Tip Sheet on
How to Write a Law School Exam

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Dated: Fall 2015

Your Goal in Writing an Exam and Pitfalls to Avoid

This is your goal in writing an exam:

To show your mastery of the material presented in the course and your skills in analyzing legal problems within the scope of the course’s subject matter.

I’ve set that off as a blockquote in bold and italics to encourage you to dwell on it for a moment.

So go ahead and dwell on it for a moment.

An exam might ask you to “advise a client,” or “write a brief,” but those are just pretenses to help you frame your answer. Your real goal on an exam is always to show analytical ability and mastery of the material from the course at hand.

The key means of demonstrating mastery of the material and skill in analysis is to apply the law to the facts. That is, you must take the law you’ve learned in the course and apply it to the facts provided in the exam.

It’s helpful to think about this not only in terms of what you should do, but also in terms of what you should avoid.

To begin with, do not make moral arguments. Do not argue what is fair. This seems to be a special hazard for first-semester 1Ls with a subject like torts or contracts. But I’ve also seen it in upper-level courses. The problem with moral arguments is that they do not show mastery of the law.

Next, do not bring in material from another course. It’s a waste of limited time, limited words, or both. So, for instance, if you are taking an exam in intellectual property, do not include analysis based on what you have learned in secured transactions, even if doing so would provide a more complete analysis of the factual scenario.1 This seems to be a special hazard for people who are taking more than one

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1 You might be surprised at how often I get material from some other course included in exam responses. I used the particular example I did because one year there was a rash of commercial law material on an upper-level exam of mine. I determined later that the exams were on the same day. I must have had many overlapping students. (Taking two exams in one day is unfortunate, and I feel for you if you are in that situation.) In my 1L torts course, I have often gotten a fair amount of contracts and criminal law on
exam on the same day – something I can sympathize with.

Correspondingly, **stick to the material from your lectures and assigned reading.** That is, you should not waste time or words on material that, even if relevant to the topic of the course, was not presented in the course itself. There are many reasons you might have knowledge that goes beyond the course. Perhaps you learned this area of law as a paralegal before you came to law school. Maybe you read a commercial outline (which is perfectly fine, as far as I am concerned). Perhaps you are working on a law-review project that has caused you to learn a great deal about some particular aspect of law. The problem is that showing off knowledge from outside the course doesn’t correspond with the goal (“To show your mastery of the material presented in the course …”), and, thus, it won’t help you get a better grade.

Also, keep in mind that your goal is to show “mastery” of the subject matter. Inherent in that charge is the need to **exercise judgment** in what you choose to discuss and how much analysis you bring to bear on any particular part of the problem.

**The Golden Purple Key: Applying Law to Facts**

The golden key to law-school exam writing is applying law to facts. (Or facts to law. Whichever way you want to think about it.) To apply the law to the facts, you necessarily must mix the law and the facts together in a way that shows your mastery of the material and your skill in analyzing legal problems. If law is blue and facts are red, then you want to make purple. In other words, remember that making purple is golden. So just remember to use the Golden Purple Key:

\[
\text{red} + \text{blue} = \text{golden purple}
\]

(Yes, I’m completely aware of what a mess I’m making with mixed color metaphors, but I’m hopeful it will help you remember the essence of good exam writing.)

Why is applying law to facts so crucial? A little reflection will show you why this must be the case.

Facts alone are do not indicate your mastery of the material. With an issue-spotter exam, you have the facts in front of you. Thus, I can’t give you any points for repeating them back to me. Most students understand this, but I’ve found that, in the pressure of the exam, some students will spend time and words just reiterating the facts.

The law alone also does not indicate your mastery of the material. Thus, saying what the law is – by itself – will not earn you any points. Now here, I think my practice may differ from that of some other professors. Certain professors might award a point for correctly stating a rule of law in an exam response, and, as I recall, the bar exam graders will give you points for correctly stating rules of law. I, however, do not. I could see some sense in awarding a point for correctly stating the rule of law if the exam were completely closed-book. But if you are taking an open-book exam, including one that is partially open-book,

\[^2\] then you have the law in front of you. In such a case, correctly

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\[^2\] By a partial open-book basis, I mean that outside references are allowed, but with limitations. My essay exams have generally been given on a partial open-book basis, with students being allowed to access a personalized reference sheet and a particular kind of group-authored course outline called a “wypadki,”
copying statements of legal rules, even relevant ones, into your exam response does not, as I see it, demonstrate your mastery of the material. You’ve got to apply the law to the facts. That is how you show that you actually understand the law.

The application of law to facts is more complicated than merely mixing the two. (Although mixing is a good start!) You want to put the relevant fact with the relevant legal doctrine and explain what comes of the combination. To accomplish this, as a mechanical matter, it is helpful to talk about the facts and the law in the same sentence and to use words such as “because” and “therefore.” Using these words can help you force yourself to show the legal analysis. Here are some examples from answers to a torts fact pattern called “Ye Olde Sawmill”:

(Ex. 1) Administrative regulations, as opposed to statutes, may or may not be used to establish the standard of care under the negligence-per-se doctrine, depending on the jurisdiction; therefore, the lack of a flashing red warning light does not necessarily constitute a breach of duty.

(Ex. 2) Abby has a good claim for assault against Danny because, by shouting “That saw blade is going to hit you!” while triggering the loud saw noise, Danny created an immediate apprehension of a harmful touching.

Don’t those passages sound good? Doesn’t that sound like a lawyer or a judge talking? That’s what professors want you to sound like after you graduate.

To help you see how to discuss both the law and facts together in order to create legal analysis, I have diagrammed the above sample sentences in color. Facts are red. Law is blue. Legal conclusions are purple. An underlined linking word (“because” or “therefore”) connects it all together with a conclusion.

Example 1 follows this pattern:

law → therefore → facts → legal conclusion

(Ex. 1 color) Administrative regulations, as opposed to statutes, may or may not be used to establish the standard of care under the negligence-per-se doctrine, depending on the jurisdiction; therefore, the lack of a flashing red warning light does not necessarily constitute a breach of duty.

Example 2 follows this pattern:

legal conclusion → because → facts + law

(Ex. 2 color) Abby has a good claim for assault against Danny because, by shouting “That saw blade is going to hit you!” while triggering the loud saw noise, Danny created an immediate apprehension of a harmful touching.

You can see that these examples present different ways of mixing facts and law together to create analysis. Don’t make too much of these particular patterns. There’s no magic in any particular way of doing it. The words “because” and “therefore” are which I have encouraged in most of my classes. Check your syllabus to find the rules for your particular course.

3 The full fact pattern can be found in my exam archive at http://ericejohnson.com/exam_archive.
helpful to use, but they are not obligatory either. The point is to remember the Golden Purple Key: Force the law and facts together to produce a conclusion – when you do, you’ve got legal analysis.

**Conclusions and Confidence**

Don’t make up a conclusion if it is not warranted.

Look again at example no. 1: Notice how there is no “conclusion” in the sense of saying whether the claim would succeed or fail. It is frequently the case in the real world that you cannot say with certainty that a claim will succeed or fail. Good lawyers know that honest assessments of legal rights and liabilities are often phrased as a matter of how likely something is. The law is largely shades of gray, and a great attorney or law student understands and recognizes that. On the other hand, sometimes the law is black-and-white, and when that’s the case, the great attorney or law student says so.

So, often the smartest thing you can say on an exam is, “This is a close issue, and thus the court could come down either way.” On the other hand, sometimes the most intelligent thing you can say is “This is a slam dunk for the plaintiff.”

**Issues and Organization**

Organization is important. With jumbled-up organization, you cannot communicate your thoughts effectively. Do not write stream-of-consciousness style. Have a logical plan for tackling the issues in a sensible order, and follow it.4

In particular, I recommend you scratch out a very abbreviated outline of your response on a piece of scratch paper. Don’t write out complete sentences, just scratch out a list of what you are going to talk about and in what order. Then stick to that outline and use it to pace yourself.

If you find that you forgot to cover a particular point that belonged with a section of your answer that you already drafted, then, if you are using a computer, scroll back up to that point and insert it where it belongs. If you are handwriting, and if there is no room for an insertion where the point would logically go, then use a large asterisk, an arrow, or something else to make a notation explaining where the remainder of your analysis can be found.

It is possible to worry too much about organization. As long as the reader sees where you are going and understands what you are talking about from one place to the next, there is no need to make your exam answer pretty. I would avoid wasting time on elaborate headings. If you feel that you need to show that you are transitioning from one major area of analysis to another, a single-word heading is often adequate. And you might even skip that in favor of an underlined or bolded word. Often, simply going to a new paragraph is a good way of helping the reader see that you are on to a new set of points. Nor is there any need for a “roadmap” section in which you preview what will be discussed and in what order. It is possible some professors would disagree with me.

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4 This tends to be less of an issue for my own exams because my practice is to specify a certain organizational structure for the answer that all students are to follow. I put this organizational structure right in the question. If you look at my more recent exams from my Exam Archive, you will see what I am talking about.
Don’t Dwell on the Obvious

On a fine-tuning issue to make your exam response as good as it can possibly be: Avoid dwelling at length on obvious points.

You will have a limited amount of time or words for your exam. Maybe both. So don’t squander your limited point-making opportunities by saying more than you need to, particularly when the issue is an easy (i.e., not very interesting as an analytical matter).

For instance, in many fact patterns in torts, the elements of actual and proximate causation are obvious – so obvious, in fact, that you could say they do not even rise to the level of being “an issue.” Suppose a drunk driver fails to stop a red light and hits a pick-up truck, totaling it. The pick-up’s owner sues for the value of the truck. In such a case, I see no need to talk about actual and proximate causation at all. If you nonetheless wanted to say something, then, as far as I am concerned, you could simply say, “Clearly, the plaintiff can establish actual and proximate causation.” Or something equivalent. Maybe other professors would want just a little bit more. But I doubt anyone would want much more. Law exams obey the general rule in legal writing – and writing in general – that there is little need to dwell on the obvious.

For an intellectual property course, I once read an exam in which a student spent several pages explaining why a machine was patentable subject matter. If you are familiar with patent law, you might see why this is problematic: All machines are patentable subject matter. It is very rare in patent practice that subject-matter constraints are a barrier to patentability. It could be an issue, for example, with medical diagnostic techniques. But on this exam, the invention was a “machine.” That meant it was patentable subject matter, and that was all that needed to be said about it. The sticky issues in that exam had to do with other points of doctrine.

But Don’t Pass Up Low-Hanging Fruit

Are you familiar with the expression “low-hanging fruit”? It denotes something you want that’s not difficult to get. In other words, in the exam context: easy points. So the advice on exams is: Don’t pass up the low-hanging fruit.

This is an important caveat to my advice about not dwelling on the obvious. Not dwelling on the obvious does not mean omitting to mention something just because it is straightforward. If something is a legitimate issue in the case, but it is easily analyzed,

5 About actual causation, you could say, I suppose, “The damage to the pick-up truck is actually caused by the collision with the pick-up truck because, but for the collision with the pick-up truck, the pick-up truck would not have been damaged.” Similarly, about proximate causation, one could say, “The owner can establish proximate causation because, by running the red light and colliding with the pick-up truck, it is a natural and foreseeable consequence that the pick-up truck would be damaged.” To me, these statements are so obvious as to be self-evident, and therefore they can be skipped. But fair warning: I am not sure how other professors or bar-exam graders would see it. (And just so we are clear, actual and proximate causation are not always non-issues in torts hypotheticals! Under different facts, they might present live issues that demand very careful analysis.)
then note it, analyze it to the extent appropriate, and move on to the next issue.

At the end of the day, I can’t give you a formulaic way of determining what you should skip, what you should mention in passing, and what you should spend considerable time on. You will need to exercise judgment about how to spend your limited time or allotted word count. And that is as it should be: Part of understanding the law at a high level is understanding what really matters – that is, what issues are the crucial ones. Thus, showing that you have a strong sense of judgment about where to focus your analysis is an important way of showing that you know the material well.

**The Twin Dangers of “If”**

Be careful if you find yourself using the word “if” on an exam. There are two things that can go wrong if you find yourself speaking in the conditional: (1) You may be neglecting to engage with the facts, and thus not doing any legal analysis. (2) You may be going outside the scope of the exam.

**Neglecting to engage with the facts:** If you use “if” to dodge the facts, then you aren’t engaging in legal analysis. On a property exam, suppose a student writes the following:

(Ex. 3) If Trixie’s will has created an interest that might vest on or within 21 years after the death of someone who is alive at the time of the creation of the interest, then the interest will not be valid.

This sentence does nothing more than restate the rule against perpetuities. There is no legal analysis. It is the exam taker’s job to apply the law to the facts and explain what comes of that. In this example, it is the exam taker’s job to say whether the will has created an invalid interest. So, remember: Don’t use “if” to avoid applying law to facts.

**Going outside the scope of the exam:** Often, “if” can be a path to wandering away from the stipulated hypothetical facts of the exam. Suppose a contracts exam says nothing more about the signing of a contract other than, “The dealership put the document in front of Dirk, and he signed it.” Now, suppose the student writes this sentence in the essay:

(Ex. 4) Dirk could have another defense if he had been forced to sign the contract under an unlawful threat, such as physical violence. Such a threat would constitute duress, and would, under the affirmative defense of duress, invalidate the contract.

Here, the student is unhelpfully inventing facts. There was nothing in the facts indicating or even suggesting duress, so there is no call to discuss it. In such a case, the student may be doing real legal analysis, but it doesn’t count as showing the student’s mastery of the subject matter of the course, because the student is essentially writing her or his own exam question and then answering it. So: Don’t use “if” to unwittingly make up facts that aren’t in the exam.
If You’re Doing a Good Job, It Should Be Tough Sledding

Let me offer another thought about exam writing that gets at much of what I have said above, but from a different angle: Writing the exam should be tough sledding. That is, if you are going along writing, thinking to yourself, “This is a breeze!”, then chances are that you are neglecting to do legal analysis that will get you points.

Some people, as a way of coping with the stress of taking an exam, make the mental decision to just start putting something on paper, whatever it is. This might seem reasonable, and in fact, it is often offered as a solution to writer’s block: “Just get started writing something, whatever it is.” Well, I don’t know if this is good advice for other kinds of writing, but I see this as bad advice for exam writing. The things you can write with little or no mental effort are precisely the things that will earn you few or no points (repeating facts from the exam without referencing the relevant law, providing lengthy recitations of law without reference to the facts, setting out roadmaps, dwelling on obvious points, making moral arguments, etc.). I have even read a few exams where students set out a lengthy list of abbreviations they would be using. I’m sure it was their way of coping with stress, and I sympathize, but their time would have been better spent doing legal analysis.

How to Study for the Exam

Now let’s talk about the most effective ways to study. Here I am talking specifically about how to study for the exam, as opposed to how to prepare for class each day during the semester.

Exam technique: The most important thing to do heading into exams is to make sure you have the generic knowledge of how to write a law school exam. (Happily, you are attending to that right now by reading this memo!) But you will have to gauge for yourself whether you will need to do more. Most 2Ls and 3Ls know how to write an exam, although it never hurts to do some more thinking about it. But if you are new to law school or if, despite your experience, you are unsure of your exam-taking abilities, then you will need to spend more time developing your exam-writing technique. Read other people’s advice, do exercises, etc. Ultimately, if you can’t effectively use an exam to show your mastery of the subject matter of any given course, then it doesn’t matter how well you know the course’s subject matter. Thus, if you perceive your exam-writing technique as a weakness, then working on your exam-writing technique has to be your first priority.

The next priority should be to focus on the course at hand. But don’t go crazy with your outline just yet.

Old exams: The absolutely best way to study your course’s material is to actively practice spotting and analyzing issues, particularly with old exams. Old exams do not have to come from your professor. You can use an issue-spotter exam covering the same

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6 As I discussed at length above.

7 At some point a few years ago I started providing with my exams a ready-made list of suggested abbreviations for persons and things that appear in the facts. Certainly, that should make an abbreviation key in an exam answer doubly unnecessary.

8 One very good, short piece on how to write exams is Bad Answers, Good Answers, and Terrific Answers by Professor Orin Kerr, at http://www.volokh.com/posts/1168382003.shtml.
course subject matter no matter who wrote it. Look for old exams retained by your own school and those archived by other schools.9

Don’t worry about finding old exams that are paired with model answers. The usefulness of an old exam is the opportunity it gives you for active studying. Model answers can be helpful, but they can also lead you astray. Note that if the model answer was written by a professor, then it will be far better than even the best student would be capable of drafting during an exam. So it’s likely to set too high a bar. On the other hand, if the model answer was written by a student, then you can bet it is imperfect, and if you put too much stock in it, you may wind up drawing the wrong lessons from it. For example, you might mimic some aspect of its style, when perhaps the exam answer was good in spite of its style. Also, even if you can get a model answer that springs from your course and your professor, you will still be looking at something from a different semester, and every time a class is taught, it is at least slightly different – perhaps very different.

Use old exams in the context of a study group. Better than fussing over model answers from other times and places, you will find that a model answer that is keyed to your exact class will emerge out of your discussion of old exams with your classmates. Look at an old exam, outline an answer, then get together with some classmates and compare your results. This is the single most effective use of a study group, and it is actually pretty fun, insofar as studying goes. Doing this will allow you to see what you are missing and what you don’t understand. Then you can go back to your outline, book, notes, etc., and focus your studying where it’s needed the most. What’s more, seeing other people’s responses will allow you to develop your own ideas of what works and what doesn’t. If you really want to make the most of this, I would recommend that everyone in your study group drafts a full mock exam response and gives that to every other member of the study group. Reading other people’s exam responses will allow you to develop the same sort of perspective that your professor has when grading.

One last thing about studying with old exams: I remember toward the end of my first semester of law school, I asked a classmate if she had looked at any old exams. She said she had not, because doing so would only stress her out. Do not make that mistake! If you feel anxious about exams, that’s all the more reason to look at some old exams sooner rather than later. Better to stress out a little now than to stress out even more during the exam.

Active studying: When you are doing a more regular sort of studying, such as working with your notes or outline (as opposed to working through old exams), try to make your studying as active (i.e., non-passive) as possible. Don’t just read and re-read. Ask yourself questions. Talk to yourself. Look for connections among disparate points of doctrine. For instance, you might search for overlapping themes, factual similarities in cases, political trends, historical patterns, etc. I know, many of you are thinking, “Hey, I’m not going to be tested on historical patterns!” It doesn’t matter. The point is that it is helpful to give your brain multiple ways to embed the doctrinal knowledge.

9 Some schools that have publicly accessible exam archives are the University of Kentucky, Golden Gate University, the University of Dayton, among others. There are links from my exam archive page: http://ericejohnson.com/exam_archive/.
Good luck!

You have the ability you need to take your exam and to do well. If you didn’t, you wouldn’t be in law school. (Believe me, if you had the undergraduate grades and LSAT score to get into law school, you absolutely have the ability it takes to succeed. There is a lot of data on law school admissions that bears this out!)

So, to summarize: The key is to provide legal analysis. To do this, you must actively make use of both the facts and the law together. Even if you feel anxious or pressured, do not recite law or facts at length without applying them to each other, and do not use “if” or other devices to avoid doing legal analysis.

Finally, don’t worry too much. The top students almost always hand in exams that are far short of the ideal. If you work hard and if you are smart about how you approach your studying and your exam writing, you’ll do just fine.

Good luck!