

MEMORANDUM

To: All Visiting Professors and Adjuncts Teaching Bar-Tested Subjects in AY17-18
From: Morris Ratner
Cc: Evan Lee
Date: July 8, 2017
Re: New Requirements for Faculty Teaching Bar-Tested Subjects; Resources

I am writing to catch you in the early stages of your planning for the coming academic year to inform you of the new teaching requirements the faculty unanimously adopted at the February 24, 2017 faculty meeting, and to identify resources available to help you meet them.

At the February 24 meeting, the faculty resolved as follows:

- (1) "Faculty teaching first year classes will **teach legal analysis explicitly** and ensure that students are provided **individualized feedback** on their legal analysis;"
- (2) "Professors teaching a subject tested on the bar¹ shall coordinate and propose a list of topics that must be covered as part of teaching the course, regardless of who the instructor is, in an effort to **teach topics routinely covered on the bar exam**;"
- (3) "All MBE-tested courses² final examinations shall contain a substantial proportion of essay and **MBE-type multiple-choice questions**;" and
- (4) "Faculty teaching subjects tested on the bar exam, as listed above, shall assess the students using an exam that is at least in part **closed book**."

I offer a few reflections on these new requirements. First, many of us have already adopted these pedagogical approaches to varying degrees. Second, some of the most time-intensive requirements, e.g., that we provide individualized feedback and test in part with MBE-like multiple choice questions, can be met in relatively more or less time-intensive ways. You can technically comply with the new baseline on individualized assessment by providing individualized feedback on a final exam, even though formative (pre-final) assessment is the gold standard to which we hope to move. And you can choose to include only a relatively small number of MBE questions on your final exam as you work on your own or with colleagues to build up an exam bank. Third, we have assembled resources to help everyone adapt to the new requirements, described more fully below.

¹ For a list of bar-tested subject classes, see <http://www.uchastings.edu/about/admin-offices/academic-support-gateway/bar-passage-support/uchastingsbarcourses1.pdf>. If you believe a course should be added to or removed from this list, please contact Academic and Professional Success Lecturer Margaret Greer at mgreer@uchastings.edu.

² *Id.* See also <http://www.ncbex.org/exams/mbe/preparing/>.

I. Teaching Legal Analysis Explicitly

On February 24, the faculty voted as follows: **"Faculty teaching first year classes will teach legal analysis explicitly."**

Teaching legal analysis explicitly is a continuum, in terms of the degree to which we address core skills. At one end of the spectrum, faculty may simply highlight the bone structure of legal analysis during Socratic dialogue in class, perhaps referring to the reading materials students are using in orientation and the Sack classes, described below. At the other end of the spectrum is the level of skills instruction involved in the legal analysis modules we are offering to all 1Ls next year. Each Inn will have one doctrinal class in the fall 2017 and spring 2018 semesters that includes a full unit of skills instruction. The professors teaching those classes, whom we colloquially refer to as "Sack professors," will teach case briefing, rule synthesis, analogical reasoning, the sequencing of legal analysis (e.g., "IRAC"), course outlining, exam outlining, and MBE-like multiple-choice test taking skills.³ This skills instruction will be fully embedded in the doctrinal courses, meaning that Sack professors will teach these skills at points in their 1L courses where it makes sense to do so given the law the students are studying.

The following resources are available to help you as you think about how to teach legal analysis in your doctrinal classes.

- Assistant Dean for Academic and Professional Success (ADAPS) Stefano Moscato has selected excerpts from the following materials to use in the academic portion of fall 2017 orientation and in the 1L legal analysis modules: Peter T. Wendel, *DECONSTRUCTING LEGAL ANALYSIS: A 1L PRIMER* (2009), at 103-121 (available at <http://www.wklegaledu.com/academic-success-series/id-5337/deconstructing-legal-analysis-a-1l-primer>); Linda H. Edwards, *LEGAL WRITING AND ANALYSIS* (4th ed. 2015), at 67-129 (available at <http://www.wklegaledu.com/aspen-coursebook-series/id-9781454857983/legal-writing-and-analysis-fourth-edition>); and Tracey George & Suzanna Sherry, *WHAT EVERY LAW STUDENT REALLY NEEDS TO KNOW* (2009), pages 1-19 (available at <https://www.amazon.com/What-Every-Student-Really-Needs/dp/073558236X>). Stefano is ordering a special edition of a book by Wolters Kluwer that includes these and other materials that all incoming 1Ls will use. We will either post copies of these excerpts on the Faculty Resource Page or supply you with a courtesy hard copy from Wolters Kluwer, such that you need not order your own courtesy copies.

³ A Fall 2017 template is attached as Exhibit A. As ADAPS, Stefano Moscato coordinates implementation of the integrated skills modules. Fall 2017 Sack professors are Stefano Moscato (Civil Procedure), Zach Price (Civil Procedure), Aaron Rappaport (Criminal Law), and David Takacs (Torts). Spring 2018 Sack professors are John Crawford (Property), Rory Little (Criminal Law), Naomi Roht-Arriaza (Torts), and Lois Weithorn (Criminal Law). Academic and Professional Success Lecturers Jennifer Freeland and Juan Carlos Ibarra will support Sack professors, help design and implement lesson plans, and create content on the Academic Resources Page that can be used in the modules and by professors teaching other classes. Spring 2018 Sack professors will reinforce most of the same skills being taught in the Fall 2017 term, but build on rather than merely duplicate the Fall 2017 template.

- Academic and Professional Success (APS) Lecturers Jennifer Freeland and Juan Carlos Ibarra have collected additional resources on our Academic Resources Page, <http://www.uchastings.edu/about/admin-offices/academic-support-gateway/student-academic-resources.php>. Jennifer and Juan Carlos are regularly adding content to this page that you may wish to cross-reference in your classes. These additional resources include video tutorials addressing key academic skills. You may wish to list this page as a recommended resource in your syllabus.
- You may also attend faculty colloquia in the coming year devoted to this topic, and/or speak with faculty who have historically focused on teaching skills, including last year’s Sack professors, Zach Price, Morris Ratner, Naomi Roht-Arriaza, and David Takacs. You may also speak with Laurie Zimet, Director of Academic Support, and with our APS Lecturers Jennifer Freeland and Juan Carlos Ibarra.

II. Providing Individualized Feedback

On February 24, the faculty voted as follows: **Faculty teaching 1L doctrinal subjects will “ensure that students are provided individualized feedback on their legal analysis.”** Individualized feedback on students’ legal analysis includes feedback that is tailored to each student either provided by the professor directly or via TAs the professor trains and closely monitors. It does not include the mere posting of sample answers.

The resolution does not state whether the individual feedback has to be in the nature of *formative* (pre-final exam) assessment/feedback, or whether it is sufficient for professors teaching bar-tested subjects to provide individualized feedback on *final* exams.⁴ While individualized feedback on legal analysis provided on students’ final exams complies with the resolution, formative assessment, such as feedback on midterms or other writing deliverables prior to the date of the final exam, is the gold standard because it gives students the chance to act on the feedback to improve their final grades. (From now on, PACE evaluation forms will ask students to rate professor feedback.)

Resources are available to assist you:

- The Faculty Resource Page on Canvas contains copies of sample class exercises and evaluation rubrics. To access those samples, click on “Files,” and select the “Teaching Assistants” folder and, within that, “TA Exercises – Samples” file, and the “Sample Faculty Writing Exercises” file. In addition, under Panopto Recordings on that page, there is a recording of a faculty teaching colloquium led last year by David Takacs and Laurie Zimet re effectively working with TAs.
- The AD’s office will maintain and administer a TA fund, which pays a stipend of \$300 per TA to professors teaching large doctrinal classes. TAs must be closely supervised by the

⁴ If the feedback is given on an assignment required in a 1L class, I encourage you to utilize the Master Calendar that Stefano Moscato and Katey Mason will maintain for each Inn showing all due dates, to minimize scheduling conflicts. Closer to the start of the fall term, Stefano will send more information about that Calendar.

professor and should give feedback pursuant to a written rubric. Director of Academic Support Laurie Zimet has offered to train TAs professors hired via this fund.

III. Course Coverage

On February 24, the faculty voted as follows: **"Professors teaching a subject tested on the bar shall coordinate and propose a list of topics that must be covered as part of teaching the course, regardless of who the instructor is, in an effort to teach topics routinely covered on the bar exam."** Our faculty members are in the middle of these discussions. Though these discussions are ongoing, we have resources available to assist you now as you think about your own course coverage.

Resources to support you in this effort include:

- APS Lecturer Margaret Greer created a file on the Faculty Resource Page on Canvas titled "CA Bar Essay Issues Matrix" that, for each bar tested subject, provides a list of the most frequently tested issues.
- As she did last year, Margaret will also send a bar company issues outline to each faculty member teaching a bar-tested subject in the coming academic year.
- The National Conference of Bar Examiners provides subject outlines for MBE-tested subjects: <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F201>.
- In his faculty teaching colloquium, a recording of which is in the Panopto Recordings file on the Faculty Resource Page on Canvas, Kaplan's Chris Fromm provides additional information regarding the most frequently tested issues on the bar exam.

IV. Including MBE-Style Questions on Exams in MBE-tested Subjects

On February 24, the faculty voted as follows: **"All MBE-tested courses' final examinations shall contain a substantial proportion of essay and MBE-type multiple-choice questions."** This means that final exams in MBE-tested subjects cannot be all-essay or all-multiple choice. They must include a mix of the two testing formats. Please be aware that MBE-style questions follow a specific format, and the multiple-choice questions you have used in the past may not comport with the faculty's resolution. MBE-style questions follow the basic format of the multiple-choice questions on the bar exam, which include a factual stem that calls on students to apply legal rules to the question's facts.

Resources to help you draft MBE-style questions include:

- The National Conference of Bar Examiners maintains sample questions on its website: <http://www.ncbex.org/exams/mbe/preparing/>.
- Mary Kay Kane reports that the NCBE intends to release approximately 25-30 additional sample questions per subject on its website in the near future. We'll post a link on our bar

passage support page (<http://www.uchastings.edu/about/admin-offices/academic-support-gateway/bar-passage-support/index.php>) when the new questions are added.

- Kaplan has shared 2016 MBE resources with us, available here: http://encore.uchastings.edu/iii/encore/record/C_Rb687890_Skaplan%20bar%20review_P0%2C1_Orightresult_U_X3?lang=eng&suite=cobalt and http://encore.uchastings.edu/iii/encore/record/C_Rb687860_Skaplan%20bar%20review_Orightresult_U_X3?lang=eng&suite=cobalt. Margaret Greer will be distributing additional Kaplan materials to faculty. Kaplan has agreed we may use these as practice questions in class, as long as we attribute the questions to Kaplan.
- As she did last year, Margaret Greer will send a memorandum to each faculty member teaching an MBE-tested subject identifying additional sources of practice MBE questions.
- Chancellor & Dean Emeritus Mary Kay Kane has expertise in MBE question drafting. You can watch a video of her faculty teaching colloquium on this subject on the Faculty Resource Page on Canvas under the “Panopto” file.
- Faculty teaching MBE-style subjects have started to coordinate to create question banks. The Civil Procedure and Constitutional Law faculty did so last year. I understand that certain Torts faculty are doing so this year.

V. Closed Book Final Exams in Bar Subject Classes

On February 24, the faculty voted as follows: **"Faculty teaching subjects tested on the bar exam, as listed above, shall assess the students using an exam that is at least in part closed book."** In other words, at least a part of the final exam in every bar-tested subject must be closed book. As Jeff Lefstin indicated at the February 24 faculty meeting, exams with separately-timed open- and closed-book portions are extremely difficult and error-prone to administer, and should thus be avoided. It is possible, though, for faculty teaching bar-tested subjects to administer formative assessments that are open book, leaving only the final exam closed book. In addition, Jeff and Records are exploring options such as permitting faculty to give final exams that are part proctored closed-book and part take home. Jeff will follow up with more guidance regarding the options.

EXHIBIT A

1L Integrated Legal Analysis Module (Fall Term)

This module is fully integrated into doctrinal classes taught by Sack Teaching Fellow professors and thus is not a separate course. The expectation is that Sack Teaching Fellow professors will take responsibility for ensuring that the core elements of the module (i.e., the skills covered in Weeks 1-8 and 13) are integrated into our courses, in coordination with the Academic and Professional Success Lecturers (“APS Lecturers”), and with guidance from the Associate Dean for Academic and Professional Success (“ADAPS”). The assignments are ungraded, but good faith completion of them is a requirement for passing the doctrinal course to which the module is attached. The Sack Teaching Fellows will perform the same function we did in the first two years of that program’s rollout, i.e., trained and with guidance from the Sack Teaching Fellow professors, Fellows will provide feedback on the two writing assignments. Working in conjunction with the professors, Academic and Professional Success Lecturers will help students self-assess and will provide feedback regarding the students’ case briefs and course outlines. In the initial year of the rollout of this module, Sack Teaching Fellow professors will communicate with each other and with ADAPS regarding how we implement the module in each of our courses.

Student Learning Outcomes

Sack Teaching Fellow professors’ syllabi should include the following student learning outcomes, in addition to subject-specific outcomes:

- Students will be able to brief court decisions;
- Students will be able to distill and synthesize course content in “course outlines”;
- Students will be able to engage in legal analysis, including identifying legal issues raised by a factual problem, correctly stating applicable legal rules, and applying the elements of those rules to the facts while reasoning by analogy to key court decisions and addressing reasonable counter-arguments; and
- Students will be able to demonstrate their understanding of and ability to apply the law in an MBE-style multiple choice testing format.

Sample Schedule

This is just a sample schedule. Each Sack Professor should adapt this schedule to fit his or her course schedule, mindful of other deadlines students may have (e.g., the LWR schedule, which I am told LWR will circulate next month). The legal analysis components need not take place only one of five hours per week. In some weeks, you may not have an explicit hour of Legal Analysis instruction. In others, you might have a few hours. Nor is the exact sequence of skills instruction listed below essential. It is essential, however, that Sack Professors have 13 hours of explicit skills instruction; that the instruction progressively build skills along the lines set out in Weeks 1-8 and 13 of the template, below, which includes integrated instruction on case briefing, IRAC, course

outlining, exam outlining, exam writing, and MBE test-taking skills; and that Sack Professors use active learning techniques¹ and provide formative assessments.²

Week 1: Case Briefing

Professors will require students to submit a case brief on the day of class, and will have students review each other's case briefs during class, comparing to samples of "good" and "bad" case briefs.

Week 2: Rules, Elements, and Facts; Reasoning by Analogy

In coordination with APS Lecturers, professors will lead an in-class legal analysis exercise that requires students to connect the dots among rules, their elements, and a set of hypothetical facts. Students will then be asked to reason by analogy in a simple exercise done in class.

Week 3: Distilling Rules from Multiple Cases

Preferably using cases from class, or, if not, using a special set of cases selected for purposes of this class day, students will be required to distill a rule from multiple cases. They should turn in rule statements before class.

Week 4: IRAC and "sub-IRAC-ing" or "elementizing"

In coordination with APS Lecturers, professors will lead an in-class legal analysis exercise that uses a multi-element rule, and preferably, multiple cases, instructing students how to organize legal analysis where different decisions help with application of distinct rule elements.

Week 5: Outlining, Part I

In coordination with APS Lecturers, professors and/or Sack Teaching Fellows will discuss outlining strategies and present sample outlines of a portion of the class to date.

Week 6: Exercise 1

Students will be given a legal analysis written exercise, to be evaluated by Sack Teaching Fellows using rubric created by professor, after being trained by Sack professors who "calibrate" Fellow feedback. The exercise can be given in-class or in a take-home format.³

Week 7: Exercise 1 (Review)

Professor will review sample exercise answers.

¹ See <http://www.crlt.umich.edu/tstrategies/tsal>.

² See <https://www.cmu.edu/teaching/assessment/basics/formative-summative.html>.

³ Prior-year experience of Sack Teaching Fellow professors suggests that having at least one timed exercise helps surface those students whose grasp of the material is insufficiently tight or who have time management problems that a take-home may not reveal.

Week 8: Multiple Choice Strategy

Students will have 20 minutes to answer 10 practice multiple choice questions. Professors will then review strategies for answering them during the remainder of the hour.

Week 9: Outlining, Part II

Students will have been required to submit an outline for a segment of the class. Review of sample outlines.

Week 10: Exercise 2

Students will be given a legal analysis written exercise, to be evaluated by Sack Teaching Fellows using rubric created by professor, after being trained by Sack professors who “calibrate” Fellow feedback. The exercise can be given in-class or in a take-home format.

Week 11: Exercise 2 (Review)

Professor will review sample exercise answers.

Week 12: Condensed Outlines – Magic Sheets

[Description to come.]

Week 13: Pulling it All Together – Exam Outlining and writing

APS Lecturers in coordination with Sack Teaching Fellow professors will lead an hour session on exam outlining, connecting the dots among case briefing, course outlining, legal analysis, and exam outlining.