

Three Examples of Exam Writing

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Here I'm providing three examples of exam answers: two excellent, both of which are deserving of the same high grade, and one problematic.

Suppose these are the facts on a torts exam:

The out-of-town sales conference was the perfect opportunity, Larry Lowthorp, figured, to get even with his rival Morgan Mabray.

"Hey, Morgan, I was grabbing coffee for myself; I figured I'd get one for you, too," Larry said, holding out a cup of coffee, offering it to Morgan.

"Gee, thanks, Larry," said Morgan, taking the cup. Little did Morgan know, Larry had swabbed the outside of the cup with a solution of streptococcal bacteria – the pathogen that causes the painful infection known as strep throat.

As Morgan was just about to put the cup of coffee to his lips, Nina Nabavian walked up.

"Morgan, I'm really dragging this morning. Anyway I can have a sip of your coffee?"

"Go ahead," Morgan offered generously. Nina took the cup and had a sip. Three days later, she came down with a horrible case of strep throat, which she contracted from Larry's contamination of the cup.

What follows are three examples of exam answers addressing whether Larry is liable to Nina for battery. The first answer is a not-good example. The second two are both excellent and would get the same high grade.

Example #1 (Problematic Example)

The following exam answer is problematic, since it does not provide analysis:

NN can successfully sue LL for battery.

Battery requires that the defendant (1) undertook an act (2) with intent, that inflicts (3) a harmful or offensive (4) touching on the plaintiff. The act must be an act of the defendant. Intent is required, and intent for battery means either acting with purpose or acting with substantial certainty of the result. Under the doctrine of transferred intent, a defendant who has the intent to commit a

battery on person A, but who instead inflicts a harmful or offensive touching on B, has the requisite intent for battery. For a touching to be harmful or offensive, many things can be considered. Any causing of actual harm is considered harmful. A touch is offensive if it transcends social convention, intruding on a person's reasonable sense of dignity. The element of touching is satisfied by direct touches, such as a punch in the face. Indirect touches also satisfy the touching element, such as causing someone to ingest something harmful or disgusting.

LL thought the convention was the perfect opportunity to get even with MM. LL gave a cup of coffee to MM. LL put streptococcal bacteria on the coffee cup. MM gave the cup to NN. NN took a sip from the coffee cup. As a result, NN contracted strep throat, a painful infection.

I can give a couple of points to this answer for spotting the issue and having the correct conclusion, but that is all. There is no analysis. The student has quoted relevant law, and the student has summarized the relevant facts, but the student has not done the work of applying that law to the facts. Since the answer omits the analysis, it proves little about what the student may have learned in the course.

Example #2 (Excellent Example)

The following exam answer is excellent, since it provides analysis:

Now I will address the issue of whether LL is liable to NN for battery.

Battery requires that the defendant (1) undertook an act (2) with intent, that inflicts (3) a harmful or offensive (4) touching on the plaintiff. The act must be an act of the defendant. Intent is required, and intent for battery means either acting with purpose or acting with substantial certainty of the result. Under the doctrine of transferred intent, a defendant who has the intent to commit a battery on person A, but who instead inflicts a harmful or offensive touching on B, has the requisite intent for battery. For a touching to be harmful or offensive, many things can be considered. Any causing of actual harm is considered harmful. A touch is offensive if it transcends social convention, intruding on a person's reasonable sense of dignity. The element of touching is satisfied by direct touches, such as a punch in the face. Indirect touches also satisfy the touching element, such as causing someone to ingest something harmful or disgusting.

The act requirement is met here because LL put the bacteria on the cup and gave the cup to MM. There is intent because LL acted with the purpose of causing a harmful touching on MM – his purpose was to deliver disease-causing bacteria to MM’s mouth. Under the doctrine of transferred intent, the intent to inflict a battery on MM transfers persons so that it counts as the intent for battery on NN: Even though LL didn’t intend to touch the bacteria to NN, the intent to touch the bacteria to MM suffices. The harmfulness/offensiveness element is met because contacting someone with disease-causing germs is harmful – it’s harmful because it causes disease. Finally, the touching requirement is met because LL indirectly caused a physical contact of the bacteria to the mouth.

Because NN can prove all the elements of a prima facie case, LL is liable to NN for battery.

This exam answer earns a high grade – it is essentially perfect. It adeptly applies the law to the facts, ending up with the correct conclusion. Notice that this answer is in classic “IRAC” format: issue, rule, analysis, conclusion. IRAC is not necessary, but it’s sufficient. The answer shows me that the student understands the law and can apply it to new facts.

Example #3 (Excellent Example)

The following exam answer also is excellent, since it provides analysis:

LL is liable to NN for battery because: LL undertook an act when putting the bacteria on the cup and giving it to MM. Intent is met here because LL acted with the purpose of inflicting a harmful touching – putting strep bacteria in MM’s mouth – and through the doctrine of transferred intent, that intent “transfers” to NN when the touch lands on her. The requirement of harmfulness or offensiveness is met because contacting someone with disease-causing germs is harmful – it’s harmful because it causes disease. Finally, the touching requirement is met because LL indirectly caused a physical contact of the bacteria to the mouth.

Like Example #2, this exam answer is also essentially perfect, and it earns the same high marks. Although this answer is not in classic IRAC format, it makes all the same points in terms of providing analysis and supplying a correct conclusion. The answer does not state the rule for battery explicitly; instead, it’s woven into a discussion of the facts, in service of the analysis. The answer shows me that the student understands the law and can apply it to new facts.