



**SEPERAC MEE MASTER TOPIC SUMMARIES  
FEBRUARY 2017 MEE EXAM  
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**INTRODUCTION**

The following outline contains summaries/synopses of the legal principles tested on the MEE exam since 1995. The topics are categorized based on the ABC subcategories contained in the NCBE Subject Matter outlines (a total of 358 MEE categories). These subcategories are sorted based on priority for the upcoming exam. If you are studying full time (8-9 hours per day for 6-7 days per week), then you should follow the study-time recommendations for each subcategory (e.g. study it once per week, once every two weeks, or once per month). If you are studying part-time (or you are using this material only to supplement your full-bar review), you should adjust the study-time proportionally. Studying this outline based on the assigned priorities should lead to the most efficient outcome on the upcoming MEE exam.

This outline is intended to help you with specific elements of a good MEE answer. According to NCBE's 2016 MEE Instructions, on the MEE you must: "*[d]emonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusions. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.*" Your ability to demonstrate a "*knowledge of the applicable principles of law*" will be developed by studying this outline based on priority, thereby being very familiar with the principles of law most likely to appear on the upcoming exam and least familiar with the principles of law least likely to appear. In addition, these answer summaries are more comprehensive than just the black letter law. Where possible, I also explain the purpose of the law. As such, when you write your response, you can illustrate to the grader that you not only **know** the black letter law, but that you also **understand** it and can explain it. This outline doesn't just tell you what to say, but also how to say it. This makes the outline more difficult to study, but it also makes the information easier to understand. Put simply, knowing the law is one thing, but saying it in a coherent lawyerly-like fashion is an entirely different matter.

For each topic, the MASTER topic headers are color-coded based on their priority: BLUE=HIGH PRIORITY, GREEN=MEDIUM PRIORITY and ORANGE=LOW PRIORITY. This enables you to quickly assess the priority of a topic if you are not reading the headers. According to NCBE, examinees testing in UBE jurisdictions must answer according to generally accepted fundamental legal principles rather than local case or statutory law. This outline is based on these generally accepted fundamental legal principles. The terminology in the summaries is taken directly from the NCBE released answers. I do this because the graders will be relying on point-sheets that are based on the terminology in these answers. By studying this outline, you are learning the key terminology and buzzwords that the graders will be basing their grading on. In the topic summaries, important laws/statutes/cases are underlined while important legal principles/terminology are in ***bold and italics***. Anything important such as a date or a condition is in **bold**. Where appropriate, if you highlight this information on the exam in the same way it is highlighted in the outline, this will create a better impression of your essay with the grader since that same terminology will be on the grading sheet.

If the MASTER category topic contains subtopics, each of the subtopics is prefixed with the NCBE MEE subject matter outline classification which is then followed by the number of times the subtopic has been tested on the MEE since 1995. For example, a subtopic prefix may appear as follows:

**Recording Acts Race Notice and Race Notice (Priorities – Common Law) [1 of 18 exams]:**



Because this outline is retrospective (it only contains topics that have appeared on past MEE exams), it will not contain all the issues that will appear on an upcoming essay exam. Thus, examinees should supplement their knowledge when necessary to ensure that they have a good understanding of the topics, especially the HIGH priority topics.

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If an examinee shares the material or information on this subscription site, they are really doing it to their detriment. Examinees must recognize that all the information on the subscription site is designed to increase your probability of passing the exam, so sharing that information with anyone decreases that probability. Thanks to the internet, sharing this material/information with just one person can have the unintended effect of it being subsequently shared with hundreds of examinees who are all competing for the same license. Examinees must keep in mind that licensure exams act as a form of economic protectionism since a bar exam "passing score" arbitrarily sets a limit on the number of attorneys licensed in a jurisdiction. An examinee that scores a 264 on the New York UBE exam is probably just as qualified to practice law as an examinee who scores a 266, but only one of these examinees will be admitted to the bar. Put simply, if the seven current justices of the New York Court of Appeals were the only persons to sit for the upcoming New York UBE exam, at least two of the justices would fail the exam based on the cut score (and probably more due to a poor MBE showing).

I place a good deal of trust in subscribers by making the information on this site available in an easily downloadable and editable format because this facilitates your outlining and studying. I do this to enable examinees to study as efficiently as possible, even if it increases the risk it can be easily shared. I appreciate that subscribers respect this and do not share the information. In return, I will do my part in working up until the exam to provide advice and resources that I believe will benefit subscribers taking the upcoming exam. Accordingly, if you ever find an unauthorized use of these materials, please email me at [joe@seperac.com](mailto:joe@seperac.com). If you purchased a copy of my materials from another source, please include it in the email.



## **DISCLAIMER**

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This is advice and opinion based on my analysis of tested exam topics. The information contained on this site is by no means a replacement for common sense, studying and hard work. No representation is made that any answer is correct or identifies or correctly responds to all of the issues raised by the corresponding question. The analysis is deemed accurate and reliable, but no warranties are being made, including, but not limited to typographical errors. In addition, please keep in mind that past performance is not indicative of future results.

## **POST-EXAM**

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There is a post-exam questionnaire for subscribers:

<http://seperac.com/postexamform.php>

If you take the exam and think you may not have passed, filling out this form immediately after you take the exam (while the information is still fresh in your mind) can help you later. For example, using this information, I track the key details of your attempt, so if you later find that you failed the exam, I will try to match your responses/statistics to whoever previously submitted the most comparable details (and later passed) to give you their advice on what worked for them. This input from examinees also gives me a better understanding of the effectiveness of my advice/priorities along with information on the exam itself.

These subcategories are sorted based on priority for the upcoming exam (HIGH prio first, LOW prio last). If you are studying full time (8-9 hours per day for 6-7 days per week), then you should follow the study-time recommendations for each subcategory (e.g. study it once per week, once every two weeks, or once per month). If you are studying part-time (or you are using this material only to supplement your full-bar review), you should adjust the study-time proportionally. Studying this outline based on the assigned priorities should lead to the most efficient outcome on the upcoming MEE.

**CrimLaw: Cat V: Const Protections of Ds (B. Confessions/Self-incrimination privilege)**  
**FEB 2017 MEE PRIORITY: MED – REVIEW: TWICE A MONTH**

Under the 5th Amendment to the United States Constitution, a defendant has a right to counsel when he is in custody and subject to interrogation. The privilege against self-incrimination of the 5th Amendment, as applied to the states through the 14th Amendment, bars a state from compelling a person to provide evidence of a *testimonial* or *communicative* nature. Evidence is testimonial or communicative when it reveals a person's subjective knowledge or thought processes. Miranda v. Arizona requires the exclusion of any statement obtained

Out of the 358 NCBE ABC categories, 247 categories have been tested on the MEE since 1995, meaning 111 ABC categories have not been tested yet. In regards to the 247 ABC categories that have been tested, 61 of the categories have been tested only once (25%), while 186 of the categories have been tested more than once (75%).

The MASTER priorities use statistical analysis to determine which topics are not likely to appear on the upcoming exam. The priorities go far beyond simply looking at the frequency of appearance of a topic. A topic cannot appear on every exam and the MASTER priorities try to account for that. After I develop the statistical methodologies for the priorities, I test how these conditions would have worked on past exams. This "scenario testing" serves as a confirmation that the priorities are on point. Post-exam analysis on the effectiveness of the priorities (for the last 16 MASTER editions) is here:  
<http://seperac.com/bar/analysis.php>

**Confession Not Voluntary [1 of 19 exams]:** The voluntariness of a confession is based on: (1) whether the police subjected the suspect to *coercive* conduct; and (2) whether the conduct was sufficient to *overcome the will* of the suspect. Trickery and deceit do not render a confession inadmissible. The law permits the police to pressure and cajole, conceal material facts and actively mislead. But in conjunction with the other factors, deception pushes a case closer to the line of coercion. The question is whether the coercive conduct was sufficient to overcome the will of the suspect. In such cases, the courts consider the totality of the circumstances and take into account both the conduct of the police and the suspect's individual characteristics such as age, level of education, and familiarity with the criminal justice system.

**Miranda Warnings [3 of 19 exams]:** Miranda has consistently been interpreted to protect only testimonial/communicative evidence. In order to be testimonial, an accused's communication must itself, explicitly or implicitly, relate a factual assertion or disclose information. Moreover, Miranda protections apply only when a suspect is both in custody and under interrogation. A person under arrest is in custody and must first receive Miranda warnings before being subjected to interrogation. Prior to any questioning, a person under arrest must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. Interrogation is defined not only as questioning initiated by law enforcement but as any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. Custody is a substantial seizure and is defined as either a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. A suspect need not be in a police station to be in custody. Whether a suspect is in custody is determined by how a reasonable person in the suspect's situation would perceive his circumstances. In assessing the question of custody, courts consider the facts surrounding the interrogation. The test to be applied is purely objective. Therefore, a suspect's age, experience, and other personal characteristics are not considered. Pursuant to Miranda, law enforcement officers are required to read Miranda warnings to a suspect when the suspect is subjected to an in-custody interrogation. If the officers were required to read the warnings and failed to do so, the statements should be suppressed.

Each subheading reports how often each sub-category has been tested

**Invocation of Miranda Rights [2 of 19 exams]:** The 5th Amendment Miranda privilege is an implied right from the 5th Amendment right against self-incrimination. This privilege applies to the states through incorporation in the 14th Amendment. Miranda rights consist of the right to silence and the right to counsel. Unlike the 6th Amendment, Miranda rights are not offense specific, meaning that once they are invoked, the police must cease questioning and scrupulously honor those rights. Miranda rights are triggered when there is ***custodial interrogation***. Custody is defined as a coercive environment or a police dominated atmosphere. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to consult with a lawyer, the interrogation must cease. Miranda warnings need not be given when a case is still in the investigational stage and the defendant is not in custody or under arrest at the time. For example, custody is less likely to exist when the questioning occurs in the suspect's home. Likewise, statements given in response to basic accident investigatory questions are not deemed custodial interrogations. "In a criminal case, a jury may not draw an inference of guilt from a defendant's failure to answer questions during a custodial interrogation unless the defendant has been advised of his Amendment Miranda rights."

**Waiver of Miranda Rights [1 of 19 exams]:** subject to interrogation (under the 5th Amendment) for a serious crime have been filed (under the 14th Amendment) refuse counsel, meaning a defendant may waive his or her rights under the U.S. Constitution, as incorporated by the 14th Amendment, ***knowing, voluntary, and intelligent***. Once the defendant is represented by counsel, the defendant's waiver is invalid. However, when the indelible right to counsel attaches to an unrelated charge, the waiver need not occur in the prior matter in which he is represented is free to consult with the defendant, not counsel on the prior matter, or to have counsel.

**Miranda Violations (Admissibility of Derivative Evidence) [1 of 19 exams]:** Statements taken during custodial interrogations conducted in violation of Miranda are excluded from the prosecution's case-in-chief. However, a violation of Miranda is a violation of a constitutional rule, not a direct violation of the Constitution. Unlike direct violations of the Constitution, Miranda violations do not taint derivative evidence and the ***fruit of the poisonous tree*** doctrine does not apply. Unlike actual violations of the Self-Incrimination Clause, there is, with respect to mere failures to warn, nothing to deter, and therefore no exclusion. In Oregon v. Elstad, the U.S. Supreme Court held that, where the totality of circumstances establishes that the suspect engaged in an interrogation process that must realistically be viewed as voluntary, subsequent custodial interrogation following a waiver of rights is constitutional. Under Elstad, uncoercive questioning is not thereby disabled from admission if the requisite Miranda warnings were given.

The terminology in these topic summaries is taken directly from the NCBE released answers. I do this because the graders will be relying on point-sheets that are based on the terminology in these answers. By studying this outline, you are learning the key terminology and buzzwords that the graders will be basing their grading on. In the topic summaries, important laws/statutes/cases are underlined while important legal principles/terminology are in bold and italics. Anything important such as a date or a condition is in bold. Where appropriate, if you highlight this information on the exam in the same way it is highlighted in the outline, this will create a better impression of your essay with the grader since that same terminology will be on the grading sheet.

The topics are categorized based on the ABC subcategories contained in the NCBE Subject Matter outlines. These generic paragraphs not only explain the relevant law, but can also be used to speed the writing process on the exam (even to bluff your way through parts of a question).

### CrimLaw: Cat V: Const Protections of Ds (D. Right to counsel)

#### FEB 2017 MEE PRIORITY: MED – REVIEW: TWICE A MONTH

Under the 6th Amendment of the U.S. Constitution, as applied to the States by the 14th Amendment, criminal defendants have a right to counsel during all ***critical stages*** of the proceedings against one accused. The 6th Amendment right to counsel attaches when a person is charged with a crime. The right is ***offense-specific***. The 14th Amendment due process clause requires any waiver of the right to counsel to be ***knowing, voluntary, and intelligent***. Once the indelible right to counsel attaches, and if police are aware that the defendant is represented by counsel, the defendant may only waive his right to counsel in counsel's presence. One exception to this rule are spontaneous statements that are neither the product of interrogation or the result of police inducement that are

This outline is 200+ pages long and containing prioritized summaries/synopses of the legal principles tested on the MEE exam since 1995.