PRE-BAR: TACKLING THE MBE

Strategies for Taking the Multistate Bar Exam

Reminder: Format

- All 1L subjects -- Con Law, Civ Pro, Contracts, Criminal Law (& Procedure), Property, Torts

- Evidence

- 200 multiple choice questions

- 3 hours for 100 questions in AM, again in PM

- 50% of UBE score, 40% of TX score

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.

- Start with untimed, open book practice

Where the magic is:

- Constantly evaluate WHY you're getting answers wrong **and** right.

    - Misread question

    - Didn't know law

    - Misapplied the law

    - Didn't know rule well enough to identify nuances

    - 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

■ 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: FIve Steps

1. **Read the call** of the question first

2. **Read the fact pattern** carefully
   - Pay special attention 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

A note about the steps

- 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!

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:

"Should the court uphold the dress code?"

     – *What do you know?*

         ■ Has to be Con Law.

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

Example: Fact Pattern

In order to foster an environment conducive to learning, a school board enacted a dress code that prohibited **all public high school** students from wearing in school shorts cut above the knee. Because **female students** at the school considered it unfashionable to wear shorts cut at or below the knee, they no longer wore shorts to school. On the other hand, male students at the school regularly wore shorts cut at or below the knee because they considered these shorts to be fashionable.

Female students sued to challenge the constitutionality of the dress code on the ground that it **denied them the equal protection** of the laws.

Should the court uphold the dress code?

Step 3: Determine the Central Issue and the Applicable Rule

■ 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?")

 – *Ask yourself:*

  What's the point?

  Which facts give rise to a dispute?

  What legal principles are involved?

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

Example: Central Issue and Applicable Rule

ISSUE

- Individual rights. Equal Protection. What's the level of scrutiny here and does the contested law pass?

    – *We have an equal protection question. Think to the types of scrutiny and what applies here.*

RULE

- Three levels of scrutiny. You have to determine the correct type of scrutiny to apply here to get the right answer.

- A law must be:

    – ***Rational Basis***

        - **Rationally related to a legitimate government purpose**

    – *Intermediate (discriminating based on sex)*

        - Substantially related to an important government purpose

    – *Strict*

        - Necessary to achieve a compelling state interest

            – *No less restrictive alternative available*

Step 4: Reach a Conclusion

- Decide a general answer to the prompt before looking at the answer selections

Example:
Reach a conclusion

- Rational basis
  - *Is the action rationally related to a legitimate government interest?*

Step 5: 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*
  - *Unless*

Step 5: 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. No, because the dress code is not necessary to further a compelling state interest.

   – *Incorrect. Wrong rule; no strict scrutiny*

B. No, because the dress code is not substantially related to an important state interest.

   – *Incorrect. Wrong rule; no intermediate scrutiny*

C. Yes, because the dress code is narrowly tailored to further an important state interest.

   – *Incorrect. Wrong rule AND misstates the rule. Narrowly tailored is required for strict, not intermediate (important state interest)*

D. Yes, because the dress code is rationally related to a legitimate state interest.

   – *Correct. Legitimate interest in fostering proper educational environment. No facts to suggest that purpose was to discriminate.*

Exam Day Strategy

- Follow the steps.

- Watch the clock – stay on track.

- No penalty for guessing – answer all questions.

- Don't skip around. An 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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