BREAKING THE CYCLE: RETHINKING BAR EXAM SCORING AND PORTABILITY FOR NEXTGEN EXAMINEES

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BREAKING THE CYCLE

Steven Foster & Nachman N. Gutowski [1]

INTRODUCTION

The development of the NextGen bar exam presents a crucial opportunity to address longstanding challenges with bar exam scoring and portability. The reliance on recent graduates' performance on the Uniform Bar Examination (UBE) as a baseline for setting future standards is flawed due to relative scoring and scaling. In addition to concerns about how the future bar exam will be scored, there are also concerns regarding the use of the new scoring metric on the NextGen bar exam for portability, and more specifically, what will happen between 2026 and 2028 as more jurisdictions progressively adopt the NextGen bar exam. This paper argues for a shift from score-based models to a standards-based, rubric-driven assessment that would better reflect minimum competence. This paper also advocates for one national score to qualify for legal practice and for true score portability between jurisdictions.

The legal profession is undergoing a significant transformation, and with that, the bar exam is being reevaluated through the lens of the NextGen bar exam initiative. As the legal landscape evolves, so must the methods for evaluating the qualifications of future attorneys. One of the central challenges is ensuring score portability, which allows bar exam scores to be accepted across different jurisdictions without complications. However, as the NextGen Bar Exam develops, it faces the risk of building on a flawed foundation: the existing UBE system, which has been riddled with inconsistencies, adjustments, and failures in true portability.

This paper critically examines several significant and related issues: (1) the problematic reliance on misleading statistics in bar exam scoring, (2) portability and scoring issues, (3) the use of recent graduates' performance as a baseline for setting the scoring standard for the NextGen Bar Exam, (4) the opportunity to move to a standards-based, criteria-driven assessment model,

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and (5) the importance of creating a single national passing score for the purposes of portability, and addressing the uncertainty regarding portability beginning in 2026. These issues highlight deeper systemic flaws, suggesting that the current bar exam scoring and portability approach requires meaningful reform.

I.   THE CURRENT UBE SCORING SYSTEM IS FLAWED

A.   *Portability and Relative Scoring*

The UBE, introduced in 2011, was intended to provide a consistent, portable bar exam score that could be transferred across multiple jurisdictions. While the UBE provides a common numerical result designed to facilitate portability, states have widely divergent passing score thresholds, also known as "cut scores." This means that a candidate's UBE score may be sufficient for admission in one state but insufficient in another, even though the same exam was administered. This variation in cut scores erodes the promise of portability, as candidates cannot rely on their score being accepted uniformly across the forty-one jurisdictions that currently administer the UBE.

Applicants also cannot rely on the cut score number staying consistent year after year. In recent years, some jurisdictions have temporarily lowered their cut scores, and in some instances, jurisdictions have both permanently *and* retroactively lowered cut scores.[2] For an exam that purports to test an applicant's minimum competence to practice law, the range and variability of individual jurisdictions' cut scores call into question the very meaning of the scores as a reliable measure of legal competency. This cut score variability

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[2] *See* Julianne Hill*, Lowered Bar Pass Cut Scores Mean Better Bar Pass Rates in 4 States*, ABA JOURNAL (May 7, 2024, at 10:23 CDT) https://www.abajournal.com/web/article/low ered-bar-pass-scores-better-bar-pass-rates-in-4-of-5-states (on file with UNT Dallas Law Review)*; see also Admission by UBE Score Transfer*, ALASKA BAR ASS'N, *https://admissio ns.alaskabar.org/appinfo.action?id=2#:~:text=Alaska%20Bar%20Exam%20Minimum%2 0Passing,Alaska%20from%20280%20to%20270* (on file with UNT Dallas Law Review) (last visited Jan. 5, 2026) (Alaska lowers cut score to 270); *see also Policy Announcements*, OFF. OF ATT'Y REGUL. COUNS., https://www.coloradolegalregulation.com /futurelawyers/policyannouncement/#:~:text=Colorado%20Supreme%20Court%20reduces %20minimum,lowered%20from%20276%20to%20270 (on file with UNT Dallas Law Review) (last visited Jan. 5, 2026) (Colorado lowers cut score to 270); *UBE Minimum Scores*, NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/exams/ube/ube-minimum-scores (on file with UNT Dallas Law Review) (last visited Jan. 5, 2026); *see also UBE Score Transfer*, IDAHO STATE BAR, https://isb.idaho.gov/admissions/ube-score-transfer/ (on file with UNT Dallas Law Review) (last visited Jan. 5, 2026) (Idaho lowers cut score to 270).

raises serious concerns regarding the integrity of the UBE's scoring data as a foundation for setting the NextGen bar exam's standards.

Cut score variability is only the beginning of the UBE's misaligned values. States with the guidance and calculations from the National Conference of Bar Examiners (NCBE) determined students' UBE scores with two fundamentally flawed concepts: relative essay scoring and scaling. Relative essay scoring requires bar graders to determine whether an individual passes the bar exam based on how the student performs compared to their peer group within the state, rather than using a standard metric.[3] The NCBE trains hundreds of bar graders from across the country every year, and their philosophy is to rank the papers from best (six) to worst (one).[4] Graders are encouraged to group submissions into buckets loosely tied to standards based on their similarity to other submissions.[5]

Relative grading leads to varying exam scores in states with different population sizes.[6] For example, Texas administers the UBE to more than 3,000 individuals per year from a wide variety of law schools.[7] New Mexico only had 196 takers in July 2024.[8] Additionally, New Mexico has only one law school. Relative essay scoring nearly guarantees some variation in essay scores when vastly different populations take the test in different states. An examinee in Texas would most likely have a different score if he/she took the exam in New Mexico.

While fundamentally flawed, relative essay scoring is not an uncommon practice. The psychometricians at the NCBE advocate for relative essay scoring for fairness and consistency.[9] They focus on the consistency of an exam score, ensuring it means the same thing this year as it did last year.[10] Their goal aligns with creating standardized tests, but unfortunately, that goal fails to meet what students, schools, and society should expect from a licensure exam. The vast majority of states require "minimum competence"

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[3] Judith Gundersen, *It's All Relative—MEE and MPT Grading, That Is*, 85 THE BAR EXAM'R 37, 37–45 (2016), https://thebarexaminer.ncbex.org/article/june-2016/its-all-relative-mee-and-mpt-grading-that-is-2/ (on file with UNT Dallas Law Review).

[4] *Id.*

[5] *Id.* at 3.

[6] *Id.* at 7.

[7] *Bar Exam Results by Jurisdiction, July 2024 Bar Exam,* NAT'L CONF. OF BAR EXAM'RS (Nov. 7, 2025, at 20:55 CDT), https://www.ncbex.org/statistics-research/bar-exam-results-jurisdiction (on file with UNT Dallas Law Review).

[8] *Id.*

[9] Gundersen, *supra* note 2, at 7.

[10] *Id.* at 4.

to practice law.[11] Minimum competence is a measurable standard that does not change based on the state in which a student took the exam or how the student next to them performed. Minimum competence is not relative and should not be derived from relative scoring.[12] Judith Gundersen, Director of Test Operations for the NCBE, justifies relative scoring based on the fairness of the test and the ease of generating a consistent score.[13] Relative scoring may be the easiest way to create a standardized test, but bar examiners should not resort to easy when trying to determine students' futures. Schools expect students to put in the hard work for success. Bar examinees should expect nothing less from the NCBE and state boards than finding a way to determine an absolute standard of minimum competence.

B. *Challenging the Assumption of Skill Alignment Between MBE and Essays*

Another fatal flaw to UBE scoring is scaling essay scores to the Multistate Bar Examination (MBE).[14] One of the most significant critiques of the NCBE's scoring methodology is its assumption that performance on the MBE aligns with performance on essay components.[15] This assumption underpins the NCBE's practice of scaling essay scores to match MBE scores, yet it fails to acknowledge the distinct skills each section is designed to assess.[16] The MBE tests candidates' ability to identify correct or "best" answers in narrowly defined multiple-choice questions, emphasizing issue-spotting and rapid decision-making. In contrast, essays require examinees to analyze broader fact patterns, craft structured arguments, and demonstrate persuasive written communication. These skills differ significantly and are often unrelated, making the NCBE's alignment assumptions flawed.

Like relative essay scoring, scaling adheres to the principles of ease and consistency of bar exam scores.[17] Scaling is a two-step process. First, it requires states to rank student essay scores. Then, the NCBE places the

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[11] *See* DEBORAH J. MERRITT & LOGAN CORNETT, BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE 3, 6 (2020), https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar_pre_print.pdf (on file with UNT Dallas Law Review).

[12] *Id.* at 93.

[13] Gundersen, *supra* note 2, at 11.

[14] Marsha Griggs, *Building a Better Bar Exam*, 7 TEX. A&M L. REV. 1, 26–31 (2019) (discussing the accelerated spread and adoption of the UBE).

[15] Gunderson, *supra* note 2, at 7.

[16] Susan M. Case, *The Testing Column: Scaling, Revisited*, 89 THE BAR EXAM'R 68, 68–75 (2020), https://thebarexaminer.ncbex.org/article/fall-2020/the-testing-column-3/ (on file with UNT Dallas Law Review).

[17] *Id.*

ranked essay scores in a similar order to the MBE for that state to ensure similar mean and standard deviations of essay and MBE scores.[18] Scaling assumes that MBE testing ability and essay testing ability are similar for the entire state population. The justification is again that the MBE provides more consistency, whereas state essay graders have too much subjectivity to be trusted with their grading. The NCBE's approach to scaling implies that the mean and standard deviation of essay scores should mirror the MBE's.[19] This creates a statistical equivalence that prioritizes administrative convenience over fairness and accuracy.

At first glance, the scaling seems logical. The MBE is standardized according to well-established principles with objective answers. However, any deeper analysis reveals apparent flaws. While this is an exaggerated example, a student could be remarkably strong at analyzing narrow fact patterns, yet struggle to write complete sentences, or vice versa. The ability to spot multiple issues in an essay differs from spotting a single issue in a multiple-choice question. The NCBE would likely claim that those individual differences would work themselves out throughout a state's population without any objective evidence that the MBE and essays test the same skills.

Moreover, the NCBE's reliance on scaling undermines the integrity of the bar exam as a measure of minimum competence. If essays and multiple-choice questions genuinely assess different skills, their scores should be evaluated independently. By including both components in the exam, the NCBE acknowledges that they serve distinct purposes; otherwise, one section would suffice. That acceptance means neither section should be the anchor for the final score. Yet, by anchoring essay scores to MBE performance, the NCBE implicitly devalues the unique competencies that the essays are designed to test.

C. *The Problematic Reliance on Misleading Statistics in Bar Exam Scoring*

The NCBE's reliance on statistical measures, particularly the bell curve, reveals a fundamental misalignment with the stated purpose of the bar exam: assessing minimum competence for entry-level legal practice. The bell curve, prominently featured in NCBE analyses of exam data from 1993 to 2022, visually demonstrates this disconnect.[20] With its highest point (the

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[18] *Id.*

[19] *Id.*

[20] Drew Weiner, *The Testing Column: When the Mean Misleads: Understanding Bar Exam Score Distributions*, 92 THE BAR EXAM'R 55, 55–60 (2023), https://thebarexaminer.ncbex

mode) at a score of 136, the curve reflects a clustering of examinee performance near the passing scores used by most jurisdictions, which typically range from 130 to 135.[21] While this approach may ensure statistical reliability across years, it compromises the exam's primary goal: identifying whether candidates possess the minimum competencies required to practice law effectively.

Designing the bar exam to align with a bell curve is especially problematic for a professional licensure test. This distribution implies that the exam is calibrated to ensure a certain percentage of candidates fail, even when many of those individuals may meet the established standards for minimum competence. The clustering of scores just below the passing threshold reinforces the perception that the NCBE has created a deliberately "hard" exam, and worse, one that prioritizes statistical predictability over competency to practice law. In a minimum competence exam, the highest point of the distribution should align with the passing threshold, reflecting that most candidates meet the required standard after completing three years of rigorous legal education.

This issue is compounded by the variability in passing score requirements across jurisdictions.[22] Different states set their own cut scores within the NCBE's framework.[23] These thresholds are not static and have fluctuated considerably in recent years, further complicating the portability, reliability, validity, and even the fairness of bar exam results.[24] A candidate who passes in one state may fail the same exam in another simply due to differences in scoring policies. This variability alters the definition of "competence" depending on when and where the exam is taken, undermining the NCBE's claim that the bar exam is a reliable measure of minimum competence.

.org/article/spring-2023/the-testing-column-mean-misleads-23/ (on file with UNT Dallas Law Review).

[21] *Id.*

[22] *See UBE Minimum Scores*, NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/exams/ube/ube-minimum-scores (on file with UNT Dallas Law Review) (last visited Jan. 5, 2026) (contains a list of the state pass scores).

[23] *Id.*

[24] *Colorado Supreme Court Reduces Minimum Passing Score for Bar Exam*, COLO. JUD. BRANCH (Nov. 4, 2022), https://www.coloradojudicial.gov/media/press-release/colorado-supreme-court-reduces-minimum-passing-score-bar-exam (on file with UNT Dallas Law Review); Julianne Hill, *Lowered Bar Pass Cut Scores Mean Better Bar Pass Rates in 4 States*, ABA J. (May 7, 2024), https://www.abajournal.com/web/article/lowered-bar-pass-scores-better-bar-pass-rates-in-4-of-5-states (on File with UNT Dallas Law Review); *Bar Examination—Cut Score Change*, PA. BD. OF L. EXAM'RS (Nov. 4, 2022), *https*://www.pabarexam.org/bar_exam_information/bescorechange.htm (on file with UNT Dallas Law Review).

The reliance on bell curve modeling also creates inequities within the legal profession, particularly for underrepresented candidates or those from less-resourced law schools. Because scores cluster near passing thresholds, even minor disparities in access to academic support or bar preparation resources can determine whether a candidate passes or fails. This perpetuates systemic barriers to entry into the legal profession, disproportionately affecting candidates who face significant obstacles. Therefore, the bar exam design should not hinge on ensuring failure rates but rather on objectively assessing whether candidates meet clearly defined standards.

Moreover, basing the exam's validity on percentile performance further exacerbates the problem. A minimum competence exam is not a competitive test where candidates are ranked against one another. Its purpose is to serve as a gatekeeping mechanism to ensure all licensed attorneys meet the same baseline standard. By attaching passing rates to percentile-based metrics, the NCBE subverts this purpose and ties an examinee's success to the performance of their peers.[25] This reliance on relative scoring distorts the accurate measure of competency and undermines confidence in the exam's outcomes.[26]

The NCBE must reject percentile-driven scoring and bell curve calibration to align the bar exam with its intended purpose. The validity of the exam should derive solely from its design, which mainly tests well-defined competencies, and not from ensuring that results fit a predetermined statistical model. Candidates who demonstrate the required skills and knowledge should pass, regardless of how many others meet or fail to meet that standard. This shift would also address the problematic clustering of scores near the passing mark, which now serves as a barrier for many competent candidates.

The current scoring model also prevents jurisdictions from assessing the effectiveness of their legal education programs. When scores are bunched around an arbitrary passing line, the data obscures whether candidates are genuinely prepared or whether incremental adjustments in curriculum and academic support push students over an artificial threshold. A redesigned scoring approach focused on minimum competence would provide schools with more precise feedback on their graduates' readiness for practice and

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[25] *See* Judith A. Gundersen, *It's All Relative—MEE and MPT Grading, That Is*, 85 THE BAR EXAM'R 37, 37–45 (2016), https://thebarexaminer.ncbex.org/article/june-2016/its-all-relative-mee-and-mpt-grading-that-is-2/ (on file with UNT Dallas Law Review).
[26] *Id.*

would enable jurisdictions to make more informed decisions about licensure requirements.

D. *Future Portability*

Even with the current flaws in the UBE portability model, one of the larger unknowns facing future law school graduates is how the gradual adoption of the NextGen bar exam will impact portability in the near term. A handful of jurisdictions in the first batch of NextGen adopters have agreed to accept UBE scores while that exam is still being offered. However, it is unclear how UBE jurisdictions waiting to adopt the NextGen bar will view NextGen bar scores. Portability remains alarmingly opaque for future bar takers in early-adoption states.

This lack of clarity between 2026 and 2028, when both the UBE and the NextGen bar exam will be administered concurrently, has the potential to be unnecessarily punitive for examinees nationwide. Score portability, though flawed, has opened more employment opportunities for law graduates. With little information currently available from jurisdictions that are choosing to wait to adopt the NextGen bar exam, law school graduates in first-wave states will begin making decisions in a matter of months about which state bar exam to take. For instance, will a state that has committed to adopting NextGen in 2027 accept NextGen transfer scores in 2026? With portability issues currently unanswered, the promise and ultimate value of reciprocity will undoubtedly be more limited. Therefore, it is imperative that jurisdictions promptly announce their decisions regarding which exam scores they will accept, before the first wave of states administers the NextGen bar exam. This will allow future graduates to make informed decisions regarding their licensure.

II.   NextGen Bar Exam Continues UBE Failures

A. *NextGen Does Not Align with Real-World Practice*

The NCBE claims that the NextGen Bar Exam's introduction of integrated question sets and performance tasks aligns more closely with the practical skills required for entry-level legal practice.[27] The new exam appears to move beyond rote memorization and multiple-choice testing to measure skills such as legal analysis, problem-solving, and client

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[27] *See Overview of Recommendations for the Next Generation of the Bar Examination*, NAT'L CONF. OF BAR EXAM'RS 2 (2021), https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Next-Gen-Bar-Exam-Recommendations.pdf (on file with UNT Dallas Law Review).

communication. However, a closer inspection reveals significant limitations in the ability of these new formats to replicate the complexities of real-world legal practice.

One of the primary shortcomings of the NextGen exam's proposed alignment with practice lies in the artificial constraints imposed by the testing environment. Integrated question sets and performance tasks are designed to assess candidates' abilities in realistic scenarios, such as drafting legal documents or interpreting statutes.[28] While these tasks mimic certain aspects of legal work, they are constrained by strict time limits, standardized instructions, and limited resources, including a digital interface.[29] In practice, legal professionals often operate in collaborative environments with access to various resources such as colleagues, research databases, and extended timelines to refine their work. The conditions under which examinees complete NextGen tasks fail to capture this context-rich process, reducing the authenticity of the assessment to another standardized box-checking barrier.

Moreover, while the inclusion of integrated question sets may suggest a move toward practical skill evaluation, the NCBE's design choices reveal a continued emphasis on academic skills over professional competence. For example, the reliance on hypothetical scenarios and controlled fact patterns prioritizes issue-spotting and legal adjacent reasoning over the interpersonal and strategic skills critical to legal practice, such as client counseling, negotiation, and ethical decision-making.[30] These omissions are particularly glaring given the legal profession's increasing emphasis on holistic problem-solving and client-centered advocacy.

The NCBE has yet to provide robust empirical evidence to substantiate its claim that the NextGen exam effectively assesses skills needed in practice. The NCBE conducted a field test which, while providing some initial data, was limited in scope, and the conditions under which participants engaged in the test differ significantly from those they would encounter in practice as attorneys.[31] Furthermore, the participants in the field test were recent graduates incentivized by monetary compensation, raising

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[28] *See NextGen Bar Exam Sample Questions,* NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/exams/nextgen/sample-questions (on file with UNT Dallas Law Review) (last visited Jan. 5, 2026).

[29] *See About the NextGen Bar Exam*, NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/exams/nextgen/about-nextgen (on file with UNT Dallas Law Review) (last visited Jan. 5, 2026).

[30] *See NextGen Research Brief: Field Test,* NAT'L CONF. OF BAR EXAM'RS (Oct. 11, 2024), https://nextgenbarexam.ncbex.org/wp-content/uploads/NextGen-Research-Brief-Field-Test-October-2024.pdf (on file with UNT Dallas Law Review).

[31] *Id.*

questions about their motivation to perform higher. Without rigorous, independent validation of the correlation between NextGen tasks and professional competencies, the NCBE's claims remain speculative.

To reflect real-world practice, the bar exam must go beyond integrated question sets and performance tasks to embrace a broader range of assessments that mirror the diversity of skills required in legal practice. For instance, the exam could incorporate simulations of client interviews, oral advocacy exercises, and team-based problem-solving scenarios. Additionally, jurisdictions could supplement the written exam with structured practical training requirements, similar to supervised practice models, to ensure that candidates develop the interpersonal and practical skills necessary for success. Alternatively, states could move away from these arbitrary, sub-standardized exams entirely.

While the NextGen Bar Exam attempts to address some of the shortcomings of the current exam format, its claim to align with real-world practice remains unsubstantiated. The artificial constraints of the testing environment and the narrow focus of integrated question sets fail to capture the full spectrum of skills that entry-level attorneys must demonstrate. To fulfill its promise, the NextGen exam must undergo significant refinement, emphasizing empirical validation and a broader range of practical assessments that genuinely reflect the realities of legal work.

B. *Using the Flawed (Legacy) UBE as a Baseline for Scoring*

Another key concern with the development of the NextGen Bar Exam is using recent graduates' performance on a national prototype exam as the baseline for determining future passing scores.[32] While this might appear to provide relevant and timely data, it introduces several issues. First, participants will receive a $1,500 stipend.[33] Compensation introduces potential conflicts and uncertainty in comparative measurements. In addition, after months of intense preparation for the bar exam, many graduates will be mentally exhausted and disengaged when they sit for the prototype exam in October. As a result, their performance on these tests may not accurately reflect their actual knowledge, skills, or readiness to practice law.

Additionally, the time lapse between the formal study period and the practice exams contributes to this decline in performance. After taking the

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[32] Nat'l Conf. of Bar Exam'rs, *NextGen Prototype Exam: Help Shape the Future of the Legal Profession*, NEXTGEN BAR EXAM OF THE FUTURE, (Sept. 13, 2024), https://nextgen barexam.ncbex.org/nextgen-prototype-exam-october-2024/ (on file with the UNT Dallas Law Review).

[33] *Id.*

bar exam, most graduates do not maintain the same level of rigorous study, meaning their performance on these practice tests is unlikely to represent their real-world testing capacity. Therefore, the data from the practice exams may provide a skewed view of what constitutes minimum competence. Relying on this information to shape the future of legal competency assessment would result in a distorted and inaccurate evaluation system. Using artificially deflated scores as a baseline for setting NextGen passing standards risks setting an undesirable benchmark for future candidates.

Ultimately, there is a fundamental misalignment between performance on standardized bar exams, such as the UBE, and the skills required in real-world legal practice. The NextGen Bar Exam purports to address this gap. The current UBE emphasizes rote memorization, rapid issue-spotting, and the ability to answer multiple-choice questions under timed conditions.[34] These skills do not necessarily correlate with day-to-day legal tasks, such as drafting briefs, conducting legal research, or advising clients.[35] Therefore, using UBE data as a baseline does not adequately capture whether candidates have the practical, analytical, and ethical skills essential for effective legal practice. This disconnect further highlights why the reliance on recent graduates' test scores is a flawed approach for establishing future NextGen bar exam standards.

The NCBE's current usage of UBE scores nearly nullifies any advancements of the NextGen Bar Exam. If NextGen is a better exam and tests different skills than the current UBE, current UBE scores should be irrelevant and not correlated to NextGen scores. This process will deliberately produce the same results as the UBE, merely with a different number. That is antithetical to the entire purpose of NextGen. Although NextGen claims to have moved away from relative scoring and scaling, the alignment of NextGen scores with UBE scores functionally relies on those concepts to produce the NextGen scale. This shortcut by the NCBE undercuts NextGen by failing to define minimum competence properly.

C. A Shift to a Standards-Based Grading Model

Given the deep-seated problems with the UBE, the NextGen Bar Exam must shift toward a more reliable and consistent assessment model. A standards-based, rubric-driven approach would solve the current system's shortcomings. The goal of the bar examination should be to determine whether a specific individual has reached a minimum level of competence, irrespective of the score of their peers. States should determine minimum

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[34] *See NextGen Research Brief: Field Test*, supra note 29.
[35] *Id.*

competence and create standards to assess whether someone meets the standard. Instead of relying on numerical scores, this model would focus on clearly defined criteria that measure whether a candidate has the skills and knowledge necessary to practice law effectively. A standards-based grading model would provide a more accurate and consistent measure of competence. Further, this type of exam would more closely align with the real-world demands of legal practice by defining the specific competencies required for bar admission, such as legal analysis, problem-solving, ethical decision-making, and client communication. This approach must occur in a vacuum, without reference to the UBE.

Standards-based grading (SBG) more closely aligns with the stated purpose of minimum competence:

> In SBG, grading is based on demonstration of mastery. Students attempt standards-aligned activities (projects, worksheets, quizzes, essays, presentations, etc.). In this approach, evaluators assess the student output and choose the appropriate mastery level that was demonstrated. Typical scales are 1-4 and reflect students' increasing skills. 1's indicate that students have little understanding of a concept and consequently cannot demonstrate mastery. Many students have no prior knowledge when starting a new target and begin at 1. As students learn, they can demonstrate partial mastery and score 2. Once they meet a target, they score 3. Typically, 4s are used for students who exceed targets.[36]

Standards-based grading also overcomes the problem of overly difficult tests. Challenging exams, such as the MBE, can misconstrue high scores as mastery of skills and overemphasize poor performance on tasks to an inappropriate degree.[37] SBG provides clear criteria for evaluating any piece of written work, regardless of whether it reached mastery or, for bar exams, minimum competence.[38] Setting the standards and determining what to evaluate may be difficult, but implementing SBG for bar exams is not impossible. Texas utilizes SBG on its standardized tests (STAAR) from elementary through high school, and psychometricians have found that the

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[36] *What is Standards-Based Grading?*, COMMON GOAL SYSTEMS INC., https://www.teacher ease.com/standards-based-grading.aspx (on file with UNT Dallas Law Review) (last visited Jan. 5, 2026).

[37] *See id.*

[38] *See id.*

scoring accurately reflects competency in the tested areas.[39] Similar to Texas, Nevada does not scale the essays to a multiple-choice section of the test,[40] and has previously administered an exam with no MBE component which was scaled without concerns, proving that essay scores can be reliable and valid without scaling.[41]

A standards-based model would promote true portability by ensuring all candidates are evaluated against the same national standard of competence. Jurisdictions could confidently accept passing scores from other states, knowing that every candidate has been measured against the same criteria. This would eliminate the variability and confusion plaguing the UBE system, providing a predictable and fair path to bar admission for all candidates. Students would also be confident that they are being evaluated by a valid and reliable minimum competence standard, rather than being compared to their peers. The current UBE is a perfect example of the idiom: don't outrun the bear; just outrun the person next to you. Everyone should have the opportunity to jump over the minimum competence hurdle.

III.   THE UBE'S FLAWS SET NEXTGEN UP FOR FAILURE

Using the UBE's score-setting model as the foundation for NextGen risks replicating the same problems that have plagued the UBE since its inception. By relying on these inconsistent scoring mechanisms, NextGen would likely face many of the same challenges to uniformity across jurisdictions. States would continue to set their own passing scores, leading to confusion and a lack of portability across jurisdictions.[42] Further, the UBE's failure to achieve true portability shows that it undermines the very purpose of a nationalized bar exam.

Replicating the UBE's current flawed system in the NextGen bar exam would perpetuate a broken cycle that fails to meet the needs of modern legal practice and aspiring attorneys. Standards-based grading with proper criteria for minimum competence is a more effective standard and would meet all statistical requirements for reliability and validity. As jurisdictions adjust their cut scores based on fluctuating pass rates, it becomes clear that

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[39] *Id.*

[40] *See Board of Bar Examiners' Report of Grading Protocols and Guidelines Regarding the Examination to Be Held July 2024, February 2025, and July 2025*, BOARD OF L. EXAM'RS OF THE SUP. CT. OF NEV. (Apr. 18, 2024), https://app.box.com/s/8vu2tttshzo ms2nru5mqe3hrzwkjh5lf (on file with UNT Dallas Law Review).

[41] *See July 2022 Bar Exam Order Approving Grading Formula*, NEV. SUP. CT. (Jun. 1, 2022), https://nvbar.org/wp-content/uploads/July-2022-Bar-Exam-Order-Approving-Grading-Formula.pdf (on file with UNT Dallas Law Review).

[42] *See UBE Minimum Scores*, *supra* note 17, at 5.

these numbers do not provide a stable or accurate assessment of a candidate's readiness to practice law.[43] Reliance on variable scoring standards across jurisdictions as the foundation for the NextGen Bar Exam would set it up for failure.

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[43] *See Colorado Supreme Court Reduces Minimum Passing Score for Bar Exam*, *supra* note 23; *See* Hill, *supra* note 23; *See Bar Examination—Cut Score Change*, *supra* note 23, at 6.