Understanding Law School Exams

Structure

- Overall
- "Essay" questions
- Short Answer
- Multiple Choice

Students who are dissatisfied with their grades often say the exam did not assess their knowledge of the material. Students often blame the test or the professor when it was a misunderstanding of the task before them.

Consider what level of knowledge we test:
(the following borrowed from John Dernbach)

I know it because I can recognize it.

This is the level of knowledge generally tested on undergraduate multiple choice exams.

Absolutely needed for law school exams, but not enough.

I know it because I memorized it.

This is the level usually necessary for undergraduate essays.

Memorization is needed for law school exams, but it is not enough.

I know it because I can explain how the cases in the casebook applied it.

If we only tested you on mastery of the cases, then this would be enough.

Absolutely needed for law school exams, but we still need more.

I know it because I can apply it to new and different factual situations.

This is what lawyers do. This is what we look for in exam answers. This is what you strive for and what you are working on in your legal writing course.

How are Essays Reviewed?

Whether you identify Rules and Elements – Starting Point for our assessment of an answer.

Issue Spotting = What Rules might apply to this factual situation?

How you use the rules to analyze an unfamiliar setting:

Application of rules to facts,

Assessment of strengths and weaknesses of arguments/defenses,

Explanation of how rules do or don't apply.

Basic Method of Analysis

- Identify Issue(s) Raised
- Identify Governing Rule(s) and Element(s) at issue
- Apply Rule(s) to Facts
- Reach a Conclusion

(Look familiar? Simple IRAC format generally works well on exams.)

Issue Spotting

Pre-writing Strategy:

Read question through once, noting "call of the question."

On second read through, underline important facts and make margin notes.

Third time, on scratch paper, identify the issues you see (leaving room between them so you can pencil in the facts that are important to each issue).

For Each FACT in problem

Ask yourself why it was included:

1) Does it **create** an Issue?

2) Does it help **resolve** an Issue?

3) Is it there merely to provide **context** for the narrative?

4) Is it a "red herring" to **distract** or **mislead** you?

More on Pre-Writing

Indicate rules that pertain to each issue you have identified.

Decide on order for addressing the issues.

NOW, you can begin to write.

Rule(s)

- Use accurate and precise language.

- Include each element.

- Discuss each element or factor separately.

- Set out the law <u>before</u> you apply it.

If more than one rule applies, discuss both:

If a threshold issue is resolved one way, then a subsequent issue need not be faced.

If the threshold issue could go either way, explore the subsequent issue as well because your professor might not agree with your conclusion on the threshold issue.

Applying rules to facts

Go element by element.

Explain how element applies to the facts, using as many facts as you can from the problem.

Be methodical.

Use Headings.

Identify and Respond to Counterarguments

Do not ignore weak points in the application of the rule.

If an issue could potentially go either way, then address arguments on the other side and respond to them.

Reach a conclusion

Reach a conclusion on each element and for each rule.

Don't waffle (could be, might be, perhaps).

Conclusion can be soft (probably, probably not, more likely, most likely) and still be a conclusion.

Why this method?

- Your goal is to maximize your points for each question.

- If you don't address an issue, then we can't award you any points for that section.

- If you identify an issue and simply reach a conclusion but don't explain your reasoning, then you have left the most valuable points on the table and we can't award those points to your score.

Another Systematic Method for Exams

- Identify the <u>Harm</u> in the facts.
- Identify the <u>Actors</u> and the <u>Act</u> that caused the harm.
- Identify <u>Topic(s)</u> implicated from your condensed outline or checklist.
- Identify <u>Rule(s)</u> to analyze in order to resolve.
- Identify <u>Issue(s)</u> when facts are viewed under rules.

How is this like Memo Writing?

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- Considered, reasoned analysis
- Lawyerly writing
- Methodical application of law to facts
- Risk analysis, predictions
- Policy analysis may assist in reaching a conclusion

How is this Different from Memo Writing?

How is this Different from Memo Writing?

- TIME PRESSURE.
- No rewrites after feedback.
- No need to cite case names, so no Bluebook!
- We don't directly subtract points for punctuation and grammar mistakes, but please try to write clearly and well.
- Depending on professor, could be closed book or open book or something in between.

How can I improve on my next memo assignment?

How can I improve from my midterm performance?