

Memorandum to Students

Exam Prospectus Oil & Gas Law

Spring 2018
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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 2018 Oil & Gas Law 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 knowledge of and mastery of the material presented in the course and your skills in analyzing legal problems and policy issues 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.

2. COMMUNICATIONS AND ANONYMITY

Section 10-1 of the Syllabus contains important provisions about students' obligations concerning communications and anonymity. I am re-printing those provisions here. Please re-review them:

10-1. Communications and Anonymity:

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

(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 on a scantron answer sheet, [which will be used for Part I]. 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.

3. **FORMAT OF THE EXAM**

You will have 3.5 hours to complete the exam, which consists of two main parts.

PART I: MULTIPLE-CHOICE QUESTIONS, CLOSED BOOK

Part I will be worth one-third of the exam grade (about 33% of your overall exam grade). It will be 1 hour in duration (60 minutes).

Closed-book administration: Part I will be administered on a “closed-book” basis. You will not be allowed to have any of your materials with you other than pencils. You also may not bring a calculator with you, and, at any rate, one won’t be useful for the questions you’ll be asked.

Part I consists of multiple-choice question, numbering in the range of 25 questions, with no more than 30 questions maximum.

These multiple-choice questions will concern material from both the Science & Society topics and the Law topics. In Part I you can expect to find questions regarding topics such as the physics, geology, property theory, and petroleum extraction technology we studied, as well as legal/doctrinal topics such as petroleum ownership law and lease provisions. Some questions will involve the application of law to fact or the working of problems. Other questions may test literacy of pure law or may be pure recall questions that require you to remember something from the reading. With all multiple-choice questions, my aim is to use straightforward questions that test on major concepts and large-level understanding, not tricky questions and not questions that reward the mastery of obscure details.

PART II: ESSAYS, OPEN-BOOK

Part II will be worth two-thirds of the exam grade (about 67% of your overall exam grade). It will be 2.5 hours in duration (150 minutes). You will have that entire stretch of time to prepare and compose your response.¹ Note that I anticipate that writing a great response to the essay questions I will provide could be done in two hours. But I am giving you 2.5 hours for the essay portion because I don’t want time pressure the dominant factor in how well people do. Nonetheless, 2.5 hours is not unlimited, so please keep track of your time and stay on track.

Open-book administration: Part II will be administered on an “open-book” basis. You may bring with you and access 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. No calculators either – although I wouldn’t expect one to be useful regardless. Importantly, note that you will be able to use a laptop to compose a written response. Laptop usage must be in accordance with applicable policies. In no event, however, will you be permitted

¹ Along these lines, you may recall that the Syllabus provided, “For an essay portion, allowable time might be structured such that you have a separate period for reading/outlining, during

to reference files stored thereon during the examination session. You will be permitted to compose a response on paper (e.g., in a “bluebook”) in lieu of using a laptop.

Part II will be broken down into two essay questions, as follows:

Essay Question 1 will be two-fifths of Part II, which is 4/15ths (~27%) of the entire exam. You will be given a hypothetical editorial from a newspaper in a hypothetical state that has never experienced any significant oil-and-gas production and has no developed oil-and-gas law, but which is now on the cusp of a massive oil-and-gas boom. Your essay must argue against the viewpoint and arguments advanced by the editorial, and your aim will be to apply what you have learned in the course – both drawing from your doctrinal knowledge and, especially, the tools you have gained in terms of oil-and-gas policy analysis. I won’t disclose what the viewpoint of the editorial will be. And, in fact, I plan to sketch out multiple editorials and use a random process to choose which one to include in the exam. One of your best modes of preparation for this question will be to think about the kinds of discussion questions we have pursued in class and the connections those questions have urged you to make among different aspects of the course’s content.

Essay Question 2 will be three-fifths of Part II, which is 6/15ths (40%) of the entire exam. It will be an issue-spotter question, providing hypothetical facts and requiring you to apply the law to those facts. The hypothetical facts will take place in a hypothetical jurisdiction (such as “Texlahoma” or “Minnekota”). In this way, you will not be asked to come up with a correct legal answer according to the law of any particular real-world jurisdiction (such as Texas or North Dakota), but instead you will apply as precedential authority whatever we have encountered in class and whatever we have found in our reading materials. Moreover, you should assume a substantial probability that this hypothetical jurisdiction will assemble a statutory and regulatory structure that largely follows those we have encountered in real jurisdictions. Essay Question 2 will be divided into sub-questions or subparts, requiring you to analyze different facets of the hypothetical facts. At a minimum, you can be expected to analyze some question of petroleum ownership and some question of the interpretation and effect of one or more lease provisions.

4. TOPIC COVERAGE ON THE EXAM

In coming days, I will issue a Study Guide that provides some specific advice on how to concentrate your studies on a topic-by-topic basis. Here I will delineate some basic principles about what I will draw from and what will constrain me as I write the exam.

The Correspondence Principle: The emphasis on the exam will track the emphasis in class and in the readings.² For example, if we glossed over 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.

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 the Chart of Assignments as a checklist. I expect to include, in some way, every topic that was substantially explored in class. (Although I can tell you right now that I will not be testing on “Topic S7A: Land Descriptions.”³) Note that while the exam as a whole will seek to be comprehensive, neither Part I nor Part II will exhibit comprehensiveness when considered alone. But put together, the multiple-choice portion and the essay portion 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, if some doctrinal point came up only in one smallish note appended to a case, 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 am designing multiple-choice questions to be answerable through the application of important concepts and emphasized content.

The essay portion 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 a clever student will make a brilliant point regarding something obscure from our materials. Such a possibility is a natural consequence of having an open-ended essay response. But to the extent someone makes a good point with something obscure and you don’t, you can expect it will earn them a point or two – not a windfall.

The bottom line is, the more you know, the better, but do not obsess about minutiae. 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

² When I refer to “readings” in this memo, I of course generally mean to include things like assigned videos and problems.

³ Note that Topic S7A was originally labeled S7, which was the same label as Supply and Demand Basics. I apologize for the inconvenience.

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 a featured subject of a case we read
- doctrine that was the subject of extended discussion in class
- doctrine that was emphasized in the casebook’s explanatory text
- problems and exercises we went over in class
- material from slideshows posted to the class website

The main message is to not worry about small details. Instead, work on having a thorough understanding of the major concepts.

Note that I plan to use problems, examples, and exercises that we went over in class as inspiration in designing the hypothetical facts for the exam, but I will not re-use them. This means that some fictional events appearing in the exam may be similar to, but not the same as, the facts from problems, examples, and exercises. To put it another way, the problems, examples, and exercises will give you a good idea of the kinds of things you might find on the exam, but you should not expect that they would represent an opportunity to draft portions of your essay answer ahead of time.

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. 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 essay-question booklet for Part II. Even an innocent omission in this regard could be catastrophic for your grade. So please don’t forget.

6. MULTIPLE-CHOICE: ABOUT THE NUMBER OF QUESTIONS

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 do not 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 am endeavoring to have things calibrated so that students will have the time they need to get through everything in a careful, thoughtful way.

For this exam, you will have one hour (60 minutes) for a maximum of 30 questions, which means at least 2 minutes per question. If there are 25 questions, that’s an average of 2.4 minutes per question. Note that this is more

time-per-question than the multiple-choice portion of the bar exam, which provides an average of 1.8 minutes per question.

In further pursuit of alleviating time pressure, I intend to keep in check the amount of material you will deal with per unit of time by paying attention to question length/size. So, if I include the maximum of 30 questions, I'll work to make them shorter on average. If I feel that they tend toward the longer side, I'll include fewer of them.

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

I may include a chart to help you with pacing, such as this one for 25 questions:

Pacing chart: To finish all questions and have 5 minutes left over, then:			
At this time since starting:	30 minutes	45 minutes	55 minutes
Be done with question no.:	14	20	25

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.

7. MULTIPLE-CHOICE: FORMAT, SCORING, STRATEGY, AND STUDY

The multiple-choice portion of the exam will be similar in format and presentation to my past multiple-choice exams in other courses. You might browse some examples in my Exam Archive⁴ so you get a feel for what my multiple-choice questions look like.

Each multiple-choice question will be worth one point. The exception would be if I throw 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 run out of time, you should guess.

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](#).⁵ There's a link on the class webpage and in the Exam Archive. 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.

An important way for you to prepare for the types of questions I will ask is to look at the questions and problems we have gone over in class.

⁴ To get to my Exam Archive, there is a link from my home page. Or you can go directly to http://www.ericjohnson.com/exam_archive.html.

⁵ You can find a link to this document in my Exam Archive.

8. ESSAY: ABOUT THE OPEN-BOOK NATURE OF THE ESSAY PORTION

I understand 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, however, are not permitted. That means no electronic or interactive resources (such as a tablet computer, smart phone, calculator, etc.) may be used or referenced. 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.

9. ESSAY QUESTION 1: WHAT WILL MAKE FOR A GREAT RESPONSE

As you can tell from what I disclosed above, Essay Question 1 will not be a typical law school issue-spotter. It will be more like a traditional college essay in a humanities course. I expect that you will have had experience writing such essays. But it's probably been a while since you've done it. Thus, I searched for tips on how to write a good college essay to pass along to you. I found a good resource in an article called *Top 10 Tips for Taking Essay Tests* by Jeremy S. Hyman and Lynn F. Jacobs.⁶ The following are bits of advice that I've excised from that article, which I think are particularly worth keeping in mind for Essay Question 1. These concern how a student can improve their exam essay writing:

Offer a more nuanced thesis, not the most obvious one.

Probe the relations between the parts or issues treated in the question.

Give more examples or illustrations.

Draw distinctions ...

Bring in materials from the readings ...

Use the methods, techniques, and analytic tools of the field (like the ones the professor ... used in the lectures).

Reach a firm conclusion.

Probably the most important piece of advice – one which I ironically didn't find in my quick scan of advice articles – is that the goal of writing the essay is to prove to the instructor how much you have learned in the course. I don't know if it's considered uncouth or acquisitive to speak so plainly about it, but I see no point in beating around the bush: Your aim is to show how much you've gained from the course. Ideally you'll make deft use of the readings and the rest of the course content, weaving it all into a compelling, on-topic response.

⁶ <https://www.usnews.com/education/blogs/professors-guide/2009/11/18/top-10-tips-for-taking-essay-tests>

In this respect, I would encourage you to reference readings by name – including cases – where relevant. If the name of a reading doesn't come to you immediately, there's no shame in identifying it in some other way – such as, for example, referring to “that case about the ship lost in the South Pacific.”⁷

A corollary is that you shouldn't bother weaving into your response material from outside the course. If you can make a good point based on something from your undergraduate philosophy course or an article you read last night on a blog, that's great; but it probably won't evidence your mastery of the course content, so I'd suggest it's better left out.

10. ESSAY QUESTION 2: WHAT WILL MAKE FOR A GREAT RESPONSE

As a Spring semester 2L or 3L, you already have a lot of experience with law school exams. So you likely know what you are doing in dealing with an issue-spotter. But I would nonetheless suggest you scrutinize a memo I have written to students about what makes for a good law-school/issue-spotter exam response: It's called [Tip Sheet on How to Write a Law School Essay Exam](#).⁸ It tells you exactly how to maximize your grade by providing solid legal analysis. Another document I've written to help students understand what makes for a good essay response is [Three Examples of Exam Writing](#).⁹ I strongly recommend reading both of these documents as exam preparation.

About referring to particular cases and citing them by name: Let me offer an important addendum to my advice in those memos. For most courses, I advise that reciting case names and the particular reasoning from the holdings of particular cases is not important. Indeed, a top Torts exam might not make reference to a single case. But for Oil & Gas Law, I project that referencing particular cases – if possible by name – is likely to be very helpful. That is because Oil & Gas Law is a different sort of course than courses like Torts. With a course like Torts, cases tend to be mere examples of doctrine, rather than the doctrine itself. By contrast, with a class like Constitutional Law, case names are more important, because those cases are the law itself, not mere examples of it. For example, in Constitutional Law, *Heller v. D.C.* and *McDonald v. City of Chicago* are not just examples of Second Amendment law – they *are* Second Amendment law. Along these lines, Oil & Gas Law is more like Constitutional Law than Torts. Granted, Oil & Gas Law is not exactly analogous to Constitutional Law; there's no Supreme Court of Oil & Gas Law whose decisions we've read. But recall what I disclosed about the set up of Essay Question 2: You will be in a hypothetical state where the cases and materials we encountered in class will have persuasive authority. Thus, expect that a substantial part of your task will be less about applying established doctrine and more about reasoning by analogy to the cases

⁷ We didn't read a case about a ship lost in the South Pacific. I'm just trying to give a hypothetical example.

⁸ You can find a link to this document in my Exam Archive.

⁹ You can find a link to this document in my Exam Archive.

we've gone over. And if you think about it, concentrating on the holdings of the cases we read should make your studying somewhat easier, since it should make more manageable the amount of doctrine you're expected to know.

11. ESSAY QUESTIONS: SOME GENERAL OBSERVATIONS AND ADVICE

Here I will review some things that are, to a greater or lesser extent, applicable to both Essay Question 1 and Essay Question 2.

Overall, the essay portion of the exam will be similar in format and presentation to my past essay exams in other courses. I recommend you browse some examples in my Exam Archive¹⁰ so you get a feel for what the essay question booklet will look like.

The kind of fact patterns I tend to write: I try to make my exams interesting and engaging. They almost always have pictures, and sometimes other things like diagrams, sidebars, and the like. 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.

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. 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: You should anticipate that I may narrow the ground for your answer and channel 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 a certain issue, or I might instruct you to make sure you address some particular issue or aspect. If I provide such instructions in the call of the question, be sure to heed them. I won't take away points for your discussing something I said not to discuss. But I cannot and will not provide credit for analysis I asked you to exclude. And going off into excluded subject matter will end up squandering your time, which will lessen your capacity for doing the analysis I've asked you to do.

¹⁰ Again that's http://www.ericejohnson.com/exam_archive.html.

Organization, separated sub-questions and subparts, etc.: Organization is important. To help on that front, I tend to prescribe that students organize their response in a certain way. Expect that I will require at least the response to Essay Question 2 to be broken up into distinct sub-questions or subparts. 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. And fairness is my paramount goal. Within each of Essay Question 1 and Essay Question 2, the sub-questions and/or subparts will not be separately weighted. The entire response to Essay Question 1 will be graded as one, and the entire response to Essay Question 2 will be graded as one. So answer all portions completely, spending relative amounts of time on them as appropriate.

Hyman and Jacobs, in the same article I quoted above, offered various advice on things to avoid in an essay response. I think the following are particularly worth keeping in mind for Essay Question 1, but they are also applicable to Essay Question 2:

Don't survey. If you're asked a specific question, answer that specific question. Don't dump everything you know about a topic into your response. No matter how nervous you are, you need to attend to what's being asked. ...

Don't introduce. Essay exams are not the time to give lengthy introductions or "setups" to the topic. ... Begin your answer in the very first sentence. ...

Don't gesture. Some students think the answer is so obvious – and the professor knows it, after all – that they only need to wave their hands at the answer (rather than wasting all that ink to spell it out). But the prof is looking for you to demonstrate your knowledge and understanding of the material, which can only be done if you take the time to make explicit your points. Be sure your answers can be understood by a reasonably intelligent person, not one who is previously familiar with the material (like the professor). ...

Some specific advice about writing mechanics: Let me offer the following advice regarding the more nitty-gritty of essay 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 avoid 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. Again, examples can be found among my more recent exams in the 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.)

12. FINAL THOUGHTS

Don't get too anxious. You probably know far more than you think you do. 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!