

MBE Lecture 2:

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.

At this point in your studies for preparing for the baby bar you have been doing multiple choice questions daily. You need to concentrate on mastering how the legal concepts are tested on multistate questions in order to succeed. Learning how to take multiple choice questions is a very special game because of how the questions are written. One word can change the whole answer. You need to understand how the questions are written.

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.

*When taking an MBE question always start with the stem of the question (call). This will narrow down the specific area that is being tested. Once you have read the call of the question, then 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.

*Do not assume facts.

*Don't make the problem harder than what it is. Keep it simple.

When practicing remember when you see the issue that is being tested make sure you are breaking out the elements and showing that the elements are supported based on the facts.

With contracts there is more demand on reading comprehension. The fact patterns tend to be long and lengthy. You need to make sure that you narrow the concept that the question is focused on.

General rules concerning the MBE

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.

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.

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.

How would we review the answer choices?

Example

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-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 is 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.

Let’s look at a few and see how you do with the application of the tips.

1. 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 not executory.
- (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.

2. Daniel owned a restored "classic" automobile made in 1922. To discourage tampering with the car, Daniel installed an electrical device designed to give a mild shock, enough to warn but not to harm persons touching the car. Paul, a heart patient with a pacemaker, saw Daniel's car and attempted to open the door. Paul received a mild shock which would not have harmed an ordinary individual but which caused his pacemaker to malfunction, resulting in a fatal heart attack.

If Paul's estate asserts a claim against Daniel for the wrongful death of Paul, will the estate prevail?

- (A) No, if Daniel was not using excessive force to protect his car.
- (B) No, because Paul was a trespasser.
- (C) Yes, because Daniel's act was a substantial factor in causing Paul's death.
- (D) Yes, if Paul had no reason to suspect the presence of the electrical device.

Answer is A

3. Bill borrowed a television set from Len to watch a football game on Sunday afternoon. Bill promised Len that he would return the set to Len by 7:00 Sunday night because Len wanted to watch a program at 10:00 that night. When Bill had not returned the set by 9:00, Len went to Bill's house. Bill was not at home, and Len forced open a window, climbed in, took his television set and walked out with it.

Did Len commit burglary?

- (A) Yes, because Len broke and entered Bill's dwelling at night.
- (B) Yes, because Bill had lawfully obtained possession of the television set from Len.

(C) No, because Bill was not at home when Len went to his house.

(D) No, because Len entered for the purpose of recovering his own television set.

Answer is D

4. Frederick threatened Bruce with a physical beating unless Bruce personally wrote, signed and mailed a letter to the President of the United States threatening the President's life. Bruce complied. A statute makes it a felony "knowingly to mail to any person a letter that threatens the life of the President of the United States."

Is Bruce guilty of violating that statute?

(A) No, because he did not intend to take the President's life.

(B) No, because of the defense of duress.

(C) Yes, because duress is not a defense to such a crime.

(D) Yes, because Bruce was not threatened with loss of his life.

Answer is B

5. Ed told Pete, an auto mechanic, that he had stolen a car and that the engine had to be rebuilt before it could be sold. Pete agreed to perform the work under the following terms: Pete would receive \$300 upon completion of the job, even though his normal fee was \$600 and he would receive an additional \$600 when Ed sold the car. After rebuilding the engine, and before the car was sold, Pete and Ed were arrested.

Did Pete commit the crime of conspiracy to sell the stolen car?

(A) Yes, because he agreed to rebuild the engine, knowing the car was stolen.

(B) Yes, because of the profit he agreed to receive on the sale of the car.

(C) No, because Ed was the person who was going to sell the car.

(D) No, because Pete's rebuilding of the engine was not *per se* illegal.

Answer is B

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.