

FCK

TAKE YOUR PLACE

THE

AT COUNSEL TABLE

BAR

WRITTEN BY

JESSICA KLEIN

FCK THE BAR

TAKE YOUR PLACE AT COUNSEL TABLE

JESSICA KLEIN

FCK THE BAR: Take Your Place at Counsel Table

Second Edition.

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For further information, please visit: www.FckTheBar.com or www.FTBBarPrep.com.

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FUCK THE BAR

Fuck the bar exam. No, really. Fuck it. This exam cannot stop you from taking your place at counsel table. It's just a test. Did you hear what I said? *Really hear it?*

It. is. just. a. test.

If there's anything you know how to do my friend, it's take a test.

If you're sitting for the bar exam, I already know you have what it takes to pass. I know it because if you have already been successful as a law student, then you possess all the qualities necessary to pass the bar exam. You've already taken law school exams. You have a four-year degree (perhaps more). You took the LSAT, SAT, PSAT, graduated from high school, middle school, elementary school, and likely even preschool. You have been a student for twenty years. *T w e n t y y e a r s*. Two entire decades. It's insane, really.

Without a doubt, you know how to be a successful test taker. You've spent years going to classes, reading, and studying, so you have the ambition to achieve. All those years you've worked, just for the

mere opportunity to sit for the bar exam, demonstrate your discipline and industriousness. You are ambitious. Smart. Driven. Capable. Disciplined. You have taken innumerable tests. Despite all that, it's probable you've suddenly developed serious angst over this particular test if you're like most other bar takers. If you don't know it already, let me tell you: you have what it takes to pass one more test. That is all the bar exam is: a test.

So yeah. Fuck the bar. If anybody's got this, you do. You've been training for this shit the last twenty years. The bar exam is not going to stop you from taking your seat at counsel table. If I've articulated my message successfully, then by the time you finish reading this book, your feelings around the bar exam will be:

“ *I've worked way too long and way too hard to let this motherfucker stand in the way of me getting on with my badass life. Fuck that. Where's my chair? I'm going to sit here at counsel table and get comfortable. In fact, I'll take that big cushy chair over there, thankyouverymuch.* ”

You will be bearing down on the bar exam full throttle in anticipatory excitement as a runner sprints in the last stretch of their race.

Although this mindset is the goal, you're probably not feeling entirely on board just yet. But why not? If the bar exam is only a test, then why freak out? It's because bar exam lore has gotten out of hand and it feeds a reputation that isn't of service to you or other bar takers. The bar exam needs to be knocked down to size. It's gotten waaaaaaay too big for its britches over the years.

This monstrous reputation is built as you advance in education. The further along you get in academia, the fewer exams you take. As the number of exams shrinks, their importance has more bearing on your future success. All of which add up to bigger stakes. Bigger stakes = more stress. More stress = diminished test performance.

It certainly doesn't help that all of a sudden the academic rules changed in law school. In law school, you're only smart *as compared to* your classmates. You also get no feedback on your grasp of the

concepts until the course is entirely over and you show up for your single exam. Add to that pressure the fact that you might not get the job you want if you don't get a high enough mark on every single exam, which is a problem when you have mortgaged your future with astronomical debt. So after having your confidence challenged the last three years, and when the stakes are highest, you must take the longest and hardest exam of your life.

No wonder so many students get fucked up in the head over the bar exam. You, like so many other bar takers, are ambitious, smart, driven, capable, and disciplined. Yet you've likely bought into the idea that somehow this exam is so incredibly different. Or perhaps that you are for some reason inept at studying for and passing it unless you pay thousands of dollars to specialized companies to teach you how to study for the test. As if you've never taken a fucking test before.

People! Let me remind you who the fuck you are. You are the shit! You have a brilliant mind. You are ambitious. You are industrious. You are a veteran test taker. You are incredibly capable, and the bar exam isn't going to change any of those facts.

You have been learning for the last twenty years how to consume information, roll it around inside your brain long enough to understand it, and then regurgitate it in whatever format your teacher wants you to. If they said: write a book report, you wrote a book report. If they said: write a poem, you wrote a poem. If they said: show the math, you showed the math. If they said: write a ten-page report with an introduction, five main points, and a conclusion, then you wrote a ten-page report with an introduction, five main points, and a conclusion.

So guess what you need to do on the bar exam? The same damn thing you've been doing the past twenty years - giving the teacher precisely what he or she wants in the format he or she wants it. It really is that easy. The bar exam is just one more time that you do exactly what you've done a hundred times before. You knew what to do on all those other tests. You took the information that the instructor gave you during the course, and you demonstrated your

knowledge and understanding in whatever format he or she asked you to. That's all you did on those tests. And that's all you have to do on this test. Because the bar exam is a test. It is, just, a test.

Yes, the content is more sophisticated. But that's not a problem because if the content was too difficult for you, you wouldn't have gotten into and graduated law school. The content isn't the issue.

The issue is that you believe the bar exam is unlike any test you've ever taken before and that none of your past twenty years of education is any good on this test. Although it's true that the bar exam *is* unlike any test you have taken before, you *can still lean on* your decades of education to carry you through. This book will show you **HOW** to take your already existing test-taking capabilities and prepare for this test. The pages of this book contain a workable and proven strategy that applies to all U.S. bar exams (with variances in materials for each jurisdiction).

This book will show you how to walk into exam day with a skip in your step because 1) you are finally checking off that last to-do from your "Things I Have To Do To Get On With My Life" list, and, 2) you know you're going to own that bar exam like the boss you are. I simplify the bar exam by breaking it down into its simple component parts and layout a completely do-able strategy to get you ready to walk into the bar exam with every confidence in the world.

PAINLESS BAR PREP

If you were shocked when you first saw the title *Fck The Bar* - good! The name is intentionally irreverent, unorthodox, and unapologetic. I hope to challenge preconceptions and shock people into thinking about the bar differently.

But guess what? That's not the only shocker in this book. Here's the next one: I firmly believe the bar exam can be painless.

There's a common bar exam perception that this test is some mythical beast which requires struggle and mental anguish to slay. In an effort to overcome this challenge, people typically throw out all semblance of a balanced lifestyle. They will study *sixteen hours a day*.

The bar exam does not leave their consciousness. Not even when they sleep. Anxiety and nightmares plague them even there.

This is bullshit. The bar exam is a test. You are hereby granted permission to go through the bar prep process feeling calm, confident, prepared, organized, rested, supported, and even - *gasp!* - enjoying your life during the process. You can change the way you view (and subsequently experience) the bar exam.

I 100% believe that it is possible to prepare for and pass the bar exam with confidence and a positive outlook! I know it's possible because I've done it, and I've helped others do it, too. In this book I show you how to do it, step by step.

The reason people are stressed out, anxious, and lose all sense of balance during bar prep is because they feel overwhelmed (out of control because they don't truly understand what the bar exam encompasses) and do not have confidence in their study approach. Also, they waste time on ineffective tasks that don't translate into true progress. They know this! Deep down they realize their busyness is *not* getting them ready to pass the exam so they are worried constantly.

Having an effective and powerful plan for success, and *executing* that plan day in and day out eliminates the anxiety and stress, and allows you to remain a whole, well-balanced person throughout.

FIGHT CLUB

If you've gone to law school, you already know that the magical thing that happens in law school is that your brain becomes unalterably changed: you learn to think differently. You learn to think like a lawyer.

You also know two hard truths about what law school does not do for you: (1) it does not teach you how to practice law, and (2) it does not prepare you for the bar exam. No one is ready to sit for the bar exam the day after graduation.

So let me ask you a question: if you are not ready to take the bar exam the day after graduation - after you've studied the law for three years under the instruction of brilliant professors who are subject matter experts - then why would a few more months of doing that same thing make you ready for the bar?

I don't think it does.

Preparing for and passing the bar exam is a much, much simpler proposition than everyone thinks it is. Traditional bar prep, which involves hours and hours of lectures, book after book of outlines, and

all sorts of other study activities *other than* practicing the MBE, essays and performance tests, is completely unnecessary.

My suspicion is that bar prep activities such as watching lectures and reading outlines developed as a solution to what bar examinees *wanted*, not what they *needed*.

If I had to hazard a guess, I would guess that if I sat you down to take a practice bar exam *today*, you would protest and explain that you can't take a practice test because you don't know enough yet. You don't think you know the subject matter; you're "not ready." So it makes sense that bar prep companies created programs to solve the problem you *think* you have of "not knowing enough" so you could *feel* prepared to take the bar exam. I stress the word *feel* because you can *feel* ready by knowing every single little bit of black letter law like the back of your hand and still not actually *be* ready to *perform* well on the bar exam.

If you've seen the movie *Fight Club*, you will be able to recite the first and second rules of Fight Club at the drop of a hat.

“ The first rule of Fight Club is: You do not talk about Fight Club.

The second rule of Fight Club is: You do not talk about Fight Club.

Likewise, anyone who reads this book should be able to immediately recite the first and second rules of the bar exam.

“ The first rule of the bar exam is: Nothing matters except performance.

The second rule of the bar exam is: Nothing matters except performance.

Nothing matters except performance! If you are doing anything that doesn't improve your bar exam performance, you are wasting your time.

If you don't perform well on the exam you won't get enough points, the bar graders will fail you, and you don't get to sit at counsel

table. So everything revolves around performance. It's not until you fully understand how pivotal performance is that you can properly view your study efforts. When you have bar exam performance as your goal, you can reverse engineer everything else and understand the actions you need to take.

Legal knowledge is NOT the goal. It is necessary, but not sufficient. Performing well enough on the bar exam that you get your name on the pass list is the goal. Performance is very, very, VERY different than knowledge. Incredibly different. Sit with that for a moment and let it sink in. Think about all the ways in which you already know that to be true. From things as rudimentary as learning to walk or tying your shoe - these are things which you "knew how to do" the moment you could perform them.

If you are like most people who learned how to drive a car around the age of sixteen, you first started your learning process by watching other drivers drive while you were a passenger in the car, reading the driver test booklet, being told what all the pedals, levers, and buttons did, and learning what the traffic signs and rules of the road were. However, none of that knowledge made you a driver. How could it? None of those things even got you into the driver's seat. No, it wasn't until you got behind the wheel of the car, started the car, and began to perform the act of driving that you crossed the threshold to becoming a driver. Performance is different from knowledge.

When you finally started performing the act of driving, I bet you weren't so great at it. It's a skill. You have to log hours actually driving - aka practicing - to become more comfortable with the car, with the roads, with the traffic signs, with other drivers, with increased speed, in new conditions, in the rain, etc. You get better and better because you were practicing, not because you spent additional hours reading the driver booklet.

Think about how many times you had to practice parallel parking before you could successfully *do* it. If you still can't really do it right, or if you drive around the block to find an alternate parking spot because you hate to parallel park, you're not alone. Plenty of people still dread it. It takes a lot of practice to become skilled at that. That's

because “knowing” the steps to properly parallel park, such as how to line up your mirrors, turn the wheel, straighten out at the proper moment, and all the other parts that go into it mean *absolutely nothing* when it comes to *doing it*. That’s because *nothing matters except performance*.

In so many areas of life, knowledge is meaningless, and performance is everything. Think of learning to play an instrument, learning a new language, learning to paint, learning to cook, or learning a sport. To learn any of these things requires a basic understanding of the concepts (i.e., knowledge), but that isn’t what is meant when someone says, for example, “I know how to speak French.” Knowledge is necessary, but not sufficient. Knowing how to conjugate a verb in a foreign language is a necessary part of learning that language, but no one would say you know that language until you can speak (i.e., perform) that language. Again, *nothing matters except performance*.

Our lives are filled with performances - skills we can DO without thought because at one point in our lives, we performed the act for the first time. We tried something. Then tried again, and again. It required action. For each one of these daily skills that we can now do without much difficulty, we learned because we did. And we became proficient because we took repeated action.

Passing the bar exam is truly the same thing. When you understand and believe this concept, you won’t look at bar prep the same way again. You will have no interest in cracking open an outline again. You won’t write out flashcards. You won’t listen to a single lecture. Why? Because by and large they’re a complete waste of your precious time since you will perform none of those things on the actual bar exam. Remember the first rule of the bar exam is: *Nothing matters except performance*.

At no point during the actual bar exam will you be asked to give a lecture, read an outline, or write out a stack of flashcards. No bar grader is going to give you points for how many mnemonics you memorized. Therefore, practicing those tasks does nothing for improving your bar exam performance. They are learning tasks, not

performance tasks. You just spent three years learning. You've already checked that box and got it covered, so now it's over and done with. The knowledge is already inside your head. You don't need more of that to pass the bar exam. Really!

This is why everyone says that going to law school does not prepare you for the bar exam. This is what they're talking about. The knowledge you have gained is vital for learning to think like a lawyer, learning core legal principles, and being able to practice law. That knowledge is necessary, but not sufficient, for passing the bar exam. Those who pass the bar exam are those who can successfully perform the bar exam tasks.

Time spent doing what has collectively become known as "bar prep" (writing outlines, reading outlines, listening to lectures, doing worksheets, creating flashcards, reading flashcards, memorizing mnemonics and rule statements, studying attack sheets, etc.) is not only a waste of your time because it only moves the needle incrementally, if at all, but it can be dangerous. The danger comes from the false sense of security you gain when you've spent day after day doing these things, thinking that you are more ready to write a passing essay answer now than you were before you did those things.

Additionally, if you spend twelve hours one day reviewing flashcards, watching lectures, and memorizing mnemonics, you'll likely feel like you've made a significant amount of progress. You may begin to erroneously equate busyness with effectiveness. The tasks that are keeping you busy are only as effective as the result they have on your bottom line. If you cannot write a better essay at the end of the day than at the beginning of the day, you have wasted your time.

Even if you "know more" after spending those twelve hours, it does not mean you are going to be able to write a passing essay if you have problems with your writing, analysis, organization, issue spotting, or some other aspect of essay performance. Your ability to regurgitate an accurate rule statement is necessary but not sufficient to get a passing score. You can perfectly list every applicable rule statement in your essay answer and still fail if you don't have all the other aspects of successful essay writing on board. We'll get into what is

necessary for a passing essay answer later on, but I want to make the point: *legal knowledge is different from successful bar exam performance.*

On multiple occasions I have heard from bar exam repeaters who had taken big name bar prep courses their first time around that they were overworked and therefore overconfident going into the bar exam, only to find out they were actually underprepared. *Busyness gave them a false sense of security*, and sadly, they paid the bitter price of trusting their knowledge instead of perfecting their performance.

NOTHING MATTERS EXCEPT PERFORMANCE

HACKING THE BAR EXAM

Some alternative titles for this book could have been “Hacking the Bar Exam” or “The Bar Exam: Deconstructed.” That’s because if you look at the component parts which constitute the bar exam, you will see it’s not a big, complicated, unwieldy beast after all. Let’s unpack it.

1. The bar exam is a PREDICTABLE test.
2. Passing it comes down to the successful performance of very specific TASKS.
3. There are simple, calculated ACTIONS you can take to become proficient at those tasks.

PREDICTABLE

The bar exam is a predictable test. It isn’t your typical law school exam where you hope and pray that you were able to discern throughout the semester what each professor intends to test on. The

bar exam is not a game of “hide the ball.” Luckily for you, there are years and years of previously administered bar exams available to you. For free. No one had to break into the principal’s office to steal a copy of the test; the administrators of the bar exam actually go through the effort of publishing the past exams on their own websites FOR you.

When you take the time to go through the past exams - and believe me when I tell you you absolutely should if you want to pass - you will discover for yourself that there is an undeniable pattern. The bar examiners test the same material over and over. You do not need to know the entire breadth of the law to pass.

Like most areas in life, Pareto’s principle (the 80/20 rule) applies here. Going through the past exams will show you that there are specific issues the examiners test over and over and over again. Moreover, there are some issues that the examiners rarely test.

If you’re wise, you will make sure to focus your time and energy to learn the frequently-tested areas down cold. It is a waste of your precious time to treat all issues and rules equally. Some have a very slim likelihood of showing up on the exam while others have a very high probability of showing up on the exam. Therefore you do not want to spend your energy equally. It is better to spend your energy *proportionately*. This is where going through all the prior exams you can get your hands on will help. This is where things get predictable.

The only way for something to be predictable is by having prior experience with it. Let’s look at a non-academic example. Everyone has that friend who runs late. When you first became friends with that person, you might have given them the benefit of the doubt the first couple of times, but after a while, you realized that they are just always late and it was part of their character. Once you realized that, you started to anticipate they were going to be late whenever you were going to meet up with them. And they didn’t disappoint. They were late. But you knew they were going to be. They just always are.

The bar exam is predictable if you get to know it. For example, if you are taking the California Bar Exam, you can be sure that Profes-

sional Responsibility is going to be tested on the essay portion. If you're taking the Uniform Bar Exam, you can be sure that Civil Procedure is going to be tested on the essay portion. How do I know this? Because I've looked at the number of times they've been tested over the last ten years and with very rare exceptions, they are tested each and every time.

Get some experience with the bar exam under your belt. Use the prior exams. You will find out what to expect. If you open up an outline and start reading the law, you are going to be reading *everything* in Torts; *everything* in Contracts; *everything* in Evidence... you get the idea. But guess what? The bar exam *does not test everything*. Yes, you will be tested on Torts, Contracts, and Evidence. But only portions of them. So if you spend some time with the previous exams you will know which portions are going to show up. It's predictable.

Now on rare occasion your late friend shows up on time. Right? Sure they do. And sometimes the bar exam will throw in an outlier and test something that hasn't shown up before or only shows up very infrequently. If that happens, it's okay. I'll talk about this later on in the book and how to handle it. For now, know that if you have prepared for the bar exam in the manner outlined in this book, you are going to be so incredibly solid on so much of the exam that being surprised by a single issue isn't going to tank the entire thing.

The bar exam is predictable in an entirely other way, too. And here's where things get really, really good for you. Most jurisdictions publish examples of high scoring answers so you know what they're looking for! They are **SHOWING YOU THE ANSWER KEY AHEAD OF TIME**. No one is hiding the ball.

I think that since people are so used to these sample answers being available for free that they completely underestimate how incredibly valuable they are. It was Jim Rohn who said, "success leaves clues." And it is so true! In so many areas of life, there are people who have gone before, figured out a system that works, and become successful.

If your goal is to become a solo practitioner after you become

licensed, you are probably interested in finding out how other solo practitioners whom you admire have structured their practice. You want to copy the successful ones, right? Or do you intend to flop around aimlessly and learn every lesson the hard way? Of course not.

Or let's say you intend to get into BigLaw and have a meteoric rise to the top. Your ambition and common sense tell you to take note of what your highly successful predecessors have done and then beat them at their own game. Am I right?

The bar exam is no different. There's a *clearly marked path* for you. You can see exactly what previous bar passers wrote on exams to achieve high scores. It's there for you to take advantage of. And more than that, the bar examiners want you to see it. They put it out there so this information will serve people. They're handing them out like high school nurses hand out condoms. They're saying: *Please, take some! Use these!*

For example, The State Bar of California publishes two selected answers for each essay and performance test right on their website to be accessed for free. The selected answers "were assigned high grades and were written by applicants who passed the examination after one read."

Having the sample answers is helpful for more than just the content of the answers. Sure, the answers contain the legal issues being tested, but they also show you how to draft a good answer. A good essay answer isn't just about knowing the law being tested, it's about regurgitating it in a particular format that the graders want to see. You need to present it in a certain fashion.

You wouldn't dump a pile of flour, sugar, salt, egg, vanilla, butter, baking soda, and baking powder on a plate and call it a cake. You have all the ingredients which are necessary to make a cake. But until you mix them together in the proper order and proportions, then bake it at the right temperature, and for the appropriate amount of time, you can't call it a cake.

The sample answers have what the bar graders are looking for. Your goal is to give the bar graders what they are looking for so they

can award you as many points as possible. Later on, you'll learn how to take these examples and utilize them to your greatest benefit, and do so in a very simple way which makes the most effective and efficient use of your time.

TASKS

The second component part of hacking the bar exam comes down to the successful performance of very specific tasks. In most jurisdictions, the bar exam is broken down into these three tasks:

- The Multistate Bar Exam (MBE)
- State-specific essay questions or the Multistate Essay Exam (MEE)
- A state-specific performance test or the Multistate Performance Test (MPT)

Please note what is NOT on the exam:

- Reading outlines
- Creating outlines
- Reading flashcards
- Creating flashcards
- Writing mnemonics
- Listening to lectures

In short, there is no portion of the bar exam where you will be asked to provide a brain dump. No amount of legal knowledge inside your brain is going to get you a single point unless you can apply that knowledge in the proper format. I can't stress this enough. You can be incredibly smart and have tons of knowledge, but unless that knowledge gets transmitted to the bar graders, you get absolutely no points. As outlined above, there are only three formats in which you can demonstrate your knowledge: the MBE, essays, and performance tests.

These are the crucial tasks. If your bar prep activities are not *directly improving* your *performance* of these three tasks, then you are not studying as effectively as you can and should be. Activities which *indirectly* improve your bar exam performance are a poor use of your time, especially since they might not actually be improving your bar exam performance at all!

For example, if you fail the bar exam because you can't finish in time, it doesn't matter how many issues you can spot or how well you know the material! In this instance, activities such as memorizing flashcards or listening to lectures are doing you zero bit of good, and in fact, are eating up precious time that could be better spent by getting faster at the exam.

Here's another example. Let's say you know all the law and can spot all the issues, but you don't know how to apply the facts to the law and perform an analysis. If you have a bad habit of making conclusory statements, you are likely going to fail no matter how many outlines you read or how many mnemonics you know. Bar graders need to see that you know how to analyze facts. They couldn't give a shit how well you've got that mnemonic memorized.

Let's do one more example. For this example, we're going to use a performance test. Let's assume you've read the file and the library, and understand what type of task you're being asked to perform. You know what you want to say, but you just can't seem to get it from your brain and into your answer in a logical and methodical fashion. You get hung up on how to get it organized and presented in a lawyerly way.

When the reader looks at your answer, it's chaotic and disorganized and doesn't seem to demonstrate the information they're looking for. In a situation like this, it doesn't matter what is going on in your brain because the graders are not going to grade what you know. They are going to grade *the product*. That's all they have to go on.

At this point, it should be crystal clear that the only thing you're being scored on is your ability to perform these tasks. I've got some tough love for you: if you're not good at performing these tasks, you're not going to do well on the bar exam. It's as simple as that. But have no fear, there's an answer. In this book, I will teach you how you can get really good at performing those tasks.

The Gatekeepers

Before we move on and talk about the actions you can take to get good at performing these tasks, I want to pause and talk about an important group of people who are integral to you passing the bar exam: the bar graders.

Understanding why we have a bar exam in the first place, and how this plays out in your bar exam journey is helpful to framing your study approach.

With all this talk about “fuck the bar” and how to “hack” the bar exam, it may seem that I'm giving a big fat middle finger to the boards of bar examiners across the nation. Not at all true. Although this book has an irreverent and unapologetic title designed to shake things up a bit and hopefully get you to see the bar exam differently, I am not irreverent about the purpose the bar exam serves or about the legal profession itself. I wholeheartedly believe in the honor and dignity of the profession.

The legal profession is prestigious and should be filled with practitioners of utmost integrity. The things we do as lawyers are weighty and humbling. The public will trust us with life-altering responsibili-

ties. As a lawyer, you will be fighting for the freedom of clients who face serious criminal charges and may lose their freedom to incarceration; you will be fighting to protect the multi-million dollar businesses of clients who have spent their lifetime building; you will be fighting for mothers and fathers who don't want to lose their children; you will be fighting for the ability of the indigent to keep a roof over their head and avoid homelessness.

The seriousness of this responsibility cannot be over emphasized. The consequences of allowing unfit persons to practice law is severe. Naturally, there must be standards and safeguards, which is why we have a bar exam in the first place.

The bar exam is a gatekeeper. It filters out the small percentage of individuals who have been accepted into and graduated law school but are unable to judiciously apply legal principles in a proficient enough manner to adequately represent the legal interests of the public. In this way, the bar exam provides an invaluable service not only to the legal profession but to the millions of individuals who seek legal services to carry them through some of the most challenging problems of their lives.

This is the *reason* we have a bar exam, and the bar graders are tasked with judging our competence through reading a single essay. Or a single performance test. Based on those few pages of written work that you submit, they will have to give you a score that reflects their judgment as to your fitness to practice law. Later, all the individual scores from the essays and performance tests are compiled with your MBE score, and ultimately you receive a passing or failing score.

Put yourself in the bar graders shoes... they need to do their best to decipher whether you have the minimum competence required to be able to go out into the world and handle these responsibilities. They only have a few pages of your written work to make that determination. You need to be able to prove to them through those pages that you are competent.

How do you do that? You write a damn good essay and perfor-

mance test, as well as score well on the MBE. These are the only three avenues by which you can prove your competence. If you want a seat at the table - a seat at *counsel table* - you need to be able to keep up with everyone else sitting there. The bar exam is your chance to demonstrate that you can.

The bar graders are expecting and looking for a certain kind of work product. The people who pass the bar exam are the ones who take the raw black letter law and mix it together with the ability to spot legal issues and extract relevant facts, then combine those in an organized and logical way, fashion it all together with the proper language and tone, and polish it off with a reasoned legal conclusion, all while demonstrating sound judgment.

In essence, you are presenting the bar graders with a cake, not simply the pile of flour, sugar, salt, egg, vanilla, butter, baking soda, and baking powder that I referenced earlier. By taking these raw ingredients and putting them all together and presenting it to the bar graders in the correct way, they will be able to see through the lens of your essay answer that you know what *to do* with that raw knowledge: you know what's important, you know what the law is, you know how the law applies to that situation, you exercise good judgment, and you are intelligent enough.

IF YOU'RE A REPEATER

If you're a repeater, hear me out. Just because you have failed the bar exam one or more times, does NOT mean you should be filtered out from the practice of law. That is not what I'm saying here. The bar exam is designed to filter out people who do not have the competence to practice law. Chances are (and my experience tells me) you most likely failed for an entirely different reason. You may have had test anxiety, were unable to spend sufficient time preparing, did not take enough practice tests, or wasted time doing tasks that didn't help you perform on the exam.

There are many reasons you may have failed - reasons which are

easily remedied once you identify them and take effective action. This will be made clear as you continue reading this book, and chapter 16 is devoted entirely to this. A few changes are most likely all that is needed to completely change your trajectory and get your name on the pass list.

ACTIONS

The last component part of hacking the bar exam comes down to taking the simple, calculated actions that will make you proficient at the bar exam tasks.

To become good at performing the bar exam tasks, there are specific actions you can take. It's just like getting good at driving. You're going to have to practice driving. Likewise, you should practice taking essays, performance tests, and MBEs. Over and over and over again. Do EXACTLY what you will be doing on the bar exam.

The old adage is so true: practice makes perfect. So for essays, you are going to sit down to take a timed practice essay, full length, using your complete concentration. Do not short cut this process by bullet-pointing your answers, issue spotting only, or skipping the conclusions. You will write it *as if you had to hand it into the bar graders*. You will do this for every essay subject, multiple times. The same goes for performance tests. The same goes for MBEs.

Curiously, almost everyone already understands and adopts this principle when it comes to the MBE. I've never met a bar examinee who needs to be convinced that they need to do practice MBEs in order to get ready for the bar exam. Nor do they think that they have to keep reading outlines because they don't know enough law to start

doing MBEs. Instead, they usually jump right into practicing MBEs and do lots of them over the course of their bar prep - which is great! This is precisely the way all bar prep should be!

Where things go wrong is when bar examinees treat the essays and performance test portions of the exam differently. Just as it would be absurd to put off practicing MBEs until the very end of bar prep when they “know enough,” it is dangerous to put off practicing essays and performance tests until the very end!

Struggling through an MBE question, getting it wrong, and then reading through the correct answer and its explanation is how you learn and improve your performance. It is the same process with the other portions of the exam. The earlier you start practicing essays and performance tests, the sooner you will learn and improve your performance.

Understandably, taking practice MBEs is more palatable than taking practice essays and performance tests. A practice MBE question literally takes less than two minutes, and all you have to do is select between four answer options that have already been provided to you.

A practice essay will take thirty to sixty minutes (depending on your jurisdiction), and you have to turn a blank document into a cogent written answer, drawing upon your legal knowledge and various other skills such as analytical thinking, judgment, organization, legal analysis, etc.

A performance test is going to take ninety minutes, and also requires you to rifle through pages and pages of raw material in the file and library before you even know what the answer should be.

It’s a ton more work! If you’re anything like me, the despicable thought of writing essays and performance tests day in and day out makes you want to groan.

I won’t deny it - it’s the advice no one wants to hear. No one wants to write essays. Reading outlines and flipping through flashcards is so much more preferable. Why? *Because it’s easy.* Someone else had to do the hard work of getting that knowledge in their brain onto paper to create the outline or flashcard. You already know this to be true.

For example, reading this book is easy. Writing the book is a different story. Reading the book is fast. Writing it, not so much. Reading books does not make you a writer of books. Don't think that because you can consume the content, you can create the content. Going back to the driving analogy... don't think that because you've been a passenger in a car for sixteen years and know what it feels like to ride with a good driver that you can operate a vehicle in the same way. *Don't think that because you can read a well-written bar exam essay that you can create a well-written bar exam essay.* You must become good at it. And to become good at it, you must try - over and over again.

Reading outlines and model answers is also a passive activity. It doesn't challenge you. It doesn't show you where you are messing up or what you don't know. Writing essays, taking a performance, doing MBEs - this is stuff that no one can do for you. It sucks. It's hard (at first). It takes more effort and requires active engagement. But it's also what you have to do on the bar. Do the hard work now, and it will pay off big time.

If you do the work, you will find that you won't have to spend as many hours preparing as a lot of other examinees. Many people take commercial bar prep classes and spend most of their time listening to lectures, reading outlines, and creating outlines. They make checklists and flashcards. They re-read the outlines and checklists. They quiz themselves on the flashcards. These passive tasks become a massive portion of their preparation. Consider the simple fact that they are going to be in a class for hours each day, commute to and from class, take a lunch break, then commute to the library. Take note: they haven't even started studying yet! That's at least five hours of their day, and they haven't yet performed a single task that they will be asked to perform on the actual bar exam.

But not you! You are too damn smart for that. You're not going to spend hours each day in class. You're not wasting your time doing busywork that doesn't prepare you for the bar exam, such as reading outlines. Instead, you are going to be practicing actual bar exam tasks

by performing them. Doing this will cause you to learn the law so much faster!

The reason you learn the law so much faster this way is because any knowledge gaps become very apparent as you try to write your essay answer. When you come upon a knowledge gap, writing the essay becomes a struggle.

For example, you might try writing a Contracts essay only to realize you are struggling to do an offer and acceptance analysis. You have just discovered a knowledge gap! Be glad when this happens! *It is so much better to uncover that gap now than on the actual bar exam.* You may have thought you knew offer and acceptance. After all, what 2L doesn't? However, understanding the concept in your brain is different from demonstrating that knowledge in bar exam format.

Your brain works harder, and differently, when taking the bar exam. If you don't know - really know - the material being tested, you will become keenly aware of your knowledge gap immediately. But only if you're practicing! Practicing illuminates your knowledge gaps.

If you're reading a flashcard or outline, you will mistakenly believe you know the material. But when you write an essay and find out you don't know offer and acceptance, then it will get cemented into your brain through this process because you must grapple with it while trying to write out your answer. Your brain must work hard to draw upon some knowledge that isn't there, so when you read that rule of law afterward, your brain soaks it up and files away that information so you won't ever have to feel that awful struggle again. Now you will know the rule, and if for some reason it doesn't get cemented in at this point, it only takes one or two more tries until you have it solidly in your memory banks.

Let's say you had been reading an outline instead of doing a practice essay. Would you have tested yourself to see if you could recite the rule of law, out loud, before you read it? Let's give you the benefit of the doubt and say you had taken those steps to test yourself only to find out you couldn't articulate the rule. It's not a big deal, is it? You can just read the rule a second later.

But it's not the same when your entire essay is riding on this key

issue. If you can't put the operant rule of law down on paper and then properly analyze the facts, your whole essay is shit. You may only get a few points on the essay, which would make it extremely hard to pass the bar exam.

This type of pressure isn't present when you are just reading through an outline. That is why you will never learn as much by reading outlines as you will by testing yourself. Moreover, that is why doing practice essays will work much, much faster than rote memorization. When you do practice essays and performance tests, you are essentially creating a "sink or swim" or "trial by fire" situation. This raises the stakes and makes your efforts much more effective.

I hope I've driven home how important it is to practice doing the exact tasks that you will be asked to do on the bar exam. It truly is crucial, despite the fact that it deviates from the standard approach that you will probably see most of your friends taking. There is a good reason for this approach, and it truly works.

This approach may sound like more work (and harder work), and it may seem like there is a lazier, more passive option out there. But the truth is, once you get going, you will find that this is actually a lot easier than you thought it would be. You learn faster and more effectively. And not to be dismissed as inconsequential is the **incredible amount of confidence** you will gain in the process. For example, if you follow the approach outlined in this book, you will have written out every essay that has been tested on the bar exam in the last ten years. The numbers vary depending on your jurisdiction, but it will be at least 100 essays. You will also take over 1,200 MBEs.

Can you imagine how much confidence you will have when you walk into the bar exam with 100 essays and 1,200 MBEs under your belt? Do you think you will be worried about your performance? Will you be afraid that you won't know what is going to be tested? Hell no! The confidence you will have on the bar exam will be invaluable. There won't be anything on that bar exam you're not equipped to handle, and feeling that level of preparedness is something you can't buy.

Every. single. day. you will be actively working to improve your

bar exam performance. NOTHING you do will be a waste of time or effort. Everything you do will have a direct impact on your performance because it will be something that moves the needle. You have only one goal: to pass the bar exam and claim your seat at counsel table. If you find yourself engaged in any activity which is not in direct alignment with that goal, stop! Just stop. And then get back on task.



When I started law school, I was working full time during the day and was enrolled in the evening program, which meant that I didn't get to take Evidence or Civil Procedure my first year like 1Ls usually do. Not having taken Evidence didn't stop me from wanting to participate in a mock trial competition, though! My trial partner (also in the evening program) and I were supposed to be paired against another 1L team. An error was made, and for our very first mock trial, we were pitted against 2Ls who had not only taken Evidence but also had an entire extra year of law school under their belt along with a summer's worth of practical legal experience.

It was a massacre.

We had no idea what we were doing. We didn't know when to make objections, what to object to, how to correctly ask a non-leading question, or even how to cross-examine. It was an extremely painful, stressful, and embarrassing situation. But! We were learning from each mistake we were making. We were learning the hard way, but oh were we learning!

After the blood bath, we regrouped, evaluated the destruction, and re-assessed our trial skills before the next round the following morning. That morning, we were placed against another 1L team for the second round. This 1L team was in the day program, so they still had more legal knowledge than we did due to their Evidence class. However, we had learned a hell of a lot the night before and were confident in our new skills. We creamed them and were advanced to the next round.

It just so happens that we advanced on to face the same exact 2L team we had competed against the night before when we had been mistakenly mismatched. But this time, things were different. Really different. We knew what to do this time. We realized that they had been getting away with murder the night before because of our lack of knowledge. When they tried the same tactics this time, we shut them down. Over and over again. I was even able to get their most hostile witness to impeach himself on the stand. Twenty-four hours previously, I couldn't even get him to talk.

We beat them, and the look on their faces was priceless. It is one of my favorite law school memories. They were completely shocked not only that we were winning, but that we were the same team they had humiliated the night before. We were badass.

Even though we felt completely humiliated and were defeated the previous night, we learned more through that short struggle than we would have in an entire year of a trial skills class. Why? Because we weren't listening to lectures about how a trial works, how to object, how to preserve the record, how to claim privilege, etc. Nor were we observing other people perform a trial and taking mental notes from the safety of the gallery. Both of these techniques are passive ways of learning. Instead, we learned by doing - and that type of learning is the best kind.

*To continue reading the remaining 12 chapters,
and to learn about The Klein Method and how it can help you pass the bar
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