PHASE 3 REPORT

OF THE TESTING TASK FORCE

BLUEPRINT DEVELOPMENT COMMITTEE AND TEST DESIGN COMMITTEE MEETINGS

NOVEMBER 2020

TESTING TASK FORCE
National Conference of Bar Examiners

National Conference
of Bar Examiners

Building a competent, ethical,
and diverse legal profession

The National Conference of Bar Examiners, founded in 1931, is a not-for-profit corporation that develops licensing tests for bar admission and provides character and fitness investigation services. NCBE also provides testing, research, and educational services to jurisdictions; provides services to bar applicants on behalf of jurisdictions; and acts as a national clearinghouse for information about the bar examination and bar admissions.

Our mission

NCBE promotes fairness, integrity, and best practices in admission to the legal profession for the benefit and protection of the public. We serve admission authorities, courts, the legal education community, and candidates by providing high-quality

- assessment products, services, and research
- character investigations
- informational and educational resources and programs

Our vision

A competent, ethical, and diverse legal profession.

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OVERVIEW AND NEXT STEPS

The purpose of the Testing Task Force's study over the past three years has been to gather the necessary research to inform how the bar exam should be changed to adapt to a changing profession. The study has been conducted with transparency and has included input from stakeholders each step of the way.

For Phase 3 of the Task Force's work, two committees were convened to discuss test blueprint and design issues by working from the qualitative and quantitative data that were compiled in Phase 1 (stakeholder listening sessions) and Phase 2 (nationwide practice analysis). The charge of the Blueprint Development Committee (BDC) was to help determine what content should be tested on the bar exam, while the role of the Test Design Committee (TDC) was to recommend how that content should be assessed. The BDC consisted of newly licensed and experienced practitioners who provided input on exam content using the Phase 2 study results and applying their professional judgment and experience. The TDC was composed of legal educators and bar admission representatives who provided input on an effective structure and design for the exam. The TDC's work was guided by the Phase 1 study results and by the professional judgment and experience of committee members in educating law school students and admitting newly licensed lawyers (NLLs) to the bar. This Phase 3 report summarizes the work completed by the BDC and the TDC.

Using the results from the BDC and TDC meetings, the Task Force is formulating a set of preliminary recommendations for the content and design of the next generation of the bar exam. The starting point for developing any exam is to consider the purpose of the test and the claim(s) to be made about examinee performance. Early in the study, the Task Force adopted the following claim for the intended use of scores from the bar exam: *To protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer.* This claim guided the work of the BDC and TDC and will serve as the foundation for the Task Force's recommendations for the next generation of the bar exam.

Beyond fidelity to the claim, the content and design of the exam must be constrained by psychometric requirements relating to reliability, validity, and fairness. Therefore, the Task Force has consulted, and will continue to consult, with its internal and external assessment experts in formulating recommendations that satisfy the *Standards for Educational and Psychological Testing* (AERA, APA, NCME, 2014). The other key objectives guiding the Task Force as it develops recommendations include

- ensuring that the depth and breadth of the content tested is carefully aligned with minimum competence for entry-level practice;
- increasing emphasis on assessment of lawyering skills;
- adopting an integrated approach to assessing knowledge and skills;
- continuing to exercise vigilance to prevent bias and ensure fairness and accessibility for all examinees;
- reducing the length of the exam to the extent possible without sacrificing reliability and validity of score interpretations;
- administering the exam by computer either at test centers managed by vendors or on examinees' laptops in jurisdiction-managed testing facilities;
- keeping the exam affordable so that cost does not pose a barrier to entering the profession;
- reducing the time between exam administration and announcement of results through greater efficiencies in scoring and grading while maintaining the high quality of processes used; and
- maintaining the benefits of score portability realized through use of the Uniform Bar Exam.

The Task Force's preliminary recommendations will be shared with bar admission authorities and the legal academy for comment before recommendations are finalized by the Task Force for submission to NCBE's Board of Trustees in January 2021.

BLUEPRINT DEVELOPMENT COMMITTEE MEETING

BDC Panelists

The TTF recruited 17 practicing lawyers to participate as panelists on the BDC; 14 of the panelists were female and 10 were people of color. In total, the panelists practiced in 13 jurisdictions and across a range of practice settings (private law firm, government, nonprofit organization, legal services/public interest, judicial law clerk, and in-house counsel). Each panelist indicated his or her area(s) of practice, which collectively included:

- Administrative Law
- Appellate
- Business Law
- Civil Rights
- Commercial Law
- Contracts
- Criminal Law
- Disability Rights
- Education Law
- Employee Benefits
- Employment Law and Labor Relations
- Estate Planning
- Fair Housing
- Family Law
- Health Care Law
- Insurance Coverage
- Judicial/Clerkship
- Juvenile
- Personal Injury
- Probate
- Professional Regulation
- Torts

Process

The BDC met from June 29 to July 1, 2020. The meeting was held virtually for five hours each day. Prior to the meeting, each panelist was provided a binder of materials that served as advance readings for the meeting:

- Meeting Agenda
- NCBE Testing Task Force Study Overview
- Testing Task Force Phase 1 Executive Summary
- Testing Task Force Phase 2 Report

Additional materials were provided closer to the meeting date for reference during the meeting:

- Detailed results of Phase 2 Analysis
  - Tasks organized by overall frequency of performing with results provided by Practice Cluster
  - Knowledge Areas organized by overall importance with results provided by Practice Cluster
- Proposed Blueprint Structure – tasks organized under seven skill domains and knowledge areas
- Information about the structure of the current Uniform Bar Examination (UBE) and Multistate Professional Responsibility Examination (MPRE)
- Current MPRE Subject Matter Outline

Dr. Chad Buckendahl and Dr. Susan Davis-Becker from ACS Ventures LLC (ACS) facilitated the meeting. Staff from NCBE (Kellie Early and Dr. Mark Raymond) and the Chair of the TTF (Hon. Cindy Martin) attended the meeting to observe. Following introductory remarks by Judge Martin, ACS led an orientation that began with a review of the primary claim for the intended use of scores from the bar exam:

> ***To protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer.***

ACS then provided an overview of the TTF study, the purpose and function of a test blueprint, and the plan for the three-day meeting. The facilitators walked the panelists through the meeting materials and explained how to interpret the results of the Phase 2 practice analysis. This orientation took the majority of the first day of the meeting.

The general discussion began after the orientation with a review of the job tasks from the practice analysis survey. Specifically, the full list of 179 tasks was reduced to those 136 tasks that were rated as being performed *Frequently* or *Moderately* by 50%[1] or more of the survey respondents. Further, the tasks identified for review were organized by the TTF and ACS under these seven skill domains:

- Legal Research
- Legal Writing and Drafting
- Client Counseling and Advising
- Issue Spotting and Evaluation
- Investigation and Analysis
- Negotiation and Dispute Resolution
- Client Relationship and Management

The BDC reviewed each task and discussed its relevance to practice by NLLs based on the ratings collected during the practice analysis, including (1) the overall frequency ratings (how frequently the tasks were performed by NLLs), (2) the frequency ratings by Practice Cluster (survey respondents grouped by practice areas), and (3) the frequency ratings by those survey respondents identified as NLLs versus those who were not NLLs. The result of each task-level discussion was a recommendation as to whether the task should be included within that skill domain as being representative of the activities required of NLLs. The BDC also recommended consolidation of some tasks to eliminate overlap or redundancy.

After reviewing all 136 tasks in this manner, the BDC was asked to consider how much emphasis or weight should be given to the seven skill domains on the bar exam, including models of (1) equal weighting for each skill domain, (2) natural weighting, meaning the weight is determined by the number of tasks under each skill domain, or (3) weighting based on the judgments of the BDC. The BDC panelists opted for the third model and applied their judgment to reach consensus on recommended weights for each skill domain. This activity was concluded at the end of the second day.

The third day of the meeting was focused on reviewing the knowledge areas from the practice analysis. The full list of 77 knowledge areas from the practice analysis survey was reduced to 25 by prioritizing those areas that were rated as *Important* by 50%[2] or more of the survey respondents. The BDC reviewed each knowledge

1 To account for a margin of error of 3%, the list reviewed by the BDC included tasks rated as being performed *Frequently* or *Moderately* by 47% or more.

2 To account for a margin of error of 3%, the list reviewed by the BDC included knowledge areas rated as *Important* by 47% or more.

area and discussed the relevance to practice by NLLs based on the overall importance ratings, the importance ratings by Practice Cluster, and the importance ratings by those respondents identified as NLLs versus those who were not NLLs. The result of each knowledge area discussion was a recommendation as to whether the area should be included on the bar exam.

After making decisions about what knowledge areas to recommend for inclusion, the BDC considered how much emphasis or weight should be given to each knowledge area on the bar exam. The BDC also considered generally whether knowledge areas should be measured in a content-dependent context (necessary legal resources are not provided) or in a content-independent context (necessary legal resources are provided). There was not enough time at the end of the third day to allow for coming to consensus on weighting or how the knowledge areas should be measured. Therefore, the facilitators introduced the topic and the panelists were sent a post-meeting assignment to provide their recommendations.

Each panelist was also asked to complete an online evaluation of the blueprint development meeting.

Results

Skill Domains

In total, the BDC identified 103 tasks from the original list of 136 tasks as representative of the seven skill domains identified for assessment on the bar exam: 9 of the original 136 tasks were consolidated to eliminate redundancy, and 24 tasks were recommended for exclusion, with most of those excluded because the BDC concluded that the tasks exceed the scope of an NLL's practice. As an example, "Prepare or designate record for appellate or other post-judgmental review" is a task that the BDC recommended for exclusion. The list of tasks that were considered and the results can be found in **Appendix A.**

Table 1 shows for each skill domain the number of tasks, a general description of the domain, and the recommended weighting. The weighting is shown as the average of the weights recommended by the BDC panelists; a range of roughly 3% around that average is shown in parentheses.

Table 1. Skills Results

Skill Domain	Tasks	Description of Domain	Weighting (%)
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)

Knowledge Areas

In deciding which knowledge areas to recommend for inclusion on the exam, the BDC endorsed 11 of the original 25 areas that were rated as *Important* by 50% or more of the survey respondents. The list of knowledge areas that were considered and the results can be found in **Appendix B.**

The BDC further recommended that the following six knowledge areas should be excluded as stand-alone topics and coverage of these areas should be subsumed under other knowledge areas and skills:

- Statutory Interpretation Principles –> subsumed under Skills and Constitutional Law
- Uniform Commercial Code –> subsumed under Business Organizations or Contract Law
- Remedies –> subsumed under all knowledge areas
- Civil Rights –> subsumed under Constitutional Law
- Landlord-Tenant Law –> subsumed under Real Property and/or Contract Law
- Debtor-Creditor Law –> subsumed under Business Organizations and/or Contract Law

For each recommended knowledge area, **Table 2** below shows the recommended weighting (average of BDC panelists' judgments along with a range of ± 3%) and measurement approach (reflecting the consensus of at least two-thirds of the panelists) based on the post-meeting survey completed by 15 panelists. The survey asked for their recommendations on

1. the weighting to be given to each knowledge area; and
2. the measurement focus for each knowledge area as either testing knowledge of legal doctrine (content-dependent—legal resources not provided) or applying skills in the area (content-independent—legal resources provided).

Table 2. Knowledge Area Results

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.*

In submitting their recommendations regarding the knowledge areas after the meeting, the BDC panelists were invited to provide comments supporting their recommendations. The survey responses of those panelists who provided comments are set out in **Appendix C.**

Finally, the panelists were provided with the opportunity to complete an evaluation of the meeting and results by answering four selected-response questions and one open-ended question allowing for additional comments (see **Appendix D**). In general, the panelists felt prepared for the meeting based on their advance reading, rated the orientation and training part of the meeting as successful, and felt the recommended knowledge and skill domains represent appropriate expectations for NLLs. There were mixed feelings on the amount of time allocated for discussions, with the responses ranging from "more than enough time" to "not enough time." This might be due to the need for a post-meeting activity to complete the work of the BDC relating to weighting and measurement focus for the recommended knowledge areas.

Summary

Through review of the Phase 2 practice analysis results and discussion among the panelists, the BDC came to consensus and recommended 7 skill domains, with 103 representative tasks, and 11 knowledge areas for inclusion on the bar exam, with a targeted weighting for each. For 2 of the 11 knowledge areas—Legal Research Sources & Methods and Dispute Resolution—the BDC recommended that the assessment focus on applying skills in the area in a content-independent context (legal resources provided). The BDC suggested overall measurement targets of 30–40% weight on skills and 60–70% weight on knowledge on the bar exam.

TEST DESIGN COMMITTEE MEETING

TDC Panelists

The TTF invited each jurisdiction to nominate a representative (bar administrator, bar examiner, or justice) to serve on the TDC by completing an online form. The TTF selected from the nominees to achieve a mix of roles, jurisdiction sizes, and other demographic variables. The TTF also invited individual deans and faculty members from a variety of law schools to serve. The panel of 28 was composed of 11 educators, 9 bar examiners, 6 bar administrators, and 2 justices; 10 of the panelists were female and 7 were people of color. Each panelist had experience educating law students, administering the bar exam, serving as a bar examiner, or, in the case of the justices, serving as liaison between a state supreme court and the state's board of bar examiners.

Process

The TDC completed its work between July 16 and August 4, 2020, through two virtual meetings of five hours per day over three days (Meeting 1 on July 16–17 and Meeting 2 on August 4) with an offline review of written materials before Meeting 1 and between meetings. The third day of August 4 was added after the meeting was switched from in-person to virtual mode. Seven of the TDC panelists were not available on August 4. Therefore, 28 panelists were present for Meeting 1 and 21 were present for Meeting 2.[3] Those who could not attend Meeting 2 were given the opportunity to provide written input before and after the meeting.

3 The panelists present for Meeting 2 consisted of 10 educators, 7 bar examiners, and 4 bar administrators.

Each panelist was provided with the following materials to read prior to Meeting 1:

- Meeting Agenda
- Testing Task Force Study Overview
- TDC Role and Discussion Topics
- Phase 1 Report Executive Summary
- TTF Study Phase 2
- BDC Meeting Summary
- Summaries of Test Design Considerations

Dr. Chad Buckendahl and Dr. Susan Davis-Becker from ACS Ventures LLC (ACS) facilitated the meeting. Staff from NCBE (Kellie Early, Danielle Moreau, and Dr. Mark Raymond) and the Chair of the TTF (Hon. Cindy Martin) attended the meeting to observe. Judge Martin made introductory remarks and then ACS led an orientation that began with a review of the primary claim for the intended use of scores from the bar exam:

> ***To protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer.***

ACS then provided an overview of the TTF study, the purpose and function of a test design, and the plan for the three-day meeting. The ACS facilitators walked the panelists through the meeting materials and explained how each document related to the TDC's work.

After the orientation, the panel was split into two groups, and an ACS facilitator guided each group through a discussion of the test design topics and specific questions listed below.

1. **Structure**
    - 1.1. How many decisions will there be to the bar exam? [Will there be one overall pass/fail decision, or will candidates have to pass individual components?]
    - 1.2. How many components will there be to the bar exam?
2. **Knowledge Areas & Skill Domains**
    - 2.1. How should each skill domain be represented on the exam?
    - 2.2. How should each knowledge area be represented on the exam?
3. **Assessment Methods**
    - 3.1. What methods should be employed and to what degree?
4. **Administration**
    - 4.1. When should the bar exam be administered? [At what point in their legal education would candidates be eligible to take the exam?]
    - 4.2. How frequently should the bar exam be administered?
5. **Score Interpretation and Use**
    - 5.1. What features are important for score portability?
6. **Accessibility and Fairness**
    - 6.1. What flexibility is important in administration?
    - 6.2. What accommodations should the design consider?

As noted in the TDC's reading materials, the TTF decided that the next generation of the bar exam will be a computer-based test, administered either at testing centers or on examinees' laptops, so the TDC did not discuss the issue of delivery mode.

The TDC panelists recognized the interconnectedness of these topics and spent the meeting time sharing their opinions and discussing advantages and challenges associated with the options. Most of the discussion time was spent on topics 1 (Structure), 2 (Knowledge Areas & Skill Domains), 3 (Assessment Methods), and 4 (Administration). Although there was some discussion of topics 5 (Score Interpretation and Use) and 6 (Accessibility and Fairness), no specific suggestions were formulated on these topics.

The ACS facilitators identified the general opinions expressed in the two group discussions during the first day, noting similarities and differences in viewpoints. At the beginning of the second day, the facilitators presented the main points from each group's discussion to the entire TDC. Then the TDC again split into their respective groups to continue working through the design topics.

After Meeting 1, ACS consulted with NCBE staff and the TTF Chair to develop three draft design models that represented the range of opinions expressed by the TDC panelists on design topics. These three models were sent to the panelists prior to Meeting 2, and they were asked to comment via a survey. Responses to the survey were provided by 21 panelists.

At the beginning of Meeting 2, ACS shared the results of the survey regarding the three draft design models and presented a fourth model that consolidated several features from the original models and drew from the strengths of each, as identified through the survey responses.

At the conclusion of Meeting 2, the TDC was mostly in accord on several features. One topic in particular—the timing of administration of the exam—was not resolved. Therefore, ACS distributed a second survey to all 28 TDC panelists requesting their opinion on that topic.

Each panelist was also asked to complete an online evaluation of the test design meeting.

Results

The results from Meeting 1 reflected a diverse set of opinions and perspectives as to what design features would best meet the claim outlined for the intended use of bar exam scores. The TDC was largely split on whether the design should use compensatory scoring (with scores on each component combined to produce one overall pass/fail decision for licensure) or conjunctive scoring (with scores on each component treated as separate pass/fail decisions and a requirement that candidates pass each component to be licensed). Under a compensatory design, candidates may compensate for a weak performance on one component with a strong performance on another. Under a conjunctive design, candidates must demonstrate the required level of proficiency on each component. The other design feature on which there was a diversity of opinions was whether to use a single-event (one exam administration taken after completion of law school) or a multi-event (exam administered as separate components with the option to take the first component during law school) administration model.[4] Therefore, the three draft design models detailed in **Appendix E** were created using these decision points as the key differentiators.

Each of the draft design models assumed that the bar exam would include two components—Application of Core Doctrinal Law and Application of Lawyering Skills—and would be administered using a range of assessment methods/formats. TDC panelists were instructed to recognize that assessment of knowledge and

4 Under either administration model, jurisdictions could permit candidates to take components that are to be completed "after law school" prior to graduation, as is the case with the current bar exam.

skills are interconnected. That is, examinees are applying lawyering skills, such as issue spotting and analysis, when demonstrating their knowledge of legal doctrine, and some knowledge of or familiarity with legal doctrine is generally needed when demonstrating lawyering skills.

A common feature of each draft model is a test of Knowledge of Professional Responsibility that would be administered separately from the bar exam and could be taken during law school or after graduation.

- **Model A:** This model proposed single-event administration and compensatory scoring (component scores combined for one pass/fail decision). Candidates would take the exam as a single event after completing law school and would be required to retest on all components if they failed to achieve the combined passing score.
- **Model B:** This model proposed multi-event administration and conjunctive scoring (separate pass/fail decision for each component). Candidates would be eligible, but not required, to take the Application of Core Doctrinal Law component after completing 60 credits of law school. The Application of Lawyering Skills component would be taken after completing law school. Candidates would be required to retest on only the component they failed to pass.
- **Model C:** This model proposed a hybrid approach to both administration and scoring. Candidates would take the exam after completing law school but not necessarily as a single event, meaning they would have the option to take each component separately and would retake only the component(s) they failed. Hybrid compensatory scoring would be used, with one overall pass/fail decision based on a combined score but with a minimum required score set for each component.

The three draft test design models were emailed to all 28 TDC members after Meeting 1 with an online survey, and 21 members responded to the following questions:

1) What they perceived as the strengths of each model that would best help NCBE meet the stated claim
2) What they perceived as the weaknesses of each model that would detract from NCBE's ability to meet the stated claim
3) Their overall opinion of each model rated on the following scale:
    a. I like it and would support it
    b. I can live with it and would support it
    c. I do not like it and would not support it

The ratings for each model are shown in the table below, as well as a set of consolidated ratings where the responses of "I like it" and "I can live with it" are combined. Overall, the panel rated models A and B similarly but gave lower ratings to model C.

Ratings of Draft Design Models

Original Ratings	A	B	C	Consolidated Ratings	A	B	C
I like it and would support it	6	7	7	I like it OR I can live with it	17	17	13
I can live with it and would support it	11	10	6				
I do not like it and would not support it	4	4	8	I do not like it and would not support it	4	4	8

Additional feedback included the strengths and weaknesses the TDC perceived for each model. The full set of feedback is included in **Appendix F** and is briefly summarized below.

- **Model A:** The TDC recognized that this single-event administration with compensatory scoring model was most similar to the current bar exam and would not require major changes for stakeholders. Many supported this model because compensatory scoring affords candidates the opportunity to balance their strengths and weaknesses, while a single-event administration requires them to pull together everything they learned in law school. Conversely, the TDC noted that, given the similarity to the current design, this model would not take advantage of the opportunity to enhance the design of the bar exam. Some highlighted that compensatory scoring adds to candidates' stress about the exam because it requires unsuccessful candidates to retake the entire exam.
- **Model B:** The TDC identified the benefits of this multi-event administration with conjunctive scoring model to be that it would allow the testing of core doctrinal knowledge closer to when it is learned, would be less stressful for candidates, and might be viewed by candidates as being fairer because they could focus on demonstrating their proficiency on each component separately. The option to take the Application of Core Doctrinal Law component while in law school allows candidates to make a choice that works best for them and may enable some candidates to get licensed more quickly. On the downside, some noted that allowing testing during law school might change the educational experience (e.g., change timing of taking courses, cause students to miss out on internship/externship/employment opportunities) and might add stress for candidates who are trying to prepare for a high-stakes exam while still in law school.
- **Model C:** Of the three models, the TDC panelists provided the most consistent feedback on this hybrid model; they highlighted the advantages of allowing candidates to combine their scores on the two components for a single pass/fail decision but with minimum score requirements for each, and allowing candidates to retake only the component they failed. The most frequently noted weakness was the lack of opportunity for candidates to take a component earlier in law school and related concerns about delay in licensure after graduation because of the time needed to score the Application of Lawyering Skills component.

ACS focused on the most common positive and negative comments about each model and created Model D as a fourth option (see **Appendix G**) to share with the TDC during Meeting 2. This model adopts the hybrid scoring approach from Model C (component scores combined for a single pass/fail decision but with minimum score requirements for each component) and the optional multi-event administration approach from Model B (candidates may take the Application of Core Doctrinal Law component during law school if they wish).

The TDC discussed each design feature of Model D. The prevailing views of the TDC members who participated in Meeting 2 are summarized below.

Structure: The TDC generally supported the structure of two components (Application of Core Doctrinal Law and Application of Lawyering Skills) for the bar exam and a separate exam on Knowledge of Professional Responsibilities. Pass/fail decisions for the bar exam would be based on a compensatory score for the exam but with minimum score requirements for each component. The compensatory score would be a weighted combination of the scores on the two components, and the TDC suggested either a 50/50 weighting (equal weight between the two components) or a 60/40 weighting with the higher weight allocated to the Application of Lawyering Skills component. Again, it is important to recognize the interdependence of knowledge and skills and that the two are not necessarily assessed separately.

Application of Core Doctrinal Law component: For this component, the TDC did not unanimously agree with the appropriateness of assessing some of the knowledge areas recommended for inclusion by the BDC; both the BDC and the TDC agreed, however, that the depth and breadth of coverage in the knowledge areas tested should be limited to the core legal principles that NLLs need to know without "looking it up" (i.e., they should be able to issue spot and know the basic rules but should not be expected to know "the exceptions to the exceptions").

Application of Lawyering Skills component: The TDC showed unanimous support for measuring skills such as Legal Writing, Legal Research, Issue Spotting and Evaluation, and Investigation and Analysis. With respect to assessing legal writing skills, some TDC panelists suggested that the written responses be scored on both content and effectiveness of writing, with some proposing that the effectiveness of writing should only enhance a candidate's score if the content is correct. For Professional Responsibility and Ethics, the TDC acknowledged the importance of the subject matter but did not want to see it tested as a core knowledge area on the bar exam because it would duplicate content tested on the Multistate Professional Responsibility Exam (MPRE). The TDC suggested that Professional Responsibility could serve as the context for questions in the Application of Lawyering Skills component to assess skills such as Issue Spotting and Evaluation, with the Model Rules of Professional Responsibility being provided as a resource to use during testing. Some members of the TDC expressed strong concerns that the skills of Client Counseling and Advising, Client Relationship and Management, and Negotiation and Dispute Resolution could not be measured objectively and without bias, and the importance of those concerns is noted. In terms of methods for assessing skills, the TDC generally supported the idea of case studies (e.g., written fact scenarios or video simulations) using multiple item types (e.g., short answer, selected response, extended response) with a library of legal resources provided.

Administration: Most of the TDC panelists were supportive of the idea that candidates should have the option to take a component of the bar exam during law school, but a few panelists were adamantly opposed, voicing their concerns regarding the impact on law school curriculum and law students. Near the end of the meeting, discussion arose about which component would be more appropriate for testing during law school if such an option were to be offered. There was not enough time remaining to resolve panelists' views on this issue, so a short follow-up survey was distributed to the TDC posing the following questions:

> (1) Would you endorse candidates being able to take a component of the bar exam after completing 60 hours of law school?
>
> (2) If there was an option for candidates to take a component of the bar exam after completing 60 hours of law school, which component do you think should be available?

The results of the survey, including comments, are provided in **Appendix H**. There were 21 responses, with 13 answering "yes" to the first question of whether candidates should be able to take a component after completing 60 hours of law school and 8 answering "no." Thus, the results show a preference for allowing candidates to take components of the bar exam during law school based on the yes/no votes. When reading the comments provided with the "no" votes, two of the eight wanted the option for candidates to take a component in law school but at an earlier point than after completing 60 credits. The second question resulted in 17 selecting "Doctrinal Law" and 4 selecting "Lawyering Skills." While they were asked to select either doctrine or skills in question #2, a couple of panelists indicated in their comments that they would prefer candidates have the option to take either component or both during law school.

Following completion of the meeting, each panelist was asked to complete an online evaluation of the test design process. The results are set out in **Appendix I**. Overall, the panelists felt they were very prepared for the first meeting and that the right amount of time was allocated to discussing each test design topic. Similar responses were provided regarding Meeting 2, with a few panelists indicating that more discussion time would have been beneficial. Panelists' overall evaluation of the process was generally positive.

Summary

Through review of the Phase 1 input from stakeholders, review of the BDC recommendations based on the Phase 2 practice analysis results, and review of the additional reading materials that were provided, the TDC discussed various options for test design. Their opinions on test design issues were not unanimous, and the TDC's discussion rightly reflected the interconnectedness and complexity of some of the test design issues while providing valuable insight into the benefits and challenges of various approaches to those design issues.

APPENDIX A: BDC RECOMMENDATIONS FOR TASKS UNDER SKILL DOMAINS

Appendix A lists the 136 tasks organized under 7 skill domains that were considered by the BDC, with the recommendation for each task reflected (i.e., include, exclude, or consolidate with another task). The BDC recommended 103 tasks be included, 9 tasks be consolidated, and 24 tasks be excluded. See **Table 1** in the body of the report for a description of the skill domains, as well as the number of tasks and suggested weighting for each.

Legal Tasks Organized under Skills (tasks identified by task numbers used in Practice Analysis)	
Legal Research (17.5%) – Researching the Law, Written/Reading Comprehension, Critical/Analytical Thinking	
1	Research case law (T1.35) **include**
2	Research statutory and constitutional authority (T1.33) **include**
3	Research secondary authorities (T1.36) **include**
4	Research administrative rules, regulations, and decisional law (T1.34) **include**
5	Research court rules (T1.37) **include**
6	~~Determine requirements for admitting exhibits or witness testimony into proceeding (T2.53)~~ **exclude**
Legal Writing and Drafting (14.5%) – Written Expression, Critical/Analytical Thinking	
7	Prepare documents to answer or respond to legal proceeding (T2.12) **include**
8	Prepare or respond to written discovery or other requests for information (T2.22) **include**
9	Prepare documents to initiate proceeding, including required schedules or exhibits (T2.07) **include**
10	Draft or respond to non-dispositive motions (T2.16) **include**
11	Draft or respond to dispositive motions (T2.15) **include**
12	Prepare required disclosures to other parties, the court, or fact-finder (T2.17) **include**
13	Draft documents reflecting resolution of dispute (T2.34) **include**
14	Draft witness or exhibit lists (T2.43) **include**
15	Draft affidavits or declarations to admit evidence or testimony (T2.38) **include**
16	Draft proposed orders, judgments, findings of fact, or conclusions of law (T2.60) **include**
17	Draft witness testimony outlines or summaries (T2.44) **include**
18	Draft or respond to discovery deficiency letters (T2.29) **include**
19	Draft or respond to discovery enforcement motion (T2.30) **include**
20	Draft or respond to motions in limine (T2.39) **include**
21	Draft required schedules, statements, or reports for submission to court, tribunal, or other fact-finder (T2.37) **include**
22	Draft or respond to post-judgment motions (T2.59) **include**
23	~~Prepare expert disclosures (T2.24)~~ **exclude**
24	Draft pre-trial or dispute resolution statements or summaries (T2.42) **include**
25	~~Prepare information requests to governmental agencies (T2.20)~~ **exclude**
26	~~Draft documents reflecting resolution of contract or business disputes (T3.13)~~ **exclude**

27	Draft or respond to request for interim relief or award (T2.10) **include**
28	Draft briefs or written submissions in appellate or other post-judgmental review proceedings (T2.65) **include**
29	~~Draft documents to seek appellate or other post-judgmental review (T2.63)~~ **exclude**
30	Draft resolutions, written consents, and/or meeting minutes (T3.06) **include**
31	~~Draft or negotiate business agreements (e.g., purchase and sale, lease, licensing, non-disclosure, loan, security interest, assignment) (T3.16)~~ **exclude**
32	~~Draft or respond to removal or remand pleadings (T2.13)~~ **exclude**
33	Draft proposed jury instructions (T2.50) **include**
34	Draft term sheet, memorandum of understanding, or letter of intent for transaction (T3.15) **include**
35	~~Respond to information requests from governmental agencies (T2.21)~~ **exclude**
36	~~Draft handbooks or written procedures (T3.07)~~ **exclude**
37	~~Seek modification of prior orders or judgments (T2.71)~~ **exclude**
38	~~Draft employment or independent contractor agreements (T3.08)~~ **exclude**
39	~~Respond to audit, violation or non-compliance report, or request for information from governmental or regulatory agency (T4.09)~~ **exclude**
40	Draft and file documents to form business organizations (T3.04) **include**
41	~~Draft power of attorney, durable power of attorney or health care proxy (T3.36)~~ **exclude**
42	Draft or respond to motions to suppress evidence (T2.40) **include**
43	~~Prepare application to governmental or regulatory authority (T4.07)~~ **exclude**
44	~~Draft or respond to request for writ or other extraordinary relief (T2.32)~~ **exclude**
45	~~Draft legal opinion letter for third party reliance (T3.28)~~ **exclude**
46	~~Draft or respond to demand to compel arbitration (T2.14)~~ **exclude**
Client Counseling and Advising (11.9%) – Oral Expression, Oral Comprehension, Cultural Competence, Advocacy, Critical/Analytical Thinking, Problem Solving, Practical Judgment	
47	Respond to client inquiries (T1.38) **include**
48	Inform client about status of client matter (T1.39) **include**
49	Identify rules of professional conduct applicable to client communications (T1.40) **include**
50	Prepare client or witness for sworn interview, statement, deposition, or proceeding (T2.26) **include**
51	Advise client about dispute resolution options (T2.02) **include**
52	Advise client regarding contract performance, enforcement, or termination issues (T3.11) **include**
53	Advise client about preservation or collection of electronically stored information (T2.19) **include**
54	Draft initial report for client (T1.06) **include**
55	Advise client regarding form of business organizations (T3.03) **include**
56	Draft or advise client about litigation hold letter (T2.18) **include**
57	Advise client regarding insurance coverage (T3.14) **include**
58	Advise client on employee discipline or termination issues (T3.09) **include**
59	Advise client regarding local, state, or federal tax implications and obligations (T4.13) **include**
60	Assist client in securing status, benefits, or assistance from governmental programs (T4.12) **include**

Issue Spotting and Evaluation (17.5%) – Identifying Issues, Observant, Critical/Analytical Thinking	
61	Identify issues in client matter including legal, factual, or evidentiary issues (T1.18), **(T2.04) include**
62	Evaluate strengths and weaknesses of client matters (T1.20) **include**
63	~~Determine issues or claims to be raised in legal proceedings (T2.04)~~ **consolidate with T1.18**
64	Assess the probable outcome of client matter (T1.21) **include**
65	Evaluate and develop strategy to address potential defenses to proceedings (T2.05), **(T2.11) include**
66	~~Determine issues, defenses, or claims to be raised in response to proceedings (T2.11)~~ **consolidate with T2.05**
67	Develop a strategy for client matter (T1.23) **include**
68	Develop strategy for presenting claims and/or defenses to court, tribunal, or other fact-finder (T2.41) **include**
69	Determine advisability of defending or prosecuting client matter (T1.22) **include**
70	~~Determine proper or best forum to initiate legal proceeding (T2.01)~~ **exclude**
71	~~Determine proper forum to seek appellate or other post-judgmental review (T2.62)~~ **exclude**
Investigation and Analysis (17.5%) – Interviewing/Questioning, Fact Gathering, Cultural Competence, Problem Solving	
72	Interpret laws, rulings, and regulations for clients (T1.24) **include**
73	Interpret how legal documents could be construed (T3.02) **include**
74	Conduct factual investigation to obtain information (T1.27) **include**
75	Obtain and review public records (T1.31), **(T1.32) include**
76	Determine lawfulness or enforceability of contract or legal document (T3.01) **include**
77	Interview client, client representatives, or witnesses to obtain information (T1.28) **include**
78	Review and analyze discovery received, including electronically stored information (T2.28) **include**
79	Determine client's compliance with laws, regulations, or standards (T1.25), **(T4.11) include**
80	~~Determine compliance with laws, rules, and regulations (T4.11)~~ **consolidate with T1.25**
81	Determine whether conditions precedent to initiate legal proceeding have been performed or satisfied (T2.03) **include**
82	Identify proper or required parties to legal proceedings (T2.06) **include**
83	Evaluate need for and identify fact witnesses (T2.25) **include**
84	Investigate background of parties (T1.29) **include**
85	Identify rules of professional conduct applicable to discussion of client matters (T1.42) **include**
86	Evaluate need for and identify expert witnesses (T2.23) **include**
87	Identify rules of professional conduct applicable to investigations or interviews (T1.30) **include**
88	~~Obtain information through Freedom of Information Act request (T1.32)~~ **consolidate with T1.31**
89	Conduct transaction due diligence (T3.17) **include**
90	Conduct lien, litigation, or bankruptcy filing searches (T3.18) **include**
91	~~Determine eligibility for governmental status, programs. . . (T4.10)~~ **exclude**

	Negotiation and Dispute Resolution (11.9%) – Negotiation Skills/Conflict Resolution, Creativity/Innovation, Expressing Disagreement, Written Expression, Oral Expression, Oral Comprehension, Advocacy, Practical Judgment.
92	Persuade others of a particular point of view (T1.43) **include**
93	Negotiate or facilitate resolution of client matter (T1.26), **(T2.33), (T3.12) include**
94	~~Negotiate resolution of dispute (T2.33)~~ **consolidate with T1.26**
95	Notify or serve parties to legal proceeding (T2.08) **include**
96	Resolve discovery disputes (T2.31) **include**
97	Identify rules of professional conduct applicable to communications with counsel for other parties or pro se parties (T2.74) **include**
98	Prepare witnesses to testify at trial or before other tribunal or fact-finder (T2.46) **include**
99	Represent client in court, before governmental agencies, or before other fact-finders (T2.47) **include**
100	Prepare client to testify at trial or before tribunal or fact-finder (T2.45) **include**
101	Identify rules of professional conduct applicable to communications with court, tribunal, or other fact-finder (T2.73) **include**
102	Identify rules of professional conduct applicable to filing of documents with court, tribunal, or other fact-finder (T2.72) **include**
103	Make or defend against objections to the admission of exhibits or witness testimony (T2.54) **include**
104	Introduce exhibits into evidence or proceedings (T2.56) **include**
105	Conduct or defend deposition (T2.27) **include**
106	Conduct direct examination or cross-examination of witnesses (T2.52) **include**
107	~~Negotiate resolution of contract or business dispute (T3.12)~~ **consolidate with T1.26**
108	Make or defend motions seeking judgment or directed verdict before submission of case to fact-finder (T2.57) **include**
109	Make an offer of proof (T2.55) **include**
110	~~Prepare or designate record for appellate or other post-judgmental review (T2.64)~~ **exclude**
111	Represent client in preliminary hearing, arraignment, or bond proceedings (T2.09) **include**
112	Present closing argument (T2.58) **include**
113	Represent client in proceeding to approve or accept negotiated resolution of dispute (T2.36) **include**
114	Present opening argument (T2.51) **include**
115	Represent client in non-binding dispute resolution proceeding (T2.48) **include**
116	Participate in jury selection activities (T2.49) **include**
117	Secure required governmental or regulatory approvals or authorizations (T4.08) **include**

	Client Relationship and Management (9.2%) – Networking and Business Development, Resource Management/Prioritization, Organization, Strategic Planning, Managing Projects, Achievement/Goal Orientation, Practical Judgment, Decisiveness, Cultural Competence
118	Consult with colleagues or third parties regarding client matters (T1.41) **include**
119	Develop specific goals and plans to prioritize, organize, and accomplish work (T1.44), **(T1.47), (T1.08) include**
120	Identify goals and objectives in client matter (T1.19) **include**
121	Maintain confidential client records (T1.11) **include**
122	~~Schedule meetings and other work activities (T1.47)~~ **consolidate with T1.44**
123	Identify rules of professional conduct applicable to representation of client (T1.12) **include**
124	~~Establish and maintain calendaring system (T1.08)~~ **consolidate with T1.44**
125	Identify rules of professional conduct applicable to potential client engagement (T1.02) **include**
126	~~Establish attorney-client relationship (T1.04)~~ **consolidate with T1.18**
127	~~Analyze workflow processes to identify ways to improve quality or efficiency (T1.49)~~ **exclude**
128	Supervise attorneys or support staff (T1.45) **include**
129	Evaluate potential client engagement (T1.01) **include**
130	~~Monitor and control resources (T1.46)~~ **exclude**
131	Conduct conflicts of interest check in connection with potential client engagement (T1.03) **include**
132	Identify rules of professional conduct applicable to representation of business organizations and/or their shareholders (T3.05) **include**
133	~~Develop or implement strategy to generate new business or retain clients (T1.16)~~ **exclude**
134	Draft engagement letter (T1.05) **include**
135	Identify rules of professional conduct applicable to generation of business (T1.17) **include**
136	Secure withdrawal from client representation from court or other tribunal (T1.15) **include**

APPENDIX B: BDC RECOMMENDATIONS FOR KNOWLEDGE AREAS

Appendix B lists the 25 knowledge areas that were considered by the BDC, with the recommendation to either include or exclude each area from coverage on the bar exam noted. The BDC recommended that 11 knowledge areas be included and 8 be excluded, and that coverage of 6 areas be subsumed under other areas. See **Table 2** in the body of the report for a list of the included knowledge areas with the suggested weighting and measurement approach shown for each.

Knowledge Areas
1. Professional Responsibly, Ethics **include**
2. Civil Procedure **include**
3. Contract Law **include**
4. Evidence **include**
5. Legal Research Sources & Methods **include**
~~6. Statutes of Limitations~~ **exclude**
~~7. Statutory Interpretation Principles~~ **subsumed under Skills and Constitutional Law**
8. Business Organizations **include**
9. Torts **include**
10. Constitutional Law **include**
~~11. Trial Practice & Advocacy~~ **exclude**
~~12. Choice and Conflicts of Law~~ **exclude**
13. Dispute Resolution **include**
14. Criminal Law & Procedure **include**
15. Real Property **include**
~~16. Employment~~ **exclude**
~~17. Family Law~~ **exclude**
~~18. Uniform Commercial Code~~ **subsumed under Business Organizations and/or Contract Law**
~~19. Administrative Law & Regulatory Practice~~ **exclude**
~~20. Remedies~~ **subsumed under all knowledge areas**
~~21. Estates and Trusts~~ **exclude**
~~22. Civil Rights~~ **subsumed under Constitutional Law**
~~23. Legislative Process~~ **exclude**
~~24. Landlord-Tenant~~ **subsumed under Real Property and/or Contract Law**
~~25. Debtor-Creditor~~ **subsumed under Business Organizations and/or Contract Law**

APPENDIX C: BDC SURVEY COMMENTS PROVIDED WITH WEIGHTS AND FOCUS

Fifteen of the BDC panelists responded to the post-meeting survey regarding the weight and focus for each knowledge area (see **Table 2** in the body of the report). Only the responses of those panelists who also provided comments are set out below.

Knowledge Area	Focus	Comments
Professional Responsibility, Ethics	Knowledge of this area	I selected knowledge as the focus, but professional responsibility issues could be covered in skill questions such as those asked by the MPT. As a general matter, I favor incorporation of knowledge areas into the MPT. I do not believe the MPT should be content-neutral.
	Knowledge of this area	This area could be tested in connection with other knowledge areas.
	Do not include	Already tested by the MPRE
	Knowledge of this area	Ethical issues should be raised within other subject matters.
	Do not include	The MPRE covers this area. There is no need to test again.
	Do not include	Although an important knowledge area, this is already covered by MPRE.
Civil Procedure	Knowledge of this area	Both knowledge and application are important here. This applies to all procedural rules (criminal, civil, and evidence). Not only do you have to know the rule, but you have to apply it to your case (for ex. summary judgment or motion to dismiss for subject matter jurisdiction).
	Applying skills in this area	Both knowledge and application
Contract Law	Knowledge of this area	Again, although I selected knowledge as the focus, I believe knowledge should be tested in an MPT question.
	Applying skills in this area	Both knowledge and application
Evidence	Applying skills in this area	Both knowledge and application are important here. (see civil procedure)
	Applying skills in this area	Both knowledge and application
Legal Research Sources & Methods	Applying skills in this area	I believe legal research and critical/analytical thinking is going to be the critical, essential skills that NLLs will need to perform "activities typically required of an entry level lawyer." Critical/analytical thinking informs and guides legal research. Again, I underscore my view that the MPT should test content as well as skills.
	Knowledge of this area	This area could be tested by knowledge or applying skills.
	Applying skills in this area	Still not sold on this, but I only see one benefit of testing this. I believe knowledge here is basic. The only benefit I see of testing this area is for attorneys to figure out the most swift way to research. There is not one way for an attorney to research—some don't use terms and connectors and can still find a case quicker than most. But every attorney can figure out the best and quick[est way] for them [to] research the way they prefer to research.

Knowledge Area	Focus	Comments
Business Orgs	Knowledge of this area	See my prior comments re integrating skills and content on the MPT. Refers to comment #1 in this table
	Applying skills in this area	Both knowledge and application
Torts	Applying skills in this area	Both knowledge and application
Constitutional Law	Knowledge of this area	I do not believe a significant percentage of NLLs practice constitutional law.
	Applying skills in this area	Both knowledge and application
Dispute Resolution	Applying skills in this area	As we discussed, dispute resolution should include trial skills and advocacy, ADR, and negotiated settlements between or among parties without the use of a mediator or other neutral. This would be a good area for interrelating a knowledge area with skills. For example, to effectively participate in ADR, a lawyer needs to understand the legal principles that govern the client's case so the lawyer can assess the strengths and weaknesses of the client's case and the adverse party's case.
	Knowledge of this area	This area could be tested by knowledge or applying skills.
	Applying skills in this area	Both knowledge and application are important here. (see civil procedure)
	Applying skills in this area	Trial advocacy should not be tested on the exam. ADR can be tested on the exam but at a minimum.
	Applying skills in this area	Both knowledge and application
Criminal Law & Procedure	Applying skills in this area	Both knowledge and application are important here. (see civil procedure)
	Applying skills in this area	Both knowledge and application
Real Property	Knowledge of this area	I reviewed the subject matter outlines for this topic, and I believe the outlines include quite a bit of material that goes into areas outside of the "minimal knowledge" required of NLLs. For example, zoning and more esoteric title issues such as ademption, exoneration, and tax liens. Further, tax liens are typically governed by statutes and will vary from state to state.
	Applying skills in this area	Both knowledge and application

APPENDIX D: BDC MEETING EVALUATION RESPONSES AND COMMENTS

BDC Meeting Evaluation Responses

Evaluation Question	Responses
How prepared did you feel for the meeting based on the advance materials?	
Very prepared	5
Prepared	9
Not prepared	0
Please rate the success of the orientation and training as preparation for the committee discussions	
Very Successful	5
Successful	9
Not successful	0
Please rate the time dedicated to the committee discussions	
More than enough time	2
Right amount of time	6
Not enough time	6
How well do you feel the consensus recommendations represent the expectations of an entry level lawyer?	
The results represent what is expected of an entry level lawyer	10
The results somewhat represent what is expected of an entry level lawyer	4
The results do not represent what is expected of an entry level lawyer	0

BDC Meeting Evaluation Comments

- Well organized committee, great group!
- I enjoyed being a part of the task force. I do feel that there has to be a connection between what is actually taught at law schools and what is tested on the Bar. Several times, it was stated that the test is on "what is expected of a NLL and not necessarily what law schools teach." I feel that is the very reason for the recent low passage rates.
- I wish I had a better understanding of what had occurred before we met. Doing it in an online format, I would have preferred to do the first day orientation and then have a week break and then do the two day discussion. I would have better understood and been better prepared to discuss. I think it was a good mix of people and that we have a good sense of what is required of a first year lawyer. I enjoyed being a part of this process.
- I found the substance of our discussions thought provoking and important, and I very much appreciated the chance to participate. Having taken the bar exam 43 or so years ago, I had not followed its evolution into the UBE and its component parts. I read the Task Force phase 1 and 2 reports online before receiving the printed material, and also reviewed much of the online material on NCBE's website concerning the MEE, MBE, and MPT. Having done this I could understand why I had heard so many complaints about the UBE. It appeared to me that the UBE tested too many knowledge areas, too many knowledge areas that an NLL would not need to know, and tested too deeply into "niche" topics in various knowledge areas. Further,

the practice of law is changing from a memory based profession to more of a skills based profession. I believe the recommendations we made regarding content and legal tasks will address these issues.

- The Zoom platform worked well. Chad kept our discussions moving forward, and Cindy, Kellie, and Susan were very helpful and informative.
- I thought the first two days of the meeting went very well. The afternoon of the third day felt very contentious and also rushed, so the meeting didn't end on a great note. I think we could have moved a little faster through the earlier portions of discussion to leave more time for the discussion of which knowledge areas should be included on the UBE and what relative weight those areas should be given. A fourth day probably would have been beneficial, too.
- Chad did an excellent job mediating the committee discussions. I also appreciated the involvement and input from Cindy and Kellie. In regard to the end result of the knowledge areas to be tested on the exam, I did not feel comfortable with ADR being a new, stand-alone subject area. Otherwise, I fully agreed with the overall final consensus recommendations of the committee.
- It will be interesting to see how our recommendations are actually tested. I think the focus should remain on broad areas taught at every ABA law school during their first year courses.
- I think the Testing Task Force should keep in mind that while entry level attorneys may have to do a lot of the tasks discussed, it does not mean that law school prepares them for such. I am not sure if this is beyond the scope but hopefully the completed report can also consider requiring law schools to expand their curriculum to ensure that students possess the skills required of them.
- I applaud everyone who has had a hand in making this a successful endeavor. I'm excited to see the final results.

APPENDIX E: DRAFT DESIGN MODELS PREPARED FOR REVIEW AFTER TDC MEETING 1

MODEL A – WEIGHTED COMPENSATORY MODEL

This model includes components of the bar exam that would be scored and evaluated collectively (i.e., one pass/fail decision). The bar exam would be administered using a range of assessment methods as a single-day or multi-day event. Candidates would take the exam after law school and retest on all components if they failed to achieve a sufficient compensatory score to pass.

Structure/ Components	Application of Core Doctrinal Law	Application of Lawyering Skills	Knowledge of Professional Responsibilities
Knowledge/Skills	• Civil Procedure • Contract Law • Criminal Law & Procedure • Evidence • Torts • Real Property • Constitutional Law • Business Orgs	• Legal Research • Legal Writing • Issue Spotting and Evaluation • Investigation and Analysis • Client Counseling and Advising* • Client Relationship and Management* • Negotiation and Dispute Resolution* • Professional Responsibility, Ethics	Professional Responsibility
Assessment Methods	• Selected response • Short answer (computer scored)	Case studies (e.g., background text, simulated clients presented via video) with legal resources; candidates review and respond via • Selected response • Short answer (computer scored) • Extended response (human scored)	• Selected response • Short answer (computer scored)
Decisions	One overall Bar Exam Score and Compensatory Decision (60% Application of Doctrinal Law + 40% Application of Lawyering Skills)		Professional Responsibility Score and Decision
Administration	After law school Event where all components of the Bar Exam are administered		During or after law school

*Some panelists had concerns that these skills could not be measured objectively and without bias.

MODEL B – CONJUNCTIVE MODEL

This model includes two components of the bar exam that would be scored and evaluated separately (i.e., a separate pass/fail decision for each component). Candidates would be eligible to take the first component after completing 60 credits of law school but not required to take the first component during law school. Further, candidates would have the option to prepare for and test on each component separately, and retest on a single component, if needed.

Structure/ Components	Application of Core Doctrinal Law	Application of Lawyering Skills	Knowledge of Professional Responsibilities
Knowledge/Skills	• Civil Procedure • Contract Law • Criminal Law & Procedure • Evidence • Torts • Real Property • Constitutional Law • Business Orgs	• Legal Writing • Legal Research • Issue Spotting and Evaluation • Investigation and Analysis • Client Counseling and Advising* • Negotiation and Dispute Resolution* • Client Relationship and Management* • Professional Responsibility, Ethics	Professional Responsibility
Assessment Methods	• Selected response • Short answer (computer scored)	Case studies (e.g., background text, simulated clients presented via video) with legal resources; candidates review and respond via • Selected response • Short answer (computer scored) • Extended response (human scored)	• Selected response • Short answer (computer scored)
Decisions	Score and Decision on the Application of Core Doctrinal Law	Score and Decision on the Application of Lawyering Skills	Professional Responsibility Score and Decision
Administration	Eligible to take after 60 credits have been earned in law school	After law school	During or after law school

*Some panelists had concerns that these skills could not be measured objectively and without bias.

MODEL C – WEIGHTED HYBRID COMPENSATORY MODEL

This model includes two components of the bar exam that are scored and evaluated collectively (i.e., one overall pass/fail decision), but with a minimum performance expectation for each component. Both components will be administered after law school but not necessarily as a single event. Further, candidates would have the option to prepare for and test on each component separately and retest on a single component if needed.

Structure/ Components	Application of Core Doctrinal Law	Application of Lawyering Skills	Knowledge of Professional Responsibilities
Knowledge/Skills	• Civil Procedure • Contract Law • Criminal Law & Procedure • Evidence • Torts • Real Property • Constitutional Law • Business Orgs	• Legal Writing • Legal Research • Issue Spotting and Evaluation • Investigation and Analysis • Client Counseling and Advising* • Negotiation and Dispute Resolution* • Client Relationship and Management* • Professional Responsibility, Ethics	Professional Responsibility
Assessment Methods	• Selected response • Short answer (computer scored)	Case studies (e.g., written background text, simulated clients presented via video) with legal resources; candidates review and respond via • Selected response • Short answer (computer scored) • Extended response (human scored)	• Selected response • Short answer (computer scored)
Decisions	One overall Bar Exam Score and Compensatory Decision with minimum performance expectations on each component (Application of Core Doctrinal Law, Application of Lawyering Skills)		Professional Responsibility Score and Decision
Administration	After law school, possibly but not necessarily as a single administration event	After law school, possibly but not necessarily as a single administration event	During or after law school

*Some panelists had concerns that these skills could not be measured objectively and without bias.

APPENDIX F: TDC FEEDBACK ON DRAFT DESIGN MODELS

TDC Feedback on Design Model A

What are the strengths of MODEL A? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL A? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL A?
This model best demonstrates that a new lawyer has all of the knowledge and skills at one specific time that are typically required of a new lawyer. That statement is weakened, however, because the MPRE is administered at a different time. I confess that I have a difficult time giving up on looking at the bar exam through the lens of history. I like this approach, but perhaps only because it is familiar. I like the all-or-nothing aspect of this exam. Lawyers deal with stress every day and that is one of the unstated, but clearly tested, portions of the bar exam. Some applicants fail because of the pressure and it is better that they learn how to manage that before they fail when it harms a client.	The skills we expect new lawyers to have do not need to be tested and scored at the same time. A lawyer who knows the law and has the skills will not forget one or the other if the parts of the tests are administered and scored at different times. This approach adds significant pressure to the test that may not be necessary. The exam missing important substantive material like wills and family law. Testing relationships (with clients and negotiation) seem too difficult and subjective to test in this format, so I would omit them from the skills that could be tested. If those skills are tested, perhaps trial advocacy should also be tested.	I like it and would support it
I don't see any strengths. This appears to be a vaguely updated version of what we have now. There may be underlying assumptions about changes in testing that we discussed before—such as changing the scope of doctrinal testing to focus on basic rules rather than technicalities. But as presented here, I don't see why we would bother changing what we have now.	Students who fail one component but pass another would still have to take the entire test again. All testing is completed after graduation. This doesn't look very different than the current bar. Sure, the methodology for the skills testing is interesting, but it comes across as a vaguely enhanced version of the MPT.	I do not like it and would not support it
It preserves the format and timing the legal community is accustomed to. Professors could continue teaching in the way they are accustomed to. Law firms could continue with the traditional rhythm of their internship programs. 2. It introduces incremental change (computer testing, short answers, new topics, etc.), which is easier for many stakeholders. 3. Incremental change may make it easier to study the effect of the changes.	As under our current format, candidates will be most successful if they can carve out a chunk of time outside of law school and employment to prepare for a comprehensive exam, and perhaps pay for bar prep. If they are unsuccessful on their first attempt, they will have a better chance of succeeding on a second attempt if they can carve out another chunk of time to prepare for the whole comprehensive test again, and perhaps pay for bar prep. Carving out this chunk of time, and paying for bar prep, is easier for those with more personal resources and harder for those with fewer personal resources. So, for some, the exam will test personal resources as much as it tests minimum competence. 2. Because of #1, the results of the exam may look racist. 3. I was persuaded by discussion in our group that none of the * lawyering skills was a skill that was needed to perform activities typically required of an entry level lawyer—even if these skills could be tested well, they shouldn't be. If no new topics are introduced, the only change this Model offers appears to be that all components will be computer delivered, and some components will be short answers.	I can live with it and would support it
This is a recognized model; I like the split. It's easier to administer.	There's no compensatory aspect.	I can live with it and would support it

What are the strengths of MODEL A? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL A? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL A?
N/A	N/A	I do not like it and would not support it
I favor a compensatory model. Each applicant has strengths and weaknesses and generally I have not seen marked differences in scores between the MBE and the MEE/MPTs. Generally, an applicant who fares poorly on one, fares poorly on the other and vice versa. There's little risk an applicant would be incompetent in one area. I've only had one student that scored extremely high on the MBE and performed extremely low on the MEE/MPT, but just enough to reach the cut score. This student was never interested in learning to write better and did not value the skill. He ultimately practiced with his father who took a similar attitude.Taking the exam after graduation ensures that the students have attained the writing skills necessary to succeed on the exam. The MBE could be taken sooner, but I am not dead-set on a step-approach. A design that mimics the current set-up of the bar exam is what law schools and employers are accustomed to dealing with, as well as students.	Because the design mimics the current set-up with a two-day high stakes exam, it is fraught with the same problems. Having both days back-to-back increases the stress exponentially versus having the two days separated by a year or more. It requires more intensive study, usually requiring not working or a significant reduction in working. Financial hardship ensues or the student must take out a higher interest private loan to pay for bar costs and living expenses. Many employers wait to hire until after bar results come out as many jurisdictions have limited temporary licensure rules. These employers don't want to risk hiring someone who may have failed.	I like it and would support it
This is true of all my responses, but I like the MPRE portion specifically testing on professional responsibility issues and a possible expansion into a short answer component. I like the concept of narrowing the doctrinal law that would be tested, because I actually view that portion of the exam to be less important. The compensatory model is what I tend to lean toward, because people have different strengths. I would qualify that by saying that I am supportive of it to the extent the knowledge and skill areas are sufficiently related to support a compensatory design--I will leave that up to the experts to decide. Case studies and MPT-like components across the lawyering skills mentioned—Including those denoted with an asterisk—would be the strength of this model. I think expanding the types of questions and the way applicants receive the question material to more closely mimic the practice of law is a strength. For example, having simulated video clients and potentially a simulated time-lapse to hit different points of working on a client matter. To the extent that this model would mesh applying the core doctrinal law with the application of lawyering skills, I strongly support it. However, I do not like the idea of these basically being stand-alone components within a single exam—that is, I don't want a doctrinal testing day and a skills testing day.	One of my concerns is that an exam offered exclusively after law school—at least on the same timeline as now—leads to delays in getting newly-licensed lawyers up and running. I think there needs to be less emphasis on strict knowledge of the law, because having a working memory of the law without relying on research is not how most attorneys practice and I think is one of the better criticisms of the current format. Having to study for an appropriate period of time to put all of that information into their heads and to be able to access it is one of the reasons I think we have to allow so much time between graduation and the exam. I think the better method may ultimately be to be testing the core doctrinal law in the context of the application of lawyering skills, so that a working knowledge of those doctrines helps in efficiently navigating the exam, but just spewing out lists of law is not what is being tested. I would actually advocate flipping the percentage of importance assigned to each section or even giving the lawyering skills portion more than 60% emphasis. For all of the models, I don't know that a UBE testing client relationships and management is appropriate based on differences in people's personalities as well as regional differences in how people interact. Negotiation is tricky, because that is necessarily a back and forth process, so I would worry about how that could be reliably tested. I would be interested to see how the computer-scored answer evaluation works, because at least a few years ago when I was looking into it, it seemed like there are ways to "game" the system and get a good score without really providing the correct content.	I like it and would support it

What are the strengths of MODEL A? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL A? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL A?
It's the bar exam in the more traditional fashion that graders are familiar with in evaluating applicants. It's testing for minimal competence in an environment which requires applicants to act and respond as attorneys often do in a higher stress environment than Models B or C.	Testing for minimal competence in this fashion has resulted in lower passing rates nationwide, however, I can live with this.	I can live with it and would support it
It better ensures that applicants have a full range of competencies necessary to practice law.	An overall score does not necessarily prove that someone maintains competency in all the areas tested. I.e. they could do well on the multiple choice answers but bomb the written writing and reasoning.	I can live with it and would support it
Like the current UBE it measures competency at the appropriate time, when the test taker is ready to commence practice. There is a lot to be said for requiring a candidate to review all learned in law school at this time to further an appreciation of how various subjects may interrelate in actual practice.	It defers all assessments until after law school, leading some students to continue when perhaps they should be redirected.	I like it and would support it
Tests appropriate areas of both doctrinal law and lawyering skills for NLL. An increase in the % now devoted to skills is positive.	Continues to test memorization, which is not how attorneys practice. No flexibility on when a student/ graduate can take the examination. Must re-take all blue portions, even if they truly showed competency on the other.	I can live with it and would support it
Better measure of analytical skills (at least three years of legal education); relationship between theory and practice (doctrine and skills) done at single time; equating and reliability mechanisms much better available in this model	Too much information; heightened testing anxiety; no measurement of relationship of skill-building from core doctrinal knowledge to skills	I can live with it and would support it
Testing for legal research and writing. (I apologize for typos throughout, I'm on my phone.)	Selected Response for the Application of Lawyering Skills does not seem like a meaningful way to assess skills like this. Also, I think that testing for skills is more meaningful in terms of testing for minimum competency. Skills transcend practice groups whereas doctrinal law does not. If we have the MPRE and most states require Ethics CLEs throughout practice, testing for ethics is duplicative, and just adds another subject matter that is not necessary.	I can live with it and would support it
Tests a good balance of core doctrinal law and lawyering skills and provides a portable score for admission in several jurisdictions.	Does not allow individual to test in core doctrinal law during law school when knowledge is fresh. Also, allows candidates with strength in one area to compensate for weakness in another area—that's good for candidates but not necessarily for the public / bar.	I can live with it and would support it

What are the strengths of MODEL A? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL A? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL A?
The primary strength of this model is that it is the closest approximation to the current model for the UBE, it is proven and involves no unknown risk. The apparent expansion of written/ skill to include short answer seems relevant to testing discrete analytical skills using black letter law.	Its potential weaknesses are that it too closely resembles the current exam in terms of mode of testing, scoring, and timing. If we adopt a model so close to the status quo we will have not met the objective of this committee in rethinking ways to truly measure competency for practice. By presenting additional options for the timing of the exam, we give bar applicants more flexibility and more opportunities to retest, without impairing their ability to be practice ready soon after graduation. It is possible to achieve a more accurate and equitable outcome if the exam can be bifurcated if will allow students with a broader range of circumstances to maximize their resources. The percentage values assigned to the professional skills do not align with the feedback data on prioritizing writing as the core competency—40% is too low.	I do not like it and would not support it
Feels familiar. Content changes, but the test design seems most similar to status quo.	Seems strong.	I like it and would support it
One decision means no need to grapple with piecemeal approach to test talking and potential unfairness which might come from a conjunctive approach. This model demonstrates the ability to master large amounts of material for one high-stakes examination. This is a traditional approach which has worked well in my estimation.	It does negatively impact those examines who do not have the ability to process large amounts of information at one time.	I like it and would support it
MODEL A's strength is that in allowing candidates to take the exam that is scored and evaluated collectively, those with jobs and families need only focus on studying at once, instead of in piecemeal. MODEL A would minimize interruption to the lives of applicants who are working parents or full-time workers. by offering predictability to their work schedule and reducing necessity to take multiple time-off to prepare and take the exam.	MODEL A closely tracks the status quo. This is not to say that the current exam approach is flawed; but other models need to be evaluated to fully appreciate the strength or weakness of MODEL A.	I can live with it and would support it
Model A seems to offer a robust assurance that anyone who passes is both minimally competent in areas of importance to new lawyers.	The weakness is that it may work too well—in other words, given the likely volume, it also necessarily tests skills that are helpful, but not strictly necessary for or related to being a competent lawyer, such as ability to memorize quickly, ability to test well and for long periods of time (if a multi-day event). Also single decision makes the test higher stakes than necessary.	I do not like it and would not support it
This model deviates the least from the current model and would create the least surprise for law students when announced. As a one-decision test, it helps to ensure that all new lawyers possess the knowledge of all tested subject areas at the time of the test and allows examiners to assess the overall preparedness of the candidate.	The compensatory model is a one-decision high-stakes test that will continue to require candidates who must re-take the exam to study for every component—even one on which they have already demonstrated competence—again.	I can live with it and would support it

What are the strengths of MODEL A? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL A? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL A?
There is less chance for human error in grading.	I'm not sure I agree with computer scoring. Short answer format may not adequately test examinees knowledge of the subject.	I can live with it and would support it

TDC Feedback on Design Model B

What are the strengths of MODEL B? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL B? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL B?
This form allows for separate testing of the skills needed by new lawyers. This may be a fairer assessment of skills because it relieves the pressure of an all-or-nothing exam.	This form moves the pressure from after law school to during law school. It changes the focus of law school from education for three (or four) years to possibly cramming for two years and then taking the bar exam. I would hate for law students to miss out on valuable law school opportunities because they are focused on taking part of the bar exam. This model does not allow the skills and abilities of new lawyers to offset one another. Someone who can memorize the law should be able to use that skill to offset lesser writing abilities. The skills of a lawyer should not be compartmentalized. The exam missing important substantive material like wills and family law. Testing relationships (with clients and negotiation) seem too difficult and subjective to test in this format, so I would omit them from the skills that could be tested. If those skills are tested, perhaps trial advocacy should also be tested. Does this format create a problem for score reliability? Will each section be valid if taken with different groups of applicants or over an extended period of time? I could live with this model, but it would be my third choice among the options.	I can live with it and would support it
Students who pass one component but fail another would only have to re-take the component that they failed. Some testing done during law school, which I think is great.	I don't understand at all why the skills testing would need to be after graduation. If you are going to have some testing done before graduation, why not do all of it? I see no reason why students couldn't do the skills testing during their third year, especially because this kind of testing wouldn't require cramming a bunch of doctrinal subjects.	I can live with it and would support it
1. It reduces the chunk of time that candidates need to carve out in order to prepare for the exam. If success on the exam depends less on a candidate's personal resources, then it is likely that more candidates will pass the first time. 2. Because candidates could delay the first component until after law school, students, schools, and law firms could continue with their traditional schedules of classes and internships if they wanted to.	It may lead to a 2-track path to licensure that splits candidates along lines that appear to be racist or classist.	I like it and would support it
This meets the needs of many students who are ready to take a portion of the exam. It allows them to preserve a passing score.	Law professors have raised concerns students would focus on the bar and not the classes.	I can live with it and would support it
N/A	N/A	I like it and would support it

What are the strengths of MODEL B? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL B? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL B?
Separating the two parts allows the student to study for only one part at a time. Theoretically by focusing their study on only one part, their performance on that part should be better than if they were studying on both parts. Taking the first part after 60 hours of law school credit is good timing and allows students to take it several times before graduation—I am assuming there would be more than just two test dates as it would be computerized delivery.	I do not like conjunctive scoring. People have different strengths and the ability to answer multiple choice questions is not a skill attorneys have to have. It's the underlying analysis skills. But, I could live with it because of the ability to take the MBE multiple times and to start taking it after 60 hours.	I can live with it and would support it
I do like that this is considering different delivery methods, and the strength of it is the application of lawyering skills component. The PR component is important, as indicated in my response to model A. As far as the areas tested, I like them.	I do not like the concept of having a component of the exam where memorization is required, except for potentially with the professional responsibility component, because that is what all attorneys need to have a good sense of at all times. To the extent the application of core doctrinal law would be based on the memorize and access in your brain only, I do not generally like it. I think it is inefficient to test skills outside of the context of application of core doctrinal law. Comparing this to exams for doctors, I think there is less of a chance that an attorney will ever need to pull a business organization doctrine or real property doctrine from memory in order to help a client. Put another way, there is never an emergency situation where a split-second recitation of doctrinal law is necessary. I much prefer crafting an exam that would layer those two things together, which would require an applicant to come in with a good working knowledge of core doctrinal law, but would allow them to get into the intricacies and exceptions to exceptions by using a provided library of information. For all of the models, I don't know that a UBE testing client relationships and management is appropriate based on differences in people's personalities as well as regional differences in how people interact. Negotiation is tricky, because that is necessarily a back and forth process, so I would worry about how that could be reliably tested.	I do not like it and would not support it
Testing for minimal competence under this Model should offer applicants a more comfortable method of demonstrating their abilities without the pressure one might feel under Model A. I think also, knowing the core law at an earlier stage will enable applicants to better develop their lawyering skills.	I personally don't see a downside to this Model.	I like it and would support it
Allows applicants the potential option of passing the first component while in law school while the information is fresh in their minds. Following graduation, they would only have to take the second portion if they were successful on the first portion.	By allowing applicants to take the first part of the test while in Law School, it would distract from their other Law School Courses. At one time my jurisdiction had this allowance, and it was a problem so the Court did away with it.	I can live with it and would support it

What are the strengths of MODEL B? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL B? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL B?
It tests much of the doctrinal law closer to the time it is studied in law school, which should decrease the amount of preparation required for the post-graduation exam. It increases the importance of skills by having a separate pass/fail decision for each component.	It would not be offered until after the second year of law school and candidates taking it at that time would not have as much time available for summer employment or internships which can be important elements in training them for actual practice. It also is one more year before any assessment. The doctrinal assessment would be solely by multiple choice questions, which tend to discriminate slightly against women. I also have concerns as to whether the second assessment could be adequately equated to make it fair from assessment to assessment (although all 3 models do indicate there would be computer-scored short answers included) and whether one day of testing would be adequate for it so as not to extend the total amount of testing time.I was disappointed that the models presented were more similar than varied. All 3 retain the MPRE as a separate component, which I support. All 3 have the same division between an examination of core doctrinal law and an examination of lawyering skills. Only B has eligibility before graduation, and that requires waiting until after the second year of law school. None of the models included the possibility for the exam or some portion of it being open-book. If there are to be 2 components, I would rather have the first component test only contract law, criminal law, torts, real property and business organizations after the first year of law school and include civil procedure, criminal procedure, evidence and constitutional law in the second component after law school. (I am not totally certain about the proper placement of constitutional law and business organizations.) This would include more subject matter appropriate for MC questions, making for better equating, but might make it even more difficult to do a one day test.	I can live with it and would support it
Tests appropriate areas of both doctrinal law and lawyering skills for NLL. An increase in the % now devoted to skills is positive. Also: Gives flexibility on testing times; allows examinees to take the doctrinal portion closer to the time they've taken the related classes. Allows someone to retake only the portion failed, thus reducing costs/debt load.	Continues to test memorization, which is not how attorneys practice. Could make students choose between studying for and taking the exam and foregoing another opportunity (job, clinic, journal, etc.). Could detract from the 3L year, depending on when the test were offered.	I like it and would support it
breaks up amount of testing information; operates as a formative tool for law school stakeholders; gives pathway to examinees from one step to the next; measures knowledge of content as it relates to skills better with at least one year of upper level legal education between the parts	timing; equating (second part performance to first part) and instrument reliability; resources in grading the second component	I like it and would support it

What are the strengths of MODEL B? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL B? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL B?
Permitting eligible students to have the option to take prior to graduation. This is not related to the goal BUT I think its practical and would be beneficial to applicants and employers. The Conjunctive model I think achieves the goal of testing for minimum competency better. Especially with dividing the test between Doctrinal Law and Lawyering skills. If an applicant passes one section they've demonstrated min competency in that section and having them retake it is timely, costly, and does not pursue to end goal.	Selected response for application of lawyering skills. If we have the MPRE and most states require Ethics CLEs throughout practice, testing for ethics is duplicative, and just adds another subject matter that is not necessary.	I can live with it and would support it
Permits test of core doctrinal law during law school when learning is fresh. Also, tests a good balance of core doctrinal law and lawyering skills. Finally, requires minimum score on both core doctrinal law and lawyering skills.	Does not provide a portable score for admission in several jurisdictions.	I can live with it and would support it
Affording candidates the opportunity to take one component of the exam after the completion of a set number of hours beyond the 1L curriculum of law school credits is ideal. It showcases the responsive and collaborative efforts of this committee. Further, it is responsive to the needs for greater flexibility in licensure exams. It is also the most compassionate of the three models: by allowing applicants to test in law school while the subject material is fresher in their memory, it may spare some applicants the need to undertake costly bar preparation courses. Candidates who are not successful on the first component of the exam, could have multiple opportunities to retest before graduation. This option allows the NCBE to fulfill its mission in identifying an accurate measure of competence and is also the most likely to be well received by law students and law faculty. This model is highly adaptive and shows great innovation on the part of the NCBE.The Proposal B allows students to participate in a competency exam that better reflects ability, and gives less primacy to the high stakes winner takes all approach. The broader range of mechanisms to practice skills is included (with the exception below) and better aligns with the data regarding relevance to entering the profession as a competent new attorney.	Several members of the review team noted that the inclusion of client interviewing and management is highly subjective and lends itself to bias. Perhaps if you were testing the students ability to demonstrate a discreet skill, such as to identify the information or questions that needed to formulate a viable theory of litigation or other legal objective.	I like it and would support it
The best part is students can have clarity about which part they passed or failed and could retake each part.	It makes every part equal in weight. The eligibility after 60 credits is big problem and would be too disruptive. If anything, that's the part that actually requires study time. In some ways the application of lawyering skills could probably be administered after 60 credits with less disruption.	I do not like it and would not support it

What are the strengths of MODEL B? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL B? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL B?
It allows for examiners to take the core substantive examination closer in time to the initial studying of that subject-matter.	I believe the ability to "zero in" on components not previously passed creates an unfair advantage for those taking limited components compared to those who are taking multiple components. Further, in jurisdictions which allow law office study as preparation for the bar examination, difficulty would be created in determining when those applicants would be eligible to sit for the initial component.	I do not like it and would not support it
MODEL B's strength is that it optionally allows candidates to spread out their study over the course of the law school—one during law school and one upon graduation. This approach allows the state bar to focus the "earlier" component on assessing whether law students can understand and apply important concepts of the legal tenets (from contract to constitutional law) to the practice of law while offering a path way to adjusting the "later" component to concentrate on key areas (e.g., practical skills and research analysis) that are more reflective of their competency to practice as a lawyer.	Competency is tested at the time when a respective component is scored and evaluated. Where a particular component is tested earlier on in the law school cycle, it is not clear whether evaluation at this early stage would fully demonstrate a candidate's competency upon graduation. Separately, MODEL B will require each state bar to prepare for multiple administrations of different components every year. While the impact might be minimal for state bars with a limited number of applicants, MODEL B would undoubtedly impose significant strain on human resources for states such as California and New York where more than 10,000 candidates apply to take the bar exam.	I like it and would support it
It allows for the evaluation and assessment of relevant competencies at times that make sense. Allowing students to test core doctrinal law after 60 credit hours would create an expectation of what law schools should/must deliver while they are still in the building to demand/request changes if they feel that the curriculum is not adequately cognizant of the bar. Also, by separating the components which can be taken independently, the model seems to envision and normalize the potential for multiple attempts, thus reducing the stakes to some extent (though it will of course remain a high stakes exam).	It would be hard to keep track of and support where every student is in the bar passage process. In other words, because paths can begin to diverge as soon as the 3L year, it could be hard to tailor bar support to 2Ls, 3Ls, and graduates—especially if each component is offered multiple times per year (as with the MPRE). However, if the stakes are reduced enough (as with the MPRE), that would be a fair trade-off.	I can live with it and would support it
The conjunctive model opens the possibility of preparing for each component separately such that they can demonstrate their competence in each area on a exam day for which they have prepared specifically for that component. For those who must re-take a given component, it encourages candidates to re-focus their attention on just that aspect of the bar exam.	Introducing the possibility to take 2 of the 3 components of the bar exam during law school will affect the curricular choices of law schools and will likely affect the content of individual "bar courses" that will, over time, become pressured to act as bar-prep courses rather than preparation for the long career of a lawyer. For first generation students or others for whom law school is a particularly challenging for reasons other than potential competence. Unfortunately, it may be that these students are more likely than their peers to need to enter the work-force as soon as possible, such that they will have strong incentives to take as many components of the bar exam as possible during law school.	I do not like it and would not support it
Same as A.	Same as B and I am further not sure I support taking before law school graduation and testing as separate pass/fail components.	I can live with it and would support it

TDC Feedback on Design Model C

What are the strengths of MODEL C? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL C? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL C?
The compensatory grading model allows for strengths and weaknesses to be graded together. This form allows for separate testing of the skills needed by new lawyers. This may be a fairer assessment of skills because it relieves the pressure of an all-or-nothing exam. This form is better than Model B, however, because it also allows varying strengths and weaknesses to be considered together.	This form could relieve some of the pressure by allowing the parts of the exam to be completed separately. The pressure, however, mimics what lawyers will feel in their professional lives, and there is value in that. The multiple administrations could lead to it taking longer for applicants to take and pass the exam. The option to take the exam in parts may cause applicants to decide to focus on one part at a time and unnecessarily delay their passing the entire exam. The exam missing important substantive material like wills and family law. Testing relationships (with clients and negotiation) seem too difficult and subjective to test in this format, so I would omit them from the skills that could be tested. If those skills are tested, perhaps trial advocacy should also be tested. Does this format create a problem for score reliability? Will each section be valid if taken with different groups of applicants or over an extended period of time?	I can live with it and would support it
Like Model A, I don't see many advantages. I don't feel strongly enough about whether each component should have minimum scores to care much about the difference.	Students who fail one component but pass another would still have to take the entire test again. All testing is completed after graduation.	I do not like it and would not support it
A candidate who passed only one component would have a better shot at passing the other component the second time around.	It's hard to evaluate this Model without knowing more about the content and timing of each component. It could simply exacerbate the problems of Model A by requiring candidates to carve out 2 chunks of time to prepare for 2 post-law school exams. It could lead to a 2-track path to licensure, where candidates with sufficient personal resources will study for and pass both components at the same time, while candidates with fewer personal resources are advised to focus on one component at a time. Clearly a candidate who passed only one component would have a better shot at passing the other component the second time around, but this Model doesn't necessarily help level the playing field for that first attempt. This Model may just introduce a pretty big change without any real benefit.	I do not like it and would not support it
I like the compensatory aspect. I like that students can prepare for and test separately and only test on the portion that they don't pass.	I'd like them to be able to test on some aspect of it in law school. I do not like the videos of clients in ANY of the tests. Client counseling is highly subjective, subject to bias and can vary widely based on culture of where you live.	I like it and would support it
N/A	N/A	I do not like it and would not support it

What are the strengths of MODEL C? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL C? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL C?
I like the idea of having a minimum performance on each and letting students choose whether to take one or both components—similar to how the CPA test is done now. That will require jurisdictions to modify temporary licensure rules. And, I like that it is still compensatory model.	I'm concerned that if both are after law school, but not at the same time, it will just prolong the process for applicants. Their financial insecurity would be elongated rather than shortened. Or are you picturing something like one a month? That might work. A minimum performance expectation is not a bad idea, but I would be concerned that a jurisdiction would set it so close to their cut score that it would mean little difference.	I like it and would support it
I do like that this is considering different delivery methods, and the strength of it is the application of lawyering skills component. The PR component is important, as indicated in my response to model A. As far as the areas tested, I like them. The idea of an overall pass/fail decision is intriguing to me for the reasons stated in my response to Model A.	I do not like the concept of having a component of the exam where memorization is required, except for potentially with the professional responsibility component, because that is what all attorneys need to have a good sense of at all times. To the extent the application of core doctrinal law would be based on the memorize and access in your brain only, I do not generally like it. I think it is inefficient to test skills outside of the context of application of core doctrinal law. Comparing this to exams for doctors, I think there is less of a chance that an attorney will ever need to pull a business organization doctrine or real property doctrine from memory in order to help a client. Put another way, there is never an emergency situation where a split-second recitation of doctrinal law is necessary. I much prefer crafting an exam that would layer those two things together, which would require an applicant to come in with a good working knowledge of core doctrinal law, but would allow them to get into the intricacies and exceptions to exceptions by using a provided library of information. I would actually advocate flipping the percentage of importance assigned to each section or even giving the lawyering skills portion more than 60% emphasis. For all of the models, I don't know that a UBE testing client relationships and management is appropriate based on differences in people's personalities as well as regional differences in how people interact. Negotiation is tricky, because that is necessarily a back and forth process, so I would worry about how that could be reliably tested.	I do not like it and would not support it
Like Model B, I like the idea that core components can be tested separately and retested if needed.	I feel this hybrid system would be better served if the core components were evaluated earlier rather than after law school so as to better prepare applicants for demonstrating their lawyering skills.	I can live with it and would support it
This is the best of both models. It requires a minimum performance on BOTH components. Also, they can test each portion separately and just re-take the portion they failed.	Applicants who have to retake a component may find it costly. With a regular bar exam, you pay for the whole exam one time, depending on costs of the components this could likely be a financial hardship.	I like it and would support it

What are the strengths of MODEL C? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL C? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL C?
I see none.	It has all of the weaknesses of both A & B. In addition, I have concerns about compensatory grading between two exams given at different times to different groups. Some additional general comments: I am presently opposed to including any of the skills denoted with an asterisk in any of the models. There is too much danger of bias, both based on sex and ethnicity and based on any personal predilections of the grader. To some extent these skills tend to reflect an individual's personality. And different methods may work better for different people. To the extent these skills may be acquired, they are more likely to be acquired through experience and mentoring after law school than acquired through school learning. Also, they may not be skills required for all lawyers, although I would agree they should be possessed by those lawyers dealing directly with the public. I also have concerns regarding the statement, "All components will be computer delivered." With all the remote testing now occurring, I have been hearing a lot about the limits that should be placed on time looking at a screen and problems for those requiring non-standard testing accommodations. It also seems that answering an MPT-type question is made more difficult because of the need to move back and forth among the answer, the file and the library.	I do not like it and would not support it
Tests appropriate areas of both doctrinal law and lawyering skills for NLL. An increase in the % now devoted to skills is positive. Allows someone to retake only the portion failed, thus reducing costs/debt load. Does not require students to choose between taking part of the bar and law-school opportunities or 2L summer jobs.	Continues to test memorization, which is not how attorneys practice. Could delay licensure since it's not clear whether the exams would be offered at the same time. That those weaker in one area may have a more difficult time passing overall. Testing on key areas occurs 3-4 years after the student has studied that topic.	I can live with it and would support it
ability to repeat only one part if not successful on one	planning for applicants on when to take it; requiring the first and the second part after law school unnecessarily delays licensure—their content knowledge could be assessed after 60 credits given this list of subjects; it assumes skills don't build off knowledge (they do)	I do not like it and would not support it
The main plus for me is the ability to retake components.	Selected response in application of lawyering skills. If we have the MPRE and most states require Ethics CLEs throughout practice, testing for ethics is duplicative, and just adds another subject matter that is not necessary.	I like it and would support it
Tests a good balance of core doctrinal law and lawyering skills and requires minimum score on both core doctrinal law and lawyering skills. May provide a portable score for admission in several jurisdictions (but not if components taken at different times).	Does not allow individual to test in core doctrinal law during law school when knowledge is fresh and may not provide a portable score for admission in several jurisdictions (if components taken at different times).	I can live with it and would support it
I think that the hybrid grading allows for students to establish a base line competence, and yet recognizes that a student to balance an under-performance in one skills are could offset the other.	I cannot support this model unless at least one component is available to administered during law school. The portion testing an applicant's ability to apply core doctrinal law is well suited to be tested while an applicant is still enrolled in law school and has completed at least 60-75 hours of legal education. Although some may elect to test after law school graduation, the option is key. The separately scored exam components are less significant if all components must be taken together. Option B is far superior to this option.	I can live with it and would support it

What are the strengths of MODEL C? In other words, what aspects will best help NCBE meet the stated claim?	What are the potential weaknesses of MODEL C? In other words, what aspects of this model detract from the claim?	What is your overall opinion of MODEL C?
I like the fact that students could retake individual parts but that it's still compensatory. This isn't too far from current practice, but certainly is different and would be seen as a move forward.	None	I like it and would support it
This model has some of the good components of model A, with collective scoring and evaluation and a minimum performance evaluation for each section.	This model allows for an examinee to take the components separately and thus suffers from the same weakness as model B, giving the examinee who is taking a reduced number of components an unfair advantage over those who are testing on both components at once.	I do not like it and would not support it
The strength of MODEL C is that it enforces a minimum performance of the "earlier component" before allowing candidates to take the "later" component with benefits akin to those observed in Model B.	MODEL C's biggest weakness is that it creates unpredictability and a winding road to passing the bar exam. Not allowing an applicant to take the "later" component until the "earlier" component has been satisfied could pave an arduous path to licensure. This impact disproportionally harms applicants who are working parents or working students. Also, testing two separate components after graduation is akin to administering two bar exams upon graduation. This requires significant resources on large state bars to accommodate both components in such a short time while forcing candidates to prolong their study before they can formally commence their new employment (or study during employment).	I do not like it and would not support it
I may be misunderstanding, but the best thing I see about this model is the "minimum performance expectation"—as that is precisely what the NCBE is trying to achieve in its stated charge. I would respectfully add here that I think that should be an express part of all Models (A, B, and C).	As with Model B, the decoupling of the components—even if all taken post-graduation—complicates institutional bar support (thus graduates who should be attorneys may fail the exam for reasons unrelated to their core legal knowledge and abilities).	I can live with it and would support it
The weighted hybrid model opens the possibility of preparing for each component separately such that they can demonstrate their competence in each area on a exam day for which they have prepared specifically for that component. For those who must re-take a given component, it encourages candidates to re-focus their attention on just that aspect of the bar exam. The weighted hybrid has the added benefit of allowing candidates to tie the components together such that strength on one component can assist weaker performance on another. Ultimately, I am not convinced that these differences have as much significance as it might seem.	My largest concern with this model would lie in the cut scores in particular jurisdictions rather than with the model design. The potential to set cut scores either too high or too low could have negative gate-keeping effects. This is true of all the models, of course, and does not go directly to the question of test design.	I like it and would support it
This model seems to be the most comprehensive test model.	As with B, I am not sure I would support re-testing separate components.	I like it and would support it

APPENDIX G: DRAFT DESIGN MODEL D PREPARED FOR DISCUSSION DURING TDC MEETING 2

This model includes two components of the bar exam that are scored and evaluated collectively (i.e., one overall pass/fail decision), but with a minimum performance expectation for each component. Candidates would be eligible to take the first component after completing 60 credits of law school but not required to take the first component during law school. Further, candidates would have the option to prepare for and test on each component separately, and retest on a single component, if needed.

Structure/ Components	Application of Core Doctrinal Law	Application of Lawyering Skills	Knowledge of Professional Responsibilities
Knowledge/Skills	• Civil Procedure • Contract Law • Criminal Law & Procedure • Evidence • Torts • Real Property • Constitutional Law • Business Orgs	• Legal Research • Legal Writing • Issue Spotting and Evaluation • Investigation and Analysis • Client Counseling and Advising* • Client Relationship and Management* • Negotiation and Dispute Resolution* • Professional Responsibility, Ethics	Professional Responsibility
Assessment Methods	• Selected response • Short answer (computer scored)	Case studies (e.g., background text, simulated clients presented via video) with legal resources; candidates review and respond via • Selected response • Short answer (computer scored) • Extended response (human scored)	• Selected response • Short answer (computer scored)
Decisions	One overall Bar Exam Score and Compensatory Decision with minimum performance expectations on each component (Application of Core Doctrinal Law – 60%, Application of Lawyering Skills – 40%)		Professional Responsibility Score and Decision
Administration	Eligible to take after 60 credits have been earned in law school – administered as CBT in windows 3 times per year	After law school	During or after law school

*Some panelists had concerns that these skills could not be measured objectively and without bias.

APPENDIX H: RESULTS OF TDC POST-MEETING 2 SURVEY

Would you endorse candidates being able to take a component of the bar exam after completing 60 hours of law school?	If there was an option for candidates to take a component of the bar exam after completing 60 hours of law school, which component do you think should be available?	Comments (optional)
No	Doctrinal Law	I remain worried that the 60-hour option will fundamentally change law school. Maybe it could use a shake-up, but I am not sure this is the one that is necessary.
Yes	Doctrinal Law	I actually don't mind either component being available early. However, as an administrator, I would qualify that comment by saying that I support either being offered early if the components would be offered at Pearson Vue—or similar testing—centers. I think if there is a component that is going to be administered by the jurisdictions—whether it be in-person or remote—the jurisdictions are not in a great position to test applicants who may or may not otherwise qualify for admission (for example, it is a drain on our resources to administer an exam to someone who may not graduate law school). If I have to pick one or the other to be tested early, I would actually prefer the doctrinal law, because I think it is more important to make sure that the skills are present for the applicant to be a minimally competent lawyer as close to licensure as possible.
Yes	Doctrinal Law	
Yes	Doctrinal Law	I personally think it should be both. If it is only one, I can see good reasons in support of both options. For doctrinal, testing during law school does the testing closer in time to when students take the courses. On the other hand, if we move doctrinal testing to modes that are graded by machine, the time-to-license for successful takers would be shorter than if human-graded skills testing was done after law school. I would say that grading time counsels towards doing skills during law school. Also, the skills testing likely would require less focused preparation time immediately before the exam, so preparing for it during the school year would not be disruptive. I recognize that some of my Dean colleagues would disagree, but I think that the potential for disruption to the law school curriculum that would result from having doctrinal testing is overstated for most law schools. My colleagues who tend to be concerned about doctrinal testing during law school uniformly come from elite schools that don't have to be very concerned about the bar exam in its current iteration. It is hard to imagine for me to see how they would need to be very concerned about the bar in any other iteration. For the vast majority of law schools, the bar exam already dictates our curriculum. It determines what courses we require and how we test our students for bar-tested courses. Moving the testing up so that it occurs during law school would lead to the exam having less curricular impact at most schools. It also would help us better prepare our students for the exam while at the same time freeing us to focus more energy on preparing our students for practice. Finally, I'd note that I think this is one of the most important issues we are considering, and I was a bit uncomfortable about how our discussion was rushed at the end.
Yes	Doctrinal Law	Would support a student being allowed to choose either component to take during law school—or to take both during law school.
Yes	Doctrinal Law	Lawyering skills should not be tested during law school as such skills are not FULLY developed until much later in their law education / legal training. Thank you.

Would you endorse candidates being able to take a component of the bar exam after completing 60 hours of law school?	If there was an option for candidates to take a component of the bar exam after completing 60 hours of law school, which component do you think should be available?	Comments (optional)
No	Doctrinal Law	I would favor law students being able to sit for the full bar exam after completing five semesters of law school, which included at least one class in bar preparation. I do not see any benefit to sitting for part of the exam at the end of second year and it would interfere with clerking opportunities. Sitting for the exam after 5 semesters would not interfere with clerkships.
No	Lawyering Skills	I think there is a sharp divide on this issue between top 100 law schools and the other 100 law schools (we saw that play out on our call). Unfortunately, the current plan caters to the other 100 law schools and puts the top 100 schools in an untenable position. Therefore, I think you will see strong opposition from those schools. To be honest, I would encourage our state to abandon the doctrinal piece altogether and consider a state only solution (as we know COVID is causing states to create their own test)—that's how strongly I feel about this. Also, law schools would lobby states to ban students from taking the doctrine test prior to graduation—likely creating a fractured system. As a compromise, I strongly urge you to consider this—allowing students to take EITHER the doctrine or lawyering skills tests after 60 credits and the other after graduation. That way, schools could decide if they are a school that promotes the lawyering skills first or the doctrine test first. Schools could make the choice and adopt to a model that best fits with their education plan, rather than promoting a one size fits all model. Also, in that kind of system, neither side would have a perceived advantage (i.e. students from schools at both groups get to finish a portion after 60 credits). Leaving it as it is and just saying "it's optional" isn't fair or helpful. Schools will be under enormous pressure to offer "the option" because the perks will be too great. I've fought back attempts to adopt an "early bar" in [two jurisdictions], and the breakdown was always the same (the highest ranked law schools were against the early bar and the other schools supported the early bar.) That's because some schools already do a lot of specific bar instruction in their curriculum (which is a good thing for their students) so they want the bar early and want to work with students while they are students on passing the test vs. national and well-placed regional law schools that do not have curriculums that are centered around the test and have no interest in teaching to the test (which is a good thing for their students). I firmly believe the current proposal is a mistake. I can't support it.
No	Doctrinal Law	There is some benefit to retaining this knowledge at a time frame more near to licensing.
Yes	Doctrinal Law	Testing candidates on doctrinal law while they are still in law school tests candidates closer in time to when they studied doctrinal law in law school, so candidates could spend less time and resources cramming for a post-law school bar exam. Reducing emphasis on personal resources (how much time candidates can take off of work to study after law school, how much money they can spend on bar prep) could increase the effectiveness of the exam's testing minimum competence. Also, reducing emphasis on personal resources may lead to more diversity in the profession. Testing doctrinal law during law school may also lead to a better connection between what is tested on the exam and what law schools teach. Some participants were concerned that the exam would dictate what professors teach, but it could also work the other way around—law schools could become more interested in what giving input on what is tested on the exam. Also, depending on the timing of the lawyering skills exam, successful candidates could get licensed months earlier than they do now.

Would you endorse candidates being able to take a component of the bar exam after completing 60 hours of law school?	If there was an option for candidates to take a component of the bar exam after completing 60 hours of law school, which component do you think should be available?	Comments (optional)
Yes	Doctrinal Law	Students need to practice the skills more than 60 hours in law school to be competent. Needs to wait until after graduation. The doctrinal law is mostly 1L and 2L courses. To me, the whole point of taking it early is to take it close in time to when they have the courses. It was the deans of top tier law schools that were the ONLY ones complaining about the allegedly huge impact such a system would have on legal education. The rest of us did not feel that way at all. The reason is their Contracts classes are not really Contracts classes, but Law and Economics or whatever the professor's fancy is. Our classes really are Contracts classes. Those deans get the heat because students complain they have to get what they need from a commercial provider. Yet their students don't usually struggle with the bar exam. Commercial providers will quickly find a way to deliver a prep course when it's after 60 hours. [All Saturdays. 3 weeks of prep. etc. If the bar doesn't test as deep, their lectures won't need to be as long.] Law schools won't have to do it, if they don't want to. And, it sure wouldn't be a six hour course. I wanted to laugh out loud at that. It showed how little those deans understood what the commercial providers currently do. A law school could do it with a regular 3 hour course easily. Their arguments were misplaced. [One dean advocated for] picking and choosing modules, but that missed the point entirely that this is a generalist license. I don't mind modules, but not pick and choose. Finish all four modules, etc. More non-top tier law schools have expanded beyond the fall-start only model of legal education as well. We have students that start in January and May. They will have 60 hours done at various times. Whatever design is the finished product, we need more than just two shots at the after 60 hours exam during a calendar year. Then, as an afterthought, we will need lots and lots of examples of the case studies-style questions, short answer style, true-false, whatever you come up with or those first few groups will be incredibly frustrated and we'll go nuts. For example, the 10 Civil Procedure questions that were released before Civil Procedure was added as an MBE subject was just not enough. It needed to be double that at least. Hope that helps!
No	Lawyering Skills	
No	Doctrinal Law	I still do not feel they should take part of the bar exam while in Law School.
Yes	Doctrinal Law	Lawyering skills and written expression take longer to develop and they will be better equipped to do that after completing experiential learning that takes place later in their tenure. Few people complete sufficient skills courses within 60 hours.
No	Doctrinal Law	If there is to be an earlier component, which I am not necessarily opposed to, I would prefer a test of fewer doctrinal law subjects after 30 hours. I am afraid that our final product is a test "designed by committee," which I guess is inevitable.
Yes	Doctrinal Law	Skills presuppose a basic understanding of doctrine so a properly assessed skills test should also incidentally measure a grounding in doctrinal knowledge. The step process of licensure examination would only work in a changing legal education landscape if knowledge was tested before skill.
Yes	Doctrinal Law	They are closer to learning the doctrinal law if tested after 60 hours and most students gain lawyering skills between year two and three.

Would you endorse candidates being able to take a component of the bar exam after completing 60 hours of law school?	If there was an option for candidates to take a component of the bar exam after completing 60 hours of law school, which component do you think should be available?	Comments (optional)
No	Lawyering Skills	I understand the desire to move part of the bar exam into the time of a student's studies. However, as was reflected in our discussion during the first set of meetings (I was not able to attend the meeting earlier this week, unfortunately), I believe there was a clear dividing line between those schools in the top half of the law school rankings and those ranking below that line. For the schools in the bottom half of the rankings, teaching to the bar exam is important for their students and, therefore, for them. Their doctrinal courses, and the required timing of those courses, are often tied closely to the content of the bar exam and the teaching within those courses is also tied closely to the content-coverage on the bar exam. They teach courses that are specifically bar-prep courses, in addition. Schools ranked in the top 100, on the other hand, see their educational mission very differently. For these schools, and for their students, legal education is geared to the long career of attorneys, providing methods and tools that are not covered by the bar exam. This is both possible and acceptable to students with a proven record of high achievement on tests. This is an essential aspect of legal education for these schools and these students and, indeed, it is essential to the practice of law in "real life" after and beyond the bar exam. I worry tremendously about moving the option to take any portion of the doctrinal law bar exam during student's years of law school study. One might say that each student having the option provides flexibility. But that seems like a useful ruse rather than a realistic view of how this would play out. Even at these schools, potential short-term benefits students might (mistakenly) seek in taking the doctrinal portions of the bar exam would put pressure on the curricular offerings of every school. And, within those schools, it would place tremendous pressure on instructors of each course on the bar exam to alter their curricular coverage and pedagogical approach to the course. Students who wanted to take the doctrinal portion of the bar exam would lobby very hard, would provide negative reviews of their courses and instructors, would make deans' lives very difficult, if they did not think the school was doing enough to prepare them to exercise their "option" to take the doctrinal portion of the bar exam during law school. I am aware of deans' efforts at many schools in the top 100 schools to stave off early bar exams for precisely these reasons. The detriment would be too great to their schools and to their students. They, and I, have believed that the detriment would be great to the profession; the philosophical, theoretical, historical, humanistic, and scientific tools that are taught in our classrooms would be diminished. These are tools and ways of thinking that are not tested on the bar exam. They are taught in our classrooms in preparation for our students' long and wonderful careers. And they are tools and modes of thinking that affect the law and the most important legal issues of our day. In addition to the above, I strongly believe that this option will harm first generation students. Even at the lower-ranked schools, those students will be competing against students who have an inter-generational, life-long familiarity—or even intimacy—with the law. How a student can hope to level-up to that advantage after just 60 credits is mystifying to me. I personally could not have done that and would have felt that the bar exam was an even narrower gate than I thought it to be as I prepared for the bar exam as a first generation law graduate. I cannot support a plan that would affect legal education so profoundly and that could have a greater potential to keep first generation lawyers out of the profession. I believe an "option" to take the doctrinal portion of the bar exam would do that. I also believe schools in the top 100 would react strongly, and negatively, to such a design. *Perhaps (though I am not fully convinced of this) a middle ground would be for individual states or individual schools to decide whether their students would be eligible to take the doctrinal portion of the bar exam or the skills portion, but not both. This would give schools that ability to define their identity and educational mission at the time students apply for admission.

Would you endorse candidates being able to take a component of the bar exam after completing 60 hours of law school?	If there was an option for candidates to take a component of the bar exam after completing 60 hours of law school, which component do you think should be available?	Comments (optional)
Yes	Doctrinal Law	
Yes	Doctrinal Law	
Yes	Lawyering Skills	Many thanks for the follow up. However, this is too complicated—and too important—an issue to be handled appropriately via a two question survey. Redesigning the bar in a way that permits part of it to be taken in law school risks having major incentive effects on students and the choices they make about what to take within law school, and how to structure their legal education, as well as incentives on how law schools themselves conduct their education. That should be something that the NCBE truly cares about. The NCBE should—indeed must!—see itself as a contributing part of the entire legal education ecosystem. It should care deeply about thinking through that component and its effects. I recognize that law schools are not all similarly situated—and indeed, in this meeting, we saw and heard a variety of perspectives even from law deans, and we did not all agree. That's fine, of course—and not surprising. My point is bigger. The bar exam does not stand alone as a location for production of qualified attorneys, to protect the public and to support our system of justice. It operates on top of a system of legal education also focused on the same. The bar exam should be designed in a way that improves legal education and the development of talent. That should be a criteria that matters, and indeed a focus. I confess I was disappointed at the extent to which that perspectives seemed somewhat sidelined in our conversations about test design. Substantively, I am open to the notion of a component during law school, but only if it is not going to harm the law school experience. And though I have my own instincts about that question, which I shared, I also recognize that I don't fully know enough to answer that adequately at this point—and neither do the other people who were in the room. And yet that question ought to be absolutely central to this evaluation and this assessment. So the NCBE should engage, in my view, in a more significant effort to assess THIS question before it can responsibly assess whether the exam should include a piece that is tested during law school, and if so, which one.

APPENDIX I: TDC MEETING EVALUATION RESPONSES AND COMMENTS

TDC Meeting Evaluation Responses

Evaluation Question	Responses
Meeting #1	
How prepared did you feel for the discussions during the meeting based on your experience with the bar exam and the advance materials?	
Very prepared	12
Somewhat prepared	4
Not prepared	0
How would you rate the time allocated to discussing each test design topic?	
More than enough time	1
Right amount of time	13
Not enough time	1
Meeting #2	
How would you rate the time allocated to discussing the feedback on each model and delineating the final expectations?	
More than enough time	0
Right amount of time	9
Not enough time	3
Did not attend the August 4th Meeting	3
Overall Process	
Please rate the success of the process overall (Meeting #1, Review of Models, Meeting #2) in soliciting and distilling the input from TDC members into recommendations for the design of the exam	
Very successful	1
Successful	9
Not successful	1
Please rate your opportunity to contribute to this process	
Plenty of opportunity	8
Sufficient opportunity	5
Not enough opportunity	2

TDC Meeting Evaluation Comments

- I had a difficult time answering the "amount of time" questions. I felt there were some topics we spent too much time on (for example, revisiting the work done by committees that came before us) and others that did not receive enough discussion. In the end, I trusted the process and the leaders to make sure we spent the time where it was necessary.
- I valued the input of so many different points of view. No matter what comes of this process, I cannot honestly say that I did not have the opportunity to share my perspective. Having said that, it felt at times like there were some voices that dominated the conversation and perhaps the frequency and length of those comments seemed to tilt the discussion that direction. Those strong voices served as advocates for their positions, but length and volume should not take supplant those who spoke quietly or concisely.
- Finally, thank you for the opportunity to be part of something that is so meaningful. I really appreciated it!
- I think the process was generally good. At some points, it did feel like the topics were pre-determined to the extent where some additional ideas may not have been given enough time. For example, I think there should have been a decision made about whether to recommend a closed- or open-book bar exam. I think one of the better models that I have seen in other places is the open-book concept, where a base knowledge of the core doctrinal principles would be necessary in order to successfully navigate the exam, even while using study materials. We brushed up against that idea at times, but that is the big change that I would have advocated to address what I perceive are some of the biggest weaknesses/criticisms of the exam. Those weaknesses/criticisms would be 1) that the exam is more about memorization at this point than the actual practice of law consists of, 2) it takes too long to study for the exam by having to memorize too many legal nuances, which means we cannot offer the exam any earlier than we currently do based upon typical graduation dates, and 3) there is a real disadvantage to people who cannot afford expensive bar prep courses and to those who cannot afford to not work at least part time. The only other criticism that I have is that we too often got sidetracked talking about the bar exam's effect on the legal education world as opposed to what a test that measures minimum competency to practice law should consist of and look like. While I appreciate the concerns of the legal educators, and it is certainly something to consider when ultimately crafting the exam of the future, it felt like that was the issue that we discussed the most.
- I thought that the overall process was great, but that we were rushed at the end of the August 4 meeting.
- Individuals from the law schools dominated the conversation and often got way off topic. They were more concerned about how any changes would impact THEM, as opposed to deciding what changes, if any, to the bar exam would further the goal of ensuring that newly licensed lawyers had minimum competence in legal knowledge and skills to enter the practice of law.
- This was a very educational and worthwhile experience. The opportunity to discuss these issues with people of varied roles in the process was enlightening. I hope to have the opportunity to be involved in something of this nature again.
- I appreciated this opportunity. I learned so much from listening to the other participants. And I respect the time and resources that are being applied to this project.
- I would have liked to see examples of what was meant by the new style of questions such as case study with selected response, what the short answer would look like in order to be computer-scored, etc. Some educators think short answer is a fill-in-the-blank style question, others a sentence, and others a paragraph. I did have a suggestion for finding out when your questions go to far. I never feel the person creating the question can truly tell. You need to ask the people grading them. So, do a survey of actual

graders over this July, September, and October's essays and MPTs asking about each essay and each subquestion on the essay—inquiring how students did, how grader felt if it was in the wheelhouse of the basics or beyond, etc. As one of the graders noted, the first part of the Trusts essay was beyond even him, but then it was fine. That's the information you are going to need. Property professors should have known that the Fair Housing Act is not taught in every law school's first year property classes. Far from being basic. Then, that was the whole question—average student totally screwed. As least they all were.

- These calls happened during very busy times in our office. I feel bad that I was not able to verbally participate to the level I wished to contribute.
- My only complaint was that the group was too big.
- I liked how the differing positions were coalesced into a new proposal by finding the similarities in each. I thought the testing professionals were really good.
- The large group discussion at the 8/4 meeting was more challenging and less productive than the earlier smaller group discussions. Participants spent too much time on 8/4 responding to each other's assumptions and beliefs rather than discussing the options and decisions before the committee.
- This is a challenging survey to fill out. I appreciate the hard work to include a variety of voices and perspectives. And I think the efforts at facilitating and including those perspectives were serious and sincere, and I learned a good deal over the course of the several days and appreciated the opportunity to be included. But at an important structural level, the purposes of the bar exam and its potential effects on legal education, and, frankly, the purposes of law school, did not, in my opinion, get a deep enough airing, and yet they must significantly inform test design. I suspect there would be a significant difference in perspective about the appropriate design (and timing) of the bar exam among deans from different 'tiers' of schools—indeed we saw that play out in the meeting, and we would likely see something similar with broader engagement. Several of us—but certainly a minority—were very concerned about the effects that certain changes would have on legal education. Others—not deans of law schools!—didn't appear to care one whit for that concern. Many participants thought that everything important ought to be tested, somehow, on the exam—but there was little engagement (nor do most of us have the expertise) to understand what can be tested most effectively and reliably. How one thinks about these questions also depends greatly on priors: is the bar exam a critical tool for weeding out hordes of unqualified law graduates that would otherwise prey on the public?; is it an important moment forcing qualified attorneys to consolidate and synthesize knowledge in a high-stress situation?; is it a check to ensure that a very small number of unqualified attorneys are located before they begin to practice? Should we be more concerned with type one or type two errors? Should we be more concerned for verisimilitude on the exam with the tasks newly licensed attorneys engage with in practice, or ought we to care more about test reliability across sittings/graders even if that pushes towards multiple choice exams? In any event, I hope that the materials about what emerged from this set of meetings will make clear and acknowledge the lack of consensus on a number of these important questions, as well as with regard to several of the recommendations.