Practice Short Answer Questions WITH ANSWERS

As you know (syllabus §8), both the midterm and the final exam will include short answer questions. You can expect that the instructions and the kinds of questions asked will be similar to those below.

I. Instructions
Read each question carefully, then write your answer in the space provided (which has lines for this purpose, like lined notebook paper). Do not write longer answers that go beyond the space provided. Only answers within the space provided will count. Write succinctly but in complete sentences. Notice that some questions have sub-parts. Read the entire question, along with its sub-parts, before answering any part of the question.

II. Examples of short answer questions

1. (This question has multiple parts.) A state statute provides that “persons who exceed the posted speed limit are liable for damages they inflict.” Defendant drove her car faster than the posted speed limit, and crashed into plaintiff, injuring him. The trier of fact has determined that the crash was caused by an unforeseeable oil slick on the road, and that the crash would have happened even if defendant had been driving within the speed limit. The judge must decide what the statute means.

1a. In one sentence, state defendant’s interpretation of the statute.

*Persons who exceed the posted speed limit are liable for damages that their speeding causes.*

1b. In one sentence, state plaintiff’s interpretation of the statute.

*Persons who exceed the posted speed limit are liable for damages their driving causes, whether or not the damage is caused by their speeding.*

1c. In one sentence, explain which interpretation is better, and why.

*Defendant’s interpretation is better. It serves the rule’s background justification by tying compensation to a wrong that the defendant did to the plaintiff.* [Note to students: you could favor plaintiff’s interpretation and provide a good reason to support that interpretation.]
2. (This question has multiple parts. The last part of the question continues on the next page.) At T1, the Tennessee Supreme Court decided Boyd v. Coca Cola Bottling Works (cigar stub in bottle of Coca Cola; defendant owed duty of care to plaintiff). At T2, the same court decided Liggett and Myers Tobacco Co. v. Cannon (L&M) (bug in chewing tobacco; defendant did not owe duty of care to plaintiff). Shortly thereafter, at T3, the same court must decide Bice v. Jack Daniels Distillery. In the trial court in the Jack Daniels case, the trier of fact determined that plaintiff Bice was injured when he drank several sips from a jug of Jack Daniels Whiskey; the whiskey was made and bottled in the jug by defendant; plaintiff bought the jug of Jack Daniels from an intermediate dealer, not from defendant; the cause of the injury was a dead lizard in the jug of whiskey; because plaintiff broke the seal on the jug just before he sipped from it, the lizard must have gotten into the jug at the defendant distillery; and plaintiff could not see the lizard in the ceramic jug.

In the Tennessee Supreme Court, the defendant distillery argues that it owes the plaintiff no duty of care because of the absence of privity between it and plaintiff.

2a. In one sentence, state a holding on the duty of care issue in the Jack Daniels case that satisfies the principle of stare decisis in relation to Boyd and L&M.

Producers of alcoholic beverages for the market owe a duty of care, to those who consume these products and can’t easily inspect them, to take reasonable precautions in their production.

2b. Explain how this holding is consistent with Boyd and L&M.

Such beverages are like Coca Cola in that they are meant to be ingested and it is hard for the consumer to inspect the product and find the defect. L&M should be read narrowly (as holding that tobacco is not food), not broadly (as holding that all unhealthy excise-taxed items are not IDPs).

(Question two continues on the next page.)
2c. (This is the last part of question two.) Jack Daniels Whiskey is made in Tennessee. Suppose the Jack Daniels Distillery is a major employer in Tennessee. Defendant’s legal briefs argue that imposing a duty of care on the Distillery would damage its business and harm the overall Tennessee economy. Plaintiff’s legal briefs argue that imposing a duty of care on the Distillery would help the Distillery’s business and help the overall Tennessee economy. Under Boyd and L&M, is this argument between Defendant and Plaintiff relevant to the duty of care issue? Circle one answer: YES or NO. Explain and justify your answer.

Boyd rests its interpretation of manufacturer’s duty of care on the ground that requiring manufacturers to compensate consumers harmed by the defective product is fair and advances public welfare. Boyd does not consider special features of the Tennessee economy, but looks instead to “common” law. L&M considers public health policy, but not the place of tobacco in the state economy.

3. Justice O’Connor begins her opinion for the Court (majority opinion) in Smith v. United States by stating the issue (question of law): “We decide today whether the exchange of a gun for narcotics constitutes ‘use’ of a firearm… within the meaning of 18 U.S.C. §924(c)(1).” Explain, by succinctly setting out the conflicting reasons for decision, why that issue was hard to decide.

“Use” could mean “any employment,” but the ordinary meaning of “use a firearm” is narrower and might exclude barter. “Use” in the forfeiture provision includes barter, but forfeiture is a much lesser penalty than a longer prison term. Congress had no particular intentions about trading guns for drugs, but might have wanted a longer sentence had it considered the scenario. Trading a gun for drugs increases danger, but how much increase is needed? Rule of lenity favors defendant, but only in case of an interpretive “tie.”
4. When an appellate court decides the question of law presented in the appeal, it produces an issue answer (also known as a decision rule), a holding, and a disposition. Briefly explain or define these three concepts.

An issue answer answers the question of law (e.g., by saying that $X$ is $Y$, or that $X$ is not $Y$), but does not state a rule of law. A holding states a rule of law by swapping the issue answer into the legal rule (major premise), thus attaching some legal consequence (a right, a liability, etc.) to $X$. A disposition is an outcome that attaches this legal consequence to a particular party to a suit. The disposition of an appeal either affirms or reverses the judgment of the court below, or remands with instructions.

5. (This question has multiple parts, and continues on the next page.) In the State of East Dakota the crime of burglary is defined by statute §345 as follows:

Burglary is the breaking [Y1] and entering [Y2] of a dwelling of another [Y3] at night [Y4] with the purpose to commit a crime therein [Y5].

(Each Y-category is what lawyers call an “element.” Together, they comprise what lawyers call “the elements of burglary” in East Dakota.) Now consider the following fact pattern.

At approximately 6:30 p.m., Susan, a newly sworn-in attorney, was happily walking down the street when she saw a lovely pearl necklace in Julie’s Jewelry shop window. Susan thought how it would be nice to have the pearls to celebrate her recent bar passage, but knew she couldn’t afford them since she had spent all her savings on law school and bar exam preparation.

“I think I’ll steal them,” she thought. Susan then noticed that the window behind which the pearls lay was open about 6 inches. She put her hand through the opening, but just before she touched the pearls, she changed her mind because she was afraid she would jeopardize her state bar license and her career as an attorney. She then withdrew her hand and continued walking down the street.

Susan has been charged with burglary. Look carefully at each Y-category (each element) of burglary in §345. Look carefully at the facts stated in the fact pattern, above. Then circle the best answer to each question on the next page, and explain your answer.
5a. Do the facts satisfy the element of “breaking” [Y1]?  Yes  No

Susan reached in without permission. But because the window was open, Susan’s putting her hand through did not “break” anything or even open anything that was shut. “Breaking” implies an act done to enable entry; here no such preparation was needed.

5b. Do the facts satisfy the element of “entering” [Y2]?  Yes  No

Her hand “entered,” but not her whole body. In ordinary language “entering” a building is completed when the whole body (the person) has come in. But in context, the part of her that “entered” the store (her hand) was enough to steal the pearls.

5c. Do the facts satisfy the element of “dwelling of another” [Y3]?  Yes  No

A dwelling is a place where someone lives. The facts do not indicate that anyone lived in the store, or behind or above it. On the facts we have, Susan did not enter the “dwelling of another.”

5d. Do the facts satisfy the element of “at night” [Y4]?  Yes  No

We can’t give a good answer without either more facts (such as date) or more law (such as other East Dakota cases or statutes defining “night.”) If “night” requires darkness and 6:30 is twilight, we have a problem because darkness is a matter of degree.

5e. Do the facts satisfy the element of “with the purpose to commit a crime therein” [Y5]?  Yes  No

Susan’s “I think I’ll steal them” satisfies the intent element. Her later change of mind doesn’t matter because at the time she “entered” she intended to steal. Anything that counts as “entering” should also count as “therein.”

End of practice short answer questions