All That You Needed to Know About Bar Exams

In case you’re wondering, attorneys are called "the bar" because they have the privilege of entering beyond the wooden railing that separates the general courtroom audience from the judge’s bench; thus the word "barrister” as a name for an attorney in Britain.

The term "organized bar" refers to those attorneys who belong to a bar organization. It comes up most often in references to the ABA, which fights for the interests of attorneys, offers annual conventions (for which attorneys can get a tax write-off) in places like San Francisco and Hawaii, and researches questions pertaining to the legal system.

Besides the ABA, there are city and county bar associations, associations of trial attorneys, etc. Each state has a bar association that handles issues having to do with the practice of law there; that association, or else the state’s supreme court, sets the requirements for admission to the practice of law in the state. With few exceptions, practically everyone has to take a bar exam before they can practice law.

In law school, all I knew about the bar exam was that it was given twice a year. Nobody talked much about it. It just kinda stayed out there in never-never land until graduation day. But things changed quickly after graduation.

1. The Exam Itself

One day of the two-day bar exam is devoted to the Multistate Bar Examination (also referred to as the Multistate or simply the MBE). It covers six subjects that most states and territories consider basic to the practice of law, namely, contracts, torts, constitutional law, criminal law, real property, and evidence. Most of us hadn’t even looked at those subjects since the first year of law school.

On the other day of the exam, you don’t take a standardized national test. Instead, you answer questions posed by the state's bar examiners. The questions might require essays, or even a brief in which you tell an imaginary judge why your hypothetical client should win.

The examiners also reserve the right to cover a lot of different topics on the state portion. Here is what the New York exam once upon a time looked like:


Besides, as a "national" school, Columbia didn’t even offer courses in some of the New York bar exam...
2. Morale, Crisis In, Explained

You start your bar review preparation intelligently. You don’t waste a minute pretending that you know the law. The exam wants you to memorize the rules and spit out the right answers, not to sit there and theorize. For this, your three years of open-book exams in law school leave you unprepared.

The first step is to sign up for a bar review course. You pay up to several dollars and attend classes five days a week for those two months. You’re a fool if you don’t sign up for one of these courses.

There really are patterns to the bar exam’s questions, and these review courses can detect them. They also give you mnemonic devices and shortcuts to cram your memory full of the trivia on which you’re likely to be tested. With their assistance and a lot of devoted effort, you can make it.

3. Behind the Curtain

The scores from each year’s exams are published each May in a magazine called The Bar Examiner, and, boy, are they silly.

The first problem is that these guys don’t understand arithmetic. Here are a few of their many miscalculations:

- They mess up the percentages on first-timers. In 1988, Montana did not know how many people were taking its February bar exam for the first time. This is understandable. The statisticians in Helena must have been overwhelmed by the data that flooded in from the 25 people who took that exam. And it is an improvement, because they had tried to count the number of first-timers the previous year, but had gotten it wrong.

- Maybe they aren’t really sure what a "percentage" is. In Nevada in 1987, 169 percent of first-timers passed the July exam. The overall 1980 pass rate was either 67 percent or 87 percent - we just don’t know which. In Idaho in 1990, 147 out of 179 passed, for a total of... 90 percent?

- They can’t count. In 1988, the total number of people taking the exam was 67,888, and the total number passing was 45,054; and then the total number taking was 45,054, and the total number passing was 34,876. Of those people, a whopping 1,193 came from ABA law schools. In North Carolina in 1990, there were 94 first-timers and 58 repeaters, yielding a total of - you guessed it - there are dozens of such errors in The Bar Examiner each year. For instance, the first-timer figures fail to work with the totals in as many as half of the jurisdictions.

- The bar examiners do mean well, however. In 1989, they produced an "Errata" sheet to correct the errors that had "occurred" [sic] in their first try. This sheet was terrific. Such ambition! It changed the data for a whopping eight jurisdictions. Unfortunately, after those changes, the other numbers for at least two of the "fixed" jurisdictions no longer added up.

- Small wonder that they say, each year, that "The National Conference leaves the interpretation of the following statistics to the reader." All hope abandon, ye who enter here. And to think that these people were calculating the number of right answers on your bar exam.

- Besides bad math, you can get suspicious about bad intentions. Did they want more lawyers or fewer? It’s not clear. From 1982 to 1988, a number of jurisdictions cut their pass-rate percentages, on top of the fact that they were getting fewer applicants for the bar. Meanwhile, others had a different idea: Pass rates stayed about the same or even increased, despite the fact that those states were getting significantly more applications. Nor is it a geographical phenomenon. Neighboring states go in opposite directions, as do states containing some of our biggest cities.

One explanation is that state bar examiners are doing their level best to find out who’s capable of practicing law in their states. The other is that it’s a hoax, and their real goal, to the great pain of law schools, law students, and clients, is simply to control the number of attorneys who are permitted to enter the practice of law in their states each year. Limitation is the severest form of flattery: As they know, once you’re admitted, you’ll be taking business away from other attorneys.

If you believe that the examiners are sincere, you have to conclude that they don’t even know for sure what it means to be a "competent" attorney. Although the bar exam questions are becoming more similar from one state to another, the pass rates continue to diverge. It was no surprise to hear former Stanford Law School Dean Charles Meyers quoted as saying that the bar’s claim that its exam insures a high quality of
entering lawyers is based on "an act of faith."

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