

CONSTRUCTING LAW SCHOOL EXAMS

Writing a good exam is probably one of the hardest parts of law teaching. The ideal exam tests the content that was taught in a way that requires both memory and critical thinking. There are a number of possible formats for law school exams: long essays, short-answer questions, multiple choice, true/false, and various combinations of these types. Exams may be taken in a classroom during a set period of time, or may be given as take-home exams (sometimes with a fixed time period or word limit).

This document contains some general principles about exam construction for essay exams. These materials will not answer every possible question, but we hope they will be a helpful starting point in constructing your own examination.

Best Practices for Law School Essay Exams¹

1. General Strategies

Every essay exam should ask questions that establish tasks that require students to demonstrate their command of the domain of knowledge that is covered by the exam.

The essay exam should consist of specific questions that can be answered within the time allotted for the exam. The time allotment for each exam question or the maximum number of points to be awarded should be specified. The time allotted for topics should reflect the amount of time spent on that topic during the semester.

2. Identifying the Parts of an Essay Question

Every essay question consists of two parts: (1) the fact situation and (2) the call of the question, which is synonymous with what is known as “the stem” in a multiple-choice exam.

3. Writing the Essay Question

Theoretically, essay exam questions may be used to test the student’s ability (1) to recognize and extract facts; (2) to recognize and describe issues; (3) to identify and articulate legal principles; (4) to apply facts to relevant legal principles; (5) to present a clear, thorough, complete explanation; (6) and to present a well organized discussion.

¹ Adapted from materials provided by the Center for Legal Pedagogy, Thurgood Marshall School of Law.

The substance of the exam question should be based on “essential knowledge” of a field rather than trivia. The exam question should be “determinate” in the sense that experts in the field could agree that one answer is better than another. For example, exam questions with phrases such as “What do you think...” or “What is your opinion...” are indeterminate. Although indeterminate exam questions can be used for assessing skill in written expression, they do not measure other aspects of achievement because they have no right or wrong answer.

To construct an essay exam question, one should (1) select an area covered in a course and jot down issues to test; (2) think of a fact situation that encompasses the chosen issues and will require the students to apply the law to those facts; (3) draft the fact situation and the call of the question; (4) write a model answer to validate the do-ability of the question (sometimes you see ambiguities or realize you inadvertently included issues while writing a sample answer); and (5) edit the question for content, readability, and do-ability within the time allotted for the exam.

Issues should be arguable; they should be mixed so that some issues are obvious and some are subtle. One issue should not be dependent on the outcome of another (otherwise a student who misses the first will lose credit for both). If the essay exam question is based the interpretation of a statute or regulation, one should consider reciting the statute or regulation in the question itself.

4. Specific Strategies for Writing the Factual Section

To write the factual section, one should think of it as a story and tell it chronologically, using paragraphs and short sentences to break the facts into manageable chunks of information.

Keep the section uncluttered. Intended ambiguities/red herrings are OK if they are intended to test a point. Intentional irrelevancies are not usually helpful.

Multiple parties on each side of the case have their place if one is drawing distinctions that matter, but don't load the facts with unnecessary parties.

Using Names

Regarding names of places, people, parties, and things, one should avoid names that are whimsical, pejorative, or likely to create stereotypes and biases. To facilitate convenient association, use names that are descriptive of the parties (e.g. Buyer/Seller – Plaintiff/Defendant – Taxpayer/IRS – Corporation/Shareholder). Avoid using two or more names beginning with the same letter (students will get them confused).

Using Dates

Regarding dates, make them realistic and recite them chronologically at the beginning if they are important. If dates do not matter, don't use them. If spans of time matter, make the dates easy to deal with.

5. Specific Strategies for Writing the "Call" of the Question

When writing the "call" of the question, clarity is paramount. Ask students precisely the question you want answered. Place the call at the end of the question. The questions may require the students to adopt a particular role or viewpoint: how should the judge rule? what would you advise the client? etc.

Unless part of what you are testing is the student's ability to spot multiple issues, consider dividing an exam question into separate calls when there are multiple parts to the intended responses. The use of parts helps examinees organizationally, and it also helps the grading process.