

# The Truth About The MBE

...What I want to do next is look at the multistate exam itself, and I'm going to assume for our purposes that you don't know much about the exam.

You may know some of this information, but I suspect some of it will also be a surprise to you. Now we start by pointing out that the multistate bar, the MBE is a 200 question multiple choice exam that tests general principles of law. It's called an objective test, and by that I mean you're going to receive a fact pattern, a hypothetical, and then you'll see a question stem more call of the question, and then you'll have four responses to that question in your job is to choose which of those responses, which are the four is the best answer to that particular question.

No, no. I said it's the best answer we're not necessarily looking for or where we see a perfect answer or the right answer or a perfectly correct statement of law, but what's the best of the four choices that you're given. As I said, you're going to have 200 questions on the exam. 100 questions will be taken from all seven subjects of the exam mixed up and put in random order in the morning.

Then there'll be a lunch break and then there'll be a hundred more questions in the afternoon. The test is given in the same way three hours for each session, unless you're receiving accommodations based on some particular circumstance. Before I get into the specifics of the questions, let me tell you a little bit next about how the exam is scored because scoring is obviously the key and it's somewhat difficult at the beginning, I think, for people to understand, but it does help in terms of knowing how to study.

The first thing that you need to understand is that after you've completed your exam and you've done it on a scantron bubble sheet, that test will be graded by the NCBE. That's the national conference of bar examiners. Now, this is not your state or local examiners. The NCBE determines your raw score.

And that raw scores, the score that you got correct, or the number of questions that you answered correctly, not out of the 200 but actually based on 175 of those questions that are the actual test questions. I'm going to talk about this a lot today, but 25 of the questions currently out of the 200 are not going to count at all their questions for evaluation and future use by the NCBE.

But let's say for right now, for hypothetical purposes, that you got 120 questions correct. Out of the 175 that counted. Well, what happens next is that the NCBE applies a scaling factor that's added to your score to make sure that the scores for every one on this particular administration of the MBE, is, equivalent to what's happened on past multi-state exams.

In other words, what the examiners want to do, is to be certain that a score, let's say, of 140 raw on the 1989 bar exam, would be roughly equivalent for the same performance or the same level of competence is that same, number would have been for a test given in 1999 or 2019 or 2020. They're trying to equate all of those tests.

Now, that's a complicated process, but for our purposes and generally speaking, as you plan and look at your results, you can count on additionally receiving about 15 to 20 scale points added to your raw score in order to create what's called a scaled score, and it's the scaled score that counts.

That's the one that's used in your state bar exam to determine whether you passed or failed the test. So in our example where I said, you've got 120 questions correct. Typically you would add a scaling factor. Let's be conservative and say it's 15 points, and now you'd have a 135 scaled score.

Even within the same administrative date of the bar exam, the number of points that are added are based and vary based on score. In other words, it's not that everyone on the test got 15 points. It's actually a sliding score, and this is why it gets complicated and that sliding score changes based on the raw score.

So let's say that instead of getting 120 questions correct raw, you only got 110 questions correct. Well, instead of getting 15 points added, you might get 20 scale points added and you'd say, well, wait a minute. That ends up with about the same score. Yeah, it actually does. What the examiners are trying to do is to give you more points when you have a lower raw score in the circumstance that they assume it's a tougher task and fewer points when you got a higher raw score, because the assumption is it was an easier test.

So if you've got, let's say, 155 raw questions correct. Out of the 175 you may only get five or six points added to your raw score, but obviously that wouldn't matter because your 155 raw is more than passing. Now, all of this scaling and movement is done using a mathematical principle to make sure that the results are roughly equivalent and reflect the same amount of knowledge, the same level of confidence, or the same level of performance across various administrations of the multistate bar exam.

the term that's used in testing is that it's psychometrically accurate. Don't you love that? And it simply means that it's been balanced, out test for test. So all of that is to say, what points should I use when I'm trying to figure out a scaled score? Well, over the last 10 years or so, 15 points is a conservative number to use as to what would be added to your raw score.

But most of the time, most people will see about a 20 point scale jump in their testing. To give you an idea of the kind of score you want to be shooting for I would tell you that you should probably add in that 20 points, but you should also know that the score that you need varies from state to state.

So there's no one single number I can tell you to aim for.

So there's a different passing score in the New York version of the UBE. Then there will be in the Texas version of the UBE or the New Mexico version of the UBE or the Illinois version and so on. So it's important that you be aware of those numbers based on your specific state exam. Now, most States, whether it's UBE or doing their own state exam, combine the multistate and the state or written score in some fashion to get an overall passing score.

The way that the scores are combined or the relative weight on those two portions of the test. And there could even be a third portion, a short answer or performance test portion of the exam, might be tested or, or evaluated separately. But the way that those scores are combined will vary from state to state.

And for our purposes right now, we can save this much. If you get 125 to 130 raw, multi-state questions, correct. And then you do a competent job, not spectacular, but a competent job on the state portion of the exam, whether it's essays or performance tests or short answer, multiple choice, whatever format or combination of formats or States provide, that's generally going to be sufficient to pass.

In other words, to put it very clearly, 125 to 130 raw, correct. On the multistate, we'll typically put you in the 140 to 145 scaled score, and that's a high enough score across the country to pass the bar exam. Now, over the past decade or so, looking at statistics from the national conference of bar examiners, what we see is that the total.

A mean score. That's the average score that someone got on their scaled scores has ranged from a high of 142 roughly to a low of about 137 and in general, when we look at those scores, they've gone down over the past 10 years. Although there are small bumps up and down. There are also big differences between July scores and February scores.

Not because the test is different or harder in February than in July, but because you have far more repeat bar takers in the February exams. So I want to be careful in the way that you use those statistics. But to get the, the point here is that if the mean continues to be in this average of 137 to 142 that puts you in a passing level in most jurisdictions, although California would require a 144. So, that's a little more difficult. Currently, Florida requires a 136. New York would require an effect, a 133 on the UBE. So just to give you some relative numbers, the lowest passing multistate score in the UBE right now would probably be about 130 scale a or half of a 260 overall score.

So that's the range that you need typically. And what's happened over the past 10 years is that the multistate scores have gone down overall. So the test is dynamic and it is difficult. And I would say it's getting harder generally. All right now and now that I've probably depressed you, for our purposes, if you're getting 125 to 130 questions, raw correct out of the 175 so that's about 70% correct answers. The chances of passing the bar exam are still pretty high. And so that's the number that we want to be shooting for. Our goal here, if you're thinking in law school terms, is to focus on getting a C. plus. If you can get a C plus or a B minus on the multistate, then you're probably going to pass the exam.

No, I do think the exam is ultimately something that you can be successful on. and I know that because I've worked with literally thousands of people and help them succeed regardless of their prior experience. I would also say that the MBE is ultimately a pretty fair test. It's difficult and it's become more difficult, and that certainly makes it fearful for some people.

Now, let me go into a little bit of detail about each of those subjects. First of all, the first important thing to understand is how many questions are going to be asked on each subject. And remember, we start with 175 questions that count, not 200 and there are seven subjects, which is very convenient.

So instead of having subjects with 32 or 33 questions and others with 27 or 28, which is the way it used to be you now have the weighting of the 175 questions equally across all seven, categories. So, the result is 25 questions per subject. Now the other 25 questions that don't count, the evaluation questions are actually indistinguishable from the scored questions, and that can be a problem for you as a test taker because those 25 questions could theoretically all be in contracts, or they could be in Civ Pro, or they might be spread out over seven subjects or four subjects or two subjects.

There's absolutely no pattern or way of knowing that, and to make it even more complicated, it will be different on each person's exam. The result is that it may make the exam feel wildly out of balance to you at times or more heavily weighted in one particular subject. And so you come out of the exam and you say, Oh my God, I can't believe how many property questions there were.

Well, it's possible that a substantial portion of the evaluation questions on your form of the exam were in property. And so instead of having 25 questions, which actually are still the ones that count in property, you might've done something that looks more like 35 property questions. You might see how that could change your feelings about the test depending on how much you love property or whatever the subject might be.

The next thing I want to do is to take a look at this exam and sort of switch sides. Now look at it from the other side of the table, from the side where the bar examiners said, you might say, well, what do I care about?

What they think? And that's fair, but the way that the examiners come up with the questions and how they make sure the exams stay relatively constant and fair is important. How the examiners devise and create the test helps you when it comes to answering the questions and it helps you in terms of knowing how to study.

I say that in part because I think there's a lot of mythology around the MBE. For example, many people, probably almost everyone you've talked to will tell you the MBE is brutally difficult, but it's weighted in impossible ways and you can't possibly pass it. I hear that all the time, and I think there's a sense out there, there's some degree of mythology that says the MBE is really unfair.

The MBE is one of the most consistent one of the fairest, and ultimately, and this is important, most predictable tests that I'm aware of in any topic, in any field of professional,

testing. And all of those factors are big assets in your favor as long as you think about the exam from the standpoint of the test makers.

Now, I'm not just relying on my own sense of this. I actually want to quote to you from what the examiners themselves say. So let me begin with a restatement of what the focus of the MBE is based on what the people who write the test say. And here I'm quoting the NCBE and they say, the touchstone question is, what does a minimally competent attorney or a new lawyer need to know.

In other words, that's what they're trying to determine. How do you test for that knowledge? Their goal, and I can't emphasize this enough, is minimal competence. It is not expertise. It is not perfection. It's not what some of the bloggers out there would tell you the test is all about. It's not about knowing the law cold.

I say that because very often people get wound all around the axle of the multistate and they think that after a while they have to know every nuance, every detail, every rule, every element. Now as a result, that causes people to want to memorize the law or to create flashcards or mnemonics or do a bunch of other things I think generally are not productive. They're certainly a waste of time. They can be a waste of money and they don't have the result of helping your pass. And many of you watching this lecture right now have been right there. You have done all those things. You put your effort in and you didn't pass.

So I think we have to begin with that as a starting point. Remember the standard that comes directly from the examiners is simply, minimal competence. Now, to get to that minimal competence over the years, the MBE has been administered, since the early 1970s. And one of the ways that it was measured, was to take, as I said earlier, a certain number of questions from each exam that I'm now going to refer to as marker questions, marker questions.

Now I'm using these marker questions. Each exam is scaled and examined to reflect its relative degree of difficulty. Well, the marker question programs still exist, but it's got a new piece to it, which is called pretesting. Those are those 25 questions I told you about earlier. They're not marker questions.

Well, when the national conference began doing the same thing on the multistate, you got 200 questions on the exam and then for a long time, there were only 10 pretest questions. Then it went to 175 actual questions in 25 pre test questions. All of those, are there to help them figure out what goes on the next exams.

They're just being tried out. They don't count in your score. Now, as I said, one of the interesting things about pretest questions as compared to markers, and we'll get back to markers in a minute, is the pretest questions are put in different places. They are administered throughout different sections of the exam on your form of the exam.

They could all be in your morning section or they could be split half and half. They can be split any way the examiners want to do it. They can even be split across the subjects. In fact,

we have confirmation from the NCBE that there are actually eight separate forms of each exam that are administered.

So when you sit down to take your exam, the seven people in the row next to you all have different forms of the same exam. And what that means is you're all doing the same, 75 questions, or a hundred questions that in the morning. but the order is completely different. And of course, out of those, some number are going to count towards that 175.

And then all of you in the room have the same hundred questions in the afternoon. Again, all eight forms of the exam, but different forms of the order of questions, so that's a lot more sophisticated than it used to be. Now when I took the bar exam way back in the days of paper and pencil, there were only two or three forms of the exam.

But as I said, we're currently up to eight so these pretest questions can appear anywhere in each of those exams. But, and this is where it gets really interesting, at least to me, 25 of those questions, the pretest questions are different in each of the pretest forums. In other words, I said, you have the same hundred questions, and I hesitated because that isn't exactly true.

You all had the same 175 questions that count in the same sessions of the morning and afternoon, but 25 of those questions are actually different across the forms. So all eight of you lined up in your row, you had 25 different pretest questions over the entire exam, 25 on every form of the exam. Oh, the reason I tell you all that is because you might have a question after the bar that's driving you crazy and you're talking about it with a mentor or a friend that took the exam and they say, what are you talking about?

That question wasn't on the test. I didn't see it. And you start thinking, God, I lost my mind. No, you didn't. The good news is that you can probably think to yourself that was a pretest question, but the point is the postmortems are very hard to work out anymore in the MBE because there are all of these different versions of the exam.

And so that's the reason for it. . Now this form of eight different tests, booklets helps us obviously identify what the pretest questions were.

All right, so circle back around, why do we care at all about that? Well, this pretesting essentially allows the examiners to work on the forms of the question to make sure that they're going to be a fair and accurate and well-written.

And I've seen over the last 10 years a distinct improvement in the quality of the questions. The examiners now test for things that are supposed to be done. And I think they are becoming better. And what we're going to call and what they call pre editing and pre editing simply is how do you design questions that are fair and workable and what does that mean for you as a test taker?

Well, it means in the long run, you're going to get better questions than the examiners got 10 years ago, or maybe then you took when you took the bar 20 or 30 years ago. I want to

emphasize, however, again, that your score is only going to come from the 175 actual questions. Now, some of you hearing all of this, so probably already thought to yourselves, well, wait a minute, I've got 25 less possible questions to get correct.

So my score would automatically go down by 25 points, wouldn't it? No, not at all. And I want to be clear about this. 175 is the new starting point. That is the perfect score. You are not graded at all on the pretest questions. 175 is the number that you used, and then the examiners back that down, they scale from the 175 as a max and they've adjusted the scale from what it was when there were 190 questions that counted, or 200 questions that counted.

And so the point is that these 25 pretest questions will not make any difference in the scaled score given in your jurisdiction. Okay. So it's all right to breathe again, it's just that your score is now calculated against 175 as a possible perfect score instead of 200 and the scale is adjusted to reflect that.

Now it's important to know that after pre editing is done and the testing of the questions, the evaluation is done, then those questions are further reviewed by panels that put together the multistate and then eventually the questions show up in the test. And so it actually takes quite a while to get a question onto an actual bar exam.

Now, some of those questions that were prepared this way, were started to, the examiner started to feed them into the test around 2006 and 2007. The good news is they're now fully integrated in the exam, and I think from about 2009 on, it's been pretty consistently, an updated exam. And it's still that way today.

That's why I find it so absurd that there are people out there talking about this test in the same way that it existed in the 1980s so those are things I think you really need to know about how the testing is done. .

So that's pre editing or pretesting. Now, I know that there are some among us and certainly some out there in cyberspace who would say the examiner spent all year trying to come up with the questions just to screw you.

That's really not so .What they're doing, as I said, is they're trying to come up with questions to test your ability to work through, the tasks of a lawyer with minimal competency. And how do they do that? I would say one of the ways they do it is they take tried and tested fact patterns and then they modify them just a little bit.

But what they're really trying to do is to test whether you understand the law that's on the exam and they do it with slightly different fact patterns. I like that because then you can see the pattern and the good news is there's only so many ways you can create a fact pattern, for example, that would test strict product liability, but you can change the detail of the questions.

But the essentials of the fact pattern remain relatively constant. So in that sense, you can be prepared and know what the pattern is and know what the answer choices are going to look like. But no matter how much you study, and no matter how many questions you practice, there will always be new material on the multistate new questions that have new specific items, even though they resemble fact patterns.

You studied in the course. Now I would even go so far as to say that if you bought books from every single bar review course available, there would still be fact patterns on the MBE that you've never seen before that would happen. Now, I'm not suggesting you go out and buy everybody's books. I'm definitely not saying that, but what would happen is you begin to get a pattern if you did all of that, of how the questions are asked based on what we've just seen.

Now, as I said, the examiners are careful that they don't allow questions to be seen from exam to exam in order to create fairness, and so that no one's got an edge over someone else. And so again, one of the myths that people will tell you in addition to memorize and recite the law, there are some people in bar review who will say, in addition to all of that, what you really want to do is to be absolutely certain you have the questions, the ones that are on the exam. Boy, that's snake oil. There is no such thing, and I hate to burst your bubble if you thought that was true. It just doesn't work that way. No one has the questions.

If we circle all the way back around, we were looking at the problem of how to get at the MBE from the examiner standpoint. And one of the questions that I think you want to be aware of, though, it may not have occurred to you yet, is how does the examiner make sure that the test itself stays relatively equal or constant in difficulty?

Because that obviously would affect the scoring. And we want the scores to stay constant. And so this brings us back to our idea of marker questions. And this is how the examiners fairly measure how people do year to year or test to test. And so in order to solve that problem, many years ago, the examiners came up with this marker, or sometimes they call them equator questions.

And it's actually pretty clever. Essentially what the examiners do is that on each administration of the test, we're now not talking about testing or evaluation questions, but in the 175 questions that actually count on each exam, there are roughly 30 to 35 questions that you're going to be taking that actually did exist on a prior exam sometime in the past.

Now remember, you will never see the fact patterns before, but there are 30 questions of the 175 that are in fact repeat questions, and these questions are not from one specific exam. They never come all from the same exam. Instead, they're from a variety of exams in a period of a rolling period that can go back several years previously and they continue to roll on.

Some of the questions might go back many, many years, some from maybe two or three years ago. And those questions are rolling and repeating. So it's never a question of coming back



and taking the exam and seeing the same 30 questions that you saw last time, two exams in a row or anything even close to that.

But the net effect for the test taker is that it looks like all the questions are brand new, when in fact they are not. Now, the purpose of these marker questions is to compare how people did on the marker question in previous exams, how many got those questions correct when the test was given previously, and how many got that marker question correct on this administration of the exam.

Once the examiners have a base number of how people did previously on a question, they compare that to the number of people who got the question right from the prior exam and how those people scored, and then they look at how many people got that question right on this exam and what their raw scores look like.

And what that does is allow the examiners to create a relative strength or weakness of this test taking population. In other words, they're looking at all multistate takers across the country, not in just one jurisdiction. And this is the basis of the scaled score that you hear being discussed. I think it's important to understand this is not just the people that took the exam in California or New York or Florida.

It is national and it's done very quickly after the bar exam is administered. So the conference of bar examiners are not testing or evaluating whether or not this administration of the exam is harder or easier, and this is, this is key. What they're actually doing is looking at the overall test population saying we need to stabilize for that population.

So, for example, if 50% of the bar takers got a marker question right previously, but on this administration of the exam, only 40% of the people are getting this question correctly. Then in effect, the examiner say, we have to give a slightly higher bump in scaled scores to bring the number of people back up to that 50% scaled scoring level.

And that's essentially what the examiners are doing. Thank goodness for computers and psychometric testing skills. They're able to do it pretty quickly, but what they're trying to do is to figure out whether the people who take the bar exam today are a little smarter, a little better prepared, or a little less prepared.

I don't want to say they're less stupid. That's never true, but just less prepared than people were on the previous exams and they want to use these equator or marker questions for that purpose. But remember questions from 30 40 50 years ago may not solve that purpose for them because they've done all this pre editing now.

So the purpose of the marker question is to help create a scale that adjusts the test overall, either up or down. I've never been aware in over 60 administration. So the exam that the test has been adjusted down from the base level. and the reason for that is that I think the test is simply gotten harder and harder, and they want to make sure that the result, the performance stays relatively constant.

So the scale has always gone up. Now, if everything I just said was complete psychobabble and geek to you, that's fine. You don't need to know it. But for those of you that are

appropriately, analytical, it's very simple to see what happens when you go back and you look at the statistics of the MBE over the past 15 or 20 years, you will find that, for a long period of time, the average score stayed relatively constant.

Over the last 10 years. As I'm recording today, it's been, as I said, a scale of ne 137 to 142 from exam to exam. And the biggest change is really between February and July, year to year. Now, that's despite the fact that hundreds and hundreds of thousands of people have taken this test. And how in the world could that possibly be?

Well, the only way you can make everyone come in at the same number or the same range of numbers is by modifying the scaled score each time so that it puts a predetermined number of people in each percentile. And that's what the examiners are doing. They are not as many people in the industry say, they're not trying to determine whether the exam itself was harder, easier.

I've say it again. They're actually comparing the population of bar takers. So if you're in with a group of relatively not good test takers, congratulations, you get to rise above that level. If you happen to be put into a group of really good test takers taking the test, it would be unfortunate. But here's the really good news that's never happened and we can thank the big box bar reviews for that.

The other really important point to keep in mind about all of this is that you need to stay ahead of the curve. If you can do that, if you're one of the successful people in a group of people that aren't doing generally very well, as we've seen certainly happen over the last 10 years, you get an enormous boost.

It's sort of like a hyper boost from the scaled score, and that's why it's good to be studying and preparing as a contrarian. That is to say, if you're taking the exact same course and you're exposed to the same study approach and the same information that 90% of the bar takers are taking, you're going to get lumped in with that 90% group.

But if you're part of the 10% that's doing something different and you're doing something better than it throws you way ahead of the curve. And that's the reason why our students consistently outperform the MBE averages year after year exam after exam. Even though most of our students have previously failed the bar.

As I say, the bar examiners use these past equator or marker questions to make sure that the way students are performing now and the way they performed earlier are roughly equivalent. And they adjust the scaling factor. And so when you hear about scaling, that's where it really comes from. Now, in saying all of this, I have to tell you, I feel a little bit like telling children, there's no Santa Claus, but really this is what it's about.

You know, I've heard some people say in my industry that multi-state is really a multiple guess exam, but there was a very interesting study that was done on this topic, and I want to share with you a little bit about it now, this study took incoming law students who had not yet been to law school and they let them participate in the morning session of the MBE,

along with people who'd already been through law school and were actually taking the test for real.

And what they did was to make sure the control group had exactly the same LSAT scores. So the incoming law students had the same LSAT scores as the measure group of bar takers who are going through and taking the exam. In other words, these people would have theoretically the same level of test taking ability.

And so those were the groups that were being compared. Now, the interesting point was that if the theory was that it's just about taking the test, that's game theory. If that theory is correct, those two groups should have come in very closely aligned on their scores. However, significantly the highest multistate score, the pre-law student was lower than the lowest multistate score of any of the law school graduates.

In other words, the results were nowhere near the same. They were in fact, dramatically different. The best multistate score from a pre law student was lower than the worst multistate score of a law school student. Now, what that told the examiners and the people conducting the study is that the exam is not just an aptitude test.

It's more than that. It's not just a question of your ability to take multiple choice questions and answer them. It's not a reading test. It's not a how smart are you test. So when you hear the inevitable, "Oh, I've got this friend and this friend never studied, and they just went through and took the test and they passed."

You know what? That's crazy. it really is, and you've got to get past those kinds of crazy stories that you hear from people. The one-off the Black Swan, it's not representative of what happens. And somewhere along the way that crazy friend really did study and did learn because what the tests and the analysis tells us clearly is that the bar exam is not an IQ test.

It is not a test of how good a test taker you are. In fact, there's something else really going on. So fair to say, what does that other thing that's going on? Well, here's what the examiners say, and I agree the test is actually the ability to reason properly, to a conclusion, to apply the law and reason to a conclusion.

And that's a skill that law students typically acquire over three or four years of study that pre-law students do not yet have. So it is not a matter of knowing the rules. It's instead learning how to reason to a conclusion. And that's why you have to go through the material and practice the questions.

You have to get used to seeing the fact patterns and the way that they're presented to you in this kind of a test. Now, something else that people mentioned fairly frequently to me is that the bar exam questions are just too difficult. They're too arcane and tricky. They're designed to screw you up, and I'm sure that it can be argued that the examiners do try to come up with new and clever fact patterns.

But I also think you have to be fair and say, the examiners go to great lengths that they are not testing something that is too tricky or too arcane or too obscure. You see what the

examiners found out as they studied the statistics after each exam, is that about two thirds of the cabinet, 66% or so, select the right answer for a typical question.

In other words, about two thirds of the students will select on any given question, the right answer, and that's required before the examiners come to believe that that question is a good workable question. In other words, you need a two thirds majority to get the question right to put the question on the exam.

When or if the examiners detect a question and a result outside the norm. In other words, if too few students get the question correct or too many students pick what they thought was a wrong answer, then the examiners go back to the the test and they question it and they may decide, you know what? We're either going to throw that question out or we're going to make perhaps two answers correct.

In order to assure that no applicant was disadvantaged by having a particular question appear on their form of the multistage. And my point in telling you that is twofold. Number one, you do have to know the laws I've said. And secondly though, the exam is difficult, the exam is also fair, and for these scores to stay constant across the years, as we pointed out, the examiners who had to make it a fair test.