

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

Skills pointer guide – for use with 2011 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:
 - Involuntary manslaughter (Criminal Law)
 - Offer and acceptance (Law of Contract)
 - Trespass to the person (Law of Torts)

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 they are merely trying to save some 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 can 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 3 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 of the case referred to in the question in the context of the overarching theme.

*In the 2011 resource materials both G154 Criminal Law and G158 Law of Torts have more than 8 cases each referred to in the resource material. The following cases will not be the subject of question 1:

- Criminal Law - *Rogers* [2003] 1 WLR 1374 (since it has been overruled by the House of Lords in *R v. Kennedy* [2007] UKHL 38);
- Law of Torts - *Robinson v Balmain Ferry Co Ltd* [1910] AC 295 and *R v Ireland* [1998] AC 147.

The 2011 themes are:

- Involuntary manslaughter
- Offer and acceptance
- Trespass to the person

Criminal Law:

- *R v Church* [1966] 1 QB 59 (CCA);
- *Andrews v. DPP* [1937] AC 576 (HL);
- *R v Adomako* [1995] 1 AC 171 (HL);
- *R v Lidar* [2000] 4 Archbold News;
- *R v Bateman* [1925] All ER Rep 45;
- *R v Goodfellow* (1986) 83 Cr App R 23 (CA);
- *R v Kennedy (No.2)* [2007] UKHL 38, [2007] WLR 612;
- *R v Cato* [1976] 1 WLR 110;
- *R v Rogers* [2003] 1 WLR 1374 (CA).

Law of Contract:

- *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256 CA;
- *Gibson v Manchester City Council* [1978] 1 WLR 520 (CA) and [1979] 1 WLR 294 (HL);
- *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1953] 1 QB 401;
- *Hyde v Wrench* [1840] 3 Beav 334;
- *Household Fire Insurance Co v Grant* [1879] 4 Ex. D. 216;
- *Adams v Lindsell* (1818) 1 B & Ald 681;
- *Entores v Miles Far East Corp.* [1955] 2 QB 327;
- *Byrne v Van Tienhoven* (1880) 5 CPD 344.

Law of Torts:

- *Read v Coker* [1853] 13 CB 850;
- *Thomas v National Union of Mineworkers (South Wales Area)* [1985] 2 All ER 1;
- *Letang v Cooper* [1965] 1 QB 232 CA;
- *Cole v Turner* [1704] 90 ER 958;
- *Wilson v Pringle* [1986] 2 All ER 440;
- *Collins v Wilcock* [1984] 1 WLR 1172;
- *Re F (Mental Patient: Sterilisation)* [1990] 2 AC 1;
- *Herd v Weardale Steel, Coal and Coke Co.* [1915] AC 67 HL.

Candidates should be able to learn the significant points of all 8 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, and there is varying degrees of detail on others. Candidates must be able to show in the exam that they have a full understanding of the significance of the 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:

- explaining in detail the key critical point of the case in the context of the question and of the overarching theme;
- explaining in the same depth and detail at least two other critical 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 - Goodfellow (1986) 83 Cr App R 23 (CA) – high marks could be gained, for example, with the following:

- The Court of Appeal rejected an appeal against conviction because it held that all of the constituent parts of unlawful act manslaughter were present. The Court stated that because the unlawful act had been committed intentionally, that reasonable people would inevitably recognise the act would subject the victims to the risk of at least some harm, albeit not serious harm. Similarly the test for causation was established since by the defendant's own actions this caused a chain of unbroken events which ended with the death of the victims;
- The appeal was rejected even though the unlawful act (arson) was not directed against a specific person and in particular those that had died in the fire. This widened the rule in *Mitchell* that the unlawful act can be an indirect act and supports the argument that the earlier decision in *Dalby* on this point was wrong. In *Dalby* the Court of Appeal had insisted the unlawful act must be a direct act. Later Lord Hope in the *Attorney General's Reference (No. 3 of 1994)* supported the decision in *Goodfellow* but did not overrule the decision in *Dalby*;
- *Goodfellow* had historically confirmed the basic rule of reckless manslaughter under the now overruled objective definition in *Caldwell/Seymour*. Similarly, on the facts of *Goodfellow*, this could also give rise to a conviction for gross negligence manslaughter.

Example Law of Contract - Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953] 1 QB – high marks could be gained, for example, with the following:

- In this case the defendants successfully defended themselves against an action alleging that they were selling medicines without the supervision of a pharmacist. The Court of Appeal upheld the first instance judgment and applied the accepted distinction of offer/invitation to treat to the then new situation of 'self-service' shops. The court held that displaying the medicines on shelves was not an offer but an invitation to treat and that the actual contract of sale was formed at the cash desk. The cash desks were in fact supervised by a pharmacist and therefore no offence had occurred;
- By extending the rules on invitation to treat to self-service shops, the courts extended the protection of the interests of shopkeepers by preserving their discretion to refuse to contract with any particular customer in this new situation;
- The courts adopted a similar line of reasoning in the later case of *Partridge v Crittenden* in which it was held that an advertisement in a periodical was an invitation to treat and not an offer. The reasoning in this case was further supported by the argument that sellers who sold through printed advertisements could find themselves bound into more contracts than they were able to perform if the advert was found to be an offer;
- Whilst the shopkeepers' interests have been protected in this case, the position of the customer has been weakened as they have no legal grounds to compel the shopkeeper to sell the goods at the price shown on the shelf.

Example Law of Torts – *Read v Coker* [1853] 13 CB 850 – high marks could be gained, for example, with the following:

- The court decided that, to constitute an assault, there had to be something more than a threat of violence;
- Byles Serjt approves of the assertion made by Buller that ‘... [n]o words can amount to an assault’. However, this notion is now considered somewhat out-of-date and fails to recognise the threat and fear felt by the use of words alone;
- The case can be contrasted with later cases such as *R v Ireland* [1998] AC 147 (see Source 2) which assert that words alone can amount to an assault. Although *R v Ireland* is a criminal case, most academics agree that the outcome would be the same if a similar case were brought in tort (Source 2, lines 20-21);
- This case can also be contrasted with cases like *Tuberville v Savage* [1669] 1 Mod 3 where the courts stated that words may negative acts which would otherwise amount to an assault.

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 point from the case and another case or cases 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 involuntary manslaughter (Criminal); offer and acceptance (Contract); and trespass to the person (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 law, 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 in the source materials;
- They can do this by citing the appropriate information/comment by 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);
- 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 should be able to locate possible essay titles in advance by examining the comment in the source materials for likely quotes to attach to a question.

Example Criminal Law:

Source 3 lines 1-3

The author states that '[Involuntary manslaughter] includes all varieties of homicide which are unlawful at common law but committed without malice aforethought. It is not surprising, therefore that the fault required takes more than one form'.

Example Law of Contract:

Source 2 lines 8-15

The author states that "care must be taken ... in distinguishing between an offer and an invitation to treat. ... Although the dichotomy is easy to state at the level of theory, it is not so easy to apply at the level of practice".

Example Law of Torts:

Source 5 lines 7 - 8

Viscount Haldane LC states that 'By the law of this country no man can be restrained of his liberty without authority in law'.

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 involuntary manslaughter is based on the common law, judges have had difficulty clarifying the definitions and, at times, blurred the existence and boundaries of the different types;

Law of Contract - judges have developed rules on offer and acceptance which are arguably more arbitrary than logical and which are often very difficult to apply clearly to any given factual situation;

Law of Torts - trespass to the person has seen the rise of statutory intervention in protecting the individual (eg police powers, mental health and human rights legislation) as well as creative judicial intervention through the interpretation of key definitional elements.

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 cases 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:

- Involuntary manslaughter (Criminal Law)
- Offer and acceptance (Law of Contract)
- Trespass to the person (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 plus one case for each for high marks, eg:

Example - Criminal Law:

- X has pushed his son Y over (who has later died) and therefore committed an unlawful act [case]; and/or X owes a duty of care to Y through their father and son relationship [case];
- Whether the unlawful act committed by X is a dangerous act which has caused the death of Y [case] and/or if X has fallen below the standard of care that it amounts to a criminal act [case]. It may also be possible also for liability under reckless manslaughter if X had foreseen a risk of injury;
- Therefore that the initial actions of X could lead to liability under any or all of the types of involuntary manslaughter;

Example - Law of Contract:

- Z has published an advertisement in a newspaper which would ordinarily be seen as an invitation to treat [case];
- But in fact the specific nature of the promise in the advertisement and the absence of any caveats mean that it is likely to be treated as a unilateral offer [case];
- However in this case, X has not complied fully with the terms set out in the advertisement so the 'acceptance' does not mirror the offer [case] and therefore he will be unsuccessful in his action for breach of contract.

Example - Law of Torts:

- When A punches B on the nose he commits a possible battery [case];
- A is acting directly and intentionally as the punch is clearly aimed at B's nose and accompanied by the words 'take that big nose' [case];
- Although A was (arguably) acting in self-defence, his response was so disproportionate that the defence is unlikely to succeed and he will be liable for the battery of B [case].

Planning for Question 3

For the small problems in question 3 candidates should:

- structure their answer logically;
- 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 the sections of Acts or common law definitions to apply the law (eg judicial definitions of involuntary manslaughter; Consumer Protection (Distance Selling) Regulations 2000; judicial definitions of assault, battery, false imprisonment and the tort in *Wilkinson v Downton*);
- 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.