Final exam, Tuesday morning:

- **Part One: Two and a half hours.** Open book, open notes. Part One of the final examination consists of one Essay Question (no length limit) and three Short Answer Questions (400 word limit applies to each of the three answers). Recommended time: 90 minutes for the Essay Question and 45 minutes for the Short Answer Questions. If you follow that recommendation you will have 15 minutes of spare time.
- **Ten minute break.**
- **Part Two: 50 minutes.** Part Two of the final exam consists of Multiple Choice Questions.

Thank you for submitting the following questions for our review session. I’ve organized them under headings, and in some cases refer you to pages in our readings.

**Economic analysis**

1. **Generally, how we should approach questions with economic analysis? Would it come in as a counter to an ex-ante approach?**
   - **Example: Akers-Baker exercise.** As you read HRPA, you notice that the statute possibly authorizes Commission and court to carry out an efficiency analysis or CBA. You explain why. You apply that analysis. You also notice the limits of that analysis. (Does it really match the statute’s purpose: assuring equality in death and in life?)
   - **Example: Gould virus exercise.** Unlike Akers-Baker, the prompt comes right out and asks you to apply both economic and non-economic analysis when evaluating the five proposed vaccination policies. But you would know to do that anyway, to the extent that something about the statute – its wording, or background justification, or cases construing it – authorizes both forms of analysis. The fact pattern tells us that the statute empowers the Health Department to provide for vaccination “when necessary for the public health or safety.” The statute also charges the Health Department to provide for “reasonable exemptions from any mandatory vaccination policies.” Our frameworks for normative reasoning, including but not limited to economic analysis, offer interpretations and applications of those statutory concepts.

2. **Could you talk a little bit about application of Coase theorem and its application beyond just theory. How can it be used in real life in legal reasoning?**
   - **Example: Reclining seats.** You are a lawyer on the staff of the FAA, asked to recommend a way to reduce in-flight conflicts about reclining seats.
   - **Example: Los Paisanos, settlement conference issue.** (Or suppose you represent the Antonios. Would you make a settlement offer to Luticia?)
   - **Example: Akers-Baker.** Suppose you represent Baker, and you are trying to explain to the Commission why the proposed Akers-Baker transaction meets the “best possible use of the land” standard even if the remains are not relocated.

**Critique of economic analysis**

3. **Can you go over the surplus idea with Amartya and the book transfer?**  
   See the detailed explanation in C.H. 18, Review of frameworks for normative reasoning, II.5, pp. 36-37. Dworkin uses the Derek/Amartya scenario to try to demonstrate that maximizing
the social surplus is not, in and of itself, a worthy value. It is instead a value only when related to the actions of free citizens in fair institutions (mutual gain through trade under fair circumstances) or to the extent that it stands in for utility (greatest happiness of the greatest number).

**Dworkin and our natural law imagination**

4. *Can you go over what your natural law of imagination means and how it relates to your realist doubts?*

   See the detailed explanation in C.H. 21, Review of theories of adjudication and theories of law, pp. 43-45. One of the capacities that we develop as we become a lawyer is the capacity to look at (or behind) a mass of legal material (statutory language; cases applying the statute; legislative history; a mass of common law cases) and envision this material as embodying or aiming for some worthy value. We are then able to explain how a particular application of the law – the one we are urging upon the court – is consistent with or serves that worthy value. We can call this our interpretive imagination (or our natural law imagination). But as we become a lawyer we also develop a contrary capacity to look with a skeptical eye upon any mass of legal material, and view it as a meaningless mish-mash of inconsistent outcomes, question-begging abstractions, and outcomes of interest-group battles and shifting political majorities. We can call this our realist doubts. As I said at the end of the semester, a truly great lawyer has both a visionary interpretive imagination and a healthy capacity to doubt whether the legal materials fully support the envisioned interpretation.

5. *What are the differences between Dworkin’s principles and policies?*

   See the detailed discussion of this point at pp. 373-377. It works fine, for our purposes, to equate “principles” with ex post normative frameworks and “policies” with ex ante normative frameworks.

**Montoya and masking/unmasking**

6. *What was the take away from Montoya’s stories about masking and unmasking in legal reasoning?*

   **First,** the self is a hard case unto itself. Our very selfhood is very layered and context-relative. Each of us wears multiple masks. This helps us understand, and begin to come to terms with, some of the ways in which the study and practice of law are very challenging and demanding. Being an becoming a lawyer sometimes exposes fractures or inconsistencies in our own identity, commitments, values, feelings. **Second,** for at least some of us some of the time, voluntary unmasking can be a way to grow and empower ourselves and others. Margaret Montoya voluntarily unmasks herself during the Chavez discussion in Criminal Law, and does so again in writing her article. Judge Fernandez voluntarily unmasks by revealing that he weeps uncontrollably as he reads Phillip Becker’s medical records. **Third,** involuntary unmasking can be disempowering, and “outsiders” (Montoya’s description) are especially vulnerable to this. Suppose a law professor poses a hypo about marriage, frames it in heteronormative terms, and cold-calls a student. The student is gay or lesbian, and now faces a kind of dilemma: how much to say about the assumption that the professor is making and how that assumption does not match the student’s life, love, and experience. **Fourth,** and light of points 1-3, we can find a way toward wholeness or authenticity by braiding together the tangled strands of our selfhood, and from time to time letting the tangle show. We do this when we put our commitments in play, even though we cannot fully defend all of them, even though this makes us vulnerable.