TACKLING THE MBE AND MPT

Strategies for Taking the Multistate Bar Exam and Multistate Performance Test

MBE Test Format

- Given in all states except LA
- 200 Questions – one full day of testing
  - 100 Questions in 3 hour morning session
  - 100 Questions in 3 hour afternoon session
- Mixed subject order
- Average 1.8 minutes per question
- 190 questions are scored, 10 are unscored trial questions

Subjects Covered

- Civil Procedure (27 Qs)
- Contracts and Remedies (28 Qs)
- Constitutional Law (27 Qs)
- Criminal Law and Procedure (27 Qs)
- Federal Rules of Evidence (27 Qs)
- Real Property (27 Qs)
- Torts (27 Qs)

Scaled Scoring

- NCBE scales scores to equalize with prior exam administrations; raw scores from previous exams are not comparable.

- When studying, you can add 10-20 points onto your raw score to estimate a scaled score; max scaled score in TX is 200 pts.

- How the MBE fits into the Texas bar score

- The average MBE scaled score in Texas for the July 2009 exam was 145.

Sample Evidence question

- A defendant was on trial for nighttime breaking and entering of a warehouse. The warehouse owner had set up a camera to take infrared pictures of any intruders. After an expert established the reliability of infrared photography, the prosecutor offered the authenticated infrared picture of the intruder to show similarities to the defendant. Is the infrared picture admissible?

  A. Yes, provided an expert witness points out to the jury the similarities between the person in the picture and the defendant

  B. Yes, allowing the jury to compare the person in the picture to the defendant

  C. No, because there is no eyewitness available to authenticate the picture

  D. No, because infrared photography deprives a defendant of the right to confront witnesses

Approach to MBE Review

- Review and relearn the black letter law via prep class or self study, then focus on practice questions

- You can learn while you practice, if you do it correctly – quality over quantity

- Constantly evaluate WHY you're getting answers wrong and right. Use tracking sheets like the one provided to monitor your progress.
  - Reading comprehension
  - Didn't know rule at all
  - Didn't know rule well enough to identify nuances
  - Knew rule, but misapplied because of sympathetic facts/personal morals
  - Added facts / assumed facts not present

MBE Practice Strategy – How Many?

- Target practice questions for success on the MBE is 2400 +

- Pace of 34 Q per day average
  - 10 weeks/ 7 days week   2380
  - 10 weeks/ 6 days week   2040
  - 12 weeks/ 7 days week   2856
  - 12 weeks/ 6 days week   2448

Practice Pacing Chart

# Practice Questions	Target Practice Time
25	45 minutes
34	1 hour
50	1 1/2 hours
75	2 hours 15 minutes
100	3 hours

Answering Questions: the MBE Focus

- Apply legal principles to factual situations in a dispassionate manner
- Tests rule details, not broad concepts

  - Outer fringes of a rule element

  - Nuances of law

  - Sub-rules, fine points of law
- Ability to do the analysis quickly

Approach to MBE Questions: Six Steps

1. Read the call of the question first
2. Read the fact pattern
3. Determine central issue
4. Identify applicable rule if possible
5. Reach a conclusion, without looking at the answer choices
6. Consider all answer choices – try to fill in the gap between your conclusion and the answers given – and select the best answer

Step 1: Read the Call of the Question First

- Identifies area of law
- May identify point of view you must adopt (best defense or claim, etc.)
- Will provide context as fact pattern is read

Example: Call of the Question

- Call of the question:

"If Pam brings an action against Dottie to recover for her emotional distress, is she likely to prevail?"

  - What do you know?
    - Torts -- IIED question.

Step 2: Read the Fact Pattern

- Actively engage (use the pencil)
- Pay attention to seemingly meaningless details about people
- Have no sympathy for "MBE people"
- Make no assumptions (no outside knowledge)

Example: Fact Pattern

"When Dottie learned that the boyfriend of her roommate, Pam, had a motorcycle, she advised Pam that they should both wear helmets when riding. Pam responded that they wouldn't wear helmets because they were to restricting. Dottie, whose brother died in a motorcycle accident because he was not wearing a helmet, wanted to impress upon Pam how important helmets are. While Pam was at work, Dottie left her a <u>voice mail that her boyfriend had a serious head injury from a motorcycle accident and was on life support</u>. Pam was <u>very upset when she got the message</u> and immediately went to the hospital. When she discovered that her boyfriend was not there, she became <u>even more upset</u>.

- You're looking for IIED elements. Underline them as you see them.

Step 3: Determine the Central Issue

- Identify the particular legal issues raised by the fact pattern – especially when you didn't get much from the call of the question (i.e. "Who is likely to prevail in court?")
- Ask yourself:

    What's the point?

    Which facts give rise to a dispute?

    What legal principles are involved?

Example: Central Issue

- Do the facts provided satisfy the elements of intentional infliction of emotional distress?

Step 4: Identify the Applicable Rule (if possible)

- Decide which rule best resolves the central issue before looking at the answer choices

Example: Applicable Rule:

- IIED requires:
  1. D = extreme and outrageous conduct
  2. Intent to cause ED or recklessness as to effect of D's conduct
  3. Causation
  4. Damages = severe emotional distress

Step 5: Reach a Conclusion

- Decide an answer to the prompt before looking at the answer selecitons

Example: Reach a conclusion:

- IIED:
  1. Outrageous and extreme?
  2. Intent or recklessness?
  3. Causation?
  4. Damages?

Is Pam likely to prevail in the suit?

Step 6: Consider all answer choices and select the best answer

- Fill in the gap between your answer and the choices given
- Read all available answer choices before selecting the best one
- Consider how any information added to the answer choice affects the outcome, paying special attention to modifiers:
  - If
  - Because

Step 6: Continued

- Eliminate any answer choice that:
  - Applies the wrong rule/ incorrect legal standard
  - Misstates the facts
  - Relies on faulty legal reasoning
- Between 2 correct answers, the more precise/ effective answer choice is better
  - More complete statement of applicable rule
  - Better covers the central issues raised

Answer choices:

a) Yes, if Pam suffered physical injury from her distress

b) Yes, if Dottie knew it was likely that Pam would suffer severe emotional distress.

c) No, unless Dottie's purpose was to cause Pam severe emotional distress

d) No, because Pam and her boyfriend are not related.

Exam Day Strategy

- Follow the six steps.
- Make sure to have a silent timer with you to keep track of your pacing.
- No penalty for guessing – answer all questions.
- Don't skip around.

Mock MBE

- Sign up to take a shortened mock MBE on April 3, at 9:30 am.
- All answers will be scored and returned to you.

THE MPT CAN BE YOUR BEST FRIEND

MPT Overview

- The Format
  - 90 minutes
  - You have:
    - an assignment memo (sometimes including an example of the work product);
    - the facts of the case (the "File"); and
    - the law of the fictional land (the "Library").
  - Closed universe

MPT Overview, cont.

- The Skills:
  - Reading Comprehension
  - Organization
  - Communication
  - Ability to Follow Directions
- The Purpose:
  - To allow you to demonstrate your use of "fundamental lawyering skills in a realistic situation."
  - The MPT evaluates your "ability to complete a task that a beginning lawer should be able to accomplish."

The Steps

- Read the Instruction Sheet before the exam
- Read the Task Memo
- Read the Library
- Read the File
- Outline your answer
- Write your answer

Writing the MPT

- Make sure to FOLLOW INSTRUCTIONS.
  - Adopt the correct tone and format
- Manage your time effectively – you should start writing at 45 minutes.
- When reading the File and Library, be an active reader. Write all over it.
- Isolate the overarching rule; it may be statute or case based. You may need to synthesize it from multiple sources.
  - Components of the rule can serve as your structure.

Writing the MPT, cont.

- Remember to include citations to the relevant law.
- Just like law school exams, your job is to spot the issue, state the applicable law, analyze how the rule applies to your facts, and state a conclusion.
- Use headings, even if the assignment doesn't specifically ask for them.

MPT Tips

- Make points briefly; don't worry about eloquence
- Don't forget to note whether a case is controlling or merely persuasive
- Need to address both favorable and unfavorable facts
- Note facts that are unreliable (e.g., witness statements)
- Keep your outline short and to the point
- Practice actual MPTs

Selected sources for this presentation:

- Mary Basick, The MBE Exam: Strategies for Improving Performance on the MBE, as part of Bar Support Programs: Form, Content, & Collaborations, Southwestern Law School (September 19, 2008).

- DENISE RIEBE & MICHAEL HUNTER SCHWARTZ, PASS THE BAR! 125-140 (2006).

- BARBRI BAR REVIEW, SIMULATED MBE (2007).

- SUZANNE DARROW-KLEINHAUS, THE BAR EXAM (2nd ed. 2009).

- My own marathon experience taking two separate MBEs and MPTs.