

Raising the Bar: Adjusting the New York Law School Curriculum to Prepare for an Inevitable Exam

By Benjamin Pomerance

Introduction

For decades, observers have speculated about the best ways to revise and refine the American law school curriculum.¹ Relatively few commentaries, however, focus their attention on the most glaring inevitability for the majority of law students: the bar exam. While plenty of pundits offer fine arguments about the insufficiency of state bar exams as tools for assessing an aspiring attorney's fitness for legal practice, only a small number of evaluators center their gaze on the important matter of better preparing law students to take these ever-controversial tests.²

This lack of detailed attention regarding bar exam preparation is problematic. The continued existence of these exams is a reality that legal educators cannot in good faith avoid.³ Most students pay the high price of a law school education with the goal of entering the practice of law—a desire that becomes unattainable without passing the bar.⁴ To fulfill the reasonable expectations of their paying customers, law schools are obligated to prepare students as best as possible to overcome this inevitable barrier.⁵ While students bear a responsibility to devote the time and energy that is necessary to learn the material that is tested on this exam, educators possess an equally vital duty to develop the best pathway for students to reach this objective.⁶

This article briefly outlines a set of principles which, if followed, should improve the readiness of law school graduates to confront this inevitable test. It then provides a sample three-year course curriculum aimed at improving the overall preparation for the majority of students at a New York State law school. Overall, this article demonstrates that New York's law schools can follow this set of basic values to better prepare students for passing the bar without causing a decline in the overall academic experience that the students at these schools receive.

The Five Pillars

a. Complementary Pairings

Legal education is in many respects an ongoing cumulative process.⁷ Law is best taught in an environment of constant critical thinking in which students are forced to view various practice areas as interlocking and interrelated components of a much larger whole.⁸ To maximize this form of learning, law schools should look to match complementary courses together in a single semester. Certain legal subjects pair particularly well with other topics, allowing professors to highlight both the similarities and the differences of each.

By closely evaluating which topics intersect best together, and then assigning these courses side-by-side in the same semester, schools will give students a better understanding of these subjects at both the micro level and the macro level. As a result, graduates will leave these classrooms with a far better grasp of the material taught in these courses, a depth of understanding that should pay dividends when evaluating fact patterns on the bar exam.



b. Familiar Before Foreign

For most students, all law school classes introduce a substantial amount of previously unknown subject matter.⁹ However, certain law school courses are typically more foreign than others. Criminal law, for instance, contains situations, principles, and concepts that are at least peripherally recognizable to most people who watch crime shows on television. On the other hand, a course in property law forces the majority of students to learn an array of unfamiliar terms and procedures, leading to a typically steeper learning curve for pupils in these classes.

A student's ability to learn, retain, and properly apply information increases when that student gains confidence and acts with assurance within a subject area.¹⁰ With this in mind, it logically follows that law students will improve their retention of knowledge and their ability to apply concepts to fact patterns—essential skills for bar exam success—if they encounter at least partially familiar subjects at the outset of their law school careers.¹¹

c. More Mandatory, More Meaningful

This is perhaps the most controversial proposal on the list. Trends in modern legal education emphasize the need for law students to pick from a broad menu of course offerings.¹² Commentators supporting these theories call for ample room in a law student's schedule for multiple elective courses, allowing the pupil to select from an array of lecture classes, seminars, clinics, internships, externships, study abroad opportunities, independent study options, and more.¹³ Without a doubt, students benefit in many ways from a diverse legal education, allowing them to gain experiences that they can carry with them into the practice of law.

However, the gates to the practice of law will almost certainly remain closed to students who do not pass the bar exam. Accordingly, law schools need to strike a better balance between the all-you-can-eat buffet of elective class offerings and the castor oil of mandatory courses. While most law schools tend to demand that all of their students pass courses in criminal law, constitutional law, contracts, property law, torts, federal civil procedure, and evidence, classes in plenty of frequently tested bar exam topics are not required learning at many New York State law schools.¹⁴ At minimum, a law school in New York should also mandate classes in trusts and estates, matrimonial and family law, criminal procedure, conflicts of laws, and business organizations to best prepare all students for bar exam success.¹⁵

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Experts agree that the current New York State bar exam demands greater precision than ever in understanding the black-letter law in these areas and successfully applying these laws to sets of facts.¹⁶ Preparations to succeed in this format should not begin on the first day of some costly high-pressure bar review course. Instead, law schools need to establish the groundwork of knowledge in all of these areas by requiring at least one semester of focused study in each of these fields. As the sample schedule illustrates below, such a structure is eminently possible.

d. Reinforce Through Review

Typically, law schools assign courses in the subjects that appear most frequently on the bar exam—torts, contracts, criminal law, property law, and the like—during students’ first two semesters of study.¹⁷ As a result, students subsequently have two years to forget most of the in-depth knowledge acquired during those two semesters.¹⁸ Consequently, most pupils begin their bar review sessions by trying to dust the cobwebs off of material that they likely have not touched in two years, an experience that is both counterproductive and exasperating.¹⁹

Reinforcement and review is an age-old pedagogical tool which often proves successful, particularly when preparing for an exam that requires test-takers to think of key concepts accurately and quickly to avoid wasting time.²⁰ Therefore, to avoid this damaging knowledge regression, law schools should mandate review courses for all students during their second- and third-year schedules. Students need to take these courses for academic credit, and professors administering these courses need to offer periodic graded examinations—preferably using questions from prior bar examinations—to assess student performance in these classes.

While such a system may seem unduly paternalistic to some observers, it is the only practical way to ensure that law students continually review and reinforce the material learned in their prior year’s courses. Voluntary ungraded review sessions will never rise to the top of a law student’s hierarchy of needs. Only mandatory courses with grades that count toward the student’s class rank will stimulate the majority of students to take these review classes seriously.²¹ Through these periodic well-structured review opportunities, schools will help students guard against the demoralizing phenomenon of beginning to study for the bar exam and abruptly realizing just how much material they forgot since their first semester of law school.

e. Pace and Space

As discussed above, most law school curriculums ironically place virtually all of their mandatory bar exam-related courses into the first two semesters, with perhaps one or two required courses remaining for the third semester.²² By the time a student enters his or her fourth semester of law school, the classes encompassing the subjects that are most heavily tested on New York State’s bar exam are already squarely in the rearview mirror.

There is no reason why these courses cannot be spaced out in a more balanced manner during the first two years of law school rather than shoved into the first couple of semesters. In particular, law schools should extend many of the most heavily tested core subjects into a full-year course. This will provide students with ample opportunity to ask questions, address concerns, and fill in any gaps in their necessary knowledge of these topics. Additionally, stretching these courses from one semester into a full year will afford professors enough time to cover each key element upon which the bar exam tests, rather than rushing through certain sections or skipping particular segments entirely due to tight time constraints.

Extending the length of certain heavily tested courses from one semester to one year, and moving some of these courses from the first year into the second year, will not impose dramatic hardships upon the ability of students to pursue additional opportunities during their second and third years of law school. The sample schedule outlined below demonstrates that students still have room in their schedules during their second and third years to take a healthy number of elective courses, clinics, internships, and so on. This is therefore another change in the New York State law school curriculum that simply makes sense to enact.

One Sample Schedule

Various possibilities exist for developing an academic schedule adhering to the five principles discussed in the preceding section. The schedule outlined below offers just one possible plan of courses that a law school could require to better meet the needs of its students in terms

of bar exam preparation without sacrificing the quality of their legal education.

a. First Semester

Course	Credit Hours
Lawyering Skills 1	Three
Federal Civil Procedure	Three
Torts 1	Three
Criminal Law	Three
Criminal Procedure	Three
Total Mandatory Credits	Fifteen

b. Second Semester

Course	Credit Hours
Lawyering Skills 2	Three
Constitutional Law	Four
Evidence	Four
Torts 2	Two
Professional Responsibility	Three
Total Mandatory Credits	Sixteen

c. Third Semester

Course	Credit Hours
Property Law 1	Three
Contracts 1	Three
Trusts & Estates	Three
First-Year Review	Two
Total Mandatory Credits	Eleven

d. Fourth Semester

Course	Credit Hours
Property Law 2	Three
Contracts 2	Three
Matrimonial & Family Law	Four
First-Year Review	Two
Total Mandatory Credits	Twelve

e. Fifth Semester

Course	Credit Hours
Business Organizations	Four

Conflict of Laws	Two
Second-Year Review	Four
Total Mandatory Credits	Ten

f. Sixth Semester

Like a competitive swimmer, runner, or cyclist training for a big race, law students under this plan will undergo a “tapering phase” in their last semester. By this point, all of the required courses that introduce new legal practice areas will have been completed, allowing students ample room to take electives or pursue other opportunities prior to graduation day. This ensures that students will not reserve all of the courses that are most relevant to the bar for a final semester of panic.

The only mandatory course in this final semester is a graded four-credit bar review class. By adhering to the five pillars throughout the previous five semesters, this class plan should ensure that this course will not bring an unpleasant discovery of how much the student has left to learn. Rather, this course should focus on filling any final gaps in a student’s understanding of bar-tested subject matter, providing plenty of opportunities for students to practice bar-style questions under time-pressured conditions, and bolstering the confidence of students leading up to the post-graduation final leg of their journey toward the bar exam.

Conclusion

Regardless of how valid any criticisms of the bar exam might be, this test remains an inevitable reality for any person seeking a career as a practicing attorney—and, by extension, an inevitable reality that law schools must confront on their students’ behalf. This article provides five pillars upon which any bar-focused curriculum revision should stand. Placing the most traditionally familiar fields of study first in a law student’s course plan will help build confidence among these pupils from the outset. Pairing complementary courses together will immerse students in an environment of constant reinforcement and review, allowing them to better understand how key legal principles compare and contrast among interrelated fields of study.

Increasing the number of mandatory courses guarantees that pupils receive appropriate exposure to the primary areas of focus on the bar exam prior to graduation, an approach far better than leaving students to teach themselves complex fields of law in a few weeks before the exam. Spreading the required courses over a longer time period will grant professors sufficient duration to cover the various sub-topics about which the bar examiners may pose questions. Lastly, mandatory graded review classes will guard against students forgetting information

learned in prior years and will provide experience with bar-style questions long before the actual test.

The course plan described in this article represents the author's belief of how to best implement these five principles. Alternative curricula may also be possible while still following these five overarching pedagogical values. The more important takeaway from this discussion is the need for law school administrators to engage in these conversations about better preparing their students for the bar exam and revising their sets of courses accordingly. Such changes are not infantilizing, excessively paternalistic, or improperly restrictive. Rather, they represent a necessary improvement in the services that schools deliver to their students, raising the bar in legal education to help their paying customers reach their ultimate goal.

Endnotes

1. See, e.g., R. Michael Cassidy, *Reforming the Law School Curriculum from the Top Down*, 64 J. LEGAL EDUC. 428 (2015); J. Henry Landman, *The Curriculum of the Law School*, 47 AM. BAR ASS'N J. 156-59 (Feb. 1961); Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L. J. 1303, 1315 (1947).
2. See Linda Jellum & Emmeline Paulette Reeves, *Cool Data on a Hot Issue: Empirical Data That a Law School Bar Support Program Enhances Bar Performance*, 5 NEV. L. J. 646, 648-49 (2005); Christian C. Day, *Essay: Law Schools Can Solve the 'Bar Pass Problem'—'Do The Work!'*, 40 CAL. W. L. REV. 321, 341-50 (2003); Richard Cabrera, *Essay: Working to Improve: A Plan of Action for Improving the Bar Exam Pass Rate*, 27 WM. MITCHELL L. REV. 1169, 1182-88 (2000). One might reasonably argue that the overall lack of faculty members at law schools possessing any background in educational theory represents one reason for the lack of scholarly commentaries about improving law schools' abilities to bolster bar exam performance among their graduates. See Nancy B. Rapoport, *Essay: Rethinking U.S. Legal Education: No More 'Same Old, Same Old.'*, 45 CONN. L. REV. 1409, 1415 (2013).
3. Jellum & Reeves, *supra* note 2, at 647.
4. Cabrera, *supra* note 2; Cassidy, *supra* note 1.
5. Linda Sheryl Greene, *Law Schools Need to Better Prepare Their Students*, N.Y. TIMES, Sept. 24, 2015, <https://www.nytimes.com/roomfordebate/2015/09/24/is-the-bar-too-low-to-get-into-law-school/law-schools-need-to-better-prepare-their-students>; Jellum & Reeves, *supra* note 2, at 647 n. 10.
6. See, e.g., Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 783 (2011) ("Law schools do have an affirmative duty to prepare students to pass the bar examination"); Christian C. Day, *Essay: Law Schools Can Solve the 'Bar Pass Problem'—'Do The Work!'*, 40 CAL. W. L. REV. 321, 322 (2003) ("Law schools have a moral and professional obligation, not only to graduate their increasingly heterogeneous student body, but also to enable graduates to practice by preparing them to pass the bar.");
7. Judith Welch Wegner, *A Legal Education Prospectus: Law Schools and Emerging Frontiers: Reforming Legal Education's 'Wicked Problems.'*, 61 RUTGERS L. REV. 867, 930-40 (2009).
8. See Cassidy, *supra* note 1, at 432-35.
9. Rapoport, *supra* note 2, at 1417-18.
10. See Jamie Doward, *Confidence, Not Peer Pressure, Is Key to Success at School, Say Researchers*, THE GUARDIAN, Sept. 21, 2013, <https://www.theguardian.com/education/2013/sep/21/confidence-peer-pressure-school>.
11. Day, *supra* note 6, at 336-38.
12. See Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLINICAL L. REV. 1, 17-19 (2002).
13. See Wegner, *supra* note 7, at 916, 941-42.
14. See, e.g., Academic Life As a First Year, Columbia Law School, <http://www.law.columbia.edu/admissions/jd/learn/curriculum/11>; Your First Year, Cornell Law School, http://www.lawschool.cornell.edu/admissions/admitted/first_year.cfm; Required First Year Courses, NYU Law School, <http://www.law.nyu.edu/academics/courses/requiredfirstyearcourses>; First-Year Schedule, Albany Law School, <http://www.albanylaw.edu/admissions/accepted-students/first-year-schedule>; Required First-Year Courses, Hofstra Law School, <http://law.hofstra.edu/jdprogram/academics/courses/index.html>; Course Descriptions, Syracuse University College of Law, <http://law.syr.edu/academics/course-descriptions/>; Required and Elective Courses, Pace Law School, <http://www.law.pace.edu/sites/default/files/registrar/coursedescription.pdf>; Sample Student Programs, St. John's University School of Law, <http://www.stjohns.edu/law/admissions/faqs/sample-student-programs>; First-Year Curriculum, Benjamin N. Cardozo School of Law, <https://cardozo.yu.edu/academics/jd-degree/curriculum>; Your First Year at Brooklyn Law School, Brooklyn Law School, <http://www.brooklaw.edu/academics/curriculum/firstyearprogram>.
15. See *The Difference Between the NY Bar Exam and the UBE*, PIEPER BAR REVIEW NEWS, Jan. 22, 2016, <http://news.pieperbar.com/the-difference-between-the-ny-bar-exam-and-the-ube>; Mary Campbell Gallagher & Suzanne Darrow-Kleinhaus, *A Comparison of the New York Bar Examination and the Proposed Uniform Bar Examination*, N.Y.S. BAR ASS'N J., Feb. 2015, at 35.
16. Jackson Mumej, *A Chart Summarizing the New York Bar Exam Changes*, THE LAW INSIDER, May 17, 2015, <http://www.thelawinsider.com/lawschool/new-york-bar-exam-changes/>; see also Cabrera, *supra* note 2, at 1186 ("Experience tells us that the reason most people fail [the bar exam] is not lack of substantive knowledge, but the failure to correctly apply substance to the exam's hypotheticals. This is confirmed by the bar examiners...").
17. Rapoport, *supra* note 2, at 1420.
18. See Jeff Smink, *This Is Your Brain On Summer*, N.Y. TIMES, July 27, 2011, <http://www.nytimes.com/2011/07/28/opinion/28smink.html> (discussing the regression of knowledge that occurs for a student when he or she ignores material learned during the previous academic year).
19. Cabrera, *supra* note 2, at 1170-71.
20. Mumej, *supra* note 16.
21. Some law schools already provide a mandatory bar review course that lasts for the semester prior to a student's graduation, but do not provide academic credit for this class. See Cabrera, *supra* note 2, at 1183. However, such a course is too easy for students to subordinate to other classes that actually count toward their final grade point average and class rank. See Susan Sturm & Lani Guinier, *Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 528 (2007).
22. Rapoport, *supra* note 2, at 1420.

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