

Speaker 1: Welcome to The Extra Mile podcast for bar exam takers. There are no traffic jams along the extra mile when you're studying for your bar exam. Now, your host, Jackson Mumey, owner of Celebration Bar Review.

Jackson Mumey: Hey everyone. Welcome to episode 33 of the Extra Mile podcast for bar exam takers. This is Jackson. Really glad you're with us today. We're going to be doing something a little different than our normal structure or methodology. Today's episode is going to be devoted entirely to the Florida bar exam results from the July 2015 exam. I want to take a look at the overall trends, look a little bit at the questions, give you a feeling for the exam, what it looked like, how we saw it from our perspective, some thoughts about where the exam is now and where it's going, at least where we think it's going. If you're not a Florida bar taker or don't plan to be a Florida bar taker, [then 00:01:05] this may not be the best episode for you but I am going to talk some general numbers about the Multistate as well, so you may find some things to be of interest there.

If you are at all interested in the Florida bar, I think this is an episode you're going to want to stay tuned and be part of as we're going through it. Now before I dive into the details of the Florida exam in July, I do want to invite all of you to subscribe and be part of our podcast series. We produce these podcast episodes twice a week, and you can find them on iTunes or you can go to our website at celebrationbarreview.com. You'll find under the podcast link at the top of the page all of the prior episodes [along 00:01:49] the show notes and you can subscribe from there as well, so I hope that you'll come along if you're not already a subscriber and join us there. I also want to invite all of you, regardless of what bar exam you're taking, to join me for a free live online training program called How to Make The Next Bar Exam Your Last Bar Exam. We'll be doing those on Thursday at 3pm Eastern, 12 noon Pacific time, and the course is 90 minutes long.

It's free, but seating is limited because we do try to make it pretty interactive. You can claim your seat in one of two ways. You can go to our website at celebrationbarreview.com/webinar, so that's celebrationbarreview.com/webinar and reserve your seat, or you can just text the phrase "nextbarexam," all one word, "nextbarexam" to 33444. You can subscribe by using text messaging, by texting to 33444, just that simple phrase, "nextbarexam," and then I look forward to seeing you on the webinar joining me for some information about how to make the next bar exam your last bar exam. It's the 4 steps that you must take in order to pass and definitely those 4 steps were borne out by the results here in Florida in July of 2015. Let's pivot and talk about that exam now for a few minutes and give you a feeling for what happened generally.

If I had to characterize the test, I think I would say, and I have used this language before, I think that the exam for most bar takers was something akin to a train wreck. The passing rates are very low across the board. We were pretty successful with our students but I would say that the general rates are not very encouraging for most bar takers. Now here are the official first time bar taker

rates as released by the bar examiners and we'll put links in our show notes to a lot of these statistics for you as well. The total first time bar takers, there were 2687 first time takers and 1851 passed. That's a pass rate of 68.9. Now you've got to be careful with these numbers because this only reflects first time bar takers.

You might think, "The overall pass rate was 68.9." Oh no, it was much lower. The National Conference of Bar Examiners every year puts out a statistical analysis of each state's bar exams and we don't have the breakout yet specifically for this test, but we do have the 2014 results in Florida from the NCBE and those numbers have been pretty consistent for the last few years. I suspect they will be worse for 2015 than they were for 2014, but just for reference, repeat bar taker pass rate in Florida in 2014 was 35%. [Let me 00:04:55] say that again. It was a 35% pass rate. I suspect we'll see an even lower number this 2015 exams, when those statistics are released later in 2016. We've got a big disparity. Even the first time bar takers aren't doing very well. The repeat bar takers are doing horribly across the board, and that's certainly problematic for folks. When you look at the law schools in Florida, I don't know. I guess they get all crazy about this. It's interesting.

FIU, Florida International, had an 89% pass rate among their first time bar takers. I think that was the top in the state. The low in the state probably was Ave Maria for first time bar takers with a 47.8%. If you went to law school outside of Florida but you weren't admitted to practice yet, your pass rate was 63% if you were a first time taker, and if you were a practicing attorney from somewhere else and it was your first time taking the exam, you had a 69.6% pass rate. None of those numbers are particularly exciting and they reflect what we suspect we'll see across the board with respect to the Multistate, the MBE, in other jurisdictions as we get results out in big states like California and New York and Texas. We would expect to see some drop-off in all of those areas.

Now, does that mean that the test is getting harder? Maybe. I'm going to talk about the essay questions that were asked in just a moment in Florida. I don't know that it's necessarily harder after having looked at these exams for now going on 25 years, so 50 exams. I think that it's incremental. I think the Multistate for some people got tougher through the addition of a seventh subject. For other people, I thought it actually got easier and our bar students actually did better on the Multistate in 2015 than they did in 2014, so I'm not entirely sure that those national trends hold certainly when we're looking at our students, but the national trends are certainly something that you want to be aware of.

Now, I think it's instructive to look at how the exam in Florida is laid out and the mean scores, the averages, so that you get a feeling for what the test looked like, and if you got a test result back in Florida, you actually could look at your test examination status report to see these numbers. Part A in Florida is the Florida section of the exam. Part B is the Multistate, if you're trying to figure

that out. In years past, Part B was identified by subject matter, your score in each topic. It's no longer done that way because of the 7 topics. You just get a scaled score. You don't even see your raw score. Now as you probably know, in Florida, you need a 136 scaled on each part of the exam to pass. What did that equate to on the Multistate in Florida this year? We would say based on the national statistics on the scaling, that they probably equated to around a 125, 126 raw score to get a 136 scale.

That looks like about where it's coming in, so if you're looking at your scaled score in Florida and it's less than 136, you failed that part of the exam at least. You can see your scaled score. You don't have any idea what your actual raw score is any longer, so just keeping that in mind. When you look at the national statistics, most of the mean score on the MBE, the Multistate Bar Exam, tends to come in at about a 130 to a 135 scale so you had to be above the mean nationally to pass in the Florida MBE part of the exam. Let me talk a little bit about the Part A Florida part and the scoring there because I think that's ... We've got a little more information there. The way that Florida scores the exam is that they create 6 categories and you'll see them as under Part A, numbered 1, 2, 3, 4, 5 and 6.

Those correspond to the subjects at the bottom of an admission status report and here's what subjects were tested according to the examiners on the last exam. Section or part 1 was an essay question in contracts and ethics. It was a crossover question as they all were. Question 2 was an essay question on criminal law, constitutional criminal procedure and juvenile delinquency and a crossover in ethics, so actually 4 subjects were tested according to the bar examiners on that one essay. Question 3 was an essay with torts and again professional responsibility or ethics, so if you're watching for trends, ethics was on all 3 questions and that has become more and more the norm in Florida. All of the questions had more than one topic in them. That's also becoming the norm.

What was unusual was question 2 with criminal law, and I'll come back to that in a few minutes. Then there are 3 multiple choice topics in the Florida part of the exam. The first of these which is number 4 on your score sheet is simply called the Florida rules of civil and criminal procedure. This is always tested and always in this format. Section 5 happened to be Florida evidence. Typically and very often tested. Then section 6 was wills and administration of estates. This topic sometimes is tested, sometimes it's business entities, but on this exam, it was wills and estates. Now, when you look at a status report, you will see first a raw score both for each section and then a total raw score. This raw score on your Florida exam report is totally meaningless. You should just draw an X through it.

It doesn't mean anything to you because 2 applicants with exactly the same raw score can get very different scaled scores and the reason is fairly complicated but it has to do with standard deviations and where those points come from. The same number of raw points in each of the 2 or between 2 applicants

depending on where you got the points, whether it was section essay 1, 2 or 3 or multiple choice sections 4, 5 or 6 can radically affect your scaled score. As a result, you can't really learn anything from your raw score, unfortunately. The best way to do it is to look at your score in each section and compare it to the mean, and in general, your goal is to be at or above the mean raw score. In question 1 which was on contracts and ethics, the mean raw score was 48.7 out of 100 points.

In question 2, the crim law, constitutional crim pro, juvenile delinquency ethics question, the mean score dropped almost 10 points to 40.4, and there's a reason. It was a surprise question, a surprise topic. By the way, the range on that question went from 0. There are some people that just gave up. Some amazing person got an 85 on it. No-one got the perfect 100. Then essay number 3, torts and ethics, the mean, and this was really surprising to me, the mean was actually lower here than in question 2. I think there's a reason for it but the mean was 39.5. Again we had a range from 0 actually only up to 83. Those are your 3 essay scores. In the multiple choice, you have a total of 30 questions that are testable in each of those sections. In the Florida rules of civil and criminal procedure, the mean as it usually is was 18.2. The range went from 40 correct up to 30, so there were a few people that got them all correct.

Evidence, the mean was 18.9. Again the range went from 3 to 30, and in wills, it was 17.6 and again the range was from 3 to 30. I frankly have always found it very dubious that anyone actually got 30 questions correct in any of these subjects. I'm not questioning the voracity of the examiners. I'm just wondering how in the world someone could do that given the incredibly poor way in which those questions are drafted but that is a topic for another podcast, to be sure. That's what you've got. You've got a total perfect raw score available of 390 points, and those 390 points have to be reduced to a 200-point scale and that's why your raw score typically will be higher than 136 and you'll have to drop down from that raw score into a scaled score. Sometimes I'll hear from people and they'll say, "Well, I got a 140 or a 150 or 160," or some big number raw score, "and then they took points away from me and I failed."

Yeah, those raw points don't actually matter. It's a little bit like that old game, that show with Drew Carey. The lines are all made up and the points don't matter anyway, the way the Florida bar is scored in this respect. Those are the numbers that you're looking at, and the mean and the range, so let's dive in to a little bit of analysis particularly on the essays. I said to you that question 2 was really out of left field. It was crim law, constitutional crim pro, juvenile delinquency and ethics. Now, up until this point, it's been more than 20 years since criminal law and constitutional criminal procedure have been tested in an essay format in Florida. Totally unexpected I think by everybody. I certainly didn't see it coming. I don't know anyone that did and if someone tells you they did, I would say, "Prove it."

It was a surprise definitely to most people, and I think that because there were really 4 different topics in the question, there was some [con 00:14:51] law, in terms of constitutional criminal procedure but then there was just straight up crim law. There was also the newer topic of juvenile delinquency which we had not seen tested quite this way before. Then we had ethics, the old standby. This caused a lot of consternation, a lot of low scoring. The mean raw dropped down to 40 points. You might say, "Well, wait a minute. Didn't you say torts was even lower than 39.5?" Yeah, it was question 3 and I think what happened was people spent so much time on question 2, that they got so freaked out by question 2 that I would suspect a fair number of people never got to question 3 or got there with very little time left because question 3 actually wasn't all that difficult. I think that the people just ... There was a cumulative effect.

It just really turned into a mess for them, and so they ran into problems on that question. In and of itself, the question really wasn't that difficult. It's simply the fact pattern was that there was an automobile manufacturer that discovered a hidden safety defect and then [a city 00:15:58] whose employees had the cars, they were supposed to have the recall repairs performed but they didn't, and they modified this airbag in other ways. It sounds like the [GM 00:16:10] problem, and so what happens in the fact pattern is that one day, 5 months later, an employee jumps into a car, races home, drives beyond the speed limit, misses a curb, slams head on into a brick wall. The airbag doesn't deploy. The employee is killed, suffers fatal injuries. No defects in the car caused the accident but the spouse we're told, dies and leaves 7 minor children.

Then 22 months after the accident, the surviving spouse approaches an attorney to talk about a lawsuit and we've got part of the fact pattern about the attorney agreeing to file for 50% of any recovery. Then the attorney pulls out a 1-paragraph representation contract and the spouse signs it. 2 days later, [the 00:17:01] spouse tries to get out of the signed contract with the attorney, but the attorney refuses to cancel the agreement and the attorney devotes several months to the matter without letting the defendant know about that, files a very detailed wrongful death lawsuit 29 months after the accident, seeking 5 million dollars from each defendant. Then you're asked to evaluate the claims of the spouse, the defenses of the auto manufacturer and any ethical problems arising for the attorney.

Now I think part of what happened here is that people clearly went out to the torts part of the problem. They saw that. They might have seen some of the procedural pieces. I suspect that most people writing, and I'm just beginning to look at essay answers, they're just coming in now. What I'm seeing is that people didn't write very much about the ethical part of this. They tried to take a very simplistic approach and I think a lot of air space in the question is given to the ethics in this problem and I think it's necessary to write about those ethics. This is not the forum for me to talk about what I think should be in the answer. I simply want you to know that you can't ignore the ethical part of these questions. It was a big part.

I would say it probably was worth 25% to 33% of the overall scoring, and I'm guessing here that between the lack of time, the general frustration when people got to question 3, they just didn't give much weight to the professional responsibility part of the problem and that's a big reason why the question got such a low answer. Just something to keep in mind if you're looking at your own answers, if you took this exam, or if you're trying to think back to what might have happened there, so something to keep in mind there. Let me just also talk a little bit about questions number 1 and 2 in the essays just to give you a flavor for them, if you're not familiar with the Florida essay questions, or maybe you took the exam and you're just trying to refresh your memory.

Question number 1 as I said was a contracts and ethics question and this was a very standard kind of contracts problem. We had a situation where we've got 2 parties who are trying to talk about buying a lot, a vacant lot. We've got basically formation of a contract, offer and acceptance, mailbox rule kinds of problems, making some offers and then a counter-offer and then [avoiding 00:19:22] the deposit check and then, "I'm going to sell it. No, I'm not going to sell it." We've got that kind of traditional contracts problem going on, and then we've got some language in the contract about the contract being binding and no extra language and so on. Then the buyer can't make up their mind about whether to buy or not and while they're waffling around, the seller decides to revoke the offer. You know this from law school. This is a pretty standard fact pattern.

Then the examiners go on beyond that part of the offer and acceptance mailbox rule. This was a 2-page question. It's a long question. They bring in a new party, a third party who's interested in purchasing the lot only if they can build a 3-story home on the property. The seller isn't aware of any zoning restrictions and so she enters into a contract to sell this lot for a large amount of money and so we've got 3 lots, Vacant Lot A, Vacant Lot B and Vacant Lot C, and now we're talking about Vacant Lot C. A different problem than A and B. In any event, there is some language in the contract that says it represents the entire agreement and no other modifications are binding unless they are in writing and signed by buyer and seller.

Of course, shortly after they sign the purchase contract, they discover the zoning ordinances prohibit the construction of any home on Lot C over two stories and so now the buyer says, "The property's not worth as much to me because of this." The seller says she would accept less money, but they don't write up a new contract and at closing, the seller refuses to sell to the purchaser for the lower amount, and so the purchaser threatens to file a lawsuit. That's the second problem you've got to deal with in the question. Then the third part of the question is that the seller comes to your firm for legal advice and wants to know if she can sell any of her vacant lots to the firm in order to pay her legal fees, and the senior partner wants to buy some of the lots, so draft a memorandum.

We were actually given 4 separate calls of the question in this problem. The first had to do with the first transaction about the formation of contract. Causes of action, measure of damages, so a very traditional kind of answer there. The second is the causes of action against this second party that comes along and wants to purchase Lot B while they're going back and forth about Lot A. I didn't say much to you about that, but we've got Lot B and so there's a problem there and we have to deal with that. Again the same basic problems that we had in Section 1. Then in Section 3, we've got our guy with the 3-story house and his causes of actions and defenses and likelihood of prevailing. Then Section 4 is again ethics, professional responsibility. None of those things by themselves are really all that difficult, but it's a long question.

Welcome to the Florida bar exam. Tuesday morning, you get this 2 page 4 call of the question problem that's going to be pretty staggering to people, so definitely something that caused some difficulty. I think a lot of people had difficulty getting through all of it, particularly, or they may have done it and found themselves without enough time. By and large, we saw the highest mean score there so I think most people were reasonably okay with that. Question number 2 I've saved for the last because it's a goodie. This is our crim question, and essentially what we've got here is a fairly short fact pattern but a lot of stuff going on.

The police suspect that someone called Vic is selling drugs, but they don't have sufficient evidence for an arrest or a search warrant. Nonetheless, the police go to his house. They knock on the door. A third party named Donna answers the door, says, "Nobody's home," but the police hear sounds inside moaning and they push past and go inside and they see Vic on the floor with a bag of heroin and a needle syringe and a ledger of course. Donna says she found Vic like this, but was scared to call for help. Vic dies before the medical help arrives. The police arrest Donna, and in the patrol car she's not prompted but she says that she only intended to deliver the heroin and not for him to overdose, but she also heard voices telling her what to do.

You can see already we've got some Miranda problems, but we've also got some M'Naughten insanity maybe going on. In the first section, we've got some questions about is it a valid entry and are they fourth amendment problems in terms of search and seizure. Then we get our suspect to the police station. Now she's informed of her constitutional rights. Now she agrees to talk to the police and we get into the ledger and Vic didn't always pay for the drugs, she says, and now Donna decides that she doesn't want to talk about it. The detective keeps asking her and she now gives a self-incriminating statement and then she starts arguing with invisible people. We've still got insanity, we've now got Miranda at a different level. We had it in the police car first. Now we've got it in the custody, so we've got some constitutional issues there.

Then we get an autopsy showing that Vic dies from the heroin overdose, but his hands have been tied together recently and Donna's fingerprints are the ones

found on the syringe. Just a little bit more to load in there about whether or not she's involved. Then the newspaper reports that a defense attorney has been hired by an anonymous donor to represent Donna and that the attorney would get a million dollar bonus if Donna were acquitted. Okay. That's our fact pattern. We've got the call to the question, which is what are the potential charges against Donna related to Vic's death? You've got a lot of possibilities there. You've been given the heroin overdose, you've got the possibility of her fingerprints, you've got her statements and so on. Then her potential defenses raised by the facts. Then you've got some substantive pre-trial motions that the defense might file and what the state's responses would be.

Then finally the ethical considerations arising from the defense attorney's offer to represent Donna. Now the only thing that doesn't really make much sense to me is that when the examiners were talking about this and identifying it, they say that we've got a juvenile delinquency here. I don't see anything in the fact pattern that tells me that she's a juvenile or that Vic was a juvenile and I think you would have to go a very long way to write about that. I suppose if you're really reaching out there, you might say that there's some juvenile delinquency as perhaps a charge or a defense against that she could use, but there's really nothing here that gives us anything to go that direction.

I thought that was really a reach and frankly an unfair characterization of this question and perhaps someone else will see something that I've missed, but I don't see that at all. Obviously there was some substantive criminal law. There were some constitutional criminal procedure and there's again ethics. Did that question cause problems? Yeah, absolutely, it did, and I think for a lot of people, that was very difficult and very unexpected and very disheartening. Now will crim show up again? Maybe. Will constitutional crim show up again as an essay? Maybe. Will juvenile delinquency show up? I don't know. I didn't see it here, but I suspect it will. Ethics, absolutely, so those are some things to keep in mind about the way that the test was administered and what was asked on the exam.

When we get to the Florida multiple choice, civil and criminal procedure, pretty standard, I think. Evidence, again pretty standard. Mostly the Florida Evidence Code more than the Multistate or the Federal Rules of Evidence. Wills and administration of estates is very much a Florida specific subject and often tested so again not much of a surprise. Most people get 17 or 18 questions correct. That's about right. If you're staying at that level, you probably did okay in terms of your scaled score. The problem is if you drop off the board, if you're looking at your status report and you got 8 or 9 questions correct in one of those multiple choice sections, it really hurts you, much more so than just the total number of raw points again. It's the scaled points because the standard deviation is that most people clump right in the middle.

I would say if we were looking at a mean of 17 or 18, most of the scores in Florida range between 15 and 20. It's just hard to get much above that, but if you fall below that, you're going to take a big hit. Some things to keep in mind

about that. In general, I think that the Florida bar exam is getting ... It's tough. I think changing and adding these new subjects makes it even tougher. If we look at the 10-year trend line, the bar pass rate in Florida has gone, overall from a high of 72% down to what we're now seeing, this very low 35%. Clearly there are big changes and things going on that are problematic. If you are a first time taker, should you be afraid of the exam? No, but you should respect it and you should prepare for it substantively. This is not an easy test.

I think that if you went to an ABA approved law school, whether it was in Florida or out, statistically doesn't make a huge difference. You've got a reasonable shot, but again I'm not falling in love with a 68% pass rate. We've done better than that. I think in general when you look at the big numbers across the board, that's certainly a reason to be concerned. If you are coming from a situation in which you have not taken a bar exam in many years, you're what I call a distant bar taker, that is someone's coming from the practice of law somewhere else, you were probably hoping for reciprocity that now appears to be dead. I would say that the pass rate that you're looking at is probably going to give you pause for concern.

The key here I think is starting early and having a competent course to get you prepared for what's going on in Florida and not bringing what you did in a previous jurisdiction, particularly, in to this exam itself. Those are some of my thoughts and take on it. In some of our previous episodes, I've interviewed some successful Florida bar exam takers that we had in our course and I invite you to watch and listen to those episodes. I think they got some great insights about what this test was like for them. I would leave you with these pieces of advice. One is start early. Secondly is be prepared to cover a wide variety of subjects on both essays and on multiple choice. Use a competent bar review. I certainly think Celebration Bar Review should be in that list. Don't try and get through this exam with borrowed books and free resources from some place.

It just doesn't work. If you're a bar repeater, you probably want to look at going to a much smaller course, one like ours. The big courses just are not doing well at all. In February of 2014, the repeat bar taker rate in Florida was an astoundingly low, and I just want to make sure of this number, it was 19% pass rate. Not good at all. We've far exceeded that with our students, who are repeat bar takers. You just really need more attention than you're going to get in a big bar review course. If you are interested in, if you took the exam in July of 2015 and you'd like to get my feedback on your test and on your results, I would be glad to speak with you. In the show notes, I'll have a link for you to set up a free consultation with me to talk about it, and I'd be glad to give you my thoughts about the exam.

I hope that this was helpful for you. I hope it gives you some sense of what the exam was about. We'll try and do this in other jurisdictions as results come out during this season and we'll try and give you, as we go along, our thoughts about where the exam is going and what you need to do. It's certainly one of

those tests where you can't ignore it or take it lightly. The examiners have made it very clear that they are not going to really be a place where you can study haphazardly or play at it, instead of really getting into it and studying hard and putting a full effort in, so just something to be aware of.

That wraps up our discussion today of the Florida bar exam in July 2015. I look forward to your comments and thoughts, and thanks again for joining us today on this episode of The Extra Mile podcast. That wraps up today's episode. Thanks so much for listening. If you'd like to be part of our Extra Mile for Bar Exam Takers private Facebook group, just check the show notes. You'll find a link in which you can request an invitation and we'll see you along The Extra Mile.

Speaker 1: Thanks for listening to the Extra Mile podcast for bar exam takers at www.celebrationbarreview.com.