

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

Updated 31/8/17

Skills pointer guide – for use with June 2018 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 June 2018 are:

Duress by threats*
 Intention to create legal relations (ITCLR)*
*Rylands v Fletcher**

*to avoid overlap between the content of the Special Study papers (G154/6/8) and the Option papers (G153/5/7), questions on the Option papers will not relate to the special study theme for the same academic year.

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 for 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 2018 the cases are:

Criminal Law:

- *R v Howe* [1987] 1 AC 417
- *R v Hasan* [2005] 2 AC 467
- *R v Graham* [1982] 1 All ER 801
- *R v Gill* [1963] 2 All ER 688
- *R v Hudson and Taylor* [1971] 2 QB 202
- *R v Bowen* [1996] Crim LR 577

- *R v Valderrama-Vega* [1985] Crim LR 220
- *R v Ortiz* (1986) 83 Cr App R 173

Law of Contract:

- *Balfour v Balfour* [1919] 2 KB 571 CA
- *Parker v Clarke* [1960] 1 WLR 286
- *Coward v MIB* [1963] 1 QB 359
- *Merritt v Merritt* [1970] EWCA Civ 6
- *Rose and Frank v Crompton* [1923] 2 KB 261
- *Lens v Devonshire Social Club* (The Times, 4 December 1914)
- *Esso Petroleum Ltd v Commissioners of Customs and Excise* [1976] 1 WLR 1
- *Kleinwort Benson Ltd v Malaysia Mining Corp* [1989] 1 All ER 78

Law of Torts:

- *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 1 All ER 53
- *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61
- *Stannard (trading as Wyvern Tyres) v Gore* [2012] EWCA Civ 1248
- *Rylands v Fletcher* (1865) 3 H&C 774; (1868) LR 3 HL 330 (HL)
- *Peters v Prince of Wales Theatre (Birmingham) Ltd* [1943] 1 KB 73
- *Perry v Kendrick's Transport Ltd* [1956] 1 WLR 85
- *Nichols v Marsland* (1876) 2 Ex D 1
- *Burnie Port Authority v General Jones Pty Ltd* [1994] 120 ALR 42, (1994) 179 CLR 520

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 are 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 Valderrama-Vega [1985] Crim LR 220 – high marks can be gained, for example, with the following:

- The case of *Valderrama-Vega* provided an important development in the law on duress by threats. The case considered the seriousness of the threat under which a defendant claims to have been forced to carry out a criminal offence. The appellant had been convicted of importing cocaine into the UK. He claimed that he had only done this because he had been threatened with death from a mafia-type gang in Columbia. He was heavily in debt and claimed the gang had threatened to reveal the debt along with his homosexuality.
- Following his conviction, he appealed on the grounds that there was a misdirection at trial. He argued that the trial judge had erred in his direction to the jury when he said the defendant would only have the defence if the death threats were 'solely' the reason for his actions.
- The Court of Appeal disagreed with the trial judge's direction. They held that while there must be a threat of death or serious injury, it need not be the sole reason for the defendant's actions in committing the offence in question. The Court stated that a jury can take into account a combination of threats.
- The Court said that threats to reveal the defendant's homosexuality on their own would be insufficient, but could be taken into account when considered alongside threats of death or serious injury. The defendant's conviction was upheld.
- The case established that drug offences involving the importation of Class A drugs are sufficient to give rise to the defence of duress by threats.
- In the earlier case of *Lynch*, the potentially wide scope of the seriousness of threat was curtailed in considering *inter alia* threats to property. The case involved a defendant, under threat of death, who drove members of the IRA terrorist organisation to a place where they killed a policeman. In a dissenting judgement, Lord Simon in considering lesser threats had said: 'The law must draw a line somewhere; and as a result of experience and human valuation, the law draws it between threats to property and threats to the person.'

Example Law of Contract – Merritt v Merritt [1970] EWCA Civ 6 – high marks could be gained, for example, with the following:

- In this case a husband and wife split up and made an agreement that the husband would sign over the marital home if the wife paid off the mortgage. She did so but then he refused to sign over the house. Notably, the agreement had been written down on paper.
- It was held that there was ITCLR between the husband and wife and that the house must be signed over.
- This case is the central authority for an important development to the presumption against ITCLR in domestic situations. It provides an exception to the rule in *Balfour v Balfour* which was distinguished along the lines that in that case the parties were 'living in amity'.
- The case gives us the authority to look beyond the marital status of the parties and consider the contextual details.

- Lord Denning made it clear in the case that the courts do not look at the subjective intention of the parties but rather at whether or not reasonable people would understand the agreement to be binding. In this respect, the 'intentions of the parties' is effectively being determined by their words and actions as well as, perhaps, broader considerations of fairness or justice.
- In these respects, the case is consistent with other exceptions to the domestic/social presumption such as *Simpkins v Pays*, *Errington v Wood* or *Parker v Clark*.
- Factors which were particularly relevant in this case were the signing of the document and, arguably, the reliance on the agreement in terms of the wife paying off the mortgage.
- It is tempting to contrast this decision with *Balfour* in terms of the approach that is taken towards women in domestic contracts but *Merritt* very clearly concerns spouses dealing 'at arms' length' so doesn't address directly the arguments regarding the private sphere made in *Balfour*. It is interesting to note, however, that the decision was made half a century after *Balfour* and may reflect changing social attitudes to the position of women in society.

Example Law of Torts – *Stannard (trading as Wyvern Tyres) v Gore* [2012] EWCA Civ 1248 - high marks could be gained, for example, with the following:

- In *Stannard v Gore* an electrical fault developed (without fault) which caused a fire that spread to some tyres. The fire spread further and caused the total loss of the adjacent premises. The Court of Appeal had to consider the liability of the occupier defendant under *Rylands v Fletcher*. At trial the court allowed the claim. On appeal, however, the Court of Appeal reversed the decision and decided that the rule of strict liability under *Rylands* applied to the escape of 'dangerous things' accumulated on land not the fire that emanates from them. In this case the tyres did not escape – only the fire escaped. The practical effect of *Stannard* is probably to rule out liability on a *Rylands* basis for the escape of fire.
- Previously, in *Musgrove v Pandelis*, a fire spread to adjacent premises and destroyed them following a small explosion caused without fault when a car engine was started. It was held that *Rylands* applied to what was an escape of fire even though the thing it emanated from did not escape. Later cases upheld the position (*LMS International v Styrene*). However, *Stannard* stated that the *Musgrove* case was a 'fact sensitive' case which would be decided differently today.
- The case can also be linked to *Transco plc v Stockport Metropolitan Borough Council* where it was held that a defendant would only be liable if they were making an 'extraordinary or unusual' use of the land. In this case the defendant's activity as a tyre supplier was a perfectly ordinary and reasonable activity for an industrial estate, and was not a non-natural use of the land.
- The court also considered the historical background to liability for fire. Under both common law and statute there was a defence to liability caused by fire if it was caused accidentally. In 1866 *Rylands* appeared to create strict liability in such circumstances. However, *Rylands* became subject to multiple exceptions and defences developed through case law which left the position somewhat unclear.

- The case illustrates the way that judge made law achieves incremental development. *Stannard* represents a decisive turn from the trend since *Musgrove* regarding the escape of fire. It also reflects the increasing judicial dislike for *Rylands* which was heavily criticised in *Transco* and lends further support to the school of thought that favours getting rid of the rule in favour of negligence as seen in Australia (*Burnie Port Authority v General Jones Pty Ltd*).
- In practical terms the case has implications for insurance. Occupiers of land should make sure that their insurance policies cover them for losses caused by fire on their premises.

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: duress by threats (Criminal); intention to create legal relations (Contract); or *Rylands v Fletcher* (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 3, line 1

The authors state that “Duress operates as a concession to human weakness.”

Example Law of Contract:

Source 4, lines 30-32

Lord Denning states that “In all these cases the Court does not try to discover the intention by looking into the minds of the parties. It looks at the situation in which they were placed and asks itself: Would reasonable people regard the agreement as intended to be binding?”

Example Law of Torts:

Source 5, lines 40-42

The author states that “Their Lordships all considered that the rule had long been characterised by difficult distinctions and exceptions, and that the restatement they have provided should make the rule easier to interpret, although, it might be said, more difficult to apply.”

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 – That fact the law in this area is almost entirely ordered and developed through the common law’s decisions via the courts is problematic and, in the view of some critics, laughable. Whether successive judges have made the defence easier in its applicability, or whether precedent has tightened up the allowance to ‘human frailty’ that the defence so readily demands is dubious. Piece-meal and slow, *ad-hoc* and sometimes unexplainable, the defence has faltered along until a case appears on the appellate courts’ radar to resolve. Law reform

has been proposed, as recently as 2006, but has been conveniently shelved for future scrutiny, should Parliament have the time.

Law of Contract – intention to create legal relations continues to be a requirement for a valid contract: if there is no ITCLR, then there is no enforceable agreement. But what are the rules on ITCLR really testing? Do they concern themselves with what the parties actually intended at the time that they made their agreements or are the rules really just acting as a filter to prevent undesirable, unfair or unreasonable contracts? If they really are just a filter, then are they fit for purpose? Are the courts being consistent in their application of these rules or are they essentially reaching judgments on a case-by-case basis, driven by their own preconceived ideas concerning the fairness of the case as they see it? These are some of the key questions pertinent to this area of law today.

Law of Torts – The rule in *Rylands v Fletcher* was an attempt to create strict liability for the escape of dangerous materials accumulated on the defendant's land which cause damage when they escape to neighbouring land. Successful claims have been rare as the tort has been subject to a great deal of judicial interpretation introducing elements of fault based liability. The rule was becoming redundant but in 1994 it seemed to get a new lease of life as a potential environmental tort after the case of *Cambridge Water*. However, this did not materialise - probably because of the development of negligence, nuisance and, in particular, statutory intervention. In the recent case of *Transco* the House of Lords recognised the arguments for abolition of the rule (as has happened in Australia) but stated that it still has a role and should be preserved.

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:

- Duress by threats is a complete defence under the common law. It is a defence to all crimes except murder and attempted murder. Since Jasmine has committed theft of the mobile phone, she would be entitled to raise the defence: *Howe*.
- The threat made by Karen must be believed by Jasmine to be immediate or almost immediate. As it is Monday, and she has until Saturday, this would not appear to be immediate or almost immediate and Jasmine had time to notify the police: *Hasan*.
- Jasmine must be driven to steal the mobile phone because of a reasonable fear of serious physical injury or death to herself. Here, her mother, Karen, has

made threats to stop Jasmine from going to the party on Saturday unless she carries out the theft. Therefore, the defence is unlikely to be successful as the threat does not involve a threat of death or serious injury: *Hasan*. **(CP)**

- If the threat is serious enough, the question that needs asking is whether a sober person of reasonable firmness, sharing Jasmine's characteristics, would have responded in the same way? It is likely that a sober person sharing her characteristics (a 14-year-old female) should have been able to defy her mother's threat to stop her from going to the party unless she stole the phone: *Graham*.
- Duress of defence only operates if Jasmine has committed an explicit crime, here selected by her mother while making the threat to stop her going to the party. Here, her mother has nominated the crime of theft in order to steal the phone: *Cole*.
- Therefore, in conclusion, Jasmine would not be entitled to the defence of duress by threats against a charge of theft.

Example - Law of Contract:

- Recognise that the relationship here is a domestic one as Emilia and Charlotte are sisters. **(CP)**
- Show that in such a situation there is a presumption against ITCLR (*Balfour v Balfour*). **(CP)**
- Show that the presumption can be rebutted if there is evidence of serious intent. (*Merritt v Merritt*).
- Recognise that Charlotte insisting that Emily put the agreement in writing would constitute such evidence.
- Show that the presumption can be rebutted if a domestic agreement is being made in a commercial context (*Snelling v Snelling*).
- Recognise that the fact that the agreement concerns an important change in the running of their business is likely to be seen as a commercial context.
- Conclude that there is ITCLR in this agreement and that it can be enforced by Charlotte against Emily.

Example – Law of Torts:

- Recognise that Alice is the claimant since she has suffered the harm and that Bob will be the defendant as he is the person who accumulated the allegedly dangerous thing on his land.
- Explain that Bob will need a proprietary interest and/or control over the land from which the thing escaped.
- Establish that the thing was likely to cause mischief if it escapes
- Did Bob's storage amount to an 'extraordinary and unusual' use of the land considering the time and place?
- Did the thing (itself) escape from the land in circumstances where Bob had control?
- Did Alice suffer reasonably foreseeable harm?
- Recognise that although the key elements of *Rylands* are present, Alice has suffered personal injury not property damage and that recovery for personal injury is not allowed under *Rylands* (*Cambridge Water* affirmed in *Transco*). **(CP)**
- Conclude that Alice will **not** be able to recover in *Rylands v Fletcher* for her

broken arm. She may be able to sue in negligence however.

Planning for Question 3

For the three scenarios 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 specific relevant Act sections or cases to support their definitions of the law eg the common law interpretations of duress by threats; intention to create legal relations; *Rylands v Fletcher*
- 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.