

Professor Bret Wells

**Law Center
University of Houston**

Federal Income Taxation

Syllabus

Fall Semester 2020

Perspectives Concerning Taxation

“Basic tax, as everyone knows, is the only genuinely funny subject in law school.”

-- **Martin D. Ginsburg**

“One of the problems with trying to have a rational discussion about taxes is that so many people want to believe what's convenient rather than what's accurate. Believing, after all, requires so much less effort than thinking.”

-- **Allan Sloan**

“The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.”

Adam Smith
Wealth of Nations

“Taxes are what we pay for civilized society.”

Justice Oliver Wendell Holmes,
Compania General de Tabacos de Filipinas
v. Collector of Internal Revenue,
275 U.S. 87, 100 (1927) (dissenting).

“[T]axation, in reality, is life. If you know the position a person takes on taxes, you can tell their whole philosophy. The tax code, once you get to know it, embodies all the essence of life: greed, politics, power, goodness, charity.”

-- **Sheldon S. Cohen**

“Taxation is, in fact, the most difficult function of government and that against which their citizens are most apt to be refractory.”

-- **Thomas Jefferson**

“America's tax laws are similar to the writings of Karl Marx and the writings of Sigmund Freud in that many of the people who loudly proclaim opinions about these documents have never read a word of them.”

-- **Jeffery L. Yablon**

“Tax issues are fun. Getting to love them may take a bit of effort, but the same is true for Beethoven's string quartets, and think of how much pleasure they give if one does make the effort.”

-- **Peter L. Faber**

“People want just taxes more than they want lower taxes.”

-**Will Rogers**

FEDERAL INCOME TAX

Fall Semester 2018

Professor Wells

- 1. Class sessions:** Tuesday, Wednesday, and Thursday from 9:00 A.M. to 10:20 A.M.
There are no scheduled make-up classes at this time, but make-up classes are possible albeit not expected.
- 2. Required materials:**
 - (a) Graetz & Schenk, “Federal Income Taxation — Principles and Policy,” 8th Edition, Foundation Press (2018) (ISBN: 9781640206809).
 - (b) Wolters Kluwer / CCH Publications, “Federal Income Tax — Code & Regulations, Selected Sections,” 2020-2021 Edition (ISBN: 9780808054610). This volume contains (i) provisions of the Internal Revenue Code of 1986 (the most recent complete “codification” of the tax statutes), as subsequently amended on numerous occasions, and (ii) selected important “regulations,” as promulgated by the U.S. Department of the Treasury.
- 3. Supplementary reading material:**
 - (a) Recommended: Chirelstein & Zelenak, “Federal Income Taxation—A Law Student’s Guide to the Leading Cases and Concepts,” 14th Edition, Foundation Press (2018) is recommended as particularly useful for supplemental reading. This volume is helpful because the discussion often provides analysis of the key tax cases covered in this course. You would be well served to read the sections in Chirelstein that correspond to the topics assigned in the Graetz casebook.
 - (b) The UH Law Library has on reserve other hornbooks and study guides that may also be consulted.
- 4. Attendance requirement policy:**

Consistent with university policy, 80 percent attendance in class is required. Attendance will be taken via an electronic attendance sheet (<https://forms.gle/fdaLPDB4otH57MaN7>). I will give you a code at the beginning of class, and you need to log-in this electronic attendance sheet to register your attendance and to provide “Today’s Code.” Those individuals not satisfying the attendance requirement will be reported to UH Law Center administrative officials to be dropped from the course. Students can attend the class in-person or online, at your option.

For those students who wish to attend online, students will be required to attend the class remotely via the Zoom internet video conferencing software (accessible at: <https://uhlc.zoom.us/j/793387682?pwd=cTFHSIVGNDIET0hnUjRqelg4cUhudz09>; Meeting ID: 793 387 682; Passcode: 2020). To participate via Zoom, there are several requirements: (1) you must e-mail me at least 40 minutes prior to class, letting me know that you will be participating via Zoom and you must log in no later than 8:55 am, (2) you must have a headset (i.e., the ear buds + microphone that typically come with a cellphone), (3) your computer must have a working video camera and quality audio capability (joining by audio-only will be treated as an absence) (4) you must identify yourself with your class roll name in the Zoom videoconferencing software; (5) you must present yourself professionally in the video stream (both in attire and in conduct); (6) you must be able to fulfill your responsibilities if called on to discuss a case; and (7) you must keep yourself muted when you are not speaking.

IMPORTANT NOTICE FOR POST-THANKSGIVING CLASS SESSIONS: Per UH Central Campus guidelines, no in-person class will be held after Thanksgiving. Thus, please note that the last two scheduled class sessions (highlighted in “blue”) will be conducted online via Zoom.

5. Class session coverage, focus & discussion:

- (a) Schedule of Coverage for Semester. The schedule on the following pages identifies that class discussions will proceed at an orderly pace. The number of class sessions anticipated to be held during the semester is 41 (three class sessions each week except during weeks with holidays). I will reserve the last class session for a Review Session. Each class session will last approximately 80 minutes. We will move quickly through Chapter 1 and time value of money principles, but thereafter you should anticipate that we will reduce our pace and cover approximately 40 pages of the Graetz casebook per class. **Always the most important material to be read will be the relevant provision of the Internal Revenue Code and the assigned cases.**
- (b) Subject Matter Coverage: In order to be prepared for class discussions, all assigned items should be read in connection with each class session. You should be prepared to discuss the reading assignment where we left off in the prior class and then be prepared to discuss the next succeeding reading assignment set forth in the attachment to this syllabus. We will proceed in the order set forth in the Reading Assignment list, but please note that the dates for covering these materials **will** shift. I will update the **Reading Assignment** sheet throughout the semester and post the update on my website before each class. Thus, please be diligent to know where we are on the Reading Assignment sheet and what you need to read in order to be prepared for the next class. The relevant provisions of the Internal Revenue Code (to be carefully read) are

identified at various locations in the casebook. Although we will examine many court decisions, ultimately this is a Code-based course. **Class sessions will start with the assumption that all students have read the casebook materials and the pertinent Code provisions.**

6. **PowerPoint Slides.** Professor Wells will regularly use PowerPoint slide presentations in class. Last year's slides are not currently posted on my website because those slides related to a different casebook. Professor Wells will post his slides on Blackboard after completion of the particular chapter.
7. **Archived Lectures.** Assuming no technological issues, I plan to record and archive my class lectures and will post them to Blackboard for your later access. As stated in ¶5 above, you are required to attend classes (either online or in-person) per UHLC policy and to be prepared for class. The availability of these recordings is not a substitute for your attendance and participation. However, I have found that making these video recordings available to students provides students the luxury of focusing their attention on the class discussion because the archived lectures allow students to later supplement their note taking.
8. **Use of personal computers.** The permitted use of personal computers in the classroom is **solely** for the purposes of (i) reviewing preparation notes, and (ii) taking notes during class. Specifically **excluded** from in-class computer usage is anything beyond these activities, e.g., "surfing the web" and messaging. Nonparticipation due to diversionary uses of your personal computer constitutes an absence from the class. In the event this occurs, you are not eligible to sign the attendance sheet and are subject to appropriate action as the professor may determine in his sole discretion.
9. **Grading process for this course:**
 - (a) **Final Examination.** The grade in this course will be entirely dependent upon the final examination (except note Paragraphs (b) and (c) below). That examination will occur pursuant to the prescribed examination schedule. Through the university exam database, there is a link to a prior examination for this course. That prior examination should give you a good understanding of the types of questions that you can expect for the final examination. We will also discuss the final exam in the last class. Course materials will be permitted in the examination room but will be limited to: (i) the student's casebook, (ii) the CCH code and regulations volume, (iv) this syllabus, (iv) any supplemental materials (as provided during the semester), and (v) student prepared outlines. Not permitted in the examination room are commercially prepared materials and outlines (including the Chirelstein book identified above).
 - (b) **Impact of the "Written Exercises."** I may assign short written exercises during the semester. These exercises are expected to be completed by all students in a

satisfactory manner. Because of the short, summary nature of those presentations, they will not be graded. The only impact on the grade in this course from this written exercise part of the course will be a reduction of one notch on the final grade for each paper which is either (1) not timely provided to the professor or (2) grossly inadequate. If the latter event occurs the student will have an opportunity to (a) consult with the professor about the paper and (b) revise the paper to assure that it is to be treated as acceptable.

- (c) Impact of Class Participation. Class participation is expected in this class. Significant class participation may positively impact your grade.

10. Questions to professor. Student discussion in the professor's office is welcomed and encouraged. Office hours are Tuesday and Thursday from 10:30 a.m. until 11:30 am and Wednesday from 10:30 am to 2:30 p.m., or as otherwise arranged. Please contact Professor Wells at Room 124 (TU-II), or by telephone at 713-743-2502, or by email at: bwells@central.uh.edu. I am available to answer questions up until the last class day.

11. Counseling Options: Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

INTRODUCTORY INFORMATION

1. Perspectives on this Course

Federal Income Taxation is a foundational course. Almost any transaction that achieves a non-tax objective will simultaneously offer opportunities and pitfalls from a tax perspective. Through the tax code, the federal government has become an uninvited party-of-interest to a wide array of private arrangements. A lawyer must understand the extent and nature of the tax issues raised by the legal claims and business strategies of their clients in order to properly advise clients on how to best structure their affairs. Thus, an important objective for this course is to identify the scope of the federal income taxation system. In actual practice, you will find that the federal income tax laws are far-reaching. Furthermore, the below cartoon illustrates an important tax insight:

how one frames a tax question can often have an important impact on how one views the tax answer. Many of the most interesting tax questions are highly conceptual questions where reasonable minds can and do differ. Fundamental tax concepts must be appropriately identified and analyzed in order to predict how courts will frame and resolve a tax dispute.



"It's funny how two intelligent people can have such opposite interpretations of the tax code!"

As a result, in this course, we will spend our time arguing about the underlying theory—the structure upon which the detail is built. As lawyers, we want to concern ourselves with the undecided and the ambiguous so that we can understand what is shaping the tax law at its core. Congress may change the tax laws, but the fundamental guiding principles that frame the U.S. income tax structure are transcendent. In this course, you will gain an understanding of current tax law, but more importantly you will gain an understanding about the underlying policy conflicts that explain current law.

However, in order for us to really understand the federal income tax principles that are inherent in our federal income tax laws, we are going to need to understand some important economic and financial concepts. The objective in this course is not to make you an economist or to make you an investment banker, but you need to have a basic understanding of some key principles

from those other disciplines in order to understand the policy concepts that shape the federal income tax laws. After studying some basic economic and financial concepts, we will then turn our attention in earnest to the federal income tax laws.

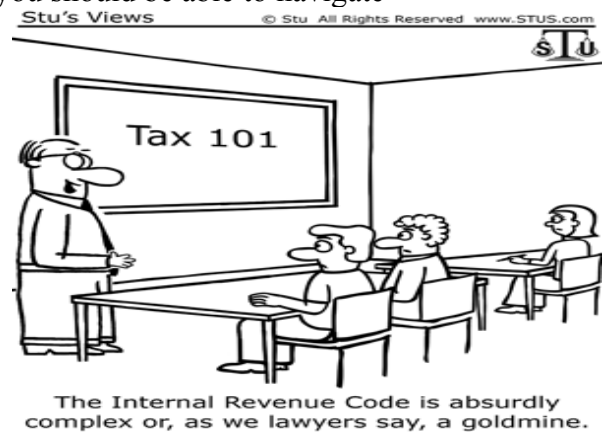
This is a “Code” course. This course involves the careful reading and interpretation of one of the most complicated statutory structures, i.e., the U.S. Internal Revenue Code (Title 26, United States Code). The regular reading of the Internal Revenue Code can significantly enhance one’s ability to interpret complicated statutory material other than the federal tax rules. The contemporary practice of law is largely based upon statutory material along with an examination of judicial case law and regulatory guidance that interprets the controlling statutory provisions. Thus, a steady dose of the Internal Revenue Code can aid you in your legal development.

Some are repelled by the complexity of the U.S. tax laws. However, all lawyers need to have a well-developed “smell test” for business arrangements. This “smell test” extends to tax planning ideas. Today’s lawyer cannot simply exclude tax issues from their vocabulary and claim that these are not relevant to their thinking. In a post-Enron world, all lawyers (not just tax lawyers) need to have a general understanding of federal income tax issues. This course lays the foundation for developing one’s tax instincts.

However, although the federal income tax laws are complex, the reality is that these laws are centered on the following fundamental tax questions:

1. Is a particular item income or does it give rise to a tax deduction?
2. When is the proper time period for recognizing an item of income or expense (including the capitalization of expenses)?
3. What is the character of the item of income (e.g., capital gains and losses)?
4. Who is the “true taxpayer” for reporting the item of income or expense?
5. What is the type of taxpayer that must report the item of income or expense (individual, corporation, partnership, limited liability company, trust, estate, resident or nonresident) and are their special rules for this type of taxpayer?

Once you understand these fundamental questions, you should be able to navigate the complexity of the federal income tax laws. The stakes for many tax issues are large, and so correctly addressing these questions can be very important to both the government and to private parties. A lawyer who can correctly identify the relevant tax issues, who can apply the tax principles to a particular set of facts, and who can then provide proactive tax planning suggestions, will provide enormous value to clients.



2. Federal Income Tax Computation Structure (a tax on net income)

We are going to spend our time discussing the conceptual, but it is helpful in that study to know how the tax concepts discussed in this course (***bolded and italicized in the below computation***) implicate the computation of one's tax liability:

	Gross receipts
Less:	Cost of goods sold
Equals:	<i>Gross income</i>
Less:	<i>Business deductions</i>
Equals:	<i>Adjusted gross income</i>
Less:	<i>Itemized deductions or standard deduction & personal exemption</i>
Equals:	<u>Tentative Taxable income</u>
Less:	<i>Tax credits</i> (including withholding & estimated tax payments)
Equals:	Final tax amount owing (or refund amount)

PLEASE NOTE: **Excluded** from the scope of this Federal Income Tax Course is the need to prepare a tax return. We will spend our time discussing the law and conceptual principles. So, let's begin!

	A	B	C	D	E	F
1	Federal Income Taxation Reading Assignment					
2		Class Date	Topic	Reading Material		
3	1	Tuesday, August 25, 2020	Introduction to Income Tax, Time Value of Money, Sources of Tax Law	Graetz Ch 1., (pp. 1-81); Ch. 3 Section 3.A. (pp. 311-318); Course Supp. pp.1-8		
4	2	Wednesday, August 26, 2020	What is Income: Compensation for Services	Graetz Ch.2 (pp. 83-121): Read Course Supp. p.9 (Rev. Rul. 79-24); Read Course Supp. pp.10-12 (<i>Benaglia</i>)		
5	3	Thursday, August 27, 2020	What is Income: Compensation for Services	Continue: Graetz Ch.2 (pp. 83-121): Read Course Supp. p.9 (Rev. Rul. 79-24); Read Course Supp. pp.10-12 (<i>Benaglia</i>)		
6	4	Tuesday, September 1, 2020	What is Income: Imputed Income, Gifts & Bequests, Prizes & Scholarships	Graetz Ch. 2 (pp.121-138); Course Supp. pp.13-16 (Rev. Rul. 2003-12); Course Supp. p.17 (Oprah Winfrey)		
7	5	Wednesday, September 2, 2020	What is Income: Capital Appreciation & Recovery	Finish earlier material; Graetz Ch. 2 (pp. 138-148); Course Supp. pp.18-20 (<i>Fairfield</i>); Course Supp. pp.21-22 (<i>Inaja</i>); Course Supp. pp.23-25 (<i>Diedrich</i>)		
8	6	Thursday, September 3, 2020	What is Income: Realization Requirement	Graetz Ch. 2 (pp. 148-167); Read Course Supp. p.26-28 (Homerun Balls); Read Course Supp. p.29-31 (<i>Bruun</i>)		
9	7	Tuesday, September 8, 2020	What is Income: Realization Requirement	Continue Discussion of Graetz Ch. 2 (pp. 148-167); Read Course Supp. p.26-28 (Homerun Balls); Read Course Supp. p.29-31 (<i>Bruun</i>)		
10	8	Wednesday, September 9, 2020	What is Income: Annuities & Life Insurance, Illegal Income	Graetz Ch. 2 (pp. 168-186)		
11	9	Thursday, September 10, 2020	Compensation for Losses, Annual Accounting, Tax Benefit Rule; Claim of Right Doctrine	Graetz Ch. 2 (pp. 218-221); Graetz Ch. 7 (pp. 679-700); Course Supp. pp. 46-47 (Clark); Course Supp. pp.48-51 (Dobson); Course Supp. pp. 52-53 (Alice Phelan Sullivan); Course Supp. pp. 54-55 (North American Oil); Course Supp. pp. 56 (Lewis)		
12	10	Tuesday, September 15, 2020	What is Income: Discharge of Indebtedness, Effect of Debt on Basis & Amount Realized	Graetz Ch. 2 (pp. 186-211); Read Course Supp. pp.32-35 (Crane); Read Course Supp. pp.36-37 (Rev. Rul. 91-31); Read Course Supp. pp.38-39 (Rev. Rul. 90-16); Read Course Supp. pp. 40-45 (Estate of Levine)		
13	11	Wednesday, September 16, 2020	What is Income: Discharge of Indebtedness, Effect of Debt on Basis & Amount Realized (continued)	Graetz Ch. 2 (pp. 186-218); Read Course Supp. pp.32-35 (Crane); Read Course Supp. pp.36-37 (Rev. Rul. 91-31); Read Course Supp. pp.38-39 (Rev. Rul. 90-16); Read Course Supp. pp. 40-45 (Estate of Levine)		
14	12	Thursday, September 17, 2020	Finish Claim of Right Discussion; Begin Personal Injury Damages and Tax-Exempt Interest	Graetz Ch. 2 (pp. 221-231); Course Supp. p.57 (NFL)		
15	13	Tuesday, September 22, 2020	Deductions: Business Expenses	Finish Graetz Ch. 2 (pp. 221-231); Graetz Ch. 3 (pp. 233-242)		
16	14	Wednesday, September 23, 2020	Deductions: Business Expenses	Graetz Ch. 3 (pp. 233-270); Course Supp. pp.58-64 (Rev. Rul. 2012-25)		
17	15	Thursday, September 24, 2020	Deductions: Business Expenses	Continue Graetz Ch. 3 (pp. 233-270); Course Supp. pp.58-64 (Rev. Rul. 2012-25); Start Graetz Ch. 3 (pp. 270-295)		
18	16	Tuesday, September 29, 2020	Deductions: Business vs. Personal Expenses, Travel Expenses	Graetz Ch. 3 (pp. 270-295); Course Supp. pp.65-68 (<i>Flowers</i>); Course Supp. pp.69-71 (<i>Correll</i>); Course Supp. p.72 (Rev. Rul. 99-7)		
19	17	Wednesday, September 30, 2020	Deductions: Business Meals, Home Office	Graetz Ch. 3 (pp. 295-309); Course Supp. pp.73-75 (Rev. Rul. 94-24)		
20	18	Thursday, October 1, 2020	Deductions: Capitalization, Repair	Graetz Ch. 3 (pp. 309-334); Course Supp. pp.76-78 (<i>Mt. Morris Drive-In</i>); Course Supp. pp.79-80 (<i>Midland Empire</i>); Course Supp. pp.81-85 (Rev. Rul. 2001-4); Course Supp. pp.86-89 (<i>Idaho Power</i>)		
21	19	Tuesday, October 6, 2020	Deductions: Capitalization versus Personal, Capital Recovery	Graetz Ch. 3 (pp. 334-355)		
22	20	Wednesday, October 7, 2020	Deductions: Interest, Losses (In general), Losses (Personal vs. Business)	Graetz Ch. 3 (pp. 355-392); Course Supp. pp.90-93 (<i>Nickerson</i>); Course Supp. pp.94-96 (<i>Plunkett</i>)		
23	21	Thursday, October 8, 2020	Deductions: Casualty Losses, Tax Shelters, Bad Debts, Personal Deductions	Graetz Ch. 3 (pp. 392-447)		
24	22	Tuesday, October 13, 2020	Deductions: Personal Itemized Deductions (Taxes & Charitable Contributions)	Graetz Ch. 3 (pp. 447-472); Course Supp. pp.97-99 (<i>Ottawa Silica</i>); Course Supp. pp.100 (<i>Lombardo</i>); Skip Graetz pp. 472- 483 (<i>Bob Jones Univ.</i>)		
25	23	Wednesday, October 14, 2020	Deductions: Personal Itemized Deductions (Medical)	Graetz Ch. 3 (pp. 483-493); Course Supp. p.101 (<i>Taylor</i>); Start Graetz Ch. 4 (pp. 495-507)		
26	24	Thursday, October 15, 2020	Whose Income: Taxation of Family, Separation & Divorce	Continue Graetz Ch.4 (pp. 495-518); Course Supp. pp.102-103 (Pittsburgh Princess article)		
27	25	Tuesday, October 20, 2020	Whose Income: Assignment of Income, Using Entities	Graetz Ch. 4 (pp.518-558); Course Supp. pp.104-106 (<i>Estate of Stranahan</i>); Course Supp. pp.107-108 (<i>Heim v. Fitzpatrick</i>)		
28	26	Wednesday, October 21, 2020	Whose Income: Assignment of Income, Using Entities	Finish Graetz Ch. 4 (pp.531-558); Course Supp. pp.104-106 (<i>Estate of Stranahan</i>); Course Supp. pp.107-108 (<i>Heim v. Fitzpatrick</i>)		
29	27	Thursday, October 22, 2020	Capital Gains & Losses: Mechanics, Definition	Graetz Ch. 5 (pp.559-589)		
30	28	Tuesday, October 27, 2020	Capital Gains & Losses: Statutory Framework	Graetz Ch.5 (pp. 589-607); Course Supp. pp.109-118 (<i>Clay Brown</i>)		
31	29	Wednesday, October 28, 2020	Capital Gains & Losses: Judicial Gloss	Graetz Ch. 5 (pp. 607-622); Re-Read Hort (Graetz Ch. 2 at p. 146); Course Supp. pp.119-121 (<i>Gillette Motor Transport</i>); Course Supp. pp.122-131 (<i>Ferrer</i>)		
32	30	Thursday, October 29, 2020	Capital Gains & Losses: Prior Transactions, What is a Sale?	Graetz Ch. 5 (pp. 622-640); Course Supp. pp. 132-134 (<i>Arrowsmith</i>); Course Supp. pp.135 (<i>Merchants National Bank</i>)		
33	31	Tuesday, November 3, 2020	Nonrecognition of Gains & Losses	Graetz Ch. 5 (pp. 641-653); Course Supp. pp. 136-139 (<i>Alderson</i>); Course Supp. pp. 140-142 (<i>Jordan Marsh</i>)		
34	32	Wednesday, November 4, 2020	When is it Income: Cash Method of Accounting	Graetz Ch. 7 (p. 701-720)		
35	33	Thursday, November 5, 2020	When is it Income: Accrual Method of Accounting	Graetz Ch. 7 (pp. 720-751)		
36	34	Tuesday, November 10, 2020	When is it Income: Accrual Method of Accounting	Graetz Ch. 7 (pp. 720-751) (cont)		
37	35	Wednesday, November 11, 2020	When is it Income: Installment Method	Graetz Ch. 7 (pp. 751-766); Course Supp. pp. 143-155 (Installment Method)		
38	36	Thursday, November 12, 2020	When is it Income: Time Value of Money	Graetz Ch. 7 (pp. 751-766)		
39	37	Tuesday, November 17, 2020	When is it Income: Change of Accounting Method	Graetz Ch. 7 (pp. 751-766); Course Supp. pp. 156-181		
40	38	Wednesday, November 18, 2020	Deferred Compensation	Graetz Ch. 6 (pp. 655-678)		
41	39	Thursday, November 19, 2020	Deferred Compensation	Graetz Ch. 6 (pp. 655-678)		
42	40	Tuesday, November 24, 2020	Open			
43		Wednesday, November 25, 2020	Holiday-- Thanksgiving			
44		Thursday, November 26, 2020	Holiday-- Thanksgiving			
45	41	Tuesday, December 1, 2020	Open (Virtual Attendance Only)			
46	42	Wednesday, December 2, 2020	Review Session (Virtual Attendance Only)			
47		Tuesday, December 15, 2020	Exam (9 a.m. - 1 p.m.)			