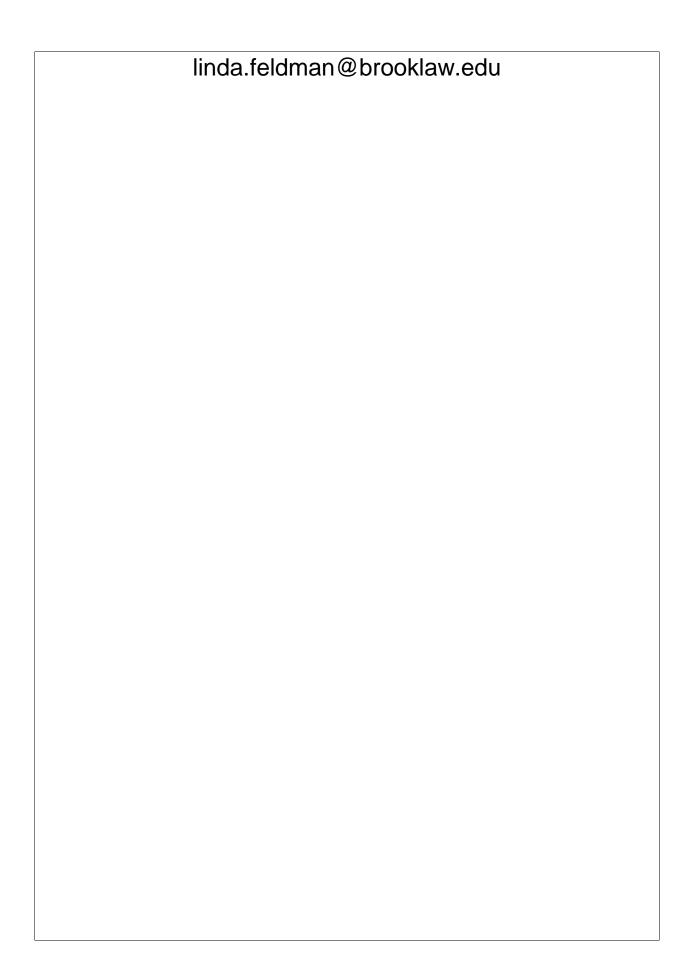
# **Brooklyn Law School**

# ACADEMIC SUCCESS PROGRAM

# Workshop #3 Exam Writing

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### **Disclaimer**

These are general guidelines for exam taking. Resolve any conflict between advice I might give and your professors' advice in favor of your professors' instructions!!

# Listen to your professor.

Law school exams differ in format from most exams you have taken. In law school you are typically given a complex fact pattern with the question at the end. Instead of writing everything you know about the course, which may be substantial, and which may have resulted in an excellent grade in college, your job on a law school exam is to:

- a) identify the issues raised in the fact pattern;
- b) decide which rules are relevant and set forth a statement of the rule or rules with exceptions as applicable;
- c) discuss how the rule(s) should be applied to the facts in your exam question;
- d) present arguments and counter arguments;
- e) predict how the issue is likely to be resolved and show the reasoning you relied upon to support your conclusion.

There is no single correct way to answer a law essay question. If you demonstrate knowledge of the law and sound reasoning ability, you are on your way to a good grade.

The secret of doing well on law exams lies not only in what you know, but how you **apply** what you know. You get little credit for stating a legal conclusion--even a correct one. You must show how the facts give rise to the issue and why your conclusion results from the facts, law and policy.

# **Exam Preparation**

For a fuller discussion on outlining course material, see **Workshop #2** handout.

- OUTLINE THE COURSE. It is important that you prepare your own outline, rather than relying on one commercially prepared. Your outline will be tailored to your professor's view of the course. Furthermore, you are reviewing the material as you do the outline. The real value of an outline is in its creation.
- Begin with the major topic headings (either from the casebook's Table of Contents or from the professor's syllabus). The major topic headings constitute a short, or "bare-bones" outline.
- As you read the course material, develop the outline. Use your casebook, case briefs, class notes, and hornbook, if recommended by your professor, to fill in the outline.
  - a. Each major heading will be a Roman numeral in your outline.
  - Directly following the heading, include a general paragraph or two about the topic. The information will be synthesized from your casebook reading, restatements, hornbooks and class notes.

#### For each general topic, ask yourself:

What is this section about?

What set of problems are presented by the cases in this section?

How were the problems resolved in the cases? How did the dissent differ from the majority opinion?

What issues arise from these problems?

What rules (and principles) can be applied to solve the problems?

What policy purposes are served by the rules and/or principles? What were the societal conditions which required the rule be developed?

- c. Look for connections within each section and between sections.
- d. Continue each section of the outline:

Majority rule with all its elements

Include references to governing codes (UCC, MPC, FRCP)

Statement of the Common Law, if applicable

Exceptions (e.g., minority rule, Restatement, U.C.C.)

Policy

Particular view of your professor

A properly prepared outline is a valuable source of information to read and re-read in preparation for the exam.

For each section of your outline read the case notes from the end of the chapter in your casebook. These questions are often focused, relate to cases, and present good hypothetical fact situations, not unlike exam questions.

Important study tip: Practice, Practice, Practice. Complete your outline with enough time to use the outline to answer practice exam questions. Set aside enough time to write a sample answer to at least one question on a practice exam. If you have several questions to use for practice, save one to answer under simulated exam conditions and time pressure. Only by actually writing out an answer can you accurately assess whether you are fully prepared.

#### **Outlining for an Open Book Exam**

Whether the exam is limited open book where you might be able to bring in only certain materials (statutes or your personally prepared materials), or unlimited open book, remember that you will not have time to search for information at your leisure. A well organized outline is your most valuable resource. If you are allowed to bring in an outline, include a table of contents to make it easily accessible. Condense your outline to a skeletal outline which includes the topics covered in the course. These topics give rise to the issues tested on the exam.

Identify any weak areas you might have and focus on them. Do additional hypotheticals, create and review flash cards, but be sure not to overlook other parts of the course as you grapple with the more difficult areas.

Review old exams given by your professor. You will find old exams on BLS' home page at http://www.brooklaw.edu/exams/

Other practice exams may be available on your professor's webpage.

# **Writing Exam Answers**

(for the traditional essay exam)

Most law school exams test critical thinking and problem-solving skills. Good exam skills require that you:

- ★ read the question meticulously
- ★ organize a complex fact pattern
- ★ properly allocate your time
- ★ communicate the information in a clear, concise manner

Read the instructions carefully. If you are handwriting your exam and are

instructed to skip a line, or write on every other page, do so! Pay close attention to word limits.

- SCAN THE ENTIRE EXAM. See how many questions are on the exam, and note the suggested time allocation for each question. Time allocation signifies the grading weight of a question, unless otherwise indicated. Do not devote disproportionate time to any one answer.
- As a general rule, answer the questions in the order they appear on the exam. If, however, you find the first question very difficult, go on to question #2. After you complete the answer to that question, your confidence will likely build and you can go back to question #1 more successfully.
- Allocate the time for the first question, and write down the time you should be completing your first answer. Spend approximately one-quarter to one-third of the time allotted reading the question and organizing your answer.

# Do not begin writing.

- 4. Read the first question, getting a sense of what is happening in the fact pattern. Pay particular attention to the call of the question, usually the last line or two. Typical questions are:
  - ★ Describe the causes of actions that the parties have against each other and all relevant defenses.
  - ★ What crimes have A, B and C committed, and what are their defenses?
  - ★ You are a law clerk for the judge. Write a memo advising whether to grant defendant's motion.
  - ★ Plaintiff has filed suit to challenge the constitutionality of the law. What constitutional issues does the case raise, and how would they be analyzed and decided by the court? Discuss fully.

# Do not write yet.

- 5. READ THE QUESTION A SECOND TIME. Force yourself to read somewhat slower than usual. Since you now know the call of the question, you know that all other parties and events are important only insofar as they bear on the question asked.
- 6. ORGANIZE THE COMPLEX FACT HYPOTHETICAL INTO SEPARATE TRANSACTIONS. If the hypothetical presents several events, or several sections of proposed legislation, each event or section is a separate transaction which presents a problem which must be resolved. These are your issues. Unless otherwise instructed, it is usually a good idea to write about each transaction separately.
- 7. QUESTION THE QUESTION!! Examination fact patterns are usually dense; every sentence, every word, may have significance. Why is that fact included? What is its significance?

**DATES.** Why this date? If an examination question begins, "On October 27, 2005..." think about the significance of the date. Is there a Statute of Limitations problem? Was there a change in a governing statute?

**RELATIONSHIPS.** Does the fact pattern include a husband and wife? Look for a marital relationship issue. Does the relationship give rise to a duty? Is one party's age mentioned? Look for an issue concerning infancy, or perhaps age discrimination. Every fact may mean something.

**DESCRIPTIVE WORDS.** Every adverb and adjective has potential significance. Do the events take place at a particular time of day, and is that of some significance? Are weather conditions mentioned? If so, why? Some people find it useful to circle the descriptive words, dates, and relationships, but take care not to clutter your exam paper in a way that may be confusing to you.

Be careful not to misread the facts, and do not argue with the facts. If you are told D is dead, accept that. Do not begin your answer with, "If D is deceased then...but, if D is not really dead, then..."

- 8. LIST EACH TRANSACTION OR ISSUE TO BE DISCUSSED.
- 9. BEGIN WITH THE FIRST TRANSACTION OR ISSUE. You need to think about the ways which exist to deal with this transaction. If you have prepared an outline for the course, and know it well, review the major topic headings of the outline in your mind. Mark down the legal theories which can be applied to resolve the issue presented by the first transaction.

#### 10. NOW YOU CAN BEGIN TO WRITE.

Assume the role assigned to you and begin by answering the question asked.

- State the issue or your conclusion to the question presented by the first transaction.
- b. Set forth the legal rule (or rules) with all elements that led to your conclusion or that you will use to resolve the issue(s) you are discussing. If there are conflicting interpretations of a rule, or if there is a split in the circuits, discuss both interpretations. You must include a sufficient discussion of the law to provide a context for your analysis of the facts.
- c. Explain the rationale underlying the rule.
- d. Discuss the facts as they relate to each element.

APPLY FACTS. Are the facts sufficient to establish each element of the rule? Which element(s) will be disputed? The disputed elements should be the main focus of your answer.

**ANALYSIS.** Interweave the elements of the rule(s) with key facts, applying appropriate legal principle and policy. Show which facts

support or prevent application of the rule.

Remember, it is crucial to apply the relevant law to the facts. Step by step, element by element. If there are two rules that might apply to your fact situation, include a policy analysis and offer reasons why a court might choose one rule or approach over another.

#### e. Refer to cases when appropriate.

- f. Come to a conclusion, but do not simply conclude. Explain **why**, based on the law and policy, and the application of your facts to the law, you have reached that conclusion. **Show your reasoning.** Why would a court choose to resolve an issue in a particular way? Are there economic arguments to support your conclusion?
- g. For each issue, discuss other views when appropriate. **Include opposing arguments**, defenses, etc. Include Restatement, U.C.C., Common Law, minority view, Model Penal Code when appropriate.

# **General Advice**

### ★ Use simple declarative sentences.

Keep your sentences short, 15-20 words. You can confuse yourself, and your reader, with long, convoluted sentences.

On your first reading of a hypothetical, certain issues will jump out at you. **CAUTION:** avoid the urge to begin writing as soon as you see the first issue on the first reading. You may spend too much time on it without going back to the rest of the problem to discuss all the issues. Approach each hypothetical in a systematic, methodical manner.

## ★ Discuss every legal controversy you identify.

Do not ignore issues because you think they are too obvious. In Torts, do not omit a discussion of defendant's duty to plaintiff because it seems so clear to you that you can't believe the professor wants you to belabor the obvious. The professor does want you to discuss all non-frivolous issues. You may dispose of the matter in a line or two, but let the reader know *you recognize* the issue.

## ★ Be responsive. Remember "because".

Show why your answer is responsive to the question. It is not enough to state your legal conclusion--"A" committed battery. You have to show **why**. What conduct amounted to battery, and why?

# ★ Read the instructions carefully.

Do not disregard them! If the instructions indicate a word or page limit, abide by those limits.

## ★ Know your professors.

Write for your professors. If they stress policy in class, you talk policy. If your professor uses certain terminology or phrases, you use them.

If your professor spent weeks on a topic and you do not see it on the exam, *look for it*. It is likely to be there.

Know the kind of exams your professor usually gives. Make copies of exams on file; one to work from as you study, one to write in a simulated exam setting *near the end of your study time for that course*. Trying to write the answer to an exam question too early in the process can be a very anxiety-provoking experience. You are not ready to tackle the entire question. Only work through those parts of the problem which refer to the portion of the course material you have already studied.

# ★ State your assumptions.

Make your assumptions explicit, then write based on your assumption. If, in an action for defamation, there is nothing to indicate damages, state "it is assumed that plaintiff can show that defendant's communication caused P economic damage". You are telling your professor that you know that pecuniary loss is an essential element to a successful cause of action for defamation.

## ★ Follow through on the answers.

Decide each issue in a manner which allows for consideration of the next issue. Even if you decide there was no offer, do not end your discussion. Professors want you to deal with all contingencies.

#### ★ Do not recite facts.

Use facts to argue in favor of or against your conclusions. A verbatim recitation of the facts is a waste of time. What you need to do is apply the pertinent facts to the rules of law.

# ★ Take a position when asked to. Assume the role assigned in the question.

Leave time to edit. Try to reread your answer. Occasionally, a student will transpose parties, saying P when he/she meant D, and attribute actions, duty, and liability to the wrong party. On a reread you can catch it and make necessary changes. If you are hand writing your exam, write on every other page. This way you can add anything you left out.

## ★ Multiple Choice Questions¹

<sup>&</sup>lt;sup>1</sup>Although modified, the materials on Multiple Choice Exam Questions on this handout are based on Michael Josephson, Evaluation and Grading in Law School, AALS Section on Teaching (1984), on the webpage "Taking Multiple Choice Exams" <a href="http://www.udayton.edu/~aep/barpass/mc.htm#">http://www.udayton.edu/~aep/barpass/mc.htm#</a> created by Professor Vernellia Randall of the University of Dayton School of

Every multiple-choice question consists of three parts: the root, the stem, and the options.

#### The Root

This section contains the underlying facts on which the problem is based. The root sections can be long or short, and may apply to one or more questions. You will be able to answer the question based on the facts contained in the root.

#### The Stem

This is the actual question, and it can come in many forms. Some will be relatively straightforward questions while others may ask you to complete a sentence.

#### **The Options**

These are the answers you have to choose from.

#### **Strategies to Employ and Mistakes to Avoid**

While possessing a thorough understanding of the law is the best way to ensure strong performance on a multiple choice exam, there are a number of strategies that can help. Similarly, there are a number of common mistakes that you can easily avoid once you are aware of them. There is nothing magical about these suggestions, and you have probably heard a number of them in connection with taking multiple choice exams throughout your academic career. Still, these suggestions are repeated here because they do work.

- Take your time. Time always seems to be running out during a law school examination. As a result, students rush and choose the wrong answer because they missed a key word and not because they didn't know the material.
- Allot an equal amount of time for each questions, and stick with it. Unless you have been told otherwise, each question on a multiple choice exam is worth the same amount. Once you have figured out the amount of time you have for each question, stick to it.
- Read the questions CAREFULLY. A single word may completely change the meaning of the question. Words to watch out for include: and, or, but, not, best, worst.
- Do not complete the definition or argument in your mind and conclude that it is correct. Be sure that the entire definition is on the page, and that you are not completing it in your head. For example:

**Wrong:** Under common law, murder was the unjustified killing of a human being.

**Right:** Under common law, murder was the unjustified killing of a human being with malice aforethought.

■ Assume nothing in addition to what has been established or given. The root,, stem, and options contain all of the information

you are to use in answering each question. Do not assume the existence of a fact or an outcome. The professor may be testing whether you recognize that an essential fact is missing.

Question: The Prosecutor proves that John shot Mary and that

Mary died an hour later. Is John guilty of Murder?

**Answer:** No! The Prosecutor must also prove that John's bullet

caused Mary's death.

■ **Do not ignore facts.** Just as you should avoid adding to the given facts, be sure that you pay attention to what the facts are telling you. Even when the question modifies your basic understanding of the law, be sure to include that change in your analysis when answering the question.

Question: Assume that you have been taught in class that an

intoxicated person is not capable of driving her car in a reasonable manner. The question indicates that, after drinking two quarts of whiskey, Mary was driving her car in a reasonable manner when she collided with

Paul. Was Mary negligent?

Answer: No! Negligence requires unreasonable conduct. Since

you were told that she was driving in a reasonable manner, you must conclude that she was not

negligent.

■ Pay careful attention to seemingly meaningless details. Everything in the question is there for a reason. Either the detail is important to the ultimate answer, or the professor placed it there to distract you from the correct answer.

■ Once you have answered a question, disregard any changes it made to the fact pattern. Oftentimes, a professor will pose multiple questions in regard to a single fact pattern, and some of these questions will modify the fact pattern. Unless instructed otherwise, the changes to the fact pattern apply solely to that

question.

- Do not make the questions more complex than they actually are. Your professor's goal is not to trick you, but to test your knowledge. So avoid fantastical interpretations of the facts.
- **Do not skip questions.** Skipping a question creates the possibility that your remaining answers will be out of order. Answer each of the questions in order, and come back to questions you were not sure of if you have time.

#### The Process of Elimination

In the end, the best way to arrive at the correct answer is to use the process of elimination. Simply put, you arrive at the correct answer by eliminating from contention those answers which cannot be correct. There are a number of things to keep in mind when eliminating individual responses.

Since the wrong options are supposed to make other options look either good or bad by comparison, don't compare one option to the others. Treat each as a separate option and as if it were the only one before you. With pencil in hand, examine each option carefully, returning to the root to confirm facts if necessary. Mark the option with a "T" if it is true, with an "F" if it is false, and with a "?" if you can't make up your mind. As long as you have a good clear "T", count "?"s as "F"s. If you have no "T"s at all, treat a "?" as a "T". The option with the "T" next to it is the correct answer.

Sometimes some of the options contain parts of others. Typical questions:

John is guilty of: A) Burglary only.

B) Robbery only.

C) Burglary and Robbery.

D) Neither Burglary nor Robbery.

Instead of trying to deal with these overlapping options in combination,

break them down into the individual components (e.g., Burglary, Robbery). Give each of the individual choices a "T" or "F" and then find the option which contains the correct combination of choices.

In some questions, three of the options offer one conclusion coupled with different reasons for it, while the fourth offers the opposite conclusion with no reason at all. A typical question:

John will: A) lose.

B) win, because . . .

C) win, because . . .

D) win, because . . .

Since the odd option is unaccompanied by a reason, it is impossible to select it without eliminating the other three first. For this reason, when confronted by a three-to-one options question, always consider the odd option last. Then choose it only if all of the others have received "F"s.

■ Issue spotting is very important.

Do not be tempted into believing that you will not need to spot issues. Although you are working with a limited universe, one of the options must identify and resolve the central issue.

■ Three quick ways of eliminating a response. If an option does any one of these three things, you can eliminate it immediately and move on:

#### It mischaracterizes the facts.

- Blatant contradictions.
- Goes beyond the stated facts.
- Assumes as true a fact in dispute.

It misstates the law.

It ignores the central issue.

■ In order to be correct, an answer must be correct in every aspect. Incorrect legal reasoning: Overstates the requirements of the law. Uses antiquated rules or rules from an inapplicable body of law. Uses rules that do not apply to the facts. Overstates or understates the applicable legal standard. Caveat: Be aware that an answer may, for example, correctly reference only a single element of a cause of action when that element is the only one at issue. ■ Every "correct" answer is not necessarily a "right" answer. Often, multiple choice questions ask you to choose the "best" answer. This means that more than one answer could solve the problem presented by the question. When choosing the "best" answer, keep the following in mind: An answer that is easier to prove is more likely to be correct than an option that is difficult to prove. A more precise answer is better than a less precise one. For example, a more precise answer would address the factual situation in more respects than other options. Guessing intelligently when your reasoning fails you. While no instructor will ever advocate guessing at the correct answer, a guess is sometimes all you are left with. Just be sure that guessing is a last resort, and that you do it intelligently.

- Do not guess until you have eliminated all the responses that are definitely wrong.
- Do not make the questions more difficult than they are. The issue that jumps out at you is likely the issue that the correct response addresses.
- □ Be wary of answers that include absolutes. There are few things

in the law that are absolute. Therefore, words like "must", "always", and "never" often--but not always--indicate an incorrect answer. □ If two answers are opposites, one is probably correct. Be wary of answer choices from unrelated subjects or unstudied theories. □ Trust your instincts. Once you've narrowed your choices down to two options, trust what your instincts are telling you. In the background, your mind has processed through the question and your "instinct" is really your subconscious helping you make the correct choice. For this reason, you should rarely go back and change an answer unless you are sure that your original response was incorrect.

#### ★ A Word About Take-Home Exams

Love them or loathe them, take-home exams do allow time to think, organize, write and edit responses. Once again, organization is key. You might consider outlining the course material according to issues and include reference to outside materials (hornbooks, law review articles, supplementary materials handed out by your professor) in your outline. Turn to those materials as you need to in answering the exam question.

Time management is still an issue in take-home exams. If you are given a 24-hour take-home and it is not your last exam, plan on using 16 hours to answer the exam and the remaining eight hours to sleep so you can prepare for and take your other exams. If the exam spans the exam period, carefully allot time to each question without allowing it to use up time needed for other exams.

# **Good luck!**