Bar Exam Fundamentals

for Legal Educators

NCBE National Conference of Bar Examiners

Building a competent, ethical, and diverse legal profession.

Contents

1 **Greetings from the NCBE President**

2 **What is NCBE?**

3 **How does NCBE partner with law schools?**

4 **How is the bar exam developed?**

8 **How does NCBE know that the bar exam tests knowledge and skills that are relevant for new lawyers?**

10 **How does NCBE ensure that the bar exam is fair for everyone?**

12 **How is the bar exam scored?**

13 **Why aren't bar exam results available immediately?**

14 **Why do bar exam scores need to be equated and scaled?**

15 **What is equating and how does it work?**

16 **What is scaling and how does it work?**

17 **What support is available for jurisdiction graders?**

Back cover
Additional resources

302 South Bedford Street | Madison, WI 53703
ncbex.org | thebarexaminer.org

/ncbexaminers
company/ncbex
/ncbexaminers

© 2020 National Conference of Bar Examiners. All rights reserved.

Greetings from the NCBE President

Educating and licensing lawyers to provide competent legal assistance to those who need it is vitally important work. At the National Conference of Bar Examiners (NCBE), we are proud to partner with law schools and jurisdiction bar admission agencies to help ensure that the public will be served by qualified attorneys, and we are committed to supporting the legal education community as you work to prepare the next generation of lawyers.

The questions we address in this publication are drawn from conversations we've had with legal educators across the country; we hope the answers we provide will be valuable for you. We believe that the more information you and your students have about how the bar exam is developed, administered, and scored, the better prepared your students will be to take and pass the bar exam.

Sincerely,

Judith A. Gundersen
NCBE President and CEO

What is NCBE?

The National Conference of Bar Examiners (NCBE) is a not-for-profit organization that develops the licensing and professional responsibility exams used by most US jurisdictions for admission to the bar. We develop the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), the Multistate Performance Test (MPT), and the Multistate Professional Responsibility Examination (MPRE). The bar admission agency in each jurisdiction is responsible for administering the bar exam in that jurisdiction.

We also provide education and support to bar admission agencies and legal educators, perform character and fitness investigations on behalf of some jurisdictions, provide score services to candidates, and conduct research on topics relevant to bar admissions and high-stakes testing. Additionally, our websites and *Bar Examiner* magazine serve as authoritative sources for bar admissions news and information.

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.

How does NCBE partner with law schools?

Support for Your Professional Development

We regularly offer educational workshops and conferences for law school faculty and staff. Some recent offerings:

Multiple-Choice Question Writing Workshop. This workshop for tenured law school faculty members who teach core subjects represented on the MBE featured training sessions led by law school faculty with experience writing MBE questions.

Unpacking the Bar Exam: A Conference for Academic Support Professionals. Academic support educators from law schools across the country attended this two-day conference, which provided an in-depth look at many aspects of the bar exam and bar performance, as well as the opportunity for educators and NCBE staff to exchange ideas about current issues and challenges in legal education and bar admissions.

Best Practices in High-Stakes Testing: What Legal Educators Need to Know. Cosponsored by NCBE and the Law School Admission Council, this conference for law school faculty and staff aimed to advance understanding of testing and assessment principles and implementation in support of law schools' educational missions.

More educational opportunities are being planned.

Support for Your Bar Prep Classes

You and your students can get bar exam study aids straight from the source with BarNow, NCBE's eLearning platform.

With BarNow, students can log in anytime, anywhere, and complete practice questions and simulated exams to study for the bar exam.

BarNow also has special features for legal educators. You can use BarNow in your curriculum to track students' progress as they complete simulated exams.

Prefer a paper study tool? The MBE Study Aid, available as a PDF or in hard copy, offers 210 MBE practice questions organized by subject area.

All the questions included in NCBE's study aids are real questions that were used on previous administrations of the bar exam.

For more information, visit ncbex.org/study-aids or email studyaids@ncbex.org.

Support for Student Success

NCBE is proud to collaborate with the Council on Legal Education Opportunity, Inc. (CLEO) in support of our shared goal of increasing diversity and inclusion in the legal profession. NCBE has provided funding to bolster CLEO's programs that help individuals from traditionally underrepresented racial and ethnic groups and disadvantaged communities achieve success in law school and prepare to take and pass the bar exam.

Support for Data-Driven Solutions

NCBE provides bar exam results and school-specific pass/fail lists to law schools on behalf of certain jurisdictions.

A new initiative, currently under way, will soon allow us to begin sharing summary MPRE candidate data with law schools.

How is the bar exam developed?

Each jurisdiction determines the content of its own bar exam. Most jurisdictions use one or more of the exam components developed by NCBE:

- the Multistate Bar Examination (MBE)
- the Multistate Essay Examination (MEE)
- the Multistate Performance Test (MPT)

A majority of these jurisdictions use the Uniform Bar Examination (UBE), which consists of the MBE, the MEE, and the MPT, and results in a portable score that can be transferred to other UBE jurisdictions.

MBE, MEE, and MPT questions are developed by the volunteer members of nine NCBE drafting committees with the support of NCBE's attorney editors. Questions go through multiple stages of drafting, review, and revision by the practicing attorneys, judges, and law school faculty members that compose the drafting committees, along with NCBE's attorney editors.

New questions are pretested (a best practice for high-stakes exams) so that their performance can be evaluated before they are used on a future exam.

TEST DEVELOPMENT AND PRODUCTION

Building the bar exam

NCBE's drafting committee members **write items (questions)** following NCBE's research-based guidelines.

The full drafting committee and NCBE's attorney editors **review the items.**

Two **external reviewers check the revised items** for content, bias, difficulty, clarity, and relevance.

Recently licensed attorneys **pretest MEE and MPT items.**

Drafting committee chairs and attorney editors **select scored items** for use on a new test form.

Drafting committee chairs and attorney editors **select MBE items to be placed as unscored pretest items** on a new test form.

The full drafting committee **reviews the new test form** at least twice.

MEE and MPT test forms receive two stakeholder levels of review by NCBE's MEE/MPT Policy Committee and user jurisdictions.

NCBE test production staff members **prepare and review exam materials.**

NCBE test production staff members perform a **final quality-control check** on exam materials.

Exam materials are **shipped to the jurisdictions.**

IN DEPTH

Writing questions for the Multistate Bar Examination

The process of developing MBE items (questions) begins with the members of the seven MBE drafting committees. Each member, or drafter, individually drafts initial versions of new items. Drafters are provided with test specifications that identify the topics to be tested within each subject area (e.g., from the MBE Contracts subject-matter outline, this might be "formation of contracts" or "contract content and meaning"). With this general guidance, the most difficult stage of the drafting process begins—conceptualizing an item. In generating ideas for items, drafters may turn to cases, treatises, Restatements of the Law, and their experiences as professors, practitioners, and judges.

Drafting principles

The four principles that guide drafters in item writing are based on best practices derived from psychometric research and specify that items should

1. be clear and concise;
2. use only the minimum number of actors and facts necessary to support the correctness of the key (the correct answer) and the plausibility of the distractors (the incorrect answers);
3. test core concepts rather than trivial or obscure topics; and
4. assess examinees' knowledge of legal doctrine and their ability to apply legal reasoning and lawyering skills and strategies rather than rote memorization.

These principles also instruct drafters to aim for a level of difficulty that corresponds to the minimum competency expected of newly licensed attorneys.

The review process

The attorney editor

After a committee member drafts a set of items, the items are submitted to the NCBE attorney editor assigned to that particular committee. Committee members also provide a citation to the rule, case, or other legal authority that supports each item. Attorney editors engage in a detailed review of each item, focused on its compliance with NCBE best practices. Attorney editors send comments to drafters, who then have an opportunity to respond to the editor's concerns.

The outside experts

Items are also reviewed by two outside content experts, a practicing lawyer and a law professor, both with subject-area expertise. These reviewers engage in a process similar to that of attorney editors but focus primarily on whether a question tests a core concept and is realistic and whether the key (correct answer) represents an accurate reflection of the current law on the topic being tested. The reviewers also determine whether the item is at the appropriate level of difficulty, whether more than one option is potentially correct, whether a question is imbued with any subtle bias, and whether each distractor (incorrect answer) is plausible. External reviewers' written comments are shared with the entire committee for discussion.

Committee revisions

Committee members subsequently discuss and edit items in response to the concerns raised by the attorney editor and the external reviewers, as well as one another's concerns. If editing fails to resolve a concern, an item will either be assigned to a committee member for further revisions or retired (never placed on an exam). Items that have been revised to address concerns or those for which there are no concerns are promoted to pretest-ready status.

Pretesting

The attorney editor and the committee chair select items to be pretested from this group of pretest-ready items. At each administration of the bar exam, 25 of the 200 items that appear on the MBE are items that are being pretested and are therefore not scored. (The remaining 175 scored items have already successfully passed the pretest process.) Examinees' performance on these pretest questions is carefully evaluated to determine whether the questions meet NCBE statistical standards and can be included as scored questions on a future MBE. Pretest items that fall outside of these statistical standards are submitted for review by the committee, which has the opportunity either to edit the items or to retire them.

Adapted from "Drafting MBE Items: A Truly Collaborative Process," by Professor Timothy Davis, chair of NCBE's MBE Contracts Drafting Committee (*The Bar Examiner,* Fall 2019).

How does NCBE know that the bar exam tests knowledge and skills that are relevant for new lawyers?

NCBE periodically conducts studies to ensure that the content of the bar exam remains relevant and appropriate for a legal licensure exam. Additionally, the expertise of the attorneys, judges, and law school faculty members who compose our drafting committees helps to ensure that content remains current and relevant.

In 2018, NCBE appointed a Testing Task Force charged with undertaking a comprehensive three-year study to ensure that the bar exam continues to test the knowledge, skills, and abilities required for competent entry-level legal practice in a changing profession.

How does NCBE ensure that the bar exam is fair for everyone?

Fairness on the bar exam begins with the questions themselves. All question writers and editors receive bias training, and should have fairness in mind as they draft and review bar exam questions. Once drafted, questions undergo additional review for potential bias; if there is any concern that a subset of candidates (such as one based on race, ethnicity, age, or socioeconomic background) might be at a disadvantage, the question is archived or revised and resubmitted for a new review. Multiple rounds of statistical review also help evaluate each item's fairness.

To provide a fair exam for every candidate, NCBE also provides extensive training and support to jurisdiction bar admission administrators, helping to ensure that the exam is administered under standardized testing conditions following consistent policies and procedures. And, because test security is also necessary to exam fairness, NCBE takes multiple steps to keep exam material secure from the beginning to the end of the testing process.

Finally, fairness and consistency in scoring are crucial to a fair bar exam. Tools like the Grading Workshop sponsored by NCBE for jurisdiction graders after each exam support consistency in written scores, while equating the MBE and scaling the written components of the exam help us ensure that test scores mean the same thing over time.

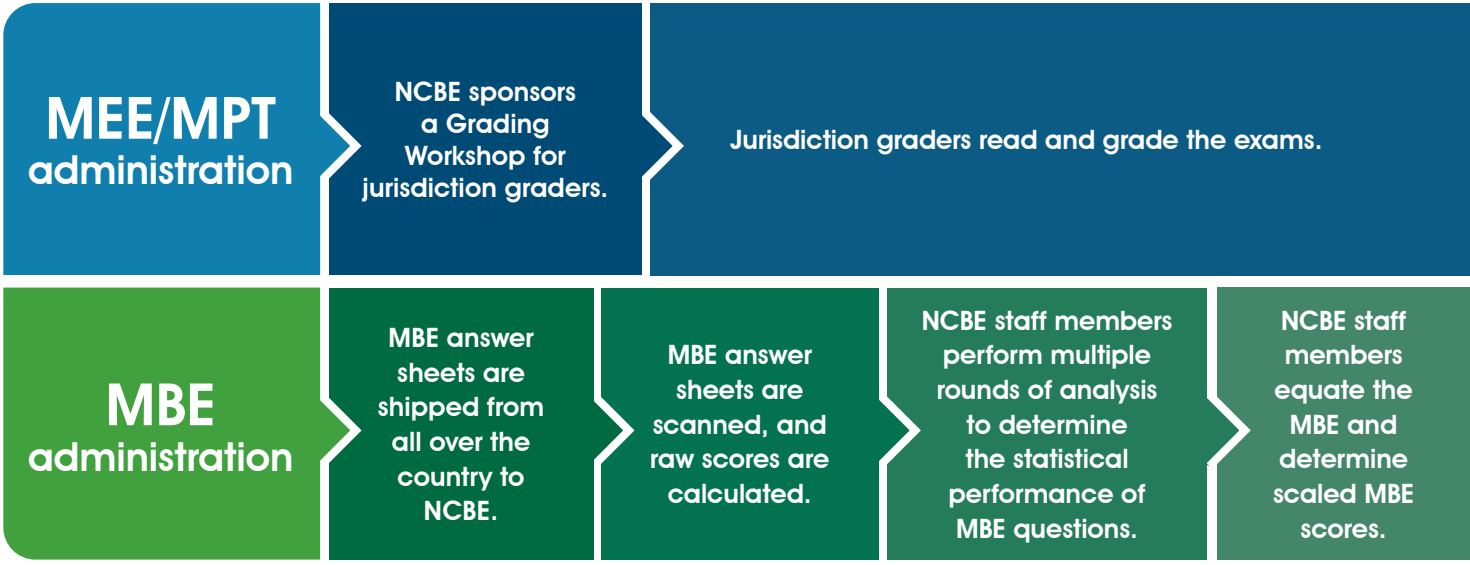
How is the bar exam scored?

Scoring the bar exam is a team effort by NCBE staff, jurisdiction bar admissions staff, and jurisdiction graders. NCBE scores and equates the MBE, jurisdiction graders grade the written portion(s) of the exam, and (for many jurisdictions) NCBE then scales those written grades to the MBE. (See pages 15 and 16 for more information about equating and scaling.)

Each jurisdiction determines the passing score, or cut score, required for candidates to be admitted to practice in that jurisdiction.

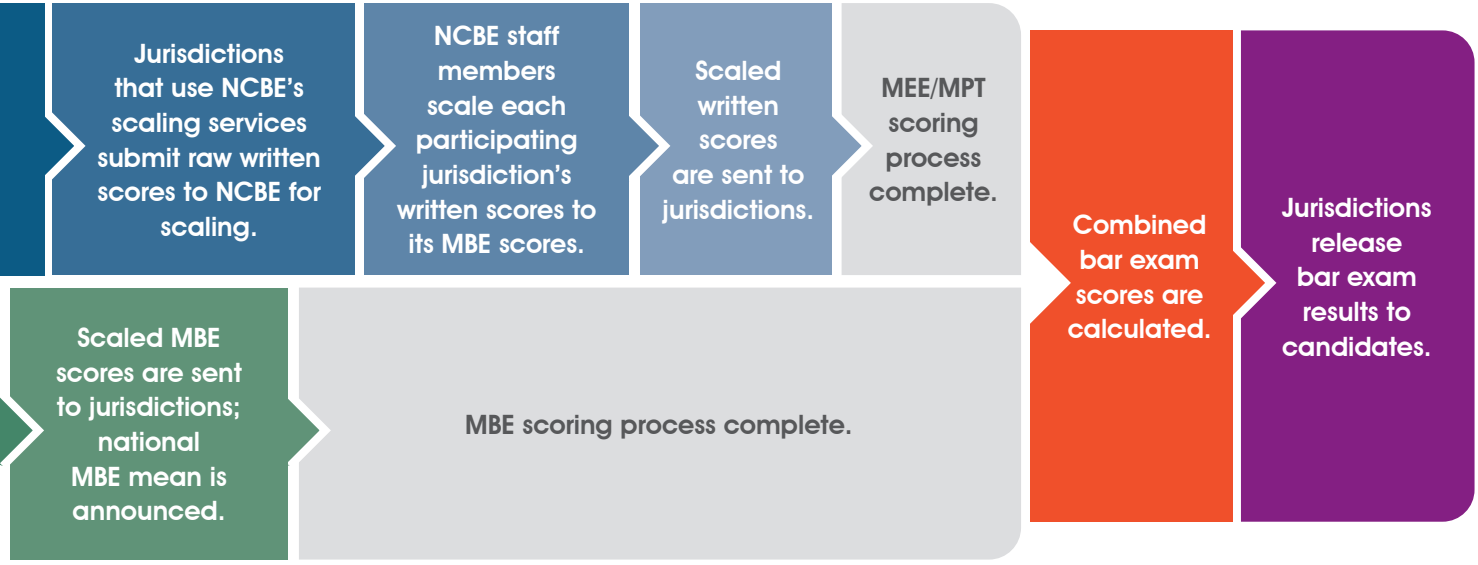
FROM TEST DAY TO TEST RESULTS

Scoring the bar exam



Why aren't bar exam results available immediately?

Scoring the bar exam is a multistep process. Simply put, it takes time to equate and score the MBE, to read and grade the written portions of the exam, and to produce final combined scores. In addition, every stage of the process receives multiple quality checks. The diagram below shows the sequence of events in the scoring process (the details and timing of the process vary by jurisdiction).



Why do bar exam scores need to be equated and scaled?

Equating and scaling are best practices for high-stakes testing. Although the procedures for equating the MBE and scaling written scores are different, both are performed for similar reasons: so that scores will remain consistent, no matter where or when the bar exam is taken.

The bar exam provides a consistent and accurate measure of candidates' proficiency. Differences in bar exam scores should reflect differences in proficiency—nothing more. To help ensure that this is the case, we need a way to adjust for other factors that could potentially (and inappropriately) affect scores—for example, differences in the difficulty of the questions, or, in the case of written exam components, differences between graders. Equating the MBE and scaling written scores to equated MBE scores allow us to do that.

What is equating and how does it work?

What is equating?

Equating is a statistical procedure that makes adjustments to candidates' MBE scores to compensate for variations in exam difficulty.

Why is the MBE equated?

While NCBE constructs the MBE carefully to minimize differences in difficulty from one exam to another, some variation in difficulty is unavoidable. Equating helps us ensure that current candidates' scores accurately reflect only their proficiency rather than any potential differences in the difficulty of the questions they answered.

How is the MBE equated?

There are many equating methods available; the approach used for the MBE is to include a set of previously administered questions known as equators on each exam. We can then compare the performance of current candidates with that of previous candidates on this common set of questions.

What is scaling and how does it work?

What is scaling?

Scaling is a procedure that statistically adjusts a jurisdiction's raw scores on the written components of the bar exam (the MEE and the MPT) so that collectively they have the same mean and standard deviation as the jurisdiction's scaled MBE scores.

Why are written scores scaled?

Performance on the written compo nents of the bar exam cannot be equated the way MBE performance can. Written questions are too memorable and there are too few of them to create and embed a mini test of previously administered materials on a current examination.

Instead, to ensure that written scores accurately reflect candidate proficiency, they are scaled to the MBE. This process takes advantage of equated MBE scores, which have consistent meaning over time. It uses those MBE scores as an anchor for statistically adjusting the written scores to account for fluctuations in written exam difficulty and/or grader stringency, while preserving the rank order of the written scores. Having written scores on the same scale as MBE scores also makes it possible to combine them into a single total bar exam score.

How are written scores scaled?

To produce scaled scores, we first determine the position of each raw written score relative to the mean and standard deviation for all the written scores in the same jurisdiction on the same administration of the exam. We then use a formula to anchor this information to the jurisdiction's scaled MBE mean and standard deviation, preserving the information about each score's position relative to those anchor points.

Linking written scores to MBE scores in this way is feasible because the content and concepts assessed on the MBE and the written components are aligned, and performance on the MBE and the written components is strongly correlated.

What support is available for jurisdiction graders?

Every jurisdiction that uses the MEE or the MPT receives grading materials from NCBE to provide to their graders. These materials provide detailed discussions by item drafters of the issues raised in the exam questions, as well as suggested resolutions or analyses of those issues.

Additionally, after every administration of the bar exam, NCBE sponsors a hands-on Grading Workshop for jurisdiction graders. Hundreds of graders attend each workshop. Individual workshop sessions, led by members of NCBE's MEE and MPT Drafting Committees, are held for each question. Participants are given real candidate answers (submitted by bar administrators from all over the country) and asked to assign a grade to each answer using a relative score scale. An in-depth discussion between graders and facilitators follows.

The Grading Workshop alerts graders to common answer trends and gives them a head start on calibration—the development of coherent and identifiable grading judgments so that rank-ordering is consistent throughout the grading process as well as across multiple graders.

Additional resources

The Bar Examiner magazine and website

NCBE's quarterly magazine, the *Bar Examiner,* is a one-stop resource for news and in-depth articles relating to all aspects of the bar admissions process. A wealth of information about testing, bar admissions, legal education, and the legal profession is available on the Bar Examiner website at thebarexaminer.org.

Statistics

Each spring, NCBE publishes annual bar examination and admission statistics gathered from all US jurisdictions. Statistics are available at thebarexaminer.org/statistics/.

The Comprehensive Guide to Bar Admission Requirements

The *Comprehensive Guide to Bar Admission Requirements,* published in collaboration with the American Bar Association, provides annually updated information on bar admission requirements in all US jurisdictions, including a directory of state bar admission agencies. View it at ncbex.org/publications/bar-admissions-guide/.

Ready to learn more about testing concepts?

Try these *Bar Examiner* articles:

- Scaling: It's Not Just for Fish or Mountains (December 2014)
- Equating the MBE (September 2015)
- It's All Relative—MEE and MPT Grading, That Is (June 2016)
- Q&A: NCBE Testing and Research Department Staff Members Answer Your Questions (Winter 2017–2018)
- Bar Exam Q&A: 13 Questions from Inquiring Minds (Fall 2018)
- How Are Questions Written for NCBE's Exams? Part One: Two Multiple-Choice Question Drafters Share the Process (Fall 2019)
- How Are Questions Written for NCBE's Exams? Part Two: Two Written-Component Question Drafters Share the Process (Winter 2019–2020)

thebarexaminer.org

NCBE National Conference of Bar Examiners

Building a competent, ethical, and diverse legal profession.