

OCR GCE Law special study units (G154/6/8)

Skills pointer guide – for use with June 2014 resource material

Updated 12/09/13

Vertical black lines indicate a change to the previous published version 1.0 (September 2013).

This skills pointer guide has been developed to assist teachers of OCR GCE Law in the delivery of the A2 special study units (G154/6/8). The themes and resource materials for the three units will change annually and the skills pointer guide will be updated and released to accompany each new theme.

General Skills

There are three critical generic skills appropriate to the special study exam which may differ in some ways from the other exams:

1 Time management is different to exams where all questions carry the same marks. In the special study exam mark distribution is:

- Question 1 = 16 marks (12 AO2 and 4 AO3)
- Question 2 = 34 marks (16 AO1, 14 AO2 and 4 AO3) and
- Question 3 = 30 marks (10 AO1 and 20 AO2) or 10 marks for each part.

Candidates should aim to apportion their time in the exam according to the marks that are available for each question. So, approximately:

- Question 1 = 15 minutes
- Question 2 = 37 ½ minutes and
- Question 3 = 37 ½ minutes (or 12 ½ minutes for each part).

2 The weightings for the three assessment objectives are very different from those in the other option papers. In the Special Study:

- Only 32.5% of the marks are available for AO1. This is because the area of study is very narrow and also because of the amount of support that candidates are given in the resource material booklet
- AO2 is worth 57.5% of the marks for the paper
- The remaining 10% is for AO3.

So, while knowledge is still important, it is what candidates do with it in this exam that counts. They cannot hope to pass merely by repeating knowledge, and they must be able to:

- Appreciate the significance of the overarching theme in developing the particular area of criminal law, contract law and tort law being studied
- Understand the significance of individual cases, and
- Do both in the context of the current substantive theme, which for June 2014 are:

Robbery and Burglary - Section 8 and 9 Theft Act 1968 (Criminal Law)*
Consideration and promissory estoppel with regard to contracts of variation (Law of Contract)*
Nervous shock (psychiatric damage) (Law of Torts)*

*to avoid excessive overlap between the content of the Special Study papers (G154/6/8) and the Option papers (G153/5/7), any questions on the Option papers which relate to the special study theme for the same academic year will be limited as far as possible to Section C.

Candidates should be able to do all of the above in a critical way and in the context of the role of judges and the development of the law. Candidates should also be able to apply the legal principles accurately and efficiently.

3 Reading skills. The Special Study is a source based exam. Candidates are given a booklet of materials at an appropriate point during the year, decided by the teacher, before sitting the Special Study exam. The whole purpose of source based exam papers is that candidates should:

- Make full use of the information and arguments contained in the source materials
- Respond to the information and arguments by discussing them in the context of the questions set and the overarching theme.

Candidates need to understand that the source material is there to help them – so it is poor exam practice if they ignore the materials and treat the exam as a pure memory test. The materials support candidates in two ways:

- Firstly, they have the Resource Material booklet during the year to support them in learning the law in the current themes. They could, for instance, make themselves completely proficient in the case of question 1 by researching all of the cases in the materials and preparing for an answer on each
- Secondly, they are given a clean copy of the materials to use in the exam itself so they always have the opportunity to refer to them for additional support and also to use them in their answers. It is good practice in the Special Study exam to use information or points of discussion from the materials in their own discussions by citing the appropriate source and lines (eg Source x, lines x-x).

When using information from the sources candidates should not merely copy the information. They should use aspects of the information there to support their own discussions. If, for instance, candidates think that something that a judge or an author in the materials has said is relevant to their answer and could not be stated any better in their own words, or if they are trying to make optimum use of their time, then it is good practice for them to refer to the specific lines of the source. By referring to the specific lines of the source an examiner can see that they are sensibly selecting and citing valid information. This is an important legal skill in itself and, if relevant, will be rewarded. Mere general references to the source as a whole are unlikely to gain any credit.

Candidates should remember for all questions:

- to read each question thoroughly so that they are absolutely sure what it is about
- to always refer back to the appropriate source for further information
- to plan their answers briefly at the start of the exam to ensure that:
 - they only use relevant information
 - they do not miss any information that is relevant
- to always use law, whether cases or statute, in support of both their arguments for essays and in their application for the problem questions
- to avoid excessive use of the facts of the cases – it is the principle that is important
- to make sure that they answer the actual question set
- to make sure that their time management is good – they are having to answer in much shorter time scales than for the option papers.

Question Specific Skills

The three Special Study papers (Unit G154 Criminal Law; Unit G156 Law of Contract; and G158 Law of Torts) each contain three questions and candidates have to answer all questions. There are no choices of question in the Special Study exam.

Each question examines a different skill and in ways that are possibly different from other papers.

Question 1

Question 1 is worth 16 marks; 12 AO2 marks plus 4 marks for AO3. There are no AO1 marks available.

This question is an invitation to provide an analysis of the contribution of one of the cases mentioned in the sources to the development of the law in that area. Normally, there will be only 8 cases directly referred to in the resource material. For question 1, candidates are required to have a full understanding of the significance or contribution of the case referred to in the question in the context of the overarching theme.

For 2014 the cases are:

Criminal Law:

- *R v Dawson and James* (1977) 64 Cr App R 170
- *R v Hale* (1978) 68 Cr App R 415
- *R v Robinson* (1977) Crim L R 173
- *R v Collins* (1973) 1 QB 100
- *R v Brown* (1985) Crim L R 212
- *R v Ryan* (1996) 160 JP 610
- *Norfolk Constabulary v Seekings and Gould* (1986) Crim L R 167
- *R v Walkington* (1979) 2 All ER 716 CA

Law of Contract:

- *Pitt v PHH Asset Management Ltd* (1994) 1 WLR 327
- *Hartley v Ponsonby* (1857) 7 E&B 872
- *Williams v Roffey Bros & Nicholls (Contractors) Ltd* (1990) 1 All ER 512, Court of Appeal
- *Chappell & Co Ltd v The Nestlé Co Ltd* (1960) AC 87 HL

- *Foakes v Beer* (1884) 9 App Cas 605
- *Re Selectmove* (1995) 1 WLR 474
- *Central London Property Trust Ltd v High Trees House Ltd* (1947) KB 130
- *Combe v Combe* (1951) 1 All ER 767 CA

Law of Torts:

- *McLoughlin v O'Brian* (1982) 2 All ER 298 HL
- *Alcock and others v Chief Constable of the South Yorkshire Police*, House of Lords (1992) 1 AC 310, (1991) 4 All ER 907, (1991) 3 WLR 1057, 8 BMLR 37
- *Page v Smith* (1995) UKHL 7
- *White and others v Chief Constable of South Yorkshire Police* (1998) 1 All ER 1, HL
- *Chadwick v British Railways Board* (1967) 1 QB 912
- *Hambrook v Stokes Bros* (1925) 1 KB 141
- *King v Phillips* (1953) 1 QB 429
- *Bourhill v Young* (1943) AC 92

Candidates should be able to learn the significant points of all eight cases comfortably. In any case, a lot of the necessary detail for many of the cases is given in the materials. Three of the sources are extracts from the judgments of cases or statutes, and there is varying degrees of detail on others. Candidates must be able to show in the exam that they have a full understanding through their discussion of the significance of each case to the development of the law in that area. This should also involve citing other cases in their answers since 'development' demands that they either know where the law developed from or where it developed to.

High marks can be obtained by:

- Discussing in detail the critical point of the case in the context of the question and of the overarching theme
- Discussing in the same depth and detail at least two other analytical points about the case in context
- Showing development by relating to an appropriate linked case
- Answering the question in light of the command word eg 'significance', 'importance' etc...

Example Criminal Law – *R v Dawson and James* (1977) 64 Cr App R 170 – high marks can be gained, for example, with the following:

- The importance of the decision in this case was that Lawton LJ in the Court of Appeal stated that 'force' under section 8 of the Theft Act 1968 was an ordinary word that is in common or ordinary usage (Source 2 line 12). Therefore, on a charge of robbery, the sole question in such cases is whether the defendant used 'force on any person...' in order to steal. The Court of Appeal stated that this issue should be left to the jury.
- The defendants had been charged with robbery after one of the defendants jostled the victim so that the victim lost his balance which enabled the other defendant to take the victim's wallet. The defendants had been convicted at trial and had appealed on the basis that what had happened could not in law amount to the use of 'force'. The Court of Appeal confirmed that the jostling was sufficient evidence of force to secure a conviction and that the trial judge had been right to leave the interpretation of 'force' to the jury to decide (Source 1 lines 7-8).
- Lawton LJ stated that it was important when directing juries in cases involving section 8 that judges should direct their attention to the words of the statute and not refer to the old authorities. Specifically, he said, the now defunct Larceny Act 1916. He stressed that the purpose of the Theft Act 1968 was to get rid of all the old technicalities of the law of larceny. The Act's purpose, he said, was to put the law in

simple language which juries would understand and which they themselves, as ordinary citizens, would use.

- Previously the word 'violence' had been used in the 1916 Act for robbery. But following advice from the Criminal Law Revision Committee and its recommendations, which largely became the 1968 Act, Parliament had changed the word to 'force'. This dispensed with the defendant's argument that extreme force was required to comply with the new section 8.
- It can then be considered whether the use of the word 'force' had been in Parliament's mind to cover exactly the type of situation that arose in *Dawson*. For example, the situation where a well-planned exercise making it easier for the defendants to appropriate, dishonestly and with intent an item (here a wallet) but without the need to prove violence. The change to the use of the word 'force' therefore provided a useful development to the law.
- This approach was later confirmed in *Clouden* where the defendant wrenched a shopping bag from the victim's grasp. The Court of Appeal in this case stated that provided the jury believes there is sufficient 'force', then they must decide that the 'force' was used 'on any person'. However, expanding the law the court also stated that 'force' can be used against property held by the victim as well as the victim itself contradicting what the Criminal Law revision Committee had suggested.

Example Law of Contract – *Re Selectmove* (1995) 1 WLR 474 – high marks could be gained, for example, with the following:

- This comparatively recent Court of Appeal decision concerned a debt owed to Inland Revenue Service (IRS) for unpaid taxes. The claimant alleged that the IRS had agreed that the debt could be paid off late in instalments and had then breached that agreement by insisting on full payment. It was argued that the 'practical benefit' (*Williams v Roffey*, Source 3) approach should be applied as if the full debt was called in the company could well go bust and then the IRS would receive even less.
- The Court of Appeal held that *Williams v Roffey* could not be extended to part payment of debt cases as it would effectively contradict the rules in *Foakes v Beer*. Such a decision could not be made by the Court of Appeal as the rules of precedent state that it is bound by the House of Lords' previous decision.
- Gibson LJ did not attempt to hide the inconsistency but stated clearly that it was beyond the proper power of the Court of Appeal to address the problem. He called for the House of Lords or, preferably, Parliament with the help of the Law Commission, to solve the problem.
- The absurdity of the inconsistency is further highlighted by the fact that, as noted in Source 4, lines 15-17, in *Foakes v Beer* itself Lord Blackburn conceded that part payment of debt may be more beneficial to a party than insisting on their full rights.
- At the time of *Foakes v Beer*, it was felt that this benefit was not sufficient to outweigh the policy argument that people should be allowed to pay less than they have promised (a sanctity of contract type argument). Given the acceptance of the new, more flexible 'practical benefit' approach, it would seem that this policy decision is now at least questionable if not totally out of date.
- This case is an excellent example of the inconsistencies inherent in the current rules in this area and the need for a serious, research-based reform.
- The law remains in its current state of impasse as shown by the recent case of *Forde v Birmingham City Council* (2009).

Example Law of Torts – *McLoughlin v O'Brian* (1982) 2 All ER 298 HL - high marks could be gained, for example, with the following:

- In the case of *McLoughlin v O'Brian* the key issue was determining the scope of what might constitute a secondary victim. The claimant, Mrs McLoughlin, was not actually present at the scene of the traumatic incident involving her family but did see them in a

very distressing condition at the hospital shortly afterwards. Consequently, she suffered severe and persisting nervous shock.

- The court found that Mrs McLoughlin was a secondary victim and Lord Wilberforce *clarified* (Source 1, lines 25-29) the legal tests to determine whether a claimant would be considered to be a secondary victim. This is when there is:
 - Proximity of the tie or relationship between the claimant and the injured person – the claimant must have a close tie of love and affection to the victim
 - Proximity of the claimant to the accident in both time and place – the claimant must be close in both time and space to the event or its immediate aftermath
 - Proximity of communication of the accident to the claimant through immediate sight or hearing of the event or its immediate aftermath – the claimant must witness the event or its immediate aftermath with their own unaided senses.
- A case like this would have been conscious of strong policy reasons for not extending the scope of claims further – the so-called ‘floodgates’ argument. This is especially so in the context of broader developments in the law of negligence in the era of post-*Anns* contraction.
- *Background* concerns about an expanding and unaffordable compensation culture have to be set against the fact that it is also true that our understanding of what constitutes psychiatric injury was also expanding at this time.
- Judicial *intervention* has been informed by a variety of motivations including doing justice to defendants who may find themselves unfairly liable whilst also trying to do justice to claimants who are suffering genuine harm.
- There *are* also practical concerns over evidential difficulties. Diagnosis of some psychiatric conditions is subjective and fears over claimants who are ‘faking’ their condition persist. Contradictory expert witness evidence also undermines confidence.
- Despite all this, some judges appear to be ready and willing to intervene with policy sensitive decisions where others are conscious of their constitutional position and feel it would be better for parliament to legislate.
- This case represents a significant development from the older case of *Dulieu v White* as it has a *more* nuanced and detailed test of what constitutes a secondary victim. However, policy concerns arising from a variety of traumatic events (notably the Hillsborough disaster) meant that these tests were developed further in later cases like *Alcock and others v Chief Constable of the South Yorkshire Police* and *White and others v Chief Constable of South Yorkshire Police*.

Planning for Question 1

For the case digest (question 1) candidates should:

- Refer back to the source for the important information contained in it
- Remember to include the significant or critical point from the case (normally the *ratio decidendi*) and at least one other linked case to show development, and the key critical issues in terms of the place of the case in the development of the law
- Get used to looking at the other sources in the resource material booklet since they are likely to contain other information that is relevant to the development of the law.

It is important to note that no credit will be given for merely describing the narrative of the case; some sort of evaluative point must be made in order to achieve marks

Question 2

Question 2 is worth 34 marks, 16 AO1 marks, 14 AO2 marks plus 4 AO3 marks.

This is always an essay style question arising from a quote from one of the sources. It is on either: Robbery and Burglary - Section 8 and 9 Theft Act 1968 (Criminal); Consideration and promissory estoppel with regard to contracts of variation (Contract); or

Nervous shock (psychiatric damage) (Torts) in the context of the role of judges, precedent, application of statutory materials and the development of the law.

Question 2 is based on a quote from one of the sources and candidates are expected to engage in a critical discussion with a balanced argument and reasoned conclusion together with supporting legal rules and detailed authorities, all in the context of the development of the law.

- Candidates should make full use of both information (for AO1) and comment (for AO2) contained within the source materials
- Candidates should aim to go beyond the source materials in their responses to demonstrate their learning within the area of law being assessed
- They can do this by citing the appropriate information/comment by accurate line and source reference (mere vague references to the source will gain no credit – simply extracting the information without applying it to their own discussion will gain limited credit)
- Candidates gain AO1 marks for providing a range of relevant legal rules, clearly stated, with supporting authorities. Providing some minimal reference to the facts of an authority shows accurate and detailed knowledge; mere case names alone will attract limited credit
- Question 2 requires high level analysis of the discussion indicated in the question. The quote from a source is there to help candidates identify the theme of the discussion
- Candidates should aim to maximise the AO2 mark – remembering that it is difficult to pass without reasonable AO2 marks, and impossible to gain a high grade without high AO2 marks
- Candidates wishing to practise writing answers may do so by locating possible essay titles in advance from examining the comment in the source materials for likely quotes to attach to a question.

Please note that the following are examples of quotations and do not reflect what may or may not be the basis for the area(s) covered by the live assessment.

Example Criminal Law:

Source 1, lines 25 to 28

The author states that “The breadth of the offence of robbery carries the danger that relatively minor criminal conduct can incur unduly harsh sentences, with the offence of robbery potentially carrying a life sentence. The dividing line between robbery and theft is often a very fine one”.

Example Law of Contract:

Source 4, lines 31-33

The author states that the rule on part payment of a debt “not only runs counter to ordinary commercial practice by that, taken in conjunction with the rule that the law will not inquire into the adequacy of consideration, it may lead to absurd results”.

Example Law of Torts:

Source 5, lines 37 to 38

The author states that “Understandably, the decision in *Alcock* attracted the obvious criticism that the lines of liability were drawn in an arbitrary and unduly restrictive way”.

In each case a specific question could be asked and the quote helps to direct the candidate into the appropriate AO2. They should also be able to find many examples of AO2 in the sources themselves. The quotes used in the questions are in fact examples.

For high level AO2 marks candidates need also to be discussing, in the context of the overarching theme, the role of judges, use of precedent or application of statutory materials and the development of law. Each individual theme obviously has its own individual aspects of this, for example:

Criminal Law - the law on robbery and burglary was consolidated by the Theft Act 1968. It was Parliament's attempt to clarify and codify the main property related offences. The 1968 Act's enactment followed much criticism of the previous and confused plethora of statutes and common law decisions in this area. However, it is argued, that judges have struggled to clarify the definitions which were left, in the main, without interpretational guidance within the 1968 Act.

Law of Contract - judges have struggled to develop a coherent set of rules regarding the common law and equitable requirements for contracts of variation and the law now consists of an uneasy mix of traditional and modern approaches to the issue.

Law of Torts - judicial development of the common law on psychiatric injury has, arguably, been one of the most controversial areas of tort law development in recent legal history. Decisions have been heavily motivated by developments in psychiatric medicine which understand better the nature of psychiatric illness, public policy issues and a fear of opening the floodgates.

In any case these discussions fall into clear categories that candidates are able to consider in their research into the materials prior to the exam and then to contemplate in the exam:

- The extent to which the law is judge-created or statutory
- If statutory, the extent to which this has led to interpretation
- How effectively judges have interpreted statute law
- Whether judge made law has been consistent or has been subject to change
- If subject to change, the reasons for the change, whether to develop the law or because previous judges got it wrong
- The extent to which the law has been developed or have judges restricted its growth and natural application
- Whether the law is just and reasonable
- Whether the law has been consistently applied
- Whether the law has been made the subject of numerous exceptions meaning that it does not easily apply universally
- Whether the judges have referred to judicial policy
- Whether the law is sensible or in need of reform
- Whether judges have used mechanisms such as the Practice Statement
- Whether judges have failed to follow the rules on binding precedent
- Whether Parliament has been forced to reform law made by the judges.

The list is not necessarily exhaustive but candidates should try to engage in such discussions. This is when they show that they have a synoptic appreciation of the law and it is also where candidates are able to engage in 'stretch and challenge'.

Planning for Question 2

For the essay style question (question 2) candidates should:

- remember the importance of structuring their answer
- provide an introduction identifying what the point of the question is

- produce a balanced discussion in which they use a wide range of cases from within and beyond the source materials and legal principles generally in support of their answer
- refer to the source materials to support and develop their answer
- produce a reasoned conclusion that arises from the discussion that they have engaged in.

Question 3

Question 3 is worth 30 marks, 10 marks each for the three separate scenarios. There are 10 AO1 marks, 20 AO2 marks and no AO3 marks.

This is always a problem question comprising of three parts which involves legal problem solving on the theme for the year.

Candidates are provided with three small factual scenarios and they will then have to identify the aspects of the law that could be used to resolve the various issues that arise from the scenarios.

Candidates should be able to identify at least three points of application (one of which is the Critical Point)* plus one case for each for high marks:

* In some scenarios there may be more than one 'critical point'. Where this is the case, any of critical points (indicated by 'CP' in the mark scheme) will fulfil the requirement for candidates to identify the 'critical point' to achieve level 2 and above. Where a response contains more than one 'critical point' (as indicated by the mark scheme) credit will also be given to the alternative 'critical point', which will be flagged as 'AP' (analytical point).

Example - Criminal Law:

- When X walked into the circus tent in order to 'take anything of value' he could be charged with burglary under section 9(1)(a) of the Theft act 1968.
- To satisfy the *actus reus* X must enter a building or part of a building. In *Ryan* the court decided that whether an entry had taken place was simply a matter for a jury to decide. Clearly X has entered as he has gone to the table at the middle of the circus tent.
- A 'building or part of a building' has been described as a structure of considerable size and permanence, or to endure for a considerable time. The circus tent is definitely a huge size and, as the circus is in town for four months, to be present for a considerable time. A jury would decide that the circus tent is a 'building'. **This is the CP**
- X must also be a trespasser. It could be argued that as a member of the public X has permission to enter the circus tent, but as X entered an hour after the show had finished this looks unlikely. Even if he did have permission it looks like this was exceeded as in *Smith and Jones*.
- To satisfy the *mens rea* X must know he was a trespasser or be subjectively reckless. X must have known this as he had no permission at that time to enter the tent. Also X must have the intent to commit one of the ulterior offences under section 9(2). His plan was to 'take anything of value' meaning he intended to steal. To steal is one of the offences under section 9(2).
- Therefore, X will be guilty of burglary under section 9(1)(a).

Example - Law of Contract:

- A has a pre-existing contractual duty to pay money to B and is attempting to pay less than required. This is not possible without something extra being offered (*Pinnel's Case*) **This is the CP**
- In this case, A has offered something extra but it must be sufficient, if not adequate,

- (*Re McArdle*) and in this case, it is not sufficient (*White v Bluett*)
- A has relied upon B's clear promise to accept less money so may be able to argue promissory estoppel (*High Trees*)
 - However, in this case, A has himself behaved inequitably so would fail in his attempt to use estoppel (*D&C Builders Ltd v Rees*)
 - In conclusion, A has not provided any consideration and cannot use equity to prevent B from claiming the full amount.

Example – Law of Torts:

- In order for X to have a claim, X will need to establish that he/she was either a primary or a secondary victim
- Firstly, X satisfies the tests for a) a primary victim, b) a secondary victim, or c) note that a rescuer is no longer a special class and will need to claim as either a) or b) (*White and others v Chief Constable of South Yorkshire Police*) **This is the CP**
- Secondly, X has also been harmed by a shock which is sufficiently sudden and traumatic (*North Glamorgan NHS Trust v Walters*)
- Thirdly, consider any of the relevant key issues as dictated by the scenario and the type of victim. For example, is X suffering a genuine recognised psychiatric injury, was X present at the scene or its immediate aftermath, did X witness the event with his/her own unaided senses, does X have a close tie of love and affection or, for a primary victim, was X in immediate danger and at risk of foreseeable harm?
- Therefore, X is unlikely to have a successful claim.

Planning for Question 3

For the three scenarios in question 3 candidates should:

- structure their answer logically, apply the law sensibly to the facts
- identify for each individual aspect of the problem the key facts on which resolution of the problem is based
- define the appropriate law accurately; and then apply the law sensibly to the facts.
- reach sensible conclusions based on their application of the law
- use specific relevant Act sections or cases to support their definitions of the law (eg sections 8 and 9 of the Theft Act 1968 and the common law interpretations of these sections; judicial definitions of the different elements of consideration and promissory estoppel; judicial decisions which determine the scope of what constitutes a primary or secondary victim)
- remember that they are dealing with small individual problem scenarios rather than a large problem, as is the case in the option papers, and therefore the structure is almost created by the question
- within their answer, in order to reach Level 5, discuss the relevant critical point(s), include at least one relevant case and provide sensible conclusions based on their application of the law stating what they think the most likely outcome would be for each scenario.