

## MBE Sample Test Questions

The following sample questions are examples of test questions similar to those on the MBE. While these sample questions illustrate the kinds of questions that will appear on the MBE, they do not represent all the material covered. Examinees are advised to review the [information on MBE content](#), including the MBE Subject Matter Outline. To model the pacing required to complete a full MBE, these questions should be answered in approximately 38 minutes. An answer key follows on page 6.

1. A father lived with his son, who was an alcoholic. When drunk, the son often became violent and physically abused his father. As a result, the father always lived in fear. One night, the father heard his son on the front stoop making loud obscene remarks. The father was certain that his son was drunk and was terrified that he would be physically beaten again. In his fear, he bolted the front door and took out a revolver. When the son discovered that the door was bolted, he kicked it down. As the son burst through the front door, his father shot him four times in the chest, killing him. In fact, the son was not under the influence of alcohol or any drug and did not intend to harm his father.

At trial, the father presented the above facts and asked the judge to instruct the jury on self-defense.

How should the judge instruct the jury with respect to self-defense?

- (A) Give the self-defense instruction, because it expresses the defense's theory of the case.
  - (B) Give the self-defense instruction, because the evidence is sufficient to raise the defense.
  - (C) Deny the self-defense instruction, because the father was not in imminent danger from his son.
  - (D) Deny the self-defense instruction, because the father used excessive force.
2. A man sued a railroad for personal injuries suffered when his car was struck by a train at an unguarded crossing. A major issue is whether the train sounded its whistle before arriving at the crossing. The railroad has offered the testimony of a resident who has lived near the crossing for 15 years. Although she was not present on the occasion in question, she will testify that, whenever she is home, the train always sounds its whistle before arriving at the crossing.

Is the resident's testimony admissible?

- (A) No, due to the resident's lack of personal knowledge regarding the incident in question.
  - (B) No, because habit evidence is limited to the conduct of persons, not businesses.
  - (C) Yes, as evidence of a routine practice.
  - (D) Yes, as a summary of her present sense impressions.
3. To keep its public school expenditures under control in a time of increasing costs, a state passed a law providing that children who have not lived in the state for at least one year cannot attend public schools in the state.

Which of the following statements about this law is most accurate as a matter of constitutional law?

- (A) The one-year residence requirement is valid because it does not affect any fundamental right or suspect class.
  - (B) State durational residence requirements that are established for publicly funded services are constitutional because they relate to government operations reserved exclusively to the states by the Tenth Amendment.
  - (C) Because publicly funded education is a fundamental constitutional right, a state may not deny it to any class of persons who reside in that state.
  - (D) State durational residence requirements established for this kind of publicly funded service solely for the purpose of reducing state expenditures violate the equal protection clause of the Fourteenth Amendment.
4. A man has four German shepherd dogs that he has trained for guard duty and that he holds for breeding purposes. The man has "Beware of Dogs" signs clearly posted around a fenced-in yard where he keeps the dogs. The man's next-door neighbor frequently walks past the man's house and knows about the dogs' ferocity. One summer day, the neighbor entered the man's fenced-in yard to retrieve a snow shovel that the man had borrowed during the past winter. The neighbor was attacked by one of the dogs and was severely injured.
- In a suit against the man, is the neighbor likely to prevail?
- (A) No, because the neighbor knew that the man had dangerous dogs in the yard.
  - (B) No, because the neighbor was trespassing when he entered the man's property.
  - (C) Yes, because the neighbor was an invitee for the purpose of retrieving the shovel.
  - (D) Yes, because the man was engaged in an abnormally dangerous activity.
5. A woman from State A filed an action against a retailer in a state court in State B. The complaint alleged that the retailer had not delivered \$100,000 worth of goods for which the woman had paid.

Twenty days after being served, the retailer, which is incorporated in State C and has its principal place of business in State B, filed a notice of removal in a federal district court in State B.

Was the action properly removed?

- (A) No, because the notice of removal was not timely filed.
- (B) No, because the retailer is a citizen of State B.
- (C) Yes, because the parties are citizens of different states and more than \$75,000 is in controversy.
- (D) Yes, because the retailer is a citizen of both State B and State C.

6. A man owned a house where he lived with his family. The man was convicted of selling large quantities of an illegal drug from his house. Acting under a state law authorizing the destruction of buildings that are used for illegal activity, the city destroyed the man's house.

The man's family then rented an apartment and demanded that the city pay the rent for that temporary residence. The family relied on a state law providing that any person who was dispossessed of his or her place of residence because of the actions of city officials was entitled to replacement housing at the city's expense until permanent substitute housing could be found. When the city refused to pay the rent for the apartment, the man's family sued the city in a state trial court claiming a right to such payment under both the state law and the due process clause of the Fourteenth Amendment to the United States Constitution.

The highest state court ruled for the family. Although the court decided that the family had no right to payment under the state law, it held that the Fourteenth Amendment entitled the family to payment of the rent for the temporary apartment. In its opinion, the highest state court indicated that in several of its decisions it had found cities liable for compensation in similar situations on the basis of the due process clause of the state constitution. But the highest state court declined to base its holding on the state constitution because that issue had not been properly raised in the case.

The city then filed a petition for a writ of certiorari in the United States Supreme Court.

Does the Court have jurisdiction to review the merits of this case?

- (A) Yes, because the highest state court based its decision wholly on federal law grounds.
  - (B) Yes, because the federal and state law issues in this case are so intertwined that a resolution of the federal law issues is necessary to facilitate a proper determination of the state law issues.
  - (C) No, because the decision of the highest state court renders the case moot.
  - (D) No, because independent state law grounds could have been used to justify the result in this case.
7. A sporting goods shop contracted with a publisher to buy, for sale in its store, 1,200 posters featuring a professional golfer. During production, the image of the golfer was inadvertently reversed and the right-handed golfer appeared to be left-handed. When the posters were delivered on the date provided in the contract, the sporting goods shop noticed the discrepancy, which had no provable significant impact on the effectiveness of the poster. In the opinion of the shop management, however, the posters did not look as good as they had in the catalog from which the shop had ordered them.

Is the sporting goods shop legally entitled to reject the posters?

- (A) No, because the nonconformity does not materially alter the value of the posters to the sporting goods shop.
  - (B) No, because the publisher must be given an opportunity to cure the nonconformity before the sporting goods shop can reject the posters.
  - (C) Yes, because the posters do not conform to the contract.
  - (D) Yes, because the publisher has breached an implied warranty of fitness for a particular purpose.
8. A woman borrowed \$800,000 from a bank and gave the bank a note for that amount secured by a mortgage on her farm. Several years later, at a time when the woman still owed the bank \$750,000 on the mortgage loan, she sold the farm to a man for \$900,000. The man paid the woman \$150,000 in cash and specifically assumed the mortgage note. The bank received notice of this transaction and elected not to exercise the optional due-on-sale clause in the mortgage.

Without informing the man, the bank later released the woman from any further personal liability on the note.

After he had owned the farm for a number of years, the man defaulted on the loan. The bank properly accelerated the loan, and the farm was eventually sold at a foreclosure sale for \$500,000. Because there was still \$600,000 owing on the note, the bank sued the man for the \$100,000 deficiency.

Is the man liable to the bank for the deficiency?

- (A) No, because the woman would have still been primarily liable for payment, but the bank had released her from personal liability.
  - (B) No, because the bank's release of the woman from personal liability also released the man.
  - (C) Yes, because the bank's release of the woman constituted a clogging of the equity of redemption.
  - (D) Yes, because the man's personal liability on the note was not affected by the bank's release of the woman.
9. A young man suggested to his friend that they steal a large-screen TV from a neighbor's house. The friend was angry with the young man and decided to use the opportunity to get even with him by having him arrested. The friend said he would help, and that night, he drove the young man to the neighbor's house. The young man broke in while the friend remained outside. The friend called the police on his cell phone and then drove away. Police officers arrived at the scene just as the young man was carrying the TV out the back door.

The jurisdiction defines crimes as at common law.

Of what crime, if any, can the friend properly be convicted?

- (A) No crime.
- (B) Conspiracy.
- (C) Burglary.
- (D) Conspiracy and larceny.

10. A 50-year-old nurse who had been fired from his job at a hospital told his attorney, "I was fired because of my age, and I want to sue the hospital."

Based on this information, the attorney filed an age discrimination complaint against the hospital in federal court. As it turned out, the hospital had hired a 52-year-old man as the nurse's replacement, a fact that rendered an age discrimination claim unavailable. The hospital responded to the complaint by filing a motion for sanctions against the nurse's attorney.

Is the court likely to grant the hospital's motion?

- (A) No, because sanctions are not proper against the attorney of a represented party.
- (B) No, because the hospital failed to give the attorney the chance to withdraw the complaint in advance of filing the motion with the court.
- (C) Yes, because the nurse's attorney failed to conduct a reasonable pre-filing inquiry.
- (D) Yes, because the nurse's complaint contained legal contentions that were not warranted by existing law based on the facts in this case.

11. A daughter was appointed guardian of her elderly father following an adjudication of his mental incompetence. The father had experienced periods of dementia during which he did not fully understand what he was doing. The father later contracted to purchase an automobile at a fair price from a seller who was unaware of the guardianship. At the time of the purchase, the father was lucid and fully understood the nature and purpose of the transaction.

What is the legal status of the transaction?

- (A) The contract is enforceable, because a reasonable person in the situation of the seller would have thought that the father had the capacity to make the contract.
- (B) The contract is enforceable, because it was made on fair terms and the seller had no knowledge of the father's guardianship.
- (C) The contract is void, because the father was under guardianship at the time it was made.
- (D) The contract is voidable at the option of the father.

12. Two sisters own a single tract of land as tenants in common, each holding a one-half interest. The younger sister entered into a three-year written lease with a tenant; the lease described by metes and bounds a specified portion of the land, which consisted of about 40% of the total tract. The tenant went into sole possession of the leased portion of the land.

The older sister has sued both the younger sister and the tenant to establish the older sister's right to possession of the leased portion of the land.

Who is likely to prevail?

- (A) The older sister, because the younger sister cannot unilaterally partition the land without the older sister's consent.
- (B) The older sister, because the younger sister may not lease her undivided interest in the land without the older sister's consent.
- (C) The younger sister and the tenant, because the older sister has been excluded only from the specified portion of the land subject to the lease, which makes up less than one-half of the land's total area.
- (D) The younger sister and the tenant, because the younger sister's lease to the tenant was necessarily for less than a fee simple interest.

13. A state law prohibits any barbershop licensed by the state from displaying posters in support of any current candidate for public office or displaying or distributing any campaign literature in support of such a candidate. No other kinds of posters or literature are subject to this prohibition, nor are any other types of commercial establishments in the state subject to similar prohibitions.

Is this law constitutional?

- (A) No, because it treats barbershops differently from other commercial establishments.
- (B) No, because it imposes a restriction on the content or subject matter of speech in the absence of any evidence that such a restriction is necessary to serve a compelling state interest.
- (C) Yes, because it leaves political candidates free to communicate their campaign messages to voters by other means.
- (D) Yes, because the operation of a licensed barbershop is a privilege and therefore is subject to any reasonable restriction imposed by the state.

14. A defendant was prosecuted for mail fraud. At trial, the defendant moved to have all witnesses excluded from the courtroom, and the court granted the motion. The government named the investigating FBI agent as its designated representative. Upon learning that the agent would be giving testimony during the trial, the defendant moved that the agent also be excluded from the courtroom.

Should the defendant's motion be granted?

- (A) No, provided that the government can show that the agent's presence is essential to the presentation of its case.
- (B) No, because the government has a right to have its designated representative remain in the courtroom throughout the trial.
- (C) Yes, because the agent's testimony might be influenced by the testimony of other witnesses.
- (D) Yes, because the defendant has a right to exclude all persons who may be called as government witnesses.

15. A man entered a tavern in an obviously intoxicated condition, was refused service, and was ordered to leave and escorted out. Just after leaving the tavern, the man staggered across the road toward a liquor store. As he was crossing the road, the man was struck by a car and severely injured.

The man sued the tavern for his personal injuries. At trial, the evidence established the facts as set out above.

At the close of the evidence, both parties moved for judgment as a matter of law.

How should the court rule on these motions?

- (A) Deny both motions and submit the case to the jury, because reasonable jurors could conclude that the accident was foreseeable.
- (B) Deny both motions and submit the case to the jury, because a tavern is a place of public accommodation.
- (C) Grant the tavern's motion, because there is no evidence that the tavern breached a duty to the man.
- (D) Grant the man's motion, because it is undisputed that by being ejected from the tavern, the man was put at risk.

16. A protester brought an action in federal court against a police officer, alleging that the officer's use of force in arresting the protester violated the protester's federal civil rights.

During the jury trial, eyewitnesses gave conflicting testimony on the arrest. At the close of evidence, the protester moved for judgment as a matter of law, which the court denied.

The court instructed the jury that the protester's burden of proof was clear and convincing evidence, rather than the correct burden of preponderance of the evidence. The jury returned a verdict for the officer, and the court entered judgment accordingly.

What is the protester's best option for challenging the judgment?

- (A) Seek a new trial, because the jury instruction affected the protester's substantial rights.
- (B) Seek a new trial, because the verdict was against the clear weight of the evidence.
- (C) Seek judgment as a matter of law, because the jury did not have legally sufficient evidence to find for the officer.
- (D) Seek judgment as a matter of law, because the jury's findings were clearly erroneous.

17. An attempt was made to hijack a commercial airliner while it was in flight from San Francisco to New Orleans. Within minutes, however, the hijacker was seized, and the plane proceeded to its destination. Upon the plane's arrival, television stations broadcast pictures of the passengers as they disembarked. Among the passengers pictured on television was a businessman who was supposed to be in Chicago on company business. The disclosure that the businessman was in New Orleans and not in Chicago at the time resulted in the loss of his position with his company and great humiliation and embarrassment for him.

If the businessman asserts a claim against the television stations for broadcasting his picture as he disembarked, is he likely to prevail?

- (A) Yes, because the businessman's location was revealed against his wishes.
- (B) Yes, because publication of the television pictures caused the businessman pecuniary loss.
- (C) No, because the humiliation and embarrassment did not result in physical harm to the businessman.
- (D) No, because the scene shown on television was newsworthy.

18. A company contracted with a builder to construct a new corporate headquarters for a fixed price of \$100 million. At the time of the contract, structural steel was widely available and was included in the contract as a \$6 million item. Before work began on the project, tornado damage shut down the production facility of the biggest structural steel supplier in the country, and the price of structural steel increased by 20% as a result. The builder informed the company of the steel price increase, and the parties then orally agreed to increase the project price to \$101 million.

The builder proceeded with construction and delivered the project on time. The company paid the builder \$100 million but refused to pay the additional \$1 million.

If the builder sues the company for \$1 million, is the builder likely to prevail?

- (A) No, because the modification was never reduced to a writing signed by the party to be charged.
- (B) No, because there was no consideration for the modification of the contract.
- (C) Yes, because the company's promise was supported by consideration.
- (D) Yes, because the modification was fair and equitable in view of the unanticipated increase in the price of structural steel.

19. At a defendant's trial for extortion, the prosecutor called a witness expecting her to testify that she had heard the defendant threaten a man with physical harm unless the man made payoffs to the defendant. The witness denied ever having heard the defendant make such threats, even though she had testified to that effect before the grand jury. The prosecutor now seeks to admit the witness's grand jury testimony.

How should the court rule with regard to the grand jury testimony?

- (A) Admit the testimony, because it contains a statement by a party-opponent.
- (B) Admit the testimony, both for impeachment and for substantive use, because the witness made the inconsistent statement under oath at a formal proceeding.
- (C) Admit the testimony under the former testimony exception to the hearsay rule.
- (D) Exclude the testimony for substantive use, because it is a testimonial statement.



20. A man arranged to have custom-made wooden shutters installed on the windows of his home. The contractor who installed the shutters did so by drilling screws and brackets into the exterior window frames and the shutters.

The man later agreed to sell the home to a buyer. The sales agreement did not mention the shutters, the buyer did not inquire about them, and the buyer did not conduct a walk-through inspection of the home before the closing.

The man conveyed the home to the buyer by warranty deed. After the sale closed, the buyer noticed that the shutters and brackets had been removed from the home and that the window frames had been repaired and repainted.

The buyer demanded that the man return the shutters and pay the cost of reinstallation, claiming that the shutters had been conveyed to him with the sale of the home. When the man refused, the buyer sued.

Is the buyer likely to prevail?

- (A) No, because the sales agreement did not mention the shutters.
- (B) No, because the window frames had been repaired and repainted after removal of the shutters.
- (C) Yes, because the shutters had become fixtures.
- (D) Yes, because the man gave the buyer a warranty deed and the absence of the shutters violated a covenant of the deed.

21. The president of a pharmaceutical firm received a report from his testing bureau that a manufactured lot of the firm's anti-cancer prescription medication was well below strength. Concerned about being able to fulfill contractual commitments, the president instructed his staff to deliver the defective lot. A cancer patient who had been maintained on the drug died shortly after beginning to take the defective pills. Medical evidence established that the patient would have lived longer had the drug been at full strength, but would have died before long in any event.

The president was convicted of murder. On appeal, he argues that his conviction should be reversed.

Should the conviction be reversed?

- (A) No, because the intentional delivery of adulterated or mislabeled drugs gives rise to strict criminal liability.
- (B) No, because the jury could have found that the president's conduct was sufficiently reckless to constitute murder.
- (C) Yes, because distribution of the defective lot was only a regulatory offense.
- (D) Yes, because the cancer, not the president's conduct, was the proximate cause of death of the patient.

### Answer Key

1. B
2. C
3. D
4. A
5. B
6. A
7. C
8. D
9. A
10. B
11. C
12. A
13. B
14. B
15. C
16. A
17. D
18. D
19. B
20. C
21. B