

Memorandum to Students

# Exam Prospectus Sales

Fall 2015

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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 2015 Sales 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 writing your exam response is to show your mastery of the material presented in the course and your skills in analyzing legal problems involving the course's subject matter. My goal in designing the exam is to provide you with a full and fair opportunity to do so.

Now for some details.

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

Section 10-2 of the syllabus describes the exam in considerable detail, including how it will be structured and administered. You should review it carefully. For your convenience, I reprint § 10-2 in its entirety here:

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

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

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

(2) Part I will be one hour in duration.

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

(4) Some questions will be closely patterned off of, although not exactly the same as, released questions from the Multistate Bar Examination. I will give you detail

about the body of questions that may be used for this purpose and how to access them later in the semester.

(5) Some questions may be closely patterned off of, although not exactly the same as, questions that we go over in class and that are posted online.

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

(1) Part II of the exam, worth approximately two-thirds of the total exam grade, will require written answers. This part of the exam will consist of one or more open-ended questions calling for written essay responses to one or more hypothetical fact patterns. In addition, the exam may include directed response or “short answer” questions.

(2) I will write Part II such that it should be answerable in less than two hours. Nonetheless, you will have three hours in which to answer Part II.

(3) You will have the choice of typing or handwriting your response to Part II. The typing of exams will be in accordance with the School’s policy for the use of computers to write exams.

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

(5) Be assured that I will not use any questions for Part II that have been used on any prior exam.

### 3. **EXAM PARAMETERS: SOME QUESTIONS ANSWERED**

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

The only limitation is that you cannot reference electronic/digital/interactive files or information. So whatever you want to be able to reference during the exam you will need to print it out on paper.

**Word limit:** There is no word limit.

### 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 writing the exam.

**The Correspondence Principle:** The most important thing to me when I write an exam is what I call the Correspondence Principle. It is this: The emphasis on the exam will track the emphasis in class and in the readings. For example, if we spent barely any time on something in class and there was scant reading on it, it will be no 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

chart of assignments as a checklist. I expect to include every topic that was substantially explored in class.

**Breadth and depth of coverage:** Any material presented in class or in the readings is potentially fair game for the exam. But, in keeping with the Correspondence Principle, the emphasis given to topics will correspond to how much attention they received in class and in the readings. So, if some doctrinal point came up only in one smallish note appended to a case, then you can be sure that it will not loom large on the exam. In fact, it won't even loom medium.

Now, I cannot guarantee that no obscure point will find its way onto the exam. Why not? Well, there is always the possibility that on the essay portion some clever student will make a brilliant point regarding some tiny point of law, even if I never intentionally meant to include it. Actually, it's more than a possibility – it happens often! This is a natural consequence of having bright students working with an open-ended hypothetical fact pattern calling for an open-ended essay response. Obviously, I can't hold it against the student who sees something I didn't, and in such a situation I will happily award an extra point or two, although not a windfall.

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

**The focus list – what I will draw from in writing the exam problem:** 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.

- the study guides for the class (which we started going through in November and which are posted to the class webpage)
- slideshows posted to the class website
- doctrine that was the subject of a case we read
- doctrine that was the subject of sustained attention in class
- doctrine needed to solve problems
  - particularly the review problems from the end of the semester (which are posted to the class webpage)
  - also problems from the Keating book we worked in class
    - of these, the simpler, more straight-forward problems are more important

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.

**Jurisdictional coverage:** All the hypothetical facts on the exam will take place in one or more hypothetical or unspecified states within the United States which adhere to the UCC, and additionally you can expect some international transactions with possible events taking place in foreign jurisdictions. For foreign jurisdictions, you should know that Canada is a CISG signatory. For other countries, the exam will disclose CISG-

signatory status. No circuit court of appeals will be specified. You will not be tested on the law of any particular state, municipality, or circuit.

**Kinds of questions (legal analysis, theory/policy, etc.):** The essay portion of the exam will call only for you to provide lawyerly analysis – that is, legal analysis (e.g., to analyze the parties’ legal positions, including possibly explaining how you would advise a client), possibly accompanied by practical advice based on what you learned in the course. There will not be a “theory” or “policy” type essay question that, for example, calls for you to provide arguments for a change in the law.

## 5. FORMAT

The exam will be similar in form to essay exams I have given in the recent past. To get a feel for them, check out my exam archive.<sup>1</sup>

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

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

**Don’t get unduly anxious about dropped issues:** Making things interesting and more realistic is not the only reason I write exams the way I do. I also do it to reduce arbitrariness. In my view, with a reservoir of facts that is both wide and deep, there is less at stake with any given issue. To be more specific, the fact-filled, broadly comprehensive, and relatively long nature of my exam hypotheticals reduces arbitrariness by increasing opportunities for students to show off their knowledge. Anyone can, in the pressure of an exam session, blow by something important. On my exam, that won’t destroy your grade. Dropping an important issue here or there will not be disastrous if you do well with the rest of the material. In fact, I have found that the top-grade recipients in my classes have never exhausted all the possibilities for legal analysis. Not only that, I can confidently say that the top grades usually miss at least one significant issue that can be found among the B exams. In my view, this method of exam design helps to develop a good overall picture of students’ mastery of the course, rather than seeing who can walk a tightrope without slipping.

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<sup>1</sup> There is a link from my home page. Or you can go directly to [http://www.ericejohnson.com/exam\\_archive.html](http://www.ericejohnson.com/exam_archive.html).

## 6. ORGANIZATION

Organization is very important in an exam response. In fact, I've found it to be so important, it is now my practice to take it largely out of the exam-taker's hands.

For your exam I will provide you with a pre-determined organizational structure, broken up into various subparts. You will find examples of this in the more recent exams in the exam archive. 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.

For example you might get a call-of-the-question and subpart structure like this:

Analyze the parties' legal positions. Organize your response as follows, clearly labeling the subparts:

Subpart A: Discuss any issues concerning Party A.

Subpart B: Discuss any issues concerning Party B.

Subpart C: Discuss any issues concerning Party C.

Subpart D: If there is anything else you wish to discuss, which does not belong in any of subparts A through C, please put it under this Subpart D.

Your subpart structure will look something like this, although the way in which the subparts are divided up might well be different. For instance, instead of being pegged to particular parties, the subparts might track particular occurrences, places, or relationships. After I write the hypothetical, I will design the subpart structure so that it breaks down the analysis in a logical, sensible way.

It is important that you understand that the subparts will not all be given equal weight. The purpose of the subpart structure is to organize everyone's responses the same way, not to signal how much time you should spend on something. Thus, it may be entirely appropriate for one subpart to have very little content, while another subpart might call for very detailed analysis. You will have to use your judgment to determine how much analysis is needed with regard to any particular subpart.

## 7. ABBREVIATIONS

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

## 8. ISSUES WITH TEXT: REPEATING, WRITING, TYPING, ETC.

Here are some specific pieces of advice for your writing.

**Repetition:** Be complete, but avoid redundancy. Specifically, do not repeat the exact same analysis with substituted parties. I will not give double the points for the same content that appears twice. (Along these lines, computer users should probably not use the cut-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.

**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. I cannot grade what I cannot read, so be sure that your handwriting is readily legible.

## 9. WHAT MAKES FOR A GOOD ESSAY RESPONSE

I have written an entire memo on what makes for a good essay response. It’s called *Tip Sheet on How to Write a Law School Exam*, and there’s a link to it in the exam archive. You should scrutinize it: It tells you exactly how to maximize your grade by providing solid legal analysis.

## 10. HOW TO APPROACH MULTIPLE-CHOICE QUESTIONS

I have written an entire memo on how to approach multiple-choice questions. It’s called *Tip Sheet on How to Take a Multiple-Choice Exam in Law School*, and there’s also a link to this document in the exam archive. Read it. It gives what I believe to be valuable advice about being effective with multiple-choice questions, and it provides considerable insight into how I write multiple-choice questions.

## 11. SOME TIPS ON STUDYING

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. Use the tip sheets, discussed above, for that. When studying the content, concentrate on the focus list (in § 4, above). Then, I recommend using as many active studying techniques as you can, including working through old problems.

## 12. FINAL THOUGHTS

Remember, the essay is open-book, so don’t get too anxious. Study the big concepts, pay attention to the focus list (in § 4, above), and get a good night’s rest. I wish you the best of luck!