

Dated: April 30, 2022

Memorandum to Students

Exam Prospectus
Intellectual Property

Spring 2022

University of Oklahoma College of Law

Prof. Eric E. Johnson

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1. GENERAL PRINCIPLES; OVERARCHING 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 2022 Intellectual Property final exam.

Information I've already given you: Please note that I've already provided a lot of relevant detail in the syllabus:

http://www.ericejohnson.com/courses/ip_22/Intellectual_Property_Syllabus_2022.pdf

(in particular, see §6 and §10 of the syllabus).

And I've provided additional detail in a slide deck titled "Some Information About the Exam" (hereinafter, the "Exam Slides"):

http://www.ericejohnson.com/courses/ip_22/m/IP_Some_Information_About_the_Exam.pdf

Please reference those documents. In this exam prospectus document, I will try to stick to things I haven't said previously.

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 the syllabus, the Exam Slides, and this memo. As a whole, I work 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.

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.

B. General Format and Time Considerations

The exam will be administered exclusively in-person at the College of Law.

The exam will consist of Part I (multiple-choice questions) and Part II (essay). Both will be worth half of the exam grade.

The two parts are independent. All the materials for Part I will be collected before Part II materials are distributed. (So, for instance, you can't bank time on Part I to use on Part II.)

You must comply with the instructions of the College of Law's administration and staff with regard to when you can or must begin and when you can or must end.

C. Part I of the Exam, in General:

I repeat here what the Exam Slides say about the format of Part I:

- Part I of the exam (worth 1/2 of the exam grade) will be 90 minutes in duration and will consist of multiple choice questions – approximately 37 or so. This Part I portion of the exam will be totally closed-book, with no materials allowed and no scratch paper.

At 90 minutes in duration, 37 questions works out to 2.4 minutes per question. Note that this is considerably more time per question than the multiple-choice portion of the bar exam, which, when I last checked, provided an average of 1.8 minutes per question.

In further pursuit of keeping time pressure from figuring too greatly, I intend to keep the total word volume in check. Some questions may be long, taking up a full page for instance, but I will work to balance such questions with shorter ones.

All that being said, the time you will have to answer multiple-choice questions is not unlimited. You should pace yourself.

I may include a chart to help you with pacing, such as this:

Pacing chart: To finish all questions and have 5 minutes left over, then:					
At this time since starting:	30 min	45 min	1 hour	1 hr 15 min	1 hr 25 min
Be done with question no.:	13	20	26	33	37

It is my strong wish that no one does poorly on the exam because of time-management problems. So please stay aware of the time, and keep yourself on track.

D. Part II of the Exam, in General:

Part II of the exam will consist of multiple open-ended questions calling for written, essay-style responses to a hypothetical fact pattern.

There is no length limit (e.g., word limit or page limit).

I repeat here what the Exam Slides say about the format:

- Part II of the exam (worth 1/2 of the exam grade) will be essay. It will have a total duration of two hours, divided up as follows: (1) a Reading Outlining Period of 30 minutes, and (2) an Exam Writing Period of 90 minutes. This Part II portion of the exam will be open-book with materials limited to paper-based notes and books. You can use a computer (tablet, laptop) locked down with exam software to type your response. No ebooks, no accessing electronic files, no accessing web, internet, etc.

Note that even though both Part I and Part II are equal halves in terms of their contribution to the exam grade, I've provided for you to have overall an extra half hour of time to spend with Part II than Part I. I realize that's unusual, but it's something I decided to do to help keep time pressure from being a needless stressor. And actually, if you think about it, you have 90 minutes to answer multiple-choice questions, and you also have 90 minutes to write your essay response. It's just that for the essay portion, you have the additional 30 minutes up front of a Reading Outlining Period to carefully read the booklet and plan your response.

3. MAKE SURE YOU PUT YOUR EXAM ID NUMBER ON THE EXAM QUESTION BOOKLETS, HANDLE THEM CAREFULLY, AND TURN THEM BACK IN

It is crucial that you clearly, legibly, and correctly write your exam identification number in the space provided on cover page of the question booklets for Part I and Part II and that you turn the booklets back in at the end of each period. Please don't forget. And do not pull apart, rip, or otherwise mutilate examination materials. Omitting to do what you are asked in these regards, even if inadvertent, will be treated harshly, including resulting in a failing grade and a referral for discipline. See Syllabus § 10-2.

For your multiple-choice answer sheet and your essay response, use your exam number. (Your examination identification number, of course, means your examination number for this semester – not one from a prior semester.)

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 use your name in or on any exam materials. 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.

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.

I'll repeat what's in Syllabus §10-4:

Some Commitments in How I Will Design the Exam and Key Advice to You in Studying:

(a) **The Correspondence Principle:** The most important thing to me when I write an exam is to work hard to ensure that the emphasis on the exam will track the emphasis in class and in the materials, and the topics covered on the exam will be at least roughly proportional to the time spent on those topics in the course. I call this the Correspondence Principle, and I will do my best to obey this when putting the exam

together. So, for example, if something was mentioned in passing in the reading but not a subject of attention in class, you can expect that it would not be more than a trifling part of the exam, if even that. Thus, when studying, I advise you to be balanced in your topic approach and to concentrate on understanding the bigger issues rather than memorizing minutiae.

(b) **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.

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.

Some more points:

Breadth and depth of coverage: Any material presented in class or in the readings is 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 try to design multiple-choice questions to be answerable through application of key concepts and major points of doctrine.

The essay exam, as well, will be purposefully designed to avoid testing you on obscure points. That being said, I cannot guarantee that obscure points won't find their 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.

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. Put differently, when approaching the essay booklet's hypothetical facts, I would advise you to read carefully but not suspiciously. My experience in reading exams 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 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 will make particular reference to the following, which we can call the "Focus List." This is where you should concentrate your studies:

- doctrine that was the subject of a case we read
- doctrine/material that was the subject of sustained attention in class
- slideshows posted to the class website
 - problems and hypotheticals in those slideshows
- big concepts that are the focus of chapters in the book
 - often these are represented in the titles of chapters
 - often these come through in the book's inclusion of statutory text and use of explanatory text

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.

Kinds of questions (legal analysis, theory/policy, etc.): The exam is mostly about applying law to facts.

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, the vast majority of questions will be of the standard type requiring you to apply facts to law. Beyond that, there might be a few questions of different types. You might see a question or so on theory – in proportion to the time we spent on theory in the course. And you might see a question or so that is simply about recall – for instance, about legal doctrine or a reading. As an example, sometimes in the past I have included a question where I had a quote from a reading and students were asked to recall something about it, such as where the reading came from. It's possible I might do that again. But such recall questions, if they are included at all, will be infrequent. And often when I have included such questions, I have designed them so that a conceptual

understanding – one that goes beyond pure recall – will aid in guiding a student to the right answer. So, bottom line, you should concentrate your preparations on cementing your conceptual understanding that will allow you to apply law to provided facts.

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: FORMAT, SCORING, AND STUDY MATERIALS

The multiple-choice portion of the exam will be similar in format to my released multiple choice questions. Thus, Part I of your exam should look very familiar.

Each multiple-choice question will be worth one point. The exception would be if I end up throwing out a question because of error or 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 are running out of time, you should guess.

Look to my [Exam Archive](http://ericejohnson.com/exam_archive/) (http://ericejohnson.com/exam_archive/) for all of my publicly released multiple-choice questions. It is very important to note that released multiple-choice questions are not balanced in terms of subject matter so as to match the balance of subjects for any given iteration of this course. In other words, you should not take the frequency of questions on particular subjects in released questions to be a clue as to the frequency with which subjects will come up on the multiple-choice portion of your exam.

6. MULTIPLE CHOICE: HOW TO TACKLE THE QUESTIONS; HOW DIFFICULT THEY MIGHT BE

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](http://www.ericejohnson.com/docs/Tip_Sheet_on_Multiple-Choice_Questions.pdf) (http://www.ericejohnson.com/docs/Tip_Sheet_on_Multiple-Choice_Questions.pdf). There's a link in the Exam Archive on my website. 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.

That being said, note that "straightforward" does not mean "easy." The regular type of multiple-choice question I use, where you are expected to apply law to facts, is a kind of puzzle. You solve the puzzle by applying the law you've learned. You have to work through the question to eliminate wrong answers and figure out the right one based on the doctrine taught in the course. I wouldn't represent that task as being easy. And, indeed, if you could tell the answer right

away just by glancing over the question, it wouldn't be accurate to describe it as a kind of puzzle.

Here's another way to think about it: I've got a lot I keep in mind when I design multiple-choice questions: fairness, accuracy, straightforwardness, correspondence to coverage in the course. Easiness is just not something I worry about. Statistically speaking, what I care about with an individual question is getting a high point biserial (which can be thought of as an indicator of fairness). I do not concern myself with whether a question garners a high percentage of correct responses (which would be a measure of easiness).

Looking over past statistical results, it is clear that some of my questions end up being easy, and some end up being hard. Frankly, before running the test, I can't tell what will be easy and what will be difficult. Many questions that I thought before would be easy end up being answered correctly by only a small percentage of test takers. And I've had questions I thought would be decently difficult be answered correctly by 100% of the class.

All in all, what I find in looking over past statistical results is that my multiple-choice exams often skew toward being fairly hard. In one recent class for which I looked up statistical information, a student with a median score¹ on the multiple-choice section answered fewer than two-thirds of the multiple choice questions correctly. So that was a hard test. And if I used a grading system, as in high school, where a student had to get 83% correct to get a B, then that would be pretty frightening. But my grading system is much, much more forgiving.

To the extent that a test is hard, that can be a very good thing for grading fairness. In truth, **you don't want a test that's super easy**. Instead, **you want a test where what you score is correlated to how much you know** – in other words, a fair test. And if you think about it, an exam that is super easy becomes dangerous: Happen to miss a question or two – perhaps because your mind is randomly drawing a blank on something – and then all of a sudden you are at the bottom of the class.² **A test that is decently difficult ends up being forgiving of random little mental blocks and minor slip-ups.**

¹ Median means right in the middle of the class – with half of test-takers scoring higher and half scoring lower.

² To take an extreme example, imagine a hypothetically very easy exam: It has just two questions, worth one point each, and each question is easy enough that 90% of test-takers will get it correct. Further assume there's a lack of correlation between test-takers' correct answers on the two questions. We have a very easy test – but a dangerous one. If you happen to miss just one question, perhaps because of nerves or because you didn't happen to go over that particular topic when studying, then you are in the bottom 10% of the class. If you happen to miss two questions, then you are in the bottom 1%. A really easy test is like being

So when you are taking the exam, if you feel like you are missing lots of questions, don't freak out. It doesn't necessarily mean you're doing poorly. You might be doing very well. Just keep moving forward, staying on pace, working through the questions to straightforwardly apply what you have learned in the course.

7. ESSAY: ABOUT IT BEING "OPEN BOOK"

Syllabus §10-5(b)7 explains the specifics of what "open book" means for this exam. Please take a look at it. To head off a question I've sometimes gotten: I know there are some instructors that allow students to bring to the exam only the assigned textbook and only materials that the students, themselves, have authored. Let me be clear: There is no such requirement in this class.

In terms of other things you can and can't have with you, see Syllabus §§10-5(b)1 et seq.

Although there is no limit on the what paper materials you can bring with you, there is a possible danger in having too much paper. You don't want to be bogged down by looking stuff up and re-reading your notes instead of doing analysis. I personally think the most important thing you can have in terms of paper is a single sheet of paper to use as a "menu outline"/"attack outline" (See what I say about this in the "OVERALL THOUGHTS ..." section, below.)

8. 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 to 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.

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 into 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.

required to maintain your balance while walking on a five-inch-wide beam suspended over a 200-foot drop with no handrails. If you stumble at all, it's catastrophic. Thus, consider that hard exams are a blessing.

9. ESSAY: ABOUT THE STYLE AND FORMAT OF MY ESSAY EXAMS

Notwithstanding some differences in exam length, topic coverage, and call-of-the-question structure, your Part II will be similar to essay exams I've given in past years, available in the Exam Archive. Thus I very much recommend doing my old essay exams as practice.

The kind of fact patterns I tend to write: I try to make my exams interesting and engaging. In comparison to other law-school 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. I also hope building exams this way makes them more engaging for their retirement years when they are used as study aids in the Exam Archive.

A consequence of my writing exams as I do is that the exams end up containing factual details that, while useful for holding the story together, are not fulcrums for the legal analysis. 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.

Use of images, charts, etc.: You will notice that my exams in the Exam Archive often have pictures, and sometimes other things like diagrams, sidebars, and the like. You should know that sometimes photos or graphics have offered something useful to the legal analysis, but often they have just been decoration.

10. ESSAY: ORGANIZATION AND SEPARATED SUBPARTS

Organization is important. To help on that front, I will likely require a response broken up into distinct "subparts." (Past exams provide examples – sometimes calling the subdivided portions "questions," sometimes calling them "subparts.") The main point in doing this is to require all essay responses to go through things in the same order. That way I can grade all the exams in the same way, which helps me to be as fair as possible. And as I've said, fairness is my paramount goal.

When typing, you should keep your entire essay response within a single field – or, as the exam software understands it, a single "question." So, don't use the exam software's features to start a new "question" field when you go on to a different subpart of your essay response. But, **you should use your typing to clearly label the different portions of your answer – corresponding to the different subparts I identify. I recommend you do this in a very simple manner.** For instance, if I set out subparts "A" through "D," then when you start, I advise that you put "A" or "Subpart A" on a line by itself, then provide the

corresponding analysis below that. And when you start writing the analysis for the second subpart, put “B” or “Subpart B” on a line by itself. And so forth.

Note that different subparts will not be separately weighted. The entire essay response will be graded as one. So answer all portions completely, spending relative amounts of time on the subparts and various aspects as you judge to be appropriate. An exception to this is if I tell you that something can be answered with great brevity. If that’s the case, then heed that instruction and keep that part of your answer brief. Or if I ask for a question to be answered in “a sentence or two,” then limit your answer accordingly. I might do this for a topic that we spent little time on in class and that I don’t want to allow to become too big a part of the exam. Going beyond what I’ve asked for won’t contribute to your grade.

By the way, the reason I don’t separately weight subparts or portions of the essay response is that in my experience it invites arbitrariness into the scoring. Why? Well, an essay exam is open-ended, and there’s no one single ideal way to write a response. But if I assign weights to different portions of the analysis in advance, then I necessarily am adopting one projected way of answering as the mold by which all responses will be judged. Thus, the results end up being arbitrary – judged against the mold rather than taken on their own merits. In other words, separately weighting subparts inevitably involves my advance projection about how much point-worthy analysis there is to provide about a given aspect of the analysis – and if my advance estimate doesn’t line up with how some happen to answer, then the scoring wends toward arbitrariness. So, I realize it can be frustrating to not be given weights or suggested times on individual questions, but in the end I’m convinced that exam scoring is fairer when I let students find points where they may.

11. ESSAY: CALL OF THE QUESTION, SPECIFIC INSTRUCTIONS ON WHAT TO COVER, WHAT TO EXCLUDE, WHAT TO ASSUME, ETC.

Be aware of the call of the question and any specific instructions I provide on what to cover – such as things to definitely address, things to assume, and things to exclude from your discussion.

When I provide such guidance, it is to keep you focused on giving me the analysis I’m hoping to get – generally with an eye toward balanced exam coverage that corresponds to course coverage (see the discussion of the Correspondence Principle, above). So make sure to carefully read this guidance and follow it! For instance, I might instruct you to make sure you address some particular issue or aspect. Or I might instruct you to omit discussion of something (such as 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).

I won’t take away points for your discussing something I said not to discuss. But I cannot and will not give credit for analysis for something I asked

you to exclude or that would have been unnecessary if you had assumed what I asked you to assume. And going off into excluded subject matter will necessarily squander your time, lessening your capacity for doing the analysis I've asked you to do. In the past, I have observed that a number of students would likely have done a bit better if they had just been more careful in heeding the guidance in the call of the question. (To be clear, I am sympathetic that exam-taking is stressful and that people feel rushed. But it would not be fair for me to give one student points for talking about something that other students didn't discuss because they were following my specific instructions.)

12. ESSAY: ABOUT THE LENGTH AND STYLE OF YOUR RESPONSE

There will be no word limit, but concision is admirable. 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. Be functional in your writing. 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. Write functionally.

I've spoken with students who omitted legal/doctrinal words and phrases because they felt like their writing was getting repetitive and boring using the same words and phrases over and over again. (For instance, in Torts, I've had students who purposely avoided phrases like "actual causation," "foreseeability," or "reasonable person.") Yikes! That is not a good strategy! This is probably less of an issue for 2Ls and 3Ls, but I still feel like I should point it out. 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.

By the same token, you should make sure you're using the *correct* legal term. If you are saying "copyright" when you mean "trademark" — that's a real problem, whether it comes from real confusion or just being lackadaisical.

13. ESSAY: ISSUES WITH TEXT: REPEATING, WRITING, TYPING, ETC.

Here are some specific pieces of advice for your writing.

Repetition: Be complete, but avoid redundancy in the substance of what you are saying. 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 avoid the copy-and-paste function.)

Instead of repeating yourself, to the extent called for, you may incorporate analysis by reference to another portion of your answer. For example, it may 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 may include in the exam a table of pre-defined abbreviations for you to use in your response, if you like. You'll find examples among my more recent exams in the Exam Archive. You can 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.)

14. ESSAY: WHAT MAKES FOR A GOOD ESSAY RESPONSE, HOW IT WILL BE GRADED, WHAT GETS POINTS, ETC.

I have written an entire memo on what makes for a good essay response. It's called [Tip Sheet on How to Write a Law School Essay Exam](http://www.ericejohnson.com/docs/Tip_Sheet_on_Exam_Writing.pdf).³ You should scrutinize it: It tells you exactly how to maximize your grade by providing solid legal analysis. (Note that if you read it in a prior year, it's possible it's been updated since then.) Another document I've written to help you understand

³ http://www.ericejohnson.com/docs/Tip_Sheet_on_Exam_Writing.pdf

what makes for a good essay response is [Three Examples of Exam Writing](http://www.ericejohnson.com/docs/Three_Examples_of_Exam_Writing.pdf).⁴ Both of these documents can be found via links in the Exam Archive. I strongly recommend reading these documents as exam preparation.

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 essay 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 the essay portion is open-book/open-note, and thus rules of law can simply be copied out of your outline or book. This necessarily means that the occurrence of correct statements of legal doctrine in your essay response is not probative of your understanding.⁵

Those are the basics. For advanced technique on how to do a great job, I recommend looking over the model answers for IP essay exams in the Exam Archive. The model answers aren't perfect, but for the most part they show extremely effective, nuanced technique.

15. 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. Most 2Ls and 3Ls are skilled at that, but it's foundational

⁴ http://www.ericejohnson.com/docs/Three_Examples_of_Exam_Writing.pdf

⁵ I can concede that on a closed-book/closed-note essay exam, regurgitating correct statements of legal doctrine could at least be probative of your successful memorization of various material. But this isn't a closed-book/closed-note essay exam.

to doing well, so I feel compelled to emphasize its importance. And as far as that goes, I've discussed that above and referenced, above, other helpful documents. Beyond that, you should do whatever works for you in learning the substantive content. Just remember to keep a smart focus – and in that regard, mind what I've said above, including the "Focus List."

Throughout your preparations, you should bring exam-writing technique and substantive knowledge together by working through old exams from the Exam Archive. I particularly recommend trading your responses with classmates: That is an extremely effective way to find your weaknesses and strengths, and reading various student responses can allow you to start to develop something of a graders' perspective.

And, of course, do old multiple-choice questions.

At some point in your preparations, **I STRONGLY RECOMMEND 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 here is a very simplified list of what we learned during the semester. I'm not talking about an outline that explains anything, just an outline that reminds you of what we covered, what you already know. I call this a "menu outline." Some people call it an "attack outline." 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 you can choose from in order to bring them to bear on the hypothetical facts of the essay booklet 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 open-book exam, many students work to accumulate a huge volume of materials they can reference as they work. You need to decide what's right for you, of course. But I tend to think this kind of accumulation of paper 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 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 diving into an old exam. If you want to save for later the more recent exams, that's fine; pick up one of the older exams. 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. And also, of course, take breaks to just relax a little to maintain your sanity.

Some random things to point out:

- **Last semester's exam:** The Fall 2020 IP exam is posted in its entirety. Look in the Exam Archive. I posted the multiple-choice questions and essay portion ("Hydroponic Warfare") separately, but I also posted the whole original booklet. I also posted answers to the multiple-choice questions.
- **Wypadkis:** In case it is helpful, you should know that I have made available class-wide group outlines from years past. These are called "wypadkis." There's a link to these on the class webpage under the "Some study resources" heading. They may or may not be useful to you, but I just want to point out that they exist.

16. FINAL THOUGHTS

Don't get too anxious. Study the big concepts, pay attention to the Focus List, remember the tips on exam-taking technique, and get a good night's rest. I wish you the best of luck!