

Dated: April 25, 2021

Memorandum to Students

Exam Prospectus
Antitrust
Spring 2021
University of Oklahoma College of Law
Eric E. Johnson, Professor of Law

1. OVERALL POINTS

Purpose: I am writing this document to give you specific information that will help you prepare for and know what to expect on the Spring 2021 Antitrust final exam.

Fairness: My paramount value in designing and grading the exam is fairness. Over the years, I have thought long and hard about how to make exams and grading more fair, and you will see the product of that reflection in this memo. As a whole, this memo is intended to eliminate the potential for surprise on the exam by disclosing as much as I can about the exam in advance.

My goal and your goal: Your goal in taking the exam is to show your mastery of the material presented in the course and your skills in analyzing legal problems involving the course's subject matter. My goal in designing the exam is to provide you with a full and fair opportunity to do so and to avoid arbitrariness in the results.

Now for some details.

2. PARAMETERS

A. Obeying Exam Requirements and Instructions: A failure to follow exam requirements and instructions is an academic misconduct issue, and violations will presumptively be treated as such, even if inadvertent. (See §6-6 of the Syllabus.) This applies to the requirements set out below, those set out in the Syllabus, and any instructions on the exam itself.

At the time I'm writing this, I haven't finalized the exam instructions yet. I am working with OU Law's Office of Faculty Support to make sure the instructions don't inadvertently create headaches for students or for administrative support staff. But I will release the exam instructions well ahead of the administration of the exam.

B. General Format and Time Considerations

The exam will be administered through Canvas.

The exam will consist of Part One and Part Two. Part One will be shorter-answer questions. Part Two will involve an issue-spotter fact pattern with one or more essay questions. More detail on the two parts can be found below.

C. Time Considerations

1. You will have a total of three hours to complete the exam. You must comply with the exam instructions and the instructions of the College of Law's administration and staff with regard to when you can or must begin and when you must end.

2. **IMPORTANT NOTE ABOUT THE CANVAS COUNTDOWN CLOCK, TIME FOR UPLOADING, AND PENALTIES FOR LATENESS:** I will ask for the Canvas exam page to be built to provide a five-minute buffer for uploading on top of the three hours for taking the exam. This means the Canvas countdown clock will start at 3:05:00. **When the countdown clock gets to five minutes remaining, you must stop writing and begin working on uploading your exam.** Make sure you upload before the countdown clock hits zero. If for some reason you are having trouble uploading and it appears that you may not succeed in uploading before the countdown clock expires, immediately e-mail the document you are attempting to upload to OU Law Faculty Support at lawfacsupport@ou.edu. If the countdown clock expires and the exam has not been received by Canvas (or, in a pinch, by e-mail to Faculty Support), then your exam is late and points will be taken off your exam score. Be aware that after the countdown clock expires, you will be unable to upload to Canvas, and at that point will have to submit your late exam by e-mail to Faculty Support. The later the exam is, the more points will be taken off. If late enough, an exam will be given no credit at all. So make sure you monitor the countdown clock on Canvas and stop writing at five minutes left.

3. **WHAT IF MULTIPLE THINGS DON'T WORK AND I CAN'T UPLOAD, E-MAIL, ETC.?** The only possible exception to the mandatory reduction in points will be in the case that before those five minutes expire you have tried to ameliorate the problem with Faculty Support and, after consultation with Faculty Support and persons in the OU Law administration, I am satisfied that the connectivity problems were bona fide and that it is beyond reasonable doubt that you obtained no advantage from any delay. As mentioned above, if you can't upload before the countdown clock expires, you are expected to immediately e-mail the document you were attempting to upload to lawfacsupport@ou.edu. If your internet isn't working at all, so that you can't even e-mail, then as a last resort you can try telephoning Faculty Support before the countdown clock expires. (Unfortunately, I don't have a telephone number to give you. I suppose you could try the OU Law main number, which is 405-325-4699.) You could also try e-mailing from your phone—perhaps with pictures of your exam response if you can make that work. If Canvas, e-mail, and your phone all fail simultaneously so that nothing works, then points are going to be taken off your exam score, regardless of blameworthiness or innocence. If your Canvas access, e-mail access, and phone all depend on a single internet

connection that is prone to failure, I strongly suggest you consider making arrangements to take the exam someplace that offers more stability and security in terms of connectivity.

D. The Download (the Exam Booklet):

The questions, hypothetical facts, etc., for both Part One and Part Two, will be contained in a single PDF exam booklet which you may download from the Canvas site at the time of the exam. You will be able to print-out and mark-up the booklet as may be useful to you. Note that I anticipate that the PDF will have text that can be copied-and-pasted into another document. But **I strongly urge you not to copy and paste material from the exam booklet into your exam response!** (I will already know what's in the exam booklet because I will have written it. If you need to refer to material in the exam booklet, I suggest you just refer to it. There's no need to quote it.)

E. The Upload (Your Answers/Response):

You will submit answers for both Part One and Part Two of the exam in a single document which you will upload to the Canvas site. (Your document must conform to certain mandatory formatting requirements, which are explained next.)

Mandatory formatting requirements: You will upload your response either as a DOCX (which is strongly preferred) or as a PDF. The document **must** be 8.5-inch-by-11-inch in size in portrait orientation with line spacing set to **single-spaced** with the only font used being **12-point font**, and with the **margins set to 1 inch** all around. Put your exam number in a paragraph by itself at the very beginning of the document and in a paragraph by itself at the very end. If your exam response does not meet these minimal mandatory formatting requirements, points will be taken off.

Strong recommendations for formatting: The document **should** use only Arial, Helvetica, or a similar sans-serif font and have paragraphs where the first line is set to indent by 0.5" and there is 6 points of space after each paragraph. The document header should consist only of your exam number and the document footer should have only the page number or, preferably, say "Page X of Y" where X is the page number and Y is the total number of pages. For each question, put the question number on a line by itself, and put an extra line break between questions. Put "PART ONE - SHORT ANSWER" at the beginning of Part One. I've created a sample/dummy response you can look at. It's on the class webpage, but here's the direct link: http://www.ericejohnson.com/courses/antitrust_21/m/Exam_response_sample.pdf. What I really want is for it to be crystal clear what material is for what question and what your exam number is.

I have posted an exam response template that I urge you to use if possible. It already has the required/recommended margins, font, font size, line spacing, etc. This exam response template is already on the class webpage, but

here's the direct link:

http://www.ericejohnson.com/courses/antitrust_21/m/Exam_response_template.docx. (When you use it, replace "000" with your exam number.)

Please do not disregard the formatting requirements or recommendations! These format requirements are so that all responses will look alike and be similarly readable. My intent is not to add to your burden in writing your response, but in the legal world, courts require documents to be formatted certain ways. So it seems to me to be reasonable to require the exam responses to be set out in a certain format to facilitate fair grading.

For the timing of the upload, see above regarding "IMPORTANT NOTE ABOUT THE CANVAS COUNTDOWN CLOCK, TIME FOR UPLOADING, AND PENALTIES FOR LATENESS."

F. About Part One of the Exam:

Part One of the exam will be worth one-third of the total exam grade, and it should take about one hour out of a total of three hours. This portion of the exam will test matters of pure economics knowledge, covered during the "Economics for Antitrust" portion of the course, as well as some legal content—particularly doctrinal matter that I couldn't stuff into the issue-spotter for Part Two of the exam.

Part One will consist of a variety of shorter-answer questions. I expect to provide word limits for questions in Part One. Some may be very short -- such as limited to 10 words or less. Others will be longer. For some questions, I direct you to make the first two words of your answer "XXX words," where "XXX" is the number of words.

For information on the kinds of questions to expect and subject matter to be covered, see §3 & §4 below.

G. About Part Two of the Exam:

Part Two of the exam, worth two-thirds of the total exam grade, will require a written response. I recommended that you do Part Two second and that you spend at least two hours on it. This part of the exam will consist of multiple open-ended questions calling for written, essay-style responses providing legal analysis for a hypothetical fact pattern.

There will be no length limit (e.g., word limit or page limit) for Part Two.

You will provide your answers to all questions in a single document you upload (the same document for both Part One and Part Two; see above for mandatory formatting requirements).

For information on the kinds of questions to expect and subject matter to be covered, see §3 & §5 below.

H. Anonymity and Identification:

Use your exam number. (Your examination identification number, of course, means your examination number for this semester – not one from a prior semester.) As set forth above, the exam number, on a line by itself, must be the first thing and the last thing in your response document.

Each exam will be “blind graded,” so that I will not know the identity of the student as I am grading her or his exam. **You may not waive anonymity. Do not include your name in your exam response.** Self-identification on the exam or otherwise compromising anonymity will presumptively result in both a deduction from your exam grade and a referral for disciplinary action.

I. Allowed and Not Allowed:

There will be no difference between what is allowed and not allowed for Part One and Part Two of the exam. The whole exam is conducted on what might be called an open-book basis, more or less. Here’s the specific rules:

(i) You may access any print sources you like for which you have your own copy, but you may not share print sources with anyone else, including other students.

(ii) You may access any of your own electronic documents for which you have a locally stored copy.

(iii) You may access my own website at ericejohnson.com and any materials thereon. But note that while I do not foresee any web hosting problems with ericejohnson.com, I cannot guarantee service during and through the exam period. Thus, I recommend having locally stored copies of any documents from ericejohnson.com that you consider essential.

(iv) You may use scratch paper. You may also use a digital device to take notes – i.e., to serve as virtual scrap paper – but whatever notes you make must be locally stored and may not be stored online or made accessible to anyone else.

(v) You may use a timer, such as a kitchen timer, a timer app on your phone or computer, a countdown function on your watch, etc. And, if it ends up being helpful, you may use a calculator, including a calculator app on your computer or phone.

(vi) **You are prohibited from communicating with anyone during the exam period.** You may not communicate with anyone – whether in person, on the phone, via text, or via any platform (e.g., Twitter, GroupMe, Discord, Facebook, Snapchat, Zoom, or anything). So, among other things, **you are prohibited from collaborating with or asking for help from any fellow student or any non-law-student for any purpose, including, for instance, helping you figure out what something means, proofreading your essay response, or helping to let you know when you are running out of time.** The only exception is that you can have entirely non-substantive communications with people along

the lines of sharing physical space. So, you can yell, “Get out of the bathroom already, I’m taking an exam!” or “Can you please take the crying baby outside, I’m trying to take an exam!” If you need technical support (e.g., “This stupid thing won’t upload, can you help me?”), you can communicate with staff at OU for that purpose. If you use another person who is not OU staff for technical support, such a roommate, sibling, etc., then you must disclose that communication immediately following the conclusion of the exam to a member of the OU staff who is helping to administer exams. If disclosure is prompt and if it is determined no substantive help was given, then this will not be considered a rule violation. Under no circumstances may you communicate with another law student in this course – even to help with tech support issues.

(vii) **You are prohibited from accessing any internet or online sources at all – with the exception of the OU Canvas site you are using to take the exam and any materials available on my own website at ericejohnson.com** (see above). This means, for instance, that you may not access or search for anything using Google, Westlaw, Lexis, Quimbee, government websites, library websites, etc. **For clarity: You are prohibited from using an online/cloud-based platform for writing your exam, such as Google Docs.** And, of course, you cannot make or receive any communications via social media.

3. TOPICS ON THE EXAM AND HOW I WILL DESIGN THE EXAM IN GENERAL

The best way for me to tell you what to expect is for me to tell you what I will draw from and what will constrain me when I write the exam.

The Correspondence Principle:

The most important thing to me when I write an exam is what I call the Correspondence Principle. It is this: **The emphasis on the exam will track the emphasis in class and in the materials.** For example, if we spent little time on something in class and there was little or no reading, slides, or other materials on it, you can expect that it will not be more than a trifling part of the exam, if even that. By the same token, if something was mentioned in passing in the reading but was not a subject of attention in class, you can expect the same.

Comprehensiveness:

In keeping with the Correspondence Principle, I will strive to be very comprehensive in terms of the coverage of topics on the exam. I will use the syllabus and chart of assignments as a checklist. I will endeavor to include, in some way, every topic that was substantially explored in class.

Breadth and depth of coverage:

Any material presented in class or in the readings is potentially fair game for the exam. But, in keeping with the Correspondence Principle, the emphasis given to topics will correspond to how much attention they received in class and in the readings. So, as an example, if some doctrinal point came up only in

passing in the reading and wasn't discussed in class, then you can be sure that such a doctrinal point will not loom large on the exam. In fact, it won't even loom medium.

That being said, I cannot guarantee that no obscure point will find its way onto the essay portion of the exam. Why not? There is always the possibility that some clever student will make a brilliant point regarding some tiny point of law, even if I never intentionally meant to include it. Such a possibility is a natural consequence of having an open-ended essay response. Obviously, I can't hold it against the clever student who sees something I didn't, and in such a situation I will happily award an extra point or two, although not a windfall.

That brings up a related point: As a matter of strategy on the essay exam, I strongly counsel you to stick to the straightforward aspects and do a good job on those rather than looking for obscure opportunities to make quirky, eccentric points. There should be more than enough straightforward material to engage you. I don't build exams with sneakiness in mind. Put differently, when approaching the exam booklet's hypothetical facts, I would advise you to read carefully but not suspiciously. My experience in reading students' exam essays is that when students try to look for hidden opportunities for points they usually end up going off in unproductive directions.

So, the bottom line is, the more you know, the better, but do not obsess about trying to commit to memory all the finer points. Prioritize your studying based on what I explain next.

The Focus List—what I will draw from in writing the exam:

When I sit down to write the exam, in order to obey the Correspondence Principle, I will look for areas that were emphasized during our semester. To accomplish that, I will make particular reference to the following, which we can call the "Focus List." This is where you should concentrate your studies:

- that material that is necessary to carry out analysis as set forth in the Antitrust Analysis Synthesis document for this semester
- the teachings of the cases we went over (and I mean the bigger-picture aspects, not the most granular details)
- material that was the subject of sustained attention in class
- slideshows posted to the class website
- problems and hypotheticals in those slideshows
- with specific regard to pure economics concepts:
 - material needed to answer the POE questions that were assigned
 - material covered in the slideshows
 - material needed to answer questions/problems in the slides

The main message is to not worry about small details. Instead, work on having a thorough understanding of the major concepts and knowing how to apply them. After that, work on things that were substantially explored in class and the ones highlighted as having particular importance. Little things that we barely touched on in class should not be the focus of your studying.

A particular word about the usefulness of studying the cases:

In addition to what's referenced in the Focus List, above, I recommend that you spend some study time re-acquainting yourself with the cases we spent time on this semester – and not just the blackletter law from those cases, but also the facts and the court's approach. The cases I'm talking about are mostly the cases that were assigned as reading, but there were also a couple of cases that we spent time on using the slides and (*Brooke Group* and *LePage's* come to mind).

As you have seen in this course, federal antitrust law under the Sherman Act is for all intents and purposes a common-law endeavor. Thus, reasoning by analogy from the cases can make for powerful analysis. And knowing the facts of the cases we read will help you to see which ones might be valuable for reasoning analogically.

Note that in terms of the potential for analogical reasoning from the cases we covered, the Antitrust course distinguishes itself from a course like Torts. While both are common-law courses, the particular cases are much more important in Antitrust. That's because for Antitrust, there's only one body of law – the federal law – and only one court that oversees it – the U.S. Supreme Court. In Torts, where there's more than 50 different bodies of tort law across the United States, the cases you read are really just examples of tort law. In Antitrust, by contrast, the cases you read *are* the law.

The other reason having familiarity with the cases can pay off in this class is that I'm going to be thinking about those cases when I write the issue-spotter facts. I want to build an issue spotter that is useful to you in giving you a chance to show off what you've learned. So I'll be trying to produce fictional facts that – in abstract, indirect ways – have commonalities and parallels to the facts of the cases we read.

My guess is that you could probably do okay on the exam without paying attention to the cases in end-of-the-semester studying – sticking instead to blackletter abstractions of the law. But if you are really looking to excel, paying attention to the cases is, I think, a useful way to do that. Don't go overboard and re-read them all. But looking back over them and reminding yourself of what you know about them would, I think, be time well spent.

Jurisdictional coverage:

You will be tested on the U.S. law we studied, including as presented in the cases we read. You will not be tested on the law of any particular circuit. Thus, you will not need jurisdiction-specific answers.

4. HOW I'LL WRITE PART ONE – SHORT ANSWER

I'm going to be real frank here.

I haven't written Part One yet, but I expect it to be very challenging for me to write.

Why will it be so difficult? I'll have to lay some groundwork to explain.

We spent a lot of time in this class on pure economics knowledge. In addition, there are some doctrinal things that we spent time on that aren't going to be easy to stick into the Part Two issue spotter. Given my commitment to the Correspondence Principle (described above), I have to strive to test that stuff in approximate correspondence to the amount of time we spent on it. In a normal semester, what's great for making that work is closed-book multiple-choice questions. But I decided that wasn't feasible this semester given the need to do the exam online. Thus, I'm using short-answer questions instead.

As much as possible, I want the short-answer questions to test your understanding of the material, as opposed to your ability to look it up in your notes. It's hard to write questions that fit that bill, but I will try. The fact is this: I don't want Part One to be a scavenger hunt where you need to look through all your notes and course materials (readings, slides, etc.), pull out the correct answer, and put it into your exam response. But, alas, there will probably be some questions on Part One that are answerable that way. It might be unavoidable.

So, insofar as Part One may have questions that are answerable by looking through your notes, the slides, the readings, and so forth, you'll want to have those materials prepared so you can look through them quickly. It may thus be useful to take advantage of the admonition, above, at 2.I.(ii), stating, "You may access any of your own electronic documents for which you have a locally stored copy."

If it were me, I'd probably have the slides, electronically stored readings, and my outline ready to be searched electronically on my computer. I don't think it takes a genius to anticipate that being able to electronically search the slides and other materials may help you find answers faster, and thus score more points.

But, obviously, it is ridiculous for a teacher to construct an exam that primarily tests students' ability to search through electronic documents for answers.

So, that's part of my challenge. I'm going to be trying to write short-answer questions that are more tuned to applying understanding than looking things up – or at least looking things up using conceptual knowledge rather than keywords.

Yet there's more to my challenge. Most of the ready ways to test application/understanding instead of recall/how-quickly-can-you-look-it-up

involve making the questions more time-consuming. But I want to keep Part One answerable—for the well-prepared student—within one hour. All while testing comprehensively.

So hopefully you can appreciate why writing Part One is a difficult task.

What can you look at to get an idea of the sorts of questions I might ask? I'm recommending you look at the following:

- Questions 1-3 and 7-24 of the [Summative Project Question Booklet from Antitrust 2020](#) (posted with [notes and model answers/responses](#)). Note that the “summative project” was used in lieu of a final exam last year because of pandemic contingencies. But a few caveats are in order:
 - I'd say Questions 1-3 are pretty good about testing conceptual knowledge as opposed to testing ability to look up answers in notes. But they are kind of long-ish.
 - Questions 7-24 vary. Some are really easy to answer by looking things up (i.e., they're what I'd call “scavenger hunt” questions). Others are much better about requiring understanding to answer (at least assuming you don't have unlimited time to search the notes, re-read them, and re-learn the material). And some are in between.
- Problems and questions assigned out of the book and provided in slideshows that we did during the “Economics for Antitrust” section of the course.

I also recommend looking at:

- The [Amalgamated Antitrust Multiple Choice Questions](#) (posted with [answers](#)). Although your Part One will not adhere to the strict multiple-choice format, the substance of the questions should be useful.

(Although I've provided some direct links above, note that the above materials and others are generally available in my Exam Archive at http://ericejohnson.com/exam_archive/.)

Please note that for Part One, as is consistent with my general teaching and exam/assessment philosophy, I will work to make the questions straightforward and attempt to avoid writing tricky questions. If you've studied and know the material, I want you to be able to get the right answer. When taking the exam, please keep that in mind.

Finally, a note about timing. Part One will be worth one-third of your exam score, and thus it is meant to take about one-third of the exam period (one hour of three hours). But I strongly recommend that you don't spend more than one hour on Part One. Please watch the clock and pace yourself. If you finish Part One earlier than one hour, you might briefly check over your answers, and you should feel free to move on to Part Two.

5. HOW I'LL WRITE PART TWO – ESSAY

I'll start with a note about timing. Part Two will be worth two-thirds of the exam score, and thus it is meant to take about two-thirds of the exam period (two hours of three hours). But make sure you spend at least two hours on Part Two. Put differently, if you are going to deviate from the one-third/two-thirds time allocation between Part One and Part Two, I recommend you make sure time isn't taken away from Part Two. (And, again, make sure you upload your response document before the Canvas countdown clock hits zero. See §2.C.2 and §2.C.3, above, in this regard.)

The Part Two essay portion of the exam will give you a novel set of facts and require you to provide analysis. The analysis will be, at least in substantial part, along the lines of what is contemplated by the Antitrust Analysis Synthesis document.

Note that the Part Two essay portion of the exam will call only for you to provide legal analysis (e.g., to analyze the parties' legal positions, including possibly explaining how you would advise a client). There will not be a "theory" or "policy" type question that nakedly calls for you to provide arguments for a change in the law or to analyze the law's desirability. Rather, you will be asked to evaluate how the extant law applies to the essay exam's hypothetical facts. But even though the essay portion will have no theory/policy question as such, it is nonetheless true that antitrust analysis is heavily reliant on theory- and policy-type arguments. So providing solid legal analysis, in the antitrust context, may involve grappling with theory and policy.

The Part Two essay portion of the exam will not directly test pure economic conceptual knowledge disconnected from the law. That is in contrast to Part One. Yet you can expect that your understanding of the economics will be brought to bear in Part Two in important albeit indirect ways. It is fair, for instance, for the hypothetical facts to assume your knowledge of the economic concepts we covered. Indeed, within the context of the hypothetical facts there may be various statements of an economic nature that you'll need to evaluate critically. Moreover, your ability to think economically will contribute to your ability to put together a compelling analytical response.

To have an idea of the sorts of questions I might ask, here's what I recommend looking at:

- The 2019 practice exam issue spotter [The Last Mile In The Plum Isles](#) (with [notes on answering](#)).
- The 2019 final exam issue spotter [Rainbow Laser Unicorns](#) (with some analysis relevant to the §2 portion available in [notes and model answers/responses for the 2020 Summative Project](#) (see Question 6 at p.16 et seq.)).

In addition, I also recommend looking at:

- Questions 4 and 5 of the [Summative Project Question Booklet from Antitrust 2020](#) (posted with [notes and model answers/responses](#)). These questions won't be indicative of the format of your Part Two, but the substance should be useful.
- Question 6 in the same booklet. Again, the question structure here isn't indicative of the format of your Part Two, but it's useful substance. As you'll see if you look at it, it's a re-casting in 2020 of a portion of Rainbow Laser Unicorns – what I already mentioned above as some relevant analysis for the 2019 final exam issue spotter.

One final note about Part One vs. Part Two. It's true that the reason I've broken the exam into Part One and Part Two is to have the sufficient variety of question types so as to test comprehensively across the course. But there's no guarantee that there won't be some overlap. So please don't try to game the test by thinking that if something came up on Part One it will be absent from Part Two. You might end up outwitting yourself if you approach it that way.

6. HOW THE ESSAY WILL BE GRADED; WHAT GETS POINTS

I have written an entire memo on what makes for a good essay response to a law-school issue spotter. It's posted to my [Exam Archive](#), and it's called [Tip Sheet on How to Write a Law School Essay Exam](#). If you haven't already, you should scrutinize it: It tells you exactly how to maximize your grade by providing solid legal analysis. (Also, note that if you read it in a past semester for a previous class of mine, I updated it in Fall 2020 with some additional advice.) Another document I've written to help you understand what makes for a good essay response, also posted to my Exam Archive, is [Three Examples of Exam Writing](#). I strongly recommend reading that as well.

The most important thing for you to understand is that you must do legal analysis to get points for the essay. As mentioned above, your goal in taking the exam is to show your mastery of the material presented in the course and your skills in analyzing legal problems involving the course's subject matter. The way you do this on the essay is by providing legal analysis. Legal analysis is the application of the law you've learned to the hypothetical facts provided in the exam. Legal analysis (including the conclusions of your analysis and the reasoning therefor) is thus the necessary and the exclusive requirement for success.

Said more concisely: Legal analysis is what gets you points – period. And legal analysis necessarily involves a productive mixing of law and facts to create conclusions.

Be aware that I cannot give you credit merely for reciting relevant hypothetical facts from the exam. The recitation of facts from the exam is not legal analysis, and it's not probative of your mastery of the material. Consider that the facts of the exam can be copied out of your booklet – thus providing

them to me in your essay response does not help me know how well you have mastered the material.

Similarly, be aware that I cannot give you credit for making correct statements of relevant legal doctrine. The recitation of legal doctrine is not legal analysis, and it's not probative of your understanding. Consider that this is an open-book/open-note exam (albeit with limitations). Given that rules of law can simply be copied out of your outline or book, the occurrence of correct statements of legal doctrine in your essay response is not probative of your understanding.

7. ADDITIONAL THOUGHTS ABOUT WHAT TO EXPECT WITH THE ESSAY

The kind of fact patterns I tend to write: I try to make my exams interesting and engaging. They often have pictures, images, sidebars, and the like. In comparison to other exams, you may find that my exams have more narrative, plot, character, and backstory. As a practicing lawyer, I found that real-life cases are heavy on drama and narrative detail. So I have strived to include the same in my exams. In my view, this gets the exam closer to the real-life practice of law than the kind of stripped-down one-or-two-page hypotheticals you might find on the bar exam.

A consequence of my writing exams as I do is that the exam ends up containing factual details that, while useful for holding the story together, are not fulcrums for the legal analysis. So, for instance, sometimes photos or graphics offer something useful to the legal analysis, but sometimes they are just decoration. A student once asked me, pointing to a sentence in one of my old exams, "I know that every single sentence in a law school exam is put in there for some reason, so why did you put this sentence in the exam? How does it change the analysis?" Well, my exams aren't like that. There will be various details that don't matter to the analysis. This is the way facts come to your desk in real life: Some are very significant, some are merely useful, others are irrelevant. I aim for my exams to be similar to real case-files in this sense.

Organization, separated questions, etc.: Organization is important. To help on that front, my habit is to instruct exam takers to organize their responses in a certain way, broken up into distinct questions and/or distinct subparts. For examples, see the *Rainbow Laser Unicorns* final exam and the *Last Mile in the Plum Isles* practice exam. By requiring all exam essay responses adhere to the same structure, I can grade all the exams in the same way, which helps me to be as fair as possible.

The different questions and/or subparts of Part Two will not be separately weighted. The entire Part Two essay response will be graded as one. So answer all portions completely, spending relative amounts of time on them as appropriate. And if I tell you that something can be answered with great brevity, then heed that instruction and keep that part of your answer brief.

Be aware of the call of the question: I will likely narrow the ground for your answer and channeling your analysis to answer particular questions. So make sure to read the calls of the questions carefully. For instance, I might instruct you to omit discussion of something — such as remedies, certain conduct, certain parties, liability under certain theories, etc. (You can see a good example in the first paragraph on page 10 in *Rainbow Laser Unicorns*.) Similarly, I might instruct you to assume something to be true — such as the strength of a patent. If I provide such an instruction in the call of the question, be sure to heed it. I will not be providing credit for analysis I ask you to exclude or that isn't embraced by the question asked.

8. SOME TIPS FOR THE ESSAY PORTION

A. Consider Preparing and Using a Menu Outline:

As I do with all classes, I strongly recommend for this course that you prepare a miniaturized outline of the course to serve as a quick-reference sheet for issue spotting on the essay portion. What I'm recommending is a very simplified list of what we learned during the semester. It's not an outline that explains anything, just an outline that reminds you of what we covered. I tend to call this a "menu outline," but if you like videogame analogies, you can think of this as a "weapons inventory." The point is, it's a list of the doctrines, tests, and so forth that you can bring to bear on the hypothetical facts for the purpose of producing a thorough analysis. I keenly encourage you to use one page only for this. I emphasize this because, for an exam that allows access to notes, many students work to accumulate a huge volume of materials they can reference during the exam. You need to decide what's right for you, of course, but I tend to think this kind of accumulation provides a false sense of security. At any rate, the larger the volume of materials you have, the more important it will be to have an ultra-concise one-page outline to use as a ready reference.

Note that the Antitrust Analysis Synthesis document is already something akin to a menu outline in the sense of providing a list of things to bring to bear on an issue spotter. But it's long. So to make a menu outline for this class, you might consider trying to miniaturize the Antitrust Analysis Synthesis document and then adding to it, tweaking it, etc.

B. Don't Spend More Than an Hour on Part One!

As I said above, spend at least two hours on Part Two.

C. Consider Imposing a Reading/Outlining Period on Yourself for Part Two:

In recent years — before the pandemic — I have tended to divide the essay portion of my exams into two periods. Thus, within the two hours for Part Two, there was a "reading/outlining period," (which was 30 minutes on the 2019 Antitrust exam) and an "exam writing period" consisting of the remainder of the time for the essay section (which was 90 minutes on the 2019 Antitrust exam). I

believe since I started doing this, I've gotten better essay responses. For this semester, because of the constraints on exam administration imposed by the circumstances of the pandemic, I will not be enforcing a similar division of time on the essay portion of the exam. Nevertheless, I urge you to impose upon yourself an initial reading/outlining period during which you refrain from beginning to write your response and instead limit yourself to reading the exam booklet (that is, the facts and the questions), taking notes, referencing your outlines or books as needed, and outlining your response on scratch paper. I believe your doing this will make your response better. How long should you devote to reading/outlining before you start writing? I don't know. When I imposed 30 minutes on everyone, then no one was disadvantaged by it. It might be that 30 minutes is too long if self-imposed. But consider some amount of time that you think is workable.

Based on my experience doing exam reviews with students, I think the number one reason that students haven't done as well as they were hoping – assuming they were well prepared – is that they missed out on analysis of relatively straightforward aspects of the essay questions because they didn't stop to think, but just rushed headlong into writing. Another top reason students haven't done as well as they were hoping – again, assuming they were well-prepared – is that they spent too much time writing the first part of the essay and didn't have time for the back stretch. Spending time planning/sketching your response can help with this as well. I know it seems counterintuitive that waiting to write could help you finish on time, but I do think it works.

9. ABOUT THE LENGTH OF YOUR ESSAY RESPONSE AND STYLISTIC ASPECTS

There will be no word limit, but concision is admired and valued. Be plain and direct. Of course, you should aim for being complete in your analysis. But steer away from writing that is periphrastic or verbose. Put differently, value substance over word count. My observation is that the number of words in an essay does not correspond well to the grade it earns. I've never analyzed that numerically with a spreadsheet, but it's my sense based on years of experience as a grader. To be sure, people can have analysis that is too truncated in terms of substance and lose points that way. But I commonly see people being needlessly wordy in their responses, and that seems sometimes to correspond with people not getting through the whole essay or not thinking as carefully as they should about the substance. Thus, I urge you to use your time to work carefully and thoroughly rather than trying to throw as many words onto paper as possible. Bottom line, I strongly believe you'll do better if you concentrate on quality rather than quantity.

In a similar vein, don't worry about stylistic aspects of writing. Write functionally. I have noticed sometimes people lose effectiveness in their writing because they are aiming for aesthetics. Don't do that! For instance, it is a bad idea to open up a thesaurus and start looking for synonyms of "because." The word

“because” is like that ideal pair of jeans that can be worn to the office, to the game, on a date, and while doing yard work. It’s never *not* appropriate. Sometimes, because of sentence structure, a “therefore” works better. That’s good too. But don’t purposefully aim for variety. As you may know, I also teach Torts. Doing exam reviews for that class, I’ve spoken with students who omitted legal/doctrinal words and phrases (like “actual causation,” “foreseeability,” or “reasonable person”) because they felt like their writing was getting repetitive and boring by using the same words and phrases over and over again. Yikes! That is not a good strategy! Use the legal/doctrinal words and phrases as many times as is appropriate for the substance of what you are talking about. Your goal as a test-taker is not to entertain me. It’s to show me that you know the law and that you know how to apply the law to a novel set of facts.

10. ISSUES WITH TEXT: REPEATING, WRITING, TYPING, ETC.

Here are some specific pieces of advice for your writing.

Repetition: Be complete, but avoid redundancy. Specifically, do not repeat the exact same analysis with substituted parties. I will not give additional points for the same content that is repeated. Consider that repeated content is not probative of your mastery of the material. And because of this, I strongly recommend that computer users avoid the copy-and-paste function! Instead of repeating yourself, you should, to the extent appropriate, incorporate analysis by reference to another portion of your answer. For example, it would be appropriate to say something like, “The analysis with regard to Party B is the same as that for Party A, except that _____.”

Spelling, grammar, etc: There are no points to be won or lost for spelling, grammar, or stylistic aspects of writing, so long as I can understand what you are saying. If grammar or spelling issues render text ambiguous, then it’s a problem. But not otherwise. Substantive content is what matters.

Abbreviations: I likely will include in the exam a table of pre-defined abbreviations for you to use in your response, if you like. Feel free to use other reasonable abbreviations as well; although if they are not completely obvious, you should define them the first time you use them.

11. OVERALL THOUGHTS ON STUDYING; YOUR STUDY PLAN

The most important thing in studying is to prepare for what you need to do on exam day. That means first of all to know what you are doing in terms of exam-taking technique. You may already be well on top of that as a Spring-semester 2L or 3L, but the resources I have for you on that are, as I mentioned above, [Tip Sheet on How to Write a Law School Essay Exam](#) and [Three Examples of Exam Writing](#). Then, when studying the content, concentrate on the Focus List (in §4, above).

Using exams as practice: A great means of active studying is to do old exams. You’ll find them in my [Exam Archive](#) under “[Antitrust](#).” There’s the 2019

practice exam, the 2019 final exam, the 2020 summative project, and the amalgamated multiple-choice questions for antitrust. If you've done all those and you still want more, there's an old exam of mine called [*Hexed by Hexetron*](#) from a survey course I taught in 2010 called Antitrust, Bankruptcy & Consumer Law. So you could do that exam as well—just ignore the bankruptcy and consumer law portions. With all old exams, keep in mind that old exams correspond to past semesters. So don't expect old exams to be a perfect fit for this semester in terms of topic coverage.

If you want still more old exams to do, understand that you don't need old exams written by me in order to get great practice. All you really need is a story with facts in it that allow you the opportunity to spot issues and bring to bear law you've learned during our semester. Any old antitrust exam should do. If the question prompt on someone else's exam doesn't correspond to what we studied or how we've approached the material, then just proceed as if you got a more general question prompt, like "Discuss the antitrust issues in view of what we have covered this semester." The University of Washington Gallagher Law Library has a guide to various law schools' online archives of old exams at <https://guides.lib.uw.edu/law/exams/other>. In 2019 when I looked, I found antitrust exams in online exam archives at the University of New Hampshire and Harvard Law School. But it appears they've changed their systems, and now I can no longer find their antitrust exams. (Although I didn't spend a huge amount of time trying.) Keep in mind that it doesn't matter if an antitrust exam is very old. Even if the law changes, hypothetical facts stay useful.

12. FEEDBACK ON PRACTICE EXAM ESSAY RESPONSES AND MULTIPLE-CHOICE QUESTIONS

I am happy to do essay review or multiple-choice-question review in-person in the context of an office visit. But I do not this over e-mail.

If you would like me to look over a practice exam essay response you have done, please have it ready when you come to office hours, and then you can e-mail it to me so I can look over it while meeting with you. I am also happy to discuss, in the context of an office visit, your answers to released multiple-choice questions, including why the correct choice is the correct choice, etc.

13. FINAL THOUGHTS

Don't get too anxious. You probably know far more than you think you do at this point. So try to stay relaxed. Study the big concepts, pay attention to the focus list (§ 4, above), remember the tips on exam-taking technique, and get a good night's rest. And above all, I encourage you to tackle the studying and the exam itself in a straightforward manner. I'm not trying to trick anyone. If you've learned the material, I want you to succeed.

Here's wishing you the best of luck and a very happy summer!

—EEJ