

Exam Preparation, Reading, Grading, and Review

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Overarching goals

- Test a cross-section of topics that fairly represents the important doctrines, conceptual themes, and policy arguments raised in the course.
- Put enough pressure on the students to generate a curve with a wide distribution.
- Force the students to develop the analytical skills they'll need in practice and the test-taking skills they'll need for the bar.
- . . . while not creating too time-consuming a grading process.

Collaboration

- I have never collaborated to write an exam. Because I try to focus the test on what we covered in class, I am suspicious that a jointly-written exam will approximate the students' in-class experience.
- I try to "collaborate" in another sense: I try to write my exams early enough that I can have someone else proof the essays.
 - I ask a secretary to reread the exam checking for typos and factual discrepancies.
 - I ask a colleague to give impressions what the target-rich topics are on the essays, and how difficult the essays are for the student body.

Exam construction

- There are 4 popular formats: (1) take-home essays; and then, within the in-class format, (2) long essays, (3) short answers, and (4) multiple choice.
- (1) Take-home essays:
 - Pros:
 - Much of what you read will be easier on the eyes. Students who can't write a pleasing product on a take-home deserve whatever bad grade they get.
 - Students will have more of a chance to show what they know.
 - Essays of any kind test whether the student can assemble the "big picture" of the class.
 - Cons:
 - You can't control cheating.

- The distribution bunches more in the middle than in-class timed exam answers do. It's harder to distinguish A's and C's from B's.
 - They take longer to grade.
- In-class essays
 - Pro: "Big picture." See treatment of take-homes, above.
 - Con: Time-consuming to grade.
- Short answers
 - Pros: Easy to grade; allow you to focus on doctrines or issues that don't relate to the biggest themes of the class.
 - Cons:
 - Still somewhat time-intensive;
 - Students can do well on short-answer questions without having the ability to see the forest for the trees.
- Multiple choice
 - Pros:
 - Least time-intensive to grade, by far.
 - If a question turns out to backfire, far easier to scratch it for grading purposes.
 - Cons
 - Most time-intensive to write. It's surprisingly hard to select 4 answers that are minimally plausible and then make 1 clearly right.
 - Have to be careful how often you reuse. Anecdotally, senior colleagues tell me that when they reuse multiple-choice questions over a long period (5+ years), students do better on those questions than on novel questions.
- My approach
 - I usually assign one 2-hour essay and then 1-2 hours of multiple choice.
 - The multiple-choice questions focus on topics the essay can't cover.
 - One two-hour essay forces the students to show off the comprehensive class-synthesis skills.

- In my experience, making the students write longer essay answers doesn't change the students' performance.
 - The best students pull even further ahead of the pack in the 3rd hour over the second.
 - It's painful for the students to write more.
 - It's marginally more painful for me to grade the extra writing.
 - Students come away more satisfied if short-answer or multiple-choice questions test what they studied.
- If I were to teach a course with a lot of detail in statutes & regs (say, tax), or a lot of discrete subjects with no obvious overlap (say, basic health-care), I would probably instead use 1 1-hour essay, an hour of short-answer questions, and then multiple-choice for the remainder.

Strategies for writing an essay exam

- Representation.
 - Create issues that hit each of the main topics covered in the course.
 - E.g., Torts: one significant question about intent, one significant choice between strict liability and negligence, one significant question about breach of duty, and one significant cause problem.
 - . . . but don't try to make the students spit back each of the 6-7 theories for proving breach of duty, or all of the intentional torts.
- Diversification
 - Make at least half and preferably 2/3 of the issues fairly straight-forward.
 - Students who bungle the law on straight-forward issues deserve C's.
 - Students who get the law right but don't cover all the facts or counterarguments deserve B-'s.
 - Except at really elite schools, you only need 1-2 hard issues for the A's to distinguish themselves from the B+'s.
- Modularity
 - Use different parties to raise different issues -- and especially hard issues.
 - If you construct a hard issue defectively, there still remain 2-3 other parties and 4-5 other issues to grade with.
- Illustration with Torts: I find it works to have

- . . . one defendant who's the "trigger man." This tortfeasor forces the students to write about intentional torts.
- . . . one defendant who's the "enabler." This tortfeasor raises standard issues of breach of duty and cause.
- . . . one defendant who's the "long-shot deep pocket." This tortfeasor creates hard questions about duty and proximate cause.
- If students foul up duty or proximate cause writing about the long-shot deep pocket, at least the failings of the trigger man and the enabler will still give them lots to write about.
- Plaintiff's-side bias: Students quite often root for plaintiffs while they write. Devise fact situations making defendants more sympathetic and plaintiffs less so than you might prefer.

Don't copy from others' old exams, and don't reuse questions

- Copyright problems.
- If you go to an exam bank or a commercial test guide, assume that at least one student in your class is resourceful enough to find the materials from the same source as you.
- If you reuse old questions, assume that students are always prowling for copies of earlier exam questions.
- Essays: Write down ideas as they come to you over the course of the semester.
- Multiple-choice and short-answer: At the end of each week, write down 2-5 testable questions based on what you covered that week.

Grading

- You will accomplish what your school needs if you sort the students out into 10 to 20% A's, 10 to 20% C's, and 60 to 80% B's. (Understanding that local mileage may vary depending on your school's policies.)
- You should not obsess about the fine gradations between one-third grades.
 - Grade point averages create these gradations anyway.
 - The extra time you spend obsessing about these differences probably won't improve the quality of your grading.
 - With middle-of-the-pack essay answers, it is fairly easy for a prof to regrade to within a third letter-grade -- but surprisingly hard to get back to the exact same letter-grade.
- Don't be afraid to fail students or to give D's.

- All lawyers need a minimal level of analytical ability. Many people don't have it.
- You're a nice person. You won't decide an exam is horrible unless it truly is.
- If you push the student along, you pass the buck to your colleagues to fail the student.
- If you pass the buck, you are also responsible for helping the student waste 1-2 years of life -- in which he could be developing another skill set in a profession where he's most likely to succeed. And saddling the student with an extra \$50,000 to \$100,000 in debt, so he's handcuffed in whatever profession he eventually shifts to.
- If you pass the buck, the student passes the bar, and gets a job . . . and then does badly at that job, you've helped give your law school a bad reputation with an employer -- and hurt better students graduating from your school later.

Post-exam review

- It's important to give students the opportunity to do better. Some small but significant fraction of students can teach themselves to do better if you give them feedback.
- But it's also appropriate for you to set boundaries to protect your time and to prevent students from back-door lobbying.
- I photocopy the best answer to each essay. Before students meet me, I require them to review their own essay, and then read the model answer (which I have my secretary loan them).
- I ask students to explain to me (preferably in writing, in advance) why they didn't do as well as the model answers.
- I meet with students after reading their essays, pointing out what they did well and what they could have done better.
- I usually have about 8-10 students from a class of 60 first-years ask me to review an exam; I give them each half an hour.