

THE BAR EXAM AND LAW SCHOOLS

Though students tend to pick courses that reflect bar exam subjects, the exam has only a marginal effect on course content.

By Byron D. Cooper

Not long after bar examinations were adopted in most states to improve the quality of lawyers admitted to practice, law school accreditation standards were raised to eliminate bar cram schools. However successful bar cram schools were in preparing students for bar exams, they were thought to provide inadequate preparation for the practice of law.

The result strikes the uninformed as odd: a scheme of required professional training that is not expected to prepare the students for the required professional licensing examination. In fact, under Standard 302(f) for approval of law schools, the American Bar Association prohibits accredited law schools from requiring bar preparation courses or offering them for credit. For the most part, the only lingering remnants of the bar cram schools are the commercial bar review courses taken by most students preparing for a bar exam.

Most states require both graduation from an accredited law school and success on a bar exam for admission to the bar. In those states, the bar exam alone is not expected to insure that lawyers are competent. Nevertheless, it is sometimes seen as a mechanism by which the bar can influence the content of legal education. Whether this has in fact happened in Michigan requires a consideration of several issues, including student course selection, course content, and the extent to which the rules and doctrines tested on specific bar exams are or can be taught in law school courses.

Course Selection

Michigan provides almost a laboratory test for the extent to which student course

selection is affected by subjects tested on the bar exam. In 1998, the Michigan Supreme Court added four new subjects to the bar exam: domestic relations, conflict of laws, "no-fault," and worker's compensation. Before this change, relatively few law students enrolled in courses in no-fault automobile insurance or worker's compensation. In no school in Michigan were these courses required.

The staff comment justifying the addition of these topics indicated that the changes "would place Michigan in accordance with the majority of jurisdictions in the United States."¹ In fact, only three other states test worker's compensation, and only one other state tests no-fault automobile insurance.

In the wake of the addition of "no-fault" and worker's compensation to the bar exam, some schools in Michigan have seen substantial increases in the numbers of students enrolling in no-fault automobile insurance and worker's comp courses. Growing student demand has led some schools to offer these courses more frequently.

Justice Patricia Boyle, objecting to the addition of these two subjects to the bar exam, commented that she "was not persuaded that adding these two subjects to a law school's curriculum will elevate either the analytical abilities of law students or their practical skills." It is regrettable that many students who could be taking advanced or specialized courses feel obliged to study narrow, heavily statutory subjects solely because of the bar exam.

All columns are the opinion of the writer and do not represent the position of the Legal Education Committee.

Nevertheless, it appears that bar exam topics influence a substantial number of students in their choice of course electives, at least among those who intend to take the Michigan bar exam.

Course Content

To what extent does the bar examination influence course content in the areas tested on the bar exam? I undertook an informal survey of instructors in Michigan law schools who teach property law, the only bar subject in which I am familiar with the content of casebooks currently being published. The survey indicates that many property instructors, though certainly not all, are influenced to some extent by the topics tested on bar exams, either the multistate questions alone or both the multistate and state essay questions. The majority of property faculty take the bar exam into consideration in deciding which sections of the required casebook should be covered in the course.

The 581 multistate questions most recently released by the National Conference of Bar Examiners² reveal that the property questions test subjects covered well in most current property casebooks and presumably covered in most property courses, the only significant exceptions being mortgages, water law, and fixtures.

Likewise, the property essay questions on the last 20 Michigan bar exams test topics that are covered in nearly every property casebook, the only major exceptions being the law of fixtures (February 1991, February 1993, February 1996, July 1997, July 1998) and perhaps equitable mortgages (February 1993, July 1999), mortgages in general (July 2000), and replevin and trover or conversion (July 1995).

Even among those property instructors who make some effort to cover topics tested on the bar exam, the bar exam appears to be a distinctly secondary consideration. Many leave mortgages to a real estate finance course and the law of fixtures to the secured transactions course. Some touch upon bar subjects only briefly while covering other topics considered more important to the course. Most regard the commercial bar review courses as an adequate alternative for any topics omitted from the course.

It appears that the bar exam has only marginal influence on course content, at least among property teachers in Michigan.

Specific Rules

What if a law professor decided to make a law school course into a “bar prep” course by drilling specific rules and preparing the students for a specific bar exam? Would this strategy be useful? What difference would it make?

If an instructor decided to orient a course to the bar examination of a particular state, the first issue that would arise is what to do with the many students in every law school class who don't intend to remain in the state where the law school is located. If that can be resolved, what rules would the instructor teach?

An analysis of the most recently released multistate multiple choice questions—again limited to the property questions—indicates that the questions are fair and the answers in accordance with the coverage of nearly all property casebooks. The only possible exception is question 423, which raised the issue whether a claim by adverse possession is sufficient to satisfy a seller's obligation to provide “good and marketable title” in a conveyance of real estate. The answer graded as correct was no, because a buyer “cannot be required to buy a lawsuit.” This result is contrary to the holding of *Conklin v Davi*, 388 A2d 598 (NJ 1978), a case discussed or reprinted in the most popular casebooks. But

other than this single question, the multistate questions fairly reflect the doctrines and rules presented in most casebooks.

From the Model Answers for the essay questions on the Michigan Bar Examination, however, it appears that the essay questions expect examinees to know Michigan law. To what extent would a course intended to prepare students for the bar exam have to address the specific rules of Michigan law? This topic will be addressed in the next issue of the *Journal*. ◆

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FOOTNOTES

1. “From the Michigan Supreme Court,” 77 Mich Bar J 346 (March 1998).
2. National Conference of Bar Examiners, *Multistate Bar Examination Questions* (1992).