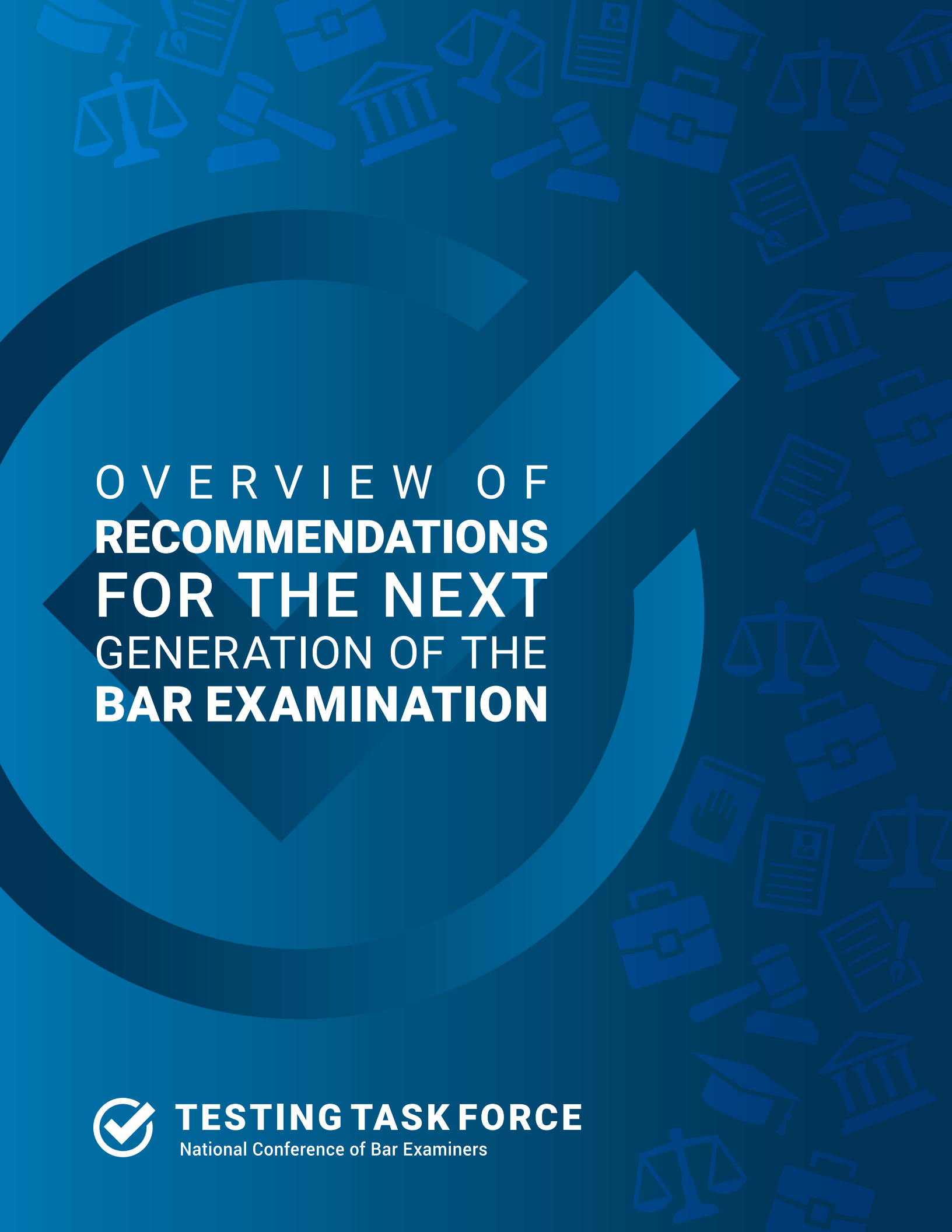


APPENDIX A

The background is a solid blue color. It is decorated with various white icons related to law and justice, including scales of justice, gavel, briefcase, and classical building facades. A large, stylized white circular arrow with a thick stroke curves around the central text, pointing from the top left towards the bottom right.

OVERVIEW OF RECOMMENDATIONS FOR THE NEXT GENERATION OF THE BAR EXAMINATION



TESTING TASK FORCE

National Conference of Bar Examiners

Best practices for high-stakes licensure examinations include periodic review of exam content and design. Consistent with that standard, the Testing Task Force undertook a three-year, comprehensive, empirical study to ensure that the bar examination continues to assess the minimum competencies required of newly licensed lawyers in an evolving legal profession, and to determine how those competencies should be assessed. This overview sets out the Task Force's recommendations for the next generation of the bar examination, which were approved by NCBE's Board of Trustees in January 2021. A tremendous amount of work will be required to implement the recommendations and transition to administration of the new examination. At the end of this overview, we list some of the steps involved in implementation, a process that is anticipated to take up to four to five years.

This study has been approached systematically, transparently, and collaboratively—unconstrained by the current bar exam's content and design—with qualitative and quantitative research conducted by external expert consultants in three phases. During Phase 1, we held a series of listening sessions across the country where more than 400 stakeholders from bar admission agencies, the legal academy, and the legal profession provided their views about the current bar exam and ideas for how it could be changed. Phase 2 consisted of a nationwide practice analysis survey completed by nearly 15,000 lawyers that provided a rich set of data on the work performed by newly licensed lawyers and the knowledge and skills they need to perform that work. In Phase 3, we convened two committees composed of bar admission representatives, legal educators, and practitioners who applied their professional experience and judgment to the data produced by Phases 1 and 2 to provide input on what content should be tested on the bar exam and when and how that content should be assessed. The results from Phases 1, 2, and 3 of our study are detailed in individual reports.

Based on this extensive research, the Task Force arrived at high-level decisions about the content

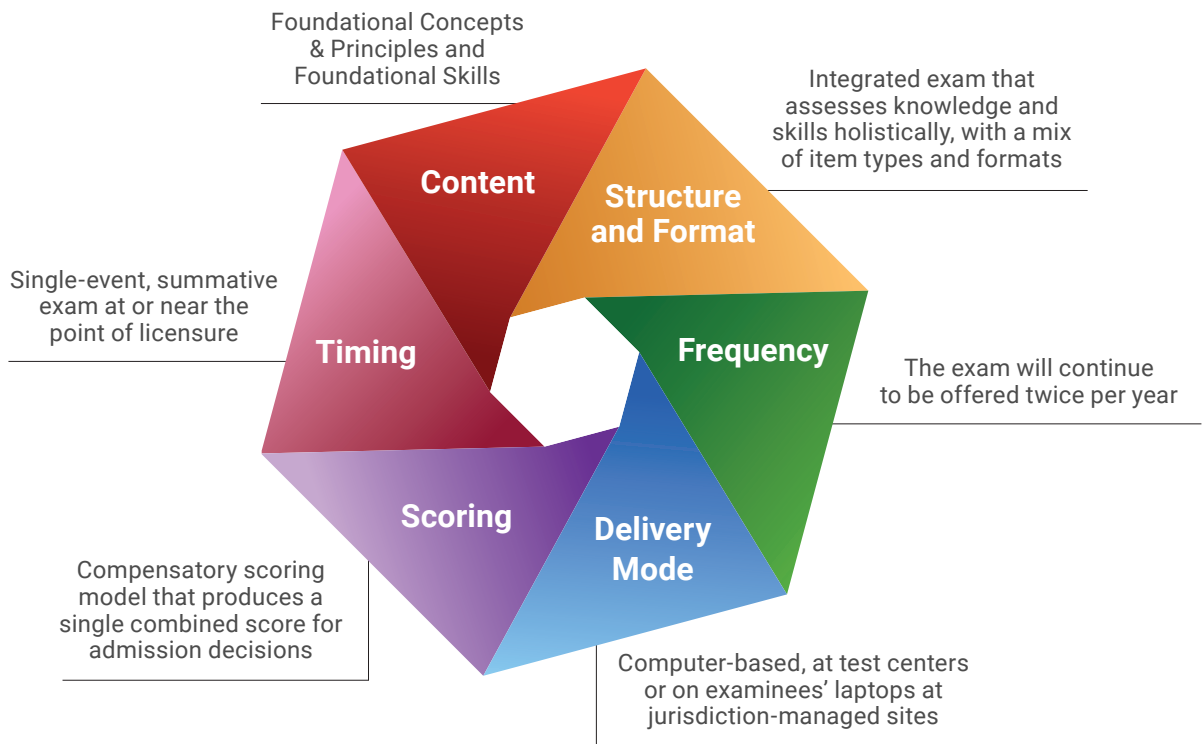
and the design for the next generation of the bar examination. Those decisions are founded on the principle that the purpose of the bar exam is

to protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer.

Our decisions were guided by the prevailing views expressed by stakeholders during Phases 1 and 3: that the bar exam should test fewer subjects and should test less broadly and deeply within the subjects covered, that greater emphasis should be placed on assessment of lawyering skills to better reflect real-world practice and the types of activities newly licensed lawyers perform, that the exam should remain affordable, that fairness and accessibility for all candidates must continue to be ensured, and that the portability of Uniform Bar Exam (UBE) scores should be maintained. In those instances where there weren't prevailing stakeholder views, our decisions were based on what will best ensure that the exam's content and design achieve the purpose described above and meet the standards required of high-stakes licensure exams by the *Standards for Educational and Psychological Testing* (AERA, APA, NCME, 2014). Finally, our decisions reflect the fact that newly licensed lawyers receive a general license to practice law, suggesting that the licensure exam should assess knowledge and skills that are of foundational importance and are common to numerous practice areas.

As explained in more detail in the pages that follow, these recommendations specify the use of an integrated examination that measures both knowledge and skills through a mix of item formats. The exam will be offered two times per year as a summative event and delivered by computer. Compensatory scoring will be used to produce a single combined score for making admission decisions.

Snapshot of the Next Generation of the Bar Examination



INTEGRATED EXAMINATION

The Task Force recommends the creation of an integrated examination that assesses both knowledge and skills holistically, using both stand-alone questions and item sets, as well as a combination of item formats (e.g., selected-response, short-answer, and extended constructed-response items). An item set is a collection of test questions based on a single scenario or stimulus such that the questions pertaining to that scenario are developed and presented as a unit. Item sets can be assembled so that all items within a set are either of the same format or of different formats.

An integrated exam reflects a fundamental shift from the current Multistate Bar Examination (MBE), Multistate Essay Examination (MEE), and Multistate Performance Test (MPT), which are discrete components covering specific knowledge and skills and using single items of the same format within each component.

An integrated exam permits use of scenarios that are representative of real-world types of legal problems that newly licensed lawyers encounter in practice and provides an authentic assessment of lawyering skills. The use of item sets also provides efficiencies in exam development and administration, in that a single scenario applies to multiple items.

SCORING

A single combined score for making admission decisions, based upon a compensatory scoring model, is consistent with the use of an integrated exam and with the interconnected nature of the competencies being measured. Compensatory scoring reflects the candidate's overall proficiency and allows areas of strength to compensate for areas of weakness and generally is considered fairer to candidates than conjunctive scoring models.

CONTENT TO BE ASSESSED

The following Foundational Concepts & Principles (FC&P) and Foundational Skills are recommended for inclusion on the new bar exam. Note that the FC&P are legal subjects that are common to numerous practice areas, which is consistent with the regulatory framework of a general license.

Foundational Concepts and Principles

- Civil Procedure (including constitutional protections and proceedings before administrative agencies)
- Contract Law (including Art. 2 of the UCC)
- Evidence
- Torts
- Business Associations (including Agency)
- Constitutional Law (excluding principles covered under Civil Procedure and Criminal Law)
- Criminal Law and Constitutional Protections Impacting Criminal Proceedings (excluding coverage of criminal procedure beyond constitutional protections)
- Real Property

Foundational Skills

- Legal Research
- Legal Writing
- Issue Spotting and Analysis
- Investigation and Evaluation
- Client Counseling and Advising
- Negotiation and Dispute Resolution
- Client Relationship and Management

Implementation of the final recommendations will include a process for developing content specifications to ensure that the depth and breadth of coverage of the FC&P is carefully aligned with minimum competence for entry-level practice. Content specifications guide development of test questions and articulate the scope of coverage to provide notice to candidates of what may be tested.

Foundational Skills may be assessed in the context of the FC&P listed above as well as in other legal contexts. Whenever Foundational Skills are assessed in a legal context other than the FC&P, appropriate legal resources (e.g., statutes, cases, rules) will be provided to candidates. As an example, Professional Responsibility or Family Law may serve as the context for the assessment of Foundational Skills with appropriate legal resources being provided.

The list of Foundational Skills includes some skills that might be thought of as performance skills, such as client interviewing and negotiation. To ensure fairness, those skills that can be objectively measured will be assessed using uniform text- or video-based scenarios that require candidates to construct a written response or select the correct response. Of course, it is necessary to also consider accessibility issues in determining appropriate methods for assessing skills.

TIMING, MODE, AND FREQUENCY OF TEST ADMINISTRATION

The Task Force recommends that the bar exam be given as a single event at or near the point of licensure. This timing is most consistent with the purpose of the bar exam in that it places measurement of minimum competence as close in time to the award of a license as possible. Jurisdictions could still permit applicants to test in their final semester of law school, as is currently the case. Single-event testing allows more options for equating and scaling and is also more consistent with the use of an integrated exam.

A single-event approach will avoid concerns expressed by some stakeholders about a multi-event approach, where components of the exam would be administered at separate times. Those potential concerns included interfering with internship opportunities, impacting law school curricula, adding the stress of taking a high-stakes exam during law school, creating multiple “hurdles” for admission, and potentially increasing costs for candidates to prepare for and travel to multiple administrations of the exam. One of the primary reasons some stakeholders favored multi-event testing was to permit testing of legal doctrine closer in time to

when students learned the content in law school. The Task Force concluded that the use of an integrated exam with an increased emphasis on assessing skills and more limited depth and breadth of coverage of doctrine addresses the underlying reasons some stakeholders favored multi-event testing.

The next generation of the bar exam will be a computer-based test, administered either on candidates' laptops in jurisdiction-managed facilities and/or at computer testing centers managed by a suitable vendor. If possible, the length of the exam will be reduced, but this will be done only if the necessary validity and reliability of scores can be maintained. The exam will continue to be offered two times each year.

NEXT STEPS

We anticipate that the implementation process to develop and deliver the new exam will take up to four to five years, which will allow time for notice to candidates of what to expect and for law schools to help students prepare. We will continue to collaborate with stakeholders as we work to build the new exam from this road map. Some of the major steps of implementation will include

- developing content specifications identifying scope of coverage;
- drafting new types of questions for integrated testing of knowledge and skills;
- ensuring accessibility for candidates with disabilities;
- field-testing new item formats and new exam content;
- conducting analyses and review to ensure fairness for diverse populations of candidates;
- evaluating options for computer delivery of the exam;
- establishing scoring processes and psychometric methods for equating/scaling scores;
- developing test administration policies and procedures;
- assisting jurisdictions to prepare and supporting them in activities such as setting passing score requirements and amending rules to align with changes to the exam; and
- providing study materials and sample test questions to help candidates prepare.



National Conference
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The National Conference of Bar Examiners, founded in 1931, is a not-for-profit corporation that develops licensing tests for bar admission and provides character and fitness investigation services. NCBE also provides testing, research, and educational services to jurisdictions; provides services to bar applicants on behalf of jurisdictions; and acts as a national clearinghouse for information about the bar examination and bar admissions.

Our mission

NCBE promotes fairness, integrity, and best practices in admission to the legal profession for the benefit and protection of the public. We serve admission authorities, courts, the legal education community, and candidates by providing high-quality

- assessment products, services, and research
- character investigations
- informational and educational resources and programs

Our vision

A competent, ethical, and diverse legal profession.

TESTING TASK FORCE MEMBERS

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APPENDIX B



Background Information on the Next Generation of the Bar Examination

Prepared by the National Conference of Bar
Examiners Spring 2024

NextGen✓
Bar Exam of the Future

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Background Information

The next generation of the bar exam is currently under development by the National Conference of Bar Examiners (NCBE). This document provides an overview of the development process and includes an appendix of additional information that the reader may find useful.

NCBE Testing Task Force

The Testing Task Force was appointed in 2018 by Chief Justice Rebecca White Berch (ret. AZ), the NCBE Board of Trustees' then chair. The Testing Task Force was charged with undertaking a comprehensive three-year study to ensure the bar exam continues to test the knowledge, skills, and abilities required for competent entry-level legal practice in a changing profession.

The study had three phases, and input from stakeholders was gathered during each phase.



Phase 1: Listening sessions were held with more than 400 stakeholders from bar admission agencies, Supreme Courts, the legal academy, and attorneys from across the country.



Phase 2: A nationwide practice analysis was completed by nearly 15,000 lawyers, who provided data on the work performed by newly licensed lawyers and on the knowledge and skills needed for early-career competence. A comprehensive and substantive practice analysis is vital to establishing a relevant content domain in any professional licensure exam.¹ For the next generation bar exam practice analysis, which provided critical information to ensure the validity of the new exam, the Testing Task Force commissioned a survey of both lawyers new to practice and those who supervise them to capture current practices and identify future trends in the profession.



Phase 3: Two committees composed of bar admission representatives, legal educators, and legal practitioners evaluated the data produced in Phases 1 and 2 to provide input on what content the bar exam should test and when and how that content should be assessed.

¹ Standard 11.13 in the *Standards for Educational and Psychological Testing* states, "The content domain to be covered by a credentialing test should be defined clearly and justified in terms of the importance of the content for credential-worthy performance in an occupation or profession. A rationale and evidence should be provided to support the claim that the knowledge or skills being assessed are required for credential-worthy performance in that occupation and are consistent with the purpose for which the credentialing program was instituted." See www.apa.org/science/programs/testing/standards.

Content and Structure

In Phase 3, two committees were convened for the purpose of discussing test content and design issues:

- **Blueprint Development Committee:** Both newly licensed and experienced practitioners who applied their professional judgment and experience to recommend what content should be tested.
- **Test Design Committee:** Legal educators and bar admission representatives who recommended how that content should be assessed and provided input on an effective design for the exam.

Content

The Testing Task Force [recommended assessment of the skills and knowledge areas](#) below:


Foundational Concepts and Principles	Foundational Skills
<ul style="list-style-type: none"> • Civil Procedure • Contracts • Evidence • Torts • Business Associations • Constitutional Law • Criminal Law • Real Property • Family Law* 	<ul style="list-style-type: none"> • Legal Research • Legal Writing • Issue Spotting and Analysis • Investigation and Evaluation • Client Counseling and Advising • Negotiation and Dispute Resolution • Client Relationship and Management
<p>* In October 2023, NCBE announced that Family Law would be added to the list of Foundational Skills starting with the July 2026 NextGen bar exam.</p>	

Structure

Based on the work of the Blueprint Development and Test Design Committees, the Testing Task Force also recommended the use of an integrated exam structure to assess both legal knowledge and skills holistically in a single, practice-related examination.

An integrated exam permits use of scenarios that are representative of real-world legal problems that newly licensed lawyers encounter in practice. Realistic scenarios are used in the current exam, but in discrete components comprised of stand-alone items, whereas an integrated exam includes item sets and a combination of item formats (e.g., selected-response, short-answer, and extended constructed-response items) within the same component.

The concept of an integrated assessment model was further supported by NCBE's Technical Advisory Panel, a group of external psychometric experts. Members of the Technical Advisory Panel were given the opportunity to review and comment on the Blueprint Development and Test Design Committees' recommendations and recognized a recurring

A decorative banner at the top of the page features a dark blue background with various white icons related to law and justice, including scales of justice, a gavel, a graduation cap, and a building.

theme pointing to the concept of integrated assessment design. Members observed that integrated assessment is not a novel concept and is already employed in academia and in high-stakes licensure assessments used in other professions.

NCBE Testing Task Force Recommendations

Following completion of the three phases, the Testing Task Force presented its recommendations via a [report released publicly on its website](#). In January 2021, the NCBE Board of Trustees approved the Testing Task Force's recommendations and announced initiation of the next phase of exam development. The process to implement the recommendations is expected to take five years.

Implementation Steering Committee

Following approval of the Testing Task Force's recommendations, NCBE appointed the Implementation Steering Committee, which has general oversight of the implementation of the next generation of the bar exam and will help ensure fidelity to the Testing Task Force study's findings and recommendations.

Four internal workgroups coordinate with the Implementation Steering Committee to address all aspects of implementation and transition:

- Test Development and Psychometrics
- Diversity, Fairness, and Inclusion
- Test Delivery and Operations
- Strategy, Coordination, and Outreach

Fairness

Principles of fairness in testing are essential elements of both the current and the next generation bar exam. Fairness considerations are embedded throughout the work on the exam.

Scope of Coverage

After an open invitation and application process, the Implementation Steering Committee selected legal educators and practitioners to form the Content Scope Committee. The Content Scope Committee was tasked with delineating the scope of coverage of the Foundational Concepts and Principles and Foundational Skills designated for inclusion on the new exam for purposes of producing the Test Content Specifications, which will be used to write appropriate test items and to inform applicants, law schools, and jurisdictions of the specific topics covered on the exam.

Content Scope Outlines

The Content Scope Outlines are intended to inform stakeholders of the scope of the topics to be assessed in the eight Foundational Concepts and Principles and of the lawyering tasks to be assessed in the seven Foundational Skills on the next generation of the bar exam. In 2021, NCBE appointed a Content Scope Committee to make recommendations regarding the breadth and depth of the topics and tasks to be tested.

Through a public comment process that closed in April 2022, NCBE sought stakeholder input on whether there were any significant oversights in the outlines of topics and lawyering tasks identified for assessment. 394 stakeholders—including law school deans, faculty, and administrators; practicing attorneys; judges and justices; law students; and bar examiners and admission staff—submitted comments on the outlines, which were accessed on our website more than 1,600 times. NCBE reviewed the comments and evaluated whether revisions should be made to the outlines based on the comments. Following this review, the final Content Scope Outlines were published on the NextGen website. These outlines are available online at nextgenbarexam.ncbex.org/reports/content-scope/.

Test Content Specifications

The Content Scope Outlines were the first step in preparing the Test Content Specifications—the “blueprint” for the new exam. The Test Content Specifications will provide more details, such as the sources of law for the topics tested, the weighting or emphasis of the subjects/topics and skills, and sample test questions illustrating how the knowledge and skills may be tested in an integrated design. Additional annotations about what is covered within subjects/topics may also be added. A first set of sample questions is available online at nextgenbarexam.ncbex.org/nextgen-sample-questions/.

Prototyping and Pilot Testing

Work has begun on three phases of prototype tests for the new exam: pilot testing, field testing, and prototype testing. These phases are designed to assess the effectiveness of new question types in testing the Foundational Concepts and Principles and Foundational Skills. Pilot testing, which is now complete, focused on:

- Determining the impact of providing legal resources during the exam
- Determining how long examinees will need to answer new question types (including time to consult provided resources)
- Developing initial grading rubrics with subject-matter experts

Throughout the pilot-testing phase, NCBE also evaluated the optimal way to provide legal resources within the exam:

- In a way that is fair to all
- Such that they enable candidates to use the resources efficiently in the time allotted

In future phases, NCBE will also:

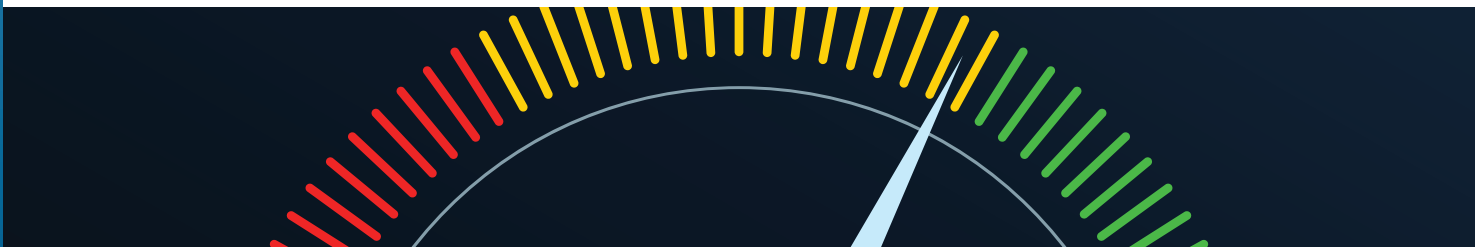
- Determine the best interface/user experience for new question types (delivered on computer)
- Determine the optimal combination of question types and which question types work best for which subject areas and skills
- Test grading rubrics with real bar graders
- Facilitate a standard-setting exercise for jurisdictions



Exam Administration

Based on the technology currently available, the Testing Task Force determined that a computer-based, in-person administration of the bar exam is best suited to ensuring uniform testing conditions for all candidates.

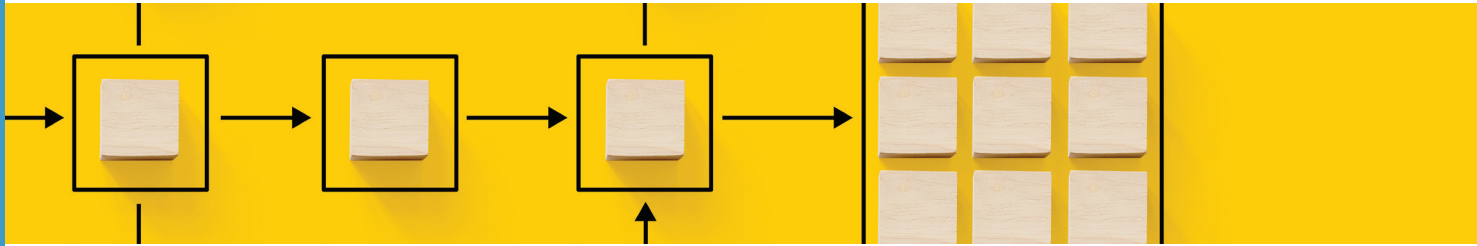
NCBE's commitment to accessibility is one of several reasons the Testing Task Force determined that in-person administration of a computer-based exam is recommended, as accessibility issues can be more readily addressed in an in-person administration environment. Moreover, NCBE has always been committed, and will remain committed, to providing nonstandard test materials to ensure accessibility for candidates with disabilities under the Americans with Disabilities Act, as amended.



Grading and Scoring

A compensatory scoring model will be used to produce a single, combined score, which is consistent with the use of an integrated exam design and the interconnected nature of the competencies being measured. A combined score allows a candidate's areas of strength to compensate for areas of weakness and reflects the candidate's overall proficiency. A compensatory scoring model is used for the current exam, too.

Multiple-choice items and other item formats that can be machine-scored will be scored by NCBE, whereas the constructed-response questions will continue to be graded by bar examiners. NCBE is exploring changes to how constructed-response questions are graded to increase uniformity across jurisdictions and boost reliability of scores.



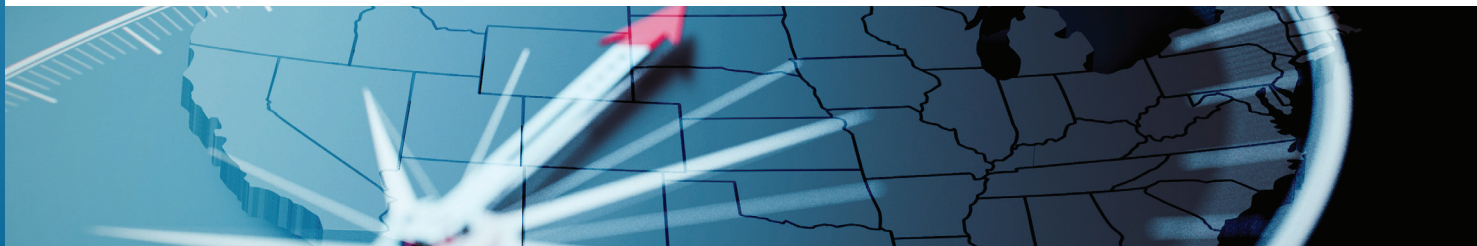
Transition to the Next Generation of the Bar Exam

Options for Transition

NCBE will work with jurisdictions to develop a rollout plan for transition to the next generation of the bar exam, focusing on the needs of courts, bar admission offices, candidates, and law schools.

Standard Setting

Prior to the first administration of the new exam, NCBE will provide concordance information and conduct a standard-setting study to provide jurisdictions with data on which their courts can base their new passing score decisions.



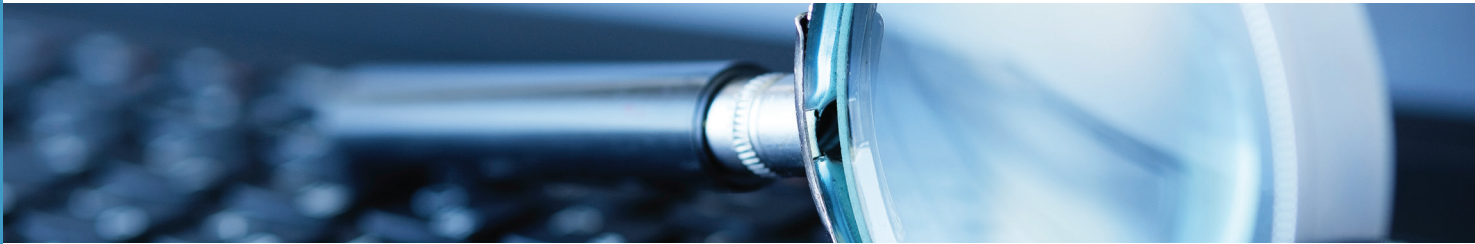
Ongoing Jurisdiction Input

Jurisdiction Advisory Committee

Following a call for applications from administrators and bar examiners in November 2021, NCBE formed the Jurisdiction Advisory Committee, which provides invaluable input to the Implementation Steering Committee on the many policy issues involved in the transition to the new exam. The Jurisdiction Advisory Committee will also help NCBE gather feedback and information to ensure that the views of all jurisdictions are considered.

Meetings and Conferences

Jurisdiction representatives, including liaison justices, bar examiners, and administrators, have attended a series of presentations and feedback sessions, both online via Zoom and in person at the recent NCBE Annual Bar Admissions Conference. NCBE staff are also available for one-on-one meetings with jurisdiction leadership on request. To arrange a meeting, please contact Judith Gundersen at jgundersen@ncbex.org.



Additional Online Resources

Next Generation of the Bar Examination website

- nextgenbarexam.ncbex.org/

Final Report of the Testing Task Force

- nextgenbarexam.ncbex.org/reports/final-report-of-the-ttf/

Standards for Educational and Psychological Testing

- www.apa.org/science/programs/testing/standards

Content Scope Outlines

- nextgenbarexam.ncbex.org/reports/content-scope/

Sample Questions

- nextgenbarexam.ncbex.org/nextgen-sample-questions/

Content Scope Committee

- nextgenbarexam.ncbex.org/announcing-ncbes-content-scope-committee/
- nextgenbarexam.ncbex.org/a-window-into-the-work-of-the-content-scope-committee/

Jurisdiction Advisory Committee

- nextgenbarexam.ncbex.org/ncbe-announces-members-of-the-jurisdiction-advisory-committee/
- nextgenbarexam.ncbex.org/jurisdiction-advisory-committee-holds-kickoff-meeting/

Ensuring Fairness in Assessment (article)

- thebarexaminer.ncbex.org/article/spring-2021/the-testing-column-ensuring-fairness-in-assessment/

New to Bar Admissions? What You Might Like to Know About: Terms Often Used in Reference to the Bar Examination (article)

- thebarexaminer.ncbex.org/article/summer-fall-2021/new-to-bar-admissions/

Standard Setting 101: Background and Basics for the Bar Admissions Community (article)

- thebarexaminer.ncbex.org/article/standard-setting/standard-setting-101-background-and-basics-for-the-bar-admissions-community/

Appendix:

Final Report of the Testing Task Force



National Conference
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FINAL REPORT

OF THE TESTING TASK FORCE

APRIL 2021



TESTING TASK FORCE

National Conference of Bar Examiners



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- assessment products, services, and research
- character investigations; and
- informational and educational resources and programs

Our vision

A competent, ethical, and diverse legal profession.



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Thank you to the following NCBE staff members who helped produce this report: Valerie Hickman, Amy Kittleson, Jim Leach, Mike Petterson, and Tiffany Stronghart.

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Testing Task Force Recommendations	20

FOREWORD BY THE TESTING TASK FORCE CHAIR

It is with great pride that the Testing Task Force presents this Final Report, marking the conclusion of an intensive three-year research study undertaken to identify the legal knowledge and skills entry-level attorneys are expected to have or learn within the first three years of practice, and to determine whether, how, and when those identified competencies should be assessed on a bar examination.

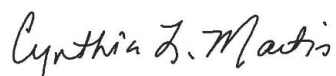
The Testing Task Force undertook this substantial research project beginning in January 2018, consistent with the National Conference of Bar Examiners' commitment to providing high quality, valid, reliable licensure exam materials to jurisdictions that require passage of a bar examination for bar admission. Licensure exam requirements are certainly not unique to the legal profession. All such requirements possess as a common thread the recognition that public protection and confidence in a profession warrant coupling satisfactory performance on a licensure exam with relevant education as conditions of licensure. High-stakes licensure exams are thus an integral part of a professional licensure system that recognizes the important and varied roles played by professional education, post-education assessment, and post-licensure training and continuing education in producing competent licensed professionals to practice in their profession consistent with public protection.

This report marks both an ending and a beginning. The report represents the end of the TTF's work—a substantial research project that produced scientifically supported recommendations for the content, timing, scoring, format, and delivery mode of the bar examination of the future. The TTF's recommendations are exciting and transformative. Most importantly, they are responsive to input gathered through listening sessions, focus groups, scientific surveys, and intensive deliberations. This report will afford the reader with a high-level summary of three years of exhaustive work and should be read collectively with the far more detailed reports published by the TTF along the way.

But this report also marks the beginning of the next chapter: implementation. The TTF's recommendations have been approved by NCBE's Board of Trustees, and over the next four to five years, NCBE will be working diligently to develop the next generation of the bar exam—the NextGen Bar Exam. Implementation of the TTF's recommendations will employ the same transparent, unencumbered, collaborative, empirical methodology that served as the hallmarks of the TTF's study. It will require an enormous amount of work, as is summarized in the closing portions of this report. You can be assured that NCBE's demonstrated dedication to the provision of products and services of unparalleled quality to jurisdictions will continue through the implementation phase of this important project.

It is no casual undertaking, producing licensing exam products that validly and reliably measure whether an entry-level lawyer, who will be afforded a general license to practice, possesses the foundational knowledge and skills required to help ensure public protection. But NCBE has demonstrated time and again its commitment to that objective in the services and products it has provided to jurisdictions. The work of the TTF, and the important work that will be required over the next few years to implement the TTF's recommendations, add to the long history of proactive efforts undertaken by NCBE to capably and professionally serve bar admitting authorities, mindful of the fundamental fairness to which applicants are entitled.

Stay tuned.



Hon. Cynthia Martin

INTRODUCTION

The National Conference of Bar Examiners (NCBE) created the Testing Task Force (TTF) to undertake a comprehensive three-year study to ensure that the bar examination continues to test the knowledge, skills, and abilities needed for competent entry-level legal practice in a changing profession. The primary goal of this research was to identify the foundational knowledge and skills that should be included on the next generation of the bar exam and to determine how and when they should be assessed. However, the TTF expected that its research could also potentially be useful to others involved in educating, training, and mentoring law students and newly licensed lawyers.

The TTF's work was conducted in three phases, starting at the beginning of 2018 and concluding at the end of 2020. It was approached systematically, transparently, and collaboratively—unconstrained by the current bar exam's content and design—with qualitative and quantitative research conducted by external expert consultants.

During Phase 1, the TTF held a series of listening sessions across the country where more than 400 stakeholders from bar admission agencies, the legal academy, and the legal profession provided their views about the current bar exam and ideas for how it could be changed. Phase 2 consisted of a nationwide practice analysis survey completed by nearly 15,000 lawyers that provided a rich set of data on the work performed by newly licensed lawyers (NLLs) and the knowledge and skills they need to perform that work. In Phase 3, the TTF convened two committees composed of bar admission representatives, legal educators, and practitioners, who applied their professional experience and judgment to the data produced in Phases 1 and 2 to provide input on what content should be tested on the bar exam and when and how that content should be assessed. Input from stakeholders was gathered at each step. The results from Phases 1, 2, and 3 of our study are summarized at a high level in this report, which should be read in conjunction with the more detailed descriptions provided in the three individual reports available at <https://NextGenBarExam.ncbex.org/reports/>.

Based on this extensive research, the TTF arrived at high-level decisions about the content and the design for the next generation of the bar examination. Those decisions were founded on the principle that the purpose of the bar exam is ***to protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer***. Our decisions reflect the fact that NLLs receive a general license to practice law, suggesting that the licensure exam should not attempt to assess knowledge and skills unique to discrete practice areas, but should instead assess knowledge and skills that are of foundational importance to numerous practice areas.

Additionally, the TTF's decisions were guided by the prevailing views expressed by stakeholders that

- the bar exam should test fewer subjects and should test less broadly and deeply within the subjects covered;
- greater emphasis should be placed on assessment of lawyering skills to better reflect real-world practice and the types of activities NLLs perform;
- the exam should remain affordable;
- fairness and accessibility for all candidates must continue to be ensured; and
- the feature of score portability provided by the Uniform Bar Exam (UBE) should be maintained.

The TTF's decisions were also based on what will best ensure that the exam's content and design achieve the purpose of the bar exam described above and meet the criteria for sound testing practices applicable to

high-stakes licensure exams as set forth by the *Standards for Educational and Psychological Testing* (AERA, APA, NCME, 2014).

At the beginning of January 2021, the TTF published its *Overview of Preliminary Recommendations for the Next Generation of the Bar Examination* and held webinars to collect stakeholder reactions and answer questions. Overall, the response from stakeholders was positive. The TTF then submitted the recommendations to the NCBE Board of Trustees, which approved the recommendations without change on January 28, 2021.

This report summarizes information gathered during the three years of our study, sets out the TTF's final recommendations and the rationale for its decisions, and highlights the major steps NCBE will undertake to implement the next generation of the bar examination.

SUMMARY OF PHASE 1: LISTENING SESSIONS

Full report of Phase 1

The purpose of the listening sessions held during Phase 1 was to *listen* to stakeholders' concerns, thoughts, and ideas related to the bar exam of the future. At each session, a member of the TTF or NCBE staff gave a welcome and introduction describing the TTF's research plan and then stayed in the session as an observer. One of the TTF's external consultants facilitated the sessions.

Following the welcome and introduction, the facilitator explained that the participants would be asked to provide input on the content, format, timing, and delivery method of the bar exam and the MPRE. Participants were invited to candidly provide their opinions and were informed that no comments would be attributable to specific participants in any written reports or materials.

The following questions served as the guiding framework for the listening sessions:

- What aspects of the current bar exam and MPRE do you think should be kept? Why?
- What aspects of the current bar exam and MPRE do you think should be dropped or modified? Why?
- What do you think the next generation of the bar exam and MPRE should be?
- What cautions do you want to share regarding any potential changes to the bar exam and MPRE?
- What else would you like to discuss about the bar exam and MPRE?

Key Points

Because each listening session included different stakeholders, the discussions reflected the interests of each respective group. The diversity of stakeholders and perspectives provided ample opportunities for rich discussion about each of the major topics. The key points that emerged from participants' input across all listening sessions are summarized below.

Very few, if any, opinions were universally shared by stakeholders. Additionally, while the intended focus of the sessions was on changes that could be made, in most sessions there were comments supporting various aspects of the current exam program/model, but with suggested opportunities for continued evolution and improvement.

Content

- The MPT was widely viewed as the component that is most representative of the skills needed for NLLs at the point of entry to practice.
- The subject areas measured on the MBE were generally viewed as representative of subjects that would be applicable to all NLLs. However, the target level for items on the MBE was viewed by many as going beyond the point of entry-level competency by testing nuanced issues and "exceptions to exceptions to rules."
- Content that focuses on skills such as issue spotting, critical thinking, legal analysis, written and oral communication, and reasoning was considered more applicable to all NLLs. In contrast, content that focuses on subject-matter knowledge was viewed by some as requiring memorization of legal rules that lawyers can look up in practice.

Format

- The constructed-response format of the MEE and the MPT was viewed as more representative of what NLLs do in practice (i.e., written analysis of legal and factual issues) than the multiple-choice format of the MBE.
- The MPRE content could be assessed using essays or MPT-like questions as opposed to, or in addition to, the current multiple-choice format.
- While multiple-choice items were viewed by some stakeholders as not reflective of the way law is practiced, many stakeholders recognized the benefits that the MBE contributes: objective scoring, reliability of scores, and scaled scores that have consistent meaning over time and across jurisdictions because the exam is equated.
- While using simulations was suggested by stakeholders to provide more realistic assessment of skills, the associated downsides of greater subjectivity in grading, the potential for bias, and increased costs were also noted.

Timing

- While the idea of “step testing” (used for physician licensing through the United States Medical Licensure Examination) was frequently suggested by stakeholders, the downsides of step testing were also raised.
- More frequent administration of the bar examination could permit candidates to sit for the exam when they are ready, permit failing candidates to retake the exam sooner, and reduce the time to employment after graduation, which would help graduates with student debt. It was also acknowledged that more frequent administrations of the exam could require jurisdictions to use more staff and other resources, which could increase costs.
- Reducing the time required to grade the constructed-response components (essays and performance tests) could allow passing candidates to begin practicing sooner.

Delivery and Administration

- There was varied support for paper-based testing, computer-based testing, or some combination of these delivery modes. The delivery method for the exam should align with law school, training, and practice environments.

Other Comments/Topics

- The consistency in subjects tested and the portability of scores are positive features of the UBE and should be maintained. Increased consistency in grading of the MEE and MPT across UBE jurisdictions could be accomplished through different activities ranging from increased guidance by NCBE on grading practices to centralized grading for constructed-response/essay questions.
- There was support for greater consistency in passing score requirements to communicate a common standard for entry-level competency, particularly for the UBE, but support was also voiced for maintaining each jurisdiction’s autonomy in setting its passing score.

SUMMARY OF PHASE 2: 2019 PRACTICE ANALYSIS

Full report of Phase 2

Phase 2 of the TTF's study consisted of a national practice analysis to provide empirical data on the job activities of NLLs, with NLLs defined as lawyers who have been licensed for three years or less. The practice analysis survey asked respondents to rate the job tasks typically performed by NLLs, as well as the knowledge, skills, abilities, and other characteristics required to effectively perform those tasks. To paint a comprehensive picture of legal practice, the survey also included a technology section that listed work-related software applications that lawyers use to perform their work. The quantitative data collected through the practice analysis was intended to complement the more qualitative data gleaned from the Phase 1 listening sessions, from focus groups and interviews with NLLs conducted in prior studies done by NCBE, and from the environmental scan conducted as part of the current study and described briefly below.

The practice analysis survey was developed between October 2018 and July 2019. First, an environmental scan was completed to research information relevant to the legal profession that could support the development of an organized taxonomy of the work responsibilities of NLLs. Draft lists of tasks; knowledge areas; skills, abilities, other characteristics; and technology items were compiled through the environmental scan. Three focus groups were then conducted with lawyers from a variety of practice areas, settings, and backgrounds to refine the lists. Next, the TTF revised the draft lists resulting from the work of the focus groups to improve consistency in wording and eliminate redundancy, and the lists were subsequently organized for use in the survey. To evaluate the content and structure of the draft survey, pilot testing was completed by 82 lawyers who volunteered to provide input on the clarity of the survey instructions, the completeness of the lists, the usability of the rating scales, and the amount of time required to complete the survey. The survey was revised and finalized based on the results of the pilot test.

Given the purpose of the practice analysis—to identify fundamental work activities across the practice areas and settings in which NLLs work to determine appropriate content for a general licensure exam—the TTF organized the tasks according to the following four broad categories: (1) General tasks, (2) Trial/Dispute Resolution tasks, (3) Transactional/Corporate/Contracts tasks, and (4) Regulatory/Compliance tasks. The lists of knowledge areas; skills, abilities, and other characteristics (SAOs); and technology items were shorter than the list of tasks and did not require organizational frameworks. The survey also included a demographics section to obtain a description of respondents' backgrounds and work environments for use in analyzing the results.

Table 1. Practice Analysis Survey Sections and Rating Scales

Survey Section	Sample Survey Items	Rating Scale
Tasks (179 Items)	Establish and maintain client trust account.	5-point <i>frequency</i> scale ranging from 0 (not applicable) to 4 (weekly)
	Determine proper or best forum to initiate legal proceeding.	
	Determine lawfulness or enforceability of contract or legal document.	4-point <i>criticality</i> scale ranging from 0 (not applicable) to 3 (essential)
	Secure required governmental or regulatory approvals or authorizations.	
Knowledge Areas (77 Items)	Bankruptcy Law	4-point <i>importance</i> scale ranging from 0 (not applicable) to 3 (essential)
	Civil Procedure	
	Criminal Law	
	Rules of Evidence	

Table 1 continued >

Survey Section	Sample Survey Items	Rating Scale
SAOs – Skills, Abilities, and Other Characteristics (36 Items)	Critical/Analytical Thinking – Able to use analytical skills, logic, and reasoning to solve problems and to formulate advice.	4-point <i>criticality</i> scale ranging from 0 (not necessary) to 3 (essential)
	Conscientiousness – Approaches work carefully and thoughtfully, driven by what is right and principled.	
	Interviewing/Questioning – Able to obtain needed information from others to pursue an issue or matter.	
	Leadership – Able to delegate, inspire, and make thoughtful decisions or plans to further goals and objectives.	
Technology (24 Items)	Research Software or Platforms – Software, programs, or databases that permit the user to conduct electronic legal research.	4-point <i>proficiency</i> scale ranging from 0 (not applicable) to 3 (expert)
	Data Analytics Software – Software used to find anomalies, patterns, and correlations within data.	
	Video-Conferencing Software – Software that permits audio or video meetings with participants in different locations.	
Demographics (10 Items)	Which of the following best describes your practice setting?	Response options were tailored to each question
	How many lawyers are in your organization?	
	With which of the following races do you identify?	
	In which of the following areas of practice do you spend at least 5% of your time?	

The survey was lengthy by necessity to adequately cover the work of NLLs. To prevent survey fatigue and encourage a high rate of response, matrix sampling was used to assign survey respondents to different sections of the survey. Respondents were randomly assigned to one of four versions of the survey. Random assignment ensured that each version of the survey was seen by comparable numbers of respondents and reduced the selection bias that can occur when survey recipients are provided with the option to choose the category of questions to which they respond.

The survey was open from August 1, 2019, through October 2, 2019. Given that there is no centralized registry of all practicing lawyers in the United States, a random sampling approach to survey distribution was not possible. The TTF instead took a census approach in which any eligible respondent could answer the survey. NCBE obtained cooperation from 54 jurisdictions to assist with promoting the survey. NCBE also promoted the survey via multiple email campaigns, through frequent posts on the TTF's and NCBE's social media channels, and in NCBE's quarterly publication, the *Bar Examiner*.

Both NLLs and more experienced lawyers (non-NLLs) who have or had direct experience working with or supervising NLLs were invited to complete the survey to ensure a breadth of perspectives on the work performed by NLLs. Respondents were asked at the beginning of the survey how many years they had been licensed, which was used to determine whether they fell into the category of NLL or non-NLL. Non-NLLs were disqualified from taking the survey if they indicated that they had not ever had direct experience working with or supervising NLLs.

The survey required slightly different sets of instructions for NLLs and non-NLLs. NLLs were asked to rate survey items in terms of their own personal practice (e.g., "How frequently do YOU perform this task in YOUR practice areas and setting?"). Non-NLLs were asked to rate survey items based on the practice of NLLs with whom they have or had direct experience (e.g., "How frequently do newly licensed lawyers with whom you have or had direct experience perform this task in THEIR practice areas and setting, regardless of what other NLLs with whom you do not have direct experience may do?").

Results

Demographics and Practice Areas

The total effective sample size was 14,846 respondents. The respondents consisted of 3,153 NLLs (21%) and 11,693 non-NLLs (79%). Because the survey did not require a response to every question, the number of respondents to any particular question varied.

Respondents represented a total of 56 jurisdictions and included a broad range of entry-level and experienced lawyers working in a variety of practice settings. Survey respondent data were compared to data for the US legal profession published by the American Bar Association in the *ABA Profile of the Legal Profession 2019* (ABA Profile). For most jurisdictions, the percentage of survey respondents in the jurisdiction and the number of lawyers in that jurisdiction as a percentage of the US lawyer population were reasonably consistent, with the following exceptions: Minnesota, Ohio, and Pennsylvania were slightly overrepresented on the survey, while Florida and Illinois were slightly underrepresented.

It can be seen from these demographic comparisons that the practice analysis survey respondents generally were representative of the population of US lawyers based on the ABA Profile. This, in combination with the large number of respondents, suggests that survey results should generalize from the sample of respondents to the eligible population of NLLs and non-NLLs in the United States.

Respondents were presented with 35 practice areas and asked to indicate the areas in which they spend at least 5% of their time. They were then asked to enter as a percentage the amount of time they estimate working in each area selected. The most and least frequently selected practice areas are shown in Table 2.

Table 2. Most Common and Least Common Practice Areas

Most Common	Least Common
Contracts	Securities
Business Law	Immigration Law
Commercial Law	Disability Rights
Administrative Law	Employee Benefits
Real Estate	Workers' Compensation
Criminal Law	International Law
Appellate	Environmental Law
Employment Law and Labor Relations	Education Law
Torts	Energy Law
Other	Indian Law

The data show that 82% of survey respondents work in multiple and varying numbers of practice areas and with different degrees of emphasis in each practice area. To better understand how the respondents allocate their time across different practice areas, the data were subjected to cluster analysis to identify groups of respondents with similar practice profiles. A desirable feature of cluster analysis is that each survey respondent is assigned to only one cluster and gets counted just once for purposes of data analyses. The results suggested that the practice profiles could be condensed into 25 practice clusters. The task and knowledge area ratings were then analyzed within each practice cluster to identify the tasks and knowledge areas that span multiple practice clusters.

Tasks

The Tasks section of the survey asked respondents to rate tasks on the frequency of performance and criticality for practice. The mean ratings of task frequency and criticality by NLLs correlated highly with the ratings by non-NLLs. Therefore, the groups were combined for most analyses.

The most frequently performed tasks were performed by more than 90% of NLLs, had mean frequency ratings approaching weekly, and had criticality ratings approaching “high importance” (essential). Of note is that three of these tasks have “research” as the primary verb. Themes other than legal research that were common to the highly rated tasks include ethics, written and spoken communications, legal analysis/evaluation, and diligence. The most and least commonly performed tasks are set out in Table 3.

Table 3. Most Commonly and Least Commonly Performed Tasks

Most Commonly Performed Tasks	Least Commonly Performed Tasks
Identify issues in client matter, including legal, factual, or evidentiary issues.	Draft and file documents to secure or maintain intellectual property protection.
Research case law.	Draft legislation or regulations.
Interpret laws, rulings, and regulations for client.	Negotiate with or on behalf of land use regulatory authorities.
Research statutory and constitutional authority.	Draft prenuptial or antenuptial agreements.
Evaluate strengths and weaknesses of client matter.	Prepare or review local, state, or federal tax returns and filings.
Evaluate how legal document could be construed.	Establish and maintain client trust account.
Develop specific goals and plans to prioritize, organize, and accomplish work activities.	Participate in initiative or proposition process to change statute or constitution.
Conduct factual investigation to obtain information related to client matter.	Represent client in post-conviction relief or habeas corpus proceedings.
Research secondary authorities.	Represent client in eminent domain or condemnation proceeding.
Consult with colleagues or third parties regarding client matters.	Draft constitutional amendments.

Because the tasks lawyers perform might depend on characteristics such as practice setting, geographic region, and so on, criticality and frequency ratings were analyzed by subgroups of respondents based on the following demographic factors: recency of experience with NLLs, practice setting, number of lawyers in the organization, gender, race/ethnicity, and geographic region. The large number of task statements, multiple rating scales, and variety of demographic factors produced thousands of comparisons. A limitation of these analyses was that they concerned only main effects for a single demographic variable at a time and did not consider joint effects of multiple variables. Another limitation was that sample sizes for some subgroups were quite small. More complex analyses were required to disentangle the effects of one demographic variable from another and to better understand the differences; the results of these additional complex analyses were considered during Phase 3, when the content to be assessed in the next generation of the bar exam was evaluated by a diverse panel of legal subject matter experts (SMEs).

In determining which of the 179 tasks that were included in the survey should potentially be addressed as part of the content assessed on the bar exam, the TTF applied a 50% rule as a general guideline, such that for a task to be considered eligible for consideration in the test blueprint development process, it must be performed by at least 50% of entry-level practitioners. However, the decision to keep or drop a task for potential inclusion was also based on the extent to which it was rated as relevant to multiple practice areas. Additional factors considered included results based on demographic subgroups (e.g., solo practitioners, women) and on practice

clusters, as well as the personal experience of the SMEs who participated in Phase 3 of the study. Ultimately, 136 tasks were considered during Phase 3, as discussed later in this report.

Knowledge Areas

The 77 knowledge areas were rated in terms of their importance to the practice of all NLLs. The overall means for all knowledge areas as rated by NLLs and non-NLLs were nearly identical, and the correlation between the two sets of ratings was very high; thus, data for the two groups were combined for most analyses.

The knowledge areas with the highest and lowest mean importance ratings are set out in Table 4.

Table 4. Knowledge Areas with Highest and Lowest Mean Importance Ratings

Highest Mean Importance Ratings	Lowest Mean Importance Ratings
Rules of Professional Responsibility and Ethical Obligations	Transportation Law
Civil Procedure	Bioethics
Contract Law	Indian Law
Rules of Evidence	Foreign Trade Law
Legal Research Methodology	Public Utility Law
Statutes of Limitations	Military Justice Law
Local Court Rules	Animal Rights Law
Statutory Interpretation Principles	Sports and Entertainment Law
Sources of Law (Decisional, Statutory, Code, Regulatory, Rules)	Air and Space Law
Tort Law	Admiralty Law

Various methods and indices were considered to guide decisions about which knowledge areas should be considered during Phase 3 as potential content to be assessed on the bar exam. The TTF decided to include knowledge areas if at least 50% of either NLLs or non-NLLs who rated it viewed it as being of moderate or high importance. As with the tasks, however, additional factors were also taken into consideration, such as differences in ratings across demographic subgroups and evaluation of the extent to which a knowledge area is relevant to multiple practice areas. Knowledge area importance ratings were remarkably consistent across demographic groups; that is, mean ratings did not vary much based on the demographic backgrounds of respondents such as race, gender, or geographic region. However, mean knowledge area ratings did vary by practice area. Therefore, the results were further analyzed by practice clusters to evaluate the extent to which a knowledge area was relevant to multiple practice areas. As a result of these analyses by practice clusters, 25 knowledge areas were included for consideration during Phase 3, as discussed later in this report.

Skills, Abilities, and Other Characteristics (SAOs)

The survey included 36 SAOs, which NLLs were instructed to rate in terms of criticality to their own practice; non-NLLs were instructed to rate the SAOs based on the practice of NLLs with whom they have or had direct experience. Again, the overall mean ratings from NLLs and non-NLLs were highly correlated and were therefore combined for analysis.

Most SAOs tended to receive high ratings, with the vast majority of the SAOs being judged as being either moderately or highly critical. The SAOs with the highest and lowest mean criticality ratings are set out in Table 5.

Table 5. SAOs with Highest and Lowest Mean Criticality Ratings

Highest Ratings	Lowest Ratings
Written/Reading Comprehension – Able to read and understand information presented in writing.	Strategic Planning – Plans and strategizes to anticipate and address present and future issues and objectives.
Critical/Analytical Thinking – Able to use analytical skills, logic, and reasoning to solve problems and to formulate advice.	Leadership – Able to delegate, inspire, and make thoughtful decisions or plans to further goals and objectives.
Written Expression – Able to effectively communicate information and ideas in writing.	Social Consciousness/Community Involvement – Demonstrates desire to improve society by contributing skills to the community.
Identifying Issues – Able to spot salient legal concerns presented by a set of circumstances.	Networking and Business Development – Able to develop meaningful business relationships and to market skills to develop client relationships.
Integrity/Honesty – Demonstrates core values and belief system.	Instructing/Mentoring – Able to manage, train, and instruct to assist others in realizing their full potential.

Results for the SAOs section confirmed previous research on the cognitive and affective skills required of practicing lawyers. Specifically, the list of SAOs included nearly all the 26 lawyering skills identified through the work of Shultz and Zedeck (2011).¹ The fact that nearly all SAOs were judged to be either moderately or highly critical can be regarded as confirmation of that earlier work.

Given the uniformly high criticality ratings for SAOs, responses to this section of the survey were not subjected to formal analyses comparing demographic subgroups.

There is little doubt that these SAOs are important for competent entry-level legal practice. Indeed, due to their broad nature, most of the SAOs are critical to working in a variety of jobs or professions. However, some of these skills are difficult to teach (e.g., Integrity and Time Sharing) and even more challenging to assess in a manner that produces reliable and valid test scores. SAOs that are relatively specific to the legal profession (e.g., Fact Gathering), as well as those that can be applied and assessed narrowly within a legal context (e.g., Critical/Analytical Thinking), were considered during Phase 3 when recommendations for the content and design of the next generation of the exam were developed.

Beyond identifying potential content for assessment on the bar exam, the SAO results may be useful to the licensing process by empirically identifying the personal characteristics that are important for competent practice. Thus, those involved in legal education, mentoring of NLLs, continuing legal education, and the character investigation part of the admissions process may find the results useful to their work.

Technology

The 24 technology items on the survey were rated by NLLs in terms of the level of proficiency required in their own practice, while non-NLLs based their ratings on the practice of NLLs with whom they have or had direct experience. The mean ratings for NLLs and non-NLLs were highly correlated, so the groups were combined for analysis.

The technology items with the highest and lowest mean proficiency ratings are set out in Table 6.

¹ Shultz, M.M. & Zedeck, S. (2011). Predicting lawyer effectiveness: Broadening the basis for law school admissions decisions, *Law & Social Inquiry, Journal of the American Bar Foundation*, 36(3), 620–661.

Table 6. Technology with Highest and Lowest Mean Proficiency Ratings^a

Highest Mean Proficiency Ratings	Lowest Mean Proficiency Ratings
Word Processing Software	Web Content Management Software
Research Software or Platforms	Data Analytics Software
Electronic Communication Software	Language Translation Software
Desktop Publishing Software	Financial Planning Software
Document Storage Software, Including Cloud Storage	Tax Preparation Software

^a The survey provided complete definitions for each technology item; these definitions appear in Table E.1 in Appendix E.

Responses to this section of the survey were not subjected to formal analyses comparing demographic subgroups.

The next generation of the bar exam will not directly assess knowledge and skills related to use of the technology items. However, knowing which technologies NLLs should be proficient in using in practice provides information about the types of testing platforms that examinees might be expected to use (with reasonable accommodations provided for examinees with disabilities). For example, the survey results provide support for the appropriateness of having examinees interact with electronic research software as part of completing a performance test.

Credibility and Generalizability of Findings

Best practices in practice analyses include validating survey responses. To do this, four sources of evidence were evaluated: sample representation, sample size and sampling error, consistency with expectations, and consistency with independent research.

Sample Representation

The survey respondents represented nearly all jurisdictions, and the proportion of survey respondents from each jurisdiction approximated the proportion of practicing lawyers in each jurisdiction based on the ABA Profile. Thus, the breadth of the sample contributes to the generalizability of findings. Furthermore, comparisons of responses to the Tasks and Knowledge Areas sections by respondents from different regions of the country indicated that there was little regional variation in ratings across tasks and almost no regional variation across knowledge areas. This limited regional variation in responses suggests that results are not overly dependent on one or more specific regions.

Sample Size and Sampling Error

A representative sample is of limited value if it is not sufficiently large. Adequate sample sizes are important to ensure the stability of the statistics reported in the findings. The margin of error, or standard error, is the most common index for documenting the precision associated with any statistic. Literally hundreds of standard errors were computed as part of the statistical analyses for this report. The margins of error were not large, meaning that if this study were replicated with new samples of NLLs and non-NLLs, mean values for the new study would be expected to be very similar to the values observed in the 2019 study. This suggests that readers can be confident in the stability of the statistical indices.

Consistency with Expectations

Another strategy for examining the validity of practice analysis data involves evaluating the extent to which the responses are consistent with informed expectations. The differences in ratings of tasks and knowledge

areas by practice clusters were in line with what most readers would expect. For example, the task of “Draft or negotiate business agreements” was performed by 92% of respondents from the Real Estate Law practice cluster but by only 11% of respondents from the Appellate Law: Criminal practice cluster, which is in line with expectations. The survey results suggest that respondents generally were attentive and provided thoughtful responses as they completed the survey.

Consistency with Independent Research

NCBE commissioned a practice analysis in 2011/2012, which was completed by a research consultant different from the one that completed the present 2019 study. In addition, the State Bar of California completed a practice analysis in 2019 specific to practice in California. Those two studies provide external criteria to which the present study was compared. Although none of the studies were intended to be replications of another, they all had the goal of identifying the responsibilities and KSAs required of NLLs.

The 2012 and 2019 NCBE studies both included sections for tasks, knowledge areas, and SAOs. Direct comparison of findings is hindered for various reasons (e.g., the lists were not identical across studies, a task from 2019 might have been classified as a skill in 2012, and there were differences in rating scales). Nonetheless, there is enough overlap to draw some parallels. Overall, the tasks viewed as important in 2012 were also viewed as critical in 2019, even though data were collected from different samples using different instruments and in different contexts. Similarly, in general, knowledge areas judged to be important by 2019 respondents were also viewed as important by 2012 respondents.

The California Practice Analysis (CAPA) survey included 23 tasks that were similar or very similar to tasks appearing on the 2019 NCBE practice analysis survey. Although the rating scales for the two studies were not identical, it was possible to use a linear transformation to rescale the NCBE ratings to approximate what those ratings would be on the CAPA rating scales.²

Overall frequency ratings were found to be very similar for the two studies, but there were some notable differences in criticality ratings. A comparison of a sample of tasks from the two surveys indicated striking similarity across all the frequency ratings and most of the criticality ratings.

The CAPA survey also included a list of knowledge areas (topics) that were rated in terms of frequency and criticality. Whereas the 2019 NCBE practice analysis survey listed 77 knowledge areas, the California survey included two levels of topics where 121 specific topics were nested under 21 broad knowledge areas (e.g., Offer and Acceptance nested under Contracts).

Of the 10 most important knowledge areas on the NCBE survey, five also appeared in the top 10 on the CAPA survey. Note that the knowledge areas of Criminal Law and Constitutional Law were included among the top 10 on the CAPA survey, and in the NCBE survey results those two areas were ranked fifteenth and thirteenth, respectively, but those two areas would have been in the top 10 of the NCBE survey had it not included the following as knowledge areas: Legal Research Methodology, Statutes of Limitations, Local Court Rules, Statutory Interpretation Principles, and Sources of Law.

Based on the systematic process of developing a practice analysis survey, and of gathering information from a representative sampling of lawyers, stakeholders should have confidence that the 2019 NCBE practice analysis results provided meaningful guidance for the TTF’s comprehensive study.

² Although the transformation allows for more direct comparison of results, it may not account for potential ceiling effects; because the NCBE scale had fewer scale points, it is possible that the ratings at the upper end of the NCBE scale were suppressed a bit relative to the CAPA means. Differences in means across the surveys may be at least partially attributable to ceiling effects or scale suppression.

SUMMARY OF PHASE 3: TEST CONTENT AND DESIGN

Full report of Phase 3

For Phase 3 of the Task Force's work, two committees were convened for the purpose of discussing test content and design issues, working from the qualitative and quantitative data that were compiled in Phase 1 (stakeholder listening sessions) and Phase 2 (nationwide practice analysis). The charge of the Blueprint Development Committee (BDC) was to help determine what content should be tested on the bar exam, while the role of the Test Design Committee (TDC) was to recommend how that content should be assessed. The BDC consisted of newly licensed and experienced practitioners who applied their professional judgment and experience to recommend what content should be tested based upon the Phase 2 results. The TDC was composed of legal educators and bar admission representatives who provided input on an effective design for the exam. The TDC's work was guided by the Phase 1 study results and by the professional judgment and experience of committee members in educating law school students and admitting NLLs to the bar.

Blueprint Development Committee Meeting

The TTF recruited 17 practicing lawyers to participate as panelists on the BDC; 14 of the panelists were female and 10 were people of color. In total, the panelists practiced in 13 jurisdictions and across a range of 22 practice areas and various practice settings (private law firm, government, nonprofit organization, legal services/public interest, judicial law clerk, and in-house counsel). None had ties to NCBE and none were current or former bar examiners.

The BDC met by videoconference from June 29 to July 1, 2020, for five hours each day. Prior to the meeting, each panelist was provided a binder of materials that served as advance readings for the meeting and additional materials for reference during the meeting.

One of the TTF's external research consultants facilitated the meeting, and staff from NCBE and the chair of the TTF attended the meeting to observe. The meeting began with an orientation that included an overview of the TTF study, the purpose and function of a test blueprint, a review of the meeting materials, and an explanation of how to interpret the results of the Phase 2 practice analysis.

The general discussion began after the orientation with a review of the job tasks from the practice analysis survey. Specifically, the full list of 179 tasks had been reduced to those 136 tasks that were rated as being performed *Frequently* or *Moderately* by 50%³ or more of the survey respondents. The tasks identified for review were organized by the TTF under these seven skill domains:

- Legal Research
- Legal Writing and Drafting
- Client Counseling and Advising
- Issue Spotting and Evaluation
- Investigation and Analysis
- Negotiation and Dispute Resolution
- Client Relationship and Management

³ To account for a margin of error of 3%, the list reviewed by the BDC included tasks rated as being performed *Frequently* or *Moderately* by 47% or more of the survey respondents.

The BDC reviewed each task and discussed its relevance to practice by NLLs based on the ratings collected during the practice analysis, including (1) the overall frequency ratings, (2) the frequency ratings by Practice Cluster, and (3) the frequency ratings by those survey respondents identified as NLLs versus those who were not NLLs. The result of each task-level discussion was a recommendation as to whether the task should be included within that skill domain as being representative of the activities required of NLLs. The BDC also recommended consolidation of some tasks to eliminate overlap or redundancy.

After reviewing all 136 tasks in this manner, the BDC was asked to consider how much emphasis or weight should be given to the seven skill domains on the bar exam, including models of (1) equal weighting for each skill domain, (2) natural weighting, meaning the weight is determined by the number of tasks under each skill domain, or (3) weighting based on the judgments of the BDC. The BDC panelists opted for the third model and applied their judgment to reach consensus on recommended weights for each skill domain. This activity was concluded at the end of the second day.

The third day of the meeting was focused on reviewing the knowledge areas from the practice analysis. The full list of 77 knowledge areas from the practice analysis survey had been reduced to 25 by prioritizing those areas that were rated as *Important* by 50%⁴ or more of the survey respondents. The BDC reviewed each knowledge area and discussed its relevance to practice by NLLs based on the overall importance ratings, the importance ratings by Practice Cluster, and the importance ratings by those respondents identified as NLLs versus those who were not NLLs. The result of each knowledge area discussion was a recommendation as to whether the area should be included on the bar exam.

After making decisions about what knowledge areas to recommend for inclusion, the BDC considered how much emphasis or weight should be given to each knowledge area on the bar exam. The BDC also considered generally whether knowledge areas should be measured in a content-dependent context (necessary legal resources are not provided) or in a content-independent context (necessary legal resources are provided).

Results: Skills

In total, the BDC identified 103 tasks as representative of the seven skill domains identified for assessment on the bar exam: 9 of the original 136 tasks considered by the BDC were consolidated to eliminate redundancy, and 24 tasks were recommended for exclusion, with most of those excluded because the BDC concluded that the tasks were generally outside the scope of an NLL's practice. A list of the 136 tasks, with the BDC recommendations indicated, is provided in [Appendix A](#) of the Phase 3 report.

Table 7 shows for each skill domain the number of tasks, a general description of the domain, and the recommended weighting. The weighting is shown as the average of the weights recommended by the BDC panelists; a range of roughly 3% around that average is shown in parentheses.

4 To account for a margin of error of 3%, the list reviewed by the BDC included knowledge areas rated as *Important* by 47% or more.

Table 7. Skills Recommendations by BDC

Skill Domain	Tasks	Description of Domain	Weighting (%)
Legal Research	5	Researching the Law, Written/Reading Comprehension, Critical/Analytical Thinking	17.5 (15–20)
Legal Writing and Drafting	24	Written Expression, Critical/Analytical Thinking	14.5 (12–17)
Client Counseling and Advising	14	Oral Expression, Oral Comprehension, Cultural Competence, Advocacy, Critical/Analytical Thinking, Problem Solving, Practical Judgment	11.9 (10–15)
Issue Spotting and Evaluation	7	Identifying Issues, Observant, Critical/Analytical Thinking	17.5 (15–20)
Investigation and Analysis	17	Interviewing/Questioning, Fact Gathering, Cultural Competence, Problem Solving	17.5 (15–20)
Negotiation and Dispute Resolution	23	Negotiation Skills/Conflict Resolution, Creativity/Innovation, Expressing Disagreement, Written Expression, Oral Expression, Oral Comprehension, Advocacy, Practical Judgment	11.9 (10–15)
Client Relationship and Management	13	Networking and Business Development, Resource Management/ Prioritization, Organization, Strategic Planning, Managing Projects, Achievement/Goal Orientation, Practical Judgment, Decisiveness, Cultural Competence	9.2 (7–12)

Results: Knowledge Areas

The BDC endorsed including 11 (of 25) knowledge areas. A list of the 25 knowledge areas considered by the BDC, with the BDC's recommendations noted, is provided in [Appendix B](#) of the Phase 3 report. The BDC further recommended that the following six knowledge areas should be excluded as stand-alone topics and coverage of these areas should be subsumed under other knowledge areas and skills:

- Statutory Interpretation Principles → subsumed under Skills and Constitutional Law
- Uniform Commercial Code → subsumed under Business Organizations or Contract Law
- Remedies → subsumed under all knowledge areas
- Civil Rights → subsumed under Constitutional Law
- Landlord-Tenant Law → subsumed under Real Property and/or Contract Law
- Debtor-Creditor Law → subsumed under Business Organizations and/or Contract Law

For each of the 11 knowledge areas, Table 9 below shows the BDC recommendations for weighting (average of BDC panelists' judgments along with a range of $\pm 3\%$) and measurement approach (reflecting the consensus of at least two-thirds of the panelists). With respect to the measurement approach for each knowledge area, the BDC was asked to recommend either testing knowledge of legal doctrine in a content-dependent manner, where legal resources are not provided as part of the test materials, or applying skills in the knowledge area in a content-independent manner, where appropriate legal resources are provided. Though Table 8 reflects the BDC's ultimate suggestions in this regard, the BDC's deliberations about whether and how knowledge and skills could or should be assessed in a content-dependent or content-independent manner were formative

in introducing the concept of integrated assessment, discussed later in this report, which recognizes the interdependency of the assessment of knowledge and skills.

Table 8. Knowledge Area Recommendations by BDC

Knowledge Area	Weighting (%)	Measurement Approach
Business Organizations	7 (4–10)	Knowledge (content-dependent)
Professional Responsibility, Ethics	7 (4–10)	Knowledge (content-dependent)
Legal Research Sources & Methods	8 (5–11)	Applying skills (content-independent)
Constitutional Law	9 (6–12)	Knowledge (content-dependent)
Dispute Resolution*	9 (6–12)	Applying skills (content-independent)
Real Property	9 (6–12)	Knowledge (content-dependent)
Torts	9 (6–12)	Knowledge (content-dependent)
Evidence	10 (7–13)	Knowledge (content-dependent)
Criminal Law & Procedure	10 (7–13)	Knowledge (content-dependent)
Contract Law	10 (7–13)	Knowledge (content-dependent)
Civil Procedure	11 (8–14)	Knowledge (content-dependent)

* This knowledge area represents the combination of *Alternative Dispute Resolution* and *Trial Advocacy and Practice*.

Test Design Committee Meeting

The TTF invited each jurisdiction to nominate a bar admission representative (bar administrator, bar examiner, or justice) to serve on the TDC. The TTF selected from the nominees to achieve a mix of roles, jurisdiction sizes, and other demographic variables. The TTF also invited individual deans and faculty members from a variety of law schools to serve. The panel of 28 was composed of 11 educators, 9 bar examiners, 6 bar administrators, and 2 justices; 10 of the panelists were female and 7 were people of color. Each panelist had experience educating law students, administering the bar exam, serving as a bar examiner, or, in the case of the justices, serving as liaison between a state's highest court and the state's board of bar examiners.

The TDC completed its work through two meetings conducted via videoconference for five hours per day over three days (Meeting 1 on July 16 and 17, 2020, and Meeting 2 on August 4, 2020), with an offline review of written materials before Meeting 1 and between meetings. The August 4 meeting was added after the meeting was changed from an in-person format to videoconference, and, unfortunately, seven of the TDC panelists were not available on that date. Therefore, 28 panelists were present for Meeting 1 and 21 were present for Meeting 2.⁵ Those who could not attend Meeting 2 were given the opportunity to provide written input before and after the meeting.

The TTF's external research consultant facilitated the meetings. Staff from NCBE and the chair of the TTF attended the meetings to observe. The first meeting began with an orientation that included an overview of the TTF study, the purpose and function of a test design, and a review of the meeting materials with an explanation of how each document related to the TDC's work.

After the orientation, the panel was split into two groups and a facilitator guided each group through a discussion of specific test design topics and issues. The TDC did not discuss the issue of test delivery mode because the TTF had already decided that the next generation of the bar exam would be a computer-based test, administered either at computer testing centers managed by a suitable vendor or on candidates' laptops at jurisdiction-managed test sites.

The TDC panelists recognized the interconnectedness of the design topics and spent the meeting time sharing their opinions and discussing advantages and challenges associated with various options. The TDC

⁵ The panelists present for Meeting 2 consisted of 10 educators, 7 bar examiners, and 4 bar administrators.

was largely split on whether the design should use compensatory scoring (with scores on each component combined to produce one overall pass/fail decision for licensure) or conjunctive scoring (with scores on each component treated as separate pass/fail decisions and a requirement that candidates pass each component to be licensed). Under a compensatory design, candidates may compensate for a weak performance on one component with a strong performance on another. Under a conjunctive design, candidates must demonstrate the required level of proficiency on each component. The other design feature on which there was a diversity of opinions was whether to use a single-event administration model (one exam administration taken after completion of law school) or a multi-event model (exam administered as separate components with the option to take the first component during law school).⁶ Therefore, three draft design models were created after Meeting 1 using those decision points as the key differentiators.

Each of the draft design models assumed that the bar exam would include two components—Application of Core Doctrinal Law and Application of Lawyering Skills—and would be administered using a range of assessment methods/formats. Another common feature of each draft design model was a test of knowledge of the rules of Professional Responsibility that would be administered separately from the bar exam and could be taken during law school or after graduation.

Though the three models presumed separate assessment of knowledge and skills, TDC panelists discussed the fact that assessment of knowledge and skills are inherently interconnected. That is, lawyering skills such as issue spotting and analysis cannot be separated from demonstrating knowledge of foundational legal doctrine. Conversely, some degree of legal doctrine is generally required to demonstrate foundational lawyering skills. As was the case with the BDC's rich discussions, the TDC's discussions around the notion of interconnected assessment of foundational knowledge and skills was formative in leading to consideration of integrated assessment.

Results

The prevailing views of the TDC members are summarized below. TDC members also commented on the content identified by the BDC for inclusion on the bar examination.

Structure: The TDC generally supported the structure of two components (Application of Core Doctrinal Law and Application of Lawyering Skills) for the bar exam and a separate exam on knowledge of Professional Responsibility. Pass/fail decisions for the bar exam would be based on a compensatory score for the exam but with minimum score requirements for each component. The compensatory score would be a weighted combination of the scores on the two components, and the TDC suggested either a 50/50 weighting (equal weight between the two components) or a 60/40 weighting with the higher weight allocated to the Application of Lawyering Skills component. These suggestions, however, were inherently limited by the fact that all the test design models presented to the TDC presumed independent assessment of foundational knowledge and skills. The TDC continued to express reservations about whether foundational knowledge and skills can be assessed independently of one another.

Application of Core Doctrinal Law component: For this component, the TDC did not unanimously agree with the appropriateness of assessing some of the knowledge areas recommended for inclusion by the BDC; both the BDC and the TDC agreed, however, that the depth and breadth of coverage in the knowledge areas tested should be limited to the core legal principles that NLLs need to know without “looking it up” (i.e., they should be able to issue spot and know the basic rules but should not be expected to know “the exceptions to the exceptions”).

⁶ Under either administration model, jurisdictions could permit candidates to take components that are to be completed “after law school” prior to graduation, as is the case with the current bar exam.

Application of Lawyering Skills component: The TDC showed unanimous support for measuring skills such as Legal Writing, Legal Research, Issue Spotting and Analysis, and Investigation and Evaluation. For Professional Responsibility and Ethics, the TDC acknowledged the importance of the subject matter but did not want to see it tested as a core knowledge area on the bar exam because it would duplicate content tested on the Multistate Professional Responsibility Exam (MPRE). The TDC suggested that Professional Responsibility could serve as the context for questions in the Application of Lawyering Skills component to assess skills such as Issue Spotting and Analysis, with the Model Rules of Professional Responsibility being provided as a resource to use during testing. Some members of the TDC expressed strong concerns that the skills of Client Counseling and Advising, Client Relationship and Management, and Negotiation and Dispute Resolution could not be measured objectively and without bias, and the importance of those concerns was noted. In terms of methods for assessing skills, the TDC generally supported the idea of case studies (e.g., written fact scenarios or video simulations) using multiple item types (e.g., short answer, selected response, extended response) with a library of legal resources provided.

Administration: A slight majority of the TDC panelists were supportive of allowing candidates the option to take one of the two components of the bar exam during law school, but a few panelists were adamantly opposed, voicing their concerns regarding the impact on law school curriculum and law students. Additionally, those who supported the option were not in agreement about which component would be more appropriate for testing during law school.

Overall, the TDC members' views reflected the interconnectedness and complexity of test design issues. For those issues where they were not of one mind, their discussions provided valuable insight into the benefits and challenges of various approaches to the design issues.

TESTING TASK FORCE RECOMMENDATIONS

The TTF formulated a set of recommendations for the content and design of the new exam after taking into consideration the views of stakeholders, the data collected during the study, the work of the BDC and TDC, the opinions of assessment experts and psychometricians, and relevant practical and logistical administrative issues. The recommendations are consistent with the purpose of the exam to protect the public and the intended use of exam scores to determine whether candidates possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer. The recommendations are also consistent with the fact that a newly licensed lawyer secures a general license to practice law, suggesting that the bar exam should assess foundational knowledge and skills that are common to numerous practice areas. The recommendations are discussed in detail below.

Structure and Format

The TTF recommended the use of an integrated exam structure to assess both legal knowledge and skills holistically in a single, practice-related examination. Although each of the draft design models presented to the TDC was based on the assumption that the bar exam would include two separate components, with one component testing legal knowledge and the other testing legal skills, the discussion of those models often highlighted the interconnectedness of knowledge and skills. Thus, while neither the BDC nor the TDC directly suggested an integrated exam, the combined discussions of the BDC and TDC sparked the idea. The concept of an integrated assessment model was further supported by NCBE's Technical Advisory Panel (TAP), a group of external psychometric experts. Members of the TAP were given the opportunity to review and comment on the BDC and TDC recommendations and recognized a recurring theme pointing to the concept of integrated assessment design. Members of the TAP observed that integrated assessment is not a novel concept and is already employed in academia and in high-stakes licensure assessments used in other professions.

An integrated exam permits use of scenarios that are representative of real-world types of legal problems that NLLs encounter in practice. Realistic scenarios are used in the current exam, but in discrete components comprised of stand-alone items, whereas an integrated exam includes item sets and a combination of item formats (e.g., selected-response, short-answer, and extended constructed-response items) within the same component. An *item set* is a collection of test questions based on a single scenario or stimulus such that the questions pertaining to that scenario are developed and presented as a unit. Item sets can be assembled so that all items within a set are either of the same format or of different formats. Stand-alone questions will still be used, and the exam will not consist of item sets exclusively. NCBE aims to have prototypes of integrated exam questions available later this year to share with stakeholders.

Scoring

A compensatory scoring model will be used to produce a single combined score for making admission decisions, which is consistent with the use of an integrated exam design and the interconnected nature of the competencies being measured. A combined score allows a candidate's areas of strength to compensate for areas of weakness and reflects the candidate's overall proficiency in the competencies being measured.

Multiple-choice items and other item formats that can be machine-scored will be scored by NCBE, while the constructed-response questions will continue to be graded by bar examiners.

Content

To reflect the nature of the content of the new exam, the TTF adopted the terms *Foundational Concepts & Principles* (FC&P) and *Foundational Skills* for the competencies to be assessed.

Foundational Concepts and Principles

- Civil Procedure (including constitutional protections and proceedings before administrative agencies)
- Contract Law (including Art. 2 of the UCC)
- Evidence
- Torts
- Business Associations (including Agency)
- Constitutional Law (excluding principles covered under Civil Procedure and Criminal Law)
- Criminal Law and Constitutional Protections Impacting Criminal Proceedings (excluding coverage of criminal procedure beyond constitutional protections)
- Real Property

Foundational Skills

- Legal Research
- Legal Writing
- Issue Spotting and Analysis
- Investigation and Evaluation
- Client Counseling and Advising
- Negotiation and Dispute Resolution
- Client Relationship and Management

The scope of what will be assessed within the eight FC&P and the seven Foundational Skills will be carefully aligned with minimum competence for entry-level practice and set out in the test content specifications that will be developed as one of the first steps of implementing the recommendations. Test content specifications guide development of test questions and provide notice to candidates of what may be tested and how. While all the features of the new exam's test content specifications have not yet been determined, we plan to include detailed descriptions of the topics and subtopics to be covered within each of the FC&P and Foundational Skills; the weight or emphasis (e.g., percent of test items, amount of testing time) allocated to each FC&P and Foundational Skill; the approximate emphasis to be given to the various item formats; and, when appropriate, the sources of law upon which FC&P content will be based. This list of features is illustrative; additional features may be included. The development of test content specifications will be a collaborative process involving external subject matter experts such as bar examiners, legal educators, and practitioners, including newly licensed lawyers. We expect to publish final test content specifications by the end of 2021.

The list of Foundational Skills includes some skills that might be thought of as performance skills, such as negotiation. To ensure fairness, those skills that can be objectively measured will be assessed using uniform text- or video-based scenarios that require candidates to construct a written response or select the correct response. We will also determine appropriate assessment methods to ensure that exam materials can be provided in accessible formats to candidates with disabilities to ensure they have equal opportunity to demonstrate their proficiency.

The Foundational Skills may be assessed in the context of the FC&P, in which case candidates will be expected to know the applicable legal concepts and principles, or Foundational Skills may be assessed in other legal contexts, in which case a closed universe of appropriate legal resources (e.g., statutes, cases,

rules, regulations) will be provided. The objective is to reduce the amount of legal knowledge candidates must learn for the exam, while emphasizing skills such as interpreting and applying law. The new exam will not be “open book” in the sense of candidates being permitted to bring in or otherwise access materials not made available in the exam materials provided to all candidates. However, the new exam’s emphasis on the application of provided legal resources will yield the practical effect of an open-book exam while maintaining the standardization central to applicant fairness.

The Multistate Professional Responsibility Examination (MPRE) will remain a stand-alone exam that is administered separately from the bar exam. Stakeholders recognize the importance of professional responsibility and value its separate assessment as a core piece of ensuring public protection and trust in the integrity of the legal profession. Because of its importance, professional responsibility may serve as the context for assessing Foundational Skills (e.g., legal analysis, client counseling and advising) on the new bar exam, but the applicable rules or other legal resources will be provided to candidates.

Timing of Test Administration

The new exam will be given as a single event at or near the point of licensure; jurisdictions may still permit students to test in their final semester of law school, as some currently do. This timing is consistent with the purpose of the bar exam in that it places measurement of minimum competence as close in time to the award of a license as possible. It is also consistent with the use of an integrated exam that assesses knowledge and skills holistically. Additionally, single-event testing allows more options for equating and scaling, which is necessary for fairness and consistency in scoring.

A single-event approach avoids concerns expressed by some stakeholders about a multi-event approach, where components of the exam would be administered at separate times. Those concerns included potential negative consequences such as interfering with internships and summer employment opportunities, impacting law school curricula, adding the stress of taking a high-stakes exam during law school, creating multiple “hurdles” for admission, and increasing costs for candidates to prepare for and travel to multiple administrations of the exam.

Among the reasons some stakeholders favored multi-event testing was to permit testing of legal doctrine closer in time to when students learn the content in law school. The TTF concluded that the increased emphasis on assessment of skills and the decreased depth and breadth of coverage of doctrine makes this reason less compelling. In addition, some of those who favored multi-event testing want to use the bar exam as a diagnostic tool, which is not the purpose for which it is designed. Further, some perceived advantages of multi-event testing, such as letting students decide when to take a component and retake separate components if they fail, would also bring disadvantages. Among these would be the challenge for law schools to keep track of where their students are in the bar passage process and the need to tailor bar preparation support to 2Ls, 3Ls, and graduates, all of whom might be at different points in the admission process.

Readers are encouraged to review the comments of TDC members that are provided in [Appendix F](#) and [Appendix H](#) of the Phase 3 report for a fuller appreciation of the range and complexity of the issues considered around this topic. Some of the most compelling comments were those related to fairness to and equity among candidates. For example, one TDC member commented that multi-event testing could lead to a “two-track path to licensure that splits candidates along lines that appear to be racist or classist.” Others expressed concerns that some first-generation law students and those who are struggling academically would feel pressured to take the first component as early as possible, even though they might not be ready to do so before completing law school. Such students might be discouraged from continuing law school if they are not successful, which could have the unintended consequence of limiting the number of first-generation lawyers entering the profession.

Mode and Frequency of Test Administration

The new bar exam will be delivered by computer, either at computer testing centers managed by appropriate vendors or on examinees' laptops at jurisdiction-managed testing sites. Although NCBE offered remote administration of the current bar exam as an emergency option during the COVID-19 pandemic, uniform testing conditions and accessibility for all candidates can be best ensured by in-person administration.

The exam will continue to be offered two times each year.

Implementation

It is estimated that it will be four to five years before the new exam is administered for the first time. A website dedicated to implementation of the new exam will be used to help keep stakeholders informed about the process. The major steps of implementation will include

- developing test content specifications identifying scope of coverage;
- drafting new types of questions for integrated testing of knowledge and skills;
- ensuring accessibility for candidates with disabilities;
- field-testing new item formats and new exam content;
- conducting analyses and review to ensure fairness for diverse populations of candidates;
- evaluating options for computer delivery of the exam;
- reviewing procedures and scoring guidelines for grading constructed response items (e.g., essays);
- establishing scoring processes and psychometric methods for equating/scaling scores;
- developing test administration policies and procedures;
- assisting and supporting jurisdictions in activities such as establishing passing score requirements and amending rules to align with changes to the exam; and
- providing study materials and sample test questions to help candidates prepare.

Implementation will be conducted in a systematic, transparent, and collaborative manner, informed by input from and participation by stakeholders, and guided by best practices and the professional standards for high-stakes testing. We will ensure that information is provided to jurisdictions, candidates, and law schools in a timely manner to create a smooth transition to the new exam.

APPENDIX C

NOTICE TO THE BAR

SUPREME COURT AD HOC COMMITTEE ON THE “NEXTGEN” BAR EXAMINATION – REQUEST FOR COMMENT

The New Jersey Supreme Court created the Ad Hoc Committee on the “NextGen” Bar Examination to review and recommend to the Court whether New Jersey should adopt the NextGen exam as a replacement for the state’s existing bar examination format.

The Court has administered the current exam -- the Uniform Bar Examination (UBE) -- since February 2017. The UBE is created by the National Conference of Bar Examiners (the NCBE) and contains several professionally developed testing components. Beyond assessing competency to practice law, the UBE provides the additional benefit of portable scores that can be used in applications for admission in the forty plus jurisdictions that administer the UBE.

Following a three-year study to ensure that the bar exam continues to test the knowledge, skills, and abilities required for competent entry-level legal practice, the NCBE has announced that it will be providing a newly refined bar exam. The NCBE will stop producing all components of the UBE after the February 2028 bar exam administration and thereafter will offer only the NextGen exam. Also, distinct parts of the NextGen exam will not be available for separate use; the test must be used as a whole. Thus, there will no longer be available a multi-state examination component that may be combined with a locally developed bar exam. The Supreme Court has charged the Ad Hoc Committee with studying the NextGen exam, elevating public awareness of the issue and decision-point faced by the Court, soliciting input from stakeholders and the public, and, ultimately, submitting a report setting forth their views and a recommendation on whether New Jersey should adopt for use the NextGen exam.

With that as its charge, the Ad Hoc Committee hereby requests written comments from the legal community and interested members of the public. Comments may be sent by March 19, to the Ad Hoc Committee on the NextGen Bar Examination, Attention: Committee Staff Karen June, Supreme Court Clerk’s Office, Richard J. Hughes Justice Complex, P.O. Box 973, Trenton, New Jersey, 08625-0973. Comments may also be submitted via e-mail to the following address: Comments.Mailbox@judiciary.state.nj.us.

Those submitting comments by mail should include their name and address, and those submitting comments by e-mail should include their name and e-mail address. The Ad Hoc Committee will not consider comments submitted anonymously. Comments are subject to public disclosure.

Justice Jaynee LaVecchia (retired), Chair
Ad Hoc Committee on the
NextGen Bar Examination

Dated: February 19, 2025

SUPREME COURT AD HOC COMMITTEE ON THE NEXTGEN BAR EXAMINATION

TO THE LEGAL COMMUNITY AND INTERESTED MEMBERS OF THE PUBLIC – REQUEST FOR COMMENT:

The Supreme Court Ad Hoc Committee on the NextGen Bar Examination requests comments to inform its recommendation as to whether New Jersey should adopt the NextGen bar exam.

By way of background, in 2016, following careful study by an Ad Hoc Committee, the Court adopted the Uniform Bar Examination (UBE) as a replacement for the state’s then-existing bar examination format. The UBE is a standardized test drafted by the National Conference of Bar Examiners (NCBE), and is uniformly administered, graded, and scored in forty-one participating jurisdictions.

The adoption of the UBE brought with it considerable benefits for applicants while continuing to protect the public by ensuring the applicants’ minimum competency to practice law. The test is professionally developed and tested for reliability, fairness, and consistency in scoring to broadly enable its usefulness to licensing authorities. Unlike the prior test format that contained essays drafted by the New Jersey Board of Bar Examiners and 200 multiple-choice questions produced by the NCBE, the UBE is uniformly administered in all participating jurisdictions, and therefore scores are “portable” for the purpose of seeking admission in other jurisdictions, as well as for assisting in evaluation of candidates for admission in New Jersey who tested in another jurisdiction. Portable scores benefit applicants by allowing greater mobility among recent law graduates and help the public through the potential for increased legal resources in currently under-served areas. Both attorneys and firms place a high value on the ability to gain admission in multiple jurisdictions.

In 2022, after a three-year study, the NCBE announced that it will transition to its newly refined test format—the NextGen bar examination (NextGen). The UBE will cease to be available after February 2028. Jurisdictions may choose to administer NextGen as soon as July 2026, or they may continue to administer the UBE until February 2028. Faced with the UBE’s discontinuation, the Court is,

again, presented with the question of how to measure minimum competence to practice law for the purpose of attorney licensure.

The Supreme Court has charged the Ad Hoc Committee with studying the NextGen exam and making a recommendation as to whether New Jersey should adopt the new exam format provided by the NCBE. The Ad Hoc Committee also will opine on ancillary decisions that could flow from the adoption of NextGen, including potential implementation date, scoring, and other administrative issues. To aid in that review, the Court asked the Ad Hoc Committee to inform the public and solicit input regarding views on the potential change in the bar examination format.

What is the NextGen Exam and how does it differ from the UBE?

The NextGen exam will be a nine-hour exam administered over 1 ½ days. It will consist of three sections, each three hours in length. Each three-hour section will consist of two integrated question sets: one practical writing task (akin to the UBE's MPT described below) that will take approximately 60 minutes, and approximately 40 multiple-choice questions.

By contrast, the UBE is twelve hours long and lasts two full days. It is comprised of the Multistate Bar Examination (MBE), which is a multiple-choice test consisting of 200 questions; the Multistate Essay Examination (MEE); and the Multistate Performance Test (MPT), a practical test that assesses lawyering skills.

The NextGen exam will test foundational Concepts and Principles as well as foundational Lawyering Skills, as follows:

Foundational Concepts and Principles

- Civil Procedure (including constitutional protections & administrative proceedings)
- Contract Law (including Art. 2 of the UCC)
- Evidence
- Torts
- Business Associations (including Agency)

Foundational Skills

- Legal Research
- Legal Writing
- Issue Spotting and Analysis
- Investigation and Evaluation
- Client Counseling and Advising
- Negotiation and Dispute Resolution
- Client Relationship and Management

- Constitutional Law (excluding principles covered under Civil Procedure and Criminal Law)
- Criminal Law and Constitutional Protections Impacting Criminal Proceedings (excluding coverage of criminal procedure beyond constitutional protections)
- Real Property
- Family Law (*starting with the July 2028 NextGen bar exam*)

The NextGen exam will be administered on examinees' laptops; the UBE presents questions in a booklet format. Braille and paper copies of the NextGen exam will be available for candidates who require such accommodation under the ADA.

How was the NextGen exam developed?

In 2018, the NCBE commissioned a comprehensive three-year study of the bar exam. With input from a cross-section of the legal community, the NCBE's Testing Task Force (TTF) performed a nationwide practice analysis involving nearly 15,000 lawyers who provided data on the work performed by newly licensed lawyers and the knowledge and skills required for early-career competence. Based on that assessment, the TTF recommended the evolution of the UBE to (1) narrow the breadth of knowledge tested by the bar exam to include those knowledge areas that cross a wide range of practice areas—from litigation to transactional work—that newly licensed lawyers most commonly encounter; (2) adjust the depth of knowledge assessed to more closely reflect the actual practice of law and the level of familiarity needed for competent practice by a newly licensed lawyer; and (3) integrate the exam structure to assess legal knowledge and legal skills holistically in a single practice-related exam. In 2021, the NCBE approved the TTF's recommendations and committed to developing the next evolution of the UBE. For more information, see the [Background Information on the Next Generation of the Bar Examination](#).

The NCBE reports that it currently is establishing scoring processes and psychometric methods for equating/scaling scores, developing test administration policies and procedures, and developing study materials and sample test questions

to help candidates and law schools prepare. Meanwhile, the NCBE's development and refinement of the test material is ongoing. The NCBE has incorporated feedback from stakeholders, including the Conference of Chief Justices, as well as individuals throughout the legal community. The NCBE is field testing and administering a prototype exam, from which it will glean still more feedback and make additional refinements based on that experience and input.

What are the possible benefits and disadvantages of the NextGen Exam?

To date, thirty-three jurisdictions have announced their adoption of the NextGen exam. Some will offer the exam with its first administration in July 2026, while others will continue to offer the UBE until it sunsets and then offer the NextGen exam starting in July 2028.

In weighing the merits of the NextGen exam, the Ad Hoc Committee will consider the benefit of score portability, which will be lost if the Court does not adopt the Next Gen exam. With a significant majority of UBE jurisdictions having declared they will transition to the NextGen bar exam, the loss of score portability could be a significant detriment for many New Jersey applicants. Portability is of particular importance in New Jersey's legal market where a majority of attorneys are dual licensed, with 46% holding a license in New York, and 27% holding a license in Pennsylvania. Importantly, New York recently announced that it will administer the NextGen bar exam beginning in July 2028, which means that if New Jersey adopts the NextGen exam, applicants will continue to enjoy the ability to transfer their score to or from that neighboring jurisdiction.

In addition to score portability, the NextGen exam, developed consistently with its intent and design, promises to be a more accurate assessment of the knowledge necessary to begin one's legal career and the lawyering skills expected of someone starting out in the profession.

On a practical note, the continuation of the UBE beyond February 2028 is not an option since the NCBE will stop producing that exam. One might consider the feasibility of returning to something akin to the pre-UBE format, when the Board of Bar Examiners drafted the essay questions for the exam. But even more than that would be required because the pre-UBE format relied on use of the MBE's 200 multiple-choice questions as an important component to the New Jersey bar exam's thoroughness. That is no longer available, so a replacement for

that testing component would also have to be developed before February 2028. That scenario presents its own substantial challenges in light of the discontinuation of the MBE as a national standard bearer to calibrate scores.

Submission of Public Comment

Against that backdrop, the Ad Hoc Committee hereby requests written comment from the legal community and interested members of the public addressing views on the benefits and potential disadvantages of adopting the NextGen exam in New Jersey. Those seeking to submit a comment should follow the procedure set forth in the Notice to the Bar, published above.

APPENDIX D



Students taking a simulated multi-state bar examination in 2014 at the Jacob J. Javits Convention Center in New York City.

COMMENTARY

We Support Adopting NextGen Bar Exam But Urge Continued Testing for Wills and Trusts

The New Jersey Supreme Court has announced the creation of an ad hoc committee to review and recommend to the court whether New Jersey should adopt the NextGen exam as a replacement for the state's existing bar examination format.

March 21, 2025 at 10:04 AM

🕒 5 minute read

Trusts and Estates



By The Law Journal Editorial Board

The New Jersey Supreme Court has announced the creation of an ad hoc committee to review and recommend to the court whether New Jersey should adopt the NextGen exam as a replacement for the state's existing bar examination format. The Uniform Bar Examination ("UBE") has been administered by the Court since February 2017. The UBE is a standardized test drafted by the National Conference of Bar Examiners ("NCBE"). The UBE is uniformly administered, graded, and scored in forty-one participating jurisdictions. As a result, the UBE also provides portability of scores that are used in applications of admission.

The UBE is professionally developed and tested for "reliability, fairness, and consistency in scoring to broadly enable its usefulness to licensing authorities." Unlike the prior test format with essays drafted by the New Jersey Board of Bar Examiners and 200 multiple-choice questions produced by the NCBE, the UBE is uniformly administered. Therefore its scores are portable to assist in seeking admission in other jurisdictions and conversely to assist in evaluating candidates for admission in New Jersey who had tested in other jurisdictions. Portability allows for greater mobility and helps the public through the creation of increased legal resources, especially in under-served areas.

The NCBE conducted a three-year study to ensure that the newly refined exam would continue to test the "knowledge, skills, and abilities required for competent entry-level legal practice." After the February 2028 bar exam administration, the NCBE will stop producing all components of the UBE and will only offer the NextGen exam. Jurisdictions may elect to utilize NextGen as early as July 2026 or retain the UBE until February 2028.

NextGen must be used as a whole; individual parts may not be used. As a result, a locally developed bar exam may not be coupled with a multi-state examination component.

The new test is based on a comprehensive three-year study of the bar exam commissioned by NCBE. The NextGen exam, nine hours in duration, will be administered over a day and a half. There will be three-hour sections of two parts: 40 multiple-choice questions and one practical writing task. The NextGen exam will test Foundation Concepts and Principles, including civil procedure, contract law, evidence, torts, business associations, constitutional law, criminal law, real property and family law. Foundational Skills will test legal research, legal writing, issue spotting and analysis, investigation and evaluation, client counseling, negotiation and dispute resolution and client relationship and management. The NextGen will be administered on laptops.

Thirty three jurisdictions, including New York, have announced their adoption of the NextGen exam.

The Supreme Court has charged the ad hoc committee with studying the NextGen exam and elevating public awareness on the issue and with

soliciting input from stakeholders and the public. Thereafter the committee will submit a report and recommendation on whether New Jersey should adopt the NextGen exam.

Should New Jersey adopt NextGen? The exam offers portability, which is of particular importance for New Jersey's practitioners where a majority of practicing lawyers are dually licensed in New York or Pennsylvania. NextGen is also touted as being a better assessment of the knowledge necessary for starting out as a lawyer.

For New Jersey, there is a practical element. Since NCBE will stop producing its exam, the Board of Bar Examiners would have to draft both the essay questions and the 200 multiple choice questions. With MBE discontinued, it will be hard to calibrate scores.

We support adoption of NextGen with one caveat. We note that the subject area of wills and trusts has been removed from new format except for years 2026 to 2028 where there will be trust and estates concepts on the Exam in the performance task and integrated question sets. As a result, examinees need not to have any prior knowledge of the subject area as they are provided with all the substantive information necessary to answer the question.

What does this mean? If students do not need prior knowledge of wills and trusts, they will not take the course. A new generation of lawyers will have no knowledge of an area of the law that is central to the lives of most people. Wills and trusts affect the most critical and deeply personal aspects of people's lives from marriage to having children, aging, and dying. It is not a discrete area of the law, but impacts business and succession planning, domestic relations, and tax planning. The substantive law of wills and trusts protects the incapacitated and those with special needs and limits elder abuse and preserves family farms and businesses. It impacts charitable giving and managing retirement assets and can hopefully help avoid the negative and expensive impact of inheritance fights that alienate many American family members. The latter is especially true as our population ages and their wealth accumulates.

We support the adoption of NextGen, but hope the New Jersey Board of Bar Examiners continues to test wills and trusts as foundational knowledge areas.

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APPENDIX E

As fallout rains down, California considers return to in-person bar exam

By Julianne Hill

ABA Journal

March 4, 2025, 9:02 am CST



The flurry of finger-pointing and attempts at rectifying the fallout from the disastrous February administration of California's new bar exam continues. (Image from Shutterstock)

Updated: The flurry of finger-pointing and attempts at rectifying the fallout from the disastrous February administration of California's new bar exam continues, as the State Bar of California considers returning to an in-person administration for the July exam, scrutinizes its vendor's failed performance for possible breach of contract, and faces a potential audit.

"Last week's administration of the bar exam in California was a fiasco. It was made all the worse because it was foreseeable in advance," wrote Erwin Chemerinsky, the dean of the University of California at Berkeley School of Law and an ABA Journal contributor, to the Journal. "It was stunning incompetence by an entity that exists to ensure competence."

On March 4, the California Supreme Court directed the state bar "to plan on administering the July 2025 California Bar Examination in the traditional in-person format," in a [statement](#).

The state supreme court earlier asked the state bar and Measure Learning for a detailed report about the myriad issues experienced by applicants to "provide appropriate remedies for affected applicants who deserved and expected better."

Unlike the widely used Uniform Bar Examination and its components administered and developed by the National Conference of Bar Examiners, the new hybrid test written by Kaplan Exam Services and deployed by Meazure Learning was designed to be taken remotely and at test centers. The state bar's decision this fall to launch a new exam was motivated by saving money to ease an anticipated [\\$3.8 million deficit](#).

According to the state bar's board of trustees' [agenda for its March 5 meeting](#), the state bar's staff "cannot recommend going forward with Meazure Learning and are instead recommending returning to the in-person administration" for the July exam. The memo was posted March 2 by Donna Hershkowitz, the state bar's chief of admissions and legislative director.

A [Feb. 28 state bar fact sheet](#) enumerates the host of issues that the bar candidates experienced, including the inability to use copy and paste functions in the performance test, being kicked off the platform and unable to reenter without restarting the exam and being unable to connect at all, and delays of 90 minutes before starting the multiple-choice section of the test.

Meazure Learning is under review by the state bar after widespread technical delays and glitches affecting in-person and remote test-takers, according to a March 3 statement, and the state bar is "closely scrutinizing whether Meazure Learning met its contractual obligations."

In September, the board of trustees had approved up to \$4.1 million for Meazure Learning's administration for the February and July exams, according to the agenda memo. Democratic California State Sen. Tom Umberg, chair of the California Senate Judiciary Committee, [recently called for an audit](#) of the state bar's handling of the February bar exam.

The state bar also is working to "determine the full scope of necessary remediation measures for February 2025 bar exam test-takers," according to the bar's March 3 statement.

"As we identify what went wrong and where accountability rests, our priority is to apply proven methods from past disrupted exams to ensure a fair February bar exam for the current cohort and a smooth administration of the July bar exam," said Brandon Stallings, the chair of the state bar's board of trustees, in the March 3 statement.

Last week, a group of examinees filed a [class action complaint](#) in the Northern District of California against ProctorU Inc. [alleging that the vendor](#) "failed spectacularly" to administer to the test through its Meazure Learning unit. On

March 3, ProctorU was hit by a similar, [second class action lawsuit](#) in the Northern District of California filed by a bar candidate who alleges that the company was aware of the software's failings but failed to rectify the glitches.

Concerns about the administration of the new test started before the Feb. 25 and 26 administration.

The board of trustees heard about the issues surrounding the Meazure Learning platform's functionality at its Feb. 21 meeting. That followed a [Sept. 17 letter](#) from 15 ABA-accredited law school deans to court expressing "grave concerns" about administration of the new hybrid exam.

Law school deans continue to be frustrated. On March 3, the deans again wrote to California Supreme Court Chief Justice Patricia Guerrero and the state supreme court recommending that candidates work under the supervision of experienced attorneys to "allow candidates with offers of employment contingent on bar passage to retain them," according to the letter.

Noting that the July exam is "fewer than five months away," the California law deans urged the "return to an in-person administration of the Multistate Bar Examination." A second letter signed March 3 by more than 40 law school deans outside California, including those from the University of Washington School of Law, the Duke University School of Law and the Northwestern University Pritzker School of Law, echoed their California peers' recommendations.

The NCBE administers the Multistate Bar Examination.

"We stand ready to help in any way we can, but we have not heard from the California bar staff or board," wrote Judith Gundersen, the president of the NCBE, in email to the Journal on Monday.

A Kaplan spokesman declined to comment to the Journal. Meazure Learning did not immediately respond to a Journal email.

California [tests the second-highest number](#) of bar examinees, according to the [NCBE](#), behind only New York.

Updated March 4 at 12:29 p.m. to add the California Supreme Court's statement.

APPENDIX F

Problems With New California Bar Exam Enrage Test Takers and Cloud Their Futures

Many aspiring lawyers could not access the test and cited delays or other issues. A lawmaker has called for an investigation.



Listen to this article · 8:02 min [Learn more](#)



By Orlando Mayorquín

March 2, 2025

Even under normal circumstances, the California bar exam is one final harrowing hurdle before aspiring lawyers can practice. But last week was worse than any other, as they were thrown into limbo by technical glitches, delays and what many said were bizarrely written questions on a revamped test that didn't match anything in preparation.

The faulty rollout last week of the new licensing test, which was approved by the California Supreme Court in October and was touted by the state bar as a way to save money, has outraged test takers and the law school community at large, and prompted an investigation by California lawmakers and a lawsuit.

“You can talk to any attorney — because they have all been through the bar experience — and they will tell you how hard it is and how stressful it is to go through the bar exam,” said Erwin Chemerinsky, the dean of the University of California, Berkeley, School of Law. “To have to then take it again because of the incompetence of the bar is inexcusable,” said Mr. Chemerinsky, who had raised concerns along with other law school deans about the new exam before it was approved.

The botched exam, which is administered digitally, has left test takers in a bind that puts their career aspirations and personal finances in jeopardy. Many took weeks off work and missed time with family — and have job offers contingent on passing the February exam.

“I just kind of feel ripped off,” said Zack Defazio-Farrell, who took the exam last week. He added: “You spend a lot of money preparing. You spend a lot of time not making money. And this happens.”

Test takers reported a range of technological problems over the course of the two-day exam, which on Day 1 included five one-hour essay sessions and a 90-minute section that assesses the ability to carry out legal tasks, and on Day 2 involved 200 multiple choice questions over the course of four 90-minute sessions.

Test takers said they had encountered delays of over an hour to gain access to the exam, and some said they could not access the test at all. Others reported chronic freezing and lags, and an unresponsive copy and paste function.

Some also said the questions were written in a strange manner, were missing key facts, contained typos or simply did not make sense. And according to the state bar, there were reports that on-site proctors often did not have answers to basic questions.

The technology and proctoring of the exam was provided by the company Meazure Learning, which provided the ability to take the exam remotely, a change from previous years. The company now faces a class-action lawsuit by test takers.

Meazure Learning could not be reached for comment. On its website, the company says it has more than 30 years of experience successfully launching licensing programs. “We excel at developing fair, reliable and secure exams that you can trust,” it says.

The state bar, which said in August that the new test would save the organization up to \$3.8 million annually, said that it was examining whether the company’s performance had failed to meet its contractual obligations and that a full

accounting of how many people had experienced issues was still underway on Saturday.

Tom Umberg, a state senator who chairs the body's judiciary committee, which is tasked in part with funding the state bar, said there would be an inquiry. "We are going to be doing a deep dive as to what happened and how to make sure this doesn't happen again," he said.

The new exam was written by Kaplan North America, a test preparation company. It replaced questions by the National Conference of Bar Examiners, which writes the exams in a majority of states. The state bar said that the questions developed by Kaplan had undergone the same reviews as previous exam questions.

Russell Schaffer, a spokesman for Kaplan, said in a statement that "the portion of the exam we wrote was subjected to a rigorous quality control process." He added that the company was unaware of any questions it was responsible for that contained typos.

For generations, California's bar exam was widely considered the nation's hardest. Even elite law students often had to take it more than once to clear the high threshold for passage. Former governors Jerry Brown and Pete Wilson and former Vice President Kamala Harris are among the many famous lawmakers who failed the California bar on their first try. The threshold for passing was lowered slightly several years ago, but the test still remains exceptionally rigorous relative to exams in the rest of the United States.

Some have said the bar was aware of glitches months in advance, after an experimental exam in November contained technical issues for some. But the bar said those problems were isolated.

The state bar appeared to anticipate issues with the new exam before the rollout ahead of last week. Before the test, it offered people who withdrew from or failed the February exam a fee waiver for the next test date. Exams are administered twice a year, in February and July.

“This new exam has not rolled out the way it should have, and we, the board, apologize along with state bar leadership and staff,” the bar’s board of trustees said in a statement on Feb 21. “The continued issues with testing locations, scheduling, technical issues and communication lapses have distracted applicants from their studies and created confusion.”

Of the 5,600 people who registered for the February exam, 1,066 withdrew, the state bar said.

On Friday, the state bar said it was looking into remedies for those who took the exam and experienced technical difficulties, including conducting analyses to adjust scores. Mr. Chemerinsky has called on the bar to offer provisional licenses to test takers and revert to the old exam in the future.

For some of those who were not able to complete the exam, the bar offered a chance to retake the test this week. But that opportunity has been delayed to later this month after some test takers allegedly leaked the questions online.

But for those who don’t get a chance to retake the test this month, it means waiting until July — which provides little comfort.

Some said that may be too late to avoid devastating financial situations dependent on becoming licensed by May, when February test results are released.

“If I have to take it in July, I probably will not be living in California anymore,” said Alexandra Sennet, who said she was hundreds of thousands of dollars in debt from law school. She added that she has a job offer that is contingent on her becoming licensed in May.

Ms. Sennet said she was also in debt paying for bills associated with a spinal injury she sustained after a car accident. That injury forced her to miss last July’s bar exam and has limited her ability to work a regular job.

“I’m banking on this to pay my bills, literally,” she said, adding, “This is my livelihood.”

Mr. Defazio-Farrell said he was unsure how he was going to pay off his student loans without a lawyer's salary.

"I'm not employed at the moment, and getting back into it is going to be difficult without a license," he said.

For others, the thought of committing yet more time for the test presents more than financial anxiety. Becky Hoffman, 38, said she decided to pursue becoming a lawyer in part to give her three young children a better life, and sacrificed spending time with them over the past three and half years during law school.

She wrote over 45 essays and took over 1,600 multiple choice questions to prepare in the weeks leading up to the exam.

After the second day of testing ran late on Wednesday because of glitches, Ms. Hoffman stepped outside the testing site where her wife and children were waiting to take her home.

"I tried my hardest to just be brave and tell them that it's over, and mommy is done, and I'm so happy to be able to spend more time with you," she said. "And I don't know if that's true or not."

Shawn Hubler contributed reporting.

Orlando Mayorquín is a breaking news reporter, based in New York, and a member of the 2023-24 Times Fellowship class, a program for journalists early in their careers. More about Orlando Mayorquín

APPENDIX G

BAR EXAM

California fails new bar exam, offers retake

BY JULIANNE HILL ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/64808/](https://www.abajournal.com/authors/64808/))

FEBRUARY 26, 2025, 10:27 AM CST



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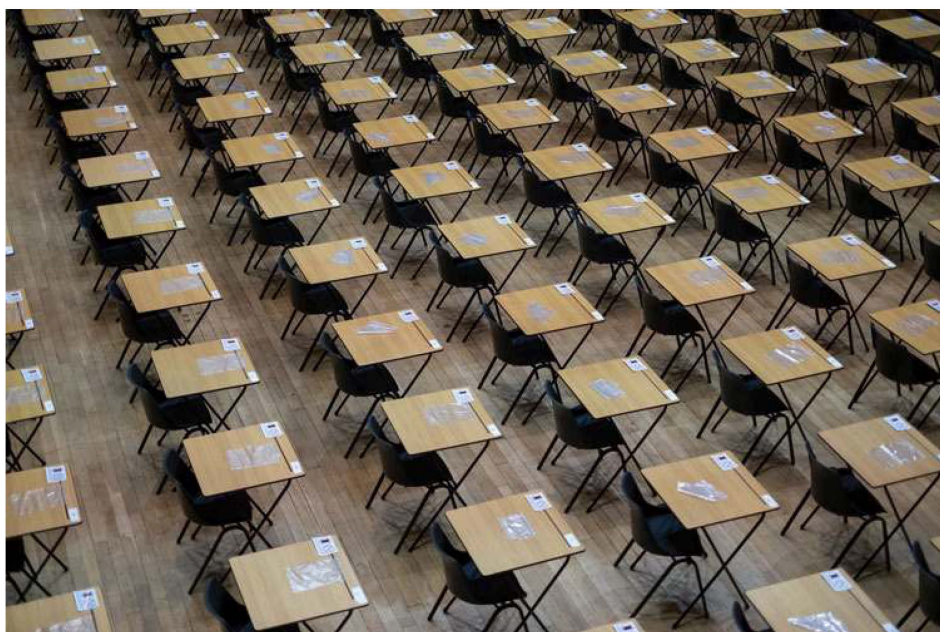
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After the first day of California's new bar exam resulted in technical difficulties and problems accessing the test for many candidates, the State Bar of California is weighing options for a retake. (Image from Shutterstock)

unacceptable," according to the message.

Unlike the widely used Uniform Bar Examination and its components administered and developed by the National Conference of Bar Examiners, the new test written by Kaplan Exam Services and deployed by Meazure Learning can be taken remotely and at test centers.

"Most troubling was the lack of cut-and-paste functionality in-person test-takers reported experiencing," said Leah Wilson, the state bar's executive director, in a statement sent to the ABA Journal. "Other test-takers reported a range of technical issues and poor proctor performance impacting their ability to complete portions of today's exam."

Updated: After the first day of California's new bar exam resulted in technical difficulties and problems accessing the test for many candidates, the State Bar of California is weighing options for a retake, according to an email sent the evening of Feb. 25 to all examinees.

The email

(<https://www.calbar.ca.gov/Portals/0/documents/admissions/Examinations/February-2025-Bar-Exam-Email-February-25.pdf>)

acknowledged that many examinees "faced significant technical and customer service challenges, and for that we are truly sorry."

"These technical and support issues were and are

As the state bar monitors the second day of the exam Feb. 26, it is weighing specific options of what that would look like, according to the email. March 3 and 4 had been earmarked for makeup opportunities even before the test launched Tuesday, the email said. But according to an email (<https://www.calbar.ca.gov/Portals/0/documents/admissions/Examinations/February-2025-Bar-Exam-Email-February-27.pdf>) the state bar sent late on Feb. 27, the initial retake of the exam will be March 18 and 19 instead of March 3 and 4 because of “a prohibited online disclosure of an essay question.”

Options being explored include retaking the performance test or the essay questions that couldn’t be accessed or making scoring adjustments, according to the email.

“We understand the uncertainty this situation creates,” according to the Feb. 25 email, adding that more guidance will be available as soon as possible.

“Maybe I’m overstating this, but I feel like if someone were to have predicted the worst-case scenario for the rollout of the new California bar exam, that prediction would have been slightly better than what ended up as the reality,” wrote Sean Silverman, owner of Silverman Bar Exam & LSAT Tutoring, to the Journal. “What a mess!”

Test-takers who faced technical issues not resolved by Meazure Learning support were encouraged to contact the state bar through the applicant portal (<https://admissions.calbar.ca.gov/s/login/?ec=302&startURL=%2Fs%2F>) or email admissions@calbar.ca.gov.

The retake offer follows what the state bar board of trustees termed “a tumultuous few weeks (<https://www.abajournal.com/web/article/fail-this-weeks-california-bar-exam-retake-the-july-test-for-free>)” in a Feb. 21 press release that offered free retakes for those who fail the February exam. That came a week after the state bar’s refund offer (<https://www.abajournal.com/web/article/apologizing-for-frustration-confusion-california-offers-refunds-to-february-bar-examinees>) for those who withdrew from the February exam, along with an apology that information from the state bar and testing company Meazure Learning was not aligned.

Since the 100% refund policy was announced Feb. 14, the state bar had received about 600 requests to withdraw by Feb. 20, according to a spokesperson.

California tests the second-highest number of bar examinees, according to the NCBE (<https://www.ncbex.org/statistics-research/bar-exam-results-jurisdiction>), behind only New York. In 2024, 3,944 examinees took the California bar exam in February.

For 2025, 5,100 initially signed up for the test’s February maiden voyage, according to a state bar spokesperson, 13% more than anticipated.

“The transition away from the National Conference of Bar Examiners was never going to be easy, but vendor failures and the [California Supreme] Court’s implementation delays and rejection of better alternatives created this untenable situation,” wrote Susan Smith Bakhshian, director of bar programs at the Loyola Law School at Loyola Marymount University, to the Journal. “Exam takers deserve better.”

See also:

California bar hunts for who leaked bar questions, applicants sue test administrator

(<https://www.abajournal.com/web/article/cali-bar-hunts-for-who-leaked-bar-questions-applicants-sue-test-administrator>)

Updated Feb. 28 at 7:23 a.m. to change the proposed retake dates.

30-DAY INTERMITTENT FASTING CHALLENGE ACCORDING TO THE AGE

AGE: 45-50	AGE: 51-55	AGE: 56-60	AGE: 61-65	AGE: 66-70
<p>BREAKFAST:</p> <ol style="list-style-type: none">Scrambled eggs with whole wheat toastFresh yogurt with fresh berries and a sprinkle of granola <p>LUNCH:</p> <ol style="list-style-type: none">Veggie stir-fry with tofu, broccoli, bell peppers, carrotsLentil soup with a side of whole wheat bread <p>DINNER:</p> <ol style="list-style-type: none">Lentil and vegetable curry served over brown riceGrilled vegetable skewers with a side of quinoa or couscous	<p>BREAKFAST:</p> <ol style="list-style-type: none">Whole grain cereal with low-fat milk and a drizzle of honeyWhole wheat pancakes topped with a dollop of fresh yogurt <p>LUNCH:</p> <ol style="list-style-type: none">Lentil soup with a side of apple wheat breadSweet potato and black bean taco with avocado, salsa, and lime citrus <p>DINNER:</p> <ol style="list-style-type: none">Carpaccio salad with fresh mushrooms, cherry tomatoes, basil, and balsamic vinaigrette	<p>BREAKFAST:</p> <ol style="list-style-type: none">Oatmeal topped with sliced banana and a drizzle of honeyVeggie omelet with spinach, tomatoes, and mushrooms <p>LUNCH:</p> <ol style="list-style-type: none">Spinach and feta stuffed bell peppers served with a side of quinoaSweet potato and black bean taco with avocado <p>DINNER:</p> <ol style="list-style-type: none">Eggplant Parmesan with marinara sauce and melted cheese, served with a side salad	<p>BREAKFAST:</p> <ol style="list-style-type: none">Oatmeal topped with sliced banana and a drizzle of honeyVeggie omelet with spinach, tomatoes, and mushrooms <p>LUNCH:</p> <ol style="list-style-type: none">Spinach and feta stuffed bell peppers served with a side of quinoaSweet potato and black bean taco with avocado <p>DINNER:</p> <ol style="list-style-type: none">Eggplant Parmesan with marinara sauce and melted cheese, served with a side salad	<p>BREAKFAST:</p> <ol style="list-style-type: none">Scrambled eggs with whole wheat toastFresh yogurt with fresh berries and a sprinkle of granola <p>LUNCH:</p> <ol style="list-style-type: none">Veggie stir-fry with tofu, broccoli, bell peppers, carrotsLentil soup with a side of whole wheat bread <p>DINNER:</p> <ol style="list-style-type: none">Lentil and vegetable curry served over brown riceGrilled vegetable skewers with a side of quinoa or couscous

Write a letter to the editor, share a story tip or update, or report an error.

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APPENDIX H



The State Bar of California

News Releases

Media Contact

Office of Communications | 213-765-1388 | barcomm@calbar.ca.gov

Board of Trustees Orders Independent Investigation into February 2025 Bar Exam Issues



Thursday, March 6, 2025 Categories: **News Releases**

After hearing approximately two hours of public comment at its March 5 meeting, primarily from test takers reporting serious problems they encountered during the February 2025 California Bar Exam, the State Bar Board of Trustees directed the general counsel to retain an independent investigator to conduct a privileged investigation into the issues relating to the exam.

"Speaking on behalf of the Board, to applicants I want to say: we hear you," said Board Chair Brandon Stallings. "We are deeply concerned about the issues and experiences reported by February bar exam test takers. We understand the anger and sense of urgency commenters expressed. At the same time, deciding on appropriate remediation and accountability measures requires that we take the time and do the work to understand what happened and why. That is why we are directing the hire of an independent investigator."

Nearly 90 speakers reported scores of issues that plagued their exam experience, whether they took the exam remotely or at in-person testing centers. A few speakers acknowledged the long-term value of a shift to remote testing, but many called on the Board to take a variety of immediate actions to address and remedy the unacceptable level of problems in this initial launch.

The Board also heard a status report on the February exam, in which approximately 4,100 test takers used the Measure Learning platform. Preliminary data indicates a disconnect between raw completions (content submitted in each section)—which were in the range of 98 percent for both written and multiple-choice portions of the exam—and what has been reported to the State Bar about test takers' challenging experiences. Staff outlined steps already undertaken to assess the impacts of the problems that test takers experienced on the completeness and quality of their exam submissions. These steps include:

- A survey of all test-takers distributed March 4;
- Evaluation of a random sampling of test takers' written submissions to assess response completeness and quality; and
- Comparison of the performance on multiple choice questions with that of past February bar exams.



Because some critics have pointed back to the November session that tested the new bar exam multiple choice questions and platform, claiming that problems were reported then, the Board also received an update on data from two surveys conducted after the November session:

- Of the 3,741 participants in the November session, 238 (6 percent) did not complete the session due to technical issues.
- Two surveys were conducted; results were partial in each case. Surveys showed a generally positive experience: Over 80 percent of survey participants expressed satisfaction with the vendor; 88 percent expressed satisfaction with their proctors, and 72 percent indicated they were somewhat or very satisfied with the computer-based exam.
- Feedback in open-ended comments indicated that there were problems and negative experiences in the November session that align with user experiences in February, however these issues were not reported by the majority of survey respondents. Commenters flagged:
 - User experience issues;
 - Issues with technical reliability, including delays to initially access the experiment and disruptions and disconnecting during the experiment; and
 - Proctor issues.

The State Bar awaits detailed data from exam administration vendor Meazure Learning needed to definitively and comprehensively assess the impact that technical issues and human support problems had on test-taker performance. **The Supreme Court has also requested an expedited, detailed report regarding the problems encountered by applicants**, stating, "This information is crucial in informing how the Court will provide appropriate remedies for affected applicants who deserved and expected better."

Commenters called for a variety of remediation measures, ranging from expanded retakes to scoring adjustments, as well as broader changes, such as reducing the cut score, extending free retakes on future exams, offering provisional licensure, admitting all test takers, or extending diploma privilege.

To date, the State Bar has offered retakes to approximately 85 eligible test takers whose access to the exam platform was so limited or incomplete as to make their exams impossible to score. These limited retakes will occur March 18–19. The Committee of Bar Examiners will explore psychometric solutions (such as scoring adjustments), but those solutions typically follow initial grading. Psychometric solutions could be applied to those who completed four of the six written sections of the exam (essays and Performance Test) or in grading the multiple-choice questions, those who completed three-fourths of them.

At the meeting, Trustee Mark Toney called on the State Bar to devote additional resources to speed the process of grading so that psychometric adjustments could be considered sooner. The Committee of Bar Examiners, which is meeting March 14, will take up this proposal.

Some of the remediation measures requested by test takers and law school deans, including changes to the cut score, ensuring a set percentage of test takers pass, offering provisional licensure, or passing all test

takers would require Supreme Court action.

On March 4, the Court directed the State Bar to plan to administer the July 2025 bar exam in the traditional in-person format. This directive aligned with staff's recommendation to the Board. During the Board meeting, staff outlined the challenging time frame to secure sites and contract with different vendors for the exam platform and proctor support for July. Staff will detail progress on these plans at the Committee of Bar Examiners' March 14 meeting. The Board or its Contracts Committee will be asked to approve contracts for facilities and other services for the July exam at a later date.

###

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The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system.

Previous Article

APPENDIX I

MAY - 2 2025

S290627

Jorge Navarrete Clerk

ADMINISTRATIVE ORDER 2025-05-02

Deputy

IN THE SUPREME COURT OF CALIFORNIA
En Banc

**ORDER APPROVING RAW PASSING SCORE AND SCORING ADJUSTMENT
FOR THE FEBRUARY 2025 CALIFORNIA BAR EXAMINATION**

The Court is in receipt of the State Bar of California's Request to Approve a Proposed Raw Passing Score and Scoring Adjustments for the February 2025 California Bar Examination, filed on April 29, 2025.

The Court, having considered the State Bar's request, and in light of the particular issues encountered during the February 2025 California Bar Examination, sets the total raw passing score for that exam at 534 points or higher. The total raw score shall consist of the 700 possible raw points for the written portion plus the 171 points available for the multiple-choice components with each weighted equally (50 percent assigned to each).

For applicants who took the February 2025 Attorneys' Examination, the raw passing score shall be 420 points or higher.

The Court also approves psychometric imputation of scores as follows: for missing multiple-choice answers, where the test taker answered at least 114 of the 171 scored multiple-choice questions; and for missing essay or performance test answers, where the test taker answered at least four of six written sections of the examination, including 18 test takers who had content in the performance test response field, but did not have access to the file and library.

For purposes of the passing score, this order supersedes the Court's October 21, 2024 administrative order concerning the California Bar Examination.

Although the State Bar's petition indicates that the February 2025 examination contained a sufficient number of reliable multiple-choice questions, the Court remains concerned over the processes used to draft those questions, including the previously undisclosed use of artificial intelligence, and will await the results of the impending audits of the examination. At this time, the Court orders that the Multistate Bar Examination be used for the multiple-choice portion of the July 2025 California Bar Examination.

GUERRERO

Chief Justice

CORRIGAN

Associate Justice

LIU

Associate Justice

KRUGER

Associate Justice

GROBAN

Associate Justice

JENKINS

Associate Justice

EVANS

Associate Justice

APPENDIX J



Bar Exam Content Scope

FIRST ADMINISTRATION
JULY 2026



Building a competent, ethical, and diverse legal profession.

MAY 2023



National Conference
of Bar Examiners

Building a competent, ethical,
and diverse legal profession

The National Conference of Bar Examiners, founded in 1931, is a not-for-profit corporation that develops licensing tests for bar admission and provides character and fitness investigation services. NCBE also provides testing, research, and educational services to jurisdictions; provides services to bar applicants on behalf of jurisdictions; and acts as a national clearinghouse for information about the bar examination and bar admissions.

Our Mission





NCBE promotes fairness, integrity, and best practices in admission to the legal profession for the benefit and protection of the public. We serve admission authorities, courts, the legal education community, and candidates by providing high-quality

- assessment products, services, and research
- character investigations
- informational and educational resources and programs

Our Vision

A competent, ethical, and diverse legal profession.

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Foundational Skills

Note: The task list below is **preliminary** and is expected to be finalized in 2024. NCBE is currently evaluating methods for assessing performance on tasks through pilot and field testing of questions. This performance will be assessed based on

- topics identified in the Foundational Concepts and Principles outlines; or
- other topics not identified in those outlines with relevant resources provided.

Foundational Skills Group A: Issue Spotting and Analysis, Investigation and Evaluation

The purpose of Foundational Skills Group A is to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns.

1. Identify which legal principles are likely to affect the outcome of a matter.

Note: Depending on the context of the question, a question assessing Task 1 may be classified as either an Issue Spotting and Analysis question (Group A) or a Legal Research question (Group C).

2. Identify which facts are likely to be relevant to or dispositive of a legal issue in a matter.

Note: Depending on the context of the question, a question assessing Task 2 may be classified as either an Issue Spotting and Analysis question (Group A) or a Legal Research question (Group C).

3. Identify the applicable standards of review and/or burdens of proof that will apply to legal issues in a matter.

4. Identify the strengths and weaknesses of a client's position or an opposing party's position based on the relevant legal rules and standards.

5. In a matter that requires additional factual development, identify which facts need to be investigated, or the best strategy for investigating or eliciting those facts, in order to be able to evaluate the strengths and weaknesses of a client's position or an opposing party's position based on the relevant legal rules and standards.

6. Assess the probable outcome of a claim, motion, discovery matter, or objection based on the relevant legal rules and standards.

7. Identify the applicable or dispositive language, standards, elements, or factors of a provided resource (such as a statute, contract, or judicial opinion).

Note: Depending on the context of the question, a question assessing Task 7 may be classified as either an Investigation and Evaluation question (Group A) or a Legal Research question (Group C).

Foundational Skills Group B: Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management

The purpose of Foundational Skills Group B is to assess the extent to which an examinee can identify lawyering strategies within the lawyer-client relationship, based on the relevant rules and standards and consistent with a client's objectives, interests, and constraints.

8. Identify which claims to recommend bringing, which remedies to recommend seeking, which evidence to present, which arguments or defenses to raise, or how to respond to arguments or defenses, based on the relevant legal rules and standards and consistent with a client's objectives, interests, and constraints.
9. In a matter requiring review of a provided transcript of an interview, deposition, or examination of a client or fact witness, identify gaps in information obtained, suggestions for improvement, and/or grounds for objection (if applicable).

Note: Depending on the context, a question assessing Task 9 may be classified as either an Investigation and Evaluation question (Group A), a Client Counseling and Advising question (Group B), or a Client Relationship and Management question (Group B).

10. Identify two factors that favor a client's position or two factors that favor an opposing party's position in a matter.
11. Identify two benefits or two drawbacks of a proposed resolution of a dispute, consistent with a client's objectives, interests, and constraints.
12. Identify potential terms of an agreement that could lead to a negotiated resolution of a dispute.
13. In a matter in which a client has multiple stated objectives, explain why a legal rule or principle, as applied to the client's situation, may make one of those stated objectives unattainable.
14. Determine the best strategy for identifying a client's needs and interests underlying the client's stated objectives, in order to aid the client in setting goals in a matter.

Note: Issues related to the rules of professional responsibility listed below frequently arise in the context of Group B Foundational Skills (Client Counseling and Advising, Negotiation and Dispute Resolution, and Client Relationship and Management). Knowledge of the following American Bar Association Model Rules of Professional Conduct (MRPC) will not be assessed in stand-alone questions but may be assessed in the context of assessment of Group B Foundational Skills.

- MRPC Rule 1.1: Competence
- MRPC Rule 1.2(a) and (d): Scope of Representation and Allocation of Authority Between Client and Lawyer
- MRPC Rule 1.3: Diligence
- MRPC Rule 1.4: Communications
- MRPC Rule 1.6(a) and (c): Confidentiality of Information
- MRPC Rule 1.7: Conflict of Interest: Current Clients

- MRPC Rule 3.1: Meritorious Claims and Contentions
- MRPC Rule 3.3(a)(1)–(2): Candor Toward the Tribunal
- MRPC Rule 4.1: Truthfulness in Statements to Others
- MRPC Rule 4.2: Communication with Person Represented by Counsel
- MRPC Rule 4.3: Dealing with Unrepresented Persons

Foundational Skills Group C: Legal Research

The purpose of Foundational Skills Group C is to test the extent to which an examinee can identify and implement legal research strategies, including preliminary issue-spotting, working with provided resources, developing and refining a theory of the case, and reaching closure on research questions.

15. In a matter that requires legal research, identify the research questions that need to be answered.
16. Identify ambiguities in the language, standards, elements, or factors of a provided resource (such as a statute, contract, or judicial opinion).
17. Identify efficient legal research strategies (including appropriate search terms) that are likely to uncover other legal sources to assist in the interpretation of a provided resource (such as a statute, contract, or judicial opinion).
18. Given a collection of legal sources, identify the roles and characteristics of the sources, including their authoritative weight.
19. Given one or more judicial opinions, identify the facts in a matter that are analogous to and/or distinct from the dispositive facts in the opinions.

Note: Depending on the context of the question, a question assessing Task 19 may be classified as either an Issue Spotting and Analysis question (Group A) or a Legal Research question (Group C).

20. Given a collection of legal sources, identify other sources, search terms, or research strategies that might be used to update sources or find additional sources.
21. Given a collection of legal sources, identify which sources are relevant to or dispositive of a legal issue in the matter.
22. Given a collection of legal sources, identify whether the sources are sufficient to complete an assigned research or other lawyering task.

Foundational Skills Group D: Legal Writing and Drafting

The purpose of Foundational Skills Group D is to test the extent to which an examinee can complete a legal writing or drafting task based on the relevant rules and standards and consistent with a client’s objectives, interests, and constraints.

23. Draft or edit correspondence to a client explaining the legal implications of a course of action, updating the client on the status of the client’s matter, and/or providing advice on the next steps to be taken in the matter.
24. Given draft sections of a complaint or an answer to a complaint in a matter, identify language that should be changed, and make suggestions for how that language should change, consistent with the facts, the relevant legal rules and standards, and the client’s objectives, interests, and constraints.
25. Given draft sections of affidavits that must be submitted to a court or other tribunal in a matter, identify the best affiant and best language to support each element to be proved, consistent with the facts, the relevant legal rules and standards, and the client’s objectives, interests, and constraints.
26. Given draft provisions of a contract, identify language that should be changed, and make suggestions for how that language should change, consistent with the facts, the relevant legal rules and standards, and the client’s objectives, interests, and constraints.
27. Given a collection of legal sources, draft specified section(s) of a document, demonstrating skill at formulating an original legal analysis. This task may include
 - an objective memo;
 - a persuasive brief or letter; or
 - another common document, such as a mediation brief, an opinion letter, or a draft proposal for a contract.

Foundational Concepts and Principles: Business Associations and Relationships

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

Where the applicable law is noted in this outline, that law is controlling. In all other cases, if specific statutory rights and remedies are tested, the applicable legal resources will be provided.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Agency and authority

A. Creation ★

B. Agent's authority to bind principal

1. Actual authority ★

2. Apparent authority ★

C. Agent's fiduciary duties to principal

1. Duty of care ★

2. Duty of loyalty ★

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D. Termination ★**II. Vicarious liability of principal for acts of agent ★**

This topic includes the doctrines of respondeat superior and vicarious liability, as well as joint venture liability. This topic also includes distinctions between employees and independent contractors. *See also* Torts II.F. Liability for acts of others.

III. Formation, management, and control of general partnerships

This topic includes the de facto treatment of improperly created corporations and limited liability companies as general partnerships, as well as the authority of general partners to manage the partnership.

IV. Formation of corporations and limited liability companies**A. Corporations**

1. Incorporation documents
2. Bylaws
3. Amendments to incorporation documents and bylaws

B. Limited liability companies

1. Certificate of organization
2. Operating agreement
3. Amendments to certificate of organization and operating agreement

V. Corporate promoters: pre-organization contracts and fiduciary duties**VI. Management and control of corporations and limited liability companies****A. Corporations****1. Powers and rights of shareholders**

This topic includes classes of shares (preferred and common) and the requirements for annual meetings (notice and quorum).

2. Powers and rights of directors

This topic includes the requirement for directors' meetings (notice and quorum) and action by committee.

3. Powers and rights of officers**B. Powers and rights of members and managers of limited liability companies**

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VII. Fiduciary duties within business associations

- A. Fiduciary duties of general partners ★**
- B. Fiduciary duties of corporate officers and directors ★**
- C. Fiduciary duties of limited liability company members and managers ★**

VIII. Shareholder and member litigation

This topic includes understanding who is suing whom in direct and derivative litigation.

IX. Liability rules related to business associations

- A. Liability of general partners under the Revised Uniform Partnership Act (1997) ★**
- B. Liability of corporate officers and directors under the Model Business Corporation Act (2016) ★**
- C. Liability of limited liability company members and managers under the Uniform Limited Liability Company Act (2013) ★**
- D. Piercing the veil ★**

Foundational Concepts and Principles: Civil Procedure

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

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Examinees are to assume the application of (1) the Federal Rules of Civil Procedure and (2) the sections of Title 28 of the US Code pertaining to district court and appellate jurisdiction, venue, and transfer.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Jurisdiction and venue

A. Federal subject-matter jurisdiction

1. Federal question jurisdiction ★

This topic includes the well-pleaded complaint rule and the general requirement that the case involve interpretation of the Constitution or laws of the United States or “arise under” the federal law that creates the cause of action.

2. Diversity jurisdiction ★

This topic includes citizenship of individuals, the complete diversity rule, citizenship of entities, the amount-in-controversy requirement, and aggregation of claims.

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3. Concurrent and removal jurisdiction ★

This topic includes the types of cases that are removable (cases that can be brought originally in federal court and cases where the defendant is a citizen of the forum state), as well as the district to which a case must be removed.

4. Supplemental jurisdiction

This topic includes the “same case or controversy” requirement and discretionary factors permitting the court to decline jurisdiction.

B. Personal jurisdiction ★

This topic includes the constitutional standards for specific in personam jurisdiction (minimum contacts, “arising out of,” reasonableness) and general in personam jurisdiction (“at home”). Specific jurisdiction includes application in a variety of contexts, such as intentional torts, contracts, “stream of commerce,” and e-commerce claims. General jurisdiction includes application to both individuals and corporations. This topic also includes the application of long-arm statutes, consent, and waiver.

C. Service of process and notice

This topic includes the constitutional requirement of notice, the different ways to serve individuals and corporations, and waiver of service of process.

D. Venue, forum non conveniens, and transfer

This topic includes the two basic circumstances in which venue is proper: where the defendant (individual or corporation) resides or where a “substantial part of” the events occurred. This topic also includes remedies when venue is improper and rules governing transfer of venue on the basis of forum non conveniens.

II. State law in federal court

This topic includes the Erie doctrine as related to the basic difference between substance and procedure and when state law, including state choice-of-law rules, displaces federal procedural rules.

III. Pretrial procedures**A. Preliminary injunctions and temporary restraining orders**

This topic includes familiarity with the purpose of temporary restraining orders and preliminary injunctions as tools to maintain the status quo pending adjudication of a case. This topic also includes understanding that preliminary injunctions can become permanent injunctions.

B. Notice pleadings and amended pleadings ★

This topic includes notice pleadings and amended pleadings, including the relation-back doctrine.

C. Rule 11 ★

This topic includes the requirements of reasonable inquiry, good-faith arguments for changes in the law, and proper purpose, as well as the timing and procedures for Rule 11 sanctions.

D. Joinder of parties and claims

1. **Joinder of multiple claims, joinder of parties, counterclaims, crossclaims, third-party practice, and the court's overriding power to sever ★**
2. **Intervention under Rule 24**

E. Disclosures and discovery

1. **Scope and limits of discovery ★**
2. **Rule 26(f) conference and planning for discovery ★**
This topic includes a general understanding of the parties' obligation to confer to develop a proposed discovery plan.
3. **Discovery tools and mechanisms, including e-discovery ★**
This topic includes depositions (including corporate representative discovery), interrogatories, requests for production and inspection, and physical and mental examination. This topic also includes how to handle electronically stored information, including metadata and large volumes of e-discovery material.
4. **Discovery motions**
This topic includes motions for protective orders, the process for claiming privilege, and motions to compel disclosure or response. This topic also includes understanding that a party may be subject to sanctions for failure to comply with discovery rules, but not the particulars of which types of sanctions are appropriate.

IV. Preserving the right to a jury trial

This topic includes the need to preserve the right to a jury trial in the complaint and the consequences of failing to do so (waiver).

V. Dispositive motions

- A. **Motion to dismiss for failure to state a claim ★**
- B. **Summary judgment motion ★**
- C. **Motion for judgment as a matter of law (directed verdict and judgment notwithstanding the verdict)**

VI. Judgments

- A. **Default judgment ★**
- B. **Effect of judgment ★**
This topic includes the elements of claim and issue preclusion.

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VII. Appealability and review

A. Final judgment rule

B. Availability of interlocutory review

C. Standard of review on appeal

This topic includes the distinctions between levels of discretion given to the appeals courts in reviewing trial court findings (de novo, clearly erroneous, abuse of discretion, plain error, and harmless error).

Foundational Concepts and Principles: Constitutional Law

Subject Matter Outline

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If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Federal judicial power

A. Justiciability requirements: case or controversy and standing ★

This topic includes the elements of standing, the broad prohibitions on citizen and taxpayer standing, and aspects of the “case or controversy” requirement related to claims brought against the government to enforce statutes.

B. Other justiciability doctrines: ripeness, mootness, and advisory opinions ★

C. The Eleventh Amendment and state sovereign immunity

This topic includes distinctions between suits against states and suits against local governments, litigation between state and federal governments, claims against government officials, suits for damages and for injunctive relief, state law claims and federal law claims, consent to be sued, and congressional power to abrogate state immunity.

D. Judicial authority to interpret the Constitution and laws

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II. Legislative powers

A. Congress's commerce, taxing, and spending powers ★

This topic includes the requirement of a “substantial effect” on interstate commerce, regulation of economic and noneconomic activity, and regulation through spending (conditional grants).

B. Congress's power to enforce the Thirteenth, Fourteenth, and Fifteenth Amendments

III. Executive powers

A. The president's power as commander in chief

B. The president's power to appoint and remove officials

This topic includes the president's appointment and removal power regarding executive branch officials and Congress's authority to limit the president's appointment and removal powers.

C. The powers of federal administrative agencies

This topic includes the roles of administrative agencies as executive enforcers of laws and regulations, as “legislators” with rule-making authority, and as “judges” conducting hearings and issuing decisions.

IV. The relation of nation and states in a federal system

A. Intergovernmental immunities

1. Prohibition on state taxation of federal entities
2. Prohibition on federal commandeering of state legislation and enforcement

B. Federalism-based limits on state authority

1. Supremacy clause and preemption ★
This topic includes the presumption against federal preemption and the distinction between express and implied preemption.
2. Dormant commerce clause, including congressional authorization of otherwise invalid state action, and the market participant doctrine

V. Individual rights

A. State action requirement and the exception for exclusive government functions

B. Substantive due process

1. The right to privacy

This topic includes the right to reject unwanted medical care, the right to educate one's children, the right to live with whomever one chooses, the right to marriage, the right to contraception, and standards of review.

2. The right to vote

This topic includes voting restrictions (e.g., residency requirements, property ownership, poll taxes, regulations related to party primaries), dilution of the right to vote (the one-person, one-vote principle), racial gerrymandering, and standards of review.

3. The right to travel, including standards of review**4. The right to bear arms, including standards of review****C. Procedural due process, including the constitutional right to process in administrative hearings ★**

This topic includes entitlement to due process, the requirements of notice and the right to be heard, waiver of procedural due process rights, and access to courts (e.g., for indigent plaintiffs). This topic also includes welfare and disability benefits, creditors' remedies, and civil forfeiture.

D. Equal protection**1. Classifications subject to strict scrutiny ★**

This topic includes suspect classifications (i.e., race, ethnicity, national origin, and alienage) and classifications affecting fundamental rights.

2. Classifications subject to intermediate scrutiny ★

This topic includes quasi-suspect classifications (i.e., gender and nonmarital children).

3. Classifications subject to rational basis review ★

This topic includes classifications that are neither suspect nor quasi-suspect, as well as the deference given to the legislature.

E. Takings

This topic includes the meaning of "taking" and "just compensation," the "public use" limitation, and the distinction between regulatory taking and regulation that is not a taking.

F. Ex post facto laws

This topic includes the two ex post facto clauses (Article I, §§ 9–10) and due process requirements.

G. First Amendment freedoms: the religion clauses**1. The establishment clause ★**

This topic includes the applicability of this doctrine to the states, religious displays on public property, government discrimination among religions, financial benefits to religious entities (e.g., aid to colleges, hospitals, K-12 schools), tax exemptions, curriculum controls, accommodations for religious students, and religious activities in public schools and at school activities off school property.

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2. **The free-exercise clause ★**

This topic includes the applicability of this doctrine to the states, the meaning of “religious belief,” the right not to work on the Sabbath, exemptions from antidiscrimination and other laws, and punishment of religious conduct because it is religious.

H. **First Amendment freedoms: the free-speech clause**

1. **Content-based regulation of protected expression ★**

This topic includes regulation of expression based on its content and the applicable standards of review.

2. **Content-neutral regulation of protected expression and forum designations ★**

This topic includes regulation of expression that is not based on its content and the applicable standards of review. This topic also includes time, place, and manner restrictions, as well as distinctions among public forums, limited public forums, and nonpublic forums.

3. **Regulation of expressive conduct ★**

This topic includes regulation of conduct that is tantamount to speech, including the use of symbols as expression.

4. **Regulation of unprotected expression ★**

This topic includes regulation of “fighting words,” obscenity, incitement of illegal activity, and defamatory speech.

5. **Regulation of commercial speech ★**

This topic includes regulation of commercial signs and commercial advertising.

6. **Regulation of, or impositions upon, public school students and public employees, licenses, or benefits based upon exercise of expressive or associational rights**

This topic includes distinctions between speech by government employees pursuant to their official duties and speech by such employees not pursuant to their official duties; government employees’ participation in political campaigns; and issuance of permits.

7. **Prior restraint, vagueness, and overbreadth**

This topic includes facial invalidity, as-applied invalidity, procedural safeguards, the amount of discretion given to officials, and the sufficiency of the government interest.

I. **Freedom of the press**

This topic includes the publication of truthful information, press access to court proceedings (including pretrial proceedings, the need to protect children, and protective orders for discovery materials), and press access to prisons to interview prisoners.

J. **Freedom of association**

This topic includes aspects of freedom of association related to the electoral process (e.g., ballot regulation, party regulation, limits on contributions, limits on expenditures), bar membership, and laws prohibiting or punishing membership in associations.

Foundational Concepts and Principles: Contracts

Subject Matter Outline

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Within this outline, there are two types of topics:

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Topics without a star symbol

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If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Identification of governing law ★

This topic includes understanding whether a transaction at issue in a test question raises issues governed by the common law or the Uniform Commercial Code Article 2 (UCC), or whether it is a hybrid transaction.

II. Formation of contracts

A. Mutual assent (offer and acceptance, and unilateral, bilateral, and implied-in-fact contracts)

This topic includes what constitutes an offer and an acceptance, how an offeror can control the manner of acceptance, when the offer and acceptance establish mutual assent, and when an offer terminates (e.g., revocation, lapse, rejection, death, counteroffer). This topic also includes the mirror image rule, limitations on the offeror's power to revoke (e.g., option contracts, firm offers, reliance), and when an offer can be accepted only by a return promise, only by performance, or by either a promise or performance. This topic also includes sale advertisements and offers made to the public (e.g., offers of reward money).

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1. **Manifestation of assent** ★
2. **Offers** ★
3. **Limitations on the power of acceptance** ★
4. **Acceptance** ★

B. Consideration (bargained-for exchange) ★

This topic includes what constitutes a bargained-for exchange and adequacy of consideration, past consideration, and moral obligation. This topic also includes the preexisting duty rule and forbearance to sue as consideration.

C. Obligations enforceable without a bargained-for exchange ★

This topic includes promissory estoppel and restitution.

D. Modification of contracts ★

This topic includes requirements for modification; distinctions between modification, waiver, and course of performance; and the effect of no-oral-modification clauses.

E. Contract formation and modification under the UCC

This topic includes contract formation and modification principles under UCC Article 2 and the use of default rules to fill gaps in contract terms.

III. Defenses to enforceability

A. Incapacity to contract

This topic includes contracts entered into by minors or individuals who are impaired, under guardianship, or under the influence of drugs or alcohol.

B. Duress and undue influence

C. Mistake and misunderstanding ★

This topic includes mutual mistake and unilateral mistake, including when a party bears the risk of the mistake. This topic also includes misunderstanding in meaning and scrivener's error (leading to reformation).

D. Fraud, misrepresentation, and nondisclosure ★

This topic includes fraudulent misrepresentation, material misrepresentation, concealment, and nondisclosure, as well as the different remedies available for each.

E. Illegality and public policy

F. Unconscionability under the common law

G. Unconscionability under the UCC

H. Statute of frauds

1. Contracts covered by the statute of frauds ★**2. Satisfaction of the statute of frauds ★****3. Exceptions to the writing requirement ★****4. Statute of frauds under the UCC ★**

This topic includes the UCC's statute-of-frauds requirements, including the exceptions that remove the statute of frauds as a bar to enforcement of a contract (e.g., part performance and specially manufactured goods).

5. Electronic transactions

This topic includes the scope of the Uniform Electronic Transactions Act and when an electronic signature or an electronic record is effective.

IV. Contract content and meaning**A. Parol evidence rule ★**

This topic includes the meaning and application of the parol evidence rule, including the effect of a partially or completely integrated agreement on the admissibility of evidence, and exceptions to the parol evidence rule (e.g., interpretation, fraud, mistake, conditions). This topic also includes differences in application of the rule depending on whether evidence is proffered to supplement, explain, or contradict a written agreement.

B. Parol evidence under the UCC**C. Interpretation ★**

This topic includes the basic rules of contract interpretation and their relative priority with respect to contract language and ambiguities.

D. Usage, course of dealing, and course of performance ★**E. Usage, course of dealing, and course of performance under the UCC****F. Omitted and implied terms****V. Performance****A. Conditions ★**

This topic includes distinctions between promises and conditions. This topic also includes the nonoccurrence and excuse of conditions, as well as conditions of satisfaction.

B. Obligation of good faith and fair dealing ★**C. Performance under the UCC**

This topic includes tender, risk of loss, title, rejection, cure, acceptance, and revocation of acceptance.

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D. Warranties and disclaimers under the UCC ★

This topic includes creation and breach of express warranties, warranties of title and against infringement, implied warranties of merchantability and fitness for a particular purpose, what constitutes a breach of warranty, and sellers' defenses to breach of warranty, including warranty disclaimers and failure to provide notice.

VI. Breach and discharge**A. Material breach, partial breach, and substantial performance ★****B. Anticipatory repudiation ★**

This topic includes anticipatory repudiation, retraction of repudiation, and demand for adequate assurance.

C. Anticipatory repudiation under the UCC**D. Impossibility, impracticability, frustration of purpose, and risk of loss ★**

This topic includes the requirements for establishing impracticability or frustration of purpose, the appropriate uses of these defenses, and their effect on each party's performance obligations. This topic also includes the effects of partial and temporary excuse and force majeure provisions.

E. Impossibility, impracticability, frustration of purpose, and risk of loss under the UCC**F. Discharge of duties: accord and satisfaction, substituted contract, novation, rescission, and release ★****G. Breach of employment contracts**

This topic includes the distinction between at-will contracts and contracts for a definite term.

VII. Remedies**A. Expectation interest: direct, incidental, and consequential damages ★**

This topic includes the standard measure of expectation damages and the categories of expectation damages (i.e., direct, incidental, consequential) and when lost profits are recoverable.

B. Causation, certainty, and foreseeability ★

This topic includes causation and certainty requirements for all expectation damages, the foreseeability requirement for consequential damages, and recognition of different ways to calculate an appropriate damages award.

C. Liquidated damages and penalties ★

This topic includes how to distinguish between liquidated damages clauses and penalties, as well as when the parties' agreed-to limitation of remedies is enforceable, and when disclaimers of consequential damages are unenforceable.

D. Avoidable consequences and mitigation of damages ★

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E. Reformation

This topic includes the requirements for obtaining reformation of a contract (and equitable defenses) when the parties inadvertently omit an agreed-upon term from the writing.

F. Specific performance and injunction ★

This topic includes when specific performance is an available remedy (e.g., land) and when a court might issue an injunction instead.

G. Reliance and restitution interests

This topic includes reliance damages and restitution as alternatives to expectation damages, restitution for the party in breach, and other circumstances where restitutionary recovery is appropriate to prevent unjust enrichment.

H. Remedies under the UCC**VIII. Third-party rights and obligations****A. Third-party beneficiaries**

This topic includes distinctions between intended and incidental third-party beneficiaries, as well as defenses against claims asserted by intended beneficiaries.

B. Assignment of rights and delegation of duties

This topic includes the types of contractual rights that can be assigned and the types of contractual duties that can be delegated, requirements for assignment or delegation, and the effect of assignment or delegation on who can enforce the underlying contractual obligations against whom (including available defenses). This topic also includes the effect of clauses prohibiting assignment or delegation and the requirements for revocation of gratuitous assignments.

C. Assignment of rights and delegation of duties under the UCC

Foundational Concepts and Principles: Criminal Law and Constitutional Protections of Accused Persons

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

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Elements of crimes and defenses will be tested on the basis of provided statutes.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. General principles

A. Acts and omissions

This topic includes voluntariness, omission as an act, and possession as an act.

B. State of mind

This topic includes the distinction between specific and general intent, the distinction between motive and intent, and the different levels of culpability for the listed subtopics. Examinees should understand different mental states and recognize them when they are presented in the language of specific statutes.

1. Intent or purpose

2. Knowledge

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3. Recklessness
4. Criminal negligence
5. Mistake of fact or law

C. Defenses

1. Provocation
2. Intoxication
3. Self-defense
4. Defense of others
5. Defense of property

D. Jurisdiction

This topic includes federal criminal jurisdiction and state criminal jurisdiction as specified by statute.

E. Burdens of proof and persuasion ★

This topic includes the presumption of innocence and the differences between reasonable suspicion, probable cause, and proof beyond a reasonable doubt. This topic also includes prosecution and defense burdens of proof and a defendant's right to present evidence.

II. Statutory crimes

A. Homicide (including felony murder)

This topic includes the distinctions in levels of intent (described in section I) for homicide charges, felony murder, and vehicular manslaughter. This topic also includes distinctions in homicide offenses, including between intentional murder (premeditated and impulsive killings) and manslaughter (provocation or extreme emotional disturbance doctrine), unintentional murder and manslaughter (depraved indifference, recklessness, and criminal negligence), and felony murder and vehicular manslaughter.

B. Theft

This topic includes statutory theft, aggravated theft, and defenses to these crimes.

C. Burglary

This topic includes statutory burglary, aggravated burglary, and defenses to these crimes.

D. Robbery

This topic includes statutory robbery, aggravated robbery, and defenses to these crimes.

E. Assault and battery

This topic includes statutory assault and battery, aggravated assault and battery, and defenses to these crimes.

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F. Possession and trafficking offenses

This topic includes statutory possession crimes (e.g., possession of drugs, guns, or contraband), possession with intent to distribute, contraband trafficking crimes, and defenses to these crimes.

G. Operating a motor vehicle while impaired or under the influence and vehicular manslaughter

This topic includes driving while impaired or under the influence, vehicular manslaughter, and defenses to these crimes.

III. Inchoate crimes and parties to a crime**A. Attempt**

This topic includes the elements of attempt, defenses to attempt, different formulations of the actus reus requirement (including the “substantial step” test), and general vs. specific intent, as well as lesser included offenses and the merger doctrine.

B. Conspiracy

This topic includes the elements of conspiracy, defenses to conspiracy, and liability of coconspirators for a substantive crime.

C. Parties to crime

This topic includes accomplices and accessories before and after the fact.

IV. Constitutional protections of accused persons

Note: Examinees should answer questions based on protections provided by the US Constitution only.

A. Arrest, search, and seizure [Fourth Amendment]**1. Search ★**

This topic includes the concept of a reasonable expectation of privacy as applied to certain circumstances, including open fields, surveillance, technological information gathering, false friends, dog sniffs, and curtilage.

2. Reasonable suspicion and probable cause ★**3. Search warrant and exceptions ★**

This topic includes requirements for obtaining a valid search warrant, exceptions to the warrant requirement (e.g., search incident to lawful arrest, automobile exception, plain view, consent, stop-and-frisk, hot pursuit, exigent circumstances, community caretaking), and requirements for proper execution of a search warrant (e.g., “knock and announce” and exceptions, proper scope of search, methods that “shock the conscience”).

4. Seizure of persons (Terry stop and arrest) ★

5. Administrative and suspicionless searches

This topic includes border searches, inventory searches, airport searches, checkpoints, searches of government offices, and searches in public schools.

6. Exclusionary rule and exceptions ★

This topic includes application of the exclusionary rule and exceptions to the rule (e.g., fruits doctrine, independent source, inevitable discovery, good-faith doctrine, “knock and announce” exception, use of evidence for impeachment).

7. Standing to object, including coconspirators and third parties, and state action doctrine**B. Confession and privilege against self-incrimination [Fifth Amendment]****1. Triggering the Fifth Amendment privilege against self-incrimination (including “testimonial” versus “nontestimonial” standard and incrimination standard) ★****2. Triggering Miranda rights ★**

This topic includes custody, interrogation, and custodial statements.

3. Adequacy of Miranda warnings ★**4. Invoking and waiving Miranda rights ★**

This topic includes the differences between the Fifth Amendment right to counsel and the Sixth Amendment right to counsel, how a person must assert Miranda rights, when the rights are properly waived, and what types of subsequent law-enforcement conduct are allowed (e.g., resuming questioning after a lapse of time, questioning about other crimes, questioning after custody has ended, questioning by informants).

5. Involuntariness under the Fifth and Fourteenth Amendments ★**6. Exclusionary rule and exceptions ★****C. Right to counsel (including ineffective assistance of counsel) [Sixth Amendment]****1. When the right attaches ★****2. Waiver of the right to counsel ★****3. Ineffective assistance of counsel ★****4. Right to counsel of one’s choice****5. Exclusionary rule****D. Right to disclosure of exculpatory and impeachment evidence****E. Due process implications related to identification**

This topic includes the due process implications of lineups, showups, voice exemplars, and photo arrays.

F. Right to trial by jury

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Foundational Concepts and Principles: Evidence

Subject Matter Outline

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Examinees should assume that the Federal Rules of Evidence (FRE) are in effect.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Relevance and reasons for excluding relevant evidence

A. Probative value

1. Relevance ★

This topic includes understanding that evidence remains relevant and may be admitted even if an opposing party offers to stipulate to it. However, a court may consider an offer to stipulate when judging the evidence's probative value.

2. Exclusion for unfair prejudice, confusion, or waste of time ★

B. Character and related concepts

1. Admissibility of character evidence

2. Crimes, wrongs, or other acts ★

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3. Methods of proving character

4. Habit and routine practice

- C. Opinions and expert testimony

1. Lay opinion ★

2. Qualification of expert witness

3. Proper subject matter for expert testimony ★

4. Reliability of expert testimony ★

5. Bases of expert opinion testimony

6. Ultimate issue rule

- II. Presentation of evidence

- A. Foundation, authentication, and identification, including the best evidence rule ★

This topic includes understanding that evidence needs to be authenticated and familiarity with the four primary examples set out in FRE 901(b)(1)-(4) of evidence that meets the authentication requirement. This topic also includes what it means to “prove the content” of a writing, as well as understanding how the rules define “writing” and the rules with respect to duplicates.

- B. Competency of witness

- C. Juror’s competency as a witness

- D. Refreshing recollection

- E. Objections and offers of proof

- F. Judicial notice

- G. Limited admissibility

- III. Privileges and other policy exclusions

- A. Spousal immunity and marital communications

- B. Attorney-client and work product ★

- C. Physician/psychotherapist-patient

- D. Insurance coverage

- E. Subsequent remedial measures

- F. Compromise and payment of medical expenses

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IV. Hearsay and circumstances of its admissibility

A. Definition of hearsay ★

B. Statements that are not hearsay

1. Declarant-witness's prior statement ★
2. Opposing party's statement ★

C. Right to confront witnesses

This topic includes the right to confront witnesses and limitations on testimonial hearsay pursuant to the confrontation clause of the Sixth Amendment in criminal cases.

D. Hearsay within hearsay

V. Exceptions to the rule against hearsay

A. Hearsay exceptions—regardless of whether the declarant is available as a witness

1. Present sense impression and excited utterance ★
2. Statement of then-existing mental, emotional, or physical condition
3. Statement made for medical diagnosis or treatment
4. Recorded recollection ★
5. Business records; absence of business record ★
6. Public records and reports; absence of public record
This topic includes understanding that when a record or statement of a public office is offered to prove “factual findings” from a legally authorized investigation, in a civil case or against the government in a criminal case, “factual findings” include conclusions and opinions.
7. Statement in learned treatise, periodical, or pamphlet
8. Reputation concerning character

B. Hearsay exceptions—when the declarant is unavailable as a witness

1. Former testimony ★
2. Statement under the belief of imminent death
3. Statement against interest ★
4. Statement offered against a party that wrongfully caused the declarant's unavailability

- VI. Impeachment, contradiction, and rehabilitation
 - A. Ability to observe, remember, or relate accurately
 - B. Contradiction
 - C. Inconsistent statements and conduct
 - D. Bias and interest
 - E. Character for truthfulness or untruthfulness
 - 1. Impeachment with bad acts
 - 2. Impeachment with convictions
 - F. Religious belief or opinion
 - G. Rehabilitation of impeached witness
 - H. Impeachment of hearsay declarant

Foundational Concepts and Principles: Real Property

Subject Matter Outline

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I. Ownership of real property

A. Present estates

1. Fee simple ★

This topic includes the language used in conveyance and the basic attributes of the fee simple absolute.

2. Defeasible fee

This topic includes the language used in conveyance and the basic attributes of the fee simple determinable, the fee simple subject to condition subsequent, and the fee simple subject to an executory interest.

3. Life estate and life estate pur autre vie

This topic includes the language used in conveyance, the rights and duties of life tenants, and the basic attributes of the life estate (for the life of the life tenant) and the life estate pur autre vie.

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B. Future interests**1. Reversion**

This topic includes the language used in conveyance and the basic attributes of reversion.

2. Remainder, vested and contingent

This topic includes the language used in conveyance and the basic attributes of an indefeasibly vested remainder, a vested remainder subject to open, a vested remainder subject to total divestment, and a contingent remainder (subject to condition precedent, or unborn or unascertained person). This topic also includes the effect of remainders on the marketability of title and the transferability of remainders.

3. Executory interest

This topic includes the language used in conveyance, the effect of executory interests on the marketability of title, and the transferability of executory interests.

4. Possibility of reverter, right of entry, and power of termination

This topic includes the basic attributes of the future interests that can result when a defeasible fee fails: possibility of reverter, right of entry, and power of termination.

5. Rules affecting future interests: survivorship, class gifts, and waste

This topic includes the language used in conveyance (children, heirs, issue); class members not yet born; when the class closes; conditions on disposition; contingency of survival (express and implied); and affirmative waste, permissive waste, and ameliorative waste (e.g., obligations to pay taxes and make repairs, apportionment of costs for special assessments).

C. Cotenancy**1. Tenancy in common, joint tenancy (the four unities), and tenancy by the entirety (the five unities) ★**

This topic includes the language used in the creation of cotenancies, the unities required to create the various types of cotenancies, and distinctions among them.

2. Partition ★

This topic includes the remedy of partition, limitations on partition, and methods of partition.

3. Severance ★

This topic includes aspects of severance related to conveyance, judgment liens, mortgages, and leases.

4. Relations among cotenants

This topic includes possession, rent and profits, cotenant's encumbrance, ouster, and contribution for expenses.

D. Landlord-tenant law

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1. Tenancy for years, periodic tenancy, tenancy at will, and tenancy at sufferance ★

This topic includes distinctions among the various types of tenancies, breach of covenants, and creation of leasehold (e.g., express or implied, by operation of law, tenant holdover, invalid lease).

2. Possession, rent, and actual and constructive eviction ★

This topic includes failure to pay rent, when rent accrues, rent deposits, landlord's duty to deliver possession, quiet enjoyment, and landlord and tenant remedies pursuant to a lease.

3. Statutory remedies

This topic includes forcible entry statutes.

4. Assignment and sublease ★

This topic includes assignment by landlord and tenant, covenants that run with the land, reassignment by assignee, original tenant's liability, sublessee's liability for covenants, sublessee's assumption of the lease, sublessee's rights, covenant against assignment and sublease, waiver of covenant against assignment and sublease, and transfer in violation of a covenant.

5. Termination of lease ★

This topic includes surrender, acceptance of surrender, mitigation of damages, anticipatory breach, security deposit, and abandonment/repossession.

6. Habitability and suitability ★

This topic includes independent and dependent lease covenants; tenant's duty to repair; ordinary wear and tear; affirmative, permissive, and ameliorative waste; destruction of premises; implied warranty of habitability; and concealed dangerous conditions.

E. Alienability, descendibility, and devisability of present and future interests

This topic includes total vs. partial restraints, reasonableness of restraints, restraints on future interests, restrictions in commercial transactions, restraints on transfer of a lease, and options and rights of first refusal. This topic does not include the rule against perpetuities.

F. Fair housing/discrimination ★

This topic includes discriminatory restraints in sales and leases (Fourteenth Amendment, Fair Housing Act), retaliatory eviction, discrimination in leasing, racially restrictive covenants, and a basic understanding of reasonable accommodations for tenants with disabilities.

II. Rights in real property

A. Easements and licenses

1. Nature and type of easements and licenses ★

This topic includes affirmative easement, negative easement, easement appurtenant (and judicial preference for this type), easement in gross, and the differences between an easement and a license.

2. Creation of easements and licenses ★

This topic includes easement expressly granted or reserved; easement implied from existing use (reasonable necessity arising in an implied grant or reservation) or by strict necessity; easement implied from subdivision plat; prescriptive easement; and easement arising by estoppel. This topic also includes license expressly created and license created by failing to create an easement.

3. Scope and apportionment ★

This topic includes rules of construction, the consequences flowing from a change in use or use outside the scope of an easement, duties to repair, and the effect of subdivision of the dominant estate.

4. Effect of transfer of the dominant or servient estate and the assignability of easements and licenses ★**5. Termination of easements and licenses ★**

This topic includes termination of easement by stated conditions, unity of ownership, release (and statute-of-frauds requirement), abandonment, estoppel, prescription, necessity, condemnation, and destruction of the servient estate. This topic also includes termination of license by revocation (e.g., public amusement cases, breach of contract), and license that becomes irrevocable (e.g., estoppel, license coupled with an interest).

B. Restrictive covenants**1. Nature and type of restrictive covenants ★**

This topic includes affirmative covenant, negative covenant, and equitable servitude.

2. Creation and enforceability of restrictive covenants and equitable servitudes

This topic includes the requirements for covenants and servitudes to be enforceable between the original parties (statute of frauds) and the requirements for the benefit/burden to run with the land (e.g., intent, notice, “touch and concern” requirement, horizontal and vertical privity for covenant but not servitude). This topic also includes servitude implied from a common scheme.

3. Transfer of restrictive covenants and equitable servitudes**4. Termination of restrictive covenants and equitable servitudes ★**

This topic includes termination of covenants and equitable servitudes, as well as remedies for breach. For equitable servitude, this topic also includes the defenses of unclean hands, acquiescence, estoppel, and changed neighborhood conditions.

III. Real estate contracts**A. Creation and construction of real estate contracts****1. Statute of frauds and exceptions ★****2. Essential terms ★**

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3. Time for performance ★

This topic includes the presumption that time is not of the essence (and how the presumption can be overcome), as well as liability issues related to when time is/is not of the essence.

4. Remedies for breach ★

This topic includes specific performance as a remedy for breach; the doctrine of part performance; when tender of performance is excused; liability for defects; damages (including liquidated damages); distinctions between negligence of builders and sellers of existing property as to misrepresentation, fraud, active concealment, and failure to disclose; and disclaimers of liability.

B. Marketability of title ★

This topic includes when a title is “reasonably free from doubt,” defects in the record chain of title, encumbrances, waiver, timing of marketability requirement, merger, and remedies (e.g., rescission, damages, specific performance).

IV. Mortgages and foreclosure**A. Mortgages and deeds of trust****1. Definition of mortgage and deed of trust****2. Purchase money****3. Future advance****B. Mortgage theories: title, lien, and intermediate ★****C. Foreclosure****1. Judicial and nonjudicial**

This topic includes defenses to foreclosure and possession before foreclosure.

2. Acceleration**3. Parties to the process****4. Deficiency and surplus**

This topic includes priorities of senior and junior interests, the effect of foreclosure on junior interests, modification of priorities (e.g., for failure to record, by subordination agreement), distribution of the proceeds of sale, and deficiency judgments.

5. Redemption after foreclosure**V. Titles****A. Adverse possession**

This topic includes the elements of adverse possession, issues affecting the running of the statutory period, and tacking.

B. Transfer by deed**1. Requirements for deed ★**

This topic includes the rules of construction related to deeds, the statute-of-frauds requirement, the use of parol evidence (e.g., to resolve an ambiguity, to prove grantor's intent, but not to show conditional delivery), proper description of the land and parties, words of intent, the signature requirement, the fact that consideration is not required, distinctions between void and voidable deeds, and delivery and acceptance issues (including conditional delivery and relation back of acceptance).

2. Types of deeds ★

This topic includes general warranty deed, covenants of title (i.e., seisin, right to convey, against encumbrances, warranty, quiet enjoyment, and further assurances), breach of covenant (and damages), statutory special warranty deed, and quitclaim deed.

C. Recording acts**1. Types of recording acts**

This topic includes notice statutes, race statutes, race-notice statutes, and who is protected (e.g., purchaser for value).

2. Indexes

This topic includes title searches, grantor and grantee indexes, the effect of recordation, issues related to mistakes by the recorder, and issues related to recording an unacknowledged instrument.

3. Chain of title**4. Undelivered and forged deeds**

Foundational Concepts and Principles: Torts

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Intentional torts

A. Harms to the person

This topic includes all elements of each intentional tort, including the defendant's act, intent (including knowledge to a substantial certainty, transferred intent, the distinction between intent and motive, and who can form intent [e.g., minor children]), causation, and harm/damages (as required).

1. Assault ★
2. Battery ★
3. False imprisonment ★
4. Intentional infliction of emotional distress ★

B. Interference with property interests

1. **Trespass to land ★**
2. **Trespass to chattels ★**
3. **Conversion ★**

C. Defenses to intentional torts

1. **Consent ★**
This topic includes distinctions among different types of consent (e.g., actual vs. apparent), when an action exceeds the scope of the consent, when consent is validly given, and when consent is unnecessary (e.g., life-saving surgery on an unconscious injured party with no available representative).
2. **Other defenses to intentional torts**
This topic includes self-defense, defense of others, defense of property, recapture of chattels (including the shopkeeper's privilege), public and private necessity, parental discipline, and privilege of arrest in the context of law enforcement activity.

II. Negligence**A. Duty of care to foreseeable and unforeseeable plaintiffs**

1. **Duty to control third persons ★**
2. **Duty to act when previous actions exacerbate a risk of harm ★**
3. **Duty of owners and occupiers of land**
This topic includes distinctions between natural and artificial conditions on land, as well as duties owed to entrants and passersby (under both the traditional and modern approaches).
4. **Duty to avoid unreasonable risk of causing emotional distress**
This topic includes “zone of danger” requirements and exceptions for “bystander” cases, requirements related to physical symptoms of distress, special relationships between the parties, and negligent reporting of a family member's death.

B. Standard of care

1. **The reasonably prudent person and the standards applied to children, physically and mentally impaired individuals, professionals, and persons acting in emergency situations ★**

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

2. Rules of conduct derived from statutes; relevance of custom ★

This topic includes the requirements for negligence per se (e.g., the plaintiff is within the class of people the statute was designed to protect, the incident resulting in injury was the type of injury that the statute aimed to prevent), how the use of negligence per se affects the plaintiff's case, the defendant's use of a statute to defend against a negligence claim, and how this use of a statute affects the defendant's case. This topic also includes the relevance of custom in establishing the standard of care, the weight to be given to statutes and customs when they are used to establish standards of care, and the use of rebuttal evidence by the opposing party.

C. The use of direct and circumstantial evidence to prove fault, including *res ipsa loquitur* ★

This topic includes the use of direct evidence, the use of circumstantial evidence, and the conditions for the use of *res ipsa loquitur* (e.g., the incident was the type of incident that does not ordinarily occur without someone having been negligent, the harm was caused by an instrumentality under the exclusive control of the defendant).

D. Actual causation ★

This topic includes the but-for test, the substantial factor test, multiple necessary causes, and multiple sufficient causes.

E. Proximate causation ★

This topic includes the “scope of the risk” test, as well as intervening and superseding causes.

F. Liability for acts of others

This topic includes parental responsibility for the negligence of minor children and the exception for nondelegable duties. *See also* Business Associations II. Vicarious liability of principal for acts of agents.

G. Pure and modified comparative negligence ★

H. Express assumption of risk

III. Common-law strict liability for abnormally dangerous activities and defenses to such claims

This topic includes the common types of abnormally dangerous activities and who may sue, the use of comparative negligence as a defense, and the common test that the harm must arise from the risk that made the activity abnormally dangerous.

IV. Products liability based on the design, manufacture, and distribution of products and defenses to such claims

This topic includes the different theories of liability in products liability cases, the different types of defects (manufacturing defect, design defect, and failure to warn), who may sue, who may be sued, the defenses of alteration and misuse, and foreseeable misuse.

V. Nuisance and defenses to such claims

A. Private nuisance ★

This topic includes the elements of private nuisance (e.g., unreasonable interference with another's use and enjoyment of land), the locality rule for determining when an interference is unreasonable, and the distinctions between private nuisance, trespass, and public nuisance.

B. Public nuisance**VI. Misrepresentation and defenses to such claims****A. Fraudulent misrepresentation****B. Negligent misrepresentation****VII. Damages****A. Apportionment of responsibility among multiple tortfeasors**

This topic includes joint and several liability and apportionment of responsibility and damages among tortfeasors.

B. Categories of damages recoverable in tort actions

This topic includes the availability and proper roles of compensatory damages (general and special, e.g., medical expenses, pain and suffering, emotional distress, property damage, loss of enjoyment, loss of consortium), punitive damages, and nominal damages in tort actions. This topic also includes the “thin skin” rule, failure to mitigate, attorney’s fees, and statutory limitations on recovery.