

THE UBE: THE POLICIES BEHIND THE PORTABILITY

by Kellie R. Early

The Uniform Bar Examination (UBE) has moved from concept to reality with its adoption by Missouri, North Dakota, Alabama, Idaho, and Washington.¹ The UBE is made up of a common set of six Multistate Essay Examination (MEE) questions, two Multistate Performance Test (MPT) tasks, and the Multistate Bar Examination (MBE), and the exam results in a portable score.²

The UBE is more than just a shared set of test components. At its essence, it is an agreement to give full faith and credit to examination scores generated in participating jurisdictions based upon the fact that all UBE jurisdictions uniformly administer, grade, and score the same examination.

Certain policies are followed by UBE jurisdictions in order to produce comparable scores, enhance score portability, and ensure reliable transfer of scores. Jurisdictions agree to adhere to these policies in order to be recognized as UBE jurisdictions and generate scores that qualify to be certified by the National Conference of Bar Examiners (NCBE) as UBE scores. These policies define what the UBE is and, by extension, what it is not.

The UBE is not reciprocal admission. The only element of reciprocity in the UBE is score portability; that is, UBE jurisdictions must accept scores from other UBE jurisdictions. But it is only the score that is portable, not the applicant's status in the testing

jurisdiction. The fact that an applicant passes the UBE in one jurisdiction and is admitted to practice there does not, alone, qualify the applicant for admission in other UBE jurisdictions. It remains the responsibility of each UBE jurisdiction to set the passing score that it concludes represents proof of minimum competence to practice law within its borders and to determine all other admission requirements. Jurisdictions that adopt the UBE are merely using the same high-quality examination to determine whether applicants have demonstrated the fundamental knowledge and skills necessary to begin practice. And because it is the same exam, it doesn't matter where that score was earned. This article discusses the policies that make the UBE work.

THE SAME EXAM, ADMINISTERED CONSISTENTLY: THE POLICIES

Standardized testing conditions contribute to score comparability. To ensure that testing conditions are as uniform as possible, UBE jurisdictions follow the instructions set out in the *Supervisor's Manual*³ for administering the examination. The *Supervisor's Manual* prescribes procedures for, among other things, maintaining the security of testing materials, providing a suitable testing environment, deterring cheating, proctoring the examination, dealing with disturbances, and reporting any irregularities that occur in the administration of the exam.

In addition to the procedures provided in the *Supervisor's Manual*, which apply to all jurisdictions that use NCBE's tests, there are a couple of other procedures specific to administration of the UBE. First, UBE jurisdictions use a common set of six MEE questions, which are answered according to generally applicable principles of law rather than jurisdiction-specific law.⁴ Second, UBE jurisdictions administer the two MPT tasks in one seamless three-hour test session rather than two 90-minute sessions.⁵

To earn UBE scores, applicants must sit for all portions of the examination in the same administration and cannot rely upon banked or transferred written-component or MBE scores from previous examinations taken in the testing jurisdiction or in other jurisdictions. Use of banked or transferred scores from prior examinations allows applicants to sit for only one day of the current examination, which is not as demanding as having to prepare for and take all components in a single administration.⁶ In order for scores to be comparable, applicants must sit for all components in the same administration to earn a UBE score. UBE jurisdictions may continue to allow applicants to use banked or transferred scores to gain admission locally, but such applicants do not earn portable scores.

UBE jurisdictions continue to make their own decisions about whether to grant testing accommodations under the ADA, and NCBE plays no role in such decisions. NCBE has sponsored development of a model form that all jurisdictions (UBE and non-UBE) may opt to have applicants use to request test accommodations. Use of the model form should lead

to greater consistency in the information and documentation supplied by applicants and considered by jurisdictions in making ADA decisions.⁷

THE SAME EXAM, GRADED CONSISTENTLY: THE POLICIES

The answers of applicants in each jurisdiction are graded within that jurisdiction using the general principles of law set out in the MEE and MPT grading materials prepared by NCBE. UBE graders must adhere to the grading rubrics set out in the grading materials so that the same weight is assigned by all

UBE jurisdictions to the various issues tested by each question. UBE jurisdictions may continue to use whatever raw scale they wish in grading the MEE and MPT, because the raw scores are converted to the MBE scale.

Further, UBE jurisdictions continue to calibrate their graders

within the jurisdiction. Calibration is the process of developing coherent judgment in assigning points, using the standards set out in the grading materials, so that the rank-ordering of answers is done consistently over the entire course of grading, either by a single grader or, if more than one grader per question is used, by the multiple graders. While calibration within each jurisdiction remains critical, it is not necessary to calibrate graders *across* UBE jurisdictions because the MEE and MPT scores are scaled to the MBE scores within each jurisdiction.

NCBE provides educational opportunities for graders from all jurisdictions that use its tests. UBE jurisdictions, particularly those that have not previously used the MEE and/or MPT, are encouraged

WHILE CALIBRATION WITHIN EACH JURISDICTION REMAINS CRITICAL, IT IS NOT NECESSARY TO CALIBRATE GRADERS ACROSS UBE JURISDICTIONS BECAUSE THE MEE AND MPT SCORES ARE SCALED TO THE MBE SCORES WITHIN EACH JURISDICTION.

to have their graders attend NCBE's grading workshop, either in person or by teleconference, the week-end following the examination.⁸ Additionally, NCBE offers several other educational events that cover the topic of grading, among other relevant topics, on an annual or biannual basis, attendance at which is funded by NCBE for one or more representatives of UBE and non-UBE jurisdictions alike. NCBE is also available to consult directly with jurisdictions that request additional assistance with training graders.

Because one of the purposes of both the MEE and MPT is to test the applicant's ability to communicate effectively in writing, UBE jurisdictions take communication skills into consideration when grading the MEE and MPT. Applicants are expected to present a clear, concise, and well-organized composition and are expected to write in complete sentences, using appropriate grammar and syntax.⁹ At this time, there is not a separate communication score or set percentage of points associated with communication skills; rather, communication skills are one aspect of the scores assigned to MEE and MPT answers.

UBE jurisdictions do not regrade the answers of failing applicants after examination results have been released.¹⁰ Regrading is not likely to produce psychometrically sound scores if the pass/fail status of the applicants is known, if the original scores are known, if the regrading is done remote in time from the original grading of the entire pool of answers, if only failing answers are reviewed, and/or if scores are only increased and never decreased. Calibration or consistency with the grading standards is difficult to maintain under such circumstances. Because most, if not all, of these circumstances are present when regrading takes place after release of results, jurisdictions have good reason not to accept scores that are the result of post-release regrading.¹¹ Therefore,

UBE jurisdictions agree not to engage in post-release regrading. UBE jurisdictions may engage in pre-release regrading of answers, assuming that it is appropriately conducted to maintain consistency with the original grading standards, but once results are released, no further review of answers is undertaken.

THE SAME EXAM, SCORED CONSISTENTLY: THE POLICIES

NCBE performs scaling and combining of scores for all UBE jurisdictions to ensure consistency in how scores are calculated.¹² UBE jurisdictions provide NCBE with the raw scores for each of the six MEEs and two MPTs so that NCBE can make sure that the proper weighting is applied and that no scores from a jurisdiction-specific exam component are intermingled with UBE scores.¹³

The MEE is weighted 30%, the MPT 20%, and the MBE 50% in calculating the UBE total score. The written-component scores (MEE and MPT) are scaled to the MBE using the standard deviation method.

Uniformity in rounding of UBE scores is necessary for score comparability. The written-component and MBE scaled scores are rounded to one decimal; these two decimal scores are combined, and the UBE total score is rounded to a whole number and stated on a 400-point scale.¹⁴

ENSURING RELIABLE TRANSFER OF SCORES: THE POLICIES

NCBE serves as the central repository of UBE scores and performs score transfer services for all UBE jurisdictions.¹⁵ When an applicant requests to transfer a UBE score, NCBE sends the receiving jurisdiction an official transcript of the applicant's full UBE score history across all jurisdictions and exam dates, with

the scores certified by NCBE. Those UBE jurisdictions that place a limit on the number of times an applicant may retake the examination will find this particularly important. In the context of the UBE, such jurisdictions may want to count all attempts to earn a score that is passing in the receiving jurisdiction, regardless of where the applicant tested, because the applicant took the same exam. For example, if Jurisdiction A's passing score is 266 and it limits attempts to three, and an applicant sits for the UBE four times in other jurisdictions, earning scores of 257, 259, 262, and 266, in that order, Jurisdiction A might refuse to accept the applicant's score of 266 because it was earned in the fourth attempt.¹⁶ In order that complete score histories can be provided in the score transcripts, all UBE jurisdictions agree that NCBE is the central repository and sole transferor of certified UBE scores.

To create accurate transcripts for applicants who take the UBE multiple times or in multiple jurisdictions, NCBE must have sufficient biographical data¹⁷ to tie all the scores together. Thus, UBE jurisdictions agree to instruct applicants to provide the necessary identifying information on their MBE answer sheets.¹⁸

ENHANCING SCORE PORTABILITY: THE POLICIES

UBE jurisdictions provide, or allow NCBE to provide,¹⁹ each applicant with his UBE scores (MEE/MPT scaled score, MBE scaled score, and UBE total score) so that applicants can determine whether they meet the minimum passing score requirements of other jurisdictions. Although some non-UBE jurisdictions restrict reporting of scores to applicants,²⁰

this hampers score portability, so UBE jurisdictions follow a policy of notifying all applicants of their scaled scores.

POLICIES SET INDEPENDENTLY BY JURISDICTIONS

All policies related to the requirements for admission on the basis of a transferred UBE score are left to the jurisdictions to set independently. As a general rule, when setting such policies, jurisdictions should keep firmly in mind that the UBE is the same exam, administered, graded, and scored uniformly by all UBE jurisdictions. Therefore, the same requirements should be applied to applicants who transfer UBE scores as are applied to those who test locally. There is no reason to differentiate on the basis of where applicants test.

Conditions for Accepting Scores

Setting Time Limits for Accepting Scores

Jurisdictions must decide how long a UBE score represents the applicant's current readiness to enter practice. NCBE does not make any recommendations in this regard, but NCBE Director of Testing Susan Case advises that jurisdictions should accept past scores for an interval that is reasonable to assume that the applicant's knowledge base has been maintained or has increased since the applicant took the exam.²¹ In many cases, jurisdictions have already identified intervals for other issues, and those intervals might be equally applicable to transferred UBE scores. Any of the following could be used as a means of determining an appropriate time limit for accepting UBE scores:

. . . [T]HE UBE IS THE SAME EXAM, ADMINISTERED, GRADED, AND SCORED UNIFORMLY BY ALL UBE JURISDICTIONS. THEREFORE, THE SAME REQUIREMENTS SHOULD BE APPLIED TO APPLICANTS WHO TRANSFER UBE SCORES AS ARE APPLIED TO THOSE WHO TEST LOCALLY.

- Jurisdictions typically set a time limit within which applicants who have passed the exam must complete the admission process and take the oath before their scores will be deemed stale and invalidated. A jurisdiction could apply the same interval to UBE scores transferred from other jurisdictions.
- If a jurisdiction accepts MBE scores earned in another jurisdiction as a basis for admitting applicants without further testing,²² it might reasonably set the same time limit for accepting UBE scores as it applies to MBE scores.
- Similarly, jurisdictions that accept transferred MBE scores from prior examinations as a basis for allowing applicants to take only a portion of the current examination might apply the same time period to UBE scores. In this situation, however, arguments can be made for setting either a longer time limit for UBE scores (because the score represents the applicant's performance on the entire examination, not just the MBE) or a shorter time limit (because the applicant will not undergo further testing to assess current knowledge and skills).

Applying the Minimum Passing Score Consistently

Jurisdictions continue to set their own minimum passing scores and should apply the same cut-score standards to UBE scores transferred from other jurisdictions. NCBE recommends that UBE jurisdictions not condition acceptance of a transferred UBE score upon the applicant's passing status or admission to the bar in the testing jurisdiction. Doing so results in the receiving jurisdiction effectively adopting the

minimum passing score of the testing jurisdiction in those cases where the testing jurisdiction's minimum score is higher; this causes different score requirements to be applied within the same jurisdiction. The following example illustrates the inconsistency that could result if this practice were to be followed.

Assume that Jurisdiction A (the receiving jurisdiction) has a passing score of 260 and requires that applicants who transfer UBE scores must have passed in the testing jurisdiction (not recommended by NCBE).

Applicant 1 earns a score of 270 in Jurisdiction B, where the passing score is 280.

Applicant 2 earns a score of 270 in Jurisdiction C, where the passing score is 266.

Applicant 1 could not qualify for admission in Jurisdiction A if Jurisdiction A were to condition acceptance upon the applicant's passing status in the testing jurisdiction. Although both Applicants 1 and 2 earn identical scores that exceed Jurisdiction A's minimum passing score of 260, the requirement that applicants must pass in the testing jurisdiction means that Applicant 1 must earn a score of 280 because that is the testing jurisdiction's minimum passing score.

To take this illustration a step further, Applicant 3, who tests locally and earns a score of 260 in Jurisdiction A, could be admitted, while Applicant 1 with a score of 270 could not.

Remember: *it's the same exam*, so a requirement that applicants must pass where they test should not be applied, because there is no common cut score.²³

. . . [J]URISDICTIONS SHOULD ACCEPT PAST SCORES FOR AN INTERVAL THAT IS REASONABLE TO ASSUME THAT THE APPLICANT'S KNOWLEDGE BASE HAS BEEN MAINTAINED OR HAS INCREASED SINCE THE APPLICANT TOOK THE EXAM.

Legal Education Requirements

The same logic applies to legal education requirements. UBE jurisdictions should apply the same legal education requirements to applicants who transfer UBE scores as they apply to those who test locally. If a jurisdiction requires applicants to have graduated with a J.D. degree from an ABA-accredited law school to be eligible to sit for the examination, it should require the same of applicants who transfer UBE scores from other jurisdictions, even if the testing jurisdiction did not impose such a requirement. Presumably, jurisdictions require specific legal education as a prerequisite to sit for the examination because they believe that passing a bar exam, no matter how valid and reliable the exam, should not be the sole measure of preparedness to enter practice. Thus, jurisdictions should not alter their educational requirements for applicants who are transferring UBE scores merely because the applicants have already passed the examination.

Multistate Professional Responsibility Examination

If the jurisdiction requires exam applicants to pass the Multistate Professional Responsibility Examination (MPRE), it should require the same of applicants who transfer UBE scores. Applicants who are transferring UBE scores likely will also have taken the MPRE, since it is required by all but 4 of the 56 jurisdictions.²⁴

But if a jurisdiction's rules require applicants to pass the MPRE within a specific time period relative to other events, such as within one year of passing the bar examination, the jurisdiction should consider whether to modify that requirement to coordinate with its conditions for accepting UBE scores. For example, if the jurisdiction accepts UBE scores earned within the preceding 24 months, many applicants transferring UBE scores may have to

retake the MPRE to earn a more current score. For those applicants who are transferring UBE scores, jurisdictions might consider setting the time limit for passing the MPRE in relation to when the UBE score was earned.

IT'S A SCORE, NOT A STATUS

Remember, it's the *score* that is portable, not the status. When developing a regulatory framework for accepting transferred UBE scores, jurisdictions should constantly return to the fact that *it's the same exam*. It doesn't matter where applicants test, just what scores they earn, and the requirements for admission should be consistent for those who test locally and those who test in other UBE jurisdictions.

As the UBE matures and is adopted by more jurisdictions, these policies may evolve to address new circumstances, and new policies may be developed. The key concepts of producing comparable scores, enhancing score portability, and ensuring reliable transfer of scores will continue to guide the process. 📄

NOTES

1. Missouri and North Dakota administered the first UBE in February 2011. Alabama began administering the UBE in July 2011, while Idaho will start in February 2012 and Washington in July 2013. Use of the UBE is under consideration in other jurisdictions.
2. To learn more about the UBE, see the following *Bar Examiner* articles: Veryl Victoria Miles, *The Uniform Bar Examination: A Benefit to Law School Graduates*, THE BAR EXAMINER, Aug. 2010, at 6; Susan M. Case, Ph.D., *The Uniform Bar Examination: What's In It for Me?*, THE BAR EXAMINER, Feb. 2010, at 50; Susan M. Case, Ph.D., *Coming Together: The UBE*, THE BAR EXAMINER, Aug. 2009, at 28; *Essays on a Uniform Bar Examination*, THE BAR EXAMINER, Feb. 2009, at 6.
3. NCBE provides jurisdictions using any of its tests with an *MBE Supervisor's Manual*, *MEE Supervisor's Manual*, and/or *MPT Supervisor's Manual*, as appropriate, and it has now developed a *UBE Supervisor's Manual*.
4. UBE jurisdictions may choose to administer a jurisdiction-specific exam component in addition to the UBE to assess knowledge of local law, but the scores from any such component are not part of the portable UBE scores.

UBE Implementation: Getting Started

When a jurisdiction is ready to adopt the UBE, it should review its rules for any changes that are necessary to conform to the UBE policies. It must also make policy decisions regarding those issues where uniformity with other UBE jurisdictions is not required, and decide what, if any, rule provisions are necessary to effectuate those policies.

In addition to amending its rules, there are other steps a jurisdiction should take to prepare to become a UBE jurisdiction. These fall roughly into two categories: (1) preparing to process a new category of applicants who are transferring UBE scores from other jurisdictions (“transfer applicants”) and (2) preparing for changes to the existing examination to bring policies and practices into accord with the UBE.

NCBE is available to assist any jurisdiction by reviewing the jurisdiction’s existing rules for conflicts with UBE policies and offering proposed language for any new rule provisions that might be necessary. In addition, NCBE can help identify some of the practical things that a jurisdiction might wish to do in preparation for becoming a UBE jurisdiction.

5. The two MPT tasks are administered in one session to save the time it takes to distribute and collect test materials in two separate sessions in larger jurisdictions.
6. A *banked score* is a score earned on one component in a prior examination in the testing jurisdiction, where the applicant did not pass the exam but scored high enough on one component so as not to have to retake that component. Allowing use of banked scores permits applicants to pass the exam in stages. A *transferred score* is a score earned in a prior examination in another jurisdiction, where the applicant may or may not have passed depending on the requirements set by the receiving jurisdiction for accepting transferred scores.
7. NCBE convened a group of bar admission administrators from nine jurisdictions to develop the model form. It is available to download from the secure section of NCBE’s website that can be accessed only by administrators. Jurisdictions are advised to have the model form reviewed by their legal counsel before using it.
8. The grading workshop teaches graders how to calibrate but is not a calibration session by itself. Graders who attend the grading workshop should undertake additional calibration before beginning actual grading.
9. Use of abbreviations is permitted.
10. Score corrections due to mathematical error do not constitute regrading and are allowed. Such events are rare, however.
11. There are also practical reasons for not allowing post-release regrading by UBE jurisdictions. There is a period between release of results and the deadline for seeking regrading when an applicant might request that an official transcript be sent by NCBE to another jurisdiction. If the applicant subsequently petitions for regrading in the testing jurisdiction, there could be a difference between the transferred score and the “final” score.
12. NCBE’s scaling services are offered free of charge to all jurisdictions, UBE and non-UBE.
13. For jurisdictions that administer a jurisdiction-specific exam contemporaneously with the UBE, NCBE will scale the jurisdiction-specific exam scores to the MBE so that the jurisdictions don’t have to do any scaling calculations on their own.
14. Non-UBE jurisdictions may choose to receive their MBE scores rounded either to whole numbers or to one decimal. There are practical advantages to rounding scores to one decimal in that (1) consecutive raw scores do not result in the same scaled score when scaled scores are rounded to a decimal and (2) raw whole-number scores and scaled decimal scores are more readily distinguishable. See Michael T. Kane, Ph.D., *To Round or to Truncate? That Is the Question*, THE BAR EXAMINER, Nov. 2003, at 24, and Susan M. Case, Ph.D., *The Testing Column: MBE “Decimal Dust,”* THE BAR EXAMINER, Feb. 2004, at 33.
15. UBE jurisdictions may transfer their own MBE scores to non-UBE jurisdictions if they wish, but NCBE is the sole transferor of UBE scores.
16. NCBE makes no recommendation concerning whether jurisdictions should limit the number of times applicants may sit for the UBE; that is each jurisdiction’s prerogative.
17. NCBE requires the applicant’s name, date of birth, and Social Security number or NCBE number to identify UBE scores with the requisite degree of confidence jurisdictions should expect.
18. NCBE can suppress applicant names and Social Security numbers on the score roster sent to a jurisdiction if the jurisdiction’s

policies mandate that it not receive this information with the MBE scores.

19. UBE jurisdictions that do not want the administrative burden of reporting scores to applicants can direct them to NCBE's website, where applicants may request an unofficial transcript of their scores.
20. Some non-UBE jurisdictions report scores only to failing applicants and not to successful applicants. In the context of the UBE, however, a score that is passing in the testing jurisdiction might not be passing in other jurisdictions. Hence, all UBE applicants are told their scores without regard to their pass/fail status in the testing jurisdiction.
21. A jurisdiction might decide to accept older UBE scores if the applicant has been engaged in the active practice of law for some portion of the time since the score was earned. In such circumstance, the jurisdiction is not relying solely upon the score (and completion of other admission requirements) as the measure of readiness to practice, but is coupling a passing score and experience practicing law.
22. North Dakota, Minnesota, and the District of Columbia admit applicants on the basis of an MBE score taken in another jurisdiction. *See* NATIONAL CONFERENCE OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2011, Chart 8, 28–30 (National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar 2011).
23. In the context of accepting transferred MBE scores, many jurisdictions require applicants to have passed the examination in the testing jurisdiction, and some require applicants to have been admitted in the testing jurisdiction. Such a requirement makes sense for MBE scores because the transferred score is taken from only one component of the bar examination and the remainder of the examination is not uniform in all jurisdictions.
24. *See* NATIONAL CONFERENCE OF BAR EXAMINERS, *supra* note 22.



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