



**SEPERAC JULY 2019 EXAM  
COMBINED MBE OUTLINE WITH 1,812 NCBE RULES  
RELEASE DATE: APRIL 8, 2019**

According to NCBE, "MBE scores are highly related to total bar exam scores." I have likewise found if examinees do well on the MBE, they typically pass the exam. The MBE tests both new topics (based on their current MBE questions) and past topics (based on their released MBE questions). This outline is intended to help you with both by merging my black letter law MBE Outlines with my MBE NCBE Rules Outline. This 285 page SEPERAC COMBINED MBE 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 the black letter law expected to be tested on the J19 MBE along with rules for every past tested NCBE MBE question (1,812 rule synopses).

This outline is intended to proportionally and contentually reflect the upcoming MBE. I have found that many MBE outlines are not properly proportioned and instead suffer from outline bloat where content is continually added but never re-balanced, leading to situations where the outline for one MBE subject is twice as large as the outline for another subject (even though they both contribute the exact same amount to your MBE score). In contrast, this outline consists of 175 pages of black letter law (25 pages per MBE subject) where each page of law is expected to represent one question you will see on the MBE. There are an additional 110 pages of MBE rules built into this outline, making this outline a total of 285 pages. I regard this outline as an excellent representation of the upcoming July 2019 MBE – the black letter law sections of the SEPERAC COMBINED MBE OUTLINE efficiently tell you what to expect on the current MBE while the built-in MBE rules concisely categorize what was previously tested so you can look at the related rules together and synthesize them.

The majority of my time is spent trying to understand the bar exam and make outlines reflective of the exam in such a way that the content is proportioned based on how much it will contribute to your score. For example, the new areas the MBE currently tests are proportionally and contentually covered in this outline. Accordingly, the black letter law portions of this MBE outline only contain the content I expect to be tested to the upcoming MBE (meaning you are somewhat taking calculated risks using my materials). For example, some sections of my outline are much smaller than any similarly sized bar outline. Meanwhile, other sections are much larger than similarly sized outlines. However, subscribers should treat this outline as their MBE study bible because I regard it as more contentually on-point than similarly sized outlines. For example, I strongly believe you can pick up extra MBE points simply from this outline's coverage of the new MBE areas which most other outlines fail to cover appropriately. In contrast, if something is not significantly covered in the black letter law sections of this outline, I do not regard it as important for the upcoming MBE.

The past MBE topics are reflected in the 1,800+ built-in MBE rules. This outline contains synopses of the law for each of the 1,800+ released NCBE MBE questions (these are the same questions in Adaptibar/Strategies & Tactics, Barmax, etc. and includes rules for the recently released 2019 MBE Study Aid questions). This outline distills the 1,812 MBE questions into rule statements so examinees can get the gist of what was tested on the released MBE questions without having to go through the questions. This means you will see every legal concept that NCBE has tested (and 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, this serves as an excellent hedge. For example, one CA examinee who scored a 160.6 on the J18 MBE recently told me: "Your outline is excellent and serves as a great equalizer since the questions on Adaptibar are not fully reflective of the exam." More so, these rules are organized by category so you can see the different ways each MBE category has been tested. Furthermore, since knowledge is constructed, seeing the rules/examples associated with the black letter law will make it easier for you to understand the law. Put simply, the better you understand the law in this outline, the better you will score on the MBE and the more likely you will pass the exam.

## **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:

### **ConLaw; Cat II: Sep of Powers (A. The powers of Congress)**

The prefix tells you the Subject (e.g. **ConLaw**), the NCBE Category (e.g. **Cat II: Sep of Powers**), and the NCBE ABC level (e.g. **A. The powers of Congress**). After each category, I outline what I regard as the relevant black letter law to cover the majority of what you can expect to see tested on the MBE along with any rules I wrote based on the released NCBE MBE questions. Each MBE rule section appears as follows:

#### **Seperac Rules for NCBE MBE Issues Tested on Sep of Powers – The powers of Congress**

Underneath this heading is a box containing a rule I wrote for every released NCBE question (from the 1991 (400 Qs), 1992 (570 Qs), 1998 (200 Qs), 2006 OPE 1 (100 Qs), 2008 OPE 2 (100 Qs), 2011 OPE 3 (100 Qs), 2013 OPE 4 (100 Qs), 2015-2017 NCBE sample questions (32 Qs) and 2019 MBE Study Aid (210 Qs). Each rule has a rule number prefix that can be used to follow along if you are listening to MP3s of the rules. At the end of each rule is a parenthetical suffix to tell you from which exam the rule is based on (e.g. a suffix of [2019] means this is a rule from the 2019 MBE Study Aid questions).

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*Torts: Cat IV: Other Torts (A. Claims based on nuisance & defenses)*  
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This outline is 285 pages long and it is broken down into 176 MBE categories (keyed to the 2019 NCBE subject matter outlines).

SEPERAC BACK REVIEW

## CivPro: Cat I: Jurisdiction (A. Federal SMJ)

### 1. Federal SMJ Overview

- a. To initiate a lawsuit against a defendant, there must be (1) subject matter jurisdiction (SMJ); (2) personal jurisdiction (PJ); and (3) service of process/notice.
  - (i) Any person (including the court) can raise challenges to SMJ at any time (if a case is improperly brought before the court, it is being heard in violation of the Constitution and can be dismissed at any time, even on appeal).
  - (ii) Even if fed court makes a mistaken judgment on SMJ or a party fails to challenge SMJ, it does not waive the inquiry (i.e. you can always object to SMJ).
- b. Fed courts are courts of limited jurisdiction and can entertain only certain types of suits – the 2 main types of fed court cases: (1) Fed question; OR (2) Diversity (including alienage)
- c. NOTE: alien = outside US, foreign = out of state

### 2. Federal Question (FQ) – Art III permits fed cts to hear all cases arising under laws of the US Constitution

- a. If a claim turns on a substantial question of federal law then subject matter jurisdiction exists
  - (i) Must be directly arising under fed law (i.e. construed narrowly) – cannot be an anticipated defense
  - (ii) Complaint must show a substantial federal right or interest (e.g. US Const, fed statute/regulation, US treaty, federal interest) – citizenship is irrelevant, & there's NO amount in controversy requirement because P is alleging a fed right
  - (iii) Well-pleaded complaint rule – the federal question must be asserted in the complaint – ask whether P is enforcing a fed right. D's claims in answer or counterclaim are irrelevant.
- b. BUT if the federal law in question does not provide a remedy and was not intended to provide a claim, then no FQ jux (e.g. Negligence claim based on violation of FDA regulation)
- c. Some FQ cases have exclusive fed jurisdiction (e.g. patent infringement, fed securities laws, etc.)
- d. If state law creates a cause of action, fed court can still exercise FQ jux if the complaint raises a real and substantial issue of fed law & the outcome necessarily depends on resolving this

### 3. Diversity – Amount in controversy *must exceed 75K*, AND the acti

#### (ii) *a citizen of a state & a citizen or subject of a foreign country*

- a. **Complete diversity rule** – there is no diversity of citizenship if there can be co-Pls or co-Defendants from the same state)
  - (a) Test for diversity *when the case is filed* – subsequent
  - (b) All aliens are considered of the same “state,” meaning party was joined later and was not an indispensable party at court under alienage/diversity).
- b. **Individuals** – citizen if *domiciled* in a state, which is established
  - (i) *Presence in state at some point* WITH
  - (ii) *Intent* (subjective) to make it a permanent or fixed home
    - (a) Alien admitted to the US for *permanent residence* is treated as a citizen (e.g. Japanese citizen with a green card is living in NY)
    - (b) US citizen permanently domiciled abroad is neither a citizen of a state nor a citizen of a foreign country & cannot sue or be sued under diversity jurisdiction rules.
      - (1) An American domiciled in France is not a *citizen of a U.S. state* (because not domiciled)
    - (c) Determining domicile is primarily a finding of fact, which means it can be reversed on appeal if it is **clearly erroneous**.
- c. **Corporations** – citizenship equals: (i) all states where *incorporated*, AND (ii) the one state where the company has its **principal place of business** (PPB) (a corp, unlike a natural person, can be a citizen of more than one state at a time)
  - (i) PPB is determined in 2 ways – (i) *nerve center* (headquarters – where decisions are made) & (ii) *muscle center* (major production or service activity)
  - (ii) Generally, courts consider nerve center as the PPB
- d. **Unincorporated associations** (e.g. partnership, labor union, etc.) – look to the citizenship/domicile of *all* members (for partnerships, that includes *general & limited partners*; so a partnership can be a citizen of all 50 states), so if any partner lives in the same state as the other party, diversity is defeated
  - (i) NOTE – *LLC treated as unincorporated association so LLC is citizen of all states its members are citizens*
- e. **Decedents, minors, & incompetents** – look to *their* citizenship, NOT the citizenship of their representative
  - (i) the legal representative is deemed to be a citizen **only** of the same state as the decedent/infant/incompetent
  - (ii) You can't create diversity by appointing a representative who has a different citizenship than the decedent/infant/incompetent

This is the outline black letter law section for each category. My subject matter outlines are up to date, on-point, well organized and detailed. For example, a subscriber who scored a 174 on the MBE in NY and then a 177 on the MBE in NJ told me: "... as far as the MBE is concerned, your outlines have been most useful since you emphasize the fine distinctions."

4. **Amount in controversy**
  - a. *Good faith allegation* that the claim in the complaint exceeds 75K (e.g. 75,000.00 is NOT OK but 75,000.01 is OK) – unless it is “*clear to a legal certainty*” that P cannot recover more than 75K (e.g. P must exclude punitive damages in a K claim, BUT P can overcome legal certainty requirement by including punitive damages with a tort claim)
    - NOTE: if P ultimately recovers less than 75K, jurisdiction is OK, but he *may be liable for costs*
  - b. *Aggregation* – Allowed where P must add 2 or more claims to meet the amount in controversy requirement; as long as there’s 1 P & 1D, P can combine the claims, even if they’re totally unrelated, BUT NOT allowed when two or more P’s have two claims against two or more D’s.
  - c. *Valuing injunctions* – equitable Relief is allowed if the injunctive relief is worth \$75,001 or more;
5. **Exclusions** – even if diversity of citizenship is met, fed courts will NOT hear cases involving:
  - a. Issuance of a divorce; alimony or child custody decrees; probate a decedent’s estate
    - EXCEPT: *Fed courts have jux to entertain suits in favor of claimants against a decedent's estate to establish their claims, so long as the fed court does not interfere with the probate proceedings*
6. **Supplemental Jurisdiction** – includes jux over any claims related to the claims in a case which form the *same case or controversy* (including joinder or intervention of claims).
  - a. For every single claim joined in fed court, *must have its own basis* of subject matter jurisdiction
    - (i) Always ask whether a claim is supported by *diversity/alienage* OR *FQ* jurisdiction –
    - (ii) If not, try *supplemental jurisdiction*
      - (a) NOTE: In a pure diversity case, P cannot use SJ to overcome a lack of diversity.
  - b. Allows fed court to entertain claims over which it would have no independent basis – MUST have at least ONE claim that satisfies diversity/alienage or FQ, so the case is in fed court:
    - (i) Claims must arise from a *common nucleus of operative fact* (i.e. the *same transaction/occurrence*)
    - (ii) If court has SMJ based only on diversity, complete diversity MUST be continued for all counterclaims against 3rd parties.
      - EXAMPLE: A cross-claim that arises out of the same transaction/occurrence may be asserted by one D against another D without regard to the amt in controversy or citizenship of the parties to the cross-claim as long as the court has SMJ.
    - (iii) In *diversity actions*, if one P satisfies the 75k amt in controversy, ct may exercise *supplemental jurisdiction* over related claims by other Ps, even if those claims are for less than 75k
    - (iv) Court’s discretion – even if the supplemental jurisdiction requirements are satisfied, the court has discretion NOT to hear the supplemental claim if:
      - (a) FQ is dismissed early in the proceedings (usually before trial); OR
      - (b) State law claim is complex or state law issues would predominate
  - c. Two Types of Supplemental Jux
    - (i) “**Pendent**” – claims joined by *P ONLY* in a FQ case (do not care if a different party is involved)
    - (ii) “**Ancillary**” – claims joined by *Anyone BUT Plaintiff* in any kind of case (diversity or FQ)
  - d. *Statute of limitations* – is tolled while (i) the supplemental claim is pending; OR (ii) for a period of 30days after its dismissal (unless state law provides for a longer tolling period).
7. **Removal – One-Way Street – only D can remove a pending state court action to federal court**
  - a. Allows *Ds ONLY* to have case, first filed in state court, to “*remove*” (i.e. transfer) *to the fed court* embracing the state ct where originally filed (e.g. case in NY Supreme Ct in Manhattan goes to SDNY)
    - (i) If case originates in fed court, there is no ability for D to remove case from fed ct to state ct.
  - b. **General test** – case is removable if there’s fed subject matter jurisdiction (diversity and FQ jux)
    - (i) *Unanimity of Ds*: If multiple Ds, *all Ds must agree to remove*, BUT a single D can remove if there is a separate and independent federal claim against the D.
    - (ii) **P CANNOT REMOVE** even if D counterclaims against P (making P the D on the counterclaim)
  - c. **Special rules for diversity cases ONLY** (not FQ cases)
    - (i) NO removal *if any D is citizen of the forum* where P brings the case (e.g. if there are 2 Ds, and D1 resides in the forum state, D2 cannot remove)
    - (ii) NO removal more than 1 year after case has been filed in state court
  - d. *Timing* – must remove within **30 days** of service of process of the first removable pleading, OR D can file notice of removal within **30 days** of service of an amended pleading, motion, order, or other court paper that shows that a non-removable case is in fact removable
  - e. *Procedure* – Removal petition is typically filed before D files either an answer to the complaint or motion to dismiss. D must file *notice of removal* (it’s not a motion) in fed court, setting forth grounds of removal; sign it (Rule 11); attach all docs that were served on D in the state action & copy to all adverse parties.
    - (i) *Answer* – if no answer was filed by D prior to petition for removal, D must answer within the longest of: (i) **21 days** after receiving initial pleading; (ii) **21 days** after service of initial pleading; OR (iii) **7 days** after notice of removal is filed.



- (ii) *If removal is improper* – P must move to remand to state court; within **30 days** if based on a defect other than SMJ (FQ never waived).
- (iii) Court must remand *anytime it finds there is no fed jurisdiction*
- f. *Waiving the right to remove:*
  - (i) D who files a *permissive counterclaim* in state court probably *waives the right to remove*
  - (ii) D who files a *compulsory counterclaim* in state court probably does NOT waive the right to remove

**Seperac Rules for NCBE MBE Issues Tested on Jurisdiction – 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 alienage/diversity, but a person domiciled in a state may sue a citizen of a foreign country in fed district court). [2019]
- 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]

**CivPro: Cat I: Jurisdiction (B. Personal jurisdiction)**

1. **In-state PJ** – courts have jurisdiction over anything within their borders. For example, PJ exists:
  - a. If D is an individual who resides or works in the state;
  - b. If D is a business incorporated in the state or has its principal place of business in the state
2. **Out-of-state PJ** – questions on PJ mainly arise with regard to a court's power to bind a D who is not physically present in the forum state. To establish out-of-state PJ, two analyses required:
  - a. Statute Analysis – there must be a statute/rule that gives the court jurisdiction over the parties (e.g. long-arm statute)
    - (i) E.g., PJ may exist if D is served in the state; OR is domiciled in the state; OR does certain things in the state (e.g. tort or business contacts)
  - b. Constitutional Due Process Analysis – if exercise of PJ pursuant to the statute/rule is constitutional

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.

within the state so that requiring D to defend the 14th and/or 14th Amendments) by offending

or being present in the state when process is served; ss, and fairness:

against D if: (1) D has **minimum contacts** with the state; AND (2) exercise of jux over D **fair and reasonable** (must be fair and reasonable). To determine **minimum contacts**, court will consider: (1) whether D is a citizen of the state, and injures someone there through that state; (2) whether D's actions are directed towards the state; (3) whether D intended to cause an effect in the state and/or

purposefully directed his actions at the state

(a) consider whether either the fed or state system have a strong interest in having its rule applied (e.g. if there's a contrary state law won't be followed unless there's

The rules are sorted based on the importance of the question source. For example, the 2017 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.

3.

and the method of proving a claim

c. The following areas are considered PROCEDURAL or SUBSTANTIVE for *Erie* purposes:

PROCEDURAL MATTERS	SUBSTANTIVE MATTERS
<ul style="list-style-type: none"> <li>• Jurisdiction</li> <li>• Form of action</li> <li>• Service</li> <li>• Proper and necessary parties</li> <li>• Pleadings (e.g. detail required by pleadings)</li> <li>• Joinder of claims and parties, and splitting claims</li> <li>• Order of trial</li> <li>• Venue and forum selection (e.g. enforcement of forum selection clause in K)</li> <li>• Sanctions for frivolous litigation</li> <li>• Judge-jury relations</li> <li>• Trial by judge or jury</li> <li>• Evidentiary rules and privileges – FRE applies to all cases, including diversity cases; includes: (i) Privilege rules; (ii) Competence and credibility of witnesses; (iii) Admissibility of evidence; and (iv) Proof, presumptions, and inferences (BUT state law evidentiary rules and privileges apply in claims and defenses governed by state law)</li> <li>• Execution of judgments</li> <li>• Grounds for new trials (e.g. for excessive damages)</li> <li>• Appellate process.</li> </ul>	<ul style="list-style-type: none"> <li>• Elements of a claim or defense</li> <li>• Standards of care</li> <li>• Statutes of Limitation</li> <li>• Rules for tolling of Statutes of Limitations</li> <li>• Choice of law rules/Conflict of Law rules (i.e. choice of which state's law to apply)</li> <li>• Privileges &amp; Presumptions, Competency &amp; Burdens of proof on matters governed by <i>state law</i> under <i>Erie</i></li> </ul>
	PROBLEM AREAS
	<p>Courts are split whether pocket is substantive or procedural:</p> <ul style="list-style-type: none"> <li>• <i>Immunity</i> – possibly both; defense of immunity may be available either under the law of the place of the wrong or under forum law.</li> <li>• <i>Limits on Damages</i> – probably procedural</li> <li>• <i>Statutes of Frauds &amp; Parol Evidence Rule</i> – could be either</li> <li>• <i>Testimonial Privilege</i> – probably substantive</li> <li>• <i>Survival and Revival</i> – whether tort claim survive the death of the parties is probably substantive.</li> <li>• <i>Direct Actions</i> – some cts hold that victim's right to sue tortfeasor's insurance company is substantive (governed by the law of the place of the wrong) while other cts say the issue is procedural and governed by forum law.</li> </ul>

**Seperac Rules for NCBE MBE Issues Tested on Laws Fed Cts – State law in federal court**

- Rule 46: A claim can be *precluded* if: (1) there was a *valid, final judgment on the merits* in the first action, (2) the second action is between the *same parties* or their privies, and (3) the second action involves the *same claim or cause of action*. Generally, the court in the second action applies the preclusion law of the jurisdiction that decided the first action. For example, if the first action is in federal court and the second action is in state court, the state court in the second action should apply federal preclusion law. However, if the first action was in federal court under diversity jurisdiction and the second action is in state court, the state court in the second action should adopt the state law of the state where the federal court sat. [2019]
- Rule 47: In a *federal diversity action*, a court must look to the choice-of-law rules of the state in which it sits to determine which of the two competing states' laws should be applied to the action before it. [2015]
- Rule 48: Under the *Erie Doctrine*, in diversity cases, the court *applies the substantive law* of the state where the court sits and federal procedural law, unless the state procedural law would result in important differences whereby the court uses state procedural law. [1991]

**Torts: Cat IV: Other Torts (D. Interference w/ business relations)**

1. **Definition** – interference with contract or prospective economic advantage. Four requirements:
  - a. Existence of a valid contractual relationship between P and a 3rd party or a valid business expectancy of P;
  - b. D's knowledge of the relationship or expectancy;
  - c. Intentional interference by D that induces a breach or termination of the relationship or expectancy (negligent interference not enough); AND
  - d. Damage to P – must prove **actual damage** from the interference (may recover for mental distress or punitive damages)
2. Defenses
  - a. *Tortfeasor's conduct may be privileged if it is a proper attempt to obtain business (e.g. competitor) or protect its interests (must have justifiable purpose and use warranted means to accomplish the purpose).*
  - b. D's is also privileged to interfere when:
    - (i) giving truthful information within the scope of a request;
    - (ii) the K violates public policy

**Seperac Rules for NCBE MBE Issues Tested on Other Torts – 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]

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There are 25 pages of black letter law for each MBE subject and I regard each page of black letter law as representing one expected MBE question. Subscribers should treat this outline as their MBE study bible because it is a very concise outline that pinpoints what will be on the exam, both proportionally and contextually, making it an excellent reflection of the upcoming MBE exam