

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

Skills pointer guide – for use with January and June 2012 resource material

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 January and June 2012 are:
 - Attempts* (Criminal Law)
 - Intention to create legal relations* (not Vicarious Liability) (Law of Contract)
 - Nuisance* (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 them 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 acceptable 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 perfectly appropriate 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) all consist of three questions and candidates have to answer each one. 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.

The January and June 2012 themes are:

- Attempts (Criminal Law)
- Intention to create legal relations (not Vicarious Liability) (Law of Contract)
- Nuisance (Law of Torts)

Criminal Law:

- *R v Campbell* (1991) 93 Cr App Rep 350;
- *R v Gullefer* [1990] 3 All ER 882;
- *R v Geddes* [1996] 160 JP 697;
- *R v Jones (Kenneth)* [1990] 3 All ER 886;
- *R v Whybrow (Arthur George)* (1951) Cr App R 141 (CA);
- *R v Mohan* [1976] QB 1;
- *Attorney-General's Reference (No 3 of 1992)* [1994] 1 WLR 409;
- *R v Shivpuri* [1987] AC 1.

Law of Contract:

- *Balfour v Balfour* [1919] 2 KB 571 CA
- *Jones v Padavatton* [1969] 2 All ER 616
- *Parker v Clark* [1960] 1 WLR 286
- *Coward v Motor Insurers' Bureau* [1963] 2 QB 259
- *Esso Petroleum Limited v Commissioners of Customs and Excise* [1976] 1 WLR 1
- *Rose and Frank v Crompton Bros* [1923] 2 KB 261
- *Edwards v Skyways* [1964] 1 WLR 349
- *Kleinwort Benson v Malaysian Mining Corporation* [1989] 1 All ER 785

Law of Torts:

- *Hunter and Others v Canary Wharf Ltd and Hunter and Others v London Docklands Corporation* (1997) AC 655.
- *Malone v Laskey* [1907] 2 KB 141.
- *Khorasandjian v Bush* [1993] Q.B. 727.
- *Network Rail Infrastructure Ltd (formerly Railtrack PLC) v CJ Morris (trading as Soundstar Studio)* [2004] EWCA Civ 172.
- *Halsey v Esso Petroleum Co Ltd* [1961] 1 WLR 683.
- *Sedleigh-Denfield v O'Callaghan* [1940] AC 880.
- *Marcic v Thames Water Utilities Ltd* [2002] 2 All ER 55 (CA); [2004] 1 All ER 135 (HL).
- *Hatton v United Kingdom Application No 36022/97, 8 July 2003, All ER 122.*

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 Campbell* (1991) 93 Cr App Rep 350 – High marks can be gained, for example, with the following:

- The Court of Appeal, surprisingly, allowed an appeal and quashed the defendant's conviction for attempted robbery because it held that an attempted crime had not been committed (see Source 1 lines 23-24). They felt that there was no evidence on which a jury could conclude that the defendant's acts were '*more than merely preparatory*'. When directing a jury as to what was an attempt, the Court of Appeal stated that the judge should have confined himself to the definition of attempt which is stated in section 1(1) of the Criminal Attempts Act 1981. Any reference to the law which was obtained before the Act was passed was wholly unnecessary.
- The Court of Appeal stated that it would be unwise for a court to lay down hard and fast rules as to when, in varying circumstances, an attempt had begun. Juries should decide on a case by case basis, on the case's own facts and when the case arose.
- In *Campbell*, the judge was in error in coming to the conclusion, that on the evidence, the jury could properly have concluded that an attempt had been made. If anything, the defendant had been stopped too early by the police. If he had been allowed to continue into the post office, an attempted robbery or a robbery could have been carried out.
- It is perhaps unfair on the police, who believed the defendant was about to commit a robbery with some sort of weapon in his pocket, to make a judgement on how long they should have waited before they could arrest him. The situation could have got out of hand, especially where a weapon was involved.
- The Law Commission in 2007 proposed a new offence of 'criminal preparation' which would make courts more willing to convict defendants like Campbell for 'preparing to commit robbery'.
- *Campbell* can be compared to the case of *Dagnall*. The defendant was convicted of an attempted offence even though he couldn't really be described, when arrested, to have tried to commit the offence. The case shows some inconsistency in court's interpretation of '*more than merely preparatory*'.

Example Law of Contract - *Rose and Frank v Crompton Bros* [1923] 2 KB 261– high marks could be gained, for example, with the following:

- In this case the House of Lords upheld the wording in a commercial agreement which stated that it was not a legal contract but merely an honourable pledge. It is the principal authority for the 'honour clause' rule within the law on intention to create legal relations. The case is notable for demonstrating the courts' willingness to rebut the basic presumption in favour of intention to create legal relations in commercial contexts.
- It could be argued that it might undermine the protection afforded to parties to commercial agreements and runs contrary to the general position that such agreements should be honoured.
- However, the court arguably adopted a classically laissez-faire approach by giving effect to the words that the parties used and not enforcing a contract which the parties had clearly not intended to be bound by. This could be seen as just since the other party freely agreed to the wording used. This shows that the honour-clause rebuttal of the usual presumption is in fact a rare example of where the intentions of the parties become highly influential in the courts' decision of whether or not to find intention to create legal relations. As such, it may run counter to the

argument provided by McKendrick in the first lines of Source 2 that these decisions are justified more by policy than by actual intention.

- The courts have subsequently emphasised their reluctance to use *Rose and Frankton* to rebut the usual presumption in cases such as *Edwards v Skyways* and *Kleinwort Benson v Malaysian Mining Corporation*. This reaffirms their basic stance that, unless there is very clear evidence to the contrary, agreements made in commercial contexts ought to be binding.

Example Law of Torts – *Malone v Laskey* [1907] 2 KB 141 - high marks could be gained, for example, with the following:

- The claimant was the wife of a tenant; she was injured whilst using the toilet when a cistern fell on her due to vibrations from the defendant's generator. The court decided that because she had no legal interest in the land on which she was injured that she had no claim in nuisance;
- This case highlights one of the potential injustices of the law of nuisance – that a licensee on premises (which might include the owner's family or a lodger) cannot sue despite suffering an obvious nuisance. The principle was later upheld in the case of *Cunard v Antifyre* [1933] which also doubted that a claimant could sue in nuisance where their action was based on personal injury alone (this being the proper remit of negligence);
- The injustice of the decision in *Malone* requiring a claimant to have a legal interest in the property affected, was eventually dealt with in the case of *Khorasandijian v Bush* [1993] which dropped the requirement. However, the decision was reversed four years later by the House of Lords in *Hunter and Others v Canary Wharf Ltd and Hunter and Others v London Docklands Corporation* [1997] and the ruling can be seen in source 1 (final paragraph) where it states that: “*an action in private nuisance will only lie at the suit of a person who has a right to the land affected. Ordinarily, such a person can only sue if he has the right to exclusive possession of the land, such as a freeholder or tenant in possession, or even a licensee with exclusive possession*”
- The apparent injustice of the *Malone/Hunter* position has been slightly eased by the development of other areas of law. **The Protection from Harassment Act 1997** would now offer some relief to a victim with no proprietary right in the property concerned and it may be that the **Human Rights Act** may offer some protection under **Article 8**.

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 attempts (Criminal); intention to create legal relations (not vicarious liability) (Contract); and nuisance (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 material 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 practice 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.

Example Criminal Law:

Source 1 lines 1-2

The authors state that "The criminal law does not punish people just for intending to commit a crime..."

Example Law of Contract:

Source 2 lines 3-5

The author states that "The judgment of Atkin LJ in *Balfour v Balfour* suggests that the initial presumption is derived from the law [or public policy] rather than the intention of the parties".

Example Law of Torts:

Source 4 lines 16-17

The author states that "The decision was essentially based on policy, and since that was the case, he would have preferred it to uphold justice rather than tidiness".

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 attempts is based on section 1(1) of the Criminal Attempts Act 1981, however, judges have had difficulty clarifying the definition and, at times, confused policy with the true interpretation of the Act.

Law of Contract - judges have developed rules on intention to create legal relations which are deeply varied in the emphasis they give to the actual intention of the parties as evidenced in the case.

Law of Torts - private nuisance has been referred to as an 'impenetrable jungle' as judges have had to develop rules which reflect the changing nature of the use of land brought about by industrialisation, increasing statutory intervention and the potential impact of the Human Rights Act

However, these discussions in any case 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;
- 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. For the duration of the 2011 theme it involves legal problem solving on either:

- Attempts (Criminal Law)
- Intent to create legal relations (not Vicarious Liability) (Law of Contract)
- Nuisance (Law of Torts)

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. The other 'critical points' can be credited as 'other' points of application.

Example - Criminal Law:

- X may be guilty of an attempted crime in trying to stab Y, since X, arguably, has done an act which is '*more than merely preparatory*' to the commission of that offence, under s.1(1) of the Criminal Attempts Act 1981 [case]. X may be charged with attempted wounding or even attempted murder. In trying to stab Y it could be argued that he has done everything he can to commit the *actus reus* of these offences, but failed in doing so by missing. He has certainly gone beyond mere preparation [case]
- As the *mens rea* for an attempted crime is an intent to commit the full offence, X in trying to stab Y clearly has such an intent [case]
- Since Y is a police officer and was wearing a stab-proof vest, even if there is a physical or legal impossibility for the full offence to be committed, X can still be charged with the attempted crime [case]. In conclusion, X would be guilty of attempted wounding or murder.

Example - Law of Contract:

- A has entered into an agreement with B in a commercial context so the presumption in favour of intention to legal relations would usually apply [case]
- However, in the wording of the agreement, A seems to have tried to imply that he did not want it to be legally binding. This could rebut the presumption [case]
- But in this case, A has not been very clear in his wording and given the courts' reluctance to allow parties out of binding contracts in commercial situations [case] it is most likely that B will be able to enforce the agreement.

Example – Law of Torts:

- Since A is the owner of the cottage, he/she has a proprietary interest in the land and qualifies as an ‘occupier’ of the affected land, Therefore, he/she is entitled to sue [case]
- Because there is no physical damage to A’s land, the action would lie in establishing an indirect, continuous and unreasonable interference with A’s use and enjoyment of his/her land [case]
- B does not appear to have a valid defence since he/she cannot claim that A ‘came to the nuisance’ and B will be liable although an injunction may simply limit his/her action rather than stopping it altogether [case].

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 Section 1(1) Criminal Attempts Act and the common law interpretations of this section; judicial definitions of the presumptions in favour or against intention to create legal relations; judicial definitions of the elements of nuisance;
- 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.