

A Quick Guide to Policy Questions

What is a policy question?

- “Policy” refers to the reasons or purpose for a legal rule
- Policy questions typically are short essay questions that ask you to *evaluate* rules rather than *apply* them as you do in issue-spotter questions

What are some examples of policy questions?

- Evaluate or take a position regarding a proposed new rule
- Evaluate or take a position regarding a doctrinal shift
- Agree or disagree with a quote that takes a position about a legal rule or doctrine
- Evaluate/comment on the evolution of or trends in the law
 - Example: “We have read many opinions exploring the concept of duty. Is there a trend in these cases? Are courts expanding or narrowing the idea of duty? What do these opinions have in common?”
- Choose among several options for a given rule and explain the reasons for your choice

How do I prepare for policy questions?

- Pay close attention in class and take notes on policy discussions. This might include, for example, the reasons for the rule, whether the rule achieves its intended purpose, whether there are unintended consequences, whether there is a better/more effective approach, etc.
- In your outline, note the policy considerations underlying every rule
 - What is the reason for or purpose of the rule?
 - Is the rule fair?
 - What incentives or disincentives does the rule create?
 - Is the rule effective?
 - Is the rule feasible to administer and enforce?
- Think critically about the legal rules you are learning and develop your own opinions about them

When I evaluate a rule, what are some of the things that I should be thinking about?

- You can evaluate legal rules from many different angles and theoretical perspectives
- The chart below will give you some ideas but be sure to focus on the policy considerations discussed in class
- Also consider the policy discussions in the cases (both majority and dissenting

opinions), hypotheticals that test the limits of a rule, and secondary sources that explain the rationale for rules

Fairness	Incentives & Efficacy	Process
<ul style="list-style-type: none"> • Does this make the victim whole? • Is there fair notice? • Does this <i>feel</i> fair? • Is this fair to the defendant? Is it proportional? • Whom does this rule advantage/disadvantage and how? • Disproportionate impact on a particular group? 	<ul style="list-style-type: none"> • Does the rule effectively carry out the intended purpose? • What behavior would this rule deter? • What behavior does this rule incentivize? • Could this have perverse incentives? • How would this impact insurance? 	<ul style="list-style-type: none"> • Is this judicially efficient? • Is the jury equipped to resolve this issue? • Would this dramatically increase the number of claims? • What sorts of resources would need to be expended? • Has the rule been fairly applied in practice?

How do I answer policy questions?

Sample Answer Structure

1. Discuss/evaluate the old/current rule or the author's position
2. Discuss/evaluate the proposed new rule or a contrasting position
3. Take a position, explain the reasons for your position, and address counterarguments

At each step:

- Discuss fairness, efficacy, incentives, and process (FIEP)
- Include both *descriptive* and *normative* arguments
 - *Descriptive*: assertions about how the rule actually works
 - *Normative*: assertions about how the rule should work
- Use specific examples
 - Is there a case that would come out differently under the new rule? Would that be a better result? Why?
 - Is there a hypothetical that illustrates your point?