

MBE Lecture:

What subjects are covered for the Baby Bar MBE questions?

Torts, Contracts/UCC, and Criminal Law

*The testing in Torts are directed towards elements, and the black letter law

*The testing for contracts is more demanding in reading comprehension. The fact patterns tend to be long and lengthy.

*The testing for criminal Law also focuses on elements and the black letter law.

The MBE exam is an objective multiple choice exam with four answer choice options. The questions are mixed and not given in order of the subject matter. All of the MBE questions are worth the same point value. The score is based on the number correct and converted to a 400-point scale.

A MBE question is comprised of three parts; the root (fact pattern), stem (call of the question) and the options (answer choices)

When reading an MBE question you need to read the facts carefully. The examiners know that we do not read in detail and that is how they test. Look to the operative language. The fact pattern often turns on the details in the facts. You need to determine what is relevant and irrelevant in the facts.

***How to read an MBE**

When taking a MBE question always start with the stem of the question (call) this will narrow down the specific that is being tested. Once you have read the call of the question, than read the fact pattern carefully. Mark up the fact pattern based on what you see from the facts.

Make sure that you are answering the call of the question

General rules concerning the MBE

Do not assume facts.

Don't make the problem harder than what it is. Keep it simple. If there are multiple ways to interpret a question, one making the problem straight forward and the other making it complex, choose the straight forward interpretation.

Look for triggering facts while reading the exam. If you see a statute on the exam, break the statute apart by the elements. Read the statute carefully. Most students would not apply the given statute in the fact pattern and the examiners know this.

If a question is specific, example which is the best defense, which claim will succeed, you need to re-write the call of the question

Example: Which is the best defense – rewrite to - Based on the facts what will support Defendant not being guilty.

Example: Which claim will succeed- rewrite to - Which is the only claim that will succeed based on the facts.

If you see an MBE question with because or since these are conclusions. Therefore, everything after the since or because will be true. Let's take a look at **Example #1** and see how this works

Let's look at an MBE question and process it together:

Example #1

In the State of X an assault is defined as an attempt to commit a battery. As Pete was walking down Main Street, he dropped his cell phone. As he went to grab the phone while in the process of dropping to the ground he hit Mary, who was jogging down Main Street, in the butt. Mary thought Pete was being fresh and pushed Pete away. If Pete is charged with assault he will be found:

- A. Guilty, because he caused apprehension in Mary.
- B. Guilty, because he should have been aware of others around him.
- C. Not guilty, because he had no intent to touch Mary.
- D. Not guilty, because he did not intend to touch Mary.

Looking at all the answer choices they all look bad. Hence, we apply the process of elimination. If you believe the answer is he is not guilty you can illuminate answers A and B since they have a modifier because, since, and as are modifiers. If an answer choice uses because or since you can illuminate 2 answer choices right off the bat.

Thus, that leaves answer choices C and D.

However let's look at all the answer choices:

- A. Answer A states - Guilty, because he caused apprehension in Mary.

In looking at the statute it states An assault is defined as an attempt to commit a battery.

Answer A only requires a showing that Pete caused apprehension. The answer choice leaves out the mens rea element. Thus, incorrect.

** Attempt – you need to show specific intent

- B. Guilty, because he should have been aware of others around him.

The mens rea based on the statute is specific intent. Answer B suggests he should have been aware. A negligent standard. Thus, incorrect.

- C. Not guilty, because he had no intent to touch Mary.

Answer choice C correctly states the mens rea in the statute. Hence, looks like a good answer.

- D. Not guilty, because he did not intend to touch Mary.

Answer choice D sounds good however, the language did not intend is not specific enough compared to answer choice C. Therefore, answer choice C is the best answer and is correct.

Remember you are to choose the **best answer**. As in the example above, there are 2 correct answers but one is better than the other. This is how the MBE are tested. You need to beware of this for your preparation.

Now let's look at other modifiers - "if" and "unless"

When you see a question that is using **if** as a modifier everything after the **if** must be true. As for the answer choice using **Unless** as a modifier the best way to attack this kind of answer choice is to re-write the answer choice : To No or yes if.

Let's take a look at another MBe question

Example # 2

Tammy is a chemical engineer. She has no interest or connection with Chemco. Tammy noticed that Chemco's most recent publicly issued financial statement listed as part of the assets a large inventory of a special chemical compound. The asset was listed at a cost of \$100,000, but Tammy knew that the ingredients of the compound were in short supply and that the current market value was 1,000,000. Chemco's stock is currently selling for \$5.00. However, if the true value of the chemical was known then the stock would sell for \$30. Tammy approaches Sam and offers him \$6 a share for his 1,000 shares of Chemco stock. If Sam asserts a claim based on misrepresentation against Tammy, will Sam prevail?

- A. Yes, because Tammy knew of the true value of the inventory.
- B. Yes, if Tammy did not inform Sam of the true value of the inventory.
- C. No unless, Tammy told Sam that the stock was not worth more than \$6 a share.
- D. No, if Chemco's financial statement was available to Sam.

How would we review the answer choices?

- A- Because modifier: Based on misrepresentation is Sam going to prevail. You need to go through and find that the elements of misrepresentation are satisfied. In going through the elements of misrep Tammy did not make any representation to Sam. Hence, A is incorrect.
- B- If, as a modifier. Everything after - If must be absolutely true. Yes, If Tammy did not inform Sam of the true value of the inventory. Now go through the elements. Did Tammy make a false statement? NO. B is incorrect.
- C- No, unless, re-write to Yes, if and after the if is everything else true. These facts support a false representation of facts which satisfies misrepresentation. C looks correct.
- D- No if, everything after if true. The facts of the financial statement do not support a misrepresentation. Do we have a false statement? No, thus, D is incorrect.

When taking an MBE, make sure you apply the rules/elements of the concept that is being tested.

Example #3

Tillie Taylor was a member of the Children of the Earth. During one of the organization's group encounter sessions, Raj Reel, the groups leader who knew that Tillie was a paranoid schizophrenic, accused Tillie of being disloyal to her fellow "brothers and sisters". Tillie's disloyalty stemmed from the fact that she had telephoned her parents in disobedience of the group's code of conduct. Ostracized from the group, Tillie fled the commune and returned to her parent's home that evening.

After unsuccessfully trying to lure Tillie back to the group's movement, Raj decided to employ a "last ditch" effort to secure her return. Raj leased a billboard located across the street from Tillie's house. Raj had the billboard printed to read:

"TILLIE, THE CHILDREN OF THE EARTH COMMAND YOUR RETURN"

As a result of the billboard, Tillie suffered a nervous shock and refused to leave her house, fearful that she would be abducted by her former "brothers and sisters."

In an action for false imprisonment against Raj and Children of the Earth, Tillie will most likely

- A. Recover, since Tillie's confinement resulted from the implicit threat on the billboard.**
- B. Recover, since Tillie's confinement was psychological and Raj knew that Tillie was a paranoid schizophrenic**
- C. Not recover, since the defendants did not intend for her to be confined in her home.**
- D. Not recover, since Tillie was under no constraint to remain in her house**

C is the best answer. For false imprisonment you need a showing of intentional physical or psychological confinement of another. – This is an example of how you need to break apart the elements of false imprisonment. There is psychological confinement present however, there is no intent. Prime example of how you need to break apart the elements and make sure that facts support the elements.

Now that you are experience let's look at a few and see how you do.

Question 1 is based on the following facts:

On November 1, 2009 Mozart entered into a contract with Thomas to play the piano in his night club for New Year's Eve. The agreement was for \$25, 000 for the evening. Mozart is very popular and Thomas knew he had a big following and would pack the night club with Mozart as the headliner. On December 29, 2009 Mozart called Thomas and told him he has been offered more money to play at another club and would not be playing. May Thomas bring the lawsuit now?

- A. No, because Thomas must wait until December 31, 2009 to see if Mozart performs.**
- B. No, since the contract was no executor.**
- C. Yes, because Mozart repudiated the contract**
- D. Yes, since Thomas will lose profit without a headliner.**

Answer C is correct. For anticipatory repudiation you need the contract to be executory, and you need express words of repudiation.

Question 2 is based on the following facts:

Biff goes to Jackson's house at 3:30 p.m. intending to break in and take Jackson's TV. When he arrives, he finds the door wide open and no one home. He walks in and takes the TV. The most serious crime that Biff could be convicted of is:

- (A) Larceny.
- (B) Robbery.
- (C) Burglary.
- (D) Embezzlement.

A is the correct answer.

Why larceny vs burglary

Question 3 is based on the following facts:

Mel is painting his car in his garage, surrounded by flammable chemicals. He steps outside to take a smoke break, and falls asleep with a cigarette in his hand. The cigarette ignites some fumes and burns the garage down. Charges with arson under most modern statutes, Mel will likely be:

- (A) Convicted, because his actions were reckless, sufficient mens rea for arson.
- (B) Acquitted, because he did not burn down a dwelling.
- (C) Acquitted, because the garage was his own property.
- (D) Acquitted, because he did not intend to start the fire or manifest extreme disregard for the danger.

D is the correct answer.

Remember the call of the question is testing Modern arson.

Question 4 is based on the following facts:

A man went into a high school and took an unattended backpack. As he was slowly driving his car out of the school parking lot, he accidentally hit and Killed a student who ran out from behind a parked car. Is the man guilty of murder?

- (A) No, because the man did not intend to hit the student.
- (B) No, because larceny of a backpack is not an inherently dangerous felony.
- (C) Yes, because the man killed the student while leaving a crime scene.
- (D) Yes, because the man could not have hit a student without being grossly reckless.

B is the correct answer.

Question 5 is based on the following facts:

Liz and her boyfriend, Lucus, were having dinner at the Golden Dragon Chinese restaurant in Chinatown when she excused herself to go to the bathroom. The restaurant was owned and operated by Wong. As Liz was walking past a table where Elliot, another customer, was seated, she slipped and fell on an egg roll that was lying on the floor. When she fell, her head struck a serving tray, which was located in the aisle. The fall caused Liz to suffer a severe concussion. Elliot knew that the egg roll was on the floor and, although he could have done so, he did not warn Liz. If Liz asserts a claim against Wong for the injuries she suffered from the fall, she will most likely:

- (A) Recover, because the egg roll on the floor constituted an unsafe condition of the premises
- (B) Recover, if the egg roll was on the floor for a substantial period of time before the accident
- (C) Not recover, unless Wong knew that the egg roll was on the floor
- (D) Not recover, if Elliot was responsible for knocking the egg roll off his table

B is the correct answer.

Question 6 is based on the following facts:

On October 1, Arthur mailed to Madison an offer to sell a tract of land located in Summerville for \$13,000. Acceptance was to be not later than October 10. Madison posted his acceptance on the 3rd of October. The acceptance arrived on October 7. On October 4, Arthur sold the tract in question to Larson and mailed to Madison notice of the sale. That letter arrived on the 6th of October, but after Madison had dispatched his letter of acceptance. Which of the following is correct?

- (A) There was a valid acceptance of the Arthur offer on the day Madison posted his acceptance.
- (B) Arthur's offer was effectively revoked by the sale of the tract of land to Larson on the 4th of October.
- (C) Arthur could not revoke the offer to sell the land until after October 10.
- (D) Madison's acceptance was not valid since he was deemed to have notice of revocation prior to the acceptance.

A is the correct answer. Based on the mail box rule the acceptance is effective upon dispatch.

****Did these few MBE questions give you an understanding of how to process and eliminate the wrong answer choice.**

When you miss an MBE question you need to figure out the why. Look to the answer you chose and determine why you chose that answer versus the correct answer. Merely reading the answer choice is not enough. If time allows you can write a flashcard on the missed questions.