

Episode 291: Thought Reversals, Pt. 2

How to Answer a Bar Essay Question

Hey everybody, welcome to episode 291 of the extra mile podcast for bar exam takers. This is your host Jackson Mumey. Really glad to be with you. As this episode is being released, we're now less than a week until the February, 2020 bar exams. So obviously it's a big, big time. Now. There's a lot going on.

[00:00:18] Want to get right into the content today pretty quickly, and share with you. Part two of our series on thought reversals. We're going to look at how you answer an essay question. Last week we talked about how to answer an MBE question. Today we're going to talk about using thought reversal, kind of changing the way you approach the, process to look at how to write an essay.

[00:00:39] if this is your first time with us on the podcast, we're glad to have you here. We do these episodes in video and audio format. You can check them out on video by going to celebrationbarreview.com/291. That's the episode number. If you prefer to listen to the podcast, you can do it on Apple podcasts, iHeartRadio radio.com.

[00:00:57] Lots of other places where podcasts are syndicated. And I do think you'll find it valuable, but watch today's episode, because as I said, I'm going to be talking about essay writing, and I think it's helpful to see the words and the structure and some of the other information so I encourage you to go to www.celebrationbarreview.com/291 to watch this particular episode.

[00:01:17] Yeah, as we've been doing each week in 2020 we've taken a prior student comment and wanted to share it with you just as we get underway. It's a good encouragement, I think, for lots of people. And today I wanted to share a comment from Nicholas. Nicholas L took the Connecticut bar exam with us, that's a uniform bar exam jurisdiction, and he wrote to say,

[00:01:37] "I'm excited to let you know that I passed. Thanks for a great course and all of the guidance and support. Your course provided me with the flexibility, the strategies, and the guidance that helped me obtain this wonderful achievement. Although not unusual my personal situation was quite challenging. I'm eight years removed from law school and I'm working full time working away from home every week.

[00:01:59] Plus I have two children under the age of five plus, and this was the amazing part my third child was born two days before the bar exam. My wife was an absolute Saint during this challenging time of preparing for the bar. I'm grateful, and thankful that I had her support along with your course. Thanks again!"

[00:02:19] Well, congratulations Nicholas on the birth of your third child and to your wife obviously, and to passing the Connecticut bar. You know, I think a lot of people, particularly in this last stretch before the exam, sometimes lose sight of the fact that their families are

going through the exam with them and what a challenging and stressful time it can be for them.

[00:02:37] And so, I really wanted to give a shout out, not just to Nicholas, but also to his family and to his wife who had been so helpful and terrific and, you know, had a baby and right before the bar exam and he was still able to be focused enough to go in and pass a very difficult test. If you haven't said thank you to your family, friends, loved ones, coworkers, and others this week, it's a great time to do that and to remind them that it's going to be over soon and you'll be back into the real world, and then you've got to deal with them again.

[00:03:04] So be nice to people this week. I know it's a big time and I know it's very stressful. but certainly you want to be aware that for everybody else, they're going through it with you, but then they don't get to take the test. So congratulations to Nick and, everyone, who's taken and passed their exams.

[00:03:20] For those of you getting ready for your exams, this coming a week, we know what a big deal that is, and that's why I wanted to share this particular message today, having to do with thought reversals. They are one of the things that people are most concerned about at this late stage is, am I really studying most productively?

[00:03:37] What approach am I using to answer questions on the exam? And so today we're going to break that down when it comes to essay writing, and I think you're going to find it really helpful.

[00:03:47] Now, if you're taking the exam in July of 2020 or later, I want you to stay with us. This was particularly useful information for you, and after we're done, we're going to make a special offer to you about a free training webinar, and I think you're going to want to stick around to find out about that.

[00:04:02] So without keeping you waiting any longer let's jump into today's message talking about thought reversals as they apply to writing a successful essay answer.

[00:04:13] Well, welcome back to our thought reversal discussion. This is part two. In Part one of the series I looked at how to answer an MBE or a multiple choice question using the an idea called thought reversal, which was basically a way of taking what you already know and applying it instead of trying to add more information and then figuring out any answer. I use the analogy of your mind as either an empty water bucket with a lot of holes in it. Or waterfall, like the Hoover dam.

[00:04:43] And essentially what we talked about was that if you approach studying and test-taking as though your brain is this empty water bucket that you've got to keep filling up with information, and of course it's got big holes in it, so information is always leaking out. It's a constant frantic effort to keep filling the bucket.

[00:05:00] On the other hand, under the human potential movement, if you view your mind, in particular your non-conscious brain as a vast resource, like a waterfall, like Hoover dam,

then there's plenty of water there. You just have to decide how to direct it to get maximum impact of maximum power.

[00:05:16] And so in thought reversal part one we talked about how you apply that concept in answering a multiple choice question, and I invite you to check that out if you want to know more about how to answer any multiple choice questions, certainly for the MBE.

[00:05:32] Well, today we're going to take thought reversal into another area. We're going to talk about how to deal with essay questions and does the same concept work. And the short answer is yes, of course it does. A little bit like these dandelions behind me, is that, you know, you can look at them and say, wait, something's wrong there. I mean, which one of those dandelions looks real?

[00:05:53] And which one doesn't? You have an intuitive sense of that, but you get to choose. In preparing answers to essay questions, you get the same opportunity to choose. And the thought reversal that we want to talk about today is to take the traditional notion of what you do when you're faced with an essay, which essentially is to spot issues and recite rules.

[00:06:13] And that basic approach requires memorization primarily. That's the primary skill. Memorize the rules, cram them, and then recite them. We want to move from that concept to a different concept in which you have fact driven analysis. And when you're doing fact driven analysis that requires knowledge, not memory.

[00:06:32] So again, what we're doing is moving from the empty water bucket or the nearly empty water bucket to the waterfall. When you apply that approach in writing essays, you're going to find that essay writing is much easier. It's much more natural. More words come to you. It's more fluent. and it has the added benefit of doing what the examiners really want to see in your essay writing.

[00:06:54] Now I recognize that many of you will assume that, you have to issue spot and use IRAC writing because that's what you learned in law school and it's what the big box bar reviews teach you to do. This is why we call it a thought reversal. If you can stand on the other side of that and look at it, I think you would notice very quickly that issue spotting and IRAC writing are very inefficient forms of writing.

[00:07:16] Very few lawyers in actual practice use either one of those approaches and while they're appropriate for law school, they're really not very effective if you're trying to evaluate whether someone is ready to be a member of the bar. And the bar examiners know this as well. And so they don't reward IRAC and issue spotting the way you would normally think that they might.

[00:07:36] If you need statistical proof for that, just look at the pass rates in general, in certainly almost every major jurisdiction, but across the United States, it's now taking people on average of four times to get through the bar exam. That's a big change from what it was 30 or 40 years ago. And in fact, in jurisdictions like California, Florida, New York, we have pass rates that are at or below 50% consistently, for first time takers and even less for repeat bar takers.

[00:08:04] One reason for that is because too many people keep applying the same approach to their essay writing of issue spotting and rule recitation. Now, if you change that approach, what we've discovered over a couple of decades is that you kept much better results for people, particularly repeat bar takers, because now what you're doing is really demonstrating the skill that the examiners want to see on an essay and not the ability to memorize and recite.

[00:08:30] Now, having said that, and having invited you into that thought reversal process for just a few minutes, what I want to do is actually take an actual bar exam question that comes from the uniform bar exam. So it's a licensed question to us, and I want to break it down and show you what happens under both of these forms.

[00:08:47] In other words, we're going to look at our approach of fact driven analysis, and then we're also going to look at the traditional IRAC approach and show you how you would approach these questions in those two ways and why they're different and why one, I think is significantly better than the other.

[00:09:05] Now, if you're just listening to this discussion, I will read the question out loud to you, but I strongly suggest that you watch the video so that you can see the words for yourself and see what we're doing with them and how we put them together. I'm not going to be writing out an essay for you in either IRAC or in our writing style.

[00:09:21] That's not my goal today. What I want to do is focus primarily on one aspect of the writing, which is the law and argumentation piece, and the reason for that is that that's where most of this thought reversal has to happen. So what we're going to do is take a moment and then we'll go through this question together.

[00:09:36] I'll read it out loud. I'll tell you what I think is important from our standpoint, and then we'll go into the preparation, particularly of the law and the argument. Okay? Now, what you should be seeing on the screen if you're watching is an evidence essay from the uniform bar exam. So we're using an actual question and we're not going to take every part of the question. We're not going to do everything with the question. We just want to make the point about thought reversal for essay writing. So I'm going to read it and annotate a little bit as we go through with you. So it's an evidence essay question, and it starts out this way.

[00:10:10] Six months ago, a woman was taken to a hospital following what she alleged was the sexual assault by a man during a fraternity party. The woman and the man were both seniors attending the college where the party was held. At the time of the alleged assault, the hospital's policy required that in all cases of alleged or suspected sexual assault, non-emergency patients must be interviewed by a victim counselor.

[00:10:32] Before receiving medical treatment, the woman was deemed a non-emergency patient and was told to wait in the waiting room to see a victim counselor. Three hours later, the victim counselor finally interviewed the woman. Thereafter hospital personnel treated the woman for her injuries and sent her home.

[00:10:50] I'm going to stop right there for just a minute. There's a couple of things to be aware of here. First of all, we've got obviously a woman. We've got a hospital. There's been a suspected sexual assault. And I suppose I should've said this might've been a trigger warning, but this is an actual question, so I wanted to give it to you pretty much the way that it comes from the bar exam, in fact, exactly the way it comes from the bar examiners.

[00:11:13] Now, I think it's important as you're reading this, you don't want to over do this in terms of trying to issue spot. We're going to show you what an issue spotter would do with it, in our second go round. But for right now, as I'm reading about it one of the first things that I note is that there's a hospital's policy, and I want to be aware of that policy, and, talking about what the policy might be.

[00:11:35] And so I might just underline that. and then, we're, we're going to continue to move through the question. So let's continue on. There was no contact between the woman and the man until one week later when the man sent the woman a text message on her cell phone. The text message said, if you're upset about what happened, I can send you a check for \$10,000 to help you forget the whole thing.

[00:11:59] I can also pay any medical expenses. The woman didn't respond. So what we've got here is a text message and some sort of an offer. Then four months after the alleged assault, the woman contacted a lawyer and she filed a civil action. That's going to be important to us against the man and the hospital.

[00:12:19] She sought damages from the man for physical injuries. According to the woman, these injuries were especially traumatic because of her belief in sexual abstinence before marriage and her lack of prior sexual experience. She sought damages from the hospital for exacerbating her injuries by negligently delaying her medical treatment.

[00:12:38] All right, so we've got the framework. Now it's a civil case. There's going to be a case against the man and against the hospital. So those are our two defendants. All right. Next paragraph says, the man filed an answer admitting that he had had sexual relations with the woman, but asserting that they were consensual.

[00:12:56] In its answer, the hospital denied that its conduct had exacerbated the woman's injuries. So now we've got our two replies. Immediately after filing the answer, the hospital contacted the woman and it offered to settle the claim for \$5,000. The woman refused the hospital's offer. So we have an offer to settle.

[00:13:15] Next paragraph. Five weeks after the woman filed her suit, the hospital changed its policy on dealing with sexual assault victims to provide that in all cases of alleged or suspected sexual assault, immediate medical care will be provided to emergency and non emergency patients. So now we've got a change in the policy post lawsuit.

[00:13:38] Next paragraph says, the woman's suit against the man in the hospital is now set for trial. And the trial and the following properly filed motions are before the court. And now we have four motions, with some sub-parts to them. So let's just look at those before we've done anything.

[00:13:53] Now, I haven't noticed at this point, I haven't really tried to issue spot or do anything, really, other than identifying the facts of the problem. So we've got four calls of the question broadly. The first one is the hospital's motion to exclude evidence of its new policy providing immediate medical treatment to emergency and non-emergency patients in all cases of alleged or suspected sexual assault.

[00:14:16] So the first motion has to do with, excluding evidence of the new policy. The second motion is the hospital's motion to exclude evidence of its offer to settle. Okay. The third has got two parts to it. The first is the man's motion to exclude evidence of his offer to pay the woman \$10,000 and then the second is his offer to pay the woman's medical expenses.

[00:14:42] And then the fourth one is the man's motion to admit evidence that the woman had sexual relations with another student during her junior year. All right, so now those are the four, questions. So really with that subpart in in section three, we've got five questions. All right? With that question in front of us, now I want to do the process of.

[00:15:02] A thought reversal, if you will, to talk about what's important and how we want to analyze this rather than just simply a stab at it as an issue. Spotting a memory recitation, exercise. So having read the question, now what I want to do is try to briefly compare for you the way that an issue spotter, a traditional bar taker would answer a question and the way that a thought reversal student a using this different approach that we've been talking about. An intuitive student might approach the same parts of it, and as I said, I'm not going to try and go through the entire question and write it all out. I just want to give you the core of the arguments and try and make the distinction.

[00:15:46] You'll recall that in the first part of the question, we've got a motion to exclude evidence of a subsequent remedial measure. Now I first want to show you what happens in the approach that we, encourage in which we are doing a fact driven analysis. I'm just going to call that an FDA. It's not a governmental agency, but you get the idea.

[00:16:04] This is a knowledge based approach. In doing that, the first thing that we want to do in this very first section here under the motion, is that we want to make the arguments that each party would make, and these are really fact-based arguments. The first argument from the hospital is that, the evidence of their change in their policy would be prejudicial if that were admitted into trial.

[00:16:28] And that's the basic argument that they're making. Now, our approach is that once you've made the argument, the second thing you want to do is to focus on, the law, the reason for that argument, the core, support for that argument. And so we identify that just with this arrow that you see right here.

[00:16:45] And the policy or the law would be that a subsequent remedial measures should be kept out of evidence because they're prejudicial. I mean, that's the, the basics of it. I don't have to know the rule number. I don't have to know the details or the specifics. It's just the, what the law would have to say to support that particular, idea.

[00:17:04] Now I go to the other side of the dispute to the woman's argument, and she would say, well, this evidence of the subsequent remedial measure is relevant to the claim that I'm making, and it's evidence of wrongdoing on the part of the hospital. That's the argument. That's the, the approach that would be made about why you should admit this evidence.

[00:17:24] Now, what would the law have to say in order to support her argument. Well, if I were thinking about it, I guess I'd say we want all relevant information that helps the FactFinder. So again, we want to be giving that as our general rule. Now you notice what we've done here is to set up two rules, that are in very broad, generalized terms.

[00:17:43] The next step in the intuitive approach to writing is simply to reach a conclusion. Who wins and why? And here, I would say that if we're talking about factor of an analysis that FDA that we talked about, it's good public policy for wrong doors to fix their mistakes. We'd like that, and introducing evidence that they've done.

[00:18:01] So, that would certainly hurt, hurt them in terms of trial so we want to discourage that activity. So therefore, that evidence should be excluded. Now, that's all common sense and I think most of you could answer that pretty clearly. You didn't have to know any rules, any specific information. It just makes sense and it flows.

[00:18:20] All right, well, what happens when we get to what the issue spotters are trying to do? Well, here I think we've got a slightly different problem. Now the issue spotter, I think, who's over here is going to say, well, I want to be talking about what these issues might be and when I see subsequent remedial measure.

[00:18:39] Then I've got to know that that's rule 407 because the way that the issue spotter has learned is through memorization. And so they've memorized each of these rules. So rule 407 what are all the things related to subsequent remedial measures? And so the rule follower, the members, the memorizer says, what does that rule say?

[00:18:57] What are all the elements of that rule? And that obviously means what are the exceptions. But it also, it eliminates any arguments. It's simply, here's the rule. So the issue spotter would say, well, the issue is subsequent remedial measures. Here's what rule 407 says, here are all the exceptions to 407 and then reach a conclusion about whether or not 407 applies or not.

[00:19:19] Now notice that we're going to come out with essentially the same result in both of those circumstances. In both cases, I think we're going to say that, it's, the, this evidence of a subsequent remedial measure should be excluded. But notice the work that the issue spotter had to do. They had to work from what they had memorized.

[00:19:37] What if you didn't know rule 407. And I'm not saying you had to know the rule number, but what if you didn't know that rule word for word or very close? I think you're in trouble here because you notice there are absolutely no arguments. There's nothing that's driven from the facts. It's all built from the law down.

[00:19:52] So essentially you're putting the law up here and then you're driving down, to the conclusion. Whereas in our approach, we're trying to drive from, the facts at the bottom down here. Up to the conclusion. So you can see this is the two different approaches and why I think they're so different and so difficult.

[00:20:13] I think for most people to understand what works best. and in terms of the writing, I would say it's a lot easier to argue from the facts and make the arguments than it is to say, did you know rule 407 and if I had started by saying, do you know rule 407 or do you know the rule about subsequent remedial measures?

[00:20:28] I think most of you would have gulped a little bit. That's a tough thing to be able to do. All right, let's look at the second problem then we've got, which is the motion to exclude evidence of an offer to settle. Now, here's an interesting thing that happens when we consider this from the idea of a fact driven approach.

[00:20:46] We noticed that really the arguments are very, very similar to the arguments that we made up above the hospital would argue it's prejudicial to the fact finder. and the woman would argue that the evidence is relevant to the claim and evidence of wrongdoing. Same arguments that we had before. The difference was before we were talking about a subsequent remedial measure right up here, but now we're talking about an offer to settle.

[00:21:09] Now, because of that, the rule or the law that we want is going to also look pretty similar. The hospital's argument is, look, the law would say, we want to not introduce offers to settle, because that would be bad public policy and the woman would argue what we want, all the relevant information that helps the fact finder.

[00:21:28] When we get to the factor of an analysis, well, we want parties to settle and introducing evidence that would discourage that activity should not be done. Pretty straight forward application and pretty easy to write because you've already put together the structure in the first section. Now here's the point I really want to make.

[00:21:46] If you're an issue spotter, you don't get to take advantage of any of that because if you're an issue spotter, what you're doing is you're saying, Oh, offers to settle. That's rule 408 and that's a different rule. And I got to now know a completely different rule. So I knew rule 407 up here, but now I also have to know rule 408 and that is a different set of information and I've got to start all over again.

[00:22:09] Again, with the exceptions, and the, and the, all of the details of the rule. Now in my mind, that's a lot more difficult to know those two rules than to simply go, the logic of the argument already exists. And again, if you're going from the law and driving down, if you don't know the law, you're in trouble.

[00:22:25] So what's rule 408 say, so now I've got to know the offers to settle rule, and I've got to know if that's different than the, the, the decision up here on a subsequent remedial measures. So my point is that while you'll end up in the same place, you've got to do a lot more work if you are working through a recitation of rules and a spotting of issues.

[00:22:45] And I haven't even gotten to the point of talking about whether or not there are other issues you might've discussed in these two first questions. Like, is there a different set of rules for hospitals because they're nonprofit or because they have a higher standard of care or, you know, is there some difference with respect to the amount of the, the settlement offer or the claim or the distinctness of the remedy?

[00:23:05] We didn't go to into any of those things, but I have seen answers from issue spotters to try to move into those areas. So I think it's just much more difficult to write in that way. All right, we'll move on quickly. Motion three was the motion to exclude the evidence of the man's offer to pay \$10,000 to woman.

[00:23:21] Remember, he does this in a text that he sends, and so the man's argument is that the settlement offer should be excluded. why? Well, I think he would say in terms of the law offers to settle or an unmissable. Remember, we've already done that analysis up here, didn't we, when we talked about the offer to settle in section two.

[00:23:38] So we don't have to rethink that. We don't have to come up with a brand new rule. Now the woman's argument is, well, no, this offer was relevant and it was made prior to her ever filing the suit. So it's really not an offer to settle at all. So factually, it's not an offer to settle and want you to get that distinction because it's factually not an offer to settle.

[00:23:57] Since there was no lawsuit, a lot of issues, butters missed this entirely. They just see offered to settle and they jump all over it. So the offer to settle before a lawsuit would be admissible. That would be the law. That would have to be in effect in order for her claim to prevail. Now, it may be that you don't know if that's true or not, but that is what the law would have to say if she's going to be successful.

[00:24:19] When we get to the, conclusion, or analysis. What we would say is there's no dispute at the time that he made the offer, so that offered. There's no reason for that offer to be excluded, and that's going to be the correct answer. All right, but now let's look at what happens if you are trying to recite rules at this point.

[00:24:40] What you have to know is that rule 408 comes in, right? We still have the offer to settle, but now we have to know. We were said we needed to know the exceptions before. Well, now we have to know it for sure. If it's prior to a lawsuit, then, the disputed claim is going to be applied. So because the offer was made before a lawsuit.

[00:24:59] The claim comes in. We ended up in the same spot, but again, you had to get there if you were a memorizer. By knowing that exception, if you weren't a memorizer, you could get there because common sense of logic tells you that he can't make an offer to settle before she's filed a lawsuit. Maybe she's not going to do anything at all.

[00:25:16] He doesn't know that, and so it makes a lot more sense to exclude the evidence based on that first line of analysis and it's got arguments in it than it is to sit there and say what's far away and say, and what are all the relevant exceptions. I hope this is beginning to make sense to you that if you've been working from an issue spotting rule memorization

standpoint, you're actually doing a lot more work than someone's just letting the facts lead them into the answer itself.

[00:25:42] All right. Section four, which is really three B, if you want, was the offer the man's offer to pay medical expenses. Now, again, if we're doing it in the intuitive method, the man's argument is that the settlement offer should be excluded. I mean, he's making an offer to pay medical expenses. That's a settlement offer.

[00:25:59] And therefore, the rule would be that offers to pay medical expenses, art in admissible. What's the woman's argument? Well, she'd say, well, it's relevant. And again, it was made prior to her filing any lawsuit. And so the law for her would have to say that an offer to make a payment before a lawsuit would be admissible as evidence of wrongdoing.

[00:26:20] All right. Now what do we do with that? Well, fact-driven analysis would tell us that an offer to pay medical expenses seems like something other than an offer to settle. and that, this situation, when we've got an offer to, pay expenses, it seems like that's, we don't need to have a lawsuit in place and therefore, whether it's been filed or not, I think it's going to be an admissible because that seems like it's prejudicial, right?

[00:26:48] So in this situation, when he said, I'm going to give you \$10,000, maybe given her \$10,000, cause he really likes her, but the offer to pay medical expenses looks like it's prejudicial and there's no requirement of a lawsuit having been filed. Now notice what happens here. If you are a, rural memorizer issue spotter, at this point, you got to be looking over to rule 409, and you might be saying rule 409, what the heck is that?

[00:27:17] Well, rule 409 is the one that, would probably apply here because it doesn't have the same requirement as 408. that don't allow offers made after a disputed claim arises. So 409 is our rule that says, we exclude evidence of offering to pay medical expenses. So that's medical expenses rule.

[00:27:36] And now I've got to know that rule and then I got to know that it doesn't apply because I've got to know the exceptions. That's a lot of work, folks. I mean, look what you've had to do so far. You've had to figure out rule 407 408 and now 409 all flowing through and then figuring out which applies and doesn't apply and what the exceptions are.

[00:27:55] But remember, when I made the intuitive argument, I didn't have to know any of those rules. It was pretty straight forward to say, yeah, you know, he wants it kept out. She wants it in. Why does she want it in? Because she thinks it would be, damning to him. yeah, it probably would. So much so that we don't want it in because we want him to pay the medical expenses paying \$10,000.

[00:28:14] That looks different. And that's the distinction. All right. Last one here, is an interesting question. Question five is the motion to admit evidence of the woman's prior sexual relations. Now, the woman's going to argue that she's a victim and therefore her sexual history is in admissible. That sounds pretty good.

[00:28:31] What would the law have to say? Well, the law would be the rape shield rule that says we don't want to put victims on trial. The man's argument, however, is this is a civil case

and that's in the fact pattern. It tells us very clearly that this is a civil case. And he would say, since the woman's claim was that this dealt with her sexual history, and that she had a lack of sexual experience, therefore, this is going to be relevant. And he would say, ah, that's relevant to her claim to put that evidence in. What would the rule or the law have to say that the probative value outweighs the harm? It's important to know of this evidence. That's his argument.

[00:29:17] All right, so when we do a factor of an analysis, what's that mean? Well, the claim that she's making is based on her damages from a lack of sexual experience. Therefore, that evidence is relevant and it should be admitted. Now that's where we go fact-driven analysis. If you're a rule follower, an issue spotter, ah, you've got a different problem.

[00:29:37] Your problem is that you better know rule 412, which is the appropriate a rule here, barring the admission of evidence, of alleged victim's sexual experience, that is the rule, but there is a huge, huge caveat in rule 412 and that is it only applies in criminal cases. So now in that circumstance, you have to know that exception or you're going to miss this.

[00:29:58] And I've seen lots of answers that rely on rule 412 talk about the rape shield wall and go long depth discussions. All the while missing the fact that this was a civil case. And where did you find out it was a civil case from the facts, not from the memorized rule. And I think that's really the point I want to make, is that this came from the facts.

[00:30:19] This came from the rule. And when you're trying to work from the facts, they're right in front of you. When you're trying to work from the rule, that's what you pulled up from your brain. So the net effect of this is that you end up doing all of this work, in each of these rules. 407, 408, 409, 412, you've got to know all of those. If you're an issue spotter and a rule a memorizer, if on the other hand, you're just using your knowledge. If you're using that waterfall in your brain, then your factor of an analysis comes from the facts that come from the fact pattern itself. They help drive it and create the arguments and then allow you to write the arguments there.

[00:30:57] But where does that leave us when it comes to writing essays? Well, you could get to the writing answer as an issue spotter. People do, but recognize the amount of work that the issue spotter had to do if they stayed focused just on these disputes and remembering that most issue spotters tend to stray and create sort of marginal straw man arguments as well.

[00:31:17] But even if our issue spotting example, stay just on these particular problems that I've identified, I think it's far more work to have memorized. Rule 407 408 409 and 412 plus all the exceptions. I didn't have to memorize any of those to answer the question intuitively.

[00:31:33] And so it goes back to our original description of the empty bucket versus the waterfall. If you're an issue spotter, you better fill up your bucket with all those rules, having memorized them and remembered them, and you better hope that there are no big holes in your bucket so that all that information drops out as soon as you put it in.

[00:31:50] On the other hand, if you're using the human potential view of a waterfall, you already know the information. And once you, in effect, activate it through the fact pattern,

through the information that you're being given in the details and the facts, you have the ability to apply that in a much more systemic and straight forward way.

[00:32:08] You end up with the same conclusion in each one of those five items, we reached the same result. But the way that we get there as an issue spotter is so different than the way we get there, when we're doing factor of an analysis. So I think the takeaway for anyone that's considering this, this idea of thought reversal is that instead of forcing yourself to do all this extra work and then hoping that your bucket doesn't have too many holes, or they're not too big, or you can keep pouring more water in faster than it can leak out, instead of that, try taking what you already know and applying it to the problem in front of you, to create this, argument driven fact-based analysis.

[00:32:45] When you do that, your writing gets much better. No. In our course, we show you how to do that, in a very straightforward way, step-by-step, actual paragraphing structure and so on. Today, all I wanted to do was to explore the concept, to help give you an idea of comparing of the two areas, one against the other.

[00:33:04] I hope this is helpful to you. Look forward to sharing with you some other thought reversal ideas in the near future and, wish you well as you write your essays. Well, I hope that information was helpful for you today and encourage you really as you get into your essay writing a to use your intuitive faculties to let that factor of an analysis drive and guide you rather than trying to work from memorization and issue spotting and rule recitation.

[00:33:30] Now, I promised you right before we jumped into today's message that we had a special offer. For those of you who are taking the exam in July of 2020 or later, we're offering a free 90 minute training program called Do Something Different: Make the NEXT Bar Exam Your LAST Bar Exam. This is a look at the four steps that successful bar takers follow in order to pass their exams.

[00:33:51] You'll hear from repeat bar takers who saw increases of 10 20, 30, 40 points and more on their bar exams by doing the things that we're describing. This training webinars completely free and best of all, I think is that you can schedule it for the day and time that's most convenient for you. So it's an on demand presentation and you do need to register and you can do that by going to the show notes on the video page here or the audio page, or by going to celebrationbarreview.com/webinar and you can register there.

[00:34:22] Then you select the date and time that you want to watch. Jump in and if you've got any questions during the webinar, you'll be provided a way to send those to us directly and we'll be glad to respond. I think you'll find this information as life changing. I think it can show you a very clear way to get through the study process in the pasture bar exam to take advantage of some of the thought reversals we've been talking about.

[00:34:43] It's completely free and we really encourage you to join us for Do Something Different:. Make the next bar exam your last bar exam. All right, well that's it for this episode of the extra mile. When we come to you next week, a bunch of you are going to actually be in taking your tests. so we wish you all safe travels to your test site.

[00:35:01] We wish for great studies, this week and a great, two or three days of testing, whatever it might be for you. do a great job. We know you will. We've been excited to have you with us. for these episodes, we'll come back afterwards, talking about what we've heard from the exam sites, and then starting to point towards the July exams and, results obviously as they come out after the February exam.

[00:35:23] So best wishes to everybody, have a great week and have a great exam for those of you taking the test next week. Bye for now.