

EXHIBIT "D"

Articles from *The Bar Examiner* regarding the UBE

Understanding the **UNIFORM BAR EXAMINATION**

What Is the UBE?

The Uniform Bar Examination (UBE) is prepared by the National Conference of Bar Examiners to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law. It is comprised of the Multistate Essay Examination (MEE), two Multistate Performance Test (MPT) tasks, and the Multistate Bar Examination (MBE). It is uniformly administered, graded, and scored by user jurisdictions and results in a portable score that can be used to seek admission in jurisdictions that accept UBE scores.

The UBE is administered over two days, with the MBE given on the last Wednesday of February and July and the MEE and MPT given on the Tuesday prior to that. The MEE and MPT scores are scaled to the MBE, with the MBE weighted 50%, the MEE 30%, and the MPT 20%.

Jurisdictions that use the UBE continue to

- decide who may sit for the bar exam and who will be admitted to practice.
- determine underlying educational requirements.
- make all character and fitness decisions.
- set their own policies regarding the number of times candidates may retake the bar examination.
- make ADA decisions.
- grade the MEE and MPT.
- set their own pre-release regrading policies.
- assess candidate knowledge of jurisdiction-specific content through a separate test, course, or some combination of the two if the jurisdiction chooses.
- accept MBE scores earned in a previous examination for purposes of making local admission decisions if they wish. Note, however, that candidates must sit for the entire UBE in a single administration to earn a portable UBE score.
- set their own passing scores.
- determine how long incoming UBE scores will be accepted.
- maintain the security of test content and provide appropriate testing conditions by administering the UBE at specified times and in accordance with the rules laid out in the Supervisor's Manual, including the guidelines for room setup, book distribution, seating charts, and proctor selection and training.

To ensure that candidates are assessed consistently across jurisdictions, UBE jurisdictions will

- administer a common set of six MEE questions.
- administer the entire examination to each UBE candidate. Banked or transferred scores may not be used in calculating UBE total scores.
- grade the MEE and MPT using generally applicable rules of law rather than jurisdiction-specific law.
- train and calibrate their graders to apply uniform standards when grading the MEE and MPT.

- have NCBE perform the scaling of the MEE and MPT scores to the MBE to ensure that score calculations are performed consistently across jurisdictions.
- make admission decisions based on NCBE's scaled score calculations; that is, they will not conduct regrading after examination results have been announced.
- report on their test administrations and permit occasional audit by NCBE to verify that best practices are being followed.

To facilitate score portability and transfers, UBE jurisdictions will

- generate a UBE total score expressed on a 400-point scale.
- require candidates to provide sufficient identifying information on the MBE answer sheets to identify their scores for transfer by NCBE, including the candidate's name, date of birth, and Social Security Number or NCBE number.
- submit all UBE scores to a central registry maintained by NCBE to ensure that a full score history is reported by NCBE to receiving jurisdictions when candidates request UBE score transfers.
- provide, or have NCBE provide, candidates with their written scaled scores, MBE scaled scores, and UBE total scores so that candidates can determine if their scores are high enough to transfer to other jurisdictions.

Role of the Jurisdictions

Representatives of numerous jurisdictions have been actively involved in shaping the UBE. UBE jurisdictions continue to participate in the discussion of issues of mutual interest and the implementation of best practices.

NCBE is prepared to assist jurisdictions that are interested in developing courses or tests on unique aspects of jurisdiction-specific law.

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Summary of Jurisdiction-Specific Content Options for UBE Jurisdictions

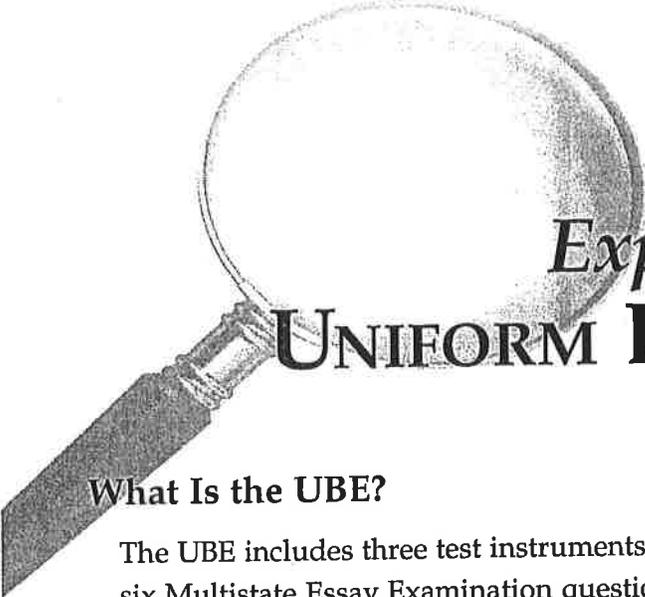
As jurisdictions consider adopting the Uniform Bar Exam, the issue of whether and how to assess knowledge of jurisdiction-specific law must be considered. This document provides a brief summary of the analysis jurisdictions might undertake in determining whether a local component is necessary and what method of assessment is most suitable. For a more in-depth discussion, refer to the article by Michael Kane, Ph.D., referenced below.

1. **Identify the scope of jurisdiction-specific content.** Are there significant state law distinctions within the subjects tested in the UBE that pose “pitfalls” for new practitioners? Are there significant local practice areas (e.g., Indian law) not tested on the UBE that are likely areas of entry-level practice? If the answer to the latter question is no and the number of significant distinctions is small, the jurisdiction might decide that a local component is not necessary and instead choose to rely upon the professional responsibility of lawyers to conduct research and independently develop knowledge of jurisdiction-specific law.
2. **Determine the best method for assessing knowledge of jurisdiction-specific content.** The primary methods are set out in the table on the reverse side. Factors to be weighed for each method include suitability of the method for the content, reliability of any pass/fail decision, timing and frequency of administration, cost to administer, and cost to applicants in out-of-pocket expense and delay in admission. The local component should not be such a high, separate hurdle that it defeats the benefits of a portable UBE score.
3. **Reliability is a key factor if the local component is a test.** Make sure any such test is reliable enough to support a decision that applicants who pass the UBE but fail the local component should not be licensed. As a general rule, longer tests (more questions) are more reliable. Reliability concerns also can be addressed by allowing failing applicants to retake the test immediately or making the test easy enough that almost all applicants who review the content material to prepare for the test will pass.
4. **It is not necessary to duplicate the assessment of competency to practice that is accomplished by the UBE.** The UBE tests knowledge of generally applicable principles of law, the ability to identify the legal issues raised by a set of facts, and the ability to apply the relevant law to those facts and reason to a conclusion—in other words, the ability to “think like a lawyer.” The purpose of a local component is to assess knowledge of significant distinctions of state law. It is verified through the UBE that the applicant can think like a lawyer, so the local component simply needs to assess whether the applicant knows the fact that state law differs from the general principle.

Prepared by Kellie Early, based on Michael Kane, Ph.D., *The Uniform Bar Exam and Jurisdiction-Specific Content*, 78 Bar Examiner 1:26 (February 2009).

Comparison of Jurisdiction-Specific Content Options for UBE Jurisdictions

<u>CLE or Course</u>	<u>Stand-Alone Test</u>	<u>Add-on Test</u>
Suitable to any type or amount of content.	Suitable when content is a major area of local practice or a large number of jurisdiction-specific distinctions.	Limited number of essay questions administered concurrently with the UBE.
Can include a short test to verify absorbed content.	Effective to highlight jurisdiction-specific content, e.g., driver's license test makes people study the manual.	Not as effective in assessing knowledge of jurisdiction-specific content because limited number of issues are tested.
Can include professionalism and non-doctrinal content, such as local customs.	Not suitable for professionalism or non-doctrinal type content.	Not suitable for professionalism or non-doctrinal content.
Can be administered any time, live or via distance learning.	Can be administered any time, live or online.	Administered live with the UBE, resulting in additional or longer days.
No significant reliability concerns.	Reliability concerns can be significant if insufficient number of quality questions.	Reliability concerns are addressed by scaling local essays to MBE and giving limited weight to local test score.
Administrative cost depends on delivery method.	Administrative cost depends on format and delivery method.	Administrative cost to develop, administer, and grade.
Cost to applicants depends on timing/delivery method and whether any administrative costs are passed on.	Cost to applicants depends on timing/delivery method and whether any administrative costs are passed on.	Applicants incur delay in admission and travel costs to take add-on test, plus any administrative costs that are passed on.



Exploring the **UNIFORM BAR EXAMINATION**

What Is the UBE?

The UBE includes three test instruments already available and in use: the Multistate Bar Examination, six Multistate Essay Examination questions, and two Multistate Performance Test tasks. The UBE will be administered over two days, with the MBE given on the last Wednesday of February and July and the MEE/MPT scheduled on the Tuesday prior to that. MEE and MPT scores will be scaled to the MBE, with the MBE weighted 50%, the MEE 30%, and the MPT 20%. UBE jurisdictions will use the same six MEE questions.

The Uniform Bar Examination is designed to be consistent in content and administration across jurisdictions that opt to use it. Jurisdictions may begin using the UBE at any time. Those that adopt the UBE will administer the same three exam components and will weight those components in the same way. Jurisdictions may choose to discontinue using the UBE at any time.

Jurisdictions will continue to

- decide who may sit for the bar exam and who will be admitted.
- determine underlying educational requirements.
- make all character and fitness decisions.
- determine how long incoming UBE scores will be accepted.
- make ADA decisions.
- grade the MEE and MPT.
- determine their own pre-release regrading policies.
- assure candidate knowledge of additional local content using methods they choose.
- admit candidates from other jurisdictions on the sole basis of high previous MBE scores if desired.
- limit the number of times examinees may take the bar examination in their jurisdiction if they so choose.

As with all NCBE tests,

- the UBE will be administered according to the rules laid out in the Supervisor's Manual, including guidelines for room setup, book distribution, seating charts, and proctor selection and training.
- examinees will be required to have appropriate ID and identifying information; this may include the LSAC number.

- have NCBE perform the scaling of the MEE and MPT scores to the MBE to ensure that score calculations are performed consistently across jurisdictions.
- make admission decisions based on NCBE's scaled score calculations; that is, they will not conduct regrading after examination results have been announced.
- report on their test administrations and permit occasional audit by NCBE to verify that best practices are being followed.

To facilitate score portability and transfers, UBE jurisdictions will

- generate a UBE total score expressed on a 400-point scale.
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- submit all UBE scores to a central registry maintained by NCBE to ensure that a full score history is reported by NCBE to receiving jurisdictions when candidates request UBE score transfers.
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THE TESTING COLUMN

THE UNIFORM BAR EXAMINATION: WHAT'S IN IT FOR ME?

by Susan M. Case, Ph.D.

By now, many of you are familiar with the basic concept of the Uniform Bar Examination (UBE). The UBE is an examination used across multiple jurisdictions; the score that an examinee receives is transportable to other UBE jurisdictions that are part of the UBE group. The UBE is composed of the Multistate Bar Examination (MBE), six Multistate Essay Examination (MEE) questions, and two Multistate Performance Test (MPT) tasks. Every UBE jurisdiction will use the same essay questions, the same performance tasks, and the same grading guidelines. The MBE will be weighted 50 percent and the written portion (MEE and MPT) will be weighted 50 percent.

As of February 2010, 34 jurisdictions use the MPT and 26 jurisdictions use the MEE. These numbers have increased considerably over the last few years. Given this current uniformity, some people are no doubt wondering why the UBE is being offered, why jurisdictions are interested in administering the UBE, and who will benefit from the new test. This column identifies the primary stakeholders and notes some of the advantages each will see.

It should be noted that NCBE does not anticipate a larger number of examinees as a result of the UBE. Although uniform adoption of the UBE will increase



the number of MEE and MPT first-time takers, adoption of the UBE will reduce the number of examinees who are taking these tests for the second or third time as a result of seeking admission in another jurisdiction.

EXAMINEES

Each examinee who takes the UBE will receive a total scaled score. This score may be submitted to other UBE jurisdictions for use in seeking admission; such an examinee will not have to retake the examination. The pass/fail result will not transfer, but the actual score will transfer.

A pass from one jurisdiction does not guarantee a pass from another jurisdiction because jurisdictions have varying passing standards. Other admission requirements may also vary. While the UBE scores will transfer, jurisdictions will still review all applicants with regard to character and fitness and other requirements before admitting them. Some jurisdictions will likely add a test or course related to local content. In these jurisdictions, although examinees will be excused from retaking the MBE, MEE, and MPT, they will need to take the local component.

The equal weighting of the MBE and the written portion is a fair system overall. While research has not shown that any ethnic or racial group performs

better as a group on one format or the other, individuals may perform relatively better on one of the formats (i.e., some individuals perform better on the multiple-choice component whereas others perform better on the written components). Creating a single total scaled score allows examinees who perform better on one component to compensate for weaker performance on another component, and weighting the written and multiple-choice portions equally assures overall fairness.

An examinee who takes the bar exam in a jurisdiction, works exclusively in that jurisdiction, and never moves from that jurisdiction probably will not realize a particular benefit from the UBE. However, the transportability of the UBE score is a significant advantage to an examinee who fails to get the job he or she intends and has to move to another jurisdiction to find work, or one who ends up working for a firm that has clients in multiple jurisdictions.

LAW SCHOOLS

The benefit to a law school is that all of its students, as well as students from many other schools in other jurisdictions, will be taking exactly the same exam and receiving scores that will have the same meaning across the country. While every jurisdiction with the exception of Washington and Louisiana currently uses the MBE, many jurisdictions use locally crafted essay questions. The UBE will only include essay questions and performance tasks that are developed centrally, researched thoroughly, and subjected to considerable quality control and review. These questions and performance tasks are packaged with grading materials, and graders have access to grading workshops to aid in the consistent grading of the essays and performance tasks.

The MBE and the written portions of the UBE will be weighted equally, ensuring reliable scores that do not give advantage to those who perform better on multiple-choice questions or those who perform better on written exams. Currently, the weights applied to each exam score vary by jurisdiction, making it more challenging for law schools to prepare their students who may be taking different bar exams.

JURISDICTIONS

The primary benefit to the jurisdictions is that they are relieved from the burdens of developing high-quality written exams and grading materials and of completing the development of these materials in a timely manner. The UBE questions and grading materials will be developed by committees of content experts under the direction of NCBE; the grading materials will be used by all UBE graders. This application of uniform grading materials will help to ensure grading consistency across UBE jurisdictions.

UBE jurisdictions will be invited to participate in the development of best practices materials. NCBE has already worked at developing best practices for various jurisdictions, but this process would become more efficient if the practices were applicable to a larger number of jurisdictions. These materials will address issues such as the best way to calibrate graders, the best structure for score reports and feedback to examinees, and the best means of giving feedback to law schools.

Currently NCBE provides aid to jurisdictions at no cost to the jurisdictions. This aid would be more efficient if the jurisdictions followed similar procedures. NCBE is also considering providing additional

services for UBE jurisdictions as needed. These services may include centralized ADA decision making, centralized grading of written materials, and centralized score reporting. Such services would be offered by NCBE, but UBE jurisdictions would determine which tasks and services they wish to retain and which they prefer to have done centrally.

THE PUBLIC

The UBE will provide more consistency in the requirements for bar admission across the country. And more consistency will make the bar admissions process more understandable to members of the public. Take a minute to look at Chart VII: Grading and Scoring in the *Comprehensive Guide to Bar Admission Requirements 2010* found on our website (www.ncbex.org/comprehensive-guide-to-bar-admissions/). This chart highlights the differences among jurisdictions in grading and scoring the various components of the bar exam. The chart shows that most jurisdictions use the MBE, most scale the written component to the MBE, and most combine scores. But the MBE weights range from 33 to 50 percent, the MEE and/or local essay exam weights range from 25 to 67 percent, and the MPT and/or local performance test weights range from 7 to 26 percent. One might wonder: How were these weights determined? Which of these reflects best practices? Why is there so much variety from one jurisdiction to the next?

The passing standard score ranges from 65 to 2,400. Do the various constituents understand what these standards mean? Is it really 36.92 times as hard to be admitted in Oklahoma as in Oregon? Questions arise, such as: Why are these passing standards expressed as they are? How can these standards be interpreted? Can comparisons be made across jurisdictions?

FINAL THOUGHTS

Several jurisdictions are working to be on the forefront of the UBE, others are holding back to see how much momentum there is, and others have not begun to think about it. More than 20 years ago, I was involved in the development of a uniform licensing exam for physicians (the USMLE). In that case, the exam was developed for graduates of medical schools around the world (i.e., for both U.S.-trained and foreign-trained physicians) who seek to practice in the United States. The initial reactions to the USMLE were very similar to reactions to the UBE. Although one could argue that the human body is the same worldwide, concerns were raised about the differences from one jurisdiction to the next—differences in terms of ethnic and socioeconomic makeup, rural/urban breakdown, social and religious belief structures that combine to affect the prevalence of disease, the types of injuries, the availability of resources that affect treatment, and the structures of patient care.

Despite the challenges that complicated the development of a uniform medical licensing exam, we were able to develop an exam that met the needs of the entire country. I have no doubt that the same will be possible in law. It is important to remember that the multistate bar exams are not designed to assess the ability to apply knowledge to every conceivable legal issue that a newly licensed lawyer might encounter. Rather, they are designed to assess the ability to apply knowledge to a reasonable set of tasks to ensure that each admitted lawyer has at least minimal competence to practice law. The UBE seeks to achieve that goal while benefiting those involved in the bar admissions process. ■

SUSAN M. CASE, PH.D., is the Director of Testing for the National Conference of Bar Examiners.

THE UBE: THE POLICIES BEHIND THE PORTABILITY

by Kellie R. Early

The Uniform Bar Examination (UBE) has moved from concept to reality with its adoption by Missouri, North Dakota, Alabama, Idaho, and Washington.¹ The UBE is made up of a common set of six Multistate Essay Examination (MEE) questions, two Multistate Performance Test (MPT) tasks, and the Multistate Bar Examination (MBE), and the exam results in a portable score.²

The UBE is more than just a shared set of test components. At its essence, it is an agreement to give full faith and credit to examination scores generated in participating jurisdictions based upon the fact that all UBE jurisdictions uniformly administer, grade, and score the same examination.

Certain policies are followed by UBE jurisdictions in order to produce comparable scores, enhance score portability, and ensure reliable transfer of scores. Jurisdictions agree to adhere to these policies in order to be recognized as UBE jurisdictions and generate scores that qualify to be certified by the National Conference of Bar Examiners (NCBE) as UBE scores. These policies define what the UBE is and, by extension, what it is not.

The UBE is not reciprocal admission. The only element of reciprocity in the UBE is score portability; that is, UBE jurisdictions must accept scores from other UBE jurisdictions. But it is only the score that is portable, not the applicant's status in the testing

jurisdiction. The fact that an applicant passes the UBE in one jurisdiction and is admitted to practice there does not, alone, qualify the applicant for admission in other UBE jurisdictions. It remains the responsibility of each UBE jurisdiction to set the passing score that it concludes represents proof of minimum competence to practice law within its borders and to determine all other admission requirements. Jurisdictions that adopt the UBE are merely using the same high-quality examination to determine whether applicants have demonstrated the fundamental knowledge and skills necessary to begin practice. And because it is the same exam, it doesn't matter where that score was earned. This article discusses the policies that make the UBE work.

THE SAME EXAM, ADMINISTERED CONSISTENTLY: THE POLICIES

Standardized testing conditions contribute to score comparability. To ensure that testing conditions are as uniform as possible, UBE jurisdictions follow the instructions set out in the *Supervisor's Manual*³ for administering the examination. The *Supervisor's Manual* prescribes procedures for, among other things, maintaining the security of testing materials, providing a suitable testing environment, deterring cheating, proctoring the examination, dealing with disturbances, and reporting any irregularities that occur in the administration of the exam.

In addition to the procedures provided in the *Supervisor's Manual*, which apply to all jurisdictions that use NCBE's tests, there are a couple of other procedures specific to administration of the UBE. First, UBE jurisdictions use a common set of six MEE questions, which are answered according to generally applicable principles of law rather than jurisdiction-specific law.⁴ Second, UBE jurisdictions administer the two MPT tasks in one seamless three-hour test session rather than two 90-minute sessions.⁵

To earn UBE scores, applicants must sit for all portions of the examination in the same administration and cannot rely upon banked or transferred written-component or MBE scores from previous examinations taken in the testing jurisdiction or in other jurisdictions. Use of banked or transferred scores from prior examinations allows applicants to sit for only one day of the current examination, which is not as demanding as having to prepare for and take all components in a single administration.⁶ In order for scores to be comparable, applicants must sit for all components in the same administration to earn a UBE score. UBE jurisdictions may continue to allow applicants to use banked or transferred scores to gain admission locally, but such applicants do not earn portable scores.

UBE jurisdictions continue to make their own decisions about whether to grant testing accommodations under the ADA, and NCBE plays no role in such decisions. NCBE has sponsored development of a model form that all jurisdictions (UBE and non-UBE) may opt to have applicants use to request test accommodations. Use of the model form should lead

to greater consistency in the information and documentation supplied by applicants and considered by jurisdictions in making ADA decisions.⁷

THE SAME EXAM, GRADED CONSISTENTLY: THE POLICIES

The answers of applicants in each jurisdiction are graded within that jurisdiction using the general principles of law set out in the MEE and MPT grading materials prepared by NCBE. UBE graders must adhere to the grading rubrics set out in the grading materials so that the same weight is assigned by all

UBE jurisdictions to the various issues tested by each question. UBE jurisdictions may continue to use whatever raw scale they wish in grading the MEE and MPT, because the raw scores are converted to the MBE scale.

Further, UBE jurisdictions continue to calibrate their grad-

ers within the jurisdiction. Calibration is the process of developing coherent judgment in assigning points, using the standards set out in the grading materials, so that the rank-ordering of answers is done consistently over the entire course of grading, either by a single grader or, if more than one grader per question is used, by the multiple graders. While calibration within each jurisdiction remains critical, it is not necessary to calibrate graders *across* UBE jurisdictions because the MEE and MPT scores are scaled to the MBE scores within each jurisdiction.

NCBE provides educational opportunities for graders from all jurisdictions that use its tests. UBE jurisdictions, particularly those that have not previously used the MEE and/or MPT, are encouraged

WHILE CALIBRATION WITHIN EACH JURISDICTION REMAINS CRITICAL, IT IS NOT NECESSARY TO CALIBRATE GRADERS ACROSS UBE JURISDICTIONS BECAUSE THE MEE AND MPT SCORES ARE SCALED TO THE MBE SCORES WITHIN EACH JURISDICTION.

to have their graders attend NCBE's grading workshop, either in person or by teleconference, the week-end following the examination.⁸ Additionally, NCBE offers several other educational events that cover the topic of grading, among other relevant topics, on an annual or biannual basis, attendance at which is funded by NCBE for one or more representatives of UBE and non-UBE jurisdictions alike. NCBE is also available to consult directly with jurisdictions that request additional assistance with training graders.

Because one of the purposes of both the MEE and MPT is to test the applicant's ability to communicate effectively in writing, UBE jurisdictions take communication skills into consideration when grading the MEE and MPT. Applicants are expected to present a clear, concise, and well-organized composition and are expected to write in complete sentences, using appropriate grammar and syntax.⁹ At this time, there is not a separate communication score or set percentage of points associated with communication skills; rather, communication skills are one aspect of the scores assigned to MEE and MPT answers.

UBE jurisdictions do not regrade the answers of failing applicants after examination results have been released.¹⁰ Regrading is not likely to produce psychometrically sound scores if the pass/fail status of the applicants is known, if the original scores are known, if the regrading is done remote in time from the original grading of the entire pool of answers, if only failing answers are reviewed, and/or if scores are only increased and never decreased. Calibration or consistency with the grading standards is difficult to maintain under such circumstances. Because most, if not all, of these circumstances are present when regrading takes place after release of results, jurisdictions have good reason not to accept scores that are the result of post-release regrading.¹¹ Therefore,

UBE jurisdictions agree not to engage in post-release regrading. UBE jurisdictions may engage in pre-release regrading of answers, assuming that it is appropriately conducted to maintain consistency with the original grading standards, but once results are released, no further review of answers is undertaken.

THE SAME EXAM, SCORED CONSISTENTLY: THE POLICIES

NCBE performs scaling and combining of scores for all UBE jurisdictions to ensure consistency in how scores are calculated.¹² UBE jurisdictions provide NCBE with the raw scores for each of the six MEEs and two MPTs so that NCBE can make sure that the proper weighting is applied and that no scores from a jurisdiction-specific exam component are intermingled with UBE scores.¹³

The MEE is weighted 30%, the MPT 20%, and the MBE 50% in calculating the UBE total score. The written-component scores (MEE and MPT) are scaled to the MBE using the standard deviation method.

Uniformity in rounding of UBE scores is necessary for score comparability. The written-component and MBE scaled scores are rounded to one decimal; these two decimal scores are combined, and the UBE total score is rounded to a whole number and stated on a 400-point scale.¹⁴

ENSURING RELIABLE TRANSFER OF SCORES: THE POLICIES

NCBE serves as the central repository of UBE scores and performs score transfer services for all UBE jurisdictions.¹⁵ When an applicant requests to transfer a UBE score, NCBE sends the receiving jurisdiction an official transcript of the applicant's full UBE score history across all jurisdictions and exam dates, with

the scores certified by NCBE. Those UBE jurisdictions that place a limit on the number of times an applicant may retake the examination will find this particularly important. In the context of the UBE, such jurisdictions may want to count all attempts to earn a score that is passing in the receiving jurisdiction, regardless of where the applicant tested, because the applicant took the same exam. For example, if Jurisdiction A's passing score is 266 and it limits attempts to three, and an applicant sits for the UBE four times in other jurisdictions, earning scores of 257, 259, 262, and 266, in that order, Jurisdiction A might refuse to accept the applicant's score of 266 because it was earned in the fourth attempt.¹⁶ In order that complete score histories can be provided in the score transcripts, all UBE jurisdictions agree that NCBE is the central repository and sole transferor of certified UBE scores.

To create accurate transcripts for applicants who take the UBE multiple times or in multiple jurisdictions, NCBE must have sufficient biographical data¹⁷ to tie all the scores together. Thus, UBE jurisdictions agree to instruct applicants to provide the necessary identifying information on their MBE answer sheets.¹⁸

ENHANCING SCORE PORTABILITY: THE POLICIES

UBE jurisdictions provide, or allow NCBE to provide,¹⁹ each applicant with his UBE scores (MEE/MPT scaled score, MBE scaled score, and UBE total score) so that applicants can determine whether they meet the minimum passing score requirements of other jurisdictions. Although some non-UBE jurisdictions restrict reporting of scores to applicants,²⁰

this hampers score portability, so UBE jurisdictions follow a policy of notifying all applicants of their scaled scores.

POLICIES SET INDEPENDENTLY BY JURISDICTIONS

All policies related to the requirements for admission on the basis of a transferred UBE score are left to the jurisdictions to set independently. As a general rule, when setting such policies, jurisdictions should keep firmly in mind that the UBE is the same exam, administered, graded, and scored uniformly by all

UBE jurisdictions. Therefore, the same requirements should be applied to applicants who transfer UBE scores as are applied to those who test locally. There is no reason to differentiate on the basis of where applicants test.

Conditions for Accepting Scores

Setting Time Limits for Accepting Scores

Jurisdictions must decide how long a UBE score represents the applicant's current readiness to enter practice. NCBE does not make any recommendations in this regard, but NCBE Director of Testing Susan Case advises that jurisdictions should accept past scores for an interval that is reasonable to assume that the applicant's knowledge base has been maintained or has increased since the applicant took the exam.²¹ In many cases, jurisdictions have already identified intervals for other issues, and those intervals might be equally applicable to transferred UBE scores. Any of the following could be used as a means of determining an appropriate time limit for accepting UBE scores:

. . . [T]HE UBE IS THE SAME EXAM, ADMINISTERED, GRADED, AND SCORED UNIFORMLY BY ALL UBE JURISDICTIONS. THEREFORE, THE SAME REQUIREMENTS SHOULD BE APPLIED TO APPLICANTS WHO TRANSFER UBE SCORES AS ARE APPLIED TO THOSE WHO TEST LOCALLY.

- Jurisdictions typically set a time limit within which applicants who have passed the exam must complete the admission process and take the oath before their scores will be deemed stale and invalidated. A jurisdiction could apply the same interval to UBE scores transferred from other jurisdictions.

- If a jurisdiction accepts MBE scores earned in another jurisdiction as a basis for admitting applicants without further testing,²² it might reasonably set the same time limit for accepting UBE scores as it applies to MBE scores.

- Similarly, jurisdictions that accept transferred MBE scores from prior examinations as a basis for allowing applicants to take only a portion of the current examination might apply the same time period to UBE scores. In this situation, however, arguments can be made for setting either a longer time limit for UBE scores (because the score represents the applicant's performance on the entire examination, not just the MBE) or a shorter time limit (because the applicant will not undergo further testing to assess current knowledge and skills).

Applying the Minimum Passing Score Consistently

Jurisdictions continue to set their own minimum passing scores and should apply the same cut-score standards to UBE scores transferred from other jurisdictions. NCBE recommends that UBE jurisdictions not condition acceptance of a transferred UBE score upon the applicant's passing status or admission to the bar in the testing jurisdiction. Doing so results in the receiving jurisdiction effectively adopting the

minimum passing score of the testing jurisdiction in those cases where the testing jurisdiction's minimum score is higher; this causes different score requirements to be applied within the same jurisdiction. The following example illustrates the inconsistency that could result if this practice were to be followed.

Assume that Jurisdiction A (the receiving jurisdiction) has a passing score of 260 and requires that applicants who transfer UBE scores must have passed in the testing jurisdiction (not recommended by NCBE):

... [J]URISDICTIONS SHOULD ACCEPT PAST SCORES FOR AN INTERVAL THAT IS REASONABLE TO ASSUME THAT THE APPLICANT'S KNOWLEDGE BASE HAS BEEN MAINTAINED OR HAS INCREASED SINCE THE APPLICANT TOOK THE EXAM.

Applicant 1 earns a score of 270 in Jurisdiction B, where the passing score is 280.

Applicant 2 earns a score of 270 in Jurisdiction C, where the passing score is 266.

Applicant 1 could not qualify for admission in Jurisdiction A if Jurisdiction A were to condition acceptance upon the applicant's passing status in the testing jurisdiction. Although both Applicants 1 and 2 earn identical scores that exceed Jurisdiction A's minimum passing score of 260, the requirement that applicants must pass in the testing jurisdiction means that Applicant 1 must earn a score of 280 because that is the testing jurisdiction's minimum passing score.

To take this illustration a step further, Applicant 3, who tests locally and earns a score of 260 in Jurisdiction A, could be admitted, while Applicant 1 with a score of 270 could not.

Remember: *it's the same exam*, so a requirement that applicants must pass where they test should not be applied, because there is no common cut score.²³

Legal Education Requirements

The same logic applies to legal education requirements. UBE jurisdictions should apply the same legal education requirements to applicants who transfer UBE scores as they apply to those who test locally. If a jurisdiction requires applicants to have graduated with a J.D. degree from an ABA-accredited law school to be eligible to sit for the examination, it should require the same of applicants who transfer UBE scores from other jurisdictions, even if the testing jurisdiction did not impose such a requirement. Presumably, jurisdictions require specific legal education as a prerequisite to sit for the examination because they believe that passing a bar exam, no matter how valid and reliable the exam, should not be the sole measure of preparedness to enter practice. Thus, jurisdictions should not alter their educational requirements for applicants who are transferring UBE scores merely because the applicants have already passed the examination.

Multistate Professional Responsibility Examination

If the jurisdiction requires exam applicants to pass the Multistate Professional Responsibility Examination (MPRE), it should require the same of applicants who transfer UBE scores. Applicants who are transferring UBE scores likely will also have taken the MPRE, since it is required by all but 4 of the 56 jurisdictions.²⁴

But if a jurisdiction's rules require applicants to pass the MPRE within a specific time period relative to other events, such as within one year of passing the bar examination, the jurisdiction should consider whether to modify that requirement to coordinate with its conditions for accepting UBE scores. For example, if the jurisdiction accepts UBE scores earned within the preceding 24 months, many applicants transferring UBE scores may have to

retake the MPRE to earn a more current score. For those applicants who are transferring UBE scores, jurisdictions might consider setting the time limit for passing the MPRE in relation to when the UBE score was earned.

IT'S A SCORE, NOT A STATUS

Remember, it's the *score* that is portable, not the status. When developing a regulatory framework for accepting transferred UBE scores, jurisdictions should constantly return to the fact that *it's the same exam*. It doesn't matter where applicants test, just what scores they earn, and the requirements for admission should be consistent for those who test locally and those who test in other UBE jurisdictions.

As the UBE matures and is adopted by more jurisdictions, these policies may evolve to address new circumstances, and new policies may be developed. The key concepts of producing comparable scores, enhancing score portability, and ensuring reliable transfer of scores will continue to guide the process. 

NOTES

1. Missouri and North Dakota administered the first UBE in February 2011. Alabama began administering the UBE in July 2011, while Idaho will start in February 2012 and Washington in July 2013. Use of the UBE is under consideration in other jurisdictions.
2. To learn more about the UBE, see the following *Bar Examiner* articles: Veryl Victoria Miles, *The Uniform Bar Examination: A Benefit to Law School Graduates*, THE BAR EXAMINER, Aug. 2010, at 6; Susan M. Case, Ph.D., *The Uniform Bar Examination: What's In It for Me?*, THE BAR EXAMINER, Feb. 2010, at 50; Susan M. Case, Ph.D., *Coming Together: The UBE*, THE BAR EXAMINER, Aug. 2009, at 28; *Essays on a Uniform Bar Examination*, THE BAR EXAMINER, Feb. 2009, at 6.
3. NCBE provides jurisdictions using any of its tests with an *MBE Supervisor's Manual*, *MEE Supervisor's Manual*, and/or *MPT Supervisor's Manual*, as appropriate, and it has now developed a *UBE Supervisor's Manual*.
4. UBE jurisdictions may choose to administer a jurisdiction-specific exam component in addition to the UBE to assess knowledge of local law, but the scores from any such component are not part of the portable UBE scores.

UBE Implementation: Getting Started

When a jurisdiction is ready to adopt the UBE, it should review its rules for any changes that are necessary to conform to the UBE policies. It must also make policy decisions regarding those issues where uniformity with other UBE jurisdictions is not required, and decide what, if any, rule provisions are necessary to effectuate those policies.

In addition to amending its rules, there are other steps a jurisdiction should take to prepare to become a UBE jurisdiction. These fall roughly into two categories: (1) preparing to process a new category of applicants who are transferring UBE scores from other jurisdictions ("transfer applicants") and (2) preparing for changes to the existing examination to bring policies and practices into accord with the UBE.

NCBE is available to assist any jurisdiction by reviewing the jurisdiction's existing rules for conflicts with UBE policies and offering proposed language for any new rule provisions that might be necessary. In addition, NCBE can help identify some of the practical things that a jurisdiction might wish to do in preparation for becoming a UBE jurisdiction.

5. The two MPT tasks are administered in one session to save the time it takes to distribute and collect test materials in two separate sessions in larger jurisdictions.
6. A *banked score* is a score earned on one component in a prior examination in the testing jurisdiction, where the applicant did not pass the exam but scored high enough on one component so as not to have to retake that component. Allowing use of banked scores permits applicants to pass the exam in stages. A *transferred score* is a score earned in a prior examination in another jurisdiction, where the applicant may or may not have passed depending on the requirements set by the receiving jurisdiction for accepting transferred scores.
7. NCBE convened a group of bar admission administrators from nine jurisdictions to develop the model form. It is available to download from the secure section of NCBE's website that can be accessed only by administrators. Jurisdictions are advised to have the model form reviewed by their legal counsel before using it.
8. The grading workshop teaches graders how to calibrate but is not a calibration session by itself. Graders who attend the grading workshop should undertake additional calibration before beginning actual grading.
9. Use of abbreviations is permitted.
10. Score corrections due to mathematical error do not constitute regrading and are allowed. Such events are rare, however.
11. There are also practical reasons for not allowing post-release regrading by UBE jurisdictions. There is a period between release of results and the deadline for seeking regrading when an applicant might request that an official transcript be sent by NCBE to another jurisdiction. If the applicant subsequently petitions for regrading in the testing jurisdiction, there could be a difference between the transferred score and the "final" score.
12. NCBE's scaling services are offered free of charge to all jurisdictions, UBE and non-UBE.
13. For jurisdictions that administer a jurisdiction-specific exam contemporaneously with the UBE, NCBE will scale the jurisdiction-specific exam scores to the MBE so that the jurisdictions don't have to do any scaling calculations on their own.
14. Non-UBE jurisdictions may choose to receive their MBE scores rounded either to whole numbers or to one decimal. There are practical advantages to rounding scores to one decimal in that (1) consecutive raw scores do not result in the same scaled score when scaled scores are rounded to a decimal and (2) raw whole-number scores and scaled decimal scores are more readily distinguishable. See Michael T. Kane, Ph.D., *To Round or to Truncate? That Is the Question*, THE BAR EXAMINER, Nov. 2003, at 24, and Susan M. Case, Ph.D., *The Testing Column: MBE "Decimal Dust,"* THE BAR EXAMINER, Feb. 2004, at 33.
15. UBE jurisdictions may transfer their own MBE scores to non-UBE jurisdictions if they wish, but NCBE is the sole transferor of UBE scores.
16. NCBE makes no recommendation concerning whether jurisdictions should limit the number of times applicants may sit for the UBE; that is each jurisdiction's prerogative.
17. NCBE requires the applicant's name, date of birth, and Social Security number or NCBE number to identify UBE scores with the requisite degree of confidence jurisdictions should expect.
18. NCBE can suppress applicant names and Social Security numbers on the score roster sent to a jurisdiction if the jurisdiction's

policies mandate that it not receive this information with the MBE scores.

19. UBE jurisdictions that do not want the administrative burden of reporting scores to applicants can direct them to NCBE's website, where applicants may request an unofficial transcript of their scores.
20. Some non-UBE jurisdictions report scores only to failing applicants and not to successful applicants. In the context of the UBE, however, a score that is passing in the testing jurisdiction might not be passing in other jurisdictions. Hence, all UBE applicants are told their scores without regard to their pass/fail status in the testing jurisdiction.
21. A jurisdiction might decide to accept older UBE scores if the applicant has been engaged in the active practice of law for some portion of the time since the score was earned. In such circumstance, the jurisdiction is not relying solely upon the score (and completion of other admission requirements) as the measure of readiness to practice, but is coupling a passing score and experience practicing law.
22. North Dakota, Minnesota, and the District of Columbia admit applicants on the basis of an MBE score taken in another jurisdiction. See NATIONAL CONFERENCE OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2011, Chart 8, 28-30 (National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar 2011).
23. In the context of accepting transferred MBE scores, many jurisdictions require applicants to have passed the examination in the testing jurisdiction, and some require applicants to have been admitted in the testing jurisdiction. Such a requirement makes sense for MBE scores because the transferred score is taken from only one component of the bar examination and the remainder of the examination is not uniform in all jurisdictions.
24. See NATIONAL CONFERENCE OF BAR EXAMINERS, *supra* note 22.



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THE UNIFORM BAR EXAMINATION: A BENEFIT TO LAW SCHOOL GRADUATES

by Veryl Victoria Miles

During the past academic year, I have had the opportunity to discuss with a variety of audiences some of the changes and innovations that have taken place within law schools and some that will be coming to the law school community in the near future. The catalysts for these changes and innovations are a variety of unrelated events, studies, and initiatives, including

1. the 2007 report of the Carnegie Foundation for the Advancement of Teaching recommending that legal education be delivered in a more integrative manner that links learning the law to law practice;¹
2. the impact of the economic recession beginning in 2008 on the legal employment market and law school placement and career services programs;
3. a proposed addition to the ABA Standards and Rules of Procedure for Approval of Law Schools on student learning outcomes and assessments,² which will require law schools to identify more clearly the educational competencies that students should obtain during their legal education and to measure student learning taking place during law school; and
4. the National Conference of Bar Examiners' initiative to promote the Uniform Bar Examination (UBE).

The audiences I have addressed have included law school students, law school deans, judges, and practitioners. As one can imagine, responses to the first three catalysts listed above have varied from school to school, which is understandable given the diversity one finds in the law school community in terms of mission, academic program, student body, and the employment market traditionally served. However, with respect to the fourth catalyst—NCBE's concept and promotion of the Uniform Bar Examination—there has been general interest and support.

In each presentation, I have identified myself as having a dual interest in the promotion of the UBE. The first reason for my interest is my service on the NCBE Special Committee on the Uniform Bar Exam and my belief that a uniform examination used by all jurisdictions is a very pragmatic way to address the increasingly multijurisdictional nature of law practice.

The second reason for my interest in the adoption of the UBE is that I am dean of a law school (The Catholic University of America Columbus School of Law) whose students represent close to 40 different states and bar licensing jurisdictions in any given graduating class year. These graduates will ultimately sit for the bar examination in as many as 25 to 30 different jurisdictions, making the UBE very appealing in meeting the broad bar admissions aspirations of our graduates, while also enhancing

their professional mobility in a fluid legal employment market.

My goal for each presentation has been to provide background information about the UBE, explain the characteristics of the UBE, explore the benefits of the UBE, and inform the audience of concerns raised by interested parties.³ In this article I summarize the information I have provided in these presentations, include some of the reactions to the UBE, and share my thoughts about how the UBE can benefit recent law school graduates, based on experiences at my own institution and commonly shared experiences with law schools in general.

THE UNIFORM BAR EXAMINATION: A RIPENING CONCEPT FOR BAR LICENSURE

One of the observations that I have come away with from each presentation about the UBE is the audience's sense of the UBE as a novel concept for lawyer licensure. The idea of a uniform bar examination, however, has been discussed by various groups within the legal community over the past 20 years. That this has occurred without garnering much traction beyond the discussant groups is revealing in terms of the importance of timing as the key to introducing the UBE throughout the states and effecting its broad adoption.

Two events seem to have helped spark interest in the UBE. In 2002 discussions about the feasibility and merits of a uniform bar examination took place among several groups that would be most impacted or advantaged by such an examination (the bench, the practicing bar, and the legal academy). These groups included the Conference of Chief Justices,

the American Bar Association, and the Association of American Law Schools.

In January 2008, NCBE held a conference to explore the feasibility and desirability of a uniform bar examination with state supreme court justices, bar examiners, and bar admission administrators from jurisdictions that were using the three NCBE tests recommended as the testing components of the UBE. This conference resulted in significant interest in the idea of a uniform bar examination. As a result of the discussions that followed that conference, a proposal for the UBE was drafted by the NCBE Special Committee on the Uniform Bar Exam.

DEMISTIFYING THE UNIFORM BAR EXAMINATION

A lawyer's understanding of the bar examination process is often reflective of what he or she took away from the experience of taking the exam. For most of us, mention of the bar exam reminds us of an extremely stressful time and an intense focus on learning "how to take the test" in order to get on with the business of being able to practice law. In spite of the memories many may have of the testing experience, the purpose of the examination itself must not be overlooked: to ensure that all new lawyers possess basic competencies for effective practice of law. These competencies include basic knowledge of core legal subjects and professional ethics; basic legal practice skills, including critical thinking, analysis, and problem solving; and effective written communication skills.

Accordingly, NCBE has developed several different kinds of tests that bar examiners may use

to assess these competencies. The tests have been introduced at different times, reflecting the changing needs and concerns of bar examiners and their desire to be more effective and comprehensive in the ultimate certification of a lawyer's competency to practice. These tests include the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), the Multistate Performance Test (MPT), and the Multistate Professional Responsibility Examination (MPRE).

The UBE is composed of the first three of these NCBE tests. (The MPRE, administered on a schedule different from the regular bar examination administrations in February and July, is not part of the UBE.) Consequently, the UBE tests a broad range of subject matters, skills, and abilities, using multiple testing formats. The sidebar on this page provides a description of each test used in the UBE.

BENEFITS OF THE UNIFORM BAR EXAMINATION

The UBE offers uniformity and consistency in test questions and grading rubrics among participating jurisdictions and ensures the same level of exam quality and comparability of scores among jurisdictions. NCBE maintains committees of test development professionals with years of experience in writing questions, and staff dedicated to assessing the validity of the tests in determining law practice proficiencies. The UBE provides greater transparency in test development, administration, and scoring, and jurisdictions do not have to incur the costs of test development.

UBE scores are portable to other UBE jurisdictions. This feature of the UBE has been received most favorably by all audiences and by student groups in particular. Given the uncertainty many recent law

THE COMPONENTS OF THE UNIFORM BAR EXAMINATION

The three NCBE tests that make up the UBE are the following.*

The Multistate Bar Examination (MBE)

- A six-hour, 200-question multiple-choice examination designed to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns.
- Areas of law covered are Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts.
- The MBE is currently being used by 53 jurisdictions, including 48 states (jurisdictions not using the MBE are Louisiana, Washington, and Puerto Rico).

The Multistate Essay Examination (MEE)

- An examination consisting of nine 30-minute essay questions from which jurisdictions usually administer six of the nine. The UBE includes six MEE questions.
- Areas of law covered are Business Associations (Agency and Partnership; Corporations and Limited Liability Companies), Conflict of Laws, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates (Decedents' Estates; Trusts and Future Interests), and Uniform Commercial Code (Negotiable Instruments [Commercial Paper]; Secured Transactions). The MEE tests on legal issues that are of general application in all states.
- The MEE is currently being used by 27 jurisdictions.

The Multistate Performance Test (MPT)

- A 90-minute examination requiring the application of fundamental lawyering skills in a realistic situation. Jurisdictions currently may use one or two MPTs for each exam. Each MPT evaluates an applicant's ability to complete a task that a beginning lawyer should be able to accomplish. The UBE includes two MPTs.
- Skills tested are factual analysis, legal analysis and reasoning, problem solving, identification and resolution of ethical dilemmas, written communication, and organization and management of a legal task.
- The MPT is currently being used by 34 jurisdictions.

* For more thorough descriptions of these tests, including sample questions and how the tests are developed, see Susan M. Case, *The Testing Column: Coming Together: The UBE*, THE BAR EXAMINER, Aug. 2009.

school graduates face in terms of where they will practice, a portable bar exam score eliminates the stress of having to select a particular jurisdiction in which to sit for the bar exam. Portability of the UBE score is particularly helpful because the ability to be admitted on motion in most jurisdictions is often unavailable to recent law school graduates who do not meet the “years of practice” requirement—generally five of the past seven years for those jurisdictions that offer motion admission.

Many practitioners find themselves engaging in cross-border or multijurisdictional law practice, making possible nationwide adoption of the UBE attractive to current and future lawyers. Widespread UBE adoption could also result in cost efficiencies in fees for clients with multijurisdictional cases. Moreover, the UBE can enhance both the professional and personal mobility of lawyers.

CONCERNS RAISED ABOUT THE UNIFORM BAR EXAMINATION

What about state-specific testing? Under the UBE testing structure, any individual jurisdiction can continue to test examinees on state-specific law and/or rules of practice and procedure either by attaching an additional test to its bar examination or by adding a continuing legal education or “bridge-the-gap” program requirement to the licensing process.

What about common decisions currently made by each jurisdiction? Other aspects of bar admissions that are of importance to individual jurisdictions will remain within the authority of each jurisdic-

tion. These include character and fitness decisions, educational prerequisites (e.g., graduation from an ABA-accredited law school), pass/fail cut scores, ADA accommodation decisions, and the duration of UBE score portability.

A LAW SCHOOL PERSPECTIVE ON THE BENEFITS OF THE UBE

In my role as dean of a law school, one of my principle concerns is the successful and speedy licensure

of our graduates. Several variables, however, can make this process complicated and inefficient—variables that could be significantly reduced or eliminated by widespread adoption of the UBE. Based on conversations with two members of our administration who provide

the vast majority of bar counseling and career advice to our graduating students—Jessica Heywood, Director of Career and Professional Development, and Georgia Niedzielko, Assistant Dean of the Office of Academic Affairs—I have provided below three examples of how the UBE can be beneficial to recent law school graduates. These examples apply not only to students graduating from our law school but to a certain extent to graduates of law schools throughout the country.

Simplifying Bar Selection and Maximizing Employability

Because bar application deadlines in many jurisdictions are set months in advance of the July bar exam administration, most graduating students are required to select a jurisdiction in which to sit for the bar exam long before they have received an offer of employment. Accordingly, law school bar

MANY PRACTITIONERS FIND THEMSELVES ENGAGING IN CROSS-BORDER OR MULTIJURISDICTIONAL LAW PRACTICE, MAKING POSSIBLE NATIONWIDE ADOPTION OF THE UBE ATTRACTIVE TO CURRENT AND FUTURE LAWYERS.

counselors and career advisors spend countless hours in the winter and spring helping graduating students decide which bar is appropriate in cases where a graduate does not yet know what type of employer he or she will be working for or the state in which he or she will be working. (For example, the place of licensing is not as important for an attorney to be eligible to work for the federal government as it is for an attorney to be eligible to work for a private firm, for which the place of licensing allows the attorney to practice in that firm's market.) Employment statistics collected by NALP (the Association for Legal Career Professionals) indicate that in 2009, almost 40% of graduating law school students nationwide did not receive offers of employment until after graduation.⁴ Thus, many graduating students are in essence forced into making a decision about where to take the bar exam because of an application deadline as opposed to being able to make this decision based on actual post-graduation employment.

Many students at Catholic University anticipate practicing in the Washington DC area immediately after graduation with the intent of moving to their home state or another state after acquiring a few years of experience in DC. Because of the "years of practice" requirement attached to the admission on motion rules of most jurisdictions, we therefore advise these students that it will be necessary for them to take another bar exam to be admitted in each jurisdiction in which they wish to practice in the early years of their careers.

However, because the admission on motion rule of the District of Columbia allows lawyers who have obtained an MBE score of at least 133 and an MPRE score of at least 75 to be admitted *regardless* of years of practice, most law school graduates planning to practice in the District of Columbia upon graduation

will take the bar exam in another jurisdiction and use the admission on motion rule for licensure in the District of Columbia. Accordingly, very few of our graduates actually sit for the bar exam in the District of Columbia, and many simply use DC's admission on motion procedure. Graduating students interested in maximizing their employment opportunities in both the short and long terms and wanting to avoid taking a second bar examination when they ultimately return to their home state or move elsewhere initially think these goals are achievable in this way.

While this may sound like a reasonable solution, it may not result in the greatest maximization of short-term employment opportunities in the greater Washington DC area. Many Maryland and/or Virginia firms based in DC require lawyers to also hold licenses from those jurisdictions. Therefore, if the graduate obtained his or her first license in a state other than Maryland or Virginia, the graduate has limited his or her employment options to firms that only require attorneys to have a DC license or to the federal government, which accepts bar licensure from any jurisdiction. In reality, the graduate will still need to sit for the bar examination in Maryland and/or Virginia to maximize employment options with Maryland- and Virginia-based firms and state and local governments, including public defenders' and prosecutors' offices. Widespread adoption of the UBE would resolve these bar selection problems by allowing recent graduates to sit for the bar exam in any jurisdiction and then simply transfer the UBE score to the new jurisdiction of their choice.

Making the Most of Bar Counseling and Bar Preparation Programs

Virtually all law schools offer bar preparation programs for graduating students in order to enhance

student readiness for the bar preparation regimen that follows graduation—essentially giving students a “head start” opportunity. At law schools where a majority of the graduates sit for the bar exam in one jurisdiction, it is relatively straightforward for the law school to design a bar preparation program for its students.

For law schools where a significant number of recent graduates sit for the bar exam in several different jurisdictions, the law schools (and therefore the students) have to become familiar with the test specifics and subject coverage of many different bar exams. My law school, Catholic University, is one of these schools. The good news is that because Catholic has a critical mass of students sitting for the exam in Maryland, Virginia, and New York, we have developed a strong base of bar preparation programming and information that we can readily provide to students for those exams. While we have a number of graduating students who sit for the bar exam in other states, our bar preparation programming is sufficient to assist all of our students with initial bar preparation readiness. However, students who take the bar exam in a jurisdiction other than our three primary jurisdictions (aside from DC itself) still need to do research to understand the specifics of that particular jurisdiction’s exam.

For example, the student who seeks admission in Colorado will find that Colorado uses the MBE, MEE, and MPT—in other words, the same exam components that Catholic covers in detail in its bar preparation program. Thus, the student can benefit from our general programming; however, he or she will still need to determine what subjects are tested in the Colorado-specific essay portion, including subjects that may be different from those covered in the MEE.

On the other hand, the student who seeks admission in the state of Washington will find that the Washington exam is dramatically different from the exam taken by almost all other graduates. Washington does not use the MBE, and its exam consists entirely of state-specific essay questions. Accordingly, students who sit for the bar exam in Washington do not benefit from the MBE portion of our bar preparation programming; they do, however, benefit from the rigorous essay preparation that we offer.

Nationwide adoption of the UBE would eliminate the challenge for law schools of developing different bar preparation courses for students who intend to practice in different jurisdictions.

Enhancing Lawyer Mobility

As I mentioned before, one of the attractions of the UBE is that it enhances the graduating student’s professional and personal mobility. I see examples of this need for mobility with every graduating class. The pressure of having to take two bar examinations to accommodate such needs so early in the graduate’s career is stressful personally and economically.

For example, let’s assume that a graduating student’s spouse is about to be stationed in California (a state that does not provide for admission on motion or accept an MBE score received in another jurisdiction) but within three years expects to move back home to New Hampshire (a state that requires a lawyer to have practiced for five of the past seven years to be admitted on motion). The individual requirements of each bar exam create serious barriers. In this example, the student will need to prepare for the California examination and then in short order prepare for another bar exam in New Hampshire, incurring significant expense and needing to wait

for the second bar exam's results before being able to obtain employment in New Hampshire.

In summary, widespread adoption of the UBE would allow lawyers to move from one jurisdiction to another as their careers and personal needs require. It would also dramatically decrease the amount of time and thought examinees spend trying to decide which bar to take, while enhancing the ability of the examinee to focus on what all bar examinations ultimately seek to assess—basic knowledge of law, professional ethics, and skills necessary for the effective practice of law.

ADOPTION OF THE UNIFORM BAR EXAMINATION: PROGRESS REPORT

At the time of publication of this article, the state bar examination and admission authorities of Missouri and North Dakota have adopted the UBE and are scheduled to launch the UBE for the February 2011 bar examination administration. Twenty-two jurisdictions use all three of the UBE test components (MBE, MEE, and MPT) and are likely candidates for adoption of the UBE. Approximately 10 additional states are said to be seriously considering adoption of the UBE over the next two years.

While it is my hope that all jurisdictions will ultimately adopt the UBE, it is clear that the process will take time. Jurisdiction concerns about providing the fullest licensing protections for their citizenry need to be addressed. As more members of the legal community become aware of the UBE, however, its novelty will disappear and its appeal as a reasonable option for law practice licensure will increase. 

NOTES

1. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (Carnegie Foundation for the Advancement of Teaching/Jossey-Bass 2007).

2. See American Bar Association Section of Legal Education and Admissions to the Bar, Standards Review Committee Student Learning Outcomes Subcommittee, May 5, 2010, Draft, Chapter 3: Program of Legal Education, available at <http://www.abanet.org/legaled/committees/comstandards.html> (find "Drafts for Consideration at Standards Review Committee Meetings"; then find "Meeting Date: July 24–25, 2010"; then find "Standards 301–307: Student Learning Outcomes").
3. The primary source of information for these presentations is "Essays on a Uniform Bar Examination" from the February 2009 issue of the *Bar Examiner*. The essays in this collection, written by a range of authors, including bar examiners and administrators, judges, and law school deans and faculty members, explore the benefits of and concerns raised by the UBE.
4. Association for Legal Career Professionals, Class of 2009 National Summary Report, available at <http://www.nalpc.org/uploads/NatlSummaryChartClassof09.pdf>.



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LOCAL LAW DISTINCTIONS IN THE ERA OF THE UNIFORM BAR EXAMINATION: THE MISSOURI EXPERIENCE (YOU CAN HAVE YOUR CAKE AND EAT IT, TOO)

by Cindy L. Martin

MISSOURI'S LOCAL LAW COMPONENT TO THE UNIFORM BAR EXAMINATION: THE UNEXPECTED BENEFITS

In April 2010, Missouri became the first jurisdiction to adopt the Uniform Bar Examination (UBE). In preparation for administration of the UBE, the Missouri Board of Law Examiners ("the Board") developed a local law component to test knowledge of Missouri-specific law as an ingredient of its bar admission requirements. That process, as discussed in this article, required the Board to evaluate the utility of a local law component and to come to terms with the objective best served by such a component. The end result was the creation of a local law component composed of written materials that highlight key distinctions of Missouri law in several substantive areas that Missouri practitioners should be expected to know.

Quite unexpectedly, the Board has since come to the realization that the local law component it created would have been worthy of incorporation into its bar admission requirements independent of adoption of the UBE, as it incorporates several desirable characteristics, as further explained in this article. The written materials

- are housed online and are as such a freely accessible resource for the entire bar community;
- are more expansive in scope than they could ever have been had they been tested on the bar exam;
- permit the Board to educate applicants about subject matters important to Missouri practitioners but not otherwise eligible for testing on the bar exam;
- remain an accessible resource for attorneys following their admission to the bar in Missouri; and
- remain relevant, as they can easily be updated and modified.

In short, although this article describes Missouri's experience in developing a local law component in connection with its adoption of the UBE, Missouri's experience bears potential equal application to all jurisdictions, even those not considering adoption of the UBE.

THE ROAD TO THE UNIFORM BAR EXAMINATION

The decision to propose adoption of the UBE was not difficult for the Board. Missouri was already

administering the three components that compose the UBE—the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT)—in conjunction with four essay questions drafted by the Board. Movement to an exam structure that eliminated the essay questions drafted by the Board while reducing the total number of essay questions from 10 to 6 and increasing the number of MPT questions from 1 to 2 (the predetermined number of MEE and MPT questions for the UBE) would not require a radical change in the exam's format.

After due consideration of the advantages and disadvantages of administering the UBE, the Board sought the approval of the Missouri Supreme Court (“the Court”) for adoption of the UBE.¹ The Court expressed interest in the UBE and authorized the Board to continue exploration of its adoption.

In September 2009, the Board met with the Court and with the deans of the Missouri and Kansas law schools and one Illinois law school to discuss the UBE.² The reaction to the UBE was generally favorable, with the law school deans predictably supporting an examination format that produces a portable score. However, one central concern emerged from this meeting: how can you license lawyers to practice in Missouri without testing their knowledge of Missouri law?

HOW TO TEST KNOWLEDGE OF MISSOURI LAW?

From the Board's perspective, the concern about how to license lawyers to practice in Missouri without testing their knowledge of Missouri law

was grounded in perception, not reality. For those essay questions the Board authored,³ it had become the Board's practice to craft questions that tested knowledge of general principles of law rather than details of Missouri law. As for the MEE questions, although examinees were instructed to answer the questions according to Missouri law, it was the Board's experience that Missouri law often was the same as the general rules of law with respect to the subjects tested on the MEE. Nevertheless, the Board acknowledged that its exam instructions counseled examinees to answer questions in accordance with Missouri law, whereas UBE ques-

tions are answered according to generally applicable principles of law. Moreover, substantive topics eligible for testing on the Missouri Bar Examination included topics that were not covered by the MEE or the MBE.⁴

Determining a Format for the Local Component

During the joint meeting of the Court and the deans, the option of adding local law essay questions to the UBE was discussed and rejected for reasons discussed later in this article. Immediately following the meeting, the Court conditionally approved adoption of the UBE effective with the February 2011 examination, subject to the Board's formulation of a local law component acceptable to the Court. The Court expressed support for an educational course but otherwise provided little guidance with respect to the details, such as the format or content of such a course.

Both the Board and the Court were excited about leading the way toward use of a single licensing examination and becoming one of the first jurisdic-

. . . [O]NE CENTRAL CONCERN EMERGED FROM THIS MEETING: HOW CAN YOU LICENSE LAWYERS TO PRACTICE IN MISSOURI WITHOUT TESTING THEIR KNOWLEDGE OF MISSOURI LAW?

tions, if not *the* first jurisdiction, to formally adopt and administer the UBE in February 2011. Thus, the Board was faced with the daunting task of developing the educational course in a time frame that would permit the Court to approve adoption of the UBE and related amendments to Rule 8 as to fairly notify applicants of administration of the UBE in February 2011.

PREPARING TO SUBMIT THE BOARD'S RECOMMENDATION TO THE COURT

Upon securing the Court's approval to adopt the UBE, subject to development of an educational course on Missouri law, the Board began considering the potential content for such a course.

Determining Substantive Areas of Law and Preparing Skeletal Outlines

As a preliminary step, the Board identified those substantive areas of law that warranted coverage because of significant distinctions or features of Missouri law. It was the Board's opinion that the course should not afford comprehensive coverage of any substantive area of the law. Rather, it should expose applicants to the unique aspects of Missouri statutory, common, and decisional law that any Missouri practitioner should be expected to know.

In identifying potential content for the educational course, the Board first considered the subject matters that are eligible for testing on the UBE and next considered whether any subjects not tested on the UBE should be covered in the course. Ultimately,

the Board identified the following subject matters as appropriate for coverage—some of which are tested on the UBE but in which Missouri law is distinct or differs significantly from generally applicable principles of law, and some of which are not tested on the UBE but about which attorneys engaging in general practice in Missouri should know: Business Associations, Missouri Civil Procedure, Estates, Evidence, Family Law, Administrative Law, Real Property, Torts, and Trusts.

... [T]HE BOARD MEMBERS REVIEWED LEGAL RESEARCH MATERIALS RELATED TO EACH OF THE SUBJECT MATTERS AND DEVELOPED SKELETAL OUTLINES THAT DELINEATED TOPIC HEADINGS AND SUBHEADINGS ONLY OF THE SIGNIFICANT LOCAL LAW DISTINCTIONS AND FEATURES IN EACH OF THESE SUBJECT MATTERS.

The Board then divided these topics among its six members. With a self-imposed deadline of January 31, 2010, the Board members reviewed legal research materials related to each of the subject matters and developed skeletal outlines that delineated topic headings and subheadings only of the significant local law distinctions and features in each of these subject matters. The draft outlines

were circulated, discussed, and revised by the Board to remove or add material as necessary in keeping with the objective to highlight local law distinctions and not to serve as comprehensive treatises.

Drafting Rule Amendments

Meanwhile, the Board's then Executive Director, Kellie Early,⁵ drafted the stopgap amendments to Rule 8 necessary to implement adoption of the UBE.⁶ If the UBE was going to be administered in February 2011, it was essential that revisions to Rule 8 be adopted by the Court with an effective date of no later than July 1, 2010, to put prospective applicants on notice before they applied to take the examination.⁷

The Board submitted the skeletal outlines with the proposed amendments to Rule 8 to the Court in February 2010, together with a memorandum setting forth issues related to delivery of the educational course (these issues are discussed later in this article). The local law component was addressed in the proposed rule by adding a provision that applicants must “complete an educational course on Missouri law prescribed by the Board and approved by the Court” as an additional condition for licensure.

Approval by the Court

In April 2010, the Court approved the amendments to Rule 8 and formally adopted the UBE, making Missouri the first UBE jurisdiction. The Court agreed with the content identified by the Board for inclusion in the educational course on Missouri law, but details regarding delivery of the course were still to be determined.

EVALUATING THREE LOCAL LAW COMPONENT OPTIONS

Local Law Essay Questions Added to the UBE

Early in the process, the Board and the Court ruled out the option of using essay questions on Missouri law as the local law component. If the local law essay questions were to result in a reliable score, they would need to be administered contemporaneously with the UBE and scaled to the MBE. Adding essay questions would require either a longer testing day on one of the days of the exam or the addition of a third testing day immediately before or after the exam. Neither option was attractive, as each option would increase the burden on applicants and on the Board and its staff. Moreover, adding testing time would increase the costs of renting testing space and proctoring the exam. These costs would have to be passed on to applicants in the form of higher applica-

tion fees. Additionally, applicants who had taken the UBE in another jurisdiction would have to wait until the next exam administration to take the local essay component, delaying their potential admission to the bar in Missouri.

Furthermore, local law essay questions inherently could test only a limited number of legal principles in but a few substantive areas. From the Board’s perspective, local law essay questions constituted a “form over substance” response, the effectiveness of which was only to counter the misperception that some existing emphasis on Missouri law was being abandoned with adoption of the UBE.

The Board also recognized that adding local law essay questions to the UBE would result in an applicant receiving two scores: a UBE score and a combined UBE/local law essay examination score. It would be the combined UBE/local law essay examination score that would determine whether applicants gained admission in Missouri, even those applicants who earned UBE scores that met or exceeded Missouri’s cut score. Given that Missouri’s current bar examination was not, in reality, testing knowledge of local law, it seemed that coupling local law essay questions with the UBE facially defeated the objective underlying the UBE without adding any meaningful measure of competency to practice in Missouri.

Attendance-Required Educational Course

The Court had expressed a preference for the Board developing an attendance-required educational course, similar to a continuing legal education (CLE) program, focusing on unique aspects of Missouri law.⁸ But this option posed its own concerns.

The administration of a CLE program is expensive, involving, among other things, the rental of

meeting room space, the cost of publicizing the program, the provision of refreshments, the need to reimburse speakers for travel expenses, and administrative overhead to track registration and attendance. A recurring educational course would be burdensome to produce. The course would have to be offered no less than twice a year in connection with each UBE administration if applicants were required to complete it before gaining admission to the bar. The course also would need to be offered at two or three locations throughout the state to afford applicants a reasonable opportunity to attend. The costs of delivering a recurring course would require the Board to increase application fees or to separately charge applicants for the course. The efforts required to repeatedly plan, organize, and present an educational course would impose a substantial burden on already overtaxed Board resources and staff.

The Lightbulb Moment: Coming to Terms with the Objective Best Served by a Local Law Component

The Board recognized that some of the obstacles inherent in presenting a recurring course could be overcome by videotaping the course for rebroadcast at live locations or in an Internet seminar (“webinar”) format. Once it began considering this solution, the Board quickly realized that it was moving away from a local law component that emphasized determining an applicant’s absorption of local law and toward a local law component that emphasized an applicant’s access to critical information about Missouri law

distinctions. The Board thoroughly discussed this philosophical difference and concluded that as the UBE already determines minimum competence to practice law, a local law component need not duplicate this objective.

Written Materials Highlighting Local Law Distinctions and Features

This philosophical revelation redirected and crystallized the Board’s efforts with respect to developing the outlines for the educational course. Having gained an inspired understanding of the relevant point and purpose of a local law component, the Board focused on developing local law materials that would enhance the licensure process. With this perspective in mind, the Board arrived at a recommended local law component that would provide applicants with written outlines of significant issues of distinction in Missouri law, including appropriate reference to Missouri statutory, decisional, and common law. The Board believed that the outlines should be available to applicants online. The Board envisioned that it would require an applicant to provide the Board with written certification attesting that the applicant had reviewed the outlines as an additional condition of licensure.

In June 2010, the Board met with the Court to propose that delivery of the educational course on Missouri law be accomplished through distribution of the written outlines rather than through an attendance-required course.

. . . [T]HE BOARD QUICKLY REALIZED THAT IT WAS MOVING AWAY FROM A LOCAL LAW COMPONENT THAT EMPHASIZED DETERMINING AN APPLICANT’S ABSORPTION OF LOCAL LAW AND TOWARD A LOCAL LAW COMPONENT THAT EMPHASIZED AN APPLICANT’S ACCESS TO CRITICAL INFORMATION ABOUT MISSOURI LAW DISTINCTIONS.

THE COURT'S ENHANCEMENTS TO THE BOARD'S LOCAL LAW COMPONENT PROPOSAL

Although the Court generally approved the Board's proposal, it did request two modifications. First, the Court requested the addition of an outline addressing the Missouri court structure and judicial selection process. With this suggestion, the Court highlighted one of the advantages of a local law component that emphasizes the provision of written information—the ability to give applicants access to materials that would never have been otherwise tested on the bar examination.

Second, the Court told the Board that it wanted applicants to do more than simply certify review of the outlines as a condition of licensure. The Court asked the Board to develop a simple online test applicants would be required to pass as a condition of satisfactory completion of the local law component. The Court made it clear that it was not envisioning a test whose score would be part of an applicant's bar examination score, or a test that would create an unreasonable impediment to licensure. Rather, the Court believed that a test would enhance applicants' appreciation of the materiality and relevance of the local law component. In the words of Supreme Court Judge Zel Fischer, the Court believed that the local law materials were intended to prevent applicants from "backing into a buzz saw" once they began practice in Missouri because they were not aware of significant distinctions in Missouri law. The Court thus believed that a simple test would cause applicants to treat the local law component with a level of seriousness, and not simply as an item to check off as a condition to licensure.

FINAL STEPS FOR THE BOARD

The Court's additional requests presented the Board with another daunting deadline. The adopted revisions to Rule 8 implemented the UBE as of the February 2011 exam administration. The Board's online application for the February 2011 exam was slated to open on September 1, 2010. The Board thus had to complete the following tasks by no later than September 1, 2010: (1) finalization of the outlines⁹, (2) preparation of an outline covering the additional topic of the Missouri court system as suggested by the Court, (3) development of an online testing instrument acceptable to the Court, (4) coordination of the logistics with respect to where the substantive outlines and the testing instrument should be housed online, and (5) determination of an appropriate means by which the Board could verify that an applicant had passed the local law test in satisfaction of the local law component.

THE MISSOURI EDUCATIONAL COMPONENT TEST

In keeping with the Court's articulated objective, the Board formulated a 30-question multiple-choice test covering matters addressed in the written outlines. The Board decided to require an applicant to answer 75 percent of the questions correctly in order to satisfactorily complete the local law component. The Missouri Educational Component Test (MECT) was thus born. The Court quickly approved this testing concept.

Housing the Materials and Test

In the meantime, the Board's new Executive Director, Colette Neuner,¹⁰ focused on the logistics of housing the outlines (eventually to be called the "Missouri

Materials”) and MECT online. Although initial consideration was given to modifying the proprietary website used by the Board for hosting the electronic application forms and the secure applicant accounts, it quickly became apparent that the cost and time required to do so would be prohibitive. Neuner thus worked with the Office of State Courts Administrator (OSCA), the agency that oversees the state’s judicial website. This cooperative enterprise resulted in the Board being permitted to place the local law outlines and the MECT on OSCA’s website. Applicants are seamlessly directed by a series of links from the Board’s home page to the local law materials and test housed on the OSCA site.¹¹

Importantly, housing the local law materials and the MECT on OSCA’s website was accomplished at virtually no cost to the Board. As a result, the Board has not been required to increase its application fees or to assess a separate charge for administering the MECT.

Taking the Test

Although the local law component materials and the MECT are publicly available and can be accessed by any member of the public, including applicants, an applicant must have submitted an application to sit for the exam in Missouri before the applicant can attest to satisfactory completion of the local law component as a condition of licensure. Applicants are afforded up to one year following notification that a passing UBE score has been achieved in Missouri, or that a passing UBE score achieved in another jurisdiction has been accepted by Missouri, to complete all requirements of licensure. Thus, applicants have the flexibility of completing the MECT component at any time between these parameters.

Scoring the Test

OSCA’s programming permits the MECT to be automatically scored and is designed to deny an applicant access to the written certification of satisfactory completion of the MECT until a passing score on the MECT has been achieved. Once a passing score on the MECT is achieved, an applicant is required to print the Certificate of Completion shown on page 14 to attest that the applicant personally reviewed the local law materials and completed the MECT, and to mail the original Certificate of Completion to the Board.¹²

Retaking the Test

Applicants are permitted to retake the MECT as many times as is necessary to achieve a passing score. This is not inconsistent with the objective of affording applicants access to important local law distinctions and features, as opposed to testing competence or proficiency in a psychometrically sound fashion.

FUTURE EVOLUTIONS OF THE MECT

The Board has committed to annually reviewing and updating the local law outlines by June of each year. The Board welcomes input from the bar about the subjects covered in the outlines and the specific content of the outlines.

The MECT is not a difficult test to pass—nor was it intended to be. Applicants can review the substantive outlines to find the correct answers to questions while taking the MECT, rendering the MECT an open-book test. However, the Board is sensitive to maintaining an appropriate level of respect for the MECT and the role it is intended to serve. Thus, the

Certificate of Completion
Missouri Educational Component

MECT SCORE:

Date:

Certificate Number:

This test score is valid in accordance with Rule 8.08(c).

1. Fill in the blanks.

Enter your full name as it appears on your ILG application:

Enter your e-mail address:

Enter the area code and phone number of your primary contact number:

2. Fill in the blanks.

3. Sign this page and mail it to the Board of Law Examiners, 1700 Jefferson St., Jefferson City, Missouri 65109.

I hereby certify that I completed the Missouri Educational Component open book test myself.

Your Signature _____

MECT Certificate of Completion. The score, date, and certificate number are automatically filled out upon applicant receipt of a passing score.

Board will modify the MECT questions on a regular basis, and no less than annually.

The Board is also considering restricting the frequency with which an applicant can retake the MECT

within a set period of time in an effort to prevent an applicant from cheating the process by merely guessing at answers without having studied the local law materials. In addition, the Board may develop

several versions of the MECT so that an applicant who fails to achieve a passing score will be directed to a different version of the MECT on retake.

Though firm decisions about these and other potential enhancements to the MECT have not yet been made or implemented by the Board, the beauty of the MECT is its flexibility. The outlines and the testing instrument can be easily modified at virtually no cost to the Board.

CONCLUSION

The MECT exposes applicants to an extensive array of critical distinctions and features of Missouri law in several substantive areas. The MECT materials are more expansive in scope than they could ever have been had they been tested on the bar examination, and they permit the Board to educate applicants about subject matters not otherwise eligible for testing on the bar examination. Because the MECT materials are housed on a website that is in the public domain, the materials remain an available resource to applicants after licensure. In fact, the availability of the materials is promoted to all lawyers in Missouri. The Board's partnership with OSCA for housing the MECT materials and for scoring the MECT was essentially cost free and remains an extraordinarily flexible tool permitting maintenance and upgrading of the MECT.

The real or perceived conflict between the promotion of a portable UBE score and the desire to focus on local law need not stand in the way of a jurisdiction's desire to adopt the UBE. Missouri humbly suggests that the MECT strikes just the right balance between conditioning licensure on exposure

to unique distinctions and features of local law and promoting the portability of UBE scores.

The Missouri Board and its staff stand ready to serve as a resource for any jurisdiction exploring adoption of the UBE in the face of resistance to the perceived necessity of forgoing a local law component. As the Show-Me State has demonstrated, it is indeed possible to have your cake and eat it, too. Uniformity is not mutually exclusive with the ability to emphasize a state's uniquely valuable identity. ■

NOTES

1. In Missouri, admission to the practice of law is authorized by Missouri Supreme Court Rule 8, Admission to the Bar. Rule 8 also addresses the creation and composition of the Board. The members of the Board thus serve upon appointment by, and at the will of, the Court. Any change in the format of the bar examination in Missouri requires Court approval and attendant modification of Rule 8.
2. Applicants from Kansas and Illinois frequently seek dual licensure employing a transferred MBE score. It has therefore been the Board's practice to communicate with the deans of both Kansas law schools and one Illinois law school because of the regularity with which their students seek admission in Missouri.
3. When NCBE began offering 9 MEE questions in July 2007, the Board would often select more than 6 MEE questions and would then write the number of essay questions necessary to administer a total of 10 essay questions.
4. These subjects included Missouri Civil Procedure, Administrative Law, and Equity.
5. Kellie Early served as the Board's Executive Director for 10 years. She accepted the position of Director of Administration for the National Conference of Bar Examiners beginning in mid-June 2010.
6. Given the exigencies of time, the Board elected, initially, to incorporate necessary revisions into its current Rule 8.08, which addresses application for the bar examination generally. The Board is now in the process, however, of adopting a stand-alone rule, Rule 8.09, addressing the requirements for admission on the basis of a UBE score earned in another jurisdiction.
7. The proposed changes to Rule 8 addressed (1) the adoption of the UBE and the intent to administer the UBE commencing with the February 2011 examination, (2) the addition of a local law component as a condition of licensure, (3) the required UBE cut score to pass the exam in Missouri, (4)

the weighting to be afforded each component of the UBE (the specific weighting of the MBE, MEE, and MPT is predetermined as a condition of UBE use), and (5) the requirements for admission on the basis of UBE scores transferred from other UBE jurisdictions into Missouri.

8. In the limited discussions about adding a local law component, the Court had indicated that any educational program would be offered only to applicants for admission and would not compete with CLE programs offered by the Missouri Bar and other providers to licensed attorneys.
9. Although the Board invested considerable time and energy in developing the outlines, to avoid responsibility for reliance on the accuracy or completeness of the substantive outlines, the Board prepared an appropriate disclaimer, which is posted online along with the substantive outlines.
10. Colette Neuner was hired to replace Kellie Early as the Executive Director of the Board in late May 2010 and was thus thrust headlong into the adoption of, and transition to, the UBE.
11. The Board's home page is www.mble.org. On this page, an applicant (or any member of the public) can click the highlighted "Read More" link under the section titled "Missouri Educational Component Test (MECT)." Highlighted links thereafter direct an applicant to the substantive outlines, to the MECT, and, upon achieving a passing score, to the Certification of Completion.
12. Some have inquired about security issues in terms of how the Board can verify that the test was actually taken by the applicant and not by a surrogate test-taker. The primary goal of Missouri's local law component, however, is to simply ensure that applicants are exposed to and know where to find the Missouri-specific materials that the online test covers. The Board believes that as applicants become familiar with the Missouri-specific materials, they will come to quickly appreciate that the MECT is a resource and not a serious impediment to admission that should tempt an applicant to resort to dishonesty. In addition, the Board's Certificate of Completion presumes the same character for honesty presumed in affidavits of attendance submitted by attendees of CLE courses offered to licensed practitioners in the state. For these reasons, the Board was not overly concerned about applicants falsifying MECT certification.



CINDY L. MARTIN is a judge on the Missouri Court of Appeals for the Western District. She has served since 2001 as one of six lawyers appointed by the Supreme Court to the Missouri Board of Law Examiners and served as president of the Board from October 2009 through May 2011. Her term on the Board expires in October 2011. Prior to her appointment to the bench in October 2009, Martin enjoyed an active commercial litigation practice for 25 years. Martin is also a member of the National Conference of Bar Examiners' Board of Trustees and its Special Committee on the Uniform Bar Examination. She received her undergraduate degree from William Jewell College in Liberty, Missouri, and her law degree from the University of Missouri-Kansas City School of Law.

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September 20, 2010

The ABA Section of Legal Education and Admissions to the Bar recently issued a Council Resolution urging state bar admission authorities “to consider participating in the development and implementation of a uniform bar examination.” In January 2010, the Society of American Law Teachers—SALT—issued a statement entitled: “SALT RAISES QUESTIONS FOR STATES CONSIDERING ADOPTION OF A UNIFORM BAR EXAM.” The statement discusses the benefits, and potential pitfalls, of a uniform bar exam. To help inform your state’s discussion, should you decide to consider the Uniform Bar Exam, we enclose that statement.

If you would like more information about any of the issues raised in the attached statement, please contact SALT’s Executive Director, Hazel Weiser, at 631 650 2310 to arrange for a consultation with a member of SALT’s Issues in Legal Education Committee.

For more information about SALT, please browse our website at www.saltlaw.org.

cc: State Chief Justices
State bar association presidents

***SALT RAISES QUESTIONS FOR STATES CONSIDERING ADOPTION
OF A UNIFORM BAR EXAM***

January, 2010

The Society of American Law Teachers (SALT) offers the following analysis to help states identify and discuss some of the many questions engendered by the proposed Uniform Bar Exam. This analysis focuses on issues that implicate SALT's mission of enhancing the quality of legal education and promoting diversity within the profession. Other concerns, such as how to deal with state specific law, have been thoroughly addressed by others¹ and are not discussed here.

I. Test Validity and Reliability

A. Increasing Validity and Reliability of Essay Questions

All questions on a high stakes test like the bar exam should be both valid and reliable. (A valid test question measures the skills and knowledge it is intended to measure. A reliable test question is one that produces scores that vary according to students' performance and abilities rather than scores that are due significantly to chance.) Although many states use the Multi-State Essay Examination questions drafted by the National Council of Bar Examiners, many states' essay questions are drafted by practitioners untrained in the design of test questions or grading rubrics. Many states simply do not have the resources necessary to properly train these practitioners to ensure that they develop a wide range of valid and reliable test questions twice a year. Thus, despite good faith efforts to draft essay questions based upon state law, it is highly likely that at least some essay questions on various state bar exams are not valid and reliable measures of the skills sought to be tested.

A desire to ensure validity and reliability may be one reason to consider allowing the National Council of Bar Examiners to draft bar exam essay questions via a Uniform Bar Exam: professionals trained in drafting questions and developing reliable grading rubrics may be better suited to drafting essay questions and grading rubrics that are valid and reliable measures of the skills sought to be tested by this question format. In a high-stakes exam such as the bar exam, reliability and validity should be key considerations and states should discuss whether one way to better ensure this is to use questions drafted by the NCBE, either for the Multi-State Essay Examination or a Uniform Bar Exam.

¹ See THE BAR EXAMINER, Feb. 2009 (containing multiple essays that discuss various solutions to the desire to test state specific law).

B. Increasing Validity and Reliability of the Overall Exam

Although adoption of a Uniform Bar Exam may increase the validity and reliability of individual states' essay questions, SALT believes states should consider the bigger underlying question: whether the current bar exam format itself is a valid measure of who will be a competent new lawyer. SALT has long argued that the currently constructed paper and pencil bar exam is not a valid measure of a new lawyer's competence.² Even if one believes that the current bar exam validly and reliably measures legal knowledge, reasoning and analysis,³ those skills are only one small segment of skills new lawyers need.⁴ Moreover, measuring those skills via multiple choice questions, timed essay questions,⁵ or even time-pressured "performance" questions⁶ is not a good way to determine whether new licensees possess those skills in the way that lawyers actually use them. Thus, if states really want to ensure that they develop a valid and reliable way to license minimally competent new lawyers, SALT encourages states to explore pilot projects that seek to develop a licensing process that better measures whether new licensees truly will be minimally competent lawyers. Below, SALT lists a few ideas states may want to consider while debating whether to adopt a Uniform Bar Exam.

1. Bar Exam Credit for Well-Supervised Practical Experience

One option for states that want to ensure new licensees can do more than answer a multiple choice question or timed short essay question is to consider giving some credit, perhaps via additional points on a bar exam score, to licensees who perform satisfactorily in well-supervised clinic and externship experiences. Scholarly literature already provides some criteria that help define well-supervised clinical and externship learning experience.⁷ Building upon those criteria, bar examiners, practitioners, judges and law professors could develop guidelines that

² *Society of American Law Teachers Statement on the Bar Exam*, 52 J.LEG.ED. 446 (2002).

³ See e.g., Charles T. Beeching Jr., *A Bar Examiner's Perspective on Minimum Competence*, THE BAR EXAMINER, Nov. 1996 at 6 (noting that the bar exam cannot test a wide range of skills but it can realistically test knowledge of the law and application of legal reasoning); Suzanne Darrow-Kleinhaus, *A Response to the Society of American Law Teachers Statement on the Bar Exam*, 54 J. of Legal Ed. 442 (2004) (arguing that the bar exam does a good job testing reading comprehension, general legal knowledge, issue identification and legal analytical and writing ability).

⁴ Marjorie M. Schultz and Sheldon Zedeck, *Final Report: Identification and Development and Validation of Predictor for Successful Lawyering*, at 26-27, available at http://lawschool.about.com/gi/o.htm?zi=1/XJ&zTi=1&sdn=lawschool&cdn=education&tm=17&gps=504_340_1276_576&f=00&su=p897.6.336.ip_&tt=2&bt=1&bts=1&zu=http%3A//www.law.berkeley.edu/files/L.SACREPORTfinal-12.pdf (delineating a list of 26 lawyering effectiveness factors based upon extensive empirical research)

⁵ Professor William Henderson's extensive empirical study found that test-taking speed was an independent variable for both the LSAT and law school exams. See William D. Henderson, *The LSAT, Law School Exams and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed*, 82 TEX. L. REV. 975 (2004). It is likely that this finding is equally applicable to timed bar exam questions. Whether test-taking speed is a valid variable in determining lawyer competency is a debatable question.

⁶ Questions on the Multi-State Performance Test require test-takers to quickly read and assimilate law and facts and produce a written product such as a legal memo, brief, client letter or pleadings. Again, measuring these skills via a time pressured test question may not be a valid measure of whether potential licensees possess the skills in the ways lawyers use them.

⁷ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 188-205(2007).

ensure that successful completion of an experiential learning course added sufficiently significant additional skills and professionalism dimensions to warrant adding some designated number of points to applicants' final bar exam scores. As discussed in more detail in Section II, below, this option may be particularly important if states also consider raising their passing cut-off score to some nationally agreed upon score.

2. New Hampshire "Client Ready" Model

States may also want to consider exploring the alternative licensing option currently in place in New Hampshire. Franklin Pierce Law School, in conjunction with the New Hampshire Supreme Court, New Hampshire State Bar and New Hampshire Board of Bar Examiners has developed an alternative bar licensing program that focuses upon building and assessing the ten fundamental skills and four fundamental values described in the *MacCrate Report*. Because students who successfully complete this program repeatedly demonstrate to New Hampshire Bar Examiners those core competencies required to practice law, they are deemed to have passed a variant of the New Hampshire Bar Exam, and are not required to take the traditional two day State Bar Examination in order to be admitted to the New Hampshire Bar.⁸

The various stakeholders in New Hampshire are willing to share their materials with other states and help others implement a similar model. Although the initial alternative licensing program began as a small pilot, it has expanded each year and currently is experimenting with a computer-adapted model that will allow many more students to participate. SALT is co-sponsoring a conference in April, 2010 for states interested in finding out more about how to develop and implement a similar alternative licensing model. The conference, which will be held at Franklin Pierce Law School, will provide participants with an overview of the New Hampshire program and will include sessions about how students are assessed and how the assessment process satisfies the New Hampshire licensing criteria. Conference participants will see students' work product and various assessments used to ensure student competency. State Supreme Court Justices, State Bar Examiners and law school deans will also have the opportunity to meet with each other and with their New Hampshire counterparts to discuss issues and concerns unique to these various stakeholders. For more information about this conference, contact Professor Tim Floyd at: Floyd_tw@mercer.edu.

3. Using Technology To Test Additional Skills

Computer simulations are part of the testing methodology in the medical profession and those models could be adapted to the law licensing process.⁹ States also should consider encouraging law schools and the National Council of Bar Examiners to develop pilot programs that explore

⁸ For more information about this program, see John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready, A New Model in Legal Education*, 1 DUKE F. FOR L. & SOC. CHANGE 101 (2009) (explaining how the Daniel Webster Honors Program uses authentic assessments to help students become client-ready).

⁹ G. F. Dillon et al., *Simulations in the United States Medical Licensing Examination (USMLE)*, *Qual Saf Health Care* 2004;13:141-145 (discussing the use of computer based case simulations in the medical licensing exam).

ways to use technology to examine licensees' ability to perform legal research, factual investigation, and test their knowledge of a range of lawyering skills such as interviewing, counseling and negotiation. Technology could be used to develop simulations and even perhaps to measure potential licensees' ability to perform legal and factual research. States interested in better assessing a wide range of new lawyering skills should consider working with the NCBE to develop pilot projects to test the use of technology in the lawyer licensing process.

4. Other Options

The above options are only a starting point aimed at generating meaningful discussion and consideration of better ways to ensure that newly licensed lawyers are, in fact, minimally competent. Other options have been discussed in various journals and law review articles¹⁰ and states may consider exploring those, as well. Confining discussion to whether to adopt a Uniform Bar Exam without consideration of fundamental issues, such as the validity of the existing exam and ways to better measure new lawyers' competence, would be an unfortunate missed opportunity. Thus, SALT urges that any discussion about a Uniform Bar Exam also include conversations about ways to develop and implement licensing criteria that measure a wider range of skills and abilities to ensure that states have a truly valid measure of who will actually be a minimally competent new lawyer.

II. Portability of Scores and Potential Impact on Diversity

A Uniform Bar Exam raises the possibility of a uniform pass rate that would allow those taking the exam to transport their scores to other jurisdictions administering the same exam. In fact, one of the strongest arguments in favor of a Uniform Bar Exam is the transportability of bar exam scores.¹¹ Allowing applicants to be licensed in multiple jurisdictions after passing one bar exam certainly makes sense on a theoretical level since the skills that make one a competent lawyer are not state specific. It also makes sense on a practical level. In a tough economic market, it allows lawyers to look for jobs beyond their state's borders without worrying about having to spend the time and money involved in taking another bar exam.

Initial discussions of a Uniform Bar Exam have raised questions about whether a uniform pass rate score is viable and desirable. This issue merits close scrutiny because it has important implications for the profession. Currently, states have different methods of weighting the multiple choice versus essay questions, and have different passing rate cut-off scores. If there is a move to adopt a uniform passing cut-off score, states must be extremely cautious because

¹⁰ See Kristin Booth Glen, *Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry Into the Profession*, 23 PACE L. REV. 343 (2003); see also Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 NEB. L. REV. 363 (2002); Steven Barkin, *Should Legal Research Be Included on the Bar Exam? An Exploration of the Question*, 99 Law Library Journal 403 (2007).

¹¹ The February 2009 edition of *The Bar Examiner* contains numerous essays discussing bar exam score portability issues. THE BAR EXAMINER., FEB. 2009.

raising cut-off scores has a potential serious negative impact on diversifying the profession without any underlying empirical justification for raising bar pass cut-off scores.¹²

Currently, no data supports the proposition that those scoring at or near the current pass rate cut-off are less competent lawyers than their higher scoring counterparts. On the other hand, data indicates that within existing cut-off score parameters there is a differential in bar exam pass rates between potential licensees of color and their white counterparts,¹³ although some of that differential is eliminated when the bar exam is re-taken.¹⁴ Studies indicate that the pass rate differential likely will increase if the bar exam cut-off score increases¹⁵ and likely will also increase the number of minority bar applicants who are forced to re-take the bar exam. Thus, raising the minimum score for bar exam passage may have a significant negative impact on the diversity of a state's bench and bar without any data justifying the need to raise the cut-off score. States need to thoroughly research and discuss this issue before even thinking about raising their cut-off score in order to participate in a Uniform Bar Exam that allows transportable scores but requires a higher passing score than is currently required by that state. This is especially true given the lack of data correlating bar pass scores to actual lawyer competence.¹⁶

One possible solution to this dilemma may rest with the idea proposed in Section I.B.1., above: states could consider adding bar exam passage points to those potential licensees who have successfully completed a well-supervised clinical or externship program. This would both ensure that the state's lawyers had a wider range of skills than is currently tested, and may counter the negative effects of requiring a higher pass rate score.

SALT urges states to discuss the option outlined above, as well as other potential options, to ensure that the adoption of a Uniform Bar Exam does not have a deleterious effect on the profession's diversity.

III. Impact on Law School Pedagogy and Assessment

In addition to the issues discussed above, states should realize that the current bar exam drives a host of decisions in law schools affecting admissions, curriculum, pedagogy and assessment; in

¹² See William C. Kidder, *The Bar Examination and the Dream Deferred: A Critical Analysis of the MBE, Social Closure and Racial and Ethnic Stratification*, 29 LAW & SOC. INQUIRY 547 (2004) (arguing that the psychometric research sponsored by the National Council of Bar Examiners minimizes and obscures the impact of raising bar exam pass rate cut scores on people of color); see also Deborah J. Merritt, et al., *A Social Science Critique of Recent Increases to Passing Scores on the Bar Exam*, 69 U. CIN. L. REV. 929 (2000) (discussing the flaws in the social science analysis of those arguing that higher passing cut scores improve the quality of new lawyers and discussing the implications of the higher cut scores on diversifying the profession).

¹³ Linda F. Wightman, LAW SCH. ADMISSIONS COUNCIL, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY 27 (1998).

¹⁴ *Id.* at 32.

¹⁵ See Merritt et al, *supra* note 13 at 965-66-; see also Kidder, *supra* note 13 at 550.

¹⁶ Some scholars argue that increasing bar pass rate scores may actually lead to less competent lawyers because students may feel compelled to take courses that will help them pass the bar exam rather than taking courses such as alternative dispute resolution that provide them with critical, but untested, lawyering skills. Merritt, et al, *supra* note 13 at 931.

effect, pressure about the bar performance often forces students and schools to make decisions not for sound educational reasons but to protect bar passage rates. Many schools' curriculum is geared toward courses students should take to pass the state's bar exam and many students forego courses that will help them develop a jurisprudential perspective or a wider range of lawyering skills in order to help ensure bar passage. Additionally, the most frequent law school assessment method in doctrinal courses focuses solely on students' grasp of legal doctrine and the ability to apply that doctrine, usually via a make-or-break timed test consisting of multiple choice or essay questions or some combination thereof. Thus, most law school assessments do not attempt to measure whether students can integrate doctrine, skills and values in ways that replicate how those issues arise in law practices. The current law school assessment methods predominate, in part, because they can be justified as necessary to "prepare students to take the bar exam". If states want to encourage law schools to engage in the work necessary to better integrate doctrine with skills and professionalism,¹⁷ states should discuss whether adopting a Uniform Bar Exam furthers that goal or more deeply entrenches the status quo.

Summary

There are many positive aspects to a Uniform Bar Exam, including its ability to ensure essay test questions are reliable, and the portability of bar exam scores so that lawyers can more easily move from state to state. There also are many questions that this proposal raises. Amongst those are the following. Is the adoption of such an exam only an interim measure toward developing a better licensing exam that tests a wider range of skills and qualities new lawyers need? Will this new exam have a negative impact on the diversity of the profession? Are there ways to ensure that this does not happen? Will the adoption of a Uniform Bar Exam as presently constructed justify law schools' decisions to retain the status quo rather than to engage in the development of innovative law school pedagogy, assessment and curricular changes that enhance the integration of doctrine, skills and professionalism? These are questions SALT urges states to consider if and when they discuss the potential adoption of a Uniform Bar Exam.

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Since 1973, the Society of American Law Teachers (SALT) has been an independent organization of law teachers, deans, law librarians, and legal education professionals working to make the profession more inclusive, to enhance the quality of legal education, and to extend the power of legal representation to under-served individuals and communities. Browse our website at www.saltlaw.org.

¹⁷ Recent seminal pedagogical literature argues that law schools need to better integrate legal knowledge, skills and professionalism. See Stuckey et al, *supra* note 7; WILLIAM M. SULLIVAN ET AL, EDUCATING LAWYERS, PREPARATION FOR THE PROFESSION OF LAW (2007).