

Teaching Law

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Play to Your Strengths, Not What Others Advise

Write a
novel!

No!



Berthe Morisot



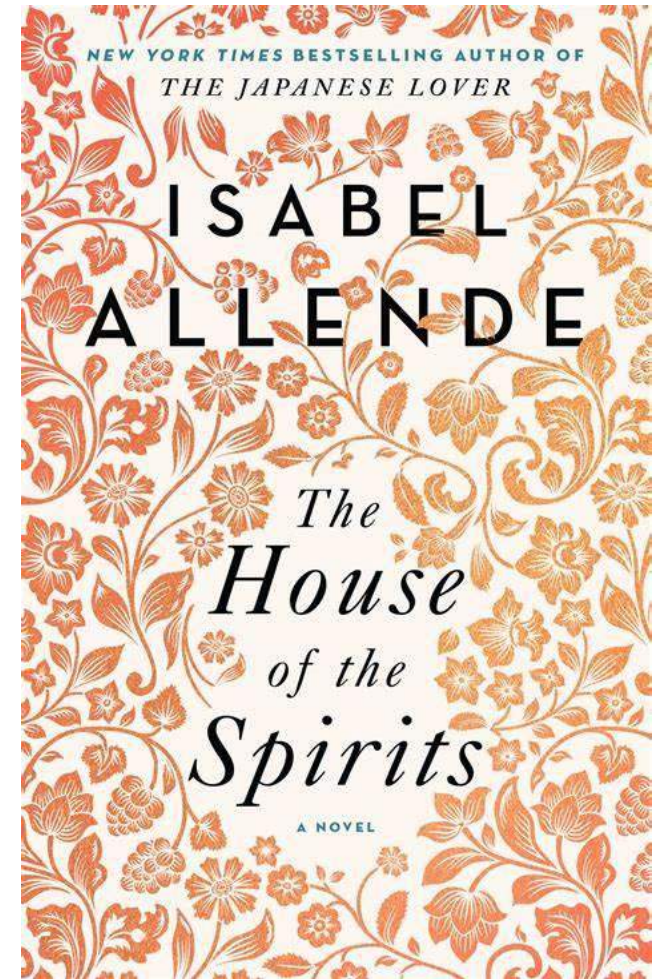
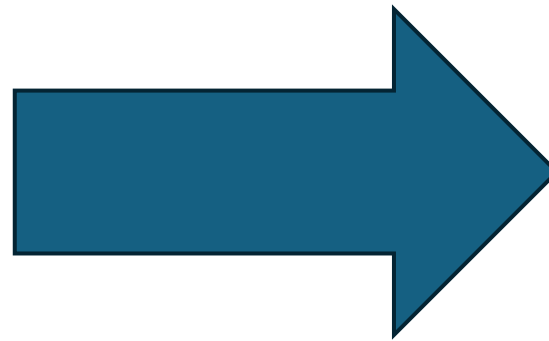
Play to Your Strengths, Not What Others Advise

Paint a picture!

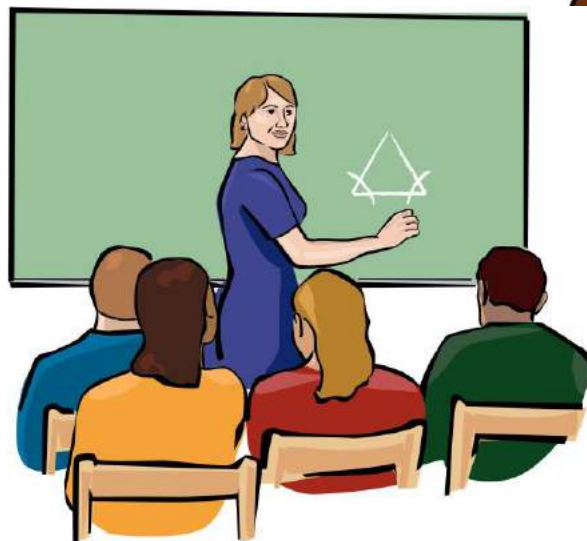
No!



Isabel Allende



Many Excellent Methods of Teaching Exist



Some Clearly *Wrong* Ways to Teach Do Exist



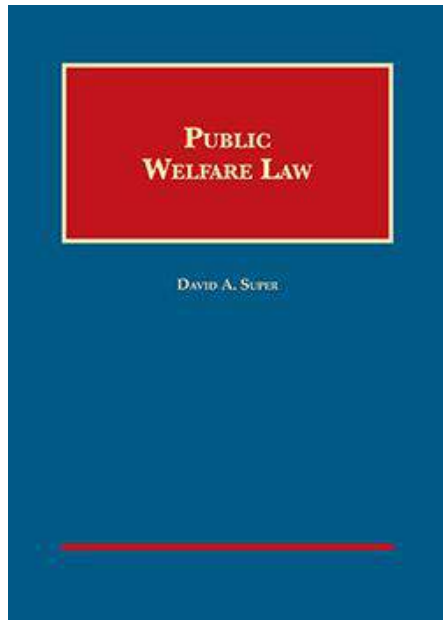
DailyCliparts.Com

Lecture on the Law

Socratic Method



Choosing a Casebook



- Some casebooks are designed to support quite different models of learning from one another:
 - Case-based v. problem-based.
 - Pure doctrinal v. policy perspectives.
 - Common Law v. statutory.
 - “Majority Rule” v. pluralistic.
- The status of the authors is a bad indicator of a book’s worth.
- Colleagues at your school may have different teaching styles.
- Choosing a book for a good teacher’s manual is very smart.
- If torn between two or more books, pick a few topics that you care about and read each book’s treatment of that topic. What you see likely reflects the books’ overall approaches.

Your Syllabus Sets the Tone for the Course

It should include:

- Learning objectives
- Course policies
- Office hours and other contact information
- Evaluation procedures
- Context on the subject*
- Reading assignments*

* If available: can be added later.



Many Courses Have Secondary Purposes

Course	Common Implicit Secondary Curricular Responsibilities	
Civil Procedure	Federalism	Constitutional Law
Contracts	Law and Economics	Statutory Interpretation
Torts	Law and Economics	U.S. Legal History
Property	Precision with Technical Terms	English Legal History
Criminal Law	Philosophy of Law	Statutory Interpretation
Administrative Law	Regulatory Theory	Separation of Powers

Declare Your Policy on Laptops in Class



Allow laptops in class:

- Frees students from printing notes.
- Facilitates electronic casebooks.
- Avoids complexity around exceptions.
- Avoids outing students with disabilities that have laptop accommodations.



Prohibit laptops in class:

- Avoids distracting/offensive surfing.
- Reduces stenographic note-taking.
- Reduces (but does not eliminate) opportunities for students to aid colleagues during a cold-call.

Declare Your Policy on Recordings of Class

- Many schools let faculty choose whether their classes will be recorded and, if so, how easily students can access those recordings.
- Some recordings/access likely are mandatory:
 - For students missing class on religious holidays.
 - As part of ADA accommodations.
- Often the school has a default policy but faculty can take steps to change that rule.
- Some faculty fear recording will stifle class discussion, especially on sensitive subjects.
- Other faculty like class recordings because they give students another way to review.



Perspectives on Cold Calling Vary Dramatically

Faculty

Students



Perspectives on Cold Calling Vary Dramatically

Faculty



Students



Decide and Declare Your Policy on Cold-Calling



Random cold-calls?

- Maximize deterrence for lack of preparation.
- Maximize student stress.
- Most likely to waste time as unprepared student tries to avert humiliation.



Pre-announced sequence or “on-call” panels?

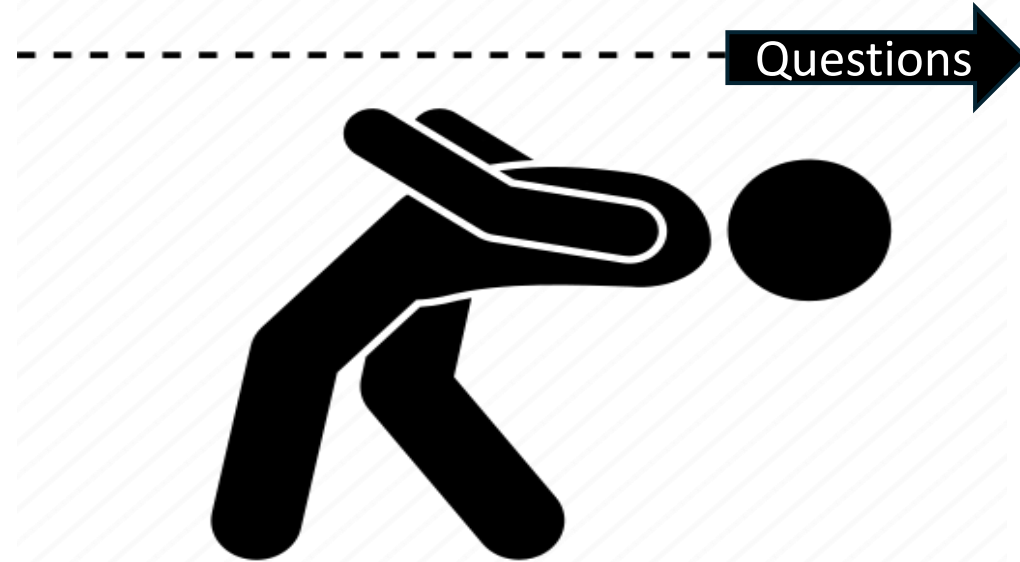
- Largely sacrifices incentives to prepare for most classes.
- More efficient and on-point.
- Only modest relief for those stressed by public speaking.



No cold-calling?

- Eliminates distracting stress for many students.
- Can establish panels of people expected to volunteer for each class.
- Class is less adversarial.

If You Cold-Call, Declare Your Policy on Passing



Passing not allowed:

- If student unprepared, forces faculty to become unpleasant, distracting class from learning.
- Students will waste class time stalling, evading, and guessing.
- Unprepared students will skip.

Limited passing allowed:

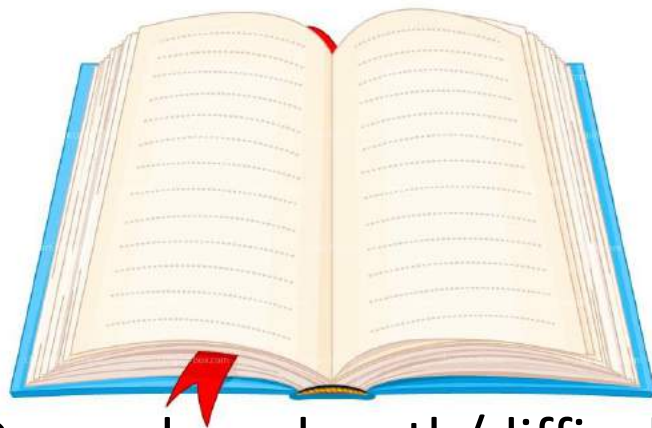
- Yes, if they submitted a note in advance – but what if you call on an unprepared student with no note?
- Yes, up to X times per semester.
- Yes, but they will be cold-called more later.

Allowing no-hassle passes:

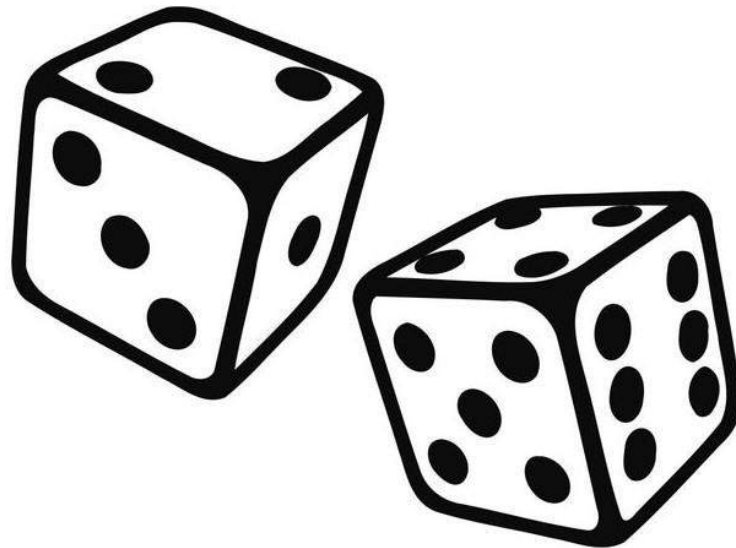
- Strong social pressures still deter passing.
- Still broadens participation.

Cold-Calling's Dubious Deterrent Effect

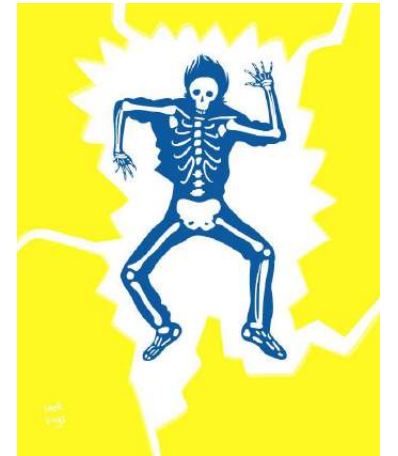
Burden \leftarrow Probability \times Loss



Depends on length/difficulty of reading assignments and other demands on the student's time.



Depends on class size.



Making unpreparedness unpleasant can poison the relationship with your class.

Declare Your Policy on Assigning Grades

What rules will govern the final examination?

- Open or closed book?
- In-class or take-home?
- Multiple-choice, short answer, longer essays, or some combination?
- Any major exclusions of what you will be testing?



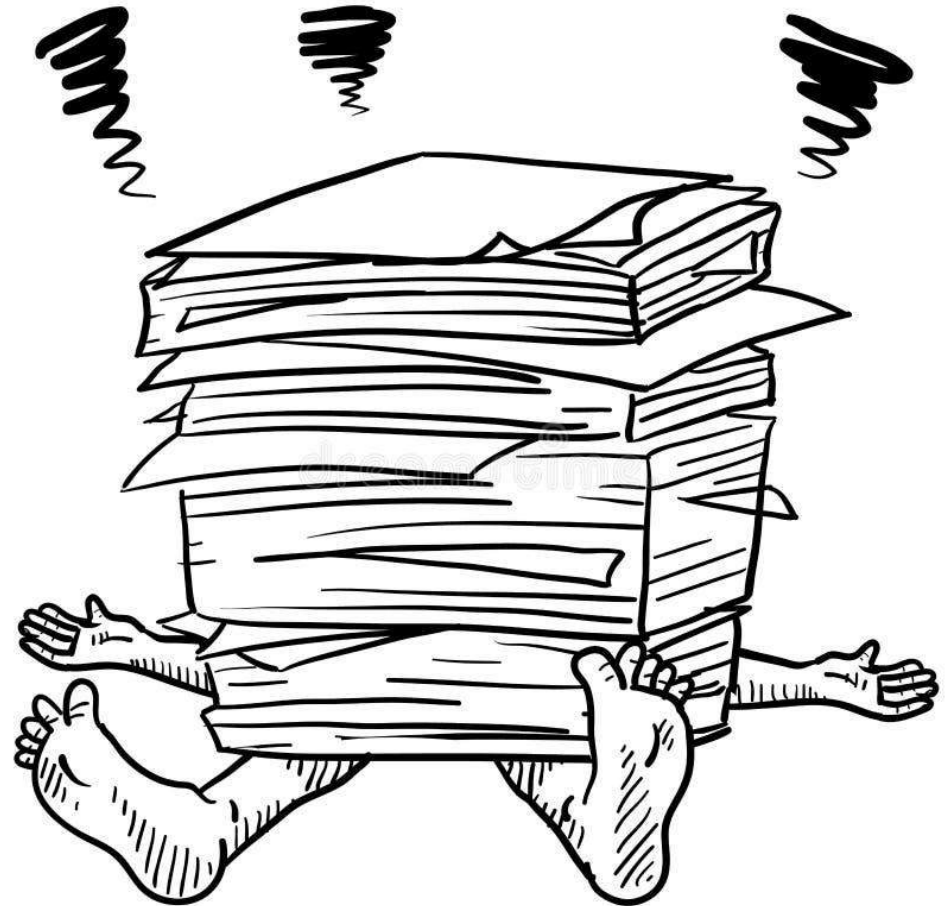
What else will factor into your assigning grades?

- Class participation? If so, how will you measure it and how will it factor in?
- Class exercises, quizzes, or other assignments? If so, how will they factor in?

Whatever you say, you must follow it to the letter. Students are rightfully enraged when faculty change rules they have relied upon.

Err on the Side of Shorter Reading Assignments

- If assignments are too long:
 - Some students may stop reading.
 - Others may rely on dubious outlines.
 - You are at more risk of falling behind.
- What is reasonable depends in part on how much you can discuss properly in one class.
- What is reasonable also depends on how dense and technical the material is:
 - For standard cases and notes, giving assignments much above 20 pages per class hour is suspect.
 - For technical material such as statutes or practice problems, much less is best.



Scaling Assignments to Subject Matter



Ordinary Assignments:

- Routine cases and notes.
- Straight text background.

Shorter Assignments:

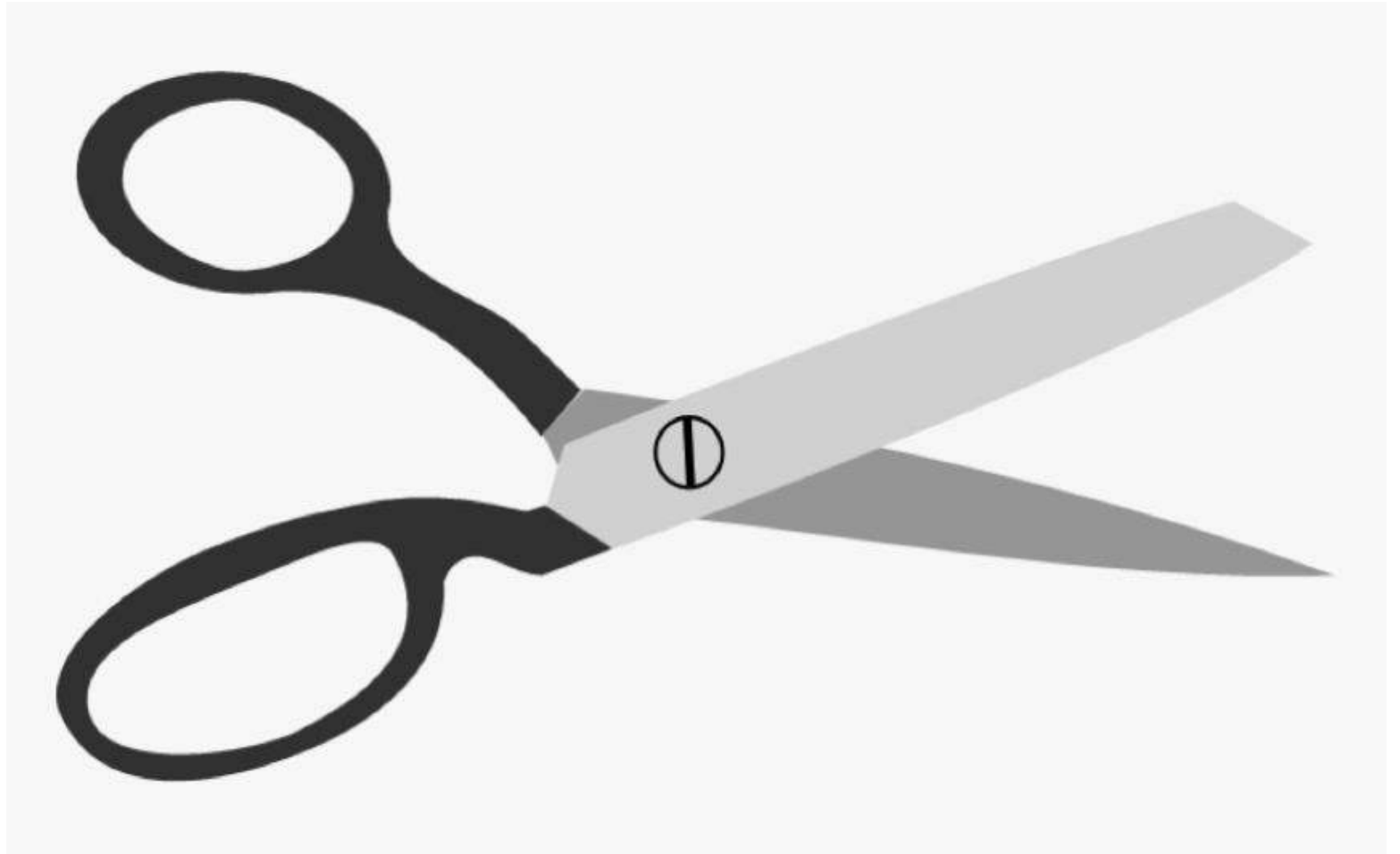
- Confusing cases (*e.g.*, *Marbury*, *Palsgraf*, *Eisner v. Macomber*, *Euclid v. Ambler*).
- Cases getting extra time for being foundational (*e.g.*, *Glenshaw Glass*, *Int'l Shoe*, *Johnson v. M'Intosh*, *Bourjaily*, *Vermont Yankee*).

Very Short Assignments:

- Substantial statutes (*e.g.*, sections of the Internal Revenue or Bankruptcy Codes or the Copyright Act).
- Explanations of technical, non-intuitive rules (*e.g.*, present/future interests).
- Practice problems (*e.g.*, in many Evidence or Professional Responsibility books).

Editing Cases is Time Well-Spent

- The shorter each case is, the more cases you can assign.
- Many parts of the case that interest you will confuse them.
- Very rarely can one case effectively teach more than one point.
- Assigned statutes also should be trimmed.



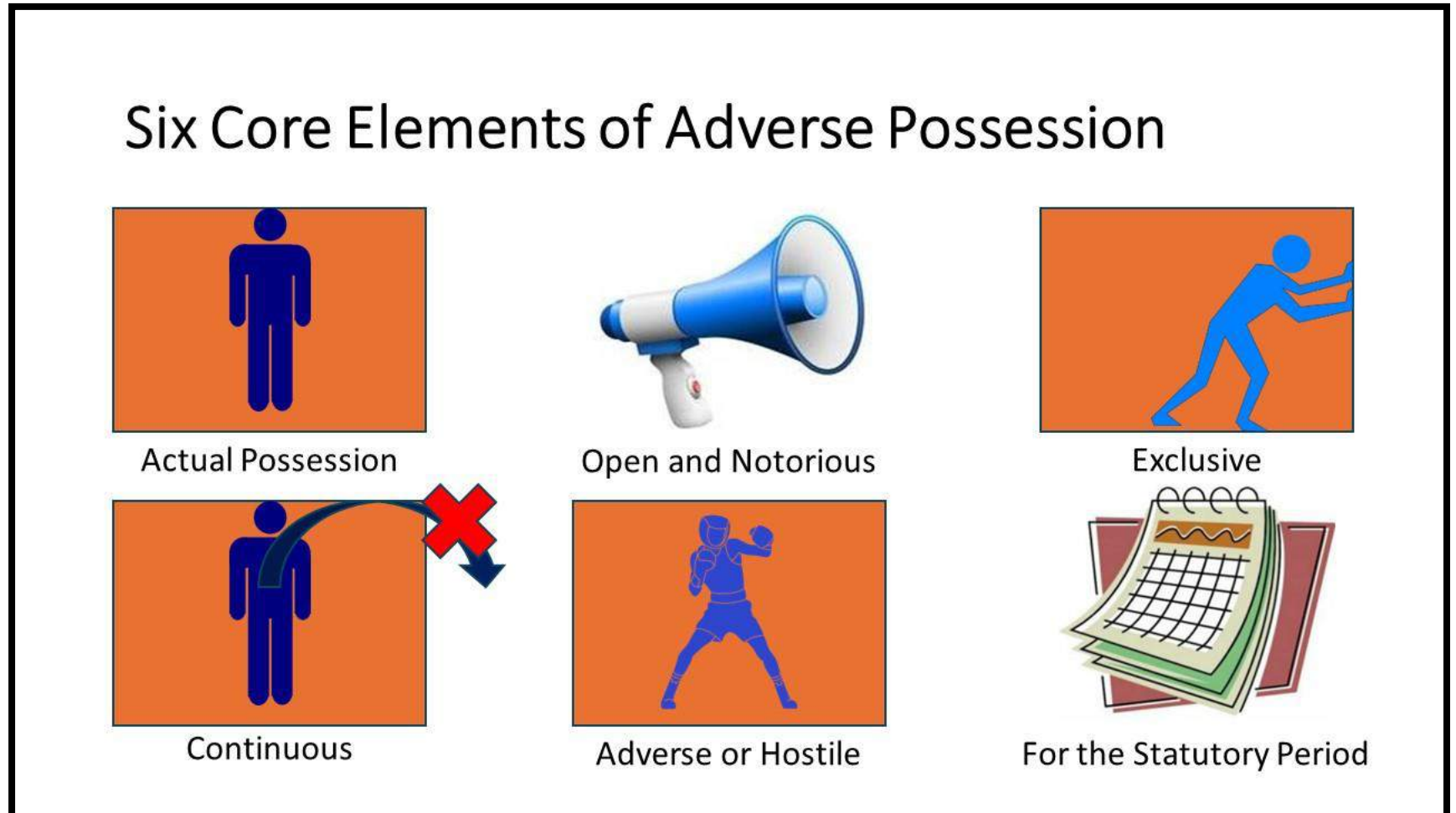
Resist Beautiful and Tempting Cases in the Book

- Casebooks commonly have a few foundational cases to teach a rule and then several options for giving students practice applying that rule.
- For harder or more important rules, you may assign more than one applications case.
- For most topics, you do not have time for more than one.

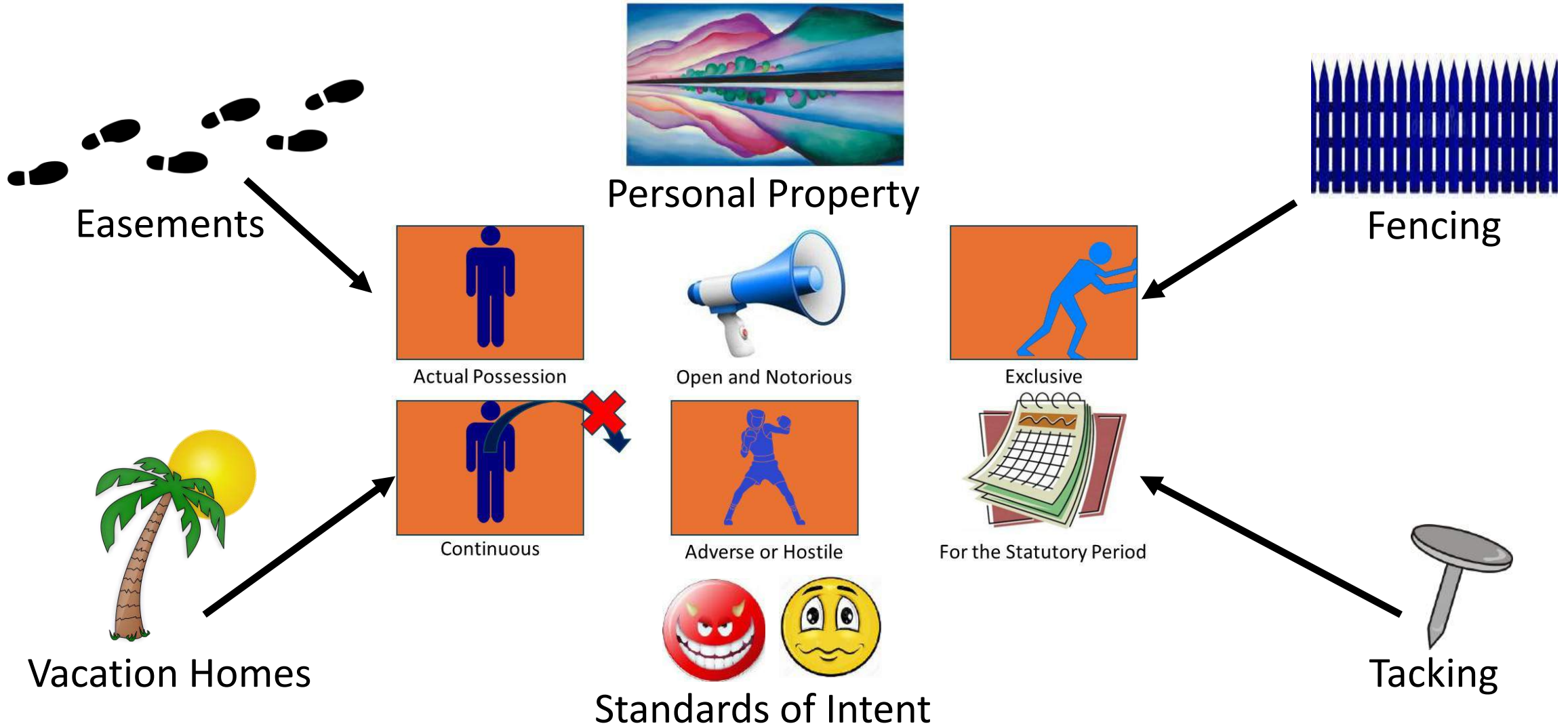


Example: Teaching Adverse Possession

Most casebooks start with one or two cases to introduce the concept and the core elements. These cases often feature disputes over several of the elements.



Casebooks Then Offer Chances to Elaborate



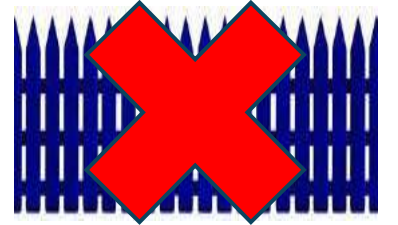
Assign a Few Elaborations – Or Just Skip Them



Easements



Personal Property



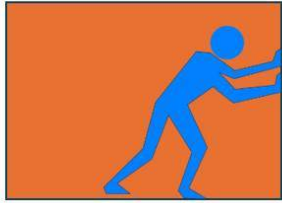
Fencing



Actual Possession



Open and Notorious



Exclusive



Vacation Homes



Continuous



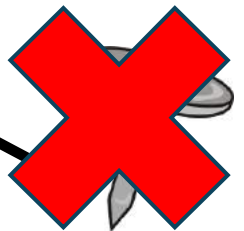
Adverse or Hostile



For the Statutory Period



Standards of Intent



Tacking

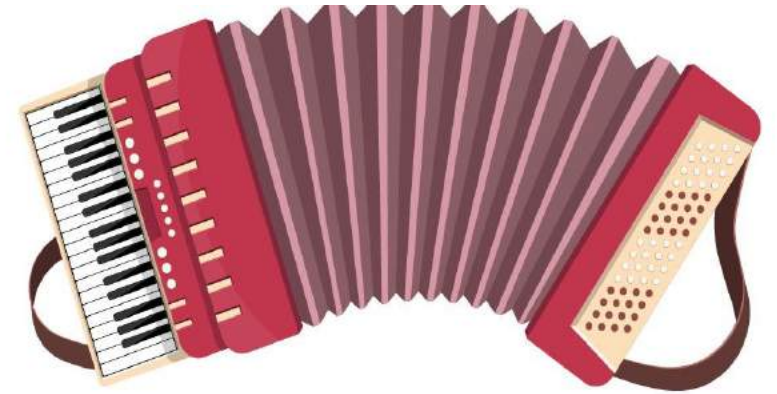
Identify Nonessential Material to Manage Time



Class is running behind: skip the note material in the book.



Class is running on schedule: discuss the more important note material in the book efficiently.



Class is at risk of finishing early: ask questions to stimulate active discussion of some of the note material in the book.

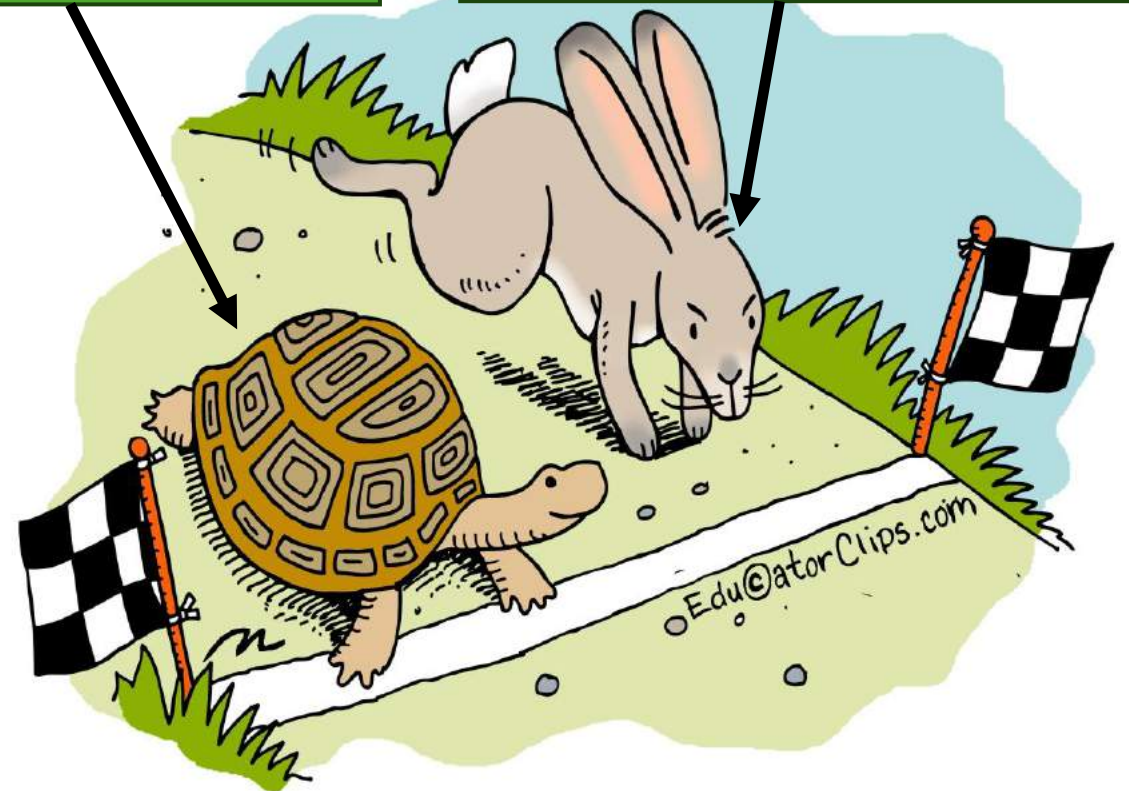
Try Hard Not to Fall Much Behind Your Syllabus

Try to avoid falling behind, your assignments, and if you do try to catch up quickly.

- The sooner you address being behind, the better choices you can make about what topics to trim.
- If you cut readings from the syllabus, do so at least a week in advance so that few or no students have already spent time on them.

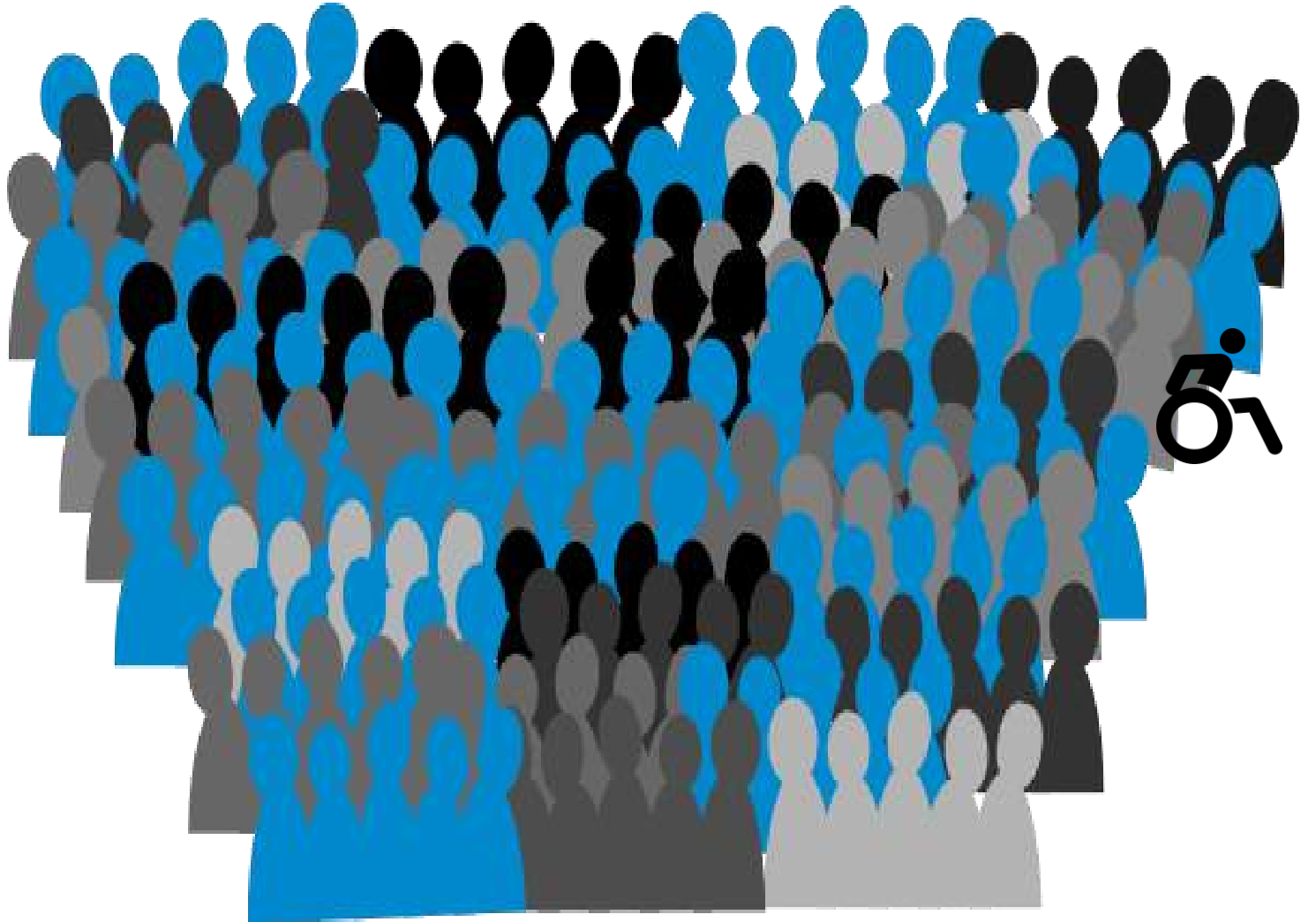
Law professor with well-planned syllabus, beloved by students

Law professor frantically trying to catch up at the end of the semester.



Learning Students' Names Builds Connection

- In required classes, say in the first class you will circulate a blank seating chart in the second.
- In other classes, circulate a blank seating chart in the first class after Drop/Add.
- Students feel much more engaged if called by name.
- “Name Drop” and similar software can allow students to record the correct way to pronounce their names.



Learning Students' Names' Pronunciation is Key



Which Students Are More Likely to be Called?

Ghazouani



Meloni



Ndayishimiye



Rajoelina



Scholz



Harris



Frederiksen



Macron



Kristersson



Akhannouch



Other Options for an Inclusive Classroom

- Include diverse characters in any slides you present.
- Address students in ungendered ways, either by first names or with ungendered honorifics such as “Counselor”.
- Allow forms of class participation that do not involve speaking in class, such as posting on Blackboard/Canvas/etc., to bring out insights from neuro-divergent students and those lacking self-confidence.
- If your casebook (like most of them) skews toward cases involving privileged white straight men, consider substituting some cases that reflect the broader experience of this country, its people, and its law.
- Avoid unnecessary discussions of gun violence in deference to the growing number of mass shooting survivors entering law school.

Managing Class Participation Inclusively

- When soliciting volunteers, wait several seconds to allow thoughtful students time to think through a comment and raise their hands.
- Call on whichever volunteer has spoken least-recently in class.
- Resist the temptation to call on another student when the current one is struggling unless that student clearly has finished.
- Commend quality contributions, especially from infrequent speakers.
- Be *extremely* careful when criticizing or correcting students: anything you say will be distorted and amplified on social media to humiliate the student. Just state the correct answer as if you are rephrasing.
- Avoid characterizing students' political or jurisprudential beliefs or implying that you know in advance what a student is going to say.

Bring Everybody into the Discussion

When Discussing Economics

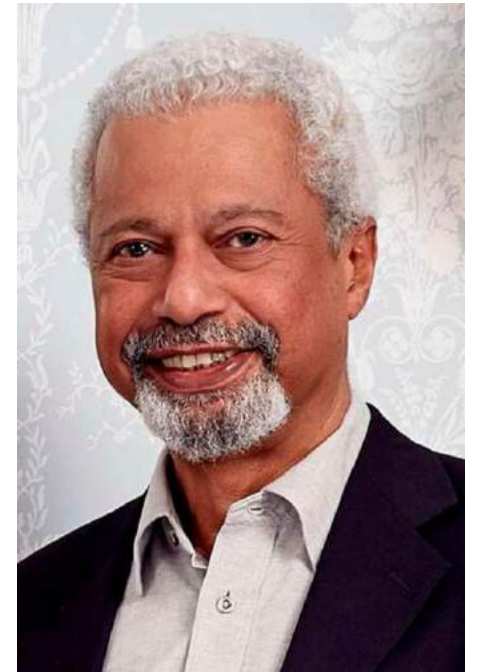
- Clearly explain any Econ concepts and terms for the English majors in the class.
- Interrupt students with Economics training to ask them to explain when they reference concepts or jargon others might not know.



Claudia Goldin
Nobel Laureate

In Making Literary Allusions

- Try to avoid allusions that may primarily be accessible to people with certain cultural backgrounds.
- Interrupt students making allusions that some might not catch and ask them to make their points clear.



Abdulrazak Gurnah
Nobel Laureate

Prepare the Class for Discussing Hard Topics



- Before the class begins discussion of a topic that may have a personal impact on particular students (*e.g.*, rape, the legality of discrimination against LGBTQ+ people, immigration, gun violence), speak directly to the class about the importance of professionals choosing their words carefully and considering how their words will affect their reputation.

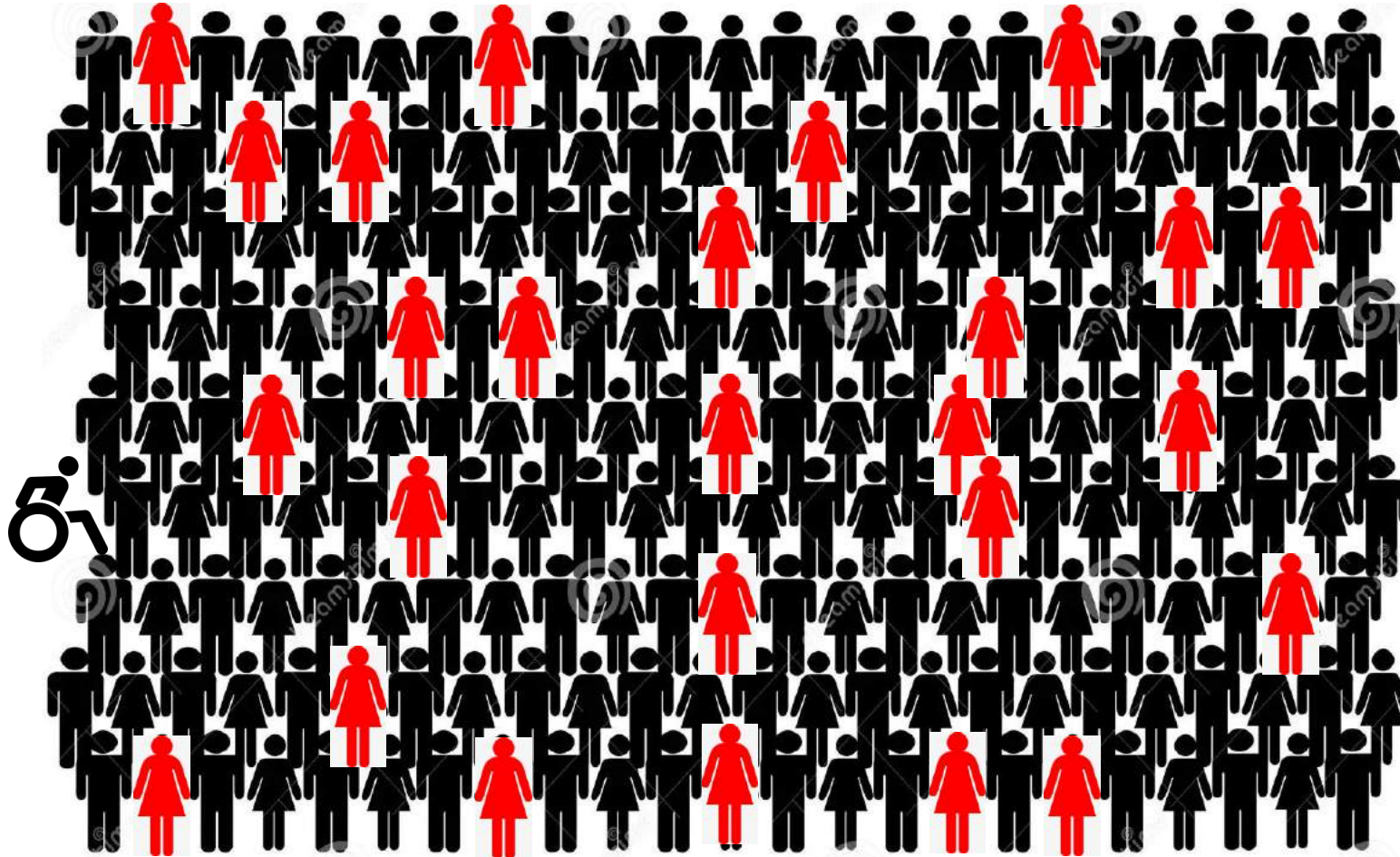


- Avoid humor and chatty digressions that could be taken as trivializing real human suffering.



- Intervene when students trivialize harms suffered by others, speculate about the motives of classmates, or imply that a classmate holds other views because of those they expressed.

College Women Sexual Assault Survivors: 25%



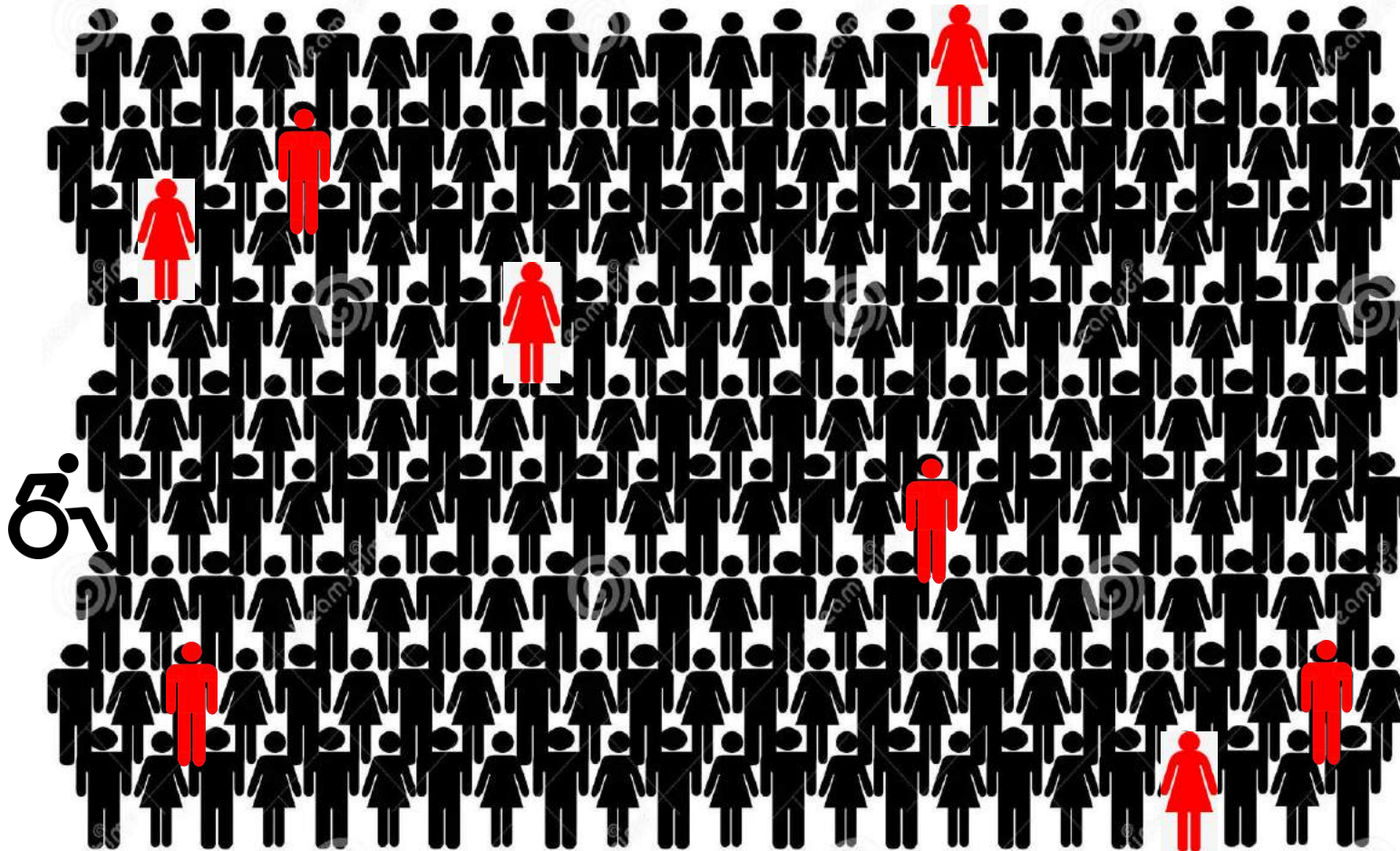
People who Lost a Family Member to Guns: 19%



College Students from Immigrant Families: 28%

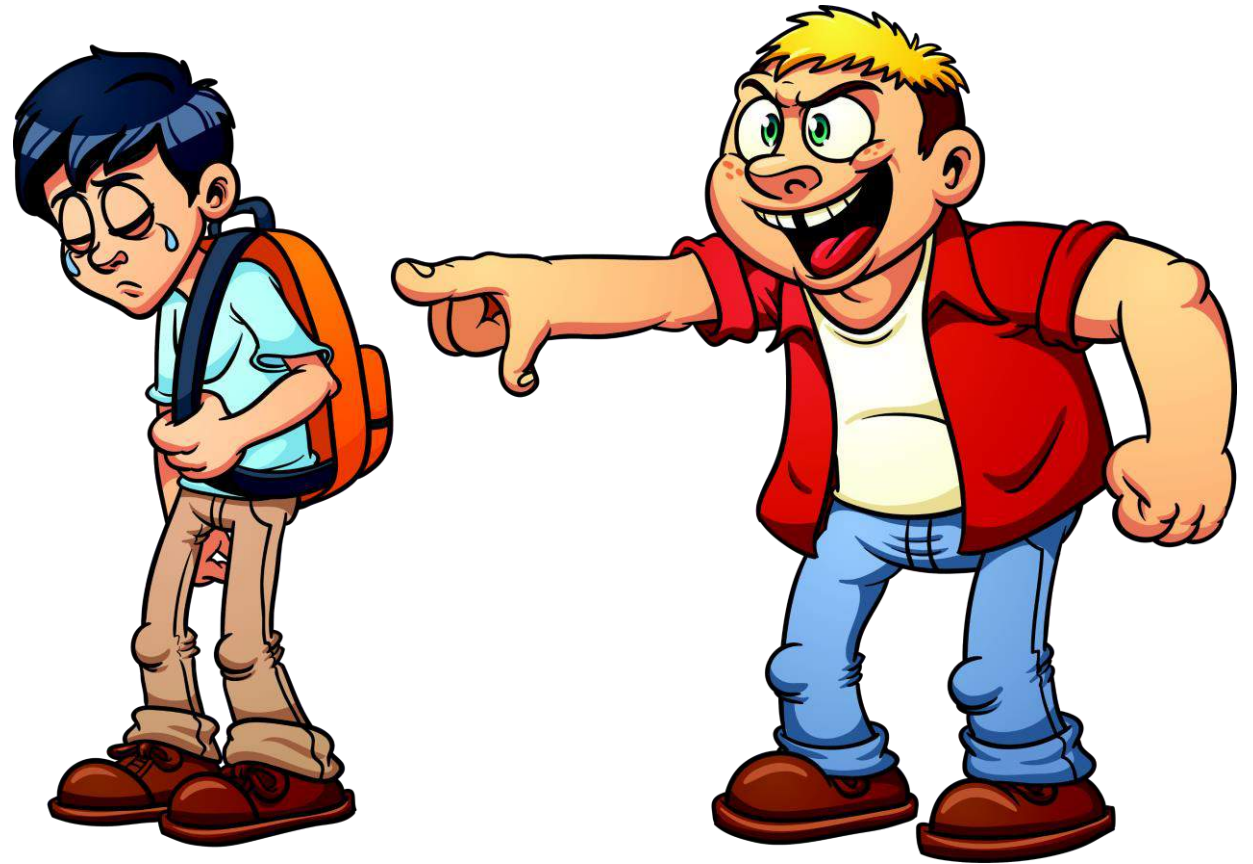


Law Classes Routinely Include People with Autism

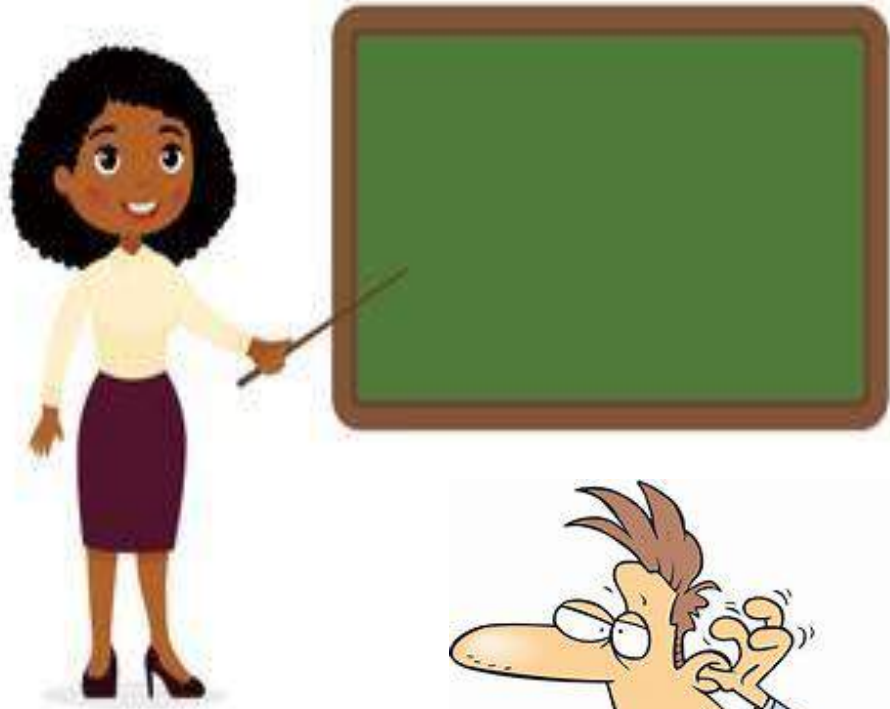


Insist on Civility in the Classroom

- A lot of bullying occurs on social media (*e.g.*, class Facebook pages), where faculty typically cannot see it. This significantly suppresses class participation, especially by members of marginalized groups.
- When this bullying erupts into the open, faculty need to leverage their positions to shut it down decisively.
- Cool, collected comments on the importance of professional respect, and the difficulty of rebuilding a damaged reputation, are crucial.



Do Not Tolerate Overt, Deliberate Disrespect



- Students disagreeing with faculty is an important part of their education.
- Students disrespecting faculty is not.
- This is particularly common against women faculty and faculty of color.
- Some informality, even inappropriate informality, may not be ill-intentioned.
- Overt challenges to the instructor's qualifications or competence, or wilful disregard of classroom policies, must be met coolly, directly, and firmly to prevent the situation from spiraling out of control.

Students' Strongest Modes of Learning Vary



Reading



Listening



Viewing Slides/Diagrams



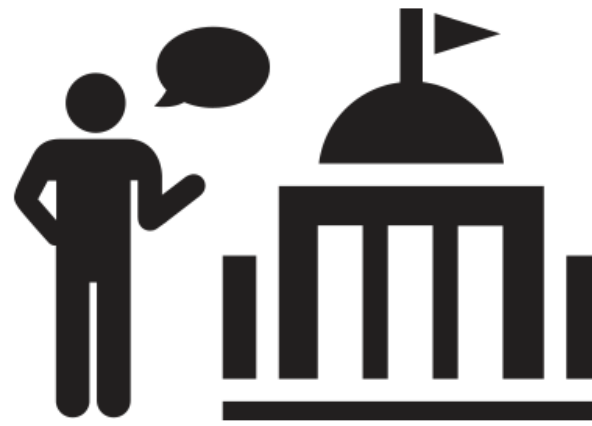
Problem-Solving



Rephrasing



Discussing



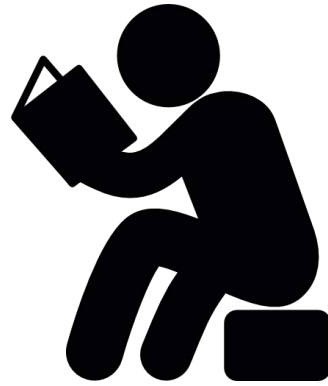
Understanding Policy



Arguing

Instructors Should Try to Accommodate All

Tight, well-crafted reading assignments



Diagrams, flow-charts and tables on key points



Issue introductions and summary mini-lectures



Suggested old exams or problems with answers

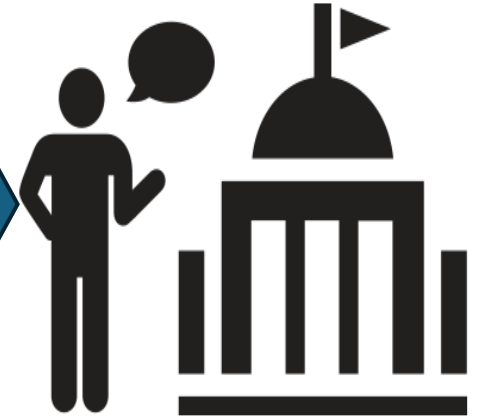


Instructors Should Try to Accommodate All

Careful, constructive feedback to students



Teach both doctrine and policy systematically



Role-playing exercises; meet with study groups

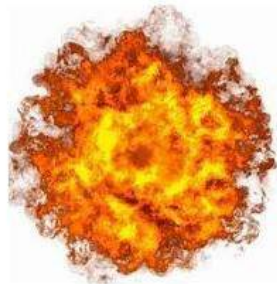


Foster vigorous debate in class and elsewhere



Show Recurrent Policy Themes in Doctrine

Neighbor Law is an Amalgamation of Many Tools



Show that Policy Has Elements Just Like Doctrine

- Induce students to make this part of their preparation by predictably asking the class to fill in each of the boxes each time a policy issue arises.
- Help them see how countervailing factors arise within the same box.

Policy Considerations in Weighing Property Rights



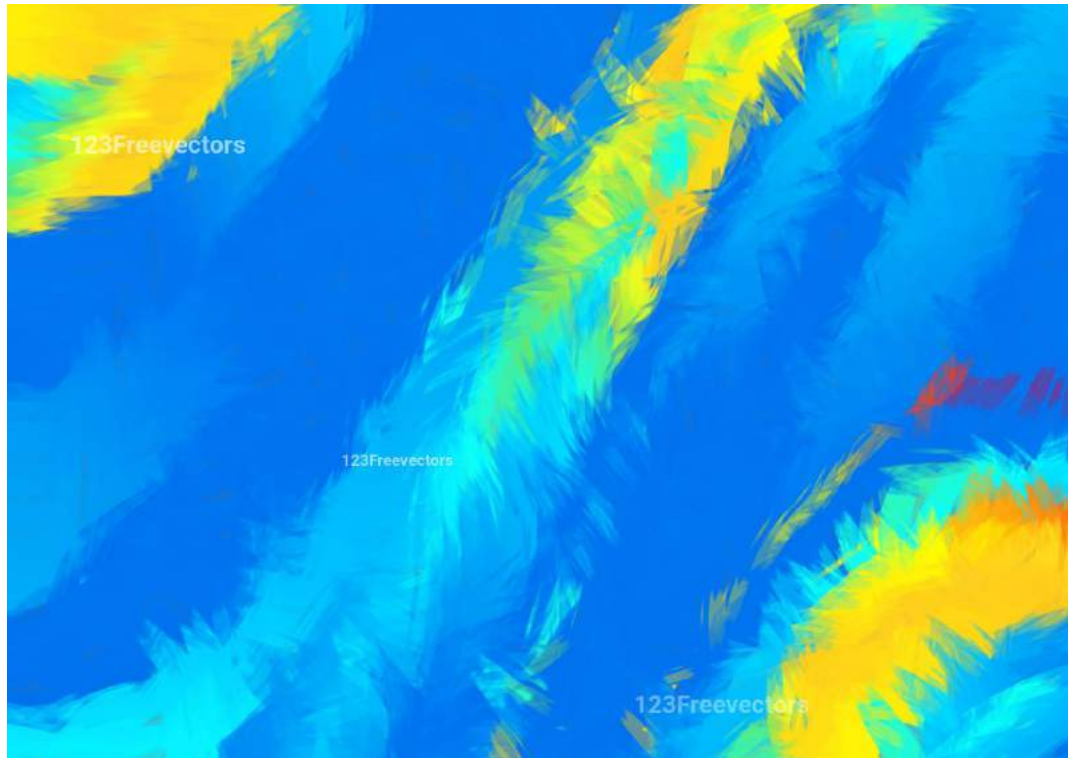
Fairness considerations:

Economic Efficiency considerations:

Administrability considerations:

Accept Ambiguity but Later Resolve It

End of One Class



Beginning of Next Class



Lectures and Diagrams Help Students Digest

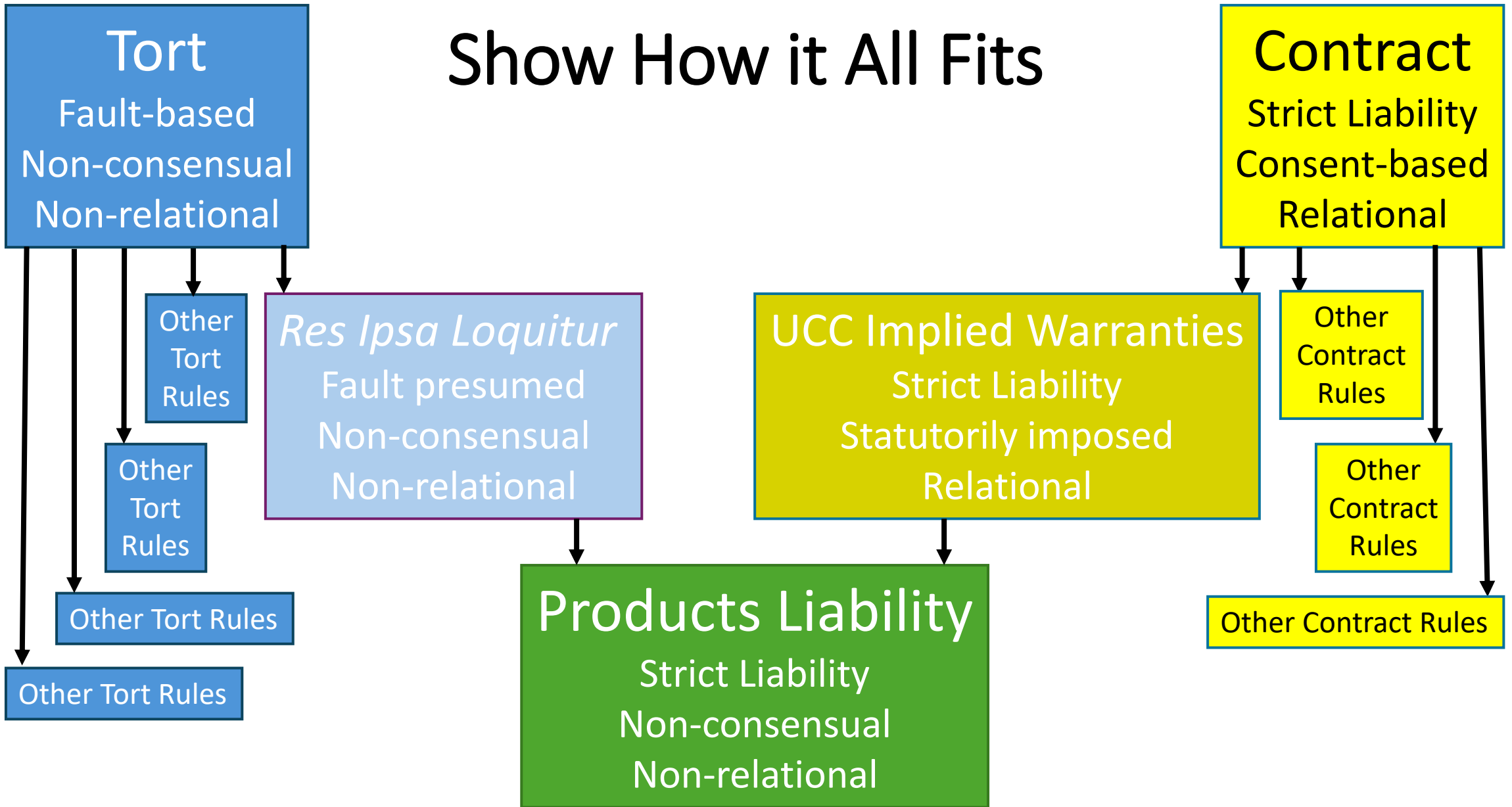
Law Schools Do Well



Law Schools Do Badly



Show How it All Fits



Slides Can Help: Straight Text

- Can aid visual learners.
- Useful as *de facto* class notes, helping student focus in the moment knowing they can review these later.
- Best if presented in outline format that shows relationships.
- Risk being a bit dry, especially if you seem to be reading them.

Common Themes in Tax Shelters

- Inconsistent legal positions, such as:
 - Treat part of a transaction formally and another part substantively
 - Treat the taxpayer as an owner for some purposes and not for others
 - Characterize the same payment in different ways under different tax rules
- Include cancelling mechanisms to avoid real-world impacts:
 - Transfers of ownership negated by options to buy back or likely foreclosures
 - Transfers of control negated by lease-backs
 - Installment payments offset by lease payments
- Link taxpayers that have income in need of sheltering with entities that have relatively little income
- Goal commonly is tax deferral although sometimes full avoidance

Slides Can Help: Setting Out Text to be Parsed

- Can aid visual learners.
- Frees students from having to constantly look down at their books and then back up to class discussion.
- Allows you to highlight key words in the text that everyone is reading at once.
- Facilitates questions.

The Nuclear Disallowance

§ 274. Disallowance of certain entertainment, etc., expenses—

(a) Entertainment, amusement, recreation, or qualified transportation fringes.—

(1) In general.—No deduction otherwise allowable under this chapter shall be allowed for any item—

(A) Activity.—With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or

(B) Facility.—With respect to a facility used in connection with an activity referred to in subparagraph (A).

Slides Can Help: Visualizing Elements of a Test

- Can help visual learners.
- Makes elements of the test more memorable.
- Especially helpful where students tend to merge, disbelieve, or forget some elements of a legal test.

Express Warranties: UCC § 2-313

			
Promises	Statements of Fact	Descriptions of the Goods	Models or Samples

Slides Can Help: Visual Examples Applying Rules

- Can help visual learners.
- May make illustrative example more memorable and so make it easier for students to assess new problems they meet.
- Less dry than presenting a hypothetical verbally or by writing on the board.

Implied Warranty of Fitness for Intended Use



"I need a new washboard."

"I trust you to find me one."



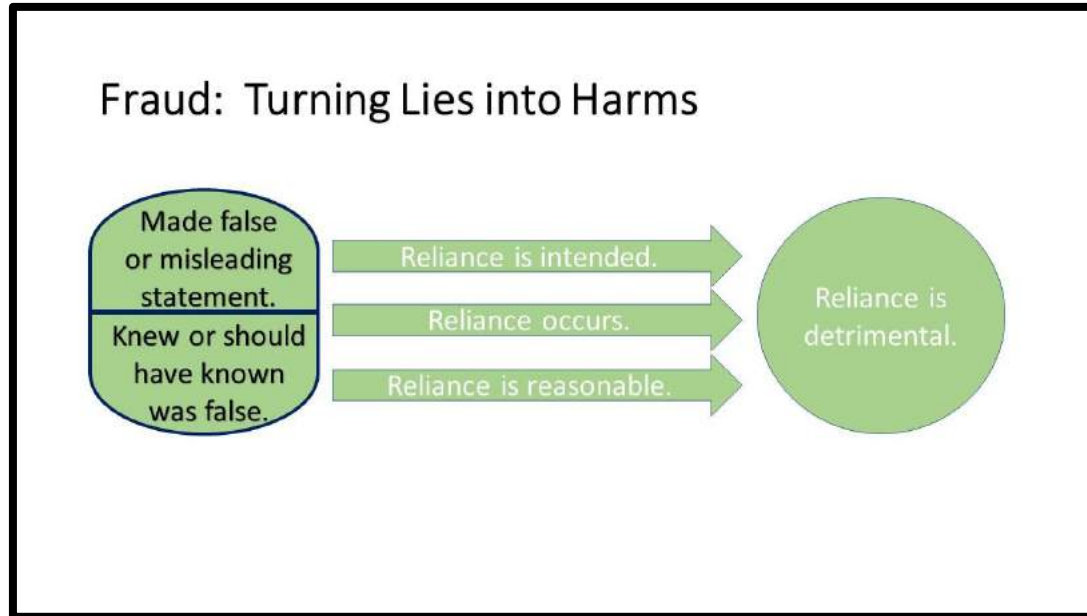
Slides Can Help: Making Formulas Accessible

- Can help visual learners and numerophobes.
- Once the class sees a key formula, you can present other slides that point out what is and is not present in that formula or work through problems.

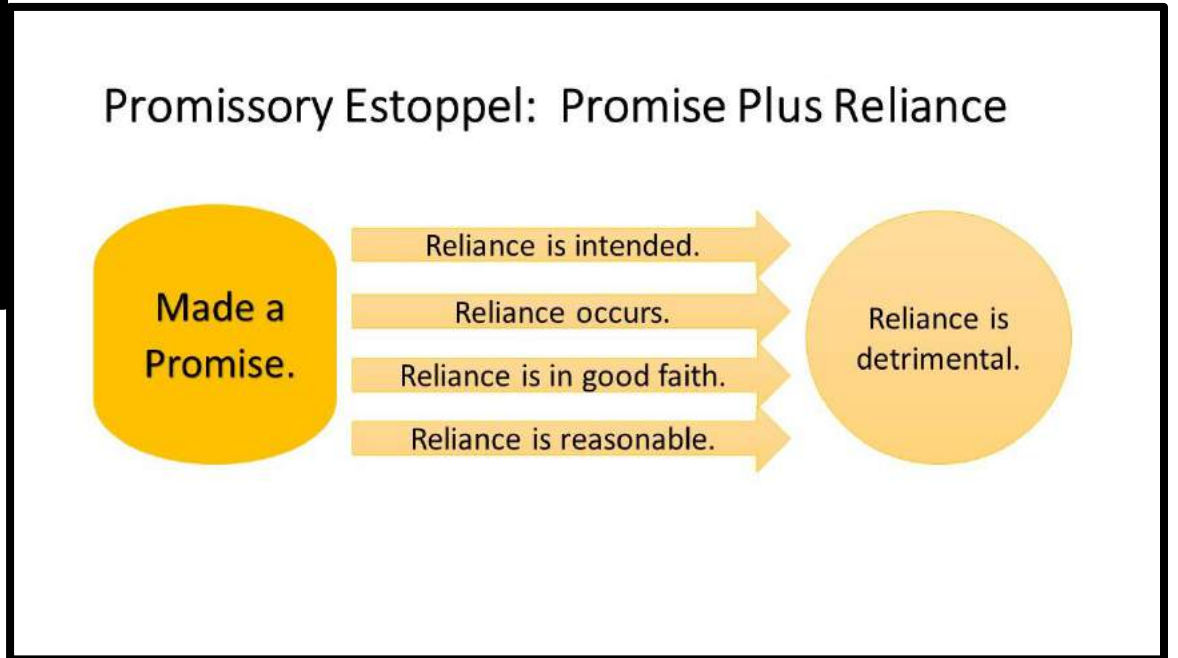
Restatement § 347: Where is the Penalty?



Slides Can Help: Format Showing Similarities

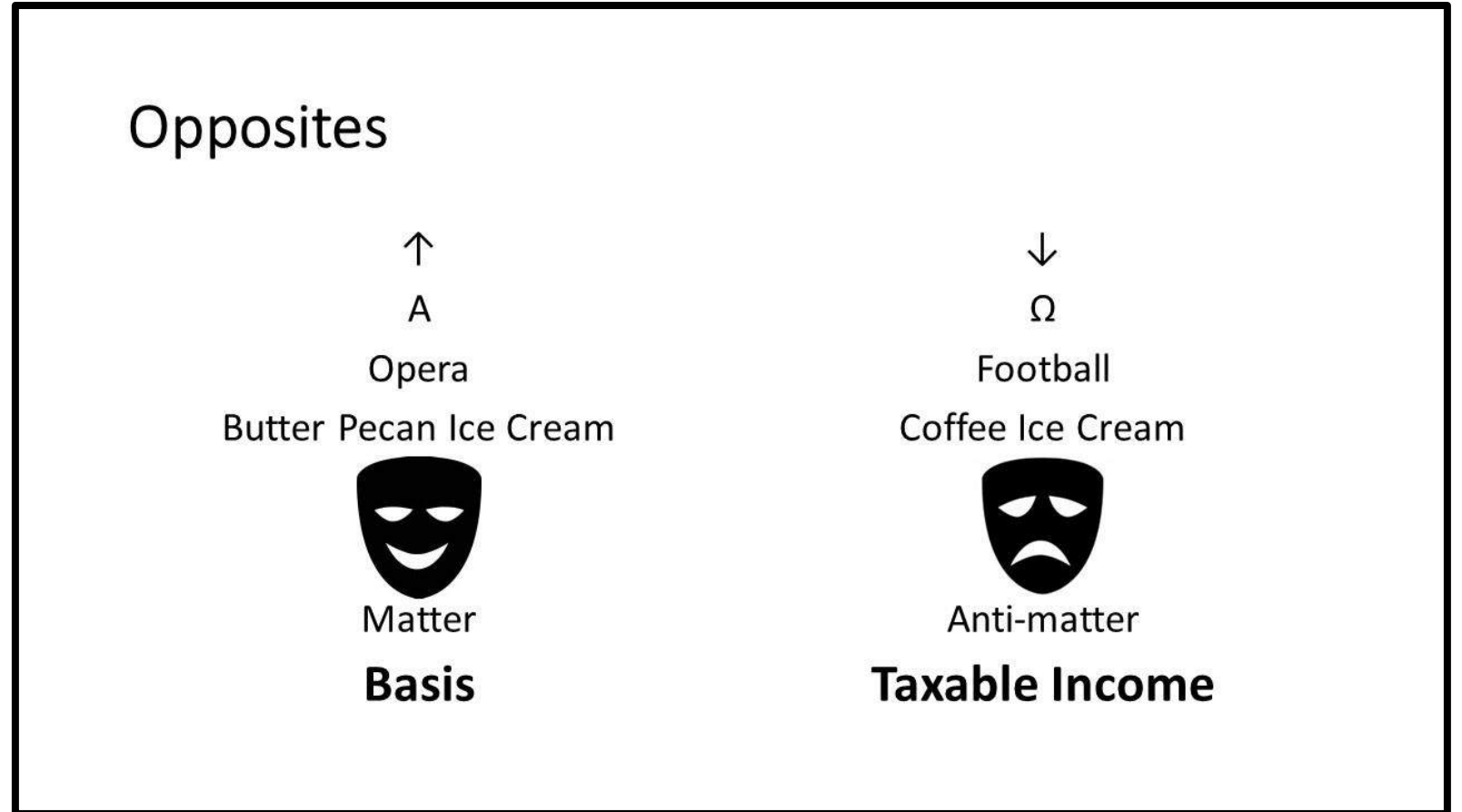


- Can help visual learners.
- Repeating a familiar format can encourage students to see similarities between concepts.



Slides Can Help: Comparisons and Contrasts

- Can aid visual learners.
- Can introduce visual metaphors for big ideas memorably.
- Follow up on initial slide with detailed ones that explain the contrast and source it to course readings.



Slides Can Help: In-Depth Comparison Tables

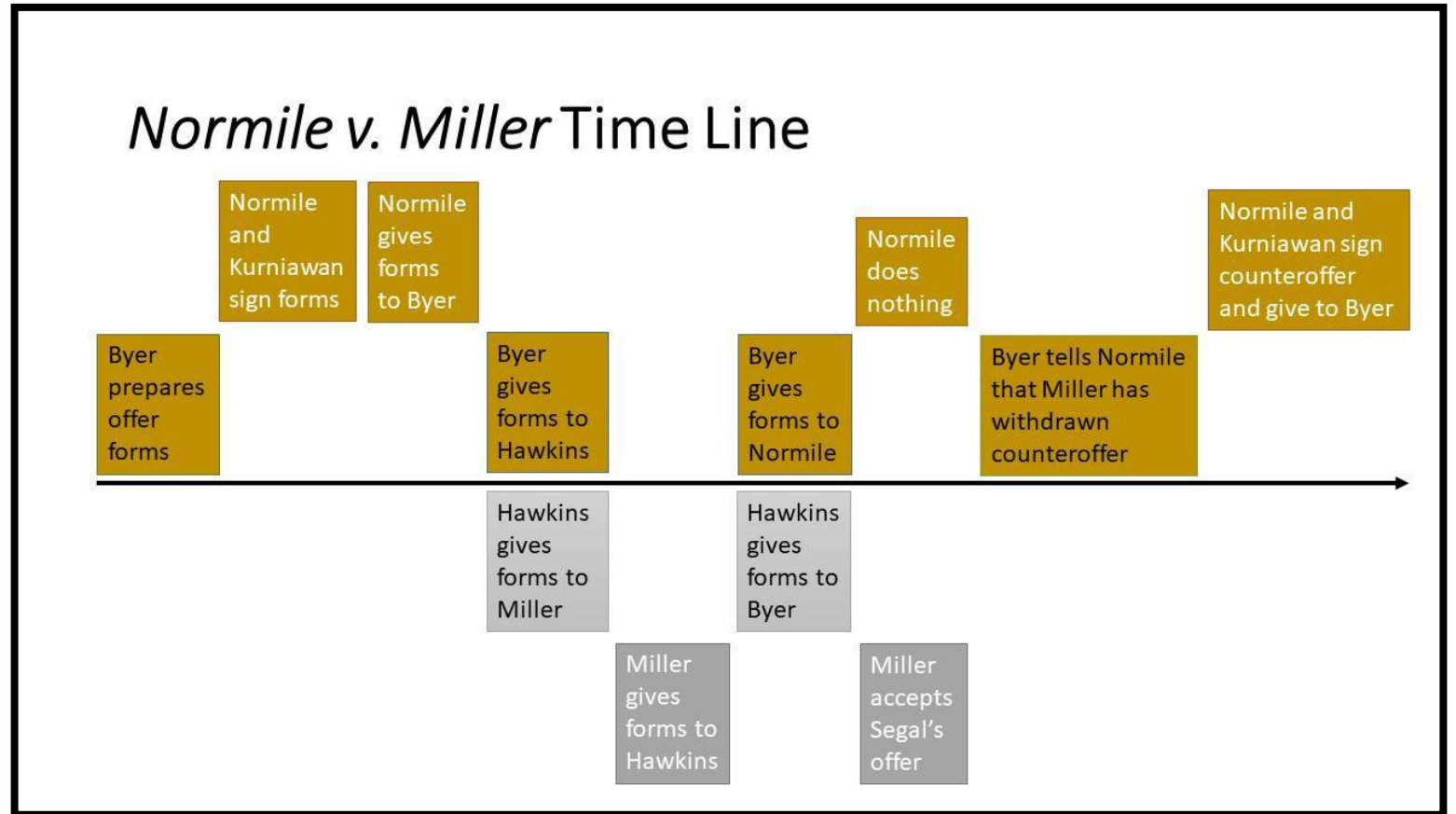
- Can facilitate more complex comparisons than many students could get from an oral description alone.
- Performs a similar function to writing on the board but may disrupt class less and be easier to read.

Comparing Firm Offers and Option Contracts

	Ordinary Offer	Firm Offer under UCC § 2-205	Option in Contract
Rights of receiving party	Accept and bind granting party <i>or</i> walk away	Accept and bind granting party <i>or</i> walk away	Granting party already bound <i>but</i> receiving party may walk away
Rights of granting party	Rescind offer	None: cannot rescind for duration of firm offer	None: cannot rescind ever
When allowed	No restrictions	Granting party is a merchant <i>and</i> offer is in writing <i>and</i> reasonable duration stated in offer	Only when supported by separate consideration

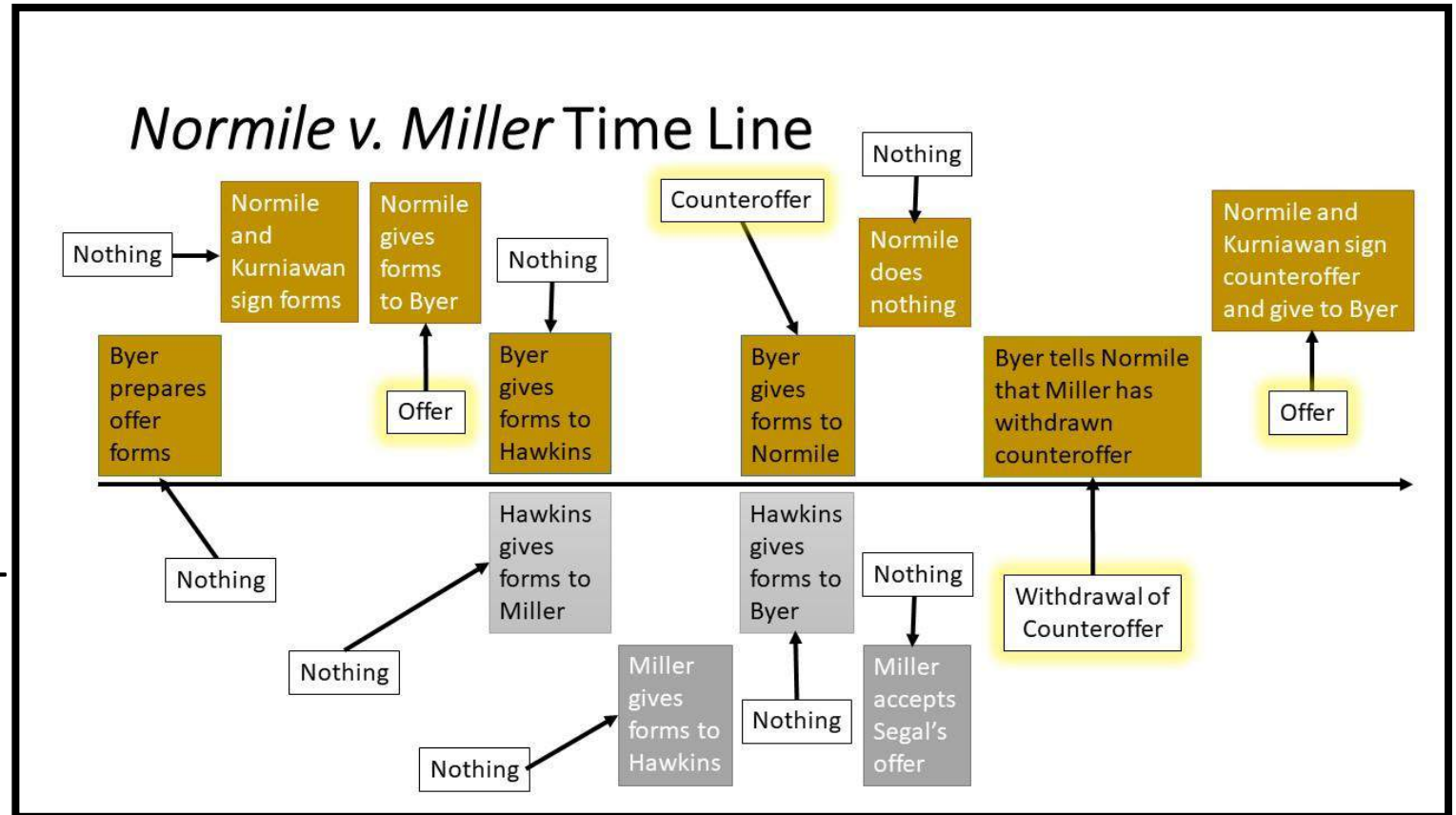
Slides Can Help: Setting Up In-Class Exercises

- Can help visual learners.
- Diagram the parties' actions so that the class can assign the right legal significance to each.



Slides Can Help: Setting Up In-Class Exercises

- Can help visual learners.
- Diagram the parties' actions so that the class can assign the right legal significance to each.
- Each characterization is on a new slide so that labels are added one-by-one just as they would be writing on the board until all are marked.



Slides Can Help: Presenting Practice Problems

- Can help visual learners and numerophobes.
- Allows you to draw attention to critical facts in the hypothetical that affect the outcome.
- Facilitates clear, focused questions from students that are confused.

Problem 3

Pepe is a temperamental and superstitious genius. He has started several new companies. Each time, after investors have put up the necessary financing, he rolls two dice. If the dice come up “seven”, he refuses to work, and without his genius the company quickly fails. If the dice come up anything other than “seven”, he works extremely hard and develops a highly successful business that handsomely rewards his investors. In 2016, Augustias invests \$10,000 in one of Pepe’s companies. The dice roll comes up favorably (*i.e.*, not “seven”), Pepe works hard, and soon the company is sold to a hedge fund at a good price. Augustias gets her money back plus a \$4,000 profit. Still in 2016, Augustias invests the total \$14,000 that she got back from the sale of the first company in a new company Pepe is starting. This time, Pepe’s dice come up “seven” and Pepe quits and moves away. The company quickly collapses, and Augustias’s investment becomes worthless. Augustias has substantial other income for 2016. How do Augustias’s investments in Pepe’s companies affect her reportable income for 2016?

Slides Can Help: Contrasting Problems' Solutions

- Can help visual learners and numerophobes.
- Allows you to show in what ways divergent facts in the hypothetical are treated similarly and in what ways they change the outcome.
- Facilitates clear, focused questions from students that are confused.

Comparing Gambling and Investing

	Bernarda	Maria Josefa	Augustias
First Investment	\$10,000	\$10,000	\$10,000
Return on First Investment	+ \$4,000	+ \$4,000	+ \$4,000
Second Investment	\$14,000	\$14,000	\$14,000
Return on Second Investment	- \$14,000	- \$14,000	- \$14,000
Gross Earnings	\$4,000	\$4,000	\$4,000
Total Losses	- \$14,000	- \$14,000	- \$14,000
Countable Losses	- \$4,000	\$0	- \$14,000
Net Income	\$0	\$4,000	- \$10,000

Slides Can Help: Showing Calculations

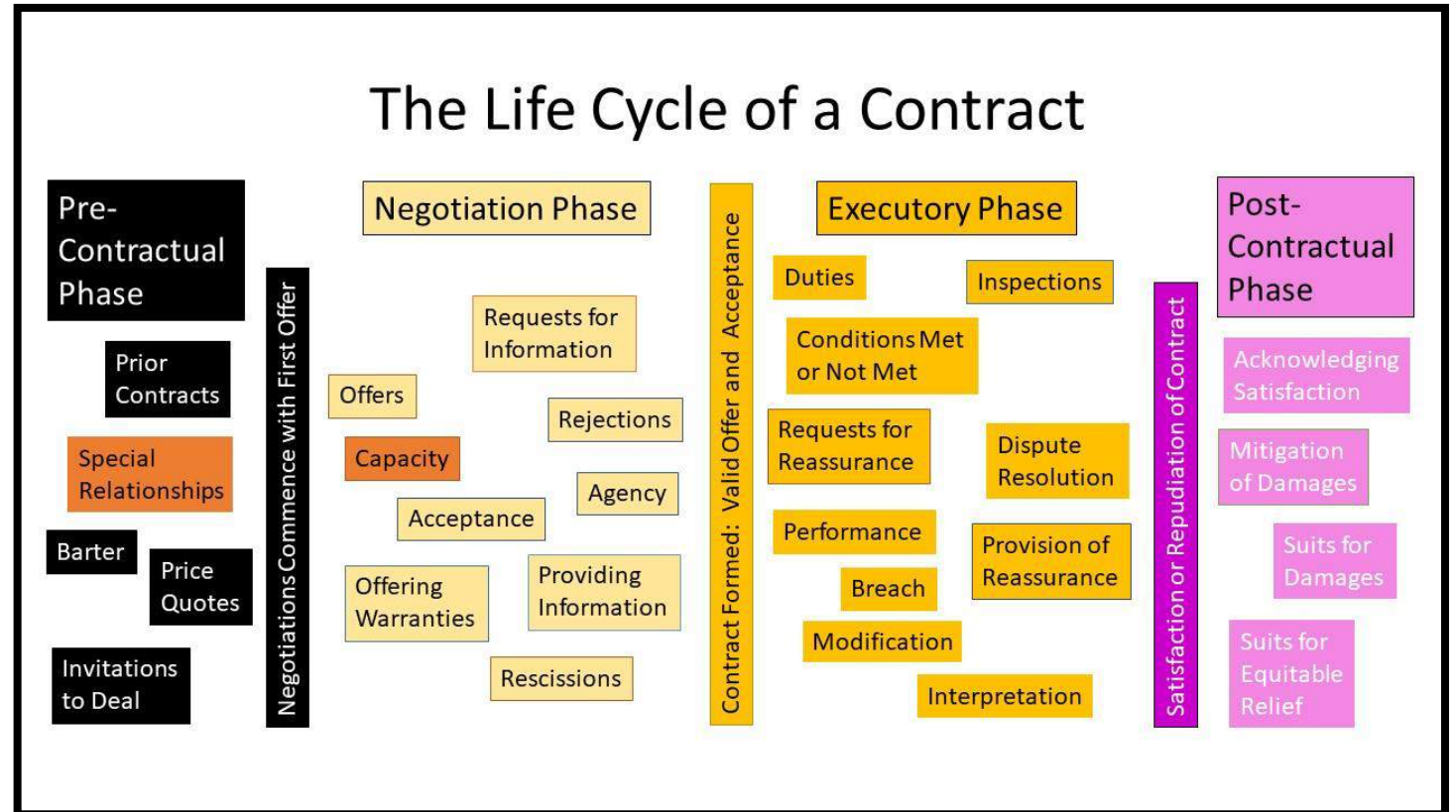
- Can help visual learners and numerophobes.
- A legible alternative to writing on the board, which allows you to ensure correct numbers and accessible format before class.
- Frees students from furious, and possibly erroneous, note-taking, allowing them to focus on the concepts.

Fujimaki's Bargain Sale of Widget to Charity

	Appreciation or Depreciation \$50,000	Adjusted Basis \$50,000
Donation \$95,000	\$47,500	\$47,500
Amount Received \$5,000	\$2,500	\$2,500

Slides Can Help: Giving View of Broad Field

- Can help visual learners.
- Can help all students organize their notes about individual cases into a more coherent outline of the subject.
- Can show why some principles that are crucial in some cases are wholly ignored in others.



Slides Can Help: Sites and Scenes

- Slides showing people or places involved in a case may add the least to the learning process.
- Seeing the location of a dispute in cases may add authenticity for some students.
- Can be combined with other slide formats that help organized relevant information.

Justifying Liability in *Zelenko v. Gimbel Bros.*

Action

- Moved to the back
- Prevented others from aiding

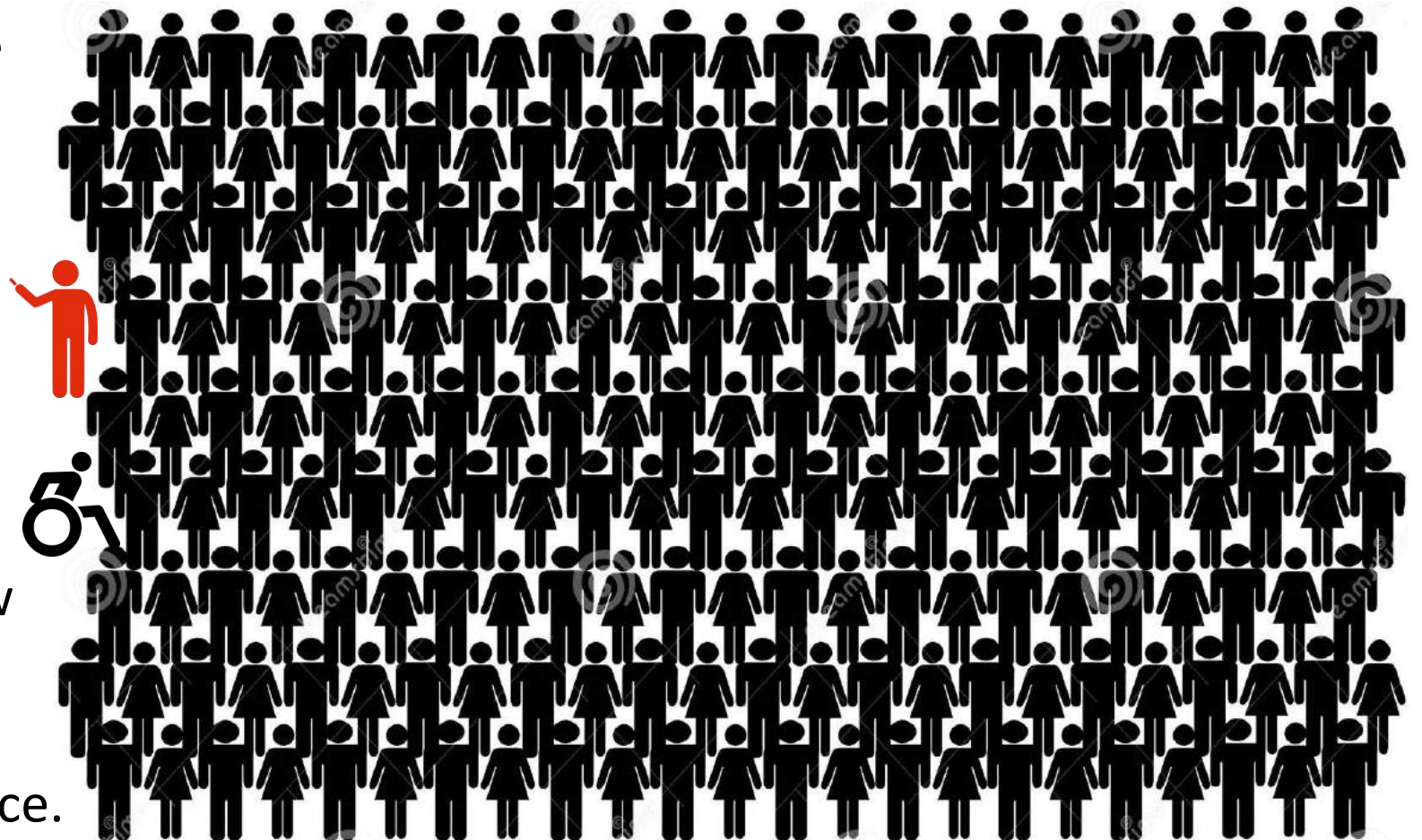
Inaction

- Property owner's responsibility
- Failed to provide needed rescue



Do Not Judge a Class by its Most Vocal Members

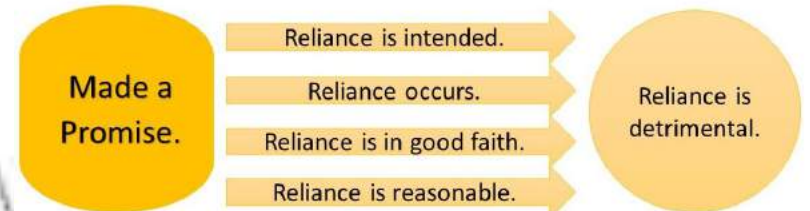
- Those speaking in class are disproportionately:
 - the most confident or
 - the most confused.
- You cannot answer every question *in class*.
- You cannot stay on a topic until everyone gets it.
- Tangents that engage a few vocal students will confuse most of the class and are best addressed in your office.



Law Students Struggle to Learn from War Stories







Promissory Estoppel: Promise Plus Reliance



Some students like war stories, but they typically lack the background to draw valuable lessons about course material.

Successful Classes Require Lots of Preparation

Offering	Preparation Time	Class Time
First		
Second		
Third		

Creating Good Class Notes

Ives v. South Buffalo Ry. Co. (N.Y. 1911), at 18

- Background:
 - ◊ Civil litigation process
 - ◊ Comparing statutes and common law – what is the source of authority of each?
 - ◆ Statutes and democracy
 - ◆ Case law and anti-democratic character, reception of English common law, failure to account for fundamental transformations of society
 - ◊ Goals and objectives of tort law
 - ◊ Comparing prior common law with New York workers' compensation statute
- Facts:
 - ◊ Earl Ives injured
 - ◊ Why not more in the opinion?
 - ◊ How does the appellate court decide which facts to recite?
 - ◊ What is a demurrer?
 - ◊ Backstory:
 - ◆ Ives was experienced switchman
 - ◆ Standing on 32d car of 35-car train containing coke
 - ◆ Ives signaled the engineer to move forward to take up the slack in the train
 - ◆ Movement knocked Ives off of train, suffering sprained ankle, bruises, other injuries
 - ◆ Evidence of collusion, with railroad paying Ives and hiring his attorney to sue on relatively minor injuries
- Procedure in trial court (Special Term):
 - ◊ File complaint
 - ◊ Defendant admits facts in answer
 - ◊ Demurrer/motion to dismiss/R. 12(b)(6)
 - ◊ Plaintiff demurred – disagreed with defendant's argument, joining the issue
- Appellate procedure, variety of courts' names
 - ◊ Special Term entered judgment for plaintiff Ives, and defendant railroad appealed
 - ◊ Appellate Division affirmed by an equally divided court
- Issue: was 1910 workers' comp. statute consistent with federal and state constitutions?
 - ◊ Change in source of legal authority for compensation from common law to statute
 - ◊ Changes in the handling of cases:
 - ◆ Did the employer act with fault?
 - ◆ Are contributory negligence, assumption of risk, and the fellow servant rule available to the defendant as affirmative defenses?
 - ◆ Who decides which claims are paid and in which amounts?
 - ◆ What is the measure of damages?
 - ◆ Are damages paid in a lump sum or as need arises?
 - ◊ Why did Wainwright Commission think workers' compensation was desirable?
 - ◆ Loss minimization?
 - ◆ Loss distribution?
 - ◆ Minimization of transaction costs?
 - ◆ Corrective justice?
 - ◆ Peaceful dispute resolution?

- What notes are most useful varies by the teacher.
- Avoid a script, even for part of the class:
 - It deadens your teaching, making concentration hard.
 - If you have something you want to write up for the class, provide it as a hand-out instead.
- Key points on each main case to be discussed:
 - Court, date, parties, procedural history
 - Core essentials of the issue or issues raised
 - Quotes you want to emphasize and their exact location
 - Any calculations within the case (damages, income, etc.)

Things to Include in Class Preparation



Mark questions to drop if you have time trouble and ones to add if things go fast.



Put sticky tabs on any text you plan to quote and parse in class.

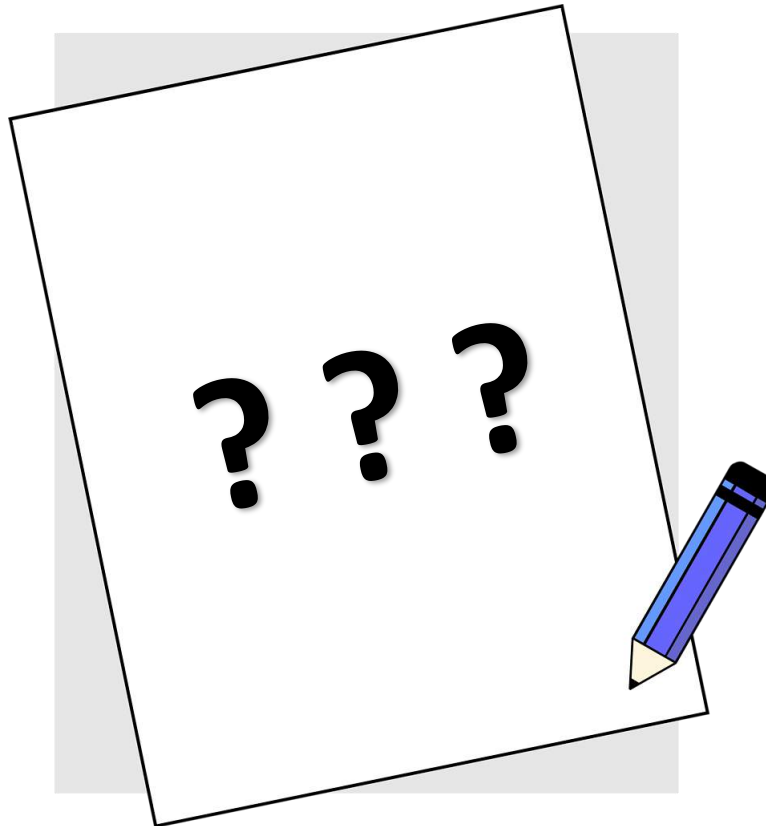


Practice with classroom A/V equipment if you will show slides or videos.

Prepare Practice Problems on Difficult Points

Some topics need practice for full comprehension:

- Minimum contacts
- Contract damages
- Types of tort causation
- Present/future interests
- Depraved heart murder
- Due process balancing
- Character evidence
- Like-kind exchanges
- Holders in due course
- Confidences and secrets



Provide the problems in a format allowing close study:

- Ideally, distribute them in advance via email or the course website.
- Otherwise:
 - make slides or
 - use paper handouts.

After class, prepare and distribute model analyses. Problems are worth the effort as they are reusable.

Possible Design for a Single Class Meeting

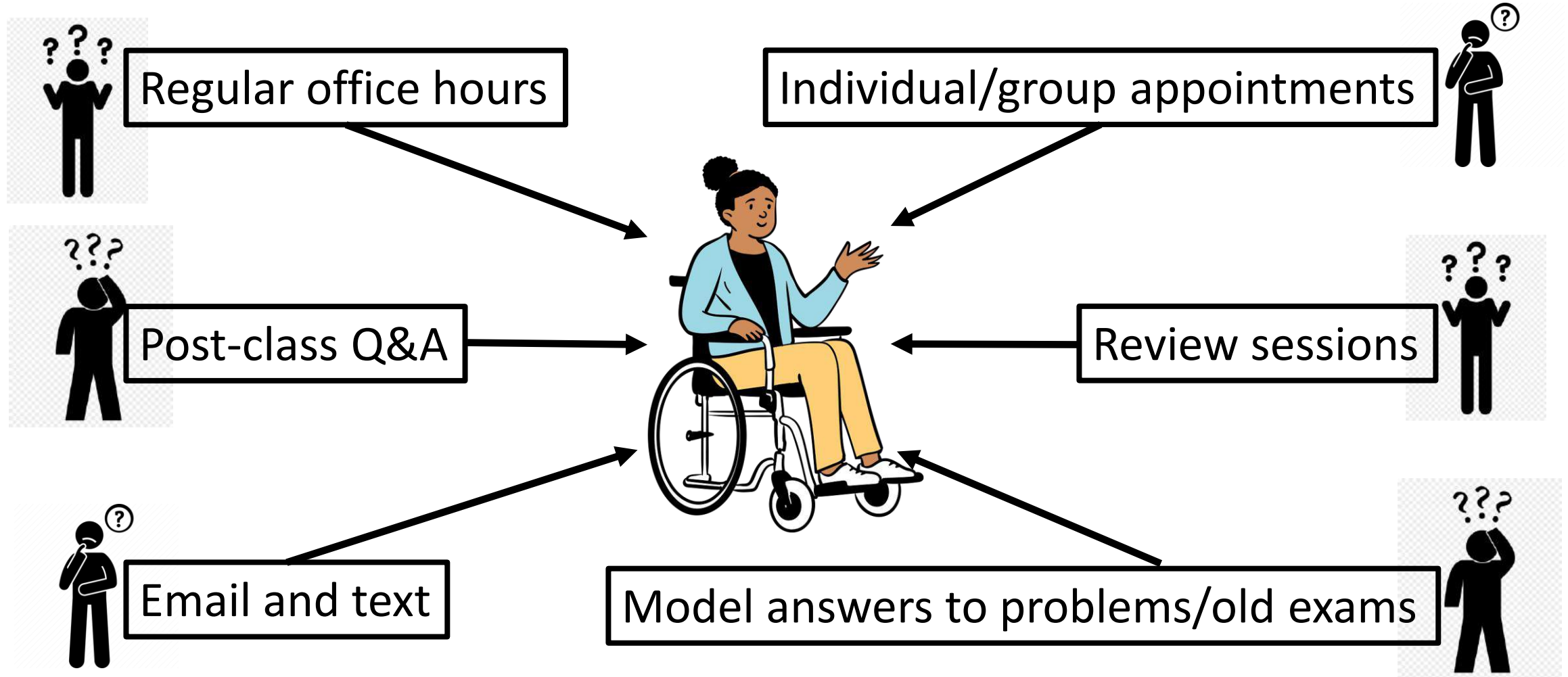
Time	Activity
10:00-10:10am	Mini-lecture summarizing prior class and transitioning to this one
10:10-10:25am	Discussion of primary case for this class's topic
10:25-10:35am	Discussion of secondary case for this class's topic
10:35-10:45am	Discussion of secondary case for this class's topic
10:45-11:00am	Class answers multiple choice or short answer problems together
11:00-11:10am	Develop a flow chart on the board to fit this topic into broader law
11:10-11:15am	Field questions from the class on today's topic
11:15-11:30am	General class discussion of policy questions posed by instructor

Stay Confident, Even When Problems Arise

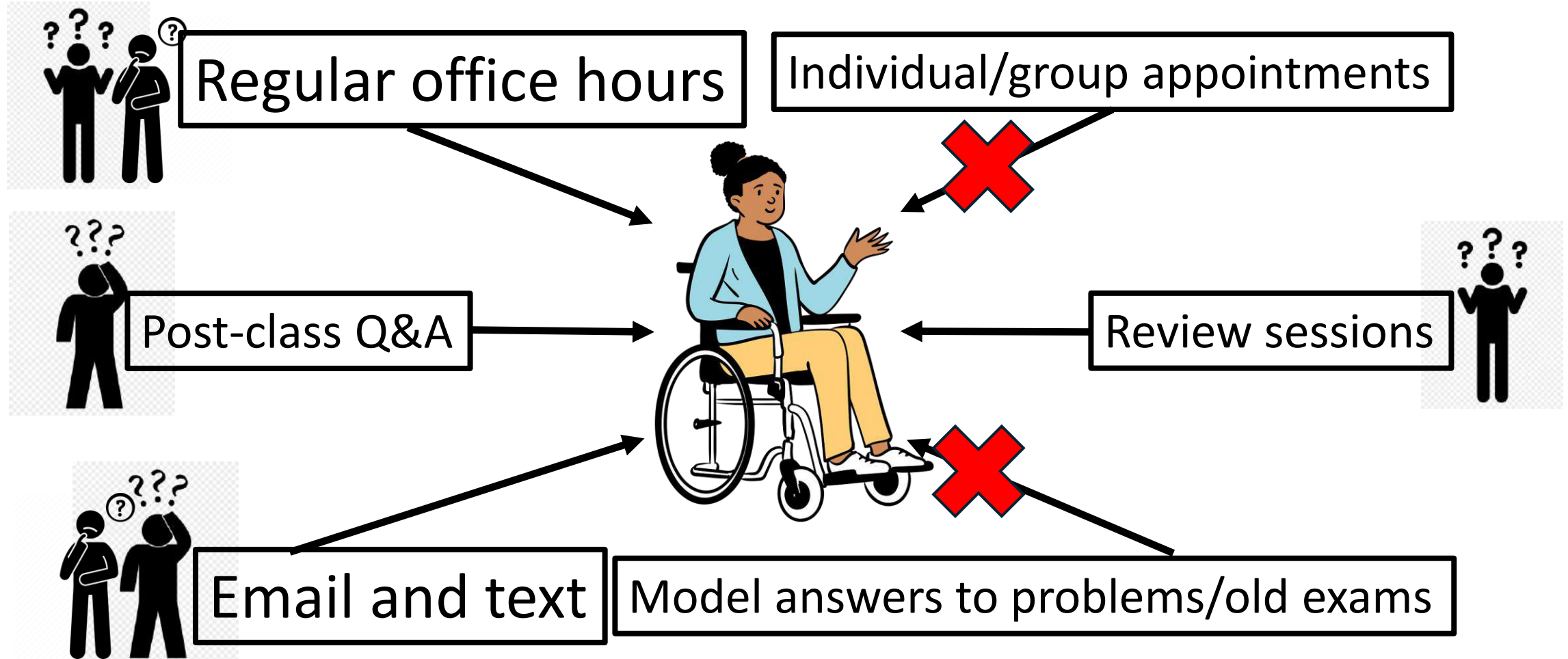


- Students assume you must be good if the school hired you to teach.
- Students do not assume you know it all off the top of your head.
- Students care far more about how well you teach than “brilliance”.
- Students respond well to humanity and humility – they know we all have days when we are “off” – but not to bragging or faking it.
- Telling the class you will look something up and get back to them – and then doing so – gives you a chance to model professional behavior and demonstrate your respect for them as a teacher.
- Admitting mistakes builds credibility and authenticity.

Faculty Access is Crucial to Students' Learning



Limiting One Form Increases Demand for Others



Keep as Many Channels Open as Possible

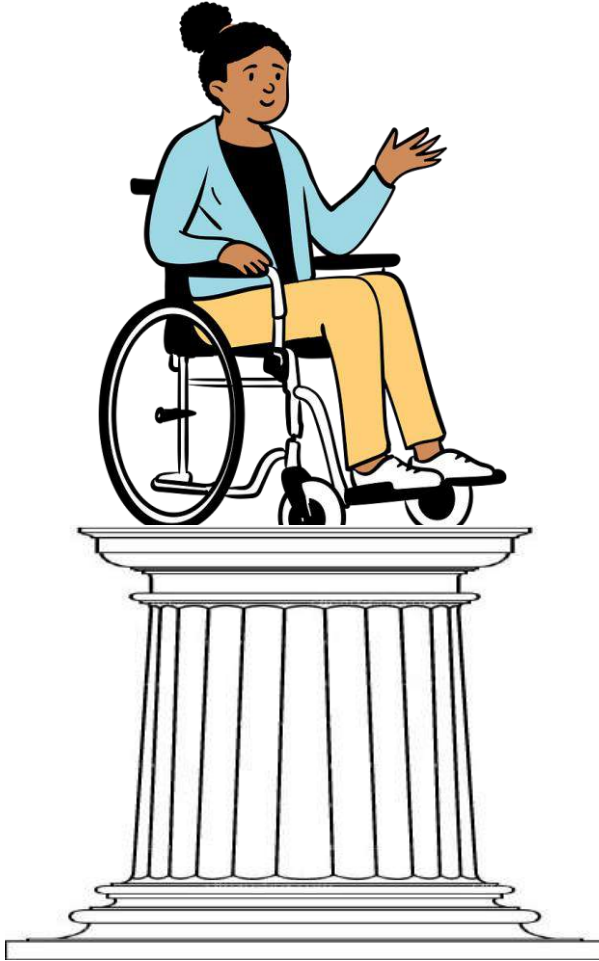
- Different students learn better from one format than from another.



- Adding more channels of accessibility only marginally increases total burden: the biggest effect is to shift the mode of question-asking.
- For example, posting model answers to problems avoids repetitive questions in office hours and over email. Demand for access rarely changes.

Avoid artificial barriers such as appointment requirements for office hours, pre-submission requirements for questions asked during review sessions, or early cut-offs for questions in advance of exams.

Accessibility to Students is Richly Rewarded



- The more accessible you are outside of class, the less resistance you will get moving on from a topic while students still have questions.
- Faculty accessibility:
 - is praised directly in course evaluations *and*
 - causes students to give faculty grace for many other shortcomings.
- Accessibility helps students learn more, leading to better and more interesting exams/papers.

Perspectives on Exams Vary Dramatically

Faculty

Students

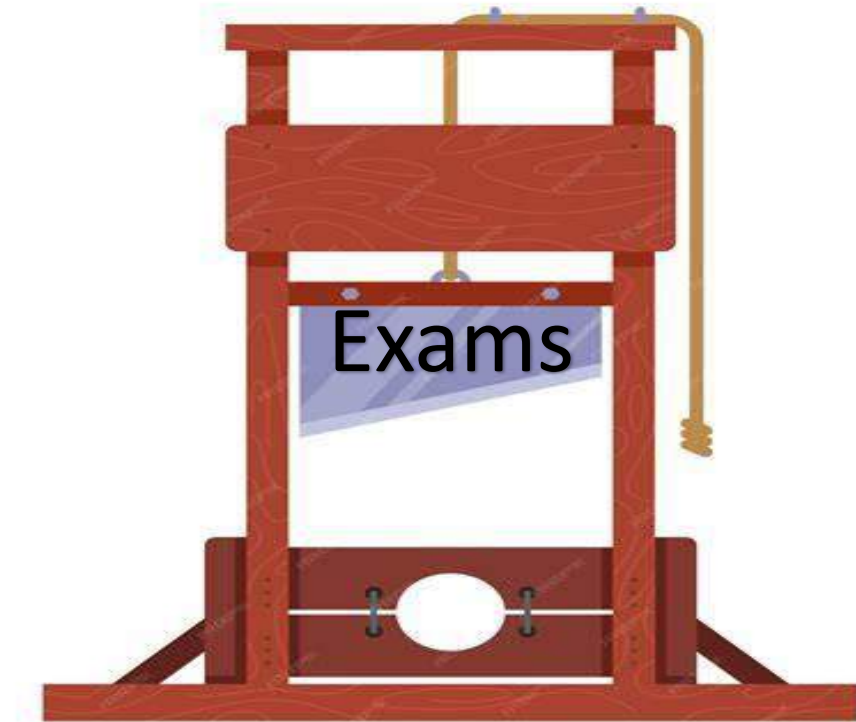


Perspectives on Exams Vary Dramatically

Faculty



Students



Respect Students by Respecting their Anxiety

- Students' professional opportunities really do depend on their grades. Making light of someone being rejected for an important job would be insensitive and demoralizing; making light of law school grades is, too.
- Law school grades include some false positives but many false negatives.
- First generation students and those whose lack of privilege resulted in going to high schools and colleges that offer little help developing exam-taking skills are right to worry that they will fare badly on our exams.
- Opportunities to practice on old exams both improves learning and helps students write exams that more accurately reflect what they know. If you have few or none, read carefully the exams of other faculty and recommend those that resemble what you plan to put on your exam.

Decide and Declare the Format of Your Exam

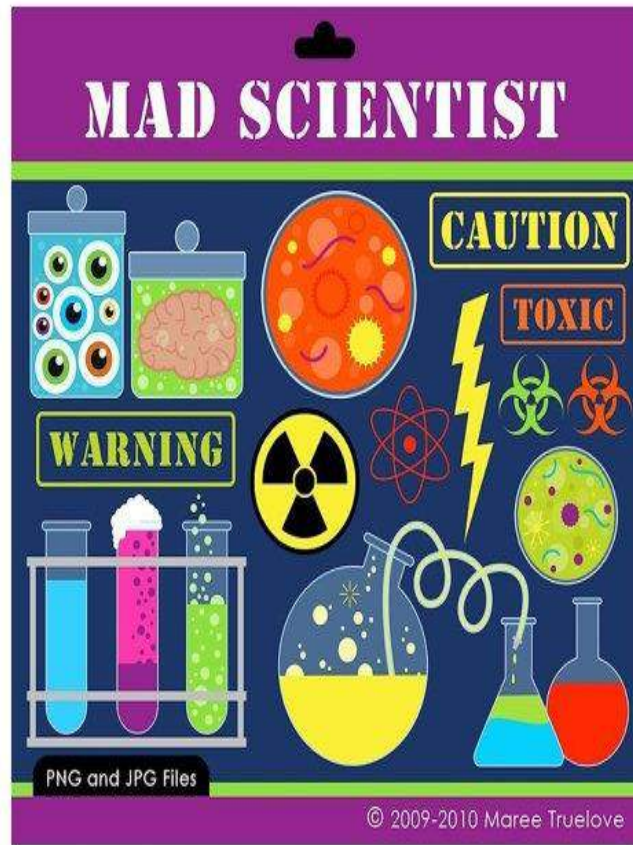
In-Class

- Typically turn into brutal writing contests, with differences in output only dimly related to what students have learned.
- Any student falling behind on an early question cannot catch up.
- Favor students with more test-taking experience.
- Can be needed for night students.

Take-Home

- Students have enough time to edit their answers so imposing a word limit becomes viable.
- Answers typically are better-organized and less chaotic.
- Reduces harm from misguessing how long questions will take.
- May save schools money as they do not require hiring proctors.

Exam Composition Basics



- You cannot re-use *anything*. Exams from long, long ago and far, far away live on through on-line bulletin boards you will never find – but they will.
- Your exam must *strictly and absolutely* adhere to *any* commitments you made in the syllabus or in class, no matter how annoying or problematic.
- Your exam should indicate the point allocations among its components. You cannot change these in grading. To get them right, it helps to write a detailed grading key first. Mispointed exams stink.

Prudential Factors in Exam-Writing

- If you think you taught something badly in class, leave it off the exam.
- Try to include a roughly even mix of easy, medium, and difficult issues on your exam to obtain the fullest possible curve.
 - Too many easy issues will waste their time and yours without shaping a curve.
 - Too few easy issues will prevent you from knowing how bad the bad exams are.
- Do not ask policy questions on issues on which you feel very strongly, or seem to feel very strongly, to be fair to students with other views.
- Allocate your exam's coverage similarly to how your syllabus allocated coverage in the readings and in class time. Beware of issues that are easy to test but conceptually unimportant (*e.g.*, most intentional torts).

Sensitivity in Exam-Writing

- Your class is statistically certain to contain survivors of rape. It likely contains people that have experienced abuse and discrimination due to their membership in one or another marginalized group. Survivors of mass shootings are increasingly common in law school classes.
- Asking someone to stay focused on writing an exam answer when the question retraumatized them is profoundly unfair. It is likely to harm the student both psychologically and professionally.
- Most subjects can be tested without including potentially traumatizing material. Where it is necessary, avoiding details that might mirror a student's trauma, and avoiding all attempts at humor, can reduce risks.

Types of Exams: Broad Issue-Spotters



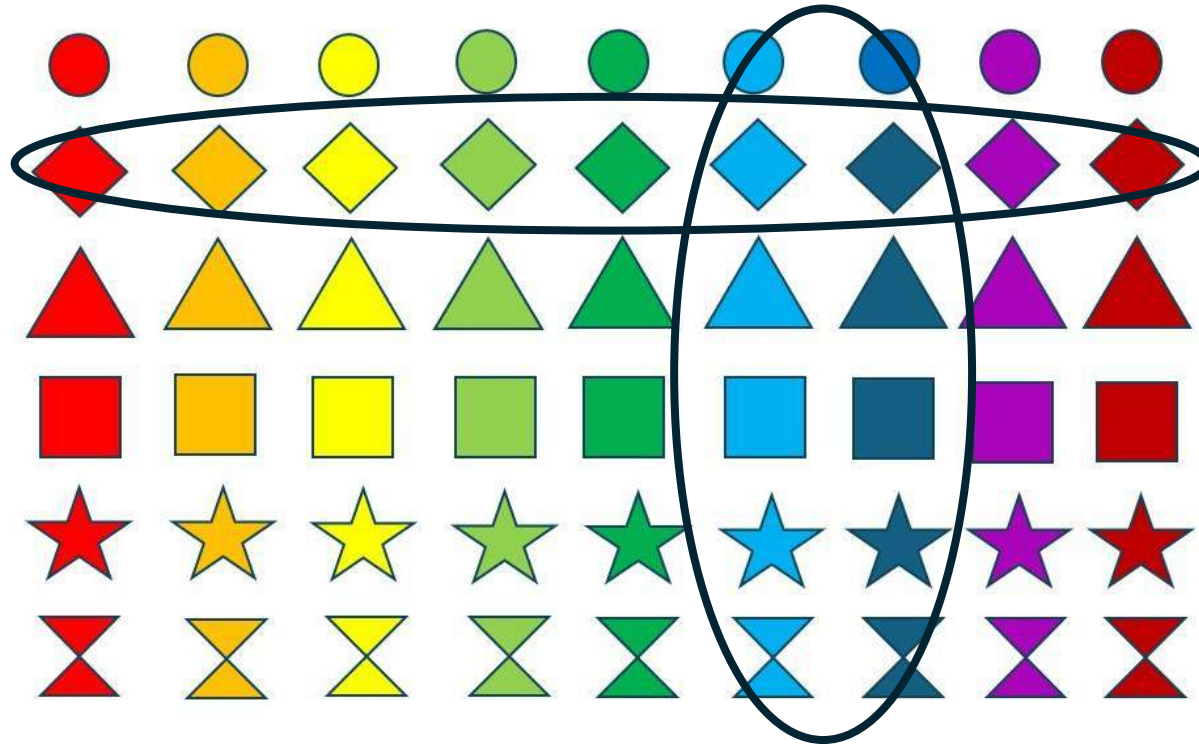
- Tests more different topics covered in the course, but in fairly shallow way.
- Measures whether students could even begin to research a kind of problem should they encounter it in practice.
- Can be highly stressful for students.
- Produces many “spotted” issues of debatable merit that grader must decide whether or not to credit.

Types of Exams: In-Depth Tests of a Few Issues



- Ignores most topics covered in course in favor of deep examination of a few.
- Often asks students to marshal several arguments on each side of crucial issue.
- Measures the depth of students' preparation and their skill in making legal arguments. Good fit for personal jurisdiction or exceptions to APA rule-making.
- Produces sharp random windfalls and wipe-outs depending on how well the issues you chose to test match up with particular students' strengths/preparation.

Types of Exams: Thematic or Policy Questions



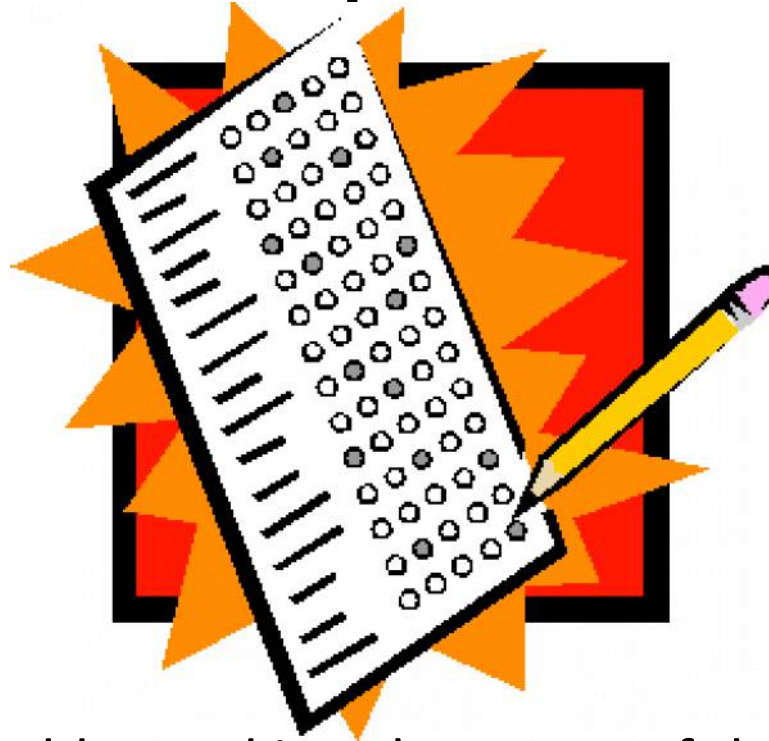
- Can allow students to focus on their areas of strongest preparation.
- Resistant to rote memorization and lets students show they see the big picture.
- Less opportunity for applying doctrine to facts, although that can be included.
- Some students will suspect political leanings affect these questions' grading.

Types of Exams: Short Answer



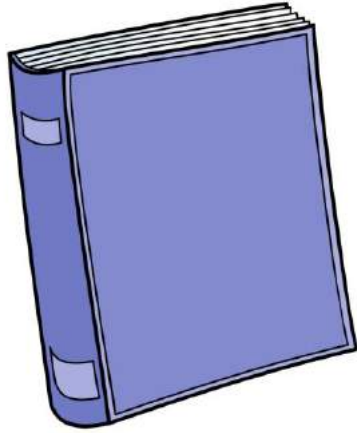
- Can target doctrines not addressed in other parts of the exam.
- Well-suited to formal aspects of law such as present/future interests, applying mechanical statutes, etc.
- Easier to write than multiple choice questions and lack risk of calamitous errors.
- Susceptible to rote memorization and reveal little about ability to apply doctrine.

Types of Exams: Multiple Choice

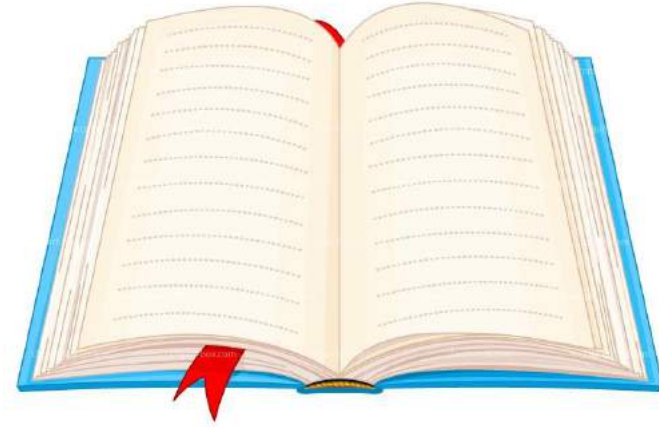


- Can target doctrines not addressed in other parts of the exam.
- Can be good practice for the Bar and are extremely easy to grade.
- Are quite difficult to write and can cause meltdowns if one of the intended “wrong” answers arguably could also be correct.

Decide and Declare if Closed-Book or Open-Book



- Facilitates some kinds of multiple-choice and short answer questions.
- Strains honor code if used on take-home.
- Drives students to spend more time on rote memorization.



- Little practical difference as few have time to check book or notes much.
- Allows asking statutory questions without providing a supplement.
- Incentivizes students to spend more time preparing outlines.

Other Grading Policies to Decide and Declare

-2 **-3** **-1**

Maya Eudelo

Take Off for Wrong Answers?

- Unless you promise not to do so, many students will self-censor *lots* of correct answers for minor doubts about their knowledge.
- Women and students of color disproportionately self-censor.
- The time required to write an incorrect answer is already a penalty on a timed exam.

Grade on Writing/Organization?

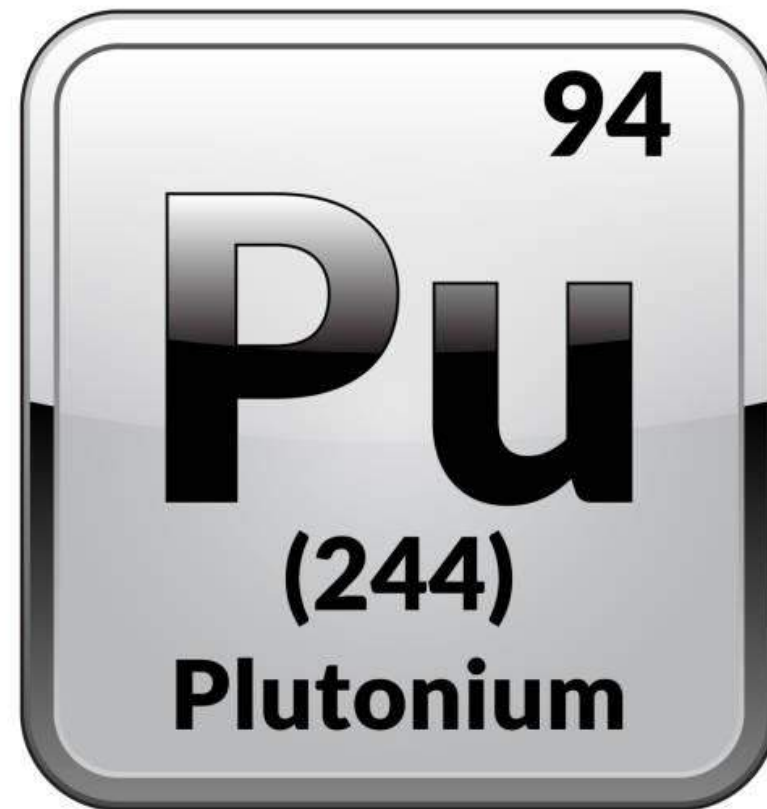
- Unless you teach Legal Writing, grading based on organization and writing has grades depend on something you did not teach.
- Bad substantive grades along with bad Legal Writing grades may sink students' career options even if they later improve their writing.
- Skews against the less-privileged.

Be Careful What You Say about the Exam



- As the person who taught the course and wrote the exam, you likely are wildly optimistic about how long students will take to comprehend the problem and write answers showing what they actually know.
- Advising students to spend substantial time organizing their answers may increase their risk of running out of time to show what they know.
- What may seem like playful or tantalizing hints about what is on the exam can become major distractions for students, who may feel they must decipher what you said to remain competitive with their peers.
- Saying the exam is easy may demoralize students who struggle on it and lure other students into complacency.

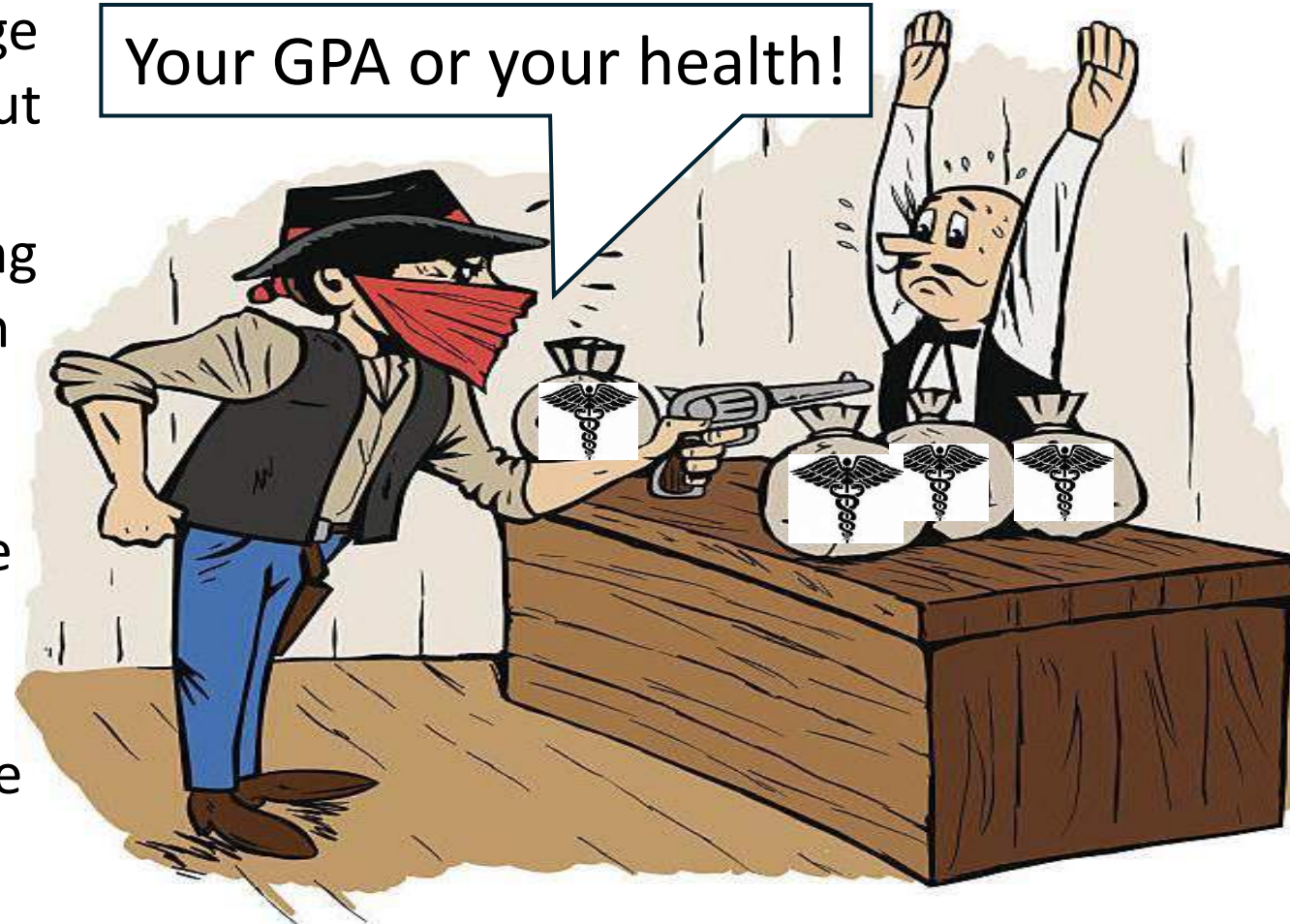
You Do Not Need Much: Exams Work in Small Doses



Trying to Test Everything Results in a Brutal Exam

If your exam has large numbers of issues but allows little time:

- It becomes a writing contest rather than measuring analysis or knowledge.
- That benefits those whose privileged backgrounds gave them more practice with essay exams.



If your exam has many issues and give lots of time:

- Students with disabilities may get exhausted and not finish, even with ADA accommodation.
- Students with family duties also may lack enough time.

Check Over Your Exam as Carefully as Possible



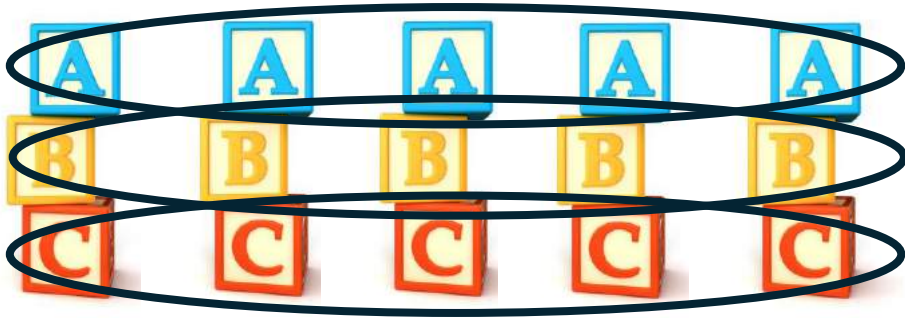
Effort required to write and recheck a good exam

Having a friend or colleague proof your exam before submitting it can avoid typos and ambiguities that will create untold chaos.



Effort and anguish required to grade, and later explain, a bad exam

Reading Exams: Sequence



Reading question-by-question:

- Likely increases consistency in grading.
- Allows you to moderate the impact of any inconsistencies by reversing your direction with each question.
- Prevents strong or weak performance on one question from affecting your grading on the others.



Reading exam-by-exam:

- Provides a little more variety.
- Is not very different from reading question-by-question if you have a few exams with shorter grading deadlines (such as graduating 3Ls).
- Can magnify the impact of your being tired or grumpy at some point.

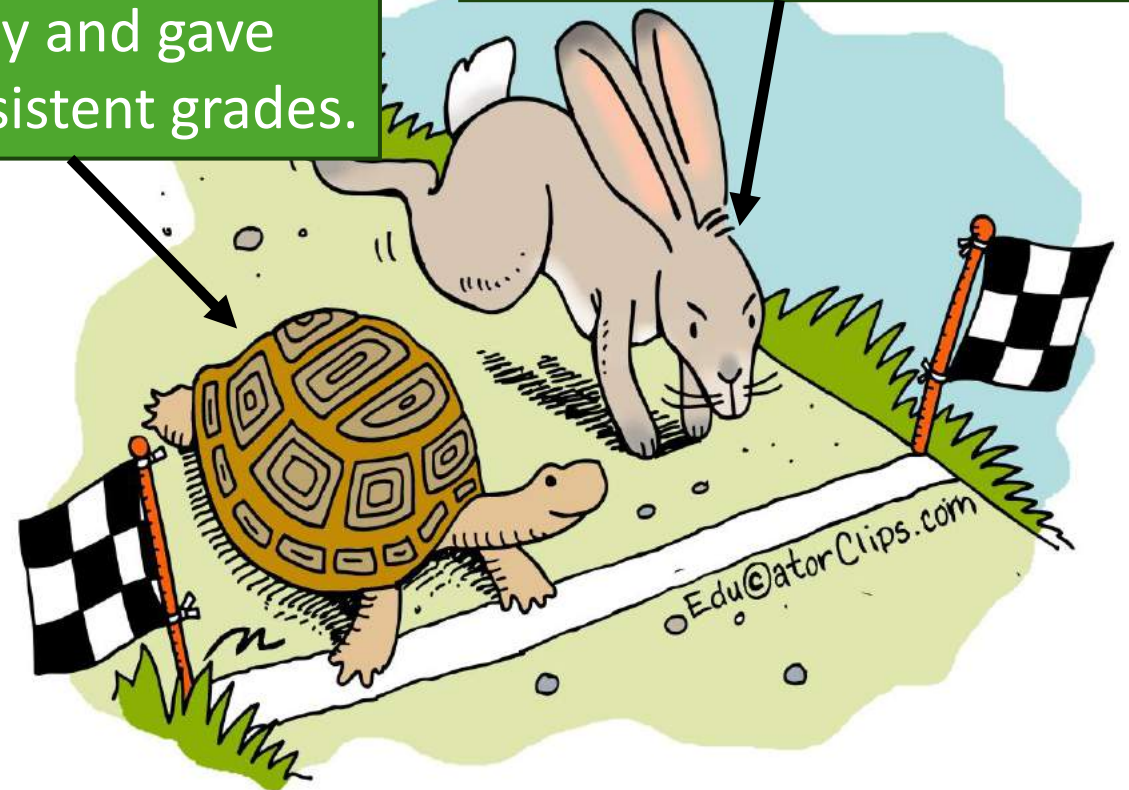
Reading Exams: Pace

Here again, slow and steady wins the race – and keeps you sane and avoids ruptures with friends and family members:

- After about the 8th exam, you will not get much faster.
- As the grading period goes on, you may get more tired, which can slow you down.
- Continuing to grade when your mind has turned to jelly for the day is quite impossible so ***you dare not get behind.***

Law professor who read the average number of exams every day and gave fair, consistent grades.

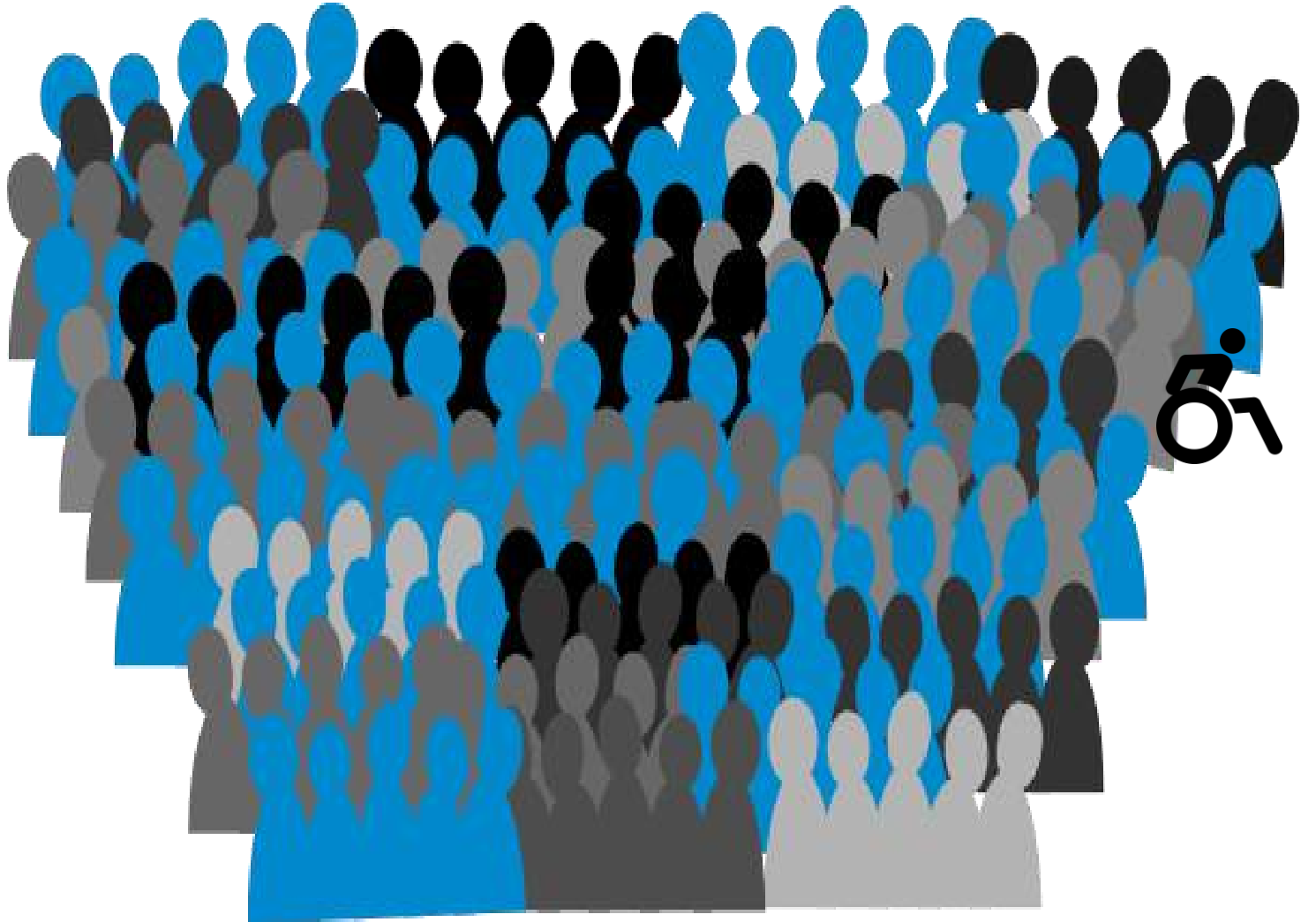
Law professor frantically trying to catch up as the deadline approaches.



Reading Exams: Deadlines

Meeting or exceeding the grading deadline is crucial:

- Students that did badly need to know so they can get support or adjust their course choices next term.
- Changes in the legal hiring market may require early grades to apply for jobs.
- Delayed grades increase anxiety for students (as well as for registrars and deans).
- You need to do other work.



Grading Exams: Striving for Consistency

- Ideally, read a few student answers to each question before you begin to score. This will allow you to assess what the general strength of answers is likely to be and calibrate your scores.
- Students should not be required to read your mind so you should give credit for unanticipated arguments that are legally valid and responsive.
- Give point scores rather than letter grades. Until you are nearly done, you will have no idea what an A- or a C+ looks like. Points are also much easier to aggregate across several questions.
- Resist the urge to think that you are being too hard or too easy: you just need to be consistent.



Grading Exams: The Value of Spreadsheets

Spreadsheets can provide an easy way to keep track of points, for one question or for the whole exam. They can avoid math errors, fit curves, and offer a matrix for later student feedback.

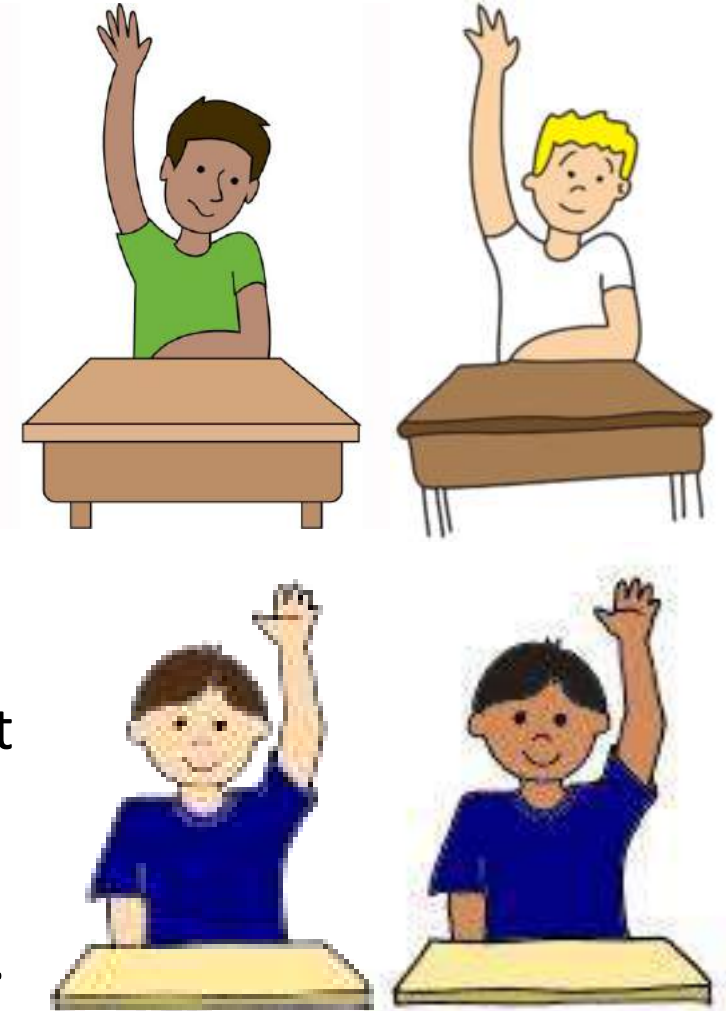
Problem A	Max.	13031	13699	14989	15417	15620	16151
Own playground with A as joint tenants	4	3	4		2	4	4
No covenant with A because no privity of estate	4		1				
No covenant with A because not intended to run with land	4	4	4			4	
No contract with A because no consideration	4	4	3			4	
Placing shed in the playground probably does not oust A	4	1					3
Adding occupancy likely violates zoning ordinance	4	4		1	4	4	4
Although does not change building, occupancy can be limited	4	4			1	4	
L may be eligible for a variance because of housing crisis	4	4	2		4	4	4
L may also have violated building code in modifications	3	3	1		3		
Possible easement by estoppel to Courtyard of Happy Toys	4						
Possible easement by prescription to Courtyard	6					4	3
Easement appears to be both right of access and profit	4						2
L may be bailee by estoppel of toys in Courtyard	4						2
Toys in Courtyard are not lost property but may be abandoned	6	4	4		4	6	6
Tour operators may have action against L for closing access	4						
Families likely do not have action against L for selling toys	4	3		1			

Assigning Final Grades

If the syllabus said you would include class participation in assigning final grades, you can do this in two ways:

- Set a certain number of points for the exam and a certain number for class participation and add them together once you have the names back on the exam. This requires you to assign class participation points for everyone in the class, which can be quite hard.
- Rely on class participation to “bump” a student up (or down) if their exam score is near the break between two grade levels. Focus on quality, not quantity, or next year’s gunners will be even harder to rein in.

Adhere to the curve: your goal should be that no one gets a bonus or penalty for having you as their instructor.



Meeting with Students about Their Exams

- Faculty's job is to educate, and students wanting to meet about their exams typically want to learn.
- Meeting with students can help them feel valued at a time when their self-confidence is battered.
- Many very different problems can lead to a low, or lower-than-expected, exam grade. Some are quite readily remediable if the student is aware:
 - Errors reading the call of the question (*e.g.*, wasting time on issues not affecting their assigned "client" or disregarding key facts);
 - Failure to systematically apply each element of the applicable legal test to the facts;
 - Failing to take notes on the exam to ensure they write up each issue that they identify.



Students' Disagreement with Their Grades

- At many schools, faculty lack authority to change grades once assigned (perhaps with a limited exception for math errors). If true at your school, you should point this out as soon as a student appears to want to dispute the grade.
- Some schools allow grade appeals, especially for failing grades, but these rarely yield changes.
- A student *cannot* possibly know whether their grade is or is not correct because that would require knowing how good other exams were.
- A student *can* reasonably object if they were denied points for something that was correct and responsive. If you erred (we all do in grading), model good professional behavior and admit it.



It is Better to be Loved than to be Feared



Professor Kingsfield was a sadistic narcissist.

It is Better to be Loved than to be Feared



Professor Kingsfield was a sadistic narcissist.

And a lousy educator!

Thank you for coming!
Questions?

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das62@law.georgetown.edu