Bar Exams: The Final Hurdle

Perhaps you are wondering about bar examinations. You may be thinking, "If I am not ready for practice law then, I never will be. So, why take still more exams called bar exams?"

Just think for a moment, though. We have all kinds of law schools in this nation. Some are good and some are less than good. Some States do not even require graduation from an accredited school. Should men ignorant of the law be permitted to hold themselves out to the public as lawyers? Obviously not. When you walk into the office of a man licensed to practice law, or medicine, you should have a right to assume that he is competent to draft a contract, if a lawyer, or to set a broken leg, if a doctor. You have no way to check on his qualifications. But others do, namely, the State itself. Consequently all States now have what is called a “Board of Bar Examiners,” or some such name, whose duty it is to see that only those competent to practice their profession shall be allowed to hang out their shingles as lawyers.

How do they determine this? They determine by examination, the bar examinations. Not only are there written examinations upon legal questions; there are other examinations as well. Why? (If you get nothing else out of this book except to learn to ask that question, your time in reading it will have returned you a rich reward. This isn’t a “snow job.”) Because, in addition to knowledge of the law the lawyer must have some thing else: character. All his life he’s going to be dealing with people’s innermost secrets, their most precious possessions, in fact, sometimes, their very lives. In addition the lawyer may go on into public life. Many do. By the way, is your congressman a lawyer? Your senator? The governor? The President? Why is there a correlation between the legal profession and public service? If so, he bears a part of the responsibility of government itself. The welfare of great numbers of our people, possibly the safety of the nation itself, will be placed in his hands.

In this position will he vote as the best interests of all the people require? Or will he vote as some selfish little group of partisan supporters want him to vote? Character is the answer.

The determination of fitness for admission to the bar, then, comprehends both a moral determination and a legal determination. When you make application for admission to the bar (which is usually in your senior year in law school, though some States require, as well, an earlier registration with the State Board of your intention later to apply for admission), you will have to fill out a questionnaire, and some States require “certificates of character” as well. One way or another the State Board will have a good line on your potentialities of character before they certify you as qualified to practice law.

In addition, we have the bar examinations themselves for the determination of professional competence. The purpose of the bar examination was well expressed by Mr. Eugene Glenn, who was at one time Chairman of the National Conference of Bar Examiners. He put his answer in these realistic terms:

Of course the purpose of the bar examination is to determine which applicants are to be granted a license to practice law. Therefore, a bar examination should be a test of professional competence in legal reasoning and legal knowledge. A bar examination should be designed to test whether an applicant has learned to use legal principles and not whether he has memorized a lot of legal rules.

Rules of law

It is true that an applicant must be able to draw on his memory for a good many rules of law to pass an analytical type of question, but this is secondary. An applicant who is eligible to sit in an examination should be presumed to know a great many rules of law. The prime question the bar and the public are concerned with is--can the applicant make use of these rules in a lawyer--like manner when he is confronted with a fairly complicated set of facts. We want to determine what capacity the applicant has for independent thought and reasoning rather than his capacity for uncritical absorption and retention of information.

The subjects covered in bar examinations vary from State to State. But regardless of minor variations, knowledge of certain subjects is believed to be essential by all of the States. A typical list of such subjects would include constitutional law, criminal law, property (real and personal), equity, evidence, torts, corporations (or business organizations), negotiable instruments (checks, for example), and pleading and procedure.

(It is not just a coincidence that this list corresponds generally with the list of required courses in law school.) In addition to these basic subjects the bar examinations will cover additional subjects. However,
since not all the students will have taken courses in all of these subjects, the student may (but not always
will) be given a choice of optional questions. For in stance, possibly the courses in municipal corporations
(the law of towns and cities and school boards and drainage districts, and so forth) and domestic relations
(family law, marriage, divorce, children, and related topics) conflicted in your school, so you couldn't take
both. You may have planned on practicing in a small town, where you might very well become the city
attorney, whereas your roommate knew he was going into a city firm handling a great many divorce
matters. Naturally your choice (as respects this particular conflict) would be municipal corporations and his
would be family law. In the bar examinations, also, you might well be given a choice of questions on these
subjects. No doubt it has already occurred to you that it would be a smart thing to find out which subjects
the bar examiners of your State regard as required for the bar examinations, and which, if any, they treat
as optional. (Your law-school dean's office will know.)

A number of years ago two of the members of the Illinois Board of Law Examiners, Robert Sprecher and
Len Smith, wrote a very interesting little pamphlet about their bar examinations. Here it is:

Two examinations are held each year in March and September, both in Chicago. The subjects upon which
the examiners "may" examine applicants are, in alphabetical order:

1. Administrative Law
2. Agency
3. Business Organizations
4. Conflict of Laws
5. Contracts
6. Criminal Law and Procedure
7. Equity Jurisprudence, including Trusts and Mortgages
8. Evidence
9. Federal and State Constitutional Law
10. Federal Jurisdiction and Procedure
11. Federal Taxation
12. Illinois Pleading, Practice and Procedure
13. Legal Ethics
14. Negotiable Instruments
15. Persons and Domestic Relations
16. Personal Property, including Sales and Bailments
17. Real Property
18. Surety ship
19. Torts
20. Wills and Administration of Estates

Since the Board "may" examine upon these subjects, it does not always include all of them. Furthermore,
the number of questions asked in a particular subject may and does vary from time to time.

The number of questions asked in each subject during a particular examination is based upon the Board's
evaluation of the relative importance of the subject at that time. In recent examinations, four questions
have been asked upon each of such basic subjects as Contracts, Torts, Real Property, Business
Organizations and Constitutional Law. Three questions have been asked on subjects such as Evidence,
Illinois Practice, Personal Property and Equity; two questions on Criminal Law, Agency, Federal Taxation,
Federal Practice, Negotiable Instruments, Conflicts and Wills; and one question on Administrative Law,
Surety ship, Domestic Relations and Ethics. The questions are not labeled as to subject matter since one
of the abilities tested by the examination is that of determining the issue or issues raised by each question.
A client does not customarily announce in advance that he has a problem in a particular area of the law;
that is the lawyer's first problem. The applicant may ordinarily assume, however, that all of the questions
upon a particular subject will be given during the same examination session. . . .

Overlapping

Each question ordinarily deals with one of the twenty subjects covered, although occasionally there may
be some overlapping- for example, a question could conceivably concern Contracts and Equity or
Administrative and Constitutional Law. Because of the short time for answering, a question normally does
not deal with more than one or two issues and those are usually the fairly obvious issues which appear
after a careful reading of the question. When, on occasion, a brilliant student fails the bar examination, it is
often traceable to his over-analysis of the problem- a mistaken belief that the more or less obvious issues
presented are merely traps and that the examiners expect a deep probing for more obscure and profound
issues. A reading of the instructions should dispel this belief; "Do not search for hidden meanings,
'catches' or remote exceptions since none are intended. Let your answer represent your best judgment in each instance on the plain meaning of the question." In other words, do not become involved in any intricate game of outguessing the examiners because they are not trying to outguess you. . . .

Almost everyone with any voice in legal educational policy has declared himself in favor of bar examinations and against the so-called diploma privilege which permits automatic issue of a license with the granting of a law degree. Law schools, for example, are equipped to provide a legal education for an otherwise competent person who lacks the ability to qualify as a practicing attorney and the bar examination is necessary to determine qualification to practice. Bar examinations and the resulting failures are likely, therefore, to be an ever-present problem. The ultimate goal of administrators of bar examinations is not to eliminate failures (which would simply reintroduce the diploma privilege) but rather to be assured that the percentage of failures includes (all and only those not fit to practice. The achievement of this goal is sought by constantly endeavoring to improve the quality of bar examination questions and the general administration of the examination itself. Whether improvement occurs is measured by continual correlation checks to determine if the examination is eliminating the same persons that the law schools, after a much more extensive and intensive consideration, have ranked in the lowest portion of that particular class.

In taking the bar examination you should allot yourself a certain amount of time to answer each question. (If one question is so long, or difficult, that it counts for two, I think you can rest assured that those in charge of the exams will warn you.) If you have ten questions to answer in four hours you should allow twenty-four minutes to each question. First of all, analyze the problem. If it is involved, draw a little diagram. Then jot down in your own shorthand the controlling issues and your comment on those issues. Only then should you start to write, (Don't repeat the question. The examiners know it already.) When you reach the end of your twenty-four minutes, stop. I have actually known students who got so mixed up, baffled, and frustrated on one question that they did not finish the exam, and flunked. Don't let this happen to you. If the question is as confused as it seems to you, you have probably missed something. Do what you can with it in the time allotted, and move on. Don't throw good money after bad.

Legal principles

As for preparation for bar exams, any all-night "cramming" is of course ridiculous. If you don't know your legal principles now, you never will. Moreover, the all-night stint is really detrimental. I have seen students in law school come in for an exam after one of these all-night, black-coffee deals, so jittery and unstrung they wouldn't know a contract if they met it on the street. You will, of course, still do the refreshing-of-memory we looked at when we were speaking of law-school exams. But here there's another problem as well. Remember that both the national school and the good local school taught the same law. But you are going to take the bar examination for some particular State, and the bar examiners of that State may very properly require you to demonstrate a knowledge of the law of that particular State.

Some States progress more rapidly in the law than others. "The law" does not march forward in all the fifty States shoulder to shoulder, like a massed parade of Annapolis midshipmen, an unbroken, unwavering line from company to company across the whole field. Rather it is as though one company got a head start on the others, two companies had foot trouble, three got the order to run instead of walk, while the balance were likely to be behind. Some States progress more rapidly in the law than others. "The law" does not march forward in all the fifty States shoulder to shoulder, like a massed parade of Annapolis midshipmen, an unbroken, unwavering line from company to company across the whole field. Rather it is as though one company got a head start on the others, two companies had foot trouble, three got the order to run instead of walk, while the balance never heard the order "Forward march" at all. Some States will be way out ahead on a certain legal issue, while others will be far behind.

So, the law in one State is, in many instances, not exactly parallel to the law in a sister State. We should hasten to add that this is not always due to a lack of modern thought in the (apparently) backward State. Perhaps some atrocious old decision has never been challenged in that particular State, although it has been in other States. Sometimes those things happen. At any rate, as we said, the bar examiners may very well require you to have a familiarity with the law and the procedure of the State whose citizens are going to come to you for help. If your law school stressed local law and procedures, your notes will already contain most of what you will have to know to pass the local bar exams. But if not, you should devote whatever time is necessary in your senior year (or in the weeks between law-school graduation and the bar exams) to learning the leading peculiarities of local law and local procedures. There probably won't be very many. If there were, you see, we would simply have to have a law school in each State teaching nothing but the law of that State. Actually, there's no need for this. General legal principles are pretty well followed in all of the States, there being only minor aberrations. All States, for instance, permit you to provide much as you wish for the distribution of your property on your death. This is done by a writing called a "will." Since the will is such a powerful document, and since (if the deceased is a wealthy man) there are so many motivations for fraud in connection with it, all States require certain safeguards in its execution. It must be signed, witnessed, and so forth. As we noted, these requirements are common to all States. But there's another thing, also common to (almost) all States. If the will is entirely in the handwriting
of the deceased, it need not be witnessed by others. (The handwriting of the man making it out is thought to be a sufficient guaranty of its authenticity). Yet Michigan requires that even such a will must be witnessed. This is the sort of thing that you would be wise to learn about the law of your own State.

So much for bar examinations. If you are well prepared for the practice of the law, they offer no threat. If you are poorly prepared, you shouldn't be allowed to complete your preparation at the expense of clients who put their trust in you. It's just as simple as that.

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