



Lee Burgess: Welcome to the Bar Exam Toolbox podcast. Today, we are walking through a California bar exam question with Mihal Ansik, who is a law school and bar exam tutor at the Law School Toolbox and the Bar Exam Toolbox. Your Bar Exam Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're 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](#), [Bar Exam Toolbox](#), and the Career related website [Career Dicta](#). Alison also runs [The Girl's Guide to Law School](#).

If you enjoy the show please leave a review on your favorite listening app and check out sister podcast the [Law School Toolbox](#)! 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.

And with that, let's get started.

Welcome back. Today we are walking through a California bar exam question from a few years back with Mihal, one of our tutors on our Bar Exam Toolbox team who's a California bar expert. Thanks for joining us today.

Mihal Ansik: Thanks for having me.

Lee Burgess: Who else would want to spend all this time talking through a California bar question, somebody else who's as geeky as I am?

Mihal Ansik: Exactly.

Lee Burgess: Who likes to talk about the bar.

Mihal Ansik: Yup. Yeah, even though it means I'm going to have bar nightmares for the rest of my life ...

Lee Burgess: I know, right?

Mihal Ansik: It's still worth it.

Lee Burgess: Exactly, exactly, I know. Whenever the team gets together to talk about this stuff and totally geeks out, it's like, we're so glad we found each other.

Mihal Ansik: Yeah, exactly.



Lee Burgess: All right, well, first, what we're going to do today is we're going to talk through a real question. We're going to present the law that you need to know to get through this question. We're going to read you the question, and then we're going to talk through the facts, and then we're going to give you an outline of the question. Really, the whole point of this is to just share with you a bit about our thought process about specifically reading facts. One of the things that I am really passionate about is this idea that you have to become an expert at reading the facts and the fact pattern, because these are constructed stories. They're not something that you would hear from a client, right?

Mihal Ansik: Oh, totally, and I think the fact that you characterize it as a story is really helpful. Even though we're going to be talking about triggering facts, and checking the facts, and constantly having the wheels turning about, "Oh, where have I seen this before? What does this mean?" I always tell students for the first read, even when you're in the exam and you're worried about time, you want to do the first read without your pen in your hand, without thinking necessarily about fully trying to think about which issues you're going to raise. You just read it as a story. I think it's really helpful to just have your first taking in of the information be a holistic one, and just see where things end up from the beginning of the story to the end of the story, because then I think it's a lot easier to do your analysis and apply the facts to the law, and the law to the facts, because you actually have a sense of where the story ends and where things might be going.

Lee Burgess: Yeah, I think that's a really good point. I mean, if you're one of these people who has a really hard time of just reading, like I know this sounds completely silly, but sometimes I'll tell my tutoring students they need to sit on their hands, literally. Just lay down your pen and sit on your hands, because it can be very hard, especially when you're anxious (and who isn't anxious in the bar scenario?). You start just marking up everything, and your brain gets a little jumbled. So, I think it's a good practice to say, "If you can't just lay the pen down, sit on your hands, literally."

Mihal Ansik: Yup. Yeah, totally, because I get it. I mean, I am that way, and you get trained in law school and in your bar study, as we're going to be discussing also, to attach a law to basically every fact. And so, those pistons start firing, and these bar questions, even though they're heavily recycled, even though some of them can be really straightforward, they can be really misleading. You can see a fact and fixate on what you think it's about, and what you think the whole story's about, and then they kind of will pivot halfway through the fact pattern and be like, "Actually, it's about this."

Lee Burgess: Right.



Mihal Ansik: And so, it's important to kind of read the whole thing and not become too attached to what the fact pattern is about on your first read.

Lee Burgess: That's really true. I mean, you don't want to make assumptions. I always also describe to students about the fact pattern that it's almost like this very strange, almost passive aggressive conversation with the grader. Instead of them telling you, "We want you to talk about negligence," they've got to dribble out these facts to encourage you to talk about negligence, and it's your job to figure out that they want you to talk about negligence. So you can't come to it with a lot of assumptions about what you think they want you to talk about, because they are communicating through the facts. People literally sit in a room and argue over words in these questions to make sure that they are getting the outcome that they want from the bar takers. Nothing is done in a flippant manner.

Mihal Ansik: Right.

Lee Burgess: I think you're really wise to remember that, because they are trying to solicit a quote unquote "right answer" or something that is close to a right answer, and they're telling you that by what's in the fact patterns.

Mihal Ansik: Right. Yup, and every fact will have a home eventually, so ...

Lee Burgess: It does. There aren't really hanging facts. Yeah. I was just reading ... I watched the Ruth Bader Ginsburg documentary, which is quite good, if anybody hasn't seen it yet. But it was like the hanging chad. They were talking about *Bush v. Gore*.

Mihal Ansik: Oh god.

Lee Burgess: And I was like ...

Mihal Ansik: Flashbacks.

Lee Burgess: ... yeah, it totally escaped my vocabulary, and now I'm like hanging facts? Hanging chads? I don't know.

Mihal Ansik: Right. That's so funny. I literally had a conversation about the hanging chads today.

Lee Burgess: You did?

Mihal Ansik: Yeah.



Lee Burgess: That is so weird.

Mihal Ansik: We're registering voters in jails for my job, and ...

Lee Burgess: Oh.

Mihal Ansik: Yeah, and so there are a lot of voting war stories that were exchanged, and we had a walk down memory lane about Florida.

Lee Burgess: Yeah. Yeah. Well, then you can check out the RBG documentary, and you can have-

Mihal Ansik: I will.

Lee Burgess: ... more information on that again.

Mihal Ansik: Awesome.

Lee Burgess: I realize that we all read *Bush v. Gore* in law school, but still.

Mihal Ansik: Still. Anyways, side note.

Lee Burgess: Yes. We also are nerds about constitutional laws, so we can totally-

Mihal Ansik: I know.

Lee Burgess: ... geek out on that, too.

Mihal Ansik: Sadly, this is a torts question, yeah.

Lee Burgess: Okay. Well, before we can dive into this question, which is going to be a torts question ...

Mihal Ansik: Whoops, I spoiled it. Sorry.

Lee Burgess: Oh, I know, right? It's okay. It's okay. Today, we're going to talk through a torts question, and we're going to need to review a bit of law. So, if you haven't been studying torts yet or you just can't get enough of torts, here's your little summary of the law that's covered in this question. Like many, many torts questions, it's going to cover negligence, which we remember is duty, breach, causation, and damages. And for duty, all people have a duty to prevent an unreasonable risk of harm to others. And for the bar, and you may or may not



have done this in your torts class in law school, you have the two approaches to duty and foreseeable plaintiff; the Cardozo approach, which is that you have a duty only to foreseeable plaintiffs that are in the zone of danger, and the Andrews approach, which is the minority approach, which is a duty owed to all people. So, even if you didn't make this distinction in law school, they like to see it on the bar, so just memorize it and do it. It's really easy.

Then we need to move on to the standard of care, which is the reasonably prudent person in same or similar circumstances. Remember, this is an objective standard. For this question also, you need to remember negligence *per se*, which is a statutory standard of care. This is a two-part test. The statute seeks to protect the class of persons to which the plaintiff belongs, and then the second part is the statute seeks to prevent a risk of the same type as occurred in this case. Remember that for negligence *per se*, if that is met and that test goes well for your parties, that you will have standard of care and breach will be met by that. Breach is a failure to conform to a standard of care. One test that you may want to keep in mind is the balancing test of the Learned Hand formula, the $B < PL$.

Mihal Ansik: The old adage.

Lee Burgess: Exactly, you might have total law school flashbacks at this point. And then causation. You have to talk about both actual causation, which is but for causation, and proximate cause, which is whether or not the injuries are foreseeable. You want to keep in mind that there could be superseding or intervening causes that can break that causal chain of foreseeability. It's a defense only if the defendant can show that the unforeseeable event was the superseding cause of the injury, so it's really got to cut off ... I always think of causation as a line, and a superseding or intervening cause breaks the line or cuts the cord. We can use all sorts of bad analogies.

Mihal Ansik: Yes.

Lee Burgess: So I'm saying hanging chad, cuts hanging chad.

Mihal Ansik: Yeah, exactly.

Lee Burgess: And then damages. You have to show that plaintiff was actually injured. You want to remember to talk about defenses. This is something that often times, people forget in bar torts questions. Some that we want to think about in this case, you want to ask yourself about contributory negligence, which is where the plaintiff also acted negligently, so that's going to change how the balance of



damages are allocated. We have comparative negligence, which reduces damages owed by the defendant based on someone else's potential contribution to the harm. And something that you may want to ask yourself about as far as this question is concerned is assumption of the risk. I think in the end, we'll talk about it more, but I'm not sure that this is actually a major issue.

We want to think about ultra-hazardous activities, and these are activities that require that there be an inherently dangerous product or activity not common to the area that cannot be made safer. Social utility does not outweigh the risk, and that is like its own test that you want to keep in mind. There are also some separate product liability, strict liability rules out there that I don't actually think are going to apply as much, but you may want to think about them as you go through this analysis to see if they apply, such as strict liability for products liability, which requires a defendant to be a commercial supplier, and a product that reached the consumer without substantial alteration. The product has to be defective, and the consumer was making foreseeable use of that product. Lastly, there's an actual and proximate cause, and the plaintiff suffered damages.

Some of these rules I just wanted to review, because this fact pattern may call up these issues to you, and you have to make a judgment call about what applies. We'll talk about that more when we get to the fact patterns, but when you're sitting in a bar exam room, you have this head full of rules. So, you're kind of clicking through these rules and asking yourself which ones apply. That's really almost like your attack plan; your list of all these potential rules, so you're evaluating based on these rules that you've memorized whether or not they apply. That's why I'm kind of raising a couple little extra ones.

Something else that was raised that we can discuss if it applies was design defect; that if the way a product is made makes it more dangerous than necessary and there are feasible alternative designs, then often times a company or distributor, manufacturer can become liable for injuries. We also have damages. We have joint and several liability, which applies when two or more negligent acts are the proximate cause to an injury, and we have comparable negligence. I'm sorry, comparative contributions, where each defendant may be accorded proportionate amount of liability. The minority rule for that is the apportionment in equal shares.

So, again, I wouldn't necessarily take this as your whole torts outline, but this is basically the scope of the law that you need to know for this question. I think one of the things to think about, and I don't know if you feel this way too, Mihal,



is whenever I look at the rules that are applied in a fact pattern, I almost am surprised at how few rules there are.

Mihal Ansik: Yes, and when I was a bar taker, I had that impulse of, I'm holding the kitchen sink in my head. I've spent however many weeks looking at a million and one different kinds of books and resources. Like, I know all this law. Obviously they want me to show them everything they know. But, that was not actually the correct approach. A more useful approach is to remember that these questions, you have 60 minutes for these questions that are actually designed to be answered in 45 minutes. I'd say 45 to 50 minutes, because they're expecting you, and you've benefited by taking 10 to 15 minutes to actually read and process the information, and then construct an outline that's going to actually work for you as a roadmap as you're answering.

Lee Burgess: Yeah.

Mihal Ansik: And so, these questions actually contain a much more finite universe than we may be conditioned to believe in our bar study because we're having so much information thrown at us. And so, I think I actually had a lot of relief when my practice started revolving more about past questions than about ingesting a bunch of law, because what I saw was, oh, it's actually okay to, and required in fact, to only talk about three to six issues, depending on the question.

I think it's kind of unfair, because in law school, the exams happen pretty differently. Obviously, that varies professor to professor, but there are a lot of law school exams where the fact pattern's four pages. You have hours to answer it, and so it is an opportunity to show the professor everything that you ...

Lee Burgess: Right.

Mihal Ansik: You've taken in everything they know, and this is a much more sort of pared down, little more sharpened approach. And so, hopefully, that has the impact on our students of actually being a bit of a relief, because it really narrows down the universe of what you're going to cover, and it makes it okay that this only calls up three to four issues for you, because that may be just enough. So, remember that they're thinking about the time limit when they're writing these, and that time limit is going to hover around an average of 45 minutes, so it has to be answerable.

And then the other potential aspect of a question that may alarm students is if of those four issues, two of them feel like they might be the same. And so then you've narrowed it down to two, and so what you have to start thinking about is



maybe the more nuanced distinctions, because there are questions like the one that we're going to get into where actually, you are going to do a bit of a see above with reusing an issue. But what you're going to do is then dig a little deeper and see how that issue plays out differently for the second time that it's used. And so, you don't need to necessarily rule out an issue just because you've already written about it within the question. But the question is, where's the distinction? How are you writing about it a little bit differently?

Lee Burgess: Yeah.

Mihal Ansik: So, I would encourage students not to ... If this question is saying, "All right, you're going to write about issue A twice," not to be like, "Well, it can't be that, because I already wrote about that." It could be that, but then you want to go into, all right, what's different about it?

Lee Burgess: That's a really good point. I think the other thing to realize when you are practicing is that I could go back through questions, maybe easily using our [Brainy Bar Bank](#) tool where everything's keyed by issue. But I could go back and find you a few questions that pretty much cover all of these issues. The facts may be slightly different, but of course negligence is on a ton of questions. Negligence per se is on a ton of questions. We're going to get into the facts here in a minute, but corporate liability fractions, products liability, all of that stuff is heavily tested over the years.

So, it's also important to realize that this isn't a novelty. A lot of these questions, every now and then, they'll throw one out that covers something that's never been covered before, but these bigger subjects where they test pretty consistently, if you had gone a lot of targeted practice and really gone through a lot of past exam questions, you would have read this facts pattern and been like, "Oh. This isn't that new."

Mihal Ansik: Oh, absolutely.

Lee Burgess: And that's comforting in the room, you know?

Mihal Ansik: Yeah.

Lee Burgess: It's definitely comforting.

Mihal Ansik: Yeah, I think that's definitely one of the important threshold questions that students can ask themselves, is if they're sitting down for the bar and reading these questions for the first time is, "Where have I seen this before?" And



hopefully, students are using a tool like the Brainy Bar Bank, which I'm a huge fan of, or just grabbing those past exams from the California bar website, but are focusing their study on actual practice, practice, practice. And if you're doing that, there's no doubt that there will be certain parts of certain questions ... While the whole process may be uncomfortable, while there will inevitably be questions or parts of questions that stump you, there will also inevitably be questions that you're answering a little bit on autopilot, because you've written this essay before in some form.

Lee Burgess: Yep. I think that's really true. I know people are probably just chomping at the bit-

Mihal Ansik: Yes.

Lee Burgess: ... to hear what this fact pattern's about, so we'll go ahead and dive in. All right. We are going to link to the show notes, where you can download this question for free, so if you are listening to this podcast, I'm going to actually do this question after the podcast, because that just sounds like the most fun thing you could ever do. We'll link to that in the show notes.

All right, here we go. This is a [California bar question from July 2017](#). Concerned about the dangers of texting while driving, the legislature recently enacted the following section of the Motor Vehicle Code: "No person shall operate a motor vehicle upon a public road while using a mobile telephone to send or receive a text message while such vehicle is in motion."

Doug was driving down a busy street while texting on his cell phone. Doug lost control of his car, slipped off the road, and hit Electric Company's utility pole. The pole crashed to the ground, and the fallen wires sent sparks flying everywhere. One spark landed on a piece of newspaper, setting the paper on fire, and the burning paper blew down the street, landing on the roof of Harry's house, and the house caught fire and burned down. A technological advance, the wire blitz fuse, the WBF, which is a crazy acronym, but ... had made it possible to string electrical wires that would not spark if downed. Nevertheless, Electric Company had retained an old wiring system that it and other utility companies had used for years.

Electric Company believed that adoption of the WBF system would require significant increase in electrical rates, and that the WBF system had yet to gain widespread acceptance in the industry. Studies showed that utility companies that replaced their old wiring systems with a WBF system experienced vastly increased safety and reliability. So, Harry has sued both Doug and Electric



Company. Number one, what claims may Harry reasonably raise against Doug, what defenses may Doug reasonably assert, and what is the likely outcome? Discuss. Number two, what claims may Harry reasonably raise against Electric Company, what defenses may Electric Company reasonably assert, and what is the likely outcome? Discuss. And if Harry prevails against Doug and Electric Company, how should damages be apportioned? Discuss. All right. Not a super long fact pattern-

Mihal Ansik: Nope, but lots of fact.

Lee Burgess: ... which I think is always really interesting.

Mihal Ansik: Mm-hmm (affirmative). Lots of fun facts to play with, though.

Lee Burgess: Yeah. So, we've read the question, and now, because you've been listening to this podcast already, you appreciate that we think facts are really, really important. The next thing we're going to do is go through the question pretty much fact by fact, and discuss what's legally significant in each, as we go through each fact. What I want you to keep in mind is, this is kind of the exercise that you will do on that second read. Because Mihal, you were talking about the first read, you're sitting on your hands, you're trying to get the lay of the land. The second read, now that you know what's going on, you've got to be a bit more dialed in and more careful.

Mihal Ansik: Yup.

Lee Burgess: So, let's just start at the beginning. Concerned about the dangers of texting while driving, the legislature recently enacted the following section of the Motor Vehicle Code: "No person shall operate a motor vehicle upon a public road while using a mobile telephone to send or receive a text message while such vehicle is in motion." What is legally significant about this?

Mihal Ansik: At this point, I've read the call of the question, so I know that this must be a torts question. When I'm seeing a statute in a torts question, I'm going to be thinking about negligence per se.

Lee Burgess: Yup, exactly. I love how they fully call it out in the beginning of this question, too. I mean, they give you ... It's like its own little paragraph. They give you this whole section. Any time they call out a statute like that, if you don't have an issue on your outline that's going to talk about that statute, you will not pass the question. There's no way, if they've been that intentional about it.



Mihal Ansik: That's very true.

Lee Burgess: So what about the fact that Doug was driving down a busy street while texting on his cell phone? What does this go to?

Mihal Ansik: C'mon, Doug.

Lee Burgess: I know.

Mihal Ansik: Get your act together.

Lee Burgess: Bad idea.

Mihal Ansik: Yup. Not only was Doug driving down any street, he's driving down a busy street while texting, so we know having read the statute that he is potentially in violation of this statute under a negligence *per se* analysis. But also, just generally, that he's driving, he's not looking at the road. It's a busy road, so there are other cars around, potentially other people around, so this could be considered unreasonable behavior. And so, we're going to start thinking about our negligence analysis here.

Lee Burgess: Right, like breach. Did he breach a standard of care? Things like that.

Mihal Ansik: Yup.

Lee Burgess: Okay. So, he loses control of his car, slips off the road, and hits Electric Company's utility pole.

Mihal Ansik: Yeah, that sounds like damage to me.

Lee Burgess: Yeah, it does. It does. Maybe some causation mixed in there, and breach, you know?

Mihal Ansik: Yup.

Lee Burgess: The pole then crashes to the ground and fallen wires send sparks everywhere.

Mihal Ansik: Yeah, so it sounds like we're not done with our damages, and we're not done with the causation chain that's being set in motion.



Lee Burgess: Right, and I think this is one of those things ... I like that you said that causation chain, because this is so law school, right? Any time you have a negligence question, there are always like seven things that happen-

Mihal Ansik: Oh, yeah.

Lee Burgess: ... that would not happen in real life. So it's like, he can't just lose control of his car and hit a mailbox.

Mihal Ansik: Nope.

Lee Burgess: He has to lose control of his car, hit an electric company utility pole, sparks have to fly, paper has to catch on fire, things blow down the street. You know?

Mihal Ansik: Exactly.

Lee Burgess: It's got to be this crazy scenario that one would imagine would not happen in real life.

Mihal Ansik: Yeah, exactly.

Lee Burgess: Okay. So then we have the fact that the pole lamp crashes to the ground, we've got the sparks, and then we have one spark landing on a piece of newspaper and setting that paper on fire. What do you think that goes to?

Mihal Ansik: I think that fire is going to go somewhere, because at this point, we know from our call of the question that this dispute is not between Electric Company and Doug. So, we know that there's got to be another plaintiff who's going to show up at some point. We haven't met that plaintiff yet. We haven't met Harry yet, so we know that that newspaper being set on fire is going to somehow end up doing some damage to Harry.

Lee Burgess: Yeah. And so, it flies down the street, lands on Harry's house. We just met Harry, and the house catches on fire and burns to the ground.

Mihal Ansik: Yeah.

Lee Burgess: Why do you think this is significant that we now have met Harry and his house burned down from this newspaper?

Mihal Ansik: Because I think that we're going to have a bit of a robust back and forth between Harry and Doug about causation. They've devoted, let's see, one, two,



three, four, about four sentences to this causation chain. And so, there are going to be all these points in time in which Doug is going to say, "Look at all this stuff that happened between me texting and driving and your house catching on fire," and Harry's going to come back to that with his own causation points around how, "Well, my house would not be on fire right now had you not done this, this, and this."

Lee Burgess:

Right.

Mihal Ansik:

So, I think we're going to be thinking about not just our larger negligence argument, but within that, how are we going to play with causation here, and how's Doug's liability going to turn out based on the fact that there were sparks, there was a wind? So, yeah, a lot to talk about here.

Lee Burgess:

Right, and I think you make a really good point of how many words they spent on this causal chain, which means that it's something really worth thinking about, just like with that negligence per se trigger of the statute. Any time they spend that much time talking about something, you better make sure that your analysis spends time talking about it, too.

Mihal Ansik:

Agreed.

Lee Burgess:

Then the facts kind of switch gears, and now we start talking about the WBF, which had made it possible to string electrical wires so they would not spark if downed. Why do you think that the examiners shifted gears and started talking about the WBF?

Mihal Ansik:

Well, they're bringing in another potential defendant here. We know that we were just talking a second ago about how sort of wild it is that this house caught on fire as a result of an accident that happened down the street. So now, we're being introduced to the WBF because maybe there is an argument to be made that had Electric Company used a technology that would make it possible for these electrical wires not to spark, and therefore preventing that single spark that set that paper on fire, that maybe this house wouldn't have burned down in the first place.

Lee Burgess:

Yeah.

Mihal Ansik:

So we've got another potential defendant to start looking at.



- Lee Burgess: Right. Then we talk about the fact that Electric Company retained an old wiring system, that other utility companies had used for years, which sounds like some sort of industry standard.
- Mihal Ansik: Yup, yup.
- Lee Burgess: That's probably important.
- Mihal Ansik: Absolutely, for years.
- Lee Burgess: For years.
- Mihal Ansik: Really stretching out that time.
- Lee Burgess: And then that Electric Company believed that the adoption of the WBF would require a significant increase in the electrical rates, and that the WBF system had yet to gain widespread acceptance in the industry. Why does it matter what Electric Company thought at all?
- Mihal Ansik: Because basically, what we're going to be looking at here is whether ... What we're going to start thinking about is a potential alternative to the current system, whether they were unreasonable in not adopting it, or whether they were reasonable in following what was their own standard in practice, and what they're saying was not necessarily widely accepted in the industry.
- Lee Burgess: Yeah. And then lastly, they said that studies showed that utility companies that had replaced their old wiring systems with the WBF system experienced increased safety and reliability. Why is that important that we get information about what other utility companies had done?
- Mihal Ansik: This is sort of calling into question their reasonableness, and also it's going to factor into when we're talking about potential strict liability claims. Those sometimes involve a little bit of a balancing, and so we're going to be looking at this vastly increased safety versus what Electric Company says would be a significant increase in electrical rates. And so, we start balancing the cost to the company versus the value to the public. This isn't only factoring into our negligence discussion around Electric Company's reasonableness and whether their unreasonableness in not adopting this new technology led to a breach, but also calls up a strict liability question around this seesaw of harms and benefits.
- Lee Burgess: Yeah. That's all the facts. Again, not a ton when you really break it up. But you can see how by going fact by fact, you really force yourself to evaluate why the



graders put these facts in there. And why I think that's so important is going back to the original part of this podcast recording where we were talking about becoming experts at reading the facts, by going fact by fact, you are really making it so you can identify these nuances and ask yourself about words, and about number of sentences, and why they added these things in there. Where I think if you don't slow down and do this process, even in the exam room, a version of this process, that you may miss things, and then that's going to cause you to miss issues.

Mihal Ansik: Absolutely. And those alarm bells will be going off as you read this. Thankfully, sometimes the calls are ... You may have one call of a question that's just, "Name all the claims and all the defenses between all these people," and there's a little more organizing involved on the test taker's part. But in this, they give you a pretty clear outline of how you're going to set up your answer with the three calls, and the different disputing parties in each call. It does that part of the work for you, luckily.

Lee Burgess: That's true. Before we go into our outline of this question, would you just do a quick review of what those three calls of the question were for us?

Mihal Ansik: Sure.

Lee Burgess: Like, if you have an outline scratch paper, the first thing you're going to do is you're going to break out your outline or your scratch paper with these three calls of the question.

Mihal Ansik: Yup, and when I would do it, I would usually do, you know, blank versus blank. We know Doug's name starts with a D. He's the defendant.

Lee Burgess: Usually, yup.

Mihal Ansik: Yes. So, the first call we're going to explore is, what claims may Harry reasonably raise against Doug, what defenses may Doug reasonable assert, and what is the likely outcome? Discuss. The second is, what claims may Harry reasonably raise against Electric Company, what defenses may Electric Company reasonably assert, and what is the likely outcome? Discuss. And the third is, if Harry prevails against Doug and Electric Company, how should damages be apportioned? Discuss.

Lee Burgess: Before we get started on the outline, Mihal, what do you think about how a bar taker should consider these three prompts? Should they be all given equal



amounts of time, or do you think that bar studiers should apportion their time differently? What are your thoughts on that?

Mihal Ansik: When we're looking at these three calls, we're looking at a question ... By now, the student knows that they're looking at a question where there are some major what we call slap downs. They're doing a duty breach causation damages, and then maybe even another strict liability slap down. But they're doing negligence at least twice, and they may know from practice that within negligence, they're breaking that down into even smaller issues. So, there's going to be some heavy issue breakouts and analysis in both the first and the second questions. When it comes to damages, we don't really have that many facts about damages.

Lee Burgess: Right.

Mihal Ansik: We don't have a paragraph to go to damages. So, maybe in a remedies question, that's going to be really fact-heavy around damages. Or if they had said something about, "Well, now Doug and Electric Company are going at it with each other about who's responsible," but there's nothing about that. And so, when they're asking about damages, you know, you want to reserve time to have a thorough and complete discussion about that, but you also know that there's only so much you'll be able to say based on the facts that you have.

And so, the first two calls are really where you want to divide your time almost evenly. I'd say maybe the second call could use a bit more time, because you're going to be bringing in a potential strict liability discussion. But those are the two where you really want to focus most of your time and analysis.

Lee Burgess: I think that's really true. I think sometimes, students though will forget and say, "Number three, oh, it's not major, so if I run out of time, I shouldn't deal with it." And I think that's a huge mistake.

Mihal Ansik: Ooh, yeah.

Lee Burgess: You want to still write something down for number three-

Mihal Ansik: Yes.

Lee Burgess: ... because if you don't, you're literally waving your arms in front of the grader's face, being like, "I ran out of time! I ran out of time! I don't know what I'm doing!" And then you've left easy points on the table.



Mihal Ansik: Yup.

Lee Burgess: So, you want to not ignore a smaller prompt, but you're right; you don't want to give it equal billing because there aren't as many points available for number three as there will be for number one and number two.

Mihal Ansik: Yup, and hopefully, even though we're going to be talking about these major issues with little tests within the larger tests, hopefully practice has made ... We call them slap downs because it conjures this sort of ... you know, you can kind of bop, bop, bop, bop, bop it. You know? I couldn't think of ... I'm also losing my words on a Monday night, but have resorted to sound effects. But basically, these are the things that you kind of can throw down in your sleep, and then put your time less into thinking, "Oh, what comes after duty?" And more into what the analysis is going to be.

Lee Burgess: Yeah.

Mihal Ansik: And so, hopefully, the actual figuring out what the issues are won't take as much time as just the discussion itself. So, you should have time at the end for this remedies question. Please don't ignore it, because we want ... I think we talked about this before, Lee, but we really want the grader's eyes to sort of glaze over, and few things will catch a grader's attention more than an unanswered question.

Lee Burgess: Yeah. I mean, that's so easy for them to dock points for that. They don't even need to read anything to dock points for that, so you don't want to make it that easy for them to do their job.

Mihal Ansik: Yup.

Lee Burgess: One other thing I wanted to touch on is the fact that California does release two real student answers for every bar question that it publishes, and it can be very challenging sometimes to use these bar questions to evaluate your own ... I'm sorry, these student answers to evaluate your own work, because they are very high-scoring student answers, but they are not identical. Isn't that a fun little twist?

They often times will raise issues that the other does not raise, or sometimes, they might not even have the law really stated in the same way, which can also be kind of exciting. You want to be thoughtful when you compare these model answers, and so a good way of thinking about it is kind of going really old school, like a Venn diagram. Every issue that both answers talk about is required. If both



of them talk about it, but you didn't talk about it when you did the practice, that's a problem, because that meant that it had to be there. And then the issues that are discussed in one and not the other, it's not that they didn't necessarily get points for those, but they weren't the, "I will fail if I don't talk about the," issues. But if it was discussed in both of those questions, if you don't talk about them, you will probably not pass the question. Do you think that's a good way to think about them?

Mihal Ansik: Yeah, absolutely. I'm actually going to start using that Venn diagram thing. I haven't used that before, but I think that's a great way to talk about it. And again, I think this is another area where students can take comfort to the extent that you can take comfort in bar exam answers. But, you know, and first of all seeing, okay, there's room for a little bit of variation. Again, not wanting to deviate from what the bar examiners need to see from you, but also knowing, okay, if I miss something that wasn't necessary but was on a model answer, I can still pass this answer.

Lee Burgess: Exactly.

Mihal Ansik: I don't have to have written about everything and cited to cases.

Lee Burgess: Right.

Mihal Ansik: And write a thesis about-

Lee Burgess: Some of these answers are crazy.

Mihal Ansik: Some of them are crazy. I mean, I will never forget reading one of the 13th Amendment answers and being like, "This guy wrote a law review note in his bar exam."

Lee Burgess: Yeah.

Mihal Ansik: Or a woman, sorry, or a person, just this person, yeah. This person wrote a law review note.

Lee Burgess: But you also have people who have photographic memories who write some of these answers, and they read a fact pattern and they memorize the whole thing, and they basically have their whole entire outline memorized. They're going to be able to write an exam answer on a level that most of us cannot do no matter how much we study. That doesn't mean that you're not going to pass, but you do just have to take these answers with a grain of salt, because they are



fantastic answers that most of us are not trying to replicate. Because most of us are not trying to be the model answer; most of us are just trying to get over the passing threshold. So, you learn from them, you study from them, but don't make yourself crazy trying to emulate them.

Mihal Ansik: Right.

Lee Burgess: All right, well, without further ado, let's dive in and talk about what our outline would look like for this question. For the first issue, we've got the claims Harry reasonably can raise against Doug, the defenses that Doug may reasonably assert, and what's the likely outcome? We've talked about it already, but our major issue here is negligence, because it's a torts question, and what's a good torts question without talking about negligence?

Mihal Ansik: Exactly.

Lee Burgess: It's like most of your torts class, right?

Mihal Ansik: Yup.

Lee Burgess: Yup, and so you need to have headers for duty, breach, caution, and damages, and defenses, and then you need to go one by one.

Mihal Ansik: Yes.

Lee Burgess: For duty, what do you think that you need to talk about for duty for this question?

Mihal Ansik: We're going to do a callback to what we discussed earlier when we were talking about the law, is what is Doug's duty as a driver, and what is everyone's duty to each other? We have two sort of schools of thought on this. We have Cardozo's, which is duties only being owed to foreseeable plaintiffs, and the plaintiff is foreseeable if they're within the zone of dangers. And then Andrews, which is the minority approach, but that there's the duty to the community at large, or to all people.

We don't have to pick one. We just need to discuss both. Some people may be wondering, "Oh, but they start out with the statute. Why aren't we just talking about negligence per se first?" This is where, actually, in your study, looking at bar exam answer outlines is really helpful. How are these questions typically structured? Because negligence per se actually is going to fit within our negligence discussion, but negligence is the umbrella issue, and so we have to



start out with just ... It's going to get in there, but we're starting out with negligence and with duty within negligence.

Lee Burgess: And I think another important point on this one, too, is if you're listening to this and you might be taking, or have taken another jurisdiction like the UBE, where the essay questions are much shorter ... California question are an hour. The MEE questions are 30 minutes. If this was a 30 minute question, I would be like, "Quickly dismiss these other preliminary issues, and dive right into the negligence per se, because that's really where the facts are driving."

But in California, they want you to check all these boxes to show that you really can march through the analysis. So you want to spend time ... Not an exorbitant amount of time, but you do want to spend time going step by step, because it is going to collect you points. You're going to get points for this Cardozo, Andrews approach because also, it was weird, because Harry didn't even live on this street. Or he did live on the street.

Mihal Ansik: Yup. He lived all the way down the street.

Lee Burgess: But all the way down the street.

Mihal Ansik: Yup.

Lee Burgess: It's not like Harry drove into his house and crashed into something. Right? They've given you some weird facts to trigger that maybe you need a couple sentences about this, but again, you have to be disciplined and not go off the deep end with this issue that could be dealt with easily. You just need to discuss the facts and move on.

Mihal Ansik: Yeah, exactly. And the fact that we have Andrews view incorporated in all of these answers is always going to mean, there's going to be a discussion. Even if you find that Cardozo's zone of danger test doesn't apply because you're always going to be wanting to mention that there is an approach that requires a duty to all people, your question ... Unfortunately, you can't stop writing after duty.

Lee Burgess: No.

Mihal Ansik: You're going to keep going, because D is going to owe a duty somehow. And so, yeah. The Cardozo view is where there's going to be, again, a little bit of ping pong game. Doug is going to say, "I don't owe Harry a duty, because he lived all the way down the street. My collision happened all the way at the other end of the street." So, he shouldn't be factored in as a foreseeable plaintiff, especially



considering all that other stuff that happened with the sparks and the newspaper and the wind.

But, then again, when a person is texting and driving on a busy street, read broadly, maybe a jury wouldn't necessarily want to limit the extent to which that danger, or that anyone living on that street is a foreseeable plaintiff. So there's room there, and then obviously under the Andrews view, Harry is part of the community at large, is a person in the world, and so Doug will owe a duty to Harry.

Lee Burgess: Yup. All right, so then we move on to our standard of care, which is generally a reasonably prudent person in the same or similar circumstances. Here, you could dismiss this quickly and just say that you've got to be a reasonable driver, and a reasonable driver doesn't text while driving, hopefully.

Mihal Ansik: Yeah, right?

Lee Burgess: I'm sure that-

Mihal Ansik: In theory.

Lee Burgess: In theory. No judgment.

Mihal Ansik: Yeah. Yeah, I live in L.A., so ...

Lee Burgess: Yeah, exactly.

Mihal Ansik: Lot of counterexamples.

Lee Burgess: So, this minor issue of the regular standard of care should be dealt with quickly, because the major issue as we discussed is really about negligence per se, and negligence per se is the statutory duty of care. We have the two part test. The statute seeks to protect a class of persons to which the plaintiff belongs, and the statute seeks to prevent a risk of the same type has occurred in this case. So, we have to take them one by one. Who do you think are the class of persons that this statute was arguably designed to protect?

Mihal Ansik: We're talking about drivers, so it's probably going to be other drivers, as well as pedestrians.

Lee Burgess: Yeah. I mean, maybe you could argue property damage, but-



- Mihal Ansik: Yeah.
- Lee Burgess: ... But usually it'd be direct property damage, right?
- Mihal Ansik: Yup, exactly.
- Lee Burgess: Yeah, and then the type of harm. What do you think was the type of harm that this statute's trying to protect?
- Mihal Ansik: I mean, most likely, we're looking at collisions. Cars are huge, metal death machines when not operated by reasonable people, or people who are looking at their phones while they're driving. So they're probably looking at, again, property damage maybe to a car, or maybe to a person's home, again, if it's direct, and also to other people, so either other drivers in their cars, to the drivers themselves could also be a concern. You know, the negligent driver themselves, and of course pedestrians.
- Lee Burgess: Yeah. You want to just raise these issues going one by one for these two parts of negligence per se, and anyway there's negligence per se, break it into these two parts. You don't necessarily have to have separate headers, but you might do separate paragraphs, so the grader can easily see that you are doing the analysis in the two parts.
- Mihal Ansik: Right. And so, this is a little bit ambiguous. I think it depends again on how narrowly or broadly you want to read into the class of person, the class of harm. I don't think a student would come out too wrong either way. From what I could tell, I think the answers we've looked at landed on this not quite fitting into the class of harm that was intended.
- Lee Burgess: Right.
- Mihal Ansik: Because it was just sort of so outlandish that it would be hard for a statute to conceive of the sort of damage that happened here.
- Lee Burgess: Yup. I also think that when you have facts that are debatable, your job really on the bar is to just debate the facts and then pick a side. It doesn't really matter what side you come out on. If it's not obvious, just. present both sides, and move on.
- Mihal Ansik: Exactly.



- Lee Burgess: Because that analysis of arguing both sides is where you're going to get a bunch of points from.
- Mihal Ansik: Yes, and remember, you're also following instructions because the call of the question is asking what the likely outcome is.
- Lee Burgess: Right, yup. All right, so then if negligence per se is met, duty and breach are taken care of if you're doing the standard negligence analysis, you need to talk about breach. Breach is just a failure to conform to a standard of care. It would be pretty easy to just quickly deal with it like defendant acted unreasonably while texting and driving, because that's not something reasonable that you do to be safe, so the duty was breached. You kind of throw that in there just to cover your ass if you're worried that you were wrong with negligence per se, but that just completes the analysis. You're going step by step.
- Then we get into causation, which as we discussed when we were going fact by fact, that we have a lot of facts about. So, remember, we have to do but for the defendant's actions, the injury would not have happened, and then whether or not the injuries are a foreseeable result of defendant's actions. But for is pretty easy here, right?
- Mihal Ansik: Mm-hmm (affirmative).
- Lee Burgess: Because if defendant hadn't run into the pole because he was texting and driving, the fire wouldn't have started.
- Mihal Ansik: Right.
- Lee Burgess: That's a slam dunk issue, not a big deal.
- Mihal Ansik: Totally. But was it foreseeable?
- Lee Burgess: Right. Then we get into this idea about foreseeability and the possibility of superseding and intervening causes. What do you think is the stuff that needs to be discussed in this part of the question?
- Mihal Ansik: Well, just like we did before, we really want to break down those four sentences about the step-by-step harm that took place. So, yes, we know that Doug hit this pole and as a result, Harry's house caught fire. But what are all the things that happened in between, and were those things sort of random and unforeseeable enough to cut off the causation? We've got sparks flying, we've got a newspaper.



- Lee Burgess: Right.
- Mihal Ansik: A single spark in a newspaper, and we've got a gust of wind, and we've got a gust of wind that is so powerful that it blows this burning newspaper onto Harry's house down the street. And so, again, this is going to be a debate, and the student's going to pick a side, and among the students taking the exam, there are going to be some who say it is foreseeable that knocking over an electric pole can ... that a sparking electric pole will cause a fire, and Harry just needs to suck it up, because it was foreseeable. And there are others who will say, "Are you kidding me? There happened to be a newspaper. There happened to be a gust of wind in that moment. This is not foreseeable." This is what some test takers call an act of God, or a supervening event, and either way, you'll be fine as long as you just support your argument with plenty of facts and pick a side.
- Lee Burgess: Yup. Perfect. Then damages. Damages here again are pretty much a slam dunk issue. You have to have an injury, and a house burned down, so it's pretty clear that there are damages. Don't spend a lot of time talking about that, because there aren't a lot of points to be had when somebody's house burnt down and that's their damage.
- Mihal Ansik: Right.
- Lee Burgess: So really, this question seems to turn on proximate cause and negligence per se. But you need to just conclude which way you think it's going to come out.
- Mihal Ansik: Yup.
- Lee Burgess: What do you think about defenses here? What are the defenses that you definitely needed to talk about?
- Mihal Ansik: The defenses you definitely need to talk about, even though there are no facts that raise this, when you're talking about negligence, you just need to show that you know what contributory negligence is.
- Lee Burgess: Yeah.
- Mihal Ansik: So, you're going to raise it and then you're going to slap it away, because all Harry did was live in a house, was have a house on a busy street.
- Lee Burgess: Right.



- Mihal Ansik: So, there's absolutely no information that Harry was negligent. But again, these are key terms where you want the grader to be going down their checklist, and when they look at their checklist and look at your answer, they can check it off that you know what contributory negligence is.
- Lee Burgess: Yup, agreed. All right, so that's pretty much prompt number one. Then we move onto what claims Harry reasonably can raise against Electric Company, what defenses Electric Company can assert, and what is the likely outcome? The sample answers that were presented by the bar both talk about these. They talk about them in a different order. I wouldn't really worry about that, but why don't we just start with kind of ultra hazardous activity, and whether or not that applies in this situation?
- Mihal Ansik: Okay, great. Yeah, so students may have come with ultra hazardous activity, because these facts, some of them do sort of have a flavor of past exams. I know I read it and I was thinking of that kid, Peter, with the pigeon in this past, and that past torts question.
- Lee Burgess: Electric wires, yeah.
- Mihal Ansik: Yeah, that poor kid.
- Lee Burgess: I know.
- Mihal Ansik: And so-
- Lee Burgess: You guys, this is what happens when you take the bar. You think about-
- Mihal Ansik: You get attached.
- Lee Burgess: You're like, "It's just like this question about Peter and the pigeon," or, "It's just like this question about the ..." The other one I was thinking of when I was going through this question again was the one with the blender, where the woman makes soup in the blender. And then that-
- Mihal Ansik: Yes, yeah, and the whole ...
- Lee Burgess: Yeah, exactly. This is what happens.
- Mihal Ansik: It's sadder that we ourselves are bringing it up, or that the other person is totally empathizing? I mean, like, "Yes, I know exactly what you mean."



Lee Burgess: I know, I know.

Mihal Ansik: That one. That's in, like, the top 10 classic.

Lee Burgess: I know, exactly.

Mihal Ansik: All right, so but this is about Doug and Harry. So, we're going to do ultra hazardous activity as our first discussion. Harry might want to say, "Look, we're not even going to look at whether the electric company was reasonable or unreasonable, and using this technology. We're going to look at whether having these electric poles in this neighborhood on this busy street was so dangerous as to constitute and ultra hazardous activity, and therefore triggers strict liability."

Lee Burgess: Yup, exactly. I think that this is something that is good to discuss, but I don't think it needed to be a super robust section, because you just kind of need to go through the elements and talk about those facts and kind of move on. I could see this being a place where someone could spend for a while, and spend too much time, but I don't know that there are enough points available to spend more time than just kind of going element by element.

Mihal Ansik: Totally, and I think it's sort of an area where it's a gut check with the student to think about, "All right, how far would I need to be stretching to really make this fit into the test?" If you're running out of facts pretty quickly to fit into the elements or into the factors, then you know that you can kind of mention it, raise it, and make sure the grader sees that you know it, but you don't want to create work for yourself that isn't there.

Lee Burgess: Yeah, I agree. So then we're going to move on to the next issue, which is negligence. But as we talked about earlier in the podcast, you don't want the negligence analysis to be identical. So, you want to think about what's different about this negligence than the negligence analysis we just did about Doug. Here, we're talking about negligence of a company, so our duty of care is kind of a reasonably prudent company that has special skills and knowledge. And then you need to go through whether, again, Cardozo versus Andrews; is Harry in the zone of danger of the electric company? Here, I think that analysis is a little bit easier. You're near power lines. I think most people would possibly be in the zone of danger, but you still need to go through that analysis quickly to then get to breach. And here, what do you think really we needed to talk about here in breach, given the facts that we had in the fact pattern that we mentioned earlier?



Mihal Ansik: Here, we're going to Electric Company's assertion that not using a technology that would have pretty much eliminated sparking, which is what caused the fire, that not using that was perfectly reasonable, because they and other utility companies have used this old wiring system for years, so there's no reason for them to think that not using that old wiring system would have been unreasonable for a company in their position and with their specialized skill and knowledge. And not just that, but that the increase in electrical rates is so significant that it was actually reasonable for them to stick with their old system as opposed to opt into this other system that, again, they're going to say isn't as popular as they'd like you to believe, and they've all been doing just fine for all the time that this has been the industry standard.

Lee Burgess: Right. One of the model answers that the bar released did use B<PL as a way to do this analysis, so that seems to be an option that the graders thought was fine, but I think the bigger issue is using all of these facts about whether or not they breached. I don't necessarily know that you need to bring in new breach tests, but it's really about the amount of facts.

Mihal Ansik: Right. And so, there are compelling facts here on Harry's side that show that WPF creates vastly increased safety and reliability. So the question becomes, well, if you can eliminate these sparks that cause fires, is there really a cost that is so high that not opting into this alternative technology that is catching on and studies have been done, could it really be said to be reasonable to opt out of that based on this vaguely significant increase in electrical rates?

Lee Burgess: Right. Then we would move on to causation, and again, quickly dealing with but for and proximate cause. But for, but for not updating the wiring system, the wires would not have sparked, and therefore there wouldn't have been the fire. But the proximate cause, we still have a similar analysis to superseding and intervening causes, because we have Doug who drove his car into the power line. So it wasn't like the power line just spontaneously came down; there was something else that happened. There was someone else's negligence that caused this.

So, proximate cause is something you definitely want to deal with. It might sound somewhat similar to the proximate cause analysis that you do for question number one, but it is going to be different because the facts are different.

Mihal Ansik: Yup, absolutely. But it's going to be similar in the sense that there can be a robust debate, and students can come out differently, just as a jury might come



out differently. But as long as you wrap it up with a neat little, "Therefore, this is or is not likely to lead to liability," then you're good.

- Lee Burgess: Yup, exactly. The damages on this one are going to be exactly the same, because it's the house. The loss of the house is still the damage, so you should just reference, like, "See above," for that. Don't waste time restating a bunch of stuff about damages. And then defenses are going to feel pretty similar, too, because contributory negligence is going to be pretty much the same as Doug's claim above. Don't you think?
- Mihal Ansik: Yeah, absolutely. Actually, something that I forgot to mention with Doug's claim, too, is that the supervening cause, that can be thrown into your ... as a defense as well. So, you can either have it worked into your larger proximate causation discussion and obviously you want to be alluding to that, if not calling it out specifically. But supervening cause is also totally appropriate under your defenses header as well.
- Lee Burgess: Yeah. No, that's a good point. I think under defenses, you could also re-raise comparative negligence if you had time. Again, I don't think this is a major issue, but I think you could talk about how you could reduce the damages owed by the electric company based on Doug's potential contribution to the harm. But you know, not a big deal.
- Mihal Ansik: Yeah, totally. And if you're going to bring it up, you want to make sure that you understand and are making clear the distinction between a full defense and just sort of an analysis of how ... the extent of liability.
- Lee Burgess: Yeah. I agree. You know, we talked in the rules about whether or not this was a defect. Defects are, I think, not an issue here, because we don't have enough facts about a defect. We don't have anything about the manufacturing or anything like that, but you know, I think this is where you kind of do that evaluation in your head and say, "Mm, not enough facts. Not really something to talk about," and just move on.
- Mihal Ansik: Right.
- Mihal Ansik: And damages.
- Lee Burgess: Yes. So, now we are going into if Harry wins against Doug and Electric Company, how should damages be apportioned? They're giving you a great clue here that's about having two liable parties, so that should make you think of joint and several liability, which applies when two or more negligent acts are proximate



causes of the injury. What do you think the facts have told you about this to be able to kind of talk about joint and several liability here?

Mihal Ansik: I mean, basically, Doug and Electric Company are kind of going to be trying to throw each other under the bus.

Lee Burgess: Right. Like all good defendants will do.

Mihal Ansik: Yup, exactly. And you've got your sort of different chicken and egg discussions, or you know, around was it the fire or the collision? So, there's going to be a lot of going back and forth around the source of the harm, and then the discussion is going to be around whether under joint and several liability, either defendant could be considered fully liable for the entire extent of the damage, and then try to get the other defendant to cover that. Or, whether this harm really is cleanly divisible, and therefore each defendant can be apportioned an identifiable portion of liability. And then we can't necessarily say that these defendants are acting in concert, but that would be its own analysis if that were the case.

Lee Burgess: Right. And then, I mean, I think joint and several liability is the big issue here. But another one that I think would be one that you could raise would be comparative contributions which is different than comparative negligence.

Mihal Ansik: Yes.

Lee Burgess: So, this is when each defendant may just be accorded a proportioned amount of liability. It could be equal shares that's a minority rule, or it could be based on their actual liability if you can say that he caused so much more damage than Electric Company did, but the jury figures that out. So, you would just kind of talk about how they would figure that out, and then move on.

Mihal Ansik: Yes, exactly. No need to do any real math on this question.

Lee Burgess: No, don't do math.

Mihal Ansik: Thank goodness.

Lee Burgess: There's no time.

Mihal Ansik: Yup.

Lee Burgess: So, that's the entirety of the question. If you are studying for the California bar and you've never written this question, it could be fun, and I'm using air quotes



around fun, because you may not think this is as fun as we clearly do, because we've been talking about it for almost an hour.

Mihal Ansik: Oh my goodness.

Lee Burgess: But I think writing out this question, even after listening to discussion, can have a lot of opportunities for learning for you. You can go through the question and see if you would make similar decisions to the ones that we have outlined in this podcast, and it could flag for you places that maybe you aren't reading the facts as carefully as you could, or you weren't allocating your time as well as you could based on the facts that were included, or perhaps even that you are trying to throw in everything in the kitchen sink, and you're talking about issues that aren't really triggered by the facts. So, it could be a worthwhile exercise to just sit down and try and write out this answer, or at least review the question online, and read the model answers and see how you feel about them. Well, that was fun. Thanks for hanging out with me and talking through torts questions. I really appreciate it.

Mihal Ansik: Thanks, Lee. It was a blast.

Lee Burgess: No problem. Well, with that, we are going to be out of time.

Mihal Ansik: Oh, and don't text and drive.

Lee Burgess: Oh, that's right, don't text and drive. That's our PSA.

Mihal Ansik: Yeah, exactly.

Lee Burgess: I feel like the bar was doing a public service announcement with this question.

Mihal Ansik: Exactly. Don't text and drive on a windy day near electric poles.

Lee Burgess: That's right. Don't do it.

Mihal Ansik: Or Harry's going to get you.

Lee Burgess: Yup. I want to take a second to remind you to check out our blog at BarExamToolbox.com, which is full of helpful tips to help you prepare and stay sane as you study for the bar exam. 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.



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