

Sample Fundamental Skills Exercises



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Formative exercises: About every other week throughout the semester, I provide students with formative exercises that help students build their understanding of both the doctrine and written analytical skills. I also provide students with formative exercises that help them learn *how* to study and learn law.

Doctrine/Skill Building Formative Exercises:

Each formative exercise has 10-20 questions that typically begin with a short answer or essay style question. I conduct most of these quizzes through D2L, so the feedback you see below only appears after the student submits their quiz.

Each formative exercise focuses on the doctrine learned in the most recent unit.

The formative exercises teach and reinforce good written analytical skills. They are designed to be increasingly challenging throughout the semester. Here is the progression of types of questions I ask:

1. Application of Rule: Answer straight-forward questions about who would win a particular issue. (Straight application; analysis demonstrated, but not required of the student.)
2. Issue Spotting: Identify the issues that you would want to discuss in response to a hypothetical.
3. Analysis Part 1: From a model answer, identify the components of a well written answer: issue, rule, analysis, conclusion. Within the analysis section, identify the purpose of each sentence or phrase (fact, understanding/explanation of the fact, link back to the rule).
4. Analysis Part 2: From an incomplete model answer, identify which component of IRAC or Analysis is missing.
5. Analysis Part 3: From an incomplete model answer, identify the sentence (from a list of choices) that would complete the analysis.
6. Analysis Part 4: From an incomplete model answer, fill in the missing component.
7. Analysis Part 5: Write a practice short answer exam.

Here are sample questions from my formative assessments:

Straight Application:

If B caught a wild rabbit in B's trap, picked up the trap, and walked home with the rabbit still inside, has B met the Rule of Capture?

- A. Yes.
- B. No.

Discussion

The correct answer choice was A. This fact pattern is fairly similar to the fox (Pierson) case. However, it is not an exact match with any of them.



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In Pierson, there was no trap, whereas here there is a trap. Also, in Pierson, the “saucy intruder” killed the fox, whereas here, nothing indicates that the trap killed the rabbit. It is important to ask yourself if these differences in fact distinguish this case enough that a judge is likely to disregard the precedent case as non-controlling (meaning the judge does not have to follow the rule from the precedent case). As you can see from the sample answer, there is a strong argument that these facts fit within the scope of the precedential cases.

Issue Spotting:

You represent A. Write an objective memo analyzing A’s legal claims to the wild animal. For the purpose of this question, assume that another associate has been assigned to write an objective memo about A’s policy arguments, B’s legal arguments, and B’s policy arguments.

Of the following issues, which would you discuss in your answer? Choose all that apply.

- A. Whether the animal was unowned when it entered B’s land.
- B. Whether the animal was unowned when A captured it.
- C. Whether A’s capture of the wild animal satisfies actual dominion.
- D. Whether B constructively possessed the animal while it was on B’s land.
- E. Whether the fact that A’s trespass was trivial creates an existing exception to the Rule of Capture.
- F. Whether A’s intentions should create a policy argument for A to keep the animal.
- G. Whether the protection of private property rights creates policy arguments for B to keep the animal.

Discussion

The correct answers are B, C, and E.

A is incorrect because answer choice A relates to B’s legal arguments. The call of the question assigned B’s legal arguments to another associate. While this question might be relevant to the overall disposition of the case, you must answer only the question the judge poses to you.

B is correct because our focus is on A and whether A’s capture of the wild animal sufficed to create ownership in A.

C is correct because actual dominion is the most straight-forward type of capture. Also, the facts give rise to this issue because A caught the animal, a very typical type of actual dominion. Even if you think that the animal was owned when A caught it, you would still want to talk about actual dominion because it is one of the mandatory elements of the Rule of Capture.

D is incorrect because A relates to B’s legal arguments. The call of the question assigned B’s legal arguments to another associate. While this question might be relevant to the overall disposition of the case, you must answer only the question the judge poses to you.

E is correct because it relates to A’s legal arguments. If there was a trivial trespass exception to the Rule of Capture, A might win. Unfortunately, there is not. However, a lawyer would explore this option as a possible winning argument.



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F and G are both incorrect because they relate to policy arguments. The call of the question assigned this topic to another associate. While this question might be relevant to the overall disposition of the case, you must answer only the question the judge poses to you. It is important to be able to separate out legal arguments to their finest distinction.

Analysis: Identify the Components

1. When a true owner intends to relinquish rights to property and actually does, the first person to exercise dominion over the property becomes the new true owner. 2. The placement of the bike next to the trash can with the sign that offers the bike "free to a new home" 3. suggest that the original true owner wanted to relinquish rights to the bike 4. because "free to a new home" is customary language for indicating that the owner no longer wants the item. 5. Additionally, the fact that the items were placed next to a trash can 6. suggests that the true owner did abandon her rights 7. because a trash can is an customary place to discard unwanted property.

Identify the purpose of sentence number 4:

Issue

Rule

Fact

Understanding of the facts

Link to the language of the element or rule

Discussion

This statement is not an issue statement. An issue statement provides the precise legal questions addressed in the analysis of the facts at hand. This statement does not identify a question.

This statement is not a rule statement. Rule statements provide a generic statement of the law. This statement is not generic because it refers to the specific facts of the case. It is also not a statement of the law because it does not identify a standard that could apply to many factual situations.

This statement is not a fact. Fact statements pull from the hypothetical presented. This statement does not use the exact language of the fact pattern. It also doesn't use a functional equivalent of the fact pattern.



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This statement is an understanding of the facts. Understandings of the facts go beyond what is actually stated to explain how the reader should interpret the facts. This statement explains how the reader should understand the sign.

This statement is not a link to the language of the element or rule. Linking statements help the reader understand the connection between the facts and/or explanations of those facts and the language of the rule statement. This statement does not contain language of the rule.

Identify the purpose of sentence number 1:

Issue

Rule

Fact

Understanding of the facts

Link to the language of the element or rule

Discussion

This statement is not an issue statement. An issue statement provides the precise legal questions addressed in the analysis of the facts at hand. This statement does not identify a question. Additionally, this statement is a generic statement that does not incorporate any of the facts in the hypothetical.

This statement is a classic rule statement. Can you determine which pattern of formats for rule statements (from the slides on synthesis and/or Expert Learning) that this rule statement adopts?

This statement is not a fact. Fact statements pull from the hypothetical presented. This statement is a generic statement that does not incorporate any of the facts in the hypothetical.

This statement is not an understanding of the facts. Understandings of the facts go beyond what is actually stated to explain how the reader should interpret the facts. This statement does not reference any facts from the hypothetical.



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This statement is not a link to the language of the element or rule. Linking statements help the reader understand the connection between the facts and/or explanations of those facts and the language of the rule statement.

Analysis: Identify the Missing Components

What would you add to this analysis if there were no facts other than the fence?

Open & Notorious The possession must be so visible and apparent that it gives notice to the true owner that someone might assert a right to the land as their own. Here, A built a fence that kept B off of the land on A's side of the fence for the first ten years. Therefore, A met the open and notorious element for the respective amounts of property that they fenced, mowed, and decorated.

→ How to understand the fence.

Feedback: Yes. As silly as it sounds, lawyers need to identify reasonable inferences to draw from the facts. This skill helps lawyers identify assumptions that might or might not be true. Remember my discussion on this point, "If the glove doesn't fit, you must acquit." Sample answer: A fence is a large, manmade structure.

→ A link between the fence and the language, "visible and apparent."

Feedback: Yes. Even if you explain how the reader should understand the fence, you need to be explicit about how the facts and explanation relate back to the rule. Sample answer: The fence would be visible and apparent to B.

A link between the fence and the language "open and notorious."

Feedback: No. Saying the fence meets the name of the element (open & notorious) simply repeats the conclusion of law without adding anything to it.

Analysis: Best Completion

What would you add to this analysis to help explain how to better understand the facts?

Exclusive



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The adverse possessor must exclude others from the land as an ordinary owner would. Here, A built a fence and excluded B from a 30 foot strip of the land for the first ten years. However, after 10 years, B entered the land to remove the fence. If B interrupted A's exclusive use of the property, there is a question as to whether this interruption applies to the entire 30 foot strip or just to the 20 foot strip that B used.

- When B entered the land to remove the fence, A was no longer excluding others from the land as an ordinary owner would because ordinary owners do not allow neighbors to remove fences on their property.

Feedback: Yes. Notice how the first part of the sentence uses the facts exactly as they appear in the hypo. The second part of the sentence uses the language of the element to help us make the connection between the element name and what the element means and how it relates to these parties. The third part of the sentence helps us understand how to understand the facts provided.

- When B entered the land to remove the fence, B began to exclude A from the property.

Feedback: No. The first part of the sentence uses facts exactly as they appear in the hypo. The second part of the sentence uses the name of the element, so it is more of a conclusion with respect to this element, not a link.

- When B entered the land to remove the fence, A was no longer in exclusive possession because B entered the land and removed A's fence which does not constitute exclusive possession on A's part.

Feedback: No. Notice how the first part of the sentence uses the facts exactly as they appear in the hypo. The second part of the sentence uses the name of the element, so it is more of a conclusion with respect to this element, not a link. The third part of the sentence repeats the facts. This example is a common 1L response that feels like analysis, but isn't. With practice, you will overcome this classic trap.

What would you add to this analysis?

Open & Notorious The possession must be so visible and apparent that it gives notice to the true owner that someone might assert a right to the land as their own. Here, A built a fence that kept B off of the land on A's side of the fence for the first ten years. Therefore, A met the open and notorious element for the respective amounts of property that they fenced, mowed, and decorated.

- A fence is visible to an ordinary person.



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Feedback: Yes. You want to identify that the fence meets the first prong of the test: it is visible (or apparent.)

- A fence should give a reasonably diligent owner notice that someone is asserting a claim to part of their land because a fence creates a barrier that prevents the true owner (and anyone else) from entering the land unobstructed. Fences generally tell others, "what's inside is mine," which gives the message of staking a claim to the land.

Feedback: Yes. You want to clearly state that the fence indicates someone is staking a claim and explain why.

- The fence met the open & notorious element.

Feedback: No. Saying the fence meets the name of the element (open & notorious) simply repeats the conclusion of law without adding anything to it.

Analysis: Fill in the Blank

Add an analysis statement about the mowing and the decorations that speak to open and notorious. Feel free to use the "When [facts] it constituted [definition of the element] because [understanding]" template.

Open & Notorious

The possession must be so visible and apparent that it gives notice to the true owner that someone might assert a right to the land as their own. Here, A built a fence that kept B off of the land on A's side of the fence for the first ten years. Therefore, A met the open and notorious element for the respective amounts of property that they fenced, mowed, and decorated.



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