



Lee Burgess: Welcome to the Law School Toolbox podcast. Today we're discussing our top tips for preparing for the performance test portion of the bar exam, with our special guest Doretta McGinnis. Doretta is one of our most experienced law school and bar exam tutors and we're excited to have her here today. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), the Catapult Conference and the Trebuchet Legal career site. Alison also runs [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review on iTunes. And if you have any questions, don't hesitate to reach out to us. You can reach us via the [contact form](#) on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.

Welcome back! Today we're discussing our top bar exam performance tests writing tips with special guest Doretta McGinnis. Doretta is one of our experienced law school and bar exam tutors, who's worked in the law schools and helped people work on their performance tests. So, we're very excited to have her here today to talk about the performance test portion of the bar exam, which turns out can be a huge headache for those preparing for the bar. So, to get things kicked off, before we get to our studying tips – Doretta, why do you think the performance test portion of the bar exam is just so challenging for people?

Doretta McGinnis: I think the main reason it's challenging has to do with time management. The Multistate Performance Test presents applicants with a huge volume of material to sort through and synthesize, and then write about within only 90 minutes.

Lee Burgess: Yeah, and I think that that is really one of the main things that's challenging no matter which performance test you're taking. So, if you are not studying for the bar and you're listening to this podcast, maybe we should take a second and tell you what the performance test is.

Doretta McGinnis: That's a good idea.

Lee Burgess: That could be helpful. So, the performance test is my favorite part of the bar exam.

Doretta McGinnis: Mine too.

Lee Burgess: I know. Only because you don't have to know any law to pass the performance test. It's fantastic. Basically, the performance test is an intellectual exercise, where the bar examiners give you a File like you would get at work, full of letters or contracts or depositions and things like that. You have a task to do, you have to write an assignment. And then they give you case law or statutes



called the Library that you also have to review and synthesize. And then you'd basically do an assignment, just like you would at work. And different jurisdictions have some different requirements for the performance test. What Doretta was mentioning, the Multistate Performance Test is a 90-minute performance test that's part of the UBE, but it is also used in a bunch of other jurisdictions. And then California dared to be different until 2017 – July, actually, of 2017 – still has a three-hour performance test. So, it's the same exact format, but it's a three-hour assignment instead of a 90-minute assignment. In July 2017, California is going to switch to a 90-minute performance test, so things will get a little bit different there. But really the same struggles and approaches still apply whether or not it's a 90-minute assignment or a three-hour assignment. Okay, so now that we know what we're talking about, we can get to why this is so hard, again. So, you're right, you've got this huge packet of information, you've got to read it, you've got to do this assignment in 90 minutes. And can you just write anything that you want, or do they give you really strict directions? Do you have to follow directions?

Doretta McGinnis: You absolutely have to follow directions, and that's one of the most important aspects of doing well on the exam. That sounds very obvious – that you'll do better if you follow directions – but yet, many examinees kind of fail to do that. So yes, you do have to follow their directions, they will be expecting a certain kind of format, they will be expecting an IRAC structure with lots of analysis. So, those are some of the standards that you have to meet. And you can be prepared to do that.

Lee Burgess: Yeah, I think it's shocking, sometimes in the moment, in the high stress moment of the exam, that people really stop following directions and just doing what they're told. It's like you have to abandon all desire to be creative, you kind of have to abandon all of your own unique writing style to just do the task at hand. And it can be really challenging. We work with people who've struggled with the bar exam all over the country, and I'll have students send me a performance test that has a statement of facts, but they told you explicitly not to do that in the directions. And I'll ask them, "Why did you write a statement of facts?" And they're like, "I don't know."

Doretta McGinnis: Well, that's right. I've experienced that as well. And the Multistate Performance Test tends to request specific tasks – a memo, a brief, a letter, or some things that we call "wildcards". It could be a type of document that you're unlikely to have seen before in law school. It may be a closing argument, it may be a bench memo, could really be anything. And yet, you are right, that many applicants will not follow the prescribed directions, and might, for example, write any MPT as if it were a memo, even though that's not what was requested.

Lee Burgess: Yeah. And if you are not studying for the bar exam and you're listening to this podcast, you might be saying, "I would never do that." But let me tell you what



happens to you when you study for the bar. The bar is kind of this pressure cooker, high stakes, stressful preparation period, that doesn't necessarily have to be as stressful as we make it. But most of us really get kind of frustrated and very bogged down in the high stakes nature of studying, and then you do some kind of bizarre things that you wouldn't do otherwise.

Doretta McGinnis: Well, that's right. And I think we've both seen people who are retaking the bar exam, who are already working in a legal environment. And those people sometimes have the most difficult time putting aside their past practices and following these directions.

Lee Burgess: For sure. In fact, I was just talking to a friend of mine who sat for the UBE after being a licensed lawyer in California for years and years and years, about going back to study for the MPT and how weird it was, because her instinct was just to plow through the assignment like she would at her office. And that's not what they're looking for.

Doretta McGinnis: That's right. And she probably was tempted to format it the way she would have at work, and that might not be the format that the MPT is requesting.

Lee Burgess: Exactly. So, even though you don't have to know any law to be successful on this part of the bar exam, you do still have to take it seriously, because it is quite easy to go off course and lose what I consider to be very easy points, when you compare it to the other sections of the bar.

Doretta McGinnis: Yes, that's right. And while it's, of course, correct, that you don't need to know any substantive law because you are given this closed universe of law, which may or may not resemble your experience in reality, the thing that you do have to bring to the MPT are the skills that you've acquired in law school. And that's why it's my favorite part of the MPT, because it is much more realistic, it is much more like practice, and it is very much like a legal writing assignment of the sort that you probably experienced in law school. So, all those skills – of analysis, of organization, of being able to interpret the law – you're bringing all those skills to bear. And that's one of the things that the MPT is testing.

Lee Burgess: Yeah. And Doretta knows this stuff, because she was a legal writing instructor in law school and helped people work on the MPT as well, at a law school. So she just made all those beautiful connections, and has written some great blog posts about this that we will link to in the show notes. But it is important to remember that it's not like you're coming to this with no skills. You have worked on these skills in law school. Some schools – and I have taught in these programs as well – may even have classes that help you work on the performance tests portion of the bar exam while you're in law school. And I think you would be foolish not to take them if your school offers that. But I also think you'd be foolish not to take that class seriously, because I also talk to folks



who will take these classes in law school, and I'll say, "Well, what did you get out of it?" "Well, I just kind of checked the box and did the assignments. It was pass/fail." Well, okay, that's kind of not how you should approach the bar exam.

Doretta McGinnis: That's right, Lee. And I think some of those classes you're referring to are those in law school bar prep classes, and that's a topic I've written about as well. Those classes can be very valuable, and you of course, should be taking those seriously, because that's your first exposure really to bar prep, and it gives you a leg up then heading into that summer or winter bar prep period.

Lee Burgess: Absolutely. I know that by the time you're a 3L, the last thing you want to do is take a class that is going to make you write essays or performance tests, or even necessarily think about the bar because it's no fun to think about, and you think you have plenty of time to study. But having been at the front of those classes, having taught those classes and watched the blank stares on the faces of some of my students, even though I am highly entertaining when I am teaching a class, as I'm sure all of my listeners would agree – but even when I'm trying to do my best to make this as compelling as possible, I knew that some of the students were just not invested. And then they would contact me after bad results and I basically had to say, "You knew some of the stuff. We talked about it, but you weren't invested." So, you're paying a lot of money to be in law school, you set aside the time to take these classes – get the most you can out of it, because the last thing you want to do is set yourself up to not be successful in the bar exam. It's the gatekeeper for the next step in your legal career. Alright, so now that we have convinced you that it is important to take this seriously, let's talk about some of our best tips that we can offer about how to prepare for this exam. So, it shouldn't be a shock to anyone who listens to this podcast, who reads anything that we write online, that one of our main tips for being successful in the performance test is to practice, then do some more practice, and then after that, do some more practice, and then maybe do a little more practice after that. So, Doretta, why is the practice so important for the performance test portion? You don't need to know any law.

Doretta McGinnis: Well, that's true. But you need to get familiar with the format of the MPT. And the more familiar you are with its format, the faster you will become. Again, for many students, time management is the biggest obstacle to scoring well on the MPT, and you'll just get faster the more you practice, the more that you do it. For example, all the MPTs have the same directions – so, one tip would be to familiarize yourself with those directions so that you're not wasting time rereading and mulling over them when you actually are faced with taking the test. And there I mean, the overall directions for the exam. I don't mean the specific task memo for the MPT. So, that's an important part of practice, is just getting familiar with the format. And you'll see patterns emerge. The more of them that you do, the more you will see the sort of strategies, the sort of questions that they ask, again, the types of documents that are requested.



There are plenty of MPTs available to practice. And the more you do, the less surprised you will be when you walk into the room and get your actual MPT, because I think it's that element of surprise that also adds to the stress of the exam. You don't know if it's going to be a brief, or a memo, or a letter, or some crazy wildcard document. But if you've practiced enough, you've seen all of those things before, so you should have a higher comfort level when confronted with one of them on the exam.

Lee Burgess:

Absolutely. And I think California is the same thing. California's exam itself is three hours – the performance test – which I think creates frustration for a lot of students who want to set aside time to practice, because they're like, "I don't have three hours." And it's like, well, you need to make three hours, because until July 2017, it's still a huge chunk of your score. And so, one or two performance tests throughout the entire exam season, whether it be the MPT or the California performance test is not enough. You need to give this section its due. One of the beauties of the performance test is if you are listening to this and you are not in the midst of your bar season, you can think ahead for the performance test. I like to think about the performance test as kind of like riding a bike – once you get your approach down, once you are comfortable with everything... You can do that earlier, and then go back to it and refresh your recollection. So, if you're really worried about this part of the test and you're a 3L in law school, you can do some of these before bar prep time. If you need to start studying earlier because you're not going to be able to do full time study, you can start with a performance test, because starting early isn't a downside. Not practicing it though, is not a great solution. I think students don't want to do it because it takes so much time that they think it's more important to practice the substantive law. And sometimes these things are boring, and they're not fun to do. But unfortunately, studying for the bar can be boring and not fun to do. But what's worse is not passing.

Doretta McGinnis:

Sometimes being a lawyer is boring and not fun to do.

Lee Burgess:

That's true. That's so true, yes. There's a lot of times that your writing assignments at your law firm or whatever you choose to do will be boring and you don't want to do it. So, it's good to start working on that now.

Doretta McGinnis:

I would particularly recommend an early start for students who have struggled with legal writing. The MPT really plays to the strengths of students who are comfortable with legal writing and who have done well in legal writing courses. They need to practice as well, but particularly if you're a weaker writer, I think that you will probably get the most benefit from really a very early start and extra practice.

Lee Burgess:

I think that that's a really good point. And check out the resources at your law schools. Sometimes your law schools might have academic support programs



that might be able to help you get an early start, or the classes that Doretta and I've talked about that we've taught at different law schools. Or tutors. We oftentimes will start working with students in their second part of their 3L year to try and get some of this stuff knocked out of the way so you don't have to worry about it come exam time. So it's definitely something that you can think about early and be proactive about, which will just lighten the load come the crunch time of the exam. And you're right, if you have a history of struggling with legal writing, let me tell you, nothing gets better during the bar. So, you have to solve these problems early. And I think what's so heartbreaking for me... We spend a lot of time talking to people who struggle with the bar, and some of the things that come out, after they found bar exam success after shifting their writing style, after becoming better at reading the facts on the essays, after becoming better at legal analysis, is, boy, I wish I'd worked on these skills during law school. I struggled with the exact same things my first year, or my first year and a half, but I just kind of set them to the side and thought I had good enough, good enough was going to get me through. If they had worked on these skills during law school, then they probably would have gotten better grades in law school, which is never a bad thing, and they might have felt that they were better prepared for the bar. So, the skills that the bar tests – although it's a whole another podcast to talk about the validity of the bar's licensing people... That's a whole separate discussion.

Doretta McGinnis: That is another topic, yes.

Lee Burgess: But the reality is, it is the tool that we have now, and it's the gatekeeper. And there's no secret about the skills you have to be successful. So if you're struggling, please start early so you don't have to call us afterwards when you get bummed results after the fact. Okay, what about giving yourself feedback? We talk a lot on the blog and in other podcast about needing to self-evaluate your work. For the MPT, how does a student go about that?

Doretta McGinnis: The MPTs that have been released by the National Conference of Bar Examiners include what they call the Drafter's Point Sheet, and that is basically the answer to the MPT. So, a student who's taken a practice MPT should of course consult that Drafter's Point Sheet and compare that with his or her answer. The caveat, though, is that the Drafter's Point Sheet is extremely comprehensive. It includes basically every possible issue that you could conceivably have come up with, and it might even discuss alternative theories that you might have explored, or you might not have. It frequently uses language I like, which it refers to the "perceptive examinee". And will say, "The perceptive examinee might have noticed this." And that's nice. It'd be great to be the perceptive examinee who gets those extra points, but it's not necessary to pass. That Drafter's Point Sheet is perfection, and your goal is simply to pass. And I think that virtually no examinees will hit every single point as comprehensively as that point sheet does. My other comment about the point sheet is, it's not a model answer, in



that it is not formatted the way your MPT answer will be formatted. So, if you've been asked to write a memo, that Drafter's Point Sheet is not a memo. It's not a letter, it's not a brief. It is a detailed analysis of all of the issues that you could possibly have discussed in your answer. That means, in self-evaluating, the Drafter's Point Sheet will help you focus really more on the content, typically, than on the structure and format.

Lee Burgess: And I think when they give you something like a point sheet, that is an unattainable answer for most everybody taking the exam. That can really mess with you from an emotional perspective, because every time you go to self-evaluate your work, you're probably going to feel like you're failing.

Doretta McGinnis: And you are not the perceptive examinee.

Lee Burgess: Right. And that's okay. The bar is a minimum competency exam.

Doretta McGinnis: That's right.

Lee Burgess: We don't need to get As, we don't need to get A pluses; we just need to pass. So, you really do have to, I think, keep in mind what they're giving you, and don't let it go to your head that you are not able to meet the threshold necessary to pass.

Doretta McGinnis: Right.

Lee Burgess: So, California – for those of you who are taking California – does something also that can kind of mess with your head, but they release some of the best scoring answers in the state that are actual student answers, and they release two of them – an answer A and an answer B, and they are, of course, not identical. They are substantially similar, but they are not identical. And your job is to look at those answers and try and decide how close you could possibly get to them. And I don't know who writes those answers – sure as heck wasn't me – but they are really of a volume of writing that I have not seen anyone else be able to do in the time allowed. These are extraordinary people who are able to write an extraordinarily voluminous answers under strict time constraints. They can get through all of this reading terribly fast. They might be speed readers, they might have photographic memories, we do not know. I've had people take the bar who have photographic memories. The PT is really fast for them, because can they remember where everything was in the packet. So, you don't know who these people are. You really have to read them keeping that in mind. You really have to compare the two answers and remember, just because one answer made one point, that doesn't mean that that was a make or break issue if you didn't do it that way, that you are going to fail. What you really want to do is compare the answers and see where they overlap. That's the magic. That's the "must know, must have" information. But again, you have to check yourself.



Your goal is to not be the model answer. If you can do that, that's great – go forth. But the goal is to take what they did that you liked, take what they did well, and incorporate that into your answer. But they don't make this easy, do they? They don't even tell us like... Wouldn't it be easy if they would just tell us what we had to have to pass?

Doretta McGinnis: Well, it's true. That actually could be potentially much more helpful.

Lee Burgess: I know. I don't think the bars really will care about our perspective on that though.

Doretta McGinnis: I think not.

Lee Burgess: So, that's our first tip – practice, practice, evaluate your work, and keep in mind the assignments and start early if you need to. Alright, now within the performance test, Doretta, is it a good idea to just get the packet and flip it over into page one and just sit back and read the packet?

Doretta McGinnis: Right, at your leisure.

Lee Burgess: At your leisure.

Doretta McGinnis: No, starting at the beginning and reading straight through the end is the worst strategy that you could have on the MPT, because it is just too dense. And if you read from start to finish, you will have no context for your reading, you won't know what you're looking for, and you don't have time for that. You need to read with some focus and some context. So, the place that you need to begin, having put aside the general directions that I mentioned earlier, is the task memo, or some people call it the assignment memo. It's the first page in the packet, and it's always in the format of a memo to the examinee from a supervising attorney. This is the most important part of the MPT, because it identifies the task that you're going to be asked to do, whether that be a memo, brief, letter, whatever it would be. It tells you about your client, it sets out the legal issues. It may tell you not to address certain issues. It may describe the format that's expected for your written product. So, this is your starting point, and that's the place where you begin, and that is something that you want to read carefully. And it'll be short. It'll be like a page. It's not going to take you very long. So that's your first step. Then you want to move through the rest of the packet, skim over the File. That's the point that Lee mentioned earlier – that includes perhaps deposition transcripts, or contracts, or correspondence, or any sort of materials that you might find in the real world, such as the results of discovery. This is a place where you can really, really get bogged down, but you can't afford to. You want to simply skim that over at this point, to just have some idea of what is in there.





- Lee Burgess: And Doretta, I think with the skimming part, what can be so hard is you have your highlighters and your pens next to you, and I swear, by the time you get to law school, it's like we have this magnetic pull to the highlighter.
- Doretta McGinnis: True.
- Lee Burgess: And I will literally tell students, "You have to sit on your hands." I'm sure that people think my students in the exam are crazy for doing that, but I have had students who literally cannot skim. They cannot not not mark it up. And so, sometimes you have to do crazy stuff like sit on your hands, so you do not touch the highlighter and then find yourself highlighting the entire File. Oh, I've seen it, guys – the entire File. The entire File is not material, so you have to really check yourself when you come up with your plans that are working for you and say, "Okay, I need to skim. What do I have to do to make sure I skim?"
- Doretta McGinnis: Right. And there's a tension there between skimming and all of the close reading that we've been trained to do in law school.
- Lee Burgess: Very good point, yeah.
- Doretta McGinnis: We don't skim in law school. We're supposed to read carefully and thoughtfully, and we're going to do that in the Library section of the MPT. We're going to come back and do it in the File, but that first time through the File, we really do mean skim. And I really appreciate the point, Lee, about not overly highlighting, because one of the key tasks of the MPT is to sort relevant from irrelevant information. And it's very common for the File to include some information that really is not pertinent.
- Lee Burgess: But this is in direct contrast to typically what we talk about with the essays, which every word is material and important.
- Doretta McGinnis: Yes, that's correct.
- Lee Burgess: So, that is one of the big differences between the performance test and the essays, is that the performance test, part of your job is to find the material information.
- Doretta McGinnis: That's right, because it's much more of a real world kind of task.
- Lee Burgess: Exactly, exactly.
- Doretta McGinnis: Right. So that's right. So then you move on to the Library, and here you're going to really read carefully. And you're going to read with a view toward pulling out the legal rules. And again, the Library has a variety of sources – there may be cases, there may be statutes, there may be, I don't know, proposed legislation.



There could be all sorts of things in there, regulations, all sorts of legal sources can be in there. But you are on the hunt for the rules.

Lee Burgess: And I think that that's a really important thing to remember, which I talk about. In California, because you have more time, your Library is even more robust than the MPT, although it's basically the same material. And again, there's this tension between close reading and time management. So it's like, yes, you are reading closely, but what you are doing is you are hunting for things, you are reading to find the rule statement, you are reading to find the point of that case being in the packet. I think one of the things that is important to remember with the Library is, you're not doing an open-universe, like a research assignment. This is a constructed puzzle that they have put together for you, and your job is to figure out how all the pieces fit together. So, you're looking for why did they put this case in the packet? It's got to be there for a reason.

Doretta McGinnis: Right. That's exactly right. And the biggest clue to why that case is there is found back in that task memo, because the task memo told you what issues you were looking for. Like your client wants to know if there was a breach of contract, so you know you're looking for a rule that pertains to a breach of contract. That's an overly simplistic example, but the point is, that's why we're going to start by reading that task memo so closely. You know what the issue is, so that when you get to the Library, you're looking for the rules that pertain to that issue, and that will answer that question for your client. And this is a place to highlight, take notes, outline the law. You do want to take some time to do that, because the structure of the law is going to drive the structure of your answer. Just the way we organize a memo or a brief around issues or elements of a rule, we're going to do the same thing on the MPT.

Lee Burgess: Yep, exactly. And I think it's an important point that we really recommend that you do this organization on scratch paper. You can take notes directly on the packet itself, but to organize things and to pull out the important elements and think through your answer before you write, you've got to do that by creating a structure. We are not personally big fans of creating that structure on the computer, for a number of reasons. One is, if you haven't heard these stories before, things happen to computers in the bar exam. And if something happens to your computer, they hand you a blue book, although some people were telling me that now they're red in some jurisdictions. So it's like a red blue book. But whatever it is, they hand you a book and you pull out your ink pen and you have to start writing. And if you had done all of your preparation work, all of your outlining on the computer, it's gone. It's gone. It's gone. It's very, very hard to keep writing, so that is one point. Also, I just think that outlining on the computer, you don't have enough space to see the universe of your answer. And I think especially for California, which is even a larger, more robust assignment, you've got to see the big picture. And as things move off your screen, as you're outlining or taking notes on the computer, you lose that big



picture. And if you can't see the big picture, see the structure, see what the task that was presented to you by the task memo was, make sure you're answering the full question asked, make sure you've got sections with clear headers, all of that stuff – that is going to hurt your answer in the end.

Doretta McGinnis: That's right. And the contents of the Library on the MPT can really vary widely, and some of them have multiple cases where you really do have to synthesize and compare those cases. And you want to take those notes by hand so that you can connect the concepts from those cases and be able to modify your rule, perhaps, as you add to it by reading through the Library.

Lee Burgess: Right, and more and more research continues to come out about how taking notes on a computer is basically worthless. The other great thing about taking notes by hand, as you're synthesizing down this material, is you're likely to retain it, which you don't have to retain it in your long-term memory, but you need to retain it for 90 minutes or three hours.

Doretta McGinnis: That's right.

Lee Burgess: So, you still want to have some sort of an idea of what those laws are. On my bar exam, one of my PTs was an eight-factor test about custodial interrogations. And I was going to be more familiar with those eight factors since I went back to the File and looked for facts to discuss those eight factors if I wrote them down by hand than if I typed it on the computer, and that's what the research continues to show us. So again, I'm going to be better at going back and creating this answer if I remember what's in my notes from the cases.

Doretta McGinnis: Right, and that going back to the File is the next step. After you have outlined the law based on the Library, you're going to go back to the File, and this is your time to read that File more carefully. And you can see, just from what Lee said about having, "Oh, I've got this eight-factor test, now I've got to look for the facts that relate to those eight factors" – that meant that she could go back and read the File in a focused way – not just reading it from start to finish wondering what it's about, but reading it with a view toward pulling out the facts that related to those factors.

Lee Burgess: And there are some people who recommend that you start with the Library cold – especially in California, that is a common recommendation. I'm not personally a fan of that, only because it's really hard for me to go read a bunch of law without much context. And so, even for me personally, I liked to go through the File quickly and then gab that context. Even though the File's kind of long in California, it was still nice to know what the deal was, what have I got? Have I got a whole packet of depositions, have I got a bunch of contracts, have I got pleadings? I need to know what I've got, and then when you get to the Library, then I'm remembering, "Oh, there was a lot of discussion about these facts. Oh,



now I see that this is the law." Some people prefer to dive straight into the law, but I think without context, I think it can be hard to pick out the important things. So, of course, there's some room for you figuring out what you want to do, but I think the key is that you can take the advice we're sharing with you, take the advice that you're getting from your bar prep courses, and if it's not working for you, do something else. Create your own approach, but then do it consistently, so you know, "Hey, I get the packet. Here's the first thing I do every time. Here's the second thing I do every time. Here is the third thing I do every time."

Doretta McGinnis: That's right. That's right. You have to have that sort of attack plan, because that will save you time. And particularly on the MPT, you've only got 90 minutes – you can't waste five or six minutes contemplating what your starting point should be.

Lee Burgess: Yeah, no, there's just no extra time for that. Okay, so now we're back in the File and we're getting to read the facts again, more carefully. Do we have to sit on our hands this time or can I take out my highlighter?

Doretta McGinnis: No, now it's time to highlight.

Lee Burgess: Oh, good.

Doretta McGinnis: Judiciously. Judiciously.

Lee Burgess: Judiciously. Excellent.

Doretta McGinnis: But you are going to highlight, yes. And your goal here, again, is to connect facts to the elements of the rule that you have pulled out of the Library, whether that came from a statute or synthesizing cases or regulation, whatever it might be. But that's what you're really focusing on. And again, this is the point where you might find some extra material in the File that really doesn't relate to any of these elements of the rule. And you want to look at that stuff carefully. You need to make that decision very carefully before you jettison those facts. But you also need to make that decision confidently. If you see something in there that doesn't relate to any of the elements of the rule, then you should relax and let it go.

Lee Burgess: Yeah, and I think, for me, this idea of going back to this image of a puzzle, since this is a constructed exercise – every document that's put in the packet, every case, every statute, all of those that have been put in the packet are there for a reason. And so, although every word might not be critical, it still got to have a point. If you find yourself only using one document in the File for your answer, that is not a good sign. Step back, go back and say, "Why did they put this in the packet? What does this do for me?" And that is going to really help you out,



because this isn't the real world, and there's not a bunch of stuff that you just throw to the side and say, "Oh, this case doesn't apply." Nope, not in this situation. The case is there for a reason.

Doretta McGinnis: Right. And in terms of material that you might not need, that may also occur in the Library, but there it will typically be statutory sections. Maybe they'll give you an excerpt with five different sections of a statute, and four of the five pertain to your problem, and one of them just really doesn't, but it was there sort of in sequential order and they left it there. It's a sort of thing that if you were reading that statute yourself, you would read it and then say, "Okay, this doesn't really pertain to my issue."

Lee Burgess: Exactly. Or I've also seen cases where... Let's go back to my eight-factor test. So it's like you've got this main eight-factor test, and then the next case is really in the packet to talk to you about how to analyze certain elements in that eight-factor test. But then maybe that case has three main issues, but only two of those issues really apply. So again, it's like, the case shouldn't be thrown out, but you have to just realize what the issues in that case that apply to your fact pattern.

Doretta McGinnis: And again, these are the skills that hopefully you've built up throughout law school.

Lee Burgess: Hopefully.

Doretta McGinnis: It's really not that mysterious.

Lee Burgess: Exactly.

Doretta McGinnis: Because you're using those same skills.

Lee Burgess: Exactly. And I remember in my first year Legal Writing class, when I figured out that it was a game, and when I figured out that the fact pattern that they'd given me had been constructed by someone who was trying to solicit an answer, that there was a right answer. There were specific cases I was looking for – this was when it was an open universe assignment. But they just didn't make up stuff willy-nilly. All of a sudden it made it make more sense to me – you're saying, "Oh well, that's a weird fact" or, "I wonder why they included that in the packet?" Well, they did it for a reason, so your job is to figure it out. Now, in the real world, it's a little bit different because sometimes you'll get an assignment at work where your boss may have no idea if there is an answer. Those were always my favorite assignments, when I would do research and research and research, and not be able to find any answer. And then I have to come back and say, "I don't think I can find that law. I couldn't find it anywhere",



and they're like, "Oh yeah, I didn't think that I was able to do that, but I thought I should just send you to do it anyway."

Doretta McGinnis: And that's a timely message for any summer associates.

Lee Burgess: Yes, exactly.

Doretta McGinnis: Who might be listening.

Lee Burgess: Summer associates are definitely the people they send on those far-fetched assignments.

Doretta McGinnis: Absolutely.

Lee Burgess: They're just like, "Can you find me anything?" But that is not what happens on the bar exam.

Doretta McGinnis: That's right.

Lee Burgess: So you definitely want to keep in mind that this is a constructed reality with a right answer, and your goal is to get the right answer. Okay, so we've talked kind of about the approach. I think we've talked about the importance then of, after you go through that File, creating a plan on scratch paper, outlining it. I call it the "thinking portion" – you must think before you write.

Doretta McGinnis: Indeed. And you should be willing to spend a lot of time thinking and about half of it writing. For the MPT, that means you want to reserve about 45 minutes to write your answer.

Lee Burgess: Yeah. California is the same. I mean, it's longer, there's more information, which makes it more challenging, so you absolutely need to spend some time thinking. And the other thing about California, because you have this three-hour block, I think it's also important to remember that you can take a moment if you are feeling very overwhelmed by the volume of information. And I would argue with the MPT too – a moment being like a minute, is still totally fine. If you want to look up, stretch, even stand up in your chair, walk to the water fountain, get a drink of water – sometimes you need to remove yourself from the packets, and then come back to it to see some clarity. That is better than sitting and spinning your wheels because you are feeling overwhelmed. I'm a big fan of the water break. Or I would always walk to the bathroom, wash my hands – that was always my thing. I don't know why, but it was just like I wanted to walk to the bathroom and do something. I felt weird just walking to the bathroom and walking back. So, I would just walk to the bathroom and wash my hands and go back. These are the strange things you do when you start preparing for the bar exam. Okay, well, we've already talked about building on your lessons that you



learned in your law school legal writing assignments, and we've also talked about the fact that for practicing lawyers who are coming to this exam after practicing law, to just remember that you still have to follow the directions. Nobody cares how you do it at work; they only care about how you do it in the performance exam.

Doretta McGinnis: Speaking of that, I just want to point out, because there's a lot of fear, I think, of these sort of wildcard assignments on the MPT, where the document you're asked to produce may be something unusual or unfamiliar. For those MPTs, the packet will often include very specific directions for formatting, and you need to follow those. But they do really throw you that lifeline so that you don't have to waste time thinking, "I've been asked to write a lobbyist's leave-behind for Congress. What do I do?" They'll tell you how to do it.

Lee Burgess: I think that is a really good point, that oftentimes when you do feel lost, it is important to always go back to the task memo and remind yourself that they've had to have told you how to do this task. They want a right answer. The graders go through this very quickly, they don't want to read a bunch of answers that are completely all over the place.

Doretta McGinnis: That's right. And for the most basic sort of documents, like a memo, you may not find more specific guidance about that. But frequently, even for the client letters, there'll be another memo in that packet that says, "At our firm, when we write a client letter, we structure it like this." And that is really helpful to you and will save, again, a lot of time of not spinning your wheels trying to figure out how to organize your answer.

Lee Burgess: Yeah, exactly. So, constantly reminding yourself that they have to explain to you what to do, or it couldn't be a test. There is an answer, and they're wanting you to drive yourself to an answer. It's very important in those moments where you feel like you have no idea where to start, you always go back to that task memo and realize that they had to have given you some keys. Well, we've talked about the time crunch with this, and time management is another thing that you want to focus on when you're preparing. We talked about the importance of practice, but I think students have to do this practice times. Because what does a four-hour PT or a two-hour PT teach you? Nothing.

Doretta McGinnis: Right, nothing.

Lee Burgess: I'll answer my own question – nothing.

Doretta McGinnis: Or perhaps that you can't complete it within the time limit, is the lesson there. So yes, you absolutely have to do it under timed conditions, yes.



- Lee Burgess: I think that is a real challenge, because so many of us are perfectionists. The law attracts perfectionists, and it is very hard to not spend as much time as possible making it perfect. But that is not the task at hand on the bar. It is not the perfect performance test answer; it is the best performance test answer you can do in the time allowed. And that is what you need to practice. If you can write a perfect answer in four hours for the California exam, or in two hours or two and a half hours for the MPT, unless you get extended time for accommodations – that is not going to help you produce a passing answer in the time allowed. That's the task. And it's just very important to constantly remind yourself what are the constraints of this test and what are you really being judged on, so you can perform at your best for that.
- Doretta McGinnis: Right. And if you really are feeling kind of crushed in terms of time pressure, I think it's obvious that the analysis is the heart of your answer, that's the most important part of your answer. So, even though we've been stressing following a particular format, you might want to start writing your answer by going into the analytical sections, and then leaving some of the niceties like the salutation, if it's a letter, leaving some of that to be your final steps, because if you run out of time and your letter doesn't say...
- Lee Burgess: "Dear so and so."
- Doretta McGinnis: "Dear so and so", but your analysis is great, you're in better shape than having it look like a letter, but contain very weak analysis.
- Lee Burgess: And I think that is often something that people get confused about with the performance test, is because they give you so much law usually, and you have this big packet of law, that you think your main job is to tell the grader that you read all the law and to write it all down. And I like to take a moment to always think about what makes us lawyers. So, anyone could read a case and re-type sections of it, anyone. You don't need to go to three years of law school for that; that is not a specialized skill. What is a specialized skill is determining what is the relevant law – that is a specialized skill. Synthesizing law down and putting the puzzle pieces together – that is specialized skill. And applying that law to the facts at hand – that is legal analysis. That's what we're all trying to learn. That's thinking like a lawyer. All these terms that you've heard in law school. So, that's what they're judging you on. If you have failed this exam or if you are evaluating some practice and you're scratching your head going, "How do I know if I have enough analysis?" – one exercise I like to recommend is, take one of your trustee highlighters that I know are lined up next to you, probably as you're listening to this podcast, if it's at a desk, pick up one of those highlighters and highlight in one color the rule statements in your IRAC, and then in one color the analysis. If your rule statements are longer than your analysis, that is typically not a good thing.





- Doretta McGinnis: That's right.
- Lee Burgess: Because that probably means you're just copying huge sections out of the cases.
- Doretta McGinnis: I like that highlighting tip very much. That's really productive highlighter use.
- Lee Burgess: Exactly.
- Doretta McGinnis: In teaching legal writing, that was something we would often have first-year law students do on their memos, would be to highlight those different components. And it really visually lets you know if the balance is off. If you included, let's say, a rule statement for each of the rules, if you see that pink section is missing, that's a problem. So I think that's a really great idea in terms of the self-evaluation of practice tests.
- Lee Burgess: Yeah. Some of these things, it's not amazing to think, "Oh my gosh, I should take highlighters." That's okay, but is that really going to teach me anything? It actually does. These little exercises you can do for five minutes by reviewing your answer can really make a difference. And onto our last tip, which I think this transitions well into, is you are writing for the graders. So the other thing you want to look at when you're self-evaluating is not just creating a rainbow on your paper with your highlighters, it's also remembering how fast the graders are going to read these packets. Even if they're long, like in California, and you've been writing for 90 minutes, they are going to maybe spend three to five minutes, but let's be honest, probably three minutes reading your answer. And your answer needs to be as easy for them as possible to read. So, I would say a happy grader gives happy grades if you make their job easy – you use clean formatting, you have lots of paragraphs, you follow IRAC, you have followed the directions.
- Doretta McGinnis: The headings.
- Lee Burgess: You have headings.
- Doretta McGinnis: Headings and sub-headings, very important.
- Lee Burgess: Headings and sub-headings. Then it's going to look professional, which of course, this is a professional exam, so that's always a plus. But it's also going to make their job easier. And the easier you make it for them to pass you, the more likely they are going to be to pass you. They are not going to dig through your writing to try and figure out how they can pass you. That is not their job.
- Doretta McGinnis: That's right. They're working from that point sheet and they are looking to see that you hit those issues, or enough of them in order to pass. And they are of



course also looking for that structure and professional presentation, as Lee mentioned.

Lee Burgess: Yeah. Okay, well, I think with that, we're out of time, even though I'm sure you and I could just nerd out in the performance exam for hours more.

Doretta McGinnis: We could.

Lee Burgess: We could, we could, which is good that we do this sort of work then, because you and I can have that meeting offline. We won't put with our listeners through that right now. But if you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on iTunes. We would really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to Lee or Alison at [lee@lawschooltoolbox.com](mailto:lee@lawschooltoolbox.com) or [alison@lawschooltoolbox.com](mailto:alison@lawschooltoolbox.com). Or you can always contact us via our website [contact form](#) at LawSchoolToolbox.com. You can find Doretta through that contact form as well. And if you haven't heard of it, we also run a bar exam site called [barexamtoolbox.com](http://barexamtoolbox.com), with lots of helpful free tips for bar takers, some courses that can help you prepare for the California and UBE bar exams. And we do some tutoring too. So, thanks for listening and we'll talk soon! And good luck if you're studying for the bar! Keep up the good work, we know it can be a grind. Alright, talk to you soon! Bye!