

# EARLY BAR PREP

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SKILLS

# Uniform Bar Exam (given in TX)

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## Day One

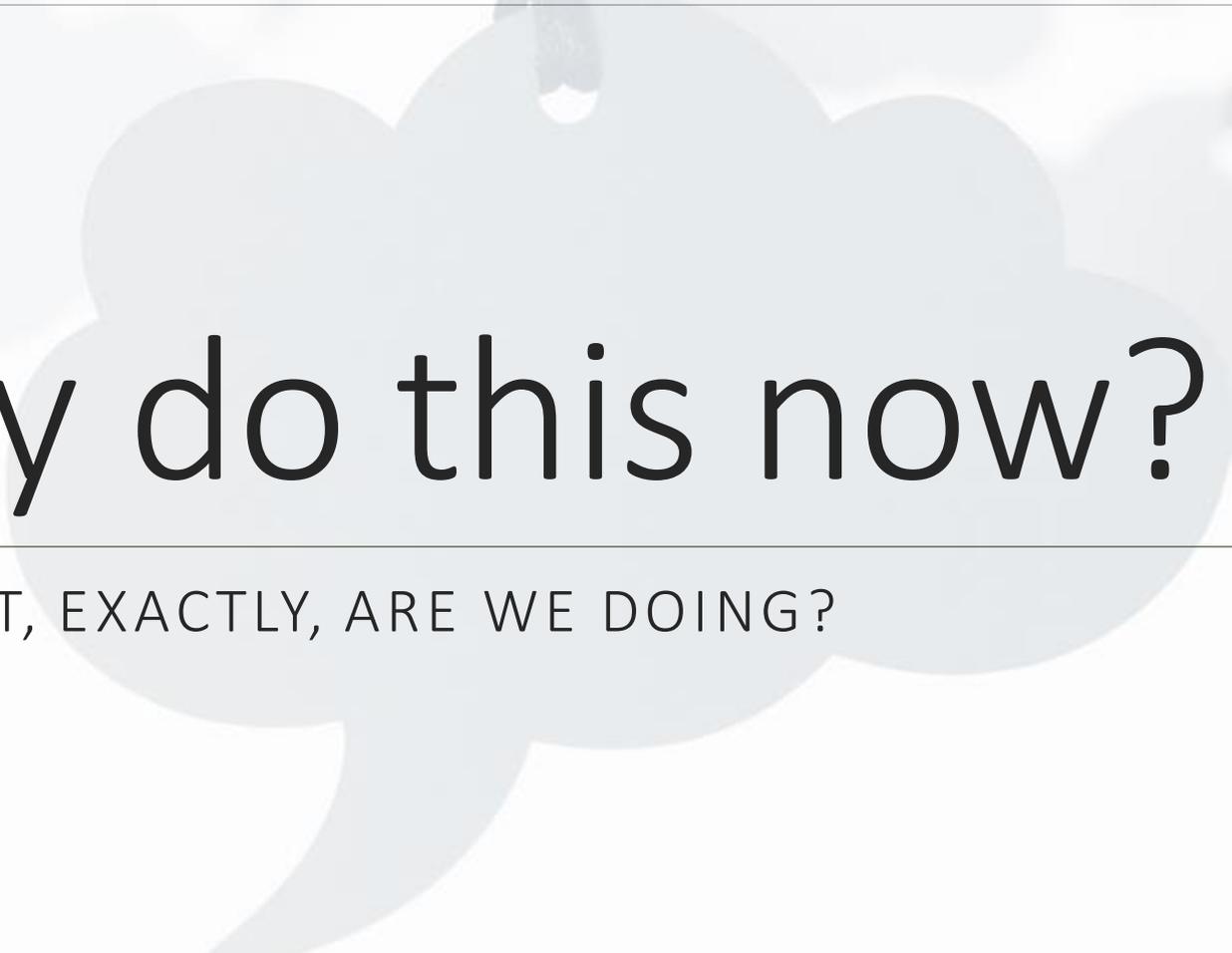
- Two 90 minute Multistate Performance Tests
- MEE – Multistate Essay Exam - 6 30-minute mixed subject essays
  - All MBE subjects + Wills, Family Law, BA, Secured Credit, Conflict of Laws
  - You manage your time; **ONLY** spend 30 minutes on any given essay

## Day Two

- Multistate Bar Exam – two sessions, three hours each.
- All multiple choice
- All 1L subjects + Evidence + Crim Pro

**Commercial bar prep course is essential.**

\*California: Two days – Five 1 hour essays, one CPT, MBE



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Why do this now?

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AND WHAT, EXACTLY, ARE WE DOING?



# Why bar essays are different

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Purpose



There **is** a right answer, but you can get points even with the wrong conclusion.



More specific, concrete and concise than the typical law school exam.



Multiple subjects can be in one essay; but tend to be focused in one area

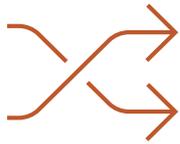
# What do bar graders want to see you do?

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1. Spot the issue – find the legal problem.
2. Material v. immaterial facts.
3. Demonstrate understanding of the fundamental legal principles relevant to the probable answer
4. Apply relevant legal principles to the facts provided.
5. Organize your answer and make it easy to read.

# What makes a bad answer?

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Poor organization



Important issues not  
identified and analyzed



Analysis doesn't  
answer the question

# Answering a bar essay question

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1. Read the call of the question
2. Read the question – circling important items
3. Re-read the call
4. Outline your answer
5. Write your answer
6. Re-read the call. Did you answer it?

# Content of a bar essay

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Use the same legal analysis methods you learned in law school

Determinative facts should take center stage

- The graders know the facts. They don't need a recitation.

Grammar, complete sentences and paragraphs matter

- Be precise and concise

Use headings

- If given multiple prompts, label your answers and answer in the order asked.

Discuss counterarguments where appropriate.

Follow the same process for each answer. Develop a template.

# Content of a bar essay

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## CRAC

- Conclusion – Be explicit. Begin with, “Yes, ...” or “No, ...”
- Rule – State the applicable rule. Give the appropriate statute if you know it. “As a general rule...” or “Under the UCC...”
- Analysis – Apply rules to relevant fact. “Here, ...” or “In this case, ...” or “Because.”.
- Conclusion – Repeat your explicit conclusion. “In sum, ...” or “Therefore...”.

## ■ CIRAC

- You’ll often be encouraged to include an issue statement. Some students find that it helps them focus their answer. Make sure you use facts from the question.
  - Bad: The issue is whether a life estate was created.
  - Good: The issue is whether the phrase “until she dies” created a life estate for Donna.

# What to NOT put in your answer

1. Avoid lengthy discussions of law
  - No brain dumps
  - They spend an average of two minutes reading your answer.
2. Do not assume any facts, unless the call directs you to do so.

## TORTS QUESTION

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A boy lives in a northern state where three to four feet of snow typically blankets the ground throughout the winter, creating excellent conditions for snowmobiling. The boy is an experienced snowmobiler and a member of a club that maintains local snowmobile trails by clearing them of rocks, stumps, and fallen tree limbs that could cause an accident when buried under the snow. In January, the boy received a snowmobile as a present on his 12th birthday. The following Sunday, the boy took his friend, age 10, out on the boy's new snowmobile, which was capable of speeds up to 60 miles per hour. The friend had never been snowmobiling before.

The boy and his friend went snowmobiling on a designated and marked snowmobile trail that follows the perimeter of a rocky, forested state park near the friend's home. The trail adjoins forested property owned by a private landowner. Neither the boy nor his friend had previously used this trail.

The landowner's property is crossed by a private logging trail that intersects the snowmobile trail. The logging trail is not marked or maintained for snowmobiling, and access to it is blocked by a chain approximately 30 inches above ground level on which a "No Trespassing" sign is displayed. However, on the day in question, both the chain and the sign were covered by snow.

On impulse, the friend, who was driving the snowmobile, turned the snowmobile off the designated snowmobile trail and onto the logging trail. The snowmobile immediately struck the submerged chain and crashed. Both the boy and the friend were thrown from the snowmobile and injured. As a result of the accident, the snowmobile was inoperable.

About an hour after the accident, a woman saw the boy and his friend as she was snowmobiling on the snowmobile trail. After the woman returned to her car, she called 911, reported the accident and its location, and then went home. Emergency personnel did not reach the boy and his friend for two hours after the woman's departure. No one other than the woman passed the accident site before emergency personnel arrived.

As a result of the accident, the boy suffered several broken bones and also suffered injuries from frostbite. These frostbite injuries could have been avoided had the boy been rescued earlier.

The boy has brought a tort action against the friend, the landowner, and the woman.

1. Could a jury properly find the friend liable to the boy for his injuries? Explain.
2. Could a jury properly find the landowner liable to the boy for his injuries? Explain.
3. Could a jury properly find the woman liable to the boy for his injuries? Explain.



MINNESOTA BAR EXAMINATION  
JULY 2015  
REPRESENTATIVE GOOD ANSWER  
MEE 1

C 1. The jury could find the friend liable for negligence because he was engaged in an adult activity and acted negligently in his operation of the snowmobile.

I The issue is whether the friend is liable in negligence, and given his age, what standard of care he will be held to. Negligence consists of four elements: duty, breach, cause, damages. A person engaging in activity owes a duty to foreseeable plaintiffs, and he must act as a reasonably prudent person under similar circumstances. It is also worth noting that a minority of jurisdictions would presume he is not negligent because he is under the age of 14. Here, the child is merely ten years old and generally children are held to a standard of care of persons of similar age, education, experience and background. The friend is probably not liable for breach if this is the case because he had never driven a snowmobile before, and ten-year-olds might have difficulty knowing exactly which paths to drive on.

R However, there is an exception to the rule of the standard of care for children when children are engaging in an adult activity. This is likely the case here because the child is driving a motorized vehicle that reaches speeds of 60 miles per hour. This is generally not a sport for children, and is reserved for adults. Thus, the friend will be held to an adult standard of care, and must act as a reasonably prudent snowmobile driver in conditions in which there are high snow levels that may contain traps hidden underneath.

A Under the standard of care of a reasonable snowmobile driver, the friend likely breached the duty when he moved off of a clearly marked snowmobile trail and onto a trail that is not marked or maintained for snowmobiling. Driving on trails not maintained for snowmobiling when there is deep snow is surely a breach of this standard of care.

R As to cause, there usually must be cause in fact but-for and proximate cause. But-for friend turning off of the maintained trail, the boy would not have been hurt and the snowmobile would not have crashed. Proximate cause is a limitation on liability, and a person is liable for all injuries within the risk of the activity involved. Here, the direct cause of the boy's breach was to crash into the chain, and these injuries, crashing a snowmobile, are exactly the type within the risk of breaching the duty of care when driving a snowmobile.

C As to damages, personal injury is certainly compensable and will suffice, including those injuries unexpected but foreseeable. Here, the boy had broken bones and also the frostbite, which is foreseeable as to cause noted above, because it is foreseeable that a crash in a rural area could cause persons to be stranded.

It should also be noted that in a comparative negligence state the boy is likely negligent as well, by entrusting his 10-year-old friend with no experience snowmobiling to drive him on the snowmobile, especially given the high rate of speed it can travel, and the fact that the boy knew the risks involved given his experience, even as a 12-year-old. If under a traditional state, contributory negligence will result in no recovery. In a modified comparative state, so long as the boy was no more than 49-50% negligent, he may recover. If a pure comparative state, the boy would recover less his percentage of fault, no matter the amount of fault so long as he was not deemed 100% at fault. It should be further noted that the boy's negligence will eliminate or cut down his reward in question 1, 2, 3, according to the state law and a jury's eventual determination as to the boy's fault.

C 2. A jury could properly find the landowner liable for the boy's injuries. A landowner under the common law owes duties to person on his land in accordance with the nature of the person on the land, and if injured by a static condition. Generally, persons are classified as trespassers, known or expected trespassers, licensees, and invitees. The boy is likely a known or expected trespasser because it seems likely that the landowner knew of the state park nearby, and his land is adjacent thereto, and further because he acknowledged it when warning "no trespassers." The boy did not have permission to enter the land, and therefore was a trespasser that the landowner could foresee.

A A known trespasser must be warned of all known artificial conditions that cause danger to the trespassers. Here, that would amount to a warning of the warning sign. Clearly, the landowner did not have this, and he would be liable under this theory. Landowner indeed created the artificial hazard himself, failed to warn, and he is liable to the boy.

It should be noted that if the boy is deemed a strict trespasser, not known or expected, the landowner breached no duty to the boy and his friend.

As noted, there may be preclusion or an offset of damages in accordance with the boy's negligence as noted in answer 1.

C 3. A jury would probably not find the woman guilty of negligence for failure to rescue. The same elements of negligence from above apply. Generally, there is no duty to rescue and therefore a person is not liable for failure to rescue. However, when one undertakes the duty to rescue, that person must act reasonably. Here, the woman saw the boy and her friend and could have done nothing, however, when she called 911 she at least arguably took on the duty of rescue. Because she failed to take them in, or help them in any other manner, she may be held liable as undertaking a duty but leaving two children out in the cold. It could also be argued that she did not undertake a duty to rescue because she merely called and reported, which is far from attempting to retrieve the children. This is a close call, but because it seems that the woman made reasonable actions and at least attempted to help, a jury would likely not find her liable of any form of negligence.

As noted, there may be preclusion or an offset of damages in accordance with the boy's negligence as noted in answer 1.

# What I grade based on:

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Practically: Neat/legible. Paragraphs clearly identified.

Is the writing style clear and concise?

Writer answers the call of the question.

Overall structure makes sense.

Use of headings and appropriate transitional phrases to guide the reader through the answer.

Begins with an explicit conclusion.

Correctly identifies the issues raised.

Explicit and accurate explanation of the applicable law.

CRAC (CIRAC) format.

Law properly applied to the specific factual scenario in the question asked, dealing specifically with the determinative facts in the question.

The essay and any subparts end with an express conclusion.