ADVICE ON ANSWERING THE QUESTIONS

Each question begins with a statement of certain facts. At the end, there is a question. Read the facts and read the question. This may sound obvious, but nearly every year, someone goes on at great length about a question that was not asked.

Take time to think about the question and to outline the central points of your answer before you begin to write. Stream of consciousness will not be rewarded. Dumping every remotely relevant portion of your outline will not be rewarded. Getting directly to the heart of the matter will be rewarded.

A few years ago, a student who dumped his outline and was disappointed with his grade said that some other professor had appeared to reward an outline dump and he didn’t believe me when I said something different. Even if he was right about what the other professor had done, which we don’t know, it was a mistake to ignore the explicit instructions on my exam. I can’t help you if you ignore my offers of help.

Issues that are central to the question generally deserve full exploration. But if the resolution of an issue is simple and obvious, you should signal that you understand that by resolving the issue quickly and moving on, no matter how central the issue may otherwise seem. You will not help yourself, and you can easily hurt yourself, by blathering on at length about something that is simple and obvious.

Issues that are marginal to the question, or that may be logically antecedent to the question, also deserve conclusory treatment. Issues that are not posed by the question deserve no treatment, even if you wish I had asked that question instead. Distinguishing the central from the peripheral is an essential lawyer’s skill. Show that you are acquiring that skill.

On the other hand, do not make important issues disappear. Suppose there are two issues, Issue 1 and Issue 2, that appear central to the facts. Suppose the problem posed by the question, or some significant part of it, could be resolved on the basis of either Issue 1 or Issue 2. And suppose that you resolve Issue 1 in a way that makes Issue 2 moot or irrelevant. You should still consider Issue 2 in the alternative. I will be awarding points for both of these issues, and students who consider only one of them will be at a disadvantage.

With respect to the issues that deserve serious discussion, assume that I know nothing. You have to explain everything to me; I can’t give you credit for what you don’t say. When you leave out a necessary step in the argument you are trying to make, I have no way to know whether you thought it was obvious, thought it was irrelevant, or didn’t know anything about it.
If you are asked to decide an issue that has not yet been resolved by the courts, you should resolve that issue and give reasons for resolving it the way you do. You cannot just say that if the Supreme Court eventually rules X, the law will be X, but if the Court rules Y, the law will be Y. A high school student could tell me that. The point of such a question is: Will the Court rule, or should the Court rule, X or Y? And more important, why?

More generally, your answer should reach a conclusion. It is rarely sufficient to just sketch the argument either way without resolving that argument and giving a reason. Very occasionally, I will ask you to make the best argument for one side or for the other. But usually, questions put you in the role of a judge who has to decide the question, or of an advisor who has to conclude that, despite the risks and uncertainties, one course of action is legally better for the client than the other.

If you are assigned the role of a judge, and asked to decide a case, you should assume (unless the question explicitly says otherwise) that the parties made all plausible arguments. You should not assume that they made irrelevant or wholly implausible arguments. I cannot give you points for discussing an issue so marginal that it would be unreasonable to expect your classmates to also discuss that issue.

These instructions are based on thirty-nine years of experience with the many ways in which students sabotage their own performance on final exams. They are not specific to this year’s exam, and they contain no hints about the nature of the issues in this exam or any relationships among those issues. Some of this advice may turn out to be wholly irrelevant this year. But the advice to read the question and to focus on the heart of the matter is always relevant in every year.