Uniform Bar Exam Analysis

I. INTRODUCTION

The Uniform Bar Exam (UBE) is a standardized bar examination prepared and coordinated by the National Conference of Bar Examiners. The National Conference of Bar Examiners (NCBE) is a U.S. based non-profit organization that develops national (“multistate”) standardized tests for admission to the bar in individual states. The organization was founded in 1931. The best known exams developed by NCBE are the Multistate Bar Examination (1972), the Multistate Essay Examination (1988), the Multistate Performance Test (1997), and the Multistate Professional Responsibility Examination (1980).

II. SECTIONS

A. OVERVIEW

The UBE consists of the: Multistate Bar Examination (MBE); Multistate Essay Examination (MEE); and Multistate Performance Test (MPT). In addition, some jurisdictions may test applicants on jurisdiction-specific topics, so be sure to check with the board of bar examiners in your jurisdiction. The first day of the UBE consists of six, 30-minute essays in the morning (the MEE), followed by two, 90-minute performance tests in the afternoon (the MPT). The second day of the UBE consists of the MBE: 200 multiple choice questions (100 in the morning; 100 in the afternoon), administered over a full day.

B. DESCRIPTION OF SECTIONS

1. Multistate Bar Examination (MBE)

According to the National Conference of Bar Examiners, the purpose of the MBE is to: assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns.

The MBE consists of 200 multiple choice questions, only 190 of which are graded, with the other 10 questions being experimental questions. Currently, the 190 questions are drawn from the following topics: Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Federal Civil Procedure, Real Property, and Torts. The MBE is six hours long.

2. The Multistate Essay Examination (MEE)

According to the National Conference of Bar Examiners, the purpose of the
MEE is to: identify legal issues raised by a hypothetical factual situation; separate material which is relevant from that which is not; present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation.

The MEE gives allows three hours to write six essays.

The MEE tests 13 subjects:

1. Business Associations;
2. Conflict of Laws;
3. Constitutional Law;
4. Contracts (including UCC Article 2);
5. Criminal Law;
6. Criminal Procedure;
7. Evidence;
8. Family Law;
9. Federal Civil Procedure;
10. Real Property;
11. Torts;
12. Trusts and Estates; and
13. Uniform Commercial Code [selected sections]

3. The Multistate Performance Test (MPT)

The MPT consists of two, 90-minute performance tests. The National Conference of Bar Examiners says that the purpose of the MPT is to “test an examinee’s ability to use fundamental lawyering skills in a realistic situation. Each test evaluates an examinee’s ability to complete a task that a beginning lawyer should be able to accomplish.”

Examinees are required to read an assignment memorandum, understand what is being asked, then sift through some information (e.g., case law, statutes, letters, pleadings, etc.) and decide what is relevant to completion of your task. Then, the examinees are asked to complete the task, which could be a memorandum, letter to a client, a pleading, etc.

C. GRADING THE UBE

The grading breakdown is 50% for the MBE, 30% for the MEE, and 20% for the MPT. Of note is that the MBE is graded nationally, but the MEE and MPT are graded only against other test takers within each jurisdiction.
III. VARIATIONS AMONG STATES

Jurisdictions that use the UBE continue to decide who may sit for the Bar Exam, who will be admitted to practice, determine underlying educational requirements, and make all character and fitness decisions. Jurisdictions that adopt the UBE may require candidates to also complete a jurisdiction-specific educational component and/or pass a test on jurisdiction-specific law in addition to passing the UBE.

IV. ADVANTAGES AND DISADVANTAGES OF HAVING A UBE IN FLORIDA

According to the Vision 2016 Commission Survey of Florida Law School Students, the following advantages and disadvantages of the UBE have been identified:

A. ADVANTAGES

1. It may reduce the expense of admission in a second jurisdiction
2. It eliminates taking a second Bar Exam in full
3. It may reduce delay in gaining admission to a second jurisdiction
4. It would allow those who pass it national opportunities in seeking employment directly following graduation
5. It recognizes the effects of globalization and the need to cross state lines
6. It moves the country towards a uniform Bar Examination

B. DISADVANTAGES

1. It may increase the cost of taking the Florida Bar Examination
2. It may add to the number of lawyers in Florida
3. It does not test on Florida law unless another testing component is added
4. Florida would lose control of the subjects tested by the exam
5. There are distinctions between Florida law and general law that may not be tested
6. It may take slightly longer to get the exam scores and be admitted in Florida

V. UBE AND ITS RELATIONSHIP TO RECIPROCITY

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 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 minimal competence to practice law within its borders and to determine all other admission
VI. SUPPORT FOR THE UBE

Law students in Florida and the deans of Florida’s law schools have indicated overwhelming support for the UBE. According to the Vision 2016 Survey of Florida Law School Students, 73 percent of respondents are in favor of adopting the UBE after reading the explanation of the UBE contained in the survey. In addition, at the recent Dean’s Summit, the deans of Florida’s 12 law schools showed almost unanimous support for the UBE. One argument is that current law students and law school deans are in touch with the needs of new graduates. The counter argument is that all current law school students, and most of the law school deans are not members of the Florida Bar, and therefore not in the best position to evaluate the requirements needed to test future members.

VII. MISCELLANEOUS POLICY ARGUMENTS FOR AND AGAINST THE UBE

A. FOR

According to one commentator who favors the adoption of the UBE, the basic principles of law do not vary from state to state and lawyers can learn the quirky specifics as they go. Forcing students to memorize detailed, state-specific rules, most of which they will never need to know and which they will promptly forget, does not ensure competence. He further argues that restrictive policies on state specific bar admissions are bad for clients who end up having fewer choices, as well has for lawyers who value geographic mobility. Another argument is that legal education would benefit if all states adopted the uniform test. The UBE, which focuses on basic subjects virtually all students take, would free students of the pressure to fill their schedule with dull subjects that do not interest them just because they are tested on the bar exam.\(^1\)

B. AGAINST

According to another commentator, the UBE places too much emphasis on multiple choice questions. Among the states that have not adopted the UBE are several that weigh the MBE less than 50% of the overall score. As a result, the adoption of the UBE, which requires that the MBE (multiple choice) comprise 50% of the UBE score, would be a step backward in that it would increase the role of multiple-choice questions and/or decrease the role of performance test questions. Another argument against the adoption of the UBE is that national


implementation of the UBE would decrease the chance of meaningful bar exam reform by taking power away from states and giving it to the NCBE.³

VIII. GROWING TREND

On August 18, Iowa became the 17th state to adopt the UBE. New York recently became the first “big” state to adopt the UBE. With New York’s adoption of the UBE, many predict a “domino” effect with other big states, including Florida. Previously, smaller jurisdictions, such as Kansas, which has no more than 400 bar exam takers each year, used the exam. In contrast, New York has roughly 15,000 individuals sit for the bar exam each year. The remaining states that use the uniform bar exam are Alabama, Alaska, Arizona, Colorado, Idaho, Iowa, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Utah, Washington, and Wyoming.