



Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we're excited to share the first episode in our new "Start Law School Right" series. In this episode, we will be discussing what is the law school process, what do lawyers argue about, and where does the law even come from. 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](#), and the career-related website [CareerDicta](#). Alison also runs [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. 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.

Lee Burgess: Welcome to episode 1 of our "Start Law School Right" series. Over the next 8 weeks, we will be sharing key tips for starting your law school experience off right. Today's episode is "Getting Started 101".

Lee Burgess: So, what is the law school process, what do lawyers argue about, and where does the law even come from? Law school learning is a process, and something that requires patience and consistent attention. Sadly, you can't easily cram for a law school test the way you could in undergrad! There are four distinct steps in the process, and each one is important:

1. Absorb
2. Ponder
3. Practice
4. Perform

Let's talk about each one in more detail.

Lee Burgess: Step 1: Absorb  
You'll have a lot of information thrown at you in law school. The first step is to simply absorb everything, without worrying too much about whether it all makes sense. Particularly first semester, students often get demoralized because they feel like they're not "getting it". This is normal, and isn't a reason to give up! Just keep doing the reading and going to class, and you'll figure out what's going on in the next step. Now, some sources of information you'll encounter include:

Lee Burgess: Cases: Most of what you learn in law school will come via cases. But it's easy to be misled about what exactly you're supposed to be learning from each case. Stay tuned, we'll talk more about that!



Lee Burgess: Class discussion: One of the best sources of information in law school is your professor. Why? Well, because that's who's grading your exam. Their concerns should be your concerns.

Lee Burgess: Commercial supplements: Some people scoff at commercial supplements, such as hornbooks or commercial outlines. Those people are crazy! Used responsibly, commercial supplements can enhance your understanding and accelerate your learning. You just can't rely on them too heavily.

Lee Burgess: Old student outlines: Yes, it's true – you will be able to find old student outlines for most law school classes. These can be useful, but don't overestimate their powers! We'll talk about each one of these in more detail later in a different podcast. But for now, just realize that you'll probably feel overwhelmed in the beginning! There's a lot to learn, so make a commitment to keep up with the reading in the first semester, even if things don't come together or make sense immediately. Be patient, and they'll eventually gel. But your brain needs the raw materials to work with, which means you really need to do your reading.

Lee Burgess: Step 2: Ponder  
Once you've absorbed sufficient information, it's time to start making sense of it. In this step, you'll take all of the information you've absorbed from your cases, class, supplements, etc., and go over it until it makes sense to you. Then you'll record everything you've learned and taught yourself, so that you can reference it later when you're studying for exams. Fundamentally, we're talking about two sub-steps: thinking, which is shaping all of your raw materials into a coherent understanding of the law – with an eye towards being able to apply your knowledge; and recording – creating quality outlines and other study materials to ensure you're ready for exam day. Each one of these is critical, so we'll talk about both in detail later!

Lee Burgess: Step 3: Practice  
A common law school myth is that you have to wait until you're finished with each course to start practicing for exams. This is not true! In fact, if you wait until the end of the course, it is much too late, especially if you are in your first year of law school. Why? Because legal exam writing is a learned skill. Law school exams are unique, and it doesn't matter how well you did in school previously. If you don't deliberately practice your legal writing, you won't be successful. Law school exam writing is actually fairly formulaic, but you have to get used to "the formula". The sooner you do this, the better! And the only way to get used to it is to practice! We'll talk more about the formula in a later podcast. So, remember: Practice early, practice often! Seriously, you'll thank us later.



- Lee Burgess: Step 4: Perform  
Once you've practiced, and time's run out, it's game time! All of your reading, thinking, outlining, and practicing comes down to one thing: the exam. Now, let's not sugar-coat things – there's a lot riding on the few hours you actually spend taking law school exams each semester. Not to worry! With advance preparation, you can go into exams feeling well-prepared and ready, with strategies for handling whatever your professor throws at you. Before we move into the nitty-gritty details of law school exams, let's consider a few foundational topics, so you'll understand what lawyers argue about, and what "law" typically applies in law school.
- Lee Burgess: So, what do lawyers argue about? Law school makes a lot more sense when you think about what it is that lawyers routinely argue about. And by "lawyers," I mean litigators, since that's what law school's teaching you to be. When you understand what lawyers do on a daily basis, you'll be better equipped to read cases actively – with an eye to the types of arguments you'd make if you were representing someone. So, let's break it down.
- Lee Burgess: Lawyers argue about whether a certain case, with a given holding, is relevant to this new set of facts. If you want the case to apply, you'll argue for a broad holding. If you want to distinguish your facts from unhelpful precedent, you'll argue for a narrow holding. Lawyers argue about what the facts are, and what they mean. Lawyers argue about what the law is, and what it should be.
- Lee Burgess: Now, what do law students argue about? What do you do in law school classes and on exams? You argue about what the law is. You argue about what the facts are. You argue about what the facts mean. And when you're out of other things to argue about, you argue about public policy, also known as, what the law should be. This old adage sums it up: When the facts are against you, argue the law. When the law is against you, argue the facts. And when the facts and the law are both against you, argue policy. Worth keeping in mind as you move forward in your legal career!
- Lee Burgess: Now, before we go any further, let's talk about an area that often trips new law students up: Where does "the law" actually come from? This sounds like an easy question, but like many elements of the legal system, the answer turns out to be more complicated than you might expect.
- Lee Burgess: There are two basic kinds of law that you'll study in law school:  
1. Law that comes from cases, which is known as the "common law".  
2. Law that has been passed by a legislative body or is written down somewhere – like statutes, code sections, regulations, restatements – sometimes referred to as "codified law".



Lee Burgess: So, let's start with the common law. Common law comes from cases. That means a judge came up with the law – influenced by any number of sources – and it's now legal precedent. So, all judges have to follow any law that another judge writes down? Well, no. To understand the scope of the common law, you must understand which jurisdiction this particular fragment of the common law is binding on. Therefore, you must understand the court system generally. As a federal system, the U.S. has state courts and federal courts, each of which has its own hierarchy of trial courts and appellate courts. Generally speaking, precedent is only binding within a system, so you don't want to be citing federal court decisions from the Northern District of California when you're in a state court in San Francisco. Those federal cases are irrelevant.

Lee Burgess: So, why do we study law from around the country? What about the Torts book with decisions from state courts all over the country? Isn't that all common law? Yes, but it would not all be binding if you're practicing in a specific jurisdiction. In law school, it's there to illustrate generally accepted legal concepts, but you want to be more careful in your legal research and writing class, which will typically feature a problem set in a specific jurisdiction. Anytime you think, "Is this settled law?", you have to immediately ask yourself, "Where?" It's impossible to answer the question in the abstract.

Lee Burgess: Now let's talk about everything else – most notably, statutes, codes, and regulations. These are rules that are passed by some sort of legislative or regulatory body. That means that a judge didn't come up with the rule, but a different branch of government did. Typically, you can flip open a book, or search the Internet, and find out what the "official" rule of law is when it falls into this category. Go ahead and try it. Google "California Evidence Code 352". Look at that – you now know exactly what the rule is!

Lee Burgess: So, why do we still read cases in classes that focus on this type of codified law, like Civil Procedure, Evidence, Criminal Law, etc.? Well, not surprisingly, when the government creates a rule, often there is ambiguity in how it should be applied – either when it should apply, or how. This is what the courts make rulings on. They give lawyers and other courts directions on how to handle issues relating to codified law. You'll read cases to explore these nuances, but you'll also need to understand the rules that come from the statutes themselves.

Lee Burgess: Bonus: What's a restatement? A restatement is something that sounds like law, but isn't really law (unless your professor tells you to treat it as such). The restatements are treatises published by the American Law Institute, describing the law in a given area and guiding its development. Different restatements are



frequently cited by judges in their opinions, and sections are therefore adopted as common law, but a restatement is not “the law” on its own.

Lee Burgess: So, now you understand the different options for where “the law” comes from. Let’s talk about how this plays out on law school exams. What’s “the law” on an exam? In addition to the real-world complexity discussed previously – what law applies in a California court? Is it a state court or a federal court? – professors can introduce even more confusion on exams by using hypothetical jurisdictions without telling you exactly what law they’ve adopted.

Lee Burgess: So, what’s the black letter law in a made-up jurisdiction? A large portion of your grade will turn on your ability to provide an answer to this question! For example, consider a hypothetical jurisdiction of Smithville, in the state of Smith. You know nothing about the choices the legislators and judges of Smith might have made over the years, so you’re going to have to analyze any legal issues in light of, first, the “traditional” versus the “modern” rule. Obviously, the law changes overtime. Compare the doctrine of contributory negligence, which is traditional, with the doctrine of comparative negligence, which is modern. Under the traditional doctrine, an injured victim who was at all at fault couldn’t recover. Finding this unfair, the law in some places has evolved so that the slightly-at-fault victim could recover for the portion of the incident that wasn’t her fault. If you’re not told which rule Smith uses, you’ll want to talk about both on an exam.

Lee Burgess: The “majority” versus the “minority” rule: Different states make different choices about what the law should be. When you don’t know what state you’re operating in, either of these rules might be in force, so you’ll want to analyze both options.

Lee Burgess: Common law versus statutory law: Contract law is a great example of this, because there’s often a conflict between the outcome under the common law and the outcome under the UCC. Arguably, this is a variant of the traditional and modern rule paradigm, but it doesn’t really matter what you call it. If you’re not sure whether Smith has adopted a particular section of the UCC, it’s important to consider both options – the common law and the UCC “black letter law”.

Lee Burgess: So, in some cases you might have more than one black letter law rule that could conceivably apply. Now, although this seems scary and a little weird, it’s actually great. Why? Because it gives you more to talk about in your exam answers! More to talk about leads to more potential points. And don’t worry too much here. With practice, analyzing all these different options will be second nature, and you’ll be well on your way to exam success!



Lee Burgess:

Okay, that's all we have time for today. We will be back next week with more of our "Start Law School Right" series, where we will be talking about class preparation. If you're starting law school soon and want some personalized help to feel confident on day one, check out [StartLawSchoolRight.com](http://StartLawSchoolRight.com) for details of our "Start Law School Right" course. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd 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 myself 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](http://contact form) at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

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