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# Drafting A Bar Exam **Essay Answer**

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NORTH CAROLINA  
BAR ASSOCIATION  
SEEKING LIBERTY & JUSTICE

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## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION</b> .....	<b>1</b>
<b>II.</b>	<b>SCORING THE BAR ESSAY</b> .....	<b>1</b>
<b>III.</b>	<b>ANTICIPATING THE RECURRING ESSAY TOPICS</b> .....	<b>2</b>
<b>IV.</b>	<b>UNDERSTANDING THE TRADITIONAL BAR EXAM TESTING BOOKLET</b> .....	<b>4</b>
<b>V.</b>	<b>DISSECTING THE ESSAY FACT PATTERN</b> .....	<b>5</b>
<b>VI.</b>	<b>HOW TO DRAFT A BAR EXAM ESSAY ANSWER</b> ...	<b>5</b>
<b>VII.</b>	<b>10 TIPS TO MAXIMIZE POINTS</b> .....	<b>9</b>
<b>VIII.</b>	<b>FINAL THOUGHTS</b> .....	<b>10</b>



## SECTION I AN INTRODUCTION

These materials have been compiled by the Bar Exam Committee of the North Carolina Bar Association's Young Lawyers Division, which is not associated with either the North Carolina State Bar or the North Carolina Board of Law Examiners. Furthermore, these materials are not endorsed by either the State Bar or the Board of Law Examiners. The purpose of these materials is to help you develop a fundamental approach to attacking typical bar exam essay questions. We hope that this Guide will provide you a method for successful bar exam essay writing and give you the confidence needed to successfully pass the essay portion of the North Carolina Bar Examination (the "Bar Exam").

If you prepare adequately and practice the approach suggested in this Guide, we believe that you can answer each of the twelve essays well enough to achieve an overall passing score. It is incumbent on each examination candidate to practice and develop the skills needed to apply the law to the specific facts present in each Bar Exam essay question and to reach conclusions that are sound. There is no substitute for careful preparation and learning the law. Every law student knows that solid essay answers are both complete and well-organized. Successful North Carolina bar applicants pass the essay session of the Bar Exam because they practice reading and writing sample essay questions and are familiar with the recurring essay topics. We hope that all who read this Guide find success on the Bar Exam and enjoy the practice of law for many years to come.

## SECTION II SCORING THE BAR ESSAY

The essay component of the Bar Exam is weighted so that the essays represent 300 of a total 500 possible points. As of this Guide's publication date, the passing score for the Bar Exam is a combined score of **346** (weighted essay score + Multistate Bar Examination score); however, this number varies each time the Bar Exam is administered. Bar Exam candidates will receive a card from the Board of Law Examiners in advance of the exam which will specify the requisite score for that particular test administration.

The Bar Exam contains a total of twelve essays. Each essay is

graded on a scale of one to ten, with ten representing a perfect score. A candidate's score on the essay portion of the Bar Exam is weighted so that each point scored on the essay portion actually represents nearly three points towards the candidate's total score. So, needless to say, the essays are a great way to accumulate a lot of points towards your ultimate goal, passing the North Carolina Bar Exam!

### **SECTION III ANTICIPATING THE RECURRING ESSAY TOPICS**

The Rules Governing Admission to the Practice of Law in the State of North Carolina state:

“The examination may deal with the following subjects: Business Association (including agency, corporations, and partnerships), Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Legal Ethics, Real Property, Secured Transactions including The Uniform Commercial Code, Taxation, Torts, Trusts, Wills, Decedents' Estates and Equity.”

See RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF NORTH CAROLINA, THE BOARD OF LAW EXAMINERS OF THE STATE OF NORTH CAROLINA § .0903, at 8 (amended July 29, 1998).

The Board of Law Examiners has said that before Taxation would be tested, the intent to test the subject would be made known to the state's law schools. Therefore, it is not a subject that will be tested this year. The recurring essay topics on the North Carolina Bar Examination are as follows:

Multistate Bar Examination subjects:

1. Constitutional Law
2. Contracts (concentrating on the North Carolina distinctions or involving UCC Article 2 Sales)
3. Criminal Law/Procedure (concentrating on the North Carolina distinctions)

4. Evidence (concentrating on the North Carolina distinctions)
5. Real Property (concentrating on the North Carolina distinctions)
6. Torts (concentrating on the North Carolina distinctions)

North Carolina specific subjects:

7. Civil Procedure
8. Family Law
9. Professional Responsibility
10. Business Associations (concentrate on Corporations for the July North Carolina Bar Examination; there are frequently questions on Partnership on the February North Carolina Bar Examination but this is not an absolute rule.)
11. Wills/Decedent's Estates
12. Secured Transactions (mortgages, suretyships, UCC Article 9)

While these 12 subjects are tested, they are in some cases larger umbrellas of smaller, more discrete topics that cannot be ignored: for example, Contracts includes Sales; Secured Transactions includes Article 9 of the UCC, mortgages, suretyship, and liens; and Business Associations or Torts may include concepts of Agency. The Board of Law Examiners does not test on new changes in these areas or very recent court opinions.

The traditional commercial bar review course concentrates study on approximately 24 subjects including: Constitutional Law, Contracts-MBE/NC, Sales-MBE/NC, Criminal Law-MBE/NC, Criminal Procedure- MBE/NC, Evidence- MBE/NC, Real Property-MBE, Torts MBE-NC, Agency, Civil Procedure MBE/NC, Commercial Paper, Corporations, Equity, Family Law, Liens, Mortgages, North Carolina Real Property, Partnership, Professional Responsibility, Secured Transactions, Suretyship, Taxation, Trusts, and Wills. As such, you should be fully prepared for the North Carolina Bar Exam by generally following a course of study that includes these topics.

## **SECTION IV**

### **UNDERSTANDING THE TRADITIONAL BAR EXAM TESTING BOOKLET**

A major part of being prepared for the Bar Exam, and minimizing test anxiety, is knowing what to expect when you walk in the door. First, be patient. The proctors have a lot of rules to cover with examinees, so do not expect to walk into the room on the first day, sit down and start testing. Do not lose your focus or your confidence during this time. Relax and listen to the proctors.

The essay portion of the Bar Exam will take place on the first day of the exam in two separate sessions - a morning session and an afternoon session. After the proctors have finished going over the rules of conduct for the exam, you will be handed two essay booklets for your morning session. Each booklet contains three essay fact patterns. The fact patterns will be double-spaced and approximately one page in length. Blank paper for hand-written answers will be provided in separate booklets. You also will be provided scratch paper to outline your answers if you choose.

As an alternative to writing, applicants are permitted (and encouraged) to use personal laptop computers and ExamSoft SofTest secure software for the essay portion of the Bar Exam. This software is very similar to the program used in many law schools around the country for secure test administration. Those who wish to use laptops must pay an administrative fee and complete the special laptop registration process in a timely fashion. A copy of the software will be provided as part of the registration procedure so that you can be sure it runs successfully on your computer and can practice with it in advance of the exam (you are required to verify that the software works on your machine before completing the registration process and paying your money). The website of the North Carolina Board of Law Examiners has more details about the deadlines and process. Please contact the North Carolina Board of Law Examiners if you have any further questions about the process for using a laptop to answer the essay portion of the Bar Exam.

You will have three hours to complete the six essays in the morning. You will not be able to return to the six morning essays after time is called for the morning session, so make sure you answer each of the six essays. After you break for lunch, you will return for your afternoon session. At the beginning of your afternoon session, you

will again be handed two booklets containing your six afternoon session essay-fact patterns.

It is imperative that you **ALLOCATE YOUR TIME WISELY**. You should not spend more than 30 minutes on each essay. The first essay is worth no more points than the last essay. We know you have heard this before, but we are going to say it again - it is in your **BEST** interest to attempt an answer for each essay. There neither is a specific order in which the essay topics will occur on the Bar Exam or by session, nor is there a specific order in which you must answer the essays in each session.

## **SECTION V DISSECTING THE ESSAY FACT PATTERN**

On the traditional Bar Exam essay, you should expect to find at least two sub-issues for each essay fact pattern. In some circumstances, there may be as many as four or more sub-issues. Addressing all legitimate sub-issues is a great way to maximize your score on the essay portion of the Bar Exam. But remember, you will want to make sure you address all of the sub-issues, regardless of the number, in the thirty minutes allocated for each essay.

Generally speaking, the model answer to the essay has been drafted to allocate the same number of points to each sub-issue. Therefore, do not write for 20 minutes on one-sub issue and then speed through the other 3 issues in the remaining 10 minutes. Instead, organize the time you have allotted to the essay to address each sub-issue as thoroughly as possible.

## **SECTION VI HOW TO DRAFT A BAR EXAM ESSAY ANSWER**

*Distinctions from law school exams.*

As a preliminary matter, it is important for all bar exam candidates to distinguish between a bar exam essay and a law school exam essay. This distinction is both a matter of form and substance. The traditional law school exam essay usually has a relatively long fact pattern designed to test multiple issues over a three-hour period. The typical bar exam essay question usually has a short fact pattern requiring the application of only a few select points of law in a maximum of thirty minutes. In further contrast, the law school exam

essay requires a great deal of issue spotting, then application of a large body of law to the identified issues. The bar exam essay oftentimes earmarks the issues for consideration in the call of the question, then requires the examinee to identify and correctly apply a narrow and select rule of law. While there is room for creativity and "partial credit" in a law school exam essay, there is relatively little room for either on a North Carolina Bar Exam essay.

In distinguishing between the traditional law school exam essay and the typical bar exam essay, it is equally important to consider your audience. In the first instance, the grader is the law school professor with whom you have studied an entire area of law for a semester. In the latter instance, a practicing attorney is reviewing your essay together with hundreds of other essays in order to assign your answer a number from zero to ten. The grader neither knows you nor will read any of the other eleven answers you draft that Tuesday in February or July. Significantly, the bar exam essay grader is reviewing your answer from a practical viewpoint. While the law school professor is usually concerned about the theoretical or academic nature of your answer, the bar exam essay grader is concerned with whether you are competent to practice law based upon your response to the particular question. With these preliminary matters in mind, we can now proceed to attack the traditional bar exam essay.

Some background concerning this approach is warranted. There is not an official or suggested approach to drafting an essay for the North Carolina Bar Exam. The only official position taken with respect to the essays are the topics as set forth above in The Rules Governing Admission to the Practice of Law in the State of North Carolina at Section .0903.

Similarly, there is little or no instruction provided in either the testing booklets themselves or by the proctors the day of the Bar Exam. It is important for the reader to understand that the Board of Law Examiners does not sanction the following approach, nor will strict adherence to the approach guarantee a passing score. The approach was developed by several committee members all of whom have taken and passed the North Carolina Bar Exam and many of whom have reviewed model answers certified by the Board of Law Examiners as having received passing scores.

*The approach.*

The approach, set forth below, is designed to give the bar exam candidate a structured and consistent approach to the essay portion of the North Carolina Bar Exam. While there is no substitute for knowing the law through careful study, this technique will take some of the anxiety out of the Bar Exam by allowing the candidate to concentrate her effort on the substance of the examination and not the form of the answer. It is suggested that the Bar Exam candidate repeatedly practice this approach under timed conditions prior to test day.

The suggested approach requires the examinee to address each issue raised in a bar exam question with the same four-step method. In short, the suggested approach is summarized by the acronym ARAC = (1) Answer, (2) Rule, (3) Analysis, (4) Conclusion.

(1) **Answer:** The first sentence of your answer should state the conclusion reached. If there are multiple issues or questions asked on a particular fact pattern, you will want to number the portion of your answer that corresponds to each issue and use the suggested approach for each issue. For example if the issue and short answer stated under the fact pattern is as follows:

1. Was the motion for summary judgment timely filed and served prior to the hearing?

(Give reasons for your answer below)

Then the first sentence of your essay answer should read:

1. "No, the motion was not timely filed and served prior to hearing."

It is appropriate to set off the first sentence, and subsequent sections of the ARAC approach, by a physical space or indentation with each section having its own separate paragraph.

(2) **Rule:** The second paragraph of your answer should state the rule or point of law applicable on the facts. It bears repeating that *the essay portion of the North Carolina Bar Exam often tests points of law where North Carolina differs from the common law or where North Carolina adopts a unique approach to a particular point of law*. Therefore, it is recommended that the examinee begin the "rule"

paragraph with the common law rule that operates on the facts. Then give the North Carolina rule or variation as necessary. By showing the grader that you know the common law and understand that North Carolina adopts or varies from the common law, you can maximize the number of points scored in this section. This approach may be varied depending on the particular rule of law applicable on the facts.

It is also suggested that the examinee clearly identify the rule by using unequivocal language in addition to spacing the rule paragraph from the remainder of the answer. For example, if the essay question concerns torts and the facts indicate the plaintiff was contributorily negligent, an appropriate rule paragraph would state as follows:

Nearly all states have adopted comparative negligence rules when a plaintiff's own negligence contributes to his injury. In a comparative negligence jurisdiction, the plaintiff's recovery is reduced by a certain percentage based on a comparison of plaintiff's fault to the defendant's fault.

In North Carolina [do not abbreviate or use symbols], the common law rule of contributory negligence states that if a plaintiff in any way, even minimally, contributes to their own injury, their negligence is a complete bar to any recovery from the defendant. North Carolina is one of only a few other jurisdictions still adhering to the common law doctrine of contributory negligence.

If the rule of law was one where North Carolina differs from the common law, an appropriate rule paragraph would use the following introductory transitions: "At common law,..." and "In North Carolina,...." It is imperative that the grader be able to easily spot the rule of law cited. Clear transitional language and appropriate spacing will assure that the grader does not have to struggle in locating the rule you intend to apply in your analysis paragraph.

(3) **Analysis:** The third paragraph of your answer is where you apply the North Carolina rule or, if none, the general/common law rule to the facts. Use the facts you need to support your answer and argue the facts concisely and to your favor. Thus, if a fact is unimportant, briefly explain why it is not determinative. Be definitive, however, and come to a conclusion. Avoid stating assumed facts that would alter the court's ruling or would yield a different outcome, as this is not answering the question asked. Do not be sidetracked by a seemingly unjust outcome - just because you do not agree with the outcome does not mean your answer is incorrect!

Like the other components to the suggested approach, the form of your answer is equally important. Separate your analysis paragraph from the other paragraphs in your answer by appropriate spacing. Also you will want to use a transition that informs the grader that you are now beginning your analysis. Suggested transitions include: "Applying the rule to the facts...", "On these facts...", or simply, "Here...." You will want to make sure that you apply the rule to the facts rather than simply rewriting facts that support your conclusion. If you have difficulty in application, consider using words like "because" and "since" in your analysis.

(4) **Conclusion:** The final paragraph of your answer is simply a restatement of your initial conclusion to bring your answer full circle. It also reminds the grader that you have come to a definite answer. Essentially you will be rephrasing the first sentence of your answer.

## **SECTION VII**

### **10 TIPS TO MAXIMIZE POINTS**

#### **(AND SOME THAT BEAR REPEATING)**

1. Avoid throwing everything you know about a particular topic into your essay. Answer only the question asked.
2. Remember your graders. They are practicing attorneys, NOT LAW SCHOOL PROFESSORS!
3. Read the facts very carefully. There is no remedy for your misunderstanding of the facts as written. THIS TIP CANNOT BE OVEREMPHASIZED.
4. Where dates are involved, always consider a statute of limitation issue.
5. Do not add or assume facts. Do not merely repeat facts from the fact pattern in your analysis. USE THEM TO SUPPORT THE RULE OF LAW! Remember to apply the rule of law stated in your "Rule" paragraph only to the facts provided in the essay hypothetical. Also remember that you may not agree with the outcome, sometimes the "bad guy" wins or the outcome is unfortunate!

6. If the call of the question requests a "ruling" such as the standard for granting a motion for summary judgment, define the standard for the grader. This may earn you an extra point.
7. Be conscious of your time by strictly allotting only 30 minutes per essay.
8. Penmanship is important. If you plan to handwrite your answers, write legibly as the graders will not be as sympathetic as your professors and will unlikely give you the "benefit of the doubt." If your penmanship is illegible (ask an independent third-party), consider making arrangements with the Board of Law Examiners to type your essay answers.
9. If you finish an essay early, consider throwing in one or two (at the most) additional points of law or rules that could be relevant on your given facts. **THIS IS THE ONLY TIME YOU SHOULD DEVIATE FROM THE ARAC METHOD.**
10. Relax as best as you can to minimize test anxiety.

## **SECTION VIII FINAL THOUGHTS**

We hope that you will find this Guide a useful tool as you prepare for the essay portion of the North Carolina Bar Exam. Having graduated from law school, you obviously have the necessary skills to perform well on an essay examination. Remember to remain focused, patient, and positive. Through diligent study and preparation, we believe that you can successfully pass the essay portion of the Bar Exam. On behalf of the Bar Exam Committee of the North Carolina Bar Association's Young Lawyers Division, we wish you the best not only on the Bar Exam but also for a rewarding and successful career in law.





