

# Evolution of the Bar Exam

JANUARY 5, 2023

Association of American Law Schools  
Annual Meeting



Building a competent, ethical, and diverse legal profession.



- ➔ **Judith Gundersen**  
President and Chief Executive Officer
- ➔ **Danette Waller McKinley, PhD**  
Director of Diversity, Fairness, and Inclusion Research
- ➔ **Marilyn Wellington**  
Chief Strategy and Operations Officer
- ➔ **Ben Barros (Moderator)**  
Dean and Professor of Law  
University of Toledo Law School



# Bar Admissions and the Bar Examination

# Professions: Licensure Assessment

***What do professions requiring an assessment for licensure have in common?***

- Large body of knowledge that has must be mastered
- Knowledge is applied in practice
- Knowledge and skills required for entry to practice

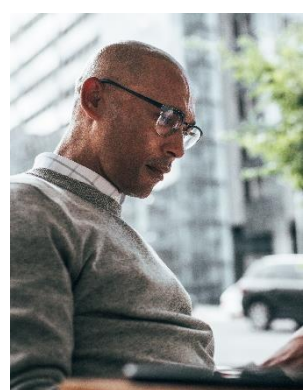
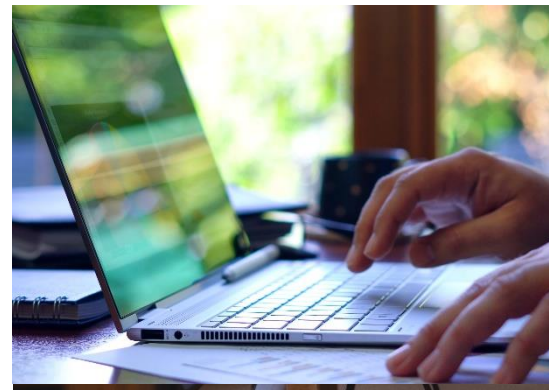
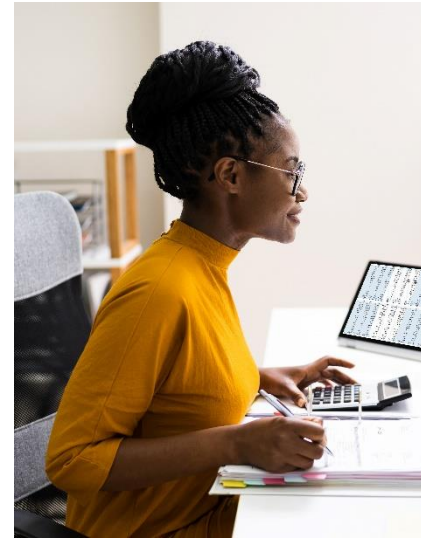
Examinations consist of cognitive and skills testing – typically multiple-choice questions and written exercises



# Best Practices in Testing

## *Standards for Educational and Psychological Testing*

- Guidelines for periodic review of exam content to ensure fidelity to entry-level practice
- Like other professions, the practice of law is changing, in large part due to technology



# The Bar Exam

## The Purpose of a Bar Exam

- To ensure that newly licensed lawyers have the acceptable level of knowledge and skills to practice law consistent with public protection

## Why a Uniform Exam?

- Provides high-quality, uniform system of assessment
- Recognizes multi-jurisdictional practice
- Maximizes job opportunities for candidates
- Reduces costs of taking exam in multiple jurisdictions



# Why Change the Bar Exam?



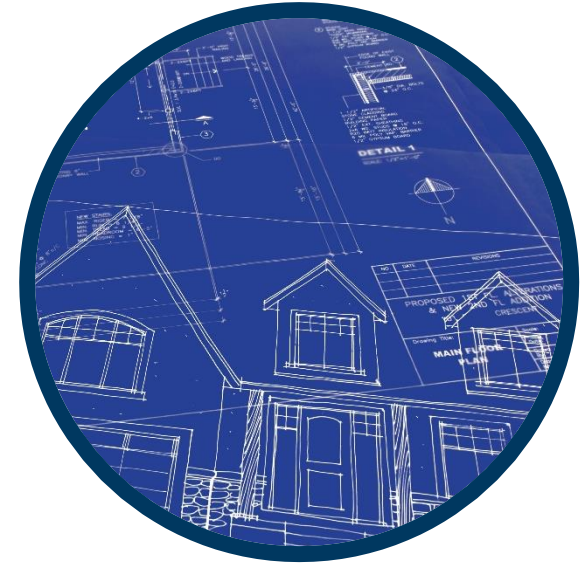
# The Testing Task Force Study



**Phase 1**  
*Listening*




**Phase 2**  
*Practice Analysis*



**Phase 3**  
*Development*





# Guiding Objectives for NextGen Exam

- Test less broadly and deeply
- Increase emphasis on lawyering skills
- Integrate the assessment
- Maintain score portability
- Keep the exam affordable

# Determining Scope of Knowledge and Skills



# Skills Require Some Ethics Knowledge

---

**Client Counseling and Advising, Negotiation and Dispute Resolution, and Client Relationship and Management skills** to incorporate some rules of professional conduct within the scope of coverage

MRPC 1.1	(Competence)
MRPC 1.2(a) & (d)	(Scope of representation and allocation of authority between client and lawyer)
MRPC 1.3	(Diligence)
MRPC 1.4	(Communications)
MRPC 1.6(a) & (c)	(Confidentiality of Information)
MRPC 1.7	(Conflict of Interest: Current Clients)
MRPC 3.3(a)(1) (2)	(Candor to the Tribunal)
MRPC 4.1	(Truthfulness in Statements to Others)
MRPC 4.2	(Communication with Person Represented by Counsel)
MRPC 4.3	(Dealing with Unrepresented Person)

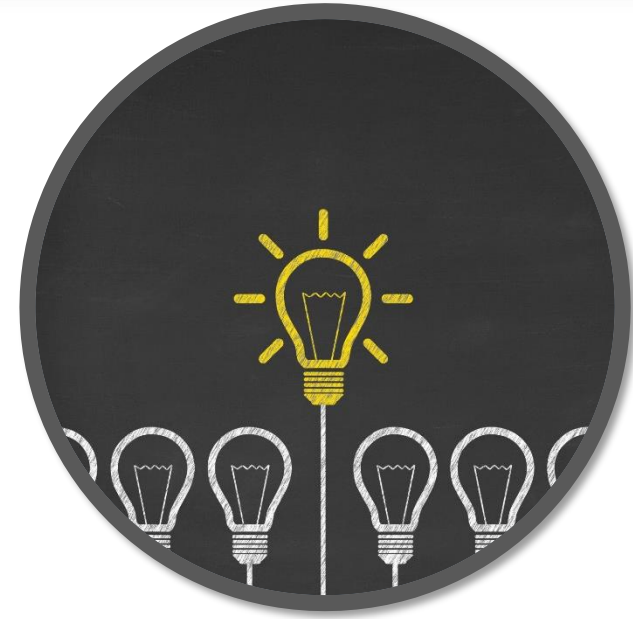
# Defining Depth of Knowledge



## Level 1

### General Familiarity

Able to spot issues and work efficiently with legal resources



## Level 2

### Detailed Knowledge

Know details of doctrine without consulting legal resources





# An Integrated Assessment

# Integrated Items



Demonstrate one or more legal skills in context of a scenario raising one or more substantive or procedural legal issues

# Integrated Exam

- No longer individual component parts, like the MBE, MEE, or MPT
- But similar item formats will appear on the NextGen exam plus short answer and fill-in-the-blank items
- The exam will be broken up into segments of between 1 ½ to 2 hours

# Constructed Response

Shorter constructed response questions combined with multiple choice questions in item sets

Extended response questions in prototyping



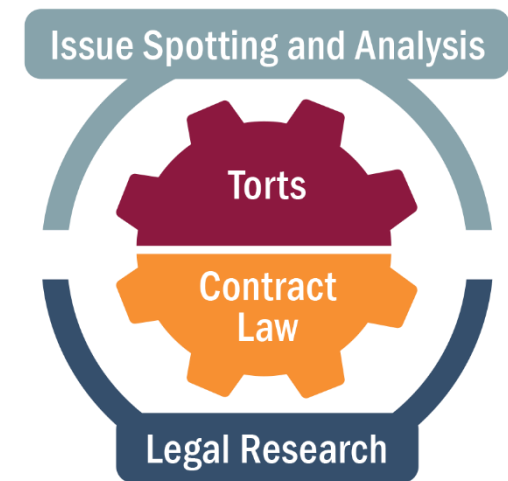




Your client has contacted you to advise them of their legal rights . . . [short facts follow].

Which of the following state law doctrines are most important to research before giving the client advice?  
Select two.

- (A) Third-party beneficiaries.
- (B) Private nuisance.
- (C) Public nuisance.
- (D) Trespass to land.
- (E) Implied warranty of habitability.
- (F) Bad faith breach.



DRAFT PROTOTYPE

# Fairness

Ensuring that the assessment allows the same interpretation about competence for all groups of candidates

What will we learn through:

- Pilot testing
- Field testing
- Prototype testing

# Ensuring Accessibility

- Access to resources
- Universal design – equipment
- Amenable to accommodations
- Jurisdiction-managed test sites

# During Pilot and Field Testing

NCBE will be evaluating the **optimal** way to provide legal resources

- An “open book” exam that is the same open book for all candidates
- Whether candidates can use the resources **efficiently** in the time allotted
- Whether resources provide the **same advantage** to all candidates



# Best Practices for Score Portability

- Use a centralized infrastructure
- Assure that rubrics are clear
- Use standardized training, calibration, grading methods, and grader monitoring
- Jurisdictions work collaboratively to increase score reliability and comparability

# Working with Jurisdictions and Law Schools

## Outreach—Providing information and seeking input from:

- Supreme Court justices
- Bar examiners
- Bar admission administrators
- Graders
- Law school deans, faculty, and staff
- Students as pilot testers

# Working with Jurisdictions and Law Schools

## Programming



**NextGen webcast**



**In-person programs:  
law school faculty**

- LexCon (11/22)
- AALS (1/23)
- AASE (5/23)



**In-person programs:  
bar admissions staff,  
examiners, and justices**



**The Bar Examiner  
Quarterly Updates**



**NextGen website**

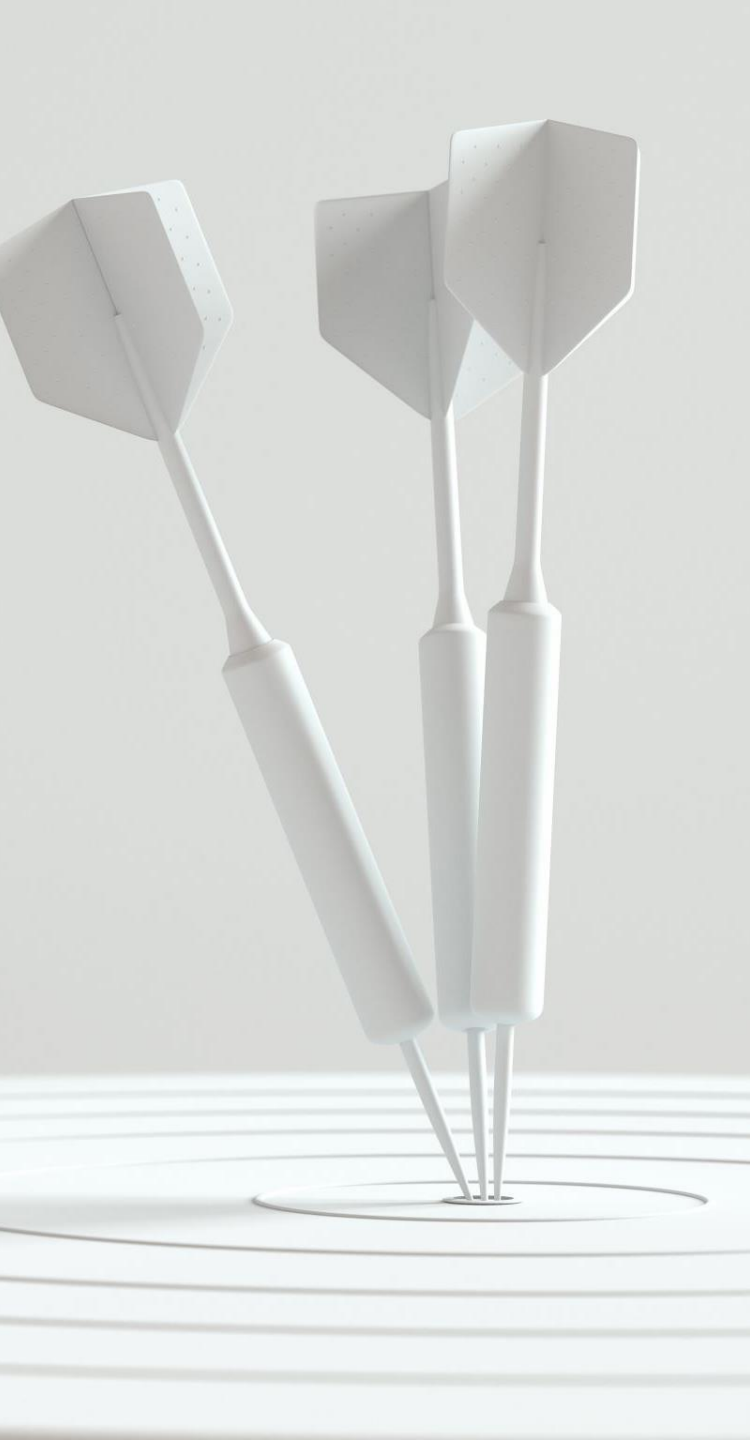
# Jurisdiction Outreach Focus

- Standard setting timeline and process
- Ensuring broad score portability regardless of adoption timeline for individual jurisdictions
- Participation in field and prototype testing
- Preview of items
- Length of exam and exam template
- Giving law schools enough time to prepare students



# Next Steps The Timeline





# Pilot Testing

---

Determine:

- Efficacy of new item types
- Impact of providing legal resources during the exam
- Time needed to answer new question types





# Field Testing

---

- Confirm timing estimates
- Generate item and test performance data
- Get responses from a broad sample of examinees
- Test delivery and scoring systems prior to implementation

# The NextGen Timeline

Q3 2022 – Q3 2023



Conduct pilot testing of draft items and item types

Q2 2023 – Q3 2023



Publish final Content Scope Outlines

Q2 2023 – Q1 2026



Upon request, assist jurisdictions with rule, statute, and policy changes

Q3 2023 – Q4 2026



Publish sample items and study aid materials as available

Q4 2023 – Q2 2024



Conduct field testing of operational items

Q4 2024 – Q1 2025



Administer prototype exam

Q3 2025



Release standard-setting recommendations to assist jurisdictions in setting passing scores

Q1 2024 – Q3 2024



Publish final exam design and test content specifications

Q2 2025



Perform standard-setting exercise

Q3 2026



First administration of new exam

Q1

Q2

Q3

Q4

Q1

Q2

Q3

Q4

Q1

Q2

Q3

Q4

Q1

Q2

Q3

Q4

Q1

Q2

Q3

Q4

2022

2023

2024

2025

2026



Building a competent, ethical, and diverse legal profession.





# Subscribe for NextGen Updates

NextGen<sup>✓</sup>

Bar Exam of the Future

National Conference of Bar Examiners



[nextgenbarexam.ncbex.org/subscribe/](https://nextgenbarexam.ncbex.org/subscribe/)