

# Tips for the Multistate Bar Exam (MBE)

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## Why the MBE should receive the bulk of your attention on the Michigan bar exam

[AS OF FEB. 2009 EXAM] ~~First, an MBE score of 150 or better — i.e., “Multistating” — renders your essay performance effectively moot. (Your essays will still be “spot checked” to make sure you’ve put forward a “good faith” effort. As long as you attempt to spot issues and to address them — in short, as long as you write what looks like an essay answer — you’re fine even if you get the law quite wrong.~~

Second, **you can lose a big chunk of points all at once on the essay portion.** Since there are only 15 essays (as compared to 200 questions on the MBE), each one represents 6.67% of the available points for that portion. Quite often one or two of the essays happen to be weird — i.e., they test hyper-esoteric aspects of the law; or they seem to sound in evidence, but actually (that is, in the test maker’s mind) they sound in professional responsibility. Yikes! What I’m saying here is that the essay portion of the test is like an insufficiently diversified 401(k): if one or two stocks go bust, you’ll spend your golden years eating cat food.

Adding insult to injury, **the grading of the essays is notoriously dicey.** (And the efficacy of appeals also tends to be somewhat of a crapshoot, even when the appellant’s essays warrant the awarding of additional points. But you didn’t want to have to appeal anyway, did you?)

Last (but in no way least), **MBE preparation pays double dividends.** Because there is considerable overlap in the material tested on the MBE and the essay portions of the bar exam, mastering the MBE subjects gives you an excellent foundation for much of the essay portion. Consider...

### Some of the Michigan subjects have no (or almost no) distinctions:

- **UCC Sales** are UCC Sales (note that UCC stands for *Uniform Commercial Code*).

- Multistate **Contract Law** is close enough to Michigan Contract Law that you can count on three fingers the distinctions that a certain corporate monolith in the bar review—industrial complex deems worthy of mention.
- The **Constitutional Law** essay tests U.S. Federal Constitutional Law (not Michigan Constitutional Law); therefore, knowing Con Law for the MBE covers you.
- **Evidence Law** — the MRE is extremely close to the FRE.
- **Criminal Procedure** (as tested on the essay) is a matter of federal constitutional law.

**Admittedly, Michigan Crim Law, Real Property, and Torts confront us with many Michigan-specific distinctions.** It will, no doubt, behoove you to gain at least a cursory familiarity with some of these — i.e., the major, structural distinctions (tort reform, for example). It should also be obvious that **you should choose not to learn many of the trivial distinctions.** Your deep understanding of these MBE subjects will likely enable you to write extremely respectable — that is, high scoring — answers on these essays, notwithstanding your ignorance of minute points of Michigan law.

Does this mean that the particular vagaries of Michigan law don’t matter? Certainly not, *once you’re in law practice*. That’s why lawyers have libraries: they consult books; they look stuff up; they don’t walk around in a state of omniscience concerning ever damn utterance of the Michigan Court of Appeals (no disrespect intended). Why would you think that to pass the bar you’d have to hold a complete copy of the Michigan Reporter in your head?

**Bottom line:** There is nothing you can do to guarantee that you’ll be perfectly prepared to write a perfect 10 on whatever essays they throw at you. If you attempt to chase after that elusive goal, you’ll paradoxically wind up less likely to pass, you’ll be spread too thin — you’ll be like the TSA, forcing every granny to take off her shoes before boarding the airplane. You need to focus on the

big picture. You need to prepare yourself to handle the recurring situations. You need to go to where the points are likely to be found. You need to be bloody clever and *adequately* informed.

Most students find this advice extremely unsettling. They want to know *all* the law. This desire reveals a profound lack of understanding of what law is: Law is not a big, fat collection of factoids. Rather, law is a process, a game. It's played on a field, and that field happens to be defined by black letter law. But the black letter law is just the chalk lines on the grass. Just because a couch potato knows the exact dimensions of a football field doesn't mean he can run, throw, or catch. I'd rather have a guy on my team who's fast as hell and has great instincts for avoiding tacklers, even though he can't say for certain how many yards wide a regulation football field is. Of course, I'd want him to know some basics: I'd want him to know which direction our team is trying to advance the ball. I'd want him to understand that the guys with the different colored jerseys are our opponents. Etc. In short, I'd want him to know enough about the rules of football so that he can play it. That's what I want you to know about the rules of the bar exam game: I want you to know enough law so that you can play it effectively.

**Indeed:** Everything I've said in the preceding two paragraphs applies to your MBE preparation as well. You shouldn't set your sights on achieving a perfect 200 on the MBE. Rather, you must be willing to let go of some of the points in order to remain focused on the objective — which is, quite plainly, to score enough points to pass. It's just that **your mastery of the MBE subjects rewards you with much greater point-earning potential than does your mastery of the essay subjects.** You can therefore justify expending much more effort in achieving the former. Consider...

If you spend decades becoming the world's foremost authority on Michigan family law, then you'll probably be well positioned to write a 10 on the Domestic Relations essay (assuming that subject winds up being tested on your particular bar exam). However, if you'd merely invested the better part of an afternoon on family law, you could probably have written at least a 5 or 6. So your Herculean efforts netted you an additional 4-5 points. Mazel tov! Let me know when your hornbook is published — I won't read it.

In contrast, if you'd applied your energies to mastering

MBE contract law, you'd not only earn lots of points on the MBE portion of the test (~~possibly rendering the essay portion moot~~), but you'd also be extremely well positioned to write 9s and 10s on the contracts *and* UCC sales essays (note the plural). Do what you want, but don't say I didn't warn you.

## How to achieve an MBE scaled score or 150

$$\begin{array}{r} \text{MBE scaled score} \\ = \\ \text{MBE raw score (number of correct answers)} \\ + \\ \text{scale factor (typically 10-15 points)} \end{array}$$

(Actually, the calculation of an MBE scaled score isn't quite so simple. The makers of the MBE use a complicated, funky statistical methodology to "standardize" scores across different administrations of the MBE. This caveat, however, needn't concern you at all, as it will have no effect on how you prepare for the exam.)

So to achieve a scaled score of 150 or better, you'll need a raw score of 137.5-ish. Please note that these numbers are ballpark figures, since the actual scale factor varies from one MBE to another. The point of this discussion is simply to let you know that scoring in the neighborhood of 70% raw is damn good (notwithstanding that back in high school 70% would have earned you a C-). Great. So how do we hit that 137.5 target?

There are **200 questions on the MBE.** This represents 200 opportunities to earn a point. Out of those 200 questions, some will be slam dunks, others will force you to guess between plausible alternatives, and some will be utterly incomprehensible. Consider the following (admittedly oversimplified) distribution:

100 "for sures"	⋯	100 points
50 "either-ors"	⋯	25 points
50 "in Hungarian"	⋯	12.5 points
<b>MBE Raw Score:</b>		<b>137.5 points</b>
		(Assuming you don't speak Hungarian.)

This is not a recipe. Rather, it's just an illustration of the importance of accumulating points *and partial points*. Squeeze as much juice out of every question as possible. You *will* have to guess — *a lot!* There is no shame in having to guess. But there is shame in squeezing less juice out of a question than you might have had you analyzed it better. For example, guessing blindly among four MBE answer choices may be the best you can do on a particular question. If that is so (perhaps because it's written in Hungarian), then guess quickly and move on — give yourself a pat on the back; you just earned 1/4 of a point. However, if you could have eliminated one of the answers by applying your cleverness just a bit more vigorously, then you could have netted 1/3 of a point instead. The difference is slight —  $1/3 - 1/4 = 1/12$  of a point — but, over the course of 200 questions, slight differences add up to a big aggregate difference. **Be greedy for every fraction of a point you can grab!**

By the way, our “70-ish% is damn good” perspective should influence the way you go about learning the material in the first place: Aim to understand the big picture, cultivate your cultural instincts for the law, get your sea legs. Obviously, you'll need to know some actual detail-ish stuff. Alas. But please — I beg you — don't try to memorize thousands of disconnected fragments of legal minutia. (Recall that scene in *The Paper Chase* in which Prof. Kingsfield proclaims, “Your photographic memory will be of no use to you here [or something along those lines].”) Rather, attempt to integrate the fragments into a coherent structure.

I'm not an apologist for the law. I don't believe that law is infallible, that it always gets it right. But the law (as tested on the MBE) *tends* to reach the same conclusion you'd reach if you bothered to demystify law and instead regarded it as an (admittedly imperfect) device we humans use to resolve our inevitable conflicts. If you were king, would you allow your subjects to punch random passers-by on the street with legal impunity? I should hope not. **This “if you were king” technique relieves you of the burden of having to memorize 80-90% of the black letter law — because, to be blunt, it couldn't be otherwise in our society.** (I'm assuming here that Your Royal Highness has spent some time hipping Yourself to the general contours of the Anglo-American legal tradition. It is precisely this street sense, this ear for the language, this cultural savvy that will enable you to intuit the law so reliably.)

## Doing a zillion MBE questions isn't, per se, important.

The important thing is to tear apart each question that you do, extracting everything it has to teach you (both as to legal substance and as to multiple-choice test taking strategies). Don't worry that you've only done 2,000 questions, whereas your friend has done 4,500. **Quality trumps quantity** (provided you've got at least minimally sufficient quantity, which would be around 150-200 questions in each subject area). I can't tell you how many students have come to me over the years after having failed a bar exam and proudly reporting, “But I did umpteen-thousand practice MBE questions!” Often these students haven't achieved even minimal clarity on big-ticket, integral, core, structural principles (read: things that help you score lots of points). Their burning through thousands of practice questions has given them no real mastery over such enormous concepts as intent, strict liability, causation, consideration, contract remedies, hearsay, character evidence [sic], mens rea, homicide, etc., etc., etc.

Do not allow yourself to lose the forest for the trees.

## Don't worry about pace — i.e., 1.8 minutes per question — until 3-5 weeks prior to the bar exam.

Speed is not something you can even be concerned with until you've established a base of understanding. In order to establish that base, you'll need to spend a lot of time on each question, extracting everything you can get from it (see previous section).

## Learn each MBE subject thoroughly before looking at the Michigan distinctions for that subject.

The Michigan distinctions are fleas on the tail of the dog. You can't gain an understanding of the dog if you're fixated on the fleas. Don't even let yourself look at any Michigan distinctions for an MBE subject until you've completed your first (extremely thorough) pass through that subject and then waited at least an additional week to allow the material to sink into your bones.

In other words, save the Michigan distinctions cribsheets for last.

## Reduce each MBE subject to a 4-8 page cribsheet (handwrite, don't type).

Is it really possible to express the entirety of any MBE subject on a handful of sheets of paper? Of course not. It takes a massive law library to even have a prayer — and even then, you'll probably need to make use of Inter-Library Loans from time to time.

However, it is possible — and indeed desirable — to distill each MBE subject down to a hyper-concise “cribsheet,” as it were. This cribsheet doesn't aspire to reiterate all the law. In fact, its terseness is its virtue. It aims to facilitate a 10-15 minute walkthrough of its subject — re-familiarizing you with the lay of the land, the major topographical features; refiring synaptic networks; bringing stuff you studied closely some months before back to immediate awareness; even helping you re-commit to memory that pesky handful of tidbits that, for whatever idiosyncratic reason, your brain has trouble pinning down.

You might ask why I don't just give you a pre-made cribsheet and save you the trouble? The answer is simple: The cribsheet is effective only because it takes you back to the heavy lifting you yourself did in learning the material and in crafting the cribsheet in the first place. Sadly, there are no shortcuts.

Many students think that a 60-page outline must be better than a 5-page outline — it's 55 pages better, no? This is just wrong. Look into the future. See yourself in the 2 weeks leading up to the bar exam. See yourself every other day or so enjoying a nice, invigorating walkthrough of each MBE subject in 10-15 minutes per subject. Now look over at that pathetic chump who's created — er, cut-and-pasted — 60-page outlines for each MBE subject: it takes him 10-or-so hours just to read his freakin' outlines! I had the excellent fortune during law school to take a comparative constitutional law seminar with Justice Aharon Barak of the Israeli Supreme Court. The guy's wicked smart. He said that it's easy to draft a long judicial opinion, but extremely difficult to draft a short one — being concise requires that you know exactly what needs to be said.

## Don't think you're going to put in more than 6-7 hours of quality learning each day.

You can't cram for the bar exam. It's not like a midterm in Art History 101, for which cramming would actually be the optimal study technique — I mean, you gotta commit to memory the fact that Velázquez painted *Las Meninas* in 1656 (as opposed to, say, in 1658) along with thousands of similarly arcane factoids.

Studying for the bar exam, in contrast, is a long-term undertaking. It requires consistent effort applied over several months (and note that this effort stands on the shoulders of several years of law school work). While you can probably string 1 or 2 days of 14-hour marathon study sessions together, you will not be able to sustain that level of intensity week after week after week after month after month after month. You'll see students at the law library — or at the coffee shop, which is an extremely distracting, and therefore bad, place to study — lying face down in a puddle of their own drool. You'll also see people “studying” with friends, which is really a convenient way of wasting time while maintaining the appearance of diligent preparation. If you put in 3 separate 2-hour (ish) study sessions each day (separated by extremely generous breaks), you'll have ample time to learn what you need to learn, and you'll have enough “down” time to allow your brain to assimilate it.

I keep harping on this theme, but that's just because it's so important (and, oddly, so counterintuitive for many students): **Quality beats quantity, and quality requires rest and balance.** So go play some golf or ride your skateboard or play your guitar or go to the beach. Rather than hurting your bar exam prospects, such small pleasures will actually improve your chances. Studying for the bar exam doesn't have to suck.

One final observation: You should be trying to optimize your prospects for passing the exam. The kind of quality learning I advocate will help you do just that. Nevertheless, in over a decade of tutoring bar examinees, I've encountered many students who insist on dedicating every waking hour to bar preparation. I suspect that they're establishing (albeit unconsciously) a kind of alibi in case they ultimately fail the exam (“Don't blame me. I studied 14 hours every day!”). No one wants to fail — that's clear. And failing sucks — you'd be quite justified in moping around in an anti-social funk for several days

upon learning such disappointing news. However, know that after a week or so, you will put the whole thing in perspective and move on (and perhaps start gearing up for the next bar exam). Please don't let your fear pull you into the loser's strategy of *a priori* excuse making. (By the way, those 14-hour study days won't actually do much to reduce the sting of failing.)

### Take a leave of absence from your job, if possible. Alternatively, reduce your hours.

As I've said already, "down" time is extremely important. It's hard to see how combining bar exam preparation with a full-time job will lead to optimal results. If you can avoid work, do so.

However, you may not be so fortunate — given your desire to put food on the table and to keep the bill collectors at bay. In such a case, know that many people before you have managed to balance work with study. Sometimes "optimal" is just not in the cards. The good news is that sub-optimal can often get the job done. If you're in this predicament, I'd advise you to give yourself a few extra months to prepare for the exam, since you won't be able to handle the same weekly volume of study as your non-working peers.

### Get steady physical exercise — at least 60 minutes every single day (and more is better).

Don't sit on your ass listening to audiotape/cd lectures. Grab your walkman/iPod/whatever and head outside for a nice 3-hour walk. You'll hear the material and enjoy the benefits of exercise, sunlight, and fresh air. I'm serious. Find a beautiful place to walk without traffic — a hiking trail, a public park, etc. Even if you're taking the bar exam in February, get outside. Buy some cross country skis or snowshoes and warm mittens — whatever it takes!

If "nice 3-hour walk" sounds like an oxymoron to you, then start right now with whatever you can do. After several weeks and months, you'll be amazed at your improving fitness.

Obviously, in the week immediately preceding the bar exam, don't do any *killer* workouts. You should still

continue with your daily exercise, however. Just keep it sane. In these last few days your mission is to marshal your energy for the big event. Hard training (physical or intellectual) at this stage won't do you a lick of good come test day.

### Get way more sleep than you think you need — say, 8 hours a night minimum.

I'm no neuroscientist, but I've heard that rats learn new tricks much better when they get plenty of sleep. Obviously, you're not a rat. But it's hardly a shocking notion that a good night's sleep sharpens your thinking. (Consider what happens to medical residents' judgment as they get near the end of a 30-hour shift.)

I'm also not an infectious disease specialist, but didn't your mom tell you that adequate sleep keeps your immune system strong? You don't really want to catch a cold in the weeks leading up to the bar exam.

### Definitely take the released MBE exams (Sample MBEs I, II, and III, available from [ncbex.org](http://ncbex.org)). But don't even look at them until 2-3 weeks before the bar exam.

When you do finally break the seal, take a full morning's (or afternoon's) portion under strict test conditions — i.e., 3-hour time limit, no books or notes, mark your answers onto a scan-tron sheet with a #2 pencil, turn off your cellphone, etc. Treat those 100 questions as an actual bar exam: Your mission is to net as many total points as possible in 3 hours. Be tough. If a question throws you, brush it off and keep pushing forward.

After the 3 hours have elapsed, count up how many questions you answered correctly. Also note how you handled the time constraint:

If you weren't able to finish all 100 questions, you'll need to go faster (duh). In order to do so, it's important to distinguish **two sources of time wasting**, each of which demands a different response. First, it may be that you need to increase your **baseline speed** — that is, move along at a speedier clip. You might ask, "Great... But how do I do that?" Quite simply, you decide to do it. On your next 100-question MBE rehearsal, you must err on the

side of going too fast. Make it your goal to finish all 100 questions. You may find that you can handle the pace, but you won't know until you try. By analogy, if you're driving on the highway at 60 miles an hour, you can easily speed up to 70 (or even 80) without losing control of your car. The increase in speed won't freak you out or make you anxious or anything. You'll just get to Chicago that much faster. (Obviously, if you keep increasing your speed, you'll eventually be going too fast — i.e., faster than feels comfortable, manageable, controllable. I'm not advocating that you drive that fast. I don't want you swerving all over the road. It's just that I don't want you tooling along at 45 mph in the passing lane (with your turn signal blinking for 400 miles). Give yourself the freedom to experiment with picking up the pace.)

Second, your baseline speed may be fine, but **you get snagged on a handful of questions** and wind up hemming and hawing on each of them for 5-6 minutes. My advice is simple: Don't do that! If you notice yourself double-triple-quadruple-quintuple guessing on an MBE question, just cut bait. No one point on the MBE is worth much more than 2-3 minutes (and that's for a long and hairy real property question involving half-a-dozen conveyances/mortgages of Blackacre spanning 90 years).

Alternatively, if you finished all 100 questions and still had 45 minutes left, you may find it beneficial to slow down (if, for example, you missed several questions due to carelessness or incomplete analysis).

**Now the hard work begins: Review those 100 questions to the gills.** Go back through the entire test, question by question. Just as you did when you were learning the material initially, extract everything each question has to teach you. Every insight you gain through this intense review equips you to earn more points on the next go-round.

I recommend not taking an entire 200-question practice MBE in a single day, because it's too depleting of your mental/physical energy and it burns through too much material without your having the benefit of reviewing. More (shorter) iterations is better than fewer (longer) ones. If you're terribly freaked out about your ability to handle 6 hours of MBE in a single day, I'd urge you not to worry. But, if you really insist, you could take one of the released MBEs as a full-day trial run (but please see the following paragraph).

**Achtung!** Many bar review courses have students take complete practice MBEs. As discussed above, I think this is a bad idea for most test takers. If you fall into that small subset for whom the ordeal of a 200-question practice test makes sense, you should nevertheless be aware of the following **additional caveats**: First, these exams are often created by the bar review companies themselves, and they are typically crazy difficult — i.e., you'll be informed that you should add a scale factor of 40 (or more) points to your raw score. Why would it be advisable to beat yourself up right before your bar exam? This is just bad for the psyche. Second, you need to train yourself to handle the specific challenge you'll confront on test day. Your actual MBE won't have a scale factor of anywhere near 40. The purpose of this late-stage training is to cultivate your instincts for thriving under the conditions you'll actually encounter on test day. You want to groove your pace, your instincts for when to fish and when to cut bait, etc. You also want the feedback on how you'd likely do on a real MBE. Finally, the quality of NCBEX-released MBE questions (though not perfect) is much higher than on any simulated test I've seen. Frankly, this is to be expected. The MBE goes through a more rigorous development and vetting process than does Acme Inc.'s 200-Question Simu-MBE (which Acme's president's nephew drafted in his living room at 3am while hopped up on Mountain Dew). This last point is not unrelated to the first point: defective multiple-choice questions are often quite difficult to answer!

**Show up to the exam rested and energized and ready to rumble (and notice that most of the other test takers show up Tuesday morning looking haggard, utterly depleted, like a wrung out rag).**

No matter how much legal substance you've managed to pack into your skull over months of study, it will do you no good if you're too exhausted/spent/wasted/feverish/vomiting to make intelligent use of it over a very, very long 2-day exam. (Recall Prof. Kingsfield's admonition!)

So get your rest, eat your veggies, and resist the urge to over-study. You've got to be firing on all cylinders during the exam.