



SEPERAC JULY 2019 EXAM-MBE RULES OUTLINE
ALL NCBE RULES (1,812 RULES)
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This outline contains 1,812 rules based on the released NCBE questions from 1991 to present (1991 MBE exams: 400 rules, 1992 MBE exam: 531 rules, 1998 MBE exam: 200 rules, older NCBE sample questions: 45 rules, 2006 OPE-1 exam: 100 rules, 2008 OPE-2 exam: 100 rules, 2011 OPE-3 exam: 100 rules, 2013 OPE-4 exam: 100 rules, 2017 Civil Procedure Sample questions: 10 rules, 2017 Sample MBE questions: 22 rules, and 2019 MBE Study Aid: 210 rules). This means you will see every legal concept that NCBE has released as a practice question from 1991 to present. If you answer the released NCBE questions, this serves as a great second perspective and if you don't answer all the released NCBE questions, it serves as an excellent hedge.

This outline is keyed to the 2019 NCBE Subject Matter outlines and broken down into 176 MBE categories that represent the ABC level items in the 2019 NCBE Subject Matter outlines. For each of the 176 categories, this outline contains self-authored rules for every past tested NCBE MBE question (1,812 rule synopses). For each MBE subject, the ABC categories are sorted based on how much MBE questions are expected from each category. This is to enable examinees to study the most important categories (that will contribute the most to the examinee's MBE score) before studying the less important MBE categories. Within each category, the rules are sorted based on the importance of the question source. For example, the 2019 MBE Study Aid rules are listed first while the MBE 1991 exam rules are listed last (at the end of each rule is a parenthetical suffix to tell you from which exam the rule is based on). If you are very short on time, this is an excellent way to pick up the most important law in the least amount of time.

Please note that studying these rules 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. For example, the entire area of Constitutional Protection of Accused Persons is under-represented in the released NCBE questions (it is just 4% of the NCBE questions, but expected to be 7% of your MBE score). Thus, if your MBE study is based only on the law behind the released NCBE MBE questions, you will be under-prepared for some areas and over-prepared for others. Accordingly, I advise examinees to use my MBE outline (separate subscription) in tandem with these MBE rules. My MBE Outline is designed to have 25 pages of black letter law per MBE subject with each page intended to represent one MBE question (e.g. for Criminal Law/Procedure, 12 of the 25 pages are on the Constitutional Protection of Accused Persons making it 7% of my outline since it is expected to be 7% of your MBE score). I strongly believe you can pick up points just from this outline's coverage of these new MBE areas (which most other outlines fail to cover appropriately). Thus, the black letter law sections of my outline will appropriately tell you what to expect on the upcoming exam (both contextually and proportionally), while the MBE rules will tell you what was tested on the past. This is about as complete a picture as you can have of the current MBE exam. While the cost for the MBE Outline subscription is \$250, examinees subscribed to the MBE Rules Subscription can upgrade to the MBE Combined Outline subscription (which is my 285 page outline consisting of my 175 page MBE black letter law outline with these 1,800+ MBE rules built into it) for a discounted price of \$150.

HOW TO USE THE OUTLINE

Each of the 176 categories in this outline are ordered based on the ABC level of the 2019 NCBE Subject Matter outlines. Each of the 176 categories has a heading that appears as follows:

CIVPRO: CAT I: JURISDICTION AND VENUE

The prefix tells you the Subject (e.g. **Civil Procedure**), the NCBE Category (e.g. **Cat I: Jurisdiction and Venue**), and then an abbreviated NCBE ABC level will appear next (e.g. **A. Federal SMJ**).

After each category are the rules I wrote based on the released NCBE MBE questions. At the end of each rule is a parenthetical suffix to tell you from which exam the rule is based on.

If you prefer to study with the MP3 audio version of this outline, you can use this outline to follow along with the MP3 since it essentially serves as a transcript. Each rule has a rule number prefix that can be used to follow along if you are listening to MP3s of the rules.

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CIVIL PROCEDURE (25 MBE QS)

CIVPRO: CAT I: JURISDICTION AND VENUE

A. Federal SMJ

• Rule 1: Under the **FRCP**, a party must state as a counterclaim any claim that the party has against an opposing party if the claim arises out of the **same transaction or occurrence** as the opposing party's claim. If the counterclaim is compulsory, it is within the supplemental jurisdiction of the court to entertain and no independent basis of federal jurisdiction is required. Thus, as between a third party plaintiff (i.e. the original defendant) and a third party defendant (i.e. a defendant sued by the original defendant), if the third party defendant counterclaims back against the third party plaintiff and the counterclaim is compulsory, there is supplemental jurisdiction even if the counterclaim does not independently meet the requirement for diversity suits. [2019]

• Rule 2: A **defendant** may **remove a case to federal court** if: (1) the federal court would have **subject matter jurisdiction** over it; (2) **all defendants join in the petition** for removal; (3) **no defendant is a resident of the forum state**; and (4) removal is sought within 30 days after the defendant originally received service. Only Defendants can exercise the right of removal – a plaintiff CANNOT remove a case to federal court (e.g. if a state case is removed to federal court by the plaintiff, it can be remanded back down to state court by the defendant). [2019]

• Rule 3: For **diversity jurisdiction**, each party must be a citizen of a state or foreign country, BUT **at least one party must be a US citizen** (e.g. two foreign aliens may not sue in federal court under

For the entire universe of released NCBE questions (about 1,812 questions), there is an MBE rule I wrote that synthesizes the legal issue being tested in that question. If you are limited in MBE practice time, studying these rules is a great way to pick up the legal knowledge without having to go through the trouble of answering these questions. Furthermore, since the older MBE questions are more straight-forward than the current MBE questions, you really don't need to answer the older questions from a practice point of view, but you still want to know the legal principles tested because this is what NCBE regards as important. Many of these concepts are re-tested over and over so you are making a mistake not to know them.

• Rule 4: The U.S. Supreme Court can **review a state court judgment** only if it rested on federal grounds – there is no Supreme Court review if the federal issue doesn't affect the outcome (e.g. if the highest state court rules under both state and federal law, the Supreme Court can't review the federal claim because the issue has been decided on **adequate and independent state grounds**). [2017]

• Rule 5: If a claim asserts **federal trademark infringement**, it arises under federal law and subject-matter jurisdiction is proper as a general federal-question action. [2015]

B. Personal jurisdiction

• Rule 6: If a defendant seeks to have an action in federal court dismissed for **lack of personal**

This 159 page MBE Rules outline is keyed to the 2019 NCBE Subject Matter Outline (176 ABC Categories), but the ABC categories are sorted based on how many MBE questions are expected from each category to make your studying more efficient.

(e.g. if a D from State B is sued in fed ct in State A based on **diversity**, but D has no contacts with State A, the D should move to dismiss the action for **lack of personal jurisdiction**, and attach an affidavit from D about his lack of connection to State A – the court should accept the affidavit and grant the motion if it finds that D lacks **minimum contacts** with the state). [2019]

• Rule 7: The **Due Process Clause of the 14th Amendment** does not permit a state to exercise **general personal jurisdiction** over a **foreign subsidiary** of a U.S. corporation if the subsidiary lacks **continuous and systematic business contacts with the state** (e.g. if a foreign subsidiary

of a U.S. corporation has no place of business, employees, or bank accounts in a state and neither its nor does business in the state, although a percentage of the subsidiaries' product is distributed in the state, this is insufficient for general jurisdiction over the subsidiary).

Furthermore, jurisdiction over a parent corporation doesn't automatically give jurisdiction over a subsidiary UNLESS the parent exerts substantial control over the subsidiary. [2019]

Within each category, the rules are sorted based on the importance of the question source. For example, the MBE Study Aid rules from 2019 are listed first while the 1991 exam rules are listed last (at the end of each rule is a parenthetical suffix to tell you from which exam the rule is based on).

C. Service of process and

- Rule 8: One method of serving **corporate defendants** is by registered mail for serving a summons in all courts of general jurisdiction in the **state where the district court is located or where service is made** (e.g. in Texas you can use restrictive registered mail). Thus, a defendant may be served pursuant to the law of the state where the district court is located, or if the defendant is served outside the state, pursuant to the law of that state where the defendant is actually getting served. [2017]
- Rule 9: An individual defendant may not be served by delivering process to a third party found at the defendant's place of employment. [2015]

D. Venue/Forum non conveniens/Transfer

- Rule 10: If the parties' contract specifies one federal district court as the forum for litigating any disputes between the parties, but the plaintiff files suit in a different federal district court that lawfully has venue (and therefore could be a proper place for the parties to litigate), the defendant may seek to **transfer the case** to the court specified in the **forum-selection clause** by invoking the federal statute that permits **transfers of venue for the convenience of the parties and witnesses, in the interest of justice**. [2019]
- Rule 11: To obtain a **transfer of venue**, the movant must establish: (1) that the action could have been brought in the district to which the movant seeks transfer (i.e. the proposed forum must have proper **subject matter jurisdiction and personal jurisdiction** over the defendants and proper venue); and (2) that the transfer is appropriate based on the **convenience of the parties, the convenience of witnesses, and the**

The rules also highlight the key dates in BLACK and legal terminology in BLUE. By studying a prioritized MBE Rules outline, you will not only familiarize yourself with the law most likely to appear on the MBE, but you will also familiarize yourself with the words and phrases the bar examiners are using in the "best" answers.

corporation is deemed to be a citizen of the state in which it is incorporated and the jurisdiction in which it has its principal place of business. [2017]

CIVPRO: CAT III: PRETRIAL PROCEDURES

A. Preliminary injunctions/TROs

- Rule 13: A **TRO** that is issued with notice to the adverse party that lasts more than 14 days is treated as a **preliminary injunction (which can be appealed)**. A **TRO** that is issued without notice to the adverse party lasts 14 days, with a possible single 14-day extension for a total of 28 days. If a **TRO** is extended for a period longer than 14 days or has an unlimited duration, it is treated as a preliminary injunction and is appealable. [2019]

B. Pleadings & amended & supplemental

- Rule 14: A **jury trial demand** may be included in a pleading and including it in a properly filed and served complaint secures the right. [2015]

C. Rule 11

- Rule 15: A motion for **sanctions** must first be served on the opposing party, and the offending party gets a 21-day **safe-harbor** in which to withdraw or correct any bad pleading, and if he does so, there can be no sanctions no matter how outrageous the original misconduct. [2017]

D. Joinder of parties and claims

- Rule 1810: An action for **negligent misrepresentation** is confined to misrepresentations made in a commercial setting, and liability will attach only if reliance by the particular plaintiff could be contemplated. [1991]
- Rule 1811: **Intentional misrepresentation** (i.e. fraud or deceit) is a misrepresentation of a knowingly false material fact with the intent to induce reliance by the plaintiff (e.g. someone lied to you with the goal of cheating you, and you fell for it and was cheated). [1991]

D. Interference w/ business relations

- Rule 1812: A tort COA based on **interference with K** cannot be between the parties to a K – it must be between a party to the K and a **3rd person** b/c claims of breach between parties to a K are governed by K law, not tort law. [2008]

Many of the rules contain illustrations (the underlined examples) to better explain the rule. This gives you a good understanding of what was previously tested by NCBE and how the rule applies. The outline content is 159 pages in total.

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