

Beginning Law Essay Writing

Professor Mary Schofield

The following pages include handouts for all eight classes in this series. Some of the handouts won't make much sense until they are explained in the classes, and others are practice exams you won't be writing until the last few classes. Thus, you should print them now, but wait to use them until each is introduced in the appropriate class session.

I highly recommend Professor Jeff Fleming's exam writing approaches, used in the *Fleming's Fundamentals of Law* materials, and on which I base the approach I teach in this series. Professor Fleming's law school essay exam approach is as follows:

- | | |
|-------------------|---------------------------|
| 1. Read call | 5. Prep paper for outline |
| 2. What subject? | 6. Slow read and mark |
| 3. Fast read hypo | 7. Make outline |
| 4. Outer outline | 8. Determine timing |

I've modified the approach slightly by switching the order of steps 2 and 3, since the student will not always know the subject of the exam until the hypo has been read. I've also deleted Professor Fleming's step 5 and include preparation of a paper outline with step 7, for those outlining by hand. Finally, I've added a new step after the mark-up (his step 6 and my step 5) to re-check the checklist. The steps I use are therefore as follows:

- | | |
|--------------------|-----------------------|
| 1. Read call | 5. Slow read and mark |
| 2. Fast read hypo | 6. Check checklist |
| 3. What subject? | 7. Make outline |
| 4. Write checklist | 8. Determine timing |

Professor Fleming's "outer outline" refers to his one-page subject outlines, which are available to NWCU students on eJuris. I refer to what Professor Fleming calls the "outer outline" as a "checklist," partly to avoid confusion over the difference between the one-page subject outline for each course and the exam outline students create as they prepare to write their exam answers. My one-page outlines are based on Professor Fleming's, but slightly modified and included here. Students should feel free to modify the outlines as they like, but I recommend keeping to a one-page for memorization, so don't add much.

Nevertheless, there are more similarities than differences between Professor Fleming's approach and materials, and the ones used in this series. Thus, it is with thanks and credit to Professor Fleming that I present these classes.

If you have already studied and developed a habit of using the original Fleming approach, you can easily continue it just as you've learned it, while using this class series. You may even make some minor modifications of your own, which is fine, although I recommend you wait to make changes until you've become proficient at exam writing — it's easy to mistakenly abandon steps before you fully understand their benefit.

Practice is needed, and more practice than you are likely planning to do at this point. However, practicing bad legal writing just results in a bigger stack of bad writing, so practice alone is not enough. Clear instruction on what is required is necessary. The purpose of this series is to give you some tools for good legal writing, to set you on the right path as you practice.

Examples of essay exam answers are included and reviewed to show you how to do it. Since writing is a creative and individualized process, your own essays will be different. However, even with differences of wording and reasoning, your answers should follow the same structure and format shown. While the included sample answers are not perfect, they would receive passing grades, and that is the goal — to help you pass your exams.

- Class 1:
 - Essay writing approach
 - One-page outline for Contracts, Criminal Law, and Torts
 - Blank of each one-page outline
- Class 2:
 - June 2009 FYLSX - Question 1
- Class 3:
 - June 2009 FYLSX - Question 1
- Class 4:
 - IRAC tips
 - Writing Assignment: Torts - Defamation
- Class 5:
 - Writing Assignment: Torts - Negligence
- Class 6:
 - Writing Assignment: Contracts - Formation
- Class 7:
 - Writing Assignment: Criminal Law - Non-homicide crimes

Essay Exam Writing Approach

1. Call of Question	10 seconds
2. Fast Read	60 seconds
3. Subject	5 seconds
4. Checklist	15 seconds
<hr/>	
1½ minutes so far	
5. Mark-up	4-5 minutes
6. Re-Check	1 minute
7. Outline	8-11 minutes
8. Timing	1 minute
<hr/>	
15 to 20 minutes total	

Contracts Main Checklist

Mnemonic: Failure To Contract Deserves Better Review

I. Formation

- A. Governing Law
- B. Valid Contract
 - 1. Mutual Assent
 - a. Offer
 - (1) Definite Terms (*Q-Tips*)
 - (2) Termination
 - (3) Revocation
 - (4) Rejection
 - b. Acceptance
 - 2. Consideration
- C. Defenses to Formation (*Pammi said fu*)
 - 1. Parol Evidence Rule
 - 2. Adhesion Contracts
 - 3. Mistake
 - 4. Misrepresentation (Neg)
 - 5. Incapacity (Legal/Mental)
 - 6. Statute of Frauds
 - 7. Ambiguity
 - 8. Illegality
 - 9. Duress
 - 10. Fraud
 - 11. Unconscionability

II. Third Party Rights

- A. Third Party Beneficiary
(*Does Public Intercourse Cause VD?*)
 - 1. Define
 - 2. Privity
 - 3. Intent to Benefit
 - 4. Classification
 - 5. Vesting
 - 6. Divide Lawsuits if Necessary
- B. Assignment
- C. Delegation

III. Conditions to Performance

- A. Covenant/Promise v. Condition
- B. Type
 - 1. Precedent
 - 2. Concurrent
 - 3. Subsequent
 - 4. Express
 - 5. Implied
 - a. Implied in Fact
 - b. Implied in Law
- C. Were Plaintiff's Conditions Satisfied?
 - 1. Substantial Performance (Constructive)
 - 2. Divisibility
- D. Were Plaintiff's Conditions Excused?
 - 1. Waiver
 - 2. Anticipatory Repudiation
 - 3. Prevention
 - 4. Impossibility of Performance
 - 5. Voluntary Disablement
 - 6. Estoppel

IV. Discharge of Defendant's Duty to Perform

- A. Merger
- B. Substitute Contract
- C. Modification
- D. Amendment and Restatement of Contract
- E. Novation
- F. Accord and Satisfaction
- G. Rescission (mutual)
- H. Release
- I. Waiver
- J. Condition Subsequent
- K. Impossibility of Performance
- L. Frustration of Purpose
- M. Commercial or Economic Impracticability
- N. Supervening Illegality
- O. Failure of Consideration
- P. Defenses to Formation

V. Breach

- A. Major
- B. Minor

VI. Remedies

- A. Legal vs. Equitable Remedies
Lively Cats Find Mice Darn Nice
- B. Damages
 - 1. General Damages
 - 2. Special Damages
 - 3. Compensatory Damages
 - a. Expectation Damages
 - b. Reliance Damages
 - c. Restitution Damages
 - 4. Liquidated Damages
 - 5. Punitive Damages (NOT)
 - a. Exceptions
 - 6. Nominal Damages
 - 7. Avoidable Consequence Rule
 - 8. Collateral Source Rule
- C. Quasi- Contract
- D. Rescission
- E. Restitution
- F. Reformation
- G. Injunction
 - 1. Specific Performance
Charles Atlas Earns Much Cash Delivering Elephants
- H. UCC Remedies for Buyer and Seller

- I.** _____
A. _____
B. _____
1. _____
a. _____
(1) _____
(2) _____
(3) _____
(4) _____
b. _____
2. _____
C. _____
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____

- II.** _____
A. _____
Mnemonic: _____
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
B. _____
C. _____

- III.** _____
A. _____
B. _____
1. _____
2. _____
3. _____
4. _____
5. _____
a. _____
b. _____
C. _____
1. _____
2. _____
D. _____
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

- IV.** _____
A. _____
B. _____
C. _____
D. _____
E. _____
F. _____
G. _____
H. _____
I. _____
J. _____
K. _____
L. _____
M. _____
N. _____
O. _____
P. _____

- V.** _____
A. _____
B. _____

- VI.** _____
A. _____
Mnemonic: _____
B. _____
1. _____
2. _____
3. _____
a. _____
b. _____
c. _____
4. _____
5. _____
a. _____
6. _____
7. _____
8. _____
C. _____
D. _____
E. _____
F. _____
G. _____
1. _____
Mnemonic: _____
H. _____

Crimes Checklist

Mnemonic: Felons in Prison Habitually Propose Planning Murderous Deeds

I. Formation

- A. Actus Reus / Mens Rea / Concurrence
- B. Accomplice Liability
 - 1. Intent
 - 2. Knowledge
 - 3. Active Assistance
- C. Vicarious Liability

II. Inchoate Crimes (SAC)

- A. Solicitation
- B. Attempt
- C. Conspiracy

III. Crimes against the Person

- A. Homicide
 - 1. IRAC Homicide
 - 2. Causation
 - a. Actual Cause
 - b. Proximate Cause
 - 3. Murder / Malice?
 - a. If YES, there is a murder:
 - (1) What Degree?
 - (a) First Degree
 - (b) Second Degree
 - (2) Justifications
 - (3) Excuses
 - (4) Mitigation to Voluntary Manslaughter
 - b. If NO, there is no murder:
 - (1) Involuntary Manslaughter
- B. Non-Homicide
 - 1. Assault
 - 2. Battery
 - 3. False Imprisonment
 - 4. Kidnaping
 - 5. Mayhem
 - 6. Rape

IV. Crimes against Habitation

- A. Burglary
- B. Arson

V. Crimes against Property

- A. Larceny & Larceny by Trick
- B. False Pretenses
- C. Embezzlement
- D. Robbery
- E. Receiving Stolen Property

VI. Crimes against Property Interests

- A. Forgery
- B. Uttering
- C. Extortion / Blackmail

VII. Miscellaneous Crimes

- | | |
|----------------|-----------------------|
| A. Misprision | E. Unlawful Assembly |
| B. Compounding | F. Malicious Mischief |
| C. Riot | G. Breach of Peace |
| D. Rout | |

VIII. Defenses: Justifications, and Excuses

- A. Justification Defenses
(crime committed, but allowed)
 - 1. Self Defense
 - 2. Defense of Others
 - 3. Defense of Property
 - 4. Prevention of Crime
 - 5. Legal Authority
 - a. Domestic
 - b. Public
 - 6. Necessity
 - 7. Consent
- B. Defenses: Excuses
(no crime due to no mens rea)
 - 1. Mistake of Law
 - 2. Mistake of Fact
 - 3. Duress
 - 4. Entrapment
 - 5. Infancy
 - 6. Intoxication
 - a. Voluntary
 - b. Involuntary
 - 7. Insanity (5 Rules)

Crimes Checklist

Mnemonic: _____

I. _____

A. _____

B. _____

1. _____

2. _____

3. _____

C. _____

II. _____

A. _____

B. _____

C. _____

III. _____

A. _____

1. _____

2. _____

a. _____

b. _____

3. _____

a. _____

(1) _____

(a) _____

(b) _____

(2) _____

(3) _____

(4) _____

b. _____

(1) _____

B. _____

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

IV. _____

A. _____

B. _____

V. _____

A. _____

B. _____

C. _____

D. _____

E. _____

VI. _____

A. _____

B. _____

C. _____

VII. _____

A. _____ E. _____

B. _____ F. _____

C. _____ G. _____

D. _____

VIII. _____

A. _____

1. _____

2. _____

3. _____

4. _____

5. _____

a. _____

b. _____

6. _____

7. _____

B. _____

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

a. _____

b. _____

7. _____

Torts Checklist

Mnemonic: In Nevada, My Sister Very Profoundly Calls Drunks “Idiots”

I. Intentional Torts

- A. Intentional Torts
 1. Assault
 2. Battery
 3. False Imprisonment
 4. Intentional Infliction of Mental Distress
 5. Trespass to Land
 6. Trespass to Chattel
 7. Conversion
- B. Defenses to Intentional Torts
 1. Consent
 2. Self Defense
 3. Defense of Others
 - a. Step-In-Shoes Jurisdictions
 - b. Reasonable Appearances Jurisdictions
 4. Defense of Property
 5. Prevention of Crime
 6. Recapture of Property
 - a. Re-entry Upon Land
 - b. Recapture of Chattel
 - c. Shopkeeper’s Rule
 7. Legal Authority
 8. Necessity
 - a. Public Necessity
 - b. Private Necessity

II. Negligence

- A. Duty
 1. General
 2. Special
 - a. Negligence Per Se
 - b. Drivers of Vehicles
 - c. Omission
 - d. Good Samaritans / Rescuers
 - e. Negligent Supervision
 - f. Professionals
 - g. Land Occupiers
 - h. Lessors & Lessees
- B. Breach
 1. Direct / Circumstantial
 2. Res Ipsa Loquitur
- C. Causation
 1. Actual
 - a. “But For”
 - b. Substantial Factor
 2. Proximate
 - a. Watch the time line!
 - b. Direct
 - c. Intervening Acts
 - (1) Independent
 - (2) Dependent
- D. Damages
 1. Physical Harm Needed
 2. NIED
- E. Defenses
 1. Contributory Negligence
 2. Comparative Negligence
 3. Last Clear Chance
 4. Assumption of the Risk
- F. Multiple Defendant Issues
 1. Joint, Concurrent, Successive
 2. Joint & Several Liability
 3. Contribution & Indemnity

III. Miscellaneous Tort Concepts

- A. Wrongful Death
- B. Survival Statutes
- C. Statute of Limitations
- D. Immunities
 1. Husband/Wife
 2. Parent/Child
 3. Charities
 4. Government

IV. Strict Liability

- A. Animals
- B. Abnormally Dangerous Activities

V. Vicarious Liability

- A. Employment Relationship - *Respondeat Superior*
 1. Scope of employment
 2. To / From Home
 3. Frolic and Detour
- B. Independent Contractors
- C. Joint Enterprise
- D. Bailor / Bailee
- E. Vehicle Ownership
 1. Family Purpose Doctrine
 2. Consent Statutes
- F. Parent / Child

VI. Products Liability

- A. General Rule
- B. Defect Type
- C. Theory
 1. Intentional (rare)
 2. Negligence
 3. Breach of Warranty
 4. Strict Liability in Tort

VII. Crossovers

- A. Misrepresentation
 1. Intentional: Deceit/Fraud
 2. Negligent
 3. Damages
- B. Nuisance
 1. Private Nuisance
 2. Public Nuisance
- C. Wrongful Litigation
 1. Malicious Prosecution
 2. Abuse of Process
- D. Business Torts
 1. Disparagement
 2. Interference with Economic Relationship

VIII. Defamation

- A. General Rule
- B. Slander / Slander per se
- C. Libel / libel per se
- D. Damages
- E. Privileges

IX. Invasion of Privacy

- A. Appropriation of Likeness
- B. Intrusion upon Seclusion
- C. False Light
- D. Public Disclosure of Private Facts

X. Tort Damages

- A. Special
- B. General
- C. Punitive
- D. Avoidable Consequence Rule
- E. Collateral Source Rule

June 2009 FYLSX - Question 1

Al, Bob, Carl, and Dolly were coworkers at Zco. Al, Bob, and Carl did not like Dolly and wanted her fired from Zco.

On Monday, all employees of Zco were required to attend a mandatory meeting. Prior to the meeting, Al entered Dolly's office and told her not to leave her office until the meeting was over. He then said to her, "If you leave this office before the meeting is over, some of my friends and I will come to your home and beat you up." Al then left for the meeting. Dolly, scared for her safety, remained in her office, missed the meeting, and was reprimanded by Carl, her supervisor.

On Tuesday, Bob placed a sleeping pill in Dolly's coffee when Dolly was not looking. Dolly drank the coffee and fell asleep at her desk twenty minutes later. She slept for four hours, and was again reprimanded by Carl for sleeping on the job.

On Wednesday, the Human Resources Manager for Zco asked Carl if he knew why Dolly had missed the meeting on Monday and fell asleep at her desk on Tuesday. Carl responded that Dolly had a serious drinking problem that interfered with her job performance. Carl was aware of the actual reasons why Dolly had missed the meeting on Monday and fell asleep on Tuesday, and he had no reason to believe that she had a drinking problem. On Thursday, Dolly was fired from Zco.

Under what intentional tort theories might an action for damages be brought by Dolly against Al, Bob, and Carl, and what defenses, if any, might Al, Bob, or Carl assert, and what are the likely results? Discuss.

IRAC Tips

Issue Statements

1. You must cover each legal issue one at a time.
2. You must identify each legal issue that you will analyze.
3. For this class (and recommended for the entire first year) you must state the issue as a yes/no question. (No shortcuts.)
4. Generally, the narrower the issue, the better.
5. Match the language of the call of the question.
6. Use highlighting to set the issue statement apart from the rest of your essay, so that the issue statement is a heading.

Rules of Law

1. Give ONE rule of law that governs the ONE issue you raised.
2. Give a concise and accurate statement of the law in one sentence.
3. Give only the rule of law that applies to your issue statement.
4. If you give a rule, you must analyze it, so never give a rule that you do not plan to fully analyze.
5. We don't want to know everything you have learned about the law.

Analysis

1. Explain why you think the facts of this particular situation prove or disprove each element of the one rule of law you gave.
2. Do not merely recite the facts and state that they do or do not disprove an element—you must explain *why* you think so.
3. Cover each element of your rule, one at a time, usually in the order presented in the rule.
4. Discuss *only* the elements of the rule you gave.
5. Easy way: write one sentence for each element of the rule of law.
Exception: If the issue is arguable, write arguments for both sides, and write a resolution.
6. If there are facts supporting both sides, don't ignore them.

Conclusion

1. Answer the question you raised in your issue statement.
2. Make a conclusion. The examiners want to know if you can resolve the matter.
3. Generally, just conclude.
4. Match the language of the call of the question.

IRAC Structure

1. Each of the four sections must be separate. Skip a line between each section.
2. Do not use labels such as "Issue:," or "Rule:"
3. Highlight minimally, but if you can, do highlight the main point in each analysis section.
4. Choose just one method of highlighting.

Assignment Following Class 4

Write a full analysis (IRAC format) of ONLY the issue defamation for the section of the hypothetical shown below. Try to do it in eight minutes.

On Wednesday, the Human Resources Manager for Zco asked Carl if he knew why Dolly had missed the meeting on Monday and fell asleep at her desk on Tuesday. Carl responded that Dolly had a serious drinking problem that interfered with her job performance. Carl was aware of the actual reasons why Dolly had missed the meeting on Monday and fell asleep on Tuesday, and he had no reason to believe that she had a drinking problem. On Thursday, Dolly was fired from Zco.

I	R	A	C
Defamation	false statement interfered w/ wk	serious drinking prob	Y
	defamatory	"	
	int. or neg. publish	C told HR manager C was aware of actual reasons C had no reason to believe drinking prob	
	to 3P	C to HR Manager	
	3P understands	D is fired next day	
	damage	"	

Assignment Following Class 5

Penny hired David to build an addition to her home. During excavation, a large hole was dug for the cement foundation to be poured. However, a section of the dirt wall around the hole caved in. David immediately shut down the work site and sent his work crew home for the day. David assessed the cave-in so that he could re-enforce the wall around the hold the next morning before continuing with the job.

Later that evening, Penny walked outside to view the progress being made on the addition. As she was looking down into the hole, the section where she was standing caved in, and Penny fell into the hole. Her leg was broken and although she called for help, no one heard her and no help arrived until the next morning when David arrived, found her there, and called for an ambulance.

In addition to Penny's broken leg, she suffered mild hypothermia from spending the night outside, and she now has nightmares due to the trauma.

Penny filed a lawsuit against David for negligence. Discuss whether she is likely to prevail and what defenses David might raise.

Assignment Following Class 6

Ed is the owner of the newly opened Ed's Custom Car Wash, where car washes cost \$25. While he was grocery shopping in his home town, which is located 20 miles from Ed's Custom Car Wash, he was greeted by his friend Alice. After they chatted for a moment, Ed said, "Come by my new car wash and I'll give you a free car wash tomorrow." Alice replied, "Thanks. By the way, we've got a few extra tickets for the game tonight. If you want them, they're yours."

A few minutes later, Ed ran into police officer Brown, who worked in Ed's home town. Ed said, "Officer Brown, if you will drive by my house soon and make sure everything is OK, I'll give you a free car wash tomorrow." Officer Brown, who was about to begin his job of patrolling Ed's neighborhood, replied, "I accept your kind offer." Officer Brown then left the store and began his routine patrol, which, as always, promptly took him by Ed's house, where everything was in order.

When Ed returned home from shopping, he saw his next door neighbor, Charlie. Ed said, "Charlie, I'll give you a free car wash tomorrow at my new car wash." Charlie replied, "Thanks, I'll take you up on that."

As soon as Ed arrived at work the next day, he found a long line of cars at the car wash. He phoned Alice and Officer Brown, and told them that he would not give them free car washes. Then he saw Charlie, who had left work and driven for one-half hour to get to the car wash and was waiting in line. Ed immediately told Charlie, "I am not going to give you a free car wash."

Does Ed have an enforceable obligation to Alice, Officer Brown, or Charlie? Discuss.

Assignment Following Class 7

Tom lived next door to his girlfriend Heather, and often helped her tend her yard. To do so, Tom used the tools that were stored in Heather's wooden toolshed, which abutted Heather's house, such as a lawnmower and edger, both of which were filled with gasoline.

One day when Tom thought Heather was away at work, he went to Heather's house to mow the lawn. However, through the backyard window, Tom was surprised to see Heather kissing another man.

Tom felt queasy and left. He went to the drug store and bought Anxiety-Fix, an over-the-counter anti-anxiety medication that he had never used before, and headed home. Tom took three Anxiety-Fix pills, even though the instructions on the box stated that a person should take no more than two pills every eight hours. Two hours later, still feeling anxious, Tom took four more Anxiety-Fix pills, and fell asleep. Tom awoke in the middle of the night due to a nightmare he had about Heather.

Tom then lit several firecrackers in his yard, and threw them at Heather's house. He wanted to wake her up to discuss what he had seen. Two of the firecrackers landed in the toolshed, setting it afire. The sound of the firecrackers awakened Heather and, upon seeing flames, she grabbed a can of lighter fluid, opened some windows on the side of the house near the shed, and squirted the flammable fluid on the windowsills. Heather had been having a hard time selling her house and thought that, as long as the shed was going to burn down, the house could just as well burn with it since her insurance would cover the loss.

Meanwhile, Tom used a garden hose to extinguish the fire in the toolshed before it spread. The inside of the toolshed suffered smoke damage. All of the items inside of it were destroyed.

1. Can it be reasonably argued that Tom is guilty of arson? Discuss.
2. Does Tom have any valid defenses? Discuss.
3. Can it be reasonably argued that Heather is guilty of any crimes? Discuss