

# Drafting the NextGen Bar Exam



Building a competent, ethical, and diverse legal profession.



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# Introduction to NextGen Content



# Foundational Doctrinal Areas

Business  
Associations

Civil  
Procedure

Constitutional  
Law

Contracts

Criminal  
Law

Evidence

Real  
Property

Torts

JULY 2028

Family  
Law

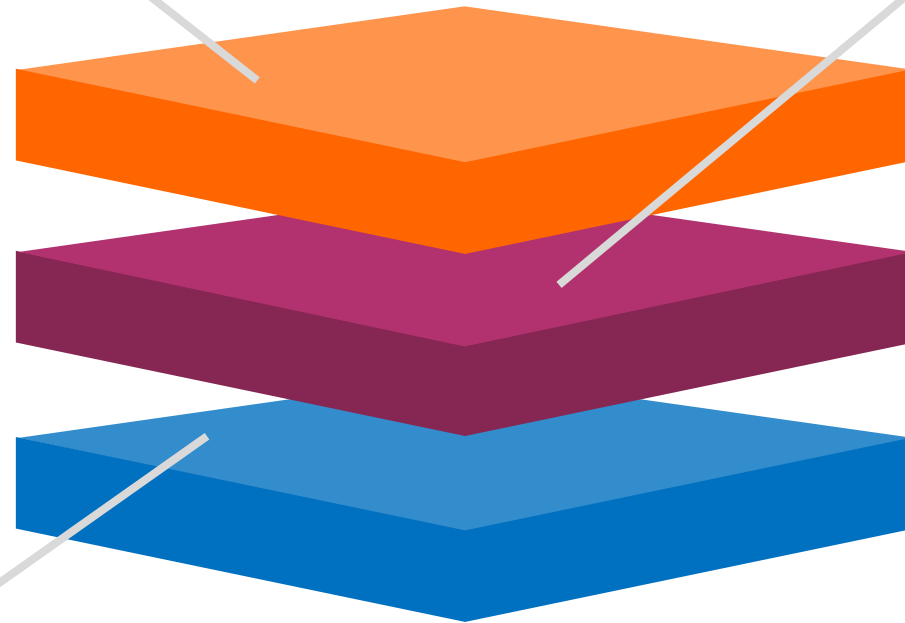
# Foundational Skills



# Components of the NextGen Bar Exam

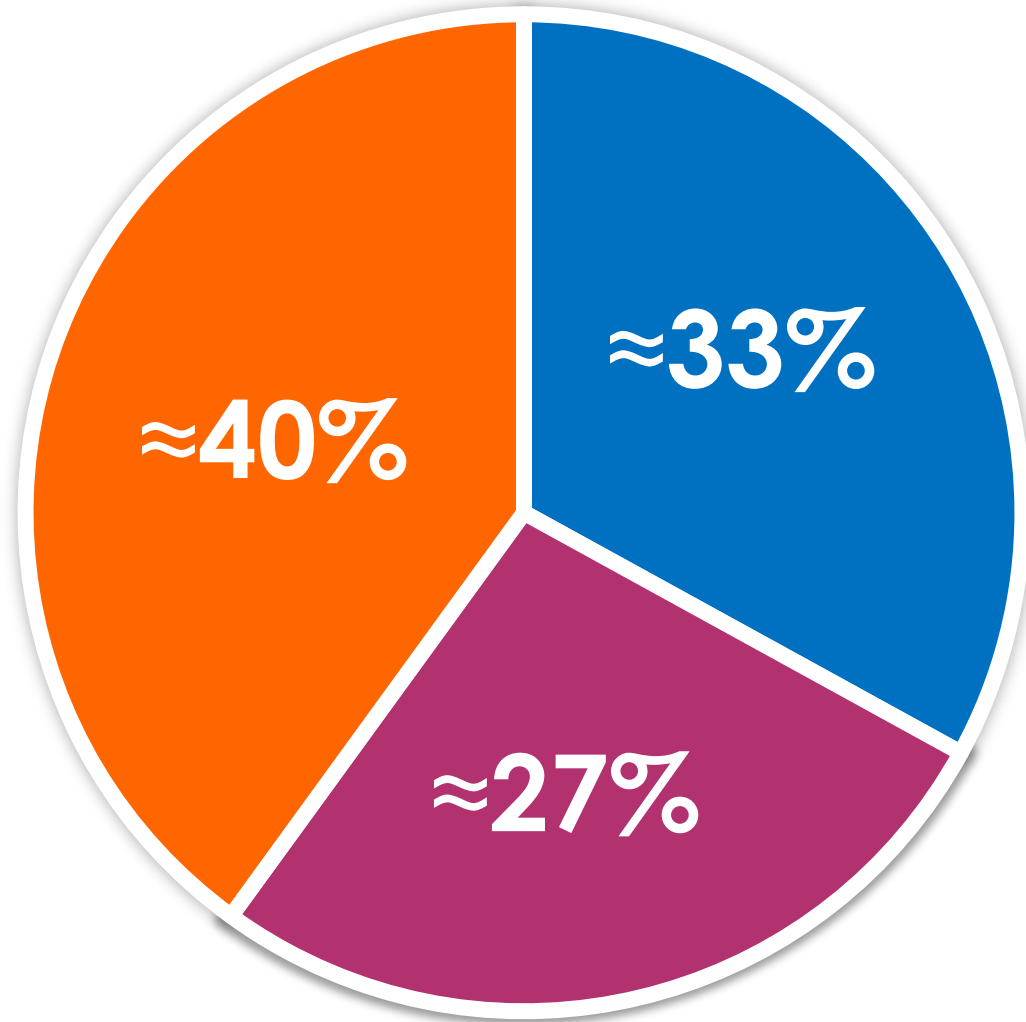
Multiple-Choice  
Questions

Integrated  
Question Sets






Performance  
Tasks

# New Format and Question Types



**Nine hours over 1.5 days**

-  Multiple-Choice Questions
-  Performance Tasks
-  Integrated Question Sets

# Integrated Question Sets

- **Counseling Sets**

- One client-focused scenario
- Collection of short-answer and multiple-choice questions

- **Drafting Sets**

- One client-focused scenario
- An editing or revising exercise based on a provided document



# Counseling Set Example



# Initial Scenario

**The initial scenario, raising issues of Criminal Law and Evidence, includes:**

- A police report
- A statute governing assault and battery
- A short excerpt from a case interpreting the statute

# Initial Prompts

**What fact** in the police report will be most helpful in proving the element of “knowingly”?

**List three avenues**

you would pursue to gather other evidence relevant to the issue of “great bodily harm.”

**Multiple choice:**

Will the police officer be permitted to testify in his own words about the victim’s description of the incident?

# Scenario Continues

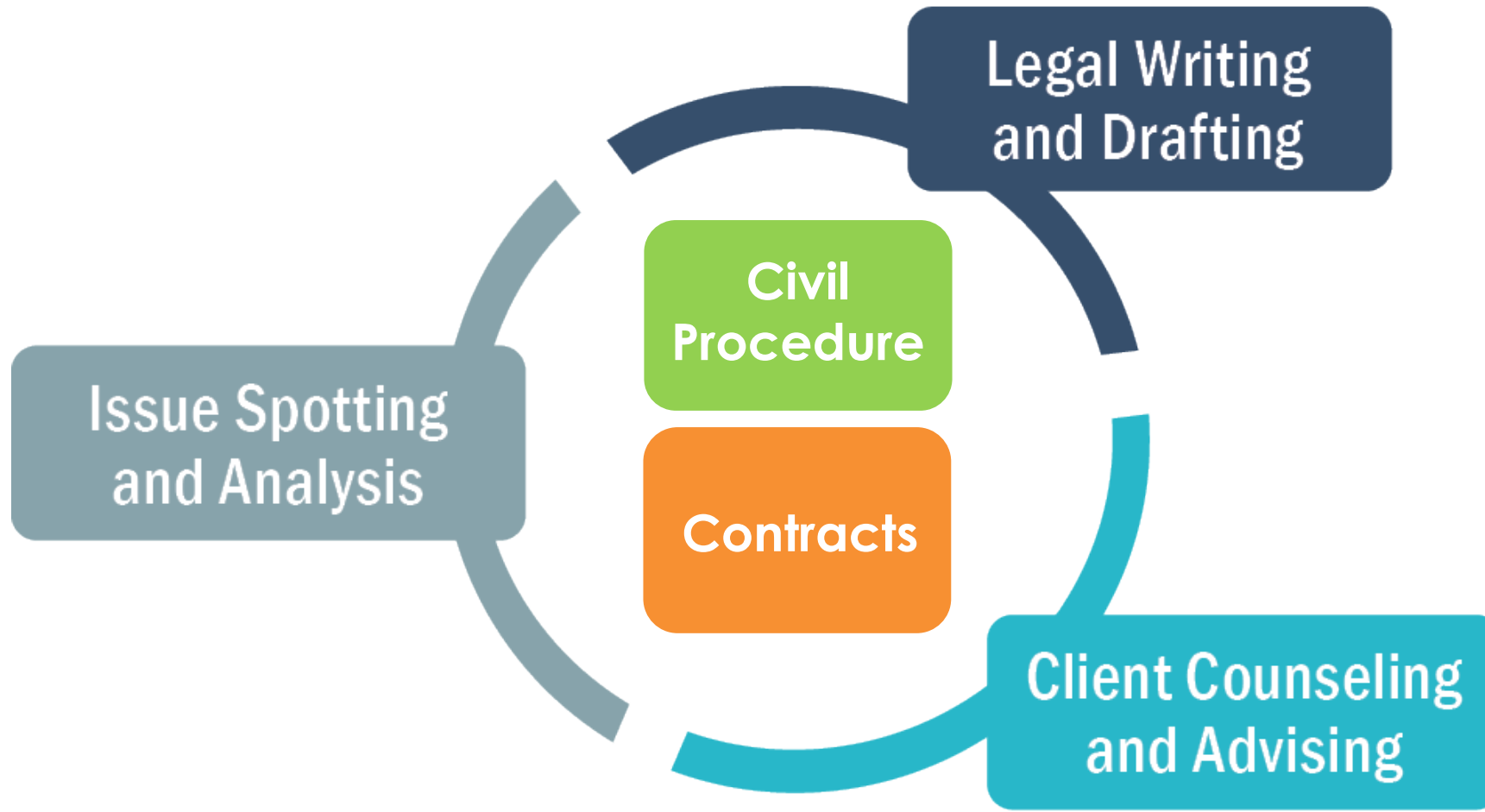
- A transcript of a law clerk's interview of a witness is provided
- Examinee learns the resolution of several outstanding issues as the case unfolds

## Later Prompts

Review the transcript of the witness interview and identify two mistakes the law clerk made.

Defense counsel has proposed a plea deal that would be very favorable to the defendant. List two concerns you would raise in response.

# Drafting Set Example



# Client Scenario

**The scenario, raising issues of Contracts and Civil Procedure, includes:**

- A transcript of a client interview (presenting a contract dispute)
- Sections of a complaint drafted by a student intern
- Two rules of civil procedure

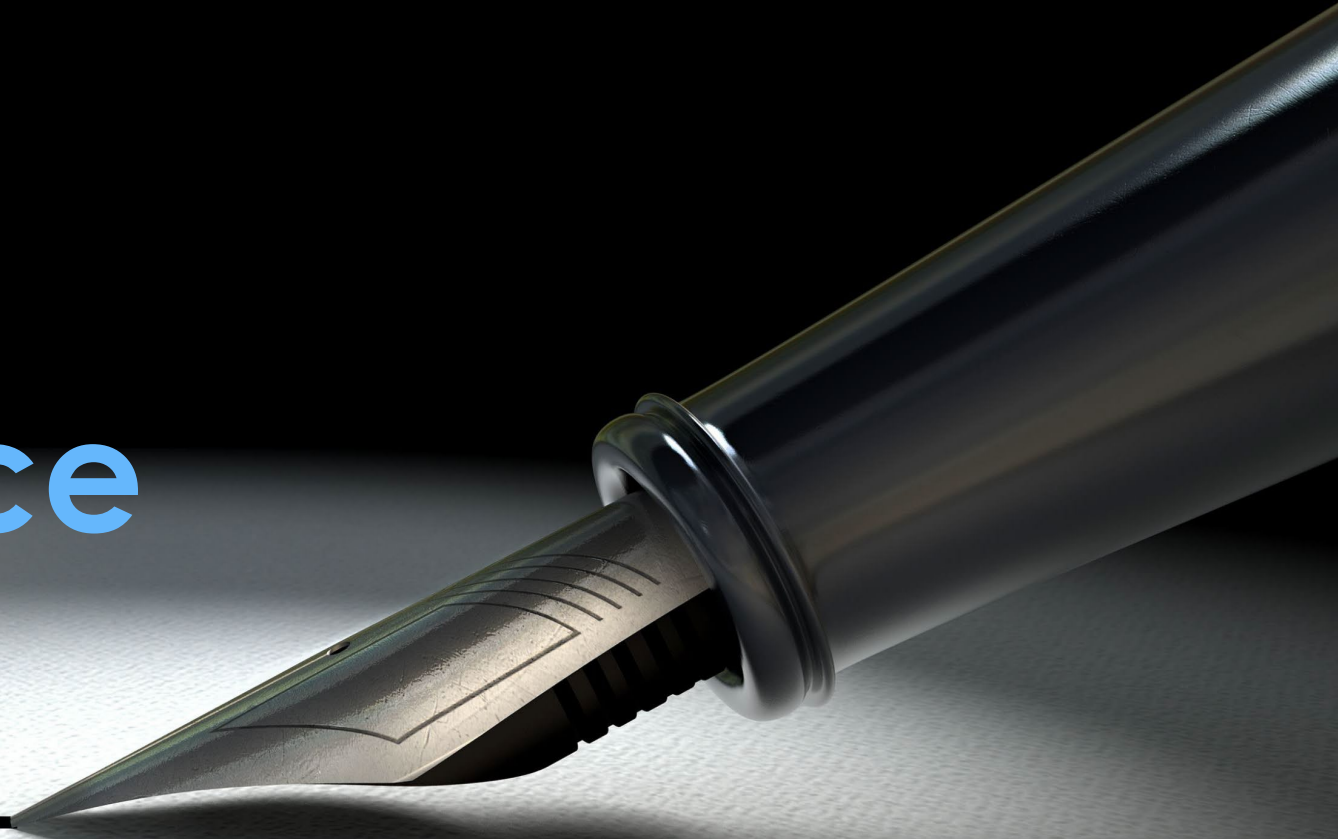
# Prompts

Identify factual and legal mistakes in the draft complaint.

Describe how to correct each mistake.



# Question Set Drafting Advice



# Levels of Change for Legal Educators



LEVEL 0

Don't know,  
don't care.  
(Not here)

LEVEL 1

Interested, but  
happy with my  
courses as they are.  
Would rather not  
change much.

LEVEL 2

Would like to alter  
aspects of my course  
to the extent I like  
the direction of the  
new exam.

LEVEL 3

Need to alter aspects  
of my course.  
(e.g., I teach bar  
readiness.)

# Traditional Law School Essay Question

- Dance school owner purchases new building and enters into agreement with contractor to renovate it
- Agreement includes a liquidated damages clause in the event contractor does not meet deadline
- Due to delays, renovation not complete by deadline
- Dance school owner incurs storage costs, advertising expenses, loss of current customers, loss of higher profits from new location
- Dance school owner demands payment of liquidated damages, contractor refuses

# Traditional Law School Essay Prompts

Discuss the rights and liabilities of the parties.

The dance studio owner sues the contractor for breach of contract, seeking payment under the liquidated damages provision or, in the alternative, the actual damages the owner incurred. What is the likely result?

LEVEL

1

# ADAPTATION

- **Add a lawyer-client relationship**
  - “Your client owns a dance studio...”
- **Consider breaking “kitchen sink” tasks into multiple tasks, including pre-litigation tasks**
  - “Your client has identified a contractor to renovate its new building and asks your advice on adding a clause . . . .”



# Key Takeaway: Foundational Skills List

Drafters are using the **foundational skills list** from the NextGen Content Scope to develop questions



**LEVEL**  
**2**

# ADAPTATION

- **Provide a client interview transcript rather than summarizing the facts**
  - “You had the following discussion with your client...”
- **Consider including questions that go beyond doctrinal-focused tasks**
  - Look at Group B, Group C, and Group D skills

# Foundational Skills List



“How would you redraft the proposed contract provision?”

“Given your client’s needs and concerns, list two drawbacks of including the current contract provision.”







# Avoid Hinging

An actual or perceived relationship between two questions such that an examinee, upon viewing the second question, reconsiders their answer to the first question.

Fixes:

- Different issues
- Different defendants
- Different claims

LEVEL 2

LEVEL 3

# ADAPTATION

- **Consider including interdisciplinary questions that connect the scenario to multiple core courses**
  - “While your client is waiting for the contractor to complete the renovations for their new building, their current lease is ending . . . .”



# Key Takeaway: Subject-Matter Outlines

Drafters are using the **subject-matter outlines** from the NextGen Content Scope to develop interdisciplinary question sets





# Interdisciplinary Benefits

- Help avoid hinging
- Help students make connections across courses
- Help students prepare for practice
- Opportunity for faculty collaboration?



# How Much Memorization?

## Detailed Knowledge ★

Know details of doctrine **without consulting legal resources**

## Limited Scope

Spot issues and work efficiently **with provided legal resources** to perform analyses and evaluation tasks



# Negligence

## A. Duty of care to foreseeable and unforeseeable plaintiffs

1. Duty to control third persons ★
2. Duty to act when previous actions exacerbate a risk of harm ★
3. Duty of owners and occupiers of land
4. Duty to avoid unreasonable risk of causing emotional distress



# Negligence

## A. Duty of care to foreseeable and unforeseeable plaintiffs

1. Duty to control third persons ★
2. Duty to act when previous actions exacerbate a risk of harm ★

Examinees are expected to know and apply these duties **without provided resources**

Examinees should be able to recognize if these duties are relevant to the scenario **without provided resources...**



# Negligence

## A. Duty of care to foreseeable and unforeseeable plaintiffs

3. Duty of owners and occupiers of land
4. Duty to avoid unreasonable risk of causing emotional distress



...and examinees should be able to apply these duties **with provided resources**



# Negligence

## A. Duty of care to foreseeable and unforeseeable plaintiffs

3. Duty of owners and occupiers of land
4. Duty to avoid unreasonable risk of causing emotional distress

LEVEL

3

# ADAPTATION

- **Check all questions against starred/unstarred designations in the subject-matter outlines**
  - Include additional source materials for unstarred topics in bar-prep materials
  - In final weeks of bar review, consider limiting memory retention exercises such as knowledge-based multiple-choice questions and flash cards to starred topics

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NextGen 

Bar Exam of the Future

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# Questions?



# Thank you.



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