

Memorandum to Students

# Exam Prospectus Sales

Fall 2017

Eric E Johnson

Associate Professor of Law

University of North Dakota School of Law

## 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 2017 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 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 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 (FROM SECTION 10 OF THE SYLLABUS)

The syllabus sets forth important details about the exam. Section 10-1 of the syllabus discusses communications about the exam and the importance of anonymity. Section 10-2 describes the exam in considerable detail, including how it will be structured and administered. Section 10-3 discusses exam security.<sup>1</sup> You should review these sections carefully. For your convenience, I reprint them in their entirety here:

### 10-1. Communications and Anonymity:

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

---

<sup>1</sup> The syllabus contains a subsequent section on recommendations for preparing for the exam, which is also denominated "10-3." That was a typo, of course. It should have been section 10-4. At any rate, I have not reprinted that section here because this Exam Prospectus is all about going into more detail on that topic.

(b) **Anonymity:** Each exam will be “blind graded,” so that I will not know the identity of the student as I am grading her or his exam. You may not waive anonymity. Do not include your name in your exam response, and do not write your name on any exam materials, including the scantron answer sheet. Self-identification on the exam or otherwise compromising anonymity will presumptively result in a deduction from your exam grade and a referral for disciplinary action.

**10-2. Format of the Exam:**

(a) The examination will consist of multiple-choice questions administered on a closed-book basis. You may not bring any reference materials in with you.

(b) The examination will be three hours in duration. The number of questions will be approximately in the range of 50 to 70. A few of the questions may be “pre-test” questions, for which I will gather data, but which will not count in grading for this semester. Such pre-test questions will not be marked and you will not be able to distinguish them from the non-pre-test questions.

(c) Exam questions will include, but may not be limited to, bar-exam-style hypotheticals testing the application of law to facts. Other questions may test literacy of pure law (e.g., legal doctrines and statutes) and understanding of relevant concepts of legal theory and scholarship.

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

(e) 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. Some questions may be closely patterned off of, although not exactly the same as, released questions from the Multistate Bar Examination.

(f) Some questions may be closely patterned off of, although not exactly the same as, questions that we go over in class and/or that I have posted online.

**10-3. Issues Relevant to Exam Security:**

(a) Re-use of unreleased multiple-choice questions is standard in higher education, and the practice permits better exam quality and better calibration of the results. This is not trivial: The statistical data that results from a multiple-choice test administration is quite rich, suggesting which questions are good, which should be revised or thrown out, and which might serve as models for building new questions in the future. Using this data in a careful way helps me improve multiple-choice tests from year to year. That makes exams more fair – and fairness is my ultimate aim in designing examinations. There is, of course, a downside, which is the possibility that questions will be leaked to some students. I take appropriate steps to prevent the dissemination of unreleased questions. But bear in mind that the security of multiple-choice questions is not

just a matter of faculty and staff responsibility; it is a matter of student responsibility as well. If you are aware that detailed information about or copies of unreleased questions are circulating, please let me know. Informing me will allow me to (1) refrain from using the compromised questions on the exam, and (2) release those questions to the public exam archive so that everyone can study from them.

(b) Be aware that the use of unreleased exam materials – whether photocopied, roughly transcribed, or otherwise – as part of your preparation for the exam constitutes academic dishonesty. Moreover (not to put too fine a point on it) reproducing or trafficking in unreleased questions is civilly actionable. If you find, receive, or are offered unreleased questions, be responsible and act promptly to ameliorate academic unfairness by letting me know; I will pursue no action against you in this regard if you make timely notice to me, which may be made anonymously, specifically identifying the materials, preferably by submission of a copy. The notice is timely if (i) it is near the beginning of the semester, (ii) it is reasonably soon after you come into possession of the materials and there is enough time to prevent such questions from being used on the exam and to release them to the class for their meaningful use in studying, or (iii) it is immediately upon coming into possession of the materials.

(c) Also be aware that a crucial part of exam security is the numbering of exam booklets, the marking of booklets with students' exam identification numbers, and subsequent checking to ensure that all booklets have been returned. Exam booklets will be clearly marked with a space for you to write your exam identification number. This is crucial: Do not omit to write your exam identification number, and do not omit to return the exam booklet as directed when directed. An omission in this regard, even an innocent one, will cause loss of credit for your answers and will be catastrophic for your grade, almost certainly resulting in a failing grade.

### **10-3. Resources for Studying for the Exam:**

My old exams should be quite useful to you in studying for and thinking about this semester's exam. You will find them in my Exam Archive, which is publicly accessible online. You will find a link on [ericejohnson.com](http://ericejohnson.com) (or use the direct URL: [http://ericejohnson.com/exam\\_archive/](http://ericejohnson.com/exam_archive/)). Later in the semester I will distribute an Exam Prospectus that will provide more detail about the substance of the exam and how I recommend preparing.

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

The best way for me to tell you what to expect is for me to tell you what I will draw from and what will constrain me when I write the exam.

**The Correspondence Principle:** The most important thing to me when I write an exam is what I call the Correspondence Principle. It is this: The emphasis on the exam will track the emphasis in class and in the readings. For

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.<sup>2</sup>

**Comprehensiveness:** In keeping with the Correspondence Principle, I will strive to be very comprehensive in terms of the coverage of topics on the exam. I will use the syllabus and chart of assignments as a checklist. I expect to include, in some way, every topic that was substantially explored in class.

**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 small.

The exam's multiple-choice questions will concentrate on the bigger points and will be purposefully designed to avoid dwelling on obscure points. The more you know, the better, but do not obsess about trying to memorize fine-grained details. Prioritize your studying based on the Focus List, below. The main message is to not worry about small details. Instead, work on having a thorough understanding of the main aspects.

**The relation of problems done in class to exam questions:** Note that I plan to use the problems we went over in class and the examples and problems from posted slides as inspiration in designing the hypothetical facts for the exam questions, but I will not re-use them verbatim. This means that some fictional events in the exam hypotheticals may be similar or very similar to the fictional facts from problems and examples. Now, the answer to the question on the exam may be substantively the same as the answer to the problem, or it may be different. But regardless, understanding the analysis will be of enormous value to you. To put it another way, the problems and examples will give you a very good idea of things to expect on the exam, but I would not try to memorize their outcomes. Instead, I suggest you study how they work and prepare yourself to do analysis in a similar vein on the exam. Put still another way, if you are at a level where you could do all the problems from scratch because of your knowledge of the material (as opposed to having seen the answers previously), then you will be in fantastic shape for the exam.

**Jurisdictional coverage:** For the most part, hypothetical facts for exam questions will take place in one or more hypothetical or unspecified states within the United States which adhere to the UCC. Additionally you should expect a few international transactions with possible events taking place in foreign jurisdictions. For foreign jurisdictions, you should know that Canada, Mexico, China, and Japan are CISG signatories, and you should know that the United

---

<sup>2</sup> Keep the Correspondence Principle in mind when using old exams to study: An old exam corresponds to an old semester. Your exam will correspond to this semester.

Kingdom is not. For other countries, if mentioned, the exam would disclose CISG-signatory status. You will not be tested on the law of any particular state, municipality, or circuit. But you should know that every state except Louisiana has adopted Article 2 of the UCC in some form.

**Kinds of questions (legal analysis, theory/policy, pure recall, etc.):** Most questions will involve legal analysis (that is, applying law to facts) done in the context of a hypothetical scenario. But as disclosed in the syllabus, some questions may test literacy of pure law and understanding of concepts of legal theory and scholarship, to the extent we covered that. In addition, some questions – probably not more than a handful – may involve pure recall. Keep in mind my goal in designing the exam is to provide a full and fair opportunity for you to demonstrate what you have learned from the course. So to the extent I think a question other than the regular hypothetical-style question might do this, then I am open to using it. But the overall aim of the course is to enable you to do legal analysis, so doing legal analysis will be the bulk of your work during the exam.

#### 4. THE FOCUS LIST

**The Focus List – what I will draw from in writing and compiling the exam questions:** When I sit down to put together 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 Sales Study Guide Outline posted to the class website
- 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, *meaning*:
  - my own problems from the Teal Set
  - problems in the Compendium casebook
    - of these, the more important are those that are the simpler, more straight-forward, more determinative in their analysis, and more definite in their answers
    - less important are head-scratcher/irresolvable-type problems and problems that point out an interesting but ultimately somewhat obscure point of doctrinal confusion or jurisdictional variance

## 5. SOME QUESTIONS ANSWERED

**Minority rules:** I was asked to what extent students will be required to know minority rules. And I was asked specifically if students need to know the minority rules for dealing with different terms in a §2-207 context. The answer is that minority rules are not categorically excluded from the tested subject matter; the principles discussed above apply. If the minority rule was only mentioned in passing in the readings and it was not discussed in class, you'd be safe in ignoring it. But if it was the subject of attention in a case or in class, if it was implicated in a problem we did, or if it is mentioned in the Study Guide Outline, I would elevate its importance in your studying.

**Math and calculators:** I have been asked in the past if students will be required to do any math on the exam. The answer is that students may have to do some incidental math. But - and this is important - I am not setting out to test students' ability to do math. That is, I don't want some students to do less good on the exam than others because of a difference in arithmetical ability or because they made a math mistake. Now, as you have seen over the course of the semester, sometimes getting the legal analysis correct for the subject matter of this course means doing a bit of math. My way of dealing with this on the exam will be either to make the numbers such that the math is incredibly easy to do, or else provide the arithmetic as part of the problem. The fact is, in the stress of a law exam, even easy math can get difficult. I am keenly aware of that. Thus, I will attempt to design all questions so that math ability is not a factor. Will you be allowed to use a calculator on the exam? The answer is no, a calculator is not permitted. But I am confident a calculator would be a distraction for the questions you will have, because, as I said, I am already aiming to take math ability out of the equation.

## 6. FORMAT, NUMBER OF QUESTIONS, TIME PRESSURE

The exam will be similar in format to my past multiple-choice exams<sup>3</sup> and as a general matter the multiple-choice questions will be similar to multiple-choice questions we worked in class and that I've posted.

With regard to the number of questions and concerns about time pressure, 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 will work on having things calibrated so that students will have the time they need to get through everything in a careful, thoughtful way.

For Sales Fall 2017, there are three hours (180 minutes) for at most about 70 questions, which means approximately 2.57 minutes per question at minimum. (This is considerably more time per question than the multiple-choice portion of the bar exam, which provides an average of 1.8 minutes per question. And it is likewise a substantial adjustment in the direction of commodiousness from Part I

of the Fall 2016 Torts I exam, which was 1.8 minutes per question, and which many people said was time pressured.)

In further pursuit of alleviating time pressure, I intend to additionally reduce the amount of material you will deal with per unit of time by keeping in check question length and/or question size. So, if I include the maximum of around 70 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, which I would use if there were 60 questions total:

<b>Pacing chart: To finish all questions and have 10 minutes left over, then:</b>						
At this time since starting:	0.5 hours	1 hour	1.5 hours	2 hours	2.5 hours	2 hrs, 50 min
Be done with question no.:	11	21	32	42	53	60

It is my strong wish that no one does poorly on the exam because of time-management problems. So I'll do my part by working to keep the quantity of material manageable. You do your part by staying aware and keeping yourself on track

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

I have written an entire memo on how to tackle multiple-choice questions. It's called *How to Take a Multiple-Choice Exam in Law School*, and you can find the link on the class webpage. I strongly recommend that you read it as part of your studying. I'll summarize a few aspects here.

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 being tested, finding the right answer should be straightforward. Put another way, if you know your stuff, then I am absolutely rooting for you to get the question right.

What is more, the personal standard I impose on myself for writing questions is that every wrong answer is totally, unarguably, and demonstrably wrong. I do not believe you should be tested on how well you can guess what I am thinking or how well your sense of judgment corresponds to my judgment about which answer might be best. Thus, I aim for every wrong answer to be wrong for an objective reason that everyone could agree upon.

Given all this, I encourage you to think through the questions carefully, and answer them based on analysis, not based on your gut instinct. Many people advise multiple-choice-exam takers to go with their gut. I don't know if this is good advice for other multiple-choice tests, but I don't think it is good advice for mine. I have found when using polling software in class, if much of the class gets a question wrong, I can reliably increase the percentage of people getting it right

if I just ask them to think about it a little more and then answer again. I take this as a sign that it's a good idea, where time permits, to check your work and change your answer if further thinking takes you to a different conclusion.

## 8. STATISTICAL MEASURES AND PERCENTAGE CORRECT

When I write multiple choice questions, I aim for fairness, as I discussed above. In terms of a quantitative statistical measure that is a partial indicator of fairness, I aim for questions to register a high point biserial. The point biserial indicates how well a question does in sorting test-takers out in a non-random way. I point this out because I want you to understand what I am not aiming for statistically in writing questions: I am not aiming to calibrate question difficulty level so to correspond to the classical secondary-school grading scale of 90% and above is an A, 80-89% is a B, 70-79% is a C, and so on. Such a grading scale would work out to be far too harsh on my multiple-choice exams.

Thus, you should not become worried if, while you are doing the exam, you feel like you are getting a lot of questions wrong. The raw average percent-correct for the multiple-choice questions in Sales in Fall 2016 was 69.5% and in Fall 2015 it was 68.6%. That's an average, meaning half of test takers got below that. In fact, getting about half the questions wrong has been pretty normal on past exams and has most definitely not meant failing.

Now, this year's test may be "easier" or "harder" – I don't know. But whether it is or not, keep in mind that question difficulty is not necessarily an indication that grading for this semester will be any higher or lower than in previous semesters. So my earnest advice is that you don't waste energy trying to speculate about how well you are doing. Just keep working through the questions, applying your knowledge, doing your best. My guess would be that most people will probably be doing considerably better than they think they are doing.

## 9. 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. For that, review *How to Take a Multiple-Choice Exam in Law School* (linked from the class webpage).

Then, when studying the content, concentrate on the Focus List (in §4, above).

In terms of how you study, I believe that the best bang-for-your-buck in terms of study time (I guess, technically, *bang-for-your-hour*) is re-doing problems and doing old exams. And yes, I recommend working through old essay exams posted to the Exam Archive<sup>3</sup> even though your test is multiple-choice. Working through the issue spotters and trading your responses with classmates is an

---

<sup>3</sup> [http://www.ericejohnson.com/exam\\_archive.html](http://www.ericejohnson.com/exam_archive.html).



effective way to find your weaknesses and strengths and a powerful way to continue the active engagement of your mind on the course material.

## **10. FINAL THOUGHTS**

Don't get too anxious. Pay attention to the Focus List (§ 4, above), remember the exam-technique tips from the *Tip Sheet*, and get a good night's rest. Finally, if anything on the exam seems overwhelming, just take a deep breath and work through things step by step and keep moving forward.

I wish you the best of luck!

- EEJ