

Navigating Bar Admission Reform as Clinicians: NextGen Bar Exam Overview

AALS Clinical Conference 2024

	Uniform Bar Exam	NextGen Bar Exam
Length	12 hours (6 hours + 6 hours)	9 hours (6 hours + 3 hours)
Question Types	Multiple Choice (MBE)	Multiple Choice
	Essays (MEE)	Integrated Question Sets (mix of short-answer and multiple choice from a common fact scenario)
	Performance Test (MPT)	Longer Writing Tasks
Subjects Tested	Civil Procedure	Civil Procedure
	Contract Law	Contract Law
	Evidence	Evidence
	Torts	Torts
	Constitutional Law	Constitutional Law
	Criminal Law & Procedure	Criminal Law
	Real Property	Real Property
	Business Associations	Business Associations
	Family Law	Family Law* (to be added July 2028)
	Conflict of Laws	ABA Model Rules of Professional Conduct** (application of ethics rules)
	Trusts & Estates	
Secured Transactions		
Skills Tested	Legal Research	Legal Research
	Legal Writing	Legal Writing
	Issue Spotting & Analysis	Issue Spotting & Analysis
	Investigation and Evaluation	Investigation and Evaluation
		Client Counseling and Advising
		Negotiation and Dispute Resolution
	Client Relationship and Management	

When Will the NextGen Bar Exam Debut?

July 2026	July 2027	July 2028
Connecticut	Wyoming	Utah
Maryland	Arizona	Kansas
Missouri	Kentucky	Colorado
Oregon	Vermont	
Washington	Nebraska	
Guam	New Mexico	
	Minnesota	

Integrated Question Set 1

Your law firm encourages you to take on pro bono cases. Recently, you agreed to take on a pro bono case through your local bar's volunteer lawyers program in which you represent a tenant whose apartment has flooded. The following is an excerpt from your notes from the initial interview with the client:

Notes from the Initial Interview

During a recent hurricane, a lot of water entered the client's apartment. The apartment has carpet throughout, which was completely soaked. The property manager refuses to do anything about the flooding and said that the lease the client signed makes this the client's responsibility. The property manager also claims that the client did not take proper precautions before the storm, which made the flooding worse. The client disagrees. After the storm, the property manager recommended that the client buy a water pump and some fans to "dry things out." The client tried this, but it didn't fix the problem. The apartment is still wet and smells "unbearably bad." The client can't afford to try to fix it anymore. The client does not want to move but can't keep on living in these conditions.

The client is in a month-to-month lease. The lease identifies the landlord as "Rentals LLC." The lease was signed by both your client and the property manager, who signed as "the Managing and Sole Member of Rentals LLC." The lease includes the following provision:

Condition of the Premises

Landlord ("Rentals LLC") makes no covenants or warranties about the condition of the leased premises and disclaims all responsibility for the condition of the leased premises. Tenant agrees to be solely responsible for maintaining the condition of the leased premises. Tenant waives any and all rights to the contrary, including but not limited to a right to bring a claim related to the habitability of the leased premises.

The lease does not include any provision on what damages may be available in the event of breach. Your jurisdiction has a residential landlord-tenant statute that applies to the lease. The following is an excerpt from that statute:

6-20-5 Landlord's Duty to Maintain Premises; Prohibited Conduct

(a) Subject to subsections (b) and (c), a landlord has a nonwaivable duty to maintain the premises in a habitable condition, including making necessary repairs. The duty includes but is not limited to a requirement that the landlord ensure that the premises . . . have effective waterproofing and weather protection of the roof and exterior walls, including windows and doors. . . . Tenants have a cause of action for breach of this duty, with remedies as set forth in § 6-20-10 [Tenant Remedies]. This cause of action

supplants any common-law claims for breach of the landlord's implied warranty of habitability.

(b) The landlord's duty in subsection (a) is relieved if the uninhabitable condition of the premises was caused by an unreasonable act or omission of the tenant, the tenant's immediate family member, or the tenant's guest.

(c) If the premises are substantially damaged by a fire, other casualty, or natural disaster and continued occupancy of the unit is unlawful or dangerous or requires repairs that can be made only if the tenant vacates the premises, the landlord may terminate the lease by giving the tenant reasonable written notice.

(d) Any provision in a lease that purports to waive the landlord's duty in subsection (a) is unenforceable. If the landlord seeks to enforce such a provision or accepts the tenant's voluntary compliance with such a provision, the tenant has a cause of action in the amount of three times the periodic rent. This cause of action accrues irrespective of any claim the tenant may have for breach of the duty described in subsection (a).

Integrated Question 1

Which of the following is an accurate application of Section 6-20-5 to the facts? **Select one.**

- A. The section allows the landlord to enforce the lease provision, making the client responsible for repairs, but the tenant may seek damages of three times the periodic rent.
- B. The section makes the lease provision unenforceable but does not decide the issue of which party is responsible for which portion of the repairs.
- C. The section makes the lease provision unenforceable and makes the landlord responsible for the full extent of the repairs.
- D. The section does not decide the issue of the lease provision's enforceability but establishes the landlord's negligence per se.

Integrated Question 2

Section 6-20-5 of the statute does not define the term "habitable." A partner at your firm has asked a law clerk to determine the jurisdiction's meaning of the term for the purposes of potential litigation, and the law clerk has asked you for guidance.

Advise the law clerk on two specific legal sources that are the most likely to provide a controlling definition of the term "habitable."

Integrated Question 3

You receive an email from your client. In the email, the client asks you “whether it would be a good idea to sue.” You begin your reply to the client by explaining that litigation will consume the client’s personal time and will almost certainly take longer to resolve than reaching a settlement before litigation. You consider what other risks your client would face in litigation.

Considering your client’s objectives and the applicable statute, describe two other potential risks of filing a claim or claims on the client’s behalf.

Integrated Question 4

After discussing your research with the client and assisting the client in setting goals, you contact the property manager on the client’s behalf and attempt to negotiate a settlement. The property manager agrees to replace the carpet but refuses to refund any of the client’s past rent or to pay any of the client’s costs. Eventually, negotiations break down, and you prepare to draft a complaint on behalf of the client.

Which of the following facts provide the most support to a cause of action under § 6-20-5(d)? **Select two.**

- A. The lease provides that the client “waives any . . . right to bring a claim related to the habitability of the leased premises.”
- B. The apartment has an unbearably bad smell.
- C. The property manager claims that the client did not take proper precautions to prevent flood damage.
- D. The client bought a water pump and fans at the property manager’s recommendation.
- E. The client cannot afford to make any other repairs.
- F. The flooding was caused by a hurricane.

Integrated Question 5

Your legal research since the initial client interview supports a finding that the condition of the client's apartment after the storm fell below the standard of habitability in the jurisdiction. In addition, your factual investigation has established the following:

- There was nothing that Rentals LLC could reasonably have done to prevent the flooding from the hurricane.
- The client spent money on fans and a water pump.
- Since the client notified the property manager about the flood five months ago, the client has continued paying monthly rent in full.

List two claims you could bring on behalf of your client to seek the greatest possible damages for your client. For each claim, describe what remedy you will seek in the complaint. If the remedy is uncertain, describe the information you need to determine the appropriate remedy.

Integrated Question 6

Your firm has had some experience with Rentals LLC. The company does not always show up in court to defend small claims against it, and you are concerned that it might be difficult to collect a future judgment against the company.

List two factual issues you could investigate to help determine whether the LLC's veil can be pierced to collect a future judgment from the property manager personally. In your jurisdiction, the test for piercing the veil of an LLC is the same as the test for piercing the veil of a corporation.

For example, in a torts matter, a factual issue that might require investigation is "whether the plaintiff lost wages as a result of the accident."

ANSWER SHEET

1. **(B)**. Section 6-20-5(d) makes the lease provision unenforceable, but § 6-20-5(b) relieves the landlord's duty to maintain the premises in a habitable condition if the uninhabitable condition was caused by an act or omission of the tenant or a tenant's guest or family member. (A) is incorrect because, as noted above, § 6-20-5(d) of the statute makes the lease provision unenforceable. (C) is incorrect because the statute does not necessarily make the landlord responsible for the full extent of the repairs; as noted above, § 6-20-5(b) makes the tenant responsible in certain circumstances. (D) is incorrect because, as noted above, § 6-20-5(d) of the statute makes the lease provision unenforceable. Although § 6-20-5(a) establishes a landlord's duty to provide habitable premises, it does not establish negligence per se.
2. Representative Answer:
 - State statute that defines the term as it is used in this statute, such as a "definitions" subsection within the same statutory scheme.
 - High court decision in this state interpreting "habitable" as it is used in this statute.
 - Appellate court decision in this state interpreting "habitable" as it is used in this statute.
 - State regulatory or administrative source if an administrative agency regulates the area and has provided a definition.
3. Representative Answer:
 - The landlord may be able to use subsection (c) of the statute to terminate the lease, if it is necessary for the client to vacate in order to repair the flood damage.
 - Termination of the lease could also be a concern based on the month-to-month status of the lease (regardless of the statutory provision). Termination is a risk for this client even if the jurisdiction has a statute that prohibits a landlord from terminating in retaliation for filing a complaint.
 - Even if the client remains in the apartment, a lawsuit will further sour the client's relationship with the landlord.
 - The landlord might counterclaim and allege that the client was negligent, which could open the client up to potential liability.
 - Litigation, particularly about your home, can be extremely stressful and frustrating.
4. **(A) and (D)**. Section 6-20-5(d) states that any provision in a lease prohibited by subsection (a) is unenforceable. If the landlord seeks to enforce the provision or accepts the tenant's voluntary compliance with the provision, the tenant has a cause of action in the amount of three times the periodic rent. (A) is correct because the lease's inclusion of a provision that violates this statute is relevant to a request for damages under § 6-20-5(d). (D) is also correct because the fact that the client bought a water pump and fans at the property manager's recommendation is evidence that Rentals LLC is seeking to enforce the prohibited provision. The client's purchase of the water pump and fans at the

property manager's recommendation is relevant and supportive even if it is not dispositive. (B), (E), and (F) are incorrect because none of these options is relevant to the lease's inclusion of a provision that violates the statute or Rentals LLC's attempt to enforce the provision. (C) raises an issue that, if true, would be relevant but not favorable to the client. **Partial credit is available for this question.**

5. Representative Answer:

- **Breach of § 6-20-5(a)** – I'm going to need to determine remedies through the remedies provision. [We don't know what it would cover, though possibilities could be the fans/pump and the rental value.]
- **Breach of § 6-20-5(d)** – The remedy is three times the monthly periodic rent. I'm going to need to determine what the client's monthly rent payment is.

6. Representative Answer:

- Whether any commingling of the company's assets and the property manager's assets occurred.
- Whether the company maintained adequate business records, to the extent the company was required to keep business records.
- Whether the company disregarded legal formalities, to the extent that the company was required to follow formalities.
- Whether the property manager was so inseparable from the company as to be its "alter ego."
- Whether the property manager used the company as an agent.
- Whether the property manager intended to use the company to perpetrate a fraud.
- Whether the company was undercapitalized.