

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW  
Intellectual Property Survey  
Fall 2020  
Prof. Eric E. Johnson

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**FINAL EXAMINATION**

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**GENERAL INSTRUCTIONS:**

1. You can print out the PDF exam booklet and mark on it as a means of helping you analyze the questions and hypothetical facts.
2. Sharing this exam or any portion thereof is prohibited.
3. After the exam: Communicate nothing about the exam, including even vague impressions or characterizations, to any member of the class who has not yet taken it.
4. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. This is what you will be graded on.
5. Unless otherwise provided, base your legal analysis on the federal law, the general common law and typical state statutory law in the United States, including all rules, procedures, and cases from the course, plus any hypothetical laws presented in the facts.
6. Assume today's date is December 16, 2020.
7. Unless otherwise specified, all facts take place in the United States. All references to registrations are to U.S. registrations, all references to patents are to U.S. patents, and so forth – unless specified otherwise.
8. All references to patents are to utility patents unless otherwise specified. All references to patent applications are to regular, non-provisional patent applications.
9. Some specifics regarding multiple choice questions (1/6 of the exam grade):
  - a. I strongly recommend you limit yourself to 30 minutes to ensure you leave adequate time for the essay portion.
  - b. You must answer the questions within the Canvas webpage to receive credit.
  - c. There are 12 questions. Each question 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.
  - d. 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.
10. Some specifics regarding the essay (5/6 of the exam grade):
  - a. Organization counts. Read all questions before answering any of them – that way you can be sure to put all of your material in the right places.
  - b. Within the confines of the questions you are asked, note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
  - c. Clarity counts. Clearly label each question separately in your answer. Be aware that 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. Feel free to use abbreviations, but only if the meaning is entirely clear.
  - d. Important: **Limit your discussion to the questions posed.** Leave out parties and causes of action not embraced by any question. Also: **Please do not repeat**

the exact same analysis when discussing a different aspect of something. Instead, if analysis of an issue is similar to but not exactly the same as what you have written previously, then I encourage you to refer to your prior analysis and go on to discuss any differences.

- e. **Note that the questions are not separately weighted; instead, they will be lumped together for assessment.** So divide your time among the questions according to what requires the most discussion and analysis. Plan ahead to put information where it belongs. And correspondingly: **Do not expect that each question calls for an equal share of your time or words. Consider that any given question might be appropriately answered with substantial brevity or might require in-depth treatment.**

11. The bulk of the instructions for this exam are those previously disclosed in Section 2 (“Parameters”) of the Exam Prospectus. For convenience and emphasis, I include that text below. Certain portions of the text where I disclosed what I *planned* to do, are omitted and replaced with \*\*\*\*\*, as that material is now superseded by instructions above. Note that in H.(vi), where the instructions state “You are prohibited from communicating ... ” during the exam period, the prohibitions regarding “communicating” include the one-way reception of information transmitted during the exam period and include the one-way transmission of information during the exam-period.

### [BEGINNING OF REPRINTED MATERIAL FROM EXAM PROSPECTUS §2:]

**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 \*\*\*\* multiple-choice questions. I strongly recommended that you complete Part I first and that you spend no more than 30 minutes on it. \*\*\*\*\*

**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 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.**<sup>1</sup> (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

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<sup>1</sup> The direct URL is:

[http://ericejohnson.com/docs/Essay\\_exam\\_response\\_template.docx](http://ericejohnson.com/docs/Essay_exam_response_template.docx)

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.

#### **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](http://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.

**[END OF REPRINTED MATERIAL FROM  
EXAM PROSPECTUS §2]**