



The State Bar *of California*

Bar Exam Topics Release FAQs Updated August 21, 2019

Bar Exam Facts

July 2019 dates: July 30-31

Applicants approved to sit for the exam: approximately 9,000

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

California Bar Examination topics are listed on this page:

<http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/California-Bar-Examination-Scope>

The MBE tests seven subjects: Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts.

What happened?

On Thursday, July 25, at around 1:40 p.m., the State Bar inadvertently emailed a memo to 16 law school deans that was not intended to be sent until after the California Bar Examination. 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. The memo was intended to be sent *after* the exam was administered, but was mistakenly sent early. The memo included only the bar exam topics, not the questions themselves.

Because law schools use information about subjects on the exam to select which faculty to attend the calibration sessions, the memo could have been distributed in good faith to others besides the addressees, increasing the risk of potentially unfair access to the information by some applicants were the information to be shared for whatever reason.

Was this a systems or human error?

It was a human error.

What did the State Bar do next?

At approximately 2:00 p.m. on Saturday, July 27, State Bar management learned of the early 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, we decided to release the information in order to provide a level playing field to all. We had no indication that information had in fact been disseminated to any applicant, but acted proactively to address any worst-case scenario in which information about the exam might in whatever manner reach some but not all applicants.

How long was the delay?

State Bar leadership acted promptly to assess the situation and initiate disclosure to the approximately 9,000 applicants registered to take the bar 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 on July 28 at approximately 12:30 p.m.

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 diverse pool of approximately 150 experienced attorneys from which graders are selected for each examination grading cycle. Grading the California bar exam requires more than 70 graders. Many graders have participated for well over 10 years or more. The calibration process ensures consistent grading of the essay questions across the panel of experienced graders who read, evaluate, and score the essay and performance test answers. We invite a cross-section of law school deans to observe the calibration sessions because their feedback helps ensure the integrity of this calibration process. We have invited law school deans to observe calibration for approximately 30 years.

Why did only 16 deans get the memo?

Deans are invited to observe grading calibration for every bar exam. We choose a select group and rotate the selection among the law schools, as there is insufficient space to accommodate all who may be interested in attending. We try to choose a combination of deans from the different tiers/categories of law schools in California—including ABA-approved, California-accredited, and registered unaccredited, both fixed-facility and distance-learning— to the extent practicable. The invitation is supposed to be sent *after* the exam is administered, but this time was mistakenly sent early. Other law school staff often attend, depending on the subject matter used on the exam, which is why information about the specific subjects tested is included in the invitation.

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?

We consulted with the psychometrician who is 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.

Does this incident impact the Multistate Bar Examination (MBE) as well?

No. This impacts the California bar exam only; the MBE multiple-choice section is not impacted by the release of the topic areas for the California-specific exam. Topics not on the essay question list may be covered on the MBE.

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 limited number of alternate questions we have on hand. While only the topics, not the questions, were shared, there was simply insufficient time to prepare, edit, pre-test, re-edit, print, and package an entire set of new test questions in time for the bar exam.

Did the State Bar consider postponing the bar exam?

Yes. We concluded it would not have been fair 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 in the future, 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 have already planned and studied for this exam date.

What other measures is the State Bar taking?

Some students have asked about withdrawing from the bar exam and getting a full refund. While we hope that applicants do not decide to withdraw at this late stage, we will honor all such requests and furnish 100% refunds for the July 2019 bar exam requested from July 27 to July 30, 8:30 a.m., when the bar exam begins. Applicants who wish to withdraw can email us at: Admissions@calbar.ca.gov.

How will this event affect the scoring and results of the bar exam?

We anticipate using the same scoring protocol and procedures as have been used in the past. In large part due to the bar exam grading process itself, we do not expect there to be an impact on bar exam results.

The Committee of Bar Examiners utilizes a [grading procedure](#) designed to ensure that the difficulty of passing the bar exam remains unchanged from one administration of the exam to another. The statistical technique, called scaling, also ensures that the written and MBE portions of the bar exam carry equal weight.

Scaling involves adjusting scores on the written portions of the bar exam to fall within the range of MBE scores. The MBE scores are used for scaling because of the large number of questions on the MBE and the fact that they are multiple-choice in nature and thus scoring is objective, as opposed to the degree of subjectivity that exists in grading written bar exam questions. This

process ensures that measuring performance on written questions is anchored by performance on MBE questions. More information about scaling can be found [here](#).

We will closely monitor any changes in the written scores to scrutinize any deviation from the norm as exhibited from previous bar exams so that we preserve the integrity of the bar exam and ensure fairness for test-takers.

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 the 9,000 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.

What measures is the State Bar taking in the aftermath of this error?

The State Bar is committed to ensuring the integrity of the California bar exam. We believe that the remedial measures we have taken, by notifying students and deans and answering questions in a timely way, are sufficient to ensure the integrity of the July 2019 bar exam.

However, the State Bar apologizes for and regrets this error. The agency will launch an independent review of the circumstances surrounding the error to identify any measures we may need to take to prevent such occurrences in the future. Board Chair Jason Lee said, "On behalf of the State Bar, we do sincerely apologize for this error. Having taken the test myself 20 years ago, I understand the stress of preparing. We know this only adds to the level of the stress."

What is the status of the investigation?

Retired California attorney Jean C. Gaskill was retained to perform the investigation starting August 21.