

**Empire College School of Law
SYLLABUS FOR SPRING 2012 SEMESTER**

**COURSE NAME: ANALYSIS & INSIGHT FOR THE
CALIFORNIA BAR EXAMINATION**
Course #: C560
Instructor: Professor Shiver

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1. Introduction: The course is taught by an attorney who served for 35 years with the California Committee of Bar Examiners as an *ex officio* member of the Committee: initially for 5 years as a “Reader” (grader) for the Bar Exam, then as a member of the Board of Reappraisers of the Committee (now called the “Examination Development and Grading Team”) for 31 years, including a term as chair of the Board. The Board (Team) consists of 10 experienced attorneys, all of whom previously served for 5 years or more as Bar Exam Readers, whose term on the Board averages 15 years, and who by reason of their Board membership are *ex officio* members of the Committee.

The Board edits all of the essay and “performance test” (“PT”) questions submitted for potential use on the Exam, and rank orders them for periodic selection for use in an Exam by the full Committee. Later in the Bar Exam semi-annual cycle, after the Exam is administered and grading commences, the Board supervises the Readers (an average of 15 are assigned to each essay question) in the grading of the Exam, directing the “calibration” of the grading in order to maintain consistency in grading standards among individual Readers; and in addition, also “re-reads” and re-grades those Exam “regular” and PT essay question answers which were scored as “close fails” on original grading, as a form of a “court of last resort.”

Over his years on the Board, the course instructor passed on and re-wrote literally hundreds of Bar Exam questions (most of which were then selected for use on actual Bar Exams given between the early 1970’s and the early 2000’s), and has read and graded thousands of Exam essay question answers.

This course has only been taught twice previously: by the same ELS adjunct professor, at Empire Law School in the Spring 2010 and 2011 semesters. To his knowledge, such a course – directed exclusively to the California Bar Exam – is not being taught in any other California law school, certainly not by another former Bar Exam administrator.

The results of administration of the two past courses on attendee “first timer” applicants from ELS, has been mixed, with no presently-determined clear explanation for the marked difference in performance. The Bar Exam pass rate for ELS graduates taking the Exam for the first time (a majority of whom attended sessions of the first course) on the July 2010 Bar Exam, was **85%**: a very high rate, comparable to the “first

timer” July Exam pass rates of graduates from “full time” law schools such as Boalt Hall, Stanford, Hastings, etc. However, by contrast, the pass rate for ELS graduates as “first timer” applicants on the more recent July 2011 Bar Exam (a smaller number than in July 2010, and including fewer course attendees), fell to only 34%, below the overall average pass rate for ELS “first timer” applicants over the past decade, of 44%.

The “first timer” pass results for ELS graduates, including those attending the current course, on the July 2012 Bar Exam, may provide some explanation to the great disparity between the July 2010 and 2011 results. During the Spring 2011 course the instructor did note some significant difference in attitude between the two seminar classes, however: those in the 2011 class displayed a noticeably more *blasé* attitude toward the Bar Exam, almost like attending the seminar (with the 2010 Exam 85% pass rate as a background) somehow guaranteed a passing Bar Exam grade. That attitude will be strongly challenged in the current course administration.

“De-mystification” is not equivalent to disdain. The Bar Exam remains a substantial career challenge, only to be successfully overcome by a serious approach and significant hard work in preparation.

2. Course Structure:

a. The course is presented in fourteen (14) weekly classroom Monday night (except the first week) sessions of two (2) hours each, providing the student with two (2) units of credit for successful completion.

Because a majority of the sessions involve some integrated sample essay and PT question answer analysis and writing, and historical essay and PT question reviews in class, one (1) hour sessions would not provide enough necessary classroom time.

Some of the course time is spent “offsite”, outside of the classroom, in writing Exam question answers, at home or at another non-ELS location, on the student’s personal computer, under Bar Exam time constraints imposed by the student.

b. The course’s law student constituency is expected to be the Fourth Year students who have completed or then are completing the other courses in the substantive law areas covered in the California Bar Examination (“BarEx”), and who presumably, after April 19, would be preparing to take the July BarEx (to be given three months later, in late July.)

c. The Empire College Law School course does **not supplant** the “outside” Bar Review Courses such as BarBri, or Bar Passers, etc., for the fundamental reason that the law school course does not provide a review of substantive law courses, except to the incidental degree that review of past BarEx essay and PT questions during the course, also involves that substantive law “review.” Rather, this course compliments and supplements such outside review courses.

The law school course is thus one primarily of successful Bar Exam taking technique and familiarity, with a close to “one on one” environment.

It will be up to the individual student to decide whether to also enroll in an outside review course (which may start while the law school course is still underway); they will be encouraged to do so, because of the substantive law review factor noted above.

d. There are basic Empire College scholastic requirements that mandate this course to include a “final exam” during the weeks of April 9-19. For the 2011 course, the “final exam” was the writing of an answer to actual past Bar Examination courses, done at home or outside the classroom on the students’ computers, and then emailed to the instructor for grading and comment. The final course grade is a combination of scores on the Exam questions given in conjunction with the final session, and overall course classroom attendance and performance.

e. No significant course material costs are anticipated. There is a course-book to be purchased. It is assumed that all students in the course will have personal laptops (or will have such equipment otherwise available) to be used as in-classroom or off-site word processors, the same as they will be used in taking the BarEx.

At the beginning and periodically throughout the course, each student will be provided with physical copies of one or more actual complete past California Bar Examinations. Photocopies of past selected online Bar Examination essay questions (and their past “sample answers”) are provided for this purpose, free of charge.

f. Although the Bar Exam’s MBE (multiple choice) questions are originally promulgated by the National Committee of Bar Examiners (“NCBE”) for use by state bar examiners, including in California, the California BarEx utilizes the 200 MBE set per exam as an integral part of the examination (comprising 35% of the overall exam score, and consuming one of the three BarEx days). Therefore, a complete course about the BarEx necessarily includes consideration of MBE questions, including by studying the idiosyncrasies of NCBE’s multiple choice questions included in past BarEx sessions. Past MBE question booklets are obtained from the NCBE for use by the course students, free of charge.

Various review courses suggest that the BarEx applicant practice for the MBE portion of the Exam by reviewing and answering at least 1,200 MBE questions. Several successful ELS “first timer” applicants on the July 2011 BarEx have advised the instructor that they reviewed **over 3,000 past MBE questions** beforehand,

It is deemed very important for students in the course to have in hand to keep as their own, to “heft” and periodically look at from the beginning, the physical expression of the “feared snake” in their future: the actual physical California Bar Examination, in all three of its printed-out manifestations: Essay Questions, PT Questions (including the “File” and the “Library”), and 200 MBE Questions. Familiarity doesn’t breed contempt in this context, but it should mitigate some of the natural apprehension.

3. Weekly Syllabus:

1st Session (Monday January 9th): Introduction to the course –

description of the BarEx in format
distribute complete copies of past BarExs
review of procedures to sign up as BarEx applicant (from online directions)
explanation of differences with traditional BarEx “review” courses.
discuss desirability of enrolling in an “outside” review course
review BarEx administration processes (locations, equipment, etc.)
brief historical review of the California BarEx over the last 50 years or so,
and how the same reflects on the current BarEx
description of the BarEx administration staffing and functions (i.e., Committee,
the “Examination Development and Grading Team” (“Team”; formerly
the Board of Reappraisers), the Grader cohort, the Director for Examinations
and his/her immediate assistants)
attitudes of those (preceding) administering the BarEx
what will be done over the balance of the course

2nd Session (Monday January 16):

any matters necessary to complete course introduction (from First Week)
explanation of how the BarEx is assembled
the process for the selection of essay and PT questions; editing and
redrafting of questions by Team members assigned to particular subjects
how essay questions are constructed:
question “banks”, editing by Team members, Committee input
control over the number of “issues”
the distinctions in questions in certain substantive law areas, i.e.,
Evidence, where the subject itself dictates format and issue “numbers”
the care given to drafting of and thus the importance of the essay question’s
“call.”
length concerns, lack of “padding”
tracking (by Team, for Committee), the number of particular BarEx subjects
being tested on in recent BarEx questions; how this “record” (which can
be determined from the Committee’s website) can or cannot be used to
project likely future BarEx question course coverage
assembly of PT questions; differences from essay questioning drafting
factors considered in PT drafting (assignment letter, file, library)

3rd Session (Monday January 23):

completion of course materials listed for 2d Session, above
sample “break-down” analysis of essay question for answer writing

4th Session (Monday January 30):

review of the grading process of the BarEx
puncturing urban legends about BarEx grading; Graders' conduct in grading
relevant history of BarEx grading; the current model of issue point weighting and addition (for calibration purposes), to derive a tentative score, vs. "holistic" grading
classroom exercise in "breaking out" of an essay question's issues, **and** the student's assignment of "relative" "allocated" grade "points" (in 5-point and/or 2-1/2 point increments.)
relative importance of answer syntax, grammatical and spelling accuracy
"scaling": purpose (brief history of Dr. Steve Klein of SRI and his studies), methods use to accomplish scaling
"raw" scores v. "scaled" scores
"equalizer" multiple choice questions embedded in the MBE; effect of being able to possibly isolate such questions.
the "40 to 100" scoring range policy and its history and purposes
when and why a "0" grade is assigned
the importance of the "out of time" summary answer, and what to say in such an answer to maximize credit
the importance of putting something down for all six "answers"; passing the BarEx, despite one or two low grades
essay questions in the reappraisal or "re-read" range; policies applicable to Team members in re-reading and re-scoring BarEx questions
effect of MBE grades, gross grade/score, on reappraisal
the meaning and purposes of "phased" grading, its brief history

5th Session (Monday February 6):

answering the six essay BarEx questions
techniques for considering all questions in the session at the start; reasons pro and con
answering questions out of order, and reasons therefor
techniques for isolating in advance the likely question subjects;
pros and cons to even attempting the exercise
review of and personal exercises with past BarEx essay questions and answers available on the internet
how sample answers for internet display are selected
recognition and answering of "cross-overs"; likely frequency of cross-over questions
the IMPORTANCE of READING and ANSWERING the question's "call"
Grader treatment of extraneous matter in an essay question answer; avoiding "toe-dancing at the threshold"
the importance of avoiding the writing of excuses
where conciseness is important

organizational considerations, imperatives
self-discipline in the avoidance of “immediate” answer writing
whether or not to “outline” an answer in advance of writing it

6th Session (Monday February 13):

Completion of course materials listed for 5th Session, above.

7th Session (Monday February 20):

Presidents’ Day” national holiday; Empire School of Law **closed**.
Self-study consisting of writing an answer on students’ pc to an actual
past BarEx question(s) designated in advance by the instructor
in a preceding class and by email on Monday, February 13: students
send their answers to instructor as email attachments, for grading and
comments, on or before Friday, February 24, 2012.

8th Session (Monday, February 27):

Answering the Performance Test “essay” question
history of the PT question (the purposes of the originator, past
Committee Chair Armando Menocal; their relevance today)
review of some actual recent BarEx PT questions and answers
how to conduct the initial review as between the initial assignment letter
or memorandum, the “file”, and the “library”
how to isolate and focus upon the PT question’s call
critical time budgeting; how relative time factors affect grading
validity of suggestion by some PT review courses of “copying” portions
of the Library before creating the answer, to “insert” by “pasting” as
part of the eventual answer
consideration of the “double-weighting” of PT question answers
in the overall BarEx scoring
how Team members treat PT questions and answers in re-reading
processes
“short answer” considerations
what differences, if any, in syntax, grammar, and spelling considerations
between PT and regular “essay” answers

9th Session (Monday, March 5):

“Presidents’ Day” national holiday; Empire School of Law **closed**.
Self-study consisting of writing an answer on students’ pc to an actual
Past Bar Examination question designated by the instructor
in class and by email on Monday, February 14: students should
send answers to instructor as email attachment, for grading and
instructor comments, on or before Friday, February 25, 2011.

10th Session (Monday, March 12):

Answering the 200 “multiple choice” “objective” MBE questions
review samples of past MBE set(s) given on past BarEx(s)
review of identity of MBE question subjects
source of MBE questions as affecting their style and content
the use of “equalizer” MBE questions
tautology on answer selection: one choice “rather clearly wrong”;
two choices “close together” as likely the right answer: a key, or
just urban legend
importance of time control unique to answering MBE questions
techniques of “setting aside” certain MBE questions for “delayed”
answering to “assure” “correct” answers to “known” questions

11th Session (Monday, March 19):

clean-up any course materials remaining from essay, PT, and MBE
question-taking syllabus portions of the course (above)
outline, and begin, practice BarEx question answering and course
instructor grading and comments (see below)

12th Session (Monday, March 26):

practice BarEx essay, PT, and (to a more limited extent) MBE question
answering, in class (for practice and actual time control)
the instructor will endeavor to read and grade all essay and PT
answers between the last three sessions (i.e., 10th, 11th, and 12th),
commenting on the contents of the answers (or some of them).

The questions used will be actual prior BarEx questions, or perhaps
some older “bank” questions ready for BarEx use. While the former
will be available online, the student will not know their identity in
advance of being provided the question, in class, to be answered.

[NOTE: the foregoing anticipates that students will “write” answers on their
own laptop PCs, to email their online answers into the instructor’s computer for
reading, grading, analysis, and possible commentary in class.

13th Session (Monday, April 2):

See description in 12th Session, above. Further practice BarEx question
taking under instructor’s supervision

14th Session (Monday, April 9):

Further practice BarEx question taking under instructor's supervision;
designation of past Bar Examination question(s) as the subject(s)
of offsite or "home" Final Examination (see below)

Week of April 9-13:

First week of final examinations; students are not attending regular
classes this week.

Final Examination (Monday, April 16):

Offsite or "take home" examination consisting of students writing
answers on their personal computers of a designated actual
Bar Examination question, under simulated Bar Exam time and
other constraints, submitting answers to the course instructor
by a designated time deadline, for grading (and possible comments).