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## The Fourteenth Rule

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# THE FOURTEENTH RULE

R. LAWRENCE DESSEM\*

*“And gladly would he learn, and gladly teach.”*<sup>1</sup>

Professor Jerry Phillips established himself as one of the leading torts scholars of his generation; many articles in this issue showcase his pioneering research. Jerry Phillips will be remembered, however, for much more than this original and creative legal scholarship. The generations of students who encountered him at the University of Tennessee College of Law will remember him first and foremost for his classroom teaching. Dean Kent Syverud has reminded us that “with the exception of a few dozen law professors, our ideas will improve the world more through our students than through our writing.”<sup>2</sup> Thus, this memorial issue appropriately contains an essay by Professor Phillips concerning the manner by which professors evaluate most law student work: the end-of-semester final examination.

Jerry Phillips wrote *Thirteen Rules for Taking Law Exams*<sup>3</sup> when he was an associate professor, at a time when American legal education was about to both bloom and boom. While the essay is now more than thirty years old, it is vintage Phillips.

*Thirteen Rules for Taking Law Exams* is vintage Phillips perhaps most significantly because of its wit. Rather than writing his essay in a straightforward manner, Professor Phillips satirized the common mistakes that are so prevalent in law school examination answers. Professor Phillips’ first rule (“never spell correctly any word which is central to the content of the course”) is, in part, justified because such errors “weaken the teacher’s resistance so that he will more readily accept greater errors to come.”<sup>4</sup> The essay continues in a similar vein.

Another vintage Jerry Phillips aspect of the essay is his implicit critique of students who excuse bad legal writing because “[they] are studying law and not English.”<sup>5</sup> Professor Phillips initially mentions this false dichotomy on the first page of his essay, but he satirizes this distinction later in his essay.<sup>6</sup>

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\* Dean and Professor of Law, University of Missouri-Columbia. From 1985 to 1995, Dean Dessem was a colleague of Jerry Phillips on the faculty of the University of Tennessee College of Law.

1. GEOFFREY CHAUCER, *THE CANTERBURY TALES* 9 (David Wright trans., Oxford Univ. Press 1985) (1478).

2. Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247, 259 (1993).

3. Jerry Phillips, *Thirteen Rules for Taking Law Exams*, 24 J. LEGAL EDUC. 76 (1971).

4. *Id.* at 76.

5. *Id.*

6. *See id.* at 79 (“In any event, you are taking a law exam and not writing an English

As some of his writings attest, Jerry Phillips loved English and the English language,<sup>7</sup> and he taught Law and Literature as well as Torts and Products Liability.<sup>8</sup> Jerry prized well-crafted English. He expected it of himself and others, whether they were writing for a legal journal or a final exam.

In this and in other significant ways, Jerry Phillips set high standards. He did not suffer fools gladly—whether he perceived them to be at his law school, within legal education more generally, or within the society around him.

Jerry Phillips set high standards because he cared. He cared about the law, about his law school, and about the craft of teaching. I will always remember Jerry Phillips' involvement in a meeting of the American Law Institute in the 1990s. The ALI was at that time debating the *Restatement (Third) of Torts: Products Liability*. Jerry had strong feelings about some of the most contested issues, and his was both a principled and passionate voice during these important deliberations. He cared.

For me, Jerry's "Fourteenth Rule" was to always set and strive for the highest standards. His essay challenges students to do more than "write a minimally acceptable examination."<sup>9</sup> As he says in the final sentence of his essay, "If you believe that mediocrity is the password of the day there is no sense in trying to be different when difference only brings discomfort."<sup>10</sup> Jerry Phillips did not believe this, and his life in and outside the law school classroom exemplified his conviction that the discomfort was worth it.

I can neither disagree with, nor directly respond to, Jerry Phillips' *Thirteen Rules*. Instead, I offer as an appendix to his 1971 essay, *Reflections Upon Reading My Students' Civil Procedure Examinations*, a short document that I prepared while a colleague of Jerry's at the University of Tennessee.<sup>11</sup>

Jerry Phillips was never one who, in the words of his essay, "believe[d] that mediocrity is the password of the day."<sup>12</sup> Whether students follow Jerry's

essay.").

7. See, e.g., Jerry J. Phillips, *Commentary on the Foibles of the English Language*, 66 TENN. L. REV. 789 (1999) (discussing the complexity of the English language).

8. Professor Phillips co-authored a text book for his Law and Literature course entitled *Sound and Sense: A Text on Law and Literature*. JERRY J. PHILLIPS & JUDY M. CORNETT, *SOUND AND SENSE: A TEXT ON LAW AND LITERATURE* (2003). Not only did Jerry Phillips teach Law and Literature at the University of Tennessee College of Law, he taught an undergraduate course in literature while still a practicing attorney. Jerry J. Phillips, *Law as Ornamentation*, 10 T. M. COOLEY L. REV. 499, 501 (1993).

9. Phillips, *supra* note 3, at 79.

10. *Id.* at 80.

11. Indeed, it appears that Jerry Phillips' article was written for the same reasons as was my own 1992 memorandum. His essay begins: "After grading nearly 200 3-hour law exams over a 10-day period of approximately 10 hours per day, I began to observe certain elementary rules of examination-taking which I will describe for the benefit of present and future students." *Id.* at 76.

12. *Id.* at 80.

1971 advice or my more recent advice which follows, may we continue to train and inspire generations of law students who strive for the excellence that Jerry Phillips himself epitomized.

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*Reflections Upon Reading My Students' Civil Procedure Examinations*

R. Lawrence Dessem  
December 22, 1992

After reading and grading the Civil Procedure I examinations in the Fall of 1992, I have noted some common problems with the examination papers. Before speaking with me about your own examination, please critique it in light of the following checklist of common problems.

1. Did you read the question carefully? Some students confused plaintiffs and defendants, as well as particular plaintiffs and defendants, in their answers. If you do not carefully read and understand the question, you cannot hope to answer it correctly.

2. Did you answer the question that actually was asked? Many students spent valuable time hypothesizing as to the existence of subject matter jurisdiction in their answers. However, there was no question concerning subject matter jurisdiction. While some of the jurisdictional discussions were interesting dicta, they garnered no points for their authors.

3. Did you spend time copying quotations as part of your answers? Some students copied, verbatim, code provisions or portions of cases into their exam booklets. Instead, they should have summarized, briefly, any relevant law. For example, answers may have mentioned that the Rules Enabling Act requires that the Federal Rules must be "rules of practice and procedure" and cannot "abridge, enlarge or modify any substantive right."

4. Did you apply the law to the facts contained in the questions? This is the most common problem with examination answers. Don't spend pages laying out the relevant test and then fail to apply it to the facts of the question. The questions asked you to decide specific problems, not merely state that "in resolving this question the court will have to apply the *Erie* test." Particularly in an open book examination, merely copying definitions from your notes, the book, or study aids will get you few or no points.

5. Did you follow the structure suggested by the question? I try to break down my questions into subparts. This helps me in grading the answers and is intended to help you in organizing your answers. Failure to follow the structure suggested by the question may cause you to miss issues or repeat yourself in your answers.

6. Did you repeat yourself in subparts of the same question? Several students defined "claim preclusion" and "issue preclusion" several times in their answers. While this will get you no extra points, it will take valuable time that could have been devoted to your analysis. Simply apply the test

after it has been set out initially. Incorporate definitions or analysis by reference.

7. Did you budget your time wisely with respect to the various parts of the examination? Some students spent too much time on the multiple choice questions, while others spent significantly more time on one essay question than the other. The suggested time for each of the three parts of the examination was one hour, and those who spent significantly more time on any particular part of the exam received a lower grade than they otherwise might have received. While additional time spent on one part of the exam probably will raise your score marginally, you will lose significantly more points by leaving another part of the exam only partially answered.

8. Were you precise in your answers? Ambiguity can be a problem on rapidly written examination answers. Telling me that “he” is not estopped is not helpful if there is more than one person to whom this pronoun may apply.

9. Were you explicit in your answers? I can only give credit for what actually is written in your answer. Tell me how the court should rule or the defense that should be asserted or whatever I have asked. Subtlety has no place on a law school examination.

10. Did you spend a significant portion of your answer restating the question? Some student answers contain entire paragraphs that begin, “In this case, the plaintiff has filed an action . . .” Do not waste your time reminding me about a question that I, myself, wrote. Rather than writing a “fact statement” for each answer, use the facts in the analysis portions of your answer. For example, rather than telling me at the outset of your answer that a defendant has particular contacts with a jurisdiction, refer to those contacts during your analysis of whether they constitute minimum contacts under *International Shoe*.