



## Bar Examination Grading Standards And Procedures

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"The Bar examination should test the applicant's ability to reason logically, to analyze accurately, the problems presented to him and to demonstrate a thorough knowledge of the fundamental principles of law and their application. The examination should not be designed primarily for the purpose of testing information, memory or experience." (*National Conference of Bar Examiners: Canon 16*)

### I. ESSAY QUESTION GRADING GUIDELINES

1. In grading an examinee's answer to an analytical essay-type question, the grader must exercise both skill and judgment in the analysis and evaluation of that answer. The grader must know and understand not only the problems involved in the questions, but also the specific factors which comprise a good, well-reasoned answer and how to recognize and assess the same. The grader must constantly exercise care lest the standards of judgment and valuation vary and lose consistency during the progress through the whole group of successive answers the grader is called upon to assess.
2. In assigning a grade to any answer, the graders shall take into consideration the following concepts:
  - a. **Identification of Issues** - The grader shall consider the ability of the examinee to identify legal issues raised by the question as the most important single element of the answer, but mere identification of an issue alone, without analysis, should normally be insufficient to warrant a passing grade.
  - b. **Knowledge of the Law** - A demonstration by the examinee in the knowledge of the law relevant to the issues raised by the question is also of importance in grading the answer.

While mere knowledge of legal rules and principles and the ability to repeat them accurately on the examination paper are not the most essential criteria of a good or a satisfactory answer, they are elements to be weighed with the others. If, as a part of discussion and reasoning, the applicant sets forth a particular rule and the statement thereof is incomplete or incorrect, the error may be due either to faulty knowledge or to faulty memory. If, however, the applicant proceeds therefore to reason logically and consistently to a conclusion which is compatible with the rule used, the answer is entitled to credit even though the starting-point may be a faulty premise.

The proportionate amount of the grade which should be deducted for such an error will depend, obviously, upon the rule itself and the extent to which it is either basic law or a relatively remote and obscure principle. If it is so fundamental and well-known that every applicant should be reasonably expected to know and recall it accurately, the error would justify the giving of a lower grade than if it is a rule of negligible significance.

There is, with some examiners, a tendency to overstress the importance of a mere knowledge and ability to remember rules correctly as an essential element of a satisfactory answer. While it is to be expected that a well-prepared applicant will have a broad, working knowledge of fundamental rules and principles of law, this is but one of the several qualities required. It should be considered in determining the grade, but it should not be the sole factor in governing success or failure of the applicant.

- c. **Application and Reasoning.** In addition to the applicant's analysis of the question and knowledge of the rules of law, the examiners must evaluate the applicant's ability to use or apply the knowledge. Generally speaking, this is a matter of determining whether the answer shows a capacity to apply the appropriate rule to the operative facts of the question as a step in reaching the conclusion.

Further evaluation of the applicant's ability to reason from the rules in a logical and orderly fashion requires a careful check by the examiner to see that the applicant's expressed line of thinking is clear and consistent. If there are gaps or digression in the chain of argument, or inconsistencies in the reasoning, there are matters which should be noted and weighed in determining the grade to be given.

Even though a grader may disagree with the analytical approach or the conclusions of the answer, the examinee should be given credit for a reasonable and organized analysis of the facts and the law.

- d. **Conclusions.** If the question calls for a specific conclusion or result, such conclusion should clearly appear in the answer, usually either at the beginning or at the end thereof. If no definite conclusion is given by the applicant, the answer is at least partially incomplete.
- e. **"Objective Correctness" of an Answer.** The basic emphasis in grading should be on the applicant's demonstrated ability to analyze the problem and to reason logically and clearly, rather than upon any objective standard of "correctness" or "incorrectness" of the final conclusion reached.
- f. **Grading the Answer as a Whole.** It is extremely important that each grader examines a particular answer as a *whole* and determines whether it, as a unit, indicates or fails to indicate, the required competence of the examinee.
- g. **Organization and Clarity.** The overall organization of an answer may be considered by the grader in assigning a grade. The grader must also understand that a bar examination is not a test in English composition. While bad grammar and poor spelling may adversely affect an applicant's ability to develop and express properly the legal issues and principles involved in question and result in a low grade, no reduction in grade should be made for errors in grammar, spelling, and the like per se.
- h. **Quality of Question.** The quality of the question, including but not limited to ambiguity, clarity, length, complexity, scope, subject matter and difficulty should be considered.
- i. **Time Limit.** The six Multistate Essay Exam (MEE) questions are administered during a three-hour testing session. This fact should be considered along with the pressure of a continuous examination in assigning a grade.

- j. **Additional Issues.** Relevant comments in an answer upon additional issues or points of law not originally thought to be within the scope of the question shall be considered in assigning a grade to the answer.
- k. **Multistate Essay Exam.** The Court has authorized use of the MEE and recognizes that the National Conference of Bar Examiners will suggest grading standards for MEE questions that may vary slightly, e.g. heavier emphasis on issue identification on certain questions.

## II. MULTISTATE PERFORMANCE TEST GRADING GUIDELINES

The Multistate Performance Test examines six fundamental lawyering skills that are required for the performance of many lawyering tasks. These skills, as described in the "Statement of Fundamental Lawyering Skills" from the *Report of The Task Force on Law Schools and the Profession*, ABA, July 1992, are:

1. **Problem solving** - The applicant should demonstrate the ability to develop and evaluate strategies for solving a problem or accomplishing an objective. Problem solving includes the ability to:
  - a. Identify and diagnose the problem;
  - b. Generate alternative solutions and strategies;
  - c. Develop a plan of action;
  - d. Implement a plan of action;
  - e. Keep the planning process open to new information and new ideas.
2. **Legal analysis and reasoning** - The applicant should demonstrate the ability to analyze and apply legal rules and principles. Legal analysis and reasoning includes the ability to:
  - a. Identify and formulate legal issues;
  - b. Identify relevant legal rules within a given set of legal materials;
  - c. Formulate relevant legal theories;
  - d. Elaborate on legal theories;
  - e. Evaluate legal theories;
  - f. Criticize and synthesize legal argumentation.
3. **Factual analysis** - The applicant should demonstrate the ability to analyze and use facts and to plan and direct factual investigation. Factual analysis includes the ability to:
  - a. Identify relevant facts within a given set of factual materials;
  - b. Determine the need for factual investigation;
  - c. Plan a factual investigation;
  - d. Memorialize and organize information in an accessible form;
  - e. Decide whether to conclude the process of fact gathering;
  - f. Evaluate the information that has been gathered.
4. **Communication** - The applicant should demonstrate the ability to communicate effectively in writing. Communication includes the ability to:
  - a. Assess the perspective of the recipient of the communication;
  - b. Organize and express ideas with precision, clarity, logic, and economy.

5. **Organization and management of a legal task** - The applicant should demonstrate the ability to organize and manage a legal task. Organization and management includes the ability to:
  - a. Allocate time, effort, and resources efficiently;
  - b. Perform and complete tasks within time constraints.
  
6. **Recognizing and resolving ethical dilemmas** - The applicant should demonstrate the ability to represent a client consistently with applicable ethical standards. Ethical representation includes:
  - a. Knowledge of the nature and sources of ethical standards;
  - b. Knowledge of the means by which ethical standards are enforced;
  - c. Ability to recognize and resolve ethical dilemmas.<sup>1</sup>

### III. GENERAL STANDARDS FOR THE ASSIGNMENT OF GRADES

The Rules Governing Admission to Practice Law in Idaho state that a scaled score of not less than 67.5% of the highest possible scaled score shall be a passing scaled score on an examination. (IBCR 217(k)(2)). Since essay and MPT examination grades are assigned on a grade range from 0-100, the effect of a very bad answer must be clearly understood.

Grades are assigned on a scale of 0-100, although most grades will fall between 40-100. A grade of "0" hurts an applicant more than two grades of "100" help. Therefore, as a practical matter, most grades should fall within the range of 40-100. As a result, an applicant who makes a reasonable attempt to answer a question but who obviously has not written a passing answer will not be so severely penalized for that bad answer that he or she has little chance to ever recover. These grades should be assigned in five (5) point increments. The following standards should be applied in assigning grades to essay and MPT examination answers:

#### Essay Grading Standards

- 90-95-100** A grade of 90-100 demonstrates a **high degree of competence** in response to the question. While not reserved for a perfect answer, a 90-100 answer demonstrates a full understanding of the facts, a complete recognition of the issues presented and the applicable principles of law, and a good ability to reason to a conclusion. A 90-100 answer is clear, concise and complete.
- 80-85** A grade of 80-85 demonstrates **clear competence** in response to the question. An 80-85 answer demonstrates a fairly complete understanding of the facts, recognizes more of the issues and applicable law, and reasons fairly well to a conclusion.
- 70-75** A grade of 70-75 demonstrates **competence** in response to the question. A 70-75 answer demonstrates an adequate understanding of the facts, an adequate recognition of most of the issues and law, and adequate ability to reason to a conclusion.
- 60-65** A grade of 60-65 demonstrates **some competence** in response to the question but is inadequate. A 60-65 answer demonstrates a weak understanding of the facts, misses significant issues, fails to recognize applicable law, and demonstrates inadequate reasoning ability.

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<sup>1</sup> *The MPT 2001 Information Booklet*, National Conference of Bar Examiners, 2000, pp. 2-3.

- 50-55** A grade of 50-55 demonstrates only **limited competence** in response to the question and is seriously flawed. A 50-55 answer demonstrates little understanding of the facts or law and little ability to reason to a conclusion.
- 40-45** A grade of 40-45 demonstrates **fundamental deficiencies** in understanding facts and law. A 40-45 answer shows virtually no ability to reason or analyze.
- 0** A grade of "0" should be assigned only when the applicant makes no attempt to answer the question, or when the answer shows no reasonable attempt to identify or address the issues raised by the question.

In connection with assignment of very high grades, it should be emphasized that the grade of 100 is not reserved for a "perfect" answer; it is not reserved even for a single "best" answer, which a grader may encounter to a particular question or on a particulate examination. A grade of 100 may be assigned if the grader believes that the applicant has done an exceptional job considering the time and circumstances.

If the applicant shows some understanding of the problem and has made some serious attempt to grapple with it, it would be most surprising to find that the applicant has not earned *at least* a 40. An applicant who has never taken a course in the subject but displays analytical ability should be able to earn credit for the attempted answer.

While there is no arbitrary "floor" in the grading system, the 40-100 practical "grading range" previously mentioned should be kept in mind for the reasons stated above.

### **MPT Grading Standards**

- 90-95-100** A grade of 90-95-100 demonstrates a **high degree of competence** in response to the assigned lawyering task. Although not reserved for a perfect answer, a grade of 90, 95 or 100 shows that the applicant fully understands both the practical and academic aspects of the task, is able to assimilate and digest the relevant factual and legal materials, incorporate them coherently into a well reasoned and well written product, and write a complete and responsive answer in the allotted time.
- 80-85** A grade of 80-85 demonstrates **clear competence** in response to the assigned lawyering task. It shows that the applicant has a fairly complete understanding of the practical and academic aspects of the task, is able to assimilate and digest most of the relevant factual and legal materials, incorporate them coherently into a logically well reasoned and well written product, and write a useful and responsive answer in the time allotted.
- 70-75** A grade of 70-75 demonstrates **competence** in response to the lawyering task assigned. It shows that the applicant somewhat understands the practical and academic aspects of the task and is able to assimilate and digest enough of the relevant factual and legal materials to allow him/her to incorporate them into a satisfactory, albeit less than complete, exposition of the task in the time allotted.
- 60-65** A grade of 60-65 demonstrates **some competence** in response to the lawyering task assigned but is **inadequate**. It shows that the applicant has a weak understanding of the task, tends not to appreciate the practical aspects, and is barely able to assimilate and digest the factual and legal materials in a useful written product in the time allotted. That is, it is an answer that

you, as a supervising attorney, would find sufficiently lacking in the content you intended when you made the assignment.

- 50-55** A grade of 50-55 demonstrates only **limited competence** in response to the lawyering task assigned and is **seriously flawed**. It shows that, although the applicant has attempted to grasp the factual and legal materials, he/she has only rudimentary understanding of the task and how to accomplish it.
- 40-45** A grade of 40-45 demonstrates **fundamental deficiencies** in response to the lawyering task assigned. It shows that the applicant has a complete lack of understanding of the task or how to accomplish it and is unable to analyze the factual and legal materials and incorporate them into even a minimally acceptable written product.
- 0** A grade of "0" should be assigned only when the applicant makes no attempt to answer the question.

#### IV. GRADING PROCEDURES AND GUIDELINES

1. **GRADERS.** Members of the Idaho State Bar shall be appointed by the Commissioners of the Idaho State Bar to grade the bar examination. Three (3) graders, with varying years of experience at the bar, shall constitute a grading team for the purpose of grading all the answers to a particular bar examination question. More than one bar examination question and its answers may be submitted to a grading team.
2. **PRE-GRADING PROCEDURE.** Before assigning any grades to bar examination answers, each grader of a grading team shall, together with the other graders of the team, complete the following pre-grading procedure in the following sequence:
  - a. Copies of the bar examination question to be graded by a particular grader, together with the analyses thereto, and a copy of the Grading Standards shall be furnished to each grader after the examination has been given, but sufficiently in advance of the grading session to allow the grader to become familiar with the question and standards.
  - b. Each grader, individually, shall outline in writing the issues, which are raised by the question. All members of the grading team shall then compare and discuss the issues raised by the examination question, and prepare a consensus summary of the issues of the particular question.
  - c. All members of the grading team shall then compare the "model answer" prepared by the National Conference of Bar Examiners with the graders' analysis of the question to arrive at a further consensus among the graders as to the issues and points of law raised by the question, which an examinee should be expected to identify and discuss.
  - d. The grading team shall give consideration to the weight assigned by the National Conference of Bar Examiners to particular issues raised by a question.

- e. The grading team should first read five (5) randomly selected answers of examinees to the bar examination question without assigning grades. The team should then discuss any additional issues or problems foreseen in grading the answers to the question.

**3. GRADING PROCEDURE.** After completing the pre-grading procedure, the graders shall grade all the answers to a single question in accordance with the following procedure:

- a. Read the entire answer before forming any opinions as to its merit or grade.
- b. Consider the weight assigned by the National Conference of Bar Examiners to particular issues raised by a question.
- c. After reading and discussing the answer, each grader shall assign a tentative grade to the answer after considering it as a *whole* and after considering all of the guidelines set forth in these instructions.
- d. The team grade to be assigned to the answer must be concurred by all members of the grading team. The graders shall not determine the team grade by a quotient process of adding each of their grades together and dividing by the number of graders. Grades shall be assigned in increments of five (5) points. (e.g., 65, 70, 75, etc.)
- e. Upon completion of the grading of the answers to a bar examination question each grader shall fill out a critique on the question.

**4. REVIEW BY COMMISSIONERS.** If at any time during the giving or grading of a bar examination, the commissioners determine that any question cannot be fairly graded for any reason, the Commissioners may order the examination graded without regard to such questions, or may order any other adjustment in the grading procedure which they find proper in the circumstances to compensate for such a question.

**5. SCORING ESSAY AND PERFORMANCE QUESTIONS.** Following is the process for calculating scores on the essay questions:

- a. Graders use a 100-point scale for assigning initial scores on all essays as outlined in the "General Standards for the Assignment of Grades Scores" found in Section III herein.
- b. Scores assigned by the graders are then weighted to reflect the amount of testing time allotted to answer the questions.
- c. Weighted essay scores are scaled to the MBE to ensure consistent interpretation across test administrations.
- d. The scaled total essay score and the scaled MBE score each represent one half of the final combined score.
- e. A passing score on the Bar Examination is a score of not less than 67.5% of the highest possible score. *Idaho Bar Commission Rule 217(k)(2)*.