



2006

Pass the bar!

Denise Riebe
Brooklyn Law School

Michael Hunter Schwartz
University of the Pacific, McGeorge School of Law, mschwartz@pacific.edu

Follow this and additional works at: <https://scholarlycommons.pacific.edu/facultybooks>

 Part of the [Legal Education Commons](#)

Recommended Citation

Riebe, Denise and Schwartz, Michael Hunter, "Pass the bar!" (2006). *McGeorge School of Law Scholarly Books*. 24.
<https://scholarlycommons.pacific.edu/facultybooks/24>

This Book is brought to you for free and open access by the McGeorge School of Law Faculty Scholarship at Scholarly Commons. It has been accepted for inclusion in McGeorge School of Law Scholarly Books by an authorized administrator of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

PASS THE BAR!

Copyright © 2006
Denise Riebe and Michael Hunter Schwartz
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Riebe, Denise.

Pass the bar / by Denise Riebe, Michael Hunter Schwartz.

p. cm.

Includes bibliographical references and index.

ISBN 1-59460-165-8 (alk. paper)

1. Bar examinations--United States. I. Schwartz, Michael Hunter. II. Title.

KF303.R54 2006

340.076--dc22

2005034209

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America
Cover Illustration: Bruno Budrovic © images.com/Veer

PASS THE BAR!

Denise Riebe

DUKE UNIVERSITY SCHOOL OF LAW

Michael Hunter Schwartz

CHARLESTON SCHOOL OF LAW

CAROLINA ACADEMIC PRESS

Durham, North Carolina

CONTENTS

| | |
|------------------|------|
| Acknowledgements | ix |
| Foreword | xiii |
| Preface | xv |

PART ONE Bar Exam Preliminaries

| | |
|--|----|
| Chapter 1 What Are “Bar Exams” and Why Are They So Hard? | 3 |
| Chapter 2 Action Plan Checklists | 7 |
| Chapter 3 Staying Positive: Increasing Your Likelihood of Passing Your Bar Exam by Managing Your Mood, Attitude, and Stress | 17 |
| Chapter 4 Preparing Your Significant Others for the Bar Exam | 29 |

PART TWO Licensing Requirements, Your Bar Exam, and Bar Review Courses

| | |
|--|----|
| Chapter 5 Bar Exam Components | 39 |
| Chapter 6 Carefully Selecting Your Bar Exam State | 49 |
| Chapter 7 Obtaining Licensing Information for Your State | 55 |
| Chapter 8 Bar Review Courses | 63 |

PART THREE
Planning to Pass Your Bar Exam

| | |
|---|----|
| Chapter 9 | |
| Bar Exam Statistics and Individual Risk Factors for Not Passing the Bar | 71 |
| Chapter 10 | |
| Your Winning Game Plan | 77 |

PART FOUR
Expert Study Strategies

| | |
|--|-----|
| Chapter 11 | |
| The Knowledge and Skills You Bring to Your Bar Study | 87 |
| Chapter 12 | |
| Your Study Strategies Should Change Over Time | 91 |
| Chapter 13 | |
| Expert Study Strategies for Substantive Law | 95 |
| Chapter 14 | |
| Doing Practice Exam Questions for Your Multistate Bar Exam | 125 |
| Chapter 15 | |
| Doing Practice Exam Questions for Your Essay Exam | 141 |
| Chapter 16 | |
| Doing Practice Exam Questions for Your Performance Exam | 179 |
| Chapter 17 | |
| Putting it all Together: Your Individualized Study Plan | 205 |
| Chapter 18 | |
| “What-ifs”: Dealing with an Unexpected Crisis During Your Preparation Period | 213 |

PART FIVE
Taking Your Bar Exam and More

| | |
|---|-----|
| Chapter 19 | |
| Taking Your Bar Exam | 221 |
| Chapter 20 | |
| Getting Licensed in More Than One State | 227 |

| | |
|----------------------|-----|
| Chapter 21 | |
| Repeating a Bar Exam | 229 |
| Final Words | 235 |

APPENDICES

| | |
|--------------------------------------|-----|
| Appendix A | |
| National Conference of Bar Examiners | 239 |
| Appendix B | |
| State Licensing Offices | 241 |
| Appendix C | |
| More Bar Preparation Resources | 243 |
| Appendix D | |
| Answers to Sample MBE Questions | 245 |
| Appendix E | |
| Answers to Sample MPRE Questions | 247 |
| Appendix F | |
| Sample Answers to Essay Questions | 249 |
| Appendix G | |
| MPT Point Sheet for Sample Question | 305 |
| Appendix H | |
| More Practice Questions | 311 |
| Index | 319 |

ACKNOWLEDGEMENTS

This text reflects a forty-year journey, between the two of us, in the legal profession: becoming lawyers, practicing law, teaching at law schools, and working with law students. We feel grateful that we've had such interesting and fulfilling career experiences, and that our paths intersected (by coincidence, over the Internet) to produce this text as collaborators. We would like to thank the numerous individuals and institutions that have supported us as individuals as well as the publication of this text.

Professor Riebe

It's fascinating to witness a variety of professional and life experiences merge to produce a text such as *Pass the Bar!* I'm grateful for the widespread support I've received for this project, and I'd like to thank everyone who has supported my efforts.

Thanks first to my family: my husband, Mike, and our wonderful daughters, Elizabeth and Hannah. It's my hope that Elizabeth and Hannah will both become engaged learners whose lives are enriched by life-long learning, and that they'll find in their careers the level of satisfaction I've experienced coaching students.

Second, thanks to my extended family: my mother and father, Duane and Ruth Daggett; my second set of parents, Ken and Elaine Riebe; my siblings, Dave Daggett, Dawn Brackmann, Danielle Shealy, and Darci Grady, and their families; and Ann Robertson, Coleen Miller, and Chris McLeod, three amazing women who have had a significant impact on my life.

Third, I wish to thank my professional mentors and colleagues. I am fortunate to live in an area with several excellent law schools, and especially fortunate to have the opportunity to teach at two of them: Duke University School of Law in Durham, North Carolina, and the University of North Carolina School of Law ("UNC") in Chapel Hill, North Carolina.

I would like to thank my Duke colleagues for their encouragement and support: Professor Sara Beale, Professor Tom Metzloff, Dean Theresa Newman, Dean Jill Miller, Dean Bruce Elvin, Professor Diane Dimond, Professor Hans Linnartz, Professor Sarah Ludington, Professor Joan Magat, Professor JoAnn Ragazzo, and my assistant, Eileen Wojciechowski.

Also, thanks to my UNC colleagues. Professor Ruth Ann McKinney at UNC is the person who first recommended that I write a book about the bar exam. She is an immensely wise woman, was my first and most influential mentor, and is a wonderful colleague and friend. I also thank my other colleagues at UNC who have supported my professional efforts: Dean Gail Agrawal, Dean Sylvia Novinsky, and Professor Bobbi Boyd.

Next, I thank my coauthor, Michael Schwartz, an incredibly caring and talented professional who is deeply committed to academic success and who has a positive effect on all those with whom he interacts. I feel fortunate that I met you, am grateful that you were willing to be my collaborator, and thank you for teaching me so much about educational theory.

Finally, I thank my students—the reason I teach. I'm grateful to have worked with many bright, enthusiastic, and energetic students who I am confident will make significant contributions during their legal careers. Special thanks to my students who have taken the time to read and edit the manuscript for our text: Brian Berman, Jeff Goldman, Chris Hart, Heather Howard, Matt Leerberg, Alyssa Rower, and Britt Whitesell. I'm confident they'll pass the bar as well as set new ones in their legal careers.

Professor Schwartz

The opportunity to write a set of acknowledgements daunts me because of the difficulty of including everyone who has influenced my life and work. But I also enjoy the process because it gives me perspective. So, here goes.

Thanks to my wife Stacey, who is not only the best editor I know but is also the best advisor, wife, friend, and person I know. Every time I have listened to you, good things have happened. I hope I keep paying attention. Thanks also to my daughters, Kendra and Samantha; you inspire me in every way—to try to be the best father, teacher, and man I can be.

I thank my mom, Alice Gokkes, for teaching me to care so much about the people who mean something to me and my father, Albert Schwartz, whose model of how to be a spouse, a father, and a man I have adopted without reserve. I also thank my siblings, Jackie, Terry, Gail, and Steve and my stepfather, Harry, for supporting me and my career, even when my career caused me to move 3,000 miles away.

Thanks also go in many professional directions. Thanks to my former colleagues at Western State University School of Law; I know of no faculty that is more committed to the success of its students. In particular, I thank Susan Keller, whom I still regard as a mentor and the legal thinker I hope someday to be. Her insights into legal learning in general and about the bar exam in particular influence me in ways so numerous and varied that I can no longer trace all of them.

Thanks also to my new colleagues at Charleston School of Law. I feel lucky to be joining a group I admire so much. Thanks also to three deans, Dennis Honabach, one of the smartest people I have ever met, Maryann Jones, one of the most dedicated and hardest-working people in legal education, and Richard Gershon, for whom I'd gladly work at any job.

Professional (and personal) thanks also are due Professor Jan Heck, who started me on the path that has given me a career I never anticipated. I also wish to acknowledge the professional and personal inspiration of Professors Gerry Hess, Vernellia Randall, Paula Lustbader, Alice Thomas, Ruth Ann McKinney, Barbara Glesner-Fines, Sophie Sparrow, Carole Buckner, Roy Stuckey, Laura Rovner, Larry Krieger, and Justine Dunlap.

Thanks also to my many students over my thirteen years in teaching. I remain amazed to be paid to have the opportunity to teach and learn from you.

Finally, thanks to my coauthor and friend, Denise Riebe. I greatly admire your insight, intelligence, thoughtfulness, and diligence, and I greatly value your kindness, sense of humor, patience, and wonderful listening skills.

Professors Riebe and Schwartz

We thank all of the professors working in academic success programs at law schools across the nation, an incredibly dedicated group of professionals who have a positive impact in the lives of thousands of law students. Since we undertook writing this text, we've had widespread support from academic success professionals—including colleagues we've met at conferences and others we've never met in person who have sent us e-mails congratulating us on our publication contract and expressing their interest in our work.

We extend special thanks to two of these professional colleagues who volunteered to review our text before publication: Nancy Luebbert, Director of the Academic Support Program at the University of Idaho College of Law in Moscow, Idaho, and Emmeline Reeves, Associate Professor for Academic Success at the University of Richmond School of Law in Richmond, Virginia.

We also thank our publisher, Carolina Academic Press, our primary contact, Robert Conrow, Jennifer Gilchrist, and Erin Ehman for making the publication of our text a reality.

Further, we thank the Law School Admissions Council ("LSAC") and the American Bar Association ("ABA"). As organizations, both the LSAC and the ABA have recognized the obligation that legal educators have to assist students in passing their bar exams and becoming practicing lawyers, and the link between bar passage efforts and student recruitment, retention, placement, and increasing the diversity of our profession. We especially thank Kent Lollis, Associate Executive Director and Assistant to the President for Minority Affairs at the LSAC, a committed professional who spearheads numerous projects to increase the effectiveness of legal education and to increase the diversity of the profession.

—Denise Riebe

—Michael Hunter Schwartz

August 2005

FOREWORD

Once in awhile, the perfect book comes along at the perfect time. *Pass the Bar!* is just such a book, arriving at an ideal time to help law students and legal educators get a grip on how to maximize each student's chance for success on the bar exam in the jurisdiction of his or her choice.

In their Introduction, the authors accurately refer to the bar exam as the “last hurdle” in a student's quest to become a licensed attorney. The approach the authors take to help a student clear this hurdle is both logical and powerful, and would immediately enhance any bar taker's chances of success. Beginning with critical background information about the application and examination process, the book moves to foundational educational principles that will increase the student's ability to learn effectively, and then to concrete strategies each student can use profitably to approach multiple-choice, essay, and performance questions with confidence. While this book would be useful at any point in a student's legal education, it would be particularly valuable to rising third-year law students who are facing the reality of a bar exam within a year.

Each chapter contains core concepts that are followed by reflection questions and hands-on exercises that pull the reader into the subject at hand. These questions and exercises turn what might otherwise be an overwhelming sea of information into useful knowledge that is personally meaningful to each reader. Rooted in active learning principles, the book could easily be used as a self-instructional guide by individual students seeking answers to their bar exam questions.

And while the book is an empowering self-instructional tool, it lends itself equally well to use in a group or classroom setting. For many learning styles, there is strength in numbers. The synergy created by a group of students who choose to go through the chapters together, or in a classroom led by an experienced law professor, would enhance the learning of each group participant. In any case, the tone of the book is so congenial and the information so accessible that each reader—whether working in a group or working alone—will develop a sense of personal engagement with the authors throughout the book.

The powerful impact of this book's logical structure should come as no surprise. The authors are experienced legal educators with shared expertise in bar preparation and legal learning. After graduating with honors and law review credentials from Wake Forest University School of Law, Professor Denise Riebe began her career practicing in an international law firm and then became the regional director for a commercial bar review company. Later, she moved into legal education, earning high student praise as an adjunct professor here at the University of North Carolina School of Law before moving to a position at Duke University School of Law. Professor Michael Hunter Schwartz has been a law professor for over thirteen years and has specific expertise in law student learning and law school teaching. Recently, he published *Expert Learning for*

Law Students, a book that has its roots in self-regulated learning theory and in his practical expertise as director of the STELLAR™ law student program at Western State University College of Law in Fullerton, California, a highly successful academic support and bar preparation program.

Pass the Bar! gives every law student—and every legal educator working with students—a tool that can be used to help students clear the last hurdle in the race they began when they started law school. Rather than facing that hurdle uncertain and alone, any student can now approach this challenge with confidence and with a coach by his or her side. It is a book I will recommend happily to generations of students as they gather their energy to cross the finish line in this important and challenging race.

—Professor Ruth Ann McKinney
Director, The Writing & Learning Resources Center
The University of North Carolina School of Law
Chapel Hill, North Carolina

PREFACE

The time for your bar exam—the final hurdle for obtaining your law license and becoming a licensed attorney—is drawing near. If you’re like most students, you’re feeling some apprehension about, and aren’t looking forward to, the bar exam—and for good reason: there’s a lot at stake! The good news is that by understanding the bar review and bar exam process, making strategic studying decisions, and following a smart study plan, you can pass the bar. That’s what this book will help you do.

So, what do we know? And why should you believe that we can help you pass the bar?

Professor Riebe’s first contact with a bar exam was taking—and passing!—the Virginia bar exam in 1986. After practicing for two years with a large, international firm, she moved to North Carolina and sat for—and passed!—the North Carolina bar exam. Then she became the North Carolina Director for Bar/Bri, a national bar review company.

In her role as the North Carolina Director of Bar/Bri, she inevitably met students who were unsuccessful on their bar exams. (We’ve yet to see a one hundred percent passage rate in any state.) Her heart went out to these students. After thousands of dollars and years of time invested in becoming attorneys, these students were devastated by their failure to pass their final hurdle to becoming licensed. Perhaps even more painful, it was a public failure—fellow students, friends, families, and employers all knew that these students, consistently high achievers, had “failed.”

Professor Riebe wanted to know what differentiated passers and “repeaters” (those failing their exams who would need to take the exams again), and she felt a personal obligation to help those who used her company’s products.

In 1994, she started informally meeting and talking with repeaters, debriefing them about their bar exam experiences, and trying to diagnose why they weren’t successful in passing their bar exams. She also started helping repeaters prepare to take the bar a second time—explaining the process and helping them with study plans and essay writing. And it worked. Despite the low passage rates that repeaters face,¹ a high percentage of the repeaters with whom she worked passed the bar on their next attempt.

Professor Riebe eventually left her job with Bar/Bri to teach at the University of North Carolina School of Law in Chapel Hill, North Carolina (“UNC”). At UNC, she had another opportunity to work with repeaters when the Director of the law school’s

1. Students repeating bar exams have significantly lower passage rates than first-time takers. See National Conference of Bar Examiners, *2004 Statistics*, THE BAR EXAMINER 10–12 (May 2005), available at www.ncbex.org/pubs/pdf/740205_2004statistics.pdf. For example, here are a few comparisons of passage rates for first-time takers and repeaters for the July 2004 bar exam: Alabama, 86% compared to 17%; Georgia, 87% compared to 29%; Michigan, 76% compared to 28%; and Maryland, 73% compared to 23%. *Id.* at 10–11.

Writing and Learning Resources Center invited her to help coach a group of students who were repeating their bar exams. At the same time, she started a consulting and coaching company, Pass the Bar![®], to provide individualized services to students preparing for bar exams.

Through her experiences with bar review courses, bar exams, consulting, and coaching students, Professor Riebe has developed a good sense of what separates passers from repeaters, and consequently what it takes to pass the bar. Since bar examiners keep most test results confidential, and usually only repeaters have a right to review their exams, her perspective is necessarily based on her first-hand experience. Her personal experience has been that, in most cases, not much separates passers and repeaters—just a little more work, information, or focus. What a shame, she thought, not to provide an early heads-up to save students the pain and price of failing.

Fortunately, the law schools where she teaches—she’s now a Senior Lecturing Fellow at Duke University School of Law in Durham, North Carolina, and still an adjunct professor at UNC’s School of Law—allow her to teach bar exam workshops to third-year students so they can start preparing themselves for the bar exam before their bar review courses begin.

Professor Schwartz also passed a bar exam on the first try—the dreaded California bar exam. He then practiced law for four years before becoming a law professor. He has taught law for thirteen years now, teaching many subjects that appear on bar exams (agency, contracts, corporations, criminal law, and remedies).

Six years ago, Professor Schwartz assumed responsibility for the academic support and bar passage programs at Western State University College of Law in Fullerton, California (“Western State”). He was drawn to this work by his interest in learning and his heartfelt belief that law school and bar passage failures are the result of curable problems, not lack of ability. Some of the curable problems include inappropriate study strategies, insufficient persistence, inadequate time management, inadequate stress management, insufficient motivation, and lack of self-confidence.

Accordingly, Professor Schwartz designed and implemented programs at Western State aimed at increasing his law school’s bar passage rate while reducing its academic attrition (“flunk-out”) rate. These programs have proven successful: even though student-entrance credentials did not change, and the first-year attrition rate decreased by 67.5%, approximately 35% more students passed their bar exams on their first attempts than had done so in the past.²

Professor Schwartz has also written extensively in the areas of law school teaching and learning methodology.³ His book, *Expert Learning for Law Students*, is designed to

2. When Professor Schwartz took over Western State’s academic support and bar passage programs, the law school’s bar passage rate was hovering around 34% (29% at its lowest point). Since then, the law school’s passage rate has steadily climbed (with the exception of some February bar exam deviations) as follows: 34% (July 2001), 43% (Feb. 2002), 44% (July 2002), 41% (Feb. 2003), 46% (July 2003), 40% (Feb. 2004), and 49% (July 2004).

3. See, e.g., MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* (2005); Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. D.C.L. L. REV. 447; Michael Hunter Schwartz, *Teaching Law By Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347 (2001). Professor Schwartz is also a member of the Steering Committee for the Clinical Legal Education Association’s monograph on legal education, *The Best Practices of Law Schools for Preparing Students to Practice Law* (forthcoming 2006).

teach first-year law students to learn successfully.⁴ In recent years, he has also given presentations about teaching and learning research to law faculties and at conferences across the country.

By sharing our expertise relating to research about how students learn and the bar exam process, we hope this book will help you maximize your chances of passing your bar exam. Specifically, our intent is to help you understand the bar review and bar exam process, develop realistic expectations about the process, and develop an individualized plan for success.

Although we designed this book to help you maximize your chances of success on your bar exam, passing your exam is up to you. It requires your own personal commitment to making your bar review and exam a priority. It's up to you to take on and tackle this process, and your level of motivation will be a primary factor in your success.

In addition to your level of motivation, your success will be determined by both your aptitude and level of optimism.⁵ Research demonstrates that aptitude is an imperfect predictor of success; pessimists drop below their potential and optimists exceed theirs.⁶ Thus, your level of optimism will be a key factor determining your success. Fortunately, as chapter 3 explains, optimism is a factor that you can completely control.

If you're committed to doing the best you can to succeed on your bar exam, where do you start and where do you go? Here's how we recommend you use this book: first, skim through the table of contents to obtain an understanding of its structure and topics covered. Then, read chapter 1 and look over the action plan checklists in chapter 2. Note which time frame you're in, and do the checklist items for that time frame. (Make sure to refer to the corresponding chapters because the checklists are just shorthand lists of items you need to accomplish).

Then, continue to proceed through the book. You'll notice that we've included many checklists and exercises throughout. We urge you to use them to integrate the information you've read. Educational research demonstrates that you'll be a more successful learner if you take the time to integrate information with active learning techniques like the ones we've provided throughout this text.⁷

Note that, as you work through this book, you'll likely find that many of the points made seem elementary. That's great, but please do not disregard them. Many students who are unsuccessful on their bar exams realize, in hindsight, that they've failed to understand fundamental points. One of our goals is to ensure that you understand the bar review and exam process on the front end—so that you don't miss any of the fundamental points that many students who fail their bar exams overlook.

Finally, remember: if you can get into and graduate from law school, you, too, can pass the bar! Whether you will is up to you.

GOOD LUCK!

4. Professor Schwartz's self-regulated learning book and articles have been required readings at law schools across the country, including Cleveland-Marshall College of Law in Cleveland, Ohio; Michigan State University College of Law in East Lansing, Michigan; University of Dayton School of Law in Dayton, Ohio; University of the District of Columbia David A. Clarke School of Law in Washington, D.C.; and Western State.

5. MARTIN E.P. SELIGMAN, *LEARNED OPTIMISM* 137, 154 (2d ed. 1998).

6. *Id.*

7. E.g., Alan K. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solvers*, 32 AKRON L. REV. 107, 116 (1999).

