



- Lee Burgess: Welcome to the Bar Exam Toolbox Podcast. Today we are talking to Doretta McGinnis, a legal writing expert and one of our fabulous Bar Exam tutors here at the Bar Exam Toolbox. We're chatting about the Multistate Performance Test, or the MPT.
- Lee Burgess: Your Bar Exam Toolbox hosts are Alison Monahan and Lee Burgess. That's me. We are here to demystify the Bar Exam experience, so you can study effectively, stay sane, and hopefully pass, and move on with your life. 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](#).
- Lee Burgess: If you enjoy the show, please leave a review on your favorite listening app and check out our sister podcast the Law School Toolbox Podcast. If you have any questions, don't hesitate to reach out to us. You can reach us via the [contact form](#) on [barexamtoolbox.com](#) and we'd love to hear from you.
- Lee Burgess: And with that, let's get started.
- Lee Burgess: Welcome back. Today, we're discussing our top bar exam performance test writing tips with special guest Doretta McGinnis. Doretta is one of our experienced Bar Exam and law school [tutors](#), and a former legal writing instructor. We're very excited to have her here today to talk about the performance test portion of the bar exam, which can be a huge headache for those preparing for the bar.
- Lee Burgess: To get things kicked off Doretta, why do you think the performance test portion of the bar exam is so challenging for folks?
- Doretta McGinnis: I think the biggest problem is [time management](#). A lot of Bar examinees are overwhelmed by the [MPT](#) and the fact that they have to produce a complete legal writing document within 90 minutes from start to finish. So that, I think, is the single biggest problem. I feel that a lot of the students that I work with are repeat bar takers and the MPT is a focus of some of their anxiety and stress about the bar exam.
- Lee Burgess: Yeah. I've also been speaking to a lot of attorney applicants or people who have been working in one jurisdiction and they might be transferring over to another. I find that attorney applicants often times struggle with the performance test because it is not exactly what you would do in practice.
- Doretta McGinnis: Well, that's right. That is something that I've noticed as well working with non-traditional Bar examinees, by which I mean people as you've described who are not straight out of law school. It's often a challenge for them to put aside the style or format that they have been using in the workplace. It's also difficult for them to put aside their substantive knowledge of the law. I've had students like



that say, "Oh well, I have this expertise and intellectual property, and I don't really think this MPT turned out the way that I would have expected it to. The law was not what I would of been looking for to apply to this problem."

Doretta McGinnis: So [I try to work with those individuals](#) to come at it as a blank slate, and to remind them that all legal writing is about pleasing the audience. Well, all writing is about pleasing your audience, but legal writing in particular, you're writing for a specific audience and the audience for the MPT is the Bar Examiners, whereas the audience for the writing that you do at work might be a judge, might be a client, might be a supervising attorney. Those people have different expectations of what your product should be.

Lee Burgess: Yeah. I think that's a really good point about needing to look into their audience and focus on that. But also I find that reminding people that this is more of a game or an intellectual exercise and not necessarily a real world scenario because the graders or the folks who draft these exams, they can edit the case law. Even if you're familiar with some of this case law, it might look different, but they don't ... Part of the exercise is not including your own creative thinking.

Doretta McGinnis: That's exactly right. And in fact, you need to put everything substantive aside and just accept the law for what it is, for what is presented to you in that packet. You want to bring your skills into the exam room, but not any knowledge of the substantive law. I think that's a funny disconnect for people.

Doretta McGinnis: That said however, the law in the MPT is not insane.

Lee Burgess: No.

Doretta McGinnis: It's not crazy or out of sync with the common American jurisdictions. The Federal Rules of Evidence are pretty much the same as the Franklin Rules of Evidence that you're going to see on the MPT. So the law's not crazy and I don't want to give that impression, but I do find that people who have expertise in a particular area sometimes do question it.

Lee Burgess: Yeah, I think that is interesting. I also think one thing that people assume is that because you're not being tested on any sort of law that you need to have memorized, that it's got to have ... That the law has to have some really intense tricks to it, or that they're hiding the ball somewhere in these packets. But I find that if you can step back from the anxiety, that most performance tests generally are not that tricky. They can be hard, but they're hard for so many reasons with the time crunch, with the volume of information, with the stress of the exam taking scenario. It's hard enough; they don't need to make it super wacky.



Doretta McGinnis: Well, I think that's exactly right. And they really are very straight-forward, as you say. They're not hiding the ball, there are no tricks, the cases are very cleanly written. You're going to use virtually everything that they give you. There are no red herrings or they won't put you in a position of having you read a case and then having no use for it. In fact, you want to try to use virtually everything they've given you.

Doretta McGinnis: One of the skills they test is separating relevant from irrelevant material, but the material that might be irrelevant is very minor. They give you a bunch of code sections, there might be two sections that you really don't apply to the problem that's presented. But they will never put you in the position of having to make the decision to jettison an entire case.

Lee Burgess: Right. And they usually, I think the code section example is a great example because if they do give you some lengthy code, usually the cases help point you to the applicable code. They're not just making you read code for reading code's sake. They give you some tips of like, "This is probably the section or these are the two sections that you really have to talk about. We're just going to give you the complete quote of the code."

Doretta McGinnis: That's right.

Lee Burgess: Yeah. I think you can approach these packets with this idea that the information is there, and it's your job to just parse through it, but not make it harder than it is, you can kind of take a deep breath and I think it simplifies the assignment a little bit.

Doretta McGinnis: Well, I think that's right. Actually, as much as we've suggested that it's stressful and difficult for a lot of bar examinees, there are actually people who find it to be the easiest part of the bar exam for exactly-

Lee Burgess: I sure did. I was like, "Wait, I need to know no law, I just have to follow directions. I'm a really good rule follower, I can just follow directions, and write some stuff." I was like, "Sign me up!"

Doretta McGinnis: Exactly, exactly. Those are some of the aspects of it that I try to emphasize with students. They already have the skills because they've taken [legal writing courses](#), they've been reading case law for three years in law school, they've been applying law to facts. So they have the skills and they can relax because they're not forced to memorize details or to bring any other knowledge into the room. They already have what they need in order to succeed. They just need to hone that with practice in this particular format.

Lee Burgess: Yeah. Let's break it down in the ways that students should be preparing for the performance test. There are a few different performance tests floating around



the country. After some recent changes in California, now there's a 90-minute performance test. It used to be three hours, and there's only one of them. There used to be two of them. There's the very popular, getting more popular every day, the MPT, the Multistate Performance Test that is part of the UBE, but it's also used by other jurisdictions as well, even those who haven't fully adopted the UBE.

Lee Burgess: And then Pennsylvania likes to dare to be different as well and has-

Doretta McGinnis: It does.

Lee Burgess: Their own 90-minute performance test as well. But these performance tests are all very similar in structure and what is required of you to write a passing answer. Specifically in California, for those of you who might be sitting, there are only a handful of actual performance tests that have been released in this new 90-minute format. We, with our students, but we also recommend to other students that they use the MPT as the way to practice because it's going to be the closest thing to getting more practice since you don't have the years and years and years of backlog that we used to.

Lee Burgess: So Doretta, to get us started, could you go through what a particular performance test packet would look like for a student?

Doretta McGinnis: Sure. The MPT has a generic [set of instructions](#) that are posted online on the National Conference of Bar Examiners website. That's your first step. You want to read that over once. They almost never change, you're not going to waste time reading them in the exam room. These are just the basic instructions that tell you you're in the wonderful state of Franklin, what it's neighboring jurisdictions are, all of that good make-believe setting for your MPT. And of course, that you have 90 minutes and should spend about half that time planning, and half that time writing, which we can break down further. So that's one piece, the instructions.

Doretta McGinnis: The next thing though, is the most important part of the packet, and that's the task memo or assignment memo. Every MPT begins with a memo from an assigning attorney telling you what you need to accomplish and giving you very specific instructions for accomplishing that task. In this memo, you will get the background on your client; you will find out a summary of the facts; you will know what your client's goal or question is; and you'll be told what document you need to produce, whether that be a memo, brief, letter, or some other type of document. That is your starting point and that is the most important thing in this packet because that lays the foundation for everything that follows.

Doretta McGinnis: Next you have the File where you'll find the facts. The File contains documents from which you will cull the important facts such as deposition transcripts, trial



transcripts, correspondence, maybe a contract, emails, any sort of exhibits that you might find in the real world. That's where you'll get the facts for your assignment.

Doretta McGinnis: Then the next part is the Library. There you have your legal sources. They can be any of the common legal sources we might find: cases, statutes, regulations. Those are the primary things that you'll see there. The MPTs may have those in different proportions. You may have a Library that is three cases. You may have a Library that has statutory sections and one or two cases. It really will vary depending on the MPT.

Doretta McGinnis: So those are the [components](#).

Lee Burgess: Yeah. I think students are wise to really see them as components because the packet can seem a little overwhelming because it's so lengthy, but if you break into these sections, I think it makes it feel much more manageable.

Doretta McGinnis: It does. If you approach them, the File and the Library, with the foundation that you've drawn from the task memo, it will all make sense.

Lee Burgess: Yeah. All right, so now we know what's in the packet. Do they set forth some pretty basic or [common assignments](#) so you can have a good guess of what you might see?

Doretta McGinnis: Yes. By far the most common assignment is a memo. And by that, we mean the standard objective memo that you've done in legal writing class, that you might do during a summer internship, that you might do as a junior attorney in virtually any setting.

Doretta McGinnis: The tweak here is that the format is going to be streamlined. The MPT never requires you to do a statement of facts. I think that makes sense. You've only got 90 minutes, and what the graders are concerned about is your analysis of the law, not your ability to write a statement of facts. So the instructions will always exclude that.

Doretta McGinnis: For a memo, again, you're going to streamline that even further and have an introduction, discussion, and conclusion. That's it. No brief answer, no question presented, you're going to consolidate that sort of information into the introduction. And then of course the discussion is the heart of your memo, just the way it is in law school and in the real world. So that's the most common format.

Doretta McGinnis: The next is a brief. There are often trial briefs. They may be for summary judgment or some other kind of motion brief. The brief MPTs will sometimes give you more specific instructions for formatting, particularly for styling the



headings. That's a common thing to look for in your packet is to see if after that task memo, are you given specific instructions about your type of document.

Lee Burgess: Yeah because following directions is one of the things that they're testing.

Doretta McGinnis: Exactly.

Lee Burgess: Yeah. Which sounds so silly when you say it out loud like that sometimes, but as a lawyer, you are required to follow directions quite often.

Doretta McGinnis: True. And it's also a thing that makes your life easier because you don't have to panic. You don't have to say, "Oh my goodness. They've asked me to write this document. I don't know what it should look like." You know, because with a memo, they pretty much assume you've seen a memo, you should be able to figure that out. But for some of these others, they will often give you directions.

Doretta McGinnis: The most important thing with the brief, as compared with the memo, is that shift in tone and that a brief has to be persuasive. One of my observations in working with students is that a lot of students seem to be reluctant to push that persuasiveness and to make that shift. I saw that in teaching legal writing. That was often a difficult transition. And I see it with the MPT. Students are afraid sometimes to be zealous advocates for their client, and they tend to write kind of wishy washy briefs where they're afraid to ask the court for the relief that they are seeking. I think that hurts their grades because part of the task here, again, is to rate this document that shows you are writing like a lawyer as you would in the professional world. That would include being persuasive, of course, in a brief.

Lee Burgess: And do you think students should worry about sounding too persuasive? Or do you think there are ways that a student can be so clearly persuasive that the grader will quickly acknowledge that they're using a different voice?

Doretta McGinnis: I don't think I have ever seen a MPT where I thought the student had been too persuasive or had pushed it too far. There is a line out there where you don't want to be obnoxious.

Lee Burgess: Right.

Doretta McGinnis: Or disrespectful, but I think that line is much further away than most students think that it is. So I'm talking about things like saying, "The court must grant this motion because whatever the facts are," as to saying something like, "The court might grant this motion because we will be able to prove X." Don't use that wishy washy language. Just say what you're looking for.



- Lee Burgess: I think that's a good point too, especially given the fact that the graders are reading these pretty quickly, and so if you use wishy washy language, it can make it hard for them to decide whether or not you're using the right tone. Just stand up on your little soapbox and be in the role that they've asked you to be in the role in clearly, so they can say, "Check that box, they're using the right tone."
- Doretta McGinnis: Exactly, exactly. That's right. That brings us to our next type of assignment, which is a letter. The interesting thing about letters is they can go either way. Some of them are objective. Sometimes you're writing to a client to assess her chances of success on a particular claim, so that's going to be objective. But sometimes you are writing the letter in a persuasive posture. You're making a demand on opposing counsel, for example.
- Doretta McGinnis: You need to follow the instructions, again, very carefully, not just for format but also for tone. For letters, they will, at times, provide additional guidance for how to structure that letter and will indicate clearly what the tone is meant to be.
- Lee Burgess: Yeah. And follow the directions guys, follow the directions!
- Lee Burgess: It kills me when I see failing performance tests where people didn't follow the directions because I think that's the easiest points possible. I've seen failing performance tests where people included a statement of facts when it explicitly told you not to. "Why did you spend time doing the statement of facts?" "Well, that's how I'm used to doing it." It's like, "There were no points! And you just took all that time that could have gotten you points elsewhere and it's gone. There's no way that they're going to pass you for not reading the directions!"
- Lee Burgess: It seems so silly, but it is so critical and it's so easy to not follow the directions.
- Doretta McGinnis: Well, you're right. I've seen that, inclusion of statement of facts, and lately I've seen a disturbing trend toward summarizing the cases rather than integrating the cases into the analysis of the client's problem. Sometimes I'll see one where someone will have written just, "Summary of the Law," and they'll have squib summary of the each of the cases. Again, I think, "Why did you do that? The instructions told you to integrate that information, not to set it out as a separate section." Plus that's not what we do in law school or legal writing professionally.
- Lee Burgess: Right. I think sometimes it's easy to forget what skills that they're trying to test to decide if you're ready to be a lawyer. I often have to remind my students, and I did this when I was teaching too in the classroom, that anyone can write a book report about a case. Anyone without specialized knowledge can muddle through a case and probably summarize it for you. That is not legal analysis. That is not specialized skills that we have. What we are supposed to be trained



to be so good at is being able summarize cases, put them together to understand how the law works, and then argue how it applies to fact patterns and identify these legal issues. That's where the points come from. Book reports don't give you any points.

Doretta McGinnis: That's right. That's exactly what the MPT is looking for. Again, the instructions in the task memo will even tell you that, to weave those pieces together. So that's the letter. And then the last, of course, is the beloved "Wild Card," as I call it. This is where the Bar Examiners present you with a type of document you are unlikely to have seen in law school. It could be a bench memo. One a few years ago was something called a lobbyist's "leave behind," which was a document a lobbyist would leave-

Lee Burgess: Behind?

Doretta McGinnis: To argue for his or her position. But who has heard of that, right?

Lee Burgess: I definitely have not.

Doretta McGinnis: I didn't know what that was. There was the notorious February 2017, "Findings of Fact and Conclusions of Law" that threw people for a loop. When we think about these wild card formats, people have a tendency to panic, but they really should not because the MPT always gives you specific directions for these. Again, they'll assume you know what a memo is, but they are not going to assume that you have ever drafted, "Findings of Fact and Conclusions of Law," so they'll tell you how to do it. It's really not that difficult. But that gets to the point about practicing. You want to do a lot of practice of all of the different formats, including some of these crazy formats just to have that experience of reading and following the directions, although you may not ever see that specific document again.

Lee Burgess: Right. And just get comfortable with that feeling of, "Uh-oh, this is something I've never seen before," because that feeling can cause anxiety to boil up and it can cause you to be flustered. At least if you've practiced working through that on different wild card questions, that you're familiar with that feeling of, "Uh-oh, I've never seen this." But you can take comfort in the fact that if you've never seen it, most everybody else sitting around has never seen it, which means that the graders have to tell you or the Examiners have to tell you how to do it. So it's getting used to taking that deep breath, and regrouping quickly, and not letting the fact that it's weird, or shocking, or something that you haven't seen before change how you perform.

Doretta McGinnis: Right. That's exactly right.



- Lee Burgess: All right, well if you ... Let's move on to how you study for this performance test because if you don't need to know any law, how do you actually study for it? Can't listen to lectures, hours and hours and hours of lectures about it. So the first thing, I think, that we always focus on in our team, of course, is practice, practice, with a little more practice, and some practice on the end of that. Why do you think it is so important to practice these performance tests?
- Doretta McGinnis: I think the more you practice, the more comfortable you become with the exam. And I think that for students who have difficulty for timing, practice helps to improve their timing. I think that is the critical piece. And patterns begin to develop. The more you do, the more you see the way the cases tend to fit together, the more you see that they are really not throwing in additional confusion to trick you, the more comfortable you become with the format.
- Doretta McGinnis: I think the faster you get at pulling out what's important from the cases and working on that really important pre-planning stage that is, I think, where one of the biggest trouble spots occurs is in planning the answer - drawing law from the Library, outlining, and structuring the answering. I think that is something that improves with practice. So that is really my pitch for why a lot of practice is important.
- Lee Burgess: Yeah, and we'll talk in a few minutes more about what we think that plan should be when you sit down with your packet. But I agree, you want the plan to be a habit, you want the execution of how you prepare to write to be a habit because you don't want to be in the moment being like, "So, what should I read first? Should I read the library or the file first? Or how do I start my outline? Do I start it at this point or that point?" No brainstorming of situations. You need to have a plan, execute the plan.
- Doretta McGinnis: Exactly. That should be internalized by the time you take the exam. That should be internalized.
- Lee Burgess: Then why do students often refuse to do this practice or not want to work on the MPT or any performance test?
- Doretta McGinnis: Well, I've had some people say that they think it's going to be easy, and they don't need to practice for the reasons that we stated earlier. They don't have to memorize anything, how hard could it be? I think that's a very destructive attitude because at least on the UBE where it's 20% of your score, the MPT could be a make or break component for you and could certainly be a source of relatively easy points if you do well, and that will forgive you for maybe getting a few multiple choice questions wrong on the MBE.
- Doretta McGinnis: I think some students have said that to me. Like, "Oh, I thought it was just going to be so easy that I didn't really need to prepare for it." Others, I think, have had



bad experiences in legal writing, or they're insecure about their writing, and they feel almost predisposed to do poorly on this component of the exam.

- Lee Burgess: Yeah. Those scars from legal writing, I'm telling you, they can run deep.
- Doretta McGinnis: That's right, that's right. I think there's that and then, again, just the overall feeling that because this doesn't require memorization and so much does, that maybe their time should be shifted more toward the memorization tasks.
- Lee Burgess: Yeah. I think that it is very easy to get sucked into this idea that the only thing you should be worried about is memorizing the law. We talk about the importance of practice with studying essays and doing MBE questions, but I think it can just fall under this idea of, "Yeah, it should be easy. I should be able to just knock these out of the park. I shouldn't have to study for them." And some people can pull that off, but I think everybody can benefit from getting some feedback.
- Lee Burgess: We have worked with brilliant lawyers, and even of counsel, and people who are at the top of their game, and they send the performance test and I've seen your feedback. It is still redlined. It's redlined because this is a very specific task. You have to shift your writing style to what's being asked of you here. If you choose not to do that, you will leave points on the table and these are easier points to get than those extra five MBE questions on the rule against perpetuities.
- Doretta McGinnis: Exactly. That's exactly right.
- Lee Burgess: What about rewriting? Do you think it's worth rewriting performance tests if it doesn't go well when you're doing your self-evaluation of how you did?
- Doretta McGinnis: I do think so. I think it depends on how bad it is and for what reasons it is bad. I think that if it's a real train wreck in the sense that the student maybe reached the wrong conclusion because I'll toss that out there. These MPTs really do have a right or wrong conclusion. They're not ambiguous, they're not like a law school exam where maybe you could of reasonably come out the other way. If someone's reached the wrong conclusion, I think that is a problem. They need to revisit their case reading and their interpretation of the facts and figure out how they came out the wrong way.
- Doretta McGinnis: And I think the formatting, as well, needs to be ... Is worth working on and reworking if you're having difficulty with formatting, particularly if there are those gaps. You didn't use the case at all, that's a problems we see, or you did the crazy things we were describing earlier. You wrote a statement of facts or you gave summaries of the cases, that means you didn't really analyze this



problem and create an analytical response that would have garnered you significant points on the exam.

Doretta McGinnis: So in those situations, I think rewriting is worthwhile.

Lee Burgess: Yeah. I think it's important to remember: you don't always have to rewrite the whole thing. If you screwed up a section, you can just rewrite that section. I think so often students don't want to do it because they're like, "Well, I don't want to spend 45 minutes writing out the whole answer." Well, it's probably not 45 minutes. Maybe it's 25 minutes because you only really messed up this one area. I think there is something to be said for understanding how the right answer should feel versus the wrong answer.

Lee Burgess: I had a, my Torts professor, who said something to the effect of, "If you're right, your answer will march and sing along with you; and if you are wrong, it will be like slogging through the mud." I think that is something I have always taken, especially through these constructed exams where they do have a right answer. If you're fighting the MPT to make it work, it's possible that you have missed the boat because if you have got the right answer, it does fit together kind of like puzzle pieces. That's not to mean that it's easy, it's just that there's a rhyme or reason to how it fits together.

Lee Burgess: If you're not sure what that feels like, then you should rewrite an answer to see what that feels like so you can recognize it when you do more practice.

Doretta McGinnis: Right. And speaking of targeted rewriting of just specific sections or elements, the headings tend to be very important in the MPT. As I mentioned, many times the directions will even tell you, "Here is how we write headings in our law firm. They must look like this." That's an example of something that's definitely worth redoing if you didn't do it right the first time.

Lee Burgess: Right. No, that's a very good point. Now, for the MPT specifically, the Multistate Performance Test, they release these slightly crazy to go through, but can be frustrating, point sheets for the MPT.

Doretta McGinnis: Yes.

Lee Burgess: And then I know in California, they release "model answers," which are high-scoring student answers, which can be equally frustrating in different ways. What do they do in Pennsylvania? Do they release student answers? Or do they have a key?

Doretta McGinnis: They do kind of both. They release a brief outline of what the answer should be, and they do release some sample answers from students. So the summary



outline comes from the Bar Examiners, and then the answers from the students come from people who pass the exam.

- Lee Burgess: Okay. With the performance test, with the Multistate Performance Test point sheets, [how does a student go about using those](#) so they don't get completely overwhelmed?
- Doretta McGinnis: Well, those are very difficult to use because they are not formatted the way the student's answer will be formatted. For example, if the task was to write a memo or the task was to write a brief, the point sheet is a point sheet and it doesn't look like a memo or a brief. That is the problem.
- Doretta McGinnis: I think that what students need to do is to focus on the main sections in the point sheet. The point sheet will often be divided into topics that should have been covered in your answer, again, whether it was a memo or brief, whatever it might of been. Those are the areas to see whether you've used the law and the facts and coordinated them within the section the way the point sheet does. The point sheet's laid out with bullet points, so giving point sheet a different meaning, as the points you earn. I think you want to look at those bullet points of law and facts for each topic, and see if you did that in your answer.
- Lee Burgess: And I think that the frustration that can come with some of these point sheets, the other side of that is you might find it very helpful to get feedback from a living human being on this work because that feedback might be more meaningful to you than the point sheets.
- Lee Burgess: So some schools are offering programming where you can get feedback from maybe your academic support program, or they might have some bar support services. You can hire tutors like us and we can give you that feedback. We have our [Writing of the Week Program](#) where you can listen to Doretta, since you did this for the MPT, walk through I think it's five different MPT questions and facilitate you doing practice, and explain what the answer would be in a much clearer way than the point sheets. We give you the point sheets, but we also give you what, in my opinion, is a much easier version of a key to be able to grade your work.
- Lee Burgess: No matter what, if you're frustrated by the way you're supposed to evaluate your own work, try and get better at that, but also make sure that you're getting some sort of feedback so that you know if what you're doing is right or wrong.
- Doretta McGinnis: I think that's right. I also would suggest, just as we mentioned California and Pennsylvania releasing sample answers, there are jurisdictions out there that do release passing MPT answers.
- Lee Burgess: Oh good point, yeah.



Doretta McGinnis: If you just Google search that, you can pull those up. Again, I take all of that with a grain of salt because they're not perfect, but at least you are going to see a solid answer that is formatted correctly, that is not a point sheet, but is formatted the way your document should have been formatted.

Doretta McGinnis: So for example, now that New York has switched to the UBE, I've looked at some New York-released answers for the recent administrations on the theory that New York's a huge state, they've got a lot of takers, the best ones the Bar Examiners have chosen in New York are probably going to be pretty good quality.

Lee Burgess: Yeah, that's a really good tip. All right, so what about this plan of how to approach the performance test? We've been referencing this. You and I both agree, don't go in without a plan. What is your suggested [basic approach](#) that we've found has worked for students?

Doretta McGinnis: Okay. Well, we want to start by, again, ignoring those generic instructions. Just give them a very quick skim, and really dive into the task memo, and make some notes from that or mark it up because that's, again, the place where you're finding out about your client's situation, the question you've been asked, the task that is presented to you, and any specific formatting requirements. I would spend a couple of minutes with the task memo absorbing it and taking some notes on it and letting that lay the foundation for what you're going to do.

Doretta McGinnis: The next thing is the File. This is a problem spot because some people get very bogged down in reading the File. You don't want to do that. You want to just skim through it, literally, flip through the pages and say, "Oh look, there's a bit of trial transcript. Oh look, here's a police report," or whatever it might be just to see what's there. It's very common that the task memo even tells you what's going to be in there and gives you a little preview. You don't want to spend a lot of time there diving into that.

Doretta McGinnis: You then want to get on to the Library. And here's where you're going to spend your first big chunk of time, maybe 20 minutes or so, reading the cases and outlining the law. Now, some people like to get fancy with reading the cases and look at what jurisdiction they're from, and read the most recent case first, and they think there's some complexity to that. In my experience, there is not. I would read that Library straight-through.

Doretta McGinnis: If you have cases, the cases tend to be cumulative. It is very, very common for the first case, for example, to set out a rule or test with elements and then for a subsequent case to further explicate some of those elements, let's say. Or the first case says, "Oh, there are three relevant theories here: one, two, and three." Then the next case goes all-in on that third theory. So reading the cases in order is always going to be the right decision.



- Doretta McGinnis: If you have statutory sections, there's a little bit of debate. Do you read the cases first and see which sections of the statute, the cases, interpreted? Or do you read through the statute first and then read the cases? They always put the statute ahead of the cases. I would tend to read through it and just see what's there with a view toward then really honing in on the sections that are relied up in the cases.
- Lee Burgess: Yeah, I agree. I think skim the cases, the statutes, but kind of sit on your hands, don't get too deep. Don't do a deep dive into the statutes because you don't really know yet which parts are important.
- Doretta McGinnis: Exactly. And the parts that are in the cases are going to be the most important parts. You need to read that all very actively, and as you are reading, you need to be extracting the law and pulling out the rules, and somehow, outlining the law.
- Doretta McGinnis: This is a point, again, where there is some debate. Some people love to outline by hand and feel that is important. Other people like to outline on the screen. I'm very much in the screen camp because I think that outlining the law on the screen gives you the ability to move pieces around, to cut and paste, and to organize the heart of your document, whether that's the discussion section of a brief ... Excuse me. The discussion section of a memo, argument section of a brief, whatever it might be.
- Doretta McGinnis: So I take some notes on screen with what the legal rules are that you're pulling out of these cases. And I would hone in, any time you see a numbered list, this is my favorite MPT tip. They love numbered lists.
- Lee Burgess: Oh yeah, they do.
- Doretta McGinnis: They do! So if you see anything that's numbered, you should be jumping all over that, you know?
- Lee Burgess: Yep.
- Doretta McGinnis: And laying your argument or discussion out in accordance with the numbered list of factors and making sure you're discussing each one of them.
- Doretta McGinnis: You're going to outline the law, and then you want to plug in some of the key facts from the cases that pertain to each of those aspects of the law. You're kind of summarizing the law, but you're also synthesizing. Again, you may have to put the pieces together. You may have to put two or three cases together to fully explore the law just like you did in law school.



- Lee Burgess: Right. I think that's one, because I'm a bit more in the handwriting camp, but I think one of the things that can be tricky that you have to play with with taking notes on your screen is it's so easy to move into that book report mini-brief area because it's so validating to just type and copy things out of the cases because you feel like you're doing something. It takes a lot of discipline and practice to make sure that if you are going to choose to organize the law on the screen, that you are being very thoughtful about what you're writing down, and that you are not wasting time or making these long paragraphs of rule statements because again, there's no specialized skills that you're getting reported for for copying things out of a case.
- Doretta McGinnis: That is absolutely right. I agree with you completely that that is the downside of the screen method. It has to be used with discipline.
- Lee Burgess: Yeah. So if you can't make it work, then try more handwriting because that removes the ability to write these lengthy book reports because I can type incredibly fast; I can not handwrite the same volume of information as I can on the screen. That's why you have to practice to constantly evaluate where are your own pitfalls, where can you ... Do you have to protect yourself almost from yourself? And then make those changes.
- Doretta McGinnis: Yes. That gets back to our point about doing a lot of practice and starting early. I have worked with students who have tweaked their approach in the course of practicing. Maybe they started on either handwriting or on screen, and then they ended up with some sort of hybrid system, but they figure out what is most efficient and what works well and effectively for themselves. So I don't think it's a one-size fits all approach. Taking the time to practice gives you the opportunity to figure out what is optimal for you.
- Lee Burgess: Right. And then once you've got that planning done, then it should be very easy to execute the writing of the answer.
- Doretta McGinnis: Right, precisely. But now, after we've outlined the law from the Library, we've gotta go back to the File. That's our other approximately 20-minute chunk. There, we are pulling out those key facts that correlate with each element of the rule that we've set. Again, that task memo gave you a very good preview of how these pieces are going to fit together. So you do that. At this point, you've got your answer pretty much outlined, and then you should have approximately half your time or 45 minutes to really write it and put it into final form.
- Lee Burgess: Yeah. I think one of the things that I know that you and I have talked about together, but we're also always reminding students, is that this is a professional exercise and so you don't want it to look sloppy. You want it to look professional. You want to present yourself as a member of this Bar, that's what you're trying to get. So don't be sloppy. Use thoughtful formatting. Use



thoughtful spacing. Try not to have your headers riddled with typos. Just be professional. It doesn't have to be perfect because it's under timed conditions and you'll even see that in model answers. They're not perfect.

Doretta McGinnis: They're not.

Lee Burgess: Because they're written under timed exam conditions, but also remember that you don't want to be disrespectful to the grader and make their job very hard because they can't follow what you're writing.

Doretta McGinnis: Exactly, exactly. And that is, again, where following directions and formatting is so important because you don't want your MPT to be the one that looks weird and attracts negative attention, or it's difficult to comprehend, or it was supposed to be a memo but you wrote a letter. That's negative attention that you do not need.

Doretta McGinnis: It's interesting, just to circle back to the point about how it's going to be a good answer, but no answer is perfect. The point sheets used to say, "We are a comprehensive point sheet and you don't need to do all of this in order to do a passing answer. You could write an excellent answer without all of these points. You don't need to hit on absolutely everything." They removed that language a while ago, but I think the spirit of that is still true. When you look at the answers released by jurisdictions, you will see that they are very, very good answers, but they are not perfect and they do not include absolutely every detail that is found in the point sheet.

Lee Burgess: Yeah. It's a very good point. One thing that I've noticed the longer we all do this work together is that we're seeing more and more 3Ls who had concerns about legal writing. You referenced that this is a lot like what you learned how to do in your legal writing classes. That they are wanting to practice these performance tests early, either the summer before bar prep, or in the year before bar prep.

Lee Burgess: I think the one thing about the performance test and bar writing in general is it can be, this part, because you don't need to know any law, is something great that you can work on and get familiar with outside of the bar prep period. Some law schools will have classes like bar prep. You and I have both taught these, bar prep classes or preparing to take bar prep classes. I don't even know the best way to describe them, but they can give you some initial support and help in learning how to do these different parts of the test.

Lee Burgess: But I think the performance test is one of those things where you can study it, figure out your plan, practice executing it, and then put it on ice, and then revisit it closer to the exam and it will come back to you.



- Doretta McGinnis: Yes. I think that's right and as you know, that is one reason why we typically start our bar work with a student with the MPT, especially those folks who start preparing well in advance of the exam. That's the thing. We knock it out, they solidify their skills, and then they return to it for a little bit of tune-up and refresher closer to the exam.
- Lee Burgess: Yeah. It's really something that you can be open to. You can find performance test practice online from just Googling. If you want to find a few, you could go to your academic support at school if you're still in school and ask if they have any bar materials that they can share. We have people who are tutoring students who work with us who want to work through some of these.
- Lee Burgess: But if this is something that has worried you, if legal writing is anxiety-inducing and you are concerned, it's better to be concerned before the eight weeks before the Bar exam.
- Doretta McGinnis: Yes. Yes. If you've struggled with legal writing, you already know who you are.
- Lee Burgess: Yes, exactly! That's true.
- Doretta McGinnis: So don't be shy. Come forward and work on this. For sure.
- Doretta McGinnis: And you know, it really has the capacity to improve your legal writing beyond the Bar exam. It really does because the Bar Examiners are looking for the professional standard of organization and analysis. It is really a slice of what you'll be doing in practice. In fact, I've used the MPT as a vehicle to help people who are struggling with legal writing because it's a confined, discreet assignment and you can really focus on the skills without getting distracted by having to research a broad area yourself or making those decisions about which cases to include or exclude. You're going to use everything that they give you and we can focus on the skills and putting the pieces together.
- Lee Burgess: Yeah. Before we run out of time, I do want to focus on time management for a minute because that's something we raised as one of the challenges of the performance test. What do you think are some of the top things that students should try or focus on to help with time management issues?
- Doretta McGinnis: I think following the attack plan structure that we just described is very helpful to students, including internally timing those components. I've had students work with setting a timer. If we said, for example, that our reading and outlining of the Library should take about 20 minutes, set a timer for 20 minutes. Don't just set a timer for 90 minutes for the whole task, set those internal timers for those break points and see how much you got done within that period. I think that is helpful for students.



Doretta McGinnis: I also think that we have to hold onto the idea that this is not going to be the best piece of legal writing anyone has ever produced, and that it has to be good enough to pass, and we want to maximize points. But I think some people get bogged down in their own perfectionism and spend way too much time on it. These MPTs could expand to fill many more hours than 90 minutes. I think it has to be confined.

Doretta McGinnis: When I work with students, if they're really struggling with time management, I do have them start untimed because I want to see if I left them to their own devices, how long would it take them to complete this task. Maybe instead of 90 minutes, it takes them two hours. Then we have to figure out where is that time being spent? Where is that extra half an hour being spent? And how can we cut it back? Is it spinning wheels and not knowing what to do? Is it getting bogged down in the file? Is it not taking effective notes and outlining so that prep time is wasted or inefficiently spent? Where is that time being spent that we can either speed up or eliminate what is being done in that time?

Lee Burgess: Right. That's really good advice. I think there's discipline that comes with doing this practice in 90 minutes. No one will know what you can do past 90 minutes. At a certain point, you have to be able to perform your best in the 90 minutes allowed. And even for folks who get extended time for accommodations, you might feel like, "Well, I get time and a half. I have so much extra time," even then, it is still about discipline because it's often not ... It doesn't feel like a lot of extra time. It's usually still just enough time for you to do the task. You have to remain disciplined and not indulge yourself in having too much extra time because they're not going to read it. They stop reading at 90 ... At 90 minutes, you have to stop. Put down. Remove your hands from the computer. They don't know what else you could have written.

Doretta McGinnis: That's right.

Lee Burgess: Yeah. Well, any final thoughts Doretta that you wanted to pass on to our listeners about the performance test?

Doretta McGinnis: I would think back to legal writing class. That's what it all comes back to, to me. You already have the skills. Whether you believe it or not, you have learned everything that you need to know to succeed on the MPT by the time you have finished law school. You should view the MPT as an opportunity to demonstrate those skills in a confined time period with a very small universe of materials. Work to hone the skills that you already have to a point of efficiency where you can accomplish that within 90 minutes. If you can do that, you'll score well on the MPT.

Lee Burgess: Yeah. Spoken like a true former legal writing professor.



- Doretta McGinnis: Is there any more important topic in law school?
- Lee Burgess: Exactly.
- Doretta McGinnis: It is the foundation of everything.
- Lee Burgess: Well, with that, we are out of time. I want to take a second to remind you to check out our blog at [barexamtoolbox.com](http://barexamtoolbox.com), which is full of helpful tips to help you prepare and stay sane as you study for the bar exam. We have a lot of helpful posts on the performance test as well. You can also find information on our website about our [courses](#), [tools](#), and [one-on-one tutoring](#) programs to support you as you study for the UBE or California Bar Exam.
- Lee Burgess: If you enjoyed this episode of the Bar Exam Toolbox Podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. Be sure to subscribe so you don't miss anything. If you're still in law school, you might also like to check out our popular [Law School Toolbox podcast](#) as well.
- Lee Burgess: If you have any questions or comments, please don't hesitate to reach out to myself or Alison at [Lee@barexamtoolbox.com](mailto:Lee@barexamtoolbox.com) or [Alison@barexamtoolbox.com](mailto:Alison@barexamtoolbox.com), or you can always contact us via our [website contact form](#) at [barexamtoolbox.com](http://barexamtoolbox.com).
- Lee Burgess: Thanks so much for listening and we will talk soon.

#### **RESOURCES:**

- [National Conference of Bar Examiners – Multistate Performance Test](#)
- [Tips on How to Read the MPT Library and Save Time](#)
- [Everything You Need to Know About the MPT for Practicing Lawyers](#)
- [How Your Legal Writing Class Prepares You for the MPT](#)
- [NCBE - Multistate Performance Test Directions](#)
- [Last Minute Tips for the MPT](#)
- [How to Use MPT Point Sheets and Sample Answers to Prepare for the Bar Exam](#)
- [UBE Writing of the Week Course – MEE + MPT](#)
- [Get Ready for the MPT!](#)