

SUMMATIVE ASSESSMENT IN LAW SCHOOL
AALS New Teachers' Conference

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June 2005

OUTLINE

I. Why Have Summative Assessment In Law School?

- A. Local culture, grand tradition
- B. Rank and order students for employers and graduate schools
- C. Students' validation
- D. Learning tool
- E. Foreshadow Bar Exam

II. Question Types

- A. Essay, Short Answer, Multiple Choice
- B. Why Use All Three?
 - 1. Comparisons; learning styles; coverage; variable complexity; feedback; or ability domain (level of ability)

III. Three Prerequisites to Exam Questions

- A. *Content validity* (testing the quality and quantity of learning in the course)
 - 1. Linking articulated course goals to exam objectives
- B. *Reliability*
 - 1. Consistency from one paper to the next and one question to the next
 - 2. Grading issues – more like figure skating or golf? – Criterion-referenced? (external standards) or normative-referenced? (Relative to other papers)
- C. *Workability – minimize distortions* resulting from length, time, clarity, etc.
 - 1. Considerations: Learning styles, disabilities, cultural differences

IV. Creating Questions Using a Protocol

- A. Step #1: Select the Subject Matter
 - A. Pick from the course syllabus
 - B. Focus on one aspect of the rule:
 - 1. *Elements* (of cause of action; defense)?
 - 2. *Explanations* (meanings)?
 - 3. *Examples?* (other cases, hypos);
 - 4. *Exceptions* (defenses);

- 5. *Comparisons?* (to other rules); Or
- 6. *Theory/Jurisprudence*

B. Step #2: Select a Question Objective

- A. Lawyering competencies (e.g., persuasive advocacy; client interviewing; negotiating);
- B. Substantive coverage
- C. Cognitive Thinking Skills
 - 1. Adapted Bloom's Taxonomy – orders of cognitive thinking:
 - 1. Knowledge;
 - 2. Understanding;
 - 3. Critical reading (issue spotting; fact sifting);
 - 4. Problem solving;
 - 5. Doctrinal and course synthesis;
 - 6. Judgment in advocacy (e.g., what to argue when)

C. Step #3: Ask a Question About the Subject Matter

- A. E.g., What does the element *mean*? For example, in *Res Ipsa Loquitur*, what does it mean for the defendant to have exclusive control over the thing that produces the injury?

D. Step #4: "Factualize" the inquiry (create the stimulus) – add facts

- A. Can use cases from class, advance sheets, other case books, films, books, pop culture, history, etc.

E. Step #5: Create the call of the question

- A. The call of the question should be (1) a complete sentence that (2) clearly asks the test-taker to identify, understand or do something.
- B. Examples:
 - 1. What are the *best/worst arguments* by (a party to the dispute)?....
 - 2. If A sues B, what is the most *likely outcome*? *Explain*, using case law.

F. Step #6: (Multiple Choice Questions) Create the responses

- A. The responses should all possess a similar structure, length and amount of detail to minimize guessing. Incorrect answer choices generally should fall within the "3i's:" inaccurate; incomplete; or irrelevant.
- B. *Example: Who will win, A or B?*
 - A. A wins because....
 - B. A wins because...
 - C. B wins because....
 - D. B wins because....

V. **Grading Practices and Principles**

- A. Set Aside Time

- B. Use a protocol and create reliability
1. Reliability means consistency – from one paper to the next and one question to the next within the same paper. E.g., a scale measuring height
 2. Reliability factors
 - A. The number of positive relationships between items
 - B. The length of the test – the more test items, the greater chance of reliability.
 - C. The test content – the more homogeneous the test subject matter, the more reliable it likely is.
 3. Essay Reliability Issues
 - A. Does test assess all levels of cognition? Have a sufficient number of items? Place importance on the skill of communication?
 - B. Errors:
 1. Weighting errors;
 2. Linkage problems;
 3. Spread in scores
 4. Single test, higher reliability required
 4. Item Statistics – analyzes individual items for quality of item and expanded to quality of test as a whole
 1. *Mean* – average response to a particular item
 2. *Standard Deviation* – the range of scores on a particular item.
 3. *Item Difficulty* – easy; moderate; difficult
 4. *Item discrimination* – determines whether the better (higher scoring) test-takers are performing better on an item than the worse test-takers.
 5. *Reliability coefficient* – the likelihood of a test being reliable
 - A. Range – from zero (no reliability) to one (perfect reliability)
- C. Grading Methods
1. Comparison to model answer – form of holistic assessment
 2. Point system – awarding points for statements of value. (Conversely, subtracting points for omissions, incomplete statements or misstatements.).
 3. Rubrics – assessment inventories describing different levels of competency.
 4. Trait grading
 - A. Trait-based grading of content, organization, style, mechanics and creativity.
 5. Holistic assessment – Assessing quality of response as a whole. Holistic assessments often use a rubric and a score of 0 to 6 or 0 to 8.

VI. Summative When?

- A. *Midterm*
- B. *Quizzes at end of doctrinal area (in review)*

1. Make accommodations for test-takers when needed.
 2. Only one multiple choice question required.
 3. Can use answer justification, asking for an explanation.
- C. *Take-Home Exam/Paper (with spacing, length and margin limits)*
D. *Course Project*

VII Exam Do's and Don'ts

A. Do's:

1. Observe local culture (course, school year, faculty, administration, etc.)
2. Get a mentor
3. Start early – use an exam file with cases; newspaper articles; pointers from class; etc.
4. Write out a response to get the feel of the questions – clarity is paramount.
5. Have a detailed and comprehensive set of exam instructions
6. Proof-read

B. Don'ts

1. Use fancy, obfuscatory or esoteric names
2. Create obscure, esoteric or excessively lengthy questions
3. Test outside of the reading assigned.
5. Realize clarity is paramount – readers should understand the questions

VIII. Question Appendix

1. (Released MBE Question) Plaintiff sued Defendant for breach of a commercial contract in which Defendant had agreed to sell Plaintiff all of Plaintiff's requirements for widgets. Plaintiff called Expert Witness to testify as to damages. Defendant seeks to show that Expert Witness had provided false testimony as a witness in his own divorce proceedings. This evidence should be
 - (A) admitted only if elicited from Expert Witness on cross-examination
 - (B) admitted only if the false testimony is established by clear and convincing extrinsic evidence.
 - (C) excluded, because it is impeachment on a collateral issue.
 - (D) excluded, because it is improper character evidence.

2. (Released MBE Question) Joe and Marty were coworkers. Joe admired Marty's wristwatch and frequently said how much he wished he had one like it. Marty decided to give Joe the watch for his birthday the following week. On the weekend before Joe's birthday, Joe and Marty attended a company picnic. Marty took his watch off and left it on a blanket when he went off to join in a touch football game. Joe strolled by, saw the watch on the blanket, and decided to steal it. He bent over and picked up the watch. Before he could pocket it, however, Marty returned. When he saw Joe holding the watch, he said, "Joe, I know how much you like that watch. I was planning to give it to you for your birthday. Go ahead and take it now." Joe kept the watch. Joe has committed
 - (A) larceny.
 - (B) attempted larceny.

- C) embezzlement.
- (D) no crime.

3. Trusts Question: A, trustee for B, deposited \$2,000 of the trust funds in the X Savings Bank in A's name as trustee for Z. The X Bank at A's request then applied \$1,000 of the deposit in satisfaction of A's mortgage on Blackacre to the X Bank. Both A's and X Bank's property being liquidated in insolvency proceedings what are the rights of B and Z?

Harlan Fiske S

4. Sales Question [“Think first, and don't write until you see where you are going. It is not necessary to finish any question. State the law before you discuss or criticize it.”] B was a jobber in groceries working a limited territory..... Is B liable in regard to any of the goods ordered or shipped, and to what extent? Karl L.

IX Rubrics (Assessment Inventories)(Derived from the work of Professor S. Sparrow; *see*, e.g., 2004 Mich. St. L. Rev.1)

Exam-taking Competencies:

1. The ability to identify facts that cause or relate to legal issues.
2. The ability to understand the particular legal issues to which the facts relate.
3. The ability to articulate the specific applicable legal principles, especially the elements of the governing rules of law.
4. The ability to apply the facts of the hypothetical to the relevant law and how the problem ought to be resolved in light of the applicable law.
5. The ability to organize a response in a coherent and understandable fashion.

Grades:

4 = Highly Competent.

Skillful, clear, well-organized, accurate and thorough in spotting issues, identifying facts that relate to those issues and analyzing the consequences of the relationships.

3 = Competent.

Sufficiently understandable and organized, fairly accurate in spotting issues, identifies some facts relating to the legal issue and engages in some application of facts to the rules.

2 = Less than Competent.

Weak issue spotting, inaccurate and incomplete statements of the rules, fails to identify facts relating to the issues, confused legal analysis.

1 = Poor.

Little or no ability to spot issues, define relevant rules or analyze the legal issues.