Episode 73: What to Do if You Failed the Bar Exam (with Guest Ariel Salzer)

Lee Burgess: Welcome to the Law School Toolbox podcast. Today, we are discussing a difficult reality for some law graduates: what happens if you fail the bar exam? If you've just gotten disappointing news, we have helpful tips in this podcast to help you regroup. If you are in law school right now, this podcast can offer you tips on how to make sure you are as prepared as possible for your bar exam, so hopefully this will be the only attempt that you need.

Your Law School Toolbox host today is Lee Burgess. That's me. Alison Monahan and I are the hosts of this podcast. 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 Catapult Conference.

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 at lawschooltoolbox.com, and we'd love to hear from you. And with that, let's get started.

Welcome back to the Law School Toolbox podcast. Today, we are talking about a difficult reality for some folks: what happens when you don't pass the bar exam. And we're welcoming our special guest, Ariel Salzer, who is one of our most experienced California bar exam tutors. And guys, we actually like talking about failing the bar exam. I think we might be two of the only people out there who like to talk about this.

Ariel Salzer: Yeah, I think you might be right.

Lee Burgess: Yeah. I think we might be right. All right. Well, let's get started, because if you fail the bar, it is pretty much the best of times or the worst of times. But you know, a lot of people have been getting bad news. California results are usually the last ones to come out. They'll come out November 18th of this season. So what do you do, Ariel, when you get the news that your name isn't on the pass list?

Ariel Salzer: You know, I think for most people, the first impulse is to think it was a mistake. I talk to so many people, so many students, that they're really convinced they're gonna pass, and then when they don't, especially since it's kind of ambiguous. In California, you know, it says that your number does not appear on the list. It's sort of vague, right? You're wondering if maybe they made a mistake. So I think that's probably the first thing people do.

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Lee Burgess: Then you get the letter.

Ariel Salzer: Then you get the letter. And then it's very clear that it wasn't a mistake, a couple days later. Right. So you have this two-day window of maybe. And then you get the for sure no. And I think for a lot of people, you know, their world comes crashing down to a certain extent. These people are not used to failing exams of any kind.

Lee Burgess: Right. I mean, that's the reality, right? You go to law school, usually because you're a pretty good student, and then you fight your way through law school, and hopefully you've done pretty well. And, you know, I think there's an assumption that people who are not academically successful in law school are the only people that fail the bar. That is absolutely not true.

Ariel Salzer: And I was looking it up this morning, actually, thinking about this podcast, and I think they were saying, what, Michelle Obama, Hillary Clinton, Judge Cardozo, John F. Kennedy. All these people have failed the bar in whatever jurisdiction. So I mean, it's not just the bottom of the class that you're talking about.

Lee Burgess: Exactly, and I think that, you know, it's important to remember that you're in good company if this is your reality. And there are plenty of things that you can do to make sure this doesn't stay your reality. But the first thing you have to do is, you know, be kind to yourself, and remember, this isn't the end of the world. You know, this is just an unfortunate bump in the road in your path to your law career.

Ariel Salzer: Yeah, and it's not like the people passing are getting 100% and you got 1%. I mean, it's sometimes a matter of four points, one point even.

Lee Burgess: Oh, I know.

Ariel Salzer: I've seen scores that are literally a couple of points apart.

Lee Burgess: Yeah. I've recently talked to a couple people who missed the New York bar by just two points.

Ariel Salzer: Ugh.

Lee Burgess: So frustrating. You know? And it's so frustrating 'cause you're so close, but then you look at your scores, and you're like, "Well, I could've made it up so many different places." And then you have to figure out how the hell are you gonna

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make up those, you know, couple points so you're not in that danger zone anymore.

Ariel Salzer: Yeah, definitely. And you know, I mean, for these guys who are getting the bad news right before Thanksgiving usually, it's awful. You know? It feels terrible, and I think it's important to just kind of sit with that a little bit. You know? Give yourself some space. And let yourself feel bad 'cause it's a bad feeling.

Lee Burgess: Yeah. And I think it's also important to remember that nobody is really going to feel your pain like you do at this point.

Ariel Salzer: Sure, and you know, while it might be tempting to think like, "Oh, my whole class is looking me up and wondering why I didn't pass or why I'm not calling or whatever," like, people, everybody who takes this exam has thought about, "What if I don't pass?"

Lee Burgess: Oh, yeah.

Ariel Salzer: And they know that that's an awful feeling, and they're not gonna hold it over you. Like, your enemies are not waiting, checking the results. And everybody knows that it's terrible, and it feels bad. And the good news is everybody forgets. Really soon, you care about it a lot, but it's water under the bridge at a certain point.

Lee Burgess: Yeah. I mean, let's be honest, we were just looking at my law school graduation pictures before we were doing this podcast, and that seems like a really long time ago.

Ariel Salzer: Ugh, it's been so long.

Lee Burgess: And I really can't tell you who in my class did not pass the bar. I mean, it is just not information you retain in your brain.

Ariel Salzer: No. And even, you know, people who have failed and felt terrible and gone on to pass, they don't even remember how painful it was most of the time. You forget. You know? Like any pain in life, right?

Lee Burgess: Like childbirth.

Ariel Salzer: Sure, let's go with that. You know, you live on, you forget. And nobody's gonna care about it as much as you do in this moment.

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Lee Burgess: I think though it's important that you do give yourself time to grieve though, because I think a lot of people don't wanna deal with the emotions. They just wanna start studying again or start coming up with a plan, which is critically important, and we're gonna talk about that. Don't worry. But I think there is something about, you know, doing whatever you need to do to, like, sit with this and move past it. 'Cause if you don't process these feelings, they're gonna come back, and they're probably gonna come back, like, the week before the exam.

Ariel Salzer: With a vengeance.

Lee Burgess: With a vengeance.

Ariel Salzer: They come back. They rear their ugly head at the worst moment when you're stressed out. I think, too, that whole idea of, oh, maybe it was a mistake. Maybe I was close, and I just got a mean grader. Maybe it's someone else's fault. I think people really need to come to terms with the idea that no, your numbers were lower for a reason. You have to figure out that reason.

You know? So I think maybe the first step even, as you're sitting there dealing with that grief, maybe the next step after the grief is, you know, why did this happen, and how was it my fault, and how can I fix it? And, of course, we'll get to that. But really kind of staring it in the face and figuring out why did this happen, you know?

Lee Burgess: Yeah. It's a very vulnerable place. I mean, like, you have to do some serious self-reflection. You know, one of the things we've talked about a lot in our podcast is the growth mindset, you know, versus deciding you're a failure because of these results, but instead saying like, "Okay. Well, I just failed." Now it's about, you know, what can I learn from this? And getting to that place where you can have that growth mindset I think is the only way that you can start to prepare again from a positive place. You can't just stay in the, like, you know, this was somebody else's mistake. I mean, and crazy stuff happens.

Like, you know, yeah, there was an earthquake, or your computer crashed. Or like, you know, sure, those may have been factors. But the reality is, like, you maybe still could have even done better, been better prepared, been better at the writing portion, done more MBE prep. I mean, I think all of us can think about things. Even I would definitely think about things I would have done differently if I retook the bar. I'm not planning on it just for fun or anything. But, you know, to change what you did to be, you know, better prepared. It's just important that you don't just blame the situation. You have to look at yourself

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and say, "Okay. Well, now that I've grieved, now what can I do? What can I learn?" 'Cause I think anytime you can learn from the previous experience. Unless you get 100% on the bar, which–

Ariel Salzer: Which they don't tell you even if you do, right?

Lee Burgess: Yeah, which they don't even tell you. They don't tell you.

Ariel Salzer: No, I think you're absolutely right. I think there's no way you're gonna fix a problem if you don't understand in detail what that problem was and how it happened. There's no way to move forward. So I do agree. That's a huge first step.

Lee Burgess: Yeah. Exactly. Now, so you come up with your best guess for why this happened, and I think there's actually a lot of wisdom that people have when they just sit down and start to reflect. I mean, I talk to so many bar takers all over the country, and when I ask them what went wrong, they have a lot of wisdom when you really start to be honest with yourself about what happened.

Ariel Salzer: And you know, it's kind of funny because I know you deal with people kind of early on in the process. And then once we're getting into tutoring–

Lee Burgess: And then I hand them off.

Ariel Salzer: And then you hand them to me. And once we're into tutoring, a lot of times I think they lose sight of that kind of gut instinct of why they failed. And so people will say things to me like, "Oh, well, you know, I just need to do 200 MBEs a day and I'll be fine." It's like, no, really? I mean, why don't we think about why you may have failed for other reasons too? Like, what was your personal situation in your life? Did you have enough free time to actually study in the way you needed to? Did it actually come down to MBEs, or was it really the essays that were sort of terrible? Let's look at those.

Lee Burgess: And haven't we at times recommended people even writing a letter to themselves in the early days, that they can reference later in the process?

Ariel Salzer: Yeah. And, you know, I had a student do this. It wasn't a letter per se, but it was kind of notes to themselves about, "This is how I do my best. These, you know, these situations are where I study the most effectively. You know, when I'm at home versus the library or whatever, vice versa. When I'm, you know, running on nine hours of sleep instead of five." You know, and I think keeping these things in

mind as you go through the process of studying, which is gonna get really stressful, it can help you kind of remember, like, back to the basics. How do you do the best? Or why did you fail? You know, for these particular reasons.

Lee Burgess: Yeah, I think it can be really powerful to write this stuff down. And you may feel like it's a little woo-woo or whatever. But yeah, I've also had students over the years journal, do journal entries at night, where we recommend, you know, you write down what did you do well today, you know, what was successful, what could you have done better on, and then maybe, you know, any other notes to yourself.

And that's another way that you can kind of check in with yourself. But I like the idea of like setting goals in the beginning, kind of almost making a mission statement for how your bar prep's gonna go. You know, this is what I'm committing to through the process. So you can kind of hold yourself accountable because it does get gnarly. Like, the stress does really bubble up.

Ariel Salzer: For sure. And, you know, bullet point journaling even. It doesn't have to be paragraphs. I know at the end of the day, a paragraph is the last thing you wanna write. Especially after doing essays and performance tests. But, yeah, just keeping yourself accountable too. And making sure... You know, it's amazing how many times students tell me things like, "Well, you know, that PT was really hard 'cause I was at Starbucks and it was really distracting," and it's sort of like, "Why were you at Starbucks doing a PT? It's really loud there. There's people interrupting you. Like, what are you..." You know, you know in the back of your mind that this is not conducive to your work. So I think people lose sight of that kind of stuff.

Lee Burgess: Yeah. It's really easy to start doing self-sabotaging behavior really quickly. So it's important to hold yourself accountable, make sure family and friends or if you're working with a tutor or somebody is helping you hold yourself accountable, because, yeah, a PT or an MPT at Starbucks on your computer, you don't even print it out, you do it for an hour, and then you go up and get a coffee, and then you come back, and you can't remember what you read. Like, then you can't figure out why you didn't do well. That's not productive.

Ariel Salzer: Sure. And the idea of sabotage is so interesting, too, I think because in some people's minds, I think it's a lot easier to fail and feel like, "Well, I didn't give it my all. And I failed, and maybe that's okay 'cause I wasn't trying my hardest," which means it's not an accurate reflection of my ability. But a student was

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telling me the last bar season, actually, she was saying, "What if I try my hardest and I still fail?"

Lee Burgess: Yeah.

Ariel Salzer: It's like, well, that's a reality that might happen, but if you don't try your hardest, you're almost certainly gonna fail. So what are you gonna–

Lee Burgess: It's a big vulnerable space to be in.

Ariel Salzer: Yeah, absolutely.

Lee Burgess: Like, you really have to throw yourself out there and go all in, you know? If you don't go all in, you're only going to be more sure you're not gonna get the results that you want.

Ariel Salzer: Yeah, and you're only short-changing yourself. Because like we were saying at the beginning, at the end of the day, no one cares about this like you do. No one's gonna think, "Oh, well you didn't really try that hard and you failed. No problem. You're still smart." No one's having these thoughts. No one cares.

Lee Burgess: Yeah, exactly. I think a lot of people are anxious just about how to tell people. You know, if you're working, you have to tell your boss.

Ariel Salzer: That's a big one.

Lee Burgess: Yeah, if you've gotta tell family and friends.

Ariel Salzer: Well, and especially, I mean, in a way it's pretty cruel that they release, at least in California, the results right before Thanksgiving.

Lee Burgess: Oh, so brutal.

Ariel Salzer: In some ways I think it's sort of like, okay, this person will have their family around them, hopefully. But in other ways it's sort of like, oh great, my Aunt Mildred who's been asking me every day, "Did you pass?" And then all of a sudden, you know, you have to tell them you failed. Or whoever it is in your life. I don't know. Nobody has an Aunt Mildred anymore. But you know what I mean.

Lee Burgess: I had a Grandma Mildred, so you know.

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Ariel Salzer: There we go. But, you know, it's tough. And it's not the dinner conversation you wanna be having with, you know, your relatives and people who think of you as, you know, maybe the smart one or the law school kid in the family or whatever. It can be a crashing blow, for sure.

Lee Burgess: Yeah. So you wanna definitely have a plan. You know, I think for family and friends, this can be a nice place where email can be really productive. Composing an email where you kind of explain what happened. Maybe you explain that you're gonna take it again, that you're getting ready to study. You know, that this is what happened, but you're looking forward to spending, you know, the holidays celebrating other things.

You know? Whatever it might be, because then you maybe don't have to have some of those dynamic conversations where people say insensitive things when they don't intend to.

Ariel Salzer: Yeah. Or maybe, I mean, get a brother or sister or mom or dad to kind of brief the family and, you know, sort of say something like, "Okay, well, as everyone knows, little Johnny didn't pass. So we're not gonna be talking about it over turkey. Thanks."

Lee Burgess: Yeah. You know, or something.

Ariel Salzer: Exactly. That could help.

Lee Burgess: I don't know. Yeah. That's very true. And then bosses. I mean, bosses are tough ones because some people, it's a harsh reality, do lose their jobs over this stuff.

Ariel Salzer: Yeah. Definitely. I was reading a story online actually about a guy who failed the bar twice and his big firm law job kept the job for him, miraculously. But then he decided to take a two-week vacation and they fired him.

Lee Burgess: Oh no.

Ariel Salzer: So, I mean, you have to use judgment for sure. But that was a lucky situation. I mean, most jobs, especially if you're failing twice, but a lot of times they'll say, you know, "The bargain was that you pass and come work for us at X date," or whatever.

Lee Burgess: I even think that private firms, I've heard that most of them will at least give you a chance to take the second one. But government jobs oftentimes don't have

the bandwidth. Because if you can't appear in court, you really can't do the job function. So the people I know that actually lost their jobs were lined up for PD jobs or DA jobs, because, you know, they can't hold a spot. In a big firm, there's plenty of work you can do not being licensed. You know, because you can just do work. You're, anyway, you're doing work for other people.

Ariel Salzer: You're a cog in the wheel.

Lee Burgess: Exactly, no matter what. Like, your name isn't on anything anyway. But I think, you know, but in a DA's office–

Ariel Salzer: You're out there in court.

Lee Burgess: You're out there. Yeah. They really don't have a lot of value for you if you can't go fill that role.

Ariel Salzer: Sure. Yeah, that's definitely something to think about. So yeah, who is this boss that you're working with? How do you best present the information to them? I mean, I would probably do it in person. I don't know. I guess it depends on that relationship and how well you know them and whether you're working every day, whether you're seeing this person.

Lee Burgess: Seeing them, yeah. But I think you definitely want to not wait. You know, depending on the jurisdiction, sometimes the lists are public, sometimes they're not. So if they're not public, you have a responsibility to tell your boss, you know, what's happened. Like, I don't think if you get your results on Friday night that you have to call them at 10 o'clock at night.

Ariel Salzer: And let's just not do that anyway. Yeah, please don't call your boss. I mean, this is tantamount to drunk dialing at a certain point. Right? Like, you don't want to spill your guts on the phone.

Lee Burgess: No, that's true. Like, I would say maybe, like, you know, if it's a boss that you would talk to over the weekend, like, an email or a phone call saying, "I'd like to meet with you first thing on Monday, you know, but this is the reality." I mean, they're wondering. They might reach out to you. You need to be ready to talk to them about that.

Ariel Salzer: Yeah, and like, don't let them hear it from somebody else.

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Lee Burgess: No. You know? And to be honest, like, if results come out and they're not public and your boss doesn't hear it from you, they're gonna figure out why they didn't hear from you.

Ariel Salzer: And it kind of looks bad.

Lee Burgess: Yeah, it also kind of looks bad.

Ariel Salzer: Let's be frank.

Lee Burgess: Yeah, exactly. All right. So once you've gone through the suffering of having to tell family, friends, and bosses, then it really comes the decision point, are you gonna get ready to take the next exam? And our rule of thumb is yes.

Ariel Salzer: Right.

Lee Burgess: Unless, because we're lawyers, it depends.

Ariel Salzer: There's always an unless.

Lee Burgess: There's always a but or an unless, unless there's some special situations. So special situations that I've seen are, you're not in a financial situation to set yourself up for getting help or taking time off to study, or–

Ariel Salzer: Get a babysitter.

Lee Burgess: That's a big one. Getting a babysitter is a big one if you have children, or you're dealing with a family situation. You know, I've also had students who are primary caregivers for elderly family members. Things happen, not a good time to study. Another situation is if you have not gotten accommodations and you need them. I don't necessarily think sitting for the exam without accommodations, if the accommodations are standing in the way of you performing your best, may not make sense. It may make sense to, you know, do what you need to do to get those accommodations, get the accommodations, and then, you know, sit when you have a higher likelihood of success.

Ariel Salzer: Yeah, and with accommodations, I think it can be hard too, because it takes a while for them to be processed. And the whole time you're sort of wondering, "Am I studying the right way?" The way that uses the accommodations or the way that doesn't, because it can be really different. You know, if you're getting

extra time or food or whatever it is during the test, you wanna make sure you're studying the way that you're actually gonna be able to take the test, so.

Lee Burgess: Yeah. We have a great podcast on accommodations that we will link to in the show notes. But, you know, if right now you are listening to this, and if you're a 3L, and you're thinking like, "Oh my gosh, I might someday fail the bar," what I want you to hear is if you are in the class of, you know, candidates that needs accommodations, please call the bar today, the day that you listen to this podcast.

Do it. Find out what is required, and file that paperwork on the first available day. Because the ambiguity around what kind of accommodations you might get, especially later in the bar process, is just stress that is absolutely unnecessary. It's just important to move on that information as fast as possible. And there are phone numbers for the bar. Like, you can actually call humans, and a human will tell you what the process is. You just have to do it.

Ariel Salzer: Definitely.

Lee Burgess: Yeah. All right. Then it's also time to figure out what went wrong by, you know, how you prepared. And it's not just about the academic situations of was your bar prep working for you or not. But, you know, like the other things we mentioned. Were you sleeping?

Ariel Salzer: Were you drinking so much Red Bull that you made yourself throw up every day? I mean, this is a real example from a real person that we've known. You know, so there are things you can do to sabotage yourself just in terms of lifestyle too.

Lee Burgess: Not having a stable living environment–

Ariel Salzer: Yeah, can be really stressful. Not being able to pay your rent so you're worried. I mean, it's a harsh reality, and failing the bar is expensive. But you have to figure that stuff out beforehand, not while you're studying.

Lee Burgess: Yeah. I think, and that's where I've seen delaying the exam actually work really well. I knew a student years ago who, you know, she didn't pass once, and she just knew, like, she couldn't... She didn't have the situation where she could take the next one. So she was bartending. She just said, "I'm just not gonna study. I'm just gonna bartend. I'm gonna save money, and then I'm gonna bartend up to

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this point, and then I can afford to get a tutor, and then I can study, and then I can take time off."

And she passed. And I actually really respected that. It wasn't like she was trying not to take the exam or, like, skirting around, like saying, "Oh, I'll just take a break." You know, she was basically like, "It's not... Like, I'm not setting myself up for success. I need to set myself up for success. This is what I need to do. It's worth it for me to wait, you know, the extra six months or whatever." And I think for her, it was absolutely the right thing to do.

Ariel Salzer: Yeah, definitely. Or people who, you know, maybe last time when they studied, they just couldn't get any time off of work. And now it's looking like they're also not gonna get any time off of work. And they're at the kind of job where their work basically owns their life. I mean, that's probably not setting yourself up for success either.

Lee Burgess: Oh, also planning your wedding while studying for the bar. That's one we hear a lot, too.

Ariel Salzer: Very bad idea.

Lee Burgess: That can lead to not fantastic results.

Ariel Salzer: Or, you know, in terms of wedding planning, realizing you'd like to be a wedding planner and you don't wanna be a lawyer. You know, maybe don't take the exam. I mean, there are reasons not to take the test, too. And these are coming from real people. Like, these are real examples.

Lee Burgess: Yeah, exactly. So as much as you need to think about, you know, exactly how you memorize stuff, did you do enough MBEs, things like that, you've also gotta look at your life. You know, were you so stressed you were having, you know, chronic health problems, migraines, panic attacks. I mean, literally this stuff happens. If you're listening to this and going like, "I must be the only person." No, trust me. A huge portion of the bar population is struggling with, you know, finding this balance and it's something that you really need to think about before you come back to study again.

Ariel Salzer: You know what? It's interesting, though. I think what I see even more often than people's life situations getting in the way, is people just not coming to terms with the fact that they failed and figuring out why. Because I think you can set yourself up in terms of life situations as much as you want, but if you can't face

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the music in terms of, like, this is... You know, I'm just terrible at writing essays. I can't write a PT in three hours. It's not gonna work well for you to just keep going down that same road that you've been down.

Lee Burgess: Yeah. And I think that's a really great point that we should talk about, is coming back and developing a plan to study again. Typically, doing the exact same thing you did last time does not lead to different results.

Ariel Salzer: I think it was Einstein that said that. So let's go with that being a good idea.

Lee Burgess: We'll go with that one.

Ariel Salzer: You know, and the same thing with, you know, you're gonna get your test booklets back, and you're gonna have to really face those and see why they didn't stack up well against what everyone else wrote. And a lot of people don't do that. A lot of people don't even read them.

Lee Burgess: And do you know that some jurisdictions, you have to pay money to get those back? I know. It's like 50 or... Like, just to, like, turn the knife a little bit. Just to make it worse. Just to say, like, "Oh, and you have to pay us money to get those booklets back, or you have to go pick them up at a certain time." I mean, I've heard all of these crazy things. And people just want it out of sight, out of mind, but there's such an important point of getting those booklets back and figuring out what happened. Because your recollections of what you did on that test can be completely different. I mean, I've had students say, "I have no idea why I failed this question, because I had so many issues. Like, there was no way I could have missed any issues." And then you go through it, and I'm like, "Well, you missed, like, six." And then they're like, "Oh, huh." Like, I mean, it's a long time between taking the exam and studying again.

Ariel Salzer: Sure. And we wanna build ourselves up. We wanna tell ourselves it had to have been some kind of error or mistake, or maybe it just wasn't as good as it needed to be in some weird sort of minutia type of way. A lot of times, though, I think students say this quite frequently to me at least, "My essays were so bad. I had no idea how bad they were. They were just run-on sentences. I talked about stuff that didn't even fit with the question." You know, and they realize that after reading their test booklets. But if they never read them, a lot of times they just keep repeating the same mistakes.

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Lee Burgess: Yeah, which is pretty amazing. So get those test booklets however you need to get them, and sit down with them. Maybe pour a glass of wine, 'cause I think it can be easier with a little liquid courage to make yourself go through them. But you can learn a lot from them. And I think, you know, sometimes you can get them back early in the process. You know, for instance, in California, you have to get them much later when you're already midway through studying again. But it's all part of this evaluation of, you know, what happened and what can you do differently.

You know, we said don't do the same thing again. If your commercial bar program didn't help you get where you needed to be, I would probably recommend that you utilize all of their resources again if they give them to you for free, because you paid for them. But doing their program again is probably not gonna get you a different result. We see this over and over and over again, and that's because if you went through a commercial bar prep program and your writing scores weren't passing, you need to figure out why they weren't passing. Was it because you didn't know enough law? Typically, be honest, guys, not the problem. Could be that you weren't identifying all of the issues. Much more popular problem. You weren't doing all the legal analysis necessary. Also a popular problem. You know, you weren't managing your time well. A super popular problem, especially on the MEEs, which are just 30 minutes. You have no wiggle room to talk about stuff that's not relevant, because you literally have no time.

And so it's incredibly important for you to think about how you're gonna work on those skills, and that's really where I think that, like, a bar tutor or some sort of alternative, very targeted program can help you solve those problems, because those typically aren't the problems that are really, you know, deeply dealt with in the commercial bar programs 'cause they're just focused on disseminating a huge amount of law for you to learn.

Ariel Salzer: Sure, and giving you a numerical score. If you already know you're failing essays, 'cause you just failed the bar, getting, you know, a 50 on an essay doesn't tell you much. You know? So if that's the kind of program you're working with, you might need more specific information.

Lee Burgess: Yeah, exactly. And so you just really evaluate if you need additional help. There are definitely plenty of other resources out there. You know, you should learn about them, talk to people, you know, try things out, look at samples of different

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products and things like that because you wanna, you know, evaluate if some other tool can really help make a difference.

All right. So another thing that we like to talk about with our students is it's important, especially, you know, if you're going back through your exams or you're just thinking about the past exams, you've gotta think about what the graders are actually looking for. I realize that most people don't talk to bar graders on a regular basis.

Ariel Salzer: But we do.

Lee Burgess: But we do.

Ariel Salzer: Like, we were just talking to bar graders last week.

Lee Burgess: Exactly. And, you know, it is fascinating when you as a student start to put yourself in the position of a bar grader. If you're a law student, I think we've talked about how important it is to put yourself in the position of your law professors as well. You know, because if you've never graded a stack of papers before and really felt like what it feels like to read, like, a bad answer after bad answer after bad answer, it's very sobering. And I think you have to realize that bar graders read stacks and stacks and stacks of essays, and if you make their bar grading job difficult, your scores are likely going to reflect that.

Ariel Salzer: And these are nights and weekends. These people have jobs. I mean, they're already... The grader we were talking to just last week was saying what? "When I open a booklet and I see a huge page of text with no breaks and no headers, I'm already thinking, 'Oh, great.'"

Lee Burgess: Oh, yeah.

Ariel Salzer: "There goes my time."

Lee Burgess: It's true. I mean, I've had other graders tell me they open a booklet and, like, everybody's, like, kind of a high fail, low pass. Like, when they open it up, that's kind of where they start, and they either feel more positive and the score goes up, or they get frustrated and the score quickly goes down. I mean, they don't take a lot of time to do this. It's not like, you know, even your law professors weren't taking a ton of time to read your exams, but they were probably going through it with much more of a fine-tooth comb than graders who have to move through these exam questions incredibly quickly.

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Thousands, thousands, and thousands of people in many of these jurisdictions take the exam, and you've gotta basically say, "Okay, I wanna be one in the pile of many that they open up and go, 'Oh, that is so lovely. Check, check, check, check, check. Pass.'" And then just, like, move you on. You don't want them to stop and say, "Oh my God, no paragraph breaks. Oh my gosh, no analysis."

Ariel Salzer: "Where is the fourth element of negligence?"

Lee Burgess: Right. "I don't see anything in this answer." Exactly. Or, like, they didn't number all the parts to the question. Now I have to go look to see if they answered all the parts of the question. No headers, rampant typos. I mean, we're not talking about, like, you know, needing to do spell check, but incoherent writing is not also going to, you know, make your exam very easy to read.

So it's really important to start thinking about how this test is graded, how the test works, especially for the writing portion. You know, let's think about the performance test, whether it be a three-hour performance test or, like, a 90-minute MPT. There, it's closed universe. Like, you don't have to know anything else, so you can't get the law wrong. It's, like, in front of you. You know? But you have to follow the directions because that's, like, what they're grading you on, is whether you can follow directions.

Ariel Salzer: A lot of people don't.

Lee Burgess: A lot of people don't follow the directions. I know. I will never forget when I first started bar tutoring, I had a student bring me a performance test, and she had done a statement of facts. And the directions told you explicitly not to write a statement of facts. And I asked her, "Why would you write a statement of facts? Why would you do that?" And she goes, "Well, because I usually did, and I thought, I'm sure they would give me points for it." And I'm like, "Not if they told you not to."

Ariel Salzer: Yeah. They're grading you on did you do what I say?

Lee Burgess: Right.

Ariel Salzer: It's basically did you do what I say in the exact words that I said it? Yeah, or people just try to sound really bombastic about things. And I know bombastic is sort of a bombastic word to be using to describe that, but, I mean, they try to sound smart. You know, they try to... They put in all these fancy prose. No.

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Short, concise sentences that make sense when you're reading fast. That's what you're going for.

Lee Burgess: Yeah. A really great exercise that you can do with some of your friends, if you're studying for the bar for the first time or even a repeat taker, that I used to do in one of my bar classes is we would hand... You know, you bring one of your essays, and you hand it to the person next to you. And you give them just a couple minutes to read it, and then they hand it to the next person, and the next person, and everybody has to give it a score once you understand how the exam is graded. And if you don't understand how the exam is graded, learn about that.

Ariel Salzer: Read our blog.

Lee Burgess: Read our blog. So you will be shocked at what people are able to see when they skim those answers. You can do it to your own answers. I mean, I've had my own tutees, students, where I'm like, "Did you read this answer?" You know, in California they spend two to three minutes on an essay. I'll be like, "Did you set your phone for two minutes and read your answer to see how much you can get through?"

Ariel Salzer: Could you find the issues?

Lee Burgess: Could you find the issues? Yeah. You know, could you see that you answered all four parts of the question? And it's such a simple little thing, but it really can make a huge difference.

Again, like, this all goes back to, like, being very honest with yourself, being very vulnerable. If you're doing a bad job, that's fine. Let's own it and fix it. This stuff isn't rocket science. And we're not saying that passing the bar is easy. Passing the bar is very challenging. It's probably one of the more difficult academic things that most of us will have gone through. But, you know, they're not, like, hiding the ball. They do want a good chunk of the people in the room to all get the same answer so they can pass.

Ariel Salzer: And there's no special points for, "Oh, wow, this person, I know I said don't write a statement of facts, but this person did, and that shows initiative." I mean, they don't do that.

Lee Burgess: No. They're not trying to trick you. In fact, they don't want you to be original. Don't be original. Originality is not rewarded. Blend.

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Ariel Salzer: Blend.

Lee Burgess: Blend in. You know, I've also had students who, you know, there's a crim law question, and on something they wrote a really complicated motion on at their externship, and they don't understand why they didn't get a high score on that. And it's like, because you didn't answer the question.

Ariel Salzer: You wrote about the motion.

Lee Burgess: You wrote about your work. You wrote about the motion and then you wrote about work, which is great, but that's not what the graders... The graders have a key that they're reading against.

Ariel Salzer: And, you know, it's funny actually, a lot of times, and I think this has happened to you too, Lee, but students will tell me, "I was so surprised. My very highest score was on my worst subject."

Lee Burgess: Oh, yeah. All the time.

Ariel Salzer: And it's like, okay, well, that's because you forced yourself to be really plain and clear and simple and organized because, well, you didn't know the law very well. And that happens a lot of the time.

Lee Burgess: Yeah. I was actually talking to one of our other bar tutors for the UBE yesterday, and we were talking about the importance of this idea of precision with the bar, that I think is something that, on one hand we like to say minimum competency because you don't have to be perfect. But what you do know, you have to be precise. You know, rule statements need to include the terms of art. They don't have to be long. You don't have to give me the history of the Constitution.

Ariel Salzer: Please don't, in fact.

Lee Burgess: Please don't. You know, but if you are saying, you know, that there's a warrant requirement and the warrant requirement exception is if, you know, yada, yada, yada, blah, blah, blah, then it's like, okay, well, you still have to be precise, right? You have to use, you know, if it's in plain view, that needs to have the words plain view. You can't say because the officer could see in the car. Like, the grader isn't really psyched to figure out if that means plain view.

Ariel Salzer: Yeah, you need to tell them explicitly.

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Lee Burgess: You need to say, like, plain view. And so there is an element of precision both with the law, which doesn't mean you need to learn more of it or study more of it. That actually means you need to study less words, but just have them be the right words. And write them the same way over and over and over again. And then you also need to be precise with your issues, like we were talking about. You know, you write about the Fourth Amendment that you wrote on this motion, but it doesn't answer the question. You're not being precise. You can't pass. You know? You need to answer the question asked. You need to raise the issues raised by the facts. You need to discuss the facts discussed in the fact pattern. I always enjoy reading... Enjoy, I'm using air quotes on the podcast. Reading a student answer that's making up facts.

Ariel Salzer: Sure.

Lee Burgess: Or changing facts.

Ariel Salzer: I saw that the other day. Oh, the man was punched in the face and hit his head. And no he wasn't. He was struck with a fist. He was not punched in the face. You know, it's different.

Lee Burgess: It is different. You know, or hitting your head on the concrete versus, you know, hitting your head on a pillow. Those are very different things.

Ariel Salzer: Changes the whole story.

Lee Burgess: It changes the whole story. And so you have to be very precise. So I think it can be so overwhelming with the amount of law that you have to learn, the amount of questions you have to do, but precision is so important. And I think, you know, in practice, remembering that when you're studying, but also with the multiple-choice, precision is very important. They're typically testing narrow rules, and you have to be very specific. You know, you have to read the language very carefully. You have to read those answer choices very carefully, 'cause they can be changing words in the answer choices to make some of them wrong.

And so you just have to, you know, not be super anal retentive. But you do have to, you know, be very precise, focus on what you're doing, and realize that the bar is hard enough without them making it overly complicated. The law is hard enough.

Ariel Salzer: They're not trying to trick you.

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Lee Burgess: Yeah, the law is hard enough. The time constraints are hard enough. You know, sitting down for the multiple-choice and taking six hours of multiple-choice in a day is hard enough. You know, they don't have to make it any trickier than the law allows it to be.

Ariel Salzer: Yeah, definitely. And how do you get to precision? I mean, is it sitting in the corner reading a bunch of esoteric stuff about burglary? No. You know, is it reading why we have burglary rules and what all of the different combinations of whatever it is might be? No, you have to find something precise, and you have to memorize it in a precise way, and then you have to use it with precision. And that's where I think a lot of people go wrong, is they think, you know, familiarity is good. Familiarity will get me through, and a lot of times it's not good enough.

Lee Burgess: No.

Ariel Salzer: You know, you do need those buzzwords.

Lee Burgess: You do, and I think that's where it gets a little murky in the bar world, because many bar prep programs encourage you to learn the law by listening to hours and hours and hours and hours, and then some more hours of lectures. Which is great if you're an auditory learner and you can retain information that is said in those lectures. But for most of us, you can listen to three hours of lectures, and if you ask me what the rule for standing is, if I didn't know it already, I would probably say, "I don't remember," because I just listened to three hours of constitutional law being, you know–

Ariel Salzer: Yeah, the concept would sound familiar. But that's not enough.

Lee Burgess: But that's not enough. And so, you know, especially if you're coming back after a failure, it's really important to think about what worked as far as learning the law and what didn't. And we oftentimes talk about many bar providers giving you law in the way of drinking from a fire hose. You are supposed to just take all of this information and figure out how to make sense of it. So we like to say to flip it on its head, and try and maybe say that this next time you're gonna come at it, is to start from a very simplistic place. Let's say a minimum competency knowledge of the law place, and then add knowledge through practice and through studying.

You know, I want you to know all the basic rules for constitutional law before you knew the nuances about executive orders and this or that.

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Ariel Salzer: I was just gonna say executive orders. No, you need to know the Commerce Clause. You need to know equal protection, due process. Learn that stuff before executive power.

Lee Burgess: Exactly. It's all important, but some of it's more important. And through practice, why practice is such a big part of studying is, anytime you study for the bar exam, especially studying again, is the practice questions are going to pull these nuances out for you. I mean, that's the beauty. You do banks of MBE questions, you're gonna see a lot of nuances, and you're gonna start to see the same ones. You know, character evidence over and over and over again because people–

Ariel Salzer: All those hearsay exceptions.

Lee Burgess: Yeah, all those hearsay exceptions, and the nuances around those hearsay exceptions. That's why you do the practice, so you can actually learn from them.

Ariel Salzer: Definitely.

Lee Burgess: Yeah. All right. Well, I think we might be out of time. Although we could talk about the bar exam forever.

Ariel Salzer: And we'd love to.

Lee Burgess: And we'd love to, but you probably either are feeling really good or feeling really stressed, and so we'll just stop it right there.

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