

MBE Difficult Points

Civil Procedure

Most Frequently Tested Topics

- **Jurisdiction and Venue:** This includes questions about subject matter jurisdiction, personal jurisdiction, and venue.
- **Pretrial Procedures:** This includes questions about pleadings, discovery, and motions.
- **Motions:** This includes questions about motions to dismiss, motions for summary judgment, and motions for judgment as a matter of law.

Most Difficult Topics

- **Personal Jurisdiction:** This is often difficult because it requires an understanding of the complex rules on personal jurisdiction, including the minimum contacts test and the fairness test.
- **Erie Doctrine:** This is difficult because it requires an understanding of the difference between substantive and procedural law, and how federal courts apply state law in diversity cases.
- **Class Actions:** This is difficult because it requires an understanding of the requirements for class certification, and the different types of class actions.

Constitutional Law

Most Frequently Tested Topic

- **Individual Rights:** This includes questions about the First Amendment, the Equal Protection Clause, and the Due Process Clause.

Most Difficult Topics

- **Equal Protection:** This is difficult because it requires an understanding of the different levels of scrutiny that courts apply to different types of classifications.
- **Due Process:** This is difficult because it requires an understanding of both procedural due process and substantive due process.
- **First Amendment Speech:** This is difficult because it requires an understanding of the different types of speech, and the different levels of protection that courts give to different types of speech.

Contracts

Most Frequently Tested Topics

- **Formation of Contracts:** This includes questions about offer, acceptance, and consideration.
- **Performance, Breach, and Discharge:** This includes questions about the perfect tender rule, substantial performance, and anticipatory repudiation.
- **Remedies:** This includes questions about expectation damages, consequential damages, and specific performance.

Most Difficult Topics

- **Parol Evidence Rule:** This is often difficult because it requires an understanding of when extrinsic evidence is and is not admissible to interpret a contract.
- **Statute of Frauds:** This is difficult because it requires memorizing the specific types of contracts that must be in writing to be enforceable.
- **Third-Party Beneficiaries:** This is difficult because it requires an understanding of the difference between intended and incidental beneficiaries, and when a third party has rights under a contract.

Criminal Law and Procedure

Most Frequently Tested Topic

- **Constitutional Protection of Accused Persons:** This includes questions about the Fourth Amendment (search and seizure), the Fifth Amendment (right to remain silent), and the Sixth Amendment (right to counsel).

Most Difficult Topics

- **Fourth Amendment Search and Seizure:** This is difficult because it requires an understanding of the many exceptions to the warrant requirement.
- **Fifth Amendment Miranda Rights:** This is difficult because it requires an understanding of when Miranda warnings are required, and when a suspect's waiver of their Miranda rights is valid.
- **Homicide:** This is difficult because it requires an understanding of the different types of homicide, including murder and manslaughter, and the different mental states required for each.

Evidence

Most Frequently Tested Topic

- **Relevancy and Reasons for Excluding Relevant Evidence:** This includes questions about the definition of relevance, Rule 403 exclusions, and the rules on character evidence and specific bad acts.

Most Difficult Topics

- **Hearsay:** This is arguably the most difficult topic in Evidence, as it requires memorizing the many definitions, exclusions, and exceptions to the hearsay rule.
- **Impeachment:** This is difficult because it requires an understanding of the different ways that a witness's credibility can be attacked, and the rules on extrinsic evidence.
- **Character Evidence:** This is difficult because it requires an understanding of when character evidence is and is not admissible, and the difference between character evidence in civil and criminal cases.

Real Property

Most Frequently Tested Topics

- All Real Property categories are tested in the same proportion, so there is no one "most frequently tested" topic.

Most Difficult Topics

- **Future Interests:** This is often difficult because it requires an understanding of the different future interests, and how they are created and transferred.
- **Land Sale Contracts and Deeds:** This is difficult because it requires an understanding of the requirements for valid contracts and deeds, and the different types of deeds.
- **Non-Possessory Interests:** This includes easements, profits, and licenses, and is difficult because it requires an understanding of how these interests are created, terminated, and enforced.

Torts

Most Frequently Tested Topic

- **Negligence:** This includes questions about duty, breach, causation, and damages.

Most Difficult Topics

- **Negligence:** This is a broad, difficult topic because it requires a strong understanding of the many aspects of negligence law, including the reasonable person standard, the different duties owed to different types of entrants, and the rules on actual and proximate cause.
- **Strict Liability:** This is difficult because it requires an understanding of when a defendant is strictly liable for harm caused by their animals or abnormally dangerous activities.
- **Products Liability:** This is difficult because it requires an understanding of the different types of product defects, and the rules on commercial suppliers and product misuse.