



# NextGen<sub>✓</sub>

Bar Exam of the Future

R&D Phase 1:  
Exam  
Developments

# “Foundational” content to be assessed

## CONCEPTS & PRINCIPLES

1. Civil Procedure
2. Contract Law
3. Evidence
4. Torts
5. Business Associations
6. Constitutional Law
7. Criminal Law
8. Real Property

## SKILLS

- 1. Legal Research**
- 2. Legal Writing**
- 3. Issue Spotting & Analysis**
4. Investigation & Evaluation
5. Client Counseling & Advising
6. Negotiation & Dispute Resolution
7. Client Relationship & Management

# Where it started...



PHASE 1: LISTENING  
SESSIONS



PHASE 2: 2019  
PRACTICE ANALYSIS



PHASE 3: TEST  
CONTENT & DESIGN

“Lawyering skills should be emphasized over subject matter knowledge.”

Content that focuses on skills such as **issue spotting, critical thinking, legal analysis, written and oral communication, and reasoning** was considered more applicable to all newly licensed lawyers. In contrast, content that focuses on subject matter knowledge was viewed by some as requiring memorization of legal rules that lawyers can look up in practice.

# Stakeholder Input

"The MPT is a strength of the current bar exam."

"Consider adding legal research skills by providing access to an electronic database of legal resources."

"Consider more frequent administrations of the bar examination."

"Evaluate the impact of change on historically underrepresented populations of examinees."

"Avoid increased costs for candidates to take the exam."

"Offer more study aids as a low-cost alternative, or supplement, to commercial bar preparation programs."

**Table 3. Most Commonly and Least Commonly Performed Tasks**

<b>Most Commonly Performed Tasks</b>	<b>Least Commonly Performed Tasks</b>
Identify issues in client matter, including legal, factual, or evidentiary issues.	Draft and file documents to secure or maintain intellectual property protection.
Research case law.	Draft legislation or regulations.
Interpret laws, rulings, and regulations for client.	Negotiate with or on behalf of land use regulatory authorities.
Research statutory and constitutional authority.	Draft prenuptial or antenuptial agreements.
Evaluate strengths and weaknesses of client matter.	Prepare or review local, state, or federal tax returns and filings.
Evaluate how legal document could be construed.	Establish and maintain client trust account.
Develop specific goals and plans to prioritize, organize, and accomplish work activities.	Participate in initiative or proposition process to change statute or constitution.
Conduct factual investigation to obtain information related to client matter.	Represent client in post-conviction relief or habeas corpus proceedings.
Research secondary authorities.	Represent client in eminent domain or condemnation proceeding.
Consult with colleagues or third parties regarding client matters.	Draft constitutional amendments.



**Table 4. Knowledge Areas with Highest and Lowest Mean Importance Ratings**

Highest Mean Importance Ratings	Lowest Mean Importance Ratings
Rules of Professional Responsibility and Ethical Obligations	Transportation Law
Civil Procedure	Bioethics
Contract Law	Indian Law
Rules of Evidence	Foreign Trade Law
Legal Research Methodology	Public Utility Law
Statutes of Limitations	Military Justice Law
Local Court Rules	Animal Rights Law
Statutory Interpretation Principles	Sports and Entertainment Law
Sources of Law (Decisional, Statutory, Code, Regulatory, Rules)	Air and Space Law
Tort Law	Admiralty Law

**Table 7. Skills Recommendations by BDC**

<b>Skill Domain</b>	<b>Tasks</b>	<b>Description of Domain</b>	<b>Weighting (%)</b>
Legal Research	5	Researching the Law, Written/Reading Comprehension, Critical/Analytical Thinking	17.5 (15–20)
Legal Writing and Drafting	24	Written Expression, Critical/Analytical Thinking	14.5 (12–17)
Client Counseling and Advising	14	Oral Expression, Oral Comprehension, Cultural Competence, Advocacy, Critical/Analytical Thinking, Problem Solving, Practical Judgment	11.9 (10–15)
Issue Spotting and Evaluation	7	Identifying Issues, Observant, Critical/Analytical Thinking	17.5 (15–20)
Investigation and Analysis	17	Interviewing/Questioning, Fact Gathering, Cultural Competence, Problem Solving	17.5 (15–20)
Negotiation and Dispute Resolution	23	Negotiation Skills/Conflict Resolution, Creativity/Innovation, Expressing Disagreement, Written Expression, Oral Expression, Oral Comprehension, Advocacy, Practical Judgment	11.9 (10–15)
Client Relationship and Management	13	Networking and Business Development, Resource Management/ Prioritization, Organization, Strategic Planning, Managing Projects, Achievement/Goal Orientation, Practical Judgment, Decisiveness, Cultural Competence	9.2 (7–12)



**Table 8. Knowledge Area Recommendations by BDC**

Knowledge Area	Weighting (%)	Measurement Approach
Business Organizations	7 (4–10)	Knowledge (content-dependent)
Professional Responsibility, Ethics	7 (4–10)	Knowledge (content-dependent)
Legal Research Sources & Methods	8 (5–11)	Applying skills (content-independent)
Constitutional Law	9 (6–12)	Knowledge (content-dependent)
Dispute Resolution*	9 (6–12)	Applying skills (content-independent)
Real Property	9 (6–12)	Knowledge (content-dependent)
Torts	9 (6–12)	Knowledge (content-dependent)
Evidence	10 (7–13)	Knowledge (content-dependent)
Criminal Law & Procedure	10 (7–13)	Knowledge (content-dependent)
Contract Law	10 (7–13)	Knowledge (content-dependent)
Civil Procedure	11 (8–14)	Knowledge (content-dependent)

\* This knowledge area represents the combination of *Alternative Dispute Resolution* and *Trial Advocacy and Practice*.

Q3 2022 – Q3 2023



Conduct pilot testing of draft items and item types

Q2 2023 – Q3 2023



Publish final Content Scope Outlines

Q2 2023 – Q1 2026



Upon request, assist jurisdictions with rule, statute, and policy changes

Q3 2023 – Q4 2026



Publish sample items and study aid materials as available

Q4 2023 – Q2 2024



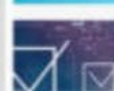
Conduct field testing of operational items

Q4 2024 – Q1 2025



Administer prototype exam

Q3 2025



Release standard-setting recommendations to assist jurisdictions in setting passing scores

Q1 2024 – Q3 2024



Publish final exam design and test content specifications



Q2 2025

Perform standard-setting exercise

Q3 2026



First administration of new exam

Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4

2022

2023

2024

2025

2026

Primary Focus	2021-22	Early 2023	Late 2023	2024
1.	Publish & gather feedback on <b>preliminary Content Scope Outlines</b>	Continue <b>pilot testing</b> of draft items & item types	Publish <b>sample items and study materials</b> as available	Publish final exam <b>design &amp; test content</b> specifications
2.	Develop & evaluate <b>prototypes</b> of new item types/sets	Publish <b>final Content Scope Outlines</b>	Conduct <b>field testing</b> of items	Administer <b>prototype exam</b>

Testing Phase	Use
<b>Pilot</b>	Guide standards
<b>Field &amp; Prototype</b>	Build multiple simulated exams to solidify structure of exam

# Pilot testing

- Two waves completed, continuing into 2023
- **Overall purpose?** Evaluate form, organization & structure of exam items
- **Who?** Recent grads and law students from 22 US law schools
  - You can still [get involved!](#)
- **How?** Given 2-3 hours to answer series of draft exam items & provide feedback
- **Specific goals?** Determine (i) types of questions to be used, (ii) best way to combine & sequence different types of questions, (iii) *best way to provide examinees with supplementary materials*, and (iv) appropriate amount of time for examinees to complete new questions & question sets



# So... where does this (ideally) put NCBE next year?

Goal is for NCBE to gain awareness of:

- Format of items
- Best order in which to present item sets
- How to provide **supplementary materials** in a way that is fair and accessible
- How much extra time such materials add to total time to complete question set
- Overall time necessary for examinees to complete new types of test items
- Having begun assessment of specific content (skills & knowledge)

# Field & prototype testing (beginning 2024)

- More examinees as compared to pilot testing
- Designed to determine:
  - whether specific questions or item sets will assess examinees' knowledge and skills appropriately
  - whether questions are fair and within an appropriate level of difficulty
- NCBE begins to work with subject matter experts and offer training, guidance and support to draft exam items
- Prior to this stage, drafters and reviewers will seek to have ensured that questions cover relevant topics (i.e., those within content scope outlines)
- Provide opportunity to see full-length exam administered as it will be beginning in 2026

# Glossary of terms

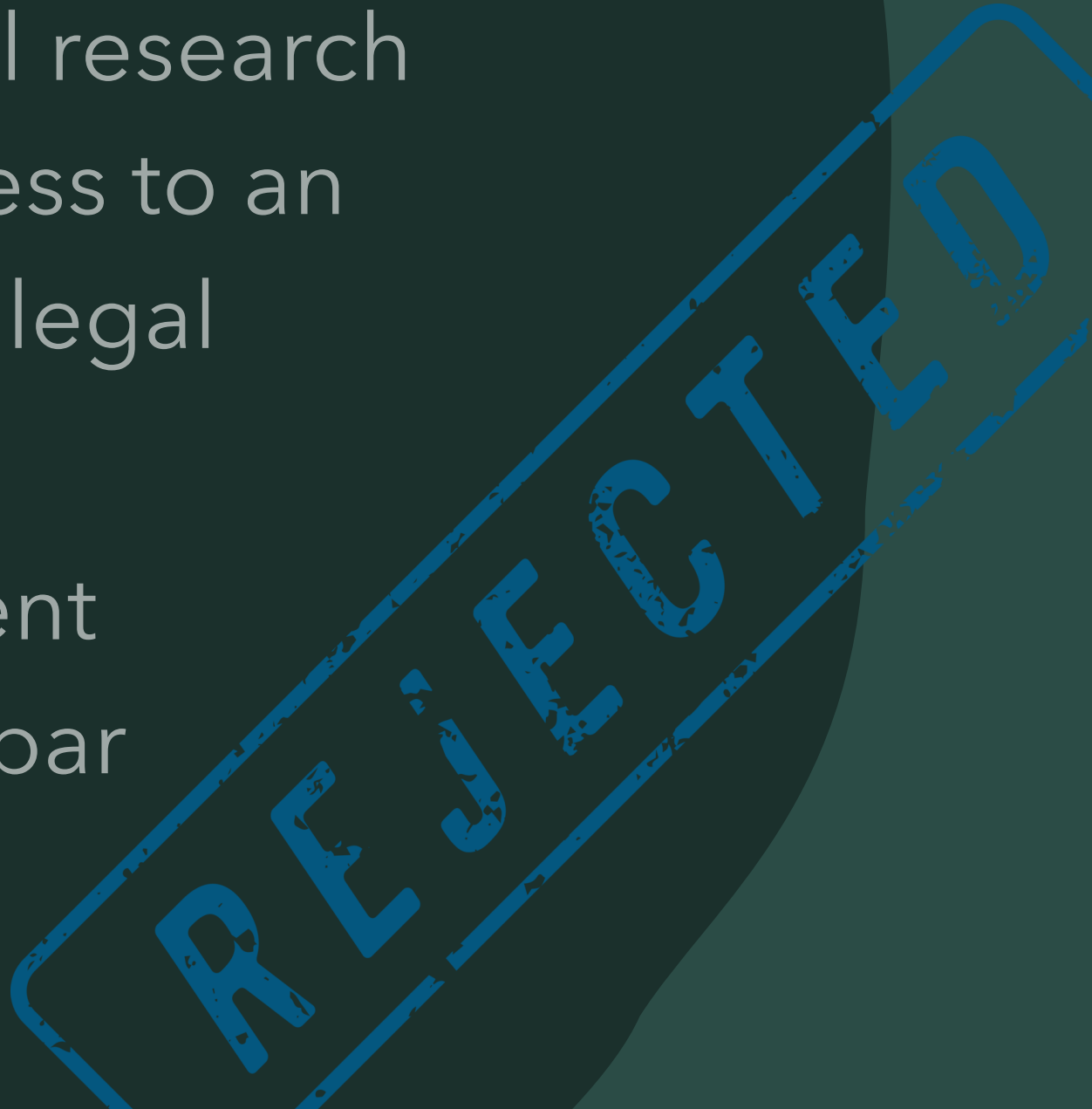
**Item Set.** A collection of test questions (items) based on a single scenario or stimulus such that the items pertaining to that scenario are developed and presented as a unit. Item sets can be developed so that all items within a set are of the same format or of different formats.

**Pilot Testing.** A small-scale administration of early drafts of new item formats under semi-realistic conditions to small groups of law students and/or recently licensed practicing lawyers.

**Field Testing.** A large-scale administration of finalized new items under realistic conditions to a large and representative sample of students or recently licensed lawyers for the purpose of determining the operational feasibility of the items and format and to obtain estimates of item performance statistics.

**Prototype Exam.** A large-scale administration of a full-length exam to a large and representative sample of students or recently licensed lawyers for the purpose of generating performance data to support the standard-setting process for jurisdictions.

- "Consider adding legal research skills by providing access to an electronic database of legal resources."
- "Consider more frequent administrations of the bar examination."



“Testing legal research skills.. raises an issue of how to deliver legal resources to candidates in a manner that is **accessible** to all and allows them to view and use the resources seamlessly. But we have no doubt that meeting these challenges is worth the effort.”



“Ensuring that the bar examination is free from racial/ethnic/gender bias is a priority.”

# Where we're at...



- Still waiting on final content scope outlines; anticipated to be published mid-2023
- Moving toward end of pilot testing and into field & prototype testing
- Test content specifications scheduled to be published next year

# Moving into Phase 2 of R&D, what can / should legal skills instructors be doing.. and asking?

- GET INVOLVED!
- Evaluate final content scope outlines for changes and responsiveness
- Ask how skills can best be tested – and knowledge, where applicable
- Ask whether research can aptly be tested in closed universe exam
- Ask what efforts can / should be made with respect to stated goals, including accessibility and DEI initiatives
- And...?

# Questions?

Email me @

[ashley.arrington@ttu.edu](mailto:ashley.arrington@ttu.edu)

