

Taking Exams: Common Mistakes

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Below are some common mistake students make on exams. Let me use as a running example the following simple problem. S and B agree that S will deliver widgets to B on June 1, for a price of \$100. The parties sign a lengthy form contract supplied by S. The widgets arrive on time but are not painted. B claims that S promised that the widgets would be painted during the negotiations but the writing does not mention whether the widgets are to be painted or not. B refuses to accept the widgets and refuses to pay the \$100 due on delivery. B sues S for breach of contract, and seeks damages. Question: what is B's legal argument?

The Excessive Windup

Nearly everyone will see that the parol evidence rule is an issue in this problem. But some students will begin with a lengthy discussion of the rationale for the parol evidence rule, the different versions that exist in different jurisdictions, etc. Don't make this mistake. Start with a description of B's claim, and its basis.

Excessive Abstraction, or Ignoring the Facts

Consider the following (common) answer. "B's legal claim fails because the parol evidence rule bars introduction of parol evidence that contradicts the writing or varies the meaning of the writing." This might be a good enough starting point for a discussion, but it is highly incomplete. You cannot just state the law; you must also apply it to the facts. So you need to identify what the parol evidence is, even if it seems obvious: the alleged promise that the widgets will be painted. And then you must explain whether this promise contradicts (no) or varies (yes) the meaning of the writing. And then the key question is whether the writing itself was complete or not. You are not given enough information about the latter point, but you would at least need to point out that the form is lengthy, which might suggest that it is supposed to cover all aspects of the agreement, but might not.

Ignoring the Question(s)

Suppose the Question had been: "What is B's legal argument? Does S have any counterclaims?" Surprisingly, students often answer the first question but not the second. Even if S did not have any counterclaims at all, you should say "No" and then explain why, even if it seems obvious to you.

Spotting Non-Issues

Consider an exam answer with the following discussion. "Since money is consideration, and so are widgets, the consideration doctrine is satisfied. In addition, it appears that one of the parties made an offer and the other accepted the offer. Moreover, there does not appear to have been any duress...." You should not invoke doctrines that are not relevant to the real dispute—here, whether the widgets have to be painted or not.

Too Much About the Law

I mentioned above that there is no need to talk about the history of the law in a windup, or to discuss jurisdictional disagreements. This is true generally: you should not talk about these things anywhere in the question unless you are specifically asked or you think that the question calls for such a discussion. If the transaction involves real estate, you should not find yourself saying, “by the way, if this transaction involved the sales of goods, we would rely on U.C.C. §”

Not Enough About the Law

The parol evidence rule, like all legal rules, can be described at a highly abstract level (“parties cannot introduce parol evidence that varies the written contract...”) or at various lower levels of abstractions (“parties cannot introduce evidence that varies a complete integration or that contradicts terms in a partial integration, except to show fraud,..., unless...”). Try to avoid highly abstract statements, and pick the level of generality that is called for by the facts. In general, try to integrate your statement of the law into your discussion of the facts.

Philosophizing When It Is Not Called For

Standard issue-spotting questions ask for lawyerly answers. Philosophical discussions about the advantages and disadvantages of the parol evidence rule are unwise in an exam, just as they are in a brief—unless you can tie your philosophical argument directly to the dispute at hand.

Not Seeing (and Responding to) the Other Side

If you want to argue that the parol evidence rule applies, then also discuss the argument that it does not. And vice versa.

How To Prepare

You should focus on your notes, the reading assignments, and other materials (commercial outlines if they are helpful, restatement or UCC sections that were not assigned, casebook materials that were not assigned), in that order. You will not be tested on “other materials,” but they are often useful, as they may discuss in greater detail topics that we have discussed, or with greater clarity, or they might provide useful examples, illustrations, and rules. Your notes matter the most: I try to test people on topics that we discuss in class. You are also responsible for reading assignments that we do not discuss, but you should give these lower priority during preparation.

Taking practice exams (old exams that can be found posted on the library’s website) under exam conditions is also likely to be helpful. When you look at model or student answers, remember that in earlier courses, we might have covered different materials.