



# MBE Approach Workshop

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# The Multistate Bar Exam – 50% of your score

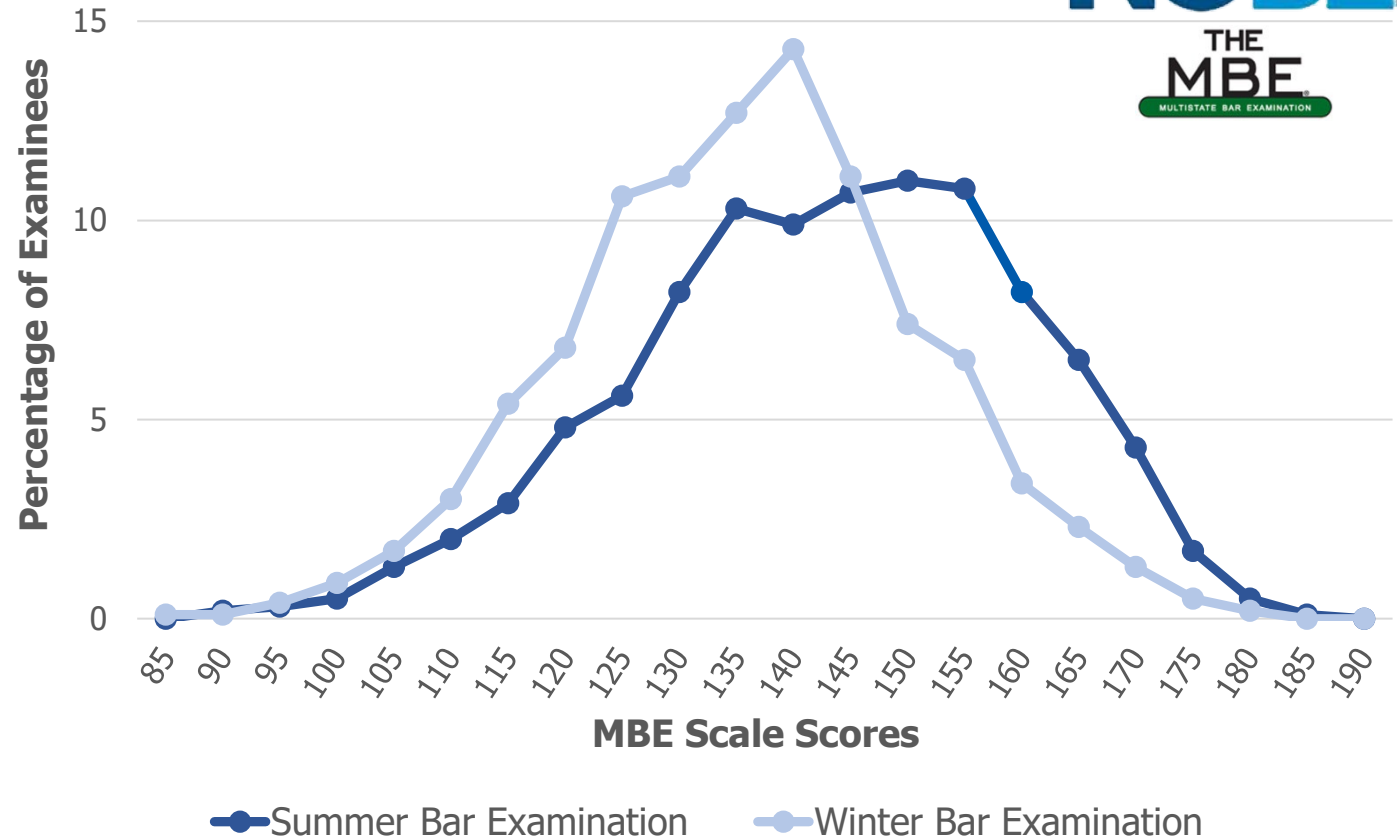


## 200 multiple-choice questions

### Seven subjects

- Civil Procedure
- Constitutional Law
- Contracts
- Criminal Law
- Criminal Procedure
- Evidence
- Real Property
- Torts

Average scaled score is less than 70%



# Evidence Approach on the MBE

1. What court are we in?
2. Where are we in the proceeding?
3. What is the purpose of the evidence?
  - Propensity
  - Credibility
  - Truth

## Question 1

The defendant was on trial on a hit and run charge, whereby the prosecution asserted that the defendant's vehicle struck and injured an elderly pedestrian, and then the defendant sped away from the scene of the accident without stopping to assess the pedestrian's injuries or to render assistance. The defendant took the stand and denied the charge. A priest is ready to testify that he has known the defendant for 12 years, that the defendant has performed many charitable acts, and that the defendant is a highly responsible person who would not run away from his obligations by leaving the scene of an accident.

If the prosecution objects to the priest's proposed testimony, should the court bar the priest from testifying?

- (A) No, because the testimony shows that the defendant is a person of good character.
- (B) No, because the testimony is habit evidence tending to show that it was unlikely that the defendant was the perpetrator.
- (C) Yes, because one may not use character evidence to bolster one's own testimony.
- (D) Yes, because the prosecution has not made an issue of the defendant's character.

## Question 2

The defendant is being tried for murder in the bludgeoning death of his brother. The defendant denies any involvement in the crime. He calls a witness to the stand, who testifies that, in his opinion, the defendant is a nonviolent, peaceable man.

Which of the following, if offered by the prosecution, would most likely be admissible?

- (A) A neighbor's testimony that the witness has beaten his wife on several occasions.
- (B) A police officer's testimony that the defendant has a general reputation in the community as a violent person.
- (C) A neighbor's testimony that the defendant has a reputation for being untruthful.
- (D) Evidence that the defendant has a conviction for aggravated battery.

### Question 3

The plaintiff sued the defendant for bodily injuries suffered by the plaintiff as a result of a collision between the cars they were driving. The accident occurred on a rainy day, when the defendant's car skidded across the center line and struck the plaintiff's car. A principal issue is whether the defendant was driving too fast for the wet conditions. At trial, the plaintiff calls a witness who is prepared to testify that he has lived next door to the defendant for 15 years, and that the defendant is notorious in the neighborhood for driving his car at excessive rates of speed. The defendant's attorney objects.

May the witness's testimony be allowed?

- (A) Yes, because the defendant's character as a careless driver is in issue.
- (B) Yes, because character may be proven by reputation evidence.
- (C) No, because the testimony is improper character evidence.
- (D) No, because the testimony is hearsay, not within any exception.

#### Question 4

The plaintiff filed a personal injury action against a restaurant. The plaintiff alleges that she suffered food poisoning after consuming the restaurant's daily special—extra-strong coffee and chili over eggs. The restaurant defends by claiming that the special on the day in question was an exotic tea served with a yogurt and fruit blend and that the extra-strong coffee drink was not even on the menu that day. Counsel for the restaurant called a former waitress to testify as to whether the extra-strong coffee drink was on the menu that day. The former waitress, who lives with the plaintiff, testified that it was always on the menu. The restaurant's attorney then asked, "Didn't you in fact, at your deposition, state that the extra-strong coffee drink was not on the menu that day?" The plaintiff's attorney objects.

The question is:

- (A) Proper, because the former waitress is hostile.
- (B) Proper, because it constitutes refreshing the witness's recollection.
- (C) Improper, because this is a leading question on direct examination.
- (D) Improper, because the restaurant cannot impeach its own witness.

## Question 5

A plaintiff sued a defendant for serious personal injuries he incurred when the defendant allegedly drove through a red light and collided with the plaintiff's car. Calling the defendant as an adverse witness, the plaintiff asked her if she had been drinking before the accident. The defendant refused to answer, asserting her privilege against self-incrimination. The plaintiff then offers in evidence a certified copy of a court record indicating that, eight years previously, the defendant had been convicted of reckless driving while intoxicated that caused serious personal injury, a felony.

The trial court should:

- (A) Admit the record as relevant character evidence because the plaintiff suffered serious personal injuries.
- (B) Admit the record as impeachment evidence.
- (C) Exclude the record as irrelevant because as yet the defendant has given no testimony to be impeached.
- (D) Exclude the record because the conviction is too remote and does not necessarily reflect on the defendant's credibility as a witness in the present proceedings.



## Question 6

At the defendant's trial for rape, he calls a witness who testifies that she was on her patio barbecuing some hamburgers at the time of the charged rape and saw the assailant run from the victim's apartment. She further testifies that the person who ran from the victim's apartment was not the defendant. On cross-examination by the prosecutor, to which of the following questions would a defense objection most likely be sustained?

- (A) "Weren't you convicted of perjury 11 years ago?"
- (B) "Weren't you under the influence of heroin at the time you were barbecuing those hamburgers?"
- (C) "Haven't you and the defendant known each other since grammar school?"
- (D) "Weren't you fired from your job last week because they discovered you were embezzling funds?"

### Question 7

The plaintiff sued the defendant for making a slanderous statement that greatly embarrassed the plaintiff. The defendant denied that he ever made such a statement. At trial, the plaintiff called a witness to the stand, and the witness testified that he heard the defendant make the statement on August 4. The defendant discredited the witness, and the plaintiff offers evidence of the witness's good reputation for truthfulness. The rehabilitation is most likely to be permitted if the discrediting evidence by the defendant was testimony that:

- (A) The witness and the plaintiff had known each other since childhood.
- (B) The witness had been convicted of perjury in an unrelated case.
- (C) The witness had attended a school for developmentally disabled children.
- (D) The witness disliked the defendant.



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