point but needs to be supported with legal authority; ideally Section 58 Police and Criminal Evidence Act 1984. 6 Overall, only two detention rights have been mentioned with very little detail or legal authority to support. Mark for (a) = 4 out of 10 Mark for AO1 = 4 out of 10

Example Candidate Response – low, continued

b General public and even the suspect have their rights. These should be given and protected by the police. People are allowed to move around and do what they want until it abide the law. To detain a suspect there needs to be reasonable grounds to do so. Even to stop an individual there needs to be some kind of description to stop them. Police can't use their powers just out of personal vendetta or the appearance of someone.

Now to detain someone there needs to be strong possibility that if that person is out in the public he or she can cause serious crime. When the suspect is detained at a police station they also have some rights. They have a right to legal advice, lawyer, clean and safe environment, food and water and basic hygiene necessities. If the suspect has some kind of illness or mental problem that needs to be protected. They shouldn't be hurt physically or even mentally. If the suspect detained is a kid they should have a legal guardian alongside them. They shouldn't be threatened or put some fear in them.

But the problem is that are these rights even in effect. Do they even protect the suspect. Well for some extent the suspect are protected. They do have a lawyer and a legal guardian. They are not harmed

Examiner comments

7 As with part (a), this lacks focus and there is too much emphasis on other, irrelevant elements of police powers.

8 Although the candidate talks about detention rights here, it is not in an evaluative way and is a repeat of what has already been stated in (a). To be credited with AO2 and AO3 marks, the content needs to be evaluative.

Example Candidate Response – low, continued	Examiner comments
in any way. But in a lot of cases police ignores all the rights. They torture their suspects and even in some cases are not even detained in a police station. They are being kept in a secret facility where they have no rights. Police even threaten them. They are even being mentally (9) tortured. For days they are not given their food. Basic needs and necessities are also not provided. But at the end police are able to get away with all that. They are able to cover their tracks.	(9) These points do not add anything to the answer and without any legal authority or support are mostly inaccurate.
Even if all the rights are being provided to the detained suspect, they still don't give the full protection as they deserve. They are protected to a certain extent. If the person hasn't committed a crime and is innocent they are effected mentally by being in the environment of a police station. Their work is being effected and time wasted. There are also (10) expenses which the detained suspect then has to pay. This could be a fee of a lawyer. So there is a strong argument that these rights, even if provided by the police, do not fully protect the detained suspects.	(10) This has the potential to be a good point about the effect being in custody has on a suspect but again is not supported or developed. Mark for (b) = 3 out of 15 Mark for AO2 = 1 out of 8 Mark for AO3 = 2 out of 7 **Total mark awarded = 7 out of 25**

How the candidate could improve their answer

- **(a)** The candidate did not need to spend time writing about irrelevant content, such as, stop and search and arrest. The candidate would have been better placed to remain focused on the question.
- **(b)** Although it was necessary to repeat the detention rights, this needed to be done with the aim of evaluating why or why not they protected the suspect. Ideally, this should be done from both perspectives, making good use of connectives.

Common mistakes and guidance

- **(a)** To access the higher mark bands, candidates needed to discuss a range of detention rights with legal authority. Often, candidates write about other, irrelevant police powers such as stop and search and arrest. It is important that candidates focus on the specific nature of the question.
- **(b)** Some candidates just repeated the rights of the suspect that they had already explained in **(a)** with no further development or evaluation, or case law to illustrate how these rights may not protect the suspect.

Question 8

Example Candidate Response – high

a) (1) Inferior Judges are ~~selecte~~ judges present in the inferior courts. These are all the courts below the High Court. Such courts include Magistrate's Court, County Court, Crown Court.

(2) Inferior Judges are selected on Merit. Previously it was solely depended ~~out~~ on the Lord Chancellor to select & appoint judges. It was done secretly by keeping the data of each potential candidiate. This ~~disapp~~ disapproved the concept of keep (3) 3 pillars of government seperate, the Judiciary, executive counsil & the politics. As the L.C is a government employed individual, it can be affected by government & it's pressure to appoint judges. So now the selection & appointment of inferior judges is done by Judicial appointmen (4) Committee, with the help of Lord Chief Justice.

Examiner comments

1 This is a good introduction which provides a definition of who the inferior judges are. This helps focus the candidate for the rest of the answer.

2 This is certainly true that judges are chosen on merit, but some legal authority would benefit here – such as citation of the Constitutional Reform Act 2005, or the Judicial Appointments Commission.

3 This is an excellent point and good practice to explain what the appointment process for judges was previously – but previous to what? This is not made clear.

4 It is the Judicial Appointments Commission, not Committee and this is an important term for this question so candidates should get it right.

Example Candidate Response – high, continued	Examiner comments
5 The vacancies for judges are published in the ~~next~~ newspaper, television, website, twitter. People can apply to it and be selected. A potential judge must have 5 qualities. Efficiency, personal qualities such as integrity, etc, ability to understand, fairness, judging qualities, or to pass a right decision. These qualities are assessed by the committee, the candidates are interviewed, & with the recommendation of the committee & approval of LCJ an inferior level judge is appointed. To select a judge of inferior level it is important that he also passes some tests. A judge to ~~p~~ be appointed a Magistrate, he/she should be a barrister/solicitor with minimum 5 years of experience in the field. For County & Crown Court Judge it is important to have 7 years of experience in the legal field along with being a solicitor or barrister. ~~They.~~ This is how inferior judges & selected & appointed, on sole merit. Also a judge should not have committed ~~an~~ offences, or ~~no~~ even more than 6 motoring offences.	5 The candidate logically discusses the appointment process from advertisement to selection and the qualities required. This is a sensible approach and what is expected. Mark for (a) = 7 out of 10 Mark for AO1 = 7 out of 10

Example Candidate Response – high, continued	Examiner comments
b Inferior Judges are Judges of Magistrate, Crown, County Court. These Judges are selected & appointed according to the above stated way. There are several advantages to this process of selection & appointment of Judges. When these judges are selected by application and then are assessed, it allows people from different backgrounds such as age, gender, race to be appointed. This ~~makes~~, brings diversity to the judiciary. When these people are selected they judge with different views and ways ~~and~~ so this results in fairty as they all are from diff background.	6 Increasing diversity is a key advantage of the process, and the candidate does this well as an AO3 point. To further develop this, the candidate could offer statistics, or some insight into why it is important we have improved diversity and for what reasons the 'new' process improves diversity.
Previously when the L.C appointed the judges, it make the appointment more able to be influenced by the politics & government. This made the appointment unfair. Now due to the appointment by committe, it makes it fair to appoint judges on merit ~~&~~ & expertise/qualification.	7 The candidate raises another salient point here about the political involvement no longer being an issue. This is developed well for the AO2 and AO3 points to be credited.
This way of ~~a~~ selecting & appointing keeps the judiciary away from politics. So now the judges do not have to be under the pressure of MPs while giving decisions. This makes their decisions more fair & improves the justice system as	8 A good point about the selection process being fair because of the way judges are interviewed and selected ensures it is on merit and not favouritism. Mark for (b) = 10 out of 15

Example Candidate Response – high, continued	Examiner comments
now no ~~political~~ political party will influence the judges. Selecting judges by advertising gives a chance to everyone to apply making it fair. Assessing the judges through interviews, tests as well as by the 5 qualities helps the committee to get the right person for the job as it is very important to have an ~~ex~~ ~~x~~ expert person ~~in~~ at such an important place playing an important role. Assessing the judge by having limitations such as being a barrister or a solicitor, with experience of years makes it appoint the best person with relative expertise. This makes the justice system appointments more fair as well as their decisions right and fair. ~~Process~~ Governing the selection of inferior judges in this way ~~x~~ gives ~~a~~ fairty to the selection & appointment as well fairty to justice system as its main purpose is to provide justice in the society.	Mark for AO2 = 5 out of 8 Mark for AO3 = 5 out of 7 **Total mark awarded = 17 out of 25**

How the candidate could improve their answer

- **(a)** The candidate had a 'mostly accurate' knowledge and understanding, which 'may not be detailed' – the lack of detail here was in the omission of key legal concepts and terminology. The correct citation of the Judicial Appointments Commission and the inclusion of the Constitutional Reform Act 2005, which would have added a lot of value to this answer and been overall a more convincing response.
- Overall, this was a logical discussion of the key advantages of the judicial appointments process and was structured in a fluent and coherent way. There was a real attempt to address the question and a little more development would have put this in the top band for both AO2 and AO3.

Example Candidate Response – middle	Examiner comments
Inferior judges selection and appointment process takes place as follows. The judicial commition of appointment selects over 5000 candidates. The committee lists some qualities a judge should have. A judge should have intellectual capacity, sound judgment, commitment, good charachter and integrety. After looking at these factors a online test for judicial aptitude is taken. Those who pass it and those who contain the following qualities are recommended by the committee to the Lord chancellor the Lord chancellor then with the help justice Lord chancellor select and appointed judges. Judges in lower courts than county courts go through this process to be selected. (1) (2)	(1) This is a concise answer which addresses the selection and appointment of judges by the Judicial Appointments Commission, though incorrect terminology has been used – Committee has been used instead of Commission. (2) Overall, this answer has 'some accuracy, but lacks detail in relevant areas' and there is 'some knowledge and understanding'. This means that there is not enough detail to warrant more than half marks. Mark for (a) = 5 out of 10 Mark for AO1 = 5 out of 10
b The process governing the selection and appointment of inferior judges has many advantages. To start with this process makes sure that skilled and intelligent judges end up being appointed. The appointments take place based on merit which is why the process ensures the best of the best are entrusted with taking decisions for the community as a whole. The qualities listed by the committee make sure the judges selected are in the right head space and are fully agile to take on cases. It also ensures that judges are of good character and integrity which ensures that they wont easily be bribed or corrupted. It is fair process which gives every one interested a fair chance to prove oneself and be appointed. The online judicial aptitude test ensures that they are fully capable mentally and intellecuhy to become sound judges. (3) (4) The processes fairness and standard put the judiciary at an advantage as the judiciary will be filled with the most best individuals to take on the job, this is greatly important as people lives are at stake and no risk can be taken.	(3) There is reference here to the argument about merit and that the selection process ensures only the most appropriate judges are selected. This is the only evaluative point that the candidate makes. (4) This is repetition and the candidate would have been better advised to use their examination time to provide further evaluation points. Mark for (b) = 6 out of 15 Mark for AO2 = 3 out of 8 Mark for AO3 = 3 out of 7 **Total mark awarded = 11 out of 25**

How the candidate could improve their answer

- **(a)** There was a lack of detail about the process of judicial appointment prior to 2005. This was needed to demonstrate how the process has evolved into its current state.
- **(b)** A wider range of evaluation points was needed. The merit argument was the only evaluation point put forward by the candidate. There were other points that could have been explored, such as the increased diversity, the lack of political influence with the process and the wider selection criteria which enables solicitors to now apply to the judiciary.

Example Candidate Response – low

2a) Judges are Central to the British constitution. They are said to make impartial and just decisions based on the strict letter of law. Yet, judges are affected by their personal prejudices.

Historically, judges were appointed by the Queen on the advise of the Lord Chancellor. This (1) was in direct contradiction of the doctrine of precedent because Lord Chancellor was a political appointment and used to sit along the government office all day. Lord Chancellor was also the member of the cabinet, speaker of HoL. Hence this was changed which the Lord chief justice. Lord Chancellor used to select on the basis of contacts rather than merits. However, now the Lord chief justice was given the authority to curb the power of the Lord Chancellor.
(2) The members of the judiciary were now

now selected by Judicial Appointment Commission. This led to a fair selection.

Examiner comments

1 The candidate makes a good start here where they write about the appointments process prior to 2005 and the involvement of the Lord Chancellor and the problems with that.

2 The candidate goes on to write about the process now and correctly identifies the Judicial Appointments Commission as the relevant body.
Mark for (a) = 4 out of 10

Mark for AO1 = 4 out of 10

Example Candidate Response – low, continued	Examiner comments
Yet the lord chancellor had the authority to reject a candidate or inform to reconsider. This was highly questionable but the powers of lord chancellor have been mitigated to a certain extent. The selection process is flawed and inadequate however the ideal approach has ~~been~~ took its steps but the direction seems unclear. b) (3) Judges ~~are~~ have a high standard of skills that they possess and are ~~considered~~ praised for their work in the English legal system. The Appointment of judges is very important as concerned to magistrates and judiciary who are lay people making decision. Judges have	(3) There is reference to a 'high standard of skills' here but no development of what this means or how the selection process makes this an advantage. There is no direct link to the question.

Example Candidate Response – low, continued

more skills and training over solving difficulties.

(4) Judges are equivalent to 10 magistrates, which possibly shows the importance of judges in the system.

However judges may allow their political mindset affect their decision as stated by Griffith where a judge used the word 'economic' to interpret,

(5) because which meant subsidies could not be granted. This was on their dislike of having subsidies.

Judges may even use different methods of interpretation to allow discretion powers to be implemented e.g. purposive approach in Pepper v Hart.

Examiner comments

(4) This is inaccurate, as Magistrates are laypeople and are not equivalent to judges.

(5) The point about statutory interpretation is not creditable and is disregarded by the examiner.
Mark for (b) = 2 out of 15

Mark for AO2 = 1 out of 8
Mark for AO3 = 1 out of 7

Total mark awarded = 6 out of 25

How the candidate could improve their answer

- **(a)** Overall, there was a lack of detail on the selection process and the qualities required to become an inferior judge.
- **(b)** Overall, this was a brief answer with very 'limited' evaluation. To access the higher bands, candidates needed a wide range of evaluative points. The answer should have focused on the advantages of the judicial appointments process, rather than irrelevant aspects such as superior judges, or as was the case in this question, statutory interpretation.

Common mistakes and guidance

- This is often the last question to be answered on the paper and did result in some candidates running out of time. It is important that candidates split their time between the questions so that they can give their best to all questions equally.
- Very few candidates made reference to the Constitutional Reform Act 2005 and many cited incorrect terminologies in terms of the name of the Commission. This is a crucial mistake and demonstrates an unconvincing application and evaluation.

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