

DEMYSTIFYING THE MBE

Have you ever wondered how bar prep companies come up with the MBE questions that are in their books and on their websites? Where do they get them? How do they get them? Are they real MBEs? Made up?

Do you ever worry whether the real MBE will be similar to the materials you've been practicing with? Will it be harder? And why on earth do MBE books and online subscriptions cost so much money?!

These are all things I wondered the first time I studied for the MBE. That was in 2008 when I took the California bar exam. It wasn't until I studied for the MBE in 2014 in preparation for the Virginia bar exam that I looked into finding the answers to those questions. The answers to some of the questions surprised me; others were quite revealing. And now that I have them, I can share my knowledge. I hope that by doing so it will remove some of the mystery that surrounds the Multistate Bar Exam.

Where Do All Those Practice MBE Questions Come From?

Any Multistate Bar Exam (MBE) question you come across via any media type is either: real, altered, or completely made up.

Fake Questions

Let's deal with the most frightening type first: those that are made up. Not much needs to be said about this. Practicing with fake MBE questions makes your chances of passing the actual MBE a gamble. There is absolutely no benefit to choosing fake MBE questions over real ones because as I will explain below, they won't even cost you less money!

If you don't know whether the MBE questions you're working with are real or fake, simply ask. Email the author, publisher, or company and ask them if all their questions are licensed by the National Conference of Bar Examiners (NCBE). If you are using a book, check the copyright page in the front. Books which include licensed material should show the NCBE copyright.

Altered Questions

If questions are altered, that means that in their original form they were real MBE questions released and licensed by the NCBE. One reason why a real MBE question might be altered is to update the question to reflect changes in the law. If the MBE question was very old, this could be necessary to make the question usable.

Another possible reason to alter real MBE questions is to increase the number of MBE questions available for sellers to market. By making changes to a real question, it is possible to draft an entirely new question to offer examinees. In this situation, it becomes less clear if the question

has been altered or simply made up. It is a gray area which turns on the extent of the edits. The MBE is many things, but gray is not one of them; it is a test of precision.

Real Questions

Real questions are MBE questions that have been developed by the NCBE. According to the NCBE website,

MBE questions are developed by drafting committees composed of recognized experts in the various subject areas. Before a test question is selected for inclusion in the MBE, it undergoes a multistage review process over the course of several years. Besides intensive review by the drafting committee members and testing specialists, each test question is reviewed by other national and state experts. All test questions must successfully pass all reviews before they are included in the MBE. After an MBE is administered, the performance of each test question is reviewed and evaluated by content and testing experts. This final review is conducted to ensure that the exam is graded fairly, particularly with regard to any questions affected by recent changes in the law.

Here is a listing of all the real, released MBE questions that the NCBE makes available on their website at www.ncbex.org:

MBE Questions 1992 consists of 581 MBE questions that were administered between 1972 and 1991.

Sample MBE consists of the 200 questions administered in the February 1991 MBE.

Sample MBE II consists of the 200 questions administered in the July 1991 MBE.

Sample MBE III consists of the 200 questions administered in the July 1998 MBE.

Online Practice Exam 1 (OPE 1) was released in 2006 and consists of 100 questions that, according to the NCBE, were “drawn from actual MBEs administered in recent years.”

Online Practice Exam 2 (OPE 2) was released in 2008 and consists of 100 questions that, according to the NCBE, were “drawn from actual MBEs administered in recent years.”

Online Practice Exam 3 (OPE 3) was released in 2011 and consists of 100 questions that, according to the NCBE, were “drawn from actual MBEs administered in recent years.”

Online Practice Exam 4 (OPE 4) was released in 2013 and consists of 100 questions that, according to the NCBE, were “drawn from actual MBEs administered in recent years.”

MBE Sample Test Questions consists of 21 questions that, according to the NCBE, serve as “examples of test questions similar to those on the MBE.”

MBE Civil Procedure Sample Test Questions consists of 10 questions that, according to the NCBE, “are intended to familiarize candidates with Civil Procedure MBE-style questions.”

Where And How Do Companies And Authors/Publishers Get The MBE Questions?

In order to reproduce or distribute any NCBE copyrighted material (such as MBE questions), companies such as bar review courses or book publishers must obtain a licensing agreement with the NCBE, pay the licensing fee, and pay royalties for each enrolled student or book sold. This is how they can lawfully distribute the MBE materials to resell them at a profit.

Did you know that even though they have a licensing agreement, the only questions available for licensing are the same exact questions I just listed above? Yes, those are the same ones you can get directly from the NCBE! There is no secret batch of real MBE questions that any bar review course, book or website can offer you that you cannot obtain for yourself on the NCBE website.

If you total up the number of MBE questions you can get directly from the NCBE website, you will see that there are exactly 1,612 questions available to you. Most companies offer between 1,400 and 1,800 questions. This shows us two things. First, you are not at any disadvantage if you do not use an MBE prep course because you already have access to a huge volume of practice questions. Second, any company that offers more than 1,612 questions must be including some altered or fake questions within their materials.

Will The Real MBE Be Like My MBE Practice?

It depends. If you are practicing with OPEs 1-4, the “MBE Sample Test Questions,” and the “MBE Civil Procedure Sample Test Questions,” then yes, the real MBE will feel as similar as it possibly could. These are the most current questions made available by the NCBE for the express purpose of illustrating “the kinds of questions that will appear on the MBE,” and are “examples of test questions similar to those on the MBE.”

If you practice with anything else, such as altered or fake questions, or even old questions such as “MBE Questions 1992,” “Sample MBE,” “Sample MBE II,” or “Sample MBE III,” then the real MBE will probably feel like it came out of left field. The reason for this is discussed in greater detail in the next chapter where I discuss old MBE questions.

If you practice with a mixture of questions, then the real MBE will likely feel a lot harder than your MBE practice. Make no doubt about it, the real MBE will seem hard to you no matter what, if only because you know it’s the real exam and there is increased pressure on your performance. But not as hard as it would be if you prepare with second-rate materials.

The ultimate goal in practicing MBEs is to be so well prepared for the actual MBE that you do well enough to pass. You need to spend your time effectively, practicing in such a way that you are constantly improving. If you use sub-par materials, you will likely have sub-par results. So find out exactly what you’re using if you don’t already know. Are the questions real? Are they recent? If

they're old, how old? Evaluate your progress with these factors in mind. For example, if you score well on the "Sample MBE II," which are from 1991, but poorly on OPE4, which was released in 2013, your OPE4 score is more likely to reflect what you would score on the actual MBE.

Why Is It All So Expensive?

Ah, here's where it gets interesting. Simply put, it costs a lot because people will pay a lot. Consumers of bar prep materials are generally in a weaker bargaining position than the purveyors of materials because examinees are a desperate lot! We are all so desperate to be successful on the bar exam and there is a lot riding on this one exam. When so much anxiety surrounds a single test - a test which stands guard to your future career - feelings of desperation can result. From a marketing perspective, desperate consumers = premium prices!

There is good news. Bar exam prep doesn't have to be so expensive! First of all, there are more and more options flooding the market every year. (This book is the perfect example.) While all these options can feel overwhelming on the one hand, it is actually really good for consumers. The competition will drive prices down, and over time the best products, the best study approaches, the best tutors, etc. will all rise to the top.

My belief is that bar prep has become quite a racket over the years and it has all gotten out of hand. I'm not a believer in the mystique and terror that shrouds the bar exam. It's just a test. To pass, you first need to learn and understand the substantive material. Second, and most importantly, you need to demonstrate that knowledge on the actual exam by choosing the correct answers frequently enough to achieve a passing score.

Part 1 of this process - learning the law - is straight forward enough. You know what that means, and there are many ways to learn the material. Part 2 of this process - proficiency on MBE questions - comes from practicing real MBE questions. That's the name of the game. Get your hands on MBE questions so you can practice, practice, practice!

If students knew that they could obtain the practice MBE questions that they need for less money, they would stop paying those outrageous prices. The fact is, you don't have to pay high prices to get the MBE practice questions you need to study. The most you would ever need to spend to obtain ALL 1,612 practice MBE questions is \$200. Here's how:

1. Go to the NCBE website at www.ncbex.org, and purchase each of the four OPEs for \$50 each.
2. The remaining 1,212 MBE questions on the NCBE website are free. Free!

The price you pay for MBE questions should never be higher than \$200, *but it could be lower*. You see, whenever there's a licensing agreement with the NCBE to reprint MBE questions, a royalty must be paid for each sale. The royalty amount for each OPE is less than the \$50 you would pay directly to the NCBE for the same OPE. Thus, it is possible to license all four OPEs to resell to

students for less than \$200 and still make a profit (the profit depending on various other costs involved in the creation, production, and distribution of the materials).

Ironically, however, the MBE questions that are free to students on the NCBE website are not free for licensees. In order to reprint and distribute those questions it would be necessary to pay additional royalties, which would increase the costs of production. Therefore, the most economical way for a student to get all 1,612 practice MBEs is to purchase all four OPEs through a licensee for as little as possible, then download the remaining 1,212 MBEs from the NCBE website for free. In the true spirit of what it means to “Be A Goat,” this was my precise goal when creating this book.

As always, it is my goal to share my knowledge of the bar exam for those that come after me; to break it down into understandable, digestible, and actionable steps. And to make it as inexpensive as possible. Because, let’s face it, if you can buy a car with the same amount of money you spent on studying for the bar exam, then something is wrong with the system. This is why I have licensed the four OPEs from the NCBE to create a resource that provides you with what you need, for as little as possible.