MEET THE MODULE BUILDING TEAMS: CIVIL PROCEDURE AND PROFESSIONAL RESPONSIBILITY

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Civil Procedure and Professional Responsibility

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Civil Procedure

Self-Assessment Exercises

Highlighter Exercise

Compare/Contrast Exercise

Self-Assessment Reflection

Self-Assessment Exercises

Use this worksheet to guide your self-assessment as you learn to compare your answer to a model answer. After a couple of practice writing assignments, you should be able to put the worksheet away and compare/contrast on your own, noting the key differences between the sample and your answer in your head.

Part I: Highlighter Exercise

The purpose of this exercise is to identify whether you are writing your answer in a logical and organized manner, following an IRAC (Issue-Rule-Analysis-Conclusion) format.

You will need three colored highlighters for this exercise (one pink, one yellow, and one green), as well as a blue or black pen.

Pull out the sample answer and complete the following steps.

Step One: Identify all "Issue" statements and highlight them in pink.

A well-written essay answer uses headings and subheadings to identify the issues. Each heading or subheading should indicate the topic, the parties, or both, depending on the issue being addressed. An additional Issue sentence is not necessary, but if one is included, it should identify the legal issue that you are trying to solve and incorporate the facts that give rise to the issue.

<u>Step Two: Identify all overarching Rule and Rule Explanation sentences and highlight them in yellow</u>.

Your overarching Rule sentences should identify the governing law for the issue and state the general rule, or cause of action with elements, that the court will use to resolve the issue. Your Rule Explanation sentences should provide further explanation of how specific parts of the overarching Rule apply to the issue.

<u>Step Three: Identify all Analysis sentences and highlight them in green</u>.

Your Analysis sentences should apply the relevant rule to the relevant facts ("R" + "A"), using connector terms like "because" and "when." This section is the most important part of your answer, so you must avoid making conclusory statements. Instead, your Analysis section should show WHY the facts you have included are important.

The analysis is often the trickiest piece of the puzzle for students to master because it requires the combination of facts and rules. Assume your rule contains elements X, Y, and Z. Your analysis therefore should contain the following: "X + Fact(s). Y + Fact(s). Z + Fact(s)." There are several ways you can combine the rule and the facts using the connector words "because" and "when" to create a solid analysis:

When [Fact(s)], this meant that [Element X/Y/Z] was satisfied.

[Element X/Y/Z] was satisfied **because** [Fact(s)].

Because [Fact(s)], [Element X/Y/Z] was satisfied.

Step Four: Review each Analysis sentence identified in Step Three and use your pen to do the following:

(a) Underline the rule language;

(b) Circle each fact; and

(c) Draw a box around any connector words, such as "because" or "when."

For example: Element X was satisfied box{because} circle{Fact A.}

Step Five: Identify all final Conclusions and highlight them in pink.

At the end of each issue, you should include one sentence that concisely states (or reiterates) the likely outcome of the issue, based on the application of the rule to the facts contained in the question.

Step Six: Repeat Steps One through Five using a printed copy of your own answer.

Part II: Compare/Contrast Exercise

The purpose of this exercise is to identify whether each piece of your IRAC is fully developed. For each section of the model answer laid out in the "Model Answer" column below, insert the corresponding section of your own answer into the "My Answer" column. Remember to limit yourself to the words written in your answer – if you didn't have it in your answer, you shouldn't add it after the fact because that defeats the purpose of this exercise. This is your opportunity to be a scientist, not a judge. Gather data on where your strengths lie and where you need to improve on your course preparation and legal writing.

	MODEL ANSWER	MY ANSWER
Overarching Issue: Federal Subject-Matter Jurisdiction (SMJ)	You asked me to analyze whether a federal court has proper subject-matter jurisdiction over Pat Pell's lawsuit against ZWin LLP and Pruvi Inc. This memorandum will explore both federal question and diversity jurisdiction as potential bases for subject-matter jurisdiction, as well as supplemental subject-matter jurisdiction should Pell's claim against one party fail to satisfy either of the original bases of subject-matter jurisdiction.	

	MODEL ANSWER	MY ANSWER
Sub-Issue #1: Federal Question SMJ	At issue is whether a federal court would have federal question SMJ over Pell's lawsuit against ZWin LLP and Pruvi Inc.	
Rule for Federal Question SMJ	Pursuant to 28 U.S.C. § 1331, federal courts may exercise federal question SMJ if a case arises under federal law or the U.S. Constitution. Under the well-pleaded complaint rule, § 1331 requires that the plaintiff's cause of action arise under a federal law or the U.S. Constitution, so the plaintiff cannot depend on an anticipated federal defense or counterclaim that the defendant might raise to invoke federal question SMJ. Federal question SMJ may also exist when the plaintiff's right to relief on a state claim necessarily depends on the resolution of a substantial question of federal law.	

Analysis of Federal Question SMJ	Here, Pell's claim is for misrepresentations in violation of Orange's "Deceptive and Unfair Trade Practices Act" (DUTPA). Although Pell's claim concerns a federal energy tax credit created by a congressional act, Pell's claim specifically relates to a misrepresentation about the federal act, and not for a violation of the federal act itself. Thus, Pell's claim will not require resolution of any question of federal law in relation to that federal act.	
Conclusion on Federal Question SMJ	Therefore, a federal court would not have federal question SMJ over Pell's lawsuit.	

Part III: Self-Assessment Reflection

The purpose of this exercise is to help you reflect on the bigger picture of your course preparation and legal writing. Reflection is a critical component of active learning. It is only after reflecting on what went well, and what you would like to improve, that you can come up with concrete learning goals and steps for improvement.

1. Preparation: How well did your Civil Procedure materials and preparation set you up for writing your answer? What do you wish you had done differently, or done more of?

2. Organization: Did your answer use the same headings as the sample answer and/or mimic the order of the essay prompts? Why or why not?

3. Overall IRAC Structure: How did the order of the highlighted sentences differ between your exam answer and the sample answer?

4. <u>Issues</u>: Did your answer have the same issues and sub-issues as the sample answer? Why or why not?

5. <u>Rules</u>: Did your answer contain all the same rules as the sample answer? Did your rules include all the components of the sample answer's rules? Why or why not?

6. <u>Analysis</u>:

   (a) Did your answer contain the same analysis points as the sample answer? Why or why not?

   (b) Look back at the green highlighted sentences in your exam answer: Did each analysis sentence have rule language (underlined), a connector word (boxed), and a fact or facts (circled)? .

Professional Responsibility

Our Modules

Professional Responsibility

- Substance is not directly tested on the NextGen Bar Exam

- Examinees are expected to recognize and address relevant PR issues throughout the exam

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Our Modules

- Four Integrated Problem Sets

- One Performance Task

Our Modules

Components of Each Module

- Professor Instructional Guide
- Integrated Problem Set/ Performance Task
- Sample Answers
- Professor Grading Grid
- Student Self-Assessment Grading Grid and Exercise

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Our Modules

- Designed for the 1L curriculum [can be modified to fit an upper division course]

- Designed as formative assessments to help professors and students assess their understanding and abilities with regards to skills tested on the NextGen Bar Exam

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Module 1: Integrated Question Set

Rules

MRPC 1.3 (Diligence)

MRPC 1.4 (Communication)

Foundational Skills

Issue Spotting and Analysis

Legal Research

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Module 2: Integrated Problem Set

Rules

MRPC 1.6
(Confidentiality)

Foundational Skills

Issue Spotting and Analysis

Legal Writing and Drafting

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Module 3: Integrated Problem Set

Rules

MRPC 4.2 (Persons Represented by Counsel)

MRPC 4.3 (Unrepresented Persons)

Attorney Client Privilege

Work Product Immunity

Foundational Skills

Issue Spotting and Analysis

Client Counseling and Advising

Legal Writing and Drafting

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Module 4: Objective Memorandum Performance Task

Rules

MRPC 1.1 (Competence)

MRPC 1.2(d) (Scope of Representation)

MRPC 1.3 (Diligence)

MRPC. 4.1 (Truthfulness in Statements to Others)

Foundational Skills

Issue Spotting and Analysis

Legal Research

Legal Writing and Drafting

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Takeaways

- How did students react and interact with these modules?

Takeaways

- What changes did you make to the modules based on student interaction?

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THANK YOU!

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Questions?