

Alison Monahan: Welcome to the Bar Exam Toolbox podcast. Today we're talking about the NextGen Bar Exam, which will eventually replace the UBE. Your Bar Exam Toolbox hosts are Alison Monahan – that's me, and Lee Burgess. 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. Together, we're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). I also run [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review on your favorite listening app, and check out our sister podcast, the [Law School Toolbox podcast](#). If you have any questions, don't hesitate to reach out to us. You can always reach us via the [contact form](#) on BarExamToolbox.com, and we would love to hear from you. With that, let's get started.

Welcome back to the Bar Exam Toolbox podcast. Today, we're excited to be talking about the NextGen Bar Exam, which will eventually replace the UBE. First off, Lee, what are we even talking about? What is this exam?

Lee Burgess: Well, believe it or not, they're going to change the bar exam.

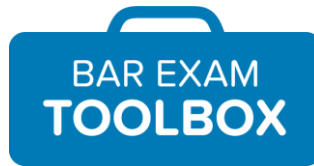
Alison Monahan: Cool!

Lee Burgess: It's kind of weird. I know, cool. They're going to replace the UBE after the UBE kind of took over the country. And the idea is less memorization and more testing of lawyering skills, whatever that means.

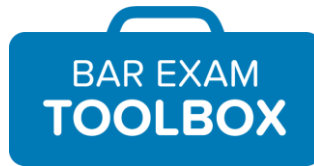
Alison Monahan: Whatever that means. They do define it, yeah. The test is going to be shorter – it's nine hours over a day and a half, versus 12 hours for your standard administration. And this is rolling out pretty quickly. The first administration is actually July 2026. And I believe they're going to be phasing out the UBE by sometime in 2028. So, this is coming up.

Lee Burgess: Yeah. It helps that the people writing the NextGen Bar Exam are the same people, and so they're like, "We're not going to write two tests. That's not how this is going to work."

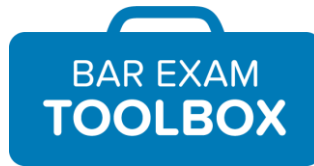
Alison Monahan: Yeah, exactly. And certain states have started announcing that they're going to be using it, when they're going to be using it. All of this information is on the [NCBE website](#), I would actually recommend people check it out. It has a lot of really good information actually. So, if you're wondering, "I'm in State X. When are they going to be doing it?" Unfortunately, they don't have the little map like they have on the UBE part at this point, but I'm sure they'll have that eventually.



- Lee Burgess: Maybe someday.
- Alison Monahan: Maybe one day.
- Lee Burgess: They might need just like a quorum of states or whatever that might be.
- Alison Monahan: Yeah. At this point, they kind of have some press releases, like "These three states are really similar." Don't you just have a list? I didn't find one, but hopefully there'll be one eventually.
- Lee Burgess: Yeah. We get emails periodically, like "This state and this state..."
- Alison Monahan: Yeah, exactly. Like, "Oh, Arizona. Okay, whatever, cool." And then I was like, "Oh, I wonder what all the states were. Isn't there just a convenient list?" And I didn't find it, but maybe one day.
- Lee Burgess: Yeah. So, one of the things that's going to be interesting about this transition is going to be this issue of score portability, which came up when the UBE itself was gaining popularity. And it seems like there's still going to be portability, but of course it's not assured. So, this is what they say on their website and their [FAQs](#) about that: "The current portability of the UBE scores is based not only on the use of the same discrete test components, which are uniformly administered and graded, but on the agreement by UBE jurisdictions to accept scores earned in other jurisdictions. The NextGen Bar Exam will produce portable scores for all jurisdictions that agree to accept the scores." I feel like that's an important one. They have to agree to do it.
- Alison Monahan: Yeah, that's starting to feel like, well, if they agree, then of course it's portable.
- Lee Burgess: Right, then of course it's portable. Yeah, but we'll have to see. "Although jurisdictions may use the NextGen Bar Exam without agreeing to accept scores earned in other jurisdictions, we hope that" – that was my favorite part too – "we hope that jurisdictions will value the benefits of score portability for candidates, and that scores will be portable across all jurisdictions." And we'll link to the FAQs if you want to read it for yourself. But there's some squishy stuff in that.
- Alison Monahan: Yeah, "We hope."
- Lee Burgess: I feel like there should have just been a big asterisk that said, "But we don't know."



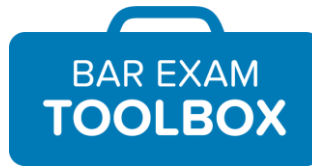
- Alison Monahan: Nobody's really committed, but we think it probably makes sense. I do think eventually they will have score portability – that's kind of the whole point of this. But I think the key here is to understand it's not guaranteed. And I think there's going to be potentially kind of a messy transition period, where some people in some states are taking the existing UBE, some people are taking the NextGen, and I don't really know how that's going to work.
- Lee Burgess: I know. Let's say.... New York has not announced, I believe, as of this recording, that they are going to shift, or when they're going to shift.
- Alison Monahan: I mean, they have to, or write their own, which I guess they could.
- Lee Burgess: Right, they could go back to. But what are you going to do when you're sitting for New York using the regular UBE? Are they just going to say, "Well, you can also take this other test that we haven't even adopted yet"? Maybe. I don't know. It's going to be interesting.
- Alison Monahan: Yeah, I think the best-case scenario is just that the states that adopt it, the states that don't adopt it immediately, wait a year or two, but that in that transition period, you could do either and have portability. But that's definitely not guaranteed.
- Lee Burgess: No. So it's something to watch, especially if you're in those early classes of students that are going to be sitting for the NextGen exam and you want to take that score on the road. It's just going to be the Wild West for a little bit.
- Alison Monahan: Yeah. I hope everyone is reasonable and tries to make it simple, but hey, when is that ever the case with the bar exam?
- Lee Burgess: Yeah, that just is not really how these organizations roll. I'll be honest, I've been trying to call the California Bar Exam about a question. I can't figure out how to find a person. I just can't. They just keep saying, "With budget cuts, we can't..." I'm like, "With budget cuts? I just paid my bar dues."
- Alison Monahan: Yeah, I paid mine.
- Lee Burgess: Do you know how expensive those bar dues were? They're so expensive.
- Alison Monahan: I know, I'm inactive. I don't even get anything. I'm inactive and I still have to pay them.



- Lee Burgess: I was like, "Somebody pick up the phone." I'm going to try again later. I don't know, but the bars do tend to make things difficult.
- Alison Monahan: Yeah, so I think portability is a really big question, and hopefully it gets worked out in a reasonable way and is not a big deal. But I do think it's definitely something you really want to be aware of, because you don't want to be the person who takes the last exam in 2028 and then find out that your score is not portable in most of the places you wanted to be. That's just not going to be a good scenario, so don't do that.
- Lee Burgess: For the rest of your career.
- Alison Monahan: Yeah. So you want to keep an eye on this and just kind of generally be aware that if you think you're going to sit one place and you want to take your score somewhere else, that they have at least agreed that you can do that.
- Lee Burgess: And goodness knows what California is going to do.
- Alison Monahan: Oh, well, that's like a whole other podcast. I thought about including that.
- Lee Burgess: That's a whole other podcast.
- Alison Monahan: We don't even know what they're doing. We have no idea what they're doing.
- Lee Burgess: No, who knows?
- Alison Monahan: We've got to focus this one on the actual bar that we do know something about, that has a website that at least has some [sample questions](#), some idea of what they might be doing, a timeline.
- Lee Burgess: Yep.
- Alison Monahan: I think California has a lot of meetings. I don't know, I'm on a mailing list and I get meeting notes and they're all pretty much like, "Oh, we talked about the meeting notes from the last meeting."
- Lee Burgess: Yeah. Again, our bar dues at work.
- Alison Monahan: Yes.



- Lee Burgess: The other thing that's interesting, as we kind of mentioned, is they're going to test fewer subjects and subject matter areas. So, they're looking at foundational concepts and principles. And these are Civil Procedure – my favorite, of course.
- Alison Monahan: Love it!
- Lee Burgess: Contract Law, Evidence, Torts, Business Associations, Con Law, Criminal Law, and Real Property. And then in July 2028, Family Law will also be included in the foundational concepts and principles tested on the NextGen Bar Exam. So, this is quite a bit of substantive law for an exam that's not really supposed to be about substantive law.
- Alison Monahan: It is, but I think one of the interesting things they're doing inside of these categories... So, they have gotten rid of a few topics, so that's one thing. You do have a few fewer subjects, but within the topics, they also have made it so that you don't have to memorize all of the areas. So, there are certain things that you have to memorize and certain things that could come up but you're not expected to know them. And there's actually a topic list on the website and they have little stars beside of the things you have to memorize. And to be fair, I thought it was most of the topic area but it's not everything. I was like, "This isn't like 50%; it's more than that." But there are certain areas that you might not have to actually sit down and memorize. So, I think they're trying to kind of narrow the [scope](#) of it, but it's not, I would say, an enormous difference.
- Lee Burgess: Yeah. I thought it was interesting this debate about whether Family Law should be included. But I will say, having now been a lawyer for a number of years, it is just an area of the law that everyone should know something about.
- Alison Monahan: I kind of agree.
- Lee Burgess: Because people ask you about it, you need to personally know something about it. It's an area of the law that touches everyone's life, whether you get married or not. I mean, not getting married is a family law issue too. So, it's really... I don't know, I do think that one is important. But it is interesting they took out Wills and Trusts, they took out other stuff that does touch and concern a lot of people. So, I don't know, it's interesting to see what made it in.
- Alison Monahan: Yeah, it's kind of an interesting mix. I agree with you on the Family Law – that is one of those where people do ask you questions. And of course, your answer is, "Well, you should probably talk to a family lawyer." But at the same time, you can also, at least in California, I'm like, "Well, there're some forms if you're trying to get divorced that, here's how you access those forms. And you can fill



them out yourself and file them." It is one of those everyday law type of things. But yeah, I think the concept of the test is that they want to be testing more of these skills. So there's also a list of the foundational lawyering skills that we're trying to test here: legal research, legal writing, issue spotting and analysis, investigation and evaluation, client counseling and advising, negotiation and dispute resolution, and client relationship management. I find the second half of this list to be pretty interesting and definitely not something that's on the current bar.

Lee Burgess: No, and I'm just not even sure how they're going to test some of this stuff, to be honest. I'm curious to see.

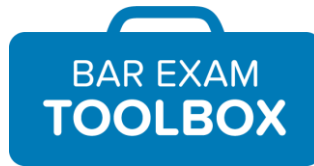
Alison Monahan: Yeah, we've definitely gone to webinars and things where they've talked about the pros and cons of different types of questions and things and how do you... Probably in a perfect world, if you want to see if somebody is going to be able to do client counseling, you'd put them in a scenario-based exam, but that's not really feasible, economically. Multiple-choice is a lot easier to grade. So yeah, it is going to be very interesting. I want to talk about the question types in a minute and also give a few examples, because I do think this is going to be a real challenge both to create, and frankly, to study for.

Lee Burgess: And to grade.

Alison Monahan: And to grade.

Lee Burgess: There's more open-ended stuff, yeah. And get a curve and all of that stuff. I mean, it's not easy. So, what are the question types? We are still going to see some multiple-choice questions. Multiple-choice is not going away.

Alison Monahan: Right. And I think, frankly, that is really for grading purposes, and also to be able to scale it. I mean, you need some type of objective criteria if you're going to be able to scale the rest of the test. Right now, they basically see how people did on the MBE, decide, "Okay, the caliber of people taking the test was around here", and then they scale the essays essentially to that, to try to make things consistent. So yeah, this test, they're saying right now about 40% of the exam time is going to be standalone multiple-choice. They may have between four and six answer options. There may be one or more correct answers – sounds a little wild. And initially, these are going to be really close – at least a lot of them – to the MBE questions. So, part of what they're trying to do, I think, with this is to ensure stability as they kind of roll out this new test. So, I wouldn't be shocked if a lot of the MBE questions were the same on the UBE and the NextGen in those transition years, because they've got to have some way to



scale the test. So, as they go forward, they're saying that the variety of questions is going to increase, so you might start seeing less of the MBE-type questions and more of these other questions. And you might also see multiple-choice questions in things that we're going to talk about in a minute, which are the integrated question sets and the longer writing. So, they could be mixing this stuff in as well. Sounds so fun!

Lee Burgess: I know. Who knows what you're going to get? It's going to be a surprise.

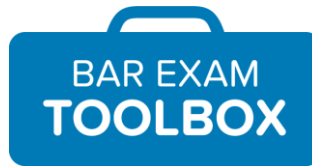
Alison Monahan: Who knows? Could be a smorgasbord. You think you're writing basically an MPT-style essay, and suddenly there's a multiple-choice. Hey, got to go with it! I think flexibility is really going to be key.

Lee Burgess: I know. I think that's going to be really hard for students prone to anxiety or prone to kind of attention deficit issues, because it's going to create a necessity for flexibility, and you can't have as much of a rigid attack plan as we recommend often for those students going into the bar right now. And that's going to be really tricky. It's going to be hard. It's going to require a lot of timed practice and just familiarity with bouncing between these different types of questions.

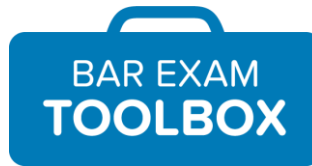
Alison Monahan: Yeah, because the next thing on the list of question types are these integrated question sets. This seems to be where the focus really is on kind of developing new ways to test. One place on their website said it was a quarter of the exam, another place said a third. I don't know, could be anything.

Lee Burgess: Comforting.

Alison Monahan: Yeah, who knows? Will be somewhere in that ballpark of, yeah, it'll be on the test, basically, we can say. So, what these are is basically a set of questions. They're based on what they call a "common fact scenario", and they may include some legal resources – things like excerpts of statutes or judicial opinions, or supplemental documents – a police report, an excerpt from a deposition. And they might include a mixture of multiple-choice and short-answer questions, but they all relate back to this basic set of materials. It says in addition to testing doctrinal law – so, some you might need to know some law here - some integrated question sets will be focused on drafting or editing a legal document, other sets will be focused on counseling or dispute resolution. We're going to look at one of these later, but it seems to be basically, they're kind of giving you a scenario and maybe you get some information, you answer a few questions, and then later on, they might give you some more information, ask you some different questions. It seems like it's going to be pretty fluid.



- Lee Burgess: "Fluid" isn't a word that I've ever used to describe the bar exam in the over decade that we have been working together.
- Alison Monahan: Yeah, it's definitely going to be interesting.
- Lee Burgess: Yeah, it's definitely going to be interesting. It seems like they're colliding different parts of the test together. It's like a little bit of the PT, a little bit of the MBE, a little bit of the MEE, which in a way are short-answer questions with only 30 minutes. So, it's going to be interesting to see. I know that we're going to walk through some sample questions, but really what a volume of these questions looks like.
- Alison Monahan: And I think that's one of my biggest concerns, is there just aren't probably going to be a lot of these questions released to practice with before we get too far into this.
- Lee Burgess: Yeah. And I think that's going to make this really challenging for folks graduating in 2026, which is not very far away, considering it's now 2024.
- Alison Monahan: Yeah, it's definitely going to be interesting. And then the remaining kind of third-ish of the exam is going to be three longer writing tasks. That sounds I guess those will be an hour each, roughly. Those, it's really basing them on the MPT. So, you've got to do the stuff you do on the MPT, it sounds like. They might feature areas of doctrinal law with accompanying legal resources that aren't included that you've had to memorize – for example, Trust and Estates, Admin, Intellectual Property. Oh, hadn't read this part: One of the two longer writing tasks will include several multiple-choice questions and short, constructed responses focused on research skills, followed by a longer writing assignment. So, they haven't actually released any of these, but they did on the website give a list of MPTs that I think they're kind of modeling stuff on. So, I don't know. It doesn't really say if all of these are going to be an hour, if some are going to be longer. Again, we don't really know right now.
- Lee Burgess: Which is wild.
- Alison Monahan: Yeah, because also the MPT is a 90-minute test. So, if you're doing three of them and you're cutting the test time, don't really know how that's going to work.
- Lee Burgess: And you're also doing multiple-choice questions and short-answer questions as part of it.



Alison Monahan: Yeah.

Lee Burgess: It also sounds like the integrated question sets and the longer writing tasks sound somewhat similar, except that the longer writing tasks also may have a longer writing task, but also all the stuff that the integrated question set includes. It seems murky to me. Maybe I'm just missing the boat, but I feel like it's murky.

Alison Monahan: Yeah. And the multiple-choice can just be mixed in anywhere. So, yeah.

Lee Burgess: Murky!

Alison Monahan: I will be curious to see a full version of this test, if they even release one before it becomes live.

Lee Burgess: Oh my gosh, that stresses me out.

Alison Monahan: I know. I literally am like, "I don't know what to tell people." Well, let's talk about that. What's the bottom line, Lee? What do we think here? Do you think this is going to be easier or harder than the current test?

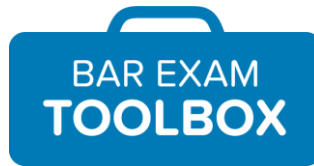
Lee Burgess: I think it's just going to be different, because the reality is, the bar exam is never really easier; it just is different. And there's always this idea... I think this played out in California when they went from a three-day test – which you and I took – to a two-day test. There was this idea, like, "Oh, is it going to be easier?" And they're still failing the same number of people.

Alison Monahan: Right. Even though they lowered the score required to pass.

Lee Burgess: And now they've even lowered the pass score and they're still failing the same number of people. So, is it easier? Well, you don't have to suffer through three days and that was pretty miserable, so I guess in that way it was better.

Alison Monahan: It's nicer.

Lee Burgess: And I feel like this, it's nicer. This is going to be shorter, you aren't going to have to do as much substantive review. And so, for folks that that is really taxing on them, maybe even for foreign-trained attorneys who didn't go to school in the U.S. – they're not going to have to learn all this nuanced substantive law that they've never heard of. I think in that way it might be easier, but my guess is they're still going to end up having the same pass rates, it's going to still be challenging, and this is still going to be a gatekeeper, because they don't want



the market flooded with licensed lawyers. That's just not really how this has ever worked.

Alison Monahan: No, I think that's true. It certainly serves a gatekeeping function, let's be honest. It might be less annoying in certain ways to take this exam, because it will be shorter and you don't have to memorize as much law. That being said, I think it's going to be harder for certain groups of people to study for. I think people who are pretty good at standardized tests and can do things quickly and write quickly – they're going to be fine, probably. But I do think it's going to be harder for people maybe to develop some of these skills if they don't necessarily have them to start with.

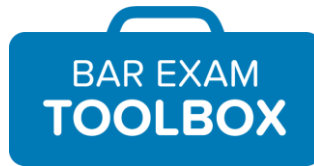
Lee Burgess: I'm also interested to see what happens down the line – if the law schools are going to start shifting how they test, to create a foundation for students, which might be really challenging because these don't sound easy tests to write, particularly, to be honest. One of the things about law school is, many law schools to help with their bar pass rates do design their exams to reflect bar questions. And I think that this might also throw a wrench in that. Are the law schools going to need to pivot how they test their students to help prepare people? Or is this test just going to feel very different from what you've done in law school? I think there are a lot of open questions about this that still need to be dealt with.

Alison Monahan: Oh, I think that's a great point. I think law schools to a certain extent, the ABAs even encourage them to have more skills-based classes and things like that. But I think they're going to need even more of them. If the bar exam is testing you on client counseling and interviewing, you need to be able to take those classes, or classes that help you with those sorts of things, in law school. So, when we're thinking about what people need to take – okay, you can axe a few things. Probably unless you're going to do trust and estates or you have an interest, you don't need to take Wills and Trusts. If you're going to take this exam, you don't need to do Secured Transactions. That's great, but those core 1L classes, plus Evidence, Business Associations – those you probably need to be taking. And then I think you need to be developing these skills one way or the other to do the sort of stuff that's being tested.

Lee Burgess: And I would go to your law school and ask them about that.

Alison Monahan: Totally.

Lee Burgess: Because law schools are not very fast at changing, and if you're in the class of 2026 or 2027, 2028 – I would really go to the law school and say, "What are the



electives that you're offering to help prepare me for this test?" Because I do think that's an open question, and they should have the most information than anyone about what is happening, and they should be pivoting their bar prep classes and skills-based classes to reflect this. And if they're not, the student body needs to be asking them about that.

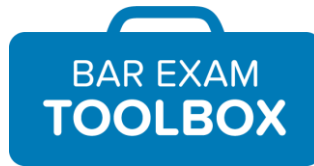
Alison Monahan: Oh, absolutely. If you think you're going to be taking this test and your school hasn't been talking about it, I think that's something you need to go and talk to people about and be like, "Look, what are you offering that's going to help me do this?" Because I just don't want people to get to the end and then suddenly realize they haven't done any of the things in law school that they probably should have been doing.

Lee Burgess: Agreed, yeah. And then I think there're just still so many open questions, and I hope that more information comes out. I'm just so excited that they seem to be releasing what states have adopted it, but did they show them a test? I still don't know. We don't even know what the test looks like. There're still all these open questions about portability, which really plays in, especially for students who need to apply for accommodations. Which state do you want to apply for accommodations if you're not sure where you're going to practice and things like that? That's still a big open question. How to make sure you're preparing in law school by communicating with your law school, but being thoughtful about what classes you need to take? And then who knows what prep materials will exist? I know the big bar companies are already working on their new products, as I've been told, but...

Alison Monahan: But based on what?

Lee Burgess: Unless they got slipped a bunch of tests that we don't have access to, I'm not really sure what they're doing. So, it's going to be interesting to see what happens. And then you're still going to have California and some of these big jurisdictions out there who are still doing their own thing, and Florida, and what does that mean? There're still a lot of open questions, so you've just got to stay knowledgeable and maybe put something on your calendar to review the NCBE website periodically or to follow up with your dean's office at school to see who's job it is to give you information about this, other than us. I mean, we're happy to share the information we have, but you're paying the law school and they need to provide you with as much information as possible.

Alison Monahan: Yeah. One other thing I should say – they're at least claiming the test will be less time-pressured, so that could also be helpful for certain people. We'll see if that's actually true, but I know in the testing process they're trying to make sure



that it is not as time-pressured as the current exam, which is, for most people, extremely time-pressured.

Lee Burgess: I wonder though, is that going to make it more challenging for folks to get accommodations? If they say that – that it's not as time-pressured of a test – until you really see those scores play out, I worry that that's going to make the accommodations process even more stringent in some of these jurisdictions, and that can be really a tough thing for a lot of students too. So, a lot of open questions. Not to make everybody anxious, but it's your job to stay knowledgeable and on top of things, because I think they're going to start rapidly changing here in the next two years.

Alison Monahan: I agree. Alright, well, should we look at a few sample questions before we wrap up, give people some actual context?

Lee Burgess: Ooh, let's do it.

Alison Monahan: Alright. Well, I pulled these off of the NCBE website. We're not going to go through them in great detail, but when they talked about multiple-choice and said some of them are basically straight up MBE-type questions, here's one where a defendant is being prosecuted for conspiracy to possess methamphetamine with intent to distribute:

"At trial, the government seeks to have its agent testified to a conversation that he overheard between the defendant and a co-conspirator regarding the incoming shipment of a large quantity of methamphetamine. The conversation is also audiotaped, though critical portions of it are inaudible. The defendant objects to the testimony of the agent on the ground it is not the best evidence of the conversation." The question: "Is the testimony of the agent admissible?"

So, these are multiple-choice. You get the two typical "No", the two typical "Yes, because". One of them is correct. So that's just a normal MBE question. The newer type, which I think is pretty interesting, is: "You are a criminal defense lawyer representing a client who has been charged with fentanyl possession." Really down on the drugs here. "The police found the fentanyl in the guest bedroom of the client's uncle's house when responding to a noise complaint at the house." The question goes on, but basically, you are considering filing a motion to suppress under the Fourth Amendment. And the question here is: Which of the following legal topics are the most important for you to research to determine the likelihood of success on a motion to suppress? And you select two of them. So, this is have been the kind of a typical MBE question, where you're thinking, "Whatever, does the uncle have the right to let the person in



the house", and blah, blah, blah, blah. So, it's kind of interesting. And the answers were the consent search, extended circumstances, hot pursuit, probable cause, reasonable suspicion, and standing. So I don't think this question is super hard, but it is kind of a more interesting multiple-choice, and you could apparently get partial credit if you got one of the two.

Lee Burgess: Ooh, how are they going to grade that?

Alison Monahan: Oh, because you pick two, and if you get one right, I guess they give you credit for that one.

Lee Burgess: Okay.

Alison Monahan: Yeah, I was like, "Cool."

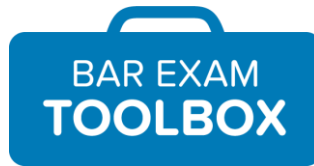
Lee Burgess: Cool. I don't know.

Alison Monahan: Alright. Lee, do you want to explain the integrated question set sample?

Lee Burgess: Sure. So, each of these questions is based on a common fact scenario that may include some legal resources – so, excerpts of statutes or judicial opinions, or supplemental documents like a police report, and include a mixture of multiple-choice and short-answer questions. Alright, so we talked about this. Here's your first hypo question:

"Your law firm encourages you to take on pro bono cases. Recently, you agreed to take on a pro bono case through your local bar's volunteer lawyers program, in which you represent a tenant whose apartment has flooded. The following is an excerpt from your notes from the initial interview with the client." And then it has a note: "Notes to follow." Here we go: "The client is in a month-to-month lease. The lease identifies the landlord as Rentals, LLC. The lease was signed by both your client and the property manager, who signed as the managing and sole member of Rentals, LLC. The lease includes the following provision:" And then they give you the provision. "The lease does not include any provision on which damages may be available in the event of a breach. Your jurisdiction has a residential landlord-tenant statute that applies to the lease. The following is an excerpt from the statute:" And then they give you the statute. So, integrated question number one: "Which of the following is an accurate application of section 6-20-5 to the facts?" So, you get the statute and then you have to pick from what you think is an accurate application of the statute.

Alison Monahan: Right, so that's multiple-choice.



Lee Burgess: Multiple-choices, yeah. Okay, question two: "Section 6-20-5 of the statute does not define the term 'habitable'. A partner at your firm has asked a law clerk to determine the jurisdiction's meaning of the term for the purposes of potential litigation, and the law clerk has asked you for guidance. Advise the law clerk on two specific legal sources that are the most likely to provide a controlling definition of the term 'habitable'". That's a short, open-ended answer?

Alison Monahan: Yes.

Lee Burgess: How do you study for that?

Alison Monahan: How do you grade that?

Lee Burgess: I know! Okay, alright, integrated question number three: "You receive an email from your client. In the email, the client asks you whether it would be a good idea to sue. You begin your reply to the client by explaining that litigation will consume the client's personal time and will almost certainly take longer to resolve than reaching a settlement before litigation. You consider what other risks your client would face in litigation. Considering your client's objectives and the applicable statute, describe two other potential risks of filing a claim or claims on the client's behalf." Again, this could be a ton of answers. I mean, how do you grade this? Okay, alright, so then you have the MPT-style questions, which presumably you can prepare for with current MPTs, maybe because they haven't released any of the questions.

Alison Monahan: Are you sensing a theme here? I think this is going to be totally bonkers, but eventually, I'm sure they'll release something, I guess.

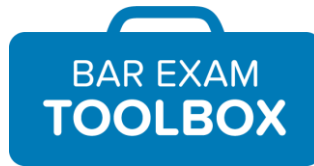
Lee Burgess: I had a professor in law school who loved a good short-answer question, but he only graded, what, 80 exams, where you could make a decision. But what's the answer key look like for some of this stuff?

Alison Monahan: I feel like they're going to start using AI for it, for the grading.

Lee Burgess: Oh, maybe. That would be cheaper for sure.

Alison Monahan: Yeah, because you could have a lot of reasonable answers to some of these questions.

Lee Burgess: Yeah. And then we have AI picking our new lawyers. Fine. I know it's probably going to happen, but okay. Alright, so our takeaways from this is, it's going to be



totally bonkers; you need to keep an eye on the NCBE website for details; you definitely want to insist that your school provides updates and resources; and you're going to have to take some ownership over this, because it's getting dropped in your lap if you're graduating after 2026. Sorry about that.

Alison Monahan: Yeah, I think flexibility is really just all I can say here. You cannot be super rigid about having any expectations about, I think, this test. It may be that you don't have a lot of resources, honestly, to use. So, people are just going to kind of have to roll with it.

Lee Burgess: Yep.

Alison Monahan: Which is frustrating.

Lee Burgess: I know. Lawyers are pretty Type A – we don't roll with things particularly well.

Alison Monahan: Maybe this is a great opportunity to do things like you would have to do in practice.

Lee Burgess: That's true. Flexibility, growth. Yeah.

Alison Monahan: [Growth mindset](#), I think, is the key here.

Lee Burgess: Okay, well, on that note – growth mindset, I like it. And with that, I think we're out of time. Thanks for listening! For more, check out [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 out about our courses, workshops, 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're 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, and we'll talk soon!

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