

The Multistate Bar Examination, Not U.S. News & World Report, Ranks U.S. Law Schools

A law school's 'product' is expected to pass at least one bar examination – *on the first attempt*. The better the school, the higher the percentage of first-time passers. Therefore, a law school's bar pass rate(s) is the true measure of its quality and serves to rank the school relative to other law schools.

The Multistate Bar Examination Determines the Legal Ability of a Law Graduate

As to law graduate quality, academic achievement (i.e., college and law school grades) plus LSAT scores is inconclusive because those credentials are subject to manipulation. As to grades, most lawyers were Humanities majors and likely 80% or more of their college grades were based on written papers. While it won't appear on their undergraduate transcripts, at different times many (if not most of them) received deadline extensions and some probably requested and received opportunities to rewrite for higher grades.¹ Accordingly, grades in Humanities courses should always be viewed with a touch of skepticism and, so far, there's been no mention of the widely whispered suspicion of grade inflation at even the most elite American undergraduate programs. As for the Law School Admissions Test ("LSAT"), one can study for it for years and retake it and many who do the foregoing eventually achieve scores that allow them to enter prestigious law schools. (Also, some law schools accept an applicant's highest LSAT score; probably because so doing helps to improve admissions statistics.)

As for law school grades, testing is by essays. A law school course grade is (1) legal analysis delivered by (a) handwriting and (b) prose, both individualistic, and (2) measured after a subjective assessment. It is undeniable that law school tests and, therefore, grades, are not objective.

The bar examination is an entirely different matter. Forty-nine U.S. states require the Multistate Bar Examination ("MBE"). As a multiple choice, machine graded test, an examinee's MBE grade is objective, and it is for this reason that only after a state receives its examinees' MBE scores that the bar's essay portions are calibrated to those scores; a process called 'scaling'. The MBE's effects are most keenly felt in jurisdictions with high minimum MBE requirements, which elevate the failure risk for average and elite examinees alike. The 133 – 136 (or lower) thresholds required by the overwhelming majority of U.S. jurisdictions do not effectively test most alumni of elite law schools: their pass rates are $\geq 95\%$ in such jurisdictions. Therefore, an alumnus of a top 14 law school who passes the New York bar with a 133 MBE (the state's minimum) score has nothing to brag about: a 133 MBE is about the 16th percentile for first-time July bar examinees.²

¹ By contrast, STEM majors usually get graded through mid-term and final examinations, which are administered whether a student is prepared or not.

² See Note 3. For example, it's difficult to fathom selecting someone for an elite legal position (e.g., a federal judgeship) who performed at the MBE's 16th percentile. As *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf) has thrust merit *sans* race in the spotlight, to assign merit to graduates of elite law schools without first confirming their MBE scores would allow majority persons who performed poorly on the MBE to 'hide' behind their brands, to the detriment of minority graduates of lower-prestige law schools with high MBE scores. See <https://www.law360.com/articles/1694662/bar-score-is-best-hiring-metric-post-affirmative-action> (requires subscription) or <https://griffincounselpc.com/wp-content/uploads/2023/07/Law360-Article-Multistate-Bar-Examination-Score-Is-Best-Hiring-Metric-Post-Affirmative-Action-071123-Final.pdf>.)

For many years California’s MBE hurdle was 144 (about the 39th percentile for first-time July examinees), and it regularly claimed victims from top law schools and those without American Bar Association accreditation alike. In 2020 California lowered its threshold to 139 (about the 27th percentile for first-time July examinees), and while six points above MBE 133 may not seem much of a hurdle to anyone unfamiliar with MBE statistics, it is, and this threshold is the reason the California bar remains the nation’s most feared bar exam.³

Law Schools Should Be Ranked by Their Graduates’ MBE Scores

A law school’s average MBE score effectively ranks the law school nationally and by state. Depending on the year, MBE averages of the top 14 law schools range from 151 to 162 based on 2022 data. See *Ranking Chart* below. A law school’s MBE data strongly correlates with its bar pass data.

Among the surprises yielded from ranking the top 14 law schools by MBE average were (a) dark horses (i.e., schools whose high MBE averages indicate they are worthy of wider recognition), (b) schools with inflated reputations, and (c) schools with limited national recognition that performed so ably as to discredit the well-known *U.S. News & World Report* (“USNWR”) law school rankings.⁴

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Ranking Chart

Top American Law Schools (2022)	Rank
Stanford University	1
Harvard University	2

³ The California Supreme Court mumbled something about Covid-19 being the reason for reducing the threshold. See https://newsroom.courts.ca.gov/sites/default/files/newsroom/document/SB_BOT_7162020_FINAL.pdf. The decision was obviously political: whites are only 39% of California’s population but are 66% of its lawyers. California is approximately 36% Latino/Hispanic but only about 6% of California lawyers claim that demographic; 9% of the number of white lawyers. See <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys> and <https://www.census.gov/quickfacts/fact/table/CA/PST045222>. The obvious way to close the gap increase the percentage of minority lawyers in California was to reduce the MBE threshold. Presumably the reduction would benefit all demographic groups, but the data suggests the people most likely to benefit are those examinees most likely to score ≥ 148 , the national MBE average for all *first-time* July bar examinees according to the National Conference of Bar Examiners. See <https://thebarexaminer.ncbex.org/wp-content/uploads/PDFs/760307-ripkeyandcase.pdf>. Statistics indicate it will benefit whites the most as they outperform all other groups on the MBE. *Id.*

⁴ The *USNWR* law school ranking employs a methodology (<https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>) relying on myriad factors including peer assessment and judges’ and lawyers’ opinions (which, like peer assessments, may be influenced by the respondent’s connections to a given school), neither of which has any relation to passing a bar exam on the first attempt, the one thing a law school is supposed to prepare a graduate to do. In the *USNWR* ranking bar passage is weighted a mere 18% (the factors named total only 93%, and the factor(s) accounting for the remaining seven percent (7%) of a school’s score are undisclosed). In any event, the methodology is preposterous as the only criterion for ‘prestige’ is a high MBE average, which necessarily entails a high bar pass rate, i.e., the premier law schools in America achieve (1) a nearly 100% pass rate in states with low MBE thresholds (e.g., New York, Illinois, Texas, Florida, Massachusetts) and (2) consistently 80%+ in California.

Yale University	3
New York University	4
University of California, Berkeley	5
University of California, Los Angeles	5
University of Chicago	5
University of Michigan	5
University of Virginia	5
Columbia University	10
Duke University	10
University of Pennsylvania	10
University of Southern California	10
Georgetown University	14
University of Texas, Austin	15
Cornell University	16
Northwestern University	17

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For MBE scores of individual schools, see: <https://griffincounselpc.com/multistate-bar-examination-data-analysis-and-rankings/>