

# OPE 643 MBE

## SEPERAC-J19 EXAM-MBE-NCBE OPE 643 QUESTIONS

**RELEASE DATE: TBD**

This exam contains the 643 most important NCBE questions for you to know for the upcoming MBE. This OPE 643 MBE exam is comprised of the released NCBE questions from 2006 to present (2006 OPE-1 exam: 100 questions, 2008 OPE-2 exam: 100 questions, 2011 OPE-3 exam: 100 questions, 2013 OPE-4 exam: 100 questions, 2017 Civil Procedure Sample questions: 10 questions, 2017 Sample MBE questions: 23 questions and 2019 MBE Study Aid: 210 questions). I regard these questions as important because NCBE also regards these questions as important – it costs four times more to license these 643 questions from NCBE than to license the remaining 1,181 questions from the 1991, 1992 and 1998 exams. You can see the much higher value NCBE attributes to these recent questions as compared to their older questions, so I place the same value on them. Put simply, any of the legal concepts in the 643 “OPE” MBE questions can be tested on the upcoming MBE (and therefore important), while a number of legal concepts in the 1,181 “NON-OPE” MBE questions are no longer tested on the current MBE (making this older set of questions less important). For example, NCBE requires licensees of the MBE 1992 questions to inform examinees that “*NCBE believes that many of these questions may no longer be representative of the MBE's content.*”

I created this OPE 643 exam to provide examinees with a very efficient way to test on the most important MBE questions in the least amount of time. There is one question per page with the answer following each question (each separated by a page). For each answer, the heading tells you the NCBE category the question is based on and then the answer explanation. Please note that the most recent NCBE questions from 2019 only contain an explanation for the correct answers (I am in the process of writing explanations for the incorrect answers, but this will take a few months). For every other MBE practice question contained in this exam, there are explanations for all the choices. The exam is arranged with the answers immediately after each question so your practice is geared towards learning/review rather than exam simulation. The idea is to answer a single question, check the answer, and then make/update your notes regarding any problems/misunderstandings.

The questions sorted by subject (Civil Procedure, Constitutional Law, Criminal Law, Contracts, Evidence, Real Property, and Torts) and then by category. By looking at one legal theory at a time, you will be able to make connections more quickly leading to a better grasp of the concept. For example, when you read 10 impeachment fact patterns together, you will begin to see what an impeachment fact pattern can look like. This will help you to spot the issue in the future (on both the MBE and essays). Grouping the questions also enables you to better compartmentalize your MBE mistakes (e.g. by answering all the MBE Torts Negligence questions together and then examining your mistakes you can efficiently identify the gaps in your knowledge)

For each question you have a problem with, you must make a rule (or whatever notes you need to make) to identify these mistakes/problems/etc. The most important thing to recognize is that you should be learning from every question. As you do the MBE practice questions, always try to insert your own rules from questions you got incorrect (along with the ones you potentially guessed correctly, or knew but maybe didn't feel like you had a command of). Basically, you want to review and make a note for anything you didn't firmly know. Sometimes you'll insert a rule more than once, or with different wording, but insert it anyways. You can't ever just review the wrong answer and say "Ah, I see, of course," and then move on. Instead, be honest with yourself about what it is about that subject you actually don't understand, then go back to your outline and review the subject of the question again. If you have to go back to the source material to gain a better understanding, do it. It's not enough to just review wrong questions by seeing what the right answer was, then tell yourself "Oh, I know this" because you obviously don't – that's not teaching you anything. You have to re-study the subject matter, and update your outline on that specific nuance because there was something about that question you don't quite understand. Basically, even with everything I give you, there isn't any magic formula to improving on the MBE – you simply have to work hard to shore up your weaknesses.

In post-exam follow-ups with examinees, I find that the most common reason for MBE improvement is learning from your MBE mistakes. For example, one examinee who passed with an MBE of 145 told me: *“If there is one thing that attributes to my passing, I guess that would be my habit of categorizing questions that I answered wrongly. I like to write down the rules of those questions with chart or minimal words, and skim through them before the exam.”* Another examinee who passed the exam with an MBE score of 158.5 said that what helped him most for the MBE was *“MAKING A RULE OUTLINE. That is the best way to learn the material. But not only making the outline, reviewing it every so often. I used this before the exam, on the day of the exam, and at lunch. Could not do anything more beneficial to learn the MBE.”* From a pragmatic point of view, making a good MBE Rules outline (which is essentially a catalog of your mistakes/misapplications of law) is the best way to ensure eventual success on the bar exam.

Bottom line – you need to know these 643 OPE questions very well. As a broad generalization, examinees who consistently score about 70%-75% correct on these questions just prior to the exam typically end up in the 130-140 range on the MBE. Please keep in mind this is assuming your practice scores reflect your knowledge and are not a result of memorizing the answers. Although most examinees won't have the time to do this, you want to get to the point where you are answering these questions correctly almost 100% of the time. Again, this doesn't mean you memorize the answers – it means you understand the law behind these questions well enough that you can find the correct answer for these questions almost every time.

Please note that practicing with these questions is only one part of your overall MBE study. While the law behind past NCBE questions will give you insight into some of the legal concepts you can expect to see on the upcoming MBE, they are not always representative of the expected proportioning on the upcoming MBE. Some subjects/categories are under-represented while others are over-represented. Accordingly, do not assume that these questions cover the full scope of the MBE exam. For example, for the subject of Real Property, the new areas the MBE currently tests (e.g. Fair Housing Act, broker's commissions, title insurance, zoning/non-conforming uses, and many more) are essentially absent from these questions. Thus, if your MBE study is based only on the law behind these released NCBE MBE questions, you will be under-prepared for some areas and over-prepared for others. Accordingly, I strongly recommend that examinees use my MBE outline in tandem with these questions as it is intended to contextually and proportionally reflect the upcoming MBE.

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**QUESTION 001:**

A shop owner domiciled in State A sued a distributor in a federal district court in State A for breach of a contract. The shop owner sought \$100,000 in damages for allegedly defective goods that the distributor had provided under the contract. The distributor is incorporated in State B, with its principal place of business in State C. The distributor brought in as a third-party defendant the wholesaler that had provided the goods to the distributor, alleging that the wholesaler had a duty to indemnify the distributor for any damages recovered by the shop owner. The wholesaler is incorporated in State B, with its principal place of business in State A.

The wholesaler has asserted a \$60,000 counterclaim against the distributor for payment for the goods at issue, and the distributor has moved to dismiss the counterclaim for lack of subject-matter jurisdiction.

Should the motion to dismiss be granted?

- (A) No, because the wholesaler's and the distributor's principal places of business are diverse.
- (B) No, because there is supplemental jurisdiction over the wholesaler's counterclaim.
- (C) Yes, because there is no diversity of citizenship between the distributor and the wholesaler.
- (D) Yes, because there is no diversity of citizenship between the shop owner and the wholesaler.

## ANSWER TO QUESTION 1: CIV: Cat I: Jurisdiction and venue

The correct answer is (B). The federal statute that confers supplemental jurisdiction, 28 U.S.C. § 1367, has two requirements. First, the federal court must have original jurisdiction over one or more of the plaintiff's claims. If it does, the court may exercise supplemental jurisdiction over any other claim(s) in the action that "form part of the same case or controversy under Article III." The Supreme Court has interpreted that language to implement the "common nucleus of operative facts" test. See *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156 (1997). Here, the court has original jurisdiction, on the basis of diversity, over the shop owner's action against the distributor for breach of contract for supplying defective goods. The court may exercise supplemental jurisdiction over claims that share a common nucleus of operative facts with the shop owner's claim. The wholesaler's counterclaim against the distributor seeks payment for the goods it supplied to the distributor. The common nucleus test would appear to be met because the counterclaim centers on the same goods that underlie the distributor's third-party indemnity claim as well as the shop owner's claim against the distributor. (A) is Incorrect. A corporation is a citizen of both its principal place of business and its state of incorporation. The wholesaler and the distributor are both incorporated in State B, making them not completely diverse. This lack of diversity, however, is irrelevant to whether the court has supplemental jurisdiction over the wholesaler's counterclaim against the distributor. (C) is Incorrect. It is true that there is no diversity of citizenship between the wholesaler and the distributor because both are incorporated in State B. This lack of diversity, however, is irrelevant to whether the court has supplemental jurisdiction over the wholesaler's counterclaim against the distributor. (D) is Incorrect. It is true that there is no diversity of citizenship between the shop owner and the wholesaler because both are citizens of State A (the wholesaler by virtue of the fact that its principal place of business is in State A). This lack of diversity, however, is irrelevant to whether the court has supplemental jurisdiction over the wholesaler's counterclaim against the distributor.