

## HOW TO APPROACH AND TAKE A LAW SCHOOL EXAMINATION

by Elizabeth Garrett

### I. SETTING THE FOUNDATION: PREPARATION FOR TAKING A LAW SCHOOL EXAMINATION

The perspective of law students toward study should change in the few weeks before they take an exam. During most of the semester, students should attempt to understand all the concepts, the "trees" in the "forest." During this time, law students should review the readings and lectures on a weekly basis. This weekly review can take many forms: outlining the course every week; reviewing and highlighting notes every week; integrating readings with lectures at the end of the week; or participating with other law students in thoughtful discussions about the preceding week's material. Students probably will devise methods that suit their study habits most appropriately without substantial outside help.

In the few weeks before a final, law students, who should already have a grasp of all key concepts through previous study, must attempt to synthesize those concepts into a greater understanding of the "forest." During this time, students should identify overarching concepts around which the course has revolved. This process can be done by examining a comprehensive syllabus (if such a syllabus has been handed out), using the table of contents in the casebook, or identifying main topics through a perusal of lecture notes.

Students can expect a law school final to revolve primarily around the topics that the professor played out in class. Once these topics have been identified, students should analyze possible approaches to questions dealing with the topics. For example, in the Civil Procedure II course, the key concepts tend to be jurisdiction, joinder, the Erie doctrine and preclusion. Students can assume that questions on the final will deal with one or more of these topics. So, in preparation for the final, students should develop a framework through which they will answer questions. In the above example, students might sketch out how they will deal with a question concerning personal jurisdiction. For example, they will set out the minimum contacts test. They may think about the difference between general and specific jurisdiction. They will fit the key cases into the analytic framework for such a question. They will address the continuing relevance of presence as a foundation for jurisdiction. Old exam memos should be consulted because they often contain suggestions for approaching particular kinds of questions.

The type of studying students do immediately before the final, then, is focused specifically on taking the test. By the time students receive the final, they will have identified the key concepts. If the test is "open note," they may even bring to the test a written framework for analysis. In the test itself, students need only decide which part of the framework is relevant to a particular question and adapt it to the specific facts given in the final.

## II. IDENTIFYING THE TYPES OF QUESTIONS IN A LAW SCHOOL FINAL

Law School finals seem to consist of three kinds of questions, all of which necessitate slightly different approaches and organizational structures. Some questions may be combinations of two or more of the basic types. Past examinations and model examinations are tools to help students learn to identify the three types of law school questions. Students must become familiar with the type of test that their professor is apt to give; they can gain such knowledge either through discussions with other students who have been in the professor's courses, or through examining tests and exam memos filed in the library. Then students can anticipate what types of question a professor is likely to ask on a particular examination.

The first type of question is commonly referred to as an "issue-spotting" question. The question is a long, very involved fact pattern that may be spun out over several pages. The key to answering such a question is to discern key information, identify relevant issues, and discuss those issues in a concise and organized fashion.

The second type of question is referred to as a "thematic" question. Although thematic questions involve fact patterns, the fact patterns are typically one or two paragraphs and contain only relevant facts. The facts implicate one or two important issues that have been discussed in the lectures or in the reading materials. Students should be able to identify the issue readily. The key to this type of question is identifying the possible approaches to the issue and presenting those approaches in an organized and concise fashion.

Finally, an exam can involve a type of question that I call a "brainstorming" question. Students faced with such a question are asked to react to a fact pattern or idea that they probably have not encountered directly in the lectures or in the reading material. Moreover, students probably have been unable to plan for such a question in their pre-final study and formulation of frameworks for analysis. Here students must relate by analogy the novel situation to the themes or policies discussed in the course and present their thoughts in a concise and organized fashion.

One tip with respect to all closed-book exams. Some students find it helpful to develop a mnemonic list which they commit to memory and write down on a scratch piece of paper immediately when the exam begins, before they read the instructions and look at the questions on the exam. A mnemonic device is a memory trick which creates an associative pattern or suggestive link so that students can remember and recall material. A mnemonic list serves as a useful checklist for issues and principles raised by the exam and may insure that students don't "blank out" or "freeze-up."

### A. *Issue-Spotting Questions*

Students faced with a large issue-spotting question should first go to the end of the question where the professor sets out what the students are to do in the answer. The end of the question usually tells students what their role is (e.g. advocate or law

clerk) and what issues to discuss. Moreover, this part of the question will often indicate what students may assume or disregard in answering the question. Once students understand the question and the perspective, their reading of the fact pattern should be influenced by that perspective.

Next, students should read through the entire fact pattern fairly carefully, jotting down in the margin or on scratch paper any concepts, legal principles, or relevant cases that are suggested by the facts. This reading should be a careful one; however, students should be concerned primarily with getting an idea of the fact pattern.

Finally, students should read through the question one more time. On this reading, they should disregard (and perhaps even mark through) any parts of the facts that are digressions or that are irrelevant to the actual question. At the same time, they should underline or highlight those facts that are relevant to legal principles implicated by the question.

After this three-step careful reading, students are ready to outline. Outlining the answer to an involved fact pattern usually requires a careful tracing or flow-charting of the steps necessary to reach the conclusion called for by the question. For example, an intricate fact pattern in a property exam would ask students to discover who owns a piece of real or personal property at the conclusion of a convoluted set of occurrences. In the outline, students should simply trace out the steps necessary to assess the ramifications of each twist and turn of the facts. An alternative approach is suggested by Wentworth Miller in The Bar Exam/Essay Writing Primer (3d ed. 1986). He indicates that one organizational approach to this type of question is to isolate "conflict-pairing" in the facts. For example, X has rights in the property as opposed to Y; Y has rights in the property as opposed to X; X has rights to the property as opposed to Z; and so forth.

Whether one approaches the question by using the conflict-pairing approach or by tracing the temporal and logical relationships in each set of facts, the key is to reduce the question into manageable components. The intimidating part of these questions is their very length and complexity. If students take the problem each step at a time, resolve each step before moving to the next, and explain the resolution in a manner that the professor can follow, they will have reduced the complex fact pattern to more manageable parts.

Clearly, this process of reducing a complicated fact pattern into a series of manageable components will take a significant amount of time. Most law students are very nervous about spending much time organizing and analyzing; they tend to want to begin to write as quickly as possible. This reaction can be disastrous in an issue-spotting question. Instead, students should feel comfortable spending approximately one-fourth of the time allocated for a question in organizing their thoughts.

#### *B. Thematic Questions*

The second type of question is the thematic question. Generally, these are only a couple of paragraphs long so there is no need to read the end of the question first. Instead, students should first read the entire question and attempt to identify the one,

two, or at most three issues in the question. For example, in a contracts examination, a thematic question may deal only with the damages aspect of a fact pattern. (In a parallel issue-spotting question, the fact pattern may deal with acceptance, consideration, the Statute of Frauds, and damages.)

After the issues have been identified, students should read the question again very carefully. On this reading, each fact given should be noted and analyzed. What does the fact mean with regard to the issues? How does each fact make this particular fact pattern slightly different from patterns discussed in the readings or the lectures? Because thematic questions are so short, virtually every fact included is important to the resolution of the question.

After students have identified the issues and determined how each fact interacts with those issues, they should work out their outlines. Again, students should not feel self-conscious about spending time organizing before they begin writing the exam. In the thematic exam, students should spend approximately one-fourth of the allocated time on outlining. Because the question is less complex and confusing, however, organizing a concise and clear answer may take less time than in the issue-spotting exam.

### C. *Brainstorming Questions*

The final type of question, the brainstorming question, calls for exactly what the name implies. Because students will not have foreseen the content of this question, they should spend a significant amount of time discovering how the question interrelates with the policies and themes developed in the course. On the first reading of the question, students are concerned primarily with understanding the new idea. If the question reminds students of themes of policies discussed in the course, they should jot those themes down in the margin.

On the second, closer reading, students should focus on the component parts of the new concept. Students should study each part to understand how it combines with the other parts to lead to the new conclusion or thesis and to determine how the question relates to the course as a whole. Does it remind them of any cases discussed in the course? Does it implicate theories, concerns, or policies in any other courses that could serve as bridges between the new idea and the ideas previously discussed in this particular course?

Again, students should spend approximately one-fourth of the allocated time in outlining the answer to the question. The answer to such a question might resemble a typical answer in an undergraduate course in humanities. In other words, students should identify three or four themes that they will discuss in the answer and then organize their reactions and thoughts under those themes.

### III. OUTLINING AND WRITING THE ANSWER

Outlining a law school answer is probably the most important step in taking a law school exam. To prepare for a final, law students should outline answers to questions

given previously by their professors and contained in the tests on file. Many law students have not outlined answers before and will tend to construct intricate or lengthy outlines. However, students should be aware that the outline is for their own use so it can be scrawled, very brief, and understandable only to them. The important thing about an outline is that it indicate to students the organization of the answer and relevant ideas and cases.

In a thematic or brainstorming question, students should jot down the issues or themes they will discuss, relevant facts or portions of the question that they will consider under each of those themes, case names if they are relevant and stand for concepts that are crucial to answering the question, and legal principles that are relevant to the question. In an issue-spotting outline, students should trace through the individual components of the question and decide how they will resolve each one in logical succession. Students should remember that time spent on outlining is not wasted time.

After an answer is outlined, students are ready to begin writing the answer. First, students should construct an introductory paragraph that will indicate to the professor what major concepts will be discussed in the answer and in what order. This type of introduction is simply a roadmap and should be easy to write, because the entire answer has already been outlined. The roadmap can be simple; the prose, concise. It need only set out the issues and organization that will be developed in the following paragraphs.

Next, students will write the body of the answer. A helpful trick that eliminates the need for transitions and makes the organization of the question readily apparent is the use of headings. For example, in a criminal procedure test where students are asked to rule on the admissibility of three different types of evidence, students can first give an introductory paragraph detailing in what order the evidence will be discussed and next can use headings (perhaps delineated with roman numerals or written in all caps or underlined) that identify the pieces of evidence as they are discussed. Or, in an administrative law examination, students might first deal with justiciability issues before merits issues. To that extent, a heading may indicate the beginning of the justiciability portion, and then subheadings may indicate the discussions of the issues relating to justiciability (e.g., (A) Ripeness; (B) Standing; and so on).

As students begin to discuss each issue, they should first sketch out the legal principles that will shape the answer to the question. This portion of the answer is largely an abstract discussion that will reveal their understanding of the legal analysis in the area. Although the concepts are the key concern, citations to cases that illustrate a particular concept may ensure that the professor knows the students are familiar with the concept, understand the concept, and remember which case exemplifies that concept. Moreover, citation of cases can be a quick way to identify a legal principle for the professor.

In addition to citing cases that illustrate relevant concepts, students should use the phraseology used by the professor to refer to concepts. This serves two purposes. First, it makes the paper more accessible to the professor because it uses his or her language; and second, it allows students to demonstrate their knowledge of the material.

presented in the professor's lectures.

Moreover, students should be sensitive to the predilections of a professor when they present the legal concepts and should tailor the answer to deal with those peculiarities. This is not to say that students must always agree with the professor. Students should feel free to disagree with the professor, so long as their presentation is well reasoned and supported by thoughtful analysis.

After sketching out the legal framework in an abstract way, students should bring the answer to a practical level by applying that framework to the facts. This step is crucial in a law school examination. Anyone can reiterate the applicable legal principles once an issue has been identified; the real skill is applying those legal principles to a new and different fact situation. In addition, restatement of the facts wastes times; instead, students should indicate how the fact pattern fits in with the principles and how the facts lead to certain conclusions.

A common mistake of law students is to lose objectivity early in the exam and advocate only one side of an issue. Students should understand that it is important to sketch out the arguments on both sides. If the question calls for students to discuss the ramifications of an issue, then they may need never present a conclusion. Even if the question calls for the students to make a clear decision, students must spin out the implications on both sides of an issue; in the end, this analysis is more important to their grades than is the conclusion. Students should disregard this advice if the instructions clearly reveal the professor's interest into eliciting only one side of an argument.

An additional note on perspective in an answer seems appropriate here. If students are asked to play a role (e.g., to write a memo to a judge or to be an advocate for a certain side), they should adopt that tone throughout the answer. This perspective indicates an awareness of the role in the factual situation that the professor has asked students to take. Nonetheless, even if students are to take one side or another, the question must include some analysis of all the relevant issues (unless the instructions clearly indicate otherwise).

After the body of the answer has been completed, students should concisely--perhaps in one sentence--indicate the conclusion they have drawn from their analysis.

This process--from outlining to concluding--should take no more time than that allocated to the question by the professor. Students must always be aware of the time limitations and should not transgress these limitations.

If students find that they have run out of the time allocated to answer the question, the outline can serve an additional function. At this point in the examination, they can indicate the time problem to the professor and then very quickly write in outline form what the remainder of the answer would have been. Although this outline is certainly not as complete an answer as one written in prose, it is a solution when students have not covered the issues and the time has run out. It is a better solution than writing past the allocated time and wrecking the schedule for the entire examination. Moreover, points may be obtained only for material written on the exam.

The brief outline may garner additional points.

#### IV. GENERAL EXAMINATION STRATEGIES

Disagreement exists about whether students should read the entire examination before answering any part of it or whether they should read each question as they come to it. The following is a suggestion which builds on a suggestion made by Wentworth Miller in his Primer. When students receive the exam, they should first read the instructions carefully. This point cannot be emphasized enough: students should read the instructions, including allocation of time and percentage of grade allotted to each question. Most tragic exam mistakes, i.e., not answering all the questions or running out of time, can be traced to a lack of careful attention to the instructions on the exam.

Next, students should flip through the exam and note the number of questions and whether time has been allocated to each. Sometimes the professor will not allocate time but will instead allocate a point basis to each question. If this is the case, students should extrapolate from the point basis an allocated time for each question. That time should be written at the top of each question. It is crucial that students stay within the allocated time period for each question.

Now students should return to the first question. They should quickly determine the type of question and then begin to deal with it appropriately. In other words, I do not recommend that students read through the entire test and then decide which questions to

analysis in question one and avoid repetition. After referring the professor to the previous legal analysis, students can apply that analysis to the particular facts of question two.

## V. CONCLUSION

First, preparation for final exams must begin weeks before the exam when students examine the course to identify over-arching concepts (the "forest") from the many ideas discussed during the course (the "trees"). As part of the pre-exam preparation, students must discover as much information as possible about the professor's past exams by reviewing available past exams, by talking to other law students who have taken the course and, if warranted, by talking to the professor. Students should never go into an exam "cold"; they should have some idea as to what will be tested and how they will be tested.

Second, students must read the instructions to the exam carefully. They should note the number of questions, the time allocated for each, and any specific, unique instructions. They should count the pages to make sure none is missing. If students don't understand the instructions, they should ask for clarification at the beginning of the exam.

Third, students should follow the guidelines given in this handout regarding the type of exam question, how much time should be spent on preparing an outline of the answer (approximately one-fourth of the exam time), and how an answer should be structured. They should answer the question asked by the professor. Also, students who set out that "roadmap" paragraph at the start of an answer to a complex question may influence the reader positively.

Fourth, simple declarative, easy-to-read sentences should be used in the answer. Communication and expression skills are necessary legal skills which the professor implicitly (if not expressly) looks for while grading examinations. The method of presentation and the manner in which the content of the answer is transmitted to the instructor are as important as the substance. By transmitting answers in a powerful, aggressive and concise manner, students will improve their chance of receiving a high grade.

Also, in transmitting the answer--the knowledge of content--to the professor, students should avoid two rather common mistakes. First, students should not waste time by restating or rewriting the question in their bluebooks before beginning the answer. The professor is familiar with the fact pattern; he or she wrote it! On the other hand, students should not ignore the facts, but they should skillfully integrate the relevant facts into the exam answer. Second, when writing the answer, students should assume the professor has no knowledge of law, but only of the facts. This concept is difficult to describe in the abstract. For example, students should not assume the professor knows that they know the prima facie elements of the tort of assault and battery if those concepts are relevant to the answer. Instead, students should lay out these elements, either in outline form (if time is short) or textually.

Fifth and finally, if time remains at the end of the exam, students should reread and improve their exam answers, for example, by writing in the margin or on a blank opposing page. There is no such thing as a perfect exam. Punctuation, grammar, and analysis can always be improved.

Good luck!