Nailing the MBE
600 Multi-State Bar Exam Practice Questions
With Proven Exam Strategies

Tim Tyler, Ph.D.
Attorney at Law
Introduction

This book provides six hundred multiple-choice questions divided into 6 three-hour practice tests of 100 questions each. The questions are presented in the same style that has been used by the MBE for the past 20 years, and they test the same seven areas of law that are tested on the MBE: Common Law Contracts, UCC (Articles 1 & 2), Torts, Crimes, Criminal Procedure, Evidence (federal rules only), Real Property and Constitutional Law.

In addition, the book provides tips, insights, and winning strategies for success on the MBE.

However, none of the 600 questions presented here are from actual MBE exams. We created them all to reflect the type of questions, legal issues, and subject areas tested on the MBE over the past 20 years without actually duplicating any of the actual questions presented on the MBE or in any other source.

SCORING SHEETS. For each 100-question test you are provided a Practice Scoring Sheet. The Practice Scoring Sheet is the “computer readable” sheet with “bubbles” you are to fill in to indicate your answers. Additional Practice Scoring Sheets for the MBE can also be obtained from the Practical Step Press website, www.PracticalStepPress.com

Following each test is an Answer Sheet and “Answer and Explanations” that give detailed explanations why the answers indicated on the Answer Sheet were considered to be the best answers. Those explanations refer to the pages and sections in the following Nailing the Bar publications where you can find more information about subject areas being tested.

- Simple Contracts & UCC Outline (O-1) ISBN 978-1-936160-06-8
- Simple Real Property Outline (O-8) ISBN 978-1-936160-28-0

This book and these Simple Outlines are all available as eBooks and can be HYPERLINKED as explained below.
Using Our eBooks with Adobe Reader and Hyperlinks

The Simple Outlines listed above are all available as eBooks (PDF files) from Practical Step Press at

www.PracticalStepPress.com

The eBook version of this book provides access to the following eBooks:

1. Simple Contracts & UCC Outline (O-1e)
2. Simple Torts Outline (O-2e)
3. Simple Crimes Outline (O-3e)
4. Simple Criminal Procedure Outline (O-4e)
5. Simple Constitutional Law Outline (O-6e)
6. Simple Evidence Outline (O-7e)
7. Simple Real Property (O-8e)
8. Simple Remedies Outline (O-10e)

Hyperlinking Your Library. The eBooks can all be HYPERLINKED so you can immediately access all referenced materials in the eBook versions of the Simple Outlines that you have on your computer. This can be a tremendous time-saver that allows you to immediately research areas of law where you are may be confused or uncertain.

Just put this eBook and all of the Simple Outlines you have in eBook format in the same a folder on your computer. Then use Adobe Reader to use the materials. Download the latest version of Adobe Reader for free from the web. We recommend downloading directly from Adobe at their website:

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To use a hyperlink to access materials from the Simple Outlines simply “click” your mouse on the hyperlink in the eBook and you will immediately be switched to the referenced section in the Simple Outlines.

Then after you read those materials in the outline you can immediately return back to the place you left in this eBook.

Marking the eBooks. You can “mark” and highlight text in the eBooks using the features of Adobe Reader. Just select “COMMENT” from the tool bar at the top of the screen and then select the “Sticky Note” or “Highlight” icons. A list of all your comments and highlights will be shown on the sidebar to the right. You can then leap to any of them by clicking on them. Clear the sidebar by clicking on “COMMENT” again.
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Chapter 1: MBE Overview

The Multi-State Bar Exam (MBE) is a multiple-choice question exam developed by the National Conference of Bar Examiners (NCBE).

The test is administered by participating jurisdictions on the last Wednesday in February and the last Wednesday in July each year. The format of the exam for many years has consisted of 100 multiple-choice questions to be answered in 3 hours on a Wednesday morning from 9:00 a.m. to 12:00 p.m. (noon) and 100 more questions to be answered in 3 hours in the same Wednesday afternoon from 1:00 p.m. to 4:00 p.m.

Typically the MBE is administered in a morning session and afternoon session as follows:

| Morning Session: | 9:00 a.m. – 12:00 p.m. | Questions 1 – 100 |
| Afternoon Session: | 1:00 p.m. – 4:00 p.m. | Questions 101 - 200 |

1. Question Structure

Each of the multiple-choice questions on the MBE presents a “fact pattern” and a “CALL” that asks a question about the given facts and 4 “possible answers” or “answer choices” labeled A, B, C or D. Students are to indicate the “best” answer by filling in the “oval” or “bubble” next to it on a computer readable Practice Scoring Sheet with a number “2” pencil.

In some years the MBE has presented a separate fact pattern for each and every question, and in some years it has presented a fact pattern that is shared by more than one question at certain places in the exam.

Most of the CALLS on MBE questions ask you to chose the “best answer”, but some questions ask you to chose the “worst answer”. In that case the “worst answer” given the fact pattern is the “best answer” for you to chose.

Some of the questions present 3-4 “assertions” or “facts” and the “possible answers” concern which of the assertions or facts are correct (or incorrect).

The unique feature that makes the MBE different from other multiple-choice exams, and far more difficult, is that you are to select the “best” answer instead of a “correct” answer. In fact,

- For some MBE questions there are no entirely correct answers at all;
- For other MBE questions there are multiple correct answers;
- Many MBE questions provide two correct answers that are only slightly different; and
- The questions on the MBE must be answered in such a limited time period budgeting time is critical.

The NCBE states that 10 questions on the MBE are only being “evaluated for future use” and are not actually scored. Possibly these are some of the questions that have no correct answer or multiple correct answers. Possibly the NCBE intentionally confronts students with impossible questions to answer simply to test their ability to function under that type of stress.

In any event, you must anticipate being confronted with some questions that are impossible to answer correctly! When that happens you must simply chose one of the best answer from the given possibilities and move on!
A. Getting Inside the Question Writer’s Head

You can better understand an MBE question if you know what the question writers (Bar examiners) were thinking when they wrote the questions for the MBE.

1) Questions are Designed to Test a Particular Area of Law

The Bar Question Writers have to present a set number of questions in each of 7 areas of law on each MBE. For example, they have to have about 34 contract law questions, and some of those have to be UCC questions. So the question writers begin with an intension of creating a certain type of question such as a “UCC” question or “Torts” question. That requirement is the foundation of every question – the area of law being tested.

But the Bar seldom wants YOU to easily understand what area of law each question is all about, so it will throw facts into the fact pattern which suggest the question is about something entirely different. For example, facts suggesting a tort question may be presented, even though the area of law actually being tested is the UCC. Those added facts are “red herrings”. The question writer is essentially testing whether you can figure out the area of law at issue.

2) The CALL and Answer Choices Determine Area of Law

The area of law a question is intended to test is indicated by the CALL of the question, or else in the possible answers themselves. The CALL is the question actually asked of you at the end of the fact pattern. For example, the CALL might be “Which of the following is Dan guilty of committing?” A CALL like that tells you this is a crime question, so all of the facts that suggest other areas of law are irrelevant (red herrings).

3) Watch for Frequently Tested Issues

Within the area of law being tested there are certain legal issues or rules that are tested much more frequently than others. And some “issues” don’t seem to be tested at all. You need to familiarize yourself with the frequently tested issues. The only way to do that is to answer a lot of practice MBE questions. For example, in a trial for attempted murder the prosecution must prove, beyond a reasonable doubt, the defendant acted with intent to kill. Law students are often totally ignorant of that fact. The Bar has picked up on this, so it is a frequently tested legal rule on the MBE.

4) Is the Question About a Civil or Criminal Action?

The Bar examiners test to see if you can distinguish between civil actions and criminal actions. This is broader than just “area of law”. Even if a question is testing evidence, there are differences in evidence rules for criminal and civil actions!

5) Expect Long Fact Patterns and Short Answer Choices

The “multiple-choice” format of the MBE makes it necessary (or at least customary) for the four possible answers (A, B, C or D) to be relatively short statements. As a result, if any of the questions are long, the length is always in the fact pattern and not in the answer choices. The effect of that is often that MBE questions focus on legal trivia or “factoids” more than on broad legal concepts.
Chapter 3: How to Use These Practice Exams

Multiple-choice questions test your knowledge of the fine-points of the law. Those fine points determine why one answer choice is the “best” answer choice and the other answer choices are not. Every law student is expected to know the general rules of law, so multiple-choice questions seldom test those things. Rather, multiple-choice questions usually test whether you know the exceptions to the general rules, the exceptions to the exceptions, or even the exceptions to the exceptions to the exceptions. That is the sort of legal trivia or what might be called “factoids” tested by multiple-choice questions.

Strategic guessing, time management, and strategic question skipping can dramatically improve your exam performance. But beyond that you can only improve your overall performance on multiple-choice law exams by improving your knowledge of those fine-points in the law.

Use these timed practice exams to “find out what you don’t know about the law”. Then use the references given in the answers / explanations to the questions you missed to read more detailed explanations of the law in those areas where your knowledge is weak or confused.

1. These Questions are Intentionally Hard

First, you must understand and accept that the questions asked on the MBE are hard. And the questions presented in these 6 tests are intended to be as hard or even harder than the actual MBE. So if you do poorly on Test #1 don’t be surprised and don’t give up.

If you study the answer explanations for the questions you miss, and refer to the study materials referenced there, your understanding of the fine points of law being tested will improve, and you will do better and better as you proceed through the next five exams.

2. Review the Law Being Tested FIRST

DO NOT take any of the multiple-choice tests here without first thoroughly reviewing the areas of law being tested: Common Law Contracts, UCC (Articles 1 & 2); Torts; Crimes and Criminal Procedure; Evidence (federal rules only); Real Property; and Constitutional Law.

It does you absolutely no good to take any of the practice exams in this book without first completing a thorough review of the areas of law tested. Get a FREE 3-Week Multi-State Bar Exam (MBE) Study Schedule to prepare for the MBE at the www.PracticalStepPress.com.

You can review your old commercial outlines like Gilbert’s or Emanuel’s, if you have them. And you can review your old class notes. But to save a lot of time get Nailing the Bar “Simple Outlines”. They are cheap and deliberately written to be quick reads, and you can read and completely understand them in a single day.

The abbreviated and condensed format of the Simple Outlines makes them subject to criticism that they do not cover all the cases and rich historical development your professors assigned you to read. Well, duh! None of that blather is tested on Bar exams, including the MBE.
3. Take These Practice Exams in MBE-Type Conditions

The whole purpose of taking the practice exams in this book is to prepare for the MBE, or at least the MBE portion of your State Bar exam, right? So you should take these practice exams under simulated MBE-type conditions!

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A. Always Test Yourself in a Timed Setting

Always test yourself in a timed setting (100 questions in 3 hours). If you do this right, you will almost certainly experience the feeling of PANIC that sets in when you realize you are going to run out of time and fail the exam. Experiencing and confronting that feeling of panic is essential to doing well on the actual MBE. Once you conquer that fear you will be able to walk into the MBE confident that you are fully prepared.

If you do not test yourself in a timed setting you are cheating yourself, you will avoid confronting that panic situation, you will walk into the MBE knowing that you are not really prepared, and you will probably run out of time.

It simply does you absolutely no good to take any of the practice exams in this book without strictly limiting yourself to a timed setting of 3 HOURS PER EXAM of 100 questions.

Frequently law students tell me they cheated on the practice exams but will speed up later or “rise to the challenge” in the actual MBE. That is simply stupid and personally dishonest.

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B. Fill in the “Bubbles” on the Practice Scoring Sheet

Print out your Practice Scoring Sheet in advance. One is provided with each practice test in the book.

If you need additional Practice Scoring Sheets download them from www.PracticalStepPress.com and print them out.

Be sure you have a 3 hour period in which you can take each exam without being interrupted.

As you do each exam under testing conditions, mark your Practice Scoring Sheet with a #2 pencil just as you would in a real exam. Fill in the “bubbles” on the Practice Scoring Sheet as you would under a real exam.

If you just put an “X” or check mark on the Practice Scoring Sheets instead of filling in the “bubble”, you will go faster, get done faster, and then on the real MBE you will likely go slower than you expect and run out of time!

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Test #1 Questions

Take this simulated MBE test of 100 mixed subject questions in a **three-hour timed setting**! You have **three hours to answer 100 questions** just as you would have in a real MBE exam (i.e. in the morning or afternoon session). You should complete about 12 questions every 20 minutes (6 questions every 10 minutes) and that will give you ample time to review. The Answers and Explanations follow.

### Questions 1-3

Recently enacted California statutes require barbers to be licensed by the Department of Health, citizens of the United States, residents of California for at least two years, and trained in California by an instructor licensed by California. Jose is a resident alien from Cuba who recently moved to California after working as a barber in New York for several years. His application for a barber’s license was denied by the Department of Health. Jose filed a suit against the California Department of Health seeking an order compelling it to issue Jose a barber’s license.

1) Jose’s best argument to challenge the constitutionality of the requirement barbers must be citizens is:

   (A) Congress has plenary power over immigration and naturalization.
   (B) It violates the Equal Protection clause of the 14th Amendment.
   (C) It violates the Equal Protection clause of the 5th Amendment.
   (D) It is a bill of attainder.

2) Jose’s best argument against the requirement barbers must be trained in California by instructors licensed by California is:

   (A) The requirement has no reasonable relationship to a legitimate State interest.
   (B) It burdens his fundamental right to practice his profession.
   (C) It violates the Privileges and Immunities Clause of Article IV.
   (D) It violates the Privileges and Immunities Clause of the 14th Amendment.

3) If Jose challenges the two-year residency requirement he will probably:

   (A) Fail because the State has fundamental authority to protect the health and welfare of its citizens.
   (B) Succeed because it violates the Due Process Clause of the 14th Amendment.
   (C) Succeed because it violates the Equal Protection Clause of the 14th Amendment.
   (D) Succeed because it violates the Privileges and Immunities Clause of the 14th Amendment.

### Question 4

Paul sued Dan, a newspaper columnist, for defamation because Dan wrote in his column that Paul beat his wife, Bambi. At trial Paul called Lucy to testify that she read Dan’s column in the newspaper stating Paul beat his wife.

4) If Dan objected to Lucy’s testimony it would most likely be ruled:

   (A) Admissible as an admission of Dan.
   (B) Admissible non-hearsay.
   (C) Inadmissible under the best evidence rule if Paul possessed a copy of the newspaper in which Dan made the statement.
   (D) Admissible if no original copies of the newspaper are available.
The missing facts should give you a clue. You were not told whether Owen got the rejection first, the acceptance first, or if he got either at all. You are not told if Owen changed position in reliance on the rejection. Since all those facts are missing there is show (A), (B) or (C) are true, so the best answer is (D).

55) (A) Any intentional act that causes a person, object, dust, or any other particulate matter to enter onto the land of another is a trespass to land. [See “Simple Torts Outline”, trespass to land, p. 28.] (A) is correct because if the cow is on farmer’s land Hunter’s bullet entered Farmer’s land to strike the cow. So Hunter intentionally caused the bullet to enter Farmer’s land, and that is a trespass to land. (B) is wrong because Hunter might actually have seen a real deer, shot at it and missed, and the bullet could have gone past the deer onto Farmer’s land where it killed the cow. In that case Hunter did not intentionally interfere with Farmer’s cow, and is not liable for conversion. (C) is wrong because Hunter might have actually seen Farmer’s cow and shot and killed it. That would be trespass to land and conversion, not negligence. (D) is wrong because hunting is not an “abnormally dangerous activity”.

56) (D) Answer (D) is the best answer because even though “Lou refused to help”, he apparently changed his mind and “then” agreed to help by hiding Bud. Bud had not yet committed the robbery, so Lou entered into a conspiracy with Bud (before the robbery) and has not yet helped Bud afterwards. Note that under the common law Lou could be convicted of conspiracy on these facts, but under the modern view many jurisdictions require commission of some “over act in furtherance” of the conspiracy. [See “Simple Crimes Outline”, conspiracy, p. 17.] (A), (B) and (C) are wrong because for Lou to be an accomplice, accessory before the fact, or accessory after the fact, the robbery has to actually take place. [See “Simple Crimes Outline”, accomplice liability, p. 14.] Here Lou just agreed to help Bud avoid capture, but he never did anything to help commit the robbery or any evidence the robbery ever occurred.

57) (A) Answer (B) is wrong because there is no evidence Lou urged Bud to commit the robbery or helped him plan for it. (C) is wrong because the evidence shows Lou refused to help Bud before the robbery occurred. [See “Simple Crimes Outline”, vicarious liability of accomplices and conspirators, p. 14.] (A) and (D) are both correct, but (A) is the better answer because it is a legal concept you were to learn in your studies. (D) is just a fact that anyone would know. Lou is an accomplice because he is an accessory after the fact, and that makes him liable for the crime that he is knowingly helping Bud profit from.

58) (A) Since Lou agreed to help Bud with his plan to rob the bank before the robbery, he is a conspirator. Answer (A) is correct because Lou is liable for all crimes committed by Bud within the scope of the conspiracy agreement, and the bank robbery was the central goal of that agreement. [See “Simple Crimes Outline”, conspiracy liability, p. 14.] (B) is wrong because “aiding and abetting” is not a crime per se. (C) is wrong because Lou is taking the loot for helping Bud, not for agreeing to “not report him to the police”. [See “Simple Crimes Outline”, compounding, p. 82.] (D) is wrong because “misprision” has not been a crime for hundreds of years and is almost never a correct answer on a multiple-choice question. [See “Simple Crimes Outline”, misprision of a felony, p. 85.]

59) (C) Answers (A) and (D) are wrong because it is always foreseeable someone could die during a “robbery”. (B) is wrong and (C) is correct because the Felony Murder Rule makes any death caused by the “inherent dangers” of a robbery chargeable as a murder, whether the criminals acted with actual intent to kill or not. [See “Simple Crimes Outline”, the felony-murder rule, p. 70.] In addition, virtually all States list murders committed during robberies as “first degree murders”. [See “Simple Crimes Outline”, homicides caused by committing enumerated felonies, p. 74.]
EVERYTHING YOU NEED to succeed on the MBE is in this ONE BOOK.

- How the MBE is Structured and Administered;
- Proven Exam Strategies;
- 600 Multiple-Choice Questions like those given on the MBE (3 times the questions actually asked on the MBE);
- Detailed answers and explanations of the best answers to each question; and
- Page citations to further explanation of the issues being tested in NAILING THE BAR Simple Outlines.

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