

# Tackling the MBE

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Strategies for Taking the  
Multistate Bar Exam

# Approach to MBE Review

- Review and relearn the black letter law via prep class and 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. Just doing 30 questions per day won't help; you need to analyze your answers. 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

# 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

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- Apply legal principles to factual situations in a dispassionate manner
  - Don't fall for the poor, pitiful MBE people.
- 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

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1. Read the call of the question first
2. Read the fact pattern carefully
  - Pay special attentions to seemingly meaningless details
3. Determine central issue and identify the applicable rule
4. Reach a general conclusion, without looking at the answer choices
5. Consider all answer choices – try to fill in the gap between your conclusion and the answers given – and select the best answer. Reread the call before marking your answer.
  - Your ability to recognize bad answer choices is one of your most valuable analytical skills

# Step 1: Read the Call of the Question First

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- 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

# A note about the steps

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- The more you do follow a strategy, the quicker you become. Don't worry if it seems like a lot to remember to do right now; you'll get faster!

# Example: Call of the Question

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- 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

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

# Example: Fact Pattern

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“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 too 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 voice mail that her boyfriend had a serious head injury from a motorcycle accident and was on life support. Pam was very upset when she got the message and immediately went to the hospital. When she discovered that her boyfriend was not there, she became even more upset.

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

## Step 3: Determine the Central Issue

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- 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

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

## Step 4: Identify the Applicable Rule (if possible)

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

# Example: Applicable Rule:

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- 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

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

# Example:

## Reach a conclusion

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- 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

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- 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
  - Unless

# Step 6: Continued

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- 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:

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- a) Yes, if Pam suffered physical injury from her distress
  - Physical injury is not necessary. Misstatement of law.
- b) Yes, if Dottie knew it was likely that Pam would suffer severe emotional distress.
  - YES
- c) No, unless Dottie's purpose was to cause Pam severe emotional distress
  - Misstates rule. Intent not required. Can be reckless.
- d) No, because Pam and her boyfriend are not related.
  - Misapplies facts and rule. Applies wrong rule 1. Physical harm to a person not required. 2. Family member not required – that's negligent infliction.

# Another example

Dutton, disappointed by his 8 year old son's failure to do well in school, began systemically depriving the child of food during summer vacation. Although his son became seriously ill from the malnutrition, Dutton failed to call a doctor. He believed that as a parent, he had the sole right to determine whether the child was fed or received medical treatment. Eventually, the child died. An autopsy disclosed the child had suffered agonizingly as a result of the starvation, that a physician's aid would have alleviated the suffering, and that although the child would have died in a few months from malnutrition, the actual cause of death was an untreatable form of cancer.

The father was prosecuted for murder, defined in the jurisdiction as “unlawful killing of a human being with malice aforethought.”  
The father should be:

# Example answers.

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- (A) Acquitted, because of the defendant's good faith belief concerning parental rights in supervising children.
- Makes up law. Wrong because his beliefs regarding starving a child are irrelevant. If the child had died from malnutrition, his "beliefs" would still be irrelevant.
- (B) Acquitted, because summoning the physician or feeding the child would not have prevented the child's death from cancer.
- Correct. He would have to be acquitted of murder, because his actions did not cause the child's death. Consider, however, could the DA file neglect and abuse charges against Dutton?
- (C) Convicted, because the father's treatment of his son showed a reckless indifference to the value of life.
- Misapplies the facts. The child did not die from reckless indifference.
- (D) Convicted, because the child would have died from malnutrition had he not been afflicted with cancer.
- Wrong because the child did not actually die from malnutrition.

# Exam Day Strategy

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- Follow the six steps.
- Watch the clock – stay on track.
- No penalty for guessing – answer all questions.
- Don't skip around. A question won't be any easier if you leave it to the end when you're exhausted. Pick an answer choice and come back to it if you have time.

# Selected sources :

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- 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* (2<sup>nd</sup> ed. 2009).
- STEVEN L. EMANUEL, *STRATEGIES AND TACTICS FOR THE MBE* (5<sup>th</sup> ed. 2013).
- My own marathon experience taking two separate MBE's.