Universal Bar Exam Hardest Concepts

The Universal Bar Exam (UBE) is a challenging exam that tests a wide range of legal concepts. While every examinee has their own strengths and weaknesses, some legal concepts are consistently identified as more difficult to grasp and frequently result in incorrect answers. This article aims to provide a comprehensive list of these challenging concepts, drawing on insights from various sources, including bar prep companies, law school forums, and online discussions among examinees.

Most Difficult Concepts on the MBE

The Multistate Bar Examination (MBE) is a significant component of the UBE, comprising 200 multiple-choice questions covering seven legal subjects. Based on analysis of various sources, the following MBE concepts are often cited as the most challenging:

1. Civil Procedure

- **Jurisdiction:** Understanding personal jurisdiction, subject matter jurisdiction, and venue can be complex, particularly when dealing with diversity jurisdiction and supplemental jurisdiction. This involves grasping the nuances of when a court has the authority to hear a case and render a valid judgment.
- **Erie Doctrine:** Applying the Erie Doctrine to determine whether federal or state law applies in a diversity case can be tricky. This doctrine requires examinees to analyze the interplay between federal and state law and understand the implications for different legal issues.
- **Motions:** Distinguishing between various motions, such as motions to dismiss, motions for summary judgment, and motions for judgment as a matter of law, can be challenging. Each motion has specific requirements and strategic implications, and examinees need to understand the procedural rules governing each one.

2. Real Property

- **Future Interests:** Grasping the intricacies of future interests, including reversions, remainders, and executory interests, can be difficult. This area of law involves complex rules related to vesting, alienability, and the Rule Against Perpetuities, which can be challenging to apply to various scenarios. For example, understanding the difference between a vested remainder subject to open and a contingent remainder is crucial for determining the outcome of property disputes.

- **Concurrent Estates:** Understanding the different types of concurrent estates, such as joint tenancy, tenancy in common, and tenancy by the entirety, and their associated rights and obligations can be challenging. Examinees need to differentiate between these estates and understand how ownership, possession, and survivorship rights differ in each.

- **Mortgages and Security Devices:** Navigating the complexities of mortgages, deeds of trust, and other security devices can be confusing. This involves understanding the different types of security interests, the process of foreclosure, and the rights of creditors and debtors in various situations.

3. Contracts

- **Formation:** Mastering the elements of contract formation, including offer, acceptance, and consideration, can be tricky, especially when dealing with the nuances of the Uniform Commercial Code (UCC) for contracts involving the sale of goods. Examinees need to be able to apply both common law and UCC principles to different fact patterns and analyze the enforceability of agreements.
- **Performance, Breach, and Discharge:** Understanding the various ways in which contracts can be performed, breached, and discharged, including the concepts of substantial performance, anticipatory repudiation, and impossibility, can be challenging. This requires a thorough understanding of contractual obligations, the consequences of breach, and the circumstances under which a party may be excused from performance.
- **Remedies:** Calculating and applying the appropriate remedies for breach of contract, such as damages, specific performance, and restitution, can be complex. Examinees need to understand the different types of damages, the requirements for specific performance, and the principles of restitution in order to determine the appropriate relief for a breach of contract.

4. Constitutional Law

- **Individual Rights:** This broad topic encompasses a wide range of complex issues, including First Amendment freedoms, due process, equal protection, and the Fourth, Fifth, and Sixth Amendment rights of criminal defendants. Examinees need to be familiar with landmark Supreme Court cases and be able to apply constitutional principles to various factual scenarios. For example, understanding the nuances of the Sixth Amendment right to counsel, including the right to effective assistance of counsel and the circumstances under which a defendant can waive this right, is crucial for analyzing criminal procedure issues.
- **Relationship between State and Federal Law:** Understanding the concepts of federalism, preemption, and the Supremacy Clause can be challenging. This involves analyzing the division of power between the federal government and the states and determining which law prevails in cases of conflict.
- **Substantive Due Process and Equal Protection:** Differentiating between substantive due process and equal protection can be tricky. Substantive due process focuses on the fundamental rights protected by the Constitution, while equal protection concerns the government's obligation to treat similarly situated individuals equally.

5. Evidence

- **Hearsay:** Mastering the hearsay rule and its many exceptions can be difficult. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted, and it is generally inadmissible. However, there are numerous exceptions to this rule, and examinees need to be able to identify and apply the correct exception in different situations. For example, understanding the difference between the excited utterance exception and the present sense impression exception is crucial for analyzing hearsay issues.
- **Character Evidence:** Knowing when character evidence is admissible and for what purposes can be tricky. Character evidence is generally inadmissible to prove that a person acted in accordance with their character on a particular occasion. However, there are exceptions to this rule, such as when character is an essential element of a claim or defense, or when character evidence is offered to impeach a witness's credibility.
- **Impeachment:** Understanding the various methods of impeaching a witness's credibility can be challenging. Impeachment involves attacking a witness's truthfulness or accuracy, and there are various ways to do this, such as by introducing prior inconsistent statements, showing bias or prejudice, or attacking the witness's character for truthfulness.
- **Best Evidence Rule:** The best evidence rule requires that the original document or a reliable duplicate be produced to prove the contents of a writing. This rule can be challenging to apply, especially when dealing with electronic evidence or when the original document is unavailable.

6. Criminal Law and Procedure

- **Catchall Type of Second-Degree Murder:** Understanding the catchall type of second-degree murder, which involves intentional killing without objective adequate provocation, can be challenging. This requires examinees to analyze the defendant's mental state and the circumstances surrounding the killing to determine the appropriate degree of homicide.

It's important to note that the perceived difficulty of MBE subjects can vary based on individual strengths, weaknesses, and prior knowledge. Some examinees may find Constitutional Law straightforward, while others may struggle with Real Property. The key is to identify your own areas of weakness and focus your study efforts accordingly.

Most Difficult Concepts on the MPT

The Multistate Performance Test (MPT) assesses an examinee's ability to apply legal skills and knowledge to real-world scenarios. While the MPT doesn't test specific legal concepts in the same way as the MBE, certain aspects of the MPT are often perceived as challenging:

- **Time Management:** Completing the MPT task within the allotted 90 minutes requires efficient time management and the ability to quickly analyze and synthesize information. Examinees need to be able to read and understand the task memo, identify the relevant facts and legal issues, and organize their thoughts and arguments effectively.
- **Extracting Relevant Information:** Identifying and extracting the relevant facts and legal rules from the provided materials can be challenging, especially under time pressure. The MPT often involves a large volume of information, and examinees need to be able to sift through it quickly and efficiently to find what they need.
- **Clear and Concise Writing:** Producing a well-organized and persuasive work product that effectively addresses the assigned task requires strong legal writing skills. Examinees need to be able to write clearly and concisely, using proper grammar and legal terminology.
- **Psychological Pressure:** The time constraints and the high stakes of the bar exam can create significant psychological pressure for examinees. The fear of failing and the pressure to perform well can make it difficult to focus and think clearly during the MPT.

It's important to remember that the MPT is not a test of substantive law. The Library materials provided in the MPT contain sufficient substantive information to complete the task. The MPT is primarily a test of legal skills, such as problem-solving, legal analysis, and communication.

Most Difficult Concepts on the MEE

The Multistate Essay Examination (MEE) tests an examinee's ability to analyze factual scenarios and apply legal principles to draft essays on various legal topics. Some MEE subjects and concepts are frequently identified as more challenging:

Subject	Frequency
Civil Procedure	High
Agency & Partnership	High
Corporations & LLCs	High
Constitutional Law	High
Contracts	High
Evidence	High
Real Property	High
Trusts & Future Int.	High
Decedents' Estates	High
Secured Transactions	High
Family Law	Low
Torts	Low
Criminal Law & Proc.	Low
Conflicts of Laws	Low

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1. Civil Procedure

- **Jurisdiction:** As with the MBE, jurisdiction remains a complex area on the MEE, requiring a thorough understanding of personal jurisdiction, subject matter jurisdiction, and venue. Examinees need to be able to analyze complex jurisdictional issues and apply the relevant rules to different factual scenarios.
- **Preclusion:** Applying the doctrines of claim preclusion (res judicata) and issue preclusion (collateral estoppel) can be challenging. These doctrines involve analyzing the effect of a prior judgment on a subsequent lawsuit, and examinees need to understand the requirements for each doctrine and the circumstances under which they apply.

2. Corporations and LLCs

- **Piercing the Corporate Veil:** Understanding the circumstances under which a court will pierce the corporate veil to hold shareholders personally liable for corporate debts can be complex. This involves analyzing factors such as undercapitalization, commingling of funds, and fraud, and applying the relevant legal standards to determine whether the corporate form should be disregarded.
- **Fiduciary Duties:** Applying the fiduciary duties of care and loyalty to corporate directors and officers can be challenging. This requires examinees to analyze the directors' and officers' actions in light of their obligations to the corporation and its shareholders, and to determine whether they have breached their duties.

3. Secured Transactions

- **Attachment and Perfection:** Mastering the requirements for attachment and perfection of security interests can be difficult. Attachment involves creating a valid security interest in collateral, while perfection involves taking steps to give notice of the security interest to third parties. Examinees need to understand the specific requirements for each step and the consequences of failing to meet them.
- **Priorities:** Determining the priority of competing claims to collateral can be complex. This involves analyzing the different types of security interests, the timing of perfection, and the applicable priority rules to determine which creditor has the superior claim.

4. Trusts and Future Interests

- **Types of Trusts:** Distinguishing between various types of trusts, such as express trusts, resulting trusts, and constructive trusts, can be challenging. Each type of trust has different requirements and purposes, and examinees need to be able to identify and analyze the characteristics of each.
- **Rule Against Perpetuities:** Applying the Rule Against Perpetuities to determine the validity of future interests can be complex. This rule is designed to prevent property from being tied up indefinitely in future interests, and it involves intricate calculations and legal analysis.

- **Powers of Appointment:** Understanding powers of appointment for trusts can be confusing. A power of appointment allows a person to designate who will receive property held in trust, and there are different types of powers with varying limitations and requirements.

5. Family Law

- **Jurisdiction under the UIFSA and the UCCJEA:** Understanding jurisdiction under the Uniform Interstate Family Support Act (UIFSA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) can be challenging. These acts deal with complex jurisdictional issues in interstate child custody and support cases, and examinees need to be able to apply the relevant provisions to different factual scenarios.

General Tips for Tackling Difficult Concepts

While the concepts listed above are often perceived as challenging, it's important to remember that every examinee has their own strengths and weaknesses. Here are some general tips for tackling difficult legal concepts on the UBE:

- **Focus on Fundamentals:** Ensure you have a solid understanding of the fundamental principles underlying each legal topic. This will provide a strong foundation for understanding more complex concepts and nuances.
- **Active Learning:** Engage in active learning techniques, such as creating outlines, flashcards, and flowcharts, to reinforce your understanding. Active learning helps to solidify your knowledge and improve retention.
- **Practice, Practice, Practice:** Answering practice questions and writing practice essays are crucial for applying your knowledge and identifying areas where you need further review. Practice allows you to test your understanding, develop your exam-taking skills, and build confidence.
- **Seek Clarification:** Don't hesitate to seek clarification from your bar prep course instructors, law school professors, or fellow examinees if you're struggling with a particular concept. Asking questions and seeking help can prevent misunderstandings and improve your grasp of difficult material.

Conclusion

The Universal Bar Exam is a demanding test that requires a comprehensive understanding of various legal concepts and the ability to apply them effectively. By focusing on the most challenging areas, engaging in active learning, and practicing consistently, examinees can increase their chances of success. Remember that thorough preparation and a strategic approach are key to overcoming the difficulties of the UBE and achieving your goal of becoming a licensed attorney. Don't be discouraged by the challenges; with dedication and perseverance, you can conquer the UBE and embark on your legal career.

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