

Dated: November 24, 2018

Memorandum to Students

Exam Prospectus

Torts

Fall 2019

University of Oklahoma College of Law
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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 2019 Torts 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 (SECTION 10 OF THE SYLLABUS)

Section 10 of the syllabus describes the exam in considerable detail, including how it will be structured and administered. You should review it carefully. For your convenience, I reprint §10 in its entirety here.

10. EXAMINATION:

10-1. General Points:

(a) **Ex Parte Communications:** I will not discuss the exam on an *ex parte* basis. (See §7-2, *supra*.)

(b) **Anonymity:** 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 a deduction from your exam grade and a referral for disciplinary action.

(c) **Obeying Exam Requirements and Instructions:** A failure to follow exam requirements or instructions is an academic misconduct issue, and violations will be treated as such, even if inadvertent. (See §6-6, *supra*.)

10-2. Decorum: During the administration of the exam, you must refrain from conduct which could reasonably be distracting to the students sharing the room with you, including by generating noise and smells.

Exams are stressful. But keep in mind that things you might hope will be useful in lowering your stress might actually intensify the stress of others. One recurrent problem in this regard has been food and beverage use during exams. You will be allowed to have food and drink with you during the exam only under the following conditions:

- Drinks must be open and drinkable before the exam starts. No popping cans or opening soda bottles during the examination period.
- Food and beverages cannot smell. Nothing creating an odor stronger than a cup of unflavored coffee is permitted. So, to be crystal clear, no sandwiches, condiments, salads, etc.
- Food cannot be noisy. No chips, carrots, or granola. In addition, food in wrappers must be unwrapped before the exam begins. For example, if you bring a package of M&Ms into the examination, the candy should be removed from the wrapper and poured onto a paper towel before the exam starts.
- Chew with your mouth closed.
- Do not allow examination materials to be contaminated with food. (This, regrettably, has been a problem in the past).

In addition:

- Don't wear perfume or cologne.
- No essential oils. No candles, potpourri sachets, or anything that is infused with scents.

Be aware that I may issue further specific instructions in this regard at some point later on.

10-3. The examination will be administered in two parts.

(a) **Part I: Multiple Choice Questions**

(1) Part I of the exam, worth one half of the total exam grade, will consist of multiple-choice questions. The questions will include, but may not be limited to, bar-exam-style hypotheticals testing the application of law to facts. There may also be

questions that test literacy of pure law (e.g., legal doctrines and statutes) and understanding of relevant concepts of legal theory and scholarship.

(2) Part I of the exam will embrace subject matter across the entire course.

(3) Part I will be administered on a “closed-book” basis. That is, for Part I, you may not use or reference any materials at all, other than pencils, the answer sheet, and the examination booklet.

(4) Part I will be two hours (2 hours) in duration.

(5) I anticipate that Part I will consist of approximately 50 or so questions.

(6) All multiple-choice questions are written by me. I do not use questions on the exam that have been previously publicly released.

(7) At least some of the multiple-choice questions may be questions that have been used by me in a previous semester, but which have remained unreleased.

(8) A word about the re-use of multiple-choice questions: Re-use of multiple-choice questions is standard in higher education, and the practice permits better exam quality and better calibration of the results. This is not trivial: The statistical data that results from a multiple-choice test administration is quite rich, suggesting which questions are valid and probative, and which should be revised or thrown out. Using this data and reusing questions in a careful way helps me improve multiple-choice tests from year to year. That makes exams more fair – and fairness is my ultimate aim in designing examinations. There is, of course, a downside to reusing questions, which is the possibility that some questions may be leaked to some students. I take appropriate steps to prevent the dissemination of unreleased questions. But bear in mind that the security of multiple-choice questions is not just a matter of faculty and staff responsibility; it is a matter of student responsibility as well. If you are aware that detailed information about or copies of unreleased questions are circulating, please let me know. Informing me will allow me to (1) refrain from using the compromised questions on the exam, and (2) release those questions to the public exam archive so that everyone can study from them.

(9) Be aware that the use of unreleased exam materials – whether photocopied, roughly transcribed, or otherwise – as part of your preparation for the exam constitutes academic misconduct/dishonesty. Moreover, reproducing or trafficking in unreleased questions is civilly actionable. Be aware that I may employ statistical analytical techniques to look for patterns that indicate cheating in this regard.

(10) If you find, receive, or are offered unreleased questions, be responsible and act promptly to ameliorate academic unfairness by letting me know; I will pursue no action against you in this regard if you make timely notice to me, which may be made anonymously, specifically identifying the materials, preferably by submission of a copy. The notice is timely if (i) it is near the beginning of the semester, (ii) it is reasonably soon after you come into possession of the materials and there is enough time to prevent such questions from being used on the exam and to

release them to the class for their meaningful use in studying, or (iii) it is immediately upon coming into possession of the materials.

(11) Also be aware that a crucial part of exam security is the numbering of exam booklets and the marking of booklets with students' exam identification numbers. I anticipate that booklets will be clearly marked with a space for you to write your exam identification number. Do not omit to do what you are asked in this regard, and do not omit to turn the exam booklet back in. You can expect that an omission in this regard, even an innocent one, will be catastrophic for your grade, causing you to receive a failing grade for the course.

(b) **Part II: Essay Response**

(1) Part II of the exam, worth one-half of the total exam grade, will require a written response. This part of the exam will consist of one or more open-ended questions calling for a written essay response to a hypothetical fact pattern.

(2) Be aware that Part II of the exam likely will involve only some of the topics covered during the semester. But you can expect that in combination with Part I, the exam will provide comprehensive coverage of topics across the entire course. I may have more to say about coverage later.

(3) Part II will be administered on an open-book basis.

You may bring with you any paper-based notes and books you like.

But no electronic, digital, or interactive resources may be used or referenced, with a few exceptions:

These are devices you may have and use:

(A) the device you are using to type your response (e.g., a laptop running appropriate exam software in accordance with applicable policies),

(B) a watch with no other functions than timekeeping.

The following are some specifics in answer to questions I've gotten in the past about the open-book nature of the essay portion:

(i) Binders holding paper sheets and tabs in paper sheets are fine. For instance, if your outline is in a binder, that's fine.

(ii) No phones.

(iii) No smart watches or other watches with functions other than timekeeping. Nothing that looks like a smart watch.

(iv) A digital watch that has an alarm function and a stop watch in addition to providing the time of day is permitted. But under no circumstances may your watch beep or emit noise.

(v) No accessing the internet, e-mail, text messaging, the world wide web, etc.

(vi) If you want to access a textbook or dictionary, you'll need to have it on paper. You cannot, for instance, access an e-book using an iPad or other tablet.

(vii) With regard to a computing device you use to type your exam, you may not venture outside the confines of the exam software to access files, etc.

(4) The total duration of Part II will be two hours (2 hours), divided up as follows: (1) a Reading-Outlining Period ("RO Period") of 30 minutes, and (2) an Exam-Writing Period ("EW Period") of 90 minutes.

(5) You may use the RO Period to read the exam booklet (that is, the facts and the question or questions), to take notes, to reference your outlines or books, and to outline your response on scratch paper. During the RO Period you may not begin recording the response upon which you will be graded. That is, if you are taking the exam on computer, you may not type any characters at all into the exam response file on your computer during the RO Period; and if you are taking the exam by handwriting, you may not make any mark in a blue book (that is, an exam-response booklet, which in some places is sometimes labeled a "green book") during the RO Period.

(6) During the EW Period you are permitted to write your response. For the avoidance of doubt, it is acknowledged that during the EW Period you may also continue to do what was allowed during the RO Period (e.g., to refer back to the exam booklet, reference your notes and books, etc.), including notes you created during the RO Period.

(7) Being able to write in a concise, focused, and organized manner is extremely important for the practice of lawyering, and it is important for the bar exam as well. Thus, I encourage concision, focus, and organization in your written response, and I will look upon it favorably when grading.

(8) I anticipate that you will have the choice of typing or handwriting your response to Part II. The typing of exams will be in accordance with any applicable policy for the use of digital devices to write exams.

10-4. Toward the end of the semester, I may release an exam prospectus that provides additional information about the exam and how I recommend preparing.

10-5. Materials set aside in my Exam Archive should be quite useful to you in studying for your exam. The Exam Archive is publicly accessible online. There is a link on ericejohnson.com, or you can use the direct URL: http://ericejohnson.com/exam_archive/.

3. MAKE SURE YOU PUT YOUR EXAM ID NUMBER ON THE EXAM QUESTION BOOKLETS

It is crucial that you write your exam identification number in the space provided on cover page of the question booklet and that you turn the booklet

back in at the end of the exam period. This goes for the multiple-choice-question booklet for Part I and the issue-spotter/essay-question booklet for Part II. And it is particularly crucial for Part I. See Syllabus § 10-2(a)(10). As I provided in the syllabus, “An omission in this regard, even an innocent one, will be catastrophic for your grade, likely resulting in a failing grade.” Please don’t forget.

4. 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.¹ By the same token, if something was mentioned in passing in the reading but 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 expect to include, in some way, every topic that was substantially explored in class. Note, however, that I will not be trying to put every topic into Part II, the essay portion. The essay portion of the exam will most definitely not be comprehensive in itself. See Syllabus § 10-3(b)(2). When the multiple-choice portion and the essay portion are put together, however, they will provide a comprehensive exam on the material of the course.

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, if some doctrinal point came up only in one smallish note appended to a case, 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 student will make a brilliant point regarding some tiny point of law, even

¹ Keep the Correspondence Principle in mind when using old exams to study: Old exams correspond to old iterations of the course. 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 never even covered topic X.* Prior instances of my Torts courses are different from this semester. Rest assured, however, that your exam will correspond to this semester.

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. Put differently, when approaching the essay booklet's hypothetical facts, I would advise you to read carefully but not suspiciously. My experience in reading exams 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 emphasized in the casebook's explanatory text²
- doctrine that was the subject of extended discussion in a case we read
- problems from the casebook that we went over in class
- material and hypotheticals from slideshows posted to the class website
- the mindmap, particularly where it overlaps with the casebook

The main message is not to worry about small details. Instead, work on having a thorough understanding of the major concepts.

Note that I plan to use the problems from the book that we went over in class and the examples and problems from posted slides as inspiration in designing the hypothetical facts for the exam, but I will not re-use them. This means that some fictional events appearing in the exam may be loosely similar to, but not the same as, the facts from problems and examples. To put it another way, the problems and examples will give you a good idea of kinds of things you might find on the exam, but they would not represent an opportunity to draft portions of your essay exam answer ahead of time.

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

² By "explanatory text," I mean the part of the casebook that explains the law – the part I wrote myself. That is as opposed to the "readings" – the cases and other portions written by other authors.

answers. Exam facts might take place in a fictional state. In the past, I've used Arkassippi, Floribama, Nevizona, and Minnesconsin, to name a few. Other exams took place somewhere outside the United States – e.g., in Hong Kong, at sea, on the Moon – sometimes with the fictional constraint that analysis was needed too quickly to do jurisdiction-specific research. I use fictional states and other devices to avoid making any analysis dependent on jurisdiction-specific law rather than the general, multi-jurisdictional view of the law we learned in class.

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 analyze the law's desirability. Nor will there be any history question.

On the multiple-choice portion, the vast majority of questions will be of the standard type requiring you to apply facts to law. Beyond that, there might be a few questions of different types. You could see a question or so on theory in proportion to the time we spent on theory in the course – although in Fall 2019, we spent very little time on theory compared to other semesters I have taught in the recent past. And you might see a question or so that is simply about recall – for instance, about legal doctrine or a reading. As an example, sometimes in the past I have included a question where I had a quote from a reading and students were asked to recall something about it, such as where the reading came from. It's possible I might do that again. But such recall questions, if they are included at all, will be very infrequent. And often when I have included such questions, I have designed them so that a conceptual understanding – one that goes beyond pure recall – will aid in guiding a student to the right answer. So, bottom line, you should concentrate your preparations on cementing your conceptual understanding that will allow you to apply law to provided facts.

5. MULTIPLE CHOICE: ABOUT THE 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. I do not want time pressure to be a dominant factor. In this regard, I am informed by feedback I have gotten on past multiple-choice exams, and I endeavor to have things calibrated so that students will have the time they need to get through everything in a careful, thoughtful way.

For Fall 2019, you will have 2 hours (120 minutes) for approximately 50 questions, which means about 2.4 minutes per question. Note that this is considerably more time per question than the multiple-choice portion of the bar exam, which provides an average of 1.8 minutes per question.

In further pursuit of keeping time pressure from figuring too greatly, I intend to keep the total word volume in check. Some questions may be long, taking up a full page for instance, but I will work to balance such questions with shorter ones.

All that being said, the time you will have to answer multiple-choice questions is not unlimited. You should pace yourself.

I may include a chart to help you with pacing, such as this:

Pacing chart: To finish all questions and have 10 minutes left over, then:					
At this time since starting:	15 min	30 min	1 hour	1 hr 30 min	1 hr 50 min
Be done with question no.:	7	14	27	41	50

It is my strong wish that no one does poorly on the exam because of time-management problems. So please stay aware of the time, and keep yourself on track.

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

The multiple-choice portion of the exam will be similar in format to my past multiple-choice exams and to the practice exam. It will look very familiar.

Each multiple-choice 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.

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.

Look to my [Exam Archive](#)³ for all of my publicly released multiple-choice questions. It is very important to note that released multiple-choice questions are not balanced in terms of subject matter so as to match the balance of subjects for this or any other iteration of the Torts course. In other words, you should not take the frequency of questions on particular subjects in released questions to be a clue as to the frequency with which subjects will come up on the multiple-choice portion of your exam. The same goes for the practice test that I distributed to you this semester. Again, your exam will obey the Correspondence Principle.

7. 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 [How to Take a Multiple-Choice Exam in Law School](http://www.ericejohnson.com/docs/Tip_Sheet_on_Multiple-Choice_Questions.pdf) (http://www.ericejohnson.com/docs/Tip_Sheet_on_Multiple-Choice_Questions.pdf). There's a link on the class webpage and in the Exam Archive. 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

³ http://ericejohnson.com/exam_archive/

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 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 score⁴ 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. Truly speaking, 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.⁵ A test that is decently difficult ends up being forgiving of random little

⁴ Median means right in the middle of the class – with half of test-takers scoring higher and half scoring lower.

⁵ 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

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.

8. ESSAY: FORMAT AND STUDY MATERIALS

If you haven't already done so, please carefully review Syllabus § 10-3(b), which describes the format in depth.

Format basics: Your essay exam will be two hours. Specifically, we will use a 30/90 format, with a 30- minute period for reading and outlining (RO Period) and a 90-minute period for writing your response (EW Period).

About using archived exams for practice: I strongly recommend using old, archived exams for practice!

Two recent examples of two-hour exams are the practice exam [This Is How We Yodel People](#), which we went over in class, and the Fall 2018 exam, [Panic at the Telescope](#), which was posted to the Exam Archive in November 2019. Both of those are good models for the kinds of instructions you can expect to get for your exam.

A number of other exams in the Exam Archive are two hours. Others have longer or shorter time limits. Regardless, they all provide good practice opportunities.

In looking at old exams, note that prior to Fall 2018, I was at the University of North Dakota where Torts was a year-long sequence: Torts I and Torts II. The distribution of topics changed over the years between Torts I and Torts II, with the exception that Torts I always at least covered negligence. Together, Torts I and Torts II were five credit hours, although the breakdown varied – most recently it was three credit hours for Torts I and two credit hours for Torts II.

Also note that these days I use a multiple-choice section that is half of the whole final. In many previous years, the multiple choice section was a considerably smaller fraction. That means some of the old Torts essay exams are quite sprawling in terms of facts and very broad in terms of subject-matter coverage, ordinarily covering most of the material from the Torts I or Torts II course, as applicable. Your exam will be more focused in terms of subject matter than the broadest exams in the Exam Archive.

Notwithstanding some differences in exam length, topic coverage, and call-of-the-question structure, your Part II will be similar to essay exams I've given in

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 200-foot drop with no handrails. If you stumble at all, it's catastrophic.

past years and thus I very much recommend doing my old torts essay exams as practice – including those from both Torts I and Torts II courses.

The kind of fact patterns I tend to write: I try to make my exams interesting and engaging. 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. 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.

Use of images, charts, etc.: You will notice that my exams in the Exam Archive almost always have pictures, and sometimes other things like diagrams, sidebars, and the like. Sometimes photos or graphics have offered something useful to the legal analysis, but often they have just been decoration.

For the Fall 2019 exam, all substantive meaning for the exam will be expressed as non-image-based text. I suspect I will likely include one or more photos in the exam booklet, but to the extent any useful information is imparted by a photo, it will also be imparted by text, such as by a photo caption.

Be aware of the call of the question: In keeping with the fact that the essay portion is only two hours, I will be narrowing the ground for your answer and channeling your analysis to answer particular questions. So make sure to read the call of the question carefully. For instance, I might instruct you to omit discussion of a certain claim, or omit discussion of one or all affirmative defenses. Similarly, I might instruct you to make sure you address some particular issue or aspect. If I provide such instructions in the call of the question, be sure to heed them. I won’t take away points for your discussing something I said not to discuss. But I cannot and will not give credit for analysis I ask you to exclude. 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.

Organization, separated questions, etc.: Organization is important. To help on that front, I will likely prescribe that you organize your response in a certain way. I will likely require a response broken up into distinct questions, maybe different subparts. See the practice exam [This Is How We Yodel People](#) and Fall 2018 exam [Panic at the Telescope](#) for examples. 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. And as I've said, fairness is my paramount goal.

Note that the different questions and/or subparts will not be separately weighted. The entire essay response will be graded as one. So spend relative amounts of time on them as you judge to be appropriate.

9. ESSAY: THE 30-MINUTE READING/OUTLINING PERIOD

As already mentioned, the administration of the Part II essay portion will start with a 30 minute period for reading and outlining (the RO Period). During this period you will not be able to start typing on your computer or writing in your bluebook.

It is my hope that the RO Period will push you to read the facts and think through the analysis carefully and deeply, and that it will encourage you to not race ahead to put down in your response everything you can think of as fast as you can think of it. So, during the RO Period, you should read the facts carefully, scratch out an outline, and be alert for difficult bits that will require deft handling in the analysis.

Note that you would be within the rules to start writing your response on scratch paper during the RO period and then spend part of the EW period copying what you've written on scratch paper into the computer response file or into your bluebook – but this would be a terrible idea! Please take advantage of the RO Period to do careful and deep issue-spotting and analytical thinking. I am confident doing so will get you a much better result.

10. 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 it'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. Be functional in your writing. 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. Write functionally. 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.

11. ESSAY: ABOUT THE OPEN-BOOK NATURE OF THE ESSAY PORTION

I've heard of instructors allowing students to bring to the exam only the assigned textbook or only materials that the students, themselves, have authored. Let me be clear: There is no such requirement in this class. For Part II, you can bring in any material on paper that you wish.

Although there is no limit on the what paper materials you can bring with you, there is a possible danger in having too much paper. You don't want to be bogged down by looking stuff up and re-reading your notes instead of doing analysis. I personally think the most important thing you can have in terms of paper is a single sheet of paper to use as a "menu outline." (See what I say about this in the "OVERALL THOUGHTS ..." section, below.)

Note that non-paper materials are not permitted. That means no electronic or interactive resources. Thus:

- No smart phones.
- No smart watches. Do not wear a smart watch or anything that looks like a smart watch—even if you aren't interacting with it.
- Also, you cannot use a calculator (you wouldn't need one anyway).

You may of course use a computer running exam software to write your exam (and I recommend this), but you may not reference files stored thereon during the examination session. For the avoidance of doubt: You may use a tablet computer (e.g., iPad) to type your exam if it is running exam software and is being used in accordance with applicable policies.

12. 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, computer users 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.

Computer-typed exams: Don't worry unduly about typos. As long as I can understand what you are saying, you're fine. There's no premium on prettiness.

Handwritten exams: If you are handwriting, please write only on one side of the page in your bluebooks and use a blue or black pen. Skip lines. Finally, I cannot grade what I cannot read, so be sure that your handwriting is readily legible. (If you're on the fence about whether to type or handwrite, go with typing – it ensures that legibility won't be an issue.)

13. ESSAY: WHAT MAKES FOR A GOOD ESSAY RESPONSE

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](#).⁶ You should scrutinize it: It tells you exactly how to maximize your grade by providing solid legal analysis. Another document I've written to help you understand what makes for a good essay response is [Three Examples of Exam Writing](#).⁷ Both of these documents can be found via links on the class webpage and in the Exam Archive. I strongly recommend reading these documents as exam preparation.

Another resource you might take a look at is an exam writing exercise I did in class in Fall 2016: [Gerald v. Stephen, Exam Writing Exercise - In-Class](#).⁸ It contains multiple examples of exam writing for an intentional torts issue. There is also, of course, the exam writing exercise we did this year, Paavo v. Darielle. The class webpage has links to the written product from that exercise from Fall 2018, from Section 2 in Fall 2019, and from Section 4 in Fall 2019.

14. OVERALL THOUGHTS ON STUDYING; YOUR STUDY PLAN

⁶ http://www.ericejohnson.com/docs/Tip_Sheet_on_Exam_Writing.pdf

⁷ http://www.ericejohnson.com/docs/Three_Examples_of_Exam_Writing.pdf

⁸ http://ericejohnson.com/courses/torts_1617/m/Torts_I_exam_writing_exercise_in-class.pdf

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. 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's a link on the class webpage.⁹ 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.

Torts Lightning Review Audio: In Summer 2017, I made an audio recording and accompanying slideshow that I called a "lightning review." My main audience was rising 2Ls, rising 3Ls, and recent grads, and my aim was to "interrupt the forgetting process," thus bridging the gap between 1L year and the bar exam. The coverage will not be a perfect match for your course, and it may or may not be useful to you in studying. But I mention it in case you have a long car ride coming up and don't want to stop studying while you drive. You can find it here: <http://ericejohnson.com/audio/>.

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 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 you can choose from in order to bring them to bear on the hypothetical facts of the essay booklet 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 as they work. You need to decide what's right for you, of course. But I tend to think this kind of accumulation of paper 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.

⁹ The direct link is: http://ericejohnson.com/projects/torts_materials/#wypadkis

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. If you want to save for later the more recent exams, that's fine; pick up one of the older exams. Try doing it without timing yourself, and just use 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. I think that 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 to just relax a little to maintain your sanity.

15. 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 bring a typed, printed copy of your exam response when visiting during office hours. I will 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.

16. FINAL THOUGHTS

Don't get too anxious. The fact is, you know far more than you think you do. 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!