

Memorandum to Students

# Exam Prospectus Intellectual Property

Spring 2017

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## 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 2017 Intellectual Property 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.

Now for some details.

## 2. PARAMETERS (SECTION 10 OF THE SYLLABUS)

*Section 10 of the syllabus describes the exam in considerable detail, including how it will be structured and administered. You should review it carefully. For your convenience, I reprint § 10 in its entirety here:*

### 10. EXAMINATION:

#### 10-1. Communications and Anonymity:

(a) **Ex Parte Communications:** I will not discuss the exam on an *ex parte* basis. (See §7-2.)

(b) **Anonymity:** 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, and do not write your name on any exam materials, including the scantron answer sheet.

Self-identification on the exam or otherwise compromising anonymity will presumptively result in a deduction from your exam grade and a referral for disciplinary action.

**10-2.** The examination will be administered in two parts.

(a) **Part I: Multiple Choice Questions**

(1) Part I of the exam, worth approximately two-thirds of the total exam grade, will consist of multiple-choice questions administered on a closed-book basis. The questions will include, but may not be limited to, bar-exam-style hypotheticals testing the application of law to facts, as well as questions that test literacy of pure law (e.g., legal doctrines and statutes) and understanding of relevant concepts of legal theory and scholarship.

(2) Part I of the exam will embrace subject matter across the entire course.

(3) Part I will be administered on a “closed-book” basis. That is, for Part I, you may not use or reference any materials at all, other than pencils, the answer sheet, and the examination booklet.

(4) Part I will be two hours and fifteen minutes (2¼ hours) in duration.

(5) Part I will consist of not more than 55 questions. A few of the questions in Part I may be “pre-test” questions, for which I will gather data, but which will not count in grading for this semester. Such pre-test questions will not be marked and you will not be able to distinguish them from the non-pre-test questions.

(6) All multiple-choice questions are written by me. None of the questions used on the exam will be questions that have been previously released.

(7) At least some of the multiple-choice questions may be questions that have been used by me in a previous semester, but which have remained unreleased.

(8) A word about the re-use of multiple-choice questions: Re-use of multiple-choice questions is standard in higher education, and the practice permits better exam quality and better calibration of the results. This is not trivial: The statistical data that results from a multiple-choice test administration is quite rich, suggesting which questions are good, which should be revised or thrown out, and which might serve as models for building new questions in the future. Using this data in a careful way helps me improve multiple-choice tests from year to year. That makes exams more fair – and fairness is my ultimate aim in designing examinations. There is, of course, a downside to reusing questions, which is the possibility that some questions may be leaked to some students. I take appropriate steps to prevent the dissemination of unreleased questions. But bear in mind that the security of multiple-choice questions is not just a matter of faculty and staff responsibility; it is a matter of student responsibility as well. If you are aware that detailed information about or copies of unreleased questions are circulating, please let me know. Informing me will allow me to (1) refrain from using the compromised questions on the exam, and (2) release those questions to the public exam archive so that everyone can study from them.

(9) Be aware that the use of unreleased exam materials – whether photocopied, roughly transcribed, or otherwise – as part of your preparation for the exam constitutes academic dishonesty. Moreover (not to put too fine a point

on it) reproducing or trafficking in unreleased questions is civilly actionable. If you find, receive, or are offered unreleased questions, be responsible and act promptly to ameliorate academic unfairness by letting me know; I will pursue no action against you in this regard if you make timely notice to me, which may be made anonymously, specifically identifying the materials, preferably by submission of a copy. The notice is timely if (i) it is near the beginning of the semester, (ii) it is reasonably soon after you come into possession of the materials and there is enough time to prevent such questions from being used on the exam and to release them to the class for their meaningful use in studying, or (iii) it is immediately upon coming into possession of the materials.

(10) Also be aware that a crucial part of exam security is the numbering of exam booklets and the marking of booklets with students' exam identification numbers. Booklets are clearly marked with a space for you to write your exam identification number. This is particularly crucial for Part I. Do not omit to do this, and do not omit to turn the exam booklet back in. An omission in this regard, even an innocent one, will be catastrophic for your grade, likely resulting in a failing grade.

(b) **Part II: Essay Response**

(1) Part II of the exam, worth approximately one-third of the total exam grade, will require a written response. This part of the exam will consist of one or more open-ended questions calling for a written essay response to a hypothetical fact pattern.

(2) Part II of the exam will be limited in subject-matter scope. That is, Part II will not be comprehensive in subject matter across the entire course.

(3) Part II will be administered on an open-book basis. You may bring with you any paper-based notes and books you like. But no electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session.

(4) The total duration of Part II will be one hour and fifteen minutes (1¼ hours), divided up as follows: (1) a Reading-Outlining Period ("RO Period") of 30 minutes, and (2) an Exam-Writing Period ("EW Period") of 45 minutes.

(5) You may use the RO Period to read the exam booklet (that is, the facts and the question or questions), to take notes, to reference your outlines or books, and to outline your response on scratch paper. During the RO Period you may not begin recording the response upon which you will be graded. That is, if you are taking the exam on computer, you may not type any characters at all into the exam response file on your computer during the RO Period; and if you are taking the exam by handwriting, you may not make any mark in a blue book (that is, an exam-response booklet, which has sometimes been labeled as a "green book") during the RO Period.

(6) During the EW Period you are permitted to write your response. For the avoidance of doubt, it is acknowledged that during the EW Period you may also continue to do what is allowed during the RO Period (e.g., to refer back to the exam booklet, reference your notes and books, etc.), including notes you created during the RO Period.

(7)<sup>[1]</sup> Being able to write in a concise, focused, and organized manner is extremely important for the practice of lawyering, and it is important for the bar exam as well. Thus, a factor in grading Part II will be concision, focus, and organization in your written response. To help you gauge an appropriate level of concision, the essay response may have a word-count target. This will not be an absolute ceiling – that is, it is not a “word-count limit.” Nonetheless, the fact of an exam-taker going beyond the word-count target and by how much an exam-taker exceeds the word-count target will be noticed and may influence the assessment of your written response.

(7)<sup>[1]</sup> You will have the choice of typing or handwriting your response to Part II. The typing of exams will be in accordance with the School’s policy for the use of computers to write exams.

(8) I do not re-use essay questions.

**10-3.** My old exams should be quite useful to you in studying for and thinking about this semester’s exam. (Note, however, that this semester’s exam format differs from past exams. In recent past exams, the essay portion was comprehensive in coverage, included a much longer set of facts, and was administered with a much longer period for writing an answer.) You will find old exams in my Exam Archive, which is publicly accessible online. You will find a link on [ericejohnson.com](http://ericejohnson.com) (or use the direct URL: [http://ericejohnson.com/exam\\_archive/](http://ericejohnson.com/exam_archive/)). Later in the semester I will have more to say about the exam and how I recommend preparing.

### **3. MAKE SURE YOU PUT YOUR EXAM ID NUMBER ON THE EXAM QUESTION BOOKLETS**

It is crucial that you write your exam identification number in the space provided on cover page of the question booklet and that you turn the booklet back in at the end of the exam period. This goes for the multiple-choice-question booklet for Part I and the issue-spotter/essay-question booklet for Part II. And it is particularly crucial for Part I. See Syllabus § 10-2(a)(10). As I provided in the syllabus, “An omission in this regard, even an innocent one, will be catastrophic for your grade, likely resulting in a failing grade.” Please don’t forget.

### **4. TOPICS ON THE EXAM / HOW I WILL DESIGN THE EXAM**

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 readings. For

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<sup>1</sup> The duplicate paragraph numbering appears in the original syllabus. I apologize for the error.

example, if we spent little time on something in class and there was little or no reading on it, it would not be more than a trifling part of the exam, if even that.<sup>2</sup>

**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 expect to include, in some way, every topic that was substantially explored in class. Note, however, that I will not be trying to put every topic into Part II, the essay portion. The essay portion of the exam will most definitely not be comprehensive in itself. See Syllabus § 10-2(b)(2). When the multiple-choice portion and the essay portion are put together, however, they will provide a comprehensive exam on the material of the course.

**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.

The multiple-choice portion will be purposefully designed to avoid testing you on obscure points. I design multiple-choice questions to be answerable through application of big, important concepts.

The essay exam will also be purposefully designed to avoid testing you on obscure points. That being said, I cannot guarantee that no obscure point will find its way onto the essay 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.

So, the bottom line is, the more you know, the better, but do not obsess about trying to commit to memory all the fine details. 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

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<sup>2</sup> Keep the Correspondence Principle in mind when using old exams to study: Old exams correspond to old semesters. So you might see an old exam and think, gee, this old exam seems to be heavy on topic X, and that seems out of whack with this semester, since we barely spent any time on topic X. That is a consequence of my adjusting the course from semester to semester: Old exams will be, to varying degrees, out of whack with the current semester. Rest assured, however, that your exam will correspond to this semester.

will make particular reference to the following, which we can call the “focus list.” This is where you should concentrate your studies:

- the mindmap
- slideshows posted to the class website
  - problems and hypotheticals in those slideshows
- doctrine that was the subject of a case we read
- doctrine that was the subject of sustained attention in class
- doctrine that is the subject of extensive coverage in the McJohn book
- doctrine needed to avoid pitfalls (listed in the appendix to this document)

The main message is to not worry about small details. Instead, work on having a thorough understanding of the major concepts and the ones highlighted as having particular importance.

**Topics that might appear on the multiple-choice portion:** The scope of the multiple-choice portion will comprise the full subject matter of the course. But keep in mind that multiple-choice questions will be deliberately designed to avoid testing obscure points.

**Topics that might appear on the essay exam:** The essay exam will focus on at least two broad topics areas on which we spent considerable time in class. One topic will be selected from among these three: **copyrights, utility patents, trademarks**. The other topic will be selected from among these four: **copyrights, utility patents, trademarks, and trade secrets**. In addition, there might be a third aspect to the exam — quite minor — that concerns some other topic. Within those parameters, I will use a random process to select which topics to test. So the essay exam might, for example test combinations such as the following.

*Examples:*

- *trademark and utility patent, plus a minor question on design patent*
- *utility patent and copyright*
- *copyright and trademark, plus a minor question on the right of publicity*
- *copyright and trade secret*
- *utility patent and copyright, plus a minor question on trademark*

The last two examples correspond to the practice exams I am releasing to provide an example of this year’s essay format. (Those practice exams are titled *Sentiments and Serendipity* and *Pulling Polymers*).

**Kinds of questions (legal analysis, theory/policy, etc.):** The 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, for example, calls for you to provide arguments for a change in the law or analyze the law’s

desirability. On the multiple-choice portion, you should expect coverage of theory reflecting the time we spent on it in the course.

**Jurisdictional coverage:** You will not be tested on the law of any particular state, municipality, or circuit. Thus, you will not need jurisdiction-specific answers.

## **5. MULTIPLE-CHOICE: ABOUT THE NUMBER OF QUESTIONS**

On past exams of mine, some have reported feeling very time-pressured on the multiple-choice portion of the exam. On the basis of that feedback, I am designing the multiple-choice portion of your upcoming exam to make time pressure much less of an issue.

As disclosed above, there will be not more than 55 questions to answer over the course of 135 minutes. That means at least 2.45 minutes per question. (Previously, a typical multiple-choice exam of mine would have 60 minutes for 33 questions, or 1.8 minutes per question.)

To alleviate time pressure even more, I intend to further reduce the amount of material students will deal with per unit of time by cutting back on question length and/or question size. So, if I include the maximum of 55 questions, I'll work to make them shorter on average. Otherwise, I'll include fewer questions.

Overall, my intent is to give students something in the neighborhood of 150% of the time available compared to past multiple-choice exams of mine. (So that would be like having an extra half hour on an hour-long test, as compared to multiple-choice tests I've given in the past.)

I hope you will take advantage of the time you are given to carefully read the questions and double-check your answers. When doing multiple-choice questions in class, I notice that encouraging people to go back and think about something again often gets additional people to move to the right answer. I am sure the same will be true of answering questions on the final exam.

## **6. MULTIPLE-CHOICE: FORMAT, SCORING, AND STUDY MATERIALS**

The multiple-choice portion of the exam will be similar in format to my past multiple-choice exams and to the midterm quiz you took. It will look very familiar.

Each multiple-choice question will be worth one point. The exception would be if I include one or more "pre-test" questions (Syllabus § 10-2(b)(2)) or throw out a question because of irregularity. In such a case, the affected question would be worth no points.

There will be no penalty for incorrect answers. So if you don't know the answer to a question or run out of time, you should guess.

My Exam Archive<sup>3</sup> has all my publicly released multiple-choice questions. Look for “AMALGAMATED INTELLECTUAL PROPERTY QUESTIONS.”<sup>4</sup>

Note that the amalgamated released multiple-choice questions are not balanced in terms of subject matter so as to match the balance of subjects for any particular semester, much less this current semester. In other words, you should not take the frequency of questions on particular subjects in the amalgamated multiple-choice questions to be a clue as to the frequency with which subjects will come up on the multiple-choice portion of your exam. Again, your exam will obey the Correspondence Principle.

## **7. MULTIPLE-CHOICE: HOW TO TACKLE MULTIPLE-CHOICE QUESTIONS**

I have written an entire memo on how to tackle multiple-choice questions. It's called *How to Take a Multiple-Choice Exam in Law School*, and you can find the link on the class webpage. I strongly recommend that you read it as part of your studying. As I emphasize in that memo, I write multiple-choice questions with fairness as my chief goal. Thus, I seek to avoid tricky questions. Instead, I try to draft questions so that if you know the material I'm testing, finding the right answer should be straightforward.

## **8. ESSAY: ABOUT THE LENGTH OF YOUR ESSAY RESPONSE**

In the syllabus, I set out the possibility of having a soft word-count target. I've decided not to do that for Intellectual Property Spring 2017. So there will be no word limit—whether “hard” or “soft.” But concision will be valued. I urge you to use your time to think carefully and thoroughly rather than trying to throw as many words onto paper as possible.

Notice that the model responses to the mock 30/45-format exams *Sentiments and Serendipity* and *Pulling Polymers* (discussed below) are both quite concise. The model answer for *Sentiments and Serendipity* is 831 words, and it is a top-flight response. The model answer for *Pulling Polymers*, also a top-flight response, is even shorter at 747 words—despite the fact that it covers more ground. And note that these are idealized answers with exhaustive analysis. In fact, I think tend to think these responses are a bit on the long side. Shorter answers could easily earn an A.

Bottom line, I strongly believe you'll do better if you concentrate on quality rather than quantity.

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<sup>3</sup> To get to my exam archive, there is a link from my home page. Or you can go directly to [http://www.ericejohnson.com/exam\\_archive.html](http://www.ericejohnson.com/exam_archive.html).

<sup>4</sup> There are some additional multiple-choice questions concerning patent law in a 2006 Patent Law practice exam in the Exam Archive. But I don't recommend using that document in studying. I have taken what would be useful from that document and folded that into the amalgamated questions.



## 9. ESSAY: ABOUT THE OPEN-BOOK NATURE OF THE ESSAY PORTION

I have often been asked about limitations on the materials that can be brought in for students to reference during the essay portion of the exam. Other than that it must be on paper, there is no limit. You can bring in any notes, books, and printed and/or handwritten materials you like. I know some instructors limit students to only bringing in materials that they prepared themselves. I have no such requirement.

The only limitation is that you cannot reference electronic/digital/interactive files or information. So, no electronic or interactive devices (such as a smart phone, etc.) may be used. Whatever you want to be able to reference during the exam will need to be printed out on paper. You may of course use a laptop running exam software to write your exam (and I recommend this), but you may not reference files stored thereon during the examination session.

## 10. ESSAY: FORMAT OF THE ESSAY PORTION

The essay portion of the exam will have important differences for this semester compared to past semesters. It will be shorter and it will be noticeably narrower and more focused in terms of subject matter. These design differences correspond to the exam being administered in a 30/45 format, with a 30 minute period for reading and outlining and a 45 minute period for writing the exam. Barring those differences, Part II will be otherwise similar to essay exams I've given in the recent past, including Fall 2016.

**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-paragraph hypotheticals you tend to find on the multistate bar exam.

Even with the new, shorter 30/45 exam format, the essay facts will have a higher level of embellishment than what you would see, for instance, 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.

**Be aware of the call of the question:** In keeping with the new shorter-format essay exam, I will be narrowing the ground for your answer and channeling your analysis to answer particular questions. So make sure to read the call of the question carefully. For instance, I might instruct you to omit discussion of something (such remedies, alternative theories of protection under a different form of IP, etc.) Similarly, I might instruct you to assume something to be true (such as the patentability of an invention). 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.

**Organization, separated questions, etc.:** Organization is important. To help on that front, I anticipate prescribing that you organize your response in a certain way, broken up into distinct questions and/or distinct subparts. See the *Sentiments and Serendipity* and *Pulling Polymers* practice exams for examples. By requiring all exam responses to adhere to the same format, 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 are not separately weighted. The entire essay response will be graded as one. So answer all portions completely, spending relative amounts of time on them as appropriate. If I tell you that something can be answered with great brevity, then heed that instruction and keep that part of your answer brief. (See *Pulling Polymers* for an example.)

## 11. ESSAY: THE 30-MINUTE READING/OUTLINING PERIOD

As already mentioned, the administration of the Part II essay portion will start with a 30 minute period for reading and outlining (the RO Period). During this period you will not be able to start typing on your computer or writing in your bluebook.

It is my hope that the RO Period will push you read the facts and think through the analysis carefully and deeply, and that it will encourage you to not race ahead to put down in your response everything you can think of as fast as you can think of it. So, during the RO Period, you should read the facts carefully, scratch out an outline, and be alert for difficult bits that will require deft handling in the analysis.

I encourage you at this point to go back up and re-read the portion of the syllabus concerning the RO and EW periods (§ 10-2(b)(4), et seq, reprinted above).

Note that you would be within the rules to start writing your response on scratch paper during the RO period and then spend part of the EW period copying what you've written on scratch paper into the computer response file or your bluebook – but this would be a terrible idea! Please take advantage of the

RO Period to do careful and deep issue-spotting and analytical thinking. I am confident doing so will get you a much better result.

## 12. 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 double the points for the same content that appears twice. (Along these lines, computer users should probably not use the copy-and-paste function.) Instead, to the extent called for, you may 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. Examples can be found among my more recent exams in my online exam archive. 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.

**Computer-typed exams:** Don’t worry unduly about typos. As long as I can understand what you are saying, you’re fine. There’s no premium on prettiness.

**Handwritten exams:** If you are handwriting, please write only on one side of the page in your bluebooks and use a blue or black pen. Skip lines. Finally, I cannot grade what I cannot read, so be sure that your handwriting is readily legible. (If you’re on the fence about whether to type or handwrite, go with typing – it ensures that legibility won’t be an issue.)

## 13. ESSAY: WHAT MAKES FOR A GOOD ESSAY RESPONSE

I have written an entire memo on what makes for a good essay response. It’s called *Tip Sheet on Exam Writing*, and there’s a link to it on the class webpage. You should scrutinize it: It tells you exactly how to maximize your grade by providing solid legal analysis. Another document I’ve written to help you understand what makes for a good essay response is *Three Examples of Exam Writing*. There is a link to this one, as well, on the class webpage. I strongly recommend reading these as exam preparation.

## 14. ESSAY: STUDYING WITH PRACTICE EXAMS AND OLD EXAMS

In order to give you examples of the new shorter 30/45 format exam, I have taken the Intellectual Property exam from Spring 2012, *Bad Days for Good*

*Cheer*, and I have converted it into two practice finals in the new format, named *Sentiments and Serendipity* and *Pulling Polymers*, respectively. Both have model answers. Use these practice exams as a way to prepare for the particular format of the upcoming Spring 2017 exam, and look to the model answers for examples of excellent responses.

As I mentioned above, I hope you will notice that the model responses to *Sentiments and Serendipity* and *Pulling Polymers* are both quite concise – 831 words and 747 words, respectively, and yet I see them as being at the outer edge of what I would expect in terms of volume. What I hope you will take away from this is that rather than racing ahead to put down material as quickly as possible, it is far better for you to spend your time thinking through the problem deeply and doing the analysis well. (It is in hopes of pushing you to do this kind of deep-thinking, concisely written analysis that I have adopted the format of giving you the 30 minute reading-outlining period during which you will not be able to start writing your response.)

In addition to doing *Sentiments and Serendipity* and *Pulling Polymers*, I also strongly encourage you to do other old exams as a way of preparing yourself for this semester's final. I understand they are in a different format. Nonetheless, they are similar enough that they will be excellent practice for this semester's exam. Also of high importance, doing old exams is active learning that cements your brain's understanding of concepts. The more the better.

## 15. OVERALL THOUGHTS ON STUDYING; YOUR STUDY PLAN

**Documents on exam technique:** 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. For that, use the documents I've provided: *Tip Sheet on Exam Writing*, *Three Examples of Exam Writing*, and *How to Take a Multiple-Choice Exam in Law School* (links on the class webpage). Then, when studying the content, concentrate on the focus list (in §4, above). And throughout your preparations, you should bring exam-writing technique and substantive knowledge together by working through old exams from the exam archive.<sup>5</sup> Trading your responses with classmates is an extremely effective way to find your weaknesses and strengths.

And of course make sure you do *Sentiments and Serendipity* and *Pulling Polymers* – the mock exams in the new 30/45 format.

**Wypadkis:** In some prior semesters when I taught Intellectual Property, I administered the exam on a limited open-book basis where students were given to use during the exam a copy of a class-wide group outline that students constructed cooperatively using wiki software. This group outline was called the "wypadki." For various reasons, I have stopped doing this, and I have moved to a no-limits open-book exam format. The legacy of the wypadkis, however, is that

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<sup>5</sup> Again, that's [http://www.ericejohnson.com/exam\\_archive.html](http://www.ericejohnson.com/exam_archive.html).

the old ones are available to you, if you find them useful. You should feel free to use them as you see fit. You can use them as is, use them as the basis for your own outline, use them to fill in holes in your outline, or, of course, you can just ignore them. There are links to the prior-semester wypadkis on the class webpage, and you can download them in PDF format or editable DOCX format.

**The benefits of a mini-outline or “menu outline”:** I strongly recommend that you prepare a mini-outline or “menu outline” for the course. This document should be a very simplified list of what we learned during the semester. It’s your quick-reference sheet for issue spotting on the essay portion. I keenly encourage you to use one page only for this. I emphasize this because, for an open-book exam, 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 sometimes 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.

**Don’t wait to do old exams:** As I have said a number of times, I believe the best use of study time is doing old exams. If you don’t yet have a completed outline and you haven’t yet reviewed all the course material, consider letting those wait just a bit and getting your feet wet with an old exam as an active learning exercise. You might spend just an hour or less looking over the topics from the semester and then dive into an old exam. Try doing it without timing yourself, and just use it as a way to get your mind engaged in the task of analyzing facts using the law you’ve soaked up over the semester. I think that will help you stay focused on what matters once you turn to other modes of studying (reviewing, outlining, etc.). Then keep taking breaks to do more old exams.

## **16. FEEDBACK ON PRACTICE EXAM ESSAY RESPONSES AND MULTIPLE-CHOICE QUESTIONS**

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

If you would like me to look over a practice exam essay response you have done, please bring a typed, printed copy of your exam response when visiting during office hours or during an appointment. I will 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.

## **17. 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. I wish you the best of luck!

## APPENDIX: IP PITFALLS

The following are “pitfall” areas – that is, aspects of the law that, if misunderstood or neglected, can result in a surprising loss or substantial liability. Because of the potential treacherousness of these areas in practice, I am especially keen that you learn them well and know them for the exam:

- Copyright:
  - Understand that the author is the initial owner of a copyright – not necessarily the person who commissioned or paid for the work.
  - Be able to determine whether a hirer will be deemed the author of a work under work-made-for-hire doctrine.
  - Understand that co-owners of a copyright can independently grant a non-exclusive license and their default obligation to one another is only for an accounting (i.e., sharing of profits, if any).
  - Understand that transfer (assignment or exclusive license) requires a writing signed by the transferor.
  - Recognize that there are limited opportunities to terminate transfers, allowing the copyright to revert to the author or author’s heirs.
    - Understand that existing derivative works can continue to be utilized after termination.
  - Be aware that many foreign works first published with authorization before 1923 had copyrights restored by Congress and that this was upheld as constitutional.
- Patent:
  - Understand that waiting too long to apply for a patent can result in the loss of prospective patent rights
    - Be able to apply 35 U.S.C. §102(a) & (b) under current law (i.e., the 2012 AIA version).
  - Recognize that enablement problems in a patent application cannot be cured without loss of the original filing date.
  - Understand that co-owners of a patent can independently grant a non-exclusive license and that patent law gives them no obligation to one another to share any profits.
- Trade secret:
  - Understand that trade secret protection is incompatible with patent protection, since trade secrets must remain secret, and patents must be published.
  - Understand that trade secret protection is lost when the trade secret stops being secret – whether or not as a result of the fault of the trade secret’s owner.
  - Understand that trade secret protection is lost when the owner does not take sufficient measures to maintain secrecy.

- Trademark:
  - Understand that a trademark's ownership is established by use in commerce, not by being the "author" of the mark.
  - Understand that two persons cannot be independent co-owners of a trademark (same mark in the same market), as that would mean the mark is not associated with a single commercial source.
  - Understand that a trademark need not be registered to be the basis of liability.
  - Understand the advantages of federal registration of a mark, including preventing future junior users from establishing rights.
  - Corollarily, understand the disadvantages of foregoing federal registration, including the possible loss of rights to a more junior user who registers.
  - Understand that trademark protection is destroyed by naked licensing,
  - assignment-in-gross, and abandonment.
  - Understand that a mark can become generic, and if it does, this destroys trademark protection.