

SOME THOUGHTS ABOUT WRITING ESSAYS FOR MY EXAMS

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Law school exams are exercises in analysis and writing. It is important to remember that the law school exam essay is NOT an exercise in persuasive writing. Your goal is not to argue as you would before a court, but to discuss the various sides of an issue as you would present it to a client or, as a junior lawyer, to a senior attorney handling a matter. For my own exams, I often make this explicit – typically I'll ask you to write a memo to a senior partner so she can sound wise when she meets with your firm's clients.

The first principle of taking one of my exams is that you have a limited amount of space: a word limit. The word limit reflects the constraints on my time and the need to treat everyone fairly, just like the word limits in briefs filed in court reflect time constraints on the judges and law clerks.

Within the space given you by that word limit, your mission is to show as many *directly relevant* doctrines and fact combinations as you can. What follows are some suggestions that might help you write better exam essays – at least for me. Some of the suggestions here may be particular to me, but some should be universally helpful. A former student, now at a big firm, read a draft of this essay and commented that much of this “is not only applicable to [Hughes’] exams, but to what you could be expected to produce in a firm.”

AVOID UNNECESSARY DOCTRINAL FOREPLAY

DON'T waste words quoting the statute at length by itself or repeating generalities about doctrine, particularly if it's an open book examination (as mine usually are). If “IRAC” or some other answer formula tells you to do that, ignore the formula. On the exam, as in real practice, there is no reward for stating generalities: the rewards come from applying general principles to particular situations.

In other words, when you discuss the legal standards, apply them immediately to the hypothetical. Here's an example of what NOT to do in a 1,000 word essay:

“[The best defense is fair use] Applied through the common law prior to codification in the 1976 revision of the Act, the fair use doctrine is an equitable rule of reason and functions as a loophole to prevent strict application of the Copyright Act when it would impede innovation and/or public benefit – the major purposes of copyright protection under the Constitution.”

Nothing wrong about this, but it is 50+ wasted words unless I had asked for a general description of the doctrine (which I didn't and won't).

Show me that you know the law by directly applying it to the facts: “Under the first fair use factor, the defendant here. . . In contrast, the second fair use factor favors plaintiff because” As another Cardozo professor said in reading an earlier draft of this essay, “I tell them that they get no credit for just stating law or for just stating facts. They get credit only for applying law to fact. If they find themselves just stating law, they're wasting their time. If they find themselves just stating facts, they're wasting their time.”

IT'S OK TO START WITH A USEFUL SUMMARY

Don't misunderstand: starting with a short, direct summary of what you are going to discuss is fine. On the other hand, if you look at the "model answers" I have picked out over the years, many (if not most) jump right into the analysis with little or no introductory overview. One approach would be to write the entire analysis in your first (and second?) draft without an introductory overview. Then, if you want, go back and write a short, simple, direct introduction later.

GIVE IRRELEVANT DOCTRINES LITTLE OR NO SPACE

Generally speaking, it is a bad idea to discuss doctrine that is not directly relevant to the hypothetical – except, *perhaps*, to say something like "X is not relevant because of Y." In explaining each and every doctrine, you might be thinking you are showing the breadth of your knowledge [and you are], but you are also showing me that you cannot distinguish directly relevant issues from more tangential points.

AVOID SECOND GUESSING THE PROF AND THE EXAM

Why do students discuss legal doctrines that are not directly relevant? Sometimes they do this because they are trying to second guess the professor. Don't say to yourself "[t]he first question was focused on the Most Favored Nation doctrine, so Hughes can't want that discussed in this essay" or "we studied the merger doctrine a lot, so it's got to be in this essay." While that's often right, the professor may be asking you to use the same doctrinal tools in different fact patterns. A topic that was discussed at length in class may just be absent from the exam (because the exam can't cover everything).

STICK TO THE SUBSTANTIVE LAW

Was this a civil procedure course? No, not from me. Was it a course in which we studied jurisdiction in detail? Probably not from me (unless I was teaching cyberlaw jurisdiction or international arbitration questions). As a general rule, discuss jurisdictional and procedural issues only when directly asked about them.

BE SUCCINCT

This is just the most basic application of the dynamic that you only get a limited amount of the professor's attention. A couple years ago, one student began an essay with:

“The Copyright owners of the books used by the Google Library Project have a claim that their rights of reproduction are being infringed. The Google project is making digital copies and archiving them in violation of Section 106. They can claim that their right of distribution is infringed. Since the books are being copied and digitalized there is no longer the need to sell them, since portions of the texts, if not all of it are being distributed. There is also a claim for a violation of the right of public display.”

Since there are going to be detailed discussions of the violation of each copyright right later in the essay (we hope!) consider how bloated this passage is. The student should have begun:

“The copyright owners of the books used by the Google Library Projects can credibly argue that their section 106 rights of reproduction, distribution, and public display are being infringed.”

When you learned to write essays in middle school and high school, perhaps you were taught that well-written essays repeat ideas for emphasis and because readers are lazy. But in taking an exam, you have a limited space to present *a lot* of ideas and the more relevant ideas you present, the better you will do. So, it's best not to repeat ideas too much: have some faith that I'm paying enough attention to get it the first time you say it.

One of my former students who read an early draft of this essay was even more emphatic; his comment was, “[i]n a word limit paper, every sentence and every word counts, so [a student] shouldn't include superfluous, descriptive language and each word should have material relevance to the sentence and overall answer.” Another former student – now in-house counsel in a big company - commented, “I totally agree with you that the answers need to be precise and concise. . . I really don't have time to read ‘novels on laws’.”

DO NOT CREATE UNNEEDED ABBREVIATIONS AND ACRONYMS

This is a truly baffling habit that some law school students acquire in first year. They come to believe that parties and doctrines should be referenced with initials, so that the “Spirit Company” is referred to as “SC” or the fair use doctrine is called “FU”.

If you think such abbreviations make your writing look more analytic, they don't. In a recent examination, a student kept writing “CI” all over the place – which meant “copyright infringement.” The word “infringement” would have been a lot better (it's a copyright class, so I know you're not referring to *patent* infringement). And “CI” does

the same thing for your word count as “infringement” – no rationale there. You will see that one of the model answers posted on my site starts "The copyright holder ('CH') will claim that the New Yorker ('NY') . . ." It was still an excellent answer, despite the off-putting abbreviations. Just call the *New Yorker* by its name and save the 5-10 words somewhere else. If there is only one person named Kim Smith in a hypothetical, call her “Smith.” If Kim Smith is suing Paul Smith in the hypothetical then call them “Kim” and “Paul,” *not* “KS” and “PS.”

DO NOT USE FOOTNOTES

Do NOT use footnotes. They’re a nuisance in a simple essay format and you should not use them because¹

USE EASY TO UNDERSTAND, CONSISTENT REFERENCES TO CASES AND LAW

Do NOT cite to pages in the casebook, i.e. don’t write “Casebook, page 86”. Believe it or not, I have not memorized the contents of the book by page number – and I may not have the book handy while grading the exams.

Refer to cases by the common names we have given them in class. Typically that will be 1-2 words from the court caption (*Nutrasweet*, *KSR*, *Canada – Pharmaceuticals*, *Japan – SPF Lumber*, *Blumenthal v. Drudge*, etc.). Sometimes, a common name for the case will be the subject matter of the litigation. For example, you could refer to the *Universal City Studios v. Sony* litigation as “the Betamax case.” However you refer to a case, be consistent.

STICK TO THE WORD LIMITS.

Consider the word limits to be ceilings. If the word limit is 1800 words and someone says that their answer is 1809 words, what does that say? It says that they were too lazy to tighten up their prose by .5%. If your draft exceeds the word count a bit, that’s normal. Just go back and tighten up the prose.

At the end of an essay, always give the word count of that essay. In 2008, one student ended his/her essay with “This essay is 775 words long, not including this sentence. It is 797 words long including this sentence and the prior one.” That was clever – and I know a person can get a little punchy at the end of a 24 hour work project - - but a simple “this essay is _____ words” suffices.

Finally, include headings in your word count. That’s a picky request, but if I said otherwise some student would write paragraph long headings. I don’t need to tell you to count footnotes because you already know not to use footnotes.

¹ I don’t read them.

REWRITE, READ, REWRITE – AND REVIEW THIS LIST

Take the time to give your prose the polishing it deserves. I think Louis Brandeis was pretty correct when he said “[t]here is no such thing as good writing. There is only good rewriting.”

Finally, after you've done the seemingly final draft of your exam answer, do a quick review of this list. Then, read your essay(s) once more and ask yourself if it meet these suggestions.

GIVE YOURSELF SOME CREDIT AND SOME FUN

Law school exams are hard work. After the exam, give yourself a spiritual pat on the back. Even if you have another exam coming up, take 20-30 minutes and take a walk around Cardozo's neighborhood. Remind yourself that you get to work every day in a wonderful, vibrant, beautiful neighborhood that is a vacation destination, a dream, and an ideal for lots of folk. There's a reason they shoot so many feature films in our neighborhood.

Some people will tell you that university was the best years in their lives. I hope that's not true for you -- because I hope your life just keeps getting better and better. But your law school years can and should be an extraordinary time in your life. Make it so.

THIS ESSAY IS 2,000 WORDS.

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