

Torts

University of Oklahoma College of Law
Fall 2021

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Section 1 (course/section 5144-600):
Section 4 (course/section 5144-603):
http://ericejohnson.com/courses/torts_21/

SYLLABUS ADDENDUM NO. 2

This addendum is hereby made part of the syllabus for Torts with Prof. Eric E. Johnson in Fall 2021 and amends and modifies it as provided. Where the terms of the original syllabus and this addendum conflict, this addendum controls.

X10. EXAM PARAMETERS:

X10-0A. Explanation:

With regard to the final exam, the original syllabus did not provide as much detail as I would have ideally liked to provide regarding the general exam. Thus, I am providing this new Section X10 to replace Section 10 in the syllabus. The new material below doesn't contradict anything in the original Section 10, but it does provide more detail, more advice, and more commitments on my part. Thus, you should consult this Section X10 in lieu of the original Section 10.

X10-0B. Possible Alteration of Exam Format in Case of New or Changed College/University Directives:

My commitment to the exam format described below (half multiple choice and half essay) is based on and premised upon the College of Law's approval of an in-person administration of the final exam. **If College or University directives require an exam administration that is not in-person for all students, then I reserve the right to change the exam so that it is as much as three-quarters essay and as little as one-quarter multiple-choice.**

X10-1. General Points:

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

(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 of the original syllabus.)

X10-2. Your Responsibility With Regard to Handling and Returning Exam Materials and Using Your Exam Identification Number: You bear the burden of properly, legibly, and correctly marking exam materials with your exam identification number. (Your examination identification number, of course, means your examination number for this semester – not one from a prior semester or summer term.) You must also obey instructions on the handling and non-mutilation of examination materials. Do not omit to do what you are asked in this regard. Any omissions, even if inadvertent, will be treated harshly, including resulting in a failing grade and a referral for discipline.

X10-3. 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. (Yes, there have been problems in the past.) Here's the thing: exams are stressful. But some of the things that some students hope will be useful in lowering their own stress can, unfortunately, intensify the stress of others. One recurrent problem in this regard has been food and beverage use during exams. Thus, 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, nuts, granola, etc. 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. (Yes – this has happened. ☹)

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.

X10-4. Commitments in How I Will Design the Exam and Key Advice to You in Studying

(a) **The Correspondence Principle:** The most important thing to me when I write an exam is to work hard to ensure that the emphasis on the exam will track the emphasis in class and in the materials, and the topics covered on the exam will be at least roughly proportional to the time spent on those topics in the course. I call this the Correspondence Principle, and I will do my best to obey this when putting the exam together. So, for example, if something was mentioned in passing in the reading but not a subject of attention in class, you can expect that it would not be more than a trifling part of the exam, if even that. Thus, when studying, I advise you to be balanced in your topic approach and to concentrate on understanding the bigger issues rather than memorizing minutiae.¹

(b) **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. 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.

(c) **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

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.

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 will be 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 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 important to the resolution of a case we read or was the subject of extended discussion in a reading
- problems from the casebook that we went over in class
- material and hypotheticals, problems, etc. from slideshows posted to the class website

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.

- the mindmap, particularly where it overlaps with the casebook

Indeed, when I draft exam hypos and questions, I frequently look back at the above sources to convince myself that what I'm testing is something that's fair to expect a good student to have learned. In fact, I often gain inspiration for an exam's hypothetical facts by looking at the problems from the book that we went over in class, the examples and problems from posted slides, and the facts of cases we read. But note that I don't re-use those problems or facts. 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.

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

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. Often, to emphasize this, I place exam facts 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.

X10-5. Format of the Exam

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. While you can expect most questions to be of the applying-law-to-facts type, it is possible that there might also be some questions that test literacy of pure law (e.g., legal doctrines and statutes) and questions that test understanding of relevant concepts of legal theory and scholarship.

(2) Part I of the exam will potentially 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) on or before December 1, (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.

(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 being used to type the 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 and date is permitted. But under no circumstances may your watch beep or emit noise.

(v) No accessing the internet, e-mail, text messaging, 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 the 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) The typing of exams will be in accordance with any applicable policy for the use of digital devices to write exams. I don't recommend that you handwrite your exam, but if you do, be aware that I cannot grade what I cannot read; a lack of ready legibility will negatively impact your grade.

X10-6. Exam Prospectus: Later on I may release a document called the "Exam Prospectus," posted to the class website, providing more detailed information about the exam and how I recommend preparing.

X10-7. Useful study materials: 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/. Note that some new materials have been posted since the beginning of the semester, and it's possible something more might be added – so you might want to check back.

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