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Professor, Please Help Me Pass the Bar Exam: #NextGenBar2026

Melissa Bezanson Shultz

Dear Dean:

In the fall of 2022, I started at your law school as a part-time student. Just like the students who walked the halls before me, I spent my 1L year in the library for countless hours learning the nuances of torts, contracts, property, and criminal law. Thereafter, I tailored my upper-level courses to ensure exposure to the additional subjects covered by the bar exam—professional responsibility, business associations, constitutional law, criminal procedure, secured transactions, wills, trusts and estates, conflicts of law, and family law. Although my curricular choices tended to be doctrine focused, I took a basic set of skills courses; to satisfy my skills requirements, I completed legal writing in my first year (begrudgingly receiving my only B in law school), a scholarly drafting course, and an externship. I believed—given the time and money I had invested in my legal education (well over \$100,000)—I was set up for success in practice and on the bar exam. I was wrong.

What I did not know—but you did—was that the bar exam your law school’s curriculum was designed to prepare me for had been replaced with a new bar exam. This change was announced in January of 2021, but you and your faculty failed to meaningfully adjust your traditional curriculum to account for the changes in time for my arrival on campus in the fall of 2022. This new bar exam no longer tests secured transactions, wills, trusts, and estates, conflicts of law, or family law. Worse, this new bar exam tests a wide variety of practice-related skills that I was never exposed to during my four years at your school, including interviewing, client counseling, negotiation, and legal research. As a final blow, multiple-choice questions—my superpower and probably the reason I even got into your law school in the first place (thank you, LSAT)—are no longer the anchor of the new bar exam. Instead, success on the new bar exam turns equally on one’s knowledge and one’s reasoning/writing abilities. Dean, how did you and your faculty let this happen?

Respectfully, Alex

Melissa Bezanson Shultz Associate Professor of Law at Mitchell Hamline School of Law. I am thankful for the insights of David Cleveland, Loren Jacobson, Brian Owsley, and Preyal Shah for their review, support, and encouragement. This work also benefited from the 2021 Sirico Scholars Workshop and the small group of scholars within that workshop who provided feedback and inspiration: Leslie Culver, Clay Sapp, and Jessica Gunder. And finally, thanks to my amazing research assistant, Grace Hoffman, for her incredible research, Bluebooking savvy, and thoughtful insights. Because working on this article took me deep into the work of legal education and pedagogy scholars, I am reminded of the amazing talent and contributions of my colleagues across the country and at Mitchell Hamline School of Law who continue to do important work in this field.

Introduction

Today, the complaints Alex makes in his letter are preventable, but the clock is ticking and, with change on the horizon, law schools must begin to plan for a new reality. Beginning in 2026, law school graduates will be sitting for a bar exam—the so-called NexGen bar exam—that is both substantively and structurally different from the one administered across the country since most attorneys can remember—the so-called “existing bar exam”¹—and since the founding of the National Conference of Bar Examiners (NCBE)² in 1931.³ Unfortunately, the legal academy is not known as agile;⁴ to the contrary, it is often viewed as an institution steeped in tradition, rites of passage, and

1 As discussed in more detail in Section II, *infra*, for the twelve states that have not adopted the Uniform Bar Exam (UBE), the existing bar exam varies some from jurisdiction to jurisdiction, although eleven of those twelve non-UBE jurisdictions still administer the component of the UBE that is often seen as the anchor of the NCBE’s existing bar exam—the Multistate Bar Exam. *See* Section II, *infra*.

2 The NCBE is the not-for-profit organization that works with other institutions to develop, maintain, and apply reasonable and uniform standards of education and character for eligibility for admission to the practice of law and that administers the Uniform Bar Exam across the forty states that have adopted it.

National Conference of Bar Examiners: MBE, MEE, MPRE, MPT Multistate Tests, AM. BAR ASS’N (June 26, 2018), https://www.americanbar.org/groups/legal_education/resources/bar_admissions/bartests [<https://perma.cc/TAA4-YPFV>].

3 *NCBE Media Kit*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/about/media-kit/> [<https://perma.cc/34T4-AXN2>] (“The National Conference of Bar Examiners, founded in 1931, is a not-for-profit corporation that develops licensing tests for bar admission and provides character and fitness investigation services.”).

4 *See, e.g.*, Alfred Konefsky & Barry Sullivan, *In This, The Winter of Our Discontent: Legal Practice, Legal Education, and the Culture of Distrust*, 62 *BUFF. L. REV.* 659, 676 (2014) (acknowledging that “there has been much complacency in American legal education and practice”); Debra Moss Curtis, *They’re Digging in the Wrong Place: How Learning Outcomes Can Improve Bar Exams and Ensure Practice Ready Attorneys*, 10 *ELON L. REV.* 239, 241 (2018) (explaining that “despite some recent innovations, many law school experiences remain strikingly similar to both each other and to the course of study as it has existed for many years”); Christopher Williams, *Gatekeeping the Profession*, 26 *CARDOZO J. EQUAL RTS. & SOC. JUST.* 171, 182 (Winter 2020) (detailing the many small gates deeply embedded in the structure of legal education that are in place and serve to exacerbate inequality in legal education and the legal profession); Sandra Simkins, *The “Pink Ghettos” of Public Interest Law: An Open Secret*, 68 *BUFF. L. REV.* 857, 866–75 (2020) (discussing how pushing females into social justice careers (an undervalued part of the profession) continues to devalue women lawyers and law professors); Brent E. Newton, *The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 *S.C. L. REV.* 55, 55–62 (2012) (acknowledging the glacial pace of change in the legal academy); Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 *VAND. L. REV.* 515, 519, 524 (2007) (“Law schools, whose culture has been passed down through generations of lawyers, generally do not ask fundamental questions about long-established practices and their relationship to institutional mission”). *Cf.* Eli Wald, *The Economic Downturn and the Legal Profession, Foreword: The Great Recession and the Legal Profession*, 78 *FORDHAM L. REV.* 2051 (2010) (noting that the legal academy has demonstrated adaptability to changes in practice over time, but not discussing or assessing the adequacy of the pace of that adaptability).

deliberation.⁵ While its reliability and measured approach have certainly contributed to its success and stability since the founding of the Juris Doctorate degree in the early 1900s,⁶ at moments like the one raised in Alex's letter, the legal academy's stability also serves as its Achilles' heel.⁷

Legal education is faced with an industry-changing event: the complete revamping of the licensing exam law school graduates must complete to use their hard-earned J.D. to practice law. What is not known is what law schools will do in response to this news; that is, how law schools will make adjustments to prepare Alex—and all other students who will walk the halls with Alex starting in the fall of 2022⁸—for this monumental change.

5 See, e.g., Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 740 (2011) ("In essence, careful review and constructive critiques have engendered incremental advances, but legal education has not changed fundamentally in the last quarter century."); John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 344-45, 320-25 (2007) (discussing the slow progress of the legal academy).

6 *What is a Juris Doctor Degree?: An Overview of the J.D. Degree*, COLL. CONSENSUS, <https://www.collegeconsensus.com/law/what-is-juris-doctor-degree/> [<https://perma.cc/M4ZW-VN5U>].

7 For example, beginning in December of 2007, the sky seemed to be collapsing on the legal academy. See generally *Determination of the December 2007 Peak in Economic Activity*, NAT'L BUREAU OF ECON. RSCH. (Dec. 11, 2008), <https://www.nber.org/sites/default/files/2021-03/dec2008.pdf> [<https://perma.cc/VU8F-U8HM>].

Law schools, like the rest of the country, faced a significant economic downturn. This so-called Great Recession had a marked impact on legal education: It caused admissions to plummet in terms of both numbers and applicant credentials and decimated the market for graduate and alumni employment; those injuries, together with accreditation changes impacting law school curricula, had grave impacts on law schools' financial health. Ian Holloway & Steven I. Friedland, *The Double Life of Law Schools*, 68 CASE W. RESV. L. REV. 397, 405-06 (2017); Karen Sloan, *How the Recession Forced Law Schools to Reimagine Their Role in Students' Careers*, THE AM. LAWYER, June 24, 2019. When faced with the economic downturn and its direct effects on legal education, law schools acknowledged they were facing an epic problem; but instead of assessing the situation quickly and implementing changes to address the issues facing the academy, law schools actually did little, opting ever-so-slowly to adapt their practices to the new economic realities without systemic reflection or change. See generally Steven T. Taylor, *Recession Sours Current State of the Profession and, Some Say, Its Future Even More*, OF COUNS., No. 5, May 2009, at 1; *Law School Costs out of Sync; Closures Predicted*, COMP. AND BENEFITS FOR L. OFFS., Dec. 2010; *Didactic Distress as Salary Cuts Hit Law Professors*, COMP. AND BENEFITS FOR L. OFFS., Sept. 2009 (illustrating the awareness of the serious issues faces legal education).

8 The NCBE has announced that the NextGen bar exam will be ready in 2025 or 2026. Given the mammoth task in creating and implementing an entirely new exam, this article assumes the implementation date will be 2026. That said, if the exam is ready in 2025, the students affected will include part-time students starting law school this academic year and all full-time students starting law school in the fall of 2022. In addition, although the details of the new exam's rollout have not yet been announced, students already enrolled in law schools across the country today could face the new bar exam if they fail the exiting bar exam the first time they take it, or delay taking the exam until after the new exam is adopted.

The diverse constituents of the legal academy, from administrators to faculty, from bar-readiness professors to contracts professors, from skills programs to curriculum committees, should be abuzz with conversations about the implications of the forthcoming new bar exam and should have already started, in earnest, to think about how to adapt to prepare future generations of students to succeed on the exam for both student success and to ensure continued compliance with the ABA accreditation standards.⁹ Unfortunately, the halls of the legal academy seem eerily quiet.

On the one hand, the year 2025 seems like a time in the distant future, but any sense of “plenty of time” between now and then is an illusion. As Alex’s letter illustrates, part-time law students who matriculate in 2022 (the class admissions departments will admit during the coming academic year) and full-time students who matriculate in 2023 will likely take the NextGen bar exam—an exam for which today’s law school curriculum and bar-preparation courses have not been designed to prepare students. Given this reality, some law schools may feel a sense of panic (some may believe that, as with the recession, legal education as we know it is over). Other law schools may have the urge to wait and see how the NextGen bar exam fully develops and adapt only as absolutely necessary over time. But this new reality calls for swifter and more decisive change in legal education. Law schools must abandon their traditional tendencies to adapt to change at only a glacial pace and, instead, do as their clinicians teach their students to do: plan, do, reflect, repeat.¹⁰ Moreover, law schools must begin this process swiftly to account for the multiple steps required to enact even uncontroversial curricular changes at law schools¹¹ and in light of the reality that curricular changes are not retroactive.

- 9 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 316 (Am. Bar Ass’n 2020) [hereinafter Standard 316]. On May 17, 2019, the Council of the ABA Section of Legal Education and Admissions to the Bar approved a major change in the bar passage standard, Standard 316, that would require seventy-five percent of a law school’s graduates who sit for the bar to pass it within two years. Gregory G. Murphy, *Revised Bar Passage Standard 316: Evolution and Key Points*, 88 THE BAR EXAM’R, no. 2, 2019, at 21–23. The change took effect immediately, although schools falling short of the standard had at least two years to come into compliance. *Id.*
- 10 See generally Kimberly E. O’Leary, *Evaluating Clinical Law Teaching—Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 491, 510 (2002); Meredith Heagney, *Plan, Do, Reflect: Clinical Teaching at the Law School*, UNIV. OF CHI. L. SCH. (Apr. 22, 2013), <https://www.law.uchicago.edu/news/plan-do-reflect-clinical-teaching-law-school> [<https://perma.cc/9X9F:JTRC>]; Nancy M. Maurer & Liz Ryan Cole, *Design, Teach and Manage: Ensuring Educational Integrity in Field Placement Courses*, 19 CLINICAL L. REV. 115, 145–46 (2012).
- 11 Although law schools’ processes vary some from institution to institution, changing law school curricula is a slow and multistep process. For example, if a law school wants to add a new course to its curriculum, someone must first draft a formal proposal to add a new course. The law school’s curriculum committee reviews that proposal and, after deliberation, either sends it back to the drafter for revisions or approves it and sends it on to the faculty for a full vote. The faculty then reviews and votes on the new course. If approved, at many law schools that are part of larger university systems, the new course must be approved by the institutional curriculum committee. Given scheduling realities, it can often take an academic

In other words, law schools must make the adjustments they can anticipate today so those changes are in place before students who will take the NextGen bar exam start walking their law school halls.

This article 1) explores why, based on the tie between the curriculum and the existing bar exam, the wait-and-see approach to the NextGen bar exam is ill-advised, and 2) provides the tools needed for law schools to begin discussions that will serve as a springboard for both short- and longer-term curricular change. Section I of this article orients the reader to the debate over the existing bar exam and explores the basis for the creation of the NextGen bar exam. Section II sets out the structure of the existing bar exam. With that context in mind, Section III identifies the three emerging ways law schools seem to be adapting their curricula—or not—to prepare law students for this existing exam. Section IV introduces the NextGen bar exam, highlighting how it will differ from the existing bar exam substantively and structurally. Finally, Section V suggests a number of ways—even without a specific NextGen bar exam prototype—law schools can begin to rethink their current curricular and assessment practices in response to and in preparation for the NextGen bar exam’s forthcoming implementation.

I. The Rationale for the Move from the Existing Bar Exam to the NextGen Bar Exam

The pièce de résistance of three or four often grueling years of law school and the final hurdle to clear before acquiring licensure to practice law is the bar exam.¹² Although it has evolved over time and its content and precise format are jurisdiction specific, the purpose of the bar exam in all jurisdictions remains the same: to ensure that law school graduates who receive law licenses demonstrate the minimum level of competency needed to practice law.¹³ Even given its gatekeeping purpose, the utility of administering a bar exam—any form of bar exam—has been debated since the 1970s, when the NCBE first

year for a new course to progress from the idea stage to full approval. For complex changes involving multiple adjustments, the deliberation and compromise required at each step slow down the process of approval even more.

¹² Although historically adopted more broadly, Wisconsin is the only state that still offers the diploma privilege, which allows in-state law school graduates to become lawyers without sitting for the bar. See George Neff Stevens, *Diploma Privilege, Bar Examination or Open Admission: Memorandum Number 13*, 46 THE BAR EXAM’R, 1977, at 15, 17. In addition, a handful of states have allowed for either limited practice or a limited diploma privilege as an emergency response to the 2020 Covid-19 restrictions that affected students’ abilities to prepare for and take the bar exam. Derek T. Muller, *Diploma Privilege, July Bar Exam Administration, and Law School Employment Outcomes*, EXCESS DEMOCRACY (Apr. 22, 2021), <https://excessofdemocracy.com/blog/2021/4/diploma-privilege-july-bar-exam-administration-and-law-school-employment-outcomes> [<https://perma.cc/5CPU-YZW4>]. These recent adjustments to the bar exam requirement, however, are just temporary.

¹³ See Sabrina DeFabritiis & Kathleen Elliott Vinson, *Under Pressure: How Incorporating Time-Pressured Performance Tests Prepares Students for the Bar Exam and Practice*, 122 W. VA. L. REV. 107, 110 (2019).

administered the Multistate Bar Examination (MBE),¹⁴ if not since 1763, when the then-colony of Delaware administered the first version of the exam as an oral examination before a sitting judge.¹⁵ Regardless of when the debate began, the general parameters of the two sides of the bar debate as of 2021 are fairly set in stone. Bar exam critics see the exam as a scheme intended to prevent economic competition for established attorneys and, as such, exclude from the practice women, people of color, religious minorities, and immigrants.¹⁶ On the other side of the debate, proponents of the bar exam deem it a necessary gatekeeper for the profession, designed to protect the public from subpar attorneys who might eke through law school but fail to meet the professional standards necessary to ensure attorneys are people qualified to be trusted with the livelihoods, families, estates, and investments of others.¹⁷

This debate over the bar exam's utility has led scholars and academics to propose a wide variety of changes to the exam over the years, even going as far as to suggest the abolition of the bar exam in exchange for a return to a diploma privilege.¹⁸ In response to this escalating debate and, possibly, in

- 14 Margo Melli, *Passing the Bar: A Brief History of Bar Exam Standards*, 21 U. WIS. L. SCH. F. GARGOYLE 3, 3-4 (1990).
- 15 Stuart Auerbach, *Bar Examination*, THE WASH. POST (July 24, 1977), <https://www.washingtonpost.com/archive/local/1977/07/24/bar-examination/6728cbdf-a637-4b96-abd5-c6e84628edbb/> [https://perma.cc/T292-FPNN].
- 16 Cassandra Burke Robertson, *How Should We License Lawyers?*, 89 FORDHAM L. REV. 1295, 1299-302 (March 2021); Jane E. Cross, *The Bar Examination in Black and White: The Black-White Bar Passage Gap and the Implications for Minority Admissions to the Legal Profession*, 18 NAT'L BLACK L.J. 63, 63-64 (2004-2005); Nicci Arete, *The Bar Exam's Contribution to Systemic Inequalities in Access to Justice Around the World*, 30 WASH. INT'L L.J. 324, 341-58 (2021); Johanna Miller, *COVID Should Prompt Us to Get Rid of New York's Bar Exam Forever*, ABOVE THE L. (July 31, 2020), <https://abovethelaw.com/2020/07/covid-should-prompt-us-to-get-rid-of-new-yorks-bar-exam-forever> [https://perma.cc/G63J-6KEZ]; Daniel R. Hansen, *Do We Need the Bar Examination—A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RESV. L. REV. 1191, 1219-22 (1995). Its exclusionary nature is not the only critique scholars levy against the bar exam; for example, other scholars have argued that the existing bar exam fails to measure whether graduates are, in fact, prepared to practice law and that success on the existing bar exam turns on an examinee's ability to pay for expensive supplemental bar-review programming. Andrea A. Curcio, Carol L. Chomsky & Eileen Kaufman, *How to Build a Better Bar Exam*, 90 N.Y. STATE BAR ASS'N J. 37, 37-38 (Sept. 2018) (critiquing the tie between the existing bar exam and practice readiness); Lorenzo A. Trujillo, *The Relationship between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 78-85 (2007) (identifying a number of critiques of the bar exam, including the fact that success on the exam is tied to examinees' ability to pay for expensive bar-review courses).
- 17 Max Hyams, *Getting Rid of Bar Exams Won't Help Anyone*, QUILLETTE (Aug. 8, 2020), <https://quillette.com/2020/08/08/getting-rid-of-bar-exams-wont-help-anyone> [https://perma.cc/83DD-LSV9].
- 18 Jessica Williams, *Abolish the Bar Exam*, CALIF. L. REV. BLOG (Oct. 2020), <https://www.californialawreview.org/abolish-the-bar-exam> [https://perma.cc/CTL6-GEKD]; Leanne R. Fuith, *Is there a better way to admit lawyers? The future of the bar exam needs a hard look*, LEXBLOG (Dec. 6, 2021), <https://www.lexblog.com/2021/12/06/is-there-a-better-way-to-admit-lawyers-the>

response to questions regarding the quality, reliability, and validity of the exam, the NCBE recently decided to reevaluate its existing bar exam. In January 2018, the NCBE created the Testing Task Force (TTF) to “ensure that the bar examination continues to test the knowledge, skills, and abilities needed for competent entry-level legal practice in a changing profession.”¹⁹

The TTF, after a three-phase, three-year study, published its Final Report in April 2021, recommending substantial changes to ensure the bar exam continues to fulfill its purposes of “protect[ing] the public” and ensuring that newly licensed attorneys have “knowledge and skills” common to numerous practice areas and typically required for an entry-level lawyer.²⁰ The TTF’s recommended changes to the existing bar exam, already approved by the NCBE,²¹ touch on all aspects of the currently administered test, including changes to the exam’s (1) structure and format, (2) scoring, (3) content, and (4) implementation.²² Broadly speaking, unlike the existing bar exam, the TTF’s proposed NextGen bar exam will not “attempt to assess knowledge and skills unique to discrete practice areas” but will instead “assess knowledge and skills that are of foundational importance to numerous practice areas.”²³ More importantly, the NextGen bar exam will move its focus from strictly knowledge to the “foundational knowledge *and* skills required to help ensure public protection.”²⁴ In other words, the NextGen bar exam will move from focusing on the doctrinal underpinnings of the law to testing an examinee’s ability to use skills needed “to be successful practicing attorneys.”²⁵ To understand fully the implications of the substantial changes proposed by the TTF and NCBE, one must first fully understand the format and substance of the existing bar exam.

future-of-the-bar-exam-needs-a-hard-look/ [https://perma.cc/69RH-VFWU].

19 TESTING TASK FORCE OF THE NAT’L CONF. OF BAR EXAM’RS, FINAL REPORT OF THE TESTING TASK FORCE 2 (Nat’l Conf. of Bar Exam’rs 2021) <https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf> [hereinafter FINAL REPORT].

20 *Id.* at 20.

21 NCBE Board of Trustees Votes to Approve Testing Task Force Recommendations, THE BAR EXAM’R (Jan. 28, 2021), <https://thebarexaminer.org/latest-news/ncbe-board-of-trustees-votes-to-approve-testing-task-force-recommendations> [https://perma.cc/G7ZU-33TY].

22 FINAL REPORT, *supra* note 19, at 20–23.

23 *Id.*

24 *Id.* at 1 (emphasis added). See also Karen Sloan, *Modernized Bar Exam Gets the Green Light*, LAW.COM (Jan. 28, 2021), <https://www.law.com/2021/01/28/modernized-bar-exam-gets-the-green-light> [https://perma.cc/GB6Q-67AY].

25 Marilyn Odendahl, *Work Beginning to Create ‘Next Generation’ Bar Exam*, THE IND. LAW. (Mar. 3, 2021), <https://www.theindianalawyer.com/articles/work-beginning-to-create-next-generation-bar-exam> [https://perma.cc/56YD-HR3E].

II. Understanding the Existing Bar Exam

Today, the vast majority of states have adopted the Uniform Bar Examination (UBE) as their attorney licensing exam,²⁶ an exam administered by the NCBE.²⁷ The UBE is a three-component exam administered over two days comprising the MBE, the Multistate Essay Examination (MEE), and two Multistate Practice Tests (MPTs).²⁸ Some jurisdictions that administer the UBE also require examinees to take an additional jurisdiction-specific component of the exam.²⁹ Of the twelve states that have not adopted the UBE, all but one—Louisiana—administer the MBE portion of the UBE exam.³⁰ Each of the three parts of the UBE exam is slightly different from the others, and only when all three components—the MBE, MEE, and MPT—are taken together does the exam test the skills and knowledge that the NCBE views as essential for competent entry-level practice.³¹

A. The MBE Component of the Existing Bar Exam

The MBE is a six-hour, 200-question³² multiple-choice exam administered as part of the bar examination in forty-nine states and the District of

26 To date, thirty-eight states and the District of Columbia have adopted the UBE. *Jurisdictions That Have Adopted the UBE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/ube> [<https://perma.cc/FHD6-C6TN>] [hereinafter *UBE Jurisdictions*]. The states that continue to administer non-UBE examinations are California, Delaware, Florida, Georgia, Hawaii, Louisiana, Michigan, Mississippi, Nevada, South Dakota, Virginia, and Wisconsin. *Id.* Of those states, Wisconsin is the only state that offers admission through the diploma privilege. See, *supra*, note 22.

27 AM. BAR ASS'N, *supra* note 2.

28 *UBE Jurisdictions*, *supra* note 26. Note that, in addition to the UBE or jurisdiction-specific bar examination, forty-nine states and the District of Columbia (the only exception being Wisconsin) require that examinees pass the Multistate Professional Responsibility Examination (MPRE) in addition to the jurisdiction's bar examination before admission to the bar. *Jurisdictions Requiring the MPRE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mpre> [<https://perma.cc/2A3T-LQKK>].

29 *UBE Jurisdictions*, *supra* note 26. Currently Alabama, Arizona, Kentucky, Maryland, Massachusetts, Missouri, Montana, New Mexico, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas, and Washington all have a jurisdiction-specific requirement in addition to the UBE before admission. *Local Components*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/ube/score-portability/local-components/> [<https://perma.cc/BD6J-76N4>].

30 *Jurisdictions Administering the MBE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mbe> [<https://perma.cc/8WRA-MZVH>] [hereinafter *MBE Jurisdictions*].

31 See *Understanding the UBE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/pdfviewer/?file=%2Fdmtdocument%2F209> (noting that the three-part UBE “tests knowledge of general principles of law, legal analysis and reasoning, factual analysis, and communication skills to determine readiness to enter legal practice in any jurisdiction”).

32 Of the 200 questions that comprise the MBE, 175 are scored and twenty-five constitute pretest questions; the scored and pretest questions are indistinguishable to examinees. *Preparing for the MBE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mbe/preparing> [<https://perma.cc/P97H-B8RS>].

Columbia.³³ The MBE exam consists of twenty-five unscored pretest questions and twenty-five scored questions related to each of the following seven tested subject areas: civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts.³⁴ Although coverage for the MBE is seemingly limited given that it covers only seven subject areas, the scope of legal knowledge required for the MBE is extensive, as evidenced by the NCBE's eight-page list of subtopics covered by the MBE.³⁵ For states that administer the UBE, the MBE accounts for fifty percent of each examinee's total UBE score.³⁶

Although known mostly for its testing of an examinee's legal knowledge, the MBE also tests an examinee's reading comprehension and legal reasoning skills.³⁷ The MBE is often described as the anchor of the bar exam because of its impact on an examinee's overall bar exam score as well as the time allocated to it during bar exam administration.³⁸

B. The MEE Component of the Existing Bar Exam

The MEE is three hours in duration and includes six thirty-minute essay questions.³⁹ The MEE questions test a broader set of subject areas than the MBE; in addition to testing the subject areas covered by the MBE (civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts), MEE questions also cover business associations (agency and partnership; corporations and limited liability companies), conflicts of law, family law, trusts and estates (decedents' estates; trusts and future interests), and Article 9 (secured transactions) of the Uniform Commercial Code.⁴⁰ Similar to the deceptively limited subject-matter list of the MBE, the scope of knowledge required for the MEE is much more extensive than suggested by the subject-matter coverage list, as evidenced by

33 *MBE Jurisdictions*, *supra* note 30. As noted above, the only state that does not administer the MBE is Louisiana. *Id.*

34 *Id.*

35 *MBE Subject Matter Outline*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mbc/preparing/> (under the heading titled "Subject Matter," click the link titled "MBE Subject Matter Outline") [<https://perma.cc/PB88-695F>].

36 *MBE Jurisdictions*, *supra* note 30.

37 *Id.*

38 Christina Shu Jien Chong, *Battling Biases: How Can Diverse Students Overcome Test Bias on the Multistate Bar Exam*, 18 U. MD. L. J. RACE, RELIG., GENDER & CLASS 31, 88 (noting that "[b]ecause scores are equated, the MBE provides an anchor for other, more subjective test scores; the National Conference of Bar Examiners recommends that scores on essay examinations and performance tests be scaled to the MBE.").

39 *Jurisdictions Administering the MEE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mee> [<https://perma.cc/3RGC-NWW6>].

40 *Preparing for the MEE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mee/preparing> [<https://perma.cc/93TH-JUK3>].

the NCBE's thirteen-page list of subtopics covered by the MEE.⁴¹ Adding to the MEE's difficulty, often a single MEE question simultaneously tests an examinee's memory and knowledge of the law in multiple subject areas, such as civil procedure and torts.⁴²

In addition to its broader and often-entangled doctrinal coverage, the MEE's essay format allows it to test skills separate from those tested by the MBE, namely an examinee's ability to communicate in writing.⁴³ Although the NCBE provides guidance to jurisdictions on how to score an examinee's essay responses,⁴⁴ each jurisdiction is responsible for grading all examinee responses within its jurisdiction.⁴⁵ Unlike the often-employed and pedagogy-driven approach to assessing essays and other written assignments by using detailed multiline rubrics, MEE answers are graded holistically on a scale of one to six.⁴⁶ This holistic approach means that an examinee's responses are compared with those of examinees in the same sitting, rather than assessing an examinee's particular success in capturing each of the legal principles and facts at issue.⁴⁷ For states that administer the UBE, the MEE accounts for thirty percent of each examinee's total UBE score.⁴⁸

C. The MPT Component of the Existing Bar Exam

The MPT is a ninety-minute test during which an examinee must complete a commonly performed written lawyering task—such as drafting a memo, a contract, a letter, or a brief⁴⁹—using the law and factual information provided in the MPT's library.⁵⁰ Unlike the MBE and MEE, which are primarily designed to test an examinee's memory and knowledge of the law, the MPT component of the bar exam is designed to test whether examinees can demonstrate the

41 *MEE Subject Matter Outline*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mee/preparing/> (under the heading titled "Subject Matter," click the link titled "MEE Subject Matter Outline") [<https://perma.cc/LU36-KHAC>].

42 *Preparing for the MEE*, *supra* note 40.

43 *Id.*

44 Judith A. Gundersen, *It's All Relative—MEE and MPT Grading, That Is*, 85 THE BAR EXAM'R, no. 2, June 2016, at 37-45 (providing detailed information about how the NCBE works to regularize grading done by the various administering jurisdictions).

45 *Jurisdictions Administering the MEE*, *supra* note 39.

46 Marsha Griggs, *Building a Better Bar Exam*, 7 TEX. A&M L. REV. 1, 33-34 (2019).

47 *Id.*

48 *Jurisdictions Administering the MEE*, *supra* note 39.

49 *See Looking for a Multistate Performance Test (MPT) Frequency Chart?*, JD ADVISING, <https://www.jdadvising.com/mpt-frequency-chart> [<https://perma.cc/7Z88-WX63>] (detailing the most often tested tasks on the MPT in recent years).

50 *Jurisdictions Administering the MPT*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mpt> [<https://perma.cc/SX26-ZACS>].

“fundamental lawyering skills” that the NCBE thinks all entry-level lawyers should have regardless of their planned area of practice.⁵¹

The MPT requires an examinee to parse assignment instructions set forth in a “task memo” to understand the parameters of the task an examinee is being asked to complete; wade through various source documents, such as depositions, letters, police reports, pleadings, e-mails, medical records, and contracts; and then complete the requested task by applying the law provided (typically statutes, regulations, cases or rules) to the legally relevant facts.⁵² The MPT tests an examinee’s proficiency in six separate skill categories seen as fundamental for any entry-level lawyer: (1) problem-solving; (2) legal analysis and reasoning; (3) factual analysis; (4) communication; (5) organization and management of a legal task; and (6) recognizing and resolving ethical dilemmas.⁵³

Jurisdictions that administer the UBE administer two ninety-minute MPT tasks, and those two MPTs together comprise twenty percent of each examinee’s total UBE score.⁵⁴ Other non-UBE jurisdictions that administer the MPT can opt to include either one or two MPT tasks.⁵⁵ Similar to the MEE portion of the exam, the MPT is not graded by the NCBE but is, instead, graded by each jurisdiction with guidance from the NCBE.⁵⁶

D. Scoring of the Existing Bar

Sweeping with a broad brush, the MBE and MEE components of the existing bar exam are designed to test an examinee’s knowledge of legal principles through both multiple-choice (the MBE) and essay (the MEE) questions, while the MPT is designed to test an examinee’s ability to use lawyering skills when provided with the law or doctrine and facts at issue.⁵⁷ With the rise of the UBE and, thus, the move away from state-specific-bar-exam content,⁵⁸ the

⁵¹ *Id.*

⁵² *Preparing for the MPT*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/mpt/preparing> [<https://perma.cc/3V8U-KH9H>].

⁵³ *Id.* Likely by design, these six tested practice skills comprise six of the ten skills identified as central for an entry-level practicing attorney in the 1992 MacCrate Report. *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, [hereinafter “MacCrate Report”].

⁵⁴ *Jurisdictions Administering the MPT*, *supra* note 50.

⁵⁵ *Id.*

⁵⁶ Gundersen, *supra* note 44.

⁵⁷ *See* Defabritiis & Vinson, *supra* note 13.

⁵⁸ Griggs, *supra* note 46, at 15–16 (noting that early versions of the UBE, and in pre-UBE iterations of the bar exam, the essay component of the exam allowed jurisdictions flexibility to use any or none of the NCBE’s proposed essay questions and, in addition to that flexibility, jurisdictions were free to add jurisdiction-specific essay questions to the exam).

legal knowledge tested through the MBE and MEE constitutes knowledge of “generally accepted principles of common law” rather than rules of law that are specifically applicable in the jurisdiction where an examinee plans to practice.⁵⁹ In other words, the UBE, while touting its role as a gateway exam ensuring all attorneys have the basic knowledge of the law necessary for entry-level practice, actually tests only an examinee’s knowledge of a body of law applicable to no jurisdiction.⁶⁰

When tallying each examinee’s score on its present 400-point scale, the NCBE weights the MBE score fifty percent, the MEE score thirty percent, and the MPT score twenty percent.⁶¹ Given the relative weights of the three parts of the UBE exam, and accounting for the small overlap in the skills tested by each part, the majority of each examinee’s score turns on an ability to memorize and then successfully recall law, while only a minority turns on the ability to follow instructions, engage in legal and factual analysis, and complete a legal task based on law and facts provided to an examinee. The NCBE scores the MBE portion of the bar exam and then scales the jurisdiction-scored MPT and MEE portions to the MBE-scored portion to determine each examinee’s UBE total score. To scale the MEE and MPT scores to the MBE, the NCBE “statistically adjusts a jurisdiction’s raw scores on the written components of the bar exam (the MEE and the MPT) so that collectively they have the same mean and standard deviation as the jurisdiction’s scaled MBE scores.”⁶²

Importantly, this scaling does not mean that an examinee who is good at writing and poor at multiple choice is disadvantaged. Instead, scaling maintains the relative performance on each component of the exam—that is, it “does not change the rank-ordering of examinees on either test”—and yields adjusted scores on each component to ensure examinees are evaluated fairly from one administration of the UBE to the next, regardless of the difficulty of the written questions on a given exam.⁶³ Although the NCBE does the scaling and final scoring of the UBE, jurisdictions individually set for their own state the minimum passing score, which ranges from 260 to 280 out of 400.⁶⁴

59 *Id.*

60 In some instances, the “established common law” content-based testing of the UBE means that UBE requires an examinee to memorize and apply law that is directly contrary to the law of the jurisdiction in which the examinee is sitting for the bar. For example, consider family law, which is an MEE-tested subject. The MEE tests an examinee’s knowledge of generally accepted principles of family law. Family law, however, is nuanced and, while broad principles and concepts are common—for example, the recognition of common-law marriage—the specific legal rules governing the ins and outs of those principles and concepts vary in significant ways from jurisdiction to jurisdiction. *See* Griggs, *supra* note 46, at 32–33 (discussing this very problem in the context of joint tenancy).

61 *UBE Scores*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/ube/scores> [<https://perma.cc/YE5P-MB7D>].

62 *The Testing Column: Scaling Revisited*, 89 THE BAR EXAM’R, no. 1, 2020, at 68–75.

63 *Id.* at 69–72.

64 Of the fifty states, the minimum passing score to practice in the jurisdiction is highest in

III. The Connection Between the Existing Bar Exam and Current Law School Curriculum

Two things are true: Nearly all law school graduates must pass a bar exam to become licensed attorneys,⁶⁵ and all students must complete their legal education—completing all courses required by their institutions—to become law school graduates and, thus, be eligible to sit for the bar exam. Based on these two truths, it seems obvious that law school curricula and success on the bar exam would be at least loosely intertwined.⁶⁶ Nevertheless, law school curricula vary from institution to institution, and this variability includes how law schools use—or opt not to use—their curriculum, either unabashedly or implicitly, to prepare students for law school’s final “final exam”: the bar exam.⁶⁷

Despite this broad variability, scholars have identified a few common trends regarding how law schools see the connection between their curricula and the bar exam. In fact, Professor Catherine Carpenter’s 2010 survey of law school curricula⁶⁸ sought to do exactly this: to identify systematically the trends in

Alaska, at 280, and lowest in Alabama, Minnesota, Missouri, New Mexico, and North Dakota, at 260. *Minimum Passing UBE Score by Jurisdiction*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/ube/score-portability/minimum-scores> [<https://perma.cc/T3EX-S2UP>]. Alabama, Minnesota, Missouri, New Mexico, and North Dakota require the lowest minimum passing UBE score of 260. *Id.*

- 65 Wisconsin offers a diploma privilege in lieu of taking the bar exam and, as such, is the only exception to this statement. Wisconsin’s diploma privilege is limited on its face, extending the privilege only to students who graduate from either of the two ABA-accredited schools in Wisconsin and requiring that students complete courses in a number of specified areas:

Not less than 30 of the 60 semester credits shall have been earned in regular law school courses in each of the following subject matter areas: constitutional law, contracts, criminal law and procedure, evidence, jurisdiction of courts, ethics and legal responsibilities of the legal profession, pleading and practice, real property, torts, and wills and estates.

Wis. Sup. Ct. R. 40.3.

- 66 This statement does not mean that from a foundational standpoint legal education should have to adjust curriculum to match whatever the NCBE decides to test on the bar exam. After all, if the initial bar exams were tailored to law school practices, presumably because law schools knew best, why are law schools now content to let someone else tell them what is best? That said, given the realities of law school curricula and the impending NextGen bar exam, this discussion accepts the relationship as it is today and saves the “should it be that way” debate for a later time.

- 67 Reports detailing how law schools design and implement their curricula—required courses, elective courses, and extracurricular graduation requirements—remain few. In 2010, the ABA Section of Legal Education and Admissions to the Bar conducted a comprehensive survey of law school curricula that showed “how law schools have responded both to a changing legal job market and to increased competition” by making changes to their curricula. Mark Hansen, *US Law Schools Expanding Clinical, Professionalism Offerings, Survey Shows*, ABA J. (July 15, 2012, 4:20 PM), https://www.abajournal.com/news/article/us_law_schools_expanding_clinical_professionalism_offerings_survey_shows [<https://perma.cc/A28Z-ZFM8>].

- 68 See generally A SURVEY OF LAW SCHOOL CURRICULA 2002–2010 at 100, 106–115 (Catherine

law school curricula and to determine how law school curricula had changed (if at all) in response to recent changes to the bar, law school admissions, bar passage rates, and practice.⁶⁹

Professor Carpenter's survey found that the core doctrinal courses required during the first year of law school—torts, real property, criminal law, contracts, civil procedure, and constitutional law⁷⁰—remain fairly consistent across law school curricula. However, experts in the field argue that this consistency is not likely tied to law schools' desire to maximize bar success for their students; instead, the inclusion of these core required courses likely originates from the Langdellian approach⁷¹ to law school education, introduced nearly half a century before the creation of the MBE exam. In fact, in light of the timing, it is likely that the NCBE decided to test those core subjects on the MBE in part because of their importance to the development of legal education in the United States. In other words, for the core 1L courses, the bar exam was designed to mirror the existing curriculum, not vice versa.

Similarly, the 2010 survey found that law schools' decisions to require upper-level doctrinal classes tested on the bar exam—such as evidence and constitutional law⁷²—did not seem driven by the fact they were tested on the bar exam:

[T]here is no statistical evidence to suggest that the “bar factor” drove law school curricular decision making on which upper-division courses to require for graduation. The fact that a particular subject was tested on the state bar examination may have served as the impetus for an individual law school to require the course, but on the whole, it did not appear to be the primary motivation to require the course for graduation.⁷³

Despite this stated irrelevance of the “bar factor,” the 2010 survey identified two ways in which the bar exam impacts curricular decisions outside of the required doctrinal curriculum. First, the study found that following the ABA's repeal of Interpretation 302-7 of Standard 302,⁷⁴ which, before its repeal, prohibited law schools from awarding credit toward graduation for bar-preparation courses, forty-nine percent of law schools offered bar-preparation courses for credit.⁷⁵ In most instances, these for-credit bar-preparation courses

Carpenter ed., 2012) [hereinafter SURVEY OF LAW SCHOOL CURRICULA].

69 Catherine L. Carpenter, *Recent Trends in Law School Curricula: Findings from the 2010 ABA Curriculum Survey*, 81 THE BAR EXAM'R, no. 2, June 2012, at 9.

70 See generally SURVEY OF LAW SCHOOL CURRICULA, *supra* note 68.

71 See MARGARET Z. JOHNS & REX R. PERSCHBACHER, THE U.S. LEGAL SYSTEM: AN INTRODUCTION, 9-11 (2002).

72 While many law schools require constitutional law as a first-year course, some law schools do not require it until the second or third year.

73 Carpenter, *supra* note 69, at 9.

74 *Id.*

75 *Id.*

consisted of nonrequired elective courses that counted toward the number of credits students needed for graduation.⁷⁶

Second, the study found that law schools were offering more skills courses in 2010 than in the past. In fact, according to the 2010 study, forty-three percent of all surveyed schools offered five or six units of first-year legal writing instruction and fifty percent of law schools offered ten or more skills-related course offerings.⁷⁷ The study tied this increase in skills course offerings not to the bar exam itself but, instead, to law schools' desire to prepare students for practice. However, the increasing administration of the MPT across multiple jurisdictions between 1997 and 2010 suggests there is likely some connection between the increase in skills instruction and the MPT component of the bar exam.⁷⁸ After all, when the NCBE adjusted the existing bar exam to include the assessment of entry-level lawyering skills by adding in the MPT, the exam itself—and preparation for the exam—necessarily became more closely tied to preparing law students for doing the work of lawyers.⁷⁹ In other words, developing a curriculum that is tied to the skills tested on the bar exam is, in effect, also developing a curriculum designed to prepare students for practice—after all, it is the NCBE's stated goal for the bar exam to test whether examinees have competence in the basic skills and knowledge needed for entry-level lawyering.⁸⁰

Professor Carpenter's 2010 survey has not been updated. In the decade since it was published, however, there have been many changes to legal education and to law school curricula. A review of the curricula of eight law schools across the country from varied tiers of the U.S. News & World Report rankings today supports some of the 2010 study's findings while suggesting that some of the trends that Professor Carpenter's study highlighted—such as the decline in required courses and the uptick in robust elective offerings—may be changing or may turn on a particular school's bar-passage success.

76 *Id.* at 8.

77 *Id.* at 9.

78 This statement does not purport to suggest a direct causal relationship between the inclusion of the MPT and the increase in skills courses in law school curricula. Instead, it is the addition of the NCBE's move to add the MPT to the existing bar exam together with other factors, such as the publication of the MacCrate Report, that contributed to the growth of skills courses in law school curricula.

79 Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course*, 38 NEV. L. REV. 32, 40 (2002).

80 See *Tyler v. Vickery*, 517 F.2d 1089, 1002 (5th Cir. 1975) (acknowledging the bar exam's purpose as an exam testing minimal competence to practice law).

Table 1: The Required Curriculum of Eight Law Schools⁸¹

Law School	U.S. News & World Report Ranking (2022) ⁸²	Doctrinal Curricular Requirements (parenthetically noting credit hours associated with each course)	Bar Prep-Related Curricular Requirements	Skills Course-Related Curricular Requirements	First-Time Bar Passage (2020) (parenthetically noting 2018 ultimate bar passage) ⁸³
New York University School of Law ⁸⁴	Top 10 (#6)	Contracts (4) Procedure (5) Torts (4) Legislature and Regulatory State (4) Criminal Law (4) Qualifying Professional Responsibility course (2+)	None	Lawyering (writing, research, and advocacy) (5) Upper-level substantial writing course Experiential courses (6)	98.00% (98.89%)
University of Southern California Gould School of Law ⁸⁵	Top 25 (#19)	Constitutional Law: Structure (3) Contracts (4) Criminal Law (3) One Legal Ethics course (3) Procedure (4) Property (4) Torts (4)	None	Legal Research, Writing, and Advocacy (5) Upper-division writing requirement (various) Upper-division experiential learning requirement (6)	92.18% (92.96%)

81 Table 1 was created using a random sampling of law schools from a variety of tiers and regions of the United States. In a few instances, the first school randomly selected to represent a tier or region was not included in the table because the website for that school was so difficult to navigate that the curricular requirements could not be discerned with any degree of confidence.

82 2022 Best Law Schools, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Aug. 5, 2021).

83 The bar passage data for all ABA-accredited law schools is available at www.abarequireddisclosures.org. 509 Required Disclosures, AM. BAR ASS'N, www.abarequireddisclosures.org [<https://perma.cc/HF25-8PM3>].

84 New York University School of Law is a law school in New York, a state that administers the UBE. *New York*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/jurisdiction-information/jurisdiction/ny> [<https://perma.cc/4EUR-6NFU>]. NYU's curricular requirements for graduation are set forth on its web page. See generally *Degree Requirements*, N.Y. UNIV. SCH. OF L., <https://www.law.nyu.edu/academicservices/academic-policies/degree-requirements> [<https://perma.cc/5HXA-U4FG>].

85 University of Southern California Gould School of Law is a law school in California that administers the California bar exam. *California*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/jurisdiction-information/jurisdiction/ca> [<https://perma.cc/N6CL-W2KT>]. USC's curricular requirements for graduation are set forth on its web page. See generally *J.D. Degree Requirements—Juris Doctor (J.D.)*, USC GOULD SCH. OF LAW, <https://gould.usc.edu/>

Law School	U.S. News & World Report Ranking (2022) ⁸⁴	Doctrinal Curricular Requirements (parenthetically noting credit hours associated with each course)	Bar Prep-Related Curricular Requirements	Skills Course-Related Curricular Requirements	First-Time Bar Passage (2020) (parenthetically noting 2018 ultimate bar passage) ⁸⁵
University of Iowa College of Law ⁸⁶	Top 50 (#29)	Civil Procedure (4) Constitutional Law I (3) Contracts (4) Criminal Law (3) Property (4) Torts (4) Constitutional Law II (3) Qualifying Professional Responsibility course (3)	None	Introduction to Law and Legal Reasoning (1) Legal Analysis, Writing and Research I (2) Legal Analysis, Writing and Research II (3) Upper-level writing requirement Experiential courses (6)	93.6% (89.92%)
University of Houston Law Center ⁸⁷	Top 75 (#60)	Contracts (4) Procedure I (4) Torts (4) Constitutional Law (4) Property (4) Criminal Law (3) Statutory Interpretation and Regulation (3) Professional Responsibility (3)	None	Lawyering Skills & Strategies I (3) Lawyering Skills & Strategies II (2) Upper-level writing course (various) Experiential requirement (6)	86.06% (92.76%)

academics/degrees/jd/curriculum/requirements/ [https://perma.cc/DW53-F68R].

86 University of Iowa College of Law is a law school located in Iowa, a jurisdiction that administers the UBE. *Iowa*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/jurisdiction-information/jurisdiction/ia> [https://perma.cc/L8VD-J47A]. University of Iowa's curricular requirements for graduation are set forth on its web page. See generally *Courses and Curriculum*, IOWA COLL. OF L., <https://law.uiowa.edu/academics/courses-and-curriculum> [https://perma.cc/5G9Y-F4ND].

87 University of Houston Law Center is a law school located in Texas, a state that administers the UBE. *Texas*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/jurisdiction-information/jurisdiction/tx> [https://perma.cc/MBC7-P38Z]. University of Houston's curricular requirements for graduation are set forth in its student handbook. See generally *Student Handbook*, UNIV. OF HOUS. L. CTR., <https://law.uh.edu/jd/current/handbook.pdf> [https://perma.cc/9LUD-3FBN].

Law School	U.S. News & World Report Ranking (2022) ⁸²	Doctrinal Curricular Requirements (parenthetically noting credit hours associated with each course)	Bar Prep-Related Curricular Requirements	Skills Course-Related Curricular Requirements	First-Time Bar Passage (2020) (parenthetically noting 2018 ultimate bar passage) ⁸³
American University Washington College of Law ⁸⁸	Top 100 (#81)	Civil Procedure (4) Contracts (4) Torts (4) Constitutional Law (4) Criminal Law (3) Property (4) Criminal Procedure I (3) Legal Ethics (2-3)	None	Legal Rhetoric I (2) Legal Rhetoric II (2) Upper-level writing requirement Experiential or skills courses (6)	81.88% (84.07%)
New York Law School ⁸⁹	Top 125 (#119)	Civil Procedure (4) Contracts (4) Legislation and Regulation (1) Torts (4) Criminal Law (3) Property (4) Constitutional Law I (3) Constitutional Law II Corporations (4) Evidence (3) Qualifying Professional Responsibility course (3) 2-3 of the following: Family Law (3), Commercial Law (3), Criminal Procedure (3): Investigation, or Wills, Trusts & Estates (4)	Introduction to MBE/MPT (2 or 3) Introduction to MEE (for students who finish in the bottom 75% of 1L year) (3)	Advanced Legal Methods (2) Foundations for the Study of Law (1) Foundations for the Pursuit of Professionalism (1) Legal Practice I (3) Legal Practice II (4) Experiential courses (6) Writing requirement	78.79% (85.39%)

88 American University Washington College of Law is a law school located in Washington, D.C., a jurisdiction that administers the UBE. *District of Columbia*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/jurisdiction-information/jurisdiction/dc> [<https://perma.cc/7TQW-HWXB>]. American University's curricular requirements for graduation are set forth on its web page. See generally *Curriculum*, AM. UNIV. WASH. COLL. OF L. <https://www.wcl.american.edu/school/admissions/jd/curriculum> [<https://perma.cc/JL93-Q3SA>].

89 New York Law School (NYLS) is a law school located in New York, a state that administers the UBE. *New York*, *supra* note 84. NYLS's curricular requirements for graduation are set forth on its web page. See generally *Curriculum and Requirements*, N.Y. L. SCH., <https://www.nyls.edu/academics/programs-of-study/jd/curriculum-and-requirements/> [<https://perma.cc/7TQW-HWXB>].

Law School	U.S. News & World Report Ranking (2022) ⁸²	Doctrinal Curricular Requirements (parenthetically noting credit hours associated with each course)	Bar Prep-Related Curricular Requirements	Skills Course-Related Curricular Requirements	First-Time Bar Passage (2020) (parenthetically noting 2018 ultimate bar passage) ⁸³
Suffolk University Law School ⁹⁰	Top 150 (#129)	Civil Procedure I (2) Civil Procedure II (2) Constitutional Law (4) Constitutional Law II (2) Contracts (2) Contracts II (3) Criminal Law (4) Property (2) Property II (2) Torts (4) Professional Responsibility (2)	Legal Analysis and Methods (academic warning students only, 2) Advanced Survey of Core Legal Principles (2) (for students with a GPA between 2.67-2.99 at the close of the first year) Complete Diagnostic Exam and Review Lecture (after 1 st year)	Legal Practice Skills I (3) Legal Practice Skills II (2) Upper-level writing (varies) Experiential courses (6)	78.85% (77.38%)

cc/5NM7-WNCD].

90 Suffolk University Law School is a law school located in Boston, Massachusetts, a state that administers the UBE. *Massachusetts*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/jurisdiction-information/jurisdiction/ma> [<https://perma.cc/8G8E-4Y2Z>]. Suffolk's curricular requirements for graduation are set forth on its web page. See generally *Curriculum & Requirements*, SUFFOLK UNIV. L. SCH., <https://www.suffolk.edu/law/academics-clinics/juris-doctor/curriculum-requirements> [<https://perma.cc/QSHg-D2HC>].

Law School	U.S. News & World Report Ranking (2022) ⁸²	Doctrinal Curricular Requirements (parenthetically noting credit hours associated with each course)	Bar Prep-Related Curricular Requirements	Skills Course-Related Curricular Requirements	First-Time Bar Passage (2020) (parenthetically noting 2018 ultimate bar passage) ⁸³
Barry University School of Law ⁹¹	Top #147-193)	Civil Procedure I & II (5) Contracts I & II (6) Criminal Law (3) Property I & II (5) Torts I & II (5) Business organizations (3) Commercial Law Overview (3) Constitutional Law (4) Criminal Procedure (3) Evidence (4) Florida Civil Practice (3) Professional Responsibility (3)	Capstone (3)	Legal Research and Writing I & II (6) Experiential courses (6) Upper-level writing course (varies) Skills component (1-6)	58.68% (67.26%)

Although somewhat oversimplified, the curricula of the law schools highlighted in Table 1 signal the development of three distinct approaches to the use of the curriculum to maximize student success on the bar exam: the laissez-faire approach; the teaching-to-the-test approach,⁹² and the hybrid approach.⁹³ Each of these approaches is described below.

91 Barry University School of Law is in Florida, a state that administers the MBE but has not adopted the UBE. *Florida*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/jurisdiction-information/jurisdiction/fl> [<https://perma.cc/M2HR-V5U9>]. Barry's curricular requirements for graduation are set forth on its web page. See generally *Graduation Requirements*, BARRY UNIV. - DWAYNE O. ANDREAS SCH. OF L., <https://www.barry.edu/law/future-students/academic-program/graduation-requirements.html> [<https://perma.cc/374X-AF9U>].

92 The verbiage "teaching to the test" is admittedly pejorative. The concept, however, is not meant to be anything but descriptive. After all, despite the negative connotations from No Child Left Behind, in legal education teaching to the bar exam is not necessarily a bad thing. Because the NCBE designed the existing bar exam to measure an examinee's competence in terms of skills and law needed for an entry-level attorney, teaching to the test is really the same thing as preparing students to practice law. That seems like an obvious if not a laudable outcome of legal education. See Ben Bratman, *Improving the Performance of the Performance Test: The Key to Meaningful Bar Exam Reform*, 83 UMKC L. REV. 565, 602-03 (2014).

93 These three approaches are not meant to be exhaustive. In fact, scholars have identified other nuanced versions of these three as part of the "panoply" of bar-teaching programs offered, including "intensive personal coaching, for-credit bar review courses, heavy load of required courses, state-focused course offerings, bar review focus throughout law school,

A. The Laissez-Faire Approach: Leave Bar Prep to Bar-Prep Companies

On one end of the curricular spectrum, law schools take a hands-off or laissez-faire approach to bar preparation. Law schools taking this approach see their curriculum as a vehicle to teach students to “think like lawyers” through a limited set of core courses and then as a smorgasbord of options that students can tailor to their needs, interests, and personal schedules, within the confines of the ABA’s requirements. Law schools adopting the laissez-faire approach require first-year legal writing courses (as mandated by the ABA), but these law schools often allocate fewer required course hours for those classes than law schools not taking the laissez-faire approach. For example, the law schools in Table 1 that have the fewest required courses—NYU, USC, University of Iowa, University of Houston, and American University—allocate an average of 4.8 required course hours for first-year legal research and writing, whereas the law schools with a heavier required course load—New York Law School, Suffolk University, and Barry University—allocate an average of six required course hours to first-year legal writing and research.

Law schools taking the laissez-faire approach to curricular design do not dabble directly in bar preparation. Instead, these schools leave explicit teaching of bar-related doctrine and skills to students to learn on their own, to learn in elective courses (where offered), or to learn from bar-preparation companies.⁹⁴ Although many of these law schools require the majority of the courses covered by the MBE—torts, contracts, criminal law, civil procedure, constitutional law, and property—too many of these schools, the notion that these required core classes are being taught for the bar “has been one of the most insulting epithets that could be leveled against a law school.”⁹⁵ For law schools adopting the laissez-faire approach, abstractly teaching students to think like lawyers is the core work needed to prepare them for practice and for the bar exam.

B. The Teaching-to-the-Test Approach: Design Curricular Requirements and Assessments Across the Curriculum to Prepare Students for the Bar Exam in Addition to Using Bar-Prep Companies to Fill Gaps

On the other end of the spectrum, while allowing students to select electives in areas of interest, law schools adopting the teaching-to-the-test approach require students to complete an extensive set of courses introducing all or

post-graduation bar exam boot camps, flagging and releasing at-risk law students, critical skills programs focused on analysis and writing, or collaboration with commercial bar review programs.” Aleatra P. Williams, *The Role of Bar Preparation Programs in the Current Legal Education Crisis*, 59 WAYNE L. REV. 383, 401 (2013).

94 This reality is evidenced by the dearth of required bar-related classes as well as the more limited number of bar preparation-related elective courses available at these schools. See Table 1, *supra*. See also, e.g., *Course Descriptions*, N.Y. UNIV. SCH. OF L., <http://its.law.nyu.edu/courses/index.cfm#searchResults2> [<https://perma.cc/3WDA-YMG4>].

95 Emmeline Paulette Reeves, *Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education*, 64 J. LEGAL EDUC. 645, 645 (May 2015).

most of the doctrinal areas and skills tested by the MBE, MEE, and MPT components of the bar exam. These law schools have a required curriculum carefully curated to maximize bar passage that begins in the first year with the core 1L doctrinal classes covered by the MBE—contracts, torts, property, criminal law, civil procedure, constitutional law, and criminal procedure (or constitutional law II). Unlike in schools taking the laissez-faire approach, the required curricula of schools that take the teaching-to-the-test approach do not end at the close of the 1L year. Instead, in those law schools students are required to take a number of upper-level doctrinal courses covering some, if not all, of the subjects tested on the MEE, including business associations, evidence, secured transactions, wills, trusts, and estates, and family law.

In addition to the extensive doctrinal requirements, law schools adopting the teaching-to-the-test-approach allocate more required curricular hours to skills courses. These law schools require students to complete a variety of skills classes targeted to success in practice (legal research and writing I and II, legal methods, or other legal skills components) as well as some targeted specifically to success on the bar, such as capstone classes specifically designed to improve success on MEE essay writing, the MPT, and the MBE.

C. The Hybrid Approach: Have Limited Bar-Prep Coursework Required but Rely Heavily on Bar-Prep Companies for Bar Preparation

It is likely obvious, but many law schools have developed a curricular approach that occupies the ground between the two approaches at the extremes—laissez-faire and teaching to the test. Schools with such a hybrid approach generally require a heftier set of required doctrinal courses than the basic package offered at law schools taking the laissez-faire approach. There are a few ways they achieve this result, such as by requiring students to take one of a number of bar-tested subjects in addition to the core required courses, or by adopting a curricular approach that follows a teaching-to-the-test model, but only for students who demonstrate struggling academic performance after their first year. These law schools, like laissez-faire schools, rely heavily on bar-preparation courses after law school to maximize student bar passage.

As law schools grapple with the move from the existing bar exam to the NextGen bar exam, their previous approach to preparing their students for the existing bar exam will likely inform (explicitly or implicitly) their initial reaction to the change. When unpacking the substantive and structural changes of the NextGen bar exam and then thinking about what, if any, immediate action is needed in response to the changes, a law school should consider its historical approach to using its curriculum to prepare students for the bar exam. At the very least, grasping that history may inform how controversial even relatively minimal curricular changes will be to implement.

IV. Understanding the NextGen Bar Exam

In January of 2021, the NCBE adopted the TTF's extensive recommended changes to the existing bar exam. These changes create the backbone for what

the NCBE has dubbed the NextGen bar exam, scheduled for its debut in 2025 or 2026.⁹⁶ The proposed NextGen bar exam changes the existing bar exam in two ways: (1) it changes the substance, both in terms of doctrine and skills, covered by the bar exam; and (2) it alters the structure of the exam itself, including the way the exam itself is organized, the format and order of question types used, and how the exam is administered. Sections A and B below discuss each of these changes in detail.

A. The Substantive Changes Proposed for the NextGen Bar Exam

The NextGen bar exam adjusts the substance of the existing bar exam⁹⁷ in two ways. First, it reduces and refocuses the doctrinal coverage of the bar exam. Second, it reimagines and reprioritizes practice skills by incorporating the testing of a robust set of foundational skills into the exam, including several lawyering skills not currently tested on the existing bar exam. Taken together, the substantive changes convert the bar exam from one primarily focused on assessing an examinee's ability to memorize and apply a wide variety of legal knowledge to one primarily focused on assessing an examinee's ability to memorize and use basic legal knowledge to perform entry-level practice tasks. Sections 1 and 2 below detail the reduction of content and enhancement to skills testing that the NCBE has approved to date for the NextGen bar exam.

1. The NextGen Bar Exam Reduces the Subject Matters Coverage of the Bar Exam

The NextGen bar exam will reduce the content covered by the exam by eliminating six areas of law currently tested on the existing bar exam: conflicts of law, trusts and future estates, wills, secured transactions, negotiated instruments, and family law. Table II visually summarizes the reduction in content proposed for the NextGen bar exam.

Table 2: Comparison of the Doctrinal Coverage of the Existing Bar Exam and the NextGen Bar Exam

Doctrinal Coverage of Existing Bar Exam (UBE)	Doctrinal Coverage of NextGen Bar Exam
Civil Procedure	Civil Procedure
Contract Law	Contract Law (and Sales in UCC)
Evidence	Evidence
Torts	Torts
Business Associations (and Agency)	Business Associations (and Agency)
Constitutional Law	Constitutional Law
Criminal Law	Criminal Law

⁹⁶ See discussion in Section I, *supra*.

⁹⁷ In this section, for simplicity purposes and given its broad administration, "existing bar exam" will refer to the requirements of the UBE.

Criminal Procedure	Constitutional Protections Impacting Criminal Procedure
Real Property	Real Property
Conflicts of Law	
Trusts & Future Interests	
Wills	
Secured Transactions	
Negotiated Instruments	
Family Law	

This subject-matter reduction is, however, just part of the substance-reduction planned for the NextGen bar exam. In addition to the more limited list of subject matters covered, the NextGen bar exam will test content only within the eight subject areas tested⁹⁸ that is aligned with what is needed to establish “minimum competence for entry-level practice.”⁹⁹ This minimum-competence lens for evaluating what doctrine to test is different from what is tested on the existing bar, which often includes testing of exceptions as well as exceptions to the exceptions. In other words, the depth and breadth of the eight tested subject areas will be narrower than that previously tested by the MBE and MEE portions of the existing bar exam.

The NCBE’s recently published preliminary outlines, which identify the proposed scope of the topics to be assessed in each of the eight subject areas that the NextGen bar exam will test, evidence a significant reduction in scope of coverage when compared with the broader doctrinal coverage of the UBE.¹⁰⁰ One method the NCBE used to reduce the scope of coverage on the NextGen bar exam is to specify the different levels of knowledge required for each topic tested on the exam.¹⁰¹ In its coverage outline, the NCBE specifies whether for each tested topic an examinee is expected to “know the details of the relevant doctrine without consulting legal resources,” or simply “have general familiarity with the topics for purposes of issue spotting or working efficiently with legal sources provided during the exam.”¹⁰² As an example of this method of reduced coverage, on the NextGen bar exam examinees will no longer be required to memorize the Federal Rules of Evidence.¹⁰³ Instead,

98 Although the table of the subjects tested on the NextGen exam contains nine rows of subjects, the nine rows total only eight separate subject-matter areas because what used to be deemed a separate category—criminal procedure—under the NextGen bar exam is limited to only those parts of criminal procedure that fall under the study of constitutional law.

99 FINAL REPORT, *supra* note 19, at 20.

100 *Next Generation of the Bar Exam Content Scope Outlines*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/csopc-register/> [https://perma.cc/T7K2-85CX].

101 *See, e.g., id.* at 7.

102 *Id.*

103 *Id.* at 27.

examinees must only be familiar with the Federal Rules of Evidence in a way that allows them to spot evidence-based issues on the exam. After all, as would be the case in practice, examinees need to know how to apply the relevant rules of evidence rather than rely on their memory of them. Thus, the NextGen bar exam will provide examinees with the relevant rules of evidence to use during evidence-specific portions of the NextGen exam.¹⁰⁴

The second method the NCBE employed to reduce the doctrinal coverage of the NextGen bar exam is to reduce the scope of coverage within the tested topics by removing entire subtopics from the NextGen bar exam that were formerly tested on the UBE.¹⁰⁵ As an example, the table that follows compares the scope of evidence content covered on the UBE with that covered on the NextGen bar exam related to the subtopic “privileges and other policy conclusions”:¹⁰⁶

UBE Evidence Coverage: Privileges and other policy exclusions	NextGen Bar Exam Evidence Coverage: Privileges and other policy exclusions
Spousal immunity and marital communications	Spousal immunity and marital communications
Attorney-client and work product	Attorney-client and work product
Physician/psychotherapist-patient	Physician/psychotherapist-patient
Other privileges	
Insurance coverage	Insurance coverage
Remedial measures	Remedial measures
Compromise, payment of medical expenses, and plea negotiations	Compromise and payment of medical expenses
Past sexual conduct of a victim	

As evident from the table above, the NextGen bar exam will no longer test “other privileges,” plea negotiation privileges, or the policy exclusion related to “past sexual conduct of a victim.”¹⁰⁷

2. The NextGen Bar Heavily Tests Lawyering Skills, Including Skills Not Previously Tested

The second substantive change proposed for the NextGen bar exam, in contrast to the cutting back of content described above, involves expanding testing of an examinee’s ability to complete entry-level lawyering tasks. As such, the NextGen bar exam will shore up the testing of what the TTF calls “foundational skills” typically performed by entry-level lawyers. The existing bar exam tests skills through the exam’s smallest (read: shortest in terms of

¹⁰⁴ *Id.*

¹⁰⁵ Compare *id.* at 31 with *MBE Subject Matter Outline*, *supra* note 35, at 5.

¹⁰⁶ *Next Generation of the Bar Exam Content Scope Outlines*, *supra* note 100, at 31; *MBE Subject Matter Outline*, *supra* note 35, at 5.

¹⁰⁷ *Id.*

time and least significant in terms of weight) of its three parts: the MPT. As described in more detail in Section II.C, *supra*, the MPT consists of two ninety-minute exercises and comprises twenty percent of examinees' total bar exam score.¹⁰⁸ The MPT, only recently adopted in 1997,¹⁰⁹ is administered as part of the bar exam in all jurisdictions except California, Michigan, Virginia, Louisiana, Florida, and Puerto Rico.¹¹⁰

The NextGen bar exam plans to assess the skills previously covered by the MPT as well as additional skills not included as part of the existing bar exam, such as legal research, client counseling and advising, negotiation and dispute resolution, and client relationship and management.¹¹¹ The table below visually depicts the planned expansion of skills testing on the NextGen bar exam:

Table 3: Comparison of Skills Tested by the Existing Bar Exam and the NextGen Bar Exam

Skills Tested on UBE/MPT	Skills Tested on NextGen Bar Exam
Effective communication in writing	Legal writing
Issue spotting and analysis (by analyzing statutory, case, and administrative materials for applicable principles of law and applying the relevant law to the relevant facts in a manner likely to resolve a client's problem)	Issue spotting and analysis
Investigation and evaluation (by sorting detailed factual materials and separating relevant from irrelevant facts)	Investigation and evaluation
Completion of a lawyering task within time constraints	Completion of a lawyering task within time constraints
Ethics (by identifying and resolving ethical dilemmas when present)	Not explicitly tested on NextGen exam; instead, tested by MPRE

108 *Jurisdictions Using the MPT in 2020*, THE BAR EXAM'R, <https://thebarexaminer.org/2020-statistics/the-multistate-performance-test-mpt> [<https://perma.cc/93ER-NWYR>].

109 *Id.*

110 *Id.* (noting that Pennsylvania will not add the MPT until 2022).

111 The Final Report provides descriptions of each of these skills: Legal research includes "Researching the Law, Written/Reading Comprehension, Critical/Analytical Thinking"; client counseling and advising includes "Oral Expression, Oral Comprehension, Cultural Competence, Advocacy, Critical/Analytical Thinking, Problem Solving, Practical Judgment"; negotiation and dispute resolution includes "Negotiation Skills/Conflict Resolution, Creativity/Innovation, Expressing Disagreement, Written Expression, Oral Expression, Oral Comprehension, Advocacy, Practical Judgment"; and client relationship and management includes "Networking and Business Development, Resource Management/Prioritization,

Organization, Strategic Planning, Managing Projects, Achievement/Goal

Orientation, Practical Judgment, Decisiveness, Cultural Competence." FINAL REPORT,

supra note 19.

Not explicitly tested on existing bar exam: will be new skills tested on NextGen exam	Client counseling and advising
	Negotiation and dispute resolution
	Legal research
	Client relationship and management

Recently, the NCBE has identified various lawyering tasks that it will use to test the expanded list of lawyering skills that it plans to test on the NextGen bar exam. For example, the NextGen bar exam will test examinees' knowledge of the skill of client counseling and one of the ways it may do so is by assigning an examinee the following task: "In a client matter, identify which claims to recommend bringing, which remedies to recommend seeking, which evidence to present, which arguments to make, and/or how to respond to arguments, based on the relevant legal rules and standards, and consistent with the client's objectives."¹¹² Interestingly, the skills newly tested on the NextGen bar exam are reminiscent of the handful of additional skills identified as necessary for any "well-trained" lawyer in the 1992 MacCrate Report but omitted from testing on the existing bar's MPT.¹¹³ Although it comes nearly thirty years later, the inclusion of these core skills on the NextGen bar exam demonstrates new progress in efforts by the ABA and the legal industry to hold law schools accountable for teaching students not only doctrine but practice-relevant skills.

B. The Structural Changes Proposed for the NextGen Bar Exam

In addition to the substantive changes described above, the TTF's recommendations for the NextGen bar exam include nonsubstantive changes to the existing bar exam, including changes to its overall structure, scoring, and mode of administration. First, the NextGen bar exam will do away with the current three-component (MBE, MEE, and MPT) structure of the existing bar exam in exchange for a fully "integrated" exam.¹¹⁴ This integrated exam will comprise stand-alone knowledge-based questions as well as "item sets," which the TTF defines as "a collection of test questions based on a single scenario or stimulus such that the questions pertaining to that scenario are developed and presented as a unit."¹¹⁵ In lieu of dividing the exam into three question modalities—the multiple-choice MBE, the essay MEE, and the task MPT—the NextGen exam will vary the modality of questions throughout the exam, moving, for example, from multiple choice to essay, to short answer, and

¹¹² *Next Generation of the Bar Exam Content Scope Outlines*, *supra* note 100, at 7.

¹¹³ MacCrate Report, *supra* note 53. The MacCrate Report set out the following ten skills as necessary for an entry-level practicing lawyer: problem-solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. *Id.*

¹¹⁴ FINAL REPORT, *supra* note 19, at 20.

¹¹⁵ *Id.*

to task performance, all in one testing session.¹¹⁶ In other words, the various knowledge areas covered by the exam will be tested through a variety of (and through multiple) question modalities, including multiple-choice, short-answer, and performance-task-based questions. The precise format, order, and look of this new integrated, multiple-modality testing is “in progress,” as the NCBE has just formed subcommittees to begin the work of creating the NextGen bar exam from soup to nuts and is just starting to develop a prototype test.¹¹⁷

Second, the NextGen bar exam renders bluebooks and number two pencils officially relics of the past. Although laptop use is permitted for the MEE and MPT portions of the existing bar exam, the NextGen bar exam will be a fully computer-based test, administered either on an examinee’s own laptop at a managed testing site or at a computer testing center.¹¹⁸ Interestingly, despite suggestions to move the bar exam to fully remote administration post-pandemic, the TTF’s proposal, while allowing computer administration, maintains the requirement that the NextGen bar exam be administered in person.¹¹⁹ Even with in-person administration, however, the move to a fully computer-based test will likely hit some road bumps as exam administering software struggles to keep up with computer technology. For example, in 2017, SofTest, the exam software used to administer the existing bar exam, was unable to ensure students could not access pre-curated online data or cheat files by using the touch bar of certain MacBook Pro computers; given this reality, twelve states decided to ban the use of certain MacBook computers shortly before the administration of the bar exam, putting a number of students who had purchased the banned MacBook models in a predicament.¹²⁰

Third, the component-by-component scoring model employed by the existing bar exam¹²¹ will be replaced with a “compensatory scoring model.”¹²² This revised scoring model will result in an examinee’s receiving a single combined score totaling performance for all question modalities.¹²³ This more

116 *Id.*

117 See *The Work Begins! Developing Content Specifications for the NextGen Bar Exam*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/the-work-begins-developing-content-specifications-for-the-nextgen-bar-exam> [<https://perma.cc/B3CD-8V8R>].

118 FINAL REPORT, *supra* note 19, at 22.

119 *Id.*

120 Monica Riese, *MacBook Pro Touch Bar Banned from Bar Exam in 12 States*, DAILY DOT (Jan. 31, 2017), <https://www.dailydot.com/debug/macbook-touch-bar-north-carolina-bar-exam> [<https://perma.cc/43DM-82P9>].

121 See, *supra*, Section II. .

122 FINAL REPORT, *supra* note 19, at 20.

123 *Id.*

holistic grading method will ensure examinees who pass the NexGen bar exam demonstrate “overall proficiency” to serve as lawyers.¹²⁴

V. The Implications of the Proposed NextGen Bar Exam for Law School Bar Passage and Existing Curricula

With the NextGen bar exam on the horizon, law schools are seemingly faced with a choice:

1. Law schools can opt to wait for the final parameters of the bar exam to be fleshed out, tested, and formally announced and then begin the mammoth and time-consuming task of assessing their curricula and assessment techniques to make adjustments, if any, where needed to better prepare graduates for the NextGen bar exam; or
2. Law schools can opt to grapple with the substantial changes proposed by the TTF and adopted by the NCBE related to the new content and structure that will be implemented in the NextGen bar exam and begin to critically assess how their curricula and assessments need to be modified in advance of the 2022 matriculants arriving on campus to maximize their success on the NextGen bar exam and—because this is one of the motivations for redoing the exam—to better prepare them for practice.

However, only one option is advisable.

The wait-and-see approach is fraught with risks. First, failure to anticipate and prepare for the substantive and structural changes that will be incorporated by the NextGen bar exam will undoubtedly impact bar passage for students individually and for law schools more broadly. It is true that typically bar passage-related concerns have been reserved for law schools in the third and fourth tiers.¹²⁵ However, as the NextGen bar exam—given its significant change in terms of format, coverage, and focus—takes center stage, we may see bar-related problems creep into the top 100 law schools, especially those schools with ingrained curricula and established faculties that may compromise a law school’s ability pass the necessary curricula and assessment adjustments. In this way, no law school should consider itself insulated from feeling the impacts of the changes incorporated into NextGen bar exam, especially in light of the ABA’s seventy-five percent bar-passage requirement.¹²⁶

In addition, the traditional backstop for preparing students for the bar exam—postgraduate bar preparation—is unlikely to be able to fill in gaps for NextGen bar takers as it has for bar takers taking the existing bar exam. For

¹²⁴ *Id.*

¹²⁵ Matt Stetz, *Poor Bar Passage Rates Threaten 10 Schools*, THE NAT’L JURIST (July 13, 2020, 8:44 AM), <https://www.nationaljurist.com/national-jurist-magazine/poor-bar-passage-rates-threaten-10-schools> [<https://perma.cc/WJ3F-QJYK>]. See also *Third and Fourth Tier Law Schools*, TOPLAWSCHOOLS, <https://www.top-law-schools.com/third-fourth-tier.html> [<https://perma.cc/TY65-TQJD>].

¹²⁶ Standard 316, *supra* note 9.

decades, most law schools have outsourced bar preparation to commercial “bar-prep” companies, such as Barbri, Themis, or Kaplan.¹²⁷ Law schools, especially those that adopt a laissez-faire approach to the bar exam, often view their job as teaching students to think like lawyers and have been able to leave it to the bar-prep companies to fill in the knowledge gaps after graduation and before the bar exam to ensure graduates are bar exam-ready.

Historically, these outside bar-preparation companies have had significant success in distilling the legal knowledge needed to pass the bar exam into easy-to-memorize bite-size pieces and delivering that black-letter law to students efficiently and effectively.¹²⁸ Because the bar exam has traditionally been scaled to the purely knowledge-based part of the bar exam (the MBE), these companies have been highly successful at improving bar passage for at least the top law school graduates who complete their programming.¹²⁹ However, in recent years bar-passage rates have been declining, and researchers argue that the reason for the decline is not just lower scores on the MBE but a higher failure rate on the essay questions (that is, the MEE portion of the bar exam).¹³⁰ In analyzing this passage-rate decline, researchers have found that

127 See Richard Westin, *The Need for Prompt Action to Revise American Law Schools*, 46 AKRON L. REV. 137, 165 (2013).

128 See Raul Ruiz, *Leveraging Noncognitive Skills to Foster Bar Exam Success: An Analysis of the Efficacy of the Bar Passage Program at FIU Law*, 99 NEB. L. REV. 141, 160 (2020) (noting that supplemental law-school designed bar programs need not focus deeply on teaching black-letter law because “[s]tudents will have time to learn all the law they need to pass the exam from their commercial bar exam preparation company”). See also Mario W. Mainero, *We Should Not Rely on Commercial Bar Reviews to Do Our Job: Why Labor-Intensive Comprehensive Bar Examination Preparation Can and Should Be a Part of the Law School Mission*, 19 CHAP. L. REV. 545, 555-56 (2016); *Bar Exam Preparation Courses Compared—Cutting Through the Clutter of Thirty Six Company Offerings*, LAWYERISSUE (Feb. 12, 2018), <https://www.lawyerissue.com/bar-exam-preparation-courses-compared-cutting-clutter-thirty-six-company-offerings> [https://perma.cc/J476-NZTH].

129 The major commercial bar-preparation courses all claim that their programs yield bar success. See, e.g., *9/10 Barbri Students Pass the Bar, But We Don't Care About Bar Exam Pass Rates. Here's Why*, BARBRI (Jan. 31, 2021) <https://www.barbri.com/pass-rates-vs-assignments-correlated-to-bar-passage> [https://perma.cc/5CG2-ANC5] (claiming nine out of ten Barbri students who complete the average amount of work pass the bar exam); *Bring the Best Bar Prep to Your School*, KAPLAN, <https://www.kaptest.com/bar-educators/products/bar-review> [https://perma.cc/34ZZ-AAM2] (noting that with Kaplan, students get better pass rates); *Pass Rates Do Matter: Trust. Transparency. Results.*, THEMIS BAR REV., <https://www.themisbar.com/pass-rates> [https://perma.cc/32RZ-EAFG] (comparing Themis pass rates to state first-time pass rates and showing pass rates are higher for Themis students).

130 *Bar Exam Preparation Courses Compared—Cutting Through the Clutter of Thirty Six Company Offerings*, *supra* note 128. Even though results of the bar exam are scaled to MBE scores, writing ability undeniably affects bar success given that the MPT and MEE portions of the UBE comprise between fifty percent and sixty-seven percent of an examinee's overall bar exam score. Joan M. Rocklin, *Exam-Writing Instruction in a Classroom Near You: Why it Should be Done and How*, 22 J. LEGAL WRITING INST. 189, 197-202 (2018). In addition, a correlation between bar passage and writing skills can be evidenced by the fact that schools struggling with bar passage have found that to improve bar passage they must take a multi-faceted approach that incorporates both expanded doctrinal teaching in bar-tested subjects and additional

the bar-preparation companies have remained focused on the techniques of mastering the MBE rather than the techniques of following the call of an essay question, spotting a sufficient number of issues, and applying the law to the facts, as well as grammar and spelling errors.¹³¹ The documented struggle that bar-preparation companies have had teaching the writing-intensive part of the existing bar exam should be a signal that heavy reliance on those same bar-preparation companies to prepare students for the NextGen bar exam is not wise. After all, one of the central changes incorporated into the NextGen bar exam is an increased focus on the very skills that have given bar-preparation companies difficulty the past few years—research and writing.

Last, law schools should not rely on their students' high LSAT performance as a reason to continue their existing bar-preparation approaches. There are a few reasons for this. First, we do not know how success on the NextGen bar exam will, if at all, differ from success on the existing bar exam. After all, the planned scoring of the NextGen bar exam will be entirely different from the scoring method used for the existing bar exam. Unlike the current bar exam, the NextGen bar will use a compensatory scoring model to produce a single combined score rather than weighting success on the exam heavily on knowledge-based performance as the existing bar exam does.¹³² Second, any previously relied-on correlation between success on the multiple-choice-laden LSAT and success on the multiple-choice-heavy existing bar exam may not translate to the NextGen bar exam. After all, although the NextGen bar exam will continue to include some MBE-style knowledge-based questions, the NextGen bar exam will be an integrated exam and, as such, the format will present "item sets," or collections of test questions in various formats (from short-answer to multiple-choice to constructed-response items) based on single scenarios.¹³³ Thus, although statisticians and psychometricians are important to have in the room when discussing curricular changes and their relationship to bar preparation, the newness of the NextGen bar exam will require the creation of entirely new data pools to even begin to objectively identify any correlations between LSAT and NextGen bar exam passage. In light of these risks, the only viable option given the forthcoming NextGen bar exam is action.¹³⁴

curricular requirements in legal writing, reading, and research. Derek Alphan, Tanya Washington, and Vincent Eagan, *Yes We Can, Pass the Bar*, University of the District of Columbia, David A. Clarke School of Law Bar Passage Initiatives and Bar Pass Rates—From the Titanic to the Queen Mary, 14 U. D.C. L. REV. 9, 22-34 (2011).

131 *Mainero*, *supra* note 128, at 556-57, 569 (noting the weaknesses of commercial bar-preparation companies, especially related to teaching examinees legal analysis and writing, which are labor-intensive subjects).

132 FINAL REPORT, *supra* note 19, at 20.

133 *Id.*

134 As a supplement to the discussion below, Larry Cunningham, Dean and Professor of Law at Charleston School of Law, recently shared a series of questions for legal education to think about in advance of the forthcoming NextGen bar exam. Larry Cunningham, *Preparing*

VI. Curricular and Assessment Changes Law Schools Can Implement in the Short Term to Begin to Prepare for the NextGen Bar Exam

Given the substantive and structural changes presented by the NextGen bar exam, the premise of this section of the article should be uncontroversial: Law schools need to begin to understand, think about, and adjust their curricular bar-passage approach in advance of the NextGen bar exam.¹³⁵ Moreover, given that the NCBE announced in January 2021 that its NextGen bar exam will be first administered in 2025 or 2026,¹³⁶ law schools need to initiate this process now (or maybe yesterday).¹³⁷

An argument that action is premature because the NCBE's NextGen bar exam is still in development is ill-informed. Although the NextGen exam is not yet finalized, the NCBE and TTF have provided significant detail as to the substantive and structural changes that will be implemented by the NextGen bar exam.¹³⁸ Relying on the information provided to date, law schools can

for the NextGen Bar Exam: Questions to Consider, L. SCH. ASSESSMENT (Mar. 29, 2022) <https://lawschoolassessment.org/2022/03/29/preparing-for-the-nextgen-bar-exam-questions-to-consider/> [<https://perma.cc/5J6D-7U8Z>].

135 It should not be ignored, however, that in conjunction with the announcement of the NextGen bar exam, the COVID-19 pandemic, and the racial awakening of 2020 that followed the murder of George Floyd, many state bar associations have announced plans to explore alternate avenues for attorney licensure, such as extending a diploma privilege to students who complete law school, allowing for licensure after both the completion of law school and a period of supervised practice, or the completion of two years of law school followed by a third year designed to serve as a practice-based law school capstone. See, e.g., Meerah Powell, *Oregon advances alternative routes to licensure*, OR. PUBLIC BROAD. (Jan. 18, 2022) <https://www.opb.org/article/2022/01/17/oregon-advances-alternative-routes-to-becoming-a-licensed-lawyer/> [<https://perma.cc/4F22-FLG8>]; STATE BAR OF CAL., *Blue Ribbon Commission on the Future of the Bar Exam*, <https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Blue-Ribbon-Commission> [<https://perma.cc/6MVY-Q8W3>]; *Task Force on the New York Bar Examination*, N.Y. ST. BAR ASS'N, <https://nysba.org/committees/task-force-on-the-new-york-bar-examination/> [<https://perma.cc/G5KT-XPWW>]. But see Legal Profession Blog, *Task Force Not Approved to Study Minnesota Admissions* (Jan. 26, 2022) https://lawprofessors.typepad.com/legal_profession/2022/01/the-minnesota-supreme-court-on-october-6-2021-the-minnesota-state-bar-association-msba-filed-a-petition-asking-that-we-a.html [<https://perma.cc/9CUY-ZTGN>]. See also Joan W. Howarth, *The Bar: The Justice Case for Attorney Licensing Reform* (Stanford University Press, forthcoming 2021) (for an in-depth discussion of attorney licensing reform. The practical impact of these debates is still uncertain; however, the portability allowed by a national bar exam—regardless of whether it is the UBE or the NextGen bar exam—will certainly stymie any effort to abolish a national bar exam. As a result, law school matriculants are likely to continue to expect their law school education to prepare them to pass whatever portable exam is offered at the time of their graduation.

136 *Snapshot of NextGen Bar Exam of the Future*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/> [<https://perma.cc/JW3N-JT26>].

137 As discussed in the introduction of this article, *supra*, this time sensitivity is exacerbated by the fact that law schools are deliberative by nature and, thus, by their very nature are slow to implement change.

138 See, *supra*, Section IV.

begin to plan for and adjust their curricula and assessment practices to ensure their incoming students are NextGen bar exam-ready. Then, as prototypes for the NextGen bar exam become available, law schools can further adjust their curriculum and assessment practices as needed. This section proposes a series of adjustments that law schools can make immediately in advance of students' arriving on campus in the fall of 2022. By adopting some or all of the proposed suggestions, law schools can begin to ensure their curriculum addresses the content of the NextGen bar exam and—given the tie between what the NextGen exam tests and legal practice—leaving their students better prepared to practice law than students in years past.

A. Remove the Requirement that Students Take Doctrinal Courses No Longer Tested by the Bar

The first and easiest adjustment that law schools can make in response to the NextGen bar exam is to review their curricular requirements and ensure the courses they require remain appropriate given the more limited doctrinal coverage of the NextGen bar exam.¹³⁹ To do this, law schools must assess the courses they currently require for graduation and compare those courses with the doctrinal coverage adopted by the NCBE for the NextGen bar exam. This reassessment will be of particular importance for law schools adopting hybrid and teaching-to-the-test approaches. For example, compare the current doctrinal requirements for New York Law School's students with the now-reduced doctrinal coverage of the NextGen bar exam:

¹³⁹ Easy may be a bit of an overstatement given the fact that downsizing curricular requirements may impact professors' employability or at the least the enrollment in some professors' courses. That said, faculty and administration should look beyond their own egos and prioritize students. In addition, there are many ways to redesign or recreate courses that are no longer bar tested in order to ensure they remain essential. For example, secured transactions professors could redesign their secured transactions courses to teach and assess secured transactions doctrine through the new skills tested on the NextGen bar exam.

Table 4: An Analysis of NYLS's Curriculum in Light of the NextGen Bar Exam

New York Law School's Currently Required Doctrinal Courses	Doctrinal Areas Covered by Existing Bar Exam	Doctrinal Areas Covered by the NextGen Bar Exam	Courses NYLS Consider No Longer Requiring
Civil Procedure (4) Contracts (4) Legislation and Regulation (1) Torts (4) Criminal Law (3) Property (4) Constitutional Law I (3) Constitutional Law II (3) Corporations (4) Evidence (3) Qualifying Professional Responsibility course (3) <u>2-3 of the following:</u> Family Law (3), Commercial Law (3) Criminal Procedure: Investigation (3) Wills, Trusts & Estates (4)	Civil Procedure Contract Law Evidence Torts Business Associations (and Agency) Constitutional Law Criminal Law Criminal Procedure Real Property Conflicts of Law Trusts & Future Interests Wills Secured Transactions Negotiated Instruments Family Law	Civil Procedure Contract Law (and Sales in UCC) Evidence Torts Business Associations (and Agency) Constitutional Law Criminal Law Constitutional Protections Impacting Criminal Procedure Real Property	Family Law (3) Commercial Law (3) Wills, Trusts & Estates (4)

New York Law School's current curricular requirement that students select two or three courses from a menu of courses tested by the existing bar exam will soon be obsolete because the menu of optional courses includes only one course that will continue to be assessed as part of the NextGen bar exam.¹⁴⁰ In light of this reality, it would be an appropriate time for New York Law School's curriculum committee to assess whether the courses contained in its required curricular menu are important for New York Law School students to take, even though the content will no longer be tested as part of the NextGen bar exam.

This type of curricular assessment does not mean law schools should—full stop—no longer offer any courses not covered by the NextGen bar exam or

¹⁴⁰ New York is a jurisdiction that administers the UBE, so under the existing bar exam all courses included in the menu focus on doctrine tested by the UBE. *Uniform Bar Examination, New York Law Course & New York Law Exam*, THE NY. STATE BD. OF L. EXAM'RS, <https://www.nybarexam.org/UBE/UBE.html> [<https://perma.cc/XP9X-T6EB>].

that students should no longer take those courses. The curricular assessment required asks law schools to assess whether, in light of the shift to the NextGen bar exam, students who will sit for that new exam should continue to be *required* to take courses related to these no-longer-tested subjects. The outcome of such an assessment will vary from school to school and may turn on several factors, including the location of a school or common areas of post-graduation practice.

A curriculum committee could decide that a course, even though no longer tested on the NextGen bar exam, remains central to preparing its students for the practice of law and should be required. Such decisions should be made knowingly by the faculty, however, will likely be rare, given that the TTF and NCBE determined the covered content for the NextGen bar exam through a process of assessing the limited doctrinal areas critical to competent entry-level practice,¹⁴¹ and given that success in practice turns more on practical ability than knowledge of law.¹⁴²

At best, this assessment may free up only a handful of credits, depending on where a law school falls on the spectrum of the *laissez-faire* and the teaching-to-the-test approaches. But removing even a few required hours can have a significant curricular impact. For example, freeing up three required credit hours may allow law schools to add, for example, additional skills courses to their required curricula.

B. Augment Curriculum with Courses That Teach the Skills Added to the NextGen Bar Exam

The second curricular change law schools can implement in advance of the first administration of the NextGen bar exam is to require students to take courses focused on teaching the new NextGen bar exam-tested skills: legal research, client counseling and advising, negotiation and dispute resolution, and the diverse set of subskills covered by client relationship and management.¹⁴³

¹⁴¹ As part of the second phase of the reassessment of the existing bar exam, the TTF conducted a survey of newly licensed attorneys as well as more experienced attorneys, judges, and professors working in a variety of practice settings to determine the content and skills most used by newly licensed attorneys and, thus, the appropriate content for a licensure exam. FINAL REPORT, *supra* note 19, at 6–7. Based on this survey, the TTF derived a more limited set of doctrinal areas related to which the NextGen bar exam should assess an examinee’s knowledge: business organizations, constitutional law, real property, torts, evidence, criminal law and procedure, contract law, and civil procedure. *Id.*

¹⁴² See generally LINDA EDWARDS, THE DOCTRINE-SKILLS DIVIDE: LEGAL EDUCATION’S SELF-INFLICTED WOUND at 353 (2017) (acknowledging that understanding doctrine is important to conducting legal research but asserting that skills “are the muscles that animate legal representation”). See also Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. 119, 121–22 (2015) (noting that “law schools should . . . get in intimate contact with what clients need and what courts and lawyers actually do”); Max Rosenthal, *The Importance of Gaining Practical Legal Skills*, Student Lawyer (Apr. 1, 2016), <https://abaforlawstudents.com/2016/04/01/the-importance-of-gaining-practical-legal-skills>.

¹⁴³ See *supra* note 101 (describing the suggested coverage for each of the newly added skills). Adding courses related to these newly tested skills should not be at the expense of—that

Alternatively, if a law school is hesitant to implement significant curricular changes, such as creating and requiring new classes, in advance of the NCBE's issuing a final prototype of the NextGen bar exam, faculty can incorporate instruction related to these newly tested skills into required courses already imbedded in the curriculum. Although these suggestions may seem like an easy fix, giving skills instruction a more central role in legal education can be controversial. Unfortunately, the long-standing debate over the value and place of skills instruction in legal education may impact a law school's ability to make these otherwise simple adjustments to its curriculum and, thus, to better prepare students for the NextGen bar exam.¹⁴⁴

1. Background on the Relationship Between Skills Teaching and the Law School Curriculum

The integration of skills into law school curricula has been a highly debated topic over the past twenty years. On one hand, in the post-MacCrate¹⁴⁵ and post-Carnegie¹⁴⁶ era, it seems almost commonplace to say that a central goal of legal education is to prepare students for legal practice—to teach students the skills required to be a lawyer—and that law school curricula should be designed to achieve that goal. Experts believe that to achieve this goal law schools must focus their teaching and, thus, their curricula on three areas: knowledge, skills, and professionalism. Despite the trend to shift law school curricula from an overwhelming doctrinal focus to a more holistic lawyering focus in response to the MacCrate and Carnegie reports, skills-related curricular reform has been slow. That is not to say no progress has been made, but the progress has been measured and looks nothing like the large-scale curricular reform imagined by those reports.

In fact, looking back, the most significant reform related to imbedding practice-related skills in law school curricula has been driven by the American Bar Association and the NCBE, not by law schools' independent self-reflection and curricular decision-making processes. For example, the American Bar Association implemented two significant changes to the standards governing legal education that affect the teaching of practice-related skills. First, as of 2014, Standard 303(a)(3) required students to complete six credit hours of experiential learning before graduation (compared with the previous requirement of "substantial instruction" in professional skills).¹⁴⁷ Second, as

is, should not "steal" from—the curricular time already allotted teaching skills, such as that allocated to legal writing, that were tested on the existing bar exam and will continue to be tested on the NextGen bar exam.

144 See generally EDWARDS, *supra* note 131.

145 MacCrate Report, *supra* note 53.

146 William M. Sullivan et al., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter Carnegie Report].

147 ABA STANDARDS AND RULE OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 303(a)(3) (Am. Bar Ass'n 2014-2015).

of 2016–2017, Standard 304 began requiring law schools to “conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods” to determine the degree of student attainment of learning objectives.¹⁴⁸ In other words, via Standard 304, the American Bar Association required law schools to show their students were actually learning what the law schools’ outcomes claimed they were being taught. Related to this new standard, one of the institutional outcomes mandated by the ABA in Standard 302 (and now one that must be tracked pursuant to 304) is that law schools ensure that each student has the “professional skills needed for competent and ethical participation as a member of the legal profession.”¹⁴⁹ Taken together, these standards work to hold law schools responsible for producing practice-ready lawyers.

Adding on to the progress jump-started by the ABA, the NCBE—even before the creation of the NextGen bar exam—used its role as bar exam ombudsman to broaden skills-based curricula in law schools as recommended by the MacCrate and Carnegie reports. In 1997, shortly after the publication of the MacCrate Report, the NCBE added the MPT component to the existing bar exam to test an examinee’s ability to complete a lawyering task as part of its assessment of each examinee’s minimum competence for entry-level practice.¹⁵⁰ This additional bar exam hurdle necessarily refocused law schools on the importance of teaching skills at least to the extent graduates now had to engage in lawyering skills to complete the bar exam. As a result of, among other factors, changes adopted by both the ABA and the NCBE,¹⁵¹ legal education has experienced a moderate increase in skills courses offered at law schools across the country.¹⁵²

With the NCBE’s approval of the TTF’s recommendations, the movement toward skills integration in law schools—as first imagined by the MacCrate

148 ABA STANDARDS AND RULE OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 304 (Am. Bar Ass’n 2016–2017).

149 ABA STANDARDS AND RULE OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 302 (Am. Bar Ass’n, 2020–2021).

150 See Bratman, *supra* note 92.

151 By identifying the ABA and NCBE as drivers of change in this area, this article does not intend to undervalue the unwavering efforts of clinicians, skills professors, and related organizations to advocate for the integration of skills instruction into law school curriculum. Certainly, these voices through their advocacy, scholarship, and service have had a significant impact in framing the ABA’s and NCBE’s approaches as well as within certain institutions. See, e.g., DEBORAH MARANVILLE, LISA RADTKE BLISS, CAROLYN WILKES KAAS, ANTOINETTE SEDILLO LOPEZ, BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (Matthew Bender, 2015); Clinical Legal Education Association, Comment to ABA Task Force on the Future of Legal Education (June 19, 2013), <https://www.cleaweb.org/Resources/Documents/CLEA%20COMMENT%20TO%20ABA%20TASK%20FORCE.pdf>.

152 Carpenter, *supra* note 68, at 222–25 (reporting that between 2002 and 2010 law schools increased professional skills offerings and “retooled courses that boast integrated doctrine and skills”).

and Carnegie reports¹⁵³—has been given new life. And, once again, the change is being driven by external factors rather than organically growing out of law schools' own self-reflections. Refocusing the NextGen bar exam such that it tests knowledge and skills equally does not itself change or even mandate that law schools alter their curricula. However, by adding additional skills to the content tested by the NextGen bar exam together with the change in scoring metrics implemented by the NextGen exam, law schools should feel called upon to assess their skills curricula and identify gaps that they may need to fill to ensure their graduates are prepared for the NextGen bar exam.

2. Option 1: Add Skills Courses to Your Law School's Curricular Requirements, Especially Those Focused on the Skills Newly Tested on the NextGen Bar Exam

As a preliminary step toward preparing students for the skills-intensive NextGen bar exam, law schools should take stock of where—if at all—their curricula address the new skills added to the NextGen bar exam: legal research, client counseling and advising, negotiation and dispute resolution, and client relationship and management. If those skills are already covered in a school's required curriculum, a law school should then endeavor to identify the precise micro-skills currently covered by those required courses and, where appropriate, note any known gaps in the content. Where particular skills are not included as part of the required curriculum, a law school should begin to investigate and discuss either adding new required courses covering those skills into its curriculum or intentionally incorporating the teaching and practicing of those skills into existing required courses.

Several schools have well-developed, skills-rich required curricula. These programs can serve as templates for other law schools to consider as they discuss how best to ensure all their graduates have basic competence in the skills tested on the NextGen bar exam. For example, CUNY School of Law¹⁵⁴ has a well-developed and integrated required skills curriculum. CUNY requires its graduates to each take three lawyering skills classes: these classes

¹⁵³ The Clinical Legal Education Association (CLEA) also published a report around the same time as the MacCrate and Carnegie reports exploring best practices for producing practice-ready lawyers. ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* (CLEA 2007).

¹⁵⁴ Although its approach is not widely accepted, CUNY Law School is not the only law school that designs its curriculum such that it culminates in a third-year clinical program. For example, Washington & Lee University School of Law's curriculum requires students to complete eighteen credits of experiential education courses. *Experiential Education at W&L Law*, WASH. & LEE UNIV. SCH. OF L., <https://law.wlu.edu/academics/experiential-education> [<https://perma.cc/2DY8-Q5EY>]. Similarly, the University of the District of Columbia David A. Clarke School of Law has a skills-intensive curriculum that uses the first year to develop a foundation of skills and knowledge and then the second and third years to practice using the skills and knowledge through fourteen required clinical hours and courses focused on helping students develop specializations. *Full Time Curriculum*, UNIV. OF D.C. DAVID A. CLARKE SCH. OF L., <https://law.udc.edu/fulltimecurriculum>.

focus on teaching a variety of written and oral lawyering skills—from the skills needed to conduct an initial client meeting to the skills needed to present an oral argument.¹⁵⁵ In addition to this credit- and content-intensive lawyering series, CUNY law students also take a stand-alone legal research course¹⁵⁶ in which they develop proficiency in legal research skills.¹⁵⁷ Finally, all CUNY students are required to complete an immersive clinical program, comprising eight to sixteen required credit hours.¹⁵⁸

Another example of a well-developed required skills curriculum is that of UNT Dallas College of Law,¹⁵⁹ a practice-oriented law school that opened in 2014. UNT students must complete a nine-credit, three-course legal writing program focused on developing the skills of written and oral legal analysis related to client representation at various stages of a case (from intake to advocacy), as well as a two-credit legal research course.¹⁶⁰ In lieu of CUNY's intensive clinical program, UNT students must take a series of practice-oriented skills courses: a three-credit course focused on interviewing and counseling, a three-credit course focused on negotiation and conflict resolution, and *either* a three-credit externship or a three-credit clinical experience.¹⁶¹

3. Option 2: Incorporate Skills-Based Instruction and Assessment into Existing Required Doctrinal Courses

Law schools that are hesitant to revamp their curricula in advance of the publication of the *final* NextGen bar exam can opt for less permanent curricular adjustments that still allow them to begin to fill the skills gap. Such schools can integrate teaching of the newly tested NextGen bar exam skills into their preexisting required doctrinal courses. This alternative, however, is far from simple. To do this, curriculum committees must first engage in curricular mapping to determine whether these newly tested skills are already covered in their curriculum. Then, where skills are not already in the curriculum,

155 *The Lawyering Program*, CUNY SCH. OF L. <https://www.law.cuny.edu/academics/lawyering-program/> [https://perma.cc/4LFV-Z5DJ].

156 Although many law schools include legal research instruction as part of their first-year curricula, most teach it as part of their first-year writing course, not as an independent course like that offered at CUNY.

157 *First Year Required Courses*, CUNY SCH. OF L., <https://www.law.cuny.edu/academics/courses/first-year/> [https://perma.cc/LB9M-AET8].

158 *Clinic Offerings Fall 2020*, CUNY SCH. OF L. <https://www.law.cuny.edu/academics/clinics/clinic-offerings/> [https://perma.cc/LE4B-KWVL].

159 I was a member of the faculty at UNT Dallas College of Law and helped develop (and redevelop) the school's curriculum; I was also a member and, later, the chair of the curriculum committee.

160 J.D. Course Overview: Full-Time (3 Year) Program, UNIV. N. TEX. AT DALL., https://lawschool.untdallas.edu/sites/default/files/degree_plan_2021-2022_ft_ube_5-11-2021.pdf [https://perma.cc/9BBC-RHK4].

161 *Id.*

curriculum committees must determine where best to incorporate those skills and persuade faculty teaching those courses to adjust their syllabi.

Scholars in pedagogy have advocated that the gold standard for ensuring the teaching of skills in law schools involves the mapping of curriculum followed by the integration of skills teaching and assessment across the curriculum.¹⁶² Moreover, scholars have identified a variety of ways law schools can achieve this integration.¹⁶³ On the “fairly easy to integrate” end of the spectrum, law schools can adopt MPT-style assessments focused on engaging the students in various skills-based tasks tested on the NextGen bar exam across their curriculum.¹⁶⁴ On the “more involved” end of the spectrum, law schools can endeavor to both teach and assess the NextGen bar exam’s newly tested skills as part of their required doctrinal courses. For example, a law school could commit to modifying the learning outcomes of first-year criminal law to include instruction on and practice related to interviewing a client and counseling that client, for example, on possible plea deals. Although these alternative approaches to address the skills gap do not require the broad curricular revamping required to add new skills courses to the curriculum, they do still require faculty cooperation and faculty commitment to teaching skills. In addition, these approaches require doctrinal faculty, clinical faculty, writing faculty, and bar-preparation faculty to work together to ensure skills teaching across the curriculum is consistent internally and with the way in which those skills will be assessed on the NextGen bar exam.¹⁶⁵

Once the NCBE releases more information about the content and setting forth a prototype for the form of the NextGen bar exam, law schools can then

162 See, e.g., Renee Allen and Alicia Jackson, *Contemporary Teaching Strategies: Effectively Engaging Millennials Across the Curriculum*, 95 U. DET. MERCY L. REV. 1 (2017); Louis N. Schulze, *Alternative Justifications for Academic Support II: How “Academic Support Across the Curriculum Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. UNIV. L. REV. 1 (2012); Rebecca Flanagan, *The Kids Aren’t Alright: Rethinking the Law Student Skills Deficit*, 2015 B.Y.U. EDUC. & L.J. 135 (2015).

163 See, e.g., Allen & Jackson, *supra* note 151; Schulze, *supra* note 151; Flanagan, *supra* note 151.

164 See Section VI., *infra* (detailing Professors Defabritiis and Vinson’s proposal to integrate MPT style assessments across the curriculum). See also Defabritiis & Vinson, *supra* note 13, 118–24.

165 This proposed collaborative approach to teaching is not without complications. For example, if such an approach is embraced, how should a law school allocate teaching credit among the various professors who work in a course? Or how will working in a collaborative classroom affect each faculty member’s academic freedom? A number of scholars have discussed the various benefits and challenges of collaborative teaching (also called co-teaching) in other contexts; although not exactly on point, these previous conversations suggest that logistical complications are not insurmountable. See, e.g., Susan Chelser & Judith Stinson, *Team up for Collaborative Teaching*, 23 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 169 (Summer 2015); Alexi Nunn Freeman & Lindsey Webb, *Positive Disruption: Addressing Race in a Time of Social Change Through a Team-Taught, Reflection-Based, Outward-Looking Law School Seminar*, 21 U. PA. J. L. & SOC. CHANGE 121 (2018); Stacy Caplow & Maryellen Fullerton, *Co-Teaching International Criminal Law: New Strategies to Meet the Challenges of a New Course*, 31 BROOK. J. INT’L L. 103 (2005).

revisit any preliminary changes they have made and adjust them based on the additional information provided by the NCBE.

C. Allocate Resources to Grow and Support the Bar Readiness Program

The third adjustment law schools can make to prepare for the NextGen bar exam is budgetary. It seems obvious when written: Law schools should invest—in terms of money and human capital—in programs that are essential for the success of their students in practice and on the bar exam. In this time of change from the existing bar exam to the NextGen bar exam, it seems equally obvious to suggest that one of these essential programs is bar readiness.

Extensive scholarship has examined the inequities between doctrinal and skills professors—including professors teaching the bar-readiness arm of academic support—in terms of status, pay, and power.¹⁶⁶ Ultimately, it may be that the NextGen bar exam's shift to a practice-focused bar exam will finally serve as the springboard to break down these systemic inequities in the academy and shift all faculty to a unitary system of employment status and pay. However, the suggestion here posits more tempered change as an interim and immediate measure. Faced with the NextGen bar exam, law schools can invest in their bar-readiness programs in a number of ways, including the following:

- Ensure faculty teaching in the academic and bar-readiness programs have funding to attend conferences on the NextGen bar exam and related to the newly tested skills on the NextGen exam. For some law schools, this investment will mean *creating* professional development budgets for academic-support and bar-readiness faculty; for other institutions it may involve increasing the amount allocated to these faculty members to incentivize frequent conference participation.
- Host in-house brown-bag lunch sessions at which faculty interested in bar preparation discuss aspects of the NextGen bar exam and how it will differ from the existing bar exam, to begin the dialog among faculty about the forthcoming change.
- Consider starting a “Teaching Tips” series as part of faculty meetings¹⁶⁷ during which a volunteer faculty member shares—in five minutes—a technique for integrating NextGen-tested skills teaching into the classroom.¹⁶⁸ As an

¹⁶⁶ Kristen K. Tiscione and Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. 47 (2015) (discussing the continued disparities in faculties related to gender, status, and salary); Deborah J. Merritt, *Salaries and Scholarship*, LAW SCHOOL CAFE (Jan. 13, 2018), <https://www.lawschoolcafe.org/2018/01/13/salaries-and-scholarship/> [<https://perma.cc/TAT6-2QSY>]; Melissa H. Weresh, *Stars upon Thars: Evaluating the Discriminatory Impact of ABA Standard 405(c) Tenure-Like Security of Position*, 34 LAW & INEQ. 137 (2016).

¹⁶⁷ If adding more to a school's already packed faculty-meeting agenda seems impossible, this suggestion can be achieved in a variety of other ways, including brown-bag lunches, pedagogy workshops, and faculty CLE programs.

¹⁶⁸ This idea is based on a program Professor Everett Chambers started at UNT Dallas College of Law called pedagogical moments, during which faculty would share creative and

added benefit, this approach often results in skills professors teaching their doctrinal colleagues tips for their future success in the classroom, placing them in a rare position to garner respect from their colleagues.

- Compensate or otherwise place significant institutional value on any faculty member's service on one of the NextGen bar exam committees, designed to help develop the pilot NextGen exam.¹⁶⁹
- Appoint academic-support faculty to the institution's curriculum committee and add initial reevaluation of the curriculum in light of the NextGen bar exam to the committee's charge.
- If you are hiring new faculty this year, consider allocating one line—even better, one tenure-track line—to hiring a professor with academic-support and bar-readiness experience.¹⁷⁰

As law schools grapple with the changes to come, valuing those faculty members whose expertise is in the bar-preparation field and ensuring they have the time and budget to learn about the changes will be central to law schools' ability to adapt to the NextGen bar exam.

D. Incorporate Time-Pressured Assessments that Require Reading and Writing Across the Curriculum

The fourth shift law schools can make in advance of the NextGen bar exam involves reimagining their assessment practices. The NextGen bar exam is shifting the bar exam from a test primarily focused on examinees' doctrinal knowledge and ability to memorize to a test focused equally on whether examinees know the law and whether they can do the work of entry-level attorneys with the law they know, that is, identify a client's legal issue, discern relevant facts, find the relevant law, parse the relevant law, and communicate legal analysis in written format. Although these basic lawyering skills were tested by the MPT component of the existing bar exam, given the revised structure of the NextGen bar exam, these core lawyering skills now play an even more prominent role in bar passage. Moreover, given the timed nature of the bar exam generally, the NextGen bar exam even more than the existing bar exam turns on whether examinees can engage in these practice skills under time pressure.

interactive teaching ideas.

169 For example, earlier in 2021 the NCBE requested applications from legal professionals around the country, including law professors, to serve on the NextGen bar exam's Content Scope Committee, which will determine the precise doctrinal and skills coverage tested on the NextGen bar exam. *Announcing NCBE's Content Scope Committee*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/announcing-ncbes-content-scope-committee> [<https://perma.cc/93RA-PTKH>].

170 In addition, given the new skills that will be tested by the NextGen bar exam, consider also hiring faculty versed in client management, client communication, negotiation, and legal research.

Experts in the field, including Professors Sabrina DeFabritiis and Kathleen Vinson¹⁷¹ and Access Lex's Sara Berman,¹⁷² have long argued for incorporation of timed MPT-style assessments across the law school curriculum. According to these experts, weaving MPT-style assessments into doctrinal courses better prepares students both for the existing bar exam and for practice than the current assessment techniques used at most law schools—midterm and final exams driven by cram-session-style studying or open-ended semester-long writing projects.¹⁷³

Professors DeFabritiis and Vinson explain that MPT-style assessments fill a teaching and learning gap in the existing curriculum—timed performance of the completion of practice-based skills—that helps with skills transfer, engages Generation Z, aligns law school and bar assessment metrics, and emphasizes the tie between the bar exam and competent practice.¹⁷⁴ No one is suggesting that MPT-style assessments become the only or even the primary form of assessment in law school, but incorporating them as part of a law school's assessment practices will prove useful. After all, even before the announced shift to the NextGen bar exam, the experts found that a coordinated integration of time-pressured MPT-style assessments across the curriculum would improve practice readiness, improve bar preparedness, and provide helpful data to law schools that wanted to identify students likely to struggle on the MPT portion of the bar exam (while there was still time to remedy the deficits). In light of the NextGen bar exam's focus on practice skills, this fairly simple curricular adjustment becomes even more important.

*E. Begin to De-Silo Doctrinal, Bar Preparation, and Skills Teaching
and Educate Professors on Forthcoming Bar Changes*

The last adjustment law schools should make in advance of the NextGen bar exam involves reinvigorating law schools' sense of community and joint responsibility for the education of their students. The legal academy is often depicted as divided into silos: One silo houses the doctrinal faculty, another the legal writing faculty, another the clinical faculty, and yet another the academic excellence and bar-preparation faculty. These silos in legal academia are perplexing but undeniably persistent. Many scholars have called for the "de-siloing" of legal academia for decades.¹⁷⁵ Others have sought to break the silos by cross-pollinating them, so that even if the content may be kept in

¹⁷¹ See DeFabritiis & Vinson, *supra* note 13, at 141.

¹⁷² See generally Sara Berman, *Integrating Performance Tests into Doctrinal Courses, Skills Courses, and Institutional Benchmark Testing: A Simple Way to Enhance Student Engagement While Furthering Assessment, Bar Passage, and Other ABA Accreditation Objectives*, 42 J. OF THE LEGAL PRO. 147 (2018).

¹⁷³ See DeFabritiis & Vinson, *supra* note 13, 142–44.

¹⁷⁴ See *id.* at 131–37.

¹⁷⁵ See, e.g., Steven Friedland, *Adaptive Strategies for the Future of Legal Education*, 61 LOY. L. REV. 211, 216–17 (2015). See also Adam Lamparello, *The Integrated Law School Curriculum*, 8 ELON L. REV. 407 (2016).

silos, faculty move among the content-based silos by wearing multiple hats—for example, teaching legal writing and contracts.

With the NextGen bar exam's renewed focus on skills and the exam's plan to test more limited subject-matter areas using *multiple* question formats in each subject-matter area, the siloed approach to legal education endangers law schools' ability to adequately prepare students for the "fully integrated" NextGen bar exam. Skills, including writing, analysis, research, client management, and reading, have never, by their very nature, been siloed separate from doctrinal content; after all, there is no way an examinee can conduct written legal analysis without any doctrine or law. The inverse is also true: There is no way an examinee can answer a doctrine-based question without using at least some lawyering skills (critical reading or legal reasoning, for example). This intermixing of skills and doctrine is even more obvious on the NextGen bar exam, where "lawyering skills" will not purport to be tested in a single isolated component of the exam—the ninety-minute MPT. Instead, on the NextGen bar exam skills and doctrine will be interwoven throughout the exam, which will, for example, require examinees to communicate knowledge of doctrine in writing by having them draft a short-answer response, answer an essay question, or complete a lawyering task.

Viewing bar passage as being housed in a silo—taught, curated, and prepared by a set group of faculty hired solely for that purpose—is shortsighted. The skills students need for the existing bar exam and those needed—even more—for the NextGen bar exam should be introduced early on and then taught, assessed, and built on throughout law school. To do this, bar-preparation faculty must be conversant in doctrine, and doctrinal professors must be conversant in bar preparation to allow students to grow as lawyers throughout their law school careers and to practice transferring the skills across content areas and in new contexts, as they will be required to do on the NextGen exam. And, yes, to do this successfully faculty members from today's various silos must refuse to stay in their familiar silos.

This "de-siloing" begins with the administration demanding that doctrinal professors become educated in the nuances of the NextGen bar exam. This education can take place by offering brown-bag lunches, hosting symposia, circulating articles, or arranging formal presentations on the NextGen exam. De-siloing also requires academic-support, bar-readiness, and current-skills professors to begin to develop institutional best practices for skills instruction and assessment. Finally, as part of a preliminary effort to de-silo, the bar-preparation and academic-support faculty members must share materials, statistics, and other bar and bar-related pedagogical materials with doctrinal faculty to help them incorporate bar-style skills teaching and assessments into their courses. While all professors, of course, have academic freedom to teach their courses how they deem best, consistency in messaging, skills language, and skills assessment can help students transfer skills instruction from one course to another and then, ultimately, to the bar exam.

Conclusion

This is not the first time that legal education has faced an industry-changing event. But, in this instance, law schools' failure to face and plan for the impending change—the NextGen bar exam—will affect not just the elements that comprise a law school's ego—for example, rankings, admissions, and ABA scrutiny. Instead, failure to assess the substantive and structural changes of the NextGen bar exam and to adjust the law school curriculum in a timely manner in response to these changes will directly impact incoming law students—Alex and all the students in law schools across the country similarly situated to Alex. Without action, Alex will face a bar exam for which his four years of law school have not adequately prepared him. Moreover, if Alex manages to pass the bar, Alex will enter practice missing many of the lawyering skills that the legal industry deems critical to success for entry-level attorneys.

Given this fact, law schools must resist the urge to wait and see what the prototype of the NextGen bar looks like or to review the subject-matter outlines for the subjects covered by the NextGen bar exam. Instead, they can make additional adjustments as more information comes to light. In the meantime, law schools must make some of the early and, frankly, basic adjustments necessary to begin to prepare their students for the NextGen bar exam. Without a doubt, such adjustments will mean law schools will graduate students ready to be successful on the bar and equally ready to be successful in practice.