The Uniform Bar Exam: Where are We Now and Where Are We Headed?

May 16, 2017
### Growth of the UBE

<table>
<thead>
<tr>
<th>Year</th>
<th># of Jurisdictions Administering the UBE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>3</td>
</tr>
<tr>
<td>2012</td>
<td>6</td>
</tr>
<tr>
<td>2013</td>
<td>11</td>
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<tr>
<td>2014</td>
<td>14</td>
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<td>2015</td>
<td>14</td>
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<tr>
<td>2016</td>
<td>20</td>
</tr>
<tr>
<td>2017</td>
<td>27*</td>
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Applicants taking the UBE earn a portable score.
What is the UBE?

- It is a uniformly administered, graded, and scored bar examination that results in a PORTABLE SCORE.
- UBE jurisdictions use the same multistate tests to assess the fundamental knowledge and skills needed to begin practice.
Purpose of the UBE

The UBE tests knowledge of general principles of law, legal analysis and reasoning, factual analysis, and communication skills.
<table>
<thead>
<tr>
<th>Multistate Performance Test (MPT)</th>
<th>Multistate Essay Examination (MEE)</th>
<th>Multistate Bar Examination (MBE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Two 90-minute items (3 hours)</td>
<td>A common set of six 30-minute essays (3 hours)</td>
<td>200-question, multiple-choice exam (6 hours)</td>
</tr>
<tr>
<td>Content: a simulated case file presented in a realistic setting and calling for the test candidate to demonstrate fundamental lawyering skills regardless of the area of law in which the task arises</td>
<td><strong>Subjects:</strong> MBE topics plus Business Associations, Conflict of Laws, Family Law, UCC Art. 9 (Sec. Trans.), and Trusts &amp; Estates</td>
<td><strong>Subjects:</strong> Contracts, Constitutional Law, Criminal Law and Procedure, Evidence, Real Property, Torts, and Civil Procedure</td>
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NCBE Test Development

- Drafting Committees composed of law school professors from 30+ law schools and lawyers and judges from all over the country who are experts in the subjects
- Each committee is staffed by an test editor/lawyer from NCBE
- External reviewers for validity and fairness
- Questions are pretested before used
- MEE and MPT questions are reviewed by jurisdictions before each exam
NCBE’s Role in the UBE

- Develops the MEE, MPT, and MBE
- Scores the MBE
- Calculates scaled written scores (MEE and MPT) for jurisdictions
- Serves as the central repository of UBE scores and performs all UBE score transfers
- Serves as coordinating body for agreed upon UBE administrative policies
Role of UBE Jurisdictions

- Decide eligibility requirements for admission
- Set their own passing scores
- Administer the UBE and grade the MEE and MPT
- Set the maximum age of transferred UBE scores
- Make character and fitness decisions
- Make testing accommodation decisions
- Administer a separate jurisdiction-specific law component if they deem necessary
Benefits to law students

- Increases consistency in subjects tested on the bar exam across the country
- Maximizes their job opportunities—scores that are failing in the testing jurisdiction are transferable to states with lower cut scores
- Reduces actual costs and opportunity costs of preparing for and taking the bar exam in multiple jurisdictions
Benefits to the profession

- Acknowledges a shared core of legal knowledge and lawyering skills
- Assures a high quality, uniform system of assessment of minimum competence
- Recognizes the reality of multi-jurisdictional or cross-border practice
To seek admission by transferred UBE score applicants must

- Complete application forms and pay fee to jurisdiction as prescribed
- Request official UBE transcript from NCBE to be sent directly to the jurisdiction
  - http://www.ncbex.org/ncbe-exam-score-services/ube-score-score-services/
- Satisfy character and fitness and other admission requirements of jurisdiction
- Complete jurisdiction-specific component(s)
Minimum passing UBE scores

A score that does not meet the minimum passing score in the testing jurisdiction may be portable to another jurisdiction if the score is at or above the level required in the receiving jurisdiction.
Maximum age of transferred UBE scores

*Some jurisdictions describe the maximum age in months instead of years. For the purpose of this slide, if months and years are an equal amount of time, the maximum age is stated in years.*
Subject Matter Outlines

Published on NCBE’s website

- MBE Subject Matter Outline

- MEE Subject Matter Outline

- MPT Skills Tested
  - [http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F54](http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F54)
NCBE Free Study Aids

Available on NCBE’s website

UBE Schedule

Tuesday

- MEE (6 essays, 3 hours)
- MPT (2 items, 3 hours)

Wednesday

- MBE A.M. session (3 hours)
- MBE P.M. session (3 hours)
Jurisdiction-specific law

- UBE jurisdictions may require completion of a course, test, or some combination of the two that is separate from the UBE.
- Completion may be required before admission or within a prescribed period after admission.
- If required, jurisdiction-specific components typically must be completed whether testing locally or transferring in a UBE score.
UBE jurisdiction-specific law component requirements

- **No component:**
  - Alaska, Colorado, Connecticut, Iowa, Kansas, Minnesota, Nebraska, North Dakota

- **Pre-admission component:**
  - Alabama, Arizona, Massachusetts, Missouri, Montana, New Mexico, New York, South Carolina, Virgin Islands, Washington

- **Post-admission component:**

National Conference of Bar Examiners 5/1/17
What are UBE jurisdictions doing about local components?

- **Post-admission component (9):** D.C., ID, NH, NJ, OR, UT, VT, WV, WY
- **Live course (2):** MT, NM
- **Online course (5):** AL, AZ, NY, SC, VI
- **Online open-book MCQ test (3):** MO, NY, WA
New York’s Local Law Component
UBE adoption in New York

- UBE adopted by NY Court of Appeals in May 2015 upon recommendation of UBE Committee appointed by Court
- UBE effective with July 2016 Exam
- Court also directed the Board of Law Examiners to develop a local component
NY’s Local Component

I. ONLINE COURSE
(“New York Law Course” – “NYLC”)

II. WRITTEN COURSE MATERIALS
(“New York Course Materials” – “NYCM”)

III. ONLINE MULTIPLE CHOICE EXAM
(“New York Law Exam” – “NYLE”)

Purpose of Local Component

- To educate and test applicants on important distinctions in New York law.
- Local component not intended to be test of minimum competence—that is the role of the UBE.
New York has a long tradition of extensively testing New York law—traditional bar exam tested 12 subjects on the New York day.

Board was not comfortable giving up testing NY law because of our unique applicant pool with many applicants educated out of state and out of the county.

UBE Committee received comments from the bar expressing concern with eliminating NY law entirely from bar exam.
Development parameters

- Develop online course covering subjects which Board believes are important for new lawyers to know.
- Develop exam consisting of 50 multiple choice questions; administered online; 4x per year; with reasonable security measures.
- Board had discretion to develop and implement final product within parameters given.
New York Law Course (NYLC)

- 15 hours of recorded lectures on 12 subjects
- Periodic hurdle or pop-up questions must be answered correctly to progress in videos
- If question answered incorrectly, user must re-watch segment until question is answered correctly
- Videos can be viewed in any order
- User may stop, exit and return to video later
- User must complete NYLC in its entirety before registering for the NYLE
- The NYLC is available in applicant portal on Board’s website 24/7
- Developed in-house by Board Staff
- Time watching videos is audited and if Board finds that user did not watch all videos or used an app to speed up videos user must repeat NYLC.
- More than 10,000 users have completed the NYLC to date
Recorded videos

- **INSTRUCTORS**: solicited volunteers from among law professors, the bar and judges.

- **CONTENT**: we gave speakers a content outline and asked that they stick to it.

- **VIDEOGRAPHER**: we hired state media group from executive branch which were on state contract.
Course materials

- Converted existing content outline into comprehensive materials with the law and citations.
- Developed by Board Members and staff attorneys with assistance from experts from law schools and the bar.
- Available 24/7 as a download from website.
- Purposely drafted so applicants would not need to pay for separate NY bar review course.
<table>
<thead>
<tr>
<th>New York subjects</th>
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<tbody>
<tr>
<td>1. Administrative Law</td>
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<tr>
<td>2. Business Relationships</td>
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<td>3. Civil Practice &amp; Procedure</td>
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<tr>
<td>4. Conflict of Laws</td>
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<tr>
<td>5. Contracts</td>
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<tr>
<td>6. Criminal Law &amp; Procedure</td>
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<tr>
<td>7. Evidence</td>
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<tr>
<td>8. Matrimonial &amp; Family Law</td>
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<tr>
<td>9. Professional Responsibility</td>
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<tr>
<td>10. Real Property</td>
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<tr>
<td>11. Torts &amp; Tort Damages</td>
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<tr>
<td>12. Trusts, Wills &amp; Estates</td>
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New York Law Exam (NYLE)

- 50 question online multiple choice exam
- 2 hours to answer questions
- Administered at dedicated time 4x per year
- Same content as course materials
- NOT an equated exam
- Must complete NYLC before registering for NYLE
How is it administered?

- EXAMSOFT administers using SofTest
- Similar to bar exam, applicants register, purchase & download SofTest in advance of exam.
- Two days before exam they login and download Exam File that contains encrypted exam questions.
- On date & time of exam they enter password to access exam
- Password released 10 minutes before start of exam
- Secure mode vs Non-Secure mode
- We use Non-Secure mode so applicants may access notes and/or NYCM during exam.
- Exam prevents backward navigation
- Questions are scrambled for each applicant
- After 2 hours, exam file automatically closes
- Must upload exam file immediately following conclusion of exam
NYLE questions

- NY had a 50 question multiple choice section on former NY bar exam
- Revised and re-used some of those questions for NYLE
- New questions drafted by Board Members and staff attorneys; rotation schedule adopted for drafting teams
- Sample questions released online but we do not release questions after each exam because some are repeated.
NYLE scores & results

- Results released in applicant accounts within ten days after exam
- Passing Score is 30/50
- Passing candidates simply told that they passed
- Failing candidates given their score
- Score is good for 3 years
- 5 exams administered to more than 12,000 examinees to date
Sample NYLE Questions in Examsoft Software
In order for a state agency to adopt an administrative rule pursuant to the State Administrative Procedure Act (SAPA), the agency must:

- Submit notice of the proposed rule to the secretary of state for publication and afford the public an opportunity to submit comments on the proposed rule.

- Submit notice of the proposed rule to the secretary of state for publication, but affording an opportunity for public comment is not required.

- Post notice of the proposed rule on the agency’s website, and afford the public an opportunity to submit comments on the proposed rule.

- Post notice of the proposed rule on the agency’s website, but affording an opportunity for public comment is not required.
A lawyer who is a member of a law firm organized as a professional service limited liability company is personally liable for professional malpractice committed by:

Please provide your answer below, and click 'Next' to move to the next question.

- [ ] a. The lawyer herself only.
- [ ] b. The lawyer herself and any person in the firm under her direct supervision and control.
- [ ] c. The lawyer herself and any other lawyer who is a member of the firm.
- [ ] d. All lawyers who are members or employees of the firm.
Which one of the following acts is not a valid basis for the exercise of personal jurisdiction over a non-domiciliary as to a cause of action arising from that act?

- Ownership of real property situated within the state.
- Transaction of business within the state.
- Defamation committed within the state.
- Contracting out of state to supply goods or services in the state.
Suggestions/pitfalls

- Identify purpose for local component
- Provide ample time for development – we had one year which was barely enough
- Exam Options:
  - Dedicated Exam Date (i.e., NY): limited options
  - On Demand Exam (i.e. WA, MO) provides more options & potential vendors
- Live online exam challenges – connectivity issues, support