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THE KEYSTONE STATE SHOULD FORGE A NEW PATH TO LAWYER LICENSURE

Ashley M. London, Nachman N. Gutowski, Sarah J. Garrison, & Steven Foster

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Ashley M. London, Nachman N. Gutowski, Sarah J. Garrison, and Steven Foster²

INTRODUCTION

The Commonwealth of Pennsylvania's state motto is "virtue, liberty, and independence," and it is known colloquially as the Keystone State. A keystone is an architectural feature that holds the pieces of an arch in place; without it, the entire structure collapses. Pennsylvania played a vital role in holding the original 13 colonies together, and today, we urge this large state, with almost 1,500 first-time bar exam takers annually,³ to lead the way in pioneering a pathway to practice that would be a blueprint for jurisdictions situated along the East Coast.

The NextGen Uniform Bar Examination (NextGen UBE) does not currently meet the needs of a modern lawyer licensure system, and even if the Commonwealth decided to add a Pennsylvania law-specific component to the exam, the same problems would remain or even increase. By promulgating

¹ This paper is published as part of the series developed and published on behalf of the Association of Academic Support Educators to inform legal academics and bar examiners about issues related to the NextGen bar exam product created by the National Conference of Bar Examiners.

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³ See *Pa. Bar Exam UBE Statistics*, https://pabarexam.org/bar_exam_information/beststats.htm (last visited Jan 18, 2026) (on file with UNT Dallas Law Review) (The Pennsylvania Board of Law Examiners posts all current statistics for bar takers after each administration in February and July).

NextGen UBE, the National Conference of Bar Examiners (NCBE) has essentially unwound the selling points of the Universal Bar Examination (“UBE”), most notably by decreasing the ease of portability for examinees, casting doubt on uniform scoring for its jurisdictions, and inspiring serious questions about the ease of reporting bar passage for ABA-accredited law schools. For many, the NextGen UBE is seen as a series of broken promises, drawing the ire of some Pennsylvania lawyers due to cuts in traditionally tested topics such as Family Law and Wills, Trusts, and Estates.⁴

At its Board of Governors Meeting in November 2024, the Pennsylvania Bar Association (PBA) heard a proposal from its Real Property Probate and Trust Law Section (the Section), which implored the Pennsylvania Supreme Court to lobby the NCBE to put Wills, Trusts & Estates concepts back into the bar exam.⁵ The Section’s report notes that survey respondents queried by the NCBE were not a randomized sample.⁶ The Section report states, “It is hard to imagine an area of law that is more prolific than estates and trusts. The law of estates and trusts is the area in which a person is most likely to need legal assistance during their lifetime.”⁷ And yet, the area was cut by the NCBE after allegedly polling lawyers across the country who said the law did not need to be tested. The American Bar Association Section of Real Property Trust and Estate Law has also questioned whether the survey respondents were representative of the population of U.S. lawyers.⁸ The greatest generational wealth transfer of money in history—over \$68 trillion of property—is predicted to pass from the Baby Boomer generation.⁹ Who will be handling those transactions? Perhaps the better question is, who was really polled for that survey?

States such as Texas are considering remedying these significant topical defects by adding a state-specific component to NextGen UBE.¹⁰ This

⁴ *About the NextGen UBE*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/nextgen/about-nextgen> (last visited Jan. 17, 2026) (on file with UNT Dallas Law Review) (discussed further below, upon receiving pressure to add Wills, Trusts, and Estates, the NCBE has noted this topic will appear in performance test-based tasks).

⁵ Pa. Bar Ass’n, Real Prop., Prob., and Tr. Law Section, RECOMMENDATION REGARDING THE NEXTGEN BAR EXAM (2024) (on file with UNT Dallas Law Review).

⁶ *Id.*

⁷ *Id.*

⁸ Am. Bar Ass’n, Section of Real Prop., Tr. and Est. Law & Section of Fam. Law, DRAFT REP. TO THE HOUSE OF DELEGATES 3–4 (2024).

⁹ Letter from Kurt A. Sommer, President, Am. Coll. of Tr. and Est. Couns., to Judith A. Gunderson, President, NAT’L CONF. OF BAR EXAM’RS (Mar. 30, 2023).

¹⁰ Order Regarding the NextGen Bar Exam and Texas Law Component and Seeking Public Comments, No. 24-9040 (Tex. June 6, 2024), <https://www.txcourts.gov/media/1458783/249040.pdf> (on file with UNT Dallas Law Review).

paper asserts that Pennsylvania should not follow this path because the practical effect of adding a state-specific component to NextGen UBE would bring Pennsylvania back to where it started when it promulgated its own bar examination and used the NCBE's Multistate Bar Examination (MBE) multiple-choice questions.¹¹ The financial costs of paying the NCBE for its lawyer licensing products are confidential.¹² However, it is not unreasonable to consider that adopting a state-specific component on top of NextGen UBE could undoubtedly increase the administration cost, both for the state agency and the bar examinees themselves. Beyond the financial implications, there are serious and unaccounted-for reporting and accreditation considerations to keep in mind.¹³

The Pennsylvania Board of Law Examiners (PABOLE) should consider the blueprints offered by states such as Nevada and Oregon, as well as a unique plan proposed by professors at The University of Detroit Mercy School of Law, to create a new pathway to practice. Such a pathway would allow the newest members of the legal profession to provide pro bono legal services to the underrepresented and would ameliorate access to justice by increasing the availability of legal representation in the rural areas of Pennsylvania.

In a 2024 study by the Center for Rural Pennsylvania, the statewide total of active attorneys aged 60 and older is 15,600.¹⁴ These attorneys are heavily concentrated in Armstrong, Jefferson, Forest, Fulton, Potter, and

¹¹ See *Modern Bar Examination*, PA. BD. OF LAW EXAM'RS, https://www.pabarexam.org/board_information/history/modern.htm (last updated Jan. 27, 2025) (on file with UNT Dallas Law Review) (Pennsylvania administered and graded its own bar exam for decades prior to the adoption of the UBE in 2022).

¹² *Proposed Budget of the Unified Judicial System 2024–2025*, SUPREME CT. OF PA., <https://www.pacourts.us/Storage/media/pdfs/20240216/223326-proposedbudgetoftheunifiedjudicialsystem2024-25.pdf> (on file with UNT Dallas Law Review) (an examination of the Proposed Budget of the Unified Judicial System for 2024–25 by the Supreme Court of Pennsylvania does not specifically itemize the cost of maintaining the Board of Law Examiners and, as a non-profit, the NCBE does not have to disclose its individual financial arrangements with jurisdictions).

¹³ See Nachman N. Gutowski, *Stop the Count: The Historically Discriminatory Nature of the Bar Exam Requires Adjustments in How Bar Passage Rates are Reported, If at All*, 21 SEATTLE J. SOC. JUST. 589 (2023) (ABA standard 316 requires schools to maintain 75% pass rate amongst its recent graduates who take a bar exam, within two years of graduation. However, how pass rates are calculated, reported, and even defined is far from consistent nationally, and having this new state component would only further complicate the matter).

¹⁴ *Percent of Active Attorneys Ages 60 and Older by Pa. Cnty.*, 2024, CTR. FOR RURAL PA., <https://www.rural.pa.gov/datagram/648/Percent-of-Active-Attorneys-Ages-60-and-Older-by-Pennsylvania-County-2024> (on file with UNT Dallas Law Review) (last visited Jan. 17, 2026).

Susquehanna counties, where more than 50% of all practicing attorneys are nearing retirement age.¹⁵ National studies continue to show that rural communities lack access to lawyers.¹⁶ A 2020 study performed by the American Bar Association (ABA) revealed that 1,300 counties in the United States have less than one lawyer per 1,000 residents.¹⁷ A pathway to practice that allows aspiring lawyers to serve in a pro bono capacity while working toward their law license could affect positive change in areas currently considered legal deserts.

In August 2024, the PABOLE asked members from its nine in-state law schools¹⁸ to provide feedback on the adoption of and potential implementation date of the NextGen UBE bar exam.¹⁹ The PABOLE has administered the UBE in Pennsylvania since July 2022 and has not yet publicly announced if (or when) it will adopt the NextGen UBE. Law schools are on the front lines of the lawyer licensure process, and the ABA requires them to ensure all of their graduates achieve a minimum 75% bar passage rate as measured for two years post-matriculation.²⁰ At this juncture, information provided by the NCBE has not addressed the concerns outlined below.

I. NEXTGEN UBE'S SCATTERSHOT ROLLOUT AND RECENT CHANGE IN SOFTWARE PROVIDERS RAISES SIGNIFICANT CONCERNS

The NCBE is a Wisconsin-based non-profit company that develops licensing tests for bar admission and provides character and fitness investigations and other services to state examining boards.²¹ In May 2021,

¹⁵ *Id.*

¹⁶ *Profile of the Legal Profession*, AM. BAR ASS'N (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> (on file with UNT Dallas Law Review).

¹⁷ *Id.*

¹⁸ Soon to become eight with the proposed (and ABA approved) merger of Penn State and Penn State Dickinson law schools. See Devan Drabik-Frey, *ABA Approves Unified Law School for Penn State Dickinson Law and Penn State Law*, PENN STATE ACADEMICS (Nov. 19, 2024), <https://www.psu.edu/news/academics/story/aba-approves-unified-law-school-penn-state-dickinson-law-and-penn-state-law> (on file with UNT Dallas Law Review).

¹⁹ See, e.g., Letter from Pa. Bd. of Law Exam'rs to April M. Barton, Dean, Duquesne Univ. Sch. of L. (Aug. 29, 2024) (on file with author) (requesting feedback on the potential implementation of the NextGen bar exam).

²⁰ *Council Enacts New Bar Passage Standard for Law Schools*, AM. BAR ASS'N (May 2019), <https://www.americanbar.org/news/abanews/aba-news-archives/2019/05/legal-ed-bar-passage-rate/> (on file with UNT Dallas Law Review) (last visited Jan 17, 2026).

²¹ Marsha Griggs, *Outsourcing Self-Regulation*, 80 WASH. & LEE L. REV. 1807, 1828 (2024); See also *Jurisdictions*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/jurisdictions> [<https://perma.cc/W3UPHT66>] (summarizing which jurisdictions use bar examination content controlled by the NCBE).

the NCBE first announced that its Board of Trustees approved the NCBE Testing Task Force's recommendations and had begun to develop NextGen UBE, with a five-year timeline for implementation.²² However, the NCBE did not release its first iteration of NextGen UBE content outlines until May 2022.²³ No NextGen UBE practice questions were released until July 2023.²⁴ The delay in releasing key guidance and materials, coupled with confusion over the new exam's content, format, and grading methodology, has led to much uncertainty about how examinees should prepare for NextGen UBE. This uncertainty will likely impact bar passage outcomes across the country, and there is a real risk that the problems outlined below will lead to disparate bar passage outcomes along socioeconomic, racial, and gender lines.

Significant and continuing research continues to show disparate impact on diverse test takers and that higher proportions of Black and Hispanic students in a law school's entering class are associated with lower first-time bar passage rates in a UBE jurisdiction, even when controlling for causal factors like law school grade point average, Law School Admission Test score, and law school tier.²⁵ There are disproportionate bar examination outcomes based on race and ethnicity, and research suggests that this disproportionality may stem from the exam itself.²⁶ However, instead of assessing its own products and their impact on diverse test takers, the NCBE offers only a distraction by pointing to college and law school enrollment, attorney admissions, and the overall lack of diversity in the legal workforce as the reason why the bar examination itself is not exclusionary.²⁷ The NCBE should be pressed to provide evidence that its examination products offer an unbiased gateway into the profession.

²² *Implementation Timeline*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/about/implementation-timeline/> (on file with UNT Dallas Law Review) (last visited Jan. 17, 2026).

²³ *NCBE Publishes Content Scope for NextGen Bar Exam*, NAT'L CONF. OF BAR EXAM'RS (May 25, 2023), <https://www.ncbex.org/news-resources/ncbe-publishes-content-scope-nextgen-bar-exam> (on file with UNT Dallas Law Review).

²⁴ *NCBE Publishes First Samples of New Question Types for NextGen Bar Exam*, NAT'L CONF. OF BAR EXAM'RS (July 11, 2023), <https://www.ncbex.org/news-resources/ncbe-publishes-first-samples-new-question-types-nextgen-bar-exam> (on file with UNT Dallas Law Review).

²⁵ See Scott Devito, Kelsey Hample & Erin Lain, *Examining the Bar Exam: An Empirical Analysis of Racial Bias in the Uniform Bar Examination*, 55 U. MICH. J. L. REFORM 597, 630–635 (2022).

²⁶ *Id.* at 641–43.

²⁷ Danette W. McKinley, *Focus on Diversity: The Bar Examination and Racial/Ethnic Diversity in the Legal Profession*, THE BAR EXAM'R, <https://thebarexaminer.ncbex.org/article/fall-2022/focus-on-diversity-fall-2022/> (on file with UNT Dallas Law Review) (last visited Nov. 9, 2025).

A. Mixed Messages and Vagaries Can Harm Test Preparation Efforts.

To adequately prepare for any standardized test, one should arguably have a solid grasp of the subject matter of the exam, the format of the exam, and the grading methodology used. With NextGen, all three of these areas are mired in confusion and doubt due to a lack of guidance from the NCBE. This confusion can create substantial problems for bar exam takers and law schools, who are required by the ABA to maintain a 75% bar passage rate for their graduates.²⁸

Additionally, the NCBE made a significant change in the software provider who will deliver the online format of NextGen UBE. On January 31, 2024, the NCBE announced that Pennsylvania-based company Surpass Assessment will provide testing and grading platforms for the NextGen UBE.²⁹ But, in a surprise email sent to a law school listserv in March 2025, NCBE Director of Communications Sophie Martin quietly announced that it had a new partner for its NextGen UBE software—Baltimore-based Internet Testing Systems—which specializes in “AI powered assessment solutions.”³⁰ Internet Testing Systems has been tapped to deliver and enable the grading of the NextGen UBE.³¹ The NCBE has not released any further information as to why this switch was made.

Even the name of the new bar examination was not immune from the vagaries of the NCBE because on April 16, 2025, the test was officially renamed to reflect the “NCBE’s commitment to ensuring a fair exam designed to support score portability.”³² As any lawyer who has taken a bar exam

²⁸ See, *Council Enacts New Bar Passage Standard for Law Schools*, AM. BAR ASS’N, <https://www.americanbar.org/news/abanews/aba-news-archives/2019/05/legal-ed-bar-passage-rate/?login> (on file with UNT Dallas Law Review) (last visited Jan. 17, 2026).

²⁹ NAT’L CONF. OF BAR EXAM’RS, *Surpass Assessment to Provide NextGen Bar Exam Delivery Platform*, NEXTGEN BAR EXAM OF THE FUTURE (Jan. 31, 2024), <https://nextgenbarexam.ncbex.org/surpass-assessment-provide-nextgen-platform/> (on file with UNT Dallas Law Review).

³⁰ Posting of Steven Foster, sfoster@okcu.edu, to Academic-Support-and-BarPrep@google.groups.com (March 12, 2025).

³¹ Brodie Wise, *ITS to Power the NextGen Bar Exam with Proven Exam Delivery and Grading Technology*, EIN PRESSWIRE (Mar. 11, 2025), https://world.einnews.com/pr_new/s/792388624/its-to-power-the-nextgen-bar-exam-with-proven-exam-delivery-and-grading-technology (on file with UNT Dallas Law Review).

³² *Official Name of NextGen Bar Exam Announced*, NAT’L CONF. OF BAR EXAM’RS (Apr. 16, 2025), <https://www.ncbex.org/news-resources/official-name-nextgen-bar-exam-announced#:~:text=The%20official%20name%20of%20the,administration%2C%20and%20scoring%20across%20jurisdictions> (on file with UNT Dallas Law Review).

remembers, much of the bar preparation experience consists of memorizing and regurgitating thousands of rules. To accomplish this task, one must refer to subject outlines and rule explanations in commercial test prep course materials. These materials are prepared to cover the material the testing entity (in this case, NCBE) says is testable so that the bar taker can show the requisite level of competence. In the past, the NCBE provided clear guidance on testable material by publishing free outlines for all subjects tested on both the MBE and the Multistate Essay Exam (MEE).³³ These subject outlines play a critical role in developing commercial bar prep course materials—and ultimately in a student's ability to master the relevant material for the bar exam. Regarding NextGen UBE, the NCBE's guidance on testable subjects has been anything but clear. The NCBE posted "preliminary" scope outlines followed by published scope outlines in May 2023. At that time, it said only the following eight subjects would be tested on the NextGen UBE exam.³⁴

- Business Associations and Relationships (including agency)
- Civil Procedure
- Constitutional Law (including proceedings before administrative agencies)
- Contracts (including Article 2 of the Uniform Commercial Code)
- Criminal Law and Constitutional Protections of Accused Persons
- Evidence
- Real Property
- Torts

An NCBE press release specifically added, "[t]he new exam will no longer require examinees to have a base of knowledge in the areas of Conflict of Laws, Family Law, Trusts and Estates, or Secured Transactions, but these topics may still be included in certain legal scenarios for which examinees are provided relevant reference materials, as in the current Multistate Performance Test."³⁵ However, in October 2023, NCBE announced that Family Law *would* appear on NextGen UBE, but the content outline would

³³ See *MBE Subject Matter Outline*, NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/sites/default/files/2023-01/MBE_Subject_Matter_Outline.pdf (on file with UNT Dallas Law Review) (last visited Feb. 15, 2025) (detailing the MBE's scope of coverage).

³⁴ NCBE Publishes Content Scope for NextGen Bar Exam, NAT'L CONF. OF BAR EXAM'RS, (May 25, 2023), <https://www.ncbex.org/news-resources/ncbe-publishes-content-scope-nextgen-bar-exam> (on file with UNT Dallas Law Review).

³⁵ *Id.*

not be made publicly available until November 2024.”³⁶ The NCBE announced the inaugural panel charged with creating the outline met for the first time in February 2024.³⁷ While the NCBE also noted that Family Law will not be tested on the new exam before July 2028,³⁸ the date itself may not be reliable based on the number of changes that have already been announced and deadlines that have not been met during the rollout of NextGen UBE. When the NCBE published the Family Law subject matter outline, it noted that from July 2026 through February 2028, legal resources of some kind would be provided to examinees whenever Family Law concepts would be tested on the NextGen UBE.³⁹

In addition, while Wills, Trusts, and Estates were originally omitted from the subject list, the NCBE website later stated, “From July 2026 through at least February 2028, trusts and estates concepts will appear on every NextGen UBE exam in a performance task and may also be included in integrated question sets. During this period, trusts and estates concepts will be tested with the provision of legal resources.”⁴⁰ In addition, to date, no Wills, Trusts, and Estates subject matter outline has been made available, and no timelines have been revealed as to when a panel will convene or the comment period will be open. Because the only constant regarding subject matter has been uncertainty, NextGen UBE puts all examinees at a disadvantage.

The scant amount of practice test questions released by the NCBE has sparked concerns about how content will be presented to examinees. Practice questions are a key component of any successful bar preparation effort. In the past, NCBE provided sample MBE questions, which students and commercial bar prep courses could purchase. Also, after use, MEEs and MPTs were released by jurisdictions nationwide.⁴¹ As the NCBE promised new question

³⁶ NCBE Publishes July 2028 Family Law Subject Matter Outline for NextGen Bar Exam, NAT'L CONF. OF BAR EXAM'RS (Nov. 20, 2024), <https://www.ncbex.org/news-resources/family-law-subject-matter-outline-nextgen-bar-exam> (on file with UNT Dallas Law Review); NCBE Announces Members of NextGen Family Law Content Scope Panel, NAT'L CONF. OF BAR EXAM'RS (Feb. 13, 2024), <https://www.ncbex.org/news-resources/nextgen-family-law-content-scope-panel-announced> (on file with UNT Dallas Law Review).

³⁷ NAT'L CONF. OF BAR EXAM'RS, *supra* note 36, <https://www.ncbex.org/news-resources/nextgen-family-law-content-scope-panel-announced>.

³⁸ *Id.*

³⁹ NAT'L CONF. OF BAR EXAM'RS, *supra* note 36, <https://www.ncbex.org/news-resources/family-law-subject-matter-outline-nextgen-bar-exam>.

⁴⁰ NAT'L CONF. OF BAR EXAM'RS, *supra* note 4, <https://www.ncbex.org/exams/nextgen/about-nextgen>.

⁴¹ *Questions and Selected Answers*, TEX. BD. OF L. EXAM'RS, <https://ble.texas.gov/selected-answers> (on file with UNT Dallas Law Review) (last visited Feb. 17, 2025); *Past Exam*

types on NextGen UBE, academic success and bar prep professionals were anxious to see samples of these new question types but have been left with little guidance. In July 2023, the NCBE introduced its first set of practice questions, containing the three types of questions one would see on NextGen UBE.⁴² According to the NCBE, there will be two types of multiple-choice questions on NextGen UBE—the first looks like the traditional MBE-style questions and the second offers six answer choices with two correct answers. The continued reliance on the multiple-choice testing modality raises concerns that the NCBE is refusing to address certain issues.

One issue the NCBE has refused to address regarding the NextGen UBE exam is the gender performance gap. Women consistently perform at a lower level than men on the MBE.⁴³ The first set of NextGen UBE sample questions contained only eight multiple-choice questions, with only three examples in a new format.⁴⁴ On September 20, 2024, the NCBE sent law schools additional practice material, including 40 multiple-choice questions. Ideally, this would be good news. Unfortunately, many of these 40 questions are the old style of question, and only three of these 40 questions are written in the new testing format. Thus, bar professionals have very limited guidance in developing new practice questions that will prepare graduates for NextGen UBE. Accordingly, because the NCBE is merely adding new types of multiple-choice questions, the gender performance disparity remains unaddressed on NextGen UBE.

The July 2023 material from NCBE also included a completely new question style called the Integrated Question Set (IQS). Each set contains a complex array of questions that stem from a multi-part fact pattern. The IQS

Essay Questions with Sample Candidate Answers, N.Y. STATE BD. OF L. EXAM'RS, <https://www.nybarexam.org/ExamQuestions/ExamQuestions.htm> (on file with UNT Dallas Law Review) (last visited Jan. 17, 2026).

⁴² *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 Feb. 17, 2025).

⁴³ See generally Jane Bloom Grisé, *Question #1: Is There a Gender Gap in Performance on Multiple Choice Exams? A. Always B. Never C. Most of the Time*, 43 WOMEN'S RTS. L. REP. 140, 156 (2021) (noting that even before 2005, psychometricians had observed that women did not perform as well as men on the MBE); see also Stephen P. Klein & Roger Bolus, *The Size and Source of Differences in Bar Exam Passing Rates Among Racial and Ethnic Groups*, 66 THE BAR EXAM'R 8, 11 (1997) (noting that “there is a small gender effect: women score slightly higher than men on the essay section while the reverse is true on the MBE.”).

⁴⁴ *Sample NextGen Bar Exam Multiple-Choice Questions*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/multiple-choice-questions/> (on file with UNT Dallas Law Review) (last visited Feb. 17, 2025).

is a huge deviation from the question types in the current UBE. Unfortunately, the July 2023 practice material contained only two sample IQSs—and the additional material provided in September 2024 contained only two more IQSs.⁴⁵ Thus, the total number of available IQSs is now four. How can any law school prepare its examinees for a rigorous licensure examination using only four sample questions?

Finally, NextGen UBE is purportedly going to feature a Performance Test (PT) component. According to the NCBE, this component will resemble the current Multistate Performance Test (MPT). Before September 2024, the NCBE posted only one sample PT,⁴⁶ and the September material doubled that count by adding another PT. At the AccessLex conference, LexCon, held in November 2024 in Salt Lake City, NCBE representatives hinted that the organization intends to shift the grading focus of the MPT. For an examination that is slated to roll out this year, the lack of clarity and focus on grading impacts preparation.

Vague information on the new scoring scheme will make it harder for examinees to gauge their progress and could make for an administrative nightmare across jurisdictions. Questions surrounding the scoring of NextGen UBE and the portability of that score make the preparation for this exam even more confusing. This should be a primary concern for all jurisdictions that are considering the adoption of NextGen UBE. The NCBE offers insufficient guidance for jurisdictions regarding how to score this new exam. It states, “[t]he changes to the NextGen UBE exam are substantial enough to necessitate adoption of a new score scale. That means jurisdictions will need to set new passing scores. NCBE will support jurisdictions in conducting a standard-setting study to provide a range of scores based on which jurisdictions would make the policy decisions related to setting their passing score requirements.”⁴⁷

The variability in cut scores that determine an applicant’s ability to take advantage of a “portable” score on the UBE is a key issue that appears likely to continue with the adoption of NextGen UBE. For an examination designed to assess an applicant’s competency to practice law in any given

⁴⁵ *Sample NextGen Bar Exam Integrated Question Sets*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/integrated-question-sets/> (on file with UNT Dallas Law Review) (last visited Feb. 17, 2025).

⁴⁶ *Sample NextGen Bar Exam Performance Task*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/performance-task/> (on file with UNT Dallas Law Review) (last visited Feb. 17, 2025).

⁴⁷ *FAQs about Recommendations*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/faqs/> (on file with UNT Dallas Law Review) (last visited Feb. 17, 2025).

jurisdiction, the variability of cut scores across the country calls into question the real meaning of the scores as a reliable measure of protecting the public from incompetent practitioners. States may, and have, changed cut scores, including Pennsylvania, which dropped its cut score from 272 to 270 on December 27, 2023.⁴⁸ Law schools supported the change in cut score, which brought Pennsylvania into line with neighboring states. However, applicants cannot rely on the consistency of these cut scores year after year, and there is no guidance on how these scores might change nationwide upon the adoption of NextGen UBE.

A handful of jurisdictions in the first wave of NextGen UBE adopters have agreed to accept UBE scores while that exam is still being offered.⁴⁹ However, the question of how UBE jurisdictions waiting to adopt NextGen UBE will view the test scores remains open. For future bar takers, the idea of how, when, and what scores are needed makes the idea of portability just that—an idea. A lack of clarity surrounding the portability for examinees taking NextGen UBE in 2026, while other examinees are still sitting for the UBE, has the potential to be unnecessarily punitive for examinees nationwide and become an administrative nightmare for jurisdictions.

B. Pilot Test Results are Questionable, and Score Calibration from UBE to NextGen UBE Remains Unclear.

A July 2024 statement from The Association of Academic Support Educators (AASE) criticized the validity of the pilot test and asserted that the “scattershot” rollout of NextGen UBE “may exacerbate disparate bar passage outcomes.”⁵⁰ The AASE statement notes that the pilot test was conducted before Family Law and Wills and Estates were reintroduced into the exam and that “only limited and self-reported information is published about the outcomes of the pilot testing.”⁵¹ The pilot test results were the key factor in

⁴⁸ *Bar Examination - Cut Score Change*, PA. BD. OF LAW EXAM’RS (Oct. 23, 2025), https://www.pabarexam.org/bar_exam_information/bescorechange.htm#:~:text=On%20December%202023%20the,transfers%20from%2020272%20to%2020270 (on file with UNT Dallas Law Review).

⁴⁹ NAT’L CONF. OF BAR EXAM’RS, *supra* note 4, <https://www.ncbex.org/exams/nextgen/about-nextgen> (noting that jurisdictions transitioning to the NextGen Bar Exam will continue to accept current UBE scores for portability during the transition period, subject to each jurisdiction’s time limits).

⁵⁰ *Scattershot Rollout of NextGen Exam May Exacerbate Disparate Bar Pass Outcomes*, ASS’N OF ACAD. SUPPORT EDUCATORS (July 9, 2024), <https://associationofacademicsupptoreducators.org/statements/scattershot-rollout-of-nextgen-exam-may-exacerbate-disparate-bar-pass-outcomes/> (on file with UNT Dallas Law Review).

⁵¹ *Id.*

the launch of NextGen UBE, but those results may now be questionable. During the development process, Duquesne-Kline School of Law participated in both pilot testing sessions offered by the NCBE. However, the input and output of those testing events is questionable because much of the data comes from newly licensed lawyers, not current law students.⁵² While there cannot be any public discussion of the content of the pilot testing due to an extensive non-disclosure agreement, we can comment on information made public by the NCBE on June 3, 2024.⁵³

Additionally, a financial incentive was offered to takers of these pilot tests, and there was little incentive for takers to perform well aside from a generalized sense of duty that varied from taker to taker.⁵⁴ Newly licensed lawyers would have just completed the ten-to-twelve-week marathon of bar preparation and were taking time from work to complete these exams. There is a valid and logical concern that the data gathered regarding minimum competence is skewed.⁵⁵ Relying on this limited data set as any kind of proof of the validity of this new test should be carefully considered.

Finally, after completing the pilot testing of 2,500 individuals, the NCBE announced it would no longer assert that NextGen UBE would provide materials such as the Federal Rules of Evidence for examinees.⁵⁶ This was a primary draw for developing a more practice-ready examination, where a new lawyer would be given the law and then asked to apply it to a provided set of facts. Now, NextGen UBE will rely more heavily on memorization than previously advertised.

II. THE DISPARATE IMPACT ON APPLICANTS FROM POOR AND MINORITY COMMUNITIES

The above discussion explains how the NCBE roll-out has resulted in confusion among bar professionals and bar applicants, and this confusion could likely harm ABA-mandated bar passage efforts. We must also consider whether this harm will have a greater impact on bar applicants from communities of color. An article titled *Onerous Disabilities And Burdens: An*

⁵² NCBE Publishes Results of NextGen Pilot Test Research, NAT'L CONF. OF BAR EXAM'RS, (June 3, 2024), <https://www.ncbex.org/news-resources/results-nextgen-pilot-test-research> (on file with UNT Dallas Law Review).

⁵³ *Id.*

⁵⁴ Steven Foster & Nachman N. Gutowski, *Breaking the Cycle: Rethinking Bar Exam Scoring and Portability for NextGen Examinees*, 8 UNT DALL. L. REV. ON THE CUSP 33 (2026).

⁵⁵ *Id.*

⁵⁶ *Id.*

Empirical Study Of The Bar Examination’s Disparate Impact On Applicants From Communities Of Color, discusses this disparate impact of the bar exam.⁵⁷ The article states that “[w]ithout a detailed analysis of how test takers perform when categorized by overall score, and ethnicity, it is impossible to understand why the exam is biased.”⁵⁸ This statement is particularly concerning as the NCBE moves forward with NextGen UBE without a clear and detailed analysis of how this new exam might impact communities of color. Further, the article recommends that “[n]ow that our study has conclusive evidence about racial bias in the bar, exploring issues of bias in the test composition and inequities in resources needed to succeed on [NextGen UBE] need to be evaluated.”⁵⁹

It is logical to suspect that inequities access to bar prep resources will lead to unequal results on the bar exam. We can expect that these inequities will be exacerbated because exam components will be, as they have been thus far, scarce and confusing. As released study and preparation resources are scant, practice materials will likely be expensive to procure because commercial bar prep companies will have to scramble to develop test preparation material to adequately prepare their customers. Students already pay a premium for bar preparation materials, with some providers charging as much as \$5,999 for bar exam courses.⁶⁰ Those graduates who do not have access to these newly created materials—or cannot afford to purchase them—will be left scrounging for options.

The best way to overcome the financial hurdles of bar preparation is for students to prepare earlier, with guidance from law schools. The NCBE’s constant alterations to the content and scope of the test makes it impossible for schools to teach the necessary skills to students while they are still in law school. States administering the exam in July 2026 are thrusting a test upon a group of students who entered law school with a different expectation of the exam, leaving schools unable to adjust the first-year curriculum in time. The NCBE timeline and lack of clarity will have the greatest impact on potential

⁵⁷ Scott DeVito, Kelsey Hample & Erin Lain, *Onerous Disabilities and Burdens: An Empirical Study of The Bar Examination’s Disparate Impact on Applicants from Communities of Color*, 43 PACE L. REV. 205, 206 (2023) (discussing the disparate impact of the Bar Examination on communities of color).

⁵⁸ *Id.* at 243.

⁵⁹ *Id.* at 245.

⁶⁰ See 2026 Bar Exam Review, BARBRI, <https://www.barbri.com/bar-review-course/2025-bar-exam-prep> (on file with UNT Dallas Law Review) (last visited Jan 17, 2025) (offering bar exam courses where prices ranging from \$1,699 for a bare bones package to \$5,999 for extended bar review packages).

lawyers from already disadvantaged populations and schools serving those communities.

III. OUTSOURCING LAWYER LICENSING TO THE NCBE DOES NOT GUARANTEE PROTECTIONS TO THE PUBLIC OR THE LEGAL PROFESSION

As Pennsylvania considers adopting and implementing NextGen UBE, the state would be adopting a test that will be vastly understudied for its reliability and fairness. As noted above, the “scattershot” rollout of this new examination raises more questions than answers, as does the NCBE’s lack of transparency regarding the make-up, content, and grading of its new product.⁶¹ A lack of transparency stymies healthy self-regulation in a profession that is uniquely tasked with regulating its membership to protect the public.⁶²

Pennsylvania adopted the UBE in July 2022 after administering an examination that had not changed for over 20 years.⁶³ According to reports at the time, the adoption of the UBE was highly favored by the PABOLE due to the ability of successful takers to have a portable score.⁶⁴ Today, more boards of law examiners across the country are coalescing against the administration of one high-stakes examination as the only way to determine whether an applicant has obtained the high level of competence needed to practice law.

⁶¹ Marsha Griggs, *Outsourcing Self-Regulation*, 80 WASH. & LEE L. REV. 1807, 1834–35 (2024) (describing the “almost familial relationship” between the NCBE, the American Bar Association, and boards of law examiners that leads to a lack of transparency that is almost never demanded or expected from the NCBE acting as a quasi-regulator); *See also* Nachman N. Gutowski, *NextGen Licensure & Accreditation*, 22 U.N.H.L Rev. 311, 316 (2024) (explaining that NCBE’s move to the NextGen exam will impact law students, law school curriculum, and ABA accreditation standards and the extent of such impact is unclear); Keith W. Rizzardi, *Excess Confidentiality: Must Bar Examiners Defy Administrative Law and Judicial Transparency?*, 34 GEORGETOWN J. OF LEGAL ETHICS 423, 431 (2021) (explaining that bar examiners possess “consequential regulatory powers” and are “[r]ecognized by the states as a regulatory administrative agency”).

⁶² Ashley London, *Who Watches the Watchmen? Using the Law Governing Lawyers to Identify the Applicant Duty Gap and Hold Bar Examiner Gatekeepers Responsible*, 2023 MICH. ST. L. REV. 377, 408 (2023) (discussing how the lack of transparency stymies healthy self-regulation within the NCBE).

⁶³ See *Uniform Bar Exam (UBE) Information*, PA. BD. OF L. EXAM’RS (Oct. 23, 2025), https://www.pabarexam.org/bar_exam_information/UBEInfo.htm (on file with UNT Dallas Law Review).

⁶⁴ See *Pennsylvania Board of Law Examiners Announces that July 2021 Bar Exam Will Be Remote and that Pennsylvania Will Adopt the UBE in 2022*, PA. BD. OF L. EXAM’RS (Feb. 12, 2021), <https://www.pacourts.us/Storage/media/pdfs/20210518/131131-pennsylvaniaboardoflawexaminersannouncesthatjuly2021barexamwillberemoteandthatpennsylvaniawilladopttheubein2022-011163.pdf> (on file with UNT Dallas Law Review).

Task forces in jurisdictions such as Nevada and Oregon recently announced plans to proceed with alternative licensing processes, joining states like Wisconsin and New Hampshire, which have long offered diploma privileges to qualified law graduates.⁶⁵ If Pennsylvania delays the adoption of NextGen UBE to appoint a task force under the aegis of the Pennsylvania Board of Law Examiners, it will join others such as Delaware, California, Minnesota, and Utah—all states actively considering their roles in the process of lawyer licensing beyond allowing the NCBE to control the number of new lawyers allowed to practice in each jurisdiction.⁶⁶

That power disparity and lack of ability to control the NCBE have never been more evident than in the forced adoption of NextGen UBE. In October 2023, the NCBE announced that it would only make the UBE available to jurisdictions for purchase and use through February 2028.⁶⁷ Therefore, the NCBE is unequivocally directing supreme courts across the country as to how and when a bar examination will be available. This action by the NCBE—stating an absolute end date for the UBE and offering only the NextGen UBE product—is an attempt to hijack the regulatory responsibilities of state supreme courts. It is up to the state supreme courts to determine how and when their lawyers will be licensed, not a company based in Wisconsin, a state that has offered diploma privilege for law graduates since 1870.⁶⁸

Finally, even the topics tested on NextGen UBE are controlled by the NCBE, in contravention to the stated goals and desires of practicing lawyers across the country. In May 2023, the NCBE announced that Conflicts of Law, Family Law, Trusts and Estates, and Secured Transactions would no longer

⁶⁵ See *Jurisdictions*, LAW. LICENSING RES., <https://lawyerlicensingresources.org/jurisdictions> (on file with UNT Dallas Law Review) (last visited Sept. 24, 2024) (Lawyer Licensing Resources is a collaborative group of nationally recognized law professors who have studied and written about the bar examination, legal education, and lawyer licensing. The group is committed to working with jurisdictions interested in exploring the adoption of alternatives to the bar examination.)

⁶⁶ See Gutowski, *supra* note 61.

⁶⁷ See NCBE Announces Update to NextGen Exam Content, Extends Availability of Current Bar Exam, NAT'L CONF. OF BAR EXAM'RS (Oct. 25, 2023), <https://www.ncbex.org/news-resources/update-nextgen-exam-content-extends-availability> (on file with UNT Dallas Law Review).

⁶⁸ Stephen Levine, *End Separate-but-Equal Bar Admission*, 75 WIS. LAW. 12 (Dec. 01, 2002), <https://www.wisbar.org/newspublications/wisconsinlawyer/pages/Article.aspx?Volume=75&Issue=12&ArticleID=251> (on file with UNT Dallas Law Review); see also Beverly I. Moran, *The Wisconsin Diploma Privilege: Try It, You'll Like It*, 2000 WIS. L. REV. 645 (2002).

be considered required knowledge for NextGen UBE.⁶⁹ In late May 2024, the NCBE retracted that statement by stating that Family Law will appear in every NextGen UBE either in a performance test or an integrated question set from July 2026 through February 2028.⁷⁰ In March 2024, the Real Estate Probate and Trust Law Section of the Pennsylvania Bar Association issued a recommendation to the Pennsylvania Board of Law Examiners to include trust and estate law as a foundational concept on the Pennsylvania bar exam because, “it is as fundamental to the practice of law and equal access to justice as torts, contracts and real property.”⁷¹ Even after surveying 14,000 lawyers from a range of practice experience levels, the NCBE did not include Family Law or Trust and Estates in its first iteration of NextGen UBE.⁷² According to the 2023 ABA Profile of the Legal Profession, Family Law is the most common area of legal service for pro bono clients, followed by Criminal Law, Litigation, Estate Planning or Probate, Immigration, and Real Estate Law.⁷³

Like the UBE, NextGen UBE will not feature state-specific laws. Instead, it will test common law concepts and require aspiring lawyers to specialize in jurisdictionally neutral law. Upon successful completion of NextGen UBE, a newly licensed lawyer will still need to learn a significant amount of jurisdiction-specific law in order to be minimally competent to represent clients.

⁶⁹ See *Some Subjects to Be Removed from MEE in 2026*, NAT'L CONF. OF BAR EXAM'RS (July 17, 2023), <https://www.ncbex.org/news-resources/some-subjects-be-removed-mee-2026> (on file with UNT Dallas Law Review).

⁷⁰ Julianne Hill, *Group Slams NCBE for “Scattershot” Approach to Offering NextGen Bar Exam Information*, ABA J. (July 11, 2024), <https://www.abajournal.com/web/article/aase-slams-ncbe-for-scattershot-approach-to-offering-nextgen-information> (on file with UNT Dallas Law Review).

⁷¹ Letter from Michael Burns, Chair, Real Prop., Prob. & Tr. Law Section, Pa. Bar Ass'n, to author (on file with author Ashley M. London).

⁷² See *NextGen Bar Exam Media Fact Sheet*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/media-resources> (on file with UNT Dallas Law Review) (last updated Nov. 18, 2025) (“The skills and concepts to be tested were developed through a multi-year, nationwide legal practice analysis, focused on the most important knowledge and skills for newly licensed lawyers (defined as lawyers within their first three years in practice).... The practice analysis surveyed over 14,000 attorneys, focusing on both seasoned attorneys supervising newly licensed attorneys and newly licensed attorneys themselves.”)

⁷³ 2023 *Profile of the Legal Profession*, AM. BAR ASS'N 69 (2023), <https://www.americanbar.org/content/dam/aba/administrative/news/2023/potlp-2023.pdf> (on file with UNT Dallas Law Review).

IV. THE NEXTGEN UBE BAR EXAM IS NOT THE ONLY OPTION FOR LAWYER LICENSURE

Despite the attention and rhetoric of the NCBE, NextGen UBE is not the only way to license new lawyers across the country. Though the NCBE constantly publicizes states adopting NextGen UBE, the majority of the states currently committed to NextGen UBE have relatively few total bar takers, with the exception of New York.⁷⁴ California and Nevada announced they will not administer the new test.⁷⁵ Florida, Georgia, and Illinois—each with a substantial population of test takers—have committed to NextGen UBE yet delayed administering the exams until July 2028.⁷⁶ This waiting period offers ample opportunity for the states to revoke their decisions. The initial administration of NextGen UBE in July 2026 will have less than 5% of the total bar takers nationwide, and by July 2027, that number will increase but remain below 20%.⁷⁷

The current licensure climate provides Pennsylvania with an opportunity to lead other jurisdictions, resulting to a better licensing environment. Empirically, states with larger populations impact other states' decisions. The UBE illustrates this phenomenon. While smaller states adopted the UBE slowly in the first few years, New York's decision to adopt the UBE in 2016 resulted in the vast majority of the northeastern jurisdictions administering the test within a couple of years.⁷⁸ Similarly, Texas' decision

⁷⁴ Compare *NextGen UBE (July 2026)*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/nextgen> (on file with UNT Dallas Law Review) (last visited Jan 17, 2026) with *Bar Exam Results by Jurisdiction*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/statistics-research/bar-exam-results-jurisdiction> (on file with UNT Dallas Law Review) (last visited Jan 17, 2026) (the first site shows current NextGen adopters while the second site provides July 2023 state-by-state taker information); *New York Latest to Adopt NextGen Bar Exam*, N.Y.L.J. (Jan. 09, 2025), <https://www.law.com/nywylawjournal/2025/01/09/new-york-latest-to-adopt-nextgen-bar-exam/> (on file with UNT Dallas Law Review) (New York announced it will adopt NextGen on January 9, 2025, and will administer the exam in 2028).

⁷⁵ *NextGen Bar Exam Adoptions*, ASS'N OF ACAD. SUPPORT EDUCATOR, <https://associationofacademicsupportededucators.org/resources/resources-nextgen-bar-exam/> (on file with UNT Dallas Law Review) (last visited Jan. 17, 2026).

⁷⁶ NAT'L CONF. OF BAR EXAM'RS, *supra* note 74, <https://www.ncbex.org/exams/nextgen>.

⁷⁷ Nachman N. Gutowski et al., *Questioning the Inevitability of the NextGen Bar Examination*, SSRN (Aug. 8, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4905722 (on file with UNT Dallas Law Review)

⁷⁸ Kaplan, *New York's Decision to Adopt the Uniform Bar Exam May be Welcome News to Law School Grads, Says Kaplan Bar Review*, <https://www.kaptest.com/blog/press/2015/05/06/new-yorks-decision-to-adopt-the-uniform-bar-exam-may-be-welcome-news-for-law-school-grads-says-kaplan-bar>

to adopt the UBE promptly led Oklahoma to adopt the exam.⁷⁹ Pennsylvania's decision can and will impact states across the country.

As stated above, the NCBE's NextGen UBE campaign has been plagued with missteps, from a lack of guidance on content to the inability to explain how the test will be scored. The exam's content changed multiple times in 2024, first eliminating Family Law and Estate Administration, then adding back both topics in different formats on the exam.⁸⁰

In January 2024, the NCBE announced it would partner with nonprofit organization AccessLex Institute to collaborate in the development of NextGen UBE study aids.⁸¹ Practice problems from the NCBE and AccessLex⁸² remain limited, and even when schools receive information about content, faculty are extremely limited with how the information can be used with students.⁸³ The NCBE's lackluster responses to these issues have discouraged any hope the test will be an accurate assessment of minimum

review/#:~:text=New%20York%2C%20NY%20(May%206,other%20state%20in%20the%20country (on file with UNT Dallas Law Review) (last visited Nov. 9, 2025).

⁷⁹ See *UBE Jurisdictions and First Administration Dates*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/ube/list-ube-jurisdictions> (on file with UNT Dallas Law Review) (last visited Jan. 19, 2026).

⁸⁰ NAT'L CONF. OF BAR EXAM'RS, *supra* note 69, <https://www.ncbex.org/news-resources/some-subjects-be-removed-mee-2026>; *Will the NextGen UBE Test Family Law and Trusts and Estates?*, NAT'L CONF. OF BAR EXAM'RS, <https://help.ncbex.org/hc/en-us/articles/39895941319323-Will-the-NextGen-UBE-test-family-law-and-trusts-and-estates> (on file with UNT Dallas Law Review) (last visited Nov. 8, 2025).

⁸¹ *NCBE Selects AccessLex Institute Assist Study Aid*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/news-resources/ncbe-selects-accesslex-institute-assist-study-aid> (on file with UNT Dallas Law Review) (last visited Nov. 8, 2025).

⁸² AccessLex Institute is a non-profit organization supporting all aspects of legal education through pre-law, law school, and bar exam research, programming, and grants. In January 2024, AccessLex Institute was chosen by the NCBE to "partner" in the creation of preparatory materials for the NextGen bar exam. See Press Release, Nat'l Conf. of Bar Exam'rs, National Conference of Bar Examiners Selects AccessLex Institute to Assist in Study Aid Development for NextGen Bar Exam, (January 8, 2024), <https://www.ncbex.org/news-resources/ncbe-selects-accesslex-institute-assist-study-aid> (on file with UNT Dallas Law Review).

⁸³ Email from Sophie Martin, Director of Communications, Education, and Outreach for the National Conference of Bar Examiners dated Sept. 20, 2024 ("NextGen Practice Set 1 may be shared with your faculty ((please also share this email, which contains important background information and the password to access the practice set)). It is not for distribution to any other persons or entities, including to law school students or other individuals preparing to take the bar exam."); Email from Sophie Martin, Director of Communications, Education, and Outreach for the National Conference of Bar Examiners dated Dec. 11, 2024 ("The practice set is not for distribution to any other persons or entities, including law school students").

competence to practice law. The UBE scales essay scores to multiple-choice performance, and preliminary discussions about NextGen UBE have suggested it could be the same.⁸⁴ The NCBE claims non-scaled essay grading invokes subjectivity that isn't statistically reliable or valid.⁸⁵

While the NCBE perpetuates the notion that most states will adopt NextGen UBE by 2028,⁸⁶ the statistics demonstrate a different reality. NextGen UBE is not required to assess minimum competence, and Pennsylvania already possesses the expertise to employ better methods of determining who is permitted to practice law.⁸⁷

V. CONSIDERING ALTERNATIVE PATHWAYS TO LICENSURE

Pennsylvania would not be an outlier state in considering alternative pathways to licensure. Today, more state boards of law examiners across the country are coalescing against the administration of one high-stakes examination as the only way to determine whether an applicant has obtained the level of competence needed to practice law.⁸⁸

In May 2024, the ABA officially revised its policy on lawyer licensure to encourage jurisdictions to explore diverse pathways to licensure.⁸⁹ Jurisdictions such as Nevada⁹⁰ and Oregon⁹¹ recently announced

⁸⁴ NAT'L CONF. OF BAR EXAM'RS, *supra* note 4, <https://www.ncbex.org/exams/nextgen/about-nextgen>.

⁸⁵ See Susan M. Case, *The Testing Column: Scaling, Revisited*, 89 THE BAR EXAM'R 68, 68–75 (2020) (on file with UNT Dallas College of Law).

⁸⁶ See NAT'L CONF. OF BAR EXAM'RS, *supra* note 4 <https://www.ncbex.org/exams/nextgen/about-nextgen>.

⁸⁷ See generally *NextGen Content Scope*, NAT'L, CONF. OF BAR EXAM'RS, <https://www.ncbe.org/exams/nextgen/content-scope> (on file with UNT Dallas Law Review) (last visited Nov. 9, 2025); see generally PENNSYLVANIA BOARD OF LAW EXAMINERS, <https://pabarexam.org/> (on file with UNT Dallas Law Review) (last visited Nov. 9, 2025).

⁸⁸ Karen Sloan, *States Should Consider Bar Exam Alternatives Chief Justices Say*, REUTERS <https://www.reuters.com/legal/government/states-should-consider-bar-exam-alternatives-chief-justices-say-2025-07-30/> (on file with UNT Dallas Law Review) (last visited Nov. 9, 2025).

⁸⁹ See Christine Charnosky, *Legal Experts Weigh In on ABA's Support of Alternative Pathways to the Bar*, LAW.COM (May 22, 2024, 12:20), <https://www.law.com/2024/05/22/legal-experts-weigh-in-on-abas-support-of-alternative-pathways-to-the-bar/> (on file with UNT Dallas Law Review).

⁹⁰ Julianne Hill, *Nevada green-lights three-pronged plan to licensure*, ABA J. (Sept. 12, 2024, 14:24 CDT), <https://www.abajournal.com/web/article/nevada-green-lights-three-pronged-plan-to-licensure> (on file with UNT Dallas Law Review).

⁹¹ See Licensure Pathway Development Committee, OR. STATE BAR, <https://lpdc.osbar.org/> (on file with UNT Dallas Law Review) (last visited Jan. 17, 2026).

plans to proceed with alternative licensing processes, joining states like Wisconsin and New Hampshire who have long offered diploma privilege to qualified law graduates.⁹²

Oregon's Supervised Practice Portfolio Examination allows ABA-accredited law school graduates to join the state's bar by completing a 675-hour paid apprenticeship under a qualified, supervising Oregon-licensed lawyer instead of taking a bar examination.⁹³ Requirements for the apprenticeship program include leading two client interviews or counseling sessions, leading two negotiations, and producing eight pieces of written work product.⁹⁴ Applicants are still required to complete the Oregon Board of Law Examiners' bar exam application which requires an extensive character and fitness examination.⁹⁵ Oregon will also adopt the NextGen UBE bar exam in July 2026.⁹⁶

In March, the Washington Supreme Court approved additional pathways to bar membership involving supervised practice including graduate apprenticeships, a law school experiential pathway, and the proposal also includes provisions for reciprocity.⁹⁷ Washington will also adopt the NextGen UBE bar exam in July 2026.⁹⁸

In September 2024, the Nevada Supreme Court approved a progressive plan to develop a bar exam-alternative lawyer licensing pathway that does not include a traditional national bar examination.⁹⁹ This three-pronged recommendation first includes a Foundational Law Exam—a closed book multiple-choice test in foundational areas of law such as Contracts,

⁹² *Diploma Privilege*, UNIVERSITY OF WISCONSIN MADISON, https://law.wisc.edu/current/diploma_privilege (on file with UNT Dallas Law Review) (last visited Nov. 9, 2025); *NH Bar Admissions*, NEW HAMPSHIRE JUDICIAL BRANCH, <https://www.courts.nh.gov/lawyers/nh-bar-admissions> (on file with UNT Dallas Law Review) (last visited Nov. 9, 2025).

⁹³ *SPPE Home*, OR. STATE BAR, <https://www.osbar.org/sppe> (choose “Applicant completes all program requirements” under SPPE Process Flowchart) (last visited Feb. 17, 2025).

⁹⁴ *Id.*

⁹⁵ See generally *SPPE Home*, *supra* note 93.

⁹⁶ See NAT'L CONF. OF BAR EXAM'RS, *supra* note 4.

⁹⁷ *Supreme Court Approves Alternative Pathways to Lawyer Licensure in Washington State*, WASH. CTS., <https://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=50389> (on file with UNT Dallas Law Review) (last visited Nov. 17, 2025).

⁹⁸ *NextGen UBE (July 2026)*, NAT'L CONF. OF BAR EXAM'RS, *supra* note 74.

⁹⁹ Karen Sloan, *Nevada Sets Unique Alternative for Lawyer Licensing, Rejects new National Bar Exam*, REUTERS (Sept. 11, 2024, 12:22 CDT), <https://www.reuters.com/legal/government/nevada-sets-unique-alternative-lawyer-licensing-rejects-new-national-bar-exam-2024-09-11/> (on file with UNT Dallas Law Review).

Torts, and Civil Procedure.¹⁰⁰ The recommended examination will be offered four times a year, and students can take it during law school.¹⁰¹ The second prong is a Nevada Lawyering Performance Test.¹⁰² This test is akin to a traditional MPT or “closed-universe” assignment, requiring takers to analyze facts and case law to produce an advocacy memo or bench brief.¹⁰³ The recommendation states the test will be offered after the spring and fall law school semesters.¹⁰⁴ The last prong is the Supervised Practice Program.¹⁰⁵ This program includes approved practice externships or clinics in law school, pro bono work during a law firm clerkship, or 60 hours of supervised practice in qualified programs.¹⁰⁶ Notably, most of the components could be completed during law school.¹⁰⁷

Oregon, Washington, and Nevada each implemented task forces that studied the lawyer licensing system in their jurisdictions after the COVID-19 pandemic.¹⁰⁸ They each found the same thing: The presumption that a single bar examination administered only two times per year accurately assessed lawyer competency (and thereby protected the public) was an outdated and illusory concept.¹⁰⁹

A. A Proposed Michigan Plan Expands on Nevada Plan and Would Work Well in Pennsylvania.

The unique “Michigan Model” developed by professors at Detroit Mercy Law encompasses the “Nevada Plan” and, if adopted by Pennsylvania, would allow for the transfer of NextGen UBE Bar Exam scores at a score that

¹⁰⁰ Richard Trachok, *The Nevada Plan — Nevada’s Comprehensive Licensing Examination*, ST. BAR OF NEV. (July 19, 2024), <https://nvbar.org/the-nevada-plan-nevadas-comprehensive-licensing-examination/> (on file with UNT Dallas Law Review).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Trachok, *supra* note 100.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Marilyn Cavicchia, *In Wake of COVID-19, Several Jurisdictions Explore Other Ways to License New Lawyers*, AM. BAR ASS’N (Nov. 1, 2022), https://www.americanbar.org/groups/bar-leadership/publications/bar_leader/2022-23/fallissue/in-wake-of-covid-19-several-jurisdictions-explore-other-ways-to-license-new-lawyers/ (on file with UNT Dallas Law Review); Press Release Detail, Washington Courts, Supreme Court Approves Alternative Pathways to Lawyer Licensure in Washington State, (March 15, 2024), <https://www.courts.wa.gov/newsinfo/?fa=newsinfo.pressdetail&newsid=50389> (on file with UNT Dallas Law Review); Trachok, *supra* note 100.

¹⁰⁹ *Id.*; *see also* Gutowski, *supra* note 61.

would be determined by the Supreme Court of Pennsylvania and the PABOLE.¹¹⁰ Pennsylvania would also retain all current requirements for character and fitness, which includes a demonstrated understanding of ethical obligations by achieving a passing score on the Multistate Professional Responsibility Examination (MPRE).¹¹¹

The Nevada Plan rests on five key standards: (1) using the best available contemporary research about minimum competence; (2) costing the State Bar no more than the current bar exam; (3) reducing the time and money that candidates currently devote to preparing for the bar exam; (4) omitting unnecessary barriers that might exclude candidates with caretaking responsibilities, those from disadvantaged backgrounds, and those who live with disabilities; and (5) ensuring psychometric soundness—i.e., that the Nevada Plan is valid, reliable, fair, educationally effective, and feasible.¹¹² Like the Nevada Plan, the proposed Michigan Model would take the same three-prong approach to licensing that seems ideally suited to the Commonwealth:

- **A 100-Question Multiple-Choice Foundational Knowledge Exam:**¹¹³ The test would be offered four times a year at remote testing centers. The exam would be available as early as the end of a candidate's third semester of law school (after completing 42 credits) when a candidate would traditionally have completed the foundational subjects. Like California, Pennsylvania could contract with an outside commercial vendor to create

¹¹⁰ See Sarah Garrison, et.al., *Beyond NextGen UBE: A Blueprint for Michigan's Independent Bar Licensing Model*, SSRN (May 24, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5253403 (on file with UNT Dallas Law Review).

¹¹¹ *Pennsylvania*, NAT'L, CONF. OF BAR EXAM'RS, <https://www.ncbex.org/jurisdictions/PA> (on file with UNT Dallas Law Review) (last visited Jan. 24, 2026) (Pennsylvania requires a 75 on the MPRE).

¹¹² See Foundational Subject Requirement and Performance Test Implementation Task Force and the Supervised Practice Task Force Joint Report (Apr. 1, 2024), Dkt. No. 24-11608, <https://caseinfo.nvsupremecourt.us/public/caseView.do?csID=63512> (on file with UNT Dallas Law Review).

¹¹³ The test would consist of topics covered in the first three to four semesters at most law schools, and which have traditionally appeared on the MBE, although the scope of content would not be as extensive as the topics listed in the current MBE content outlines. The Nevada plan consists of 20 foundational concepts in seven subject matter areas: Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Property, and Torts. The topic outlines for the Nevada exam are available here: <https://nvbar.org/nvplan/fle/>.

statistically reliable multiple-choice questions.¹¹⁴

- **A Post-Graduation Lawyering Performance Examination:** This would consist of three two-hour performance-style tests, which include tasks such as writing a memorandum, bench brief, or demand letter. The performance exam would be an in-person, one-day exam offered in January and June. Pennsylvania has an excellent track record of creating, administering, and grading its own performance test tasks.
- **Supervised Practice or Self-Directed Learning and Reflection:** Students would also complete 40 to 60 hours of supervised practice. This requirement may take place during law school or after graduation and could be fulfilled through clinics, pro bono assignments at a law firm, or externships. Supervised practice would “measure key competencies like client interaction and case management—skills critical to legal practice but difficult to assess through a written exam.”¹¹⁵

This measured approach would, first and foremost, support the mission and directive of the PABOLE to preserve “the integrity of the legal system, and protects all individuals seeking legal representation from unethical or incompetent lawyers.”¹¹⁶ By accurately assessing whether candidates possess the knowledge and skills that a new Pennsylvania lawyer should have when first entering the legal profession, this approach addresses the need for transparency and has the potential to offer a more affordable solution to examinees. A staged licensing model like this aligns with other forms of professional licensing examinations, such as those found in medicine and accounting, and recognizes that “learning in professional education

¹¹⁴ See State Bar, Kaplan, Sign Five-Year California Bar Exam Development Contract, ST. BAR OF CAL. (Aug. 13, 2024), <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-kaplan-sign-five-year-california-bar-exam-development-contract> (on file with UNT Dallas Law Review) (discussing the State Bar’s agreement with Kaplan Exam Services to develop multiple-choice, essay, and performance test questions for the California Bar Exam).

¹¹⁵ Marsha Griggs, *Bar Examination: A Verb, Not a Noun*, 77 WASH. U. J.L. & POL’Y 1, 31 (2024).

¹¹⁶ Mission Statement, PA. BD. OF L. EXAM’RS, (Oct. 23, 2025), <https://pabarexam.org/board-information/mission.htm> (on file with UNT Dallas Law Review).

happens in stages.”¹¹⁷

B. Equal Access for Examinees in All Socioeconomic Strata

Since the foundational knowledge exam portion of the Nevada Model would focus on core concepts “it will not require extensive memorization of random nuanced exceptions. As such, it will alleviate the burden of paying for cost-prohibitive commercial bar review programs or the need to forego income while studying for the exam.”¹¹⁸ Students pay an exorbitant amount of money to prepare for the current bar exam—in actual and opportunity costs. By breaking the exam into stages and keeping the testing close to the initial learning, the cost of preparation could be significantly decreased.¹¹⁹

The costs that remain could be staged and better incorporated into financial aid budgets, avoiding the need to secure private loan funding after graduation or continue working through a long study period. It will also decrease the time between licensing and graduation, allowing students to secure employment at an earlier stage. Importantly, reducing the bar exam costs reduces barriers created by socioeconomic status and can potentially increase access to the profession for underrepresented groups.¹²⁰

Additionally, “[g]iving candidates the flexibility to take the written exam components at different times reduces the stress and fatigue of bar preparation.”¹²¹ Only the very privileged law graduates can afford to take 10 weeks off from work to study exclusively for a memorization-heavy bar examination. The knowledge that had been retained in the short-term memory is just as rapidly forgotten, while skills and knowledge put into practice remain much longer.¹²²

Equally as important is that candidates can take the test while still in

¹¹⁷ Elizabeth Sherowski, *An Inclusive Model for Licensing New Lawyers*, 51 CAP. U. L. REV. 77, 89, 143 (2023).

¹¹⁸ Griggs, *supra* note 115, at 30.

¹¹⁹ *Id.*

¹²⁰ Joan Howarth, *Improve the Diversity of the Profession By Addressing the Costs of Becoming a Lawyer*, LSSSE BLOG (Aug. 23, 2024), <https://lssse.indiana.edu/blog/improve-the-diversity-of-the-profession-by-addressing-the-costs-of-becoming-a-lawyer/> [https://perma.cc/4MGA-KB7X].

¹²¹ Griggs, *supra* note 115, at 30.

¹²² See Harry Cloke, *What is the Forgetting Curve? Definition, History & Key Strategies [2025]*, GROWTH ENG’G.: BRAIN SCI. (Feb. 13, 2024), <https://www.growthengineering.co.uk/forgetting-curve/> (on file with UNT Dallas Law Review) (according to German psychologist Hermann Ebbinghaus, increasing interactivity with materials allows learners to better retain information and make content stick).

law school when the subject matter tested is closer in time to the instruction, where knowledge deficiencies can be remedied by the law school by providing timely feedback and support because candidates will not yet have graduated. Law schools have more than a vested interest in ensuring that their students achieve the goal of becoming licensed lawyers, and it would be a good use of their time and resources to assist in this endeavor.

C. Protecting the Public Begins by Equipping New Lawyers with Necessary Skills

The second prong of the Michigan Model provides a written component for candidates to demonstrate their competency in simulated client experiences.¹²³ The third prong, which consists of supervised practice, guarantees actual client experiences where client interaction and self-directed learning are assessed before the candidate could become fully licensed.¹²⁴ Canada and most European countries require some form of supervised practice before granting a law license.¹²⁵ Other professionals, including doctors, dentists, and pilots, must also engage in supervised practice before being fully licensed and must demonstrate competency by performing the necessary skills required by the profession—something not established through a standardized exam.¹²⁶

“The [American] legal profession is light years behind other nations and other disciplines in terms of developing competency measures that are designed to accurately measure practice proficiency and provide the necessary degree of public protection.”¹²⁷ Including a supervised practice requirement reflects the importance of hands-on experience and provides a more accurate candidate competency assessment.

D. Transparency

Pennsylvania could once again control content and criteria selection and would not be reliant on an outside entity to make those decisions or dictate how candidates and stakeholders are provided with resources and information. Pennsylvania would regain control over content and its release and could seek input from its state’s licensed lawyers and law professors who are experts in the areas being tested and can best assess a candidate’s

¹²³ Griggs, *supra* note 115, at 29.

¹²⁴ *Id.*

¹²⁵ *Id.* at 31.

¹²⁶ *Id.* at 31–32.

¹²⁷ *Id.* at 32.

competence to practice in the Commonwealth. Critically, Pennsylvania could reclaim its regulatory authority over Pennsylvania lawyers. Use of the NCBE materials comes not only at a financial cost, but also at the cost of ceding oversight of grading, scoring, and product availability.

Nevada has already compiled scope outlines for the foundational law exam that closely mirror what is currently considered necessary coverage in core law school subjects.¹²⁸ Nevada has established performance test goals and developed criteria and rubrics for the supervised practice and self-directed learning tasks.¹²⁹ Pennsylvania could easily adopt those existing resources or use them as a template to establish its own goals, outlines, and criteria for each phase of testing.

Fortunately, Nevada has already done much of the work to make this model a reality. By joining forces with Nevada and other jurisdictions who plan to administer their own examinations, Pennsylvania could share the costs of drafting performance tests and MBE style questions and save costs by hiring vendors such as Kaplan like the State Bar of California.¹³⁰ Although, initial start-up costs to contract with a third party for reliable practice materials would have to be weighed against the proposed costs of licensing and administering another exam such as NextGen UBE.

The flexibility offered by the Nevada model requires additional registering and tracking of the foundational exams and supervised practice. There are areas where administrative duties may be increased for the Board of Law Examiners staff, as well as academic and bar support professionals at the law schools. However, for the nine Pennsylvania law schools, the plan would require minimal changes to the law school curriculum in the first year, with opportunities to revise second and third-year course offerings to reflect an emphasis on developing lawyering skills. Foundational classes would remain intact and deliver critical knowledge. Law schools would have the freedom to craft curriculum and experiential learning opportunities that put critical thinking, problem-solving, communication, drafting, and practical application at the forefront, rather than focusing on coverage of legal doctrine rarely utilized outside of the bar examination. Furthermore, because the

¹²⁸ Trachok, *supra* note 100.

¹²⁹ *Id.*

¹³⁰ See State Bar, Kaplan, Sign Five-Year California Bar Exam Development Contract, STATE BAR OF CAL. (Aug. 13, 2024), <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-kaplan-sign-five-year-california-bar-exam-development-contract> (the State Bar of California hiring Kaplan to create multiple-choice, essays, and performance test questions for the California Bar Exam) (on file with UNT Dallas Law Review).

examination would be broken into components that occur during law school or immediately after graduation, students would learn from their professors rather than from bar vendors.

VI. CONCLUSION

There will be challenges associated with the adoption of any new lawyer licensing scheme. But it is important to remember that the bar examination itself was instituted by the ABA after many decades of licensing lawyers through the process of diploma privilege and not a closed-book, time-constrained, memorization-heavy examination.¹³¹ Bar examinations themselves have historically encouraged professional exclusion and not inclusion.

NextGen UBE did not start off on the right foot. Its haphazard elimination of certain topics, and significant changes in technology usage could potentially inhibit access to justice for underserved populations. According to the American Bar Association Section of Real Property Trust and Estate Law, declining to test examinees on Wills, Trusts, and Estates, for example, could do a disservice to the public and entry-level lawyers based on the fact that the baby boomer generation is slated to transfer trillions of dollars in assets over the next twenty years.¹³² Its exclusion reinforces that access to justice is not intended for more people, and the legal system is not testing entry-level attorneys to ensure they have the knowledge and skills to provide the services most people need.¹³³

Adopting a model such as the one proposed in Michigan would be challenging, but as lawyers, we are up for the task. Challenges such as calculating the cost of implementing the new model, integrating the new system into existing law school curricula, and resolving the issue of reciprocity are areas of uncertainty. But these challenges do not outnumber the long-term benefits of protecting the public, ensuring equal access and affordability, and providing a Pennsylvania-based lawyer licensure process

¹³¹ See 15 ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 248–59 (Updike 1921).

¹³² *How Will the ‘Great Wealth Transfer’ Transform the Markets?*, MERRILL (Mar. 5, 2025), <https://www.ml.com/articles/great-wealth-transfer-impact.html> (on file with UNT Dallas Law Review).

¹³³ American Bar Association, Section of Real Property Trust and Estate Law, Section of Family Law, Draft Report to the House of Delegates 5; See Gerry W. Beyer, *The NextGen Bar Exam Threat to Wills and Trusts*, LAW PROFESSOR BLOGS NETWORK (July 28, 2024), https://lawprofessors.typepad.com/trusts_estates_prof/2024/07/the-nextgen-bar-exam-threat-to-wills-and-trusts.html (on file with UNT Dallas Law Review).

responsive to the unique needs of the Commonwealth. The Keystone State should forge a new path to lawyer licensure.