

Initial and Eventual Passing Rates of July 2004 First Timers

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A total of 2293 applicants took the Texas bar exam for the first time in July of 2004 (and had a complete set of data). This report examines how many of these 2293 “first timers” passed that exam, how many eventually passed after taking it as many as three more times, how many did not pass despite retaking the exam one or more times, and how many failed initially and did not try again. We make these computations for all first timers as well as separately by gender, racial/ethnic group, and whether the applicant graduated from a Texas or out-of-state law school. We also examine whether a repeater’s scores on the exam tended to improve, stay the same, or decline across administrations. Appendix A describes the different sections of the exam, passing rules, and related information.

RESULTS FOR ALL FIRST TIMERS

Table 1 shows that 79.3% of the first timers passed on their first attempt and 92.2% passed after taking the exam as many as four times; i.e., a 13-percentage point increase. There were 412 applicants who took the exam at least two times and 294 of these repeaters (71%) passed. Most, but certainly not all, of the repeaters who passed did so on their second attempt. Perseverance paid off for many applicants in that there was over a 50% passing rate among those who took the exam three or four times (Table 2).

Table 1
Number and Percent Passing and Failing
as a Function of the Number of Attempts

Group	N	Percent
Passed on 1 st attempt	1819	79.3
Passed on 2 nd attempt	224	9.8
Passed on 3 rd attempt	57	2.5
Passed on 4 th attempt	13	0.6
Total Eventually Passing	2113	92.2
Failed on 1 st attempt and no repeats	62	2.7
Failed after a total of 2 attempts	53	2.3
Failed after a total of 3 attempts	55	2.4
Failed after a total of 4 attempts	10	0.4
Total Failing	180	7.8
Total July 2004 First Timers	2293	100%

Table 2
Number and Percent Passing as a Function of the Number of Attempts

	Total Number of Attempts				Total
	1	2	3	4	
Number of applicants	1881	277	112	23	2293
Percent passing	97%	81%	51%	56%	92%

Table 3 shows the mean scale score on each section and overall for the 412 applicants who took the exam at least two times. These data indicate that on the average, a repeater's score on the second attempt was noticeably higher than that applicant's score on the first attempt (e.g., the nearly 35-point increase in mean total scale score is equivalent to two-thirds of a standard deviation in the population of all takers). This increase is probably due to additional study rather than simply practice because applicants are very familiar with question types as a result of taking similar exams in law school and bar prep courses.

Among the 412 applicants who took the exam two or more times, there was a moderate ($r = .54$) correlation between the total scores they earned on their first attempt and the total they earned on their second attempt. This finding indicates that their scores on their first attempt provide only a rough estimate of their relative standings on a subsequent administration. Put another way, many applicants had far more than a 35-point increase in total scores between attempts while others had far less than a 35-point gain (and 17 percent even lost ground). Retaking the test is no guarantee of earning a higher score.

Table 3
Mean Scale Scores by Section for Applicants
Who Took the Exam at Least Twice (N = 412)

Test Section	Mean on 1 st attempt	Mean on 2 nd attempt	Difference In Means
MBE	127.2	133.4	6.2
Essay	126.6	135.5	8.9
MPT	132.9	135.7	2.8
P&E	129.2	135.2	6.0
Total	638.1	672.9	34.8

Table 4 shows the mean total scale score on each attempt for applicants who took the exam once, twice, three, or four times. These data indicate that mean total scores increased with each attempt, but the magnitude of the increase varied between attempts; with the largest differences occurring between the last two tries. For example, in the group of 112 applicants who took the exam a total of three times, there was only a 12-point difference in mean total scale scores between their first and second attempts, but a 23-point difference between their second and third attempts. Thus, the 35-point difference between their first and last attempt was largely attributable to the difference between their second and third tries.

Table 4
Mean Total Scale Scores as a Function of the Number of Attempts

Number of applicants	Mean Total Scale Score				Difference 1 st to Last
	1 st Try	2 nd Try	3 rd Try	4 th Try	
1881	732				
277	644	691			47
112	626	638	661		35
23	620	632	633	676	56

The group of 1881 first timers who took the exam only once included 62 applicants who failed and did not try again. Their mean total scale score on this first attempt was 621; i.e., 54 points below the 675 that is needed for passing. If all of these 62 applicants took the exam again and if their average score increase was the same as that of those who did repeat the exam at least once (i.e., 35 points), then about 22 of the 62 non-repeating fails (35%) would have passed. If that happened, the overall eventual passing rate would have moved up slightly from 92% to 93%. However, it is not at all clear that this would occur. For example, the 62 non-repeating fails might not prepare as diligently for a retake as those who actually did sit for the exam again.

ANALYSIS BY SUBGROUP

Table 5 presents the results of our analysis of the initial and eventual passing rates of various subgroups of applicants. The first column of data shows the number of applicants in the group. The next four columns show, in order: the percent passing on their first try; the percent passing on one or more subsequent attempts; the percent failing despite taking the exam two or more times; and the percent taking the exam once, failing, and not trying again. The sum of the values in these four columns for a given group may not equal 100% due to rounding. The last column shows the overall percent passing in the group. For example, 94% of the graduates from the nine Texas law schools eventually passed compared to 87% from out-of-state law schools.

Table 5
Percentage of Applicants in Various Pass/Fail Categories by Subgroup

Group	N	Pass on 1 st try	Pass on ≥ 2 tries	Fail on ≥ 2 tries	Fail on 1 st & only try	Total % Passing
In-state	1701	81	13	4	2	94
Out-of-state	592	75	12	8	4	87
Female	1115	79	13	5	3	92
Male	1178	80	13	5	3	92
White	1714	84	10	4	2	94
Asian	103	75	17	6	2	92
Hispanic	219	68	21	7	4	89
Black	198	51	26	16	8	77
Total	2293	79	13	5	3	92

There were 15 Black applicants (8% of all the July 2004 Black first timers) who took the exam once and did not try again. This is a relatively large percentage of non-repeating fails compared to the other racial/ethnic groups. About 5 of these 15 applicants were likely to pass if they tried again because they had initial scores that were within 35 points of the 675 required for passing. Thus, if all 15 repeated the exam, the eventual passing rate for Blacks would be about 80%.

The unusually high percentage of initially unsuccessful Blacks who did not repeat the exam did not appear to be due to their having especially low initial scores. For example, their initial mean total scale score of 612 was comparable to the initial mean among non-repeating Hispanic applicants (see Table 6).

Table 6
Non-Repeating Fails by Racial/Ethnic Group

Group	Number of Applicants	Mean Total Scale score	N with mean ≥ 640
White	35	626	13
Hispanic	9	611	3
Black	15	612	5
All Others	3	633	1
Total	62	621	22

SUMMARY AND CONCLUSIONS

Analyses of the cohort of 2293 applicants who took the Texas bar exam for the first time in July of 2004 found that 79% passed on their first attempt and another 13% passed after as many as three more tries. Thus, their eventual passing rate was 92%. Repeaters tended to earn significantly higher bar exam scores on their subsequent attempt(s) than they did on their first try. Initial scores were only a moderately accurate predictor of eventual success. Persistence was rewarded in that about half of those who took the exam as many as three or four times eventually passed. Black applicants especially benefited from repeating the exam. Their initial and eventual passing rates were 51% and 77%, respectively. Their eventual rate probably would have been even higher if more of those who were initially unsuccessful repeated the exam. Taken together, the study's findings suggest that Texas applicants who do not pass on their first attempt should be strongly encouraged to study for and take the exam again.

Appendix A

Texas Bar Exam Components

The Texas Bar Exam is a two and a half-day test. There is one day for the Texas essay section, one day for the Multistate Bar Exam, and a half-day for the combination of the Multistate Performance Test and the Texas Procedure and Evidence test. The major features of these four components are as follows:

Multistate Bar Exam (MBE). The MBE is a six-hour, 200-question, multiple-choice test. MBE questions (or “items”) are prepared and scored by American College Testing (ACT) under the general direction of the National Conference of Bar Examiners. The MBE has an approximately equal number of items in each of the following six subjects: Constitutional Law, Contracts, Criminal Law, Evidence, Property, and Torts. An applicant’s MBE “raw” score is the number of questions answered correctly.

A subset of the MBE questions that are asked on one administration (such as July 2004) have been used previously. ACT uses the data on these repeated items to adjust MBE raw scores for possible differences in average question difficulty across administrations. As a result of this calibration process (which is called “equating” or “scaling”), a given MBE “scale” score indicates about the same level of proficiency regardless of the administration on which it was earned.

Multistate Performance Test (MPT). Texas administers one 90-minute MPT question or “task”, consisting of a legal analysis and writing assignment. This task is developed under the direction of the National Conference of Bar Examiners. There is a new task for each administration. Texas readers grade the answers on a 1 to 6 scale in half-point intervals.

An MPT task assesses certain practice oriented legal research, analysis, and writing skills. A task consists of a File that looks like a typical lawyer file (e.g., letters, memos, reports, and the like) and includes relevant and irrelevant materials and a Library with all the case law, statutes, and secondary materials needed to deal with various matters in a hypothetical case. Candidates use the File and Library to complete a realistic task, such as drafting a memo to a senior lawyer, a letter to a client or opposing counsel, or a brief to be filed with a court.

Texas Essay Test. The six-hour essay portion of the Texas exam consists of 12 questions in such areas as Business Associations, Wills, Real Property, and Family Law. Members of the Texas Board of Law Examiners, with the assistance of professional editors, draft the questions. Board members and experienced attorney graders then score the answers to each question on a 1 to 25-point scale. The maximum possible essay raw score is $12 \times 25 = 300$ points.

Texas Procedure and Evidence (P&E) Test. The 90-minute P&E test contains 20 short-answer civil questions and 20 short-answer criminal questions. The Texas Board of Law Examiners creates these questions with the assistance of professional editors. Board members and experienced attorney graders score the responses to each question on a 0 to 5 scale. Texas divides the total P&E raw score on each section by 2.0 so that the maximum possible total P&E raw score across the two sections is 100 points.

Total Scores and Pass/Fail Rules

Texas converts total essay raw scores to the same scale of measurement as that used for the MBE. This is done to adjust the essay scores for possible differences in average question difficulty across administrations. Scaling involves assigning the highest total essay raw score the same value as the highest MBE scale score in Texas, the second highest total essay raw score the same value as the second highest MBE scale score, and so on until the lowest total essay raw score is assigned the same value as the lowest MBE scale

score. The converted scores are called essay “scale” scores. This same procedure is used to convert MPT and P&E raw scores to scale scores.

Texas uses the following formula to compute each applicant’s total scale score so that the weights assigned to the MBE, Essay, MPT, and P&E tests are 40, 40, 10, and 10 percent, respectively:

$$\text{Total scale} = 2(\text{MBE Scale}) + 2(\text{Essay Scale}) + (\text{MPT Scale})/2 + (\text{P\&E Scale})/2$$

Applicants with total scale scores of 675 or higher pass. All others fail. This pass/fail standard (which corresponds to a 135 on the MBE scale of measurement) is comparable to the standards used by most other states.

Coding Racial/Ethnic Group

For the purposes of the July 2004 study, applicants indicated their gender and racial/ethnic group on their application form. These data were not obtained for prior or subsequent exams. The analysis sample contained applicants from 19 racial/ethnic groups, but there were only a few candidates in some of these groups. This led us to form the following five clusters for our analyses:

Asian = Asian, Chinese, Japanese, Korean, Pacific Islander, Polynesian, and Vietnamese

Black = African American, African, and Black

Hispanic = Hispanic, Mexican, Cuban, Puerto Rican, Latin, and Central/South American

White = Caucasian and White

Other = All others (includes Native Americans and racial/ethnic group omitted)