A Response to Criticism of the Bar Exam

by Suzanne Darrow-Kleinhaus

These excerpts are from an article originally entitled "A Response to the Society of American Law Teachers Statement on the Bar Exam" that appeared in 54 Journal of Legal Education 442–458 (September 2004) and are reprinted with permission of the author and the journal.

In a perfect world there would be no tests, and a test like the bar exam would probably be outlawed instead of required for the practice of law. . . . The bar exam—or any exam—would be unnecessary because we would all be born with superior intellects, abilities, and capacities, and the assessment of individual competencies would be irrelevant. But in our world competence matters, as it does in the case of a lawyer's ability to engage in critical analysis. The bar examination, by testing competency in the most basic and essential analytical skills required for the practice of law, serves a necessary function.

The bar exam does not seek to test, nor could it possibly test, all of the skills associated with the practice of law. Rather, the bar examiners have recognized what can be tested effectively and test only those skills. This should be considered a strength of the exam and not a weakness. . . . Of course, the bar exam does not measure a candidate's ability . . . to perform legal research, conduct factual investigations, communicate orally, counsel clients, and negotiate. . . . These are skills rightfully measured by law schools. Similarly, the bar exam does not test or purport to test a candidate's commitment to public service or willingness to work with underserved communities; these are not skills but value judgments, surely not within the purview of the bar exam to consider, let alone examine. But the bar exam does test such skills as reading comprehension and reasoning, identifying and formulating legal issues, organizing information, following directions, and the ability to write.[1] Each of these skills is fundamental to the competent practice of law . . . .

I believe that the bar exam appropriately serves its purpose. I have come to this conclusion after five years of working with candidates who had failed the bar exam multiple times and who passed after we worked together. They passed because they learned to read carefully and actively. They passed because they learned the rules with precision and specificity. They passed because they learned to write a well-reasoned argument based on an analysis of the relevant issues and an application of the law to the facts. They passed because they learned that there were no tricks to be applied, only the law.

. . .

The Bar Exam's Role in Assessing Competency

The bar examination seeks only to test the fundamental skills that should have been learned in law

school. . . . [There are] two very important aspects of the bar exam: first, that bar passage is only one of a number of jurisdictionally set criteria candidates must meet before gaining admission to the practice of law[2] and, second, that the bar exam does not purport to test more than the basic analytical skills required for legal practice. Still, the exam has become the most analyzed, criticized, and contested part of the bar admission process. Perhaps that is because it stands as one of the final hurdles to admission; perhaps it is simply because bar exam failures are visible for all to see.

I submit that the bar examination

- seeks to measure the analytical skills required for the practice of law, which requires an understanding of the rules and not just the ability to memorize.
- tests the ability to act and not react under pressure.
- requires a sound mastery of legal principles and basic knowledge of core substance for which tricks or techniques cannot be substituted.
- covers the subjects students should have learned in law school in preparation for the general practice of law.
- neither demands nor requires the sacrifice of skills-based courses for substantive courses.

THE ESSENCE OF LAWYERING IS COMMUNICATION. ESSAYS AFFORD THE BAR EXAMINERS A BASIS FOR EVALUATING A CANDIDATE'S ABILITY TO COMMUNICATE KNOWLEDGE OF THE SUBSTANTIVE LAW IN AN ORGANIZED AND ARTICULATE WAY.

The bar exam adequately assesses competency in the basic analytical skills required for the practice of law.

The bar exam is designed to see whether the law graduate has mastered the legal skills and general knowledge that a first-year practicing attorney should have. While this means a firm grasp of black letter law, it also means a solid grounding in basic analytical, reading, and writing skills. A candidate must demonstrate mastery of the fundamentals of IRAC (the Issue-Rule-Application-Conclusion structure of legal analysis), must read carefully, and must communicate in the language of the law. Further, the bar exam seeks to test these skills, when possible, in a context that relates to their practical significance. Accordingly, when it tests the applicant's ability to read and follow directions on the Multistate Performance Test, it addresses the lawyer's need to comprehend and adhere to the rules of the federal and state courts as well as the rules of individual judges; similarly, when the exam requires the candidate to complete an assigned task on the MPT within a prescribed time, it acknowledges what we all know to be true: that lawyers work under time constraints and deadlines.

Anyone who reads what the bar examiners write and looks at the exam questions can see that the bar exam is concerned solely with testing basic skills. In directions to applicants available in state publications, in postings on their Web sites, and in the National Conference of Bar Examiners' bulletins, the bar examiners tell candidates exactly what they expect when grading essays, and they all share the

same expectation: a well-reasoned argument based on an analysis of the relevant issues and an application of the law to the facts. NCBE advises candidates who take its Multistate Essay Examination:

> Each of your answers should show: an understanding of the facts; a recognition of the issues included; the applicable principles of law; and the reasoning by which you arrive at your conclusion. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.[3]

Logical reasoning is so important that "credit is given . . . for well reasoned analyses of the issues and legal principles involved even though the final conclusion may be incorrect."[4]

While bar exams vary by jurisdiction, each one tests the candidate's ability to write.[5] Some states consider the ability to communicate in a lawyerly manner so essential that the written portion of the exam is weighted more than the Multistate Bar Examination; in fact, some even give the essays twice the weight of the MBE.[6]

The essence of lawyering is communication. Essays afford the bar examiners a basis for evaluating a candidate's ability to communicate knowledge of the substantive law in an organized and articulate way. That is why law schools rely so heavily upon them. If there were viable alternatives, law schools would certainly use them. But they do not, and it is not likely that they will anytime soon.

Actually, bar exam essays are quite unlike law school's lengthy, issue-laden morass of parties and problems. Instead, the bar candidate finds a narrow, issue-driven question[7] or a general question where the task is to evaluate possible courses of conduct or competing theories of the case. . . . Unlike typical law school exam questions, even the general questions are focused and limited in the actual number of issues tested.

Bar examiners rely on essays for the same reason that law teachers do: writing a well-constructed legal essay is a learned skill that requires mastery of the law and the nature of logical argument. In working with candidates preparing to retake the bar exam, what I found perhaps most incomprehensible was that after three and sometimes four years of law school, and presumably after reading hundreds of cases, these candidates sounded nothing like lawyers. The language of Holmes, Cardozo, Brennan, and Blackmun had not made the slightest impression on them. In their essays, there was not a scintilla of evidence that they had even attended law school. The "problem" was not in the bar exam questions but in the way they approached and answered the questions. The concept of an issue-based analysis had eluded them; it was absent from their essays and, more important, from their thought process[es].[8] These are core legal skills. A licensing process that fails to assess the candidate's ability to write, analyze, and reason logically would be not only inadequate but suspect.

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The bar exam tests understanding of the rules of law, not simply the ability to memorize.

The bar exam requires one to know the rules of law with precision and specificity; it also requires a solid understanding of those rules. Memorization plays a part, but no more nor less than it does throughout the educational process. We have all had to memorize the elements of the intentional torts, the rule against perpetuities, the types of jurisdiction, and the standard for summary judgment. The same principle applies here. While the process may begin with rote memorization, the end result is knowledge of the material, for the bar exam and for law practice.

If the bar exam were solely a test of memory skills, the students I worked with surely would have passed on their first attempt; they had memorized the rules of law. But because they did not really understand them, they could not recognize a rule when it assumed a different form or appeared in language different from what they had memorized. They needed to know when a particular rule was implicated by the facts. By failing to identify the issue, they failed to recognize when a particular rule was in controversy. Then it did not matter whether they knew the rule or not. They never got to apply it because they did not see the issue.

In working with students in academic difficulty, I have learned that deficiencies in these areas are as typical of poorly performing law students as of those graduates who fail the bar exam. Both groups have the same weaknesses: the inability to identify the legal issues, the failure to separate relevant from irrelevant material, and the absence of a reasoned, organized analysis which demonstrates an understanding of the relevant legal principles. If these deficiencies are not corrected by the time students graduate, it should come as no surprise if they fail the bar exam.

A solid knowledge of the rules of law is required to write bar exam essays and answer objective short-answer questions. Unfortunately, too many candidates walk into the bar exam without truly understanding enough black letter law. A candidate could spend hours studying intentional torts, presumably "know" the elements of a battery, and nevertheless answer questions incorrectly if this knowledge was based solely on memorization without genuine understanding. This is because the bar exam, like a typical law school exam, does not test a candidate's superficial knowledge of the law.

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An example from a past MBE illustrates this point nicely.[9]

> Peavey was walking peacefully along a public street when he encountered Dorwin, whom he had never seen before. Without provocation or warning, Dorwin picked up a rock and struck Peavey with it. It was later established that Dorwin was mentally ill and suffered recurrent hallucinations.
>
> If Peavey asserts a claim against Dorwin based on battery, which of the following, if supported by evidence, will be Dorwin's best defense?
>
> A. Dorwin did not understand that his act was wrongful.

B. Dorwin did not desire to cause harm to Peavey.

C. Dorwin did not know that he was striking a person.

D. Dorwin thought Peavey was about to attack him.

I typically ask this question when I begin working with a student and use it as a kind of legal Rorschach test to evaluate the student's substantive knowledge and analytical skills. Of course, the correct answer is C, but most of my students answer the question incorrectly. Not surprisingly, B is the most popular choice among both first-time and repeat test takers. Why? Because if you read the question quickly and scan the answer choices, you jump to B because it contains the familiar battery language: "desire to cause harm." For example, one student who chose B explained that because a battery is the intentional harmful or offensive touching of another, if Dorwin did not intend to cause harm, then he could not have committed a battery. "Yes," I replied, "but did Dorwin have to intend harm to commit a battery?" The student conceded that Dorwin need not have intended harm to be found liable in battery.

Choice A is only slightly less popular than choice B. Like B, choice A reflects a student's tendency to react to an answer instead of applying the elements methodically to the issue. One student explained his choice of A as follows: if Dorwin did not understand his act to be wrongful, then it could not have been intentional. Just as in B, this reasoning is flawed because the intent element of battery is satisfied not only when the actor intends harmful or wrongful behavior, but if he acts with purpose or knowledge to a "substantial certainty." Dorwin need not have understood his act to be "wrongful" to have formed the requisite intent: he had only to know what would be the likely consequence of striking Peavey with a rock. Only choice C completely negates the intent element: if Dorwin had no idea (no "knowledge") he was striking a person, then he could not have formed the requisite intent to do the act.

A surprising number of students select D. Interestingly, there are two lines of incorrect reasoning to support this choice. One rationale is that self-defense is a valid justification to excuse Dorwin's act. "Where in the facts do you find any basis to believe that Peavey was about to attack Dorwin?" I asked. The students shook their heads. "Nowhere," each reluctantly conceded. Once again, they had reacted to a possible answer without analyzing it within the factual context of the problem. If they had, they would have realized that there were no facts in the question to lead Dorwin to believe Peavey was about to attack him. In fact, careful reading of the problem would have ruled this answer out completely because the first words tell us that "Peavey was walking peacefully"; it was "without provocation or warning [that] Dorwin picked up a rock."

The other line of reasoning relies on the M'Naughton rule regarding the insanity defense to a criminal act. But this was not a criminal prosecution. We are told that "Peavey asserts a claim against Dorwin based on battery," which must mean that it is a claim in "civil" battery; in criminal battery the state initiates the action. The candidates who hit upon the M'Naughton rule failed to read the facts carefully.

Merely memorizing the elements of battery is insufficient here because the bar exam requires an analysis of the question followed by an analysis of each possible answer with respect to the legal issue posed above. Since each multiple-choice question is

really a mini-IRAC, a candidate who fails to identify the issue or misreads the question will likely choose a wrong answer, even though all the candidates could probably recite the elements of a battery in their sleep.

The MBE is meant to weed out those candidates possessing anything less than mastery of the black letter law with a level of detailed sophistication. This is not to say that a candidate must walk into the exam knowing every single rule of law and its fine distinctions. Considering that a candidate can pass the bar exam despite answering almost 80 out of 200 questions incorrectly (depending on the weight accorded the MBE in a particular jurisdiction,[10] it is evident that one need not know every rule to be deemed "minimally competent" to practice law.[11]

. . . While it certainly might be improved,[12] the MBE is a means of testing a range of substantive law while keeping the grading process manageable. Multiple-choice tests can be graded objectively, free from the possibility of human inconsistencies. Some candidates actually prefer multiple-choice questions because they find it easier to select the correct answer than to articulate one of their own in an essay.

The bar exam tests the ability to act and not react under pressure.

The bar exam requires a candidate to "think like a lawyer." In law school we teach our students that lawyers act; they do not react. They think deliberately and respond accordingly. The bar exam tests the candidate's ability to "think precisely, to analyze coldly."[13] Bar passage requires that a candidate respond to questions with an orderly thought process. The exam demands that a candidate remain calm under pressure and not panic.

Clearly the bar exam is anxiety-producing, but a certain level of anxiety is a good thing. Anxiety is a very real part of the lawyer's everyday world of deadlines, conferences, and trials. A lawyer cannot afford to lose control because of pressure but must remain focused.

The bar exam requires a mastery of legal principles and core substance; tricks or techniques are no substitute.

When I work with candidates preparing for the bar, especially those who are retaking the exam, I do not teach tricks or strategies for bar passage, unless

- it is a trick to write an issue-based analysis.
- it is a trick to distinguish between legally relevant and irrelevant facts.
- it is a trick to include a solid discussion of the relevant rule of law before applying it to the facts.
- it is a trick to read carefully and thoughtfully and comprehend what you have read.
- it is a trick to organize one's thoughts before writing.
- it is a trick to use language carefully to convey precisely what you mean.

One of the most serious misconceptions about the bar exam is that passing it depends on tricks and techniques. There are no tricks to be learned, only the law, as any retaker will unfortunately be able to tell you. This does not mean, however, that a candidate can afford to be unfamiliar with the exam itself. One must know what to expect.

We tell our students that the key to success is preparation—preparation for class and for exams in

law school, preparation for clients and for court in practice. . . .

Not only do law students prepare for exams by studying from past exams, but practitioners regularly consult previously written complaints, memos, and briefs when drafting new motions. This is especially true of new associates in their first year of practice. Sometimes the only guidance on a project a new associate receives is a file of similar documents showing what the firm expects in terms of format, composition, style, and even specific language. Preparing for the bar exam by working with released exam questions is no different.

Admittedly, bar review courses have come to play a role in the process. But the course will be insufficient for bar passage if the student comes to it without the fundamental skills that should have been acquired in law school. The course simply puts all the rules tested in the jurisdiction in a structured, cohesive package; it does not teach anyone how to analyze a question, write an essay, or think through a problem. It assumes that the candidate learned these skills in law school.[14]

ONE OF THE MOST SERIOUS MISCONCEPTIONS ABOUT THE BAR EXAM IS THAT PASSING IT DEPENDS ON TRICKS AND TECHNIQUES.

The bar exam tests the subjects students should have learned in law school in preparation for the general practice of law.

The bar exam seeks to test a wide range of substantive law but focuses on the areas important to a beginning lawyer. It tests general topics because most law school graduates become sole or small-firm practitioners and need the basic bread-and-butter knowledge.[15] It tests general subjects and not boutique areas because law students do not graduate as experts in a particular field, although most eventually specialize and practice in one or a few areas.[16] The six subjects tested by the MBE are required courses in virtually every law school; they represent the core substance of a legal education.[17]

Perhaps more important, the bar exam acknowledges our dual system of government and recognizes the lawyer's need to know both federal and state law. Still, the bar exam remains pretty much a creature of the state. Except for the MBE, it is state-specific. Presumably it reflects the interests of the jurisdiction, as determined by that jurisdiction. Different states may test different subjects—a diversity that reflects the complexities of our form of government and, more particularly, state sovereignty in such matters.

The bar exam neither demands nor requires the sacrifice of skills-based courses for substantive courses.

. . . A school need not design a curriculum around the specific topics tested on the bar exam. Most if not all of the skills that the exam tests are already being taught routinely in law classes—both substantive and practice-based courses. Whether the course is Civil Procedure or Pretrial Litigation, students have to read, think logically about what they have read, and produce a written work product in one form or another. Every course requires legal reasoning. Any distinction between the so-called bar courses and clinical courses is a false one. Students can take both substantive and clinical courses without jeopardizing their bar passage.

Testing What Law School Teaches

Learning to think like a lawyer is the key to passing the bar. The fiction that success on the bar exam depends mainly on proficiency in taking standardized tests such as the LSAT[18] is just that—a myth that does not survive scrutiny.[19] According to a comparison between incoming law students and law graduates from the same law schools, who had virtually identical average LSAT scores, "the highest MBE score earned by the novices was lower than the lowest score earned by any of the graduates."[20] A logical conclusion is that "if general intellectual ability and test-wiseness were the major factors influencing MBE scores, both groups should have had very similar MBE scores."[21] Additional research indicates that MBE scores "are highly correlated with other measures of legal skills and knowledge, such as scores on state essay examinations and law school grades."[22] After controlling for law school quality, test reliability, subject matter and test type, time limits, and the ability to take tests, researchers concluded that "the higher the law school grade point average (LGPA), the greater the likelihood the applicant will pass. No other measured variable really mattered once there was control for LGPA."[23]

Endnotes

1. Each component of the bar exam assesses one or more of these basic lawyering skills. The essays test the ability to identify legal issues based on knowledge of the relevant law, to engage in legal reasoning, and to write in a logical, lawyerly manner. The Multistate Performance Test focuses on the ability to read and follow directions, synthesize and apply law from cases, separate relevant from irrelevant facts, and complete an assigned task in the allotted time. The MPT provides both the legal issue and the law because its goal is to test proficiency in the basic skills developed in the course of a legal education and not the ability to memorize. Finally, the Multistate Bar Examination tests the candidate's reading comprehension and reasoning skills as well as the candidate's mastery of the substantive law.
2. Each state sets its own requirements for admission to law practice within its jurisdiction, including the precise composition of its bar exam, the score required for passage, and the computation of that score. In addition to bar passage, states typically impose age, education, and moral character requirements. Education requirements specify both general education requirements and specific legal education requirements. General requirements include college work requirements and, in some cases, high school requirements. Legal education requirements specify the requirements for the law school (i.e., ABA-accredited, provisionally accredited, or otherwise authorized by statute) or, in some cases, work-study alternatives such as supervised study in law offices or the courts (California, New York). Typically, moral character qualifications are satisfied by a passing score (as determined by the jurisdiction) of the Multistate Professional Responsibility Exam and passage of a professional responsibility course in law school. But a number of jurisdictions impose additional requirements such as compliance with court-ordered child- or family-support obligations (California, Colorado, Minnesota, Nevada), letters of reference (Massachusetts, New York), character and fitness interviews in addition to passing scores on ethics exams (New York, Indiana), and evidence of mental stability, including a current mental status examination if deemed appropriate (Colorado). Some states consider a candidate's financial situation as indicative of moral character and may examine credit history (Hawaii, Kentucky, Louisiana, Nevada) or bankruptcy proceedings (Virginia). As of 2002, 34 jurisdictions provide for admission on motion based on prior practice and admittance in other jurisdictions. *See Persons Taking and Passing the 2002 Bar Examination,* 72 B. Exam., May 2003, at 14–15.
3. 2000 MEE Questions and Analyses 3 (2001). The New Jersey Board of Bar Examiners advises candidates "to identify and analyze issues and to present an organized, coherent and well-written response within the prescribed format." Suggestions on Answering Essay Questions, Rules and Regulations on How to Apply for the New Jersey Bar Exam §1(c)(5), at http://www.njbarexams.org/barbook/aic5.htm (last visited June 4, 2004). In Missouri: "The examination does not seek a recitation of legal rules by rote, but rather a demonstration of knowledge of legal principles and the ability to think and reason by applying those principles to the facts so as to come to a logical and coherent conclusion. Answers that are not responsive to the question asked will receive little or no points." *See* http://www.mble.org (last visited June 10, 2004).
4. New York Board of Law Examiners, The Bar Examination, at http://www.nybarexam.org/barexam.htm (last visited June 9, 2004).
5. Every state imposes its own essay-writing requirement for bar passage. Even states that have adopted the MBE either add their own state-based essay questions or direct the candidate to base answers on state law (Arkansas, Indiana, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, South Dakota, Utah, West Virginia). Further, while some states will transfer a passing MBE score from another jurisdiction, they still require the candidate to satisfy their own essay-writing

requirements (every jurisdiction except the District of Columbia, Minnesota, and North Dakota). I found the information for this and the following footnote from the individual bar admissions Web sites accessed through the NCBE site http://www.ncbex.org and from American Bar Association, National Conference of Bar Examiners, and Section of Legal Education and Admissions to the Bar, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS (Chicago, 2003).

6. The 17 states giving greater weight to the written portion (either a combination of essays and the MPT or only the essays) include Arizona, Arkansas, California, Delaware, Idaho, Maine, Maryland, Mississippi, Missouri, Montana, New Jersey, Ohio, Pennsylvania, Texas, and Virginia. Weighting varies from doubling (Arizona, Arkansas, Maryland, Montana, Ohio), to a ratio of 55/45 percent, to 60/40, and to one instance (Idaho) where the written portion constitutes two-thirds of the score. Twenty-two states "combine" essay and MBE scores, which means that a higher score on one section can compensate for a lower score on the other. An applicant need not pass the MBE, the MPT, or the essay portion of the examination separately to achieve an overall passing score. The states that give greater weight to the written portion of the exam also combine scores to determine a passing score. Iowa combines scores but does not indicate whether both scores are of equal weight. Louisiana and Washington are not included in these numbers because they do not administer the MBE.

7. Typically a conclusion must be based on answering a particular question. Was the court correct in granting the motion for summary judgment/for the injunction/to admit the testimony? Can the defendant successfully assert the defense of justification?

8. My assessments are based on first-hand knowledge: in working one on one with over two dozen New York bar exam retakers in the past five years, I've read several hundred failing bar exam essays. As of July 2003, 14 of 21 retakers I worked with passed the bar exam, principally on the strength of improved essay scores. Since New York releases only the MBE score to passing candidates, I was able to compare scores and determine that the difference between passing and failing was attributable to improved essay scores. New York provides unsuccessful candidates with a breakdown of scores on both the essays and the MBE and makes candidates' essay answers available for a small fee. I do not have New York statistics on passage rates for retakers, but states that publish such statistics and anecdotal evidence indicate a decreasing likelihood of passage with each taking of the exam (i.e., Massachusetts, 5th and more, 17.5 percent pass rate). *See* http://www.mass.gov/bbe/#Bar%20Exam%20Results (last visited June 10, 2004). My success rate with retakers, while not 100 percent, seems to be better than the prevailing norm.

   The first question I ask retakers is whether they've gotten their bar essays and reviewed them. Every retaker I've worked with has answered either "no" or "I ordered them but never looked at them." This is one of the primary reasons I've found that students continue to fail the exam: while they "study" again, they proceed exactly as they did before. I change the pattern: I insist on reviewing and analyzing past exam answers so the student can identify their weaknesses, which are invariably in analysis and gaps in understanding the substantive law. We also find carelessness in reading and failures to answer the question asked. In working with MBE questions, I make students explain to me why they've chosen this or that answer. Typically, we find that an incorrect answer is just as likely to be the result of faulty reading as lack of knowledge. Once these weaknesses are identified, the student works on addressing and correcting them.

   In addition to working with retakers, I've worked with first-time takers as part of Touro's bar prep program. In the past four years I've conducted workshops for graduating students (both fall and spring graduates) and worked individually with a large number of these students. Unfortunately, it is the students least in need of my assistance (those in the top quarter of the class) who typically seek me out.

9. National Conference of Bar Examiners, Multistate Bar Examination, Question 2 (1996).

10. Only six states require candidates to achieve a set passing score for the MBE: Kentucky, Rhode Island (scaled range from 135 to 140), South Carolina, Tennessee, Vermont, and Wyoming. Out of 39 states identifying scoring standards, only South Carolina sets an automatic failure based on an MBE scaled score of less than scaled 110. A candidate with a scaled score of 110 conceivably answered less than 50 percent of the MBE questions correctly. Only four states give the MBE and essay scores equal weight: Alabama, Florida, Hawaii, Kansas.

11. The NCBE provides subject matter outlines indicating the scope of coverage for each of the six subjects covered on the exam: constitutional law, contracts, criminal law, property, evidence, and torts. Not only is each potential test topic identified within each subject, there is also a breakdown by percentage of how many questions will be taken from a particular category. For example, of the 33 questions on real property and future interests, only 25 percent (8 or 9 questions) come from real property contracts and mortgages. So it is extremely unlikely that there will be more than four or five actual mortgage questions. On the other hand, it is important to know that, of the 34 torts questions, approximately one-half will be negligence questions—almost 8.5 percent of the entire MBE.

    Like the NCBE, the bar examiners of each state make vital information available to bar candidates, including the specific topics subject to examination. Most jurisdictions, if not all, include examples of past exam questions and sample answers. The Texas Board of Law Examiners, for example, goes so far as to include general guidelines to candidates for each of the tested subject areas. It offers specific, detailed comments on past exams as well, indicating the common problems encountered in grading the essays. *See* Past Examination Online, Texas Board of Bar Examiners, at http://www.ble.state.tx.us/past_exams/mainn_pastexams.htm (last visited June 4, 2004).

12. For example, the fact patterns in the MBE questions could be shorter and still adequately test reading and analytical skills.
13. Karl N. Llewellyn, *The Bramble Bush: Our Law and Its Study* 116 (New York, 1930).
14. The research indicates a strong correlation between law school grades and bar passage. Stephen P. Klein, *Disparities in Bar Exam Passing Rates Among Racial/Ethnic Groups: Their Size, Source, and Implications*, 16 T. MARSHALL L. REV. 517, 523 (1991).
15. Section of Legal Education and Admissions to the Bar, American Bar Association, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum* 27 (Chicago, 1992) (commonly known as the MacCrate Report).
16. *Id*. at 33.
17. *See supra* note 11.
18. SALT quotes Kristin Booth Glen:

    > If you take students who know how to take a test almost exactly like the bar examination and know how to take it successfully, as the LSAC study tells us is the case with the LSAT, you don't actually have to do much with those students in law school to assure their success on the bar examination (449).

19. National Conference of Bar Examiners, *Myths and Facts About the Multistate Bar Examination* (Madison, 2001). Research has found that the strongest predictor of bar exam passage is law school GPA. Linda F. Wightman, *LSAC National Longitudinal Bar Passage Study* (Newtown, 1998); see also Klein, *supra* note 14.
20. Stephen P. Klein, *The Performance of Novice Law Students and Law School Graduates on the Bar Exam* (Chicago, 1986). This research was conducted for the NCBE in July 1986; incoming law students took the morning session of the MBE.
21. *Id*.
22. *Id*. *See also* Stephen P. Klein, *Summary of Research on the Multistate Bar Examination* (Chicago, 1993). Klein's analysis of the empirical validity of the MBE included examination of the correlations between MBE and essay scores and the MBE's correlation with law school grades and LSAT scores. The studies found a strong correlation between MBE and essay scores with "an almost perfect correlation between MBE and essay scores when the unit of analysis is law schools rather than individual candidates." *Id*. at 24. MBE scores were also found to be highly correlated with law school grades (LGPA) and LSAT scores. *Id*. at 25. Analyses of July 1992 data show that at "13 of California's 15 largest law schools, LGPAs were more highly correlated with MBE scores than with this state's essay scores (median LGPA/MBE/and LGPA/essay correlations across the 15 schools were .62 and .56, respectively). The .06 difference between these correlations stems from the MBE's greater reliability (both correlations are .66 when corrected for reliability)." *Id*.
23. Klein, *supra* note 14, at 523–24 (finding that if students have the same LGPA, they are likely to do equally well on the bar exam, regardless of whether one of them is a minority student). Further, "a candidate in the bottom quarter [of the class] is much less likely to pass than is a candidate in the next quarter." *Id*.

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