



# The State Bar of California

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## FAQs: July 2019 California Bar Examination Early Topics Release Updated November 15, 2019

### RESULTS AND ANALYSIS

#### **Did the early release of topics for the written portion of the July 2019 California Bar Exam affect the grading of the bar exam?**

No. The same scoring [protocol and procedures](#) were used as have been used in the past.

#### **Did this event affect the results on the bar exam?**

To answer this question, the State Bar requested a detailed psychometric analysis of the July 2019 California bar exam results from the agency's regular psychometrician, Research Solutions Group. That [analysis](#) addressed three questions:

- To what degree, if any, did performance on the July 2019 California bar exam change as a result of the premature release of the question topics for this examination?
- To what degree, if any, was the California bar exam passage rate systematically impacted by the release?
- Was the performance of students from the 16 law schools whose deans were first made aware of the topics of the written portion of the exam differentially impacted relative to the performance of all other applicants? (This question was examined even though the State Bar has no evidence that students at these schools learned of the topics any earlier than other applicants.)

The psychometrician's analysis found that the premature release of the written exam topics had no statistically significant impact on the results.

In addition, because of the special circumstances surrounding the administration of this bar exam, the State Bar engaged a second psychometrician, ACS Ventures, national experts in assessment and psychometric analysis, to review the analysis performed by Research Solutions Group. [The ACS Ventures report](#) confirmed that the methods and procedures for scoring, scaling, and equating the bar exam were consistent with industry expectations and historical practice. ACS Ventures also confirmed the validity of the methods used in the initial psychometric analysis, concluding, "the empirical evidence suggests that the early release of topics did not have a material impact on performance on the July 2019 California Bar Exam."

**What explains the year-over-year increase in bar pass results?**

The psychometrician's findings suggest that given the increase in MBE scores, which occurred nationally as well as in California, the overall knowledge and skills of the applicants sitting for the July 2019 California bar exam increased, contributing to the increase in bar pass rate. The increase is consistent with the historic pattern of relationship between California and trends in the rest of the U.S. The 2019 California bar exam pass rate is essentially a rebound to the results last seen in 2017.

**What other measures did the State Bar take in the aftermath of this error?**

The State Bar offered refunds to students who chose to withdraw after learning of the premature release of topics and before taking the exam. The agency engaged an independent consultant, Jean Gaskill, to investigate and review the circumstances surrounding the error, identify causes, and recommend measures to prevent such occurrences in the future and protect the confidentiality of exam topics. [Final consultant's report](#)\*

(The California Supreme Court also conducted an [independent investigation](#).)

**How much did the State Bar investigation cost?**

The independent consultant was paid \$10,900 plus expenses, for a total of approximately \$11,500.

**Given the special circumstances of the July bar exam, will requests for adjustments to individual scores be considered?**

Requests for score adjustments for reasons related to the topic disclosure will not be considered. The State Bar believes it has taken the necessary steps to ensure that applicants were treated fairly, including offering refunds to those who chose to withdraw after the topic release and before the exam. The psychometricians found that the premature release of the content had no statistically significant impact on the results of the July 2019 exam.

*\* The redacted portions of the Report are exempt from disclosure pursuant to California Government Code §§ 6254(c) and (g). They are also exempt pursuant to California Government Code § 6255 because the redacted portions reveal confidential information about the administration of the California Bar Examination that, if disclosed, would undermine examination security and compromise the effectiveness of the State Bar's operations.*

## **BACKGROUND**

### **Bar Exam Facts**

July 2019 dates: July 30-31

Applicants who took the exam: 7,764

Testing centers: 15 throughout the state

Content: Five one-hour essay questions, one 90-minute performance test

Multistate Bar Examination: 200 item multiple-choice examination, testing seven subjects: Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts.

California Bar Examination topics are listed on this page:

[www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/California-Bar-Examination-Scope](http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/California-Bar-Examination-Scope)

### **What happened?**

On Thursday, July 25, at around 1:40 p.m., the State Bar prematurely emailed a memorandum to 16 law school deans that was not intended to be sent until after the California bar examination had been administered. The memo was a routine invitation to observe a calibration session of the [grading process](#) in late August and included the subject matter of the essay questions and performance test.

### **What did the State Bar do next?**

At approximately 2:00 p.m. on Saturday, July 27, State Bar management learned of the early topic disclosure from one of the law school deans who had received the memo. Once the State Bar determined that its control over this information had been lost, it decided to release the information in order to provide a level playing field to all. There was no indication that information had been disseminated to any applicant (and that remains the case), but the State Bar acted proactively to prevent a situation in which information about the exam could have reached some, but not all, applicants.

### **How long was the delay between State Bar discovery of the error and notice to applicants?**

State Bar leadership acted promptly to assess the situation and initiate disclosure to applicants registered to take the exam. After internal discussions, the decision to disclose the information to all applicants was made at approximately 6:00 p.m. Saturday, the same day we learned of the early release. The following email was sent to all applicants at about 9:30 p.m.:

To: Applicants for the July 2019 Bar Examination

It has come to our attention that the State Bar inadvertently provided a number of deans of law schools in California a list of the subject matter topics contained in the July 2019 Bar Examination essay questions and performance test. Out of an abundance of caution

and fairness, we are sending the same information, verbatim, to all those preparing to take the examination. The memo provided:

The subject areas and tasks for the July 2019 California Bar Examination are listed below. . . .

Question 1: Civil Procedure  
Question 2: Remedies/Constitutional Law  
Question 3: Criminal Law and Procedure  
Question 4: Professional Responsibility  
Question 5: Contracts  
PT: Objective Memo – Evidence

Sincerely,  
Donna S. Hershkowitz  
Chief of Programs, State Bar of California

The State Bar notified all California law school deans at approximately 11:30 p.m. Saturday, and a similar notification was sent to all national law school deans at approximately 12:30 p.m. on Sunday.

### **What is a calibration session and why did the invite include the exam topics?**

Calibration is part of the grading process for the California bar exam, described on [this web page](#). The Committee of Bar Examiners maintains a pool of approximately 150 experienced attorneys from which graders are selected for each examination grading cycle. The calibration process ensures consistent grading by the panels of experienced graders who read, evaluate, and score essay and performance test answers. The State Bar has invited law school deans to observe calibration for every bar exam for approximately 30 years. We invite a cross-section of law school deans to observe the calibration sessions to give them insight into—and ensure confidence in—the grading of the exam. Observing calibration sessions also gives law school deans and faculty useful information to impart to their students about the integrity of the grading process and what graders look for in scoring exam answers.

### **Why did only 16 deans get the memo?**

There is insufficient space to accommodate all who may be interested in attending, so the State Bar rotates the invitations among California law schools across exam administrations so that all will get an opportunity to observe calibration sessions. For each bar exam, the State Bar tries to choose a combination of deans from the different tiers/categories of law schools in California—including ABA-approved, California-accredited, and registered/unaccredited—to the extent practicable. The exam topics are listed in the invitation memo so that deans may choose to attend or send faculty well-versed in the topic areas.

### **Which deans got the memo?**

The invitation to attend the grading session was sent to deans from the following schools:

Abraham Lincoln University School of Law  
Cal Northern School of Law  
Glendale University College of Law  
Humphreys University Law School  
Lincoln Law of San Jose  
Northwestern California University School of Law  
Oak Brook College of Law  
Peoples College of Law  
San Francisco International University College of Law  
San Francisco Law School, Alliant University  
Taft Law School  
Trinity Law School  
UC Hastings College of the Law  
University of La Verne College of Law  
University of West Los Angeles School of Law  
Western State College of Law

### **What led to the decision to release the topics to all applicants?**

The State Bar consulted with the psychometrician involved in the evaluation and ultimate scoring of the bar exam. He concurred that release of general topics to all applicants was the best course of action, out of an abundance of caution and fairness, and in an attempt to level the playing field should any applicants have had access to the information contained in the memo.

### **Did the State Bar consider changing the topics for the bar exam?**

Yes. However, the State Bar has only a limited number of alternate questions available for exams. There is a rigorous process undertaken to develop questions in a way that ensures the exam's validity, and there was insufficient time to develop additional questions to supplement the existing limited number of alternate questions on hand, and to print and distribute an alternate set of exam questions and distribute them to 16 testing sites.

### **Did the State Bar consider postponing the bar exam?**

Yes, but it concluded that it would have been unfair to the applicants to postpone or cancel the bar exam because, for example:

- Numerous examinees travel to California from across the country and other parts of the world to take the bar exam.

- Numerous examinees take pre-planned leaves of absence from employment to study for and take the bar exam.
- Postponing the bar exam would likely require many applicants to engage in a renewed period of preparation, which would be disruptive to them, their families, and their employers.
- The State Bar of California does not have the authority to change the date of the Multistate Bar Exam. Making such a change requires approval from the National Conference of Bar Examiners.

Ultimately, we determined that the impacts of postponing would be too great on examinees who had already planned and studied for the exam.

**Why haven't we heard from Executive Director Leah Wilson on this?**

Her son, who graduated from an out-of-state law school, is among those who took the July 2019 bar exam. The Executive Director has been walled off from all decisions regarding the July 2019 bar exam and was not part of the decision-making process regarding release of the subject matter topics.