The proposed NextGen Bar Exam will cover eight general areas of law. Each area is bifurcated into two categories. First, "Topics followed by an asterisk will be tested in a way that assumes examinees know the details of the relevant doctrine without consulting legal resources." Second, "All other topics will be tested in a way that assumes examinees have general familiarity with the topics for purposes of issue-spotting or working efficiently with legal resources provided during the exam." We write as Property professors, but our comments should apply more broadly to all eight general areas.

In every class, we invariably receive the same dreaded question: is this topic on the exam? If the answer is *yes*, we can only hope the students will take our warning seriously, and learn the topic. If the answer is *no*, many students check out and decide the untested topic is not worth learning. In short, if a topic is not on the exam, students will deem it unimportant. This concern is especially significant at non-elite law schools where many students lack sufficient internal motivation to learn untested topics.

The proposed NextGen Bar Exam has announced that *half* of the property syllabus is important, but students will only need "general familiarity" with the other half. The consequences of this proposal are predictable and preventable.

First, students will lose the motivation to learn non-asterisked topics. For example, we often acknowledge that future interests is a difficult topic, but tell our students that this area will be tested on the bar. Once students hear this refrain, they persevere and push through the material. But if the NextGen Bar Exam is adopted, we can no longer offer this assurance. Indeed, the proposal excluded several of the most difficult property topics, including the creation of covenants, recording statutes, and mortgages. Unmotivated students will now take these topics far less seriously in class, even though the students may encounter the issues in other classes.

Second, professors will receive pressure from administrations to conform their syllabi to the NextGen Bar Exam. Specifically, professors will be nudged to spend more time on asterisked topics, and less time on non-asterisked topics. Tenured professors will feel confident to craft their

syllabi, consistent with traditional principles of academic freedom. Untenured professors, however, may lack that autonomy.

Third, for non-asterisked topics, test-takers will only need to "work[] efficiently with legal resources provided during the exam." They will not need to memorize the non-asterisked topics. Here, the NCBE is reinforcing some of the worst habits of recent law students: the hubris that they can skim the reading, read a commercial outline, and look up the answer when they really need to. Some professors give open-book exams. Other professors require closed-book exams. At least in the past, professors could say that the bar exam is closed-book. No longer. Now, students will feel less pressure to memorize information. And professors may feel pressure to provide open-booked exams to mirror the bar format. Again, there is a trickle-down effect from what is covered on the bar and 1L pedagogy. The changes made by the NCBE do not exist in a vacuum.

Finally, by narrowing the scope of topics that students will have to learn for the bar, the NCBE will necessarily narrow the scope of knowledge possessed by practicing attorneys. Ultimately, clients will be disserved. And to what end? The proposal does not explain why this line was drawn. This bifurcation needs to be justified.

We have many other comments and concerns about the specific property coverage in the proposal, but we ask that you give far more thought into your artificial bifurcation of topics students need to know, and topics they only need "general familiarity" with. And please, give extra consideration to how this broad pronouncement will affect pedagogy and academic freedom at non-elite law schools.

Sincerely,

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