

Instructor : Professor Thaddeus Pope
Course Title : Health Law: Quality & Liability
Section : Law 9322, Section 1
Format : Take Home Final Paper
Total Time for Exam : 72 hours
Total Number of Pages : 23 pages

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. Please know your **correct Fall 2012 exam number** and include this number at the top of each page of your exam answer (for example, in a header). To locate your exam number, go to www.hamline.edu and follow the steps below. A graphic guide to locating your exam number is attached to these instructions.
 - Click on Logins in the header.
 - Go to Pipeline
 - Log in to the secure area
 - Enter your Student ID and PIN
 - Click Student Services
 - Click Registration
 - Click Student Detail Schedule
 - Select the appropriate term from the drop down menu
 - Exam Numbers are listed below Total Credit Hours at the top of the page
2. Confirm that you are using and have typed the **correct exam number** on your exam document.
3. You may download the exam from the course TWEN site any time after 8:00 a.m. on Monday, December 3, 2012. All exams must be submitted within 72 hours of download. But, in any case, all exams must be submitted by the end of the exam period, i.e. by 5:00 p.m. on Monday, December 17, 2012. Therefore, you will want to download your exam no later than 5:00 p.m. on Friday, December 14, 2012, to ensure that you have the full allowed 72 hours to complete your exam.
4. Write your answers to all three parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to TWEN. Use your exam number as the name for the PDF file.

Instructions Specific to This Examination

GENERAL INSTRUCTIONS:

1. **Honor Code:** While you are taking this exam, you are subject to the Hamline University Code of Conduct. You may not discuss it with anyone until after the end of the entire exam period. It is a violation of the Honor Code to share the exam questions. Shred or delete the exam questions immediately upon completion of the exam. They will be reposted after the end of the exam period.
2. **Competence:** Accepting this examination is a certification that you are capable of completing the examination. Once you have accepted the examination, you will be held responsible for completing the examination.

3. **Exam Packet:** This exam consists of **23 pages**, including this cover page. Please make sure that your exam is complete.
4. **Identification:** Write your exam number on the top of each page of your exam answer.
5. **Anonymity:** The exams are graded anonymously. Do not put your name or anything else that may identify you (except for your exam number) on the exam. **Failure to include your correct exam number will result in a 10-point deduction.**
6. **Total Time:** Your completed exam is due within 72 hours of downloading it. If your exam is uploaded more than 72 hours after downloading the exam, your exam grade will be **lowered by one point** for every minute in excess of the 72 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 72-hour limit by more than 15 minutes, the situation may be referred for a Code of Conduct investigation and potential discipline. Please save sufficient time to successfully upload your exam.
7. **Timing:** The exam has been written as a three-hour exam. A student could write basically complete answers to all the questions in three hours. But since this is a take-home exam, you will want to take some extra time (perhaps two hours) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps two hours) to revise and polish your answers, such that you will not be submitting a “first draft.” In short, while this is a 72-hour take home, you really need not spend more than six hours on this exam.
8. **Scoring:** There are 180 total points on the exam. The final exam comprises 60% of your overall course grade, 180 of the 300 total course points.
9. **Open Book:** This is an OPEN book exam. You may use any written materials, including, but not limited to: any required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines.
10. **Additional Research:** While you may use any materials that you have collected for this class, you are neither expected **nor are you permitted** to do any online or library research (e.g. on Lexis, Westlaw, Google, reference materials) to answer the exam questions.
11. **Format:** The exam consists of three parts:
 - PART ONE comprises 20 multiple choice questions worth 2 points each, for a combined total of 40 points.
 - PART TWO comprises three short answer questions worth a combined total of 60 points.
 - PART THREE comprises one long essay question worth 80 points.
12. **Grading:** All exams will receive a raw score from zero to 180. The raw score is meaningful only relative to the raw score of other students in the class. Your course letter grade is computed by summing the midterm, final, and quiz scores. I will post an explanatory memo and a model answer to TWEN a few weeks after the exam.

SPECIAL INSTRUCTIONS FOR PART ONE:

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 20). Next to each number type the letter corresponding to the best answer choice for that problem.
2. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why immediately after your answer choice. Your objection must (i) identify the ambiguity or problem in the question and (ii) reveal what your answer would be for all possible resolutions of the ambiguity. I do not expect this to be necessary.

SPECIAL INSTRUCTIONS FOR PARTS TWO AND THREE:

1. **Submission:** In your exam document create clearly marked separate sections for each of the four problems:
Short Answer 1
Short Answer 2
Short Answer 3
Long Essay
2. **Outlining Your Answer:** I strongly encourage you to use at least one-fourth of the allotted time per question to outline your answers on scrap paper before beginning to write. Do this because you will be graded not only on the substance of your answer but also on its clarity and conciseness. In other words, organization, precision, and brevity count. If you run out of insightful things to say about the issues raised by the exam question, stop writing until you think of something. Tedious repetition, regurgitations of law unrelated to the facts, or rambling about irrelevant issues will negatively affect your grade.
3. **Answer Format:** This is important. Use headings and subheadings. Use short single-idea paragraphs (leaving a blank line between paragraphs). Do not completely fill the page with text. Leave white space between sections and paragraphs.
4. **Answer Content:** Address all relevant issues that arise from and are implicated by the fact pattern and that are responsive to the “call” of the question. Do not just summarize all the facts or all the legal principles relevant to an issue. Instead, apply the law you see relevant to the facts you see relevant. Take the issues that you identify and organize them into a coherent structure. Then, within that structure, examine issues and argue for a conclusion.
5. **Citing Cases:** You are welcome but not required to cite cases. While it is sometimes helpful to the reader and a way to economize on words, do not cite case names as a complete substitute for legal analysis. For example, do not write: “Plaintiff should be able to recover under A v. B.” Why? What is the rule in that case? What are the facts in the instant case that satisfy that rule?
6. **Cross-Referencing:** You may reference your own previous analysis (e.g. B’s claim against C is identical to A’s claim against C, because ___.” But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
7. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize the key weaknesses in your position and make the argument on the other side.
8. **Additional Facts:** If you think that an exam question fairly raises an issue but cannot be answered without additional facts, state clearly those facts (reasonably implied by, suggested by, or at least consistent with, the fact pattern) that you believe to be necessary to answer the question. Do not invent facts out of whole cloth.

Exam Misconduct

The Code of Conduct prohibits dishonest acts in an examination setting. Unless specifically permitted by the exam or proctor, prohibited conduct includes:

- Discussing the exam with another student
- Giving, receiving, or soliciting aid
- Referencing unauthorized materials
- Reading the questions before the examination starts
- Exceeding the examination time limit
- Ignoring proctor instructions

Multiple Choice Questions

- 20 Questions worth 2 points each = 40 total points.
- Mark the letter of the best answer in a vertical list in your exam document.

- 1. Your client is a physician who sometimes sees HIV-positive patients. Some of these patients require minor surgery that can be completed in the physician's office. Your client asks you whether she can require that these patients be treated as in-patients at the local hospital for enhanced infection control purposes. Your best advice is:**
 - A. Yes, because these patients are not protected under the ADA.
 - B. Yes, because these patients pose a direct threat to the physician.
 - C. No, because that would be providing disparate treatment from that given to non-infected Individuals.
 - D. No, because physicians can never provide disparate treatment to disabled patients.

- 2. Your client wants to immediately terminate an HIV-infected individual from her practice. Is this permitted?**
 - A. No, the physician must continue to treat the patient so long as her medical services are still needed or until the patient agrees to end the relationship.
 - B. No, if the termination is due to the patient's disability.
 - C. Yes, for the patient's failure to pay her bills.
 - D. Yes, for the patient's disruptive behavior unrelated to her disability.
 - E. A, C, and D
 - F. B, C, and D

- 3. An individual seeks physician's services. Physician may reject this prospective new patient on the basis of the individual's:**
 - A. Political views
 - B. Inability to pay
 - C. Refusal to abide by physician's medical advice
 - D. Decision to smoke
 - E. Vaccination status
 - F. All of the above
 - G. All except one of the above

4. **Patient and physician are ALREADY in a treatment relationship. Physician wants to end this relationship, because patient engages in risky behavior. Patient plays hockey and owns guns. Which of the following is most correct?**
- A. Physician can terminate immediately, if neither the ADA nor any other anti-discrimination law is implicated.
 - B. Physician can terminate immediately, because physicians have no duty to treat individuals who seek their care.
 - C. Physician can terminate before the patient's current medical issues are resolved, but must first give adequate notice.
 - D. Physician cannot terminate until the patient's current medical issues are resolved.
5. **Lucy donated a kidney to Jimmy. The surgery to remove Lucy's kidney was successful. But when later doing the implant surgery on Jimmy, physician accidentally stitched Jimmy's renal artery. This caused the organ to wither, and it had to be removed. Lucy can sue physician for:**
- A. Medical malpractice.
 - B. Informed consent, because had Lucy known that the organ would be immediately removed, then she would never have donated it.
 - C. Both A and B.
 - D. Neither A nor B.
6. **Gleich is a gynecologic oncologist with a private practice and staff privileges at Hospital. Hospital imposes no limits on Gleich's ability to set her own practice hours, or to practice at hospitals or locations other than Hospital. Gleich selected her own patients and billed them according to her own dictates. Patient was injured by Gleich's malpractice. Which of the following is most correct?**
- A. Hospital cannot be vicariously liable for Gleich's malpractice, because Gleich is an independent contractor.
 - B. Hospital cannot be vicariously liable for Gleich's malpractice, because she is not an employee.
 - C. Hospital is probably vicariously liable for Gleich's malpractice under a theory of ostensible agency.
 - D. Hospital might be vicariously liable for Gleich's malpractice under the non-delegable duty doctrine.
 - E. Both A and B.
 - F. Both C and D.

7. Jane arrived at Hospital to deliver her fourth child. Hospital staff diagnosed Jane with several serious complications, including preeclampsia (pregnancy-induced high blood pressure). So, the ED staff ordered Jane to be transferred to the Intensive Care Unit. But when staff discovered that the ICU was full, they instead admitted Jane to a hospital ward. Jane's condition was not subsequently stabilized and she died. Which of the following is most correct?
- A. Hospital complied with EMTALA.
 - B. Hospital complied with EMTALA, so long as it provided treatment that met the applicable standard of care.
 - C. Hospital violated EMTALA, because Hospital should have transferred Jane to another hospital with an available ICU.
 - D. Hospital violated EMTALA, because it failed to stabilize Jane's known emergency medical condition.
8. Star was also admitted to Hospital for delivery of a child. Like Jane in Question 7, Star also had preeclampsia. After a Caesarean section, Star was taken to a recovery room. Mae was the obstetrics nurse assigned to attend Star. Over the next few hours, Star's blood pressure and heart rate were erratic. And her urine output declined. But Mae failed to take any action. Star ultimately suffered serious impairments as a result of a stroke.

In a subsequent malpractice action, Star's expert witness, an OB/GYN, testified:

- That Star's symptoms were classic signs of blood loss shock and a well-known risk to preeclampsia patients.
- That Mae's failure to appreciate this was a breach of the standard of care.
- That the risks inherent to patients with preeclampsia are well known to both physicians and nurses working in the field of obstetrics, as this is an area where the practices "overlap."

- A. Plaintiff can establish the standard of care with her expert witness.
 - B. Plaintiff cannot establish the standard of care with her expert witness, because he is an M.D. and the defendant is an R.N.
 - C. Plaintiff cannot establish the standard of care with her expert witness, but need not do so in order to sue Mae for malpractice.
 - D. Both B and C.
9. Your client is Physician. Physician has a patient with a problematic arrhythmia. Physician called the managed care plan, but it refuses to pay for the treatment that physician thinks is necessary. Which of the following is the best advice that you should give physician?
- A. Physician has no duty to provide treatment that the MCO will not pay for.
 - B. Physician should terminate the treatment relationship based on the patient's inability to pay. That will eliminate any possible duty to treat.
 - C. Physician must exercise independent medical judgment in the best interest of her patient, regardless of the influence of the MCO.
 - D. Both A and B.

10. For this question, please refer to the Minnoza Statutory Appendix to this exam. Jackson has applied for a \$1 million life insurance policy. As a condition of coverage, the insurer has asked Jackson to get examined by physician. The exam takes place on December 1, 2010. Exactly two years later, Jackson discovered that he was injured during this physician visit. By when must Jackson file a non-barred lawsuit against physician?
- A. December 1, 2011.
 - B. December 1, 2012.
 - C. December 1, 2013.
 - D. December 1, 2014.
 - E. December 1, 2015.
11. For this question, please refer to the Minnoza Statutory Appendix to this exam. Jackson has applied for a \$1 million life insurance policy. As a condition of coverage, the insurer has asked Jackson to get examined by physician. The exam takes place on December 1, 2010. Jackson immediately discovers that he was injured. By when must Jackson file a lawsuit against physician?
- A. December 1, 2011
 - B. December 1, 2012.
 - C. December 1, 2013.
 - D. December 1, 2014.
 - E. December 1, 2015.
12. Ricky was taken to Hospital's emergency room with complaints of abdominal pain, nausea and vomiting blood. Ricky was found to have elevated blood sugar and in diabetic ketoacidosis. ED staff determined that Ricky was suffering from an emergency medical condition and that he was in need of a gastroenterologist. However, none were available on the premises. Every on-call doctor that Hospital contacted refused to come to Hospital to treat Ricky, because he did not have insurance. So, Ricky was transferred to St. Francis Medical Center where he subsequently died.
- A. Ricky can probably successfully sue the Hospital for violating EMTALA.
 - B. Ricky can probably successfully sue the on-call gastroenterologist for violating EMTALA.
 - C. Ricky cannot successfully sue Hospital under EMTALA, so long as Hospital stabilized Ricky's condition within the capabilities of its available resources.
 - D. Ricky cannot successfully sue the on-call gastroenterologist for violating EMTALA.
 - E. Both A and B.
 - F. Both A and D.
 - G. Both C and D.

13. On December 1, 2012, Sonia felt a crushing pain in her abdomen and started vomiting. The next day she underwent a CT scan which led to a diagnosis that a surgical sponge was lodged in her abdomen from a hysterectomy exactly five years earlier. Unfortunately, the sponge had adhered to the bladder and stomach area and spread an infection, requiring the removal of a large segment of Sonia's intestine. In a jurisdiction with a 3-year statute of repose and a 2-year statute of limitations, Sonia must file a malpractice action against her hysterectomy surgeon by:
- A. December 1, 2014.
 - B. December 1, 2015.
 - C. The action is already barred, as of December 1, 2010.
 - D. The action is already barred, as of December 1, 2009.
 - E. None of the above.
14. Each year, there are more than 4000 cases of "retained surgical items" in the United States. After surgery, items left in the patient's body include: clamps, scalpels, scissors, and especially sponges. Hospitals typically require that a nurse member of the surgical team "count" each sponge used in a procedure. But hospitals now have a more technological approach at their disposal. They can track sponges through the use of radiofrequency (RF) tags. Every sponge contains a tiny radio-frequency tag, about the size of a grain of rice. At the end of an operation, a detector alerts the surgical team if any sponges remain inside the patient. Published studies establish the effectiveness of the approach, which adds only about \$10 to the cost of a procedure. But less than 1% of hospitals employ electronic tracking.

Consider Sonia's case from Question 13. Assuming no SOR or SOL issues, in Sonia's action against the Hospital (where she had her hysterectomy) for failing to use the RF system:

- A. Sonia will probably win, because of the RF system's low cost and high effectiveness (B<PL).
 - B. Sonia will probably win, because Hospital can be directly liable for having negligent policies and procedures.
 - C. Sonia will probably lose, because she cannot establish a standard of care that Hospital violated.
 - D. Sonia will probably lose on her direct liability theory, unless she can first establish negligence of the nurse responsible for counting sponges.
15. Phillip is a radiologic technologist licensed in California. The scope of practice of a radiologic technologist includes "administering contrast media." It does not include the administration of any other drug or medication. On December 2, 2012, Phillip thought a patient was having an allergic reaction to the contrast media. So, he administered a calming drug intravenously. For acting outside the scope of his practice, which of the following are likely?
- A. The hospital can terminate Phillip's employment.
 - B. The hospital must report Phillip's termination to the licensing board.
 - C. The licensing board can suspend Phillip's license and require that he complete continuing education credits.
 - D. Phillip can challenge the licensing board's action in court.
 - E. All of the above.

16. A state statute requires that medical malpractice actions: “be commenced within three years after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered the injury, whichever first occurs, but not to exceed five years after the date of the alleged act, neglect, or occurrence.” In standard terminology, this statute is a:
- A. 5-year statute of limitations and 5-year statute of repose
 - B. 5-year statute of limitations and 3-year statute of repose
 - C. 3-year statute of limitations and 5-year statute of repose
 - D. 3-year statute of limitations and 3-year statute of repose
17. Maggie got breast reduction surgery from Dr. Nate at Baptist Hospital. Unhappy with the result, Maggie filed a proposed complaint against both Dr. Nate and Baptist Hospital with the state medical review screening panel. The panel’s only finding was that “Baptist Hospital failed to comply with the appropriate standard of care by granting hospital privileges to a physician who lacked appropriate and recognized training and residency in either plastic or reconstructive surgery.” Maggie secured no other expert witness.
- A. Maggie can proceed past summary judgment on her negligent credentialing claim, because she does not need expert evidence to establish this claim.
 - B. Maggie can proceed past summary judgment on her negligent credentialing claim, because she has expert evidence that Dr. Nate was not qualified.
 - C. Maggie cannot proceed past summary judgment on her negligent credentialing claim, because she has no expert evidence that Dr. Nate deviated from the standard of care in his performance of the surgery.
 - D. Maggie cannot proceed past summary judgment on her negligent credentialing claim, unless she can establish that Dr. Nate is Baptist Hospital’s employee or ostensible agent.
18. On November 20, 2012, Sallie arrived at the Hospital emergency department with complaints of headache and neck pain. Dr. Frank, the ED physician, diagnosed Sallie as suffering from a tension headache and sent her home with a painkiller prescription. Sallie returned the next day with a worsening headache and inability to move her arms. Dr. Frank ran some more tests and discharged Sallie with instructions to get an MRI with her primary care physician. On November 23, Sallie arrived at a different hospital’s emergency department. In contrast to Dr. Frank’s approach, staff there performed an immediate MRI. This revealed a cerebral aneurysm. By the time Sallie was prepared for neurosurgery, she had suffered bleeding and further damage to the blood vessel. This made the surgery more risky and difficult. Due to complications, Sallie was left a quadriplegic.
- In a lawsuit against Dr. Frank, Sallie’s expert established that had Dr. Frank properly discovered the aneurysm on November 20, then there would have been a 2% risk of complication from an aneurysm repair surgery. But by the time the aneurysm was discovered, the risk had risen to 45%.
- A. Sallie can establish “but for” causation.
 - B. Sallie can establish only “lost chance” causation.
 - C. Sallie can establish both “but for” and “lost chance” causation.
 - D. Sallie can establish neither “but for” nor “lost chance” causation.

19. Rita selected Dr. Cohen, of Minnetonka Obstetrics & Gynecology Group, to be her personal physician for the care of her pregnancy. She knew of Dr. Cohen because she had been in practice a long time as an OB/GYN in Minneapolis, had delivered babies for friends of hers, and she understood that Dr. Cohen was affiliated with and delivered babies at three Hospitals, any of which where she would be happy to have her baby be born. Dr. Cohen took Rita's history and confirmed the pregnancy. Routine prenatal laboratory tests were ordered. A cystic fibrosis screening test was also ordered. Rita went to Hospital outpatient laboratory for this CF screening test. The test was positive, indicating that Rita was "at least a carrier of CF." Hospital sent these test results to Dr. Cohen. But Dr. Cohen failed to tell Rita the results of the CF test. The Hospital is probably vicariously liable for Dr. Cohen's negligence under a theory of:
- A. Non-delegable duty doctrine
 - B. Respondeat superior
 - C. Ostensible agency
 - D. None of the above
20. Brandon suffered a herniated disc in his back that pushed against a nerve root and caused pain. Brandon unsuccessfully tried physical therapy. So, he elected to undergo a discectomy to repair the herniated disc. Physician told Brandon that he had an 85 percent chance that his condition would be better after the surgery, a 10 percent chance that there would be no improvement in his condition, and a less than 5 percent chance that the surgery would make his condition worse. Brandon disputed that physician warned him of the risk of an adverse outcome. Brandon sued physician in a material risk jurisdiction (like Minnesota or California). Brandon did not retain an expert witness.
- A. The lack of an expert is no problem in a material risk jurisdiction.
 - B. Brandon needs an expert to establish what the reasonable physician would have disclosed under the circumstances.
 - C. Brandon needs an expert to establish the risks and dangers of the discectomy, even if the jury would determine the significance of those risks and dangers and what a reasonable patient would have done in light of those risks and dangers.
 - D. Brandon needs an expert to establish whether his current physical injuries were caused by the discectomy or by his underlying condition.
 - E. C and D.
 - F. B, C, and D.

Short Essay Questions

- There are three short essay questions, worth a combined total of 60 points.
- All three short essay questions are based on the following fact pattern.

When patients are given decision aids, such as educational booklets, DVD videos, tutorials, animation, and/or interactive tools, to help them make treatment choices, they are more knowledgeable and satisfied with their care. Patients viewing decision aids also choose to pursue major elective invasive surgery far less often. A 2012 Cochrane review of nearly 90 randomized trials found that patients who use decision aids: (a) improve their knowledge of their treatment options, (b) have more accurate expectations of the potential benefits and risks, and (c) reach choices that accord with their values. Consistent robust evidence shows that instead of elective surgery, patients using decision aids were four times more likely to opt for “conservative options,” including medication, physical therapy, and waiting, than those not using decision aids.

But in spite of the evidence that patients both value decision aid tools and learn from them, decision aids are not in widespread use. One expert opined: “Given the level of evidence, this may be one of the best-documented but most underused interventions in American medicine.”

Betty was detected with early-stage breast cancer. Her physician presented three options: mastectomy, lumpectomy, and radiation. Based on her physician’s accurate oral presentation of the risks and benefits of each option during an office visit, Betty decided to have a mastectomy. Betty later viewed a breast cancer decision aid that her friend Martha had used. Betty was furious. She explained to Martha, “Had my physician used that decision aid, I would have opted for radiation treatment instead of mastectomy. I would totally have been willing to accept a slightly higher rate of tumor recurrence in order to conserve my breasts.”

Short Essay Question 1

- 25 points
- Limit your answer to 1000 words.

Assess Betty’s informed consent action against her physician in a jurisdiction like Minnesota, California, or Washington, DC.

Short Essay Question 2

- 15 points
- Limit your answer to 500 words.

In what ways would Betty’s informed consent action against her physician be stronger or weaker in a jurisdiction like Indiana, Virginia, or New York?

Short Essay Question 3

- 25 points
- Limit your answer to 1000 words.

Assume that you are arguing before the state Supreme Court in a jurisdiction like Minnesota, California, or Washington, DC, a court not strictly bound by precedent. Assess whether, on legal and policy grounds, the Court should change the state’s informed consent law to eliminate any obstacles to Betty’s informed consent action under existing informed consent doctrine?

Long Essay Question

- 80 points
- Limit your answer to 2500 words.
- Use the Minnoza Statutory Appendix.

In August 2005, Tina sought care from Dr. Hutt, a dermatologist employed by the Minnoza Dermatology Clinic, for the treatment of various moles and skin lesions. Tina was first examined by Dr. Hutt on August 13, 2005, when she presented for examination of moles on the right side of her neck and her mid-back region. Tina had certain risk factors for melanoma, including both her fair skin and the presence of numerous moles. On that occasion, Dr. Hutt performed an excisional biopsy of the mole on the right side of Tina's neck and sent a tissue sample to Saint Paul Pathology Associates for evaluation. Based on the lab's report, Dr. Hutt determined the specimen was benign mole tissue.

When Tina returned to Dr. Hutt's office on February 18, 2006 and March 22, 2006, Dr. Hutt's examination revealed that pigmentation had returned to the biopsied area. Dr. Hutt treated that area to freeze the tissue and remove the coloration. Tina returned to Dr. Hutt's office on July 10, 2006, August 18, 2006, October 30, 2006, and February 5, 2007. Each time, Tina complained that the brownish pigmentation had returned. Each time, Dr. Hutt examined the area and removed the coloration.

As the brownish pigmentation had not been permanently eliminated from the biopsy site by the six previous treatments, Dr. Hutt took other tissue specimens at St. Matthew Hospital, on March 14, 2007, April 20, 2007, and June 6, 2007.¹ But due to new managed care reimbursement incentives,² Dr. Hutt did not send these specimens to the SPPA pathology lab for evaluation.³ Instead, using the hospital's lab, he evaluated them himself. Dr. Hutt determined these specimens were benign skin abnormalities of noncancerous origin.

In December 2009, Tina discovered a lump on her cheek. She consulted a physician at the Gunderson Clinic. The lump was removed and evaluated by a pathologist.⁴ In January 2010, Tina was diagnosed with melanoma, the most dangerous type of skin cancer. Following this diagnosis, pathologists examined the sample that was previously reviewed by Saint Paul Pathology Associates in August 2005. This evaluation revealed evidence also supporting a diagnosis of melanoma. Tina then had more tests and procedures to determine the "stage" of her melanoma. A PET scan revealed that the cancer was Stage IV, and had spread within the skin and to other parts of Tina's body.⁵

Tina wanted to start both biologic (Interleukin-2) and chemotherapy treatment immediately. But Tina's husband had subscribed to his employer's cheapest available health plan, a managed care organization named "Kno-Care." While oncological interventions appeared to be a covered plan benefit, Kno-Care refused to pay for any medical interventions other than palliative therapy to relieve Tina's symptoms and improve the quality of her life. So, Tina sold her car, her guitars, and her stamp collection, to raise enough money to pay for

¹ Dr. Hutt has maintained staff privileges at St. Matthew, since 1998.

² Dr. Hutt was on a capitation plan whereby he was paid a flat \$20 per member, per month. But 10% of this amount is withheld and is paid to Dr. Hutt only if he meets certain target thresholds whereby his expenses for referrals and labs are sufficiently low.

³ While Dr. Hutt may have been economically influenced to proceed in this manner, a large number of respected dermatologists in the United States personally review their patients' skin samples rather than send them out to pathologists.

⁴ In fact, it can be hard to tell the difference between a colored mole and an early melanoma lesion. Consequently, the Gunderson Clinic has its patients' biopsy samples checked by a second pathologist to confirm diagnoses.

⁵ A PET scan (positron emission tomography scan) is procedure to find malignant tumor cells in the body. A small amount of radioactive glucose (sugar) is injected into a vein. The PET scanner rotates around the body and makes a picture of where glucose is being used in the body. Malignant tumor cells show up brighter in the picture because they are more active and take up more glucose than normal cells do.

cancer treatment.

Meanwhile, Tina filed a lawsuit against Dr. Hutt in May 2010. But despite aggressive treatment, Tina died in August 2010. Tina's estate continued the litigation. Through pretrial discovery, Tina's estate discovered that, between 1995 and 2010, twenty-three former patients of Dr. Hutt had filed medical malpractice actions against him. Tina's estate also retained an expert witness, Dr. Kurt, from New York's prestigious Memorial Sloan Kettering, who will testify that how well a melanoma patient does heavily depends on how quickly the cancer is diagnosed and how far it has spread. Dr. Kurt will testify that Dr. Hutt's negligence doubled Tina's mortality risk: "Had Dr. Hutt properly diagnosed the 2005 specimen, Tina would have had only a 20% risk of death instead of a 40% risk of death."

Thoroughly evaluate and assess Tina's lawsuit(s) against Dr. Hutt and against any other parties.

MINNOZA STATUTORY APPENDIX

**** Use for the Long Essay ONLY unless otherwise specifically directed. ****

Minnoza Code 100

- (a) No action upon a medical, dental, optometric, or chiropractic claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim.
- (b) If an action upon a medical, dental, optometric, or chiropractic claim is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim, then, any action upon that claim is barred.

Minnoza Code 200

- (a) No action upon a medical, dental, optometric, or chiropractic claim shall be commenced more than one year after the injury is discovered or reasonably should have been discovered.
- (b) No action upon any other tort claim shall be commenced more than two years after the injury is discovered or reasonably should have been discovered.

Minnoza Code 300

- (a) Any physician who treats a patient shall inform the patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments.
- (b) What constitutes informed consent emanates from what a reasonable person in the patient's position would want to know. What a physician must disclose is contingent on what a reasonable person would need to know to make an informed decision.

Minnoza Code 400

- (a) The state of Minnoza rejects the existence of any "limited" treatment relationship as has been recognized in some jurisdictions, *e.g. Bazakos v. Lewis* (N.Y. 2009).
- (b) Physicians either are in a treatment relationship with an individual or they are not in a treatment relationship with that individual.

Minnoza Code 500

- (a) In any proceeding against a physician, clinical psychologist, podiatrist, dentist, nurse, hospital or other health care provider to recover damages alleged to have been caused by medical malpractice where the acts or omissions so complained of are alleged to have occurred in Minnoza, the standard of care by which the acts or omissions are to be judged shall be that degree of skill and diligence practiced by a reasonably prudent practitioner in the field of practice or specialty in this State and the testimony of an expert witness, otherwise qualified, as to such standard of care, shall be admitted.
- (b) Any physician who is licensed to practice in Minnoza shall be presumed to know the statewide standard of care in the specialty or field of medicine in which he is qualified and certified.
- (c) An expert witness who is familiar with the statewide standard of care shall not have his testimony excluded on the ground that he does not practice in Minnoza.

Minnoza Code 600

A plaintiff who cannot establish that probably (more likely than not) she would have suffered the same harm had proper medical treatment been rendered, is entitled to no recovery for the increase in the risk of harm or for the loss of a chance of obtaining a more favorable medical result.

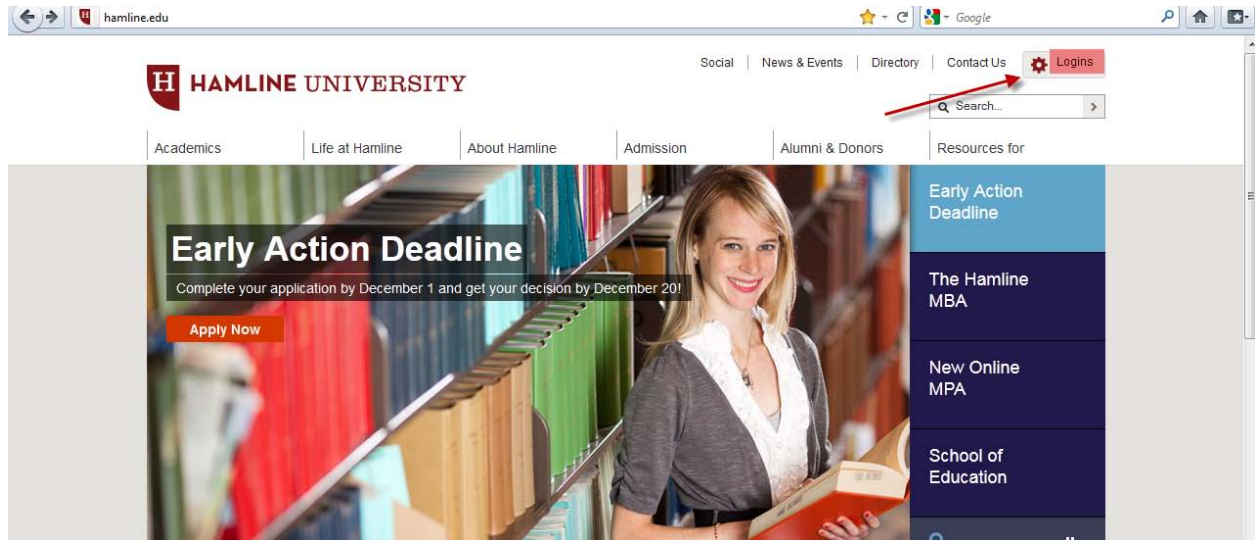
Minnoza Code 700

- (a) Contributory negligence is abolished. All actions shall be governed by the doctrine of pure comparative negligence.
- (b) Assumption of risk, as an independent complete affirmative defense, is abolished. It shall be considered as an element in the comparative negligence calculus.
- (c) Express assumption of risk remains an independent complete affirmative defense.

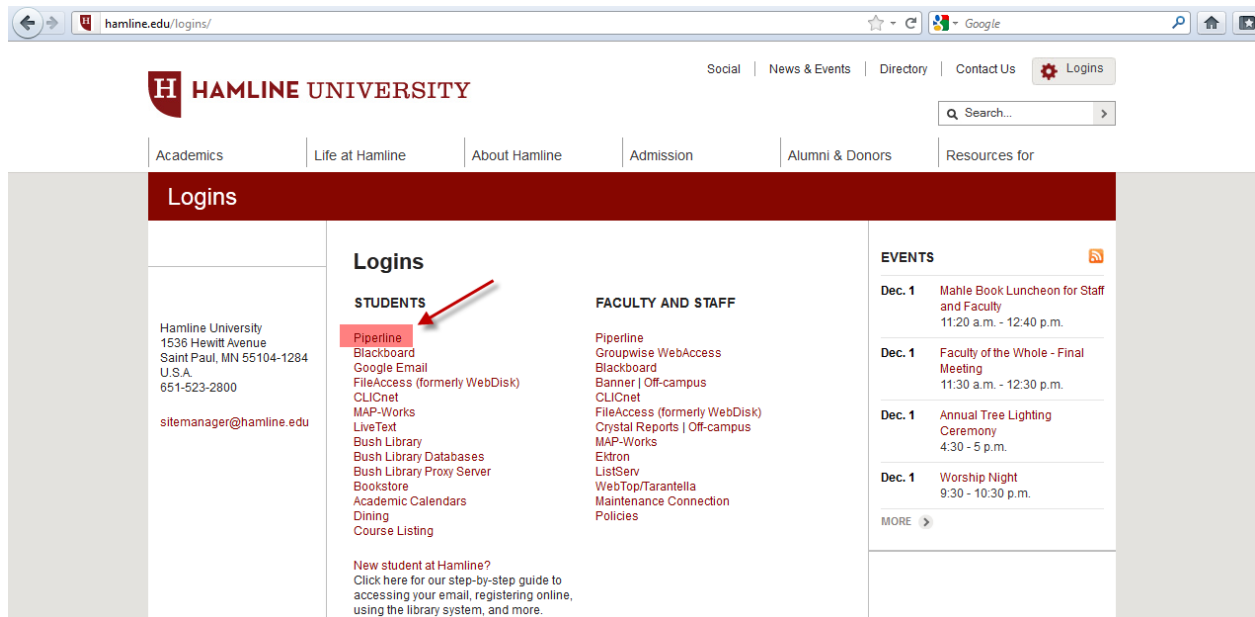
END OF EXAM

How to Find Your Final Exam Number via Pipeline

1. Go to www.hamline.edu
2. Click on the “Logins” button on the top of the right hand corner of the page.



3. Click on “Pipeline.”



4. Enter your **Hamline ID Number** (this is the seven digit number starting with a nine) and your **PIN**. Click **“Login.”** Remember that this is case sensitive. (If this is your first time logging into Pipeline, you will be taken to a page where you will create a new password.)

hamline.edu https://pipeline.hamline.edu/pls/prod/twbkwbis.P_WWWLogin

HAMLINE UNIVERSITY

HELP

User Login

Please enter your Hamline ID Number and your Personal Identification Number (PIN). Case is sensitive, so be sure to type your PIN exactly as created. Do not include dashes or other punctuation. When finished, click Login.

To ensure successful navigation throughout the system, please use the available links. When you are finished, please Exit and close your browser to protect your privacy.

Never share your PIN with anyone!

Hamline ID Number:

PIN:

Login Forgot PIN?

RELEASE: 8.4.2

5. Click **“Student Services.”**

hamline.edu https://pipeline.hamline.edu/pls/prod/twbkwbis.P_GenMenu?name=bmenu.P_MainMnu&msg=WELCOME+

HAMLINE UNIVERSITY

Student Services Financial Aid Services Employee Services Personal Information Additional Services

HELP EXIT

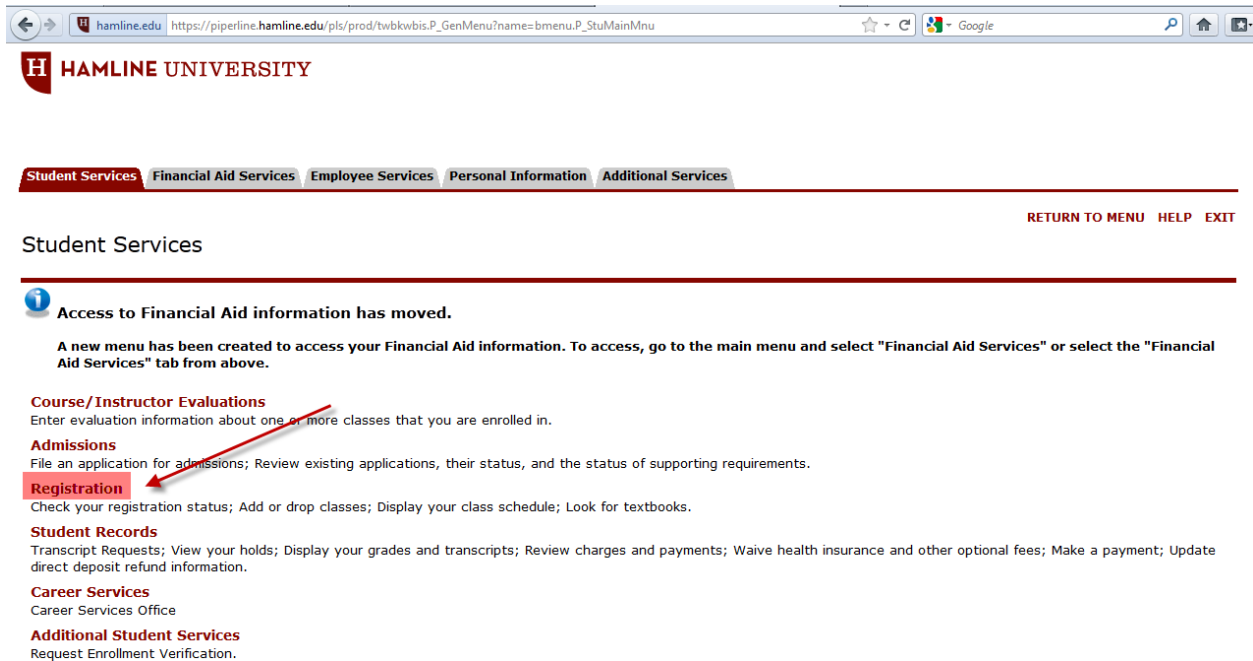
Welcome, to the Hamline Pipeline System! Last web access on

Services for Admitted Students
Pay your deposit; Waive health insurance and other optional fees; Provide immunization documentation; Update your address and contact information; View your financial aid award; Use Roommate Finder

Student Services
Register; View your academic records and Financial Aid; View account info; Waive health insurance and other optional fees; Perform Course/Instructor Evals; Request Enrollment Verification; Request a Transcript; Update direct deposit refund information; Look for textbooks.

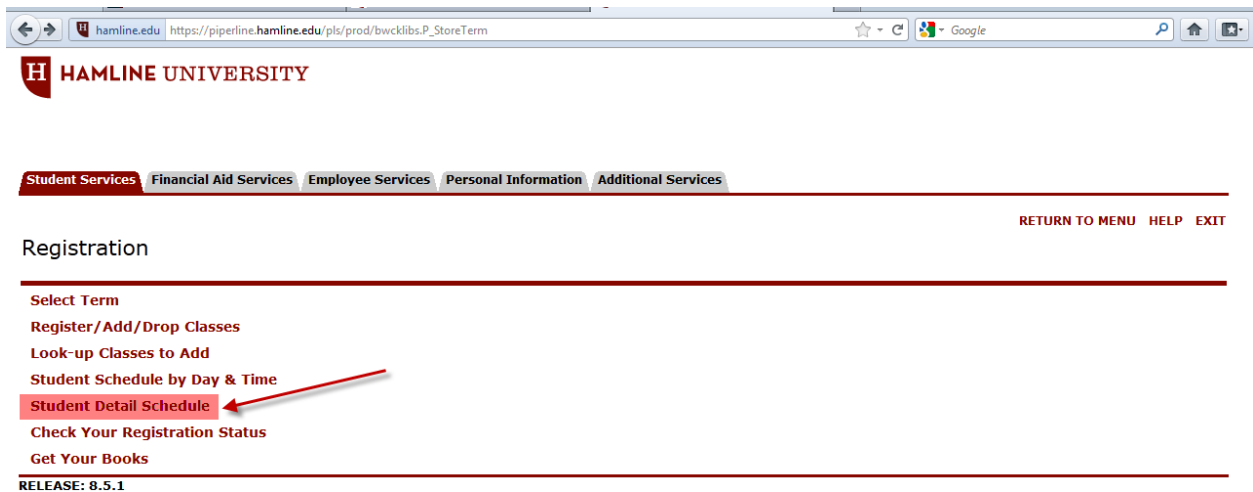
Financial Aid Services
Review the status of your financial aid applications; Check status of document requirements; Review loans.

6. Click “Registration.”



The screenshot shows the Hamline University website. At the top, there is a navigation bar with the following tabs: **Student Services**, **Financial Aid Services**, **Employee Services**, **Personal Information**, and **Additional Services**. Below the navigation bar, the page title is "Student Services". A message states: "Access to Financial Aid information has moved. A new menu has been created to access your Financial Aid information. To access, go to the main menu and select 'Financial Aid Services' or select the 'Financial Aid Services' tab from above." Below this message, there are several service links: **Course/Instructor Evaluations**, **Admissions**, **Registration** (highlighted with a red box and a red arrow pointing to it), **Student Records**, **Career Services**, and **Additional Student Services**. The URL in the browser address bar is https://pipeline.hamline.edu/pls/prod/twbkwbis.P_GenMenu?name=bmenu.P_StuMainMnu.

7. Click “Student Detail Schedule.”



The screenshot shows the Hamline University website. At the top, there is a navigation bar with the following tabs: **Student Services**, **Financial Aid Services**, **Employee Services**, **Personal Information**, and **Additional Services**. Below the navigation bar, the page title is "Registration". A message states: "Select Term". Below this message, there are several service links: **Register/Add/Drop Classes**, **Look-up Classes to Add**, **Student Schedule by Day & Time**, **Student Detail Schedule** (highlighted with a red box and a red arrow pointing to it), **Check Your Registration Status**, and **Get Your Books**. The URL in the browser address bar is https://pipeline.hamline.edu/pls/prod/bwcklib.P_StoreTerm. At the bottom of the page, it says "RELEASE: 8.5.1".

8. You will then need to select the appropriate term from a drop-down menu (Fall 2011).

9. Your **Final Exam Number** will be located under the **Total Credit Hours** at the top of the page.

hamline.edu https://pipeline.hamline.edu/pls/prod/bwskfshd.P_CrseSchdDet

HAMLINE UNIVERSITY

Student Services Financial Aid Services Employee Services Personal Information Additional Services

RETURN TO MENU HELP EXIT

Student Detail Schedule: Fall 2011
Dec 07, 2011 01:05 pm

Total Credit Hours: 8.000
Exam Numbers: Mid: Final: [redacted]

Civil Procedure I - LAW 9111 - 3
Associated Term: Fall 2011
CRN: 12930
Status: **Web Registered** on May 04, 2011
Assigned Instructor:
Grade Mode: Normal Grading Mode

Make sure that you are looking under the appropriate "Associated Term" (Fall 2011). You will find your assigned anonymous number under "Total Credit Hours" next to "Final."

Everyone needs their final exam number to take the exam.

You will use the same exam number for all of your exams.

TWEN – View as a Student

1. Log on to Westlaw as normal (www.lawschool.westlaw.com).
2. Select the TWEN tab.
3. Under your log-in information in the upper left corner, select the option to view as a student.

lawschool.westlaw.com/Gradebook/AssignmentList.aspx?courseid=131720

Westlaw

WELCOME
Megan Koltes
Hamline University School of Law
View as: Faculty Student
SCHOOL CONTACTS

NAVIGATION
Legal Research and Writing I
(Spring 2012)
Assignment Drop Box
CALI Lessons
Course Materials
E-Mail Options
Forums
Quizzes

To view the page as a student, click the radial button next to "Student."
Some items may no longer be viewable from the "student" view (i.e., exams not released, editing fields, etc.)

You have not entered any honor code text, but have activated the honor code for your assignment. Please click the Manage Honor Code link from the navigation dropdown menu to add honor code text.
Your assignment has been saved. Please note, if you opted to link your citations, you may experience a delay before the links appear in your document. Once the document's citations have been linked, you need to refresh your browser to view them.

Drop Box

| Assignment Title | Due Date | Status | Properties | Points Possible | Weight | Actions |
|------------------------------------|-------------------|--------|------------|-----------------|--------|-------------------|
| LRW III - Transactional Final Exam | 4/30/2012 6:00 PM | ✓ | I HD AN | 100.00 | N/A | Enter Grades Edit |

4. Once an exam has hit the time and date on which it should become available, students will then be able to see it in the "Assignment Drop Box."

lawschool.westlaw.com/gradebook/assignmentdropbox.aspx?courseid=131720

Westlaw

HOME WESTLAW NEXT WESTLAW TWEN LAW SCHOOL EXCHANGE™ MY ePRODUCTS BOOKSTORE

CUSTOMER SUPPORT >>> View full calendar

Westlaw > TWEN > Legal Research and Writing III > Grade Book > Assignment Drop Box

Assignment Drop Box

Current TWEN time: Thursday, April 05, 2012 at 10:53 AM Times displayed in Central Time.

Megan Koltes Manage Anonymous ID's

| Assignment/Quiz | Submitted | Version | Comments | Grade |
|--|-----------|---------|---------------|--------------|
| LRW III - Transactional Final Exam Due: 4/30/2012 6:00 PM (Mon) Time until Due: 25 days, 7 hours, 6 minutes <input type="button" value="Submit"/> | | | No Submission | Not Released |
| Absences: 0 | | | | Total: |

WELCOME
Megan Koltes Hamline University School of Law
View as: Faculty Student
SIGN OFF >>>
View full calendar
School Contacts >

NAVIGATION
Legal Research and Writing III (Spring 2012) STUDENT VIEW
Assignment Drop Box
CALI Lessons
Course Materials
E-Mail Options
Forums
Quizzes
Sign-Up Sheets
Syllabus
Web Links

5. The student will be prompted to type in his/her anonymous I.D. to access the exam.

lawschool.westlaw.com/Gradebook/AnonymousIdEntry.aspx?courseId=131720&assignmentId=79039&returnUrl=AssignmentDisplay

Westlaw

HOME WESTLAW NEXT WESTLAW TWEN LAW SCHOOL EXCHANGE™ MY ePRODUCTS BOOKSTORE

CUSTOMER SUPPORT >>> View full calendar

Westlaw > TWEN > Legal Research and Writing III > Grade Book > Anonymous Id Entry

Anonymous ID

Anonymous ID for Megan Koltes

Enter an anonymous ID to access this assignment.

Note: Your professor is using anonymous grading. You should include only your anonymous ID on your submissions. Please ensure that your name does not appear anywhere on your work or in the file properties embedded with your submission.

If you have questions about removing potentially identifiable information (metadata) from your file, please consult the help file for your specific word processor or contact the manufacturer of the software you used to create the document.

Anonymous ID

WELCOME
Megan Koltes Hamline University School of Law
View as: Faculty Student
SIGN OFF >>>
View full calendar
School Contacts >

NAVIGATION
Legal Research and Writing III (Spring 2012) STUDENT VIEW
Assignment Drop Box
CALI Lessons
Course Materials
E-Mail Options
Forums
Quizzes
Sign-Up Sheets
Syllabus
Web Links

6. If the exam is a timed exam, the student will be given instructions stating as such. (The exam does not boot students out after the maximum amount of time; rather, the TWEN time stamps when a student accesses an exam and when a student submits an exam.)

lawschool.westlaw.com/Gradebook/TimedAssignment.aspx?courseId=131720&assignmentId=79039&returnUrl=AssignmentDisplay

Westlaw

HOME WESTLAW NEXT WESTLAW TWEN LAW SCHOOL EXCHANGE™ MY ePRODUCTS BOOKSTORE

CUSTOMER SUPPORT >>> View full calendar

WELCOME
Megan Koltes Update
Hamline University School of Law
View as: Faculty Student
SIGN OFF >>>
View full calendar
School Contacts >

NAVIGATION
Legal Research and Writing III
(Spring 2012) STUDENT VIEW
Assignment Drop Box
CALI Lessons
Course Materials
E-Mail Options
Forums
Quizzes
Sign-Up Sheets
Syllabus
Web Links

Westlaw > TWEN > Legal Research and Writing III > Grade Book > Timed Assignment
Print this page TWEN Help

Timed Assignment

Timed Assignment Notification for Megan Koltes

Note: This is a timed assignment. If you click START, a time stamp will be placed to indicate your start time. Your course administrator will know the length of time it took to make your final submission. Print any confirmation messages or confirmation emails you receive for your submission. Please read any special instructions entered below by your course administrator.

Instructions:
This is a timed exam. You have 24 hours to complete this exam beginning from the time you access the exam.

Start Cancel

The instructions for time limits will appear here.

7. The student will be able to access the exam by downloading the attached file.

westlaw.com/gradebook/AssignmentDisplay.aspx?courseId=131720&assignmentId=79039

Westlaw

HOME WESTLAW NEXT WESTLAW TWEN LAW SCHOOL EXCHANGE™ MY ePRODUCTS BOOKSTORE

CUSTOMER SUPPORT >>> View full calendar

WELCOME
Megan Koltes Update
Hamline University School of Law
View as: Faculty Student
SIGN OFF >>>
View full calendar
School Contacts >

NAVIGATION
Legal Research and Writing III
(Spring 2012) STUDENT VIEW
Assignment Drop Box
CALI Lessons
Course Materials
E-Mail Options
Forums
Quizzes
Sign-Up Sheets
Syllabus
Web Links

Westlaw > TWEN > Legal Research and Writing III > Grade Book > Display Assignment
Print this page TWEN Help

Assignment Drop Box

View Assignment ?

LRW III - Transactional Final Exam
Due on Monday, April 30, 2012 at 6:00 PM

Grading Information:

- Points Possible: 100.00
- Grades have not been released
- This assignment requires anonymous submission.

Submission Information:

- Resubmissions are currently allowed
- Submissions are allowed after the due date
- Honor code acceptance is required for submission

Students will be able to attach their answers/essay/letter and submit it on TWEN.

Students can access the exam by clicking on the attached file to download.

Attached Files
[Swift.Exam.Drafting.Final.Spring12.docx](#)

Time Elapsed since Started: ?
0 days, 0 hours, 17 minutes

Submit Assignment Return to Drop Box

8. The student will be able to attach their submission by clicking “Submit Assignment” and attaching their submission on the following webpage by clicking “Browse.”

The screenshot shows the 'Assignment Drop Box' interface. A callout box points to the 'Time Elapsed since Started: 0 days, 0 hours, 0 minutes' text, stating: 'Students can see how much time has elapsed since they began the exam (pressed "Start") to figure how much time they have remaining before submitting.' Another callout points to the 'Browse' button, stating: 'By clicking on the "Browse" button, students may select a final version of their exam from their computer and attach it.' A third callout points to the 'Submit' button, stating: 'After attaching the answered exam or completed essay, students can click "Submit."' The page also shows a 'Version: Final' dropdown and a 'Message to course administrator(s):' text area containing the text 'I have attached my final draft of my exam.'

9. After submitting the attached exam/essay, students can view the time stamps on their assignment on the proceeding webpage. This will show when the student first hit the “Start” button and when the student hit the “Submit” button. (This is crucial for timed tests.)

The screenshot shows the 'Assignment Drop Box' submission history page. A callout box points to the 'Testing Submission Process' entry, stating: 'After submitting the finished exam/essay, students will be brought to a page where they can view the time stamps on their exam.' The table below shows the submission history:

| Assignment/Quiz | Submitted | Version | Comments | Grade |
|---|-------------------------|---------|----------|--------------|
| Testing Anon ID | | | | Not Released |
| Due: 1/28/2012 8:00 AM (Sat) Time until Due: 0 days, 0 hours, 0 minutes | | | | |
| | 1/27/2012 8:24 AM (Fri) | Final | | Not Released |
| Test 2 | | | | Not Released |
| Due: 1/28/2012 8:00 AM (Sat) Time until Due: 0 days, 0 hours, 0 minutes | | | | |
| Testing Submission Process | | | | Not Released |
| Due: 4/10/2012 2:54 PM (Tue) Started: 4/10/2012 2:51 PM (Tue) Time until Due: 0 days, 0 hours, 1 minute | | | | |
| Submission Duration: 0 days, 0 hours, 1 minute | 4/10/2012 2:52 PM (Tue) | Final | | Not Released |
| Absences: 0 | | | | Total: |