

Memorandum to Students

Exam Prospectus for Intellectual Property Survey

Fall 2022

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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 Fall 2022 IP final exam. My paramount goal in designing and crafting the exam is fairness. Part of that, in my view, is disclosing as much as possible about the exam in advance to eliminate the potential for surprise. That's the purpose of this document, and it's the reason why I've already disclosed a huge amount of information about the exam in the Syllabus.

Look at Syllabus §10: The bulk of the information I have for you concerning your exam has already been provided to you in §10 of the Syllabus. Because the world has been so topsy-turvy lately, with recent semesters being bent to pandemic exigencies, I hedged a bit in the Syllabus and spoke of what *would* be the case if we have a “normal exam” in Fall 2022. As I already said in class and put in slides posted online, I confirm that, indeed: **We will have a “normal exam.”** So before you read any further in this document, please put it down, pick up the IP Fall 2022 Syllabus, and read §10. What you'll get out of that includes all or most of what I have to say about **fairness, transparency, comprehensiveness, coverage, format, anonymity, key advice in studying, and the enormous importance of strictly following exam requirements and instructions—including returning all materials correctly marked with your exam ID number.**

I'm determined not to mindlessly repeat all that Syllabus §10 content in this document, so please read Syllabus §10 with care.

Also note that I've reiterated key points and previewed some of what is in this document in slides titled “Some Information About the Exam,” which are posted on the class website.

2. OVERVIEW OF FORMAT OF ENTIRE FINAL EXAMINATION

The overall duration of the exam is 3.5 hours, but it will take a bit longer in real-time because of the reading of instructions, passing out and collecting materials, stopping and re-starting between parts, and so forth.

The exam will consist of two parts. They will be separately administered, one after the other. Part I booklets and answer sheets will be collected before Part II materials are distributed.

As previously disclosed in the posted slides about the exam, Part I of the exam (worth 2/3 of the exam grade) will be multiple-choice questions, two hours in duration, and closed-book.

And, as the slides stated, Part II of the exam (worth 1/3 of the exam grade) will be essay, 90 minutes in duration, divided up as follows: (1) a Reading Outlining Period of 30 minutes, and (2) an Exam Writing Period of 60 minutes. This Part II is open-book/open-notes – limited to paper-based/non-digital materials. You will use a computer (tablet, laptop) locked down with exam software to type your response. Alternatively, you may handwrite your response in blue books that will be provided.

Highly specific details on what “closed-book,” “open-book/open-notes” means, details allowed items and answers to various past and anticipated questions in that regard are discussed in §12, below.

3. PART I MULTIPLE CHOICE: FORMAT DETAILS

As previously disclosed in the posted slides about the exam, Part I of the exam, worth two-thirds of the total exam grade, will be two hours (2.0 hours) in duration. It will consist entirely of multiple-choice questions that have no more than five answer choices each.

You will get a question booklet with instructions, questions and answer choices. You can make notes and scribble on it in pencil. But do not disassemble, tear, or otherwise mutilate it. **You must put your exam identification number on the question booklet where indicated and hand it back in at the end of the period to receive a passing grade for the course.**

You will be provided with a bubble sheet (“scantron”) to indicate your answers. You will use a “number 2” pencil to fill it in. **It is crucial that you use your current exam-identification number on the scantron sheet—and not your name.**

There will be approximately 50 questions or so.

This Part I portion of the exam will be totally closed-book, no notes. More on what “closed-book” means and detail about allowed items are in §12, below.

4. PART I MULTIPLE CHOICE: HOW MANY QUESTIONS, PACING

I am designing the multiple-choice portion of the exam with the intent of giving you adequate time to read and analyze each question. I don’t want time pressure to be a dominant factor. In this regard, I am informed by feedback I have gotten on past multiple-choice exams, and I endeavor to have things calibrated so that students will have the time they need to get through everything in a careful, thoughtful way.

For Fall 2022, you will have 2 hours (120 minutes) for approximately 50 questions, which means about 2.4 minutes per question. Note that this is considerably more time per question than the multiple-choice portion of the bar exam in recent years, which has 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 10 minutes left over, then:					
At this time since starting:	15 min	30 min	1 hour	1 hr 30 min	1 hr 50 min
Be done with question no.:	7	14	27	41	50

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.

5. PART I MULTIPLE CHOICE: COVERAGE, SCORING, STYLE OF QUESTIONS, STRATEGY

You can expect that Part I of the exam will embrace subject matter across the entire course.

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.

The bulk of questions will be hypothetical-style questions testing the application of law to facts. There likely will be other questions as well – such as questions that concern relevant concepts of legal theory or recall-type questions. Recall-type questions might be focused on testing literacy of pure law (i.e., without being applied to particular facts) or familiarity with emphasized concepts. I don't love recall-type questions, because they tend to be less probative with regard to deep understanding and attainment of learning outcomes. In large number, such questions encourage mindless memorization rather than ready-to-apply knowledge. But recall-type can be kept short even while staying clear-cut. So putting in some of them can help keep the whole exam manageable in terms of pacing.

In terms of the structure of questions, how they are set up, and what they look like on the page, you can expect your exam to have great similarity with released multiple-choice batteries in my Exam Archive. So when you open it up, it should look familiar.

Look to my 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 this or any other iteration of the IP 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. Your exam will obey the Correspondence Principle (see Syllabus §10).

If you haven't already, you should definitely read my tip sheet "How to Take a Multiple-Choice Exam in Law School." It's on the Exam Archive page: http://ericejohnson.com/exam_archive/

6. PART I MULTIPLE CHOICE: SOURCE OF QUESTIONS, MATTERS OF SECURITY AND ACADEMIC INTEGRITY

All multiple-choice questions are written by me. I do not use questions on the exam that have been previously publicly released. 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.

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 valid and probative, and which should be revised or thrown out. Using this data and reusing questions 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.

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 misconduct/dishonesty. Moreover, reproducing or trafficking in unreleased questions is civilly actionable. Be aware that I may employ statistical analytical techniques to look for patterns that indicate cheating in this regard.

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 if one is available to you.

Also be aware that a crucial part of exam quality and security involves the numbering of exam booklets and the marking of booklets with students' exam identification numbers. I anticipate that booklets will be clearly marked with a space for you to write your exam identification number. Do not omit to do what you are asked in this regard, and do not omit to turn the exam booklet back in. You can expect that an omission in this regard, even an innocent one, will be catastrophic for your grade, causing you to receive a failing grade for the course.

7. PART II ESSAY: FORMAT DETAILS

As disclosed in the slides, Part II of the exam, worth one-third of the total exam grade, will be 90 minutes in duration. It will consist entirely of written-response or essay-type questions for an issue-spotter-style hypothetical.

You will get a question booklet with instructions, hypothetical facts, and

questions. You can make notes and scribble on the booklet in pencil, pen, and highlighter. But do not disassemble, tear, or otherwise mutilate it. **You must put your exam identification number on the question booklet where indicated and hand it back in at the end of the period to receive a passing grade for the course.**

You can type using a computer or computing device (e.g., tablet, iPad, laptop) that is locked down with exam software as provided for under relevant College of Law policy. Or you can handwrite a response in provided “blue book” response booklets. Typing is recommended. **It is crucial that you use your current exam-identification number to identify your response and not your name.**

This Part I portion of the exam will be “open book” and “open notes” for paper materials. More details on what that means and detail about allowed items are in §12, below.

The 90 minute duration of Part II will be divided up as follows:

30-MINUTE RO PERIOD: The first 30 minutes is a reading-outlining period (“RO Period”). This is your time to carefully read the exam booklet (that is, the facts and the questions), to take notes, to reference your outlines and books, and to outline your response on scratch paper. During the 30-minute RO Period you may not begin recording the response upon which you will be graded and you may not use any computing device. Thus, during the RO Period, you may not type any characters at all into any computing device or make any mark in any blue book.

60-MINUTE EW PERIOD: Next, you will have a 60-minute exam-writing period (“EW Period”) during which you will write your response. (You can also continue to do the things allowed during RO Period.)

8. PART II ESSAY: KIND AND QUANTITY OF QUESTIONS.

I anticipate that Part II will have one fact pattern for which you must provide legal analysis, limited to and organized in the form of response to particular questions.

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. Nor will there be any history question.

9. PART II ESSAY: PACING, APPROACH, REPEATING ANALYSIS, ETC.

Clearly label each question separately in your answer. Please don’t start a new answer field in the exam-response software or separate “question” as far as the software is concerned (e.g., “ExamSoft,” “Examplify,” or whatever the current package is called). It’s all one essay response. And I will grade it as one. But when I am reading it, it really helps me to see where you are. So, for example, for question 1, you could put “1” or “Q1” or “Question 1” on a line by itself. (Putting it on its own line is really helpful.)

I strongly advise you to avoid constraining formats like numbered or bulleted lists. Regular paragraphing tends to work best.

Use what you've learned in this course. Within the confines of the questions you are asked, address all genuine issues you spot, including obvious ones, but expect that more difficult issues will require more analysis. Spend your time accordingly. And I advise you not to work too hard to try to stretch the law to apply in far-fetched ways. A cause of action that would almost work but not quite could be worth talking about, but a cause of action that is in substance irrelevant is probably irrelevant for you to address. Deciding what to address and how brief or in-depth your discussion should be is a subjective judgment call. There's no getting away from that. But if you've been engaged with the course's content, you should be able to rely on what you've learned to make wise choices.

If it's relevant, and if you see it as appropriate or useful, you can note differences among approaches used by different courts and jurisdictions. But you will not be tested on the law of any particular state, municipality, or circuit. It's all just general United States law.

In terms of the particular sorts of questions you might be asked, how they might be phrased, etc., look at exams in my Exam Archive, particularly the more recent ones. Those will give you a good idea of the kind of thing to expect in terms of call-of-the-question structure.

When I first started teaching, I would just have a general question along the lines of, "Discuss liability for the above facts." But I moved to asking particular questions to accomplish two objectives. First, asking a series of particular questions is a way of forcing each student's response to present analysis in the same order and the other responses, which makes essay responses more comparable. Second, by providing specific questions, I can channel students' discussion into what I'm really interested in and exclude discussion that would be largely redundant, focused on minutia, or otherwise providing material that I consider less probative of student understanding of course material. Therefore: **Limit your discussion to the questions posed.** 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 I ask you to exclude. 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 call of the question.

Please do not repeat the exact same analysis when discussing a different party or answering a different question. Instead, I strongly encourage you to incorporate previously stated analysis by reference. If analysis of an issue is substantively the same as what you have written previously, then I suggest you refer to your prior analysis and go on to discuss any differences.

All that being said, don't skip steps. If, for instance, the plaintiff has two claims for trademark infringement based on two different trademarks, then the probably all of the infringement analysis is going to be distinct.

I have indicated that for exam software, the copy-and-paste function can be enabled. So if that's working, you can use that. But keep in mind that what I am really

interested in is content that is probative of your understanding. And I'm a human being with a decent short-term memory. So mindlessly doubling your words through copying and pasting isn't going to double your points.

Organization counts. Read all exam questions before answering any of them—that way you can be sure to put all of your material in the right places. **Note that the questions are not separately weighted; instead, they will be lumped together for assessment.** Again, as I said, it's all one essay response. The purpose of separate questions is really to get you to use the organizational structure I want you to use, and address what I want to see addressed. So plan ahead to put information where it belongs, and divide your time among the questions according to what requires the most discussion and analysis. And just to be crystal clear: **Do not expect that each question calls for an equal share of your time or words.**

10. PART II ESSAY: ABOUT THE LENGTH AND STYLE OF YOUR RESPONSE, SOME WRITING ADVICE

Be aware that 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. (For what it's worth, I've checked a preference to allow spell-check in the software. Assuming it works, it's up to you whether it will be helpful for you to use it.) It's rare that grammar or spelling is so bad I can't understand the substance of what someone is saying. It's happened, but it's really unusual.

Feel free to use abbreviations, but only if the meaning is entirely clear.

I advise against trying to use an interesting writing style for the exam. Spend what words you need for the sake of substance. But there's no need to lay them on for effect. Put differently, try to stay concise and focused, and 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.**

Write functionally. I welcome simple words. In particular, I strongly advise against your trying to come up with synonyms for “because” and “therefore” for the purpose of spicing up your writing. 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. This tends to happen more with 1Ls, for example, sometimes I have students trying to avoid repeating things like “foreseeability,” or “reasonable person.” But yikes! That is not a good strategy! Please 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.

I welcome short paragraphs. Paragraph breaks are free. And I think students help themselves understand what they've covered and where they still need to go when they start a new paragraph before going on to a new issue, new cause of action, new defense, etc. Also, I love short sentences. But if a long sentence has flowed out of your fingers—then please don't spend precious time breaking it up.

Bottom line: Don't worry about polish or panache. Content is king.

Blue books: Make sure your handwriting is legible. I cannot grade what I cannot read. Please use a blue or black pen. Skip lines and write on only one side of the page. If you're on the fence about typing or writing by hand, I strongly suggest you type.

If you haven't already, you should definitely read my tip sheet "How to Write a Law School Essay Exam." It's on the Exam Archive page.

11. PART II ESSAY: ABOUT 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 blue book—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. EXAM SESSION RULES, ALLOWED MATERIALS, ETC.

What can you bring with you and use during the exam session? What are the limitations on communicating with others, accessing materials, etc.?

I've already provided most of this information in the Syllabus. But there's a few extra tidbits I can add, some of which are responsive to questions I got over the course of this semester. So what I'm going to do here is provide the text from Syllabus §10-5—with changes indicated. Obsolete text is struck out. New text is underlined.

I've gotten lots of questions over the years about what students are allowed to have with them during the exam. So I've created pretty specific instructions on that. So, ~~assuming~~ since we will have a normal in-person exam, I ~~anticipate~~ am providing the following instructions:

Applicable to the Part I multiple-choice portion and the Part II essay portion:

- You may not communicate with anyone—necessary communications with administrators/proctors being the exception. You may not view or attempt to view materials other than your own. If necessary, a brief bathroom break is allowable under applicable policies; otherwise, you cannot leave the exam room.
- For the avoidance of doubt: Absolutely no talking or communicating with any other student is permitted before time is called—even if, for instance, you are finished working on the exam and you are out of the exam room visiting the restroom. It makes no difference what you are talking about or whether it has anything to do with the exam—the communication is not permitted.
- You must refrain from conduct which could reasonably be distracting to the students sharing the room with you, including by generating noise and smells.
- For food and drinks: Drinks must be open and drinkable before the exam starts. No popping cans or opening soda bottles during the examination period. Food and beverages cannot smell. Nothing creating an odor stronger than a cup of unflavored coffee is permitted. Food cannot be noisy—whether because they are crunchy or they are in a wrapper or package that makes noise. Chew with your mouth closed.
- No essential oils, perfumes, or colognes.
- No smart watches, no phones, no music, nothing with Bluetooth. All items and materials are subject to inspection.
- Do not wear a smart watch or anything that looks like a smart watch—even if you aren't interacting with it.
- Do not have a phone on your person—even if you aren't interacting with it.
- Also, you cannot use a calculator (you wouldn't need one anyway).
- You may use earplugs. You may use noise-cancelling or white-noise-producing headphones (the word “headphones” includes earbuds) provided that they have no other electronic capabilities, functions, or features (including but not limited to Bluetooth, signal transmission, signal reception, playing music, etc.). What matters is the item's capacity to do other things—not whether that capacity is being used. Expect inspection.
- You may wear a regular watch with no functions other than timekeeping. A digital watch that has an alarm and stop watch function in addition to providing the time of day and date is permitted—but it may not beep or emit noise.
- You cannot share items with other students.

Applicable to ~~a normal~~ the Part I “closed book” multiple-choice portion:

- You can have no materials to reference.
- You can bring your own eraser and No. 2 pencils. You cannot have other writing instruments.

Applicable to ~~a normal~~ the Part II “open book” essay portion:

- You can have your computing device (including a laptop or keyboard-equipped tablet) to write your exam, provided it is running the required exam-taking software and is used pursuant to applicable policies. But you may not reference files stored thereon during the examination session. For the avoidance of doubt: No ebooks, no accessing web, internet, etc. It makes no difference what you are reading or accessing or whether it has anything to do with the exam.
- You may use any paper-based notes and books you like, including inert binders and tabs. You can also use pens, pencils, and highlighters.
- It seems some instructors allow students to bring to the exam only the assigned textbook or only materials that the students, themselves, have authored. Let me be clear: There is no such requirement in this class. For Part II, you can bring in any material on paper that you wish.
- Non-paper materials are not permitted.
- Any touching, using, accessing, viewing, or listening to electronic devices or other materials, except as provided, is prohibited.
- You cannot share materials with other students.

A heads-up: Although there is no limit on 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” or “attack outline.”

13. OVERALL THOUGHTS ON STUDYING

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. Resources on that include the *Tip Sheet on How to Write a Law School Essay Exam* and *How to Take a Multiple-Choice Exam in Law School* (which I’ve referenced above). And I strongly recommend that you 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.

The benefits of a “menu” or “attack” outline: 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 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 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.

14. FINAL THOUGHTS

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