

THE MBE™

MULTISTATE BAR EXAMINATION™

2010 *Information* *Booklet*

February 24, 2010
July 28, 2010



NATIONAL CONFERENCE OF BAR EXAMINERS

NOTE: The information in this booklet is believed to be correct at the time of publication. Since rules and policies of jurisdictions change, examinees are advised to consult the jurisdictions directly for the most current information.

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NOTICE TO EXAMINEES

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The following conduct is prohibited during the examination:

- Bringing unauthorized devices (whether turned on or off) or unauthorized materials into the testing room, including, but not limited to, calculators, cameras, cell phones, pagers, personal digital assistants, text messaging devices, audio or video recording devices, scanners, language translators, and written materials;
- Bringing test materials, unauthorized devices, or unauthorized materials out of the testing room during any scheduled or unscheduled break or at the conclusion of the testing period;
- Copying answers from another examinee or sharing answers with another examinee; and
- Continuing to work after a supervisor has instructed examinees to stop writing.

The following conduct is prohibited after the examination:

- Sharing the substance or details of any test question, including the question's fact pattern, option choices, or answer, in whole or in part, with anyone via electronic (including e-mail, blogs, and online social and professional networking sites), telephonic, written, oral, or other means;
- Reproducing, paraphrasing, summarizing, or describing to any other person any test content from memory after leaving the testing room; and
- Forwarding, re-posting, hosting, or otherwise advancing the distribution of exam content, on the Internet or via other means, that others have disclosed.

Unauthorized disclosure of exam content or engaging in prohibited conduct during the examination could result in some or all of the following penalties:

- Civil liability;
- Criminal penalties;
- Cancellation of the examinee's test scores;
- Denial of the examinee's application to sit for future exams;
- Denial of the examinee's bar application on character and fitness grounds; and
- Disciplinary action by a bar authority if the examinee is already admitted to practice law.

INTRODUCTION

The Multistate Bar Examination

The Multistate Bar Examination (MBE) is developed by the National Conference of Bar Examiners (NCBE). The purpose of the MBE is to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns. The MBE contains 200 multiple-choice questions and is administered by participating jurisdictions on the last Wednesday in February and the last Wednesday in July of each year. The exam is divided into morning and afternoon periods of three hours each, with 100 questions in each period. The exam consists of questions in the following areas: Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts. Subject matter outlines for each area are provided in this booklet and online at **www.ncbex.org/multistate-tests/mbe/**.

Jurisdiction Information

Examinees should contact the jurisdiction where admission is being sought to ascertain whether the MBE is administered as a part of the jurisdiction's bar examination. Each jurisdiction determines its own policy with regard to the relative weight given to the MBE and other scores. To obtain information about bar admission requirements or to apply for admission to the bar, contact the appropriate jurisdiction. Contact information for the jurisdictions can be found online at **www.ncbex.org/bar-admissions/offices/**.

About the National Conference of Bar Examiners

NCBE was formed in 1931 as a not-for-profit corporation. The mission of NCBE is to work with other institutions to develop, maintain, and apply reasonable and uniform standards of knowledge and character for eligibility for admission to the practice of law. NCBE also aims to assist bar admission authorities by developing standardized, high-quality exams for attorney licensure testing, disseminating relevant information concerning admission standards and practice, conducting educational programs for the members and staff of such authorities, and providing other services such as character investigations and psychometric/statistical research.

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Copyright Notice

The Multistate Bar Examination™ (MBE) is owned by the National Conference of Bar Examiners (NCBE) and is a secure exam protected by U.S. copyright laws. NCBE strictly prohibits copying or reproducing any MBE questions or answers, whether via electronic, telephonic, written, oral, or other means, to any party or to any public forum during or after the exam. NCBE will use every legal means available to protect its copyrighted materials. Any unauthorized disclosure of the MBE's contents could result in civil liability, criminal penalties, cancellation of test scores, denial of application to sit for future exams, denial of bar application on character and fitness grounds, and/or disciplinary action by bar authorities.

Accommodations for Persons with Disabilities

An examinee with a documented disability may be eligible for auxiliary aids or services in order to complete the MBE. The standard version of the MBE is printed in 12-point Times New Roman font. The MBE is also available in Braille, and in large-print (18- and 24-point Helvetica font) versions and on CD. All decisions and arrangements for accommodations are made by the jurisdictions, and each jurisdiction has its own formal application and approval process. Examinees seeking accommodations must apply separately to each jurisdiction in which they plan to take the MBE. Contact information for each jurisdiction's bar admissions office can be found online at www.ncbex.org/bar-admissions/offices/.

INSTRUCTIONS TO EXAMINEES

Test Preparation

NCBE produces MBE study aids containing questions that have been retired from use. These study aids can be purchased online at www.ncbex2.org/catalog/. The study aids can also be purchased through the publications order form found at www.ncbex.org, and many of these questions are available through licensees who have obtained NCBE's permission to reproduce copyrighted materials. Actual retired MBE questions always appear with NCBE's copyright acknowledgment.

The MBE Online Practice Exams 1 and 2

The MBE Online Practice Exams 1 and 2 (MBE OPE 1 and OPE 2) are 100-question, annotated online practice exams that use questions drawn from MBEs administered from 1999 to 2006. Purchasing either MBE OPE gives an examinee a subscription for online access to that practice exam, for unlimited trials, expiring one year after the date of purchase. Examinees can take the practice exams timed or untimed and receive feedback on their answers, including annotations and a customized score report designed to help identify strengths and weaknesses in the six MBE subject areas. The practice exams are available only online.

Other Materials

Retired questions drawn from MBEs administered prior to 1999 are available in hard copy as the *Sample MBE*, *Sample MBE II*, and *Sample MBE III*, the last of which is also available for download at www.ncbex.org. These publications include answer keys but do not offer annotations and may contain outdated question formats. Examinees are advised not to use these study aids as substantive preparation for the MBE. Due to changes in the law since the time the questions appeared on an exam, the questions and their keys may no longer be current. NCBE has also made available online a series of retired questions that appeared on MBEs administered between 1972 and 1991. Again, these questions are not recommended for substantive preparation for the exam.

Test Day

What to Bring and What Not to Bring

MBE examinees should bring several No. 2 black lead pencils or mechanical pencils with HB lead to their assigned test center. Each jurisdiction will provide specific information regarding other materials, including appropriate identification, that examinees should bring with them to the test center.

In all events, examinees are not permitted to bring the following items into MBE test centers:

- cell phones
- pagers
- text messaging devices
- portable media players
- personal digital assistants, handheld computers, or wireless e-mail devices
- audio or video recording devices
- cameras, scanners, or other picture-taking devices
- language translators
- radios or tape recorders
- pens or highlighters
- written materials, such as books or notes
- scratch paper
- calculators
- rulers
- backpacks, purses, or briefcases
- hats, earplugs, or headphones
- watches
- alarms

Each jurisdiction will provide specific information regarding other materials that are prohibited in MBE test centers.

Prohibited Behaviors

Test security procedures are designed to ensure that examinees have an equal opportunity to demonstrate their academic achievement and skills, that examinees who do their own work are not unfairly disadvantaged by examinees who do not, and that scores reported for each examinee are valid. The following behaviors are prohibited at MBE test centers:

- attempting to remove test materials or information, including test questions or answers, or any unauthorized items from the testing room during any scheduled or unscheduled break or at the conclusion of the testing period
- looking at another examinee's test booklet or answer sheet
- giving or receiving assistance
- using any device to share or exchange information during the test
- using any unauthorized aids

- creating a disturbance or allowing an alarm, pager, or phone to sound in the testing room
- filling in circles after time has been called

Examinees may not retain any test materials. Pages or covers of test booklets are not to be torn out or separated from the test booklets in any way. Examinees are not permitted to duplicate or record, by copying, photographing, or any other means, any part of the MBE. All test materials, including test booklets and answer sheets, must be returned intact to the test supervisor after testing.

Each jurisdiction will provide specific information regarding other behaviors that may be prohibited. Each jurisdiction will also provide specific instructions regarding restroom procedures, test booklet and answer sheet collection procedures, and dismissal procedures.

Taking the Test

Each of the questions on the MBE is followed by four possible answers. Examinees should choose the best answer from the four stated alternatives. Each question on the MBE is designed to be answered according to generally accepted fundamental legal principles, unless noted otherwise in the question. Examinees should mark only one answer for each question; multiple answers will be scored as incorrect. Since scores are based on the number of questions answered correctly, examinees are advised to answer every question. If a question seems too difficult, examinees are advised to go on to the next one and come back to the skipped question later. Each jurisdiction will provide specific instructions regarding the appropriate marking of answer sheets.

MBE CONTENT

Description of the Examination

The MBE consists of 200 multiple-choice questions, 190 of which are scored. The 10 unscored questions are being evaluated for future use; because these questions are indistinguishable from scored questions, examinees should answer all 200 questions. The 190 scored questions on the MBE are distributed as follows: Constitutional Law (31), Contracts (33), Criminal Law and Procedure (31), Evidence (31), Real Property (31), and Torts (33).

MBE questions are developed by drafting committees composed of recognized experts in the various subject areas. Before a test question is selected for inclusion in the MBE, it undergoes a multistage review process over the course of several years. Besides intensive review by the drafting committee members and testing specialists, each test question is reviewed by other national and state experts. All test questions must successfully pass all reviews before they are included in the MBE.

In the subject matter outlines that follow, all major topics designated by roman numerals are tested on each exam, but not all of the subtopics appear on each exam.

Subject Matter Outlines

Constitutional Law

The terms “Constitution,” “constitutional,” and “unconstitutional” refer to the federal Constitution unless indicated otherwise. Approximately half of the Constitutional Law questions for the MBE will be based on category IV, and approximately half will be based on the remaining categories, I, II, and III.

- I. The nature of judicial review
 - A. Organization and relationship of state and federal courts in a federal system
 - B. Jurisdiction
 - 1. Constitutional basis
 - 2. Congressional power to define and limit
 - 3. The Eleventh Amendment and state sovereign immunity
 - C. Judicial review in operation
 - 1. The “case or controversy” requirement, including the prohibition on advisory opinions, standing, ripeness, and mootness
 - 2. The “adequate and independent state ground”
 - 3. Political questions and justiciability

- II. The separation of powers
 - A. The powers of Congress
 - 1. Commerce, taxing, and spending powers
 - 2. War, defense, and foreign affairs powers
 - 3. Power to enforce the 13th, 14th, and 15th Amendments
 - 4. Other powers
 - B. The powers of the president
 - 1. As chief executive, including the “take care” clause
 - 2. As commander in chief
 - 3. Treaty and foreign affairs powers
 - 4. Appointment and removal of officials
 - C. Federal interbranch relationships
 - 1. Congressional limits on the executive
 - 2. The presentment requirement and the president’s power to veto or to withhold action
 - 3. Non-delegation doctrine
 - 4. Executive, legislative, and judicial immunities
- III. The relation of nation and states in a federal system
 - A. Intergovernmental immunities
 - 1. Federal immunity from state law
 - 2. State immunity from federal law, including the 10th Amendment
 - B. Federalism-based limits on state authority
 - 1. Negative implications of the commerce clause
 - 2. Supremacy clause and preemption
 - 3. Full faith and credit
 - 4. Authorization of otherwise invalid state action
- IV. Individual rights
 - A. State action
 - B. Due process
 - 1. Substantive due process
 - a. Fundamental rights
 - b. Other rights and interests
 - 2. Procedural due process, including personal jurisdiction
 - C. Equal protection
 - 1. Fundamental rights
 - 2. Classifications subject to heightened scrutiny
 - 3. Rational basis review
 - D. Takings
 - E. Other protections, including the privileges and immunities clauses, the contracts clause, unconstitutional conditions, bills of attainder, and ex post facto laws

- F. First Amendment freedoms
 - 1. Freedom of religion and separation of church and state
 - a. Free exercise
 - b. Establishment
 - 2. Freedom of expression
 - a. Content-based regulation of protected expression
 - b. Content-neutral regulation of protected expression
 - c. Regulation of unprotected expression
 - d. Regulation of commercial speech
 - e. Regulation of, or impositions upon, public school students, public employment, licenses, or benefits based upon exercise of expressive or associational rights
 - f. Regulation of expressive conduct
 - g. Prior restraint, vagueness, and overbreadth
 - 3. Freedom of the press
 - 4. Freedom of association

Contracts

Examinees are to assume that Articles 1 and 2 of the Uniform Commercial Code have been adopted and are applicable when appropriate. Examinees should assume that the 2001 proposed amendments to Article 1 have been adopted, but that the 2001 and 2003 proposed amendments to Article 2 have not been adopted. Approximately half of the Contracts questions for each MBE will be based on categories I and IV, and approximately half will be based on the remaining categories, II, III, V, and VI. Approximately one-fourth of the Contracts questions for each MBE will be based on provisions of the Uniform Commercial Code, Articles 1 and 2.

- I. Formation of contracts
 - A. Mutual assent
 - 1. Offer and acceptance
 - 2. Indefiniteness or absence of terms
 - 3. Implied-in-fact contract
 - 4. “Pre-contract” obligations based on reliance
 - B. Consideration
 - 1. Bargain and exchange and substitutes for bargain: “moral obligation,” reliance, and statutory substitutes
 - 2. Modification of contracts: preexisting duties
 - 3. Compromise and settlement of claims

- II. Defenses to enforceability
 - A. Incapacity to contract
 - B. Duress
 - C. Undue influence
 - D. Mistake, misunderstanding
 - E. Fraud, misrepresentation, and nondisclosure
 - F. Illegality, unconscionability, and public policy
 - G. Statute of Frauds
- III. Parol evidence and interpretation
- IV. Performance, breach, and discharge
 - A. Conditions
 - 1. Express
 - 2. Constructive
 - 3. Obligations of good faith and fair dealing in performance and enforcement of contracts
 - 4. Suspension or excuse of conditions by waiver, election, or estoppel
 - 5. Prospective inability to perform: effect on other party
 - B. Impracticability and frustration of purpose
 - C. Discharge of contractual duties
 - D. Express and implied warranties in sale-of-goods contracts
 - E. Substantial and partial breach and anticipatory repudiation
- V. Remedies
 - A. Measure of damages for breach; protecting the expectation interest
 - B. Consequential damages: causation, certainty, and foreseeability
 - C. Liquidated damages and penalties
 - D. Avoidable consequences and mitigation of damages
 - E. Rescission and reformation
 - F. Specific performance; injunction against breach; declaratory judgment
 - G. Restitutionary and reliance recoveries
 - H. Remedial rights of breaching parties
- VI. Third-party rights
 - A. Third-party beneficiaries
 - 1. Intended beneficiaries
 - 2. Incidental beneficiaries
 - 3. Impairment or extinguishment of third-party rights
 - 4. Enforcement by the promisee
 - B. Assignment of rights and delegation of duties

Criminal Law and Procedure

Approximately half of the Criminal Law and Procedure questions for each MBE will be based on category V, and approximately half will be based on the remaining categories, I through IV.

- I. Homicide
 - A. Intended killings
 - 1. Premeditation, deliberation
 - 2. Provocation
 - B. Unintended killings
 - 1. Intent to injure
 - 2. Reckless and negligent killings
 - 3. Felony murder
 - 4. Misdemeanor manslaughter
- II. Other crimes
 - A. Theft
 - 1. Larceny
 - 2. Embezzlement
 - 3. False pretenses
 - B. Receiving stolen goods
 - C. Robbery
 - D. Burglary
 - E. Assault and battery
 - F. Rape; statutory rape
 - G. Kidnapping
 - H. Arson
 - I. Possession offenses
- III. Inchoate crimes; parties
 - A. Inchoate offenses
 - 1. Attempts
 - 2. Conspiracy
 - 3. Solicitation
 - B. Parties to crime
- IV. General principles
 - A. Acts and omissions
 - B. State of mind
 - 1. Required mental state
 - 2. Strict liability
 - 3. Mistake of fact or law
 - C. Responsibility
 - 1. Mental disorder
 - 2. Intoxication
 - D. Causation
 - E. Justification and excuse
 - F. Jurisdiction
- V. Constitutional protection of accused persons
 - A. Arrest, search and seizure
 - B. Confessions and privilege against self-incrimination
 - C. Lineups and other forms of identification
 - D. Right to counsel

- E. Fair trial and guilty pleas
- F. Double jeopardy
- G. Cruel and unusual punishment
- H. Burdens of proof and persuasion

Evidence

All Evidence questions should be answered according to the Federal Rules of Evidence. Approximately one-third of the Evidence questions for each MBE will be based on category I, one-third on category V, and one-third on the remaining categories, II, III, and IV.

- I. Presentation of evidence
 - A. Introduction of evidence
 - 1. Requirement of personal knowledge
 - 2. Refreshing recollection
 - 3. Objections and offers of proof
 - 4. Lay opinions
 - 5. Competency of witnesses
 - 6. Judicial notice
 - 7. Roles of judge and jury
 - 8. Limited admissibility
 - B. Presumptions
 - C. Mode and order
 - 1. Control by court
 - 2. Scope of examination
 - 3. Form of questions
 - 4. Exclusion of witnesses
 - D. Impeachment, contradiction, and rehabilitation
 - 1. Inconsistent statements and conduct
 - 2. Bias and interest
 - 3. Conviction of crime
 - 4. Specific instances of conduct
 - 5. Character for truthfulness
 - 6. Ability to observe, remember, or relate accurately
 - 7. Impeachment of hearsay declarants
 - 8. Rehabilitation of impeached witnesses
 - 9. Contradiction
 - E. Proceedings to which evidence rules apply
- II. Relevancy and reasons for excluding relevant evidence
 - A. Probative value
 - 1. Relevancy
 - 2. Exclusion for unfair prejudice, confusion, or waste of time
 - B. Authentication and identification
 - C. Character and related concepts
 - 1. Admissibility of character
 - 2. Methods of proving character
 - 3. Habit and routine practice

- 4. Other crimes, acts, transactions, and events
 - 5. Prior sexual misconduct of a defendant
 - D. Expert testimony
 - 1. Qualifications of witnesses
 - 2. Bases of testimony
 - 3. Ultimate issue rule
 - 4. Reliability and relevancy
 - 5. Proper subject matter for expert testimony
 - E. Real, demonstrative, and experimental evidence
- III. Privileges and other policy exclusions
 - A. Spousal immunity and marital communications
 - B. Attorney-client and work product
 - C. Physician/psychotherapist-patient
 - D. Self-incrimination
 - E. Other privileges
 - F. Insurance coverage
 - G. Remedial measures
 - H. Compromise, payment of medical expenses, and plea negotiations
 - I. Past sexual conduct of a victim
- IV. Writings, recordings, and photographs
 - A. Requirement of original
 - B. Summaries
 - C. Completeness rule
- V. Hearsay and circumstances of its admissibility
 - A. Definition of hearsay
 - 1. What is hearsay
 - 2. Prior statements by witness
 - 3. Statements attributable to party-opponent
 - 4. Multiple hearsay
 - B. Present sense impressions and excited utterances
 - C. Statements of mental, emotional, or physical condition
 - D. Statements for purposes of medical diagnosis and treatment
 - E. Past recollection recorded
 - F. Business records
 - G. Public records and reports
 - H. Learned treatises
 - I. Former testimony; depositions
 - J. Statements against interest
 - K. Other exceptions to the hearsay rule
 - L. Right to confront witnesses

Real Property

Approximately one-fifth of the Real Property questions on the MBE will be based on each of the categories I–V.

- I. Ownership
 - A. Present estates
 - 1. Fees simple
 - 2. Defeasible fees simple
 - 3. Life estates
 - B. Future interests
 - 1. Reversions
 - 2. Remainders, vested and contingent
 - 3. Executory interests
 - 4. Possibilities of reverter, powers of termination
 - 5. Rules affecting these interests
 - C. Cotenancy
 - 1. Types
 - a. Tenancy in common
 - b. Joint tenancy
 - 2. Severance
 - 3. Partition
 - 4. Relations among cotenants
 - 5. Alienability, descendability, devisability
 - D. The law of landlord and tenant
 - 1. Types of holdings: creation and termination
 - a. Terms for years
 - b. Tenancies at will
 - c. Holdovers and other tenancies at sufferance
 - d. Periodic tenancies
 - 2. Possession and rent
 - 3. Assignment and subletting
 - 4. Termination (surrender, mitigation of damages, and anticipatory breach)
 - 5. Habitability and suitability
 - E. Special problems
 - 1. Rule Against Perpetuities: common law and as modified
 - 2. Alienability, descendability, and devisability
 - 3. Fair housing/discrimination
- II. Rights in land
 - A. Covenants at law and in equity
 - 1. Nature and type
 - 2. Creation
 - 3. Scope
 - 4. Termination

- B. Easements, profits, and licenses
 - 1. Nature and type
 - 2. Methods of creation
 - a. Express
 - b. Implied
 - i. Quasi-use
 - ii. Necessity
 - iii. Plat
 - c. Prescription
 - 3. Scope
 - 4. Termination
 - C. Fixtures (including relevant application of Article 9, UCC)
 - D. Zoning (fundamentals other than regulatory taking)
- III. Contracts
- A. Real estate brokerage
 - B. Creation and construction
 - 1. Statute of frauds and exceptions
 - 2. Essential terms
 - 3. Time for performance
 - 4. Remedies for breach
 - C. Marketability of title
 - D. Equitable conversion (including risk of loss)
 - E. Options and rights of first refusal
 - F. Fitness and suitability
 - G. Merger
- IV. Mortgages/security devices
- A. Types of security devices
 - 1. Mortgages (including deeds of trust)
 - a. In general
 - b. Purchase-money mortgages
 - c. Future-advance mortgages
 - 2. Land contracts
 - 3. Absolute deeds as security
 - B. Some security relationships
 - 1. Necessity and nature of obligation
 - 2. Theories: title, lien, and intermediate
 - 3. Rights and duties prior to foreclosure
 - 4. Right to redeem and clogging equity of redemption
 - C. Transfers by mortgagor
 - 1. Distinguishing “subject to” and “assuming”
 - 2. Rights and obligations of transferor
 - 3. Application of subrogation and suretyship principles
 - 4. Due-on-sale clauses
 - D. Transfers by mortgagee
 - E. Payment, discharges, and defenses

- F. Foreclosure
 - 1. Types
 - 2. Rights of omitted parties
 - 3. Deficiency and surplus
 - 4. Redemption after foreclosure
 - 5. Deed in lieu of foreclosure
- V. Titles
 - A. Adverse possession
 - B. Transfer by deed
 - 1. Warranty and non-warranty deeds (including covenants for title)
 - 2. Necessity for a grantee and other deed requirements
 - 3. Delivery (including escrows)
 - C. Transfer by operation of law and by will
 - 1. In general
 - 2. Ademption
 - 3. Exoneration
 - 4. Lapse
 - 5. Abatement
 - D. Title assurance systems
 - 1. Recording acts (race, notice, and race-notice)
 - a. Indexes
 - b. Chain of title
 - c. Protected parties
 - d. Priorities
 - e. Notice
 - 2. Title insurance
 - E. Special problems
 - 1. After-acquired title (including estoppel by deed)
 - 2. Forged instruments and undelivered deeds
 - 3. Purchase-money mortgages
 - 4. Judgment and tax liens

Torts

The Torts questions should be answered according to principles of general applicability. Examinees are to assume that there is no applicable statute unless otherwise specified; however, survival actions and claims for wrongful death should be assumed to be available where applicable. Examinees should assume that joint and several liability, with pure comparative negligence, is the relevant rule unless otherwise indicated. Approximately half of the Torts questions for the MBE will be based on category II, and approximately half will be based on the remaining categories, I, III, IV, and V.

- I. Intentional torts
 - A. Harms to the person, such as assault, battery, false imprisonment, and infliction of mental

distress; and harms to property interests, such as trespass to land and chattels, and conversion

- B. Defenses to claims for physical harms
 - 1. Consent
 - 2. Privileges and immunities: protection of self and others; protection of property interests; parental discipline; protection of public interests; necessity; incomplete privilege

II. Negligence

- A. The duty question, including failure to act, unforeseeable plaintiffs, and obligations to control the conduct of third parties
- B. The standard of care
 - 1. The reasonably prudent person: including children, physically and mentally impaired individuals, professional people, and other special classes
 - 2. Rules of conduct derived from statutes and custom
- C. Problems relating to proof of fault, including *res ipsa loquitur*
- D. Problems relating to causation
 - 1. But for and substantial causes
 - 2. Harms traceable to multiple causes
 - 3. Questions of apportionment of responsibility among multiple tortfeasors, including joint and several liability
- E. Limitations on liability and special rules of liability
 - 1. Problems relating to “remote” or “unforeseeable” causes, “legal” or “proximate” cause, and “superseding” causes
 - 2. Claims against owners and occupiers of land
 - 3. Claims for mental distress not arising from physical harm; other intangible injuries
 - 4. Claims for pure economic loss
- F. Liability for acts of others
 - 1. Employees and other agents
 - 2. Independent contractors and nondelegable duties
- G. Defenses
 - 1. Contributory fault, including common law contributory negligence and last clear chance, and the various forms of comparative negligence
 - 2. Assumption of risk

- III. Strict liability: claims arising from abnormally dangerous activities; the rule of *Rylands v. Fletcher* and other common law strict liability claims; defenses
- IV. Products liability: claims against manufacturers and others based on defects in manufacture, design, and warning; and defenses
- V. Other torts
 - A. Claims based on nuisance, and defenses
 - B. Claims based on defamation and invasion of privacy, defenses, and constitutional limitations
 - C. Claims based on misrepresentations, and defenses
 - D. Claims based on intentional interference with business relations, and defenses

MBE SCORES

The Scoring Process

After an MBE is administered, the performance of each test question is reviewed and evaluated by content and testing experts. This final review is conducted to ensure that the exam is graded fairly, particularly concerning any questions affected by recent changes in the law.

Once the post-examination review is complete, MBE answer sheets are scanned and scored. Both raw scores and scaled scores are computed for each examinee. A raw score is the number of questions answered correctly. Raw scores from different administrations of the MBE are not comparable, primarily due to differences in the difficulty of the questions from one administration to the next. The statistical process of equating adjusts for variations in the difficulty of the questions, producing scaled scores that represent the same level of performance across all MBE administrations. For instance, if the questions appearing on the July MBE were more difficult than those appearing on the February MBE, then the scaled scores for the July MBE would be adjusted upward to account for this difference. These adjustments ensure that no examinee is unfairly penalized or rewarded for taking a more or less difficult exam.

Score Transfers, Score Releases, and Score Advisories

NCBE offers the following score reporting services: score transfers from one jurisdiction to another, score releases to examinees, and score advisories to examinees. Each jurisdiction decides which of these services, if any, NCBE is authorized to perform for that jurisdiction's examinees. NCBE never transfers or releases scores until after the jurisdiction in question has authorized NCBE to do so and has mailed its score reports.

NCBE performs score reporting services only for scores that are less than seven years old. An examinee must include his or her name and Social Security number on the MBE answer sheet at the time of testing in order to have score information transferred or released. All requests for MBE score reporting services must include the following identifying information: the exact name under which the examinee tested, the jurisdiction in which the testing occurred (or will occur), the month and year that the MBE was (or will be) administered, the examinee's Social Security number and date of birth, and the examinee's applicant number or the seat number assigned to the examinee at the test center (if known). A score reporting services request form is provided in this booklet and online at [**www.ncbex.org/multistate-tests/mbe/services/transfers/**](http://www.ncbex.org/multistate-tests/mbe/services/transfers/). A \$25 fee is required for each score transfer, score release, or score advisory.

Jurisdictions that have authorized NCBE to perform score reporting services are listed on the following page. Since rules and policies of jurisdictions are subject to change, examinees are advised to consult the jurisdictions directly for the most current information.

Concurrent Score Transfers

With proper scheduling and approval by the bar examination boards involved, an examinee may be permitted to take the bar examination in two states over a period of three days. The examinee takes the first jurisdiction's local exam on Tuesday (in the first jurisdiction), the MBE on Wednesday (in either jurisdiction), and the second jurisdiction's local exam on Thursday (in the second jurisdiction). Arrangements to use the MBE score in conjunction with two concurrent bar examinations must be made through the jurisdictions that allow concurrent use of scores. It is the examinee's responsibility to verify that his or her MBE score will be available by the receiving jurisdiction's deadline.

Special Instructions for District of Columbia Motion Applicants

To transfer an MBE score to the District of Columbia (DC), an examinee must obtain an application packet from the DC Committee on Admissions, which can be reached at 202-879-2710. The application packet must be completed and returned to DC. DC then arranges the score transfer with NCBE on behalf of the examinee. The examinee is advised to request a score release or score advisory directly from NCBE at www.ncbex.org/multistate-tests/mbe/services/transfers/ prior to applying for a score transfer with the DC Committee on Admissions.

AUTHORIZATION BY JURISDICTION

Jurisdictions that have authorized NCBE to perform MBE score transfers on their behalf

Alabama	Hawaii	New Hampshire*
Arizona	Illinois	New Jersey
California	Indiana	North Dakota
Colorado	Kansas	South Dakota
Connecticut	Kentucky	Utah
Delaware	Maryland	Wisconsin
District of Columbia	Minnesota	Wyoming
Florida	Montana	Guam
	Nebraska	Virgin Islands

Jurisdictions that accept transferred MBE scores

Alabama	Maryland*	South Carolina*
Arizona*	Massachusetts*	South Dakota
Arkansas	Michigan**	Tennessee*
Connecticut	Minnesota	Utah*
District of Columbia	Mississippi	Vermont
Idaho	Missouri	West Virginia
Illinois	Montana	Wisconsin
Indiana*	New Hampshire*	Wyoming
Iowa	New Jersey*	Northern Mariana Islands
Kansas	New York	Palau
Kentucky	North Dakota	Virgin Islands
Maine	Oklahoma*	
	Rhode Island*	

*concurrent only

**reciprocal only

Jurisdictions that have authorized NCBE to release MBE scaled scores to examinees

Alabama	Florida	Utah
Arizona	Indiana*	Wisconsin
Colorado	Kansas	Wyoming
Connecticut	Maryland	Virgin Islands
Delaware	Minnesota*	
District of Columbia	Montana	
	New Jersey	

*Indiana and Minnesota do not advise examinees of their scores after test administration. All of the other jurisdictions on this list issue score reports directly to examinees following test administration; NCBE will release replacement copies to individuals upon request.

Jurisdictions that have authorized NCBE to provide score advisories to examinees (for admission to the District of Columbia and Minnesota)

California	Illinois	South Dakota
Hawaii	Kentucky	Guam

MBE SCORE TRANSFER, SCORE RELEASE, AND SCORE ADVISORY REQUEST FORM

Read the information on the preceding pages carefully before completing this form. Remit \$25 for each transaction. Requests must be made online or in writing.

NCBE will perform **only** those services authorized by the jurisdictions identified in the charts found on page 22. Requests for unauthorized services will be returned to the applicant. **Scores are never released to applicants until after the testing jurisdiction has mailed its examination results and furnished authorization to NCBE.**

FOR ALL REQUESTS

Provide your signature _____

Please print or type the following:

Your name _____
Last First MI

Your name when tested, if different from your name above

Your current address

Street/Box number Apt.

City State Zip

E-mail address _____

Daytime telephone number () _____

SSN (mandatory) _____

Date of birth _____
MM/DD/YYYY

Jurisdiction in which you took or will take the MBE

Administered Feb./July _____
circle one year

Applicant or seat number (if known) _____

Score reporting services are performed only for scores that are less than seven years old.

Indicate transaction(s) requested by checking the appropriate box:

☐ **Score Transfer**

Transfer my scaled score to _____
Jurisdiction(s)
_____ @ \$25 each.

District of Columbia motion applicants: see special instructions on page 21.

☐ **Score Release**

Release my scaled score to me @ \$25.

☐ **Score Advisory**

Tell me if my scaled MBE score is sufficient for admission without examination in:

_____ District of Columbia @ \$25
_____ Minnesota

One \$25 fee covers both jurisdictions.

Total amount due \$ _____

Method of payment (If electing to pay by credit card, a valid credit card number and customer signature are required.)

_____ Check or money order (payable to NCBE)

_____ Charge the total amount due to my

☐  VISA ☐  MasterCard

Credit Card # _____

Expiration Date (mm/yy) _____

Signature (required) _____

Payment is nonrefundable.

To submit request form and fees by mail or fax:

Mail: MBE Score Transfer
National Conference of Bar Examiners
302 South Bedford Street
Madison, WI 53703-3622

Fax: 608-316-3103
(Credit card customers ONLY)

MBE SAMPLE QUESTIONS

Sample Question Instructions

While the sample questions in this booklet illustrate the kinds of questions that will appear on the MBE, they do not represent all of the material covered. Each question below is followed by four suggested answers. The correct answer is the best of the stated alternatives. Examinees are advised to review the information on MBE content provided in this booklet, including the subject area outlines, before attempting to answer the sample questions. To model the pacing required to complete a full MBE, these questions should be answered in approximately 32 minutes. An answer key follows.

Sample Questions

1. A man went into his neighbor's garage without permission and borrowed a chain saw to clear broken branches on the man's property. After he finished, the man noticed several broken branches on his neighbor's trees that were in danger of falling on his neighbor's roof. While the man was cutting his neighbor's branches, the saw broke. The neighbor sued the man for conversion. Will the neighbor recover?
 - (A) Yes, for the actual damage to the saw.
 - (B) Yes, for the value of the saw before the man borrowed it.
 - (C) No, because when the saw broke the man was using it to benefit his neighbor.
 - (D) No, because the man did not intend to keep the saw.

2. 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 was no eyewitness available to authenticate the picture.
 - (D) No, because infrared photography deprives a defendant of the right to confront witnesses.

3. A man bought a tract of land, financing a large part of the purchase price by a loan from his uncle that was secured by a mortgage. The mortgage contained a due-on-sale clause stating, "If Mortgagor transfers his/her interest without the written consent of Mortgagee first obtained, then at Mortgagee's option the entire principal balance of the debt secured by this Mortgage shall become immediately due and payable." The man made the required payments on the mortgage regularly for several years. Subsequently, without seeking his uncle's consent, the man persuaded a neighbor to buy the land, subject to the mortgage. They expressly agreed that the neighbor would not assume and agree to pay the debt to the uncle. The deed from the man to his neighbor stated that the conveyance was "subject to" the uncle's mortgage.

The neighbor took possession of the land and made several mortgage payments that the uncle accepted. When the neighbor subsequently stopped making the payments for three consecutive months, the uncle sued the neighbor for the amount of the delinquent payments.

Will the uncle prevail in this action?

- (A) No, because the neighbor did not assume and agree to pay the mortgage debt.
- (B) No, because the neighbor is not in privity of estate with the uncle.
- (C) Yes, because the deed to the neighbor violated the mortgage's due-on-sale clause.
- (D) Yes, because the neighbor is in privity of estate with the uncle.

4. A municipal water supply district was incorporated under the applicable state laws to supply water to a new community in a recently developed area of the state. The new community was racially, ethnically, and socioeconomically diverse, with no history of discrimination against members of minority groups.

Two members of the five-member, elected governing board of the water district were of racial minority groups. At its first meeting, the board adopted a rule unqualifiedly setting aside 25 percent of all positions on the water district's staff and 25 percent of all contracts to be awarded by the district to members of racial minority groups. The purpose of the rule was "to help redress historical discrimination against these groups in this country and to help them achieve economic parity with other groups in our society." No federal statute applies.

Are these set-asides constitutional?

- (A) No, because they would deny other potential employees or contractors the equal protection of the laws.
- (B) No, because they would impermissibly impair the right to contract of other potential employees or contractors.
- (C) Yes, because they would assure members of racial minority groups the equal protection of the laws.
- (D) Yes, because the function and activities of the water district are of a proprietary nature rather than a governmental nature and, therefore, are not subject to the usual requirements of the Fourteenth Amendment.

5. A landowner was severely pressed for cash, so he advertised a proposed sale of standing timber on a 2,000-acre tract of his land. The only response was an offer by a contractor who owned a large, integrated construction enterprise.

The contractor offered to buy, sever, and remove the standing timber from the advertised tract at a cash price 70 percent lower than the regionally prevailing price for comparable timber rights. The landowner, in desperate financial straits and knowing little about timber values, signed and delivered to the contractor a letter accepting the offer.

Before the contractor began performance, the landowner's investments suddenly improved and he wished to get out of the timber deal.

Which of the following legal concepts affords the landowner his best prospect of effective cancellation?

- (A) Bad faith.
- (B) Duress.
- (C) Equitable estoppel.
- (D) Unconscionability.

6. While on a bus, a man who was intoxicated saw a briefcase he mistakenly thought was his own and began struggling with the passenger carrying the briefcase. The man knocked the passenger to the floor, took the briefcase, and fled. He was arrested and charged with robbery.

Should the man be convicted?

- (A) No, because he used no threats.
- (B) No, because his mistake negated the required specific intent.
- (C) Yes, because his intoxication was voluntary.
- (D) Yes, because mistake is no defense to robbery.

7. Two students in an advanced high school Russian class got into an argument one day in the high school cafeteria. In the presence of other students, the first student, in Russian, accused the second student of taking money from the first student's locker.

The second student sued the first student based on defamation.

Will the second student prevail?

- (A) Yes, because the first student's accusation constituted slander per se.
 - (B) Yes, because the defamatory statement was made in the presence of third persons.
 - (C) No, unless the first student made the accusation with knowledge of falsity or reckless disregard of the truth.
 - (D) No, unless one or more of the other students understood Russian.
8. A pedestrian died from injuries caused when a driver's car struck him. The pedestrian's executor sued the driver for wrongful death. At trial, the executor called a nurse to testify that two days after the accident, the pedestrian said to the nurse, "The car that hit me ran the red light." Fifteen minutes later, the pedestrian died.

As a foundation for introducing evidence of the pedestrian's statement, the executor offered to the court a doctor's affidavit that the doctor was the intern on duty the day of the pedestrian's death and that several times that day the pedestrian said that he knew he was about to die.

Should the affidavit be properly considered by the court in ruling on the admissibility of the pedestrian's statement?

- (A) No, because it is hearsay not within any exception.
- (B) No, because it is irrelevant since dying declarations cannot be used except in prosecutions for homicide.
- (C) Yes, because, though hearsay, it is a statement of then-existing mental condition.
- (D) Yes, because the judge may consider hearsay in ruling on preliminary questions.

9. A city enacted an ordinance banning from its public sidewalks all machines dispensing publications consisting wholly of commercial advertisements. The ordinance was enacted because of a concern about the adverse aesthetic effects of litter from publications distributed on the public sidewalks and streets. However, the city continued to allow machines dispensing other types of publications on the public sidewalks. As a result of the city's ordinance, 30 of the 300 sidewalk machines that were dispensing publications in the city were removed.

Is the city's ordinance constitutional?

- (A) Yes, because regulations of commercial speech are subject only to the requirement that they be rationally related to a legitimate state goal, and that requirement is satisfied here.
 - (B) Yes, because the city has a compelling interest in protecting the aesthetics of its sidewalks and streets, and such a ban is necessary to vindicate this interest.
 - (C) No, because it does not constitute the least restrictive means with which to protect the aesthetics of the city's sidewalks and streets.
 - (D) No, because there is not a reasonable fit between the legitimate interest of the city in preserving the aesthetics of its sidewalks and streets and the means it chose to advance that interest.
10. A woman asked a man who was reputed to have access to illegal drugs to supply her with cocaine so she could resell it. The man agreed and sold her a bag of white powder. The woman then repackaged the white powder into smaller containers and sold one to an undercover police officer, who promptly arrested her. The woman immediately confessed and revealed the identity of her supplier. Upon examination, the white powder was found not to be cocaine or any other type of illegal substance.

If the man knew the white powder was not cocaine but the woman believed it was, which of the following statements is correct?

- (A) Both the man and the woman are guilty of attempting to sell cocaine.
- (B) Neither the man nor the woman is guilty of attempting to sell cocaine.
- (C) The man is guilty of attempting to sell cocaine, but the woman is not.
- (D) The man is not guilty of attempting to sell cocaine, but the woman is.

11. A boat retailer entered into a written contract with a buyer, signed by both parties, to sell the buyer a power boat for \$12,000. The manufacturer's price of the boat delivered to the retailer was \$9,500. As the contract provided, the buyer paid the retailer \$4,000 in advance and promised to pay the full balance upon delivery of the boat. The contract contained no provision for liquidated damages. Prior to the agreed delivery date, the buyer notified the retailer that he would be financially unable to conclude the purchase. The retailer thereupon resold the same boat to a third person for \$12,000 cash.

If the buyer sues the retailer for restitution of the advance payment, what amount, if any, is the buyer likely to recover?

- (A) Nothing, because the buyer lost any right to restitution when he defaulted.
- (B) Nothing, because, but for the buyer's repudiation, the retailer would have made a profit on two boat sales instead of one.
- (C) \$4,000 minus the amount of the retailer's lost profit under its contract with the buyer.
- (D) \$1,600 (\$4,000 minus 20 percent of the purchase price as statutory damages under the UCC).

12. A woman's neighbor executed and delivered a deed granting to the woman an easement over a 15-foot strip of the neighbor's land. The easement gave the woman convenient access to a public street, even though she had access to another public street over her own land. The woman did not then record the neighbor's deed. After the woman constructed and started using a driveway within the described 15-foot strip in a clearly visible manner, the neighbor borrowed \$10,000 from a bank and gave the bank a mortgage on his land. The mortgage was promptly and properly recorded. The woman then recorded the neighbor's deed granting the easement. The neighbor subsequently defaulted on his loan payments to the bank.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

In an appropriate foreclosure action as to the neighbor's land, brought against the woman and the neighbor, the bank seeks, among other things, to have the woman's easement declared subordinate to the bank's mortgage, so that the easement will be terminated by completion of the foreclosure.

If the woman prevails in maintaining the easement, what is the most likely explanation?

- (A) The recording of the deed granting the easement prior to the foreclosure action protects the woman's rights.
 - (B) The easement provides access from the woman's property to a public street.
 - (C) The easement is appurtenant to the woman's land and thus cannot be separated from her land.
 - (D) The woman's visible use of the easement put the bank on notice of the easement.
13. A federal statute prohibited the sale or resale, in any place in the country, of any product intended for human consumption or ingestion into the human body that contained designated chemicals known to cause cancer, unless the product was clearly labeled as dangerous.

The constitutionality of this federal statute may most easily be justified on the basis of the power of Congress to do which of the following?

- (A) Enforce the Fourteenth Amendment.
- (B) Promote science and the useful arts.
- (C) Provide for the general welfare.
- (D) Regulate commerce among the states.

14. A man was tried for the homicide of a girl whose strangled body was found beside a remote road with her hands taped together. After the man offered evidence of an alibi, the state called a woman to testify that the same man had taped her hands together and tried unsuccessfully to strangle her in the same location two days before the homicide.

Is the evidence admissible?

- (A) Yes, as tending to show the man is the killer.
 - (B) Yes, as tending to show the man's violent nature.
 - (C) No, because it is improper character evidence.
 - (D) No, because it is unfairly prejudicial.
15. As a result of an accident at a nuclear power plant, radioactive vapor escaped from the facility and two members of the public were exposed to excessive doses of radiation. According to qualified medical opinion, this exposure would double the victims' chance of ultimately developing cancer. However, any cancer that might be caused by the exposure would not be detectable for at least ten years. If the victims did develop cancer, it would not be possible to determine whether it was caused by this exposure or would have developed in any event.

If the victims assert a claim for damages against the nuclear power plant shortly after the escape of the radiation, which of the following questions will NOT present a substantial issue?

- (A) Will the court recognize that the plaintiffs have suffered a present legal injury?
- (B) Can the plaintiffs prove the amount of their damages?
- (C) Can the plaintiffs prove that any harm they may suffer was caused by this exposure?
- (D) Can the plaintiffs prevail without presenting evidence of specific negligence on the part of the nuclear power plant?

16. Five years ago, a residential parcel of land was conveyed by warranty deed to a man and a woman “as joint tenants with right of survivorship.” The language of the deed was sufficient to create a common law joint tenancy with right of survivorship, which is unmodified by statute. The deed was promptly and properly recorded.

Three years ago, the man and the woman married each other. Last year, they divorced. The final divorce decree did not contain a specific provision concerning the legal title to the land. Subsequently, the man died intestate, leaving his nephew as his sole heir.

Who owns the land?

- (A) The woman alone, because of the divorce.
 - (B) The woman alone, because she survived the man.
 - (C) The woman and the nephew, because of the doctrine of estoppel by deed.
 - (D) The woman and the nephew, because unmarried individuals cannot hold title as joint tenants with right of survivorship.
17. A fruit company ordered 500 bushels of peaches from an orchard at a specified price, “for prompt shipment.” The orchard promptly shipped 500 bushels, but accidentally shipped the wrong variety of peaches. The error in shipment was caused by the negligence of the orchard’s shipping clerk.
- Which of the following best states the fruit company’s rights and duties upon delivery of the peaches?
- (A) The orchard’s shipment of the peaches was a counter-offer and the fruit company can refuse to accept them.
 - (B) The orchard’s shipment of the peaches was a counter-offer but, since peaches are perishable, the fruit company, if it does not want to accept them, must reship the peaches to the orchard in order to mitigate the orchard’s losses.
 - (C) The fruit company must accept the peaches because a contract was formed when the orchard shipped them.
 - (D) Although a contract was formed when the orchard shipped the peaches, the fruit company does not have to accept them.

18. A two-year-old child became ill with meningitis. Her parents were members of a group that believed fervently that prayer alone would heal their child. Accordingly, they did not seek medical aid for their child and refused all offers of such aid. They prayed continuously, but the child died within a week.

The child's parents were charged with murder in a common law jurisdiction.

What is their best defense to the charge?

- (A) They did not intend to kill or to harm their child.
- (B) They were pursuing a constitutionally protected religious belief.
- (C) The child's death was not proximately caused by their conduct.
- (D) They neither premeditated nor deliberated.

Answer Key

- | | | |
|------|-------|-------|
| 1. B | 7. D | 13. D |
| 2. B | 8. D | 14. A |
| 3. A | 9. D | 15. D |
| 4. A | 10. D | 16. B |
| 5. D | 11. C | 17. D |
| 6. B | 12. D | 18. A |

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