



SEPERAC J19 EXAM MBE OUTLINE RELEASE DATE: APRIL 8, 2019

SEPERAC MBE OUTLINE OVERVIEW

According to NCBE, "MBE scores are highly related to total bar exam scores." I have likewise found that if examinees do well on the MBE, they typically pass the exam. This 175 page SEPERAC 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 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. 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.

Please note there is a separate subscription (\$150 upgrade cost) which combines this MBE Outline with my MBE Rules outline. The MBE Rules outline contains 1,812 rules based on the released NCBE questions from 1991 to present organized by MBE category. The Combined MBE outline provides you with the most complete picture of the current MBE exam by merging the legal concepts behind the past NCBE questions with the black letter law you can expect to see on the upcoming MBE. Through these 1,800+ added MBE rule statements, you will have synopses for every legal concept NCBE has tested in their released questions from 1991 to present. If you plan to answer the released NCBE questions, this serves as a great second perspective, but if you don't have the time to answer all 1,800+ released NCBE questions, this serves as an excellent hedge. 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 limited on time, this is an excellent way to pick up the most important law in the least amount of time (whether through the rules embedded in the outline or through the MP3s of the MBE rules). While the cost for the stand-alone MBE Rules subscription is \$250, examinees subscribed to this MBE Outline Subscription can upgrade to the MBE Combined Outline subscription (285 page outline consisting of my 175 page MBE black letter law outline with the 1,800+ MBE rules built into it) for the discounted price of \$150.

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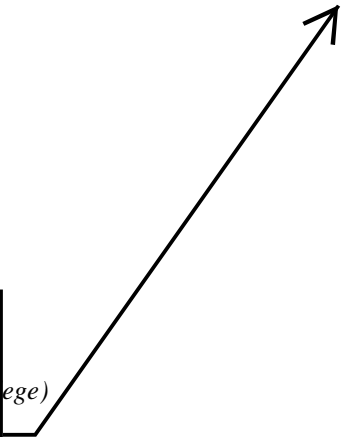
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SEPERAC BAR REVIEW

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Please note that this is a comprehensive outline rather than an attack outline so it will take you some time to get through it. While an attack outline (i.e. an outline that is 3-5 pages per subject) may be more manageable as the exam nears, I find that outlines significantly smaller than 25 pages per subject are too superficial for productive MBE study. With each exam, I actually have to force myself to limit each subject to only 25 pages of black letter law. I often feel that I need more than one page of black letter law per MBE question to cover all the nuances for each MBE topic, but I have settled on one page per MBE question for the time being. Since I put a lot of time into trying to understand the exam, so you can regard my outlines as an excellent reflection of it. Basically, what you can expect on the exam is what you can expect in my outline (which also illustrates how comprehensive the scope of the MBE is). Put simply, the best benefit of my MBE Outline is that it is packed with the nuances you will see on the MBE.

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

cases: (1) Fed questions; OR (2) diversity

- c. NOTE: alien = outside US, foreign

2. Federal Question (FQ) – Art III

- a. If a claim turns on a substantial federal question:
 - (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)
- d. If state law creates a cause of action, fed court can still exercise FQ if the claim is based on a violation of fed law & the outcome necessarily depends on resolving this fed law

3. Diversity – Amount in controversy *must exceed 75K*, AND the action is between

(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 *any* party is from the same state (there can be co-Ps or co-Ds from the same state)
 - (a) Test for diversity *when the case is filed* – subsequent changes in citizenship do not matter
 - (b) All aliens are considered of the same “state,” meaning two parties from different countries can be considered diverse if one party was joined later and was not an indispensable party to the case (e.g. diversity jurisdiction court under alienage/diversity).
- b. **Individuals** – citizen if *domiciled* in a state, which is established by:
 - (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 of the state in which he is domiciled (e.g. Japanese citizen with a green card is living in NY can bring an action in fed ct against a citizen of Mexico).
 - (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

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

This outline is 175 pages long and it is broken down into 175 MBE categories (keyed to the 2019 NCBE subject matter outlines).

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.”

- (ii) *Newsworthiness exception* – if there is a public reason/interest/justification of knowing the secret; interpreted very broadly
- (iii) “*Dual life*” *fact pattern* – P conducts his life in 2 separate spheres, one public, one private & D carries information from one sphere to another (e.g. openly gay except at workplace); NOT a tort because underlying information is public

4. **Affirmative defenses to Privacy Torts:**

- a. *Consent* – defense to all 4 privacy torts
- b. *Absolute & qualified defamation privilege* – these are defenses to false light & disclosure, but NOT to appropriation or intrusion

Torts: Cat IV: Other Torts (C. Misrepresentations & defenses)

1. **Intentional misrepresentation (fraud, deceit)** – A prima facie case consists of 5 elements (NO affirmative defenses):
 - a. ~~Must~~ be an *affirmative misrepresentation of fact* – D must misstate a fact in connection with a commercial transaction (silence can NEVER be fraud)
 - b. *Intent or recklessness* of misstatement (scienter, i.e. intent) – knowing falsity or reckless manner
 - c. D must *intend to induce reliance* – not only *intention* of luring someone into a deal
 - d. Reliance - P must *rely on the information* (opinion the engine is fine)
 - e. *Economic harm* – must be actual, pecuniary
2. **Negligent or fraudulent misrepresentation** – tort liability will attach only if reliance by the party
 - a. **Negligent misrepresentation**
 - (i) D made representation in the course of duty
 - (ii) P must prove that D owed a duty to a party in obtaining or communicating the info;
 - (iii) P *must* suffer a financial, physical, or other loss by justifiably and actually relying on the representation.
 - b. **Fraudulent misrepresentation (against a manufacturer)** if:
 - (i) manufacturer intentionally and fraudulently misrepresented a feature of a product;
 - (ii) P relied on that misrepresentation; AND
 - (iii) misrepresentation results in damages (not just that the product didn't do what the manufacturer claimed).
3. **Defenses to Intentional & Negligent misrepresentation** – four defenses available:
 - a. D made a truthful or innocent representation;
 - b. D made the representation to protect a person's welfare; OR
 - c. D made the representation to avoid a public policy violation.
 - d. Laches – P must act quickly; unreasonable delay by P tends to show acquiescence – NOTE: Contributory negligence is NOT a defense to tort of *misrepresentation*.
4. **Wrongful institution of legal proceedings**
 - a. *Malicious prosecution* – BUT prosecutors are generally immune from civil liability
 - (i) D institutes criminal action against P (e.g. D files a complaint against P with the police and P is arrested, BUT if D merely gives information to a prosecutor, this is NOT enough)
 - b. *Wrongful civil proceedings* – malicious prosecution also applies to civil cases

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

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