



Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we are doing the second part of our two-part series on writing an exam answer. 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.

This is Lee from the Law School Toolbox. Welcome back! [Last episode](#), we talked about outlining and creating study materials, and applying those study materials to a fact pattern. And today, we're going to focus on how to actually write an exam answer. To get started, what actually makes a quality exam answer?

Alison Monahan: I think the first thing – and this is really important – is, it notices and actually analyzes all the issues in a fact pattern and doesn't discuss things that are not triggered by the fact pattern. So, if you are looking for a solid grade, you want to make sure you are doing what your professor is looking for and not other things. For example, if a particular issue is not triggering a topic, but you want to talk about that topic anyway, that's wasting time. Speaking of, your answer has to be completed in the allotted time, so if you run out of time, you are not going to get points. So, even though it might be tempting to write every single thing that you know, you have to make sure that you are working within the time allotted, right?

Lee Burgess: Yep. And one of my personal favorites to think about is that your writing needs to be clear and concise and confident. I've said that it needs to wear a suit, it needs to sound like it knows what it's talking about. But it's got to be really easy for the grader to grade, because they are grading incredibly fast. Long verbose sentences using vocabulary that you think makes you sound really brilliant – that's really not what professors are looking for under a timed exam.

Alison Monahan: You want your answers to be crisp, and I think short sentences are typically better. You want to have clear statements – so, what is the rule, what is the issue? The clearer you can make it... Because you can imagine your professor sitting there with a checkbox, checking things off. I've literally seen exam answers where they're just, "Check, check." You want to get those checks. And the faster you get the checks, the better grade you're going to get, the better mood your professor is probably going to be in. Of course, you want to engage in a detailed analysis of the relevant issues, and you want to consider ambiguity,



which we talked about last time. But you've got to use your judgment. You've got to focus more time and energy on these harder issues – sometimes we call them "major issues", but not ignore the other ones. So, that's also kind of a balance. You want to make sure that you're drawing a reasonable conclusion very explicitly. And if there're subtopics or sub issues, you want to draw those conclusions too. So overall, you want it to flow. You want it to be a logical, "This is what I'm analyzing. This is why I'm drawing this conclusion. This all adds up to conclusion." And someone we can follow it in a very easy to read format, and check, check – and give you points.

Lee Burgess: Yeah. The other thing you want to think about is what can you do to make their job easier? And oftentimes using headers, formatting in an intelligent way – that's going to make it easier for them to track what you're talking about and keep you very organized. You also – and I can't even believe I have to say this, but I know we have to – you've got to follow the rules of grammar, even if you're writing incredibly quickly. If you're under strict timed conditions and you're doing this closed book, a professor's going to be okay with the fact that maybe you have some typos. But typos are one thing and just not following grammar is another. It doesn't look professional. It's not dressed up in a suit. You need to sound like you know what you're talking about and that you are going to be a professional. So, you want to make sure that you're writing in a professional way.

Alison Monahan: I've seen some answers that were literally almost incomprehensible because the spelling and things like that were so bad. So, I do think even though you're trying to get as much information as possible, you want to make sure that you're doing it in a way that is basically presentable. A couple of typos – fine, no problem. But something that... I mean, I've seen things without periods in it before.

Lee Burgess: No capital letters.

Alison Monahan: No. Like, what? Yeah, you're not E. E. Cummings. You can't write with no capital letters in a law school exam. It's just not going to go well.

Lee Burgess: No. Okay, so keeping all those in mind, I wanted to talk a bit more specifically about an exam answer. We're going to stay in the realm of Crim, which Alison does not love, but she didn't write this podcast script, so she has to do it with me. Okay, so here's a short Crim fact pattern:

"Dan has been in and out of mental institutions most of his life. He was working in a grocery store, stocking shelves. Vic, a customer, complained that he was blocking the aisle and they got into an argument. Then Dan swore at Vic and



threatened to kick him out of the store. Vic told Dan that he was crazy and should be locked up. Dan exploded in anger, shouted "I will kill you!", and struck Vic with his fist, knocking Vic down. As Vic fell, he hit his head on the floor, suffered a skull fracture, and died. Can Dan be found guilty of homicide?"

So, again, a Crim fact pattern – somebody died. And also notice that people typically don't die in the ways that you think they would. It's like he punched him and then he fell and he hit his head and he died. That should stir something up for you as you're thinking about this fact pattern, because that is weird, that is typically not what you would expect. I wonder, wonder, wonder why a professor included that? Okay, so you've read this fact pattern, now what do you do? You've got to be clear, because the answer of what crimes or under what theories could Dan be found guilty is less important than the way to get there and how you explain your thinking. So, it's important to, again, write down your thought process. I know we've talked about this before, but it is so important to do this, because you cannot get points for what is not written on the page. So, these are minor issues... I mean, major issues, I hope that you're writing down the page. But they can be minor issues, they can be dissenting issues. But if they're triggered by the facts and they aren't totally off the wall, they should go into your answer because then you're going to get credit for thinking about them. And as we also have talked, you need to think about ambiguity and how you can argue things from both sides. So, don't jump to a conclusion. Don't say, "This is murder. Intent to kill, check."

Alison Monahan: "Done."

Lee Burgess: On an exam, that's typically never going to be your answer. If that's where you're going, you're not going to get all of the points. So, you always need to think like a lawyer, and that means that you're going to put on these different hats and consider things from other viewpoints. Last episode, we took some time to discuss outlining first-degree and second-degree murder. We'll link to that episode here if you missed it. Now we need to expand our outline that we've been talking about to include issues such as voluntary manslaughter. Alright, so now we've got to think about these issues that could be triggered by a fact pattern. And is this where attack plans come in, Alison? I know that's a term that we hear a lot in the exam prep world.

Alison Monahan: Yeah, definitely. And I think Crim is one of those areas where you can do a good checklist approach. For example, as we've talked about, it's a Crim exam, there's a dead body, so you need to be prepared to address that dead body. And in this case, maybe it wasn't an entirely intentional situation, so that's going to get you into something maybe outside of first or second-degree murder. But every time there's a dead body, I want to have a checklist of potential issues or potential



theories that I might consider. For example, here we might have common law murder with our four theories, we have first-degree and second-degree, and then we get into things like voluntary manslaughter. That might include the heat of passion, imperfect self-defense, involuntary manslaughter, negligent homicide, and then some defenses. So, every single time there's a dead body, I've got to mentally go through murder, manslaughter, voluntary, involuntary, negligent homicide. I want to consider whether there's any possibility that these things could apply, and if so, I need to talk about them.

Lee Burgess: The other thing that I know that you think you wouldn't have to have on your attack plan list, but I always like to have the sanity check, is to double check that somebody got killed.

Alison Monahan: And it was a person.

Lee Burgess: And it was a person. Because sometimes these fact patterns can get really kooky. There could be a lot of people, a lot of weapons, a lot of different living things. It's very easy to get caught up in the fact pattern and say, "Oh no, and they killed the dog." So, you have to just check yourself and basically remind yourself to be anchored in this law and what you're really talking about.

Alison Monahan: Here we've got Dan striking Vic and saying, "I will kill you!" So this definitely feels to me like he had some sort of an intent to hurt somebody, possibly kill them. So, even if we don't necessarily think we're going to draw the conclusion at the end that he might be guilty of murder, we definitely, it seems to me like we need to go through a murder analysis, right?

Lee Burgess: Yeah. We also have the fact that they exchanged words, including Vic telling Dan that he should be locked up, and Dan exploding in anger. Anytime you see a word like "explode", that makes me want to consider heat of passion or voluntary manslaughter as well. But just this very short fact pattern has raised a number of legal issues that I'm going to need to deal with. And I think that's also sometimes important to remember, that it's not super long fact patterns oftentimes that will trigger lots of issues. It doesn't even have to be that many facts. This fact pattern is just a few sentences when you see it written down.

Alison Monahan: Yeah, and I think there're certain key words that you want to be keeping an eye out for. Something like "exploded in anger" should definitely make you think, "Wonder if that's heat of passion."

Lee Burgess: Yeah. Okay, so now that we have our attack plan and we've thought about our potential issues, we want to make sure that we know the rule statements and how they can connect to the facts that we have in our fact pattern. For example,



we said that we think there might be an issue of intent to kill. I mean, he did say "I will kill you!" So, I think you should at least probably raise that. And so you're going to say the first theory is intent to kill. And what facts do you have? We know that Dan got angry and he struck Vic. This doesn't necessarily show the intent to kill, but we do have the statement "I will kill you!" But we also know that people say that all the time in fights and things like that. So, I feel like that's kind of ambiguous. It's not a slam dunk for sure.

Alison Monahan: No. It's certainly not great for the person who said it, but at the same time, "I will kill you!" – I mean, five-year-olds say that all the time.

Lee Burgess: Right. Then you also have the option of intent to inflict great bodily harm. So then the question becomes, is Dan striking Vic with his fist – is that an intent to inflict great bodily harm? I mean, it might be. I think we'd want to argue it. It seems like that might be one of our better arguments. We also have a reckless disregard of an unjustifiably high risk to human life, also known as a depraved heart killing. So again, we've got the striking with his fist, but would I just describe punching somebody as a depraved heart? I don't know, that doesn't really... Maybe, but it doesn't feel like it's as good of a fit. And felony murder, which really there doesn't seem to be a felony murder happening here, so you could quickly dismiss that. But you can see that you can go through each option and go through the facts and see which ones might apply, and then pick your best one. Now, I think you would still want to show the professor that you talked about all the ones that have some sort of application, even if you decide they don't ultimately fit. However, that's the way you get the points, because they're like, "Oh well, they thought about intent to kill but they decided not to." If you don't mention intent to kill because you don't think it's going to apply, then you don't get those points. That's not great.

Alison Monahan: Right, I think that's what's the key. So right there, you just went through all four of them and said, "Okay, well, felony murder doesn't apply here. Clearly, there's no felony." And I think a lot of people would just not write that down.

Lee Burgess: Good point.

Alison Monahan: But that's not what we want to do. We want to write down, "There's a concept called felony murder. However, here, there's no felony, so it can't be felony murder."

Lee Burgess: Yeah, that's a very good point.

Alison Monahan: No other felony.



- Lee Burgess: You need a felony, and then you need a killing.
- Alison Monahan: A felony outside of the murder. He's not robbing the store and also killing somebody. That would be the classic felony murder example.
- Lee Burgess: Yes, yes. So, this exercise of what we're talking about here – going through the list, matching the facts up to the law – that is exactly what we're recommending that you do when you pre-write. We call it a pre-writing approach or a planning, but this is what you do before you start writing your answer, because you are organizing your thoughts, you are streamlining what you're going to talk about, you are mentioning what is a quick slam dunk issue, like felony murder, and what might have more ambiguity, such as whether or not he had an intent to inflict great bodily harm by punching him in the head. That is exactly the type of activity you're doing quickly. You can see even we're talking a lot and it still didn't take very long to go through those different rules and apply the law to the facts. And that's what you're doing before you write. You want to know what you're going to say before you write it. And we do still like to write it down on scratch paper. I know this sounds weird, but things happen to technology. Oh my gosh, I just had my computer melt down on a Zoom call the other day, my fairly new computer. My Internet went down in my house. Stuff just happens, and the nice thing is, nothing happens to the paper.
- Alison Monahan: I think everybody in law school has had at least one instance where their computer died during an exam, because ExamSoft or whatever you're using crashed and you had to start from scratch. And luckily, hopefully you had your notes written down and you could start writing in a bluebook if you had to, without losing your entire outline.
- Lee Burgess: Yeah. I also think it keeps you from just starting to type too much. So often, when folks outline on the computer, they just start writing. It's not really an outline, and that's not a great exercise either. So, I do recommend doing it on paper. Make these notes just like we did about the different law you need to apply, what facts apply, note what are major issues and minor issues. And now that you know what you want to say, you can actually say it. And then the next piece is to say it using some sort of formula, because that's what the law professors are looking for. In the typical formula, the most popular formula is IRAC – Issue, Rule, Analysis, Conclusion. Although some professors do like CRAC. It's such a bad acronym.
- Alison Monahan: CREAC.
- Lee Burgess: There's also CREAC and CRAC. I don't know. But that is Conclusion, Rule, Analysis, Conclusion; or Conclusion, Rule, Explanation, Analysis, Conclusion. I



think so it just doesn't sound like CRAC – I think that's why they changed that. But really, the idea is, do you want to lead with a conclusion, or do you want to lead with an issue? Most law professors want you to lead with an issue, but your professor may tell you that they want you to lead with a conclusion. That's fine. Do whatever your professor wants, and if you're not sure what they want, go to office hours and ask them.

Alison Monahan: And I think as you get a little bit more comfortable and a little more sophisticated, you might deviate certain ways away from this, but the point is, you need all four of these things, however they end up being phrased. If you don't say what the issue is, if you don't say what the rule is, things are not going to go well.

Lee Burgess: Yeah, exactly. Quickly, let's touch on what an IRAC answer would look like, based on what we've been discussing for Dan. So, the issue: Is Dan guilty of murder? And your rule is, "Murder is the killing of another human being." We know we have our four theories; we're just going to skip over that. Now we get to the analysis piece: "In this case" – ooh, my favorite words. You can always start analysis with "In this case." It's a great signpost for your professors that you're doing analysis. "There was no dangerous felony, so that theory would not be met." Boom! Short, succinct, out the door. We don't have to talk about it anymore.

Alison Monahan: Check.

Lee Burgess: Check. So therefore, we must look into the other theories. Dan's actions don't show that he had a clear intent to kill. Yes, he did say, "I will kill you!"; however, plenty of people say a statement such as that without having the intent to kill. Great, done. Dan will likely meet the threshold for intent to commit great bodily harm for his punch to the head, because it is likely he intended to hurt Vic as he punched him. This is the strongest theory. Dan likely didn't act with a reckless disregard for human life, because punching people, even in the head, is not necessarily an action that is known to kill people, even though in this case it did. Done! Concise sentence or two for the bigger issues, quick sentence for the small issues, then we just do a quick conclusion: "Given his actions, it is likely that Dan would be found guilty of murder, unless his charges can be mitigated", and then you would continue on with your heat of passion argument. But that is what the IRAC looks like. Each one of those is a paragraph. It's pretty simple, straightforward, and very clean for the professor to read.

Alison Monahan: Right. If they were checking things off, you would get a check 1, check 2, check 3, check 4, done. All of those were covered, you're going to do well on that question.



- Lee Burgess: So, you'll notice that we had our "In this case", our signpost. But the other thing that listeners may have noticed is it really almost feels like there's a formula for analysis. And this formula is this idea of, what is the element, and then is or is it not satisfied because of these facts? And it may feel so boring to write in this way, but it is very, very effective and very easy for the graders. So, if you are struggling with your analysis, rely on this formula until you have it so second nature that you don't feel like you really need the formula anymore.
- Alison Monahan: Right. And even then, you're still going to be writing formulaically; it will just sound more natural. So, let's talk a little about what to do with the facts, because I think people sometimes get tripped up here. They hear a lot about, "You need to use the facts, use the facts, use the facts." And that's absolutely true, but somehow people sometimes interpret that as just re-write the facts. And I think maybe it's nerves or not having a solid pre-writing outline and just getting nervous and wanting to type something. But your professor wrote this question; you don't need to rewrite. You don't need to say, "Here, Dan did this, and Vic did this, and they said this." It's like, okay, that's great, but that's already written in the question. What are you going to do with this? So, I think it's just going to annoy them if you basically write down all the facts at the start of your answer, and more importantly, it's going to waste time.
- Lee Burgess: Yeah, it's so true. And if your whole goal is to get points by thinking like a lawyer, you don't have to go to law school to write down facts.
- Alison Monahan: True.
- Lee Burgess: I think anyone can write down facts. My kiddo could write down facts. So, you have to think about what you're actually getting graded on, and the analysis is the piece that you're getting graded on.
- Alison Monahan: Right. And the flip side is, sometimes people want to write about the law. So, you've talked about theories of criminality, for example. Maybe you spent two weeks talking about theories of criminality in your criminal case. That's not in this question. So if you are like, "But I want to tell my professor that I know about the criminal theories", and you start writing an entire discourse on the theories of criminality, and you don't actually go through the facts of this case – that is not going to work well. You're going to get a terrible grade. So you can't just ignore the facts and write about the law. You have to sort of match them up and see what's triggered, and use both.
- Lee Burgess: Yep. Alright, before we wrap up today, I wanted to run through five key things relating to a solid exam answer. Why don't we start off with just reading the





question? Everybody's got to do it. Read the question and kind of notice the facts. I think some people are very observant, naturally, and can see all those details, and others are not, and that's fine. But it's critical to train yourself to really notice each and every fact in the question, and why each fact is legally significant. There are usually not lots of extra facts in the fact pattern. Most of them are there for a reason. And if you need to read the question twice, if you need to check off things as you write them into your outline – that is fine. That's better than ignoring facts. So really letting the facts kind of wash over you and make sure that you understand what's happening in the fact pattern is so incredibly important.

- Alison Monahan: Right. I think this is where highlighting and underlining can be helpful. Sometimes we have students underline all the facts they see in the first read, and then as they go through the pre-writing outline, they're actually crossing them off with a highlighter to see like, what did this mean. And this is something you can definitely practice. So, if you are not someone who is naturally inclined towards getting everything on the first pass, you just have to figure out a process. It's not impossible.
- Lee Burgess: Then you also need to make sure you understand what the question is asking. We talked about that, both in our last podcast and in this one. The single most important thing you need to do is answer the question asked. Don't go off script; it's not a good look. They're not going to reward that behavior.
- Alison Monahan: No.
- Lee Burgess: No. So, follow directions. If they have asked you a very specific question, answer the question asked. And double check to make sure you've done that. Your grade will suffer if you don't.
- Alison Monahan: And be really careful if they ask you about Defendant A, Defendant B, Defendant C. You want to make sure you've discussed each one of those in a separate section and go through, so that you're not missing people. Sometimes people miss, they'll switch names and things. You just want to be really careful that you've gotten all the right names, all the right issues, and that you are actually creating some sort of logical structure to answer that question.
- Lee Burgess: Yeah. You want to create a framework for your answer on scratch paper, go old school and analog. And as we said, you might have computer issues. You just want those notes next to you and easy to reference. And if the worst happens, you have the ability to continue writing, which is really important. So, please do try writing it on scratch paper. And you can explore different types of outlines. It doesn't have to be a typical linear outline. It can be a mind map. It doesn't really



matter; it just has to work for you. So, experiment and see what is going to help you get an organized and thoughtful answer.

Alison Monahan: Right. And then when it's ready to write your answer, you take that outline and those typically are going to become your headers. So that's going to give you a structure. You want to think about using things like bold or italicizing. Numbers are great. And answer the parts of the question in order. So, if they've asked you Defendant A, Defendant B, Defendant C – that's the order to follow. You want to keep things crisp, like we talked about, keep it moving, make it easy to follow. Short sentences – I just can't emphasize that enough. The shorter and more concise your answer is, typically the better it's going to be.

Lee Burgess: Yes. And you want to make sure that you are keeping track of time. Reserve a few minutes for the most important question. You're going to be able to tell what is going to get you the most points. But if you have a couple of minutes left at the end, make sure that you use it wisely. Don't get to the end and say, "Uh-oh, the biggest question was the last one. And now I only have five minutes left and I needed 15 minutes." That's going to sink you. You just can't write enough to get enough points if you do it that way.

Alison Monahan: Yeah, so I think you want to think about this beforehand. If you have a one-hour question, for example, you want to go in knowing what your timing looks like. So it might be, 10 minutes: read and understand the question. It might be 10 minutes: outline your answer. And then 35 minutes to write your answer, 5 minutes to review and wrap up. So, only about half the time is really going to be spent writing – I think that's pretty normal. People might start typing seconds into the exam, but you know they haven't thought about this. They haven't thought through it. Even though it's hard, I think you want to be focused and on point and take that time up front to plan. Obviously, you can't take 40 minutes to plan, but you can probably take 10 to 20, depending on the complexity of the question. And that's going to help you see the major and the minor issues, it's going to help you allocate your time, and it's just going to make your answer more structured and easier to follow. So, I really advocate for planning before writing. Even though people think that's going to make them slower, it does not. It makes you faster and it makes your answer a lot better.

Lee Burgess: Yes, and don't fall into the trap of getting very nervous because the people around you are typing. This is a very common thing that we hear from 1Ls, like, "I had a plan to do a pre-writing outline, but then everyone else was typing and I thought I had to just start typing." You don't. They're not winning because they're typing. It's not a race. In fact, we've seen really high-quality answers with very limited word counts because they were very, very on point. So, length is not always the most important thing here. It's really having the best possible



answer, covering all the issues, and having appropriate analysis where you need to have it.

Alison Monahan: Definitely. Well, with that, unfortunately, we are out of time. We will see you next time.

Lee Burgess: If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a rating or review 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, 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. Thanks for listening, and we'll talk soon!

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