

Dated: November 24, 2020

Memorandum to Students

Exam Prospectus Intellectual Property

Fall 2020

University of Oklahoma College of Law
Eric E. Johnson, Professor of Law

1. OVERALL POINTS

Purpose: I am writing this document to give you specific information that will help you prepare for and know what to expect on the Fall 2020 Intellectual Property final exam.

Fairness: My paramount value in designing and grading the exam is fairness. Over the years, I have thought long and hard about how to make exams and grading more fair, and you will see the product of that reflection in this memo. As a whole, this memo is intended to eliminate the potential for surprise on the exam by disclosing as much as I can about the exam in advance.

My goal and your goal: Your goal in taking the exam is to show your mastery of the material presented in the course and your skills in analyzing legal problems involving the course's subject matter. My goal in designing the exam is to provide you with a full and fair opportunity to do so and to avoid arbitrariness in the results.

Now for some details.

2. PARAMETERS

A. Obeying Exam Requirements and Instructions: A failure to follow exam requirements and instructions is an academic misconduct issue, and violations will presumptively be treated as such, even if inadvertent. (See §6-6 of the Syllabus.) This applies to the requirements set out below, those set out in the Syllabus, and any instructions on the exam itself.

B. General Format and Time Considerations

The exam will be administered through Canvas.

The exam will consist of Part I (multiple-choice questions) and Part II (essay). Details are below.

You will have a total of three hours to complete the exam.

You must comply with the instructions of the College of Law's administration and staff with regard to when you can or must begin and when you can or must end.

C. Part I of the Exam:

Part I of the exam, worth one sixth of the total exam grade, will consist of approximately 12-14 multiple-choice questions. I strongly recommended that you complete Part I first and that you spend no more than 30 minutes on it.

The plan is for you to answer each multiple-choice question by clicking on an answer choice within the Canvas page for the exam.

D. Part II of the Exam, in General:

Part II of the exam, worth five sixths of the total exam grade, will require a written response. I recommended that you do Part II second and that you spend 2.5 hours on it. This part of the exam will consist of multiple open-ended questions calling for written, essay-style responses to a hypothetical fact pattern.

There is no length limit (e.g., word limit or page limit).

You will provide your answers to all questions in a single document you upload. (See below for mandatory formatting requirements.)

E. To Help You In Prepping Your Answer for Part II:

I plan to make the questions and hypothetical facts available in such a manner as to facilitate the marking-up of that material. Thus, my current plan is for the Part II "booklet" (i.e., the hypothetical facts and questions) to be encompassed in a downloadable PDF that can be printed out and having text that can be copied-and-pasted into another document. The purpose of allowing this would be to facilitate your taking of notes to help you analyze the hypothetical facts. But **I strongly urge you not to copy and paste material from the exam booklet into your exam response!** (I will already know what's in the exam booklet because I will have written it. If you need to refer to material in the exam booklet, just refer to it. There's no need to quote it.)

In recent years – before the pandemic – I divided the Part II essay portion into two periods: a "reading/outlining period" of 30 minutes and an "exam writing period" consisting of the remainder of the time for the essay section. Because of the constraints on exam administration imposed by the circumstances of the pandemic, I will not be enforcing a similar division of time on the essay portion of the exam. Nevertheless, I urge you to impose upon yourself an initial 30 minute reading/outlining period during which you refrain from beginning to write your response and instead limit yourself to reading the exam booklet (that is, the facts and the questions), taking notes, referencing your outlines or books as needed, and outlining your response on scratch paper. I believe your doing this will make your response better.

F. Formatting Requirements for Your Part II Response:

You will upload your essay response either as a PDF or DOCX.

Mandatory formatting requirements: The document **must** be 8.5-inch-by-11-inch in size in portrait orientation with line spacing set to **single-spaced** with the only font used being **12-point font**, and with the **margins set to 1 inch** all around. Put your exam number in a paragraph by itself at the very beginning of the document and in a paragraph by itself at the very end. If your exam response does not meet these minimal mandatory formatting requirements, points will be taken off.

Strong recommendations for formatting: The document **should** use only Arial, Helvetica, or a similar sans-serif font and have paragraphs where the first line is set to indent by 0.5" and there is 6 points of space after each paragraph. The document header should consist only of your exam number and the document footer should have only the page number or, preferably, say "Page X of Y" where X is the page number and Y is the total number of pages.

I have posted to the class webpage an exam response template that I urge you to use if possible.¹ (When you use it, replace "000" with your exam number.)

Do not disregard the formatting requirements or recommendations! These format requirements are so that all responses will look alike and be similarly readable. My intent is not to add to your burden in writing your response, but in the legal world, courts require documents to be formatted certain ways. So it seems to me to be reasonable to require the exam responses to be set out in a certain format to facilitate fair grading.

G. Anonymity and Identification:

Use your exam number. (Your examination identification number, of course, means your examination number for this semester – not one from a prior semester.) As set forth above, the exam number, on a line by itself, must be the first thing and the last thing in the body of your essay response.

Each exam will be "blind graded," so that I will not know the identity of the student as I am grading her or his exam. **You may not waive anonymity. Do not include your name in your exam response, and do not write your name on any exam materials.** Self-identification on the exam or otherwise compromising anonymity will presumptively result in both a deduction from your exam grade and a referral for disciplinary action.

¹ The direct URL is:

http://ericejohnson.com/docs/Essay_exam_response_template.docx

H. Allowed and Not Allowed:

There will be no difference between what is allowed and not allowed for Part I and Part II of the exam. The whole exam will be conducted on what might be called an open-book basis, more or less. Here's the specific rules:

(i) You may access any print sources you like for which you have your own copy, but you may not share print sources with anyone else, including other students.

(ii) You may access any of your own electronic documents for which you have a locally stored copy.

(iii) You may access my own website at ericejohnson.com and any materials thereon. But note that while I do not foresee any web hosting problems with ericejohnson.com, I cannot guarantee service during and through the exam period. Thus, I recommend having locally stored copies of any documents from ericejohnson.com that you consider essential.

(iv) You may use scratch paper. You may also use a digital device to take notes – i.e., to serve as virtual scrap paper – but whatever notes you make must be locally stored and may not be stored online or made accessible to anyone else.

(v) You may use a timer, such as a kitchen timer, a timer app on your phone or computer, a countdown function on your watch, etc. And, if it ends up being helpful, you may use a calculator, including a calculator app on your computer or phone.

(vi) You are prohibited from communicating with anyone during the exam period. You may not communicate with anyone – whether in person, on the phone, via text, or via any platform (e.g., Twitter, GroupMe, Discord, Facebook, Snapchat, Zoom, or anything). So, among other things, you are prohibited from collaborating with or asking for help from any fellow student or any non-law-student for any purpose, including, for instance, helping you figure out what something means, proofreading your essay response, or helping to let you know when you are running out of time. The only exception is that you can have entirely non-substantive communications with people along the lines of sharing physical space. So, you can yell, “Get out of the bathroom already, I’m taking an exam!” or “Can you please take the crying baby outside, I’m trying to take an exam!” If you need technical support (e.g., “This stupid thing won’t upload, can you help me?”), you can communicate with staff at OU for that purpose. If you use another person who is not OU staff for technical support, such a roommate, sibling, etc., then you must disclose that communication immediately following the conclusion of the exam to a member of the OU staff who is helping to administer exams. If disclosure is prompt and if it is determined no substantive help was given, then this will not be considered a rule violation. Under no circumstances may you communicate with another member of your section – even to help with tech support issues.

(vii) You are prohibited from accessing any internet or online sources at all – with the exception of the OU Canvas site you are using to take the exam and any materials available on my own website at ericejohnson.com (see above). This means, for instance, that you may not access or search for anything using Google, Westlaw, Lexis, Quimbee, government websites, library websites, etc. And, of course, you cannot make or receive any communications via social media.

3. TOPICS ON THE EXAM / HOW I WILL DESIGN THE EXAM

The best way for me to tell you what to expect is for me to tell you what I will draw from and what will constrain me when I write the exam.

The Correspondence Principle: The most important thing to me when I write an exam is what I call the Correspondence Principle. It is this: The emphasis on the exam will track the emphasis in class and in the materials. For example, if we spent little time on something in class and there was little or no reading, slides, or other materials on it, you can expect that it would not be more than a trifling part of the exam, if even that.² By the same token, if something was mentioned in passing in the reading but was not a subject of attention in class, you can expect the same.

Comprehensiveness: In keeping with the Correspondence Principle, I will strive to be very comprehensive in terms of the coverage of topics on the exam. I will use the syllabus and chart of assignments as a checklist. I will endeavor to include, in some way, every topic that was substantially explored in class.

Breadth and depth of coverage: Any material presented in class or in the readings is potentially fair game for the exam. But, in keeping with the Correspondence Principle, the emphasis given to topics will correspond to how much attention they received in class and in the readings. So, as an example, if some doctrinal point came up only in passing in the reading and wasn't discussed in class, then you can be sure that such a doctrinal point will not loom large on the exam. In fact, it won't even loom medium.

As for the multiple-choice portion, a general principle I follow in designing questions is try to make them answerable through application of key concepts and major points of doctrine – not memorization of obscure points.

As for the essay exam, it too is built to avoid testing you on obscure points. That being said, I cannot guarantee that no obscure point will find its way onto the essay exam. Why not? There is always the possibility that some clever

² Keep the Correspondence Principle in mind when using old exams to study: Old exams correspond to old semesters. So you might see an old exam and think, gee, this old exam seems to be heavy on topic X, and that seems out of whack with this semester, since we barely spent any time on topic X. That is a consequence of my adjusting the course from semester to semester: Old exams will be, to varying degrees, out of whack with the current semester. Rest assured, however, that your exam will correspond to this semester.

student will make a brilliant point regarding some tiny point of law, even if I never intentionally meant to include it. Such a possibility is a natural consequence of having an open-ended essay response. Obviously, I can't hold it against the clever student who sees something I didn't, and in such a situation I will happily award an extra point or two, although not a windfall.

That brings up a related point: As a matter of strategy on the essay exam, I strongly counsel you to stick to the straightforward aspects and do a good job on those rather than looking for obscure opportunities to make quirky, eccentric points. There should be more than enough straightforward material to engage you. I don't build exams with sneakiness in mind. Put differently, when approaching the essay booklet's hypothetical facts, I would advise you to read carefully but not suspiciously. My experience in reading students' exam essays is that when students try to look for hidden opportunities for points they usually end up going off in unproductive directions.

So, the bottom line is, the more you know, the better, but do not obsess about trying to commit to memory all the finer points. Prioritize your studying based on what I explain next.

The Focus List – what I will draw from in writing the exam: When I sit down to write the exam, in order to obey the Correspondence Principle, I will look for areas that were emphasized during our semester. To accomplish that, I will make particular reference to the following, which we can call the "Focus List." This is where you should concentrate your studies:

- doctrine that was the subject of a case we read
- doctrine that was the subject of sustained attention in class
- slideshows posted to the class website
 - problems and hypotheticals in those slideshows
- doctrine that is the subject of extensive coverage in the McJohn book
- doctrine needed to avoid pitfalls (listed in the appendix to this document)
- the mindmap

The main message is to not worry about small details. Instead, work on having a thorough understanding of the major concepts and the ones highlighted as having particular importance.

Kinds of questions (legal analysis, theory/policy, etc.): The exam is mostly about applying law to facts.

The essay portion of the exam will call only for you to provide legal analysis (e.g., to analyze the parties' legal positions, including possibly explaining how you would advise a client). There will not be a "theory" or

“policy” type question that, for example, calls for you to provide arguments for a change in the law or to analyze the law’s desirability.

On the multiple-choice portion, I expect the majority of questions to be of the standard type requiring you to apply facts to law. Beyond that, there might be a few questions of different types. You might see a question or so on theory in proportion to the time we spent on theory in the course. Bottom line, you should concentrate your preparations on cementing your conceptual understanding that will allow you to apply law to provided facts.

Jurisdictional coverage: You will not be tested on the law of any particular state, municipality, or circuit. Thus, you will not need jurisdiction-specific answers.

4. MULTIPLE CHOICE: TIME AND NUMBER OF QUESTIONS

I am designing the multiple-choice portion of the exam with the intent of giving you adequate time to read and analyze each question within the recommended span of 30 minutes for the multiple-choice portion. Put differently, I do not want time pressure to be a dominant factor. As I said, I’m aiming for 12 to 14 questions. At 30 minutes total, that’s 2.1 to 2.5 minutes per question. That’s more time than the bar, which provides an average of 1.8 minutes per question. So you should be able to get through them in 30 minutes. But in the event you do find yourself crunched for time, I strongly urge you to hurry to finish them off in the recommended 30 minutes and thus avoid taking away from the time you should be devoting to your essay response.

5. MULTIPLE CHOICE: FORMAT, SCORING, AND STUDY MATERIALS

If you haven’t already, please review §2 (“Parameters”), above, about the overall format of the exam and what is and is not allowed.

The questions on the multiple-choice portion of the exam will be similar in format to past multiple-choice exam questions that I have publicly released to my Exam Archive, which has all my publicly released multiple-choice questions.³ (Look for “AMALGAMATED INTELLECTUAL PROPERTY QUESTIONS.”⁴) Some of these we went over in class. So if you study released multiple-choice questions, your exam should look very familiar – except for the fact that the questions will be provided in the context of the Canvas webpage rather than a photocopied booklet.

(Note that the amalgamated released multiple-choice questions are not balanced in terms of subject matter so as to match the balance of subjects for any

³ http://ericejohnson.com/exam_archive/

⁴ There are some additional multiple-choice questions concerning patent law in a 2006 Patent Law practice exam, which can be found in the Exam Archive. But I don’t recommend using that document in studying. I have taken what would be useful from that document and folded it into the amalgamated questions.

particular semester, much less this current semester. In other words, you should not take the frequency of questions on particular subjects in the amalgamated multiple-choice questions to be a clue as to the frequency with which subjects will come up on the multiple-choice portion of your exam. Again, your exam will obey the Correspondence Principle.)

Each multiple-choice question for your exam will be worth one point. The exception would be if I end up throwing out a question because of error or irregularity. In such a case, the affected question would be worth no points.

There will be no penalty for incorrect answers. So if you don't know the answer to a question or are running out of time, you should guess.

6. MULTIPLE CHOICE: HOW TO TACKLE THE QUESTIONS; HOW DIFFICULT THEY MIGHT BE

I have written an entire memo on how to tackle multiple-choice questions. It's called *Tip Sheet on How to Take a Multiple-Choice Exam in Law School*.⁵ If you haven't already, I strongly recommend that you read it as part of your studying. As I emphasize in that memo, I write multiple-choice questions with fairness as my chief goal. Thus, I seek to avoid tricky questions. Instead, I try to draft questions so that if you know the material I'm testing, finding the right answer should be straightforward.

That being said, note that "straightforward" does not mean "easy." The regular type of multiple-choice question I use, where you are expected to apply law to facts, is a kind of puzzle. You solve the puzzle by applying the law you've learned. You have to work through the question to eliminate wrong answers and figure out the right one based on the doctrine taught in the course. I wouldn't represent that task as being easy. And, indeed, if you could tell the answer right away just by glancing over the question, it wouldn't be very accurate to describe it as a kind of puzzle.

Here's another way to think about it: I've got a lot I keep in mind when I design multiple-choice questions – fairness, accuracy, straightforwardness, correspondence to coverage in the course. Easiness is just not something I worry about. Statistically speaking, what I care about with an individual question is getting a high point biserial (which can be thought of as a measure of fairness). I do not concern myself with having a question garner a high percentage of correct responses (which would be a measure of easiness).

Looking over past statistical results, it is clear that some of my questions end up being easy, and some end up being hard. Frankly, before running the test, I can't tell what will be easy and what will be difficult. Many questions that I thought before would be easy end up being answered correctly by only a small

⁵ You can find a link in the Exam Archive. Here's the direct URL: http://www.ericejohnson.com/docs/Tip_Sheet_on_Multiple-Choice_Questions.pdf

percentage of test takers. And I've had questions I thought would be decently difficult be answered correct by 100% of the class.

All in all, what I find in looking over past statistical results is that my multiple-choice exams often skew toward being fairly hard. In one recent class for which I looked up statistical information, a student with a median score⁶ on the multiple-choice section answered fewer than two-thirds of the multiple choice questions correctly. So that was a hard test. And if I used a grading system, as in high school, where a student had to get 83% correct to get a B, then that would be pretty frightening. But my grading system is much more forgiving. (See Syllabus §6 for a discussion of how I do grade.)

To the extent that a test is hard, that can be a very good thing for grading fairness. The fact is, you don't want a test that's super easy. Instead, you want a test where what you score is correlated to how much you know – in other words, a fair test. An exam that is super easy becomes dangerous: Happen to miss a question or two – perhaps because your mind is randomly drawing a blank on something – and then all of a sudden you are at the bottom of the class.⁷ A test that is decently difficult ends up being forgiving of random little mental blocks and minor slip-ups.

What all this means is that when you work through the multiple-choice, do not get despondent if you feel like you are missing a lot of questions. You might be doing well. Maybe very well. Just keep moving forward, staying on pace, working through the questions to straightforwardly apply what you have learned in the course.

7. ESSAY: HOW THE ESSAY WILL BE GRADED; WHAT GETS POINTS

I have written an entire memo on what makes for a good essay response. It's called *Tip Sheet on How to Write a Law School Essay Exam*.⁸ If you haven't

⁶ Median means right in the middle of the class – with half of test-takers scoring higher and half scoring lower.

⁷ To take an extreme example, imagine a hypothetically very easy exam: It has just two questions, worth one point each, and each question is easy enough that 90% of test-takers will get it correct. Further assume there's a lack of correlation between test-takers' correct answers on the two questions. We have a very easy test – but a dangerous one. If you happen to miss just one question, perhaps because of nerves or because you didn't happen to go over that particular topic the night before the exam, then you are in the bottom 10% of the class. If you happen to miss two questions, then you are in the bottom 1%. A really easy test is like being required to maintain your balance while walking on a five-inch-wide beam suspended over a 100-foot drop with no handrails. Most people will get across just fine. But if you stumble at all, it's catastrophic.

⁸ You can find a link in the Exam Archive. Here's the direct URL:

http://www.ericejohnson.com/docs/Tip_Sheet_on_Exam_Writing.pdf

already, you should scrutinize it: It tells you exactly how to maximize your grade by providing solid legal analysis. (Also, note that if you read it in a past semester for a previous class of, I updated it in Fall 2020 with additional advice.) Another document I've written to help you understand what makes for a good essay response is *Three Examples of Exam Writing*.⁹ I strongly recommend reading that as well.

The most important thing for you to understand is that you must do legal analysis to get points for the essay. As mentioned above, your goal in taking the exam is to show your mastery of the material presented in the course and your skills in analyzing legal problems involving the course's subject matter. The way you do this on the essay is by providing legal analysis. Legal analysis is the application of the law you've learned to the hypothetical facts provided in the exam. Legal analysis (including the conclusions of your analysis and the reasoning therefor) is thus the necessary and the exclusive requirement for success.

Said more concisely: Legal analysis is what gets you points – period. And legal analysis necessarily involves a productive mixing of law and facts to create conclusions.

Be aware that I cannot give you credit merely for reciting relevant hypothetical facts from the exam. The recitation of facts from the exam is not legal analysis, and it's not probative of your mastery of the material. Consider that the facts of the exam can be copied out of your essay booklet – thus providing them to me in your essay response does not help me know how well you have mastered the material.

Similarly, be aware that I cannot give you credit for making correct statements of relevant legal doctrine. The recitation of legal doctrine is not legal analysis, and it's not probative of your understanding. Consider that this is an open-book/open-note exam, and thus rules of law can simply be copied out of your outline or book. This necessarily means that the occurrence of correct statements of legal doctrine in your essay response is not probative of your understanding.¹⁰

8. ESSAY: FORMAT AND STUDY MATERIALS

If you haven't already, please review §2 ("Parameters"), above, about the overall format of the exam and what is and is not allowed.

Notwithstanding differences in hypothetical facts, exam length, topic coverage, and call-of-the-question structure, your Part II will be similar to essay

⁹ You can find a link in the Exam Archive. Here's the direct URL:

http://www.ericejohnson.com/docs/Three_Examples_of_Exam_Writing.pdf

¹⁰ I can concede that on a closed-book/closed-note exam, regurgitating correct statements of legal doctrine could at least be probative of your successful memorization of various material. But this isn't a closed-book/closed-note exam.

exams I've given in past years. Because of that, I very much recommend doing my old IP essay exams in the Exam Archive as practice.

It is difficult to overstate how strongly recommend using old, archived exams for practice. Don't worry about the time limits on old exams being different from yours. They are all good practice.

The kind of fact patterns I tend to write: I try to make my exams interesting and engaging. They often have pictures, images, sidebars, and the like. In comparison to other law-school exams, you may find that my exams have more narrative, plot, character, and backstory. As a practicing lawyer, I found that real-life cases are heavy on drama and narrative detail. So I have strived to include the same in my exams. In my view, this gets the exam closer to the real-life practice of law. I also hope building exams this way makes them more engaging for their retirement years when they are used as study aids in the Exam Archive.

A consequence of my writing exams as I do is that the exams end up containing factual details that, while useful for holding the story together, are not fulcrums for the legal analysis. So, for instance, sometimes photos or graphics offer something useful to the legal analysis, but sometimes they are just decoration. A student once asked me, pointing to a sentence in one of my old exams, "I know that every single sentence in a law school exam is put in there for some reason, so why did you put this sentence in the exam? How does it change the analysis?" Well, my exams aren't like that. There will be various details that don't matter to the analysis. This is the way facts come to your desk in real life: Some are very significant, some are merely useful, others are irrelevant. I aim for my exams to be similar to real case-files in this sense.

Organization, separated questions, etc.: Organization is important. To help on that front, my habit is to instruct exam takers to organize their responses in a certain way, broken up into distinct questions and/or distinct subparts. By requiring all exam responses to adhere to the same format, I can grade all the exams in the same way, which helps me to be as fair as possible.

How much time or words to spend on different questions: My practice is not to separately weight the different questions or subparts. The entire essay response will be graded as one. So answer all portions completely, spending relative amounts of time on the various questions and/or subparts as you judge to be appropriate.

The reason I don't separately weight portions of the essay is that in my experience it invites arbitrariness into the scoring. Why? Well, an essay exam is open-ended, and there's no one single ideal way to write a response. But if I assign weights to different portions of the analysis in advance, then I necessarily am adopting one projected way of answering as the mold by which all responses will be judged. Thus, the results end up being arbitrary – judged against the mold rather than taken on their own merits. In other words, separately weighting questions inevitably involves my advance projection about how much

point-worthy analysis there is to provide about a given aspect of the analysis—and if my advance estimate doesn't line up with how some or most students happens to answer, then the scoring wends toward arbitrariness. So, I realize it can be frustrating to not be given weights or suggested times on individual questions, but in the end I'm convinced that exam scoring is fairer when I let students find points where they may.

An exception to this is if I tell you that something can be answered with great brevity. If that's the case, then heed that instruction and keep that part of your answer brief. Or if I ask for a question to be answered in "a sentence or two," then limit your answer accordingly. I might do this for a topic that we spent little time on in class and that I don't want to allow to become too big a part of the exam. Going beyond what I've asked for won't contribute to your grade. That leads to my next piece of advice ...

Be aware of the call of the question: Besides keeping things organized and making responses among different students more comparable, the other reason I ask particular questions or divide the question into subparts is to keep you focused on giving me the analysis I'm hoping to get—with an eye toward balanced exam coverage that corresponds to course coverage (see the discussion of the Correspondence Principle, above). So make sure to read the calls of the questions carefully! For instance, I might instruct you to make sure you address some particular issue or aspect. Or I might instruct you to omit discussion of something (such as remedies, alternative theories of protection under a different form of IP, etc.) Similarly, I might instruct you to assume something to be true (such as the patentability of an invention).

Anytime I provide such instructions in the call of the question, be sure to heed them. I won't take away points for your correct analysis of something I didn't ask for or something I said not to discuss. But I cannot and will not give credit for analysis that is not called for by the question. And going off into excluded subject matter will necessarily squander your time, lessening your capacity for doing the analysis I've asked you to do. In the past, I have observed that a number of students would likely have done a bit better if they had just been more careful in heeding the call of the question. I know that exam-taking can cause anxiety and that students inevitably feel rushed. I understand that makes it hard to focus on things like the call of the question. But it would not be fair for me to give one student points for talking about something that other students didn't discuss because they were following my specific instructions. So force yourself to pay attention to the question and my instructions about how to answer it.

9. ESSAY: ABOUT THE LENGTH AND STYLE OF YOUR RESPONSE

There will be no word limit, but concision is admirable. Be plain and direct. Of course, you should aim for being complete in your analysis. But steer away from writing that is periphrastic or verbose. Put differently, value substance over word count. My observation is that the number of words in an essay does not

correspond well to the grade it earns. I've never analyzed that numerically with a spreadsheet, but that's my sense based on years of experience as a grader. To be sure, people can have analysis that is too truncated in terms of substance and lose points that way. But I commonly see people being needlessly wordy in their responses, and that seems sometimes to correspond with people not getting through the whole essay or not thinking as carefully as they should about the substance. Thus, I urge you to use your time to work carefully and thoroughly rather than trying to throw as many words onto paper as possible. Bottom line, I strongly believe you'll do better if you concentrate on quality rather than quantity.

In a similar vein, don't worry about stylistic aspects of writing. Write functionally. I have noticed sometimes people lose effectiveness in their writing because they are aiming for aesthetics. Don't do that! For instance, it is a bad idea to open up a thesaurus and start looking for synonyms of "because." The word "because" is like that ideal pair of jeans that can be worn to the office, to the game, on a date, and while doing yard work. It's never *not* appropriate. Sometimes, because of sentence structure, a "therefore" works better. That's good too. But don't purposefully aim for variety. As you may know, I also teach Torts. Doing exam reviews for that class, I've spoken with students who omitted legal/doctrinal words and phrases (like "actual causation," "foreseeability," or "reasonable person") because they felt like their writing was getting repetitive and boring using the same words and phrases over and over again. Yikes! That is not a good strategy! Use the legal/doctrinal words and phrases as many times as is appropriate for the substance of what you are talking about. Your goal as a test-taker is not to entertain me. It's to show me that you know the law and that you know how to apply the law to a novel set of facts.

10. ISSUES WITH TEXT: REPEATING, WRITING, TYPING, ETC.

Here are some specific pieces of advice for your writing.

Repetition: Be complete, but avoid redundancy in the substance of what you are saying. Specifically, do not repeat the exact same analysis with substituted parties. I will not give double the points for the same content that appears twice. (Along these lines, you should probably avoid the copy-and-paste function.)

Instead of repeating yourself, to the extent called for, you may incorporate analysis by reference to another portion of your answer. For example, it may be appropriate to say something like, "The analysis with regard to Party B is the same as that for Party A, except that _____."

Spelling, grammar, etc: There are no points to be won or lost for spelling, grammar, or stylistic aspects of writing, so long as I can understand what you are saying. If grammar or spelling issues render text ambiguous, then it's a problem. But not otherwise. Substantive content is what matters.

Abbreviations: I may include in the exam a table of pre-defined abbreviations for you to use in your response, if you like. You'll find examples among my more recent exams in the Exam Archive. Feel free to use other reasonable abbreviations as well; although if they are not completely obvious, you should define them the first time you use them.

11. OVERALL THOUGHTS ON STUDYING; YOUR STUDY PLAN

Documents on exam technique: The most important thing in studying is to prepare for what you need to do on exam day. That means first of all to know what you are doing in terms of exam-taking technique. For that, use the documents I've provided (which I've already referenced above): *Tip Sheet on How to Write a Law School Essay Exam*, *Three Examples of Exam Writing*, and *How to Take a Multiple-Choice Exam in Law School* (links on the class webpage, in the Exam Archive, and above). Then, when studying the content, concentrate on the Focus List (in §4, above). And throughout your preparations, you should bring exam-writing technique and substantive knowledge together by working through old exams from the Exam Archive.¹¹ I particularly recommend Trading your responses with classmates: That is an extremely effective way to find your weaknesses and strengths, and reading various student responses can allow you to start to develop something of a graders' perspective.

And, of course, do old multiple-choice questions.

Wypadkis: I have made available for you all the wypadkis – class-wide group outlines – from prior semesters. There are links on the class webpage. You should feel free to use them as you see fit. You can use them as is, use them as the basis for your own outline, use them to fill in holes in your outline, or you can just ignore them.

The benefits of a “menu outline”: I strongly recommend that you prepare a miniaturized outline of the course to serve as a quick-reference sheet for issue spotting on the essay portion. What I'm recommending is a very simplified list of what we learned during the semester. It's not an outline that explains anything, just an outline that reminds you of what we covered. I tend to call this a “menu outline,” but if you like videogame analogies, you can think of this as a “weapons inventory.” The point is, it's a list of the doctrines, tests, and so forth that you can bring to bear on the hypothetical facts for the purpose of producing a thorough analysis. I keenly encourage you to use one page only for this. I emphasize this because, for an open-book exam, many students work to accumulate a huge volume of materials they can reference during the exam. You need to decide what's right for you, of course, but I tend to think this kind of accumulation provides a false sense of security. At any rate, the larger the volume of materials you have, the more important it will be to have an ultra-concise one-page outline to use as a ready reference.

¹¹ Again, that's http://www.ericejohnson.com/exam_archive.html.

Don't wait to do old exams: As I have said a number of times, I believe the best use of study time is doing old exams. If you don't yet have a completed outline and you haven't yet reviewed all the course material, consider letting those wait just a bit and getting your feet wet with an old exam as an active learning exercise. You might spend just an hour or less looking over the topics from the semester and then dive into an old exam. You can time yourself and try to make it a realistic simulation of the final. Or you might try doing an old exam without timing yourself, just using it as a way to get your mind engaged in the task of analyzing facts using the law you've soaked up over the semester. Or try doing all of these things using different old exams available in the Exam Archive. I think doing an old exam early on in your studying will help you stay focused on what matters once you turn to other modes of studying (reviewing, outlining, etc.). Then keep taking breaks to do more old exams. (And also, of course, take breaks just to relax – you want to stay feeling healthy and fit.)

12. FEEDBACK ON PRACTICE EXAM ESSAY RESPONSES AND MULTIPLE-CHOICE QUESTIONS

I am happy to do essay review or multiple-choice-question review in-person in the context of an office visit. But I do not this over e-mail.

If you would like me to look over a practice exam essay response you have done, please have it ready when you come to office hours, and then you can e-mail it to me so I can look over it while meeting with you. I am also happy to discuss, in the context of an office visit, your answers to released multiple-choice questions, including why the correct choice is the correct choice, etc.

13. FINAL THOUGHTS

Don't get too anxious. You probably know far more than you think you do at this point. So try to stay relaxed. Study the big concepts, pay attention to the focus list (§ 4, above), remember the tips on exam-taking technique, and get a good night's rest. I wish you the best of luck!

APPENDIX: IP PITFALLS

The following are "pitfall" areas – that is, aspects of the law that, if misunderstood or neglected, can result in a surprising loss or substantial liability. Because of the potential treacherousness of these areas in practice, I am especially keen that you learn them well and know them for the exam:

- Copyright:
 - Understand that the author is the initial owner of a copyright – not necessarily the person who commissioned or paid for the work.
 - Be able to determine whether a hirer will be deemed the author of a work under work-made-for-hire doctrine.
 - Understand that co-owners of a copyright can independently

- grant a non-exclusive license and their default obligation to one another is only for an accounting (i.e., sharing of profits, if any).
 - Understand that transfer (assignment or exclusive license) requires a writing signed by the transferor.
 - Recognize that there are limited opportunities to terminate transfers, allowing the copyright to revert to the author or author's heirs.
 - Understand that existing derivative works can continue to be utilized after termination.
 - Be aware that many foreign works first published with authorization before 1923 had copyrights restored by Congress and that this was upheld as constitutional.
- Patent:
 - Understand that waiting too long to apply for a patent can result in the loss of prospective patent rights
 - Be sure to be able to apply 35 U.S.C. §102(a) & (b) under current law (i.e., the 2012 AIA version).
 - Recognize that enablement problems in a patent application cannot be cured without loss of the original filing date.
 - Understand that co-owners of a patent can independently grant a non-exclusive license and that patent law gives them no obligation to one another to share any profits.
- Trade secret:
 - Understand that trade secret protection is fundamentally incompatible with patent protection, since trade secrets must remain secret, and patents must be published.
 - Understand that trade secret protection is lost when the trade secret stops being secret – whether or not as a result of the fault of the trade secret's owner.
 - Understand that trade secret protection is lost when the owner does not take sufficient measures to maintain secrecy.
- Trademark:
 - Understand that a trademark's ownership is established by use in commerce, not by being the "author" of the mark.
 - Understand that two persons cannot be independent co-owners of a trademark (same mark in the same market), as that would mean the mark is not associated with a single commercial source.
 - Understand that a trademark need not be registered to be the basis of liability.
 - Understand the advantages of federal registration of a mark, including preventing future junior users from establishing rights.
 - Corollarily, understand the disadvantages of foregoing federal registration, including the possible loss of rights to a more junior

user who registers.

- Understand that trademark protection is destroyed by naked licensing, assignment-in-gross, and abandonment.
- Understand that a mark can become generic, and if it does, this destroys trademark protection.