



Lee Burgess:

Welcome to the Bar Exam Toolbox Podcast. Today, we are talking with Sean Silverman, a bar exam expert, specifically about the MBE, the multiple-choice section of the bar exam. This is part two of a two-part series of going through MBE questions. If you didn't check out [part one](#), please make sure you listen to that as well.

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](#).

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With that, let's get started.

Welcome back. Today we are continuing our conversation with Sean Silverman, an MBE expert, where we are going to walk through real MBE questions released by the National Conference of Bar Examiners.

If you would like to [download the PDF](#), we have a link in the show notes so you can read the questions yourself as well. If you missed part one of this conversation, please do [download and listen to that one as well](#).

Now let's dive into the next MBE question. So, this is question five on the PDF of released questions. A woman from State A filed an action against a retailer in state court in State B. The complaint alleged that the retailer had not delivered a \$100,000 worth of goods for which the woman had paid.

Twenty days after being served, the retailer, which is incorporated in State C and has its principal place of business in state B, filed a notice of removal in a federal court in State B.

Was the action properly removed?

Option A is no, because the notice of removal was not timely filed; B, no, because the retailer is a citizen of state B; C, yes, because the parties are citizens of different states and more than \$75,000 is in controversy; or D, yes, because the retailer is a citizen of both state B and state C. Oh, civil procedure, everybody loves it.

Sean Silverman:

Oh yeah. They needed to add another subject, I don't think the test was hard enough.



Lee Burgess: Yeah, I know.

Sean Silverman: And I think that was the rationale behind it. I mean, it was a little bit too easy so they-

Lee Burgess: It was too easy and other than Allison, my business partner, who loves civil procedure, most people do not love civil procedure.

Sean Silverman: And it's not like they threw on like a ... Okay, let's just throw on a subject that's not too hard. I think it's maybe jumped right to the top perhaps, or at least in the top three for the most tested subjects. And then with this one, I feel like there's quite a lot to unpack even though it's a small fact pattern. So, was the action properly removed? So, by reading that I would know what subject I'm in and this is a sort of an example of one where I think the question is very helpful. If I were just reading it, there's a whole lot of issues that I could have imagined they were testing, if I just read it without first reading the question. But if I see was the action removed, that's exactly what I'm searching for.

And there's a lot that goes into removal. The first thing I would want to try to figure out is if they could have been brought in federal court, if the case could have been originally brought in federal court, I would be looking for that as if it were a jurisdiction question, there's \$100,000. We've got that covered. Of course, a lot has to do with the different states that people are from. And so, a woman is from state A. Okay. I mean, I see A, B and C, so that makes me pretty confident that we should be okay here, and on other questions that might be a little bit more difficult. You might actually have to know well, where is a corporation actually from, it's easier for an individual.

But in this case A, B and C, it looks like it looks like we have diversity. And so, it could have been brought in federal court, but if they chose to bring it in state court and it almost looks like it could be removed. If we might be, we could be tempted to go to C or D here. Were you thinking something similar when you read it?

Lee Burgess: I was, I mean, I think when you get us ... Especially civil procedure in questions around where you can bring a case, I think you're always looking for those little tricks around things like diversity. So, you see the amount in controversy and you're like, oh, \$100,000, check that box, so immediately I'm like, is this diversity? And then you're like, oh, there are lots of states and I'm one of those people who, especially if I'm nervous and I'm trying to work quickly, I always have to write down in the margins like A equals plaintiff, B, because it can get hard even to track where all of these people are from and when you're trying to make these decisions about whether or not a case can be removed, you have to be very careful and think about, or be very careful that you're not mixing up



some of these letters and names and here, they don't even give you names. And so, you're like retailer, woman, ABC. I think it can be easy to get confused.

Sean Silverman: Definitely, definitely. And that's why sometimes I take that shortcut of well, these are all different letters A, B and C. And that's a good sign, that's always a good sign. Because if it's not A and A then I don't have to worry too much about that problem that they're from the same state. But I think definitely the trick here, and I do plenty of removal questions with students, is we get to the point where we realized this seems like it could be removable, but there happens to be an exception to this, which is, if the defendant is from the state where the plaintiff brought the case, you can't remove it. The defendant can't remove it to the federal court. So, if we know that we're going to get this question right, if we don't know that we're probably going to be tempted either C or D.

What we hope is that we can get to the point with this test where maybe if we don't know the law, we'll recognize something wrong with one of the wrong choices maybe from a logic or something. But here, maybe not. We have to look. But A says no, because the notice of removal was not timely filed. That's a really specific one. And that's the kind of one that I know you can look at and you can be like, well, I probably should have focused more on that when I was studying-

Lee Burgess: Like 20 days. I don't know, that sounds important.

Sean Silverman: That timeline, which we easily, there's a lot of those in civil procedure dealing with 14 days, 28 days, 30 days, and so we might have to hold onto that for a moment if we don't know the exact amount of time that you have to remove the case, we might have to hold onto that. B, no, because the retailer is a citizen of state B, I don't know we're going to get that if we don't know that exception. We might just think that that's actually a good thing, if the retailer from state B and the other person's from state A, it seems like that's a good thing if we don't know that exception and then C, yes, because the parties are citizens of different states. That's probably the distractor of the really ... And so, I mean it does seem a little too simple maybe in my mind-

Lee Burgess: And they threw you the 75,000 because they knew that you memorize that fact.

Sean Silverman: Right. That's a good point yeah. And D, yes because the retailer is a citizen of both state B and state C. So, what were your thoughts on choice D? Which I thought was a little tricky.

Lee Burgess: I think that is a little tricky. I think it was one of those things where it's like, well-being, I have a similar state to where you're filing. It's kind of like it's usually not a better thing to be a citizen of more places, it's usually-



Sean Silverman:

Yeah. I couldn't quite get. I think and it's just a matter of sometimes to try and get to the point. I'm trying to figure out what were they trying to pull sort of? Well, yes, because the retailer was a citizen and what they're really saying is that the retailer was not a citizen of A, and that's the impression, I think that they're trying to get you to, well, which they could have just said, just saying a citizen of B and C which happens to not be A right, which is very similar to choice C. I will say that's another strategy I have sometimes tell students is like, well, if C is right, E looks right to me. If D is right, C looks right to me and you can't really have two right answers. So why would either C or D be better than the other?

I'm not quite sure unless we said "well in C they mentioned the monetary amount and that makes it a better answer" or something. But they're really very similar, C and D, and so this question comes down to is what the MBE is sometimes all about, which is why, as much as I do stress strategies and all that, I'm here to tell students that none of that is meant to imply you don't need to know the law really well. And so, what this comes down to is knowing that exception because if the retailer is a citizen of B and the retailer here is the defendant, then that retailer is not going to be able to remove the case because it was brought in state B.

Lee Burgess:

Right. Yeah. I also think this is another thing, and I know in other questions we've talked about this keeps coming up and maybe I'm harping on it too much, but this is again, if you don't have the law where public policy I think comes into play. So, if you can't remember, I think maybe you have learned, I don't remember if I learned this in civil procedure, I may have learned it in federal courts, but this idea of why we have diversity jurisdiction, why we try and allow cases to go into the federal courts and stay out of state courts. And it's not to protect retailers from the states in which they are doing business. That's not why we remove things. And so, I think even if you can't remember the nuanced rules, I think going back to that, taking that step back and being like, what's my sniff test here?

If the policy is that we're trying to allow them to change where they do the case, if there's truly this diversity, if there are these parties from different states, that's different, but here, how can they claim that it's not fair that they'd be hauled into court in state B when they are from state B?

Sean Silverman:

Right. And then we have to wonder exactly why, and then we often hear about forum shopping as I'm trying to avoid that. But I completely agree that policy is important and sometimes I think people are under the impression because they've heard it, that they shouldn't focus on policy on either an essay exam or even the MBE, because maybe it's outside the scope of the test, but what it does is it gives you the why and then there's so much to memorize that if you



can understand it a little bit better, it does seem like it could be a little bit easier.

Lee Burgess: Well, let's think about policy. There's policy that is why these laws are there. And then there's policy of should these be the laws?

Sean Silverman: It's true.

Lee Burgess: And I think that sometimes law students or graduates can get a little bit confused about what should be the law. And so, it's like, well that doesn't ... I don't believe in that law, something like the First Amendment where I think that there can be a lot of different things that make certain people uncomfortable. Well, it doesn't matter if it makes you uncomfortable by it from a policy perspective, that you can argue about that once you become a licensed attorney.

Sean Silverman: Pass the bar first. Yeah.

Lee Burgess: But you have to pass bar first. And so, you have to think about the policy behind why these laws are put in place. And so, I think that, that's where people can get a little squishy around policy.

Sean Silverman: Definitely.

Lee Burgess: All right. So, based on all of this thoughtful discussion, Sean, what is the right answer?

Sean Silverman: Oh, okay. So, I'm thinking for that one, it's B and it's just that one strikes me, unlike some of the other ones that we've done is, it's just, know the law. You should get that one right, I think. Know that exception. And you should get that question right.

Lee Burgess: Yep. All right. Let's move on to number seven on the PDF of released questions. A sporting goods shop contracted with a publisher to buy for sale in its store, 1,200 posters featuring a professional golfer. During production, the image of the golfer was inadvertently reversed and the right-handed golfer appeared to be left-handed. When the posters were delivered on the date provided in the contract, the sporting goods shop noticed the discrepancy, which had no provable significant impact on the effectiveness of the poster. In the opinion of the shop management however, the posters did not look as good as they had in the catalog from which the shop had ordered them.

So, is the sporting goods shop legally entitled to reject the posters? Option A, no, because the nonconformity does not materially alter the value of the



posters to the sporting goods shop. Option B, no, because the publisher must be given an opportunity to the nonconformity before the sporting goods shop can reject the posters. C, yes, because the posters do not conform to the contract; and D, yes, because the publisher has breached an implied warranty of fitness for a particular purpose.

Sean Silverman: All right and that-

Lee Burgess: This was a bit of a head scratcher for me. I'll just be honest.

Sean Silverman: It's pretty tough and with these questions they released here, I think maybe they gave us a nice mix of some that were easier, some that were difficult. This one's hard I think when you do come to the end of the fact pattern and you're not quite sure because, as you had once mentioned, maybe the first thing you do at the end of the facts, is you try to think about what your answer would be and then try to find which one is close to that. There could be times where you're not able to do that. You read the facts and you're just not quite sure. And I think reading the answer choices is the way to go at that point and trying to reason it out as you look at the choices and with the mindset of trying to find something wrong with every choice. That's at least the way I do it.

Just again, is the sporting goods shop legally entitled to reject? So really what we're trying to figure out here is they wanted to be pretty clear about this idea that whatever the problem was, let's just look at how they worded it. They said they noticed a discrepancy which had no provable significant impact, effectiveness of the poster. That's kind of a weird, right?

Lee Burgess: I thought that was weird too because they were supposed to be for sale in their store.

Sean Silverman: I just don't know, it's such a weird way to word it. The effectiveness of the poster wasn't affected, I guess. But they did throw that in and I feel like maybe that's there to create a wrong answer. It seems like such a strange thing to throw in unless maybe it's going to create some kind of a wrong answer, but A says no because the nonconformity does not materially alter the value of the posters. And that's a little bit tough, first of all, because they told us in the facts that it didn't alter the effectiveness or are we supposed to equate that with value? The nonconformity does not materially alter the value of the poster. So that's basically implying that for rejection to be proper here, it would have had to have done that, if they're going to reject it, it had-

Lee Burgess: The other thing that I thought was weird is that they said that it was a professional golfer and I feel like that the idea that it was a right-handed golfer who appeared to be left-handed if it was somebody who was famous. I felt like



that was also a strange fact to include that I found a little distracting. I'm like, well if it's like Tiger Woods, he's the first golfer that comes to mind, not really into golf, but wouldn't people think a poster was weird if they changed whether he was left-handed or right-handed?

Sean Silverman: And especially people who know him well, right?

Lee Burgess: Yeah. I feel like if you're into golf, that's like a big deal.

Sean Silverman: It could be a big deal. See, I think that we have to accept what they tell us in the facts.

Lee Burgess: That's a that's a good point.

Sean Silverman: But my issue here is that, just because we have to accept that the way they worded it was that it didn't impact the effectiveness. We have to accept that as true. I don't even know what that means when it comes to ... Right? But-

Lee Burgess: We accepted even though we are totally clueless on what the exam writers were talking about.

Sean Silverman: And I'm basically accepting that the effectiveness of the poster, wasn't affected, I guess, but I don't know that I need to accept that the value wasn't. I don't know that those two things are equal.

Lee Burgess: True.

Sean Silverman: Maybe the value was, but even so, I don't think that's the standard. It makes it a little bit easier. We don't have to go through all that. I don't think it has to be the case that a materially altered it for us to reject it, that makes it of course a little bit easier. So, I would cross it out for that reason that they told me that no, I can't reject it because it didn't materially alter the value. I don't think it has to. Okay. So, I would say actually, I think it's a false statement of law.

B? No, because the publisher must be given an opportunity to cure, a little bit tricky that one, choice B. Not so quick to cross that one out. I don't think.

Lee Burgess: No, because that was my thought is that they could mitigate the problem by just rerunning the posters.

Sean Silverman: Right, exactly. And C, yes. Because the posters do not conform. Okay. Going back to what you were saying, which I'm just starting to notice a little bit more since you said it, was that that one has the least number of sort of like buzzwords in it. It's just kind of just really, really plain English. And then with D,



we see those words back, implied warranty and all this. But yes, because the publisher has breached the implied warranty of fitness. So, I think my first thought is always, which is the easiest one to cross out. I guess we were pretty confident in crossing out A. I think D, I don't think implied warranty of fitness for a particular purpose is that great here. Because, to say that as basically to say the poster doesn't do what it was meant to do, it does in a way. I mean it's a poster, obviously harder to analyze this stuff because it's a poster and not like a blender or something. And so I think D is out, so I narrowed it down to those two. And were you tempted on the cure one?

Lee Burgess: I think I was tempted on the cure one just because of mitigation, it just seems to be kind of prevalent, but, again, going back to the facts, they're not asking about solving the problem. They're not asking about damages or anything like that. They're just asking if the store can say that they don't want the posters.

Sean Silverman: Right. It's true. And only because I've gotten questions wrong. I learn a lot from getting things wrong at some point throughout teaching this test, I've learned that you can only cure up until the time that you were originally required to deliver the goods.

Lee Burgess: See, that's a fact I have not committed to memory in a while.

Sean Silverman: Only from getting questions wrong that I learned that. And so, they already had, where we're going to assume they were already required to deliver because they did, they deliver them, they lost the ability to cure at that point. So, B would be out, if we didn't know that rule, that's not something that jumps out of the outline. There is the perfect tender rule. I mean, we're dealing with goods, so it seems like the perfect tender rule is there so that you can't argue that no matter how insignificant the seller thinks the mistake is, you still get to reject it. It's not really up to the seller to say, well, all we did was screw up if he was right handed or left handed. The word perfect is pretty definite. That's a mistake they made and you can reject it. The only thing is if perhaps maybe you found out about that before it was going to be delivered, before the posters were going to be delivered, you would have to give them the opportunity to cure.

Lee Burgess: Got it.

Sean Silverman: Yeah.

Lee Burgess: Which is why you have to practice to learn these nuances. Because I think you make a good point. You oftentimes learn these nuances that they test over and over again by doing these questions and being like, oh, and now probably



everyone who's listening to this podcast will not forget this rule that you have to cure it before the delivery date.

Sean Silverman: Right. And just get it down somewhere and like getting a question wrong is great because if you got it right, you might just kind of forget about it. You might not think about it too much, but if you get it wrong, write it down somewhere. It'll pop up again. The interesting thing about the MBE is that these are just the same things over and over, being tested, they're just sort of like hidden in different facts. So, you just kind of get it down when you get it wrong once it'll come up again at some point.

Lee Burgess: At some point.

Sean Silverman: Yeah.

Lee Burgess: All right. Let's move on to question number eight. On the PDF, a woman borrowed \$800,000 from a bank and gave the bank a note for that amount secured by a mortgage on her farm. Several years later, at a time when the woman still owed the bank \$750,000 on the mortgage loan. She sold the farm to a man for \$900,000. The man paid the woman \$150,000 in cash and specifically assumed the mortgage note. The bank received notice of this transaction and elected not to exercise the optional due on sale clause in the mortgage.

Without informing the man, the bank later released the woman from any further personal liability on the note.

After he had owned the farm for a number of years, the man defaulted on the loan. The bank properly accelerated the loan, and the farm was eventually sold at a foreclosure sale for \$500,000. Because there was still \$600,000 owing on the note, the bank sued the man for the \$100,000 deficiency.

Is the man liable to the bank for the deficiency?

See it's mortgages, it's always mortgages.

Okay. Option A, no, because the woman would still have been primarily liable for payment, but the bank had released her from personal liability. Option B, no, because the bank's release of the woman from personal liability also released the man. Option C, yes, because the bank's release of the woman constituted a clogging of the equity of redemption. Wow. That's terms of art in that one. And D, yes, because the man's personal liability on the note was not affected by the bank's release of the woman.

I swear I just shudder every time a mortgage question comes up.



Sean Silverman: It's got to be the toughest one we've done, this is a really hard question. First, it's got numbers in it. I don't know if you've noticed this, but just right off the bat, a lot of my students just prefer to not deal with questions that have all these numbers in them, especially the ones that are just basically math questions. They'll say something like how much is owed and the answer choices will just have different numbers and you have to kind of work out the equation yourself. We've got to work through the numbers here. But it's really a question of who owes for not paying the mortgage. I think, at its core, is the bank liable or is the man liable to the bank for the deficiency. That was my first thought after I noticed something about assuming the mortgage.

And so, at that point I might realize, well the man paid the woman \$150,000, assume the mortgage might, just as an initial thought, without jumping to conclusions, but when you assume that mortgage, you kind of take on that obligation that you're going to have to pay it. And so, I haven't been leaning towards yes, that the man should be liable, that almost seems too straightforward to me. So unfortunately, sometimes I'm guilty of overthinking these things. It might just be a straightforward question where when you assume the mortgage, you're liable on it. And I might think to myself, well that seems too straightforward. What am I missing?

Lee Burgess: Yeah. I think this was one of those questions where the fact pattern was the one for distractors, because all of the amounts of money have really nothing to do with the answer.

Sean Silverman: Sure.

Lee Burgess: But I think people, like you said, get really freaked out by all these hundreds of thousands of dollars. And I think, yeah, I mean when I first read it, I was like, okay, well he specifically assumed the mortgage, so he stands in her shoes. Great. And then they released her from personal liability. Okay. And then you kind of get to the bottom and you start reading standard choices. You're like, what the heck is this more complicated than it actually seems because they've added in all these other little additional facts about money and things like that? But if you really boil down what's in the fact pattern, there isn't that much that happened.

Sean Silverman: Right. So, I would be thinking, yes, that would be my initial thought. I want to figure out if I'm wrong about that, and I can do that by reading the ones that I don't think are right. Maybe they'll clue me into something I'm missing. A says no because the woman would have still been primarily liable for payment, but the bank had released her from personal liability. So, I think that's a couple of things wrong with that. So first, I just don't know how the release of liability affects anything here for the man, but I don't even think she would have been



primarily liable because he had assumed the mortgage. So, I feel like there's a couple of things wrong with that, and at least a couple of reasons why I'm going to cross that out. B, no because the bank's release of the woman from personal liability also released the man. If that were true, it would be something that I would not have read anywhere.

Okay. The problem is as long as I've been doing this and it's obviously so much longer than people have to prepare for the test. There're still things I come across that I haven't read which is crazy. But it happens and it's possible that you released one person and maybe everybody in the chain is released or something, but that I will be taking a risk well that's something I haven't read. It doesn't make that much sense.

Lee Burgess: That's the thing that got me with that one is I'm like, why? I mean, let's be honest, banks don't like to leave money on the table, so why would they have said you can be released from personal liability, but I have no one on the hook for personal liability anymore. I'm just going to get screwed if this thing defaults.

Sean Silverman: And with that said, it's a little weird that they released the woman that was odd in and of itself because I don't see it often. Was that some kind of a gift?

Lee Burgess: A mortgage that comes with favors.

Sean Silverman: Just, it didn't make that much sense, but it's probably just there to make the question more complicated. So let's see. Yes, because the banks release of the woman constitutes a clogging of the equity of redemption. Okay. The problem with that is it's not just nonsense like that popped up. Another question, I've seen some that are just pure nonsense. They'll sometimes use Latin words that may not even be words to make you think that that's something you probably should have learned about that you forgot to learn and it just ends up being a wrong answer, but for clogging of the equity of redemption, like that is something that maybe occasionally can be the right answer, but it doesn't really apply to this box. That's just the situation where if you default on the mortgage, you have the right to pay it off before it's foreclosed.

You may be contacted the bank and be like, well, I have the money now and the bank can't take that right away from you so clogging there would be telling you, well, you defaulted, you cannot pay it off. And so, they just say that that would be called clogging, but it just didn't happen here and the other thing is, I don't see any attempt to pay it off. So that we can get rid of C, and then D is the one that I probably would have thought about at the beginning, because the man's personal liability on the note was not affected. I mean, it's certainly the most straightforward.



Lee Burgess: It is. Yeah. And I think that's one of the things about this question is like, you can't lose the forest through the trees. You've got to kind of just appreciate the story and then and not be like, oh, but what about all these numbers? What about all these, like tiny details. This is one where the tiny details that they threw in have really no part in coming up with the right answer.

Sean Silverman: Right. And then if we want to just, you don't think sometimes just revert to common sense. Right. It wouldn't make a lot of sense that. Okay. So, he assumed the mortgage he was benefiting from. He was living in the place. Right. And so, it doesn't make any sense that he wouldn't have to pay it off if he defaults, and so there we're going to have to find a reason why the man should be liable to the bank.

Lee Burgess: All right. One where the most straightforward answer is the right one.

All right, let's go onto number nine on the PDF.

A young man suggested to his friend that they steal a large-screen TV from a neighbor's house. The friend was angry with the young man and decided to use the opportunity to get even with him by having him arrested. The friend said he would help, and that night, he drove the young man to the neighbor's house. The young man broke in while the friend remained outside. The friend called the police on his cell phone and then drove away. Police officers arrived at the scene just as the young man was carrying the TV out the back door.

Of what crime, if any, can the friend properly be convicted? (A) No crime. (B) Conspiracy. (C) Burglary. (D) Conspiracy and larceny.

Sean Silverman: So I got to say with this question, I've not in complete agreement with the answer, although, although I might take it, I might pick it, but I could imagine some argument here that could be valid. But, what answer were you thinking of on this one.

Lee Burgess: Well to me, when I looked at the options, I was like, okay, the question is, was there a conspiracy or was there a withdrawal from the conspiracy because he called the police. That always makes me think of withdrawing from the conspiracy. And so that was where kind of what in my head, I was focused on the most.

And then what I thought was weird about this question was that they never talked about the fact that the young, the friend, I guess, which they give people names, the friend had an intent to actually have the TV be stolen. He had an intent to get his friend arrested, which is different. So you know, conspiracy, you



have to have an intent to commit an illegal act. And they don't seem to have an agreement about the crime... They have an agreement that a crime should be maybe attempted, but they don't have an intent for that crime to actually be carried out.

Sean Silverman: Right. And then we sometimes hear about where a police officer pretends to agree with somebody and they still call it a conspiracy. So, I'm assuming when they tell us that at common law, I guess we're supposed to not apply that rule, which I think is more of a rule, maybe a state law or a model penal code or something like that. Under the strict common law, you need two people or more, so that would at least get rid of B. That wasn't the one I was really that stuck on. It's more like, well, what about like an accomplice or something. So, in other words, okay. Obviously he wasn't trying to help him just steal the TV. I think it was right because his goal was to get them arrested. But he, in other words, to get him arrested, would require that the person commit the crime. Where like to get arrested, you have to at least attempt to commit the crime. I would say. I feel like it was a means to an act.

I mean he wanted his friend arrested. That was his goal, but in order to get him arrested, he had to help him to commit the crime, in a way. And so, I wasn't quite sure that he wouldn't be an accomplice to those crimes. And if you're an accomplice, you faced the same liability of the person who committed the crime. So, I don't know.

Lee Burgess: It goes back to the *mens rea* though. If he had the intent to commit the underlying crime, which, I guess -

Sean Silverman: That's how I think we get to A.

Lee Burgess: Yeah, I agree, because-

Sean Silverman: That's my point. It's like, and it's definitely probably overthinking it, but in other words, he wanted him to get arrested, so maybe he did have the intent that the person will commit the crime, so that he would then get arrested. It wasn't like his ultimate goal, that he commits the crime. It was like. But I feel like maybe committing the crime was a necessary thing for him to have gotten arrested. So, he wanted to help him to commit that crime. I'm not sure, but I don't know what I would have picked this one. I know I would've been thinking about accomplice liability, but I agree that ultimately, he had another intent here. He wanted to get his friend arrested. So, I'm not sure that's the rationale. We don't have it. Maybe there's some answer explanation somewhere for these things. But all we're told is no crime.



- Lee Burgess: Yeah. And I think that to me, again, like going back to the facts, they did spend a little bit of time like telling you about the friend's mental state, that he did not have intent for the TV to actually be stolen. And I think it's interesting that they called the cops while the crime was happening, not after the fact. It's not like he let the TV be stolen and then called the cops. Maybe that would have changed it a little bit because then maybe he did, he might not have had like an intent to permanently deprive somebody, but he at least had an intent that the somebody be able to try and permanently deprive, take the TV.
- Sean Silverman: Burglary only requires that you I guess intend to commit a felony. Right? You break, break and enter with the intent to commit a felony. Did the young man here have the intent to help his friend commit the felony, would you say like if he doesn't commit the felony, he's never going to get arrested.
- Lee Burgess: Right. Yeah. No, that's interesting. I mean, I guess, yeah, that is an interesting one about burglary that would make it an interesting one.
- Sean Silverman: I think on an essay it would be wise to kind of argue both sides. I mean ultimately, you're probably overthinking it and what they're really testing here is the fact that he just wants to get his friend arrested. But I do think maybe there's some arguments otherwise.
- Lee Burgess: Yeah, I agree. Alright, well I think that's an interesting one where for maybe a question where you don't have like a ton of facts that you can almost go much further, by really diving too much into it I think you almost have to say, okay, well because I have, like you said, if this was an essay I would have definitely talked about burglary and talked a lot about the friend's mental state. But here we don't have much about the mental state other than he just had the mental state to get his friend arrested.
- Sean Silverman: Right, right.
- Lee Burgess: I think that was the point, is that he didn't have the intent to commit the actual crime and he called the cops to stop the crime from happening. So, I think, I those are the facts that they seem to lay out and survey, in the moment you have to kind of go back in, and like we've said in some of these other questions, focus on the facts that you're given, accept them as what they are.
- Sean Silverman: Yeah. And don't overthink. That's another thing, right? Don't overthink them. Look, sometimes law, I think we've talked about this before, maybe one of the reasons why this is so difficult is that law is not exactly a subject that's open to one answer being just definitely right. You look for the best one and cross out the ones you think are worse.



- Lee Burgess: Yeah. Yeah. All right. And so, the answer is no crimes. It seems like kind of a let-down kind of an answer-
- Sean Silverman: No crimes, useful.
- Lee Burgess: No crimes.
- Sean Silverman: Yeah.
- Lee Burgess: And with that, we're out of time. 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 your 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. 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. And be sure to subscribe so you don't miss anything. If you are still in law school, you might also like to check out our popular [Law School Toolbox Podcast](#) as well. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at Lee@BarExamToolbox.com, or Alison@BarExamToolbox.com. Or, you can always contact us via our website contact form at BarExamToolbox.com. Thanks for listening. Thanks for listening and we'll talk soon.

Resources:

- [How to Analyze Real MBE Questions \(w/ Sean Silverman\) – Part 1](#)
- [Released MBE Questions Used in This Episode](#)
- [Silverman Bar Exam Tutoring Blog](#)
- [Silverman Bar Preparation](#)
- [Strategies for Mastering the MBE](#)