PRACTICE TESTS: THE HEAVY LIFTING

• Passing the bar exam requires knowledge, skill, and training
  • I wish I had started earlier
  • Overview of bar exam testing
  • Active reading equals bar reading
  • Where to get practice tests
• The MBE
  • MBE Preparation
  • Practice by completing a consistent number of MBEs every day, under timed conditions
  • How to self-assess MBEs
  • MBE Tips and Strategies
• The Essays
  • Essay-Test Tips and Strategies
  • Crossover questions
  • Practice-essay writing
  • Essays: A closer look at how to read and write them
  • Bar writing is logical writing, and it differs in key ways from law school exam writing
  • Bar reading and its relationship to bar writing
Previous chapters discussed many success factors, including planning, preparing, knowing what to expect, protecting your time, and learning the law. In this chapter, I will present strategies for effectively completing your bar review course work and, specifically, for tackling practice exams. (The information in this chapter will help you know what to expect and get ready for intensive bar prep; it gives you a head start. The information in this chapter complements but is not a substitute for bar review.) This is the hardest chapter of all. It contains the toughest advice to give regarding the most difficult stage of bar prep. Why? You have done your planning and mapped out your study schedule. From here on, it is just plain hard work—the "heavy lifting" phase. Consider the words of John Quincy Adams: "Patience and perseverance have a magical effect before which difficulties disappear and obstacles vanish."

Think of this training as you would preparation for sports. You must correctly and completely assess what you are doing now and understand where you need to improve. (Picture an athlete watching replays of recent matches, assessing where she can improve her game.) Self-assessment is critical. And after you self-assess, you must take affirmative steps to implement any changes that are necessary.

Completing practice questions without assessing your performance is what I call "Doing the Ostrich." It's the person who thinks bad news will go away if he or she just ignores it. Not true. Recognize your strengths, and directly face your weaknesses. Do not put your head in the sand. Seize these precious opportunities (after completing practice exams) to improve.

The road to success is yours, but only if you drive. Don't be the passive passenger. Take control. Get to work. After you read this chapter, review your study plan. Make sure it includes sufficient uninterrupted time blocks for taking and self-assessing practice tests on top of the time you will need for bar review lectures. And protect that time. Don't be seduced into thinking that passively attending bar review is enough. It isn't.

The months of bar prep will fly by. You will be entering the exam room before you know it. How you choose to spend the months prior to the bar will determine how you go in—confidently, knowing you have done everything in your power to achieve success, or sheepishly, knowing you could have done more. It's your choice.

PASSING THE BAR EXAM REQUIRES KNOWLEDGE, SKILL, AND TRAINING.

- You must know and understand the legal rules and principles tested on the exam.
- You must be skilled in what I call active "bar reading" (described in the following sections), clear and effective writing, analytical and logical reasoning, and time management. Bar reading is the first and most critical of these skills, for obvious reasons: If you are not reading correctly and understanding everything you read,
your analysis will be off, usually leading to incorrect or incomplete conclusions. When you fail to read critically, you miss or misinterpret key words, assume information that isn't provided in the question, and make other egregious (yet wholly preventable) errors, error you would not have made had you read carefully enough.

- You must prepare, taking practice tests under timed conditions, self-assessing your performance, and following specific steps to steadily and continuously improve your results.

"I wish I had started earlier!"

I would be quite wealthy if I had a dollar for every student who has told me, "I wish I had started bar prep during my last year of law school." Often, this is expressed simply because bar review takes more time and energy than people think. Expect to work seven days per week for at least eight weeks straight. This can be especially tough for nontraditional, working students. Debbie, a student of mine who was able to reduce her work to part-time in June and July, still found she spent far too much time catching up in bar review. Every day she worked, she lost a day of bar studies. She wished she'd gotten a head start so she wouldn't constantly feel behind. Another of my nontraditional students, Tony, worked all through law school and quite successfully managed his time to do well in both school and on the job. In early June, however, Tony unexpectedly got a promotion that was too good to pass up. Suddenly, the time he had available for bar studies shriveled. Tony was left trying to pack the entire bar review course and his practice testing into just two to three hours a day. His new job responsibilities were greater than those of his previous position, and Tony scrambled to make up the difference on weekends by studying fourteen to sixteen hours each day. That didn't work, either, as he was too tired and stressed to really focus and learn well. What was most difficult, Tony found, was freeing up enough time to listen to all of the bar review lectures. Tony was taking an online bar review with an early start, so if he had begun in early March, as I urge all of my nontraditional students to do, he would have had the time to go through nearly all the lectures once before June.

You may not get a promotion. You may not even be working during law school. But unanticipated events come up all the time. You might get sick. A family member or your significant other might get sick. Your personal relationships may hit crises. (Unfortunately, too many law students find themselves facing breakups or divorce during or toward the end of law school.) Even a joyous event, such as you or your significant other's getting pregnant, might throw your otherwise meticulously planned schedule into chaos. Some of these challenges make the bar exam (which already seemed ridiculously difficult) seem impossible. Planning ahead can help you buffer the detrimental effects of such curveballs. And, although you can't protect against every scenario by starting early, you can do yourself an enormous favor that may make the difference between passing and failing.

If an unexpected crisis arises, talk to someone who can help you through it. Right away. An empathetic faculty member or mentor may have concrete suggestions to help you tackle the situation. I think of another student whose father passed away shortly before the exam; instead of causing him to postpone the bar, the loss bolstered his determination. He redoubled his efforts. Knowing how proud his father would have been to see him pass the bar exam helped propel him forward. And I have had many students successfully manage pregnancies and caring for infants while studying for the exam. Get good advice from someone who has been there.

Note: In the wake of some tragedies, of course, it makes sense to delay taking the exam. If you have a good reason to postpone it until February, put yourself on an extended study plan rather than waiting and gearing up anew in January.

Overview of bar exam testing

Bar exams typically include some combination of essays, multiple-choice questions, and performance tests. A snapshot of each will first be provided, followed by a consideration of

- what the test is,
- how to practice for this type of test,
- how to self-assess your practice tests, and
- exam-taking tips and strategies.

Just as you will need to become fluent in each substantive area of law tested on the bar, so, too, will you need to become skilled at taking each type of test on your exam. Don't go into the bar hoping they won't test civil procedure, for example. And don't go in saying, "MBEs are my strong point. I'm not good at those PTs." Get good at everything.
THE POWER TRIO OF MBEs, ESSAYS, AND PTS

On a recent visit to New Orleans, I sampled dishes reflecting Southern chefs’ penchant for flavoring with onions, peppers, and celery. The key is the combination. That flavor would not result from a preparation with boatloads of peppers, but no onions. (Not a foodie? Think of your body’s need for diet, exercise, and rest. All the exercise in the world won’t help if you feed your body poorly or are too tired to function.) Likewise, on bar exams, all of the pieces are critical. Resist the temptation to favor one form of practice testing over another. Slap yourself if you are tempted to fill every hour with practice MBEs because “I can do thirty-three of them in the time it takes to write just one essay.” Students tell me all the time, “I can’t afford the time to do practice performance tests.” I assure you: you cannot afford to skip them.

Let’s now consider bar essays, MBEs, and PTs. Bar exam essay questions are similar in some respects to law school essay exams. They typically tell a factual story about two or more parties who have some conflict or problem. Your job is to apply the law you know (and have memorized) to these facts, and reason through to logical conclusions that answer whatever questions are asked. The ultimate question may be who prevails, why, and what damages may be awarded; with what crimes may a defendant be convicted; how provisions in a will should be interpreted to determine how property will be distributed; or who will be awarded which assets or incur which debts following a divorce proceeding. Note: Many subissues (additional questions) may need to be resolved in order to reach the ultimate conclusion. (Think about it: to decide whether Paula may prevail against Derek in a cause of action for negligence, you must resolve any issues relating to duty, breach, actual and proximate cause, and damages, and then discuss possible defense theories.)

Bar exams differ from law school essay exams in that they typically test more issues and areas of law than law school exams, but in less depth. Bar essays may also have shorter fact patterns than law school essay exams.

Bar exams also include multiple-choice testing in the form of the multistate bar exam (MBE) and sometimes also state-specific questions. (Both New York and Florida, for example, test state law with multiple-choice questions in addition to the MBE.) You may not have had any multiple-choice tests in law school. If you did, they were probably fewer in number and may not have been constructed with the complexity (trickiness) of MBE questions.

Like essays, multiple-choice questions are based on a factual story. This similar structure is why we will develop a similar strategy for approaching MBE questions (read the question first; then read the facts). Also like essays, you must read every word carefully. Unlike essays, though, you will be asked to select the best answer from a number of choices. MBEs are challenging for many applicants because the questions tend to focus on narrow points of law, and students are given only a short time to reason to that best answer. (Completing each set of 100 questions in three hours allows only 1.8 minutes per question.) MBE success requires detailed knowledge of many legal rules, but does not demand the skill that essays do of articulating those rules in your own words.

Performance tests (PTs) are practical exams during which applicants are placed in legal role-play scenarios. Simulating a lawyer with a client file, you are given papers and source documents to read and law to review, and asked to draft one or more real-world documents based on facts and legal rules you culled from those materials. You may be asked to draft briefs in support of motions, memos, client letters, settlement offers, affidavits, closing arguments, discovery plans, or other documents. PTs are “open book” in that the legal principles are provided in a “library.” You, of course, have to extract the rules from primary or secondary sources (for example, by pulling holdings from cases; analyzing statutes; and reading jury instructions, law review articles, or treatises). PTs would be relatively easy for most law graduates if they were given more time. But to provide a complete enough answer to pass within the allotted time is not easy; it requires mastering an approach and extensively developing the requisite PT skills.

THE PERFORMANCE TEST PRACTICALLY WRITES ITSELF!

I cannot even begin discussing PTs without being transported back to the voice of a most-charismatic professor who lectured nationwide for decades. In bar review, he practically danced with enthusiasm as he pounded the podium declaring that because it was open book, the PT was the easy part of the exam, joyously concluding, “Why, it practically writes itself!” Having taken PTs myself since my first year of law school, I knew they were tough. (They were also fair in my view, but in no way easy.) Though I appreciated his desire to calm and reassure the crowd, I knew better. And, given his age, I knew this professor hadn’t taken a performance test on his bar exam. PTs are fairly new additions to bar exams. If anyone tells you they are easy, find out when he or she took the exam!
Active reading equals bar reading

Before considering specifics about how to tackle these exams and improve your skills (and, ultimately, your scores), let's first focus on the most critical habit you can develop: becoming an effective bar reader. Active bar reading is the single most important key to bar passage; it is the success thread that runs through all types of bar testing. While there are unique aspects to and strategies for tackling the different forms of testing, all of them require this highly focused form of active reading that I refer to as "bar reading." [30]

What is bar reading?

Bar reading certainly includes careful reading, but it also involves being deeply engaged with the material, analyzing as you read. You superimpose a mental template (rules and issues in a logical structure) on top of the words so that you immediately see their significance, and begin reasoning them into order. You will need to have law organized and memorized—and then read facts to assess whether they prove or disprove elements of identifiable causes of action or other legal theories.

Unless you have a photographic memory, bar reading also involves note taking. Sometimes you will jot notes in the margins or on top of words on the exam itself; other times you will type thoughts separately. You will want to note any word or words that appear to trigger a discussion or analysis of some particular area of law. (This is sometimes called issue spotting, as we’ll discuss in detail below.) For example, suppose you are reading a criminal law fact pattern and see that the defendant was diagnosed with schizophrenia. You would immediately underline the word schizophrenia and jot something like "Insanity defense?" on top of it or in the margin. All of the tests for insanity require that the defendant suffer from a mental disease or defect. So, although this one word does not necessarily mean that insanity is a discusssable issue, it may be, and you need to be alert to the possibility. Consider another example: if a criminal law fact pattern indicated a defendant was engaged in some other crime at the time a death resulted, what might that suggest? Yes, that’s right: it’s a tip-off that felony murder might be a discusssable issue. Again, you might ultimately conclude that the felony murder rule does not apply. Perhaps it’s not a dangerous felony, or the rule is inapplicable for some other reason. But it still may be a relevant and discusssable issue. Remember, it is often just as important to recognize that the rule is implicated though not satisfied, and discuss why the moving party will not win, as it is to prove when the moving party prevails. The main point of bar essay testing is not to demonstrate that you know the best answer. That is for MBEs. Rather, the essay allows you to demonstrate that you know what questions the facts give rise to and how (given the law you know and articulate), and why these facts tend to prove or disprove relative claims or defenses.

While every essay will be different in some respects, there are often parallels in essay exams. Writing many practice exams will help you see which issues tend to arise in similar fact patterns, and will help you easily spot words that suggest particular issues.

When bar reading, you will also want to circle or put a box around certain words, such as party names, the first time they are introduced. [31] Circle the connecting words and and or when reading MBE interrogatories and answer choices, as well as documents such as contractual provisions in a PT file and statutes in a PT library. You cannot afford to miss even one and or or. It may change the entire meaning. Underline, highlight, or otherwise clearly mark the holdings in cases in the PT library.

Most importantly, though, bar reading involves thinking while you read. It requires asking yourself why each word in the fact pattern is there and whether it triggers some discusssable issue. It involves recalling previous fact patterns, and discerning how the new facts are analogous to or distinguishable from other scenarios or examples you recall, so that you can readily determine if a legal theory is relevant or not.

To ensure that you read in this fully engaged manner, lean forward and sit up straight when you read, and develop the habit of simultaneously reading with three senses: touch, sight, and hearing. Point to each word with your finger or pencil, as you read with your eyes, and softly say the words aloud. (Don't read loudly enough to disturb others or be kicked out of the exam room, but just loudly enough so that the words enter your consciousness, a sort of mumbling process called subvocalization.) [32]

Bar reading also involves reading certain parts of these exams several times, especially essay interrogatories, fact patterns, and the instructions to performance tests. (We will talk later about how to read a PT file and library.) Multiple-choice testing requires such fast responses that time may not allow for repeated readings, so you must develop a strategy to read those initially with the utmost attention to detail. (Even on the MBE, time permitting, a second read can help a lot.)

Where to get practice tests?

Much of the rest of this chapter is directly or indirectly related to taking practice tests: why to take them, how to take them, and how to self-assess and improve the quality of your answers. (And as much as this may feel like extra busy work you don’t have time for, you will be thankful if you develop this habit early on.) So where are these practice tests located, and how do you get ahold of them?

Practice law school exams: Go first to your professor (who may have old exams on file). A professor’s past exams are often the best indicator of how he or she will test in the future. Next, go to your school’s ASP faculty, law librarian (exams may be on reserve in the library), and possibly upperclassmen who have taken the course before. Last, cautiously employ commercial study aids and outlines. Be sure these are reputable resources that will be helpful to you. (Check them out carefully before using them; a book or video that worked for a friend may not help you, or vice versa.)
Practice bar exam questions: In intensive bar prep, a reputable bar review will typically provide all the practice questions you need. You may also be able to get the materials before June to dig in early, if you have already enrolled in (and especially if you have already paid for) your bar review. To find materials to review on your own, you might start with any past exams that are posted on your state bar’s website (especially if there are also sample passing answers or issue outlines). You may also be able to purchase updated materials from reputable commercial publications. Note: You can buy practice MBE, MPT, and MEE questions directly from the NCBE (look on their website at www.ncbex.org). You can also find older, used materials from bookstores, law libraries, or online sites. Two caveats: first, the material may be dated and some of the law may have changed. Second, the exam formats may have changed. That said, as long as you are aware of these possible deficiencies, certain old bar review materials can be very useful, especially for early start, when much of your goal is more general exposure than the intensive training that will come in June and July. (Yet another good reason to invest in a reputable bar review for your intensive work, though, is that they will tell you about relevant changes and updates.)

SAMPLE VERSUS MODEL ANSWERS

Some states release passing student answers. Caveat: sample answers may contain errors and still be passing. (Bar exams are pass/fail tests; bar examiners do not expect perfection!) By model answers, I mean those written by professors in a reliable bar review or ASP program. Model answers should not contain substantive law errors. Additionally, sample answers are written under timed conditions, whereas model answers may have been crafted and edited for days or weeks. Both can serve as learning tools, but beware of the limitations of each. (Simply put, a sample answer can tell you what you will need to do to pass; a model answer can show you what to strive for.)

THE MBE

The National Conference of Bar Examiners (NCBE) describes the Multistate Bar Examination (MBE) as a “six-hour, 200-question multiple-choice examination covering Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts.” (Soon this list will also include Civil Procedure.) Become familiar with the useful information on the NCBE’s website, www.ncbex.org.

MBE questions, like essays, begin with a short fact pattern. The facts are followed by an interrogatory and four answer choices. Applicants are to respond by bubbling in (in number 2 pencil) the best of the four choices on a Scantron answer sheet. (As we will discuss below, the “best” answer is not always the “correct” answer choice!) MBEs require fast-paced reading and thinking. They include 200 questions to be answered in 6 hours: 100 in 3 hours in the morning, and 100 in 3 hours in the afternoon. MBEs tend to test fine distinctions in points of law.

As noted, some jurisdictions also include state-specific multiple-choice questions. These vary a great deal, so be sure you are taking a bar review that is dedicated to helping students in your jurisdiction. Here we will focus on multiple-choice questions as tested on the MBE.

To understand MBE questions, you must have mastered a great many detailed legal rules. You will need to choose the best answer for each question. Therefore, a most accurate answer choice must necessarily be included for each question. To make that possible, questions are often crafted such that the answer turns on a rule of law rather than a factual analysis. Essays, by contrast, as we will discuss, often focus more on facts from which differing inferences may be drawn. Taking the same essay facts, applicants may reason through them differently or draw varying conclusions from them. Thus, applicants may write essay answers with different outcomes and still be correct and pass the exam. Because you are writing your own answers, you can present arguments from different points of view (for example, using “Defendant would argue” or “Plaintiff would argue” language). However, there is no room to argue the facts when answering an MBE question.

Mastering the skill of factual analysis is as critical to success on the bar exam as is legal analysis. You must be able to organize relevant facts and establish why they are or are not relevant to particular elements of rules of law. Often the relevance is established only by making certain inferences. In bar exam writing, you must be certain the inferences you make are explicit. 33

To illustrate, let’s take a simple hypothetical criminal law scenario:

Defendant Dan is approached by Vicious Victor, who is wielding a knife. Dan does not know for certain that Victor intends to kill him, but Dan responds nonetheless by pulling out a gun and shooting Victor, aiming at Victor’s toe. Victor dies as a result of the injury.

Assume an MBE posed a question that asked applicants to give the best defense theory presented by this scenario, with the following as answer choices: a) deadly weapon, b) insanity, c) self-defense, or d) intoxication. There are no facts to help Dan establish either
an insanity or intoxication defense, and although it isn't certain that Dan would prevail in asserting self-defense as a justification, it is the best of the choices given. Why? The focus of the question is on defenses, and Victor's use of a deadly weapon does not in and of itself provide a defense theory. In fact, it might help the prosecutor to convict Dan of a more serious offense, as discussed below. (Note: This is tricky, as MBEs often are, because Victor's use of a knife, a deadly weapon, is necessary to justify Dan having responded with deadly force. But because the question asks what Dan's best defense theory will be, the best response appears to be c.)

The best answer would be less certain, however, if this same fact pattern were an essay question asking, "Of what crimes, if any, might Dan be convicted—and why?" You would certainly strive to analyze the issues as clearly as possible, but you might point out how drawing different inferences from the facts in this case could lead to different results. Let's look at this more closely. The prosecutor would assert that Dan committed murder, and unless Dan successfully argued a defense or mitigation theory, he would be convicted of either first- or second-degree murder. A murder is a homicide committed with malice aforethought. Dan killed Victor; therefore, Dan committed the homicide element of murder—that is, the killing of one human being by another. Dan's use of a deadly weapon allows for an inference that Dan possessed the intent to kill, which would satisfy the mental state element of murder. (This means the judge or jury deciding the case could find that Dan intended to kill Victor just because Dan used a deadly weapon in a deadly manner, without other evidence of Dan's actual intent. This does not have to be the conclusion, but it is permissible.)

Law students will correctly recognize that for a first-degree murder conviction, the prosecution would also have to establish that Dan's shooting was premeditated and deliberate. Both premeditation and deliberation would likely be more difficult to prove under these facts, as Dan's actions appear to have been unplanned. But before we even address these concerns, is it crystal clear that Dan had the required mental state? Not at all.

The prosecution might be able to show by virtue of using a deadly weapon that Dan possessed the intent to kill, but that inference would not be mandatory. The judge or jury would not have to come to the same conclusion. The defense could, for example, provide additional facts to counter (or rebut) the inference that Dan intended to kill Victor. For example, the defense might stress that Dan aimed at Victor's toe. (What inference would be drawn from the fact that Dan shot at Victor's toe? Well, one who intends to kill typically aims for the head or a vital organ, rather than the smallest of extremities, right? So having shot at Victor's toe might tend to prove that Dan did not intend to kill.) But the prosecution might in turn contend that aiming to shoot at any part of a victim's body evidences an intent to kill, or, at the very least, an intent to seriously injure, a mental state that would suffice for second-degree murder.

The defense might go on to argue that Dan's actions were justified, that he was acting in self-defense. After all, Victor was the first to draw a weapon, his knife. But in order to prevail in a complete self-defense justification, the defendant has to prove that at the time of action, he or she reasonably and in good faith feared being attacked with imminent deadly force. This could pose a problem for Dan. Why? Well, although it's true that Victor was wielding a deadly weapon himself, the facts specifically state that Dan was uncertain as to whether Victor was intending to kill him. (Maybe Victor wanted to show Dan his knife to prove how vicious he was, without intending to use it on Dan at all.) Unless Dan could establish that he himself believed, and that a reasonable person in his shoes would have believed, that he was about to be attacked by Victor with deadly force, it is doubtful Dan would prevail in claiming self-defense.

Therefore, a logical conclusion to the analysis might be that Dan would likely be convicted of second-degree murder because he shot Victor with what can be established was the intent to seriously injure him. (But it's possible to have logically concluded that despite aiming at Victor's toe, Dan still likely possessed the intent to kill, especially given his use of a deadly weapon.)

From this short scenario and the fact that we were able to reason to more than one plausible conclusion, you can see how much more room there is for gray areas in essay questions than in MBEs. Learning the differences between the two (along with practicing each) will help you gain a command of effective test-taking strategies. You will likely come to appreciate that you only have to find the best answer on MBEs, and, at the same time, that you will not be trapped into coming up with one right answer to essay questions.

**MBE preparation**

How should you approach MBEs? When you sit down to complete an MBE question:

- Cover the answer choices so you don't get suckered into selecting a seductive-looking answer before you even know the facts or become biased while reading the facts.
- Next, read the interrogatory (the question at the end of the facts, usually between the facts and the answer choices), which is sometimes referred to as the tail of the question.
- Then, read the fact pattern and reread the interrogatory. Remember to use bar reading tools, as described previously: read with pencil in hand, touching and subvocalizing each word as you read.
- Now, based upon the law you have memorized, reason through the facts to draw a conclusion that you believe best answers the precise question asked. (Read and analyze this part of the MBE in the same manner you read a bar essay question.)
• Only after completing these steps should you then take your hand off the answer choices and read through the first choice carefully, asking yourself: "Is this choice plausible?" "Is it responsive to the question?" "Does it mirror the answer I reasoned to?" "Is it even a correct statement in and of itself?" If the choice contains an incorrect rule statement, does not answer the question asked, or answers it incorrectly (applies the law incorrectly to these specific facts), immediately put a line through it and go on to the next choice.

• Ask yourself the same questions regarding each of the three remaining answer choices, crossing out any that are wrong or don’t answer the question. (Do this clearly so that you don’t mistakenly think an answer choice is still on the table if you have ruled it out. Some people find it helpful to play a sort of “find the wrong answers” game with themselves. The more you rule out, the better. If you like puzzles, this might be a good strategy for you.)

• Now, what are you left with? If only one answer choice remains, select that one and quickly move on to the next question. (Always keep in mind that the MBE is a test of speed as well as knowledge and accuracy, so keep moving.) If you have two answer choices that are both consistent with your conclusion but for different reasons, read each one again carefully and isolate what exactly differs between the two choices. Then, see if one includes faulty reasoning, an internal inconsistency, or an incorrect rule statement, or fails to answer the question posed. Reread the interrogatory to be sure you understand the exact question, and reread the facts as necessary. By process of elimination, choose the best of the remaining answers. Note that the best answer might not be perfect. Sometimes the best answer is supported by a minority rule rather than the prevailing majority rule. In such a situation, if the other choices are flat-out wrong, then the minority position will be the best answer. Select the answer that seems to reason to the best conclusion when applying appropriate law to resolve the issue asked in the particular question.

• When you study answers, you should strive to determine why you chose the answer you did, and, if you didn’t choose the correct answer, why it is best. (More on the self-assessment process below.)

Practice by completing a consistent number of MBEs every day, under timed conditions.

"How many should I take?" Students always ask me this question, which is a difficult one to answer. The key is consistency. When I sit down with students to plan their schedules, I don’t ask them how many MBEs they can take each day. Rather, I ask them, "How much time do you have each day to commit to a dedicated block of MBE practice?" Once we have a time slot, we can figure out how many should be taken each day.

Let’s say someone says, "I can devote a half-hour to MBEs every morning. I’ll take them while having coffee or breakfast." Someone who is less of a morning person might say, "I can devote one hour for my daily MBEs’ before bed (after brushing my teeth, so that it becomes an automatic habit)." Some people take them in bed each night before going to sleep, on a smartphone or tablet. Taking them daily at the same time helps make this a consistent commitment.

Once you have determined a good time of day, start with a small number and build up. You will eventually have to complete two sets of 100 questions, each within a 3-hour block.

If you begin earlier than May, doing even five questions each day (in nine minutes) may be sufficient to make daily MBEs a habit. At the beginning of May, increase to ten questions per day in eighteen minutes. (Remember, you will also need at least twenty minutes or so after that to self-assess and review questions you missed.) Work up to seventeen questions daily in thirty minutes by the end of May (with another thirty minutes or so for self-assessment). Your bar review schedule may include a set number of MBE practice sessions to be completed on certain days. Do those as directed. If you can productively include additional practice questions into your schedule, do those as well. By the end of June, most people find it helpful to be answering at least thirty-three questions in an hour every day (or alternate seventeen one day, thirty-three the next, and so on). And, during July, make time for at least a couple of simulated reviews in which you answer full sets of 100 questions in three-hour blocks. You do not want the actual exam to be the first time you have tried to do three hours’ worth of MBEs in a row. (More on simulated exams below and in Chapter 9.)

Be sure to include ample review time whenever you take MBEs. Immediately after you complete a set of questions, you will want to review explanatory answers. Many people double the review time, going over questions that they got right and questions they got wrong. Others find it most productive just to review questions they missed or guessed on. Note: A guess is equivalent to a wrong answer in practice. If you guess right, you simply got lucky. You should not bank on luck to pass the bar exam, but on knowledge, skill, and preparation.

So definitely study every single answer you got wrong or guessed. And, if you find it helpful and not confusing, study each explanatory answer you got right as well. Use this opportunity to learn and or review the rule of law at issue in the context of the particular question to be sure you answer correctly the next time it appears. (The fact pattern may not be exactly the same, but it will be analogous.)

Another approach is, when you first start taking practice MBEs (during early start or at the very beginning of bar review), slowly and methodically work through sets of these questions, in each subject, one question at a time. See how they are phrased, look at each answer choice, and read the explanatory answer right away before moving on to the next question. After you take at least a small number in every subject area
that way, begin taking them under *timed conditions* and continue taking them under
timed conditions until the exam, studying explanatory answers to each set just after
you complete that set. (Again, study every answer choice or only those you missed or
guessed on—whichever you find most helpful.)
The key here, like so many of the other study and test-taking strategies in this book, is
to figure out how you learn best and what makes sense to you. Also, realize that what you
should do in early start differs from what you must train for in intensive bar preparation.

MORE THAN ONE EXPLANATION:
HELPFUL OR CONFUSING? YOU MUST
DECIDE FOR YOURSELF.

Eighth-grade algebra. I was doing very well; my best friend wasn’t. I noticed
that my friend would diligently listen to every word the teacher said. I tuned
out as soon as I understood a concept. My friend didn’t realize that our teacher
explained each concept repeatedly, in different ways, perhaps trying to appeal
to different learning styles. Listening to another explanation once I understood
something confused me. I convinced my friend to stop listening after “getting” a
concept, until the teacher moved on to something else. (And, belated apologies,
I too often facilitated this selective listening by passing notes or chitchatting.)
Remarkably, though, within a week of trying my approach, my friend’s grades
shot up. We both ended up with an A in the class, and I ended up with a lifelong
learning lesson: not every explanation makes things clearer. I applied this under-
standing in bar review. Once I “got” something, I moved on.

That said, many of my colleagues suggest that students review every answer,
right or wrong, and many of my students have found their MBE practice to be
much more productive when they do so. They force themselves to be able to
articulate why one choice is the best and the others are not. This can be a great
way to review substantive law, as well as develop MBE test-taking skills.

How exactly to review and what you should do when you miss a question are set forth
below in self-assessment strategies. But it’s important to first reflect a bit more on
what you should be taking as practice tests. In addition to asking how many practice
questions they should complete, students always ask what subjects they should study.
“Should I focus on areas I am weaker on?” “Should I do sets that assess the same
subject, or ones containing a mix of subjects (as will be on the actual exam)?” Again, it
depends when you start. In early start and through the end of June and beginning of
July, you can do subject-specific sets, preferably at or around the same time your bar
review lectures cover those subjects. Early start is a good time to do them slowly, to
spend more than the 1.8 minutes per question, reading every single answer so that you
know why each of the wrong answers is wrong and why the correct answer is “best.”
In June and July, do your practice tests under timed conditions.

In July, you will want to also be doing mixed sets (questions in different subjects) so
that you have several weeks of training to handle them since this format will be tested
on the bar exam: questions will be fired at you in random subject order. It takes mental
dexterity to switch subjects that rapidly. You must be ready! (Some people focus during
the week on whatever subject or subjects their bar review is covering, but do one set of
mixed questions each weekend to get acclimated to switching subjects.)

Once you have trained in all of the subjects and have developed your knowledge
and skills in answering questions in them, if you have identified one or more MBE
subjects that you are weaker in, spend more time on those areas. You do not want to
go into the exam “exposed.” (Knowing you are prepared for everything will make you
feel stronger on test days. Conversely, you will feel particularly vulnerable if you go
into the exam hoping an area won’t be tested—this is also true for the essay portion of
the exam.) But don’t feel like you need only to answer extra practice questions in your
weaker areas; you should still be training in all of the subjects in order to maximize
your ability to do well on every part of the exam.

ARE YOU AVOIDING REAL PROPERTY
MBES (OR QUESTIONS IN ANY AREA FOR
THAT MATTER)?

Real property questions tend to have the longest fact patterns. They also test
a subject that throws many people. Others loathe the constitutional law MBEs.
Whatever your Achilles’ heel, if you have one, train for that area even harder than
for the other subjects! A student came to me in January to create a study schedule
for the following July’s bar exam. She had taken all of the bar subjects in law school,
listed her grades in each course, and sorted them from lowest to highest. We plotted
an early-start review based on that information so that she attacked her weak-
est subjects first and then progressed to those that were stronger, covering every
subject once before bar review even started. She went into bar review knowing that
her weak areas had been strengthened and it would truly be a review. And, more
important, she went into her bar exam prepared and confident.
How to self-assess MBEs

First, be sure to keep track of (on a separate piece of paper) which answers you felt fairly certain about and those you guessed on. Be honest! Again, a guess on a practice exam is equivalent to a missed answer.

When you finish your set, study the answers. Don't just score yourself and add up the totals. Especially in early start and in June, the numbers aren't what counts. The learning is what is critical. (In the end, it does not matter what the score was at halftime. Focus on winning the game.) Proceed to work through every question you missed or guessed on (or every single question if that helps you). Read the explanatory answers. (Again, reputable bar review materials and released questions and answers from the NCBE include instructive explanatory answers that show why each correct choice is the best and why each of the others is not.)

Now, and most important, figure out why you missed the question:

- I read the question (the interrogatory) wrong.
- I missed a key word or words in the fact pattern.
- I read one or more answer choices incorrectly.
- I didn't understand what the question was asking, or didn't see the issue.
- I didn't know the law that I needed to apply to the issue to reason to a conclusion.
- I memorized the rule, but didn't understand the underlying principles the question was testing (so I narrowed it down to two possible choices, but missed the best one).
- I knew the correct answer, but entered it incorrectly.

Next, use this information to improve. (After explaining how to do this, I'll give you a chart to do on your own.) Don't spend a minute being down on yourself or frustrated by the fact that you got the wrong answers. That's a waste of time. So long as you know why, you are winning this game. (The word game does not suggest this is easy. But it can be helpful to view these as challenges, puzzles you are determined to solve.) Prac-tice tests are learning opportunities; your bar-reading skills will become more refined and your reasoning more strategic with every set you do. (They are like weight lifting. Train consistently, and you will get stronger.)

Be very pleased with yourself simply because you are taking daily practice tests. Do not obsess about scores. Just keep doing the work and self-assessing. The most important learning is in the review, the deconstruction. This involves developing strategies to strengthen each type of weakness, described as follows:

Reading error?

If you read something incorrectly, ask yourself why. Did you read too fast? Did you drift off while reading? Did you assume some fact that was not in the fact pattern?

Did you read the call of the question incorrectly? Once you know why you missed a question, you can then take steps to change the behavior. Reading incorrectly is one of the most common reasons for missing MBEs, and the easiest to fix. Remember your bar reading skills. Touch each word and say it out loud under your breath as you read with your eyes. It works.

Didn't know or understand a rule?

If, after studying explanatory answers, you can see that you did not know or understand a rule, go look it up and either write it (in your outline or on your paper or electronic flashcards) or say it out loud several times, or both. (If you want to be sure you understand it, try explaining the concept to someone else.) Expect to be learning some new rules from practice MBEs, even up to the day before the exam.

Using MBE answers to update flashcards

Even when you do understand something, often an explanatory answer may phrase a rule more clearly or succinctly, or include an instructive example. Whenever you come across this, get out your flashcards. (Again, flashcards here means whatever you have chosen as your "memory tool.") Rewrite the card in question, and replace the older card with your new version. Each practice test sitting is a chance to review or learn more law. Keep a list of concise rule statements (easy to recite in essays) for all subjects tested on the essay portion of your exam. Keep them in whatever format works for you: on paper cards, in digital flashcards that you keep on your smartphone or tablet, or in your outline. Note: Some people learn better by listening, so they also keep audio files of rule statements.

Didn't finish in time?

If you didn't have time to carefully complete each question or didn't finish in the allotted time and guessed on a number of questions, ask yourself why. Did you lose time by focusing too long on one question you got stuck on? Guess and move on if you find you have spent more than 1.8 minutes on a question. Did you drift off while reading? Did you get distracted answering a phone call or going to the bathroom? Each set of questions is an opportunity to incrementally improve your accuracy and speed.
USE QUALITY PRACTICE QUESTIONS

Be sure you are practicing with sufficiently difficult exams. Sometimes older exams are easier than newer ones. And sometimes a bar review's questions may be easier than the questions in the materials of another course.

MBE Self-Assessment Chart for Wrong Answers

Complete this assessment for every question you missed, checking the reason(s) you erred and writing an improvement plan so you do not repeat the same mistakes.

Question # __

_____ I read the question (the interrogatory) wrong.
_____ I missed a key word or words in the fact pattern.
_____ I read one or more answer choices incorrectly.
_____ I did not understand what the question was asking or see what was at issue.
_____ I did not know the law that I needed to apply to the issue to reason to a conclusion. (If you missed a question because you didn't know the rule, write it now in the space below).
_____ I memorized the rule, but didn't understand the underlying principles the question was testing (so I narrowed the answer down to two possible choices, but didn't choose the best one).
_____ I knew the correct answer, but entered it incorrectly.

Other: ____________________________

To improve, I will:

__________________________________

__________________________________

__________________________________

__________________________________

Rule(s)/concept/area of law tested in this question that I need to learn/memorize are:

__________________________________

__________________________________

__________________________________

__________________________________

MBE Self-Assessment Chart for Correct Answers

If you are someone who benefits from reviewing questions you got right, complete this assessment for every question you answered correctly.

Question # __

_____ I understand why I chose the answer I chose.
_____ I chose the correct answer for the right reason.

Note: If you chose the right answer for the wrong reason, write out here why your thinking was flawed:

__________________________________

__________________________________

__________________________________

__________________________________

Rule(s)/concept/area of law tested in this question, and any tip(s) I might use from this question to remember this rule(s)/concept/area in the future:

__________________________________

__________________________________

__________________________________

__________________________________
MBE tips and strategies

Keep this list of tips handy to look at the morning of your MBE, and perhaps again during the lunch break.

• If you have ruled out one or more answers and gone back over the facts and interrogatory and still don’t know the correct answer, guess. Come back to it at the end if you have time. You need to complete 33 questions per hour.

• Watch the clock. After one hour, be sure you are on or near question 33; after two hours, question 66. If you stick to this pace, you should be finished or nearly so after two hours and fifty-five minutes.

• Be a smart clock-watcher. Be sure to bring in an approved timepiece. (Verify the rules in your jurisdiction.) And note the exact time each of your sessions starts. Let’s say your MBE day consists of an approximately 9:00 a.m.-to-noon block in the morning and a 2:00-to-5:00 p.m. block in the afternoon. If the afternoon session starts at 1:55 p.m., you will finish at 4:55 p.m.; it is therefore important not to think you have until 5:00 p.m. to finish the test. Look at and confirm the time the proctor says, “You may begin.” (If that's 2:05 p.m., write on your answer booklet, “End at 5:05 p.m.—begin guessing at 5:00 p.m.”) Note that you may begin the morning or afternoon session at a slightly different time each day. Some people reset their clocks at the beginning of every session to noon (that way, one hour will have elapsed at 1:00 p.m., two hours at 2:00 p.m., etc.).

• Have a guessing strategy. If you can’t rule out any of the four answer choices for a question or questions, or if you run out of time, bubble in a predetermined letter. Pick your favorite letter, and have the plan in place. (If you are not near question 97 or 98 in the set, recognize that you won’t finish in time and implement your guessing strategy. Don’t leave any questions blank.)

• Be sure each Scantron response corresponds to the question you are actually answering. Due to nerves on exam day, sometimes students get off one on their Scantron. For example, after bubbling in answers for questions 1–10, you inadvertently skip to 12 when you should have bubbled in 11. If you catch this early, you can fix it. But if you don’t notice until 11:55 a.m. that you have just bubbled in an answer choice for question 100 but were actually answering question 99, you will have to redo all of your answers for question 11 on and won’t have time to finish.

• Be sure to bubble in the circles on the Scantron completely. Make sure the whole circle is darkened.

Each of these exam tips derives from real people’s mistakes. You might not think that people have actually failed because of bubbling mistakes on the Scantron. But it happens with every bar exam. Do not let it happen to you.

THE ESSAYS

Like MBEs, bar essays are made up of relatively short fact patterns, often only a half to single page of text. (Compare that with some law school finals that are several pages long.) You may have anywhere from about twenty-five to sixty minutes per question, depending on the jurisdiction. You must identify issues, state the applicable rules of law, logically apply the law you stated from memory to the given facts, and accordingly resolve the issues you identified in a way that comes to a reasoned conclusion, thereby answering the specific question or questions posed.

The law you are to apply on a particular essay question may be state-specific, federal, modern-majority, or common law. You may pick up additional points for noting influential minority rules, or for comparing a modern trend to the common law rule. Your state bar’s website and your bar review will explain which law is to be applied to answer essay questions.

Bar reading is a critical success skill for essays, just as for MBEs. Because you have to produce an organized written product rather than just identify the best choice, you must also include time during and after you read the interrogatory and facts to order what you intend to say in a logical manner—in other words, to outline.

On essays, you have to not only understand the rules and how they apply to the facts, but also to articulate those rules in your own words and analyze in writing how the facts prove or disprove the elements of those rules. On MBEs, you must see those connections, but you don’t have to write out anything yourself. (This is one reason why doing many practice MBEs does not mean one can slack off on essay preparation. You must do both; they test different skills. This is also why some people find essays more difficult. And, for this reason, nonnative English speakers may have a tougher time with essays than with MBEs.)

YOUR ESSAY AND PT ANSWERS ARE LIKE A PAPER INTERVIEW

Think of your written answers as a paper interview. The graders need to see that you are “lawyer material.” After all, it is in their hands now whether to grant you a license that puts you in charge of people’s lives and livelihoods. In addition to sounding intelligent and answering thoughtfully, you must present yourself well—in a clear, organized manner. And it helps if your paper looks good, too. Evaluate your work product the way you would your appearance before going to an interview. You’d wear a clean suit that makes you look professional, right? Similarly, your paper should be neat, with an obvious, logical organization. Use headings and subheadings. Avoid typos and especially misspellings of key legal
terms. (If you handwrite, write legibly.) Don’t scratch through or cross out too many words. Students who fail often show me their papers and say, “But I had it in there.” To which I reply, “But the grader could not easily see and understand what you wrote.” You are the interviewee. Present yourself as well as you can.

We saw previously that MBEs have a best answer choice; your mission is to seek and find it. On essays, you often don’t need to know the answer for certain. There may not even be one single answer to an essay question. Rather, the facts provide a vehicle for you to give reasoned arguments as to how both sides would resolve the issues. Think about a personal encounter with someone who saw something happen in a completely different way than you saw it. As you reread and think about the facts, you will ask yourself how the plaintiff would use these facts to prevail, and how the defendant would use them.

You may find essays liberating, in that the burden of having to know who is “right” is lifted, momentarily at least. (In a recent alumni seminar, a former student was discussing his first year in law practice. He noted as the biggest change having to know (or be expected to accurately predict) who would win, as compared with law school—where he could nearly always just argue for both sides!) Essay-test tips and strategies

The tips below focus on strategies within a single essay. Before we explore those, let’s talk about how to answer sets of several essays in a row. First, answer them in the order they appear. Most everyone else will, and your exam will be compared with others’ exams. (For example, if everyone does an amazing job on #1 and a poor job on #3, you will not benefit from going out of order and doing a superlative job on #3 to the detriment of #1. Your goal is to write a passing answer for each question.) Answer the questions out of order only if you find yourself blocked when you see question #1. Take a deep breath, and if that doesn’t help, just move confidently on to the second question and return to the first one later when you likely have your “flow” back. Second, answer the questions within the suggested time. If you had to answer forty-minute essays in two hours, you must budget your time accordingly. (Proctors generally do not notify applicants of how much time has passed.) Cut yourself off (wrap up and conclude) if you exceed the suggested time on a question, finish all the questions, and then return if there is extra time to edit or add to any of your answers. Third, make sure you answer every question; do not skip any.

- Answer the questions asked and only the questions asked. Many students waste time on nonissues. Careless reading is often the culprit. Lawyers must be detailed.

- Whenever you approach an essay question, do the following: (1) Read the interrogatory and the facts; then reread the interrogatory; (2) Read every word, preferably subvocalizing (reading aloud but under your breath, so you can hear yourself while not disrupting others around you), and touch each word (with your pencil, pen, or finger); and (3) Slow down. People next to you will be typing while you are still reading the question! No worries. They are not smarter than you. They may well be failing the exam, writing nonsense, or writing something irrelevant because they do not yet have a handle on the law, facts, or interrogatories. Do not let them throw you. Make certain you understand what is and what is not asked of you, and see how the facts fit the analytical steps of resolving the specific question or questions before you write your answer. Have confidence in yourself. Even for a thirty-minute essay, you may want to take a full ten minutes to really see the full picture before clacking away at the keyboard.

- Organize and write an outline (note the main headings and subheadings you will include in your answer). There is nearly always more than one logical way to organize; just be sure that you discuss the issues in some reasoned order (for example, by lawsuit, by event, by asset, by crime, by defendant, or in another systematic manner). Your outline is the road map to your organization, and if you include headings, it will also become the graders’ road map; but graders will judge you only on your answer, so there’s no need to create an elaborate outline. Bottom line, include in your outline what you need to write an organized answer.

- Determine how much time to spend on each call of the question if there is more than one interrogatory (that is, if the question asks about more than one thing). You can almost always assess the time you need to spend on each part by looking at how many facts relate to that question. The more facts, the more time you should spend on writing for that part.

- Cross out words in the fact pattern after you use them, and write about the issues they raise in your answer. Check the fact pattern periodically to see if there are words you have not crossed out and thus have not yet used. Might they be useful? Why?

- Use every fact they give you! This does not mean every word must be restated in your answer. (In fact, if you quote, do so selectively.) It means you should use each fact to see if it triggers an issue, provides proof of or refutes some element of a rule of law, or otherwise affects some relevant argument (perhaps a policy argument). And write in plain, simple English that spells out your reasoning so clearly that even a layperson could understand you.

- Focus on the most serious issues first (unless you are writing in another logical order, such as chronological order where appropriate). For example, if someone has battered a victim, and that victim dies as a result of the battery, start with the homicidal offenses before even mentioning battery (if that is even relevant at all).
Likewise, when you have a lesser included offense, such as a larceny in addition to a robbery, discuss the robbery first since the larceny elements are essentially subsets of the robbery elements.

- Discuss what is a problem or issue first and then quickly address (if time permits) why something is not a problem or issue given the particular facts. (An example of this might appear in a criminal procedure essay about a warrantless search. You want to hit the most likely exceptions to the warrant requirement, thoroughly discuss those, and then—if you have time—perhaps show why the other exceptions would not suffice under these facts; for example, "Here the defendant did nothing to suggest that he explicitly or implicitly consented to the search.") Students always ask me whether they should discuss all the potentially relevant exceptions when the prosecution would need only one exception to proceed. My answer is, "Yes, because exams are not the real world." And you typically get points on exams for hitting all of the relevant issues if you demonstrate why they are relevant.

- Write in complete sentences, thoroughly analyzing the facts to resolve the issues. (Note that lists of clear and relevant "bullet points" may be quick to write out and helpful in a particular analysis.) But don't expect a grader to follow your shorthand; "spell out" your thinking.

- Provide a key to any terms or party names that you abbreviate. For example, if you abbreviate "contract" with the symbol "K," write out "contract (K)" or "contract (hereinafter 'K')" the first time you use that abbreviation. You might think this association is so obvious that it's unnecessary to identify it, but the abbreviation "K" is also used to mean "$1,000," so even something so seemingly straightforward may be misconstrued.

- Avoid hammering on one point of view. Each issue often lends itself to both a defense and plaintiff perspective, as the facts can and frequently do cut both ways. If you get stuck trying to advocate in a manner that's too one-sided, you may miss points to be gained from analyzing the opposing party's perspective. Note: If you write about two opposing arguments, conclude your thoughts by noting which side has the stronger position and why before moving on to your next area of discussion.

- Write complete (but succinct) rule statements, and then prove up each element of each rule—piece by piece. Lawyers break complex thoughts down into logical parts. Elements are components of the bundle that is a rule, and each part must be proved. This is also true for defenses, as defense theories often have multiple elements that must be discussed. (Always consider defenses when analyzing crimes or causes of action.) Know the difference between tests that include factors (all of which need not always be established) and elements (each of which must be supported by the requisite level of proof).

- Make sure your exams are reader friendly! Don't underestimate the importance of style. Am I suggesting form over substance? Not! I am urging you to pay attention to form in addition to substance! The best essay answers tend to identify main areas of discussion with descriptive headings, providing a sort of table of contents so a grader can quickly see that the applicant identified the key discussable issues and relevant rules. At a glance, the grader should be able to see that your answer is set out clearly and logically. (During early start and intensive bar review, work on polishing form and style, as well as mastering content and substance.)

- If you are handwriting your answers, make sure your writing is legible. Note: Even if you don't plan to handwrite, write out at least one or two essay or PT answers by hand during bar prep so that you know you can do it should an emergency (for example, a computer problem or power outage) require you to do so.

- Write using lawyerly language. I don't mean that you should use hoity-toity, silly language ("the party of the first part heretofore contends...".). I mean, rather, that you should write in a professional manner. Below are some examples I have seen frequently when students are concluding essays.
  - Do write: For these reasons, the plaintiff is unlikely to prevail. (Do not write: The plaintiff's argument is really not likely to fly.)
  - Do write: It is therefore possible that the plaintiff will prevail; however, for the reasons stated above, it appears that the defendant has the stronger argument here. (Do not write: This is a wash. It is up to the jury. The jurors could decide either way here.)
  - Do write: The police arrest may have violated the warrant requirement. (Do not write: The cops here did not follow the rules, and the defendant was busted without the warrant they should have gotten.)
  - Avoid writing in the first person (do not use "I" or "we"). Exams grades do not care what you think or what you believe. What matters is whether the facts prove, or fail to prove, the particular legal theories you have articulated.
  - Do write: For the reasons stated above, the defendant will likely prevail. (Do not write: I think the defendant will win.)
  - Do write: After weighing the facts on both sides, it appears that the plaintiff has the stronger argument on this question because the plaintiff has more evidence and the evidence is more credible. (Do not write: I believe the plaintiff has the better argument.)
  - Do write: The defendant's spitting on the plaintiff/victim is an offensive action. Reasonable people find spitting to be a rude and demeaning gesture... Do not write: The defendant's spitting on the plaintiff/victim is an offensive action. I would be horrified if someone spit on me that way.
READ YOUR ANSWERS ALOUD.

I often ask students to read their answers out loud. I do this in class and during office hours. Some students will read a paragraph and then stop themselves and say, "This doesn't make any sense." Or, "I'm not sure what I meant here." You have to know what you mean, and what you write has to make sense to you if you want it to make sense to a grader. The same students who might challenge their score by pointing to their written answers, saying that they included all of the necessary points, may realize quickly, while reading aloud, whether what they wrote was logical or not.

Crossover questions
One of the many differences between bar exam essays and law school essays is that some bar questions contain testable issues in more than one area of law. Your evidence professor will give you a final exam that tests evidence rules. A bar exam fact pattern may have a litigation scenario that includes both pretrial civil procedure issues (perhaps a jurisdiction question) and trial issues that concern evidentiary questions, such as whether a document or statement will be admitted and why. A fact pattern that includes issues from more than one subject still usually tells a single story, so certain subjects cross over more naturally (for example, civil procedure and evidence, as noted above; criminal law and criminal procedure; and wills and trusts).

Crossovers tend to be unnerving, as they are often unfamiliar because law school exams don't test that way. (You didn't walk into your torts final to find a family law issue on the exam.) But the idea of subjects crossing is not odd at all when you think about it. The law is not isolated, and neither are people's problems. A client may come to you about a divorce, so she definitely has concerns relating to family law; but she may also have financial concerns that dip into bankruptcy law, there may be a related criminal matter, or she may own intellectual property for which you have to understand perhaps a patent or copyright issue. You don't simply do one search (or open one book), find an answer to one of your client's questions, and let the rest go. Yes, you may end up referring part of a case to an attorney who specializes in that area of law, but you will often need some basic knowledge to even know where to refer the client.

Bar preparation is similar. You are no longer studying one subject at a time. You are preparing to answer any question that they throw at you in any of the subjects, or combination of the subjects, tested on your exam.

Working with numerous subjects simultaneously helps you see how disparate pieces fit together. As we've noted, most law school courses focus on the details—the veins on the leaves on the trees. Bar preparation allows you the opportunity to pull it together and see the bigger picture. That is intellectually exciting! You begin to see parallels and intersections you never realized existed when you were studying one subject at a time, in isolation.

Practice essay writing
Set aside a certain number of hours per week to write essays in full and under timed conditions, as well as additional time to study sample answers and self-assess. Self-critique may be a quick process if you readily see where and how you need to improve. But if a question asks about rules that you don't know or understand, you should take time (if possible) immediately after completing the question to look those up. Invest that time now, after completing the practice test and while the fact pattern is fresh, to learn and see how these rules apply. Don't procrastinate. Why? 1) You may never get back to this question, and then you will remain exposed—with a weak area. 2) The closer it gets to the exam, the harder it is to make time to look things up. 3) Learning a rule in the context of a fact pattern will make it "stick" in your memory more effectively than simply memorizing words in a vacuum.

After completing your self-assessment and looking up anything you need to, add relevant rules or examples to your flashcards, outline, or other memorizing tools.

In addition to writing out essays in full under timed conditions, set aside additional time to outline them and review sample answers. If you do a lot of writing in full under timed conditions and develop your skills during early start and the first six weeks, you can focus mainly on outlining the last two weeks.

How many essays should I write out in full, and how many should I outline? At a minimum, do all of the assigned work in your bar review course. Then do more. (Early start makes this much easier.) Try to complete an essay every other day or so. Take new exams when possible, but it's fine and can be very helpful to rewrite an essay you previously completed to see if you have improved, as well as to cement the concepts and rules that the exam tests.

As is the case for MBEs, make sure you write practice essays in every tested subject. Students often have a tendency to take exams only in the subjects they are comfortable with. Do not fall into that trap. Be sure to hit every subject, especially those you feel weaker in. By exam time, you should have written out in full a number of essay exams for each subject that may be tested on the essay portion of your exam. Plan to complete essays slowly and steadily, writing some every week rather than cramping in a bunch of practice essays right before the test.
At first, in early start, look up rules if you cannot write your answers from memory. Closer to the exam, you will need to train under *closed book and timed conditions*, but early practice that is open book is perfectly fine and often very helpful.

Note: When you are quite close to the exam and time is running short, you will gradually shift to writing more essay outlines instead of writing essays in full—still, of course, studying the model answers. Days before the exam, you can even practice by reading and issue spotting in your head and then studying the sample answers. Going through many fact patterns and sample answers will help you review and memorize, as well as see how testable issues tend to arise and repeat themselves. At a certain point, you will hopefully find a great deal of overlap and catch yourself saying, "This question sounds a lot like..."

As you review questions and answers, you can edit your one-page "cheat sheet," ideally so that the main issues in each subject are set out in a logical order that you can memorize.15

---

**MAKE SURE YOU CLOSE THE BOOKS.**

I often hear students who do not pass the first time confess that they continued to write practice tests open book through July. They never closed the books. Consequently, they never got their timing right and never memorized all the rules they needed to know. (You must have as many rules as possible memorized for instant recall by the time of the exam.) When you begin taking practice tests, spend as much time as is allotted and try to recall everything you can. Then, when you are stuck, look up the information you need to, close the books again, and return to finishing the exam. But, by early July, finish your practice essays entirely closed book. Force yourself to answer the questions as fully as you can, without looking anything up, as if you were taking the actual bar exam. Only after you finish to the best of your ability should you study the sample or model answers, self-assess, and look up rules you do not know or understand.

---

**Essays: A closer look at how to read and write them**

Read the question you must answer (the "call" of the question), starting at the end of the fact pattern. Then read the fact pattern. Then reread that call. Read slowly and carefully, touching each word and mumbling it aloud under your breath, circling and highlighting key words.

Take notes. Jot down any words that raise discussable issues (more on issue spotting below). You might want to also do a quick chronology, listing key facts in the order in which they occur. That can be especially helpful in certain subjects. For example, in a torts negligence fact pattern for which you are analyzing proximate cause, tracking the chain of causation requires knowing what happened and when. Bar essays may note facts out of order. (Pay attention to dates.) Looking at your own ordered list of events, you will readily see if an event came between the defendant's actions and the victim's injury. You can then assess that intervening event to determine if it was foreseeable or not and complete your proximate cause discussion. Another example is a contracts question in which there are numerous communications between buyer and seller. In order to know the legal significance of each communication, you may need to know exactly what was communicated when (think "mailbox rule"). A final example of when chronological note taking is helpful is for bar takers in community property states. When property was earned (before, during, or after marriage) may change the characterization of that property, and thus who will be awarded certain assets in a divorce proceeding.

Next, create an outline. The best bar exam essay outlines are those that help you create a logical order without taking too much time, as most bar graders will not look at or consider your outline but only your completed answer. Think of your outline as a table of contents to your essay. Start by making sure your outline includes the main discussable issues and possibly relevant subissues, organizing those points into a logical order (often, but not always, tracking the calls of the question). Those taking the bar exam on laptops can often save time by turning their outlines into the headings that serve as a roadmap for graders, and then fleshing out what they want to say about those points as they write.

Example: A question asks, "Of what crimes, if any, may the defendant be convicted?" Your headings may list the crimes you intend to discuss. When a question asks about the division of assets in a divorce, the headings may be an asset-by-asset list. In a torts question involving multiple parties, the headings may be the various lawsuits: A v. B, B v. C, etc.

Bar writing is logical writing, and it differs in some key ways from law school exam writing. Earlier you learned that bar *reading* is active reading. Bar *writing* is logical writing. It is often recommended that first-year law students and bar takers write using a style template known by the acronym IRAC: issue, rule, analysis, conclusion. For bar writings, as I will detail below, the acronym IRPC—issue, rule, proof, conclusion—may be more helpful.

When law students first hear about IRAC, they sometimes think it stands for "I Really Am Crazy" and wonder why they went to law school in the first place. But
IRAC is just a tool—a template or system—to help students write logically. It forces them to move through steps (like A+B+C=D) and to remember to use the facts to prove or disprove the elements of the rules of law. In law school exams, as distinct from bar exams, the analysis portion is typically richer, deeper, and more thoughtful. You will want to weave into your analysis discussions of cases, analogies, and distinctions, as well as subtleties within the law itself, and how those affect the resolution of the issues at hand. You may mention both majority and minority positions in evolving areas of law, or compare older case law to more modern trends you have studied. And, of course, you must reason to a logical conclusion. Bar writing requires these same logical elements but often stated more simply. Once you understand what is expected and practice every single day, you will likely find bar writing to be rather straightforward.

**SOME BAR EXAMINERS PREFER ESSAYS THAT START WITH CONCLUSIONS**

CRAC (conclusion, rule, analysis, conclusion) or CRIAC (conclusion, rule, issue, analysis, conclusion); Some jurisdictions prefer that bar applicants state their conclusion and then follow that with a full proof of how the rule is or is not satisfied. This does not change the basic logical structure. (If you are not sure who will prevail until you finish writing, then simply IRAC and cut and paste your conclusion at the top of your discussion.) I suggest writing in an IRAC (or what I call "IRPC") style unless you know your jurisdiction prefers CRAC.

---

Some people hear the word *analysis* and think of the complex and varied wrinkles in legal theories and reasoning; they picture lengthy, detailed exchanges in law school classes—exchanges designed to break apart and promote an understanding of case law. Others hear *analysis* and think of a layered literary analysis (for example, reflecting on the meaning, style, and value of a novel or poem) in a college English class. As you will see below, a more useful mental picture for effective bar writing may instead require a flashback to middle school geometry and the simple logic contained in a basic proof.

Note: For many students, the term *analysis* conveys a more complex, and often longer, written discussion than is required for most passing bar answers. However, the word *analysis* may well represent what law professors expect on law school midterms and finals. Many law professors wish to see students weave relevant cases into their discussion as they reason to thoughtful conclusions, drawing analogies or distinguishing between the facts in the exam and facts from cases or hypotheticals studied throughout the term. Your professor may also expect a rich policy discussion, possibly noting relevant implications the issues you are discussing might have for third parties, society at large, past precedent, or future evolution of the applicable law. Bar writing is often simpler.

Let's look at the following example as a useful (albeit oversimplified) analogy to bar writing style, what I call and will explain below as *IRPC*.

What sort of figure does the shape above represent? [ISSUE]

Three-sided figures with sides coming together at three corners are generally known as triangles. An equilateral triangle is a three-sided figure in which all three sides are equal in length and all corners have the same degree angle. [RULE]

Here, side A measures x inches, side B measures x inches, and side C measures x inches. The three sides are touching and meet at three corners. Each angle measures y degrees. [PROOF (or analysis)]

Therefore, the figure represented above is an equilateral triangle. [CONCLUSION]

This logic may sound more mathematical than legal, but it is highly instructive for bar writing. Let's consider another IRPC example, this one using an everyday driving scenario in which you will see the same sort of logic but in a situation that more closely resembles a law-type fact pattern. Note here that we will also add a policy consideration to our logical writing ("IRPC"). Policy concerns, while not essential in bar writing, can be helpful in improving your score. As long as you have written about all the discussable issues, using the basic components of an IRPC correctly for each—and you finish answering the entire question—adding policy considerations may indicate a further mastery of the application of the rule of law that a grader may appreciate.

The defendant and his passenger, Witness X, both testified that the defendant's car was in the left-turn lane, the green arrow was blinking, and it was 3:00 p.m. when the turn was made. Did the defendant's turn from Elm Street onto Main Street on December 1 violate traffic regulations?

Now let's say you know (because you have learned the relevant rule of law) that when the green left-turn arrow is blinking at times other than 4:00 p.m. to 7:00 p.m. on weekdays, left turns are permitted from the left-turn lane at the intersection of Elm and Main. (From 4:00 p.m. to 7:00 p.m. on weekdays, such turns are not permitted.
even if the arrow is green.) How would we logically deconstruct the validity of the turn in question?

Did the defendant’s 3:00 p.m. left turn at Elm and Main violate any traffic laws? [ISSUE]

When the green left-turn arrow is blinking at a time other than 4:00 p.m. to 7:00 p.m. on weekdays, left turns are permitted at the intersection of Elm and Main from the left-turn lane. [RULE]

The defendant was in the left-turn lane (the proper location to make a left turn). He saw the turn arrow blinking (the signal that it was safe to make his turn). The defendant made the turn in question at 3:00 p.m. (an appropriate time for this type of turn). Note: Since it was 3:00 p.m., it did not matter which day of the week it was, as the only restrictions on turning are from 4:00 to 7:00 p.m. [PROOF or analysis]

Last but not least, policy would dictate that even if the defendant had followed the technical requirements for turning, he must have also confirmed that it was generally safe to make the turn—that is, that there were no other obstacles, emergency vehicles, or unanticipated conditions that would make the turn unsafe. Assuming the defendant did confirm this, there is no indication that the turn was unlawful. [POLICY]

Therefore, the defendant’s turn from Elm onto Main appears to have been lawful. [CONCLUSION]

This is straightforward, right? It makes sense. It is not mysterious or intriguing. It is not eloquent. It is simple and direct.

One of my professors once explained bar exam writing something like this: "Many of you came to law school from lofty colleges where you theorized and studied literature and history and the like. You read poetry and wrote beautiful essays. You sought to include metaphors and alliteration so your words would flow. You want to continue that sort of writing now, in law school. Your minds are creative. You want to think, "Well, I’ll start by discussing A; but then let me foreshadow Z; then I’ll get back to B; and maybe then toss in a bit of H and J to make things more vibrant." He then hollered, "No!" Everyone in the class jumped. "Cut that out right now! From here on, instead of flowery prose, it’s A + B + C = D. Period." Bar writing, in many ways, is indeed A + B + C = D.

Bar reading and its relationship to bar writing

Both to issue spot and to prove your points, you must read carefully, and think, as you read. Let’s look at a couple of examples in the context of criminal law. Criminal law fact patterns often include one or more defendants who will have done a series of actions that arguably amount to criminal offenses. You must use the facts to demonstrate the proof or lack thereof of the requisite conduct, mental state, or and any other elements of those crimes, and to demonstrate which, if any, defenses apply. As with all law exams, the most important skill needed to successfully answer a criminal law ques-

tion is careful bar reading. Start with the call of the question, or interrogatory (often presented at the end of the fact pattern). This way, you immediately discern what the question is asking so that you can answer that question or questions—and only that question or questions. The questions themselves may also provide an effective organizational structure for your answer. And reading the call of the question first on a bar exam essay often reveals what area(s) of law is or are being tested in that fact pattern so you can begin thinking about potentially applicable rules, which in turn will help you see the holes, gaps, questions, or “issues.”

The interrogatory in a criminal law essay may ask something like this: With what crime or crimes, if any, may the defendant be charged? or Of what crime or crimes may the defendant be found guilty? or Did the court err in convicting the defendant of any crime or crimes? By reading the interrogatory first, you will know just a moment into the exam that you are dealing with criminal law. (Bar exam questions will not be labeled by subject.)

After reading the interrogatory, go to the top of the page and read the entire fact pattern, slowly and carefully. Use the active bar-reading techniques discussed earlier. (Read simultaneously with three senses: touch, hearing, and sight. Put your finger or pen on each word as you read it with your eyes, and say it in a barely audible voice.) Circle, underline, highlight, and write notes on or near words that seem significant. If a word or phrase triggers an issue or leads you to see a point you might want to discuss, in your writing, note it right away so you do not forget. Mark directly on the question, jot your thought on scratch paper, or type it right into the document that may start as your outline and then become your essay answer. (If your outline is made up of your headings, then you can simply type each section under the appropriate heading.)

Let’s practice with the following paragraph:

Defendant Dufus wanted to burn Vicki’s cottage. Dufus set out to burn it, carrying matches and kerosene, and set fire to a chair in the living room. A neighbor smelled smoke and called the fire department. Firefighters came within moments and extinguished the flaming chair. Of what crime or crimes may Dufus be convicted?

The minute you saw the word burn, your mind might have immediately recited the definition of arson, after which you would have asked yourself, Will the defendant be guilty of arson?

Which definition would you recite? Well, the common law definition of arson is the malicious burning of the dwelling house of another. You might have thought of that, or of modern-majority variations on this traditional definition, which relax some of the elements. For example, modern jurisdictions have extended arson to include most any protected structure, not just a "dwelling," and a defendant can in certain circumstances
be convicted of arson for burning his or her own house down, not just the property of another.

You might not have every rule memorized yet, but you must have all the main rules committed to memory by the time of your exam. You must see the word burn and automatically recite the definition of arson. All the relevant crimes, causes of action, defense theories, and other testable principles must be as accessible as the passwords you use every day. The applicable rules must be memorized succinctly enough that you can spit them out quickly on essays.

Unlike typical law professors, bar graders usually do not want to see treatises on the legal rules. (Many law professors do want to see that you listened to the discussion, read the material, and learned a lot of law during his or her class.) On a bar exam, for instance, you will not get extra credit for knowing and listing all the exceptions to a rule if they don't apply to the facts at hand. And writing too much on particular rules may prevent you from finishing your proof discussion (the most important task!) and reasoning to a conclusion. Shoot for short and clear rule statements.

Back to arson; back to the fact pattern, and to what you were thinking as you read. (I'll paraphrase your potential thoughts in italics.) For this example, just to give us more elements to discuss, we'll use the common law definition of arson: again, "the malicious burning of the dwelling house of another."

With what crime or crimes may Dufus be convicted? *(OK, let me think.)*

Defendant Dufus **wanted to burn** (Dufus's desire to burn the cottage proves his wilful intent and satisfies the malice or mens rea element of arson) Vicki's cottage *(the dwelling of another).* Dufus set out to burn it, carrying matches and kerosene. Dufus set fire to a chair in the living room. A neighbor smelled smoke and called the fire department. Firefighters came within moments and extinguished the flaming chair. *(The chair was flaming, but did the flames burn or char any part of the structure itself?)* Of what crime or crimes may Dufus be convicted?

"Issue spotting," and what that really means, can confuse people. Start by thinking of issue spotting as looking for those places where the facts raise questions about whether or not an element of a crime, cause of action, or defense has been met. (One former student who for years helped me mentor new bar applicants used to tell students to look at issue spotting like Easter egg hunting. Picture walking through the facts knowing there are issues out there, perhaps just under the surface; you simply need to be alert to see and collect them.) *(Another way to say this is that the thinking you are doing when you issue spot consists of considering the legal significance of particular facts, asking what they potentially prove or disprove and why, and identifying what additional problems they may raise.)* One leading bar exam expert suggests that after reading the facts, students think about them from one side's perspective and then consider what opposing counsel might seek to expose as a weakness.*37*

You know that you must mention each element of arson and whether or not it was established under these facts, even an element that does not seem to be in question. For example, these facts say that Dufus "wanted to burn." It seems wholly obvious that the defendant possessed the requisite intent for arson. But you still have to prove he had the requisite intent (here by referring to the specific facts indicating such.)

Read further. You will notice that only the chair burned, not the structure. So you will have to use the facts given to determine whether there was a requisite burning to support an arson conviction. *(That's issue spotting.)*

Once you read carefully and issue spot, you can start making an outline. Using this simple arson hypo, how might an outline be structured? Let's look at a sample.

**Crimes of Dufus**

**ARSON?**

- a. Malicious (wanted to burn = willful),
- b. Burning (the chair burned; need to demonstrate charing or burning of structure, as smoke damage is not enough), of the
- c. Dwelling house (cottage)
- d. Of another (Vicki's cottage)

Would you be done if you concluded (which you should, after discussing all the elements of arson) that Dufus will not likely be convicted of arson? No. Remember that the question being asked is: "Of what crime or crimes may Dufus be convicted?" You need to discuss any and all of the relevant crimes.

So what should you ask yourself now? You know this: whether Dufus might be guilty of attempted arson. To determine that, you have to resolve yet another issue: whether Dufus's action of setting fire to the chair was sufficiently close to the completed offense to find him guilty of an attempted crime. And, to reason to a logical conclusion on that point, you must know the rule or test for attempt in your jurisdiction. (There are several, including those that look at whether the defendant "took a substantial step toward" or was in "dangerous proximity of" completing the offense and those that consider whether the defendant did the "last act" before actually completing the target offense tested. The outcome may differ depending on the test used.)

On a law school criminal law exam, you may be expected to analyze a situation using all the tests you studied. On the bar exam, you will need to prove the attempt did or did not take place using first and foremost the test that controls in your jurisdiction (or, on many bar exams, the modern-majority rule). Only if you have extra time should you even consider writing about a minority view, for
example. (Note: Some bar examiners stress the need to answer according to modern-majority principles, but may award additional points for noting where your state’s laws differ. As part of bar preparation, you will learn what law you are expected to know and use in your answers, and whether or not any additional points may be awarded for more refined comparative knowledge.)

Let’s continue our outline then, adding this second possible crime.

**Crimes of Dufus**

**ATTEMPTED ARSON?**

a. Acting with specific intent to burn the structure in question (wanted to burn, yes),
b. Defendant took a substantial step toward completing this arson (he “set out” to burn the cottage with kerosene (a highly flammable liquid) and matches, went to the cottage, and lit the chair on fire).

Are you done now? Quite likely, yes. Wait a minute, you say. If the chair burned, then didn’t Dufus permanently deprive Vicki of her property? Surely she didn’t consent to that. Should I discuss larceny? You quickly rattle off the elements of larceny: “the trespassory taking and carrying away of the personal property of another with intent to deprive the owner thereof,” and you continue thinking, Ah, but he didn’t move the chair at all.

Let’s finish off the outline.

**LARCENY?**

- no “taking and carrying away” (asportation element of larceny not satisfied.)

OK, we read carefully. We thought as we read, asking questions about what was potentially in question or at issue while looking at each word. We took notes so as not to lose those thoughts. Then we outlined, placing the points we want to write about in a logical order. Now let’s translate this into bar writing.

Note: This is a sample only, using this truncated hypothetical. You may not have time to or need to go into this much detail. This would likely be only one paragraph in a page-long fact pattern, and there would be many other issues to discuss. But this short sample gives you just an idea of how to write, hitting each part of TRPC and making your reasoning explicit enough for a layperson to easily follow your thinking.

**Writing Example #1**

**Crimes of Dufus**

The defendant may be charged with several crimes, but under these facts there is only one crime of which he may likely be convicted. [This is a sort of introduction. It shows the grader you read the question and are planning to respond to it.]

**ARSON**

Will Dufus be convicted of arson? Arson is the malicious burning of the dwelling house of another. Here, the facts tell us that Dufus “wanted” to burn Vicki’s cottage and that he “set out” with the tools to do so. His desire to burn the cottage and his going to the target site with those tools prove that Dufus acted deliberately or willfully, therefore establishing “malice” and satisfying the mens rea requirement for arson. (“Malice” can be proved by establishing either willfulness or a reckless disregard for the risks.) A cottage is typically a dwelling house, and this cottage belongs to Vicki; therefore it would be the dwelling house of another and satisfy the structure requirement of common law arson. The burning element of arson, however, would not likely be satisfied here since that requires some burning or charring of the structure itself. Here the flames appear to have been extinguished while only the chair was burning—before the fire could reach the floor, walls, or any other part of the structure. Assuming that is the case and no part of the structure actually burned or was charred, despite the fact that Dufus possessed the requisite intent and took some action toward committing the crime, **Dufus may not be convicted of arson.**

**ATTEMPTED ARSON**

Will Dufus be guilty of attempted arson? A conviction of attempted arson here would require proof of Dufus’s specific intent to burn Vicki’s home, and evidence that Dufus took a substantial step toward the completion of that crime. Here, as was noted in the discussion of arson above, the defendant “wanted” to burn Vicki’s cottage. His specific intent is evidenced by that fact. Dufus “set out” with “kerosene” (a highly flammable liquid) and “matches” (incendiary devices), went to Vicki’s house, and lit a chair inside the home on fire. These actions go far beyond thinking about committing the offense or even simply planning to burn the cottage. The defendant went to the site where he wanted to commit the target offense and started a fire in the home, an action very likely to have led to the burning of the cottage had the neighbor and fire department not intervened. The defendant was thus well beyond the zone of preparation and well within the zone of perpetration. Because the prosecution has ample evidence of both the specific intent to complete the arson and his having taken a substantial step toward completing that act, **Dufus will likely be convicted of attempted arson.**
LARCENY
Did Dufus’s actions in deliberately setting fire to Vicki’s chair amount to a larceny?
Larceny is the taking and carrying away of the personal property of another with
intent to permanently deprive the owner thereof. Dufus may have deprived Vicki
of her chair (clearly personal property), and done so intentionally, but nowhere do
the facts tell us that Dufus took or carried the chair away. Because Dufus did not
move the chair, the asportation element of larceny is not satisfied, and Dufus will
not be convicted of larceny.

CONCLUSION
For the reasons stated above, Dufus will likely be convicted of attempted arson.

Notice how the writing sample above tracks the logic of IRPC and is written in com-
plete sentences in a way that a layperson could understand and follow the reasoning.
In the example above, we italicized elements and conclusions to provide a road map
for the grader. It would also be possible to set the same answer up with subheadings,
as in the example below.

Writing Example #2
Here, we will write the same answer but format it slightly differently, with shorter
paragraphs and more frequent headings and subheadings. Which one do you find to
be more reader friendly?

Crimes of Dufus
The defendant may be charged with several crimes, but under these facts there
is only one crime of which he may likely be convicted.

ARSON
Will Dufus be convicted of arson? Arson is the malicious burning of the dwelling
house of another.

Malice or mens rea requirement
Here, the facts tell us that Dufus “wanted” to burn Vicki’s cottage and that he
“set out” with the tools to do so. His desire to burn the cottage and his going
to the target site with those tools prove that Dufus acted deliberately or will-
fully, therefore establishing “malice” and satisfying the mens rea requirement
for arson. (“Malice” can be proved by either establishing willfulness or a reckless
disregard for the risks.)

Dwelling house of another
A cottage is typically a place people live (so qualifies as a dwelling house), and
this cottage belongs to Vicki; therefore, it would satisfy the structure requirement
of common law arson, the dwelling house of another.

Burning
The burning element of arson, however, would not likely be satisfied here. This
element requires some burning or charring of the structure itself, and the flames
appear to have been extinguished while only the chair was burning—before the
fire could reach the floor, walls, or any other part of the structure.
Assuming that is the case and no part of the structure actually burned or was
charred, despite the fact that Dufus possessed the requisite intent and took some
action toward committing the crime, he may not be convicted of arson.

ATTEMPTED ARSON
Will Dufus be guilty of attempted arson? A conviction of attempted arson here
would require proof of Dufus’s specific intent to burn Vicki’s home, as well as
evidence that Dufus took a substantial step toward the completion of that crime
such that he crossed over from what might be deemed merely the “zone of prep-
paration” into the “zone of perpetration.”

Mens Rea: specific intent to complete the target offense
Here, as was noted in the previous discussion of arson, the defendant “wanted”
to burn Vicki’s cottage. His specific intent to complete the target offense is evi-
denced by that fact.

Actus reus: the defendant took a substantial step toward completing the crime
Dufus “set out” with “kerosene” (a highly flammable liquid) and “matches” (inci-
diary devices), went to Vicki’s home, and lit a chair inside the home on fire. These
actions go far beyond thinking about committing the offense or even simply plan-
ing to burn the cottage. The defendant went to the site where he wanted to commit
the target offense and started a fire in the home, an action very likely to have led to
the burning of the cottage had the neighbor and fire department not intervened.
The defendant was thus well within the “zone of perpetration.”

Because the prosecution has ample evidence of both the specific intent to
complete the arson and his having taken a substantial step toward completing
that act, Dufus will likely be convicted of attempted arson.
LARCENY
Did Dufus's actions in deliberately setting fire to Vicki's chair amount to a larceny? Larceny is the taking and carrying away of the personal property of another with intent to permanently deprive the owner thereof. Dufus may have deprived Vicki of her chair (clearly personal property), and done so intentionally, but nowhere do the facts tell us that Dufus took or carried the chair away. Because Dufus did not move the chair, the asportation element of larceny is not satisfied, and Dufus will not be convicted of larceny.

DEFENSES
The facts do not appear to raise any justification or excuse for Dufus' actions, nor are there any mitigating factors.

CONCLUSION
For the reasons stated above, Dufus will likely be convicted of attempted arson.

Notice in this second example that there was no need to italicize key terms because the headings and subheadings gave the grader a clear road map.

The purpose of this basic arson example was to take you through the process, from bar reading, thinking and issue spotting, to outlining, and then to writing simply in a logical IRAC (issue, rule, proof, conclusion) style, proving each element of the rules you stated with facts from the fact pattern. If you are reading this well before you even start bar review, it should help give you a window into the strategy of essay writing for bar exams.

Do not assume. Prove it. And say why.

Often one of the toughest things to grasp is how much more straightforward bar exam essays tend to be when compared with the most challenging aspects of classroom questioning. How many times did you go into class thinking you understood the reading only to find the professor threw so many factual variations or subleties in the law at you that you ended up feeling like you hadn't prepared at all?

It's good to leave law school classes with your head hurting; it means you were thinking! But on bar essays, you mostly work with the stated facts, which are presented in a fairly straightforward manner, and show how they prove or disprove elements of rules of law.

Note: I never said bar essays were easy. There are many rules, in many subjects, and you have to read and see the relevance of every word in the fact patterns—and do all of that quickly and in a high-pressure situation. What I am saying is that the level of analysis is superficial compared with most law classes. Again, that is why I prefer the mnemonic IRAC for bar exam essays rather than IRAC. It's more often simple proof rather than complex analysis that the bar essays require. But you cannot skip steps; you must at least note points that may seem obvious to you. (Remember the equalateral triangle example.) And in the Dufus example above, the facts convey that Dufus "wanted to burn" the cottage. How much more obvious could his intent be? It is clearly stated. Nonetheless, in your answer, you must state that the intent element was proved and why (even if that "why" is because the facts stated that "he wanted to burn").

Let's say you read a fact pattern and determine that the main crime the defendant may have committed is burglary. (First, of course, you would recite the rule, "At common law a burglary was the breaking and entering of the dwelling house of another in the nighttime with intent to commit a felony therein.") One element of burglary is breaking into the structure. Even when a fact pattern explicitly states that the defendant "broke the door to go inside," you would need to say something to briefly indicate that the facts prove the existence of that element. For example, you might write, The breaking element is satisfied here because the facts state that the defendant "broke the door" to go inside. While that may seem self-evident, points are often given on bar essays for stating the obvious in a clear and organized fashion. This shows that you see the relevance of the particular facts and can apply the facts to that law. (This is precisely how litigators help juries see how evidence presented at trial proves or disproves elements of the causes of action or crimes in question.)

What you do not want to do is assume, or arrive at a conclusion without saying why. That is what law professors and bar graders call conclusory. (You would not expect a jury to convict a defendant without believing beyond a reasonable doubt that there is sufficient evidence of each and every element of the charged crime, right?) Let's look back at the example of Dufus's attempted arson above. We did not just write, Dufus wanted to burn the cottage and took a substantial step toward doing so and therefore is guilty of attempt. We broke down each element (the intent element was easy to prove because the facts stated he wanted to do this, but we nonetheless still noted it explicitly) and then showed how and why Dufus's setting out toward the cottage with the kerosene and matches (linking these tools explicitly to the target offense) amounts to a substantial step toward the commission of the crime.

You may think this is obvious, so why bother writing it? Of course kerosene is flammable. On a bar essay, though, your job is to show why the exam facts prove or disprove the elements of the relevant rules. I often tell my students, "Walk into the bar exam imagining you have a teleprompter in front of you the whole time flashing the question Why?" That will force you to always remember to explain your reasoning and make your thoughts explicit. (And pretending you are writing to a layperson, not a colleague or professor, will also help you note every step of your reasoning more clearly.)
NONTRADITIONAL STUDENTS MAY FIND IT HARD TO "DO THE MATH."

Law students who are professionals in other fields, or businesspeople used to customers and clients seeking quick answers, often find it challenging to slow down and write each step of their thinking. My law students who are doctors frequently tell me, "The patient doesn't want a long story. She just wants the diagnosis and treatment. Basically, she would be thrilled if I didn't say anything other than, 'Take this. It will make you feel better.'" Clients who are paying for services also often want instant answers. Bar graders are more like good math teachers; they want to "see your work," your ability to reason logically, step by step.

Issue-Spotting Exercise

Look at the following sentence: "The defendant entered the Miller office building at dusk through an unlocked door to get the umbrella that he had left, then saw the diamond ring, took it, and walked out into the rain." If the question asks about the defendant's possible criminal liability for burglary, what, if any, discussable issues are raised by the following words? Write your thoughts about these words in the spaces below:

"office building at dusk"

"through an unlocked door"

"that he had left"

"then"

What did you identify as issues? Before identifying any issues, of course, you recited the rule: Common law burglary was defined as the breaking and entering into the dwelling house of another in the nighttime with intent to commit a felony therein. Then, you perhaps went on to ask some of the following questions:

1. Does the office building satisfy the "dwelling house" element of burglary? (And, here, you likely reminded yourself that modern jurisdictions have extended this element to include any "protected structure.") And, do the words "at dusk" satisfy the "in the nighttime" element?
2. Does entering through an unlocked door satisfy the "breaking" element?
3. Is the defendant's going inside to get the umbrella "that he had left" sufficient to prove he had the requisite mens rea, or "intent to commit a felony therein"? He may not have had any criminal intent if he walked in to retrieve his own property.
4. Does the word "then" raise a potential issue? It may be relevant to the question of when the felonious intent was formed, timing being critical to culpability.
SOME JURISDICTIONS HAVE SPECIFIC SUGGESTIONS OR REQUIREMENTS FOR ESSAY WRITING.

This chapter has focused on broadly applicable guidelines for and insights into effective bar essay writing. You must research any unique aspects of your exam. Some jurisdictions provide supplemental case or statutory authorities to use in essays; some include essays with problem-solving tasks (which seem a bit like a performance test and essay combined). Enrolling in a reliable bar course tailored to your jurisdiction and studying the website and any information provided by your bar examiners is a must.

Conclusions
Finally, a word about conclusions. While it may not always matter so much how you conclude on bar essays (who "wins"), it matters that you do conclude. Bar graders want to see that you can answer the entire question (and all of the issues that it raises) within the allotted time. They will not be satisfied if you merely demonstrate that you can start answering the questions, or outline the answers to the questions. (Do not, for example, write a stunningly rich answer to part one of the question and then run out of time for part two.) But two passing answers may contain opposite conclusions—especially when the facts are "gray," meaning there are good arguments on both sides. When faced with such ambiguity, you may, for instance, conclude in a manner that acknowledges this: Based on the foregoing analysis, the defendant will likely be found to have possessed the intent to kill the victim here. If, however, the prosecution is unable to prove intent to kill, also as noted above, the prosecution may well be able to demonstrate that the defendant possessed the intent to cause serious bodily harm or, at the very least, that his actions showed a reckless indifference to human life. There's nothing wrong with concluding in a way that shows a number of probable outcomes, but you must finish, and do so logically. And again, giving some emphasis to a conclusion, even a brief one (perhaps by underlining it or making it a subheading), shows the grader that you completed the answer.

QUIZ
TEST YOUR HABITS: When I complete a practice exam, I:

a. never look at it again, and certainly never show it to anyone else.
b. study it alongside a sample or model answer, comparing and contrasting the two.
c. show it to a professor, mentor, study buddy, or academic support advisor to review and critique.
d. do either b or c, or both, and rewrite that same practice exam at a later date and assess improvements.

Many of you, if you are honest, will choose a. Hopefully, I will have convinced you by the end of this chapter to act otherwise after completing a practice exam. If you picked b, that is good; however, be sure at some point to also have someone else critique your exams, hopefully early on, so that you are not mistakenly thinking your answers are just fine if they aren't. There is also a danger in not studying reliable sample or model answers; you risk cementing your errors. The key is to improve with every practice exam. You do yourself the greatest of disservices if you simply compound your mistakes. That said, if you picked c, be sure in the future to first try to figure out what you think you missed, and then let someone else critique it. Hopefully, what they say will mirror what you saw as errors and ways to improve. Eventually, you will learn what you need to from studying reliable sample or model answers on your own. (After all, you will not have someone critiquing or editing your actual bar exam answers. You must get to the point where you are doing them well, alone, but it is a process getting there.)

How to self-assess your practice essay writing
After completing an essay, look carefully at your own answer and a model or reliable sample answer (such as one released by your state's bar examiners as representative of a passing answer). Sit with both. Assess how they are the same and how they differ. Note the answers' organization and presentation. Note how precise and complete the rule statements are. Are there any rules you can learn more about or rule statements you can memorize more thoroughly? What about application/analysis? Is there proof
of the existence or lack thereof of each element of each rule at issue? Was every key fact used? Go through them side-by-side, and, as a clever detective,

• look for what the sample or model answers include that your answer did not contain, and what you may have written about that was not in the sample answers;
• be sure you understand why the sample answers included what was discussed and why the sample answers left out things you may have thought were important;
• look for content and style (make sure your answer is reader friendly!);
• look at the rules and be sure you understand them; and
• reread the fact pattern and then look at how the facts were used in discussing each issue in the model answer.

Then, after this basic compare-and-contrast, ask these specific questions:
1. Did I finish within the allotted time?
2. Did I spot the main discussable issues? (And did I see which issues were major and required more discussion, and which were minor and called for less emphasis?)
3. Did I state the rules correctly and succinctly?
4. Did I use facts to show why (prove) each element of each rule was or was not established in the question?
5. Did I reason to a logical conclusion for every main issue I raised?
6. Was my answer presented in a manner that was organized and easy to read?

After you have done this first part of self-assessing, find concrete ways to improve. Make every effort to leave each practice session with at least two to three specific ideas about how you can improve. The examples below are just illustrations. Your situation is unique to you. The key is to figure out where you need to improve and to then create a doable plan of action for your success.

CAVEAT: PRACTICE EXAMS MUST HELP YOU IMPROVE!

I have said this before but cannot emphasize it enough: taking practice exams is not sufficient. You must walk away from every practice session dedicated to improve the quality of what you just produced. If you write essays poorly, or you get the law wrong or your analysis (proof) or use of the facts is insufficient, or your answer is disorganized—and you just keep repeating the same mistakes on future practice exams—you will be cementing and compounding your weaknesses. That is why you have to study quality, reliable answers and learn how to make your answers look and sound more like those passing answers. This is also why it can be so helpful to at least periodically have your answers reviewed and critiqued by someone reliable (for instance, ASP, bar support, or bar review faculty).

Improvement area: Action item
• I must read the questions more carefully. (I wrote about nonhomicidal offenses when the call of the question specifically asked about homicide crimes.)

In upcoming exams, I will read the call of the question first, then read the facts, then reread the call of the question before I begin outlining. I will also underline the call of the question, and keep the fact pattern and my outline in front of me as I write.

• I need to manage my time better. (I wrote for 30 minutes on the first interrogatory and didn't have time to write the remainder of my answer.) Note: On a simulated exam, you will write several essays back-to-back, and you will want to watch your timing carefully to be certain you are stopping after the suggested time for each essay so you can finish the whole set in the allotted time.)

I will work on my timing. I will keep a small clock in front of me as I write. During a one-hour essay, for example, I will note when I reach the 15-, 30-, 45- and 55-minute marks. I will try to finish my outline by the 15-20-minute mark. I will strive to have hit all the main issues by the 45-minute mark. And, I will be concluding by the 55-minute mark. (During a 30-minute essay, I will note the 10- and 25-minute marks. I will read and try to finish my outline by the 10-minute mark. I will strive to have hit all the main issues by the 25-minute mark and begin concluding.)
TIMING

It is absolutely critical to have your timing down—nailed—by mid-July at the latest. You need to go into your bar exam knowing you can read each MBE question and select the best answer within 1.8 minutes. You need to know you can read, analyze, and write a passing essay answer within the time allotted. Remember, when you appear before a judge, your time will be limited as well. It’s part of the game. You must have both speed and accuracy. On essay questions, you will often need at least 10–15 minutes to read and outline (that is true whether the essay is a 30-, 45-, or 60-minute exam.) This will help you write in an organized manner and allocate your time appropriately between the issues raised by the question and facts. Note: The times may need to be adjusted if you are a fast reader and slow typist or a slow reader and fast typist. Experimenting by varying the amount of time you spend reading, analyzing, or writing can help boost your scores. Time and again, I have seen bar takers’ scores increase significantly when they spend more time reading and thinking and outlining before writing.

• I must type faster. (I have the thoughts in my head, but don’t get them out fast enough.)

I will work on improving my typing skills. I will type every day, and make time to type out my model answers in full for at least some of the practice essays I write. (This is another good example of why it pays to start bar preparation well before formal bar review. If you determine early in your last year of law school that you are not typing fast enough for the time pressures of the bar exam, you would have time to do something about it, for example take an online typing course. If this is something that you just realize in mid-June is causing a major obstacle you will have a tougher time making the necessary improvements.)

• I need to understand the law better. (I saw what the issues were, but did not write applicable rule statements clearly.)

I will review the lecture notes and look up areas I do not understand in the outlines. Then, I will either say out loud or copy or rewrite the legal rules several times to help memorize them.

• Facts: I’m not using enough facts.

Cross out terms as you use them in your answer. And learn the law thoroughly. The more you know the law, the better your ability to quickly see how these new facts prove or disprove elements of those rules.

Self-Assessment Chart: Your Turn

1. Did I finish the entire essay within the allotted time? □ Yes □ No Improvement Action:

2. Did I spot and write about the main issues? □ Yes □ No Improvement Action:

3. Did I allocate my time well as I was writing? (Did I write too much on any one issue such that I gave short shrift to other issues?) □ Yes □ No Improvement Action:

4. Did I state the rules correctly and succinctly? □ Yes □ No Improvement Action:

5. Did I use facts to show why each element of each rule was or was not established in the question? □ Yes □ No Improvement Action:

6. Did I reason to a logical conclusion for every main issue I raised? □ Yes □ No Improvement Action:
7. Was my answer presented in a manner that was organized and easy to read?
☐ Yes ☐ No

Improvement Action:

Bottom line: troubleshoot now, during early start or, at the very latest, during intensive bar prep. Do not use the actual bar exam to figure out what you need to do better next time. Pass the first time you take the exam. The more practice exams you take, the more opportunities you will have to learn and improve, slowly and surely.

It's normal for improvement to be slow and incremental. Some of you will hit a wall at the end of June and be tired of practice tests. You must keep going, keep plugging away, and don't give up. The breakthroughs and "aha moments" will come, maybe when you're not even expecting them, as long as you keep at it and keep moving forward. By comparing your answers with model answers, you may gain insights that show you where adding even one more sentence or bolstering the factual analysis of one particular issue greatly improves and strengthens the answer—something you may not have seen at first blush. Note those observations. Make them a part of your process. You will get there. Slowly and surely.

**Persistence**

Keep taking practice tests, and reading and studying those model answers. Even rewriting previously taken practice essays can be helpful. You will see them differently now than you did even a month ago. You will see the ways to improve. And, until the exam is complete, there is time to improve. Even the day before the bar, you can learn valuable things that may boost your scores. Do not give up. Be dogged, determined, and persistent.

You can also try rereading practice exam answers aloud or even handwriting or retyping them out in full from time to time, to "tune your ear" to a complete response. Often doing that just a few times brings home seemingly small changes that can make a huge difference in how effectively your answer responds to the queries and covers the required material.

**Reality check: Getting your exams graded by someone else**

Throughout this chapter and book, I stress self-assessment. But be sure to also complete and turn in as many exams as possible to your bar review for critique. You need to know that you are on track and not continuously repeating problems you didn't even notice. Know, though, that unless you have a tutor standing over your shoulder while you write, there will be a delay in getting feedback—even from the best of bar reviews. (Also, remember that you will go into the exam alone; the sooner you see how to improve, the better.) Another reason for *immediate self-assessment* is that powerful learning comes when the fact pattern is freshest in your mind. You will much more readily see exactly where you erred and understand how to improve. (You will quickly see if you misread a word or didn't see the significance of a key fact. You will easily see if a fact triggered an issue but you didn't know the relevant law. Look up that rule while the fact pattern is fresh so that it sticks in your memory.) If you have to reread a fact pattern days or weeks later, when you get back your graded exam, you will waste time getting back up to speed. And, it may be difficult to recall what you were thinking at the time. So, use the grader's critiques to confirm or change your own assessment. When you get an exam back from your bar review, compare the grade and comments to your own assessment. Did they point out things you didn't see, or does the critique confirm what you already figured out for yourself? (If the former, do you see them now? If not, ask for further help.) Either way, you will come out ahead by working to learn from practice tests immediately after completing them.

**Self-assess through reverse engineering**

For essays, a useful tool can sometimes be to study the fact pattern and sample or model answer, and work backward. In other words, *outline the answer.* Ask what you would have needed in an outline to produce this sort of (passing) answer. Then look back to the facts to see how and where the answer got its analysis out of these particular facts. How did this answer use the facts selected to reason to certain conclusions? Usually we move from question to answer. But turning that process around, and moving from answer (end goal) back to the question, can sometimes help you see more clearly where you need to go. Note: This process can also be used on performance tests, as discussed below.

**PERFORMANCE TESTS**

**About performance tests (PTs)**

Performance tests serve as the practical portion of the bar exam in a majority of jurisdictions. The work to be completed on a PT is similar to what you might do as a beginning lawyer: draft legal memoranda and write briefs to the court, letters to clients, discovery plans, settlement offers, and more. To complete a PT, you will be called upon to read and analyze a case file and a library of legal authorities, and draft one or more documents based upon information you glean from those materials. Whatever the exact tasks to be drafted, passing PTs requires demonstrating competency in the ability to:

- sort detailed factual materials and separate relevant from irrelevant facts;
- analyze statutory, case, and other legal authorities for relevant principles of law;