



## **SEPERAC-F19 EXAM-MBE OUTLINE RELEASE DATE: NOVEMBER 15, 2018**

### **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 175 MBE categories that represent the ABC level items in the 2019 NCBE Subject Matter outlines. For each of the 175 categories, this outline contains the black letter law expected to be tested on the F19 MBE. In addition, the expected number of MBE questions on the upcoming F19 MBE is reported for each of the 175 categories. 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.

The majority of my time is spent trying to better understand what is tested on the MBE and making an outline that reflects those beliefs that is proportional to the amounts those items will contribute to your score. The result is 175 pages of black letter law (25 pages per MBE subject) where each page is expected to represent 1 question you will see on the MBE. While most bar outlines suffer from outline bloat (always adding content but never re-balancing), this outline only contains what I expect to be tested and is proportioned accordingly (meaning you are taking calculated risks using my materials). For example, my section on RAP is much smaller than any similarly sized bar outline. Meanwhile, my section on DJ is much larger than similarly sized outlines. However, 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 F19 MBE exam. For example, the new areas the MBE currently tests (e.g. Fair Housing Act, broker's commissions, title insurance, zoning/non-conforming uses, voluminous summaries, and many more) are proportionally and contentually covered in the outline. I strongly believe you can pick up 3-6 MBE points just from this outline's coverage of these 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, it is not important for the upcoming exam.

I advise examinees to use my MBE Rules outline (separate subscription) in tandem with this MBE outline. The MBE Rules outline contains 1,810 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 MBE Study Aid: 210 rules, 2017 Civil Procedure Sample questions: 10 rules, and 2017 Sample MBE questions: 21 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 is about as complete a picture as you can have of the current MBE exam. Within each category, 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. While the cost for the MBE Rules subscription is \$250, examinees subscribed to the MBE Outline 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 the 1,800+ MBE rules built into it) for a discounted price of \$150.

## **HOW TO USE THE OUTLINE**

Each of the 175 categories in this outline are ordered based on the ABC level of the 2019 NCBE Subject Matter outlines. Each of the 175 categories has a heading that appears as follows:

### **ConLaw; Cat II: Sep of Powers (A. The powers of Congress) – MBE: 1-2 Qs**

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**). The next part of the heading tells you how many graded MBE questions (out of 175 graded MBE questions) you can expect to see on the MBE exam from this category. For example, **MBE: 1-2 Qs** means that the subcategory of Constitutional Law Separation of Powers: Powers of Congress should represent between 1- 2 of the 175 graded questions on the upcoming Feb 2019 MBE.

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## CivPro: Cat I: Jurisdiction (A. Federal SMJ) – MBE: 1-2 Qs

### 1. Federal SMJ Overview

- a. **Jurisdiction** – the power of a court to adjudicate particular types of claims
- b. 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) who is being heard in violation of the court's jurisdiction
  - (ii) Even if fed court makes a mistake, it is still valid (i.e. you can always object to SMJ)
- c. 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)
- d. NOTE: alien = outside US, foreign = out of state

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

### 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 jurisdiction over the case if the claim involves the interpretation of fed law & the outcome necessarily depends on resolving the federal issue

### 3. Diversity – Amount in controversy *must exceed 75K*, AND the ac (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-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 if a party was joined later and was not an indispensable party, diversity is defeated 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 a citizen of the US (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

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) –

For all 175 MBE categories in the NCBE Subject Matter outlines, I report how many graded MBE questions you can expect to see on the upcoming MBE exam. This is helpful when determining how to allocate your early study time and whether a particular category deserves more attention

(replace); NOT a tort because underlying information is to false light & disclosure, but NOT to appropriation or

### Torts: Cat IV: Other Torts (C. Misrepresentations & defenses) – MBE: 0-1 Qs

1. **Intentional misrepresentation** (*fraud, deceit*) – someone lied to you with the goal of ripping you off, you fell for it and got screwed – 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 do you need to know that statement is false, BUT you have to have the *intention* of luring someone into a deal
  - d. Reliance - P must *rely on the information* – even expert opinion applicable (i.e. used car salesman says that in his opinion the engine is fine)
  - e. *Economic harm* – must be actual, pecuniary loss (fraud is a contract tort so K rules for damages apply).
2. **Negligent or fraudulent misrepresentation** – this action is confined to misrepresentations made in a commercial setting, & liability will attach only if reliance by the particular P could be contemplated:
  - a. **Negligent misrepresentation**
    - (i) D made representation in the course of his business or in transaction in which D has pecuniary interest;
    - (ii) P must prove that D owed a duty to a foreseeable P and D did not exercise reasonable care or competence 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

### Torts: Cat IV: Other Torts (D. Interference w/ business relations) – MBE: 0-1 Qs

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 interference not enough); AND
  - d. Damage to P – must prove *actual damages*
2. Defenses
  - a. *Tortfeasor's conduct may be privileged* if it serves *legitimate interests* (must have justifiable purposes)
  - b. D's is also privileged to interfere where:
    - (i) giving truthful information within the scope of a legal duty;
    - (ii) the K violates public policy;
    - (iii) D is disinterested and only seeks to protect his own interests;
    - (iv) if a fiduciary encourages D to breach (b/c fiduciary is not acting for personal economic advantage).

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