

THE ACADEMIC ACHIEVEMENT PROGRAM

Seminar Series

STRATEGIES FOR TAKING LAW SCHOOL EXAMS...SO THEY DON'T TAKE YOU

I started the semester by telling you that the way to learn law is by struggling with it. No doubt you have spent plenty of time struggling to put together the pieces of each of your courses. After all that work, you may fear that you still do not know enough, and you'll do poorly on your exams as a result. Relax. The most common reason that students do not do as well as they had hoped on exams is generally **not** because they do not know enough law. Instead, it's because they do not present all that they know in the best possible way. The following tips will help you avoid making this mistake.

NOTE: To the extent that any of this advice is inconsistent with that given to you by your professor, you should know by now that your professor's way of thinking controls.

Preparing for Exams:

1. Once you have completed your outline, review your class notes again. Take a fresh look at them, and make sure you understand previously confusing points. Try to find new significance or meaning in something the professor said. Look for areas that the professor spent a lot of time on. Do not forget the material the professor went over in the last days of class. In general, professors test what they teach, so you want to be very familiar with what went on in class.
2. Review your professors' old exams, if available. Do practice questions on your own and review them as a group. You should also try a few under exam conditions (with time pressure) to get used to formulating responses quickly and efficiently.
3. Review the questions and problems that are tied to your readings in the casebook.
4. Do these things while keeping all of your exams in mind. That is, you should not simply study for the first exam up until the day of that exam. You must allocate time to study for ALL of your exams.
5. Do not spend the night before an exam cramming. You need to be well rested, because exams are physically draining. Get a good night's sleep, and make sure you get to school with enough time to get settled before the exam starts.

Taking an Exam – Before You Start to Write:

The first rule for doing well on an exam is resisting the temptation to start writing the minute you get the exam. You will see people around you doing this. Do not get nervous. The write-first-think-later people are not doing themselves any favors.

1. **Know the Rules.** Don't make silly mistakes and give away points because you failed to read the professor's instructions. When you get the exam, **carefully** read the instructions, and follow them exactly. If you have any questions about the instructions, ask.
2. **Understand the Playing Field.** Read through the exam to get a feel for the number of questions and the time and credit allocations for each one. Keep these in mind as you work through the exam, and force yourself to stick to the time limits.
3. **Read Every Question, Carefully, at Least Twice.** If you do not know where you are going, any road will get you there, but it won't get you points. Do not fool yourself into thinking that you do not have time to read the questions twice. What you do not have time for is constructing an answer that is flawed because you did not carefully read and understand the question.

Prepare a Quality Answer:

The key to preparing a quality answer is to actually **prepare** an answer, not shoot from the hip as you work through the question, writing as you go.

1. **Answer the Question that is Asked.** Many students get so excited that they are identifying issues and have something to say, they actually forget to really answer the question that is asked. For instance, some questions ask for you to analyze the possible claims that only the plaintiff could bring, some might ask for an objective analysis of all possible claims and defenses, and some questions might ask for you to take an advocacy role, and present one party's best arguments. The important thing is to have a clear understanding of what you are supposed to do with the question.
2. **Answer the Question that is Asked, Part II.** Resist what may be a very strong temptation to do the brain dump, and write about everything you have learned. Get comfortable with the idea that your exam will probably not test everything that you know about the course. It is not your responsibility to answer questions or address issues that are not there.
3. **Answer the Question that is Asked, Part III.** Do not change the question or reargue settled points. For example, if the question asks whether John can sue Pam for negligence, do not answer the question by arguing that trespass, and not negligence, is the claim that should be brought.
4. **If You are Stuck.** Relax. It will happen. You will read a question and not know where to start. What do you do? **Continue working the question, keeping in mind the topics you studied in the course.** If it's an open book exam, go through your checklist until you find something that plausibly could be related to the question. If it's a closed book exam, use your mental checklist and do the same thing. **Do not panic.** In addition, **DO NOT B.S.!!!** While the padded, B.S. answer might have gotten you points on your college exams, it will get you nothing in law school.
5. **Do Not Let the Question Take You Over.** The opposite of being stuck is getting overwhelmed. In a way, this is more dangerous, because it could cause you to produce a disorganized, half-baked response. Thus, the advice is the same as if you were stuck. **Do**

not panic. If you see numerous facts and issues that ring a bell, work systematically. Break the question down into pieces and address each issue, plugging in the key facts for each point.

6. **Think Sequentially.** When you are preparing an answer (remember, we are not writing yet) think through the issues in proper sequence. That is, do not address first whether the contract in question was breached, and then later address the issue of whether a contract does, in fact, exist.
7. **Think Smart.** When identifying issues to discuss, be sure to devote the most time and analysis to those issues that are really in dispute. While you should identify other issues to show the professor you see and understand them, you also need to demonstrate that you can prioritize. If an issue is there, but it is not really in dispute, do not devote substantial time and analysis to it.
8. **OUTLINE, OUTLINE, OUTLINE.** You've got the time to think through a clear-headed answer. You do not have time to go back and rewrite or try to fix a weak, wrong-headed answer that you came up with while frantically writing before you thought through the question. So, do not dive in and begin writing until you have taken at least a few minutes to outline your answer. This is not an exhaustive outline like you did when you were studying for the exam, but one that is done in shorthand, in a scrap bluebook, to help you think through what you are going to say, and put everything in its proper sequence. For instance:

Identify the issue -- Negligence

Put down a shorthand version of the rule – Duty, breach, caus., damages.

Put in key pieces of your analysis –

Duty: K had because of relationship to P
Can argue no duty because of -----

Breach – Yes because -----

Caus. – Yes because -----
Can argue no caus. because -----

Damages --- \$20,000 cost to repair

Short indication of your conclusion

Although possibly no duty or caus., probably negligence because -----.

Writing the Answer:

If you have taken the time to read through the question carefully, at least twice, and you have broken it down and prepared an outline of the answer, the writing part should be relatively easy. Far from writing in the frantic way that your write-first-think-later neighbors are, you will be calm and in control.

1. If possible, open your answer with a clear, confident road map. This should not be a two paragraph detailed explanation of every point you will make, but a succinct statement of your main point or points and conclusion on the issue. Show your professor right away that you know what you are doing.

2. **State the Issue.** If you have many issues to identify, you may want to make each one a heading, so that your answer is more organized and easier to read. For instance:

A. Karen v. Scott – Negligence

The first issue is whether Karen can sue Scott for negligence. Although there may be some difficulty showing a duty, Karen can likely state a claim.

To succeed, Karen must show that Scott had a duty to her, he breached his duty, the breach caused her harm, and that she suffered actual harm or damages.

Duty

Scott likely had a duty to Karen because

Breach

Scott likely breached his duty to Karen because . . .

3. **State the Rule Clearly and Concisely.** This sounds easy, but stating the rule on an exam can get pretty complex, especially if it is an open book exam. Some students make the mistake of throwing in every bit of commentary and every formulation they have of the rule, however duplicative, wasting time and cluttering up their analysis. When you study, practice formulating your rules in a succinct way, and resist the temptation to throw everything about it into your exam answer.

4. **State the Rule Clearly and Concisely, Part II.** On the opposite end of the spectrum are the students who gloss over the rule, hinting at it but never clearly spelling it out. Do not dance around the rules – state them up front, and then move into your analysis. Likewise, do not wait until you are five sentences into your analysis to spit out the rule. Earn your professor’s confidence right away by identifying the issue and stating the rule before you jump into your analysis.

5. **Explain Your Reasoning.** One of the biggest ways to give away points on an exam is to fail to explain your reasoning. Coming to a conclusion is important, but it is not nearly enough to do well. Note the following basic example:

Skimpy Analysis: A contract is breached when one party fails to perform. Joe breached the contract when he failed to perform. Therefore, Sue is entitled to restitution.

Better: A contract is breached when one party fails to perform. Here, Joe failed to perform **because** . . . (include all facts from the question supporting this point) Thus, it can be argued that Joe breached the contract.

There are three types of damages Sue might be entitled to in this case. They are . . . (list the damages and when they are appropriate) Here, Sue would most likely receive

restitution, **because** . . . (list facts that support the conclusion that Sue would be awarded restitution damages).

*** In addition to earning points, explaining your reasoning will force you to think in a deeper way about the question. If you are trying to explain your reasoning and it's not working, you can shift gears and go in a different direction (and rack up more points).

6. **Do Not Forget the Facts.** Too many students leave out the facts of the question when providing their analysis. Remember, your professor worked hard to create the facts of the question – he or she wants to see them discussed in your answer. Your analysis will be weak if you simply state the rule and make a conclusion as to how it applies. You should explain why, on the facts given, the rule compels the conclusion you state. Notice in the examples above that there are many sentences that include the word “because.” The “because” is what gives your analysis depth, and earns you points.

7. **Do Not Forget the Other Side.** Your professor has spent time inventing exam questions that are challenging, and quite likely do not have one clear answer. At a minimum, there will be at least some contradictory facts that pull your conclusion in different directions. Do not simply pick what you think the strongest side is and leave out the other facts. As part of your analysis, you should work with these facts by explaining how they might be used by the other side, and explaining why, in your view, that argument is less persuasive than the conclusions you make. For example:

A contract is breached when one party fails to perform. Here, Joe failed to perform because . . . Thus, it can be argued that Joe breached the contract. **Joe may argue, however, that he did not breach the contract because . . . Joe may also argue that if he did breach the contract, it was excused because . . . These arguments ultimately are not convincing because . . .**

8. **Use Cases to Support your Analysis of the Facts at Hand, not as a Digression.** Sometimes the facts in your exam question resemble the facts in a case you have studied. It will help your analysis if you are able to draw analogies to such cases, or distinguish the facts in the exam from the facts in the case. However, it will HURT your analysis if you go off on a tangent about the case. For instance:

Helpful Analogy: A court likely will find there was a contract here because . . . (facts from exam question that are relevant). Moreover, this case is similar to the employment promise case, where the court found that there was a contract because . . . Thus, Ken is likely to prevail.

Point-Losing Digression: This case is like the Jones employment case. In that case, an employee who sold high-speed widgets for use in the biotechnology industry sued the employer for breach of contract, alleging that . . . The court ruled that the employee could state a claim against the employer because. . . On appeal, the court upheld the decision, stating that employers cannot trample the rights of their employees. Further, the Jones case signified an important shift in contract law, because the court showed a willingness to bind employers to promises made in the context of negotiations. Subsequent cases limited the rule to negotiations between . . .

Note: Using points of law that you learned from cases you have studied can be helpful to your analysis. Keep in mind, however, that you are not expected to cite cases in your exam answers the same way you would for a memorandum.

9. **Come to a Conclusion.** It is important to come to a conclusion at the end of your analysis. That is, you should sum up your answer to the question that was asked. Explaining the counter-argument(s) does not mean to waffle and fail to come to a conclusion about which argument you think is most likely to carry the day. Ending your analysis with “it could go either way” is not what will get you points.

In some cases, it may be hard to conclude, because you really are not sure which way it will come out. Nevertheless, you should force yourself to choose. It is okay to say that it is a close call, but you think that ultimately one side will prevail.

10. **Do Not Forget Conflicting Law.** You have worked hard to learn different rules. Some of those rules have changed or evolved, or some are in conflict with other rules. There is no reason to fear. Simply spell out the different rules and how they would lead to different outcomes. For instance, imagine that your exam question involves an area that is covered by the common law and the Restatement, and the professor has NOT specified which rule she would like you to use. What do you do?

First, when stating the issue, note that this is one that can be resolved under the common law or the Restatement.

Second, when stating the rule, give both the Restatement version and the common law version.

When writing your analysis, break out clearly the common law analysis and the Restatement analysis. You may state something like this:

Under the common law, Jan likely would be found liable because . . . However, under the Restatement, she likely would not. The Restatement requires the plaintiff to show X, and here, the plaintiff likely cannot because . . .

11. **Do Not Make the “It’s Obvious” Mistake.** Do not ignore certain issues because you think they are so obvious, they do not warrant discussion. Likewise, do not leave out key facts or points of law from your analysis because you think, again, such things are so obvious, they do not bear repeating. You must spell everything out.

12. **Do Not Make the “I Know More than Just Contracts (or Torts, or Property, or Criminal Law, etc.)” Mistake.** Your exam will be on the topics you went over in the course. Resist the temptation to get side-tracked by going into detail about how another area of the law might come into play on the exam. For example:

On your Property exam, you spot an adverse possession issue. After discussing it, you decide to show the professor that you’ve taken Torts as well, and proceed to write two paragraphs on how property law provides inferior protection to the land owner, as compared to a tort claim based on nuisance. You then explain fully the doctrine of nuisance and why your exam question really relates to that.

13. Remember the Basics. Use proper English and avoid colloquialisms (“the Supreme Court dissed Congress when it ruled . . . “); Do not ask rhetorical questions (“did she intend to cause harm? That is hard to say.”); Do not try to be cute or funny.

You should also try to make your exam easy to read. Use short sentences, stick to one main idea per paragraph, and, where possible, use headings to organize your answer. If you are handwriting your exam, consider writing on every other line and on the front side of every page. This will leave you room to insert ideas if you think of something after you’ve written your answer.

14. Force Yourself to Move On. It’s easy to get hooked on a question and want to keep writing. However, remember that the law of diminishing returns is at work. If you’ve given the question the one hour allotted to it, it is unlikely you are scoring many more points with what you add while going over the time. You are, however, losing many points from the next question that you are putting off.

15. If You Are Running Out of Time . . . If you are running out of time, instead of leaving a blank space, try to outline your answer in as much detail as possible. This obviously will not score you the points you would have received with a fully written response, but something is better than nothing.

16. After the Exam. Avoid discussing the exam with others. It will likely bring you more stress and will give you little indication of how you actually did. Indeed, students who engage in a post-mortem with other students after an exam often feel terrible, because they thought the exam was very difficult, while others thought it was not so bad. In fact, common wisdom is that if you felt the exam was difficult, you probably saw many more issues that required analysis than those who felt the exam was not. In addition, even if you did truly struggle on the exam, it is likely everyone did, and you have no way of knowing how your responses stack up against the responses of your classmates. Therefore, the bottom line is, when the exam is over, forget about it.

Last But Not Least . . . If you feel that exams were particularly challenging for you (given that they are generally challenging for everyone) or you get your grades and are disappointed with your performance, remember that the Academic Achievement Program is here to assist you in getting on track. Do not hesitate to ask for help.

*The Academic Achievement Program:
We Are Committed to Your Success*

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