

# THE TESTING COLUMN

## HOW TO TEST KNOWLEDGE OF LOCAL LAW

*by Susan M. Case, Ph.D.*

All jurisdictions have considered how to test knowledge of local law. In the past, most jurisdictions have assessed it using one or more essay questions, either using those locally developed or using the Multistate Essay Examination (MEE). Some jurisdictions have used multiple-choice questions. The limitation of using essay questions to assess knowledge of local law is that the assessment covers relatively few of the critical elements of local law that make it distinct from the law of other jurisdictions. On the other hand, the limitation of using multiple-choice questions is that they do not test an ability to communicate in writing regarding local law. It may be time to step back and reconsider best practices in test development which may help to inform decisions about how to test knowledge of local law.

There are established principles for constructing tests. The first step is to develop a statement of the purpose of the test. This step is essential for ensuring that the test is doing what you want it to do. Ask yourself the following questions:

What are you trying to assess?

What are you willing to skip?

What is being assessed by other tests that are being administered?



While these questions may seem straightforward, as with most things the more you think about them the more complicated they become.

### SELECTING THE FORMAT OF A LOCAL LAW TEST

The purpose of the overall bar examination is to assess competence in matters that are considered essential knowledge and skills for the entry-level lawyer. As a credentialing examination, the bar examination is targeted at minimum competence and is developed to protect both the public and the profession from poorly qualified practitioners.

Most jurisdictions include the Multistate Bar Examination (MBE) as part of the bar examination. The purpose of the MBE component is to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns. The breadth of coverage is significant; the test covers six content areas and presents 200 fact patterns. There is no need to cover these topics again in the sections of the bar examination designed to assess knowledge of local law except under two situations: 1) where local law is unusual and the difference is important enough to be included in an assessment of the entry-level practitioner's competence, or 2) where the jurisdiction wants to assess

an examinee's ability to write on a given topic of local law, as opposed to simply assessing whether the examinee can select an answer from a list of choices.

The second method of assessment on the bar examination is typically the essay exam, which consists of either the MEE, locally developed essay questions, or both. The purpose of the MEE is to test the examinee's ability to (1) identify legal issues raised by a hypothetical factual situation; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation. Locally developed essay tests probably have similar purposes. The primary distinction between the MEE (or locally developed essay questions) and the MBE is that the MEE requires the examinee to demonstrate an ability to communicate effectively in writing. Essay questions provide a good format for assessing the ability to write on a given topic, but they are less effective for assessing breadth of knowledge.

I suggest that assessing knowledge of local law could be separated from assessment of the ability to communicate effectively in writing. From this perspective, simple multiple-choice questions might be a better format to test knowledge of facts related to local law. For example, a 50-question multiple-choice test including simple questions of fact could be administered in an hour and assess knowledge of facts such as whether the *Daubert* or the *Frye* standard is used in the jurisdiction; whether the jurisdiction follows the title theory, the lien theory, or an intermediate theory of mortgages; whether the

jurisdiction recognizes holographic wills; whether the Uniform Premarital Agreement Act has been adopted; what type of recording statute the jurisdiction has in place; whether the jurisdiction has an anti-lapse statute; and how certain felonies are defined. These and other important distinctions cannot be covered thoroughly using the essay format; it would require too much testing time.

## ASSESSMENT METHODS UNDER CONSIDERATION BY JURISDICTIONS

Assessing knowledge of local law is being revisited by jurisdictions that plan to become part of the Uniform Bar Examination (UBE) group. As everyone who has been following the UBE movement knows, the UBE includes the MBE, six MEE essay questions, and two Multistate Performance Test (MPT) tasks, all administered over two days. Because the goal is to make UBE scores portable across jurisdictions, the UBE does not include any assessment of competence in local law. The following methods for addressing knowledge of local law are being considered by some of the jurisdictions that have already decided to use or are contemplating using the UBE; they would be equally appropriate for jurisdictions that do not intend to be part of the UBE group.

1. Assessment using an additional half day of essays following the UBE
2. Assessment using a short multiple-choice test to be administered at the end of one day of UBE testing
3. Assessment using a short web-based multiple-choice test that could be taken at a time other than during the UBE administration
4. Assessment (either by essay or by multiple-choice test) following a required course on critical elements of local law

5. No assessment, but mandatory attendance of a course on critical elements of local law
6. No assessment and no course

## SCALING THE LOCAL LAW PORTION TO THE MBE AND COMBINING SCORES

Some of the methods mentioned above would generate scores that could be scaled to the MBE and combined with the UBE or any other scores.<sup>1</sup> For example, if a jurisdiction were to have a test on local law in addition to the UBE, it would generate a UBE score for each examinee using the scores from the MBE weighted 50%, the MEE weighted 30%, and the MPT weighted 20%. This total UBE score would be portable to other UBE jurisdictions. The separate essay or multiple-choice score assessing knowledge of local law would be scaled separately to the MBE. The total score for purposes of being admitted to the jurisdiction would be a weighted sum of the UBE score and the scaled local law test score.

For example, if the jurisdiction wanted the assessment on local law to be weighted 10%, the jurisdiction total score would be the sum of the UBE score times 0.90 plus the scaled local essay or multiple-choice score times 0.10. Because the UBE score is on a 400-point scale and the scaled local component is on a 200-point scale, the scaled local component would be multiplied by two before weighting and combining. The UBE score alone would be portable. (See example on this page.) Each jurisdiction would make a decision about whether examinees from other jurisdictions with acceptable UBE scores would also have to take the local component, and what combined score would be required for admission. The disadvantage of this approach is that applicants seeking admission with a UBE score from an administration in a different jurisdiction would have to wait until the next administration to take the local law component, unless it is waived.

### Example

Examinee A has a score of 136 on the MBE and 134 on the combined MEE/MPT yielding a total UBE score of 270. If that examinee received a score of 130 on the local portion, and the jurisdiction weighted the local law assessment at 10%, his total jurisdiction score would be 269 (see calculation details below). In this example, his relatively poor performance on the local component would pull his overall score down even though the weight of the local component was only 10%.


#### Examinee A

MBE scaled score	136
MEE/MPT scaled score	+ 134
<b>Total UBE score</b>	<b>= 270</b>

Local law test scaled score	130
Multiply local law test score $\times 2$ to put on UBE scale	$(2 \times 130)$
<b>Local law test score on UBE scale</b>	<b>= 260</b>

90% weighting of UBE score	$(.90 \times 270)$
10% weighting of local law test score	$+ (.10 \times 260)$
<b>Total jurisdiction scaled score</b>	<b>= 269</b>

Assessment methods 3 and 4, which involve assessment at a different time point than the rest of the examination, would probably use the local law test as a separate hurdle—that is, examinees would need to pass the UBE and separately pass the test on local law.

Although rethinking the methods used to assess knowledge of local law requires time and effort, this process is helpful for assuring that scores reflect what jurisdictions intend to assess. NCBE is happy to provide help to any jurisdiction that is planning to develop a test on local law, and NCBE will continue to scale and combine scores for any jurisdiction upon request. 

### NOTE

1. The group used to scale essay grades to the MBE should include only those examinees who took the entire test. Any examinees who took only the essay portion should not be included in the scaling group; their written scaled scores should be obtained by other means. NCBE can help jurisdictions determine the written scaled scores for these examinees.

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