

Strategies, Secrets, and Tips on How to Pass the Michigan Bar Exam

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I. Brief Overview of the Bar Exam

The February and July Michigan bar exams are held on the last Tuesday and Wednesday of February and July in East Lansing. The February exam is now held at the Lansing Center. The July exam is at the Breslin Center. *Note: Bring warm clothing to the exam!

The Michigan bar exam has two parts: The first day consists of 15 essay questions (worth ten points each). The second day (the “multistate bar exam” or “MBE”) consists of 200 multiple choice questions (worth one point per question). The essay portion and the MBE portion are weighted equally. There is no minimum score on either portion but a minimum score of 135 overall is required to pass.

The MBE tests the following subjects:

- Civil Procedure
- Constitutional Law
- Contracts and Sales
- Criminal Law and Criminal Procedure
- Evidence
- Real Property
- Torts

Each subject is worth approximately 1/7 of your overall MBE score. The essay subjects are listed below. There will be 15 essays taken from potentially 24 essay subjects that could be tested.

II. Brief Overview of How to Pass the Bar Exam

In its simplest form, there are four things you need to pass the bar exam:

- **1. Acquire good materials.** You need outlines that you are able to learn from and that adequately reflect the material tested on the bar exam.
- **2. Understand those materials.** You need to understand the law and why things work the way they do (this is generally through lecture, through private tutoring, or recollection of law school materials).
- **3. Memorize them.** You need to memorize the materials and repeatedly review them until you know them very well. The bar exam tests the details of the law.
- **4. Apply your knowledge.** Once you know the law, practice applying it to the types of multiple-choice and essay fact patterns that you see.



III. How to Prepare for the Essay Portion

Of the Michigan Bar Exam

Tip One: Study Smart! Don't Treat all Subjects Equally!

There are 24 possible Michigan bar exam subjects that could be tested on the essay portion of the Michigan bar exam¹. However, you will find that many of the subjects are hardly ever tested. In fact, a typical Michigan bar exam tests several of the 15 subjects listed below. Subjects 1 through 9 (in black font) are also subjects you will have to know for the MBE. The following six (in blue font) are Michigan subjects that will not appear on the MBE but that tend to appear on the essay portion of the Michigan bar exam. The questions in parentheses mean that you *may* see those questions, generally in place of the one it is next to. For example, you may see Secured Transactions instead of Sales (although generally Sales is tested). You may also see No-Fault Insurance instead of Torts (but generally you will see Torts) or Conflicts of Law instead of Constitutional Law (but generally you will see Constitutional Law--and the February 2016 exam had both!). (Note: The Board of Law Examiners can, in theory, test whatever subjects it wants to test! We have simply noticed that these are the subjects that are most commonly-tested.)

- **1. Criminal Law**
- **2. Criminal Procedure**
- **3. Contracts**
- **4. Sales (or Secured Transactions)**
- **5. Torts (or No Fault Insurance)**
- **6. Evidence**
- **7. Constitutional Law (and/or Conflicts of Law)**
- **8. Real Property**
- **9. Civil Procedure (and/or Equity)**
- **10. Domestic Relations**
- **11. Personal Property**
- **12. Corporations (or Agency, or Partnership)**
- **13. Workers' Compensation (and/or Equity, Conflicts, etc.)**
- **14. Professional Responsibility**
- **15. Wills OR Trusts**

This means that you will probably see all nine of the subjects you learn for the MBE tested, although sometimes Michigan distinctions for these MBE subjects are tested. For example, a rule of Criminal Law

¹ These include the subjects of Civil Procedure, Constitutional Law, Contracts, Sales, Criminal Law, Criminal Procedure, Evidence, Real Property, Torts, Agency, Commercial Paper/Negotiable Instruments, Conflicts, Corporations, Creditor's Rights, Domestic Relations, Equity, No-Fault Insurance, Partnership, Personal Property, Professional Responsibility, Secured Transactions, Trusts, Wills, and Workers' Compensation.

may be different in Michigan than it is under the “majority law” that is tested on the MBE. You will be expected to know these Michigan distinctions when you answer the essay portion. In addition to the nine subjects that overlap with the MBE, you will likely see six Michigan-specific subjects tested. Many bar exams contain these standard questions.

On the standard bar exam you will not see more than 3 questions on unusual subjects such as Agency, Partnership, Conflicts, Equity, No Fault Insurance, Secured Transactions, or Commercial Paper/Negotiable Instruments at all. These have been more popular to test in 2016 and February 2017, and it is unclear whether the trend will continue, or whether the BLE will go back to testing more standard subjects. Even if you do see something unusual, you will likely see only a few of those subjects so there is no reason to “treat all subjects equally” when you are studying for the bar exam².

Bar Exam Question Frequency Chart

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	J'10	F'11	J'11	F'12	J'12	F'13	J'13	F'14	J'14	F'15	J'15	F'16	J'16	F'17
Agency												X	X	
Conflicts												X		X
Constitutional Law	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Contracts	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Corporations	X	X	X	X	X	X	X	X	X	X	X			
Creditor's Rights														X
Criminal Law	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Criminal Procedure	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Domestic Relations	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Equity			X										X	
Evidence	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Negotiable Instruments														
No Fault		X							X				X	
Partnership														X
Personal Property	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Prof. Responsibility	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Real Property	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Sales	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Secured Transactions				X		X		X				X		
State & Federal Practice	X	X		X	X	X	X	X	X	X	X	X	X	X
Torts	X		X	X	X	X	X	X		X	X	X	X	X
Trusts		X		X	X	X	X		X		X			
Wills	X		X					X		X		X	X	X
Workers Compensation	X	X	X	X	X	X	X	X	X	X	X			X

Key: Most-to-least tested:



Tip Two: Study Smart! Don't Treat all Topics Equally!

Secondly, when you review the subjects, plan to answer and review past bar exam essays each day. While you want to have a decent understanding of the material in your outline, it is well worth your time to focus on past essay questions and study the Examiner's Analyses closely. In many cases, the Michigan Board of Law Examiners re-tests what it has tested in the past.

We recommend you focus on the highly-tested areas of law within each subject. For most of the essay questions that you see, they will test something that have tested before. These topics are listed below.

² *Note: The Michigan Board of Law Examiners' released a statement in July reminding applicants that they had to know all of the subjects listed in Rule 3. This was kind of odd. We warned 2016 takers that they would likely see some unusual subjects and indeed Agency, Conflict of Laws, and Equity was tested on their exams!



Highly-Tested Essay Topics:

1. Criminal Law

- **Homicide.** Be able to state the difference between first degree (intentional, premeditated, and deliberate) and second degree (the killing was done with intent to do great bodily harm or extreme recklessness). Be aware of felony murder. All murder requires malice in Michigan.
- **Aiding and abetting** (Accomplice liability). Michigan law states that to support a finding that a defendant aided and abetted a crime, the prosecutor must show: (1) the crime charged was committed **by the defendant or some other person**; (2) the defendant performed **acts or gave encouragement that assisted** in the commission of the crime, and (3) the defendant **intended the commission of the crime or had knowledge** that the principal intended its commission at the time he assisted. (July 2014, July 2012, Feb 2010, July 2004, Feb 2004 . . .).
- **Robbery.** In Michigan, robbery does not require a completed taking (*common law does require a completed taking*). In Michigan a person who, *in the course of* committing a larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of robbery. You should be familiar with what constitutes **armed robbery** as well. (Feb 2017, Feb 2014, Feb 2013, Feb 2012, July 2011, Feb 2008 . . .).

2. Criminal Procedure

- **Search and seizure.** Know the Fourth Amendment and the exceptions! These have been consistently heavily tested. (Feb 2017, July 2015, Feb 2013, July 2011, Feb 2009).
- **Miranda rights.** “The Fifth Amendment to the Constitution provides that a defendant cannot be compelled to incriminate himself. *Miranda* safeguards this right. *Miranda* warnings are required in cases involving custodial interrogations.” (July 2016, Feb 2014, Feb 2012, Feb 2011).
- **Confrontation Clause.** This was tested three July bar exams in a row. (July 2014, July 2013, July 2012). It is considered to be a Criminal Procedure question– not an Evidence question–on the bar exam. They will usually ask you what the *constitutional problem* with admitted a statement is. This should tip you off to perhaps discussing the Confrontation clause. If the evidence is *testimonial*, the declarant is *unavailable* and the defendant had no prior opportunity to cross-examine the declarant, the statement cannot be admitted (even if there is a hearsay exception).

3. Contracts

- **Contract formation.** Under Michigan law, in order to have a contract there needs to be offer, acceptance, and consideration. Consideration is a legal detriment that has been bargained in exchange for a promise or performance (Feb 2016, July 2014, Feb 2014, Feb 2012....) Many times the issue is whether consideration is present.
- **Modification at common law versus UCC.** Common law requires consideration. UCC requires good faith (July 2016, Feb 2015, July 2014, Feb 2013).
- **Tip: Pay close attention to the call of the question as well as the arguments that the parties make.** (Sometimes the arguments are dumb, but you still have to address them!) Contracts



essays can be quite difficult to answer and to issue-spot if you do not pay close attention to the call of the question and the arguments made.

4. Sales

- **Introduction:** State: “This transaction falls under Article 2 of the Uniform Commercial Code (UCC) which governs contracts, whether oral or written, that involve the sale of goods. Goods are defined as all things which are movable at the time of the contract. This contract involved the purchase of _____, an item movable at the time identified in the contract for sale.”
- **Learn the UCC Statute of Frauds exceptions!** (Merchant confirmation, specially manufactured goods, judicial admissions, part performance). (July 2009, Feb 2007). On the Michigan bar exam, when the SOF is an issue, the contract is almost always enforceable under an exception.
- **Delegation.** Generally, duties can be delegated unless otherwise agreed or unless the party has a substantial interest in having his original promisor perform. Delegation does not usually require consent. On almost every Michigan bar exam, delegation is not a breach and would not allow the other party to avoid the contract. Note that if a contract is delegated, the original party (delegator) is always liable on the contract unless there is a novation. The delegatee is usually liable as well. (July 2016, July 2012, July 2009, Feb 2008).

5. Torts

- **Negligence.** Premises liability and duty owed to an invitee is especially heavily-tested. Discuss: Duty, breach, cause, and harm. If the individual is an invitee, define invitee as “one who is on the premises for a reason directly related to the landowner’s commercial interest.” In general, a premises possessor owes a duty to invitees to exercise **reasonable care** to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. (Feb 2016, July 2013, July 2012, Feb 2010, Feb 2005. . .)
- **Governmental Immunity.** A government agency is usually immune from tort liability. A government agent is immune unless he is **grossly negligent** (which is very hard to show). There are some exceptions (the highway exception, the public building exception, or negligent operation of a government vehicle). (July 2011, July 2010, July 2008, July 2004...).
- **Assault and Battery.** If intentional torts are tested, usually the issue is assault or battery. The focus is generally on the defendant’s intent or the plaintiff’s harm. To recover for either battery or assault, plaintiff must show that defendant acted with *intent* to cause a harmful or offensive touching of another person or knew with *substantial certainty* that such contact would result. An assault is distinguished from a battery because it requires apprehension whereas a battery requires a *harmful or offensive contact*. (July 2015, Feb 2013, July 2010, Feb 2010, July 2003).

6. Evidence

- **Hearsay:** Define hearsay (a statement made, other than one made by the declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted).



The most common exceptions/exclusions tested are: excited utterance, present sense impression, and party admission. (Hearsay is tested on over half of the bar exams.)

- **Convictions for impeachment.** If it is not a crime of dishonesty or a theft felony, be wary of concluding it should be admitted as evidence on the Michigan bar exam (July 2016, Feb 2014, Feb 2013, July 2007). A felony or misdemeanor where an element of the crime is dishonesty is automatically admissible. Other felonies admissible in Michigan are theft felonies subject to the 403 balancing test. (Look at the age of the conviction and how probative it is of veracity).
- **MIMIC.** Evidence of a crime or other act is generally not admissible to show a person has bad character and acted in accordance with that character. However, it is admissible to prove MIMIC (motive, intent lack of mistake, identity, common scheme). (Feb 2014, July 2011, July 2010).

7. Constitutional Law

- **Free speech:** Begin your essay by stating something like: “The First Amendment proves that ‘congress shall make no law . . . abridging the freedom of speech. . . .’ The First Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment.”
- **Equal Protection Clause:** There are three levels of scrutiny under the equal protection clause (strict scrutiny, intermediate scrutiny, and rational basis). When the Michigan bar exam tests the rational basis test (age - July 2006, July 1997, July 1992 socioeconomic/other - Feb 2011, July 2002, July 1996) the plaintiff usually loses as the plaintiff cannot show that it does not rationally further a legitimate state interest. When the Michigan bar exam tests the strict scrutiny test (voting - Feb 2007, or alienage - Feb 1997, July 1992) the plaintiff usually wins because the government cannot show the law advances a compelling state interest by the least restrictive means available.
- **Dormant Commerce Clause.** On Michigan bar exam essays, introduce your essay by saying that Congress has the power to regulate commerce. Then state that the state can regulate commerce in the absence of congressional legislation. Say, “When a state statute discriminates against interstate commerce, the statute is generally struck down. However, where a state statute imposes the same burden both in-state and out-of-state, it will be upheld unless the burden is clearly excessive in relation to the benefit.”

Tip: The past couple bar exams have been “random” (government speech, second amendment). We recommend you write long answers even if you are unsure of the law.

8. Real Property

- **Race-notice.** “Michigan is a race-notice state. Owners of an interest in land can protect their interests by properly recording them. When a purchaser fails to record their interest in property, that interest is void against any subsequent purchaser so long as the **subsequent purchaser** acts in **good faith** and takes the interest **without notice** of the prior interest.” (Feb 2016, July 2014, Feb 2013, July 2009).



- **Easements.** Be familiar with easement use and creation. Prescriptive easements, easements implied from pre-existing use, and easement implied by necessity are generally tested. (Feb 2015, Feb 2012, Feb 2009).
- **Fixtures** are heavily tested. Note that in Michigan, the trade fixture doctrine (the doctrine that states trade fixtures can automatically be removed) applies only to leasehold estates. There is no special trade fixture rule for non-leasehold estates. (July 2016, Feb 2014, Feb 2013).

9. Civil Procedure

- **Subject Matter Jurisdiction.** Subject matter jurisdiction can be considered at any stage of the proceeding, even on appeal. Know the different kinds of jurisdiction – federal question and diversity jurisdiction. (July 2013, Feb 2010, July 2009).
- **Personal Jurisdiction** is *occasionally* tested (Feb 2013, July 2009, July 2006...) They expect you to discuss whether (1) Is **general jurisdiction** present? It is present if the defendant is domiciled (or incorporated) in Michigan, consents, or is present in the state and (2) If general jurisdiction is not present, does the Michigan **long arm statute** grant jurisdiction? (“specific jurisdiction”).
- **Motion for summary disposition under MCR 2.116(c)(10).** On the Michigan bar exam, usually a party does not support its motion. (Feb 2017, Feb 2012, July 2010, July 2009, July 2006). Be able to identify whether there is a genuine issue of material fact. The **moving party** must produce evidence to show there is no genuine issue of fact. The **burden then shifts to the nonmoving party**, which must then produce evidence to show there is a genuine issue of fact. The motion is looked at in the **light most favorable to the nonmoving party**. A motion for summary disposition may be **supported by affidavits, admissions, depositions, or admissible documents**.

10. Domestic Relations

- **Six main issues are tested over and over again:** Marital versus separate assets, spousal support factors, 100 Mile Rule, established custodial environment, best interest of the child, and prenuptial agreements. These have been tested repeatedly since 2007. Reviewing past exams is the best way to prepare for a Domestic Relations question.
- **Topics tested prior to 2007** (validity of marriage, common law marriage, responsibility for child, property division under common law marriage) do not come up as frequently now.

11. Personal Property

- **Gifts.** This has been super-popular lately, and gifts have been tested on the last four bar exams. You should know the difference between a gift inter vivos (which requires intent, delivery, and acceptance and is irrevocable once made) and a gift causa mortis (which is made in contemplation of death and is revocable until death occurs). (Feb 2017, July 2015, Feb 2015, July 2014).
- **Lost and Mislaid Property.** In Michigan, the Lost and Unclaimed Property Act applies to lost and mislaid property. A finder must report the finding and deliver the property to a law enforcement agency. If he wishes to receive it if it is not claimed, the finder shall provide his name and



address to the agency. If the legal owner isn't found, it is returned to the finder after six months. (Feb 2016, July 2014, July 2013, Feb 2012).

- **Bailments.** You should know the different standards of care (1) For the sole benefit of the bailor (the bailee is only liable for *gross negligence*); (2) for the sole benefit of the bailee (the bailee is responsible for even *slight negligence*); or (3) for the mutual benefit of both parties (*ordinary care* is required). To establish a prima facie case for negligence, simply show property was **lost, damaged, or destroyed** while in the possession of a bailee. The burden then shifts to the bailee to rebut the claim of negligence. (July 2016, Feb 2016, Feb 2015, July 2007, Feb 2004).

12. Corporations

- **It is a good idea to first have a “bigger picture” about the role of directors and shareholders.** You should know that shareholders hire and fire directors, who hire and fire officers. Shareholders own the corporation. Directors are managers. Once you understand the bigger picture, you can better remember the details (about meetings, voting agreements, proxies, etc.).
- **Fiduciary duties.** Know the duty of care and duty of loyalty. (July 2014, July 2012, Feb 2010).
- **Direct versus derivative actions.** Know that a direct action is brought by a shareholder if the harm is directly to the shareholder (e.g., denied preemptive rights) but that a derivative action is brought by a shareholder if the harm is to the corporation. (Feb 2014, Feb 2010, July 2009).

13. Workers' Compensation *Not tested in 2016

- **Medical benefits:** An employee generally recovers medical benefits even if he had a preexisting condition (so long as he can show a medically distinguishable change in pathology), even if he is negligent or engaging in horseplay (unless it rises to the level of intentional and wilful misconduct), and even if he is collecting benefits from other sources (he simply cannot “double dip”). (Tested multiple times.)
- **Weekly wage loss benefits:** An employee only receives weekly wage loss benefits if he is disabled. “Disability” is defined as a loss of wage earning capacity. Merely showing an inability to return to one's previous job does not mean that an employee is disabled. (Feb 2014, Feb 2013, July 2012).

14. Professional Responsibility

- **Tip: These essays test a wide-range of issues.** Being able to issue-spot is crucial.
- **Fees.** These should not be excessive, and should be disclosed early on. (Feb 2014, Feb 2013)
- **Confidentiality.** It extends to past, current and prospective clients. (Feb 2012, July 2010...)
- **Conflicts of interest rules** for present clients (July 2015, Feb 2009, Feb 2008) and former clients (Feb 2012, July 2010) are heavily-tested.



15. Wills or Trusts

- **Wills questions test a variety of issues** (some highly-tested issues include validity of a will and a holographic will, intent, who a “child” is considered for intestate share purposes, and the wife’s options if she doesn’t like what she gets in the will).
- **Trusts questions are more predictable. They frequently ask whether a trust is valid.** (Under Michigan law, for a trust to be valid, there needs to be *capacity of the settlor*, *intention* to create a trust, a *beneficiary*, the *trustee* has to have duties, and the same person cannot be the *sole trustee and sole beneficiary*. Know these five Michigan-specific elements (July 2015, July 2014, Feb 2013, July 2012, Feb 2012, Feb 1994). (Mnemonic for them = “Can’t I Be Done Studying?”). This includes testing the validity of a testamentary trust, oral trust, pet care trusts, etc.
- Trusts questions also test **spendthrift clauses** (July 2013, Feb 2011), **cy pres** (Feb 2013), and questions regarding **settlor’s intent** (July 2015).

Less-tested Topics:

Agency *Tested both exams in 2016

- **Actual Authority.** This can be express or implied. (July 2016, Feb 2016)
- **Apparent Authority** (called “Ostensible Agency”). This has three elements: (1) The person dealing with the agent must do so with a **reasonable belief in the agent’s authority**; (2) The belief must be generated by some act or neglect on the part of the **principal**; and (3) The person relying on the agent’s authority **must not himself be guilty of negligence**. (July 2006, July 2001)
- **Ratification.** When an agent had no authority to enter into a contract but the principal later accepted the benefits (Feb 2016).

Creditors’ Rights

- See **February 2017** (garnishments).

Conflict of Laws

- **Look at February 2017 and February 2016.** They repeatedly test contract and tort conflicts issues. See also July 2008, July 2004 and February 2002.

Commercial Paper/Negotiable Instruments

- If they test Commercial Paper, there is a good chance they could have a very similar question to the February 2010 question. Be very familiar with the law tested in that question!

Partnership

- **Partnership formation.** You should know that there are no formalities that are required to form a general partnership (i.e. one is not required to file a certificate). (Feb 2017, July 2007)
- **Partner’s are agents in a partnership.** Thus, they have quite a bit of power in a general partnership. (July 2007, Feb 1998, Feb 1995).



- **Fiduciary duties**, such as duty of care and duty of loyalty have been tested multiple times.

Equity

- **Factors for injunctive relief** (July 2016, July 2011). Equity is infrequently tested on its own.

No-Fault Insurance

- **Noneconomic damages are heavily tested.** State: “The No-Fault Act generally bars actions for noneconomic damages unless the injured person suffered death, a permanent serious disfigurement, or a serious impairment of a body function.” (July 2016, July 2014, Feb 2011...)

Secured Transactions

- **UCC Article 9** applies to all security interest in personal property or fixtures by contract.
- **Understand the basics of classifying goods** (i.e. consumer goods, inventory, farm products, and equipment) (Feb 2013, Feb 2000) and **attachment**. (July 2014, Feb 2013, July 2008, Feb 1999).
- **Perfection.** Know the methods to perfect (the most popular are filing a financing statement, or automatic perfection for purchase money security interests in consumer goods other than a vehicle). (Feb 2016, Feb 2013, July 2009, July 2008)
- **Purchase Money Security interests.** Be able to define them, classify them, and know how they are perfected. (Feb 2016, July 2013, Feb 2013, Feb 2012).

IV. Other Michigan Essay Tips

To Prepare for the Day:

As mentioned above, focus on the highly-tested subjects and the highly-tested topics within each subject. This will prepare you well for the day of the exam and help you to be extremely efficient when you study.

Practice answering essay questions – in a timed and untimed setting. Essay questions are available on the Michigan Board of Law Examiner’s website. You should make it a habit to practice answering essay questions. This gets you used to the structure, used to writing answers they want to see, and it helps you to be less intimidated by the essay portion of the exam.

Grade your own essays. Every time you write an essay answer, give yourself feedback on it by comparing it to the model answer. This will help you improve significantly and it will also help you “think like a grader” and get into the mind of the grader. It is helpful to get feedback from others, but giving feedback to yourself will help you get into the mind of an essay grader.



How to Read an Essay Fact Pattern:

Example of an Essay Question – July 2016

On May 1, 2016, ABC Air Conditioning (ABC) entered into a valid written contract with Central Supply, Inc. (CSI) to purchase 500 pounds of liquid Freon at \$20 per pound. Under the contract, full payment was due by July 22, 2016 and delivery of the Freon was to be made on July 23, 2016. Delivery costs were to be wholly assumed by the purchaser (ABC).

In June 2016 the price of liquid Freon plummeted due to a shift in the market. As a result, ABC contacted CSI seeking to modify its contract to reflect a purchase price of \$15 per pound. CSI agreed to the price reduction and the modification was reduced to writing.

In early July 2016 the price of liquid Freon continued to drop. Without seeking consent from CSI, ABC delegated its responsibilities under the contract to another local air conditioning company (XYZ) and assigned its rights under the contract to XYZ. XYZ failed to make any payment to CSI by July 22, 2016.

CSI now seeks your legal advice, under Michigan law, on the following two questions:

(1) Can ABC legitimately delegate its responsibilities and assign its rights under the contract to XYZ without CSI's consent? Explain your answer.

(2) Can CSI recover the original contract price of \$20 per pound? Why or why not?

Read the call of the question first and structure your answer around the call of the question. Pay very close attention to the call of the question. This will make you precise and focused in your analysis. The call of the question also generally reveals the subject area that the essay fact pattern is testing.

Pay very close attention to details when you read the question.

- Pay very close attention to specific facts such as dollar amounts, dates (statute of frauds issues), locations (jurisdiction issues, conflicts issues, etc.), government agents like police officers and mayors (governmental immunity issues in torts) and other key details that the fact pattern alerts you to.
- Pay very careful attention to language in quotes! You will likely be expected to address the specific issues that arise from the quoted language.
- Carefully look at the arguments each side is making and address those arguments. If one party says "she can't testify because she is biased" you *have* to address that argument, even if it's a dumb one. This is a good way to spot issues in questions where it is not so easy to spot them.



How to Write an Essay Answer:

Structure your answer around the call of the question. Label each issue presented by the call of the question and address it individually. When you begin addressing the issues, make sure to separate issues into separate paragraphs. Make it easy for the grader to see you've addressed all the issues. Don't make them search for the issues!

After spotting the issue, state the law, apply it to the facts, and conclude. We recommend you use the formula: "The law states..." "In this case..." "Thus..."

An Example of how to structure an essay answer:

1. Issue #1

The law states ...

In this case ...

Thus ...

2. Issue #2

The law states ...

In this case ...

Thus ...

A few other tips:

- Do not write your conclusion first if you are not sure it is correct.
- Bar exam essays are not law school essays. The graders are looking for you to be concise.
- **Emphasize Key Words and Law.** Make sure you *use* as many key words and legal terminology as you can. After you use key words, draw attention to them! Make it easy for the grader to know that you know what you're talking about and award you points. Use bolded font or underline the key legal vocabulary. Keep in mind that there is one grader for each question. They are trained to quickly read your answer and look for evidence that you understand the law.

Write longer answers, rather than shorter ones.

Leave a couple minutes to review the fact pattern again at the end. Leave a few minutes to review the fact pattern after you are done writing your essay. Are there any facts you did not address? If so, address them now! You will be surprised at how many facts you miss. A last minute review can earn you extra points.

V. How to Prepare for the Multiple-Choice Portion (MBE)

Six Key MBE Strategies:

1. First, actively review MBE subjects. There are three steps to learning the MBE law. First, you have to have **good materials**. If your outlines are not beneficial to you, then you are not going to be in good shape! Second, you need to **understand** the law. This is what a lecture or tutoring is for. Third, you need to **memorize** the law. This means that you have to actively review your outlines. “Active” reviewing is not merely reading your outlines. Active reviewing means you are doing something “active” (quizzing yourself, drawing charts, making diagrams, thinking up mnemonics, explaining the law to someone else . . .). This is how you master MBE material.

2. Spend more time on the MBE subjects that are difficult for you. If you are stellar at Torts and Constitutional Law but you really need to review Contracts and Sales, there is no reason to treat all subjects equally (in terms of the amount of time you will spend on them). You know what you need to spend time on better than a bar review course—write out a list of all the subjects, from your best to your worst, and allocate your time accordingly.

3. Spend time on the highly-tested areas: Not all of MBE topics are tested equally. The MBE is broken into seven subjects: Criminal Law, Constitutional Law, Contracts and Sales, Civil Procedure, Evidence, Real Property, and Torts. There are 25 scored questions on each subject. The subjects themselves are thus weighted relatively equally. The topics, however, are not.

Below is the breakdown of the multiple-choice questions offered by the National Conference of Bar Examiners (NCBE), which writes and administers the multistate bar exam. We’ve written the approximate number of questions you can expect to see on each topic and we’ve highlighted the highly tested topics.

Torts: (25 questions)

Negligence – 12-13 questions

Strict Liability and Products Liability – 3-5 questions

Intentional Torts – 3-5 questions

Other Torts – 3-5 questions

Evidence: (25 questions)

Relevancy and Reasons for Excluding Relevant Evidence – 8-9 questions

Hearsay and Circumstances of its Admissibility – 6-7 questions

Presentation of Evidence – 6-7 questions

Privileges and Other Policy Exclusions – approx. 2 questions

Writings, Recordings, and Photographs – approx. 2 questions



Real Property: (25 questions)

Real Estate Contracts – approx. 5 questions
Mortgages/Security Devices – approx. 5 questions
Ownership of Property – approx. 5 questions
Rights in Land – approx. 5 questions
Title to Property – approx. 5 questions

Contracts and Sales: (25 questions)

Formation of Contracts – 6-7 questions
Performance, Breach, and Discharge – 6-7 questions
Defenses to Contract Enforceability – 3-4 questions
Parol Evidence and Interpretation – 3-4 questions
Contract Remedies – 3-4 questions
Third-Party Rights – 3-4 questions
(About 6-7 of the questions will be on UCC Article 2 and revised Article 1)

Civil Procedure (25 questions)

Jurisdiction and Venue – 5-6 questions
Pretrial Procedures – 5-6 questions
Motions – 5-6 questions
Law Applied by Federal Courts – 2-3 questions
Jury Trials – 2-3 questions
Verdicts and Judgments 2-3 questions
Appealability and Review – 2-3 questions

Criminal Law and Criminal Procedure: (25 questions)

Constitutional Protections of Accused Persons (Criminal Procedure) – 12-13 questions
Homicide – 3-4 questions
Other Crimes – 3-4 questions
Inchoate Crimes, Parties – 3-4 questions
General Principles of Criminal Law – 3-4 questions

Constitutional Law: (25 questions)

Individual Rights – 12-13 questions
The Nature of Judicial Review – 3-5 questions
Separation of Powers – 3-5 questions
The Relation of Nation and States (Federalism) – 3-5 questions

You can see that not all topics are tested equally on the MBE. This has significant implications for how you should approach it. For Torts, there are 12-13 questions on negligence (this makes up half of the Torts questions, and 6-7% of the entire MBE). So negligence should be your focus when you study Torts.

You will see that some subjects, like Real Property, are divided somewhat equally in terms of what is tested. This means that if you are really struggling with, say, present and future interests in Real Property, that will likely not significantly change your score as it is not heavily tested on the multistate bar exam (only being 2-3% of the questions, if that). Further, present and future interests are not frequently tested on the Michigan bar exam essays.

4. Obtain released multiple-choice bar exam questions. Obtain actual released bar exam questions to get a taste for what questions are truly like. There are a few sources for released questions:

- The Strategies and Tactics book (6th Edition). This has 60 released questions for each topic and two 100-question exams at the end. It also contains Civil Procedure questions written by the author.
- Four online practice exams (MBE OPE's) from the National Conference of Bar Examiner's (NCBE) website (ncbex.org). These questions accurately reflect the kinds of questions you will see on the bar exam. Each 100-question exam is \$50. If you do not have time to take all four exams, start with the last exam (MBE OPE #4) and work your way to the first one.
- Adaptibar uses actual released questions and is a good resource for students who like to answer questions on their phones or iPads.

5. When you answer a question, incorrectly, write it down! We recommend you write down *why* you answered a question incorrectly on a legal pad. If you didn't know the law, write down the law you didn't know. If you answered a question incorrectly because you read the fact pattern too quickly, write it down. Constantly review this legal pad. Eventually you will see patterns in the areas of law you don't know and other reasons for answering a question incorrectly.

6. Answer questions slowly and methodically when you practice. This means you should do one question at a time (rather than five questions or ten questions at a time). You should dissect the question and get the most out of it. When you answer a question, ask yourself "What is the legal issue? What is the rule? What is the analysis?" This is how you get better at answering multiple-choice questions! This method is shown below. Note that this method takes a while and you should still complete timed exams regularly as you will not utilize this method on the actual bar exam



Examples of How to Answer Questions Methodically:

EXAMPLE #1 OF AN MBE QUESTION

A nurse was walking to his car one night after leaving his shift at work. As he neared his car, a man with a ski mask and a knife approached the nurse and threatened to kill him if he did not hand over his wallet. The nurse kicked the man and punched the man several times and the man fell to the ground, unable to get up. The nurse, angry that he got attacked, grabbed the knife then stabbed the man in the chest. The man died instantly.

What crime should the nurse could be charged with?

- (A) First degree murder.
- (B) Second degree murder.
- (C) Voluntary manslaughter.
- (D) No crime.

Subject:

Legal Issue:

Legal Rule and Analysis:

Conclusion:

Choose an answer choice that most closely matches your conclusion and explain why the others are incorrect:

ANSWER TO QUESTION #1:

Common mistake: Students struggle with degrees of murder and manslaughter (which is highly-tested on the MBE!)

Subject: Criminal Law

Legal Issue: What homicide crime, if any, is the nurse guilty of?

Legal Rule and Analysis:

Murder Chart: Intentional Versus Unintentional Killings:

Intentional Killings (Defendant ALWAYS acts with intent to kill)	
First degree murder	(with malice aforethought) Intentional killing with premeditation and deliberation (Intentional conduct with intention to kill)
Voluntary manslaughter	(without malice aforethought) An intentional killing of a human being in the heat of passion due to adequate provocation (Conduct and result intentional, but excused due to the circumstances)
Unintentional Killings: (Defendant does not always act with intent to kill – but can)	
Second degree murder	(with malice aforethought) (1) Extreme recklessness (a high probability of death), (2) intentional infliction of great bodily harm (Intentional conduct but no intention to kill), or (3) “catch all” (if defendant is not guilty of first degree but still acts with malice)
Involuntary Manslaughter (a.k.a. Misdemeanor Manslaughter)	Gross negligence, or a killing during a misdemeanor or felony that does not qualify for felony murder. (Conduct nor result intentional)
Felony Murder	Felony + death = murder. (Commission of a felony and someone dies.)

First-degree murder requires premeditation and deliberation. There is no such premeditation presented by these facts as the event happened very quickly and the nurse did not have time to premeditate and deliberate.

Second-degree murder is generally present when there is malice and extreme recklessness. Here, there is not extreme recklessness. Further, the facts do not indicate that malice is present since the man was attacked.

Voluntary manslaughter is present when one commits a killing in the heat of passion as a result of adequate provocation. Here the “adequate provocation” is the attack. He was still in the “heat of



passion” without time to cool off since he was just attacked. (The fact pattern also indicates that he was “angry” which demonstrates he was acting in the heat of passion.) Thus, voluntary manslaughter is an appropriate charge unless the nurse has a defense.

Important note if you have trouble distinguishing degrees of murder: Usually the issue on the MBE will be: “Is it first-degree murder or is it voluntary manslaughter?” OR “Is it second-degree murder or involuntary manslaughter?” on the MBE. First-degree murder and voluntary manslaughter are both present when the defendant wants or intends for someone to die. (e.g., intentionally stabbing or shooting someone). With first-degree murder, it is simply premeditated (e.g., poisoning someone). With voluntary manslaughter, it is in the “heat of passion” pursuant to “adequate provocation” (e.g., shooting someone after they punch you in the face). Second-degree murder can also be present if the defendant intends for someone to die (and acts without premeditation or deliberation but with malice) but it is not frequently tested this way on the MBE as it is difficult to test in an MBE question. It is tested this way on Michigan essays.

Second-degree murder and involuntary manslaughter both usually result on the MBE when the defendant doesn’t intend to kill but is behaving in a way likely to cause death. Second-degree murder is extreme recklessness (i.e. shooting into a crowded room, but not necessarily wanting someone to die, or driving extremely drunk) and involuntary manslaughter is gross negligence (i.e. driving drunk — but not to the point where you are “extremely reckless”). The line between second-degree manslaughter and involuntary manslaughter is hard to draw! (Note that second-degree murder can also be an intentional killing without premeditation or deliberation but with malice as mentioned above.)

Important note if you have trouble with the term “malice aforethought”: Malice aforethought is a term of art used. It is required to prove murder (first or second degree). Don’t mix it up with specific intent crimes or malice crimes. It is a legal term of art and you should know that you need it to prove any degree of murder! So, malice aforethought is present if the defendant commits first or second-degree murder. It is not present if the defendant commits voluntary or involuntary manslaughter.

Back to the fact pattern — Ordinarily, self-defense may apply when one is attacked. However, in this case, the nurse was “angry” when he killed the man (not fearful). Further, the nurse was not in danger, as the facts tell us that the man fell to the ground and was unable to get up. Thus, a self-defense claim will not be successful. **Pay careful attention to the facts! Do not “think outside of the fact pattern.”**

Conclusion: The nurse should be charged with voluntary manslaughter.

Choose an answer choice that most closely matches your conclusion and explain why the others are incorrect: (C) recognizes voluntary manslaughter. (A) and (B) are incorrect for reasons stated above. (D) is incorrect because a defense (like self-defense) will not be successful. If you picked (D), remember to read the facts carefully! A careful reading of the facts would eliminate any question that there was self-defense present. If you picked (A) or (B) it is a good idea to review first and second-degree murder.



EXAMPLE #2 OF AN MBE QUESTION

A man and his neighbor sued a landscaping company in federal court for negligence after the company used a toxic chemical when fertilizing their gardens. The chemical damaged several exotic plants in the man's garden as well as the neighbor's garden. The man and his neighbor were from State A. The landscaping company was incorporated in State B and had its principal place of business in State C. The man and his neighbor properly joined as plaintiffs in a single lawsuit. The man sued the landscaping company for \$60,000 and the neighbor sued the landscaping company for \$40,000.

One month after the lawsuit was filed, the neighbor moved to State C. The landscaping company moved to dismiss the suit on the basis that the court did not have subject matter jurisdiction over the case.

How should the court rule on the motion?

- (A) For the man and his neighbor, because the amount in controversy is satisfied.
- (B) For the company, because the neighbor moved to State C.
- (C) For the company, because the amount in controversy is not satisfied.
- (D) For the company, only if it can show that the man and neighbor are unlikely to recover over \$75,000.

Subject:

Legal Issue:

Legal Rule and Analysis:

Conclusion:

Choose an answer choice that most closely matches your conclusion and explain why the others are incorrect:



ANSWER TO QUESTION #2:

Subject: Civil Procedure

Legal Issue: Does the court have subject matter jurisdiction over the case?

Legal Rule and Analysis: There are two primary types of cases over which the federal court has jurisdiction: federal question cases (not present here because the suit is for negligence) and diversity cases (if the parties are from different states and the amount in controversy exceeds \$75,000). The case at hand is not a federal case; rather, it is a state case for negligence.

Further, in this case, the court does not have diversity jurisdiction over either party because neither party meets the amount in controversy. (While one plaintiff may be able to add the dollar value of his or her claims against a defendant to reach the amount in controversy, two plaintiffs cannot).

Conclusion: The landscaping company should win because the amount in controversy is not satisfied.

Choose an answer choice that most closely matches your conclusion and explain why the others are incorrect: (C) is correct because it recognizes that the amount in controversy is not satisfied. (A) is not correct because two plaintiffs cannot generally add their claims together to meet the amount in controversy unless they are under a common title or right. (B) is not correct because diversity only matters at the time of filing (not afterward). (D) is incorrect because the plaintiffs do not meet the amount in controversy regardless. Further, it states the incorrect test. The test is not whether the plaintiff is “likely” to recover over \$75,000; rather, the amount in controversy is met if the plaintiff alleges it, unless the defendant can show there is a “legal certainty” that the plaintiff will not recover over \$75,000. Note that there is no supplemental jurisdiction in this case because not even one plaintiff meets the amount in controversy. In order for supplemental jurisdiction to be present, at least one claim needs to be properly filed.



VI. Other MBE Tips

Don't fight the facts! The facts of a question are all meticulously chosen by the National Conference of Bar Examiners for a reason. If the facts tell you that the someone suffered severe emotional distress at the site of a plastic spider, then accept it as true. Don't think, "well they must be lying! A plastic spider isn't that scary . . ." Instead, accept the facts as true.

If the question describes a person, pay attention to it. Normally, there is a "brother" and "sister" or "landowner" and "neighbor." If the question goes out of its way to say something like, "a woman, who was extremely sensitive to being touched in any way by strangers, was tapped on the shoulder. . ." pay attention. The description of the woman is in there for a reason!

If the question states a statute or if it has any quoted language, pay attention to it. Sometimes statutes are stated because the NCBE wants to see if you are aware of, say, what a race-notice statute looks like. However, sometimes a statute (or a quoted phrase) is there to see how well you pay attention to wording. Many times, statutes on the MBE will make it a crime to, for example, "knowingly sell alcohol to a minor." Then the facts will state a man sold alcohol to someone who looked young and the man didn't check the buyer's identification. The NCBE is seeing if you can ignore your instincts and instead, pay attention to the word "knowingly" to find the guy not guilty if he didn't know that the buyer was a minor. Always pay extra attention to quoted language.

If an answer choice contradicts facts, misstates the law, or asks you to make a judgment you are not qualified to make, it is wrong. You know that an answer choice is wrong if it:

- Misstates the facts: Sometimes an answer choice will contradict the facts. Many times, people pick an answer choice that contradicts the facts because they read the question or answer choices too quickly.
- Misstates the Law or utilizes incorrect legal reasoning: For example, if an answer choice says something like, "he cannot be liable for nuisance because there was no intent to cause a nuisance" it can be eliminated right away. One does not *need* intent to cause a nuisance. (A nuisance is not an intentional tort.)
- Asks you to make a judgment you are not qualified to make: Sometimes, for example, an answer choice for a Sales question regarding a shipment of widgets to be analyzed under UCC 2-207 will say that a shipping term "materially alters" the contract. Even if it sounds right, it's probably not since the answer choice asks us to make an assumption we are not qualified to make. *(A tip is to look for the word "if". If the question states in a widget-shipping contract, "The shipping term won't be a part of the contract because it materially alters the contract" that answer is not as good as, "The shipping term won't be a part of the contract if it materially alters the contract." The word "if" recognizes that we, as law students, are not expected to know if a shipping term on a box of widgets materially alters a contract.)*

If you do not know the answer to a question, still spend time crossing off the answer choices that do not make sense. Then make an educated guess.



VII. Parting Words

Remember, in the beginning, we said there are four things you need to do in order to do well on the bar exam. Constantly reflect on whether what you are doing furthers one of these four goals.

- **1. Acquire good materials.** You need outlines that you are able to learn from and that adequately reflect the material tested on the bar exam.

Ask: Are my course materials working for me? Why or why not? Should I make my own outlines or materials? What can I do to get better materials or make my materials better?

- **2. Understand those materials.** You need to understand the law and why things work the way they do (this is generally through lecture, through private tutoring, or recollection of law school materials).

Ask: What helps me to understand the materials? Does lecture help me or not? (Do I learn from some lecturers but not others?) Stop going to lectures if they don't help you. Does private tutoring? Does googling information I don't understand?

- **3. Memorize them.** You need to memorize the materials and repeatedly review them until you know them very well.

Ask: How do I best memorize? By highlighting or color-coding outlines? By making charts or diagrams? By thinking up mnemonics? By repeating them out loud to myself or others? By quizzing myself or others? Try a variety of strategies and reflect on what works for you.

- **4. Apply your knowledge.** Once you know the law, practice applying it to the types of multiple-choice and essay fact patterns that you see.

Ask: Am I using actual released essay questions and multiple-choice questions? Am I doing them well? Am I doing enough? How is my timing?

Constantly reflect and ask questions to ensure the maximum efficiency and the highest likelihood you'll pass.



VIII. Brief Overview of Services Offered by JD Advising, LLC

Bar Exam:

- **Heidemann Bar Prep Course.** We offer a superior, full-service Michigan bar exam course in a small-group setting. This covers both the multiple-choice and essay portion of the Michigan bar exam. It comes with high-quality outlines, essay feedback, and multiple-choice questions for each subject. Price: \$5,500. (We recommend very early application to this course.)
- **Heidemann Bar Prep Essay-Only Course.** We offer a six-session “essay only” course where we review all of the Michigan essay subjects together (as well as Michigan distinctions for MBE subjects), and offer essay strategies and feedback. Price: \$2,200.
- **Private One-on-one tutoring.** We offer private tutoring for MBE subjects and Michigan subjects. We offer tutoring both online and in person. Price: \$400/two-hour session. (We recommend early application!)
- **MBE Assistance.** We offer a one-on-one and small-group multiple choice workshop. We teach students how to improve their multiple-choice score through practicing. Price: \$400
- **Michigan Bar Exam Seminar.** We offer a half-day Michigan bar exam seminar on the highly-tested areas of Michigan law. It is administered two-four weeks prior to the bar exam. We predict which subjects are ripe for testing and we accurately predict about 1/3 of the issues tested. It is a competitive seminar to attend as we keep the group very small. Price: \$500
- **How to Pass the Michigan Bar Exam book.** We offer a book on how to pass the Michigan bar exam. It has received glowing reviews and contains a winning strategy for both essay and multiple choice portions. We also have “one-sheets” for each of the Michigan essay topics that contain the most highly-tested areas of law. Price: \$199.99
- **Bar Exam Appeals.** We write winning bar exam appeals every administration through our firm, The Heidemann Law Firm, PLLC. Price: \$5,000. We wrote half of the passing bar exam appeals in the state for the July 2015 Michigan bar exam.
- **Free Advice ☺** We have tons of free tips and tricks for law school and the bar exam on our website, www.jdadvising.com.

Law School:

- **Law School Tutoring.** We offer one-on-one law school tutoring for all first year courses, legal writing, and several upper-level courses. Price: \$250/two-hour session.
- **MPRE Tutoring and Course:** We offer MPRE tutoring by the session. We also offer an MPRE course, taught by Meagan Jabbori. We have a 100% passage rate among our MPRE students. The price is \$300 for one two-hour private tutoring session (and MPRE outline), \$800 for three private tutoring session, and \$1250 for five private sessions. The MPRE course is two days long (three hours per day) and is \$550.
- **Pre-Law Prep.** We offer a law school prep course as well as LSAT tutoring.



Credentials of Ashley E. Heidemann

- Graduated as the #1 student out of 203 students in her class of 2011 at Wayne State University Law School.
- Received a top score of over 180 on the Michigan bar exam in February 2011.
- Has been tutoring for the bar exam in Michigan and other state bar exams (including Virginia, Massachusetts, New York, etc.) since 2011.
- Has designed and developed all of her own outlines as well as course materials for the Michigan Bar Exam Seminar and the Heidemann Bar Prep course.
- Writes an active blog with a large following and publishes articles in journals and magazines, including The National Jurist. Also authored the book "How to Pass the Michigan Bar Exam."
- Is a speaker and advisor. Ms. Heidemann has given speeches and seminars at various law schools, and offers bar exam assistance and advice to schools and students.
- Worked as an attorney from 2011-2014 primarily in civil litigation. Now she has her own firm, the Heidemann Law Firm, which primarily writes bar exam appeals. Her firm wrote 5 of the 6 passing bar exam appeals in the state of Michigan for the July 2016 administration.
- Ms. Heidemann has a fantastic staff of highly-qualified tutors that work for her. JD Advising tutors pre-law students, law students, and bar exam students.



Location

- Services are provided either online or at our office located at 999 Haynes Street, Suite 260, Birmingham Michigan 48009. Parking is free and there is an open lot as well as free street-parking.

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