



Alison Monahan: Welcome back to the Law School Toolbox podcast. Today we're excited to have one of our law school and bar exam tutors, [Doretta McGinnis](#), here to talk about the [Next Generation Bar Exam](#). Your Law School Toolbox host today is Alison Monahan, and typically, I'm with Lee Burgess. We're here to demystify the law school and early legal career experience, so that you'll be the best law student and lawyer you can be. Together, we're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). I also run [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can always reach us via the [contact form](#) on LawSchoolToolBox.com, and we would love to hear from you. With that, let's get started.

Welcome back to the Law School Toolbox podcast. Today we're excited to have one of our law school and bar exam tutors, Doretta McGinnis, here with us to talk about the NextGen Bar Exam. Welcome, Doretta.

Doretta McGinnis: Thanks, Alison.

Alison Monahan: Well, we're super excited to have you. First off, what is this thing we're talking about? What is the NextGen Bar Exam replacing and what is it?

Doretta McGinnis: The NextGen Bar Exam is the new edition of the bar exam currently being developed by the [National Conference of Bar Examiners](#). It will replace the current Uniform Bar Exam, or UBE, which many of our listeners are intimately familiar with. To give you a bit of background, the UBE was first administered in 2011, so it's definitely due for a refresh and a revisit. We'll start by talking about the current components of the UBE, so then we can compare and see what changes lie ahead with NextGen.

Alison Monahan: Right. This is going to be kind of a big shift.

Doretta McGinnis: Yes. Yes, and a very exciting one. A very exciting one. I think it's a very positive change coming.

Alison Monahan: Great. Tell us more.

Doretta McGinnis: Yeah. So to start, the three components of the UBE. The first is the Multistate Bar Exam, or MBE, and that consists of 200 multiple choice questions administered over two three-hour sessions. The next component is the Multistate Essay Exam, or MEE, and that is six 30-minute essays administered in one three-hour session. And the other component, my favorite, is the Multistate Performance Test, or MPT, and that consists of two 90-minute closed legal writing tasks that are completed in a single three-hour session. I'm mentioning the timing because that's one of the important changes that lies ahead.



Currently the UBE consists of 12 hours of testing spread over two days, the last Tuesday and Wednesday of February and July every year. Where's the UBE administered? Almost everywhere; 39 states plus the District of Columbia and the Virgin Islands currently use the UBE as their bar exam. Three other states require some UBE components plus a jurisdiction-drafted exam. And all U.S. jurisdictions except for Louisiana and Puerto Rico use the MBE, while some other non-UBE jurisdictions use the MPT. That's pretty complicated, but the bottom line is that because the NextGen exam will lead to the retirement of all three components of the UBE, the bar exam is going to change in virtually all U.S. jurisdictions.

Alison Monahan: Wow, so no more multiple choice questions, or at least no more MBE it sounds like, not a whole day of multiple choice. Why are they doing this? What are the goals of a new test?

Doretta McGinnis: Well, the goals, which I completely agree with, are to reduce the amount of material that is tested and to put more emphasis on lawyering skills. The goal is to have a test that's a more valid measure of the knowledge and skills that new lawyers require. And to get there, the National Conference of Bar Examiners has engaged in a years-long process of task forces and focus groups and evaluation to try to determine which content areas are critical and which skills are most important for new lawyers to have. So, we might want to start first with the content areas.

Alison Monahan: Yeah, I think that would be interesting because they've definitely... One of the things I found interesting was trying to make this a little bit less litigation-focused, so I think that's kind of an interesting piece of this. But yeah, tell us what's going to be on this. What do we need to know?

Doretta McGinnis: Sure, okay. That's a good point, that thought about it being less litigation-oriented. Well, as you probably know, the current topics that are tested are Civ Pro, Con Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, Torts. Those are tested both in multiple choice and essay form. And then there are additional essay-only topics: Business Associations, Conflict of Laws, Family Law, Partnerships, Secured Transactions, and Trusts and Estates. That's a lot of material. So, the NCBE has assessed these subject areas and the topics that are tested within each subject to reduce the amount of material that will be tested on the NextGen Bar Exam. This involved prioritizing the subjects to be tested based on how frequently they're likely to arise in entry-level practice, whether they're somewhat universal and relevant to multiple practice areas, and whether not knowing the topic would pose a significant risk of attorney malpractice or poor outcomes for clients. So, what subjects made the cut? Basically, the current MBE subjects plus Business Organizations. That means we're going to be testing Civ Pro, Contracts, Evidence, Torts, Business Associations, Con Law, Crim Law and Crim Pro, and Real Property. What is gone?



Conflicts, Family Law, Secured Transactions, and Trusts and Estates. There will also be reduced coverage within each of those surviving topics. And my hope, and I think this is consistent with what we're hearing from the NCBE, is that they will stop testing the sort of picky details that any lawyer would double check and not rely on their memory for, like the number of days for responding to a pleading; and that they'll focus on bigger core concepts within those subjects. So, that's the content. There'll also be an increased focus on skills. Now, our listeners probably already know that there are key skills already tested on the MPT. Those are legal writing, issue-spotting and analysis, and some client counseling and advising. NextGen is going to retain those skills but add some more. These are research, investigation and evaluation, negotiation and dispute resolution, and client relationship and management. So there's going to be an increased focus on skills.

Alison Monahan: Yeah, I think this whole thing sounds pretty interesting. I agree with you, I thought one of the more intriguing pieces of this was how you weren't necessarily going to have to memorize every single thing that's on the exam, that some of it might be given to you. And we went to a webinar recently where they gave some sample questions and that kind of thing. You kind of saw a situation of you have this statute, or the Code of Evidence says X, Y and Z, and then you had to apply that. So, it definitely seemed closer to me to the type of things that people would probably be doing in practice, versus taking multiple choice questions, which I don't think any client's ever really going to ask you to do.

Doretta McGinnis: Well, I think that's right. I think it's more realistic, and I really appreciate the reduction in memorization. Because in my experience of teaching law school and tutoring for the bar exam, I think that memorization is the biggest hurdle to bar success for a significant number of examinees. It's just an overwhelming amount of material to memorize. And if that can be reduced, and as you suggest, if information can be provided as part of the exam materials, then we can really focus on what matters – skills, analysis, applying the law; not memorizing picky, picky details. So, just the thought that you wouldn't have to memorize distinctions between the Model Penal Code and common law crimes, but rather the fact pattern would give you criminal statutory language to apply to a fact pattern – that's a win for examinees right there.

Alison Monahan: Oh, definitely. I often say if you did in practice what you were asked to do on the bar exam, you would almost certainly be committing malpractice. I was a patent litigator, somebody comes and they ask me, "Oh, I need your opinion on this issue of trust and estates." I'd be like, "You should call a trust and estates attorney, why are you talking to me? I know nothing about this."

Doretta McGinnis: Exactly. And that's one potential, and I think kind of insurmountable weakness with the bar exam, even with NextGen, is this idea of universality, or of testing



issues that new lawyers are likely to see. I mean, if your first job is patent lawyer, the issues you're seeing are very different than if your first job is public defender.

Alison Monahan: Yeah, I do find that a little like, "Hm, is there really any sort of universality at this point?" There're so many different ways people could be a lawyer, and it's very specialized. So, I don't know, I guess maybe you want to know some... Actually, it's kind of funny they're dropping Family Law, because I do think that's one of those questions where people do come and ask you things. Not that I would answer them, but at least like, "Oh, I'm getting divorced. Can you tell me what to do?" It's like, "Well, talk to a family lawyer, and then here are the papers you probably need to file."

Doretta McGinnis: Right, right.

Alison Monahan: But yeah, I guess there's nothing we can really do about that aspect of the legal profession, to the extent that we need a licensing exam at all.

Doretta McGinnis: Right. And yeah, if we accept that a licensing exam is reasonable, then this approach seems to me to be an improved approach.

Alison Monahan: Oh, I 100% agree. And is this stuff pretty set? I mean, are they going to make changes to this content at this point?

Doretta McGinnis: They say that they're going to finalize the specific content in the spring of 2023. They've started pilot, or they will be starting pilot testing of the exam in November of 2022. And that will continue through the end of 2023. That's going to be followed by field testing involving specific exam software and realistic testing environments. So I think there may be some tweaks to the specific content. I do not think that there will be any changes in subject matter. I don't think they're suddenly going to drop Contracts or something like that. But I think the content within has not yet been finalized. And the hope then is that we will get a slimmed down subject matter outline from the NCBE. And that will be, I think, an interesting moment to compare the new subject matter outline with those detailed listings of topics per subject to the current UBE outlines for the MBE and the essays.

Alison Monahan: Right, because just in case people miss this, there'll be some things on this new test within a topic area that you do need to know from memory, and then other things you just need to be sort of familiar with. So we're looking for those outlines to see which pieces make the cut of the really important stuff that you have to memorize, and which ones you should just be aware of and be able to apply if they show up. And when are they planning to start administering this?



- Doretta McGinnis: Well, this is exciting. They're planning to begin administration in some jurisdictions in July 2026.
- Alison Monahan: Oh, wow.
- Doretta McGinnis: Yeah, this means that first-year law students in the fall of 2023 will be the first cohort to take this NextGen exam upon graduation, presuming they graduate in May 2026 and sit in July. Now, the interesting wrinkle is that although the UBE, of course, as we said, is very widespread, and that all of its components will be retired, that's going to be kind of a piecemeal process. The NextGen exam will not be administered in all jurisdictions in July 2026, and it is unclear which jurisdictions will be the first to be blessed with this exam. So I think we're looking at a rocky transition period and some uncertainty. And I trust that the National Conference of Bar Examiners will provide more clarity on which jurisdictions will start with NextGen and how that transition is going to be implemented. But what we know right now is that at least some jurisdictions will administer this exam in July 2026.
- Alison Monahan: Right. And I wonder about reciprocity too, and how the UBE scores can be used different places. It'll be interesting to see how that all plays out in this transitional time, where some states are using this and some states are using the pieces of the older exam, and all that kind of stuff.
- Doretta McGinnis: Well, that's true. And one thing that the NCBE has made clear is that NextGen, like the UBE, will offer that score portability. You're right that it's unclear what will happen if someone – and I pity these people – are caught in that situation of having taken one exam in one jurisdiction – if they've taken the UBE in one jurisdiction, but they want to transfer that score to what is now a NextGen jurisdiction. How will that work? Those are unanswered questions right now, but the consensus is that score portability with the UBE has been successful and should be retained under the NextGen formulation.
- Alison Monahan: Well, that's good news, at least.
- Doretta McGinnis: Mm-hmm.
- Alison Monahan: Well, before we move into a few things that are more specific to either law students or bar takers, let's talk a little more about the types of questions we're going to see here, because I thought that was really interesting when we went to the webinars, were these integrated assessments. What is this stuff going to look like?
- Doretta McGinnis: Yeah, that's a very, very good question. As you know, the current exam, the questions are specific types that are separated – MBE is all multiple choice, MEE is all essays, MPT is a legal writing document drafting task. The new exam, the



NextGen exam, is going to feature questions as you referred to as integrated assessment. The model for this is that examinees will be given a case file that raises substantive or procedural legal questions and requires them to use one of the foundational skills that I mentioned earlier. So for example, in the webinar that we attended, NCBE described providing a file that implicates evidence, criminal law, and client counseling. So what's in this file? Documents of a type that we may have seen on the MPT, honestly, such as a police report, a statute for assault and battery in the jurisdiction. Again, exciting because you didn't have to memorize it, it's given to you. And perhaps an excerpt of a case that interprets the statute. And then a series of questions that the examinee has to answer, such as identifying a fact in the police report that would be helpful to prove the element of "knowingly" in the statute. And that would be an example of a short written answer question. The examinee might be asked to list ways to gather more evidence relevant to a particular issue, such as the issue of great bodily harm. That could also be a short answer question. And then we can't escape them, there may be some related multiple choice questions that arise from this case file. And this can be an ongoing scenario. There may be a set of questions, as I've just described, that pertained to that file, and then new additional information may be added to the file. The scenario may continue to develop. Example was given of providing a transcript of a law clerk's interview with a witness, and then asking the examinee some skills-related questions arising from that interview, such as identifying errors that the law clerk made, or listing concerns about a proposed plea deal. So, it's important that the questions won't be cumulative, because we don't want to have a cascading effect of getting one question wrong and that triggering errors all down the line. They have to be independent questions. But that's going to be the structure. So, it sounds like less essay writing, more short answer type of writing, and still some multiple choice being interspersed.

Alison Monahan: It definitely sounds like this is going to be interesting for students in schools to figure out how to prepare for.

Doretta McGinnis: Yes, yes.

Alison Monahan: Because when I was watching the webinar, I'm like, "How do you teach people some of these things? Some of this just seems like common sense." I don't know.

Doretta McGinnis: Yes, well, I think it's going to have a big impact on both law school curriculum and preparation, and on the bar prep industry.

Alison Monahan: Well, let's talk about the law school process, since this is our Law School Toolbox podcast. What do you see as the impact here on law schools and law students, particularly considering this is going to be starting to loom on the horizon fairly quickly?



Doretta McGinnis: Yes, it really is. Again, those 1Ls in the building in Fall of 2023 could be facing this exam. Well, I think it is going to affect course selection for law students. Some students tend to choose classes in part because they are bar subjects. And now that list of subjects has been reduced. So, a student who has absolutely no interest in Secured Transactions, who might have taken it just for comfort on the bar exam, may now choose to fill that slot with an elective of interest.

Alison Monahan: Wow, something they might actually want to take, not just for the bar. Amazing.

Doretta McGinnis: Yeah, exactly. Exactly. And concomitant with that, many law schools where bar pass has been problematic, have many required courses. There are law schools that essentially require either all students or students with GPAs below a certain point to take all of those bar subjects. And I think it's very clear that those schools will now have the flexibility to have fewer requirements. Again, there's no real value in requiring people to take Secured Transactions, Family Law, Conflicts – subjects that are no longer tested. So, I think there will be fewer substantive requirements at some law schools, those that now require bar courses. And I think that students will have the freedom to choose different electives. The flip side of that – and this gets to your point about how you test some of these things and isn't some of it common sense – is that law schools may require more skills-based courses, or participation in skills-related clinics or experiential learning. And students may choose more of that. Now, the ABA already requires students to complete a certain number of credits of experiential coursework, but I think that we may see more of that. And that makes sense to me, because if we now have explicitly tested skills of negotiation and counseling, or client management, what does that mean? Law students may benefit from having that sort of experience and being able to draw on those skills to pass the bar exam. And again, I think there is some cohort of law schools that is likely to require that sort of coursework if they don't feel that it is already adequately required in their curriculum.

Alison Monahan: Which seems like a net plus. The thing that this most reminded me of when we were going through some of the integrated assessment, was the clinic I took. I remember we did one day of actual client counseling where they brought in, I think it was actors. And we had to go through these scenarios and sort of deal with situations as they came up. This actually would be very useful in this new bar exam.

Doretta McGinnis: Exactly, exactly. And again, those types of experiential learning requirements are already in place. The question is, will they increase, or will schools think they already have that covered? I also think that professors – and this is always dangerous – may try to emulate the NextGen type questions in their law school exams in bar subjects. I just described that integrated assessment that drew on Criminal Law and Evidence. And I could easily imagine some professors trying



their hand at crafting those sorts of exam questions, especially once we begin to see model questions released by the bar examiners.

- Alison Monahan: Right, yeah. These are definitely, I think, pretty tricky to get right. So it will be interesting to see if professors try to kind of use their exams as a teaching tool for the bar – the way they do now with multiple choice, but that's a lot easier because they can just draw on the MBE questions that have been there for a long time.
- Doretta McGinnis: Right, right, right. And that is, I think, one of the key bar prep questions that's lurking, is what are the prep materials going to be going forward?
- Alison Monahan: Yeah, definitely. Well, overall, for law students who might be listening to this now, or next year when this becomes even more of reality, it sounds like you think this is a good thing.
- Doretta McGinnis: I do. And I think it's a good thing for several reasons, the major reason being the de-emphasis on memorization. I think anything that requires less memorization will lighten the burden on law students. I also think, and again, I mentioned the sheer number of hours of testing – the exam is presumptively going to be shorter. And that also reduces stress for law students who are looking ahead at that final hurdle to becoming licensed.
- Alison Monahan: Right. And particularly that comes into play when you start talking about accommodations and things like that, where suddenly someone's testing for four days, and it's just like, "Oh my gosh, really? Is this necessary?"
- Doretta McGinnis: Yes, yes.
- Alison Monahan: Alright. Well, it sounds like if you are in law school, this is definitely something to be paying attention to, and kind of playing out in your experience and figuring out which of these exams might be the one you're taking, and working with your school really to see what they're doing to prepare you for this.
- Doretta McGinnis: Yes, yes. And again, luxuriating in the freedom to choose not to take classes simply because they are tested on the exam.
- Alison Monahan: Right. I do think it's kind of an open question if somebody is listening to this now and they're like, "Well, this isn't really totally relevant to me, but I definitely don't want to memorize all this stuff and take all these exam-related courses I'm not actually interested in." I think there's going to be an interesting transition period where schools are probably going to be trying to figure out what to do. But I think law students also are going to be trying to figure out what to do, in terms of which exam to take, and do you structure your schedule one way or another? It's going to be pretty interesting.





- Doretta McGinnis: It is, especially because we don't yet know which jurisdictions will be offering this exam in 2026.
- Alison Monahan: Yeah, I wonder when they're going to decide that.
- Doretta McGinnis: Yeah, I don't know.
- Alison Monahan: I don't either. Yeah, so definitely something to keep apprised of, be aware of, but I wouldn't necessarily panic over it at this point, because you're going to have your same exam for at least a few more years, that we all know and love.
- Doretta McGinnis: Yep.
- Alison Monahan: Alright. Well, this has been super interesting. Thank you so much for joining us.
- Doretta McGinnis: Thank you, Alison. It was fun.
- Alison Monahan: Yeah. Any final thoughts you want to share for any of our listeners on this?
- Doretta McGinnis: I think it's an exciting change that lies ahead, and I would encourage our listeners to embrace it. I think that for new law students starting out, there is some discomfort probably, being at kind of the cutting edge of a brand new bar exam. Of course, you don't have a basis of comparison, so it may seem like somewhat of a moot point. But I think you're starting school at a time when you have the potential to take a better exam than your predecessors, and that you are fortunate in having more flexibility in choosing substantive coursework and not needing to choose subjects based on their appearance on the bar exam. For bar examinees and students as well, I think that the focus on skills is important, and that you should realize that even if you don't think that you do, you really have developed a lot of these necessary skills through law school or if you've been working for a while in your work experience. And I think that that practical skill-based aspect of the exam has the potential to be an asset for many examinees.
- Alison Monahan: I agree. I think it's an exciting time, it's an interesting time. And to some extent, we're all just going to have to kind of sit back and see what happens.
- Doretta McGinnis: Yes. And again, still a lot of unanswered questions in terms of which jurisdictions are going first in July of 2026, and what materials will be provided by the bar examiners to aid students, bar prep companies and tutors, law schools planning curricula, in tailoring their approach to this new exam.
- Alison Monahan: Well, we will all just stay tuned. Once again, Doretta, thank you so much for joining us. This has been really great.



Doretta McGinnis: Thank you, Alison.

Alison Monahan: My pleasure. I want to take a second to remind you to check out our [blog](#) at BarExamToolbox.com, which is full of helpful tips to help you prepare and stay sane as you study for whatever bar exam you end up studying for. You can also find information on our website about our courses, tools, and one-on-one tutoring programs to support you as you study for the UBE or California bar exams. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We would really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to Lee or Alison at [lee@lawschooltoolbox.com](mailto:lee@lawschooltoolbox.com) or [alison@lawschooltoolbox.com](mailto:alison@lawschooltoolbox.com). Or you can always contact us via our website [contact form](#) at LawSchoolToolbox.com. Thanks for listening, and we'll talk soon!

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