

MAJOR CHANGES IN THE BAR EXAMINATION: IMPACT ON BAR EXAM REVIEW AND COACHING¹

Prof. Manuel R. Riguera

“Know the enemy and know yourself, and you can fight battles with no danger of defeat.”
Sun Tzu, The Art of War.

Last 31 July 2010, I had the privilege of attending the Supreme Court’s Seminar-Workshop entitled “Preparing for the 2011 Bar Exams and Beyond” held at the U.E. College of Law. Invited were bar-review lecturers, deans of law schools, law professors, and law students of the U.E. The seminar-workshop was personally conducted by S.C. Associate Justice Roberto A. Abad, the chairman of the 2011 Bar Examination.

Justice Abad apprised us of the major changes that will be implemented starting in the 2011 Bar Examination. These are the following:

- A new method of defining the coverage of the bar exams by topics and sub-topics rather than by statutes or rules.
- Part 1 of the bar examination will be in the form of multiple-choice questions (MCQs). This part will have a weight of 60%.²
- Part 2 will be in the form of a one or two essay-type questions requiring the examinee to analyze a hypothetical legal dispute and to write a trial memorandum or decision for the side of the dispute that he chooses to uphold or defend. This part will have a weight of 40%.

Justice Abad informed us that these changes had already been approved by the Supreme Court.

I daresay that these changes are not only major but revolutionary. They will have far-reaching implications for the stakeholders in the bar examination: the bar examinees and the law professors and reviewers. One of the early advocates of the use of MCQs was retired Justice Vicente V. Mendoza.³ Many of his recommendations were subsequently adopted by the Supreme Court and incorporated in Bar Matter No. 1161, which provided for a phased implementation of bar exam reforms.⁴

New method of defining the bar-exam coverage

The previous system of defining the bar exam coverage was to state the statutes and the rules that the bar examinee has to study. The Supreme Court felt that while this was acceptable in the past when the laws and rules were not that many, such a statement of the coverage would be too sweeping and over-broad given the exponential increase in the number of statutes and rules. The sheer plethora of the coverage would overwhelm the bar examinee.

Justice Abad said that while it was the consensus that a bar examinee should be tasked with studying and knowing only the basics of the law, defining the coverage of the remedial law bar exam as including the Rules of Court, or the coverage of the civil law bar exam as including the Civil Code would give little guidance to the examinee on what the “basics” of the law are. In this regard, I remembered a question in remedial

¹ The author would like to acknowledge the pamphlet “Preparing for the 2011 Bar Exams and Beyond,” written by Supreme Court Associate Justice Roberto A. Abad and given out during the seminar, and which helped the author immensely in writing this short article. The pamphlet is hereafter simply cited as “Abad.”

² Justice Abad stated that there were some justices who favored a 50-50 ratio while others favored a 70-30 ratio, but in the end the consensus was for 60-40.

³ VICENTE V. MENDOZA, TOWARDS MEANINGFUL REFORMS IN THE BAR EXAMINATIONS, 77 PHIL. L.J. 236-263,251 (2003).

⁴ LAT, GAMEZ, BAGAREZ, & TONSON, BAR BLUES 138.

law in which the examinee was asked to discuss Section 25, Rule 114 regarding the administrative duties of judges in conducting monthly inspection of detainees.

The new system would hopefully avoid such esoteric questions by circumscribing the source of questions that an examiner may employ. The new system would be very similar to an outline or syllabus that a law professor gives his students at the start of the course so as to guide the students in what areas to study.

Use of multiple-choice questions

A seismic shift in the format of the bar examination is the forthcoming use of multiple-choice questions in the 2011 bar exam. This is patterned after the Multistate Bar Exam (MBE) given in the United States which consists of multiple-choice questions.

The evident purpose of using MCQs is to make more objective the correction of answers. Appreciation of answers to standard problem-type questions tends to be subjective and parity in grading standards is far from guaranteed. Justice Abad also stated that the use of MCQs is a better measure of an examinee's knowledge of the law since an examiner can ask 200-300 questions and can cover more topics, unlike the standard problem-type questions in which about only 15-20 questions may be asked.

Justice Abad did not give a definitive figure for the number of MCQs to be asked or the time allowed the examinees for answering the MCQs. In the United States, the MBE consists of 200 questions to be answered in 6 hours. In the morning session of 3 hours, the examinee has to answer 100 questions, and in the afternoon he has to answer another 100 questions in 3 hours. This means that on average an examinee has about 1 minute and 48 seconds for each question.

Basic format of a multiple-choice question

An MCQ consists of a stem and four choices or "picks." A stem may either be a question or an incomplete statement. The choices consist of either (1) answers to a question, or (2) a word, phrase, sentence or sentences which will complete the statement.

An example of a stem which consists of a question is as follows:

1. P filed an unlawful detainer case against D before the MeTC of Manila. D filed an answer in which he raised a counterclaim that P borrowed P350,000 from him (D) for bar review expenses. What defense may P raise against D's counterclaim?
 - A. The MeTC has no jurisdiction over the counterclaim.
 - B. D did not pay the docket fee for the counterclaim.
 - C. The counterclaim is a pleading which is not allowed.
 - D. The counterclaim is in excess of P200,000.

An example of a stem which consists of an incomplete statement is the following:

1. An order confirming the foreclosure sale may be appealed within ___ days from notice.
 - A. 60.
 - B. 15.
 - C. 30.
 - D. 5.

Justice Abad said that for 2011, an MCQ would ask the examinee to pick the correct answer, rather than the best answer. Choices like "all of the above," and "none of the above," will not be used, at least for 2011, although they may be used in the 2012 or succeeding bar exams.

Use of distractors

According to Justice Abad, while there is only one correct answer among the four choices, the other three would have the appearance of correctness or would be

“plausibly” correct. The 3 incorrect choices which are plausibly correct are called “distractors.” The distractors should be plausibly correct, otherwise, the MCQ would be too easy.

For instance in the first MCQ given, many of my students picked A. This is plausibly correct; however the correct choice is C. Under Section 4, Rule 70 of the Rules of Court, the only pleadings allowed to be filed under Rule 70 are the complaint, compulsory counterclaim and cross-claim pleaded in the answer, and the answers thereto. The counterclaim is permissive and is thus a pleading which is not allowed under Rule 70.

A is not correct because the MeTC is in Manila and hence the jurisdictional amount is P400,000, not P300,000. B is not correct because it wrongly assumes that the MeTC may entertain the counterclaim once the docket fees are paid. D is not correct because it is based on a wrong premise, that is, the jurisdictional amount is P200,000 when it is P400,000.

MCQs of 3 types

According to Justice Abad, there are 3 types of MCQs: (1) know-and-recall MCQs, (2) MCQs which test the examinee’s understanding, and (3) analyze-and-solve MCQs.

Knowledge and recall

The first type of MCQ seeks to test the examinee’s ability to know and recall a specific law or legal principle. In drafting the MCQ, the examiner will employ a specific law or legal principle as a proposition. The first part of the proposition will then be the stem and the second part will be among the choices.⁵ An example of this type of MCQ is as follows:

An action quasi in rem is:

- A Binding upon the whole world.
- B A mix of a real and a personal action.
- C Directed against particular persons but seeks the sale or disposition of defendant’s property.
- D An action in personam involving real property.

The proposition in the mind of the examiner is “an action quasi in rem is directed against particular persons but seeks the sale or disposition of defendant’s property.” The examiner uses the first part as the stem, and then embeds the second part as one of the choices among four plausibly correct answers.

A “knowledge and recall” question mainly tests a examinee’s rote memory or ability to regurgitate legal knowledge, which while not trivial is on the low end of lawyerly skills. Hence the bar exam will devote only 20% of all MCQ items to “knowledge and recall” questions.⁶

Understanding

This type of MCQ goes beyond a mere know-and-recall query by testing whether an examinee truly understands a specific law or legal principle by relating the law or legal principle to specific situations. An example is given below:

The best evidence rule bars the presentation of

- A. Photocopy of a marked money used in a buy-bust.
- B. Testimony of plaintiff as to defendant’s answer to plaintiff’s question about the contents of a letter.

⁵ Abad 9.

⁶ Abad 11.

- C. Photocopy of a print-out of an email message.
- D. Testimony of a witness as to what the defendant texted him.

This type measures a higher grade of skill than just knowing and recalling laws. The examinee is measured not only on his textual knowledge of the best evidence rule but also on his ability to apply the rule to specific fact scenarios. 40% of the MCQs will consist of this type.⁷

Analyze-and-solve MCQs

The analyze-and-solve MCQ tests the quintessential skill of a lawyer: his ability to analyze a hypothetical case or problem, to determine the applicable law, and to reach a conclusion or opinion. 40% of the MCQs shall be of this type of MCQ.⁸ The MCQ consists of a fact-pattern of a hypothetical problem, followed by the call of the question, then by the four picks. An example of an analyze-and-solve MCQ is given below:

Although more than 3 months had already lapsed from service by the Defendant of his answer, the Plaintiff had not yet moved that the case be set for pre-trial. The Defendant moved that the complaint be dismissed for failure to prosecute. May the court grant the motion?

- A. Yes, Plaintiff has the duty to move that the case be set for pretrial.
- B. No, the Defendant should have moved that the case be set for pretrial.
- C. No, the court should simply order the Plaintiff to move that the case be set for pretrial.
- D. No, the clerk of court shall issue a notice of pretrial.

The analyze-and-solve MCQ is the one closest to the typical problem-type question found in previous bar exams. However instead of the examinee writing out the answer, he will have to pick the same from four plausible choices.

MCQ more challenging and difficult than traditional problem-type question

The consensus among the law professors who attended the seminar was that the MCQ would be more difficult than the old problem-type question. The basis for this opinion was that in an MCQ question, either the examinee “knows the answer or he doesn’t.” In a problem-type question, the examinee even if he gives a wrong conclusion can get substantial credit for his legal reasoning and argument. Compare this with a MCQ where a wrong answer will get no credit whatsoever. As Supreme Court spokesperson Atty. Midas Marquez said: “In an essay-type exam, it may be difficult for an examiner to determine if the examinee really knows his codal provisions. In a multiple choice exam, there are no ifs and buts. Either you know it or not.”⁹ And guesswork will be of little help to the examinee as the odds of picking the correct answer are 25%, far below the passing percentage of 75%.

The consensus was proved when I administered MCQ exams to my law students. The results (percentage wise) were considerably lower than results in the standard problem-type question. This was also confirmed by other law professors whom I talked with.

Added importance of coaching & training

The new format involving MCQs means that the importance of coaching and training has assumed greater proportions. In the United States, the more important part of the review is not the study portion but the practice and coaching sessions. As stated by one American law professor, you cannot hope to pass the MBE by simply studying your notes and outlines in the same manner that you cannot hope to finish a marathon by simply reading books about running. You have to do practice and training sessions. An essential part of the MBE review is for the reviewee to answer practice MBE questions over and over again. A reviewee who foolhardily relies on study alone,

⁷ Abad 13.

⁸ Abad 17.

⁹ PHILIPPINE DAILY INQUIRER, “New Format for Bar Exams,” 7 April 2010.

eschewing or paying only slight attention to practice and training may find himself falling apart when confronted by a daunting 200-300 MCQs exam. He is like a person who prepares for a marathon by simply reading books on how to run and who collapses after the first 5 kilometers.

Answering mock MCQ exams will improve a reviewee's test-taking ability or his "testmanship." As you may have gleaned from some of the sample MCQs, they can be quite tricky. The examiners have artfully drafted the questions such that an examinee can be easily fooled by the close answer choices. There is an art and technique for reading and answering MCQs. This is acquired not from mere theoretical studies but from answering practice exams under the guidance and tutelage of experienced bar exam coaches. Furthermore, time-simulated practice MCQs will test a reviewee's ability to work under grinding time pressure and the ability of his body and mind to stand the pressure and rigors of a 3-hour or 4-hour MCQ exam. Practice MCQs will enable an examinee to time and phase himself so that he can answer on average an MCQ in one minute and 48 seconds or less.

In this regard, Jurists Bar Review Center is in the best position to undertake training and coaching for the new bar-exam format. Jurists already has a proven practice-exam and coaching program in place since 2005 and which has been readily adopted and fine-tuned to the new MCQ format. In fact Jurists had anticipated the eventual shift to an MCQ format and had collected and is continuing to collect a bank of MCQs for use in the practice exams and coaching.

The need for coaching has been further underscored in the essay-portion of the exam. The essay portion will test the examinee's "lawyering skills," particularly his skill in writing in English, sorting out the relevant facts, identifying the issue or issues, organizing his thoughts, constructing his arguments, and persuading his reader to his point of view.¹⁰ The emphasis here is not on theoretical knowledge but on legal writing and reasoning. The Jurists coaching staff has considerable experience in coaching examinees on how to read a bar exam question, spot the issues, and present the answer in a logical and persuasive manner. This experience will prove in good stead to the coaching staff as they train examinees on how to answer the essay portion of the bar exam. Good legal writing and reasoning is something which is not acquired from mere reading and studying but from actually writing out essays to practice questions under timed conditions and then discussing the answers with an experienced coach in order to pinpoint weaknesses and remedy flaws.

In fine, the 2011 Bar Exam is a new "enemy" about which the bar examinee knows little about. A competent coaching and training program involving practice exams and training under competent bar exam coaches will do much to conquer the new adversary.

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¹⁰ Abad 6.