Learning goal of the sequence of written exercises: There will be three written exercises. The exercises are fact-pattern essay questions, in which you are given some facts and some law (such as a statute) and asked to state the issue, analyze it, and suggest how it should be decided. The purpose of these exercises is to provide occasions for applying what you are learning. Thus they are similar to the hypotheticals or “hypos” that we pose to one another in class discussion. The exercises are also similar to the essay questions, often called “fact-patterns” or “issue spotters,” on law school final exams.

Attention to role: If you were assigned a math problem, such as “What is the area of a rectangle the lengths of whose sides are 2 and 4,” you could (and should) solve the problem without reference to your role. The analysis and solution of the problem are the same whether you are an employee of a flooring firm, an aerospace engineer, or a math teacher or student. By contrast, the analysis and solution of legal fact-pattern problem depend (to an extent) on role.

- For example, in a jury trial, the role of the judge is to decide questions of law, which includes (but is not limited to) instructing the jury on the questions it must (and must not) decide. The role of the jury is primarily to follow those judicial instructions, and thus to apply the law (as the judge has interpreted it) to the facts (as the jury determines them to be). Thus, in reasoning your way through a fact pattern, you want to know whether you are thinking about the problem from the vantage point of trial, and, if so, whether you are analyzing that problem within the role of judge or jury.

- Appellate courts typically review trial court conclusions of law in a non-deferential way, but defer to trial court findings of fact (such as a jury’s factual finding that defendant was driving at 50 mph in a 30 mph zone). Thus, in reasoning your way through a fact pattern, you want to know whether you are thinking about the problem from the vantage point of a trial court or an appellate court.

- As part of their work representing clients, lawyers make the best predictions they can (e.g., about whether the client is likely to prevail if the case goes to trial) and prepare to argue the law and the facts before judge and jury. To do this work well, the lawyer is not impartial (she is on her client’s side) and yet the lawyer must see how the issues will look from the standpoint of a more impartial judge and jury. Notice that the highest appellate court, such as a state supreme court
interpreting a state statute (as in Blanchflower), or the United States Supreme Court interpreting an act of Congress (as in Smith), is not predicting how someone else will decide. Thus, in reasoning your way through a fact pattern, you want to know whether you are thinking about the problem from the vantage point of a lawyer advising a client and preparing for trial, a lawyer advising a client and preparing an appeal to the highest court, a lower court judge (who is in part predicting whether a higher court will affirm or reverse), or a judge of the highest court with jurisdiction to decide the matter.

- Many judges hire law clerks, typically recent law school graduates who did very well in law school and who have earned a reputation for careful work and good judgment, to assist them. A judge asks her law clerk to spot issues, state them carefully, succinctly state the best reasons for decision on both sides of each issue, and identify weaknesses in these reasons. Thus a very good law clerk memo is both perceptive and balanced. It flushes hard problems out into the open. By contrast, written judicial opinions often bolster their conclusions rhetorically by understating reasons on the opposing side. (A majority opinion might address a weaker but not a more compelling version of the position taken in the dissenting opinion; the dissenting opinion might subject the majority opinion to similar treatment.) Thus, in writing your answer to a fact-pattern problem, you want to know whether you are writing as a law clerk for the benefit of your judge (in which case you should expose problems and alternative viewpoints so that your judge will see matters perspicuously) or as a judge writing a judicial opinion (in which case you might incline somewhat more to persuasive writing, aimed at showing why your decision is better than the dissent’s for example, or aimed at persuading a higher court to agree with you if your judgment is appealed).

Note carefully, then, that the first exercise positions you as a law clerk writing a memo to “your” judge. The written exercises generally position you as a law clerk as a way of encouraging you to flush hard questions out into the open and exhibit the strongest reasons on both sides of such questions.

**Evaluation:** The exercises comprise 30% of the course grade. (See Syllabus §8 on bases of evaluation.) Because the craft of writing an answer to a fact-pattern essay question is new to most of you, your lowest grade among the three exercises will be disregarded. (In other words, the written exercise component of your course grade will consist of an average of your two highest scores among the three written exercises.)

In general, your score on a written exercise is a function of the issues that you spot, the clarity and perspicuity with which you state each issue, the reasons for decision that you give for each issue, and the clarity with which you state conclusions.

- An essay that states two issues plausibly raised by the fact pattern scores more points (other things being equal) than an essay that states one issue. As to any one issue, an essay that states good reasons on both sides of the issue scores more
points (other things being equal) than an essay that states good reasons on only one side of an issue, if the issue is plausibly a hard one on which reasonable minds can differ. As to any one issue, an essay that clearly states a conclusion (a holding and a disposition) scores more points than an essay that doesn’t.

- In general, it makes no difference to your score whether the ultimate outcome or result of your analysis is that plaintiff wins or defendant wins (or, in appellate cases, whether appellant wins or respondent wins).

- Read all instructions carefully. Each exercise includes what is known as “the call of the question” or the “prompt”: the task or tasks that the legal reasoner is to carry out in light of the role in which he or she is working. Other things being equal, an essay that follows the instructions and answers every part of “the call of the question” scores more points than an essay that doesn’t.

- No previous exposure to legal writing is expected in Law 300. We do not enforce conventions about legal writing that are taught in Legal Writing courses. Clarity and organization are very important in the written exercises, because they enable you to engage the issues productively. Do your best to state your ideas clearly and in an orderly sequence, taking one idea at a time.

**Assignment date:** The written exercises are handed out in class on the day they are assigned. They are not available online, and I will not email the exercise to you. If you must miss class on the day that a written exercise is assigned, you may ask a classmate to pick up an extra copy for you, or you may arrange to pick up a copy from Shirly Kennedy (see her contact information on the Syllabus).

**Due date:** Unless I have granted an extension in advance, written exercises submitted after their due dates will not satisfy course requirements. If you cannot attend class on Tuesday, February 9 (when papers will be collected), an exercise emailed to me by 1:00 PM on February 9 will satisfy the deadline.

**Length of essay:** You are to answer the question in a short essay. Your essay should not exceed 1,000 words, and should not be shorter than 700 words. Indicate your word count at the top of the paper, along with your name. (Example: Three pages double spaced, in Times Roman 12 pt, with side margins of 1.25 inches, and top and bottom margins of 1 inch, would be around 1,000 words.)

- Invest your words wisely in light of the call of the question and the criteria for evaluation. Do not waste any words simply repeating or restating the information supplied to you in the fact pattern, because such restating of information does not do any work. You do not lose points for restating information (such as quoting a statute already supplied to you, or summarizing facts already supplied to you), but neither do you gain any points. To stay within the word limit while doing the legal reasoning work well, you cannot afford to waste any words.
Not a research paper: All the information that you need about the law (such as the wording of a statute, or the history of its enactment) is supplied in the fact pattern. No legal research into legislation or case law is required for this exercise, and no references to such research will count toward your essay’s score. To develop your reasons, however, you may draw upon social or linguistic facts not supplied in the fact pattern (such as a dictionary definition of a statutory word), and upon class discussion of cases such as Smith, Blanchflower, etc.

Suggestions:

- Legal syllogism. You will find it helpful to use legal syllogism worksheets in your preliminary thinking about the fact pattern. The questions in the left-hand column of the worksheet are questions we have asked in discussing our main cases and hypos, and the boxes in the right-hand column are useful for entering your work. Once you are clear about your reasoning and sure you haven’t left out any steps, you are ready to write out your answer.

- Consultation with classmates. Discuss the fact pattern with Law 300 classmates, especially including the members of your mini-firm. Mini-firms will meet to spot and analyze the issues on Thursday, February 4, 3:20-3:50. You are also encouraged to convene your firm again to work through the exercise. Argue both sides with your colleagues. You will learn from one another. **But do not share drafts with one another.** In a productive mini-firm conference, students take turns spotting and stating issues, and offering the best reasons on both sides of all issues. Often it helps to role-play. One member of your firm can make the best arguments on plaintiff’s (or appellant’s) side, another member can make the best arguments on defendant’s (respondent’s) side, and another member can ask questions in the role of judge. Most of us tend to begin our analysis of a fact pattern by favoring one side or the other (we think that plaintiff should win or that defendant should win). While those initial intuitions can be sound, sometimes they conceal from us the strongest arguments on the other side. Taking turns role-playing is device that sometimes helps us see that things are more complicated than they initially appear, or that strong reasons exist on both sides of an issue, or that there are more issues than we initially thought.

**Consulting with Ana and Prof. Garet:** While you are working on an exercise, you are welcome to contact Ana and Prof. Garet and ask questions. But we will respond to you by asking questions (for example, questions about similar problems we have encountered in the cases and hypos discussed in class), rather than by telling you whether we think you are on the right track.