



PREPARING YOUR LAW SCHOOL AND FACULTY FOR THE NEXTGEN EXAM

Event to Begin Shortly.




Building Bar Skills Conference

Presenters



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Initiatives

National Conference of Bar Examiners



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Agenda

- Progress Updates on the NextGen Bar Exam
- Preparing Your Institution
- Advising and Coaching Law Faculty



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Research Progress Updates

Phase 1 – Pilot Testing Complete

- Efficacy of new item types
 - 93% found item sets to be of reasonable difficulty
 - Supported by percent correct (p-values) obtained
- Time needed to answer new question types
 - Informed configuration of item sets for Phase 2 Field Testing



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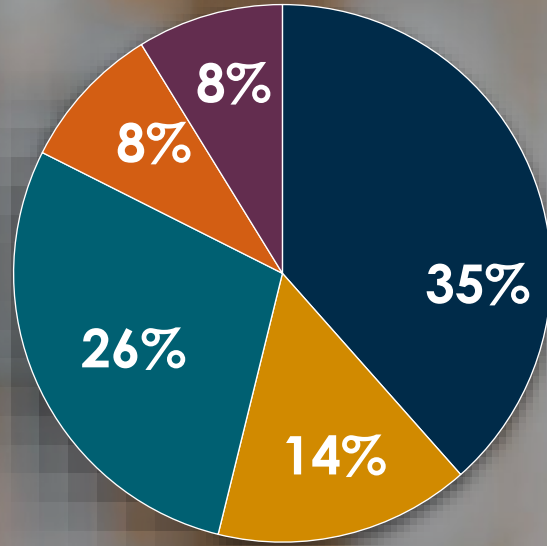
Research Progress Updates

Phase 2 – Field Testing Goals

- Confirm timing estimates
 - 4 SA, 2 MCQs in each integrated question set
 - Studying 24-minute timing per set
 - Studying 60-minute timing for PTs
- Evaluate criteria-based grading rubrics
 - Surveying real bar graders' experiences



Law School Region



■ Midwest ■ Northeast ■ Southeast ■ Southwest ■ West

175 law schools attended*
4,000+ 3/4Ls or recent graduates

*Includes non-ABA accredited and international schools

81%

1st gen law school

17%

1st gen college

8%

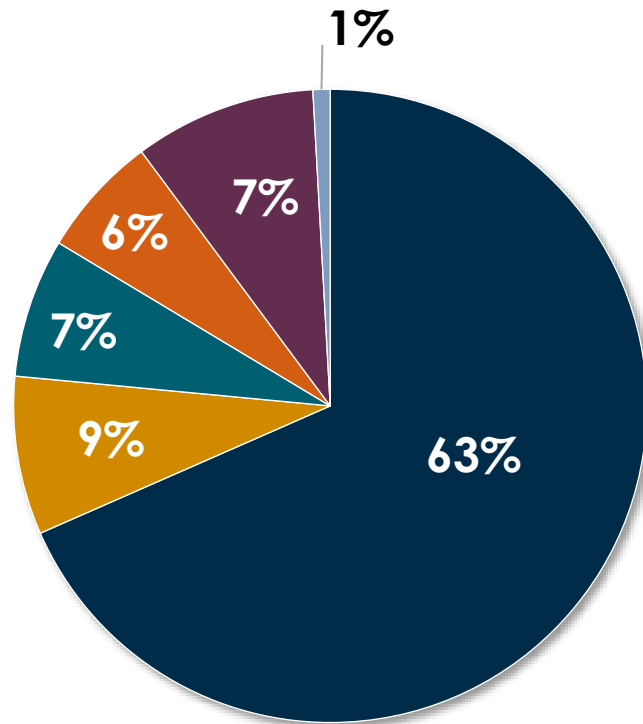
Identify as having a disability

10%

English not 1st language

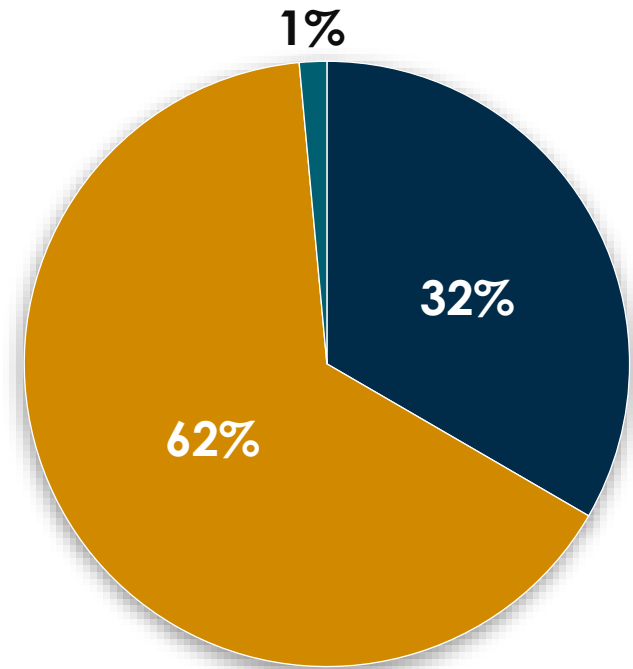
Participant Information

Race/Ethnicity



■ White ■ Black ■ Hispanic ■ Asian ■ Multi-racial ■ Other

Gender Identity



■ Man ■ Woman ■ Non-binary



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Research Progress Updates

Phase 3 – Prototype Test Administration

- Full length test
- Test delivery and scoring systems prior to implementation
- Generate item and test performance data
- Data for standard setting and concordance
- “Dress rehearsal” with real bar administrators



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Constructed Response Grading Logistics

- Centralized grading platform, training, rating scales
- Jurisdictions to hire own graders
- All responses scored by two graders
 - When scores differ, a lead grader will give a final score



Constructed Response Grading Substance

- Criteria-based grading
 - More information after the prototype test
- SA questions, in general:
 - Wrong answers are nonresponsive, irrelevant, misstate facts or law, or introduce an ethical problem
 - Examinees should read questions closely and craft answers that are:
 - Grounded in the scenario
 - Responsive to provided focus and assumptions related to issues, claims, facts, and parties (drafters' "guardrails")



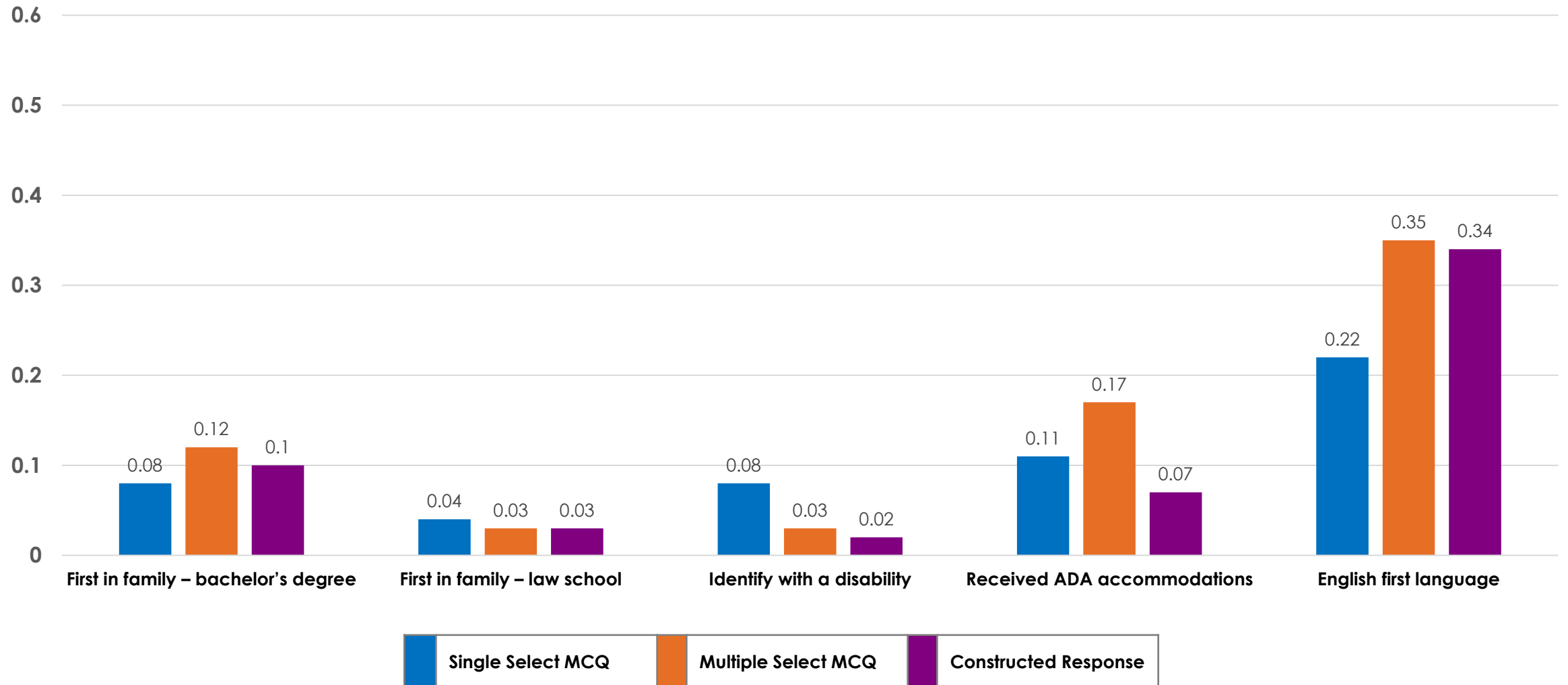
Group Differences

- Research ongoing
 - More information after the prototype test
- Early data:
 - There are group differences related to question type. However, the differences are considered small by commonly accepted metrics - most group differences were less than 0.4 (considered small)
 - Differences do not follow the same patterns as in the question types already in use on the UBE



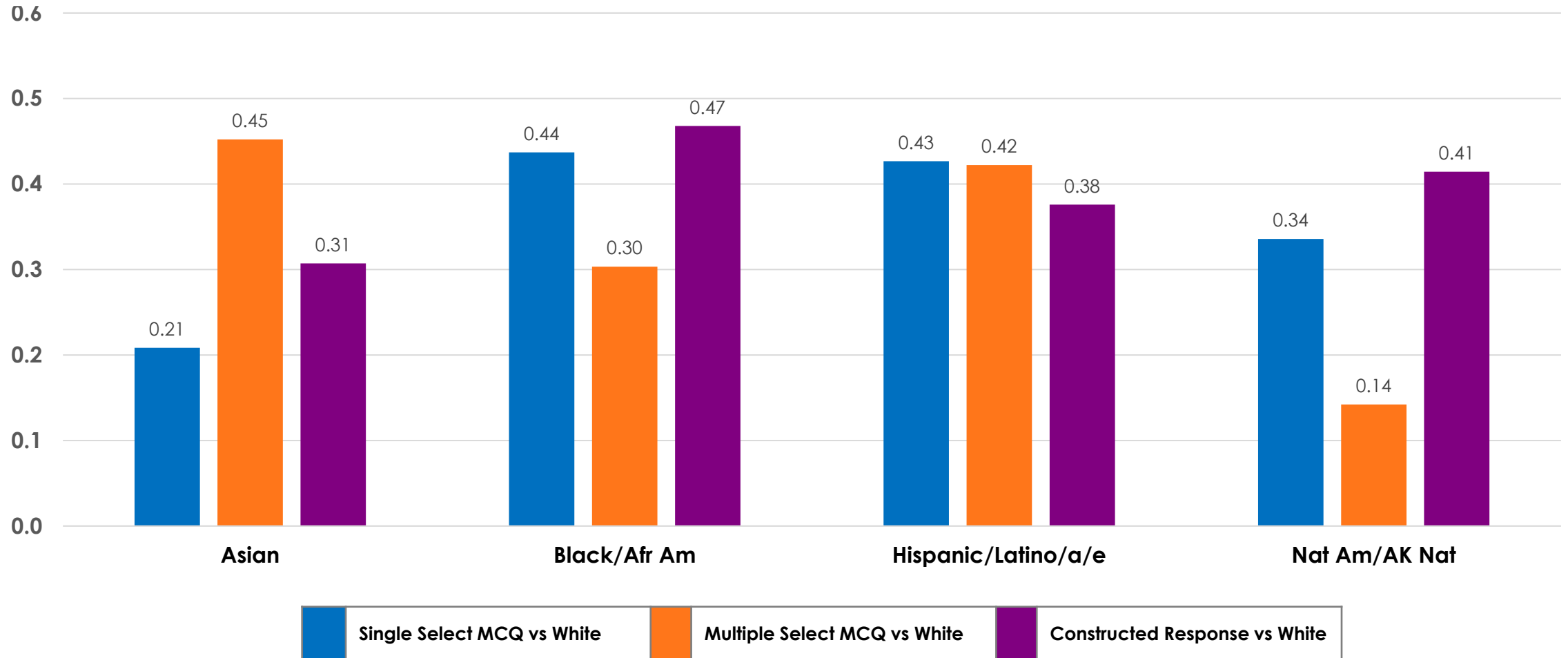
Group Performance

Score differences for different item types



Group Performance

Score differences for different item types



Upcoming Milestones

- **Q3 2024: Study Aids**
 - Three-hour block of test questions including all three question formats
- **Q4 2024: Prototype Test**
- **Q2 2025: Standard Setting**
- **Q3 2025: Standard Setting Recommendations**
- **Q3 2026: First Administration**



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NextGen[✓]

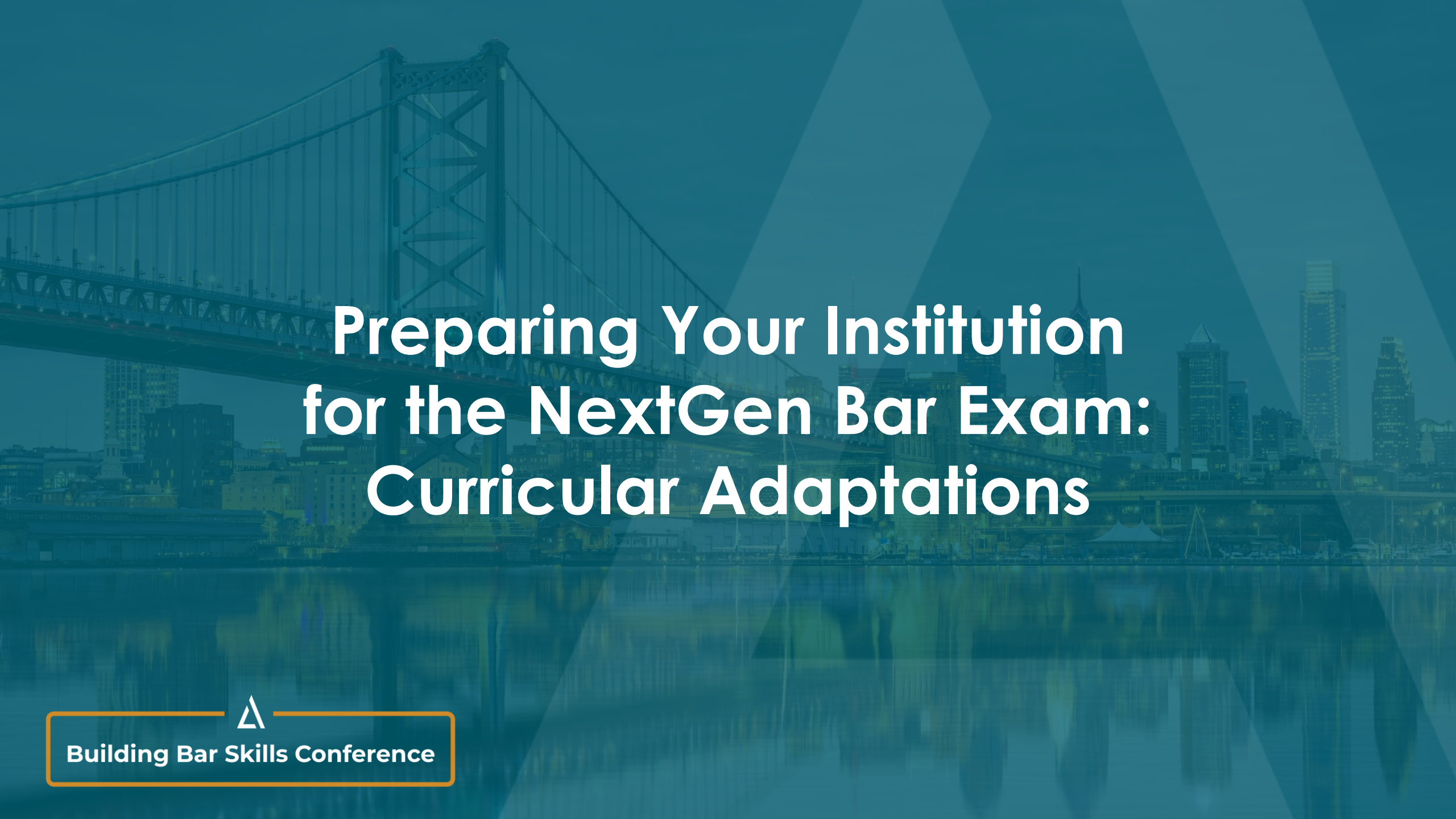
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National Conference of Bar Examiners



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Preparing Your Institution for the NextGen Bar Exam: Curricular Adaptations



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Curricular Adaptations

Required courses

Elective courses

Coverage and delivery



ABA STANDARD 304

Experiential Courses

(a) Experiential courses satisfying Standard 303(a) are simulation courses, law clinics, and field placements that must be primarily experiential in nature and must:

- (1) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
- (2) develop the concepts underlying the professional skills being taught;
- (3) provide multiple opportunities for performance;
- (4) provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor;
- (5) provide a classroom instructional component; or, for a field placement, a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and
- (6) provide direct supervision of the student's performance by the faculty member; or, for a field placement, provide direct supervision of the student's performance by a faculty member or a site supervisor. . . .

Curricular Adaptations

Required courses

Elective courses

Coverage and delivery



First-Year Coursework Across Schools

University of Minnesota	University of Oklahoma	University of Maryland
Civil Procedure (4)	Civil Procedure (6, two semesters)	Civil Procedure (4)
Constitutional Law (4)	Constitutional Law (4)	Constitutional Law (3)
Contracts (4)	Contracts (4)	Contracts (4)
Criminal Law (3)	Criminal Law (3)	Criminal Law (3)
Torts (4)	Torts (4)	Torts (4)
Property (4)	Property (4)	Property (4)
Legal Research and Writing (4, 2 semesters)	Legal Research, Writing, Analysis, & Advocacy (5, two semesters)	Lawyering (6, two semesters)
Law in Practice (3, spring)		Legal Research (1, fall)
3-credit elective		3-credit elective

Law in Practice: University of Minnesota

Law in Practice combines **classroom teaching with small group simulation experiences** to provide the conceptual knowledge and professional skills needed to master the iterative process of discovering new facts, refining legal research objectives and managing the relationship with the client. Students perform simulations in "Practice Groups" of eight students led by practicing attorneys. Groups of two students engage in client or witness interviews, client counseling, and negotiation and dispute resolution simulations.

Litigation Simulations	Transactional Simulations
<ol style="list-style-type: none">1. Client interview2. Witness interview3. Deposition4. Written settlement offer5. Chambers conference6. Mediation	<ol style="list-style-type: none">1. Client interview and counseling2. Negotiation with the opposing party

Students receive time-released information on a condensed schedule designed to mimic the patterns of case development in legal practice.



Upper-Level Requirements

All schools:

- Experiential Course Requirement (6+ credits)
- Professional Responsibility (most often 3 credits)
- Faculty-Supervised Writing Experience



Upper-Level Requirements

Examples of Variations Among Schools:

- Minnesota: Legislation and Regulation, Criminal Procedure or additional Constitutional Law
- Oklahoma: Evidence, five courses from a menu of bar-tested courses
- Maryland Carey Law: Additional Constitutional Law, Advanced Legal Research, at least one course in which students provide legal services to those in need

Curricular Adaptations

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Clinics and Externships University of Maine

All students at Maine Law are guaranteed a clinical or externship placement

- Externship (Corporate, Criminal, Environmental, Health, Judicial, Privacy, Public Interest)
- Business Law Clinic (launching soon)
- General Practice Clinic
- Prisoner Assistance Clinic
- Refugee and Human Rights Clinic
- Rural Practice Clinic
- Youth Justice Clinic

Simulation Courses

University of Oklahoma

General	Specific
Advanced Legal Research* (2 credits)	Civil Pretrial Litigation (3 credits)
Advanced Persuasive Writing (2 credits)	Corporate Drafting (2 credits)
Alternative Dispute Resolution (3 credits)	Experiencing Public Health Law (3 credits)
Evidence Lab (2 credits)	Human Rights Practicum (3 credits)
Intermediate Legal Writing: Non-Litigation Drafting (2 credits)	Moot Court Competitions (1 credit)
Interviewing, Counseling & Negotiation (3 credits)	Representing the Criminally Accused (2 credits)
Litigation Skills (3 credits)	Supreme Court Theory and Practice (3 credits)
Transactional Law Practicum I (3 credits)	Tax Practice and Procedure (3 credits)
Transactional Law Practicum II (3 credits)	Trial Techniques (3 credits)

* Designated as a skills course

Curricular mapping of current courses to tested knowledge and skills

Offering certain elective courses more frequently

Developing or refining courses so that students learn and practice skills

Curricular Adaptations

Required courses

Elective courses

Coverage and delivery



Course Coverage

- Continue prioritizing topics that you believe are most important
 - Note that the current exam is based on extensive practice analysis



Course Delivery: Doctrinal Courses

- Continue finding ways to infuse teaching of lawyering skills and address ethical responsibilities
 - Reinforce what students are learning in their research, writing, other skills courses



Course Delivery: Skills Courses

- Continue flagging areas where your course intersects with other doctrinal areas





Key Takeaways:

- Curricular innovation has been ongoing in law schools over the last several decades
- The NextGen bar exam provides another opportunity for law schools to reflect on what is being taught and how it is being taught
- Different schools will take different approaches, as they already do in relation to the current exam



Advising and Coaching Law Faculty



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Levels of Change for Legal Educators



LEVEL 0

Don't know,
don't care.
(Not here)

LEVEL 1

Interested, but
happy with my
courses as they are.
Would rather not
change much.

LEVEL 2

Would like to alter
aspects of my course
to the extent I like
the direction of the
new exam.

LEVEL 3

Need to alter aspects
of my course.
(e.g., I teach bar
readiness.)

Traditional Law School Essay Question

- Dance school owner purchases new building and enters into agreement with contractor to renovate it
- Agreement includes a liquidated damages clause in the event contractor does not meet deadline
- Due to delays, renovation not complete by deadline
- Dance school owner incurs storage costs, advertising expenses, loss of current customers, loss of higher profits from new location
- Dance school owner demands payment of liquidated damages, contractor refuses

Traditional Law School Essay Prompts

Discuss the rights and liabilities of the parties.

The dance studio owner sues the contractor for breach of contract, seeking payment under the liquidated damages provision or, in the alternative, the actual damages the owner incurred. What is the likely result?

LEVEL

1

ADAPTATION

- **Add a lawyer-client relationship**
 - “Your client owns a dance studio...”
- **Consider breaking “kitchen sink” tasks into multiple tasks, including pre-litigation tasks**
 - “Your client has identified a contractor to renovate its new building and asks your advice on adding a clause”

LEVEL
2

ADAPTATION

- **Provide a client interview transcript rather than summarizing the facts**
 - “You had the following discussion with your client...”
- **Consider including questions that go beyond doctrinal-focused tasks**
 - Look at Group B, Group C, and Group D skills



ADAPTATION

Examples

“How would you redraft the proposed contract provision?”

“Given your client’s needs and concerns, list two drawbacks of including the current contract provision.”

LEVEL

3

ADAPTATION

In bar-prep courses:

- **Check all questions against starred/unstarred designations in the subject-matter outlines**

(Not necessary for traditional doctrinal courses)



How Much Memorization?

Detailed Knowledge ★

Know details of doctrine **without consulting legal resources**

Limited Scope

Spot issues and work efficiently **with provided legal resources** to perform analyses and evaluation tasks



Negligence

A. Duty of care to foreseeable and unforeseeable plaintiffs

1. Duty to control third persons ★
2. Duty to act when previous actions exacerbate a risk of harm ★
3. Duty of owners and occupiers of land
4. Duty to avoid unreasonable risk of causing emotional distress



Negligence

A. Duty of care to foreseeable and unforeseeable plaintiffs

1. Duty to control third persons ★
2. Duty to act when previous actions exacerbate a risk of harm ★

Examinees are expected to know and apply these duties **without provided resources**

Examinees should be able to recognize if these duties are relevant to the scenario **without provided resources...**



Negligence

A. Duty of care to foreseeable and unforeseeable plaintiffs

3. Duty of owners and occupiers of land
4. Duty to avoid unreasonable risk of causing emotional distress

...and examinees should be able to apply these duties **with provided resources**



Negligence

A. Duty of care to foreseeable and unforeseeable plaintiffs

3. Duty of owners and occupiers of land
4. Duty to avoid unreasonable risk of causing emotional distress

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Submitted Questions





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