

THE MBE

MULTISTATE BAR EXAMINATION

2007 *Information* *Booklet*

February 28, 2007
July 25, 2007



NATIONAL CONFERENCE OF BAR EXAMINERS

TEST DAY

Each applicant should bring several No. 2 black lead pencils to the examination. The jurisdiction will provide specific information regarding other materials, if any, that may be brought into the testing room.

You are not permitted to use scratch paper; any note taking must be done in your test booklet. You may not retain any test materials. Pages or covers of test books are not to be torn out of or separated from the test books in any way. You are not permitted to duplicate or record, by copying, photographing, or any other means, any part of the MBE. All test materials, including test books and answer sheets, must be returned to the test supervisor after testing.

Prohibited Behavior at the Test Center. 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:

- 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
- Attempting to remove test materials or information, including test questions or answers, from the testing room by any means
- 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

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

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INTRODUCTION

The Multistate Bar Examination (MBE) is developed by the National Conference of Bar Examiners (NCBE) and is administered by participating jurisdictions on the last Wednesday in February and the last Wednesday in July of each year. Applicants should contact the jurisdiction where admission is being sought to ascertain whether the MBE is part of the jurisdiction's examination. Contact information for each jurisdiction's bar admission office can be found at www.ncbex.org.

The MBE is but one of a number of measures that a board of bar examiners may use in determining competence to practice law. Each jurisdiction determines its own policy with regard to the relative weight given to the MBE and other scores. Questions about the use made of MBE scores should be directed to the appropriate jurisdiction, not to NCBE.

This booklet is intended to provide the applicant with a description of the MBE, outlines of the subject matter covered, and representative sample questions.

The Multistate Bar Examination (MBE) is owned by the National Conference of Bar Examiners (NCBE) and is a secure examination, protected by U.S. copyright laws. NCBE strictly prohibits the copying or reproduction of MBE answers and questions onto materials that could be taken from the examination room. NCBE also strictly prohibits disclosing, orally, in writing, electronically, or otherwise, partial or whole MBE answers or questions to any party during or after the examination.

NCBE will use every legal means available to protect its copyrighted materials. Any unauthorized disclosure of the MBE's contents could result in civil liabilities, criminal penalties, cancellation of test scores, denial of bar applications on character and fitness grounds, and/or disciplinary actions by bar authorities.

From time to time NCBE releases actual MBE questions that it has retired from use. NCBE currently offers three publications: *Sample MBE*, *Sample MBE II*, and *Sample MBE III*. To order these publications, complete the MBE Study Aids Order Form at the end of this booklet or visit www.ncbex.org. These questions are also available through licensees who have NCBE's permission to reproduce copyrighted materials. Actual MBE questions always appear with NCBE's copyright acknowledged.

ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Applicants who may require accommodations because of a disability must ascertain the procedures for each state in which they propose to sit for the bar examination as arrangements for accommodations must be made directly with the testing jurisdiction. Contact information for each jurisdiction's bar admission office can be found at www.ncbex.org.

The standard version of the MBE is printed in 12-point type. The MBE is also available in Braille, audiocassette, and large-print versions in the following type sizes:

This is a sample of 12-point type (standard).

This is a sample of 18-point type.

This is a sample of 24-point type.

DESCRIPTION OF THE EXAMINATION

The Multistate Bar Examination is an objective six-hour examination containing 200 questions, 190 of which are scored. The 10 unscored questions are being evaluated for future use; because these questions are indistinguishable from scored questions, applicants should answer all questions on the examination. The examination is divided into two periods of three hours each, one in the morning and one in the afternoon, with 100 questions in each period. The examination consists of questions in the following six areas: Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts.

The questions on the examination are designed to be answered by applying fundamental legal principles rather than local case or statutory law. A given question may indicate the applicable statute, theory of liability, or comparable principle of law.

Many of the questions require applicants to analyze the legal relationships arising from a fact situation or to take a position as an advocate. Some questions call for judgments about interpreting, drafting, or counseling.

All questions are multiple choice. Applicants are asked to choose the *best* answer from the four stated alternatives. The test is designed to give credit only when the applicant has selected the best answer. Therefore, applicants should mark only one answer for each question; multiple answers will not be counted.

Scores are based on the number of questions answered correctly. Applicants are therefore advised to answer every question. Time should be used effectively. Applicants should not hurry, but should work steadily and quickly without sacrificing accuracy. If a question seems too difficult, the applicant is advised to go on to the next one and come back to the skipped question later.

Answer sheets are centrally scored. Both raw scores and scaled scores are computed for each applicant. A raw score is the number of questions answered correctly. Raw scores on different forms of the test are not comparable primarily due to differences in the difficulty of the test forms. A statistical process called equating adjusts for variations in the difficulty of different forms of the examination so that any particular scaled score will represent the same level of performance from test to test.

For instance, if a test were more difficult than previous tests, then the scaled scores on that test would be adjusted upward to account for this difference. The purpose of these adjustments is to help ensure that no applicant is unfairly penalized (or rewarded) for taking a more (or less) difficult form of the test.

MBE SCORE TRANSFER, SCORE RELEASE, SCORE ADVISORY

NCBE offers several score reporting services. These include score transfer from one jurisdiction to another, score release to applicants, and score advisories to applicants. The decision to authorize NCBE to offer a particular service is exclusively under the control of the testing jurisdiction. Scores are never transferred or released until after the testing jurisdiction has mailed its examination results and furnished authorization to NCBE.

NCBE performs score reporting services only for scores that are **less than seven years old**. NCBE transfers or releases score information only for those applicants who have included their name and Social Security Number on the MBE answer sheet at the time of testing. If you anticipate that you may wish to use the NCBE's score transfer services, be sure to include proper identifying information on the MBE answer sheet at the time you take the MBE.

The chart on the following pages identifies jurisdictions that accept transferred MBE scores obtained on an MBE administered in another jurisdiction and those that have authorized NCBE to perform score reporting services. All information is believed to be correct at the time of publication. Since rules and policies of jurisdictions change, applicants are advised to consult the jurisdictions directly for the most current information. Websites for many of the jurisdictions can be accessed via the NCBE website at: **www.ncbex.org**.

All requests for MBE score reporting services must be made in writing and must include the following identifying information: the exact name under which the applicant tested, the jurisdiction in which the testing occurred, the month and year that the MBE was administered, the applicant's Social Security Number, date of birth, and the applicant or seat number (if known).

You may request a score transfer, score release, score advisory, or concurrent score transfer online. You may also download a request form from the NCBE website or use the form on pages 9–10.

A \$25 fee is required for each transaction. (Each score transfer, score release, and score advisory is a separate transaction.) This fee may be paid by VISA/MasterCard, or check or money order **payable to NCBE**.

Submit your online request and \$25 fee to:

www.ncbex.org

Submit your written request and \$25 fee to:

MBE Score Transfer
National Conference of Bar Examiners
402 West Wilson Street
Madison, WI 53703-3614

Score Transfer. The jurisdictions that accept transferred scores are listed in Section A on the chart on pages 7–8; jurisdictions that have authorized NCBE to perform score transfers on their behalf are identified in Section B. For further information concerning any jurisdictions, contact the jurisdiction directly.

Note to District of Columbia motion applicants: Applicants wishing to transfer MBE scores to the District of Columbia (DC) must first obtain an application packet from the DC Committee on Admissions. This packet will include a form and instructions pertinent to DC score transfers which is to be returned to DC with the application packet. The DC Committee on Admissions may be reached at 202/879-2710. It is to your advantage to obtain a score release—*see Section C*—or a score advisory—*see Section D*—before applying.

Score Release to Applicants. Except as authorized by a state board of bar examiners (see Section C on the chart on pages 7–8), NCBE does not release MBE scores to applicants. **Scores are never released to applicants until after the testing jurisdiction has mailed its examination results and furnished authorization to NCBE.**

Score Advisory. The states that have authorized NCBE to release DC and MN score advisories to applicants are identified in Section D on the chart on pages 7–8. A score advisory requires a fee of \$25 each time a request is made and can include both jurisdictions for the \$25 fee.

Concurrent Score Transfers. With proper scheduling and approval by the bar examination boards involved, an applicant may be permitted to take the bar examination in two states over a period of three days. One of the states involved must administer its local examination on Tuesday and the other must administer its local examination on Thursday. The applicant would take the local examination in one state on Tuesday, the MBE in either state on Wednesday, and a second local examination on Thursday. **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 applicant’s responsibility to verify that their MBE Score will be available by the receiving jurisdiction’s deadline.**

MBE Score Transfer

Section A identifies jurisdictions that have authorized NCBE to perform score reporting services. Section B identifies jurisdictions that accept the transfer of an MBE score obtained by an applicant on an MBE administered in another jurisdiction.

| A | Jurisdictions that have authorized NCBE to perform MBE score transfers on their behalf | | |
|---|--|-----------|----------------|
| | Alabama | Hawaii | New Hampshire* |
| | Arizona | Illinois | New Jersey |
| | California | Indiana | New York |
| | Colorado | Kansas | South Dakota |
| | Connecticut | Kentucky | Utah |
| | Delaware | Maryland | Wisconsin |
| | District of Columbia | Minnesota | Wyoming |
| | Florida | Missouri | Guam |
| | | Montana | Virgin Islands |
| | | | |
| | | | |

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

*concurrent only **reciprocal only

(continued)

MBE Score Release

Section **C** identifies jurisdictions that have authorized NCBE to release MBE scaled scores to applicants. Scores are never transferred or released until after the testing jurisdiction has released its examination results.

C

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

| | | |
|-------------------------|------------|------------------|
| Alabama | Indiana | Utah |
| Arizona | Kansas | Wisconsin |
| Colorado | Maryland | Wyoming |
| Connecticut | Minnesota | Northern Mariana |
| Delaware | Missouri | Islands |
| District of Columbia | Montana | Virgin Islands |
| Florida | New Jersey | |
| | New York | |

MBE Score Advisory

Section **D** identifies jurisdictions that have authorized NCBE to advise applicants if a previously earned MBE scaled score is sufficient for admission without examination in the District of Columbia and/or Minnesota. Score advisories are never provided until after the testing jurisdiction has released its examination results.

D

Jurisdictions that have authorized NCBE to provide a score advisory (Re: District of Columbia and Minnesota)

| | | |
|------------|----------|--------------|
| California | Illinois | South Dakota |
| Hawaii | Kentucky | Guam |

MBE SCORE TRANSFER, SCORE RELEASE, SCORE ADVISORY REQUEST FORM

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

NCBE will perform **only** those services authorized by the jurisdictions identified in Sections **B**, **C** and **D** on the chart found on pages 7–8. 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 current address _____

Street/Box number _____ Apt. _____

City _____ State _____ ZIP _____

Daytime telephone number _____ / _____

Jurisdiction in which you took the MBE: (See Section A) _____

Administered Feb./July _____
circle one year

Your name when tested, if different from your name above: _____

SSN (mandatory) _____

Date of birth _____
MM/DD/YY

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 (See Section B)

Transfer my score to _____ @ \$25 each.
Name of jurisdiction

District of Columbia motion applicants: see special requirements under Score Transfer on page 6.

☐ Scaled Score Release to Applicants
(See Section C)

Release my score to me @ \$25.

☐ Score Advisory (See Section D)

Tell me if my 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
402 West Wilson Street
Madison, WI 53703-3614

Fax: 608/280-8552
(Credit card customers ONLY)

SUBJECT MATTER OUTLINES

The 190 scored questions on the MBE cover Constitutional Law (31), Contracts (33), Criminal Law and Procedure (31), Evidence (31), Real Property (31), and Torts (33). All major topics designated by Roman numerals are tested on each examination; not all of the subtopics appear on each examination.

Constitutional Law

NOTE: The terms “Constitution,” “constitutional,” and “unconstitutional” refer to the federal Constitution unless indicated otherwise.

- 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
 - C. Judicial review in operation
 1. The “case or controversy” requirement including standing, ripeness, and mootness
 2. Political questions and justiciability
 3. The “adequate and independent state ground”
- II. The separation of powers
 - A. The powers of Congress
 1. Commerce, taxing, and spending
 2. Power over federal property
 3. War and defense powers
 4. Power to enforce the 13th, 14th, and 15th Amendments
 - B. The powers of the President
 1. As chief executive
 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. 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
- B. The authority reserved to the states
 - 1. Negative implications of the commerce clause
 - 2. Tenth Amendment
 - 3. Other
- C. National power to override or extend state authority
 - 1. Preemption
 - 2. Authorization of otherwise invalid state action
- D. Relations among states
 - 1. Interstate compacts
 - 2. Full faith and credit

IV. Individual rights

- A. “State action” and the role of the courts
- B. Due process
 - 1. Substantive due process
 - a. Fundamental rights
 - b. Other rights
 - 2. Takings
 - 3. Procedural due process
- C. Equal protection
 - 1. Fundamental rights
 - 2. Other rights
 - 3. Suspect classifications
 - 4. Other classifications
- D. Privileges and immunities clauses
- E. Obligation of contracts, bills of attainder, 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 and association
 - a. Regulation of content of expression
 - b. Regulation of time, manner, and place of expression
 - c. Regulation of unprotected expression
 - i. Obscenity
 - ii. Other
 - d. Regulation of commercial speech
 - e. Regulation of, or impositions upon, public employment, licenses, or benefits based upon exercise of expressive or associational rights

- f. Regulation of association
- g. Regulation of defamation and invasions of privacy

Approximately half of the Constitutional Law questions for each MBE will be based on category IV, and approximately half will be based on the remaining categories, I, II, and III. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics.

Contracts

NOTE: Examinees are to assume that Articles 1 and 2 of the Uniform Commercial Code have been adopted and are applicable when appropriate. Applicants should assume that the 2001 proposed amendments to Article 1 and the 2003 proposed amendments to Article 2 have NOT BEEN ADOPTED.

I. Formation of contracts

- A. Mutual assent
 - 1. Offer and acceptance
 - 2. Mistake, misunderstanding, misrepresentation, nondisclosure, confidential relationship, fraud, undue influence, and duress
 - 3. Problems of communication and “battle of the forms”
 - 4. Indefiniteness or absence of terms
- B. Capacity to contract
- C. Illegality, unconscionability, and public policy
- D. Implied-in-fact contract and quasi-contract
- E. “Pre-contract” obligations based on detrimental reliance
- F. Express and implied warranties in sale-of-goods contracts

II. Consideration

- A. Bargain and exchange
- B. “Adequacy” of consideration: mutuality of obligation, implied promises, and disproportionate exchanges
- C. Modern substitutes for bargain: “moral obligation,” detrimental reliance, and statutory substitutes
- D. Modification of contracts: preexisting duties
- E. Compromise and settlement of claims

- III. Third-party beneficiary contracts
 - A. Intended beneficiaries
 - B. Incidental beneficiaries
 - C. Impairment or extinguishment of third-party rights by contract modification or mutual rescission
 - D. Enforcement by the promisee
- IV. Assignment of rights and delegation of duties
- V. Statutes of frauds
- VI. Parol evidence and interpretation
- VII. Conditions
 - A. Express
 - B. Constructive
 - 1. Conditions of exchange: excuse or suspension by material breach
 - 2. Immaterial breach and substantial performance
 - 3. Independent covenants
 - 4. Constructive conditions of non-prevention, non-hindrance, and affirmative cooperation
 - C. Obligations of good faith and fair dealing in performance and enforcement of contracts
 - D. Suspension or excuse of conditions by waiver, election, or estoppel
 - E. Prospective inability to perform: effect on other party
- VIII. Remedies
 - A. Total and partial breach of contract
 - B. Anticipatory repudiation
 - C. Election of substantive rights and remedies
 - D. Specific performance; injunction against breach; declaratory judgment
 - E. Rescission and reformation
 - F. Measure of damages in major types of contract and breach
 - G. Consequential damages: causation, certainty, and foreseeability
 - H. Liquidated damages and penalties
 - I. Restitutionary and reliance recoveries
 - J. Remedial rights of defaulting parties
 - K. Avoidable consequences and mitigation of damages
- IX. Impossibility of performance and frustration of purpose
- X. Discharge of contractual duties

Approximately 60 percent of the Contracts questions for each MBE will be based on categories I, VII, and VIII, and approximately 40 percent will be based on the remaining categories, II, III, IV, V, VI, IX, and X. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics. Approximately 25 percent of the Contracts questions for each MBE will be based on provisions of the Uniform Commercial Code, Articles 1 and 2.

Criminal Law and Procedure

- 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
- 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
- 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

Approximately 40 percent of the Criminal Law and Procedure questions for each MBE will be based on category V, and approximately 60 percent will be based on the remaining categories, I through IV. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics.

Evidence

Note: All Evidence questions should be answered according to the Federal Rules of Evidence.

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
- 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
- D. Expert testimony and scientific evidence
 - 1. Qualifications of witnesses
 - 2. Bases of testimony
 - 3. Ultimate issue rule
 - 4. Reliability of scientific evidence
- 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

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

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. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics.

Real Property

NOTE: For all the topics listed in the outline below, the following matters are included, to the extent relevant:

- Nature and characteristics
- Creation
- Classification of interests
- Rights of possession and use
- Legal and equitable remedies

I. Ownership

- A. Present estates
 - 1. Fees simple
 - 2. Defeasible fees simple
 - 3. Life estates
- B. Cotenancy
 - 1. Tenancy in common
 - 2. Joint tenancy

- C. Future interests
 - 1. Reversions
 - 2. Remainders, vested and contingent
 - 3. Executory interests
 - 4. Possibilities of reverter, powers of termination
- D. The law of landlord and tenant
 - 1. Fitness and suitability of premises
 - 2. Types of holdings: creation and termination
 - a. Terms for years
 - b. Tenancies at will
 - c. Holdovers and other tenancies at sufferance
 - d. Periodic tenancies
 - 3. Assignment and subletting
 - 4. Rent
 - 5. Surrender, mitigation of damages, and anticipatory breach
- E. Special problems
 - 1. Rule Against Perpetuities
 - 2. Alienability, descendability, and devisability

II. Rights in land

- A. Covenants at law and in equity
- B. Easements, profits, and licenses
- C. Other interests in land
 - 1. Fixtures (including relevant application of Article 9, UCC)
 - 2. Scope and extent of real property
 - a. Superjacent, adjacent, and subjacent space
 - b. Rights in the common resources of light, air, streams, and bodies of water
 - c. Nuisance
- D. Taking and aspects of zoning

III. Real property contract

- A. Relationships included
 - 1. Contracts to buy and sell by conveyance of realty
 - 2. Installment contract
- B. Creation and construction
 - 1. Statute of Frauds
 - 2. Essential terms
 - 3. Implied conditions or terms
 - a. Time for performance
 - b. Title required
 - c. Burdens related to title defects

- C. Performance
 - 1. Fitness and suitability of premises
 - 2. Marketable title
 - 3. Risk of loss
 - D. Interests before conveyance
 - 1. Equitable conversion
 - 2. Earnest-money deposits
 - E. Relationships after conveyance
 - 1. Condition of premises
 - 2. Title problems
- IV. Real property mortgages
- A. Types of security devices
 - 1. Mortgages (including deeds of trust)
 - 2. Land contracts as security devices
 - 3. Absolute deeds as security devices
 - 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 transferee
 - 3. Application of subrogation and suretyship principles
 - 4. Due-on-sale clauses
 - D. Transfers by mortgagee (including effect of Article 3 of UCC)
 - E. Discharge 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. Conveyancing by deed
 - 1. Types
 - 2. Necessity for a grantee
 - 3. Delivery (including escrows)
 - 4. Land description and boundaries
 - 5. Covenants for title
 - C. Conveyancing by will
 - 1. Ademption
 - 2. Exoneration
 - 3. Lapse
 - D. Priorities and recording
 - 1. Types of priority
 - a. Recording acts
 - b. Judgment liens
 - c. Fraudulent conveyances
 - d. Protection of bona fide purchasers other than under statutes
 - 2. Scope of coverage
 - a. Recorded documents
 - b. Elements required
 - c. Parties protected
 - d. Interests affected
 - 3. Special problems
 - a. After-acquired title (including estoppel by deed)
 - b. Constructive notice
 - c. Forged instruments
 - d. Transfers by corporations and by agents
 - e. Purchase money mortgages

Approximately 75 percent of the Real Property questions for each MBE will be based on categories I, II, and V, and approximately 25 percent will be based on the remaining categories, III and IV. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics.

Torts

NOTE: 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.

I. Intentional torts

- A. Harms to the person: assault, battery, false imprisonment, infliction of mental distress
- B. Harms to property interests; trespass to land and chattels, conversion
- C. 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

Approximately half of the Torts questions for each MBE will be based on category II, and approximately half will be based on the remaining categories, I, III, IV, and V. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics.

SAMPLE QUESTIONS

While the sample questions in this booklet illustrate the kinds of questions that will be used in the examination, they do not represent all of the types of questions or material covered.

In some cases, a fact situation is presented and a group of questions based on it are asked. There also are a number of discrete questions in the test. The number of questions based on a given fact situation has sometimes been reduced for this booklet in an attempt to illustrate as broadly as possible the kinds of fact situations used and the subject areas covered.

The following questions may be used to practice for the MBE. Allow one hour for reading the directions that follow and answering the questions. An answer key is printed on page 43.

Directions

Each of the questions or incomplete statements below is followed by four suggested answers or completions. You are to choose the best of the stated alternatives. Answer all questions according to the generally accepted view, except where otherwise noted.

For the purposes of this test, you are to assume that Articles 1 and 2 of the Uniform Commercial Code have been adopted. You are also to assume relevant application of Article 9 of the UCC concerning fixtures. The Federal Rules of Evidence control.

The terms “Constitution,” “constitutional,” and “unconstitutional” refer to the federal Constitution unless indicated to the contrary.

You 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. You should assume that joint and several liability, with pure comparative negligence, is the relevant rule unless otherwise indicated.

1. Neighbor, who lived next door to Homeowner, went into Homeowner’s garage without permission and borrowed Homeowner’s chain saw. Neighbor used the saw to clear broken branches from the trees on Neighbor’s property. After he had finished, Neighbor noticed several broken branches on Homeowner’s trees that were in danger of falling on Homeowner’s roof. While Neighbor was cutting Homeowner’s branches, the saw broke.

In a suit for conversion by Homeowner against Neighbor, will Homeowner recover?

- (A) Yes, for the actual damage to the saw.
- (B) Yes, for the value of the saw before Neighbor borrowed it.
- (C) No, because when the saw broke Neighbor was using it to benefit Homeowner.
- (D) No, because Neighbor did not intend to keep the saw.

2. Defendant is 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 establishes the reliability of infrared photography, the prosecutor offers the authenticated infrared picture of the intruder to show the similarities to Defendant.

The photograph is

- (A) admissible, provided an expert witness points out to the jury the similarities between the person in the photograph and Defendant.
- (B) admissible, allowing the jury to compare the person in the photograph and Defendant.
- (C) inadmissible, because there was no eyewitness to the scene available to authenticate the photograph.
- (D) inadmissible, because infrared photography deprives a defendant of the right to confront witnesses.

3. Several years ago, Bart purchased Goldacre, financing a large part of the purchase price by a loan from Mort that was secured by a mortgage. Bart made the installment payments on the mortgage regularly until last year. Then Bart persuaded Pam to buy Goldacre, subject to the mortgage to Mort. They expressly agreed that Pam would not assume and agree to pay Bart's debt to Mort. Bart's mortgage to Mort 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." However, without seeking Mort's consent, Bart conveyed Goldacre to Pam, the deed stating in pertinent part "... subject to a mortgage to Mort [giving details and recording data]."

Pam took possession of Goldacre and made several mortgage payments, which Mort accepted. Now, however, neither Pam nor Bart has made the last three mortgage payments. Mort has brought an appropriate action against Pam for the amount of the delinquent payments.

In this action, judgment should be for

- (A) Pam, because she did not assume and agree to pay Bart's mortgage debt.
 - (B) Pam, because she is not in privity of estate with Mort.
 - (C) Mort, because Bart's deed to Pam violated the due-on-sale clause.
 - (D) Mort, because Pam is in privity of estate with Mort.
4. Water District is an independent municipal water-supply district incorporated under the applicable laws of the state of Green. The district was created solely to supply water to an entirely new community in a recently developed area of Green. That new community is racially, ethnically, and socio-economically diverse, and the community has never engaged in any discrimination against members of minority groups.

The five-member, elected governing board of the newly created Water District contains two persons who are members of racial minority groups. At its first meeting, the governing board of Water District adopted a rule unqualifiedly setting aside 25 percent of all positions on the staff of the District 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 the historical discrimination against these groups in this country and to help them achieve economic parity with other groups in our society." Assume that no federal statute applies.

A suit by appropriate parties challenges the constitutionality of these set-asides.

In this suit, the most appropriate ruling on the basis of applicable United States Supreme Court precedent would be that the set-asides are

- (A) unconstitutional, because they would deny other potential employees or potential contractors the equal protection of the laws.
- (B) unconstitutional, because they would impermissibly impair the right to contract of other potential employees or potential contractors.
- (C) constitutional, because they would assure members of racial minority groups the equal protection of the laws.
- (D) constitutional, because the function and activities of 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 written construction contract began with the following recital: "This Agreement, between Land, Inc. (hereafter called 'Owner'), and Builder, Inc., and Boss, its President (hereafter called 'Contractor'), witnesseth:" The signatures to the contract appeared in the following format:

LAND, INC
By /s/ Oscar Land
President

BUILDER, INC.
By /s/ George Mason
Vice President

/s/ Mary Boss, President
Mary Boss

Builder, Inc., became insolvent and defaulted. Land, Inc., sued Boss individually for the breach, and at the trial Boss proffered evidence from the pre-contract negotiations that only Builder, Inc., was to be legally responsible for performing the contract.

If the court finds the contract to be completely integrated, is Boss's proffered evidence admissible?

- (A) Yes, because the writing is ambiguous as to whether or not Boss was intended individually to be a contracting party.
 - (B) Yes, because the evidence would contradict neither the recital nor the form of Boss's signature.
 - (C) No, because the legal effect of Boss's signature cannot be altered by evidence of prior understandings.
 - (D) No, because of the application of the "four corners" rule, under which the meaning of a completely integrated contract must be ascertained solely from its own terms.
6. Anna owned Blackacre, which was improved with a dwelling. Beth owned Whiteacre, an adjoining unimproved lot suitable for constructing a dwelling. Beth executed and delivered a deed granting to Anna an easement over the westerly 15 feet of Whiteacre for convenient ingress and egress to a public street, although Anna's lot did abut another public street. Anna did not then record Beth's deed. After Anna constructed and started using a driveway within the described 15-foot strip in a clearly visible manner, Beth borrowed \$10,000 cash from Bank and gave Bank a mortgage on Whiteacre. The mortgage was promptly and properly recorded. Anna then recorded Beth's deed granting the easement. Beth subsequently defaulted on her loan payments to 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 Whiteacre, brought against Anna and Beth, Bank seeks, among other things, to have Anna's easement declared subordinate to Bank's mortgage, so that the easement will be terminated by completion of the foreclosure.

If Anna's easement is NOT terminated, it will be because

- (A) the recording of the deed granting the easement prior to the foreclosure action protects Anna's rights.
 - (B) the easement provides access from Blackacre to a public street.
 - (C) Anna's easement is appurtenant to Blackacre and thus cannot be separated from Blackacre.
 - (D) visible use of the easement by Anna put Bank on notice of the easement.
7. The state of Red sent three of its employees to a city located in the state of Blue to consult with a chemical laboratory there about matters of state business. While in the course of their employment, the three employees of Red negligently released into local Blue waterways some of the chemical samples they had received from the laboratory in Blue.

Persons in Blue injured by the release of the chemicals sued the three Red state employees and the state of Red in Blue state courts for the damages they suffered. After a trial in which all of the defendants admitted jurisdiction of the Blue state court and fully participated, plaintiffs received a judgment against all of the defendants for \$5 million, which became final.

Subsequently, plaintiffs sought to enforce their Blue state court judgment by commencing a proper proceeding in an appropriate court of Red. In that enforcement proceeding, the state of Red argued, as it had done unsuccessfully in the earlier action in Blue state court, that its liability is limited by a law of Red to \$100,000 in any tort case. Because the three individual employees of Red are able to pay only \$50,000 of the judgment, the only way the injured persons can fully satisfy their Blue state court judgment is from the funds of the state of Red.

Can the injured persons recover the full balance of their Blue state court judgment from the state of Red in the enforcement proceeding they filed in a court of Red?

- (A) Yes, because the final judgment of the Blue court is entitled to full faith and credit in the courts of Red.
- (B) Yes, because a limitation on damage awards against Red for tortious actions of its agents would violate the equal protection clause of the Fourteenth Amendment.
- (C) No, because the Tenth Amendment preserves the right of a state to have its courts enforce the state's public policy limiting its tort liability.
- (D) No, because the employees of Red were negligent and, therefore, their actions were not authorized by the state of Red.

8. After being fired from his job, Mel drank almost a quart of vodka and decided to ride the bus home. While on the bus, he saw a briefcase he mistakenly thought was his own, and began struggling with the passenger carrying the briefcase. Mel knocked the passenger to the floor, took the briefcase, and fled. Mel was arrested and charged with robbery.

Mel should be

- (A) acquitted, because he used no threats and was intoxicated.
 - (B) acquitted, because his mistake negated the required specific intent.
 - (C) convicted, because his intoxication was voluntary.
 - (D) convicted, because mistake is no defense to robbery.
9. Pedestrian died from injuries caused when Driver's car struck him. Executor, Pedestrian's executor, sued Driver for wrongful death. At trial, Executor calls Nurse to testify that two days after the accident, Pedestrian said to Nurse, "The car that hit me ran the red light." Fifteen minutes thereafter, Pedestrian died.

As a foundation for introducing evidence of Pedestrian's statement, Executor offers to the court Doctor's affidavit that Doctor was the intern on duty the day of Pedestrian's death and that several times that day Pedestrian had said that he knew he was about to die.

Is the affidavit properly considered by the court in ruling on the admissibility of 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.

10. 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, City continued to allow machines dispensing other types of publications on the public sidewalks. As a result of the City ordinance, 30 of the 300 sidewalk machines that were dispensing publications in City were removed.

Is this City 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 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 City's sidewalks and streets.
- (D) No, because there is not a reasonable fit between the legitimate interest of City in preserving the aesthetics of its sidewalks and streets and the means it chose to advance that interest.

11. Mom rushed her eight-year-old daughter, Child, to the emergency room at Hospital after Child fell off her bicycle and hit her head on a sharp rock. The wound caused by the fall was extensive and bloody.

Mom was permitted to remain in the treatment room, and held Child's hand while the emergency room physician cleaned and sutured the wound. During the procedure, Mom said that she was feeling faint and stood up to leave the room. Mom fainted and, in falling, struck her head on a metal fixture that protruded from the emergency room wall. She sustained a serious injury as a consequence.

If Mom sues Hospital to recover damages for her injury, will she prevail?

- (A) Yes, because Mom was a public invitee of Hospital's.
- (B) Yes, unless the fixture was an obvious, commonly used, and essential part of Hospital's equipment.
- (C) No, unless Hospital's personnel failed to take reasonable steps to anticipate and prevent Mom's injury.
- (D) No, because Hospital's personnel owed Mom no affirmative duty of care.

Questions 12–13 are based on the following fact situation.

Landholder was land-rich by inheritance but money-poor, having suffered severe losses on bad investments, but still owned several thousand acres of unencumbered timberland. He had a large family, and his normal, fixed personal expenses were high. Pressed for cash, he advertised a proposed sale of standing timber on a choice 2,000-acre tract. The only response was an offer by Logger, the owner of a large, integrated construction enterprise, after inspection of the advertised tract.

12. For this question only, assume the following facts. Logger 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. Landholder, by then in desperate financial straits and knowing little about timber values, signed and delivered to Logger a letter accepting the offer.

If, before Logger commences performance, Landholder's investment fortunes suddenly improve and he wishes to get out of the timber deal with Logger, which of the following legal concepts affords his best prospect of effective cancellation?

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

13. For this question only, assume the following facts. Logger offered a fair price for the timber rights in question, and Landholder accepted the offer. The 2,000-acre tract was an abundant wild-game habitat and had been used for many years, with Landholder's permission, by area hunters. Logger's performance of the timber contract would destroy this habitat. Without legal excuse and over Landholder's strong objection, Logger repudiated the contract before commencing performance. Landholder could not afford to hire a lawyer and take legal action, and made no attempt to assign any cause of action he might have had against Logger.

If Logger is sued for breach of the contract by Landholder's next-door neighbor, whose view of a nearby lake is obscured by the standing timber, the neighbor will probably

- (A) lose, as only an incidental beneficiary, if any, of the Logger-Landholder contract.
- (B) lose, as a maintainer of nuisance litigation.
- (C) prevail, as a third-party intended beneficiary of the Logger-Landholder contract.
- (D) prevail, as a surrogate for Landholder in view of his inability to enforce the contract.

14. Beth wanted to make some money, so she decided to sell cocaine. She asked Albert, who was reputed to have access to illegal drugs, to supply her with cocaine so she could resell it. Albert agreed and sold Beth a bag of white powder. Beth then repackaged the white powder into smaller containers and sold one to Carol, an undercover police officer, who promptly arrested Beth. Beth immediately confessed and said that Albert was her supplier. Upon examination, the white powder was found not to be cocaine or any type of illegal substance.

If Albert knew the white powder was not cocaine but Beth believed it was, which of the following is correct?

- (A) Both Albert and Beth are guilty of attempting to sell cocaine.
- (B) Neither Albert nor Beth is guilty of attempting to sell cocaine.
- (C) Albert is guilty of attempting to sell cocaine, but Beth is not.
- (D) Albert is not guilty of attempting to sell cocaine, but Beth is.

15. Senator makes a speech on the floor of the United States Senate in which she asserts that William, a federal civil servant with minor responsibilities, was twice convicted of fraud by the courts of State X. In making this assertion, Senator relied wholly on research done by Frank, her chief legislative assistant. In fact, it was a different man named William, and not William the civil servant, who was convicted of these crimes in the state court proceedings. This mistake was the result of carelessness on Frank's part.

No legislation affecting the appointment or discipline of civil servants or the program of the federal agency for which William works was under consideration at the time Senator made her speech about William on the floor of the Senate.

William sues Senator and Frank for defamation. Both defendants move to dismiss the complaint.

As a matter of constitutional law, the court hearing this motion should

- (A) grant it as to Frank, because he is protected by the freedom of speech guarantee against defamation actions by government officials based on his mere carelessness; but deny it as to Senator, because, as an officer of the United States, she is a constituent part of the government and, therefore, has no freedom of speech rights in that capacity.
- (B) grant it as to both defendants, because Senator is immune to suit for any speech she makes in the Senate under the speech or debate clause of Article I, Section 6, and Frank may assert Senator's immunity for his assistance to her in preparing the speech.

- (C) deny it as to both defendants, because any immunity of Senator under the speech or debate clause does not attach to a speech that is not germane to pending legislative business, and Frank is entitled to no greater immunity than the legislator he was assisting.
- (D) deny it as to Frank, because he is not a legislator protected by the speech or debate clause; but grant it as to Senator, because she is immune from suit for her speech by virtue of that clause.

16. Frank owned two adjacent parcels, Blackacre and Whiteacre. Blackacre fronts on a poor unpaved public road, while Whiteacre fronts on Route 20, a paved major highway. Fifteen years ago, Frank conveyed to his son, Sam, Blackacre "together with a right-of-way 25 feet wide over the east side of Whiteacre to Route 20." At that time, Blackacre was improved with a ten-unit motel.

Ten years ago, Frank died. His will devised Whiteacre "to my son, Sam, for life, remainder to my daughter, Doris." Five years ago, Sam executed an instrument in the proper form of a deed, purporting to convey Blackacre and Whiteacre to Joe in fee simple. Joe then enlarged the motel to 12 units. Six months ago, Sam died and Doris took possession of Whiteacre. She brought an appropriate action to enjoin Joe from using the right-of-way.

In this action, who should prevail?

- (A) Doris, because merger extinguished the easement.
- (B) Doris, because Joe has overburdened the easement.
- (C) Joe, because he has an easement by necessity.
- (D) Joe, because he has the easement granted by Frank to Sam.

17. Adam and Brett are students in an advanced high-school Russian class. During an argument one day in the high school cafeteria, in the presence of other students, Adam, in Russian, accused Brett of taking money from Adam's locker.

In a suit by Brett against Adam based on defamation, Brett will

- (A) prevail, because Adam's accusation constituted slander *per se*.
 - (B) prevail, because the defamatory statement was made in the presence of third persons.
 - (C) not prevail, unless Adam made the accusation with knowledge of falsity or reckless disregard of the truth.
 - (D) not prevail, unless one or more of the other students understood Russian.
18. Five years ago, Sally acquired Blackacre, improved with a 15-year-old dwelling. This year Sally listed Blackacre for sale with Bill, a licensed real estate broker. Sally informed Bill of several defects in the house that were not readily discoverable by a reasonable inspection, including a leaky basement, an inadequate water supply, and a roof that leaked. Paul responded to Bill's advertisement, was taken by Bill to view Blackacre, and decided to buy it. Bill saw to it that the contract specified the property to be "as is" but neither Bill nor Sally pointed out the defects to Paul, who did not ask about the condition of the dwelling. After closing and taking possession, Paul discovered the defects, had them repaired, and demanded that Sally reimburse him for the cost of the repairs. Sally refused and Paul brought an appropriate action against Sally for damages.

If Sally wins, it will be because

- (A) Sally fulfilled the duty to disclose defects by disclosure to Bill.
- (B) the contract's "as is" provision controls the rights of the parties.
- (C) Bill became the agent of both Paul and Sally and thus knowledge of the defects was imputed to Paul.
- (D) the seller of a used dwelling that has been viewed by the buyer has no responsibility toward the buyer.

19. Hydro-King, Inc., a high-volume, pleasure-boat retailer, entered into a written contract with Boater, signed by both parties, to sell Boater a power boat for \$12,000. The manufacturer's price of the boat delivered to Hydro-King was \$9,500. As the contract provided, Boater paid Hydro-King \$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, Boater notified Hydro-King that he would be financially unable to conclude the purchase; Hydro-King thereupon resold the same boat that Boater had ordered to a third person for \$12,000 cash.

If Boater sues Hydro-King for restitution of the \$4,000 advance payment, which of the following should the court decide?

- (A) Boater's claim should be denied, because, as the party in default, he is deemed to have lost any right to restitution of a benefit conferred on Hydro-King.
 - (B) Boater's claim should be denied, because, but for his repudiation, Hydro-King would have made a profit on two boat sales instead of one.
 - (C) Boater's claim should be upheld in the amount of \$4,000 minus the amount of Hydro-King's lost profit under its contract with Boater.
 - (D) Boater's claims should be upheld in the amount of \$3,500 (\$4,000 minus \$500 as statutory damages under the UCC).
20. A federal statute prohibits the sale or resale, in any place in this country, of any product intended for human consumption or ingestion into the human body that contains designated chemicals known to cause cancer, unless the product is clearly labeled as dangerous.
- The constitutionality of this federal statute may most easily be justified on the basis of the power of Congress to
- (A) regulate commerce among the states.
 - (B) enforce the Fourteenth Amendment.
 - (C) provide for the general welfare.
 - (D) promote science and the useful arts.

21. Suspecting that Scott had slain his wife, police detectives persuaded one of Scott's employees to remove a drinking glass from Scott's office so that it could be used for fingerprint comparisons with a knife found near the body. The fingerprints matched. The prosecutor announced that he would present comparisons and evidence to the grand jury. Scott's lawyer immediately filed a motion to suppress the evidence of the fingerprint comparisons to bar its consideration by the grand jury, contending that the evidence was illegally acquired.

The motion should be

- (A) granted, because, if there was no probable cause, the grand jury should not consider the evidence.
- (B) granted, because the employee was acting as a police agent and his seizure of the glass without a warrant was unconstitutional.
- (C) denied, because motions based on the exclusionary rule are premature in grand jury proceedings.
- (D) denied, because the glass was removed from Scott's possession by a private citizen and not a police officer.

22. Landco owns and operates a 12-story apartment building containing 72 apartments, 70 of which are rented. Walker has brought an action against Landco alleging that while he was walking along a public sidewalk adjacent to Landco's apartment building a flower pot fell from above and struck him on the shoulder, causing extensive injuries. The action was to recover damages for those injuries.

If Walker proves the foregoing facts and offers no other evidence explaining the accident, will his claim survive a motion for directed verdict offered by the defense?

- (A) Yes, because Walker was injured by an artificial condition of the premises while using an adjacent public way.
- (B) Yes, because such an accident does not ordinarily happen in the absence of negligence.
- (C) No, if Landco is in no better position than Walker to explain the accident.
- (D) No, because there is no basis for a reasonable inference that Landco was negligent.

23. Fruitko, Inc., ordered from Orchard, Inc., 500 bushels of No. 1 Royal Fuzz peaches, at a specified price, "for prompt shipment." Orchard promptly shipped 500 bushels, but by mistake shipped No. 2 Royal Fuzz peaches instead of No. 1. The error in shipment was caused by the negligence of Orchard's shipping clerk.

Which of the following best states Fruitko's rights and duties upon delivery of the peaches?

- (A) Orchard's shipment of the peaches was a counteroffer and Fruitko can refuse to accept them.
- (B) Orchard's shipment of the peaches was a counteroffer but, since peaches are perishable, Fruitko, if it does not want to accept them, must reship the peaches to Orchard in order to mitigate Orchard's losses.
- (C) Fruitko must accept the peaches because a contract was formed when Orchard shipped them.
- (D) Although a contract was formed when Orchard shipped the peaches, Fruitko does not have to accept them.

24. Kathy, a two-year-old child, became ill with meningitis. Jim and Joan, her parents, were members of a group that believed fervently that if they prayed enough, God would not permit their child to die. Accordingly, they did not seek medical aid for Kathy and refused all offers of such aid. They prayed continuously. Kathy died of the illness within a week.

Jim and Joan are charged with murder in a common-law jurisdiction.

Their best defense to the charge is that

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

25. Pedestrian sued Driver for personal injuries sustained when Driver's car hit Pedestrian. Immediately after the accident, Driver got out of his car, raced over to Pedestrian, and said, "Don't worry, I'll pay your hospital bill."

Pedestrian's testimony concerning Driver's statement is

- (A) admissible, because it is an admission of liability by a party-opponent.
 - (B) admissible, because it is within the excited utterance exception to the hearsay rule.
 - (C) inadmissible to prove liability, because it is an offer to pay medical expenses.
 - (D) inadmissible, provided that Driver kept his promise to pay Pedestrian's medical expenses.
26. As a result of an accident at the NPP nuclear power plant, a quantity of radioactive vapor escaped from the facility and two members of the public were exposed to excessive doses of radiation. According to qualified medical opinion, that exposure will double the chance that these two persons will ultimately develop cancer. However, any cancer that might be caused by this exposure will not be detectable for at least ten years. If the two exposed persons do develop cancer, it will not be possible to determine whether it was caused by this exposure or would have developed in any event.
- If the exposed persons assert a claim for damages against NPP 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 NPP?

27. John asked Doris to spend a weekend with him at his apartment and promised her they would get married on the following Monday. Doris agreed and also promised John that she would not tell any-one of their plans. Unknown to Doris, John had no intention of marrying her. After Doris came to his apartment, John told Doris he was going for cigarettes. He called Doris's father and told him that he had his daughter and would kill her if he did not receive \$100,000. John was arrested on Sunday afternoon when he went to pick up the \$100,000. Doris was still at the apartment and knew nothing of John's attempt to get the money.

John is guilty of

- (A) kidnapping.
 - (B) attempted kidnapping.
 - (C) kidnapping or attempted kidnapping but not both.
 - (D) neither kidnapping nor attempted kidnapping.
28. In a civil action for personal injury, Paul alleges that he was beaten up by Donald during an altercation in a crowded bar. Donald's defense is that he was not the person who hit Paul. To corroborate his testimony about the cause of his injuries, Paul seeks to introduce, through the hospital records custodian, a notation in a regular medical record made by an emergency room doctor at the hospital where Paul was treated for his injuries. The notation is: "Patient says he was attacked by Donald."
- The notation is
- (A) inadmissible, unless the doctor who made the record is present at trial and available for cross-examination.
 - (B) inadmissible as hearsay not within any exception.
 - (C) admissible as hearsay within the exception for records of regularly conducted activity.
 - (D) admissible as a statement made for the purpose of medical diagnosis or treatment.

29. Owen owned Greenacre in fee simple. The small house on Greenacre was occupied, with Owen's oral permission, rent-free, by Aaron, Owen's son, and Brian, a college classmate of Aaron. Aaron was then 21 years old.

Owen, by properly executed instrument, conveyed Greenacre to "my beloved son, Aaron, his heirs and assigns, upon the condition precedent that he earn a college degree by the time he reaches the age of 30. If, for any reason, he does not meet this condition, then Greenacre shall become the sole property of my beloved daughter, Anna, her heirs and assigns." At the time of the conveyance, Aaron and Brian attended a college located several blocks from Greenacre. Neither had earned a college degree.

One week after the delivery of the deed to Aaron, Aaron recorded the deed and immediately told Brian that he, Aaron, was going to begin charging Brian rent since "I am now your landlord." There is no applicable statute.

Aaron and Brian did not reach agreement, and Aaron served the appropriate notice to terminate whatever tenancy Brian had. Aaron then sought, in an appropriate action, to oust Brian.

Who should prevail?

- (A) Aaron, because the conveyance created a fee simple subject to divestment in Aaron.
 - (B) Aaron, because Owen's conveyance terminated Brian's tenancy.
 - (C) Brian, because Owen's permission to occupy preceded Owen's conveyance to Aaron.
 - (D) Brian, because Brian is a tenant of Owen, not of Aaron.
30. Dexter was tried for the homicide of a girl whose strangled body was found beside a remote logging road with her hands taped together. After Dexter offered evidence of alibi, the state calls Wilma to testify that Dexter had taped her hands and tried to strangle her in the same location two days before the homicide but that she escaped.
- The evidence is
- (A) admissible, as tending to show Dexter is the killer.
 - (B) admissible, as tending to show Dexter's violent nature.
 - (C) inadmissible, because it is improper character evidence.
 - (D) inadmissible, because it is unfairly prejudicial.

ANSWER KEY

- | | | |
|-------|-------|-------|
| 1. B | 11. C | 21. C |
| 2. B | 12. C | 22. D |
| 3. A | 13. A | 23. D |
| 4. A | 14. D | 24. A |
| 5. A | 15. B | 25. C |
| 6. D | 16. D | 26. D |
| 7. A | 17. D | 27. D |
| 8. B | 18. B | 28. B |
| 9. D | 19. C | 29. D |
| 10. D | 20. A | 30. A |

THE MBE ANSWER SHEET

All answers to the MBE are to be recorded on a separate answer sheet using a #2 black lead pencil. For each question, select your answer and blacken the corresponding circle on the answer sheet. No credit is given for anything written in the test book.

Prior to the beginning of the examination, you will be asked to fill in some identifying information on the answer sheet. **If this information is not properly completed, your score report may be delayed.**

A completed sample identification section of the MBE answer sheet is printed on page 45. At the top, in Block A, you will see a group of columns labeled “Jurisdiction Code.” In the boxes at the top of the columns you will write the jurisdiction code number that your test supervisor will announce to you.

In Block B, labeled “Applicant Number,” you will enter the applicant number assigned to you by your state board of bar examiners. All five spaces must be filled in. If your number has less than five digits, precede it with as many zeros as necessary, as shown in the sample. Be sure you do not add extra zeros *after* your applicant number, since this will result in a delayed report.

In Block C, labeled “Date of Birth,” fill in the columns indicating your month, day, and year of birth. If the day or year of your birth is a single digit, fill in the first digit space with a zero.

Complete Block D, “Social Security Number,” if your jurisdiction requires it or if you anticipate using NCBE’s score reporting services now or in the future.

In the column under each number you have entered, blacken with pencil the circle corresponding to that number. Blacken the circles for zeros as you would for any other digit.

On Side 2 of the answer sheet (page 45), complete the “Name” field, according to instructions from your jurisdiction. Completely fill in one circle under each letter of your name. Then completely fill in the blank circles below each empty box.

Some jurisdictions will use the blank space on the back of the answer sheet for special information for their use. Do not write in that space unless directed to do so by the test supervisor.

Effective with the July 2004 MBE, applicants who anticipate they may wish to use NCBE's score reporting services are required to furnish a name and Social Security Number on the MBE answer sheet at the time of testing.

Sample of a correctly completed identification section of the answer sheet

Note: The first circles are marked “one,” not zero.

SIDE 1

A.M.

| JURISDICTION CODES (Use in block A) | | JURISDICTION CODE ← | | APPLICANT NUMBER | | DATE OF BIRTH | | | SOCIAL SECURITY NUMBER | | | |
|--|----|------------------------|---|---------------------|---|------------------|-----|------|---------------------------|---|---|---|
| | | | | | | Month | Day | Year | | | | |
| Alabama | 01 | 3 | 7 | 0 | 0 | Jan. | 1 | 0 | 7 | 1 | 2 | 3 |
| Alaska | 02 | | | 0 | 1 | Feb. | 0 | 0 | 7 | 4 | 5 | 6 |
| Arizona | 03 | | | 0 | 0 | March | 0 | 0 | 7 | 0 | 0 | 0 |
| Arkansas | 04 | | | 0 | 0 | April | 0 | 0 | 7 | 0 | 0 | 0 |
| California | 05 | | | 0 | 0 | May | 0 | 0 | 7 | 0 | 0 | 0 |
| Colorado | 06 | | | 0 | 0 | June | 0 | 0 | 7 | 0 | 0 | 0 |
| Connecticut | 07 | | | 0 | 0 | July | 0 | 0 | 7 | 0 | 0 | 0 |
| Delaware | 08 | | | 0 | 0 | Aug. | 0 | 0 | 7 | 0 | 0 | 0 |
| D.C. | 09 | | | 0 | 0 | Sept. | 0 | 0 | 7 | 0 | 0 | 0 |
| Florida | 10 | | | 0 | 0 | Oct. | 0 | 0 | 7 | 0 | 0 | 0 |
| Georgia | 11 | | | 0 | 0 | Nov. | 0 | 0 | 7 | 0 | 0 | 0 |
| Hawaii | 12 | | | 0 | 0 | Dec. | 0 | 0 | 7 | 0 | 0 | 0 |
| I Idaho | 13 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Illinois | 14 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Indiana | 15 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Iowa | 16 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Kansas | 17 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Kentucky | 18 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Louisiana | 19 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Maine | 20 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Maryland | 21 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Massachusetts | 22 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Michigan | 23 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Minnesota | 24 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Mississippi | 25 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Missouri | 26 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Montana | 27 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Nebraska | 28 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Nevada | 29 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| New Hampshire | 30 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| New Jersey | 31 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| New Mexico | 32 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| New York | 33 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| North Carolina | 34 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| North Dakota | 35 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Ohio | 36 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Oklahoma | 37 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Oregon | 38 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Pennsylvania | 39 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Rhode Island | 40 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| South Carolina | 41 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| South Dakota | 42 | | | 0 | 0 | | | | 7 | 0 | 0 | 0 |
| Tennessee | 43 | | | 0 | 0 | | | | 7 | | | |

SIDE 2

[illegible]

STUDY AIDS AVAILABLE

NCBE publishes study aids for the MBE. *Sample MBE*, *Sample MBE II*, and *Sample MBE III* are actual 200-item MBEs (February 1991, July 1991, and July 1998, respectively). Answer keys are included. You may order study aids by using the form on page 47 or the form on the NCBE website, or through the NCBE Online Store (www.ncbex.org).

The purpose of these publications is to familiarize you with the format and nature of MBE questions. The questions in these publications should not be used for substantive preparation for the MBE. Because of changes in the law since the time the examination was administered, the questions and their keys may no longer be current.

To order using the form on page 47, fill out the form and send it, with a check or money order payable to the National Conference of Bar Examiners or with completed credit card information, to the address below. If you are paying by VISA or MasterCard, you may fax the form to 608/661-1276. **ALL SALES ARE FINAL.**

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