TIPS FOR WRITING A LAW SCHOOL EXAM[1]

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A semester of reading cases, briefing them, and preparing outlines all culminates in the final act of the semester: writing exams. The task of outlining can itself seem insurmountable, let alone the art of crafting a successful exam answer within certain time constraints. This handout explores some strategies for writing strong exams for doctrinal courses. [2] In Part 1, this handout discusses some strategies for preparing for law school exams. In Part 2, the handout considers the audience for your exam (your professor). In Part 3, the handout examines various ways to approach an exam. And in Part 4, the handout provides some tips on how to write an actual exam response.

1. Preparation: Tools to Succeed

Although this handout does not focus on strategies for creating outlines directly, [3] one cannot write a strong exam answer if one is not sufficiently prepared for the exam. After all, preparation for a law school exam involves comprehending the content that will be tested by the exam. Preparation, therefore, merits at least some consideration before reaching the strategies for writing good exams.

Most law students know that they will prepare an outline for their courses. But simply creating one large outline is typically not enough to do well on the exam, even if the exam is open book. Indeed, law school exams have time constraints, ranging from three hour in-class exams to twenty-four-hour take-home exams. Regardless of the length of the exam's time constraint, the exam taker likely will not have the time to spot all of the issues, to locate all of the applicable law in a large outline, to summarize and synthesize all of that law, and to apply the law to the issues and facts implicated in the exam's fact patterns.

Recognizing the time constraints law school exams place on the exam taker, many law students choose to create more focused outlines based on their larger outlines, referred to as "attack outlines," "checklists," or "mini outlines." These more focused outlines usually include the major doctrines in the course, policy rationales, and some additional context. In other words, these outlines are condensed versions of the larger outlines, and they primarily focus on rules of law and overarching themes of each course.

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[1] Document authored in 2018 by Christopher Fitzpatrick Cannataro, B'15, L'18.

[2] This handout does not pretend to posit a formula that transcends all exams, but it provides some general guidance and points to consider when preparing for and writing exams.

[3] For more on outlining, please see the Writing Center's handout on outlining. The outline handout is available here: https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/OutliningforExamsHandoutFinal.pdf.

When preparing the condensed outline, students tend to use skills similar to those learned in the first-year legal writing course. For example, students may use the inductive reasoning skills they learned when discussing "rule synthesis."[4] Crafting synthesized rules requires the lawyer or law student to intuit a rule from a body of legal precedent.[5] Because the cases included in case books do not always provide clear tests or rules of law, law students should take the time to craft a refined rule statement prior to the exam. Often students may craft rule statements based on the primary cases assigned by the professor, the decisions mentioned in class by the professor that were not included in the assigned reading, and the subsidiary cases contained in the notes preceding or following the primary case. Here's an example on the doctrine of standing:

> *The first irreducible element of standing is the "*injury-in-fact" *requirement.* Lujan v. Defenders of Wildlife. *To satisfy this element, the injury must be "concrete" and "particularized."* Id. *A concrete injury may be either tangible or intangible, but concrete injuries are not wholly abstract.* Spokeo, Inc. v. Robins. *The injury cannot be "conjecture" or "theoretical."* Lujan. *In addition, the injury must be "actual" or "imminent."* Id.

Often one does not need to include the case names when describing the law. Some professors just ask for the rules to be stated properly without citing to specific authorities. Here's an example dealing with the dormant commerce clause:

> *The doctrine of the dormant commerce clause is that if a measure passed by a state is simple economic protectionism and discriminatory, it is per se invalid and subjected to the strictest scrutiny. Discriminatory measures includes those which are (1) facially discriminatory; (2) discriminatory in purpose; (3) discriminatory in impact/effect. If the measure is not deemed discriminatory, it is subjected to a balancing test, where the interests needing to be balanced are whether the burden on interstate commerce outweighs the benefits in-state.*[6]

In yet another context, particularly first-year common law courses, several doctrines have "majority" and "minority" positions based on the governing rules in differing states.[7] To best prepare for these exams, a student can craft rule statements for each of these doctrines. Each rule statement would include the "majority" position, the "minority" position, and a policy rationale explaining which of those positions should govern, assuming the exam question does not indicate which jurisdiction's law governs the facts.[8] Here's an example from a Property course:

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[4] KRISTEN KONRAD TISCIONE, RHETORIC FOR LEGAL WRITERS 80–86 (2d ed. 2016).
[5] *Id.*
[6] *Best Examination in Sheryll Cashin's Constitutional Law I, Fall 2015*, 2 (2016), https://exams.ll.georgetown.edu/system/files/14347.PDF.
[7] *See, e.g.*, Michael H. Gottesman, *Property Exam Feedback Memorandum, Spring 2011*, 11 (2011), http://apps.law.georgetown.edu/exams-archive/examFile.cfm?examID=12792&fileID=12820.
[8] To be sure, some fact patterns on law school exams will state which jurisdiction's substantive law should be applied in the hypothetical. In that case, the exam taker should, of course, discuss the prevailing rule within the given jurisdiction when addressing that issue on the exam. But the exam taker, regardless of the inclusion of the jurisdiction within the fact pattern, could provide a more nuanced analysis by

The threshold question is what rule of law should apply when tenants vacate their apartments. The traditional common law rule allows the landlord to leave the apartment vacant and sue for total damages. But in New Jersey and other jurisdictions, tenants receive more protections. In this minority of states, leases are treated like contracts and the landlord is accrued a duty to mitigate her damages by taking reasonable measures to find a new tenant. [Fictional jurisdiction] should adopt the mitigation rule — the rule in the minority of jurisdictions — and favor a contractual view of leases because the contractual view leads to efficient uses of property. In other words, less properties will be left vacant intentionally by landlords if the law subjects them to a duty to mitigate.

If a student employs this strategy and takes the time to craft these complex rule statements, her condensed outline will be much more accessible during the exam itself. In other words, the rules of law will be at the exam taker's finger tips because the student will have already crafted nuanced rule statements and included them in a condensed outline. Thus, the student will be able to simply include the rule on the exam quickly, concisely, and succinctly.

The structure of such a condensed outline is ultimately a choice each individual law student should make. The key to a useful condensed outline is that the student can easily and quickly find the rules of law, include them on the exam, and apply them to the facts implicated by the fact pattern. Stated another way, the material included in a condensed outline should be comprehensive, compact, refined, and easily accessible. Some students structure these condensed outlines in the form of prose that discuss issues that may be implicated on the exam. Other students use bullets or traditional outline formats. Still others use flow charts or decision trees. The bottom line is that each student must discern what format of the condensed outline works best for her.

One way to assess the utility and the functionality of a condensed outline is by taking practice exams. The registrar posts each professor's exams to the library's exam archive[9] and any feedback (a feedback memorandum, a model answer, a best student response, or some combination of all three) provided by the professor. A student may practice drafting an exam answer using her condensed outline, and then she may evaluate that response against whatever feedback has been provided by the professor. This exercise allows the student to discern whether she sufficiently synthesized the material and whether her condensed outline is accessible.

Taking practice exams (*i.e.*, taking past exams posted on the library's exam archive as practice) also helps the student to learn how to spot the issues on the exam and to see commonly recurring patterns of issues implicated by exams. But the ways in which students use these practice exams differ widely. Some students just read the questions, sketch a brief outline of the issues they think are implicated in those questions, and review any feedback provided by the

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describing the other position and providing a policy rationale to evaluate the positions normatively. On some exams, that type of response could garner additional points. At the same time, on a different exam, that response could merit no additional points. Thus, understanding the contours of a professor's exam by reviewing old exams and feedback memoranda is critical.

[9] The past exams and professor feedback may be accessed at this link: https://exams.ll.georgetown.edu/. A student must enter her Net ID and Password to access the archive.

professor for those questions. Other students attempt to mimic the actual exam setting by giving themselves the full allotted time to take the entire exam. These students write out complete responses to the questions and compare their responses with the feedback given by the professor. Some students will use both strategies or combine the two. Again, every student's approach is different—there is no "correct" way to prepare.

The point in the semester at which students begin to do practice exams also varies. Some students start looking at old exams just a few days before the actual exam. Others begin looking at them at least a month before the actual exam. This handout, of course, takes no position on when a student should begin looking at these exams; that choice is one for each student to discern on her own.

2. Audience: Understanding your Professor's Exam

In addition, understanding your professor's exam is another consideration before actually strategizing how to write a successful exam. After all, the professor is the sole audience for your exam, and a "successful exam" is one that merits a substantial number of points according to the professor's rubric.

And every law school professor (and his or her exam) is, of course, different. For example, some professors may pose questions about specific issues and award points based on the nuance of the analysis provided in the exam response. At the same time, another professor may award the bulk of the available points to exams that spot all of the issues implicated in the exam. And another professor may require the exam taker to spot all the issues and to furnish a nuanced analysis. To be sure, a general rule of thumb is to "do it all" by both spotting the issues and providing a nuanced analysis. But the relative weights of those two components vary by professor. Thus, determining the grading scheme employed by your professor is essential.

There are several ways to discern how your professor intends to grade exams. First, the professor may provide insights throughout the semester. Second, a student can ask his professor about what she looks for on successful exams during office hours. Finally, the student can review old exam questions and feedback memoranda which are available on the library's exam archive.

Indeed, to the extent those old exam questions and feedback memoranda are available, a prospective exam taker should review them throughout the semester not only to test her understanding of the material — which this handout has already discussed[10] — but also to gain insights into the professor's method of testing the material. Reading best student answers is also helpful because it shows that while the "best answers" are quite good, they are far from perfect.[11] Regardless of the strategy taken, understanding how your professor tests the material and grades exams is imperative to writing a successful exam.

3. It's Test Day: How to Approach the Exam

[10] *See supra* Part 1.

[11] As a recent feedback memorandum explains, all of the answers discussed in the memo are not "model answers[,]" and students were not expected to "hit on every issue." Gregory Klass, *Contracts Feedback Memorandum, Fall 2017*, 1 (2018), https://exams.ll.georgetown.edu/system/files/14700.PDF

This section and the next one focus on taking an actual exam. But first, relax. Take a deep breath. On the day of your exam, you will have already created an outline, condensed that outline, and otherwise prepared for your exam. Test day is about showing your professor that you have mastered the material. Before discussing some tips on how to structure your exam response, this handout discusses some general considerations about taking an exam.

Three hours may seem like a long time. Eight hours certainly seems longer. And twenty-four hours is even longer than that. But when it comes to exams, these periods of time are quite short because the exam taker has much to accomplish in those seemingly "long" windows of time. Exam takers must read the exam questions, spot all of the issues implicated in those questions, consider how to apply the law to the facts in each question, draft a response to each question, and review those responses.

First, the exam taker must read the questions carefully if she hopes to spot all the issues. Part of reading the questions also includes paying attention to what the question actually asks. Sometimes called the "call of the question," some exams ask the exam taker to discuss only certain issues or to write the exam response from a particular perspective. Discussion outside the scope of the "call of the question" is irrelevant and will likely not merit any points. Here is an example of a question on a 2017 Criminal Justice exam:

> *Your job as clerk to District Judge Confused is to draft a memorandum on the question whether officers had probable cause that plaintiffs either knew or should have known that Peaches lacked authority to give them permission to attend a party at the house.*
>
> *Remember that you must reach a definitive conclusion on how that issue should be resolved with no hedging. Remember to take into account any significant counterarguments. And remember that you will be penalized if you address any other issue.*[12]

This question states which issue the exam taker should address, that the exam taker should reach a definitive conclusion, and from which perspective the question should be addressed. To be sure, some exams just ask the exam taker to address all the issues implicated in the fact pattern.[13] Regardless, the exam taker must be aware of what the professor hopes for her to accomplish while taking the exam.

The number of times a student must read the fact pattern to discover all the issues varies, of course, but many students read the questions—or parts of questions at least—more than once. Then, once the exam taker spots all the issues, she must consider how to apply the law in her condensed outline to the factual scenario presented by the fact pattern. Some students just

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[12] Irving Gornstein, *Criminal Justice Examination, Spring 2017*, 4 (2017), https://exams.ll.georgetown.edu/system/files/15198.PDF.

[13] *See, e.g.*, Sheryll Cashin, *Administrative Law Examination, Spring 2017*, 3 (2017), https://exams.ll.georgetown.edu/system/files/14934.PDF ("For each issue implicated discuss the arguments the litigants and the agency will make, how the court should rule, and why.").

physically jot down some notes directly on the exam questions. Others transcribe an outline directly into the exam document on their computers. Still others do a mix of both.

The advantage of a student transcribing the outline of her response into the exam response document is that, in the event the student runs out of time, the professor will see the outline and may score it for grading purposes. At Georgetown, only what a student transcribes into her exam response document will be assessed for grading purposes. Thus, the student may earn some points for the outline she completed even if she could not fully transform it into prose. On the other hand, the advantage of just jotting down some thoughts on the physical exam questions is that it likely takes less time than transcribing an outline. The student that just writes down a few thoughts, therefore, likely has more time to transcribe her answer. In all events, most students do, indeed, take some time for planning their exam responses. After planning her response, the exam taker will draft her response and review it.

All told, one of the greatest obstacles for an exam taker is to accomplish all this within the allotted time. In other words, the clock may be an exam taker's greatest enemy, a constraint that needs to be managed if the exam taker hopes to finish the exam while also producing a thorough and complete analysis. Exam takers must structure their time on two levels. The first level is on the "per question" level. The exam taker must divide the amount of time she has to complete the exam based on the number of questions within the exam. Luckily, the exam taker's professor usually can help her discern how to divide her time on a per question basis. Some exams provide rough estimates on how long one should spend on each question.[14] Other exams allocate a certain number of points to each question.[15] Some professors even do both.[16] Students usually do their best to follow this guidance, but exam takers should not view this guidance as binding. Successful exams certainly have been written by students who do not follow the guidance perfectly.

Exam takers must also structure the time they spend on each question. As previously discussed, exam takers must read the exam question, spot the issues implicated in that question, plan a response (*i.e.*, discern how best to apply the law to the facts), draft a thorough response, and review that response. Every student, of course, allocates the time spent on each question differently. If you are worried about this, one helpful way to learn how you should structure your time is by taking practice exams in an exam-like setting. You will learn how you think about fact patterns and tailor an approach that works best for you.

4. Structure and Analysis: Writing the Exam Response itself

[14] *See, e.g.*, Sheryll D. Cashin, *Constitutional Law I Examination, Fall 2015*, 1 (2016), https://exams.ll.georgetown.edu/system/files/14258.PDF.
[15] *See, e.g.*, Urska Velikonja, *Securities Regulation Examination, Spring 2017*, 3-6 (2017), https://exams.ll.georgetown.edu/system/files/15009.PDF.
[16] For example, one professor writes in his exam instructions that "[t]he exam will be graded on the basis of 100 points. The points allocated to each question are indicated on the exam. It is recommended that you allocate your time accordingly. If you allocate four minutes for each point, you will have spent six hours and forty minutes, thereby leaving one hour and twenty minutes for editing and other purposes." Michael H. Gottesman, *Criminal Justice Examination, Spring 2017*, 1 (2018), https://exams.ll.georgetown.edu/system/files/15199.PDF.

As one might imagine, there are several components to writing a strong exam. And those components are generally similar to elements of strong legal writing: organization, analysis, and style.

A. Organization

Organization is critical to writing a successful exam. After all, if the professor—your audience—cannot follow your analysis, how can it merit a high grade? There are two levels of organization: large scale and small scale.[17]

Large-scale organization is critical to ensure that you cover all of the issues implicated by the exam.[18] It also tells the professor that you were thoughtful when writing your analysis, even in the context of an in-class exam. Once an exam taker has spotted the issues implicated by the fact pattern, she may begin writing the exam by including a roadmap of which issues she will discuss. The roadmap quickly shows the professor that the writer has spotted some or all of the issues. And the roadmap likely does not need to be highly technical or persuasive. For example, a student who crafted one of the best Constitutional Law exams in 2015 wrote:

> *The Working Parents Act of 2016 is unconstitutional. The Act exceeds the scope of Congress' commerce clause, taxing, and spending powers. In addition, it is unlikely to be justified by modern interpretation of the Necessary and Proper clause. The Act also cannot be justified by Congress' Reconstruction Amendment powers. Moreover, the Act violates the Anti-Commandeering Principle articulated in recent decisions regarding the 10th Amendment, and thus states will be able to mount credible challenges to its ability to be enforced within their border.*[19]

This roadmap successfully lays out all the issues the exam taker planned to discuss, and it foreshadowed the conclusions her analysis would ultimately draw. In addition to roadmaps potentially meriting points, providing a roadmap at the beginning of each response also helps the exam taker focus on the issues she plans to articulate and analyze. After the roadmap, the writer may start each section with a heading that simply lists the issue that she will discuss in that section. For example, the roadmap above could be organized with headings introducing sections about the commerce clause, the taxing clause, the spending clause, the necessary and proper clause, and the anti-commandeering principle of the Tenth Amendment. Again, those headings do not need to be as formal as section headings in a brief. The headings should simply delineate what issue will be discussed in a particular part of the student's exam response.

Although large-scale organization is important, small-scale organization[20] may be more critical. Not all professors require following the deductive paradigm,[21] but some professors

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[17] *See* TISCIONE, *supra* note 4, at 127-32 (discussing arrangement of a legal memorandum).
[18] *Id.* at 127-28.
[19] *Best Examination in Yvonne Tew's Constitutional Law I, Fall 2015*, 2 (2016), https://exams.ll.georgetown.edu/system/files/14243.PDF.
[20] *See* TISCIONE, *supra* note 4, at 128-30.
[21] *Id.* at 87-95.

certainly *prefer* it.[22] As with much of the discussion throughout this handout, students should use the basic principles and tools learned during the first-year legal writing course to aid them when analyzing each issue they discuss in their exam responses.[23] For example, exam takers should generally follow the flow of the "deductive paradigm" by stating a particular **issue** implicated by the fact pattern, describing the **rule(s)** of law that are applicable to that issue, analyzing that issue by **applying** the law to the facts of the question, and **concluding** how a court should rule on the particular issue.[24] Thus, exam takers may use the principles of the deductive paradigm to structure strong exam responses and ensure that they adequately treat each issue that they plan to address.

B. Analysis

Generally, the part of the exam that accounts for the lion's share of available points is the "analysis" section. In other words, most of the points assigned to each question may be earned by applying the rules of law to the facts presented by the exam question. To be sure, this point seems obvious; of course the application of rules of law to implicated situations amounts to most of the available points on a law school exam. Yet as some professors note in their feedback memoranda, law students frequently fail to provide a sufficient analysis of how the law applies to the facts.[25]

Similar to the discussion of organization above, concepts from legal research and writing courses apply in the context of an exam's analysis. Generally speaking, there are three types of reasoning to which legal writers appeal: rule-based reasoning, analogical reasoning, and policy-based reasoning.[26] Rule-based reasoning involves applying an abstract statement of the law to a concrete case. Analogical reasoning involves comparing and contrasting previously decided cases with a particular case. Policy-based reasoning requires an appeal to particular first principles of law and equity or societal values in order to advance a new rule or to support the continued use of an existing one.

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[22] For example, students taking one exam "lost ground" by failing to use the paradigm properly. *See* Michael H. Gottesman, *Property Feedback Memorandum, Fall 2005*, 1 (2006), https://exams.ll.georgetown.edu/system/files/1505.PDF.

[23] In legal writing courses, professors teach the deductive paradigm using different formulations. Examples include IRAC (issue, rule, application and conclusion), CREAC (conclusion, rule, explanation, application, and conclusion), and TREAT (topic sentence, rule, explanation, application, topic sentence). Others instruct students to "front the law" and then apply that law to the facts. Regardless, the key components of legal analysis are the same. Writing a strong legal argument requires stating the legal issue, providing the rule of law governing that particular issue, analyzing how the governing law impacts the factual situation, and concluding how the issue should be resolved. *See* TISCIONE, *supra* note 2, at 87-95.

[24] *See id.* at 129 (discussing the deductive paradigm).

[25] For example, a professor noted that, when describing his students' answers to a particular question, "answers varied widely in the depth and cogency of analysis." Michael H. Gottesman, *Property Exam Feedback Memorandum, Spring 2012*, 7 (2012) https://exams.ll.georgetown.edu/system/files/12506.PDF.

[26] *See* TISCIONE, *supra* note 2, at 79-114; *see also* Paul T. Wangerin, *A Multidisciplinary Analysis of the Structure of Persuasive Arguments*, 16 HARV. J. L. & PUB. POL'Y 202, 209-220 (1993).

Although analogical reasoning is often not required on an exam, rule-based reasoning is critical to writing a successful exam. Policy-based reasoning also may be desirable, but, depending on the exam and the professor-grader, it may be of less importance than rule-based reasoning. Stated differently, exam takers should take the general black-letter principle of law, show specifically and concretely how the principle applies in a particular context, and provide a conclusion on the issue. Exam takers may also potentially discuss policy-based reasons for whether a new rule should be adopted, why the current rule should remain operative, or why the writer's conclusion is warranted. Yet successful exams, generally, are not required to provide fact-to-fact comparisons or analogies between other cases and the situation supplied by the question.

Regardless of the type of reasoning the exam taker uses, the analysis should not be immediately conclusory. In other words, professors generally seek more analysis than simply stating that a certain outcome should occur because of the previously stated rule. Indeed, this type of reasoning is a recurring pitfall for many exam takers. The best exams tend to explain why the outcome is warranted, supply and distinguish counterarguments to the exam taker's ultimate conclusion, and, finally, assert a conclusion about the issue. As a rule of thumb, the analysis section for each issue on an exam should be at least as long as the statement of the rule and the ultimate conclusion.

Compare the below two example answers to the same question posed on a 2017 Bankruptcy exam:

> Answer 1: *Dewey may not be able to stop the wage garnishment process or discharge his child support obligation.* See *§ 362. Judicially-ordered child support payments may be withheld. § 362(b)(2)(C). Thus, Dewey may not be able to stop the garnishment.*
>
> Answer 2: *Dewey may not be able to stop the wage garnishment process or discharge his child support obligation. Generally, filing of a petition operates an automatic stay prohibiting any action to collect the debt. § 362. However, there are several exceptions. It does not apply to the collection of domestic support obligation from property that is not property of the estate. Furthermore, the Code also permits the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or admin order or a statute. § 362(b)(2)(C). In this case, Winter has a judicially-ordered child support claim of $15,000 and has already started the wage garnishment process against Dewey. Therefore, regardless of whether the wages are pre-petition earnings or post-petition earnings, such wage garnishment process can continue. Dewey cannot stop it. Similarly, § 523(a)(5) provides that debt for a domestic support obligation is not dischargeable.*[27]

The first example just states the issue, part of the rule, and the conclusion; it provides little to no analysis. The first example is, indeed, conclusory. On the other hand, the second example states the issue, provides a nuanced articulation of the rule, analyzes the question by examining the

[27] Anne Fleming, *Bankruptcy Exam Feedback (Sample Answers)*, Spring 2017, 9 (2017), https://exams.ll.georgetown.edu/system/files/14865.PDF.

facts and by applying the law to those facts, and draws a conclusion only after giving the analysis.

C. Style

Generally, stylistic choices are not the subject of a professor's grading scheme for law school exams. But decisions about style may come into play nonetheless. Specifically, exams may have character or word limits. If that is the case, exam takers have to make conciseness choices about using, for example, introductory phrases and transition words,[28] "legalese,"[29] unnecessary verbiage,[30] and adverbs.[31]

A general rule of thumb is to use transition words or adverbs sparingly and to avoid using "legalese," "throat-clearing language," and "meta discourse" to keep the analysis clear and concise. The rule of thumb generally holds because exams are typically not evaluated based on the response's flow or punchiness. To be sure, transition words and adverbs may be used on a law school exam. But when word or character limits constrain the exam taker's ability to adequately complete a thorough and nuanced analysis, cutting these words may create more space.

One other general note is to avoid pronouns with ambiguous referents while writing an exam.[32] This task may, of course, be unavoidable, particularly in the context of a high-pressured in-class exam. As in any other legal or non-legal writing context, pronouns that may refer to multiple previously-stated nouns may confuse the reader, who, in the case of exams, scores the exam. Likely the most perilous of the pronouns are the third person personal pronouns: it and they. These pronouns could refer to any number of nouns. Likewise, relative pronouns — this, that, these, and those — with ambiguous referents should also be avoided. To the extent an exam taker limits her use of pronouns with ambiguous referents, the more likely her analysis will be clear to her professor.

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[28] *See* TISCIONE, *supra* note 4, at 241.
[29] *See id.* at 225-26.
[30] *See id.* at 233-34.
[31] *See id.* at 236.
[32] *See id.* at 243-44.