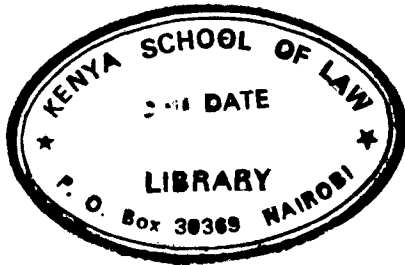


Wave of the Future or Low Tide: Offering a Bar Exam Writing Class for Credit



Presentation Slides and Selected Handouts

Legal Writing Conference
Atlanta
Summer 2006

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How to “Review” a Model Answer

Organization

- ✚ Are the model answers organized the same way?
 - If “Yes” -- was the task memo very specific (don’t vary from the task memo when it is specific – just follow it)
 - If “Yes” – was the law the key to organization? (don’t miss the list of factors, elements, or other hints in the library)
 - If “No” – how are the model answers the same or different? And how do they compare to yours? Are the differences cosmetic or substantive? Look for substantive differences. Did your organization leave you with less than a complete answer?
- ✚ Does your answer look like model answers? If you were asked to prepare a memo, did you use a memo format? Did you write a letter? Or a giant essay answer? Format is part of following the instructions.

Content

- ✚ Are the model answers the same? Don’t worry about minor content you are missing. Pay attention to content that you are missing that is in both model answers.
- ✚ How much of the content in the model answer is in your answer? 50%? 75%, more? less? The model answers are very high scoring papers (85). If you have 60% or less of the content – your exam is very unlikely to pass. If you have 75% of the content in the sample, your exam is not as strong as it could be, but it may still pass.

Length

- ✚ Format your exam to match the model answers (usually single or 1.5 line spacing). Then compare to the model answers. Is your answer substantially longer or shorter? Longer is not a problem unless your analysis has errors because you are rushing. Shorter answers can mean you did not get enough content into your answer.
- ✚ Look at the amount of space given to each major section of the answer. If the model answers spend two pages on the first issue and one page on the second issue, does your answer have a similar emphasis?

Facts & Law

- ✚ Compare the level of detail.
- ✚ Are the facts you used in your answer similar to the level of detail used in the model answers?
- ✚ Did you use the law in more or less detail than the model answers? Too much detail in your answer will cause you time problems. Too little detail in your answer will leave the grader wondering if you understood the legal analysis.

Performance Exam Checklist

Bakhshian

1. Task Memo

- How many tasks are identified in the task memo?
- Is my answer complete?
- Is every question in the task memo answered?

2. Notes & Outlining

- Did everything in my outline get into my answer?
- Did I outline past the 90 minute mark?
- Did I keep track of time through out the three hours?

3. Mechanics

- Is my organization obvious?
- Did I use the task memo to organize my answer?
- Did I use the words from the task memo in my headings whenever possible?
- Did I use headings and underlining to be sure my answer was easy to read?
- Does my document look like a giant essay or the type of document asked for?

4. Legal analysis

- How does my use of the library compare to the sample answers?
- If the library is small, did I use it all?
- If the library is large, did I make a conscious decision about what to use and what to leave out?
- Did I waste time on things I was instructed *not* to do?
- Did I critically read the library or did I miss issues?

5. Facts

- How does my use of the facts compare to the sample answer?
- What facts are in both sample answers that are not in my answer?
- What facts are in my outline or notes but not in my answer?
- What facts are repeated in the file documents but are not in my answer?

Performance Exam Approach

1. JDX & MORE: read *all* the general instructions
2. TASK MEMO: *read, study, and outline* the task memo
3. SKIM: only for the disciplined, *less than 1 minute* skim of file and library table of contents
4. READ THE LIBRARY: *all* of it, including footnotes, cases within cases, statutory comments, or whatever else is in there
5. READ THE FILE: *all* of it, paying particular attention to additional instructions or samples
6. OUTLINE: organize the task(s) called for in task memo and be complete (include favorable and unfavorable facts and authorities unless instructions are contrary)
7. WRITE IT:
 - a. make it look right
 - b. make it follow the directions
 - c. make it look done

Micas v. Eisen Checklist

POINTS & AUTHORITIES

SOF

- Logical organization?
 - chronological
 - introduction, body, conclusion
- Focus on liability not damages?
- Is the tone right? Did you tell a story from your client's point of view?

Arguments

- Did you use point headings as required?
- Did you make your own arguments first?
 - Rebuttal points should be smaller in scope and only after your own position is argued
- Are your facts complete?
 - You can't ignore unfavorable facts
- Authority Complete
 - Did you include all cases?
- Persuasive Tone
 - Would your opponent disagree with your point headings?
 - Did you avoid using objective statements in your point headings?
 - Did you use favorable authorities first, and distinguish unfavorable authorities only after your own arguments?
 - Did you avoid making the other side's arguments?

JURY INSTRUCTIONS

- Did you follow the instructions?
 - Your jury instructions should be specific, include facts
- Do your jury instructions look like the sample?
 - Use bullet lists or similar style
- If you have work experience, did it get in your way?

- The instructions required you to do things that are *not* done in real instructions

MISC.

- Does your answer look like the type of document you were asked for?
 - Do not write a giant essay answer
- Is your answer legible?
- Did you use headings and underlining? (not just point headings)
- Is your exam obviously incomplete?
 - Did you respond to all parts of the task memo?
 - Did you make it look like you were done?

GRADING INFORMATION

Score	Likelihood of Bar Pass	Translation to a Bar Score
Plus (+)	Definitely a passing score	85 or better
Check +	A Passing Score, very few weak points or problem areas	75/80
Check	Likely a Passing Score, with some minor weak areas, but no significant problems	70/75
Check –	Unlikely to Pass, many weak areas	60/65
Minus* (-)	A Failing Score, incomplete or significant errors	50/55

*A failing score on a practice exam will ***not*** mean you fail the course. All practice exams and in class assignments must be completed with a good faith effort to pass the course.

What Subjects are Tested on the Performance Exam?

What Type of Documents Will I Need to Draft?

Date	Exam A -- Tuesday	Exam B -- Thursday
February 2006	Ethics (with contact) P&A (sof and arguments)	Trust & Wills (omitted spouse) Appellate Mediation Brief
July 2005	Property (CC&R) Persuasive Letter	Constitutional Law (Prop. Forfeiture) Points & Authorities -- Opposition
February 2005	Tort (Personal Injury) Demand Letter (arguments)	Ethics (Marital Settlement Agreement) Stmnt of Facts & Opening Brief (arguments)
July 2004	Usury, Consumer Protect., Bus. Prac. Memo (analysis & investigation)	Torts (Assailant Liability) Opposition to Summary Jdmt.
February 2004	Premises Liability/Insurance (Statutory) 1. Letter (arguments) 2. Memo (analysis & recomm)	Contracts (Arbitration) Pre-Counseling Letter (analysis & more)
July 2003	Family Law (Child Custody) Opinion Letter (legal analysis)	Real Property Memo (legal analysis)
February 2003	Torts/Premises Liability Memo (present arguments)	Evidence -- A/C Privilege Civil Discovery Memo (legal analysis & consequences)
July 2002	Con Law/1st Amend. Memo (analysis & suggested revisions)	Two Memos 1. Crim/Evid/Con Law 2. Ethics
Feb. 2002	Torts 1. Points & Authorities (partial) 2. Witness Declarations	Two Memos 1. Torts (neglig.) 2. Torts & Evid
July 2001	ADA/Involuntary Comm. Memo (persuasive arguments, authority & procedures, creative solutions)	Criminal Law Partial Appellate Brief (SOF and Arguments on Three Issues)
Feb. 2001	Labor Law Pre-Counseling Letter (goals, legal criteria, case evaluation, courses of action)	Criminal Law & Evid Closing Argument (entire argument)
July 1999	Ethics/Attorney Discipline Memo (legal analysis and consequences)	Property (rule against perpetuities) Memo (legal analysis)
Feb. 1999	Vicarious Liability/Tort	Criminal Law Defense Worksheet

	Memo (liability, defenses, & damages)	(elements, proof & defenses, case theory, analysis)
July 1998	Con Law Memo & Opinion Letter (legal analysis and options)	Criminal Procedure Points & Authorities (Opposition) (SOF, QP, Summary of Argument, Arguments)

Statutory Interpretation

1. *Critical Reading: Start with Actual Words of the Statute or Code*
 - a. *Conjunctions*
 - b. *Permissive vs. Mandatory Language*
 - c. *Remedy: Civil vs. Criminal*
2. *Look for Help Interpreting the Statute or Code (Ambiguity & Vagueness are Common)*
 - a. *Never Skip the Official Comments*
 - b. *Check for Cases Interpreting the Statute or Code*
 - c. *Looks for Regulations*
 - i. *specific rules promulgated to implement a more general statute or code*
3. *Consider the Context of the Statute*
 - a. *Is there a Series of Codes or Statutes?*
 - b. *Are there Definitions?*
 - c. *If it is a Familiar Area of Law (a bar subject),
What do you Know Generally about this Subject?*
 - i. *Examples: Evidence, Ethics, Civil Pro Rules, etc.*
4. *Use the Canons of Construction, but expect to find contradictions*
 - a. *Lists – exclusive or illustrative?*
 - b. *Plain Meaning vs. Intent*

Checklist for In Re: Nittardi

“Suggested” Format really is mandatory

- ✚ Does your letter contain Goals?
- ✚ Does your letter contain Actions that Can Reach the Goals?
- ✚ Is your Analysis Objective (includes good and bad facts, includes good and bad law)?
- ✚ Does your Analysis come to a Conclusion? Did you also include the degree of certainty?
- ✚ Is the law discussed clearly? Could a lay person understand your letter?

Format Mechanics Cites

- ✚ Does your exam look like a letter? You need to start with “Dear Mr. Nittardi” or something similar
 - Neither sample answer ended with “Sincerely” or “Please call me office to discuss this” which would have been a very nice way to look done and show you were following directions
 - Alternatively, the second sample answer answers the task memo and attaches the letter
- ✚ Did you use headings? Do they include language from the task memo?
- ✚ Did you let your work experience get in the way? Both letters cite to the authorities even though most attorneys don’t actually do that and many legal writing texts state recommend avoiding cites in letters to lay clients

Emotional Topic

- ✚ Did you stay on the task? Objective analysis of the law. Don’t tell the client what he wants to hear. This is a mixed bag of good and bad news.
- ✚ Did you avoid sexist language or presumptions?
- ✚ Be sure to leave personal experiences or biases out of your answer.

Boylan
 Bakhshian
 Summer 2006
 Tuesdays and Thursdays 6:00 to 9:00 pm

Fundamentals of Bar Writing

Syllabus

Date	Class topic	Graphics Reading Assignment	Assignment Due at Start of Class
Class 1 May 30	Introduction to Bar Exam Introduction to Essay Writing	Read Introduction to the Bar Section	
Class 2 June 1	Mock Bar Review Lecture Practice Essay A Winter 2001 Question 5		Essay 1 Feb. 2004 Question 3
Class 3 June 6	Essay Writing		Essay 2 July 2002 Question 3
Class 4 June 8	No Class Practice Performance Exam 1 Micas v. Eisen	Read Performance Exam Basics Section	
Class 5 June 13	Introduction Performance Exam Lecture 1	Read Performance Exam Basics Section	Perf. Exam 1 Micas v. Eisen
Class 6 June 15	No Class Practice Performance Exam 2 Zwier v. Seaquest		
Class 7 June 20	Performance Exam Lecture 2		Perf. Exam 2 Zwier v. Seaquest
Class 8 June 22	No Class Practice Performance Exam A State v. King (graded)		
Class 9 June 27	No Class Practice Performance Exam 3 US v. Cruz		

Class 10 June 29	Performance Lecture 3		Perf. Exam 3 US v. Cruz
July 4	Holiday -- No Class		
Class 11 July 6	No Class Practice Performance Exam B In Re: Richardson (graded)		
Class 12 July 11	No Class Practice Performance Exam 4 In Re: Nittardi		
Class 13 July 13	Performance Exam Lecture 4		Perf. Exam 4 In Re: Nittardi
Class 14 July 18	No Class		

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 Mondays 6:00 to 9:00 pm
 Room B206

Fundamentals of Bar Writing
Syllabus

Date	Class topic	Graphics Reading Assignment	Assignment Due
Class 1 Aug. 22	Introduction to Bar Exam Introduction to Essay Writing	Read Introduction to the Bar Section	
Class 2 Aug. 29	Mock Bar Review Lecture Practice Essay A Winter 2001 Question 5		Essay 1 Feb. 2004 Question 3
Sept. 5	No Class -- Labor Day		
Class 3 Sept. 12	Essay Writing		Essay 2 July 2002 Question 3
Class 4 Sept. 19	Introduction Performance Exam Lecture 1	Read Performance Exam Basics Section	Perf. Exam 1 Micas v. Eisen
Class 5 Sept. 26	Performance Exam Lecture 2		Perf. Exam 2 Zwier v. Seaquest
Oct. 3	No Class Rosh Hashanah		
Class 6 Oct. 10	Practice Performance Exam A State v. King		
Class 7 Oct. 17	Performance Lecture 3		Perf. Exam 3 U.S. v. Cruz
Class 8 Oct. 24	Practice Performance Exam B In Re: Richardson		
Class 9 Oct. 31	Performance Exam Lecture 4		Perf. Exam 4 In Re: Nittardi