Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we have another in our "Listen and Learn" series. This one is on Criminal Procedure – specifically, Miranda warnings. 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 back! In today's episode about Criminal Procedure, we'll cover Miranda warnings, which might be the most familiar topic in all of Criminal Procedure, solely because it is so widely used in media. We might all, for example, know that the first line of a Miranda warning begins with "You have the right to remain silent."

Lee Burgess: We'll begin by going through an attack plan for how you might approach a Miranda issue on an exam question, and then look at specific rules you'll want to address in your answer. We'll then end with looking at a few examples and taking our turn at seeing if we can apply what we've learned to some real bar questions.

Lee Burgess: The first question we want to ask to spot a Miranda issue in a fact pattern is whether there was an incriminating statement made that was obtained by the police. If there was, then you know you will want to address the Miranda issue in your answer.

Lee Burgess: Second, if there was an incriminating statement made by the police, then the threshold question is going to be whether that incriminating statement was obtained as a result of a custodial interrogation. Why? If the statement was not made during a custodial interrogation, then Miranda warnings are not required and those statements are likely admissible at trial. However, if the statement was made during a custodial interrogation, then the officer is required to give Miranda warnings. If they fail to do so, then the statements are excluded under the Fifth Amendment. So, under this second step it is really important that we determine whether the individual was in custody and whether they were subject to an interrogation.

Lee Burgess: Number three: If they were subject to a custodial interrogation, the next thing to determine is whether they were read their Miranda rights. If not, then any incriminating statements made during the custodial interrogation are likely not

admissible at trial. Another question to ask at this stage is whether the individual invoked their Miranda rights. If they did, then it is likely the statements made during the custodial interrogation are also not admissible. More on this in a bit.

Lee Burgess: Number four: Nonetheless, if the individual was read their Miranda rights, we want to ask whether the individual at any point waived their Miranda rights. If they did, then statements following such waiver would generally be admissible at trial. However, another question to ask is whether the defendant was forced to make the statement – that is, they made an involuntary statement as a result of improper police tactics. The Fifth Amendment protects individuals against compulsory statements, and therefore such statements are inadmissible at trial.

Lee Burgess: Finally, you want to decide at the end of your analysis whether any statements made by the individual should be excluded at trial under the Fifth Amendment.

Lee Burgess: So, let's get into the specific rules. First, it's first good to understand the constitutional basis for Miranda warnings – the Fifth Amendment. The Fifth Amendment right against self-incrimination protects suspects from being compelled to make statements against their own penal interests. In *Miranda v. Arizona*, the Supreme Court held that any incriminating statement obtained as a result of a custodial interrogation may not be used against the suspect, unless the police informed the defendant of their Miranda rights. The court articulated that these warnings must inform the suspect of their right to remain silent, their right to an attorney, and that an attorney can be provided to them if they cannot afford one.

Lee Burgess: As mentioned above, the threshold question for a Miranda issue is whether the individual was subject to a custodial interrogation. Important here is that there are two parts to this analysis: (1) whether the individual was in custody; and (2) whether they were subject to an interrogation.

Lee Burgess: The court has defined "custody" as when a person is not free to leave or is otherwise deprived of his freedom in any significant way. The basic test for being in custody is whether a reasonable person would believe he is free to leave.

Lee Burgess: The court has defined an "interrogation" as referring not only to express questioning, but any words or actions that the police know or should know are likely to elicit an incriminating response. Key here is that an interrogation is not just express questioning, which is the most common understanding of an interrogation. For example, an interrogation has also been found to be a conversation between two police officers with a suspect in the back seat of a

squad car, where the officers knew or should have known that their words would elicit an incriminating response from the suspect, even though they were not directly questioning the suspect.

Lee Burgess: Remember that if there is a custodial interrogation, Miranda kicks in and the police officer must have provided the suspect with Miranda warnings. If they did not, then the statements made during the custodial interrogation are likely not admissible at trial. If the individual was read their Miranda rights, or even if they were not read their Miranda rights, they need to invoke their rights in order for them to apply.

Lee Burgess: In order to invoke the right to counsel, the individual must make a specific, unambiguous statement asserting a desire to have counsel present. If a suspect makes an ambiguous statement, police are not required to end the interrogation, but once the right to counsel is invoked, all interrogation must stop until counsel is present. In order to invoke the right to silence, the individual must make a specific, unambiguous statement asserting their desire to remain silent, and the interrogator must scrupulously honor that request.

Lee Burgess: If a suspect is read their Miranda rights, they can always waive their rights, so long as they knowingly and voluntarily do so. If they waive their Miranda rights, then any incriminating statements made during the interrogation can be admissible at trial.

Lee Burgess: On the other hand, compulsory statements, or those that were made involuntarily as a result of improper police tactics, are not admissible at trial. Improper police tactics might be things such as physical violence against the suspect, threats, or promises that the suspect will not be prosecuted.

Lee Burgess: The final step we want to cover is whether the statement and any “fruit of the poisonous tree” – evidence obtained as a result of the statement – should be excluded. There are slightly different rules for Miranda violations and involuntary statements. If an individual’s Miranda rights are violated, then their statement is excluded and inadmissible at trial. However, as a general matter, any physical fruits of the confession are not excluded. This includes, for example, evidence seized in reliance on the statement. If an individual made an involuntary statement, such statement would be excluded and inadmissible at trial. Additionally, any physical fruits of that statement would be excluded as well.

Lee Burgess: So, let’s go through our attack plan and discuss our first hypo:

Lee Burgess: "Dan was just arrested for allegedly stealing a car radio and was taken to the police station. At the police station, Officer Query met with Dan and began asking him questions about the radio. Dan stated that he did not want to talk. Officer Query responded that, if Dan chose to remain silent, he could not tell the District Attorney that Dan was cooperative. Dan immediately confessed that he stole the radio.

Lee Burgess: How should the court rule on Dan's motion to suppress the confession to Officer Query under Miranda for any use at trial?"

Lee Burgess: So, let's review our attack plan.

1. Was there an incriminating statement obtained by the police? Yes. Here, Dan confessed that he stole the radio. But also, the question stem makes it obvious that Miranda is going to be an issue, so a fairly easy start!

2. Was the incriminating statement obtained as a result of a custodial interrogation? First, custody: A person is in custody when he is not free to leave or is otherwise deprived of his freedom in any significant way. The test is whether a reasonable person would believe he is free to leave. Here, Dan was arrested and taken to the police station. Being arrested, likely having been placed in handcuffs, would suggest that a reasonable person would not feel free to leave. Additionally, being at a police station under such circumstances likely created an environment where Dan also did not feel free to leave. He was there because he was arrested on the suspicion of stealing a car radio. Therefore, it is likely that Dan was in custody. Interrogation: An interrogation refers not only to the express questioning, but any words or actions that the police know or should know are likely to elicit an incriminating response. Here, Officer Query met with Dan and began asking him questions about the radio, which likely constitutes express questioning. Furthermore, Officer Query told Dan that if he stayed quiet, he could not tell the District Attorney that Dan was cooperative, which is likely words that the officer knew or should have known would elicit an incriminating response, because a suspect would likely respond confessing to the officer any crime they committed – which Dan did. Given these circumstances, it is likely that the questioning amounted to an interrogation. Because the statement was obtained as a result of a custodial interrogation, Officer Query was required to inform Dan of his Miranda rights.

3. Did the police inform the defendant of their Miranda rights? Did the defendant invoke their Miranda rights? Here, Officer Query never informed Dan of his Miranda rights, which he was required to do because Dan was being subjected to a custodial interrogation. Furthermore, a suspect can

invoke their right to silence by making a specific, unambiguous statement asserting their desire to remain silent, and the interrogator must scrupulously honor that request. Here, Dan stated that he did not want to talk. This likely constitutes a valid invocation of his right to silence, because it was specific and unambiguous that he did not want to talk. Following the invocation of his right to silence, Officer Query was required to honor that request, but nonetheless proceeded to state that if Dan chose to remain silent, he wouldn't be able to tell the District Attorney that Dan was cooperative. Therefore, Dan's confession that he stole the radio can be suppressed, both because he was never informed of his Miranda rights and because he properly invoked his right to silence.

4. Did the defendant waive their Miranda rights? Was their statement made involuntarily? There are no facts that indicate Dan ever waived his Miranda rights. However, it's unclear whether the incriminating statement was made involuntarily. An involuntary statement could be made as a result of improper police tactics, such as physical violence, threats, or promises that a suspect will not be prosecuted if he confesses. Here, Officer Query told Dan that he could not tell the District Attorney that Dan was cooperative if he chose to remain silent. Dan might argue that such a statement suggested a guarantee of different penal consequences based on whether Dan confessed. However, Officer Query would likely argue that he only suggested a statement he could make to the prosecution, not that the prosecution could react in any specific way. Because Officer Query did not make any actual promise that Dan's penal outcome would be different, the statement was likely voluntarily made.

5. Should the statement be excluded under the Fifth Amendment? Here, Dan confessed that he stole the radio, but because Dan's Fifth Amendment rights were violated since he was never read his Miranda rights and his invocation of his right to silence was never honored, the statement should be excluded from trial.

Lee Burgess: Given the analysis above, the court should grant Dan's motion to suppress the confession to Officer Query under Miranda for any use at trial.

Lee Burgess: Okay, let's move on to another hypo:

Lee Burgess: "Detective Anna was about to subject David, who was lawfully in custody, to interrogation because she had received a tip from an anonymous informant that David was involved in transporting heroin. Detective Anna advised David of his Miranda rights and asked him if he knew anything about heroin shipments. David replied, 'I am not sure if I need a lawyer or not.' Detective Anna next

asked David how he was transporting the heroin. David responded, 'If I had anything to do with it, I would use my car.' Detective Anna released David from custody and sent a message to all police describing David's car, stating that it was believed to be involved in transporting heroin. David was later stopped in his car and arrested for transporting heroin.

Lee Burgess: How should the court rule on David's motion to suppress his statement, 'If I had anything to do with it, I would use my car'?"

Lee Burgess: The call of the question on this one is similar to the last – we want to know how a court should rule on David's motion to suppress his statement, "If I had anything to do with it, I would use my car." So, let's go to our attack plan.

1. Was there an incriminating statement obtained by the police? Yes, David told Detective Anna that if he had anything to do with the transport of heroin, he would use his car. Therefore, there's a Fifth Amendment issue here, which requires David to be warned of his Miranda rights.

2. Was the incriminating statement obtained as a result of a custodial interrogation? In an uncommon circumstance, this hypo actually states that David was lawfully in custody and he was being subject to an interrogation. Therefore, we can assume the statement that David made was obtained as a result of a custodial interrogation.

3. Did the police inform the defendant of their Miranda rights? Did the defendant invoke their Miranda rights? Here, the facts indicate that Detective Anna advised David of his Miranda rights before she asked him if he knew anything about the heroin shipments, so she did meet the requirement under the Fifth Amendment to inform him of his Miranda rights prior to questioning. However, it is less clear whether David invoked his rights, specifically his right to an attorney. In order to invoke your right to counsel, the suspect must make an unambiguous statement asserting their desire to have counsel present. If the suspect makes an ambiguous statement, police are not required to end the interrogation. Here, after Detective Anna asked David if he knew anything about the heroin shipments, he replied, "I am not sure if I need a lawyer or not." David may argue that this was an invocation of his right to counsel; however, his argument will almost certainly fail, because the statement itself uses ambiguous language like "I am not sure" as part of the thought regarding whether or not David believed he needed a lawyer. David never said anything like "I would like to speak to a lawyer", or even "Let me talk to my lawyer first" – either of which would be an unambiguous statement asserting a desire to have counsel present. Because David never properly

invoked his right to counsel, the statement he made is likely admissible at trial.

4. Did the defendant waive their Miranda rights? Was their statement made involuntarily? Here, David likely waived his Miranda rights by not properly invoking his right to counsel or right to silence after having been read his Miranda rights by Detective Anna. No facts indicate that his statement was made involuntarily. Therefore, the statement made during his custodial interrogation is likely admissible at trial.

5. Should the statement be excluded under the Fifth Amendment? Here, Detective Anna properly read David his Miranda rights prior to questioning him during a custodial interrogation, which led to David making an incriminating statement. David never properly invoked his right to counsel or silence, and therefore the statement he made, "If I had anything to do with it, I would use my car" should be admissible at trial.

Lee Burgess: Given this analysis, the court should deny David's motion to suppress his statement, "If I had anything to do with it, I would use my car."

Lee Burgess: And with that, we're out of time! 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 or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

RESOURCES:

"Listen and Learn" series
Miranda v. Arizona
Podcast Episode 290: Listen and Learn – Privilege Against Self-Incrimination and Miranda Rights
Podcast Episode 323: Listen and Learn – The Exclusionary Rule (Criminal Law and Procedure)