

# Tip Sheet on How to Write a Law School Essay Exam

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## Law School Exams Are Completely Different

Law school exams are completely different from what you've encountered before. Successful students coming from undergrad generally will have learned that success on an essay exam means regurgitating information – doing an “information dump,” as I heard one person describe it.

It is crucial that you understand that this is not how law school exams work. Feeding back into a law school exam answer all the information you've learned by repeating that information is completely ineffective.

This is especially important for first-semester 1Ls to learn. If you try to answer a law school exam in a way that worked for something else you studied (e.g., political science, philosophy, history, literature) the result will be likely be disastrous. I don't mean to scare anyone. I just want to be sure to eliminate misconceptions that could come between you and the success you deserve to achieve after a semester of hard work.

So, what is it you must do instead of repeating back information about the law? You must use your knowledge from the course to generate *legal analysis*. More specifically, you must *take the law you've learned in the course and apply it to the facts provided in the exam*. Doing this demonstrates that you have mastered the material and gained corresponding analytical skills.

## Applying Law to Facts: Making Purple

The key to law school exam writing is applying law to facts. (Or facts to law. Whichever way you want to think about it.) This is so because applying law to facts *is* legal analysis. And legal analysis is what you must do on the exam.

To create legal analysis, you necessarily must mix the law and the facts together in a way that produces some result. If law is blue and facts are red, then you want to make purple:

**red + blue = purple**

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

Providing the facts alone cannot 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.

Providing the law alone does not indicate your mastery of the material either. Thus, I can't give you any points for repeating back to me the law. Why not? I will concede that regurgitating law on a closed-book test might prove your *memorization* of the law. But it does not show your *mastery* or *understanding* of it. I only know that you truly understand the law when I see you do something intellectually productive with it. To put the point differently, regurgitating law does not show me that you are capable of using the law in a way that would allow you to advise a client about potential liability.

Now a big caveat is in order: Some professors do want you to repeat the law as an initial step before doing analysis.<sup>1</sup> So I recommend that for classes other than mine, you inquire, in a nice way, about the professor's views on this point. Indeed, I could see some sense in awarding a point for correctly stating the rule of law if the exam were completely closed-book, as that does show you've memorized it. But if you are taking an open-book exam, including one that is partially open-book,<sup>2</sup> then you have the law in front of you. In such a case, correctly copying statements of legal rules, even relevant ones, into your exam response does not, in my view, demonstrate your mastery of the material.

At the end of the day, the reason why merely regurgitating legal rules is ineffective in showing your mastery of the material is that the job of the lawyer isn't to memorize the law. The lawyer's job is to give clients advice and make arguments in court about *how the law applies to a particular set of facts*. And merely stating legal rules won't get that done.

You've got to apply the law to the facts.

That's how you show actually understand the law. And it's what you must do in advising a client, arguing to a court, and taking a law school exam.

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<sup>1</sup> I've asked around, and there's clearly a split among law professors in this regard. Some professors award points for correctly stating a rule of law in an answer, and some don't. I don't know which view predominates, but both views are common. At any rate, even among law professors who give points for stating the rule, what those law professors prize above all is the analysis. On that, everyone I've ever talked to is in agreement.

<sup>2</sup> 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 full or partial open-book basis. Check your syllabus to find the rules for your particular course.

Now, the application of law to facts is more complicated than merely mixing the two. (Although mixing is a good start!) What you must do is 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 the word “because.” Alternatively, if the structure of the sentence makes it appropriate to do so, you can use “therefore.” The words “because” and “therefore” are what you might call analytical linkage words. Just making the effort to find a way to use these words will push you in the direction of explicitly setting out the legal analysis that supports a given conclusion.

Won’t it get boring if you just keep saying “because” over and over again? No! There’s no point in trying to use alternative, fancy expressions for “because” and “therefore.” Practicing lawyers value simple, straightforward language – and so do law professors!

In the course of writing this advice memo, I opened up copies of a number of amicus briefs written by other law professors, and I did a word search. The briefs are brimming with instances of “because.” There are also many instances of “therefore.” But “because” outnumbered “therefore” about 4-to-1. Occurrences of “since” were more rare. I found zero instances of “on account of” or “inasmuch as.” As pop singer P!nk put it, “Don’t get fancy, just get dancey.”

Here are some examples of mixing law and facts together, providing a conclusion, and using “because” or “therefore” as a connector – all in the same sentence:

- Ex. 1 Anna can show a confinement sufficient for false imprisonment because by Denny yelling “If you move, I’ll shoot,” Denny used a threat of physical force to deny Anna’s freedom to move in all directions.
- Ex. 2 The plaintiff in this case cannot prove actual causation under the but-for test because the damage to the gymnasium would have happened anyway, even if the defendant had not been intoxicated.
- Ex. 3 The UCC’s statute of frauds requires a writing evidencing a sale-of-goods contract for \$500 or more; therefore, the oral contract to sell the painting for \$11,000 is not enforceable.

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, too.

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 analytical linkage word (“because” or “therefore”) connects it all together.

Example 1 follows this pattern:

legal conclusion → because → facts + law

Ex. 1<sup>(color)</sup> Anna can show a confinement sufficient for false imprisonment because by Denny yelling “If you move, I’ll shoot,” Denny used a threat of physical force to deny Anna’s freedom to move in all directions.

Example 2 follows this pattern:

legal conclusion → law → because → facts

Ex. 2<sup>(color)</sup> The plaintiff in this case cannot prove actual causation under the but-for test because the damage to the gymnasium would have happened anyway, even if the defendant had not been intoxicated.

Example 3 follows this pattern:

law → therefore → facts → legal conclusion

Ex. 3<sup>(color)</sup> The UCC’s statute of frauds requires a writing evidencing a sale-of-goods contract for \$500 or more; therefore, the oral contract to sell the painting for \$11,000 is not enforceable.

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. Many, many other patterns are possible. The indispensable point is to remember to **make purple**: Force the law and facts together and produce a conclusion from them. When you do that, you’ve got legal analysis.

And in pushing the law and facts together, **I cannot emphasize enough how important it is to use the words “because” and “therefore.”** Use them over and over. In fact, it’s long been my strong hunch that as a quantitative matter, the number of instances of “because” and “therefore” strongly correlates with the exam grade. I’ve never tried to validate that empirically, but I’d definitely put a wager on it.

## Break It Down – and Get All You Can

You need some way of tackling the analysis to make sure that you hit all the points and don’t skip any essential parts of the analysis. You must break it down to bite-sized pieces that you can work through systematically. How you do this will depend on what class you are taking and what the specific call of the question is. **If the course is centered around various causes of action and**

**questions of liability thereunder** (i.e., courses in torts, intellectual property, antitrust, and many other subjects), **then a useful general strategy is to break things down by parties, by claims (i.e., causes of action), and by affirmative defenses as applicable – in that order.** And within your discussion of each claim and defense, go **element by element.**

**Just keep in mind that not every subject or every question on an exam lends itself to this approach.** Courses on evidence law and constitutional law, for instance, are not centered on the question of “Is there liability?” Instead, the questions for evidence and constitutional law tend to be, respectively, “Is it admissible?” and “Is it constitutional?” Even within a liability-centered course, a given question you get might be centered on liability or it might not be. In a patent law course, the question might be about liability (Is the defendant liable for patent infringement?) or it might not be (Is the invention patentable?). **No matter what, you have to break your analysis down into sensible chunks and be thorough.** But since so many law-school subjects are largely organized around causes of action and focused on questions of liability, I’ll spend the remainder of this section discussing how to be thorough and systematic in that context.

Perhaps the most traditional call of the question in a liability-centered law-school exam is a simple statement such as, “Analyze the potential liabilities and potential recoveries for all parties.” In my exams, I often give particularized questions that I want answered in a particular order. Yet no matter how much organization is imposed on your response, you still need to think through all the permutations of parties, claims, and affirmative defenses. And within your analysis of each claim or defense, you want to work on an element-by-element basis to make sure your analysis is thorough.

#### *Parties:*

If there are multiple potential plaintiffs and multiple potential defendants, then you should consider each pairing. Suppose you have potential plaintiffs A and B and potential defendants X and Y. You’ll want to consider A vs. X, A vs. Y, B vs. X, and B vs. Y.

Depending on the circumstances, you might be able to lump them. So, for instance, if A and B are in the same exact same relation to X, then you can analyze A & B vs. X in one swoop.

If, on the other hand, the relevant facts are different for A and B, then you’ll need separate analysis, but **I strongly recommend against copying and pasting text in your essay response or restating the same material in slightly different words.** From the grader’s perspective, repeated text is very unhelpful. The grader of course wants to avoid awarding double points for duplicated text. So when text is duplicated, that just makes it hard for the grader to see what differences there are, if any. That means it’s harder to give whatever points are legitimately due for any distinct analysis.

So what should you do instead? Just be straightforward about what is the same and what is different. Suppose on a torts exam plaintiffs A and B were both passengers in a taxi that crashed into a lightpole thanks to X's careless driving. But suppose the crash results in a broken bone for A and only economic damages from a missed business meeting for B. In analyzing negligence liability, a good way to proceed is to analyze A & B lumped together until you get to the injury element of the prima facie case, at which point you will need to provide different analysis for A and for B. Another good way to proceed is to first analyze A vs. X and then say, "B's case against X is the same as A's except that ..." after which you go on to note the difference.

There's no formalistic requirement in how you set out your analysis among the various parties. The key is analytical substance. So consider all the pairings, and be comprehensive in analyzing them, but don't repeat yourself in ways that adds nothing to the substance.

#### ***Claims (Causes of Action):***

Once you've found one colorable claim to discuss, always consider what other claims might lie on the same facts. Take torts, for example. In the situation of an injury caused by a defect in a product, a claim based on strict products liability naturally comes to mind. So analyze that. But don't stop with what's most obvious. A claim based on negligence might also be appropriate. So unless it's excluded by the call of the question, analyze that as well.

I have a slogan I use with my torts students about this: "**Get all you can!**" It's a tagline I once saw in a television commercial for a personal injury attorney. I offer it to students as a way to remember that during an exam you should keep thinking, *Are there any more claims that might work here?* And the same admonition applies with different claims as it does with parties: Don't copy-and-paste text to try to get double the points for the same work. If the analysis for one claim is the same as for another, say so and note the differences.

#### ***Affirmative defenses:***

Affirmative defenses work the same way as claims. For each claim, think about what affirmative defenses might be applicable. And avoid copying-and-pasting repeated text.

#### ***Going element by element:***

Perhaps the most important piece of advice about the sequence of your analysis – breaking it down and getting all you can – is to go element by element.

A good default rule of thumb would be to have a sentence of analysis for each element. For negligence claims, for instance, I teach that there are five elements: duty, breach of duty, actual causation, proximate causation, and injury. Often one sentence of analysis works well for each element, although if an issue is a close call or complex, more sentences might be called for.

Is it absolutely vital to tackle each element with at least one sentence? Probably not. Strictly speaking, you can show that a claim will not work – that is, prove the negative about a claim – just by showing that one element cannot be proven. But in doing so, you might miss out on an easy point or two by explaining what works about a claim even if it's ultimately a loser. On the other hand, when it comes to demonstrating the positive statement – that a prima facie case exists for a claim – then you do need to address *all* the elements. That's because all elements of a claim are necessary for making out a prima facie case. Yet if you are clever, you might be able to combine several elements into one sentence. Indeed, that might be appropriate for upper-level classes. But my advice is to learn to walk before you run. **At least for first-year students, I strongly recommend that your default be at least one sentence for each element of each claim – such a sentence at least mentioning a relevant fact, some relevant law, the word “because” or “therefore,” and a legal conclusion.**

I should also say that the order in which you consider the elements isn't sacrosanct. For instance, given the circumstances, it might be more efficient to take them out of the order in which they are traditionally listed. For negligence, it might be easier to analyze whether or not there's an appropriate injury before you analyze the causation elements. That's because causation must necessarily link the breach to the injury. You can do whatever works under the circumstances.

The bottom line is that you should use the element-by-element breakdown as a way to make sure that what you've identified as a relevant fact gets matched up with the relevant bit of legal doctrine. For instance, for a negligence claim on a torts exam, suppose you notice that the plaintiff's injury would have happened anyway – even if the defendant had not done something careless. But so what? What comes of that observation? Where does that come into play in terms of the doctrinal structure of tort law? The answer is actual causation – and you need to make that explicit. So instead of saying, “The plaintiff can't win a negligence suit because his broken leg injury would have happened anyway since he was looking at his phone and wouldn't have seen the warning sign,” you want to say, “The plaintiff will be unable to prove actual causation because the but-for test is not satisfied; even if the defendant shopkeeper had put out a warning sign, the plaintiff wouldn't have seen it since he was looking at his phone, and he therefore would have fallen and broken his leg anyway.”

### **Use the Tests! Use the Factors!**

Where legal doctrine has been articulated by courts in the form of “tests” or lists of “factors” to consider, then by all means use those. If you don't, you are, at the very least, passing up an easy opportunity for points. And not using relevant tests and factors might even cause you to blunder into a wrong conclusion.

So when there's a test to use, use that test. Are you discussing specific personal jurisdiction in civil procedure? Use the minimum contacts test. Are you discussing whether a statute can be used for negligence per se? Use the class-of-persons/class-of-risks test.

And if there are factors to use—use those factors. Are you discussing a fair-use issue in copyright? Use the four fair use factors found in 17 U.S.C. §107. Are you discussing whether someone is an indispensable party for joinder in civil procedure? Use the Rule 19(b) factors.

## **Your Goal in Writing an Exam and Pitfalls to Avoid**

Now that you understand the means for forming an essay response—breaking things down effectively and applying the law you've learned to the facts you've been given—let's take a step back and look at all of this in a broader context.

What is your overall goal in writing an exam?

**Your goal in writing an exam answer is 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 put that in bold to encourage you to dwell on it for a moment. So go ahead and dwell on it for a moment.

An exam might ask just ask you to "analyze." But even if it asks you to "advise a client," or "write a brief," those are just pretenses to help you frame an answer that delivers legal analysis. Your real goal on an exam is always to show your analytical ability and your mastery of the material from the course at hand.

As I've said, this means that you should take the law you've learned in the course and apply it to the facts provided in the exam. But it's helpful to think about your overall goal not only in terms of what you should do, but also in terms of what you should avoid. So:

First off, **do not make moral arguments.** Do not argue what is fair. This seems to be a special hazard for first-semester 1Ls. 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 a secured transactions course, even if doing so would provide a more complete analysis of the factual scenario. You might be surprised how often this happens. It seems to be a special hazard for people who are taking more than one exam on the same day—a tough circumstance, no doubt. But I've also gotten contracts and criminal law material on a torts exam, even when 1L exams are all calendared



with a free day in between. Bottom line: Get some sleep and remember which exam you are taking!

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 (i.e., "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** about what you choose to discuss and how much analysis you bring to bear on any particular part of the problem.

## **Conclusions, Confidence, and Seeing All Sides**

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

In each of the examples above (nos. 1, 2, and 3), there is a forceful conclusion, stating with certainty what comes of given facts. That is appropriate in many circumstances. But such sureness is not called for all the time. Good lawyers know that honest assessments of legal rights and liabilities are often phrased as a matter of how likely something is. Such a circumstance requires seeing both sides of an issue, articulating those sides, and providing a candid assessment of the range and likelihood of possible outcomes.

Consider the following, taken from a model response about trade secret misappropriation. This passage does a great job of considering both sides of a close issue and providing a lawyerly and insightful – yet indeterminate – conclusion:<sup>3</sup>

Ex. 4      A trade-secret misappropriation claim here requires that the acquisition of the trade secret was somehow improper, in violation of law or ethics. Did that happen here? Vasarelski wasn't even trespassing; all he was doing was reading a disc that he picked up innocently. On the other hand, after he perceived the nature of it, his continued exploration of it and his copying of it was not inadvertent. Also, he seemed to think he was doing something shady, because he wiped it down for fingerprints.

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<sup>3</sup> This is adapted from the model response at:  
[http://ericejohnson.com/exam\\_archive/Intellectual\\_Property\\_Final\\_Exam\\_Spring\\_2012-Good\\_Cheer\\_model\\_answer.pdf](http://ericejohnson.com/exam_archive/Intellectual_Property_Final_Exam_Spring_2012-Good_Cheer_model_answer.pdf).

This could indicate a transgression of accepted norms of business ethics. Arguably this is more wrongful and culpable than the conduct in the DuPont-flyover case, so in my view there is a strong likelihood that this could be considered misappropriation.

The law is largely shades of gray, and a good attorney understands and recognizes that. On the other hand, sometimes the law is black-and-white, and when that's the case, the good attorney says so. Law students should aspire to that model.

## 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 that plan.<sup>4</sup>

In particular, I recommend you sketch out a very abbreviated outline of your response on a piece of scratch paper. At this stage, 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 as you write your answer.<sup>5</sup>

If you find that you forgot to cover a particular point that belonged with a section of your answer that you already drafted, then, assuming 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. 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

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<sup>4</sup> 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.

<sup>5</sup> In many of my classes, my recent practice has been to divide the essay exam period in two, with an initial period just for reading the exam facts and outlining a response, and then a subsequent period for actually writing the response. If you are not given separate reading/outlining time, I nonetheless recommend that you consider imposing one on yourself.

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 here, but it seems to me to be a waste of time and/or words to do this. Besides, I can’t give points for a roadmapping section if the same material is going to be covered below; to do so would be double-counting.

## **Don’t Dwell on the Obvious**

Let’s move on to 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 easy (i.e., not very interesting as an analytical matter).

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 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 the particular exam I’m thinking back to, 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.

Whether obvious points are worth talking about depends on the course and the particulars of the exam. You need to exercise good judgment. For example, the elements of actual and proximate causation are required in various causes of action and various theories of damages studied in many different courses. Often these do not even rise to the level of being “an issue.” So in some upper-level classes, where actual and/or proximate causation are required elements of a cause of action that was studied, but where the doctrines of actual and proximate causation were not, as such, a focus of study and where they are obvious in a given problem, then you can probably skip even mentioning them. But if you are taking a course in which actual and proximate causation themselves were subjects of study (as is the case with my torts course), then you should provide explicit analysis. Yet if it is obvious, keep it brief. For instance, suppose in a torts hypothetical a driver fails to stop at a red light, hitting and totaling a pick-up truck. The pick-up’s owner sues for the value of the truck. In such a case, actual and proximate causation are so clear as to essentially be non-issues. But I wouldn’t skip over them. I would just dispatch them as expeditiously as possible. For actual causation, you could say: “The damage to the pick-up truck is actually caused by the red-light running because, but for the defendant’s failure to stop at the red signal, the pick-up truck would not have been hit and thus would not have been damaged.” About proximate causation, you could say, “The plaintiff can establish proximate causation because it is a

natural and foreseeable consequence of running a red light to collide with a vehicle in the intersection and damage it.”

## **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 for law-school exams is: Don’t pass up 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, 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, which 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 your mastery of the material presented in the course.

## **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. 5<sup>(BAD!)</sup> If Trixie’s will has created an interest that may vest later than 21 years after some life in being at the creation of the interest, then the interest will not be valid and will not be upheld in court.

This sentence does nothing more than restate the rule against perpetuities. There is no legal analysis. It is the student’s job to apply the law to the facts and explain what comes of that. In this example, it is the student’s job to say whether the will has created an invalid interest. The student avoided doing that in this case – and it would be appropriate for the grader to award no points for such a statement.

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.” Then imagine that the student writes this sentence in the essay response:

Ex. 6<sup>(BAD!)</sup> Dirk could have another defense if he had been forced to sign the contract under an unlawful threat, for instance if the dealership pulled a gun on Dirk and told him to sign the document ‘or else.’ 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 invent facts that aren’t in the exam.

**When “if” is called for—deliberate ambiguity, branching contingencies:** While “if” is often problematic in an exam answer, sometimes it is called for, such as where a fulcrum for the analysis has been left ambiguous, leaving branching contingencies that beg to be analyzed. Suppose a secured transactions exam states that Midland Motorcycles sold and delivered a motorcycle to Gwen “in late July”; that Gwen then sold the motorcycle to Walter, who bought it in good faith with cash “sometime in August”; and that “the next day” Midland Motorcycles perfected its purchase-money security interest on the motorcycle with a filing. With no dates specified, these facts leave open whether Midland Motorcycles’ security interest was perfected within 20 days of Gwen having taken possession. That makes a difference as to whether Midland Motorcycles has priority over Walter in the case of a default. In this kind of situation, it is appropriate for a student to use “if” in order to fully analyze the given facts:

Ex. 7<sup>(GOOD)</sup> Based on the facts given, knowing the date only to be “sometime in August,” we don’t know whether Midland Motorcycles filed within 20 days of Gwen taking possession. If they did, then Walter will lose to Midland Motorcycles’ security interest because the perfection relates back to the date Gwen took possession, which gives Midland Motorcycles priority. On the other hand, if Midland Motorcycles did not file within 20 days of Gwen taking possession, then Walter has clear title to the motorcycle.

As with all things, you’ve got to exercise good judgment in accordance with the goal of applying the law you know to the facts you’ve been given 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.

## 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, that might be good advice for other kinds of writing, but I see this as bad advice for law school 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 (e.g., 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.<sup>6</sup>). 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.<sup>7</sup>

## 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 essay 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

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<sup>6</sup> As I discussed at length above.

<sup>7</sup> 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.

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 absolute 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 course subject matter no matter who wrote it. Look for old exams retained by your own school and those archived by other schools.<sup>8</sup>

**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 what even the best student would be capable of drafting during an exam. So it likely sets 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.

I recommend, if possible, that you use old exams in the context of a study group. Look at an old exam, draft or at least outline an answer, then get together with some classmates and compare your results. I believe 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 draft a full mock exam response and give 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

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<sup>8</sup> I've put links to other publicly accessible exam archives on my own Exam Archive page: [http://ericejohnson.com/exam\\_archive/](http://ericejohnson.com/exam_archive/).

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 can be helpful to give your brain multiple ways to embed the doctrinal knowledge.

### **Good luck!**

Be confident that you have the raw ability to succeed. Most law schools only admit people they are convinced will be successful law students and, eventually, successful attorneys. So put aside the self-doubt and see law school as something that's challenging and difficult but eminently doable.

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!