taft law

Multistate baby bar e class

10/4/16 6:00 pm

INSTRUCTOR: We will be starting in approximately one minute. Good evening everybody and welcome to tonight's baby bar miniseries. Our focus tonight will be on multi-states and going back over it, giving you some rules you will be looking at and obviously how to attack the multiple choice questions. I want to point out these sessions are recorded so if you ever want to go back and listen to a session you can go to the Taft website, go to the student section and look for the baby bar miniseries and all the lectures are listed there for your convenience. I want to point out if there's anything ever emailed out to students everything is posted online as well for your convenience so you know which documentation you need in order to match the lecture.

All right let's get started focusing on the multiple choice questions. As you know previously, way back, right, over eight weeks ago when we first talked about multiple-choice questions I did tell you they are objective. Obviously objective multiple-choice exam where you have options to choose from, remember I did point out how the questions are mixed, so you will not get 33 torts and 33 contracts. They will be mixed amongst each other. You are going to have to determine what subject matter is being tested.

 Remember all the multiple-choice questions are worth the same value. So again, what does that mean? If you are having a harder time on one, mark something and come back to it. You don't want to run out of time on this exam because if you think I got them figured out but only got to question 70 we are in trouble because the probability of getting them all correct is not that high. So of course we want to make sure we get all the questions answered and you will have 100 multiple-choice questions, remember to take in the three-hour period.

The other thing I want to point out when talking to students this week is a couple things I noticed. Number one you should have a timepiece. There's no reason you shouldn't be getting a timepiece now out in front of you and start watching and monitoring your time. I've heard in the last couple days as well as the last couple weeks that people keep running out of time. Why don't you have a timepiece? You should have a timepiece and get used to glancing at it quickly to watch your time. You should have okay at .20 I should be here. Indicate that. What I would recommend on your timepiece, a lot of people cannot add and subtract under pressure of the exam, set it at 12 so you know that I have it from 12 to 3. You don't have to think much through it, you say when I see the handle my watch hitting three I know that my time is over. Make it simplistic for yourself.

 Also you should be using the timepiece on your essays. Make sure you are getting them done under time constraints because you will find that the three-hour Windows will be the fastest. And for the essay for the window it will be the fastest you have ever seen because you will be shocked that four hours went that fast. But it is your job to allocate your time. They are not going to say question one you should be done, go to question number two. They will not do that so I want you to be aware of it.

The other thing and talking to students about multi-states this week is I noticed some of them are telling me they are not marking them up. Just like you do on an essay I want you to take the time to market up and determine as to what is being tested. If it is a contract question and you say here's the preliminary renegotiation, was this the offer, that's when help you dictate as to what is being tested and what's at issue versus if you put it in your mind set and reading and be bopping through the facts most likely you will go to the second best answer choice because you have not really broken apart and really brought it to your mindset to really think about it. So I do want you to mark it up and start looking to what is being tested.

 Remember at this point in your studies you should obviously be preparing for the baby bar you should be doing multi-states daily. That's the only way you will get the condition to how they concept comes up, how they test and by learning by your mistakes. You need to concentrate on mastering how the legal concepts that are being tested. This is the only way you're going to be successful. In doing well on the exam.

 What does this mean? it is a game. You have to learn how to take multiple-choice questions. It's very specific and the only way to understand this is by taking them and how conspiracy or tacit agreement or feigned agreement is tested or understanding even though you might see a particular issue in a fact pattern the call took you somewhere else. And put something else at issue. You've got to be able to identify that and understand its importance. Obviously we are not going to do well if we don't.

 Remember, one word can change the whole answer choice. You need to understand again how these questions are answered.

 You also need to understand what the call is asking. So what is the defendants best defense? most likely looking for a way to get the defendant off, so you need to see what can I eliminate, maybe the element of the crime or is there a true defense. You have to pay attention to what they are asking for.

 Remember when reading a multiple state question read the facts carefully, do not make assumptions or take things for granted. The examiner knows that we do not read well. We are too much in a hurry with the time constraints so of course what are we going to do? they will set us up.

Look for operative language. The fact pattern turns unnatural facts and the details of the fact. Pay attention and do that. On these questions you have to make the distinction between relative facts, relevant facts and irrelevant facts. What is pertinent to whatever the call is asking you and you have to pull that out to determine the best answer choice.

When taking a multistate question remember always start with the call of the question or the stem. A lot of times this will near you down. You want to make sure you are answering the call. A lot of times the call will take us a different direction and we read the fact pattern and we didn't go back to the call and we answered it incorrectly. Pay attention to what is being asked.

The call of the question remember can narrow down specific areas being tested. You should know at least the subject matter. In essence if you have got plaintiff defendant most likely we know it is what? has to be other torts, could be contracts but definitely not Crim law. So again, the call can narrow you down to the specific subject matter and of course and the detail to what is being tested so you need to read it first and get a good understanding what is being asked. Go ahead and read the fact pattern carefully once you read the call.

 Markup the fact pattern. There is no reason we can't get your pencil and start dissecting between what is going on between the actual parties. This is important and again I cannot stress this enough. Make sure you answer the call the question. Do not assume facts and don't make it harder than it is. Make it simple.

Member when you practice multi-states and you see an issue that is being tested make sure you break apart the elements. When students contact me and say I do not understand this a lot of times it's because you didn't dissect or took something for granted in the elements. Was there a burglary, was there a nighttime, was there breaking and entering, was there a specific intent to commit a felony therein. Dwelling in the house of another. Those all have to coexist. In order to find what? A burglary. So you want to make sure you are breaking that apart because they will trick us and see in the fact pattern that this one particular element they are testing based on what they put at issue and we will not be thinking of the other elements. We will think it is there and it is not. So don't make assumptions. Make sure the facts do support each and every element.

Remember you are going to learn specific areas such as torts. Remember, tort is directed toward the elements. The black letter law. You're going to see a lot of questions dealing with negligence. What should I be aware of? negligence. And what does that mean? A lot of us think I know what negligence is. Is a duty, breach, actual proximate cause causing one's damage. Yes, but break apart even further. How do I know I owe you a duty? There are special duties and general duties. How do I know you actually reach, maybe I don't know what occurred, maybe it is a res ipsa problem maybe we don't know there is a [inaudible] cause we have to be able to break it apart and determined based on the facts what conflict, based on the negligence being tested what within it negligence being tested set say it's proximate cause, what with the proximate cause are they trying to get me to focus on here. You've got to break it apart that far in detail. If you don't then obviously you're going to get the best answer choice. You might get the second best answer choice and that is where again you probably are seeing frustration which is common, but the more we build on this that is going to help you.

The common questions basically what you're going to see in torts will ask you what is the plaintiff's best claim. It is your job by the way to determine or understand what is a claim. If you look at your torts checklist, negligence strict liability, products liability, these are types of claims and is the cause of action can be brought by the plaintiff.

 The call might say what is the defendant’s best defense? what does that mean? You are looking for a way to get the defendant off the hook by negating the element or maybe a true defense. Or the call could say will the plaintiff prevail. In the plaintiff prevailing you're looking less likely to the underlying theory and seeing the elements are supported based on the facts, each and every element has to be there in order for the plaintiff to prevail. The problem with these types of questions is a you are not told the cause of action.

 The other problem is once you narrow down to the cause of action we do not break it apart. You’ve got to break it apart that each and every element whether it is negligence or defamation, is supported based on the facts. If we don't we are going to have a problem. You will not get it correct. You need to read the facts and not only determine the cause of action but look to see what the questions really asking you. Or placing at issue. So is it a duty and whether or not you are within the zone of danger. Is the issue res ipsa or and was the instrument talent in the plaintiff's exclusive control. You've got to break it apart.

 In order to do well you need to understand what claims apply based on the facts. How do you know it is a defamation action versus negligence. If you think about it, could we really mess those two up? Not really. Again you've got to think about the facts and how the claims do arise, the theories based on the facts. Also by knowing this, this will help you quickly eliminate two wrong answer choices right off the bat. Then you will see what legal concept is being tested, run the facts through the elements and narrow down specifically as to what is the best answer. And make sure you are answering the call of the question. So that is very important. If you are not following the call then we have a problem here.

That's what you want to focus on for torts. Contracts. Remember I've told you previously contract multiple choice questions are very demanding with reading comprehension. The fact patterns are very long and lengthy. Aren't they. Now, the problem is they can ask you a wide range and contracts. I can ask you formation issues. I can ask you defenses to formation, conditions excuses, breach, remedies. There are a lot in the checklist we can actually cover.

 What you want to do is first of all read the call and see what the question is asking. So what is the best argument between the parties? That is pretty generic. I'm going to have to look and see was there a contract form and who is claiming what. Always cannot stress this enough with contracts, take it in the order of the checklist. Your check list should start off with does the UCC apply. If it doesn't, don't bring it up. But you go through the steps and see what is supported based on the facts and what particular elements in the formation of contract or condition or excuse, what have you, are they planning to see at issue. It is your job to determine that.

 Also, what is... Let's say the call says has a been a contract formed. That's kind of near Uganda formation. Offer, acceptance, consideration and going through that but there could be some issues such as counteroffer, maybe there was an option contract, something to that effect. You would have to break it apart.

 The call of the question could be what additional facts will strengthen bills claim or argument. Then you have to read the fact pattern and determine what is Bill claiming. The oral contract is not enforceable. Oh, that kind of told me the statute of frauds. So obviously is claiming the statute of frauds based on, indirectly based on that statement and then go see if it is true or not and see if there is an exception. I see consistently with your answers for some reasons students are not looking for the exceptions to the statute of frauds. That is highly testable. Why wouldn't you look for it? if you get it into the purview of the statute look for the exceptions. You don't want to leave it there. That is important.

 Remember you need to make the distinctions between common law and UCC. If you do see that the UCC is triggered remember how are we going to write the exam? we will talk about UCC, merchants if it is triggered, go through common offer if it fails and bring up the distinction between the UCC.

 You do the same thing on the multi-states. Break it apart and see if it is being tested. Issues like for UCC versus commonly you have option versus firm offer, modification, your counteroffer. In regards to additional terms. So these are all areas where there are contrasts where you have to make the distinctions. So again, you want to make sure which area especially in the multi-states is being tested. Is it common law or UCC. Do not second-guess yourself. A lot of times students panic and it is a rental of a car, UCC applies. No no no no. Where does it say renting a car dealing in regards to transaction of goods? It is not. So stick to what you know and do not let them psych you out. We don't want that to happen.

All right, the other thing I want you to pay attention to is, remember I told you common law. Versus UCC distinctions. I need you to understand in regards to the remedies with UCC. You're going to see these on the multiple choice questions. If there is a breach of contract what is the applicable or viable remedy. Lost volume seller. Risk of loss. Warranties. These are all words that you should be familiar with that will come up on the multiple-choice questions and I want to make sure that you are prepared. So it is something that you want to go over.

 Also when you read the facts for contracts, diagram them out. Determine as to what does the fact support, offer, counteroffer, look to what the legal effect is. For example if the call states what is the effect of the statement or the letter of May 12, go back and break it apart and see what occurred. Maybe they gave you a date, April 1 this is what happened, and May 12 this is what happened. We will see what happened May 1 or April 1. And that will carry down to what occurred on the 12th. You have to follow the timeline and dissected. You see a lot of times on these questions I might tell you October 5, 2015. And I start telling your story. But then all of a sudden what happens? in March 2015 and we went back in time. Interesting. Why did I do that? To trick you because you're not paying attention. You got to go back and make sure you understand the dates and what transpired between the parties. That's important and again it is something that they like to do.

 Again if you find the facts support a contract remember contract needs an offer, and consideration and look to see what else could be at issue. Do we have defenses to formation? Do we have duties under the obligation of the contract for conditions and excuses to those conditions and again I cannot stress it enough that is where the checklist is really going to help you. Because in contracts it is all in methodical order for yourself versus a tort I can take you anywhere and take you anywhere in Crim law. Take it in the chronological order. Very important. Remember, if you do find it duties like conditions look to see if there's been excuses to the duties. So, can we excuse your performance? again we have a tendency to stop short.

Generally in contract questions you are not told the parties names. Aren’t you. However, again look to the facts and see if there is something as to why they named him buyer or trucker, why did they name him builder, owner, generally the names of the people mean something, so at least they are generous that way.

 Now if I tell you Tracy is an employee and... She is an employee law student and she calls timothy and says I'll sell you my car for $5000 was there an enforceable contract what are they trying to get you to focus on. You are looking at her phone call and seeing if it equates to a contract. So, was her phone call equivalent to an offer. And that is where you take the facts and say okay do we have the outward manifestation of intent. You look to the conduct of calling and I will sell you my car based on that language. Yes. Do we have the definite and certain terms, and break that apart and medication obviously the offer would be by the phone call. You want to break it apart and see where the weakness is or what additional facts we might need, or whatever they are testing here and break it apart. That is important. That is very very important. And that is basically shall I say the contracts and what you look for in the contracts, Crim law. I told you Crim law is not very difficult, it's like torts, isn't it? The examiner's test the black letter law. The key with Crim law, you have to pay attention to number one the call. A lot of times we have a tendency not to pay attention to the call of the question and we [in audible] look at torts at the Crim law question do not answer the torts. They will have the answer therefore you, so you have to pay attention to what the call is actually asking. Generally it will be the defending [inaudible] what is the prosecution best argument what is the defendant best argument.

A lot of times you will know what you should know always what is a common law question. With the most serious crimes the defendant can be convicted, what crimes can the defendant be charged? is the defendant [in audible] with murder. You will know. There is no way I can hide that from you. But I want to make sure when you find burglary or murder whatever it is you can go through the steps. And I told you previously one of your favorite issues that they like to test is the felony murder rule. So that's an area that I do want you to know and understand how you're going to set it up on the examination. Again, you do the same thing on the multi-states. These are the steps you go through and I will tell you the best answer choice. So you do need to know how to set it up and break it apart. That's very very important.

 Now, overall I want to make sure you are always looking for triggering facts when you read the exam. That’s going to help you eliminate and determine as to what specifically is being tested. Remember if you see a statute on the exam break apart the exam. I see so many times students make the assumption it applies. No, break it apart and make sure it applies. You have got to read the statute carefully, dissect the ailments of the statute. Member this is a statute, that is the rule of law to follow. Break apart the elements and see if it is supported pursuant to the facts. Most students basically say it applies. No. I need you to go through the steps with your facts. If the call is specific what happens, what claim is likely to succeed. What are you going to do? Usually I rewrite the call. What is the only way we get off the hook or what is the only claim that is going to be successful here. So you do need to be obviously make sure you understand the call and when it is in the negative I have a hard time with the calls myself I have to rewrite them. Remember we learned about modifiers. If, unless. Most students do not do well on those questions. If you see a question using if as a modifier remember everything after the if must be true. Everything after if must be true. If you see the answer choice using unless as a modifier then how do we attack this question?

if it says yes, unless we are going to cross it out and put no, if. We took out the yes and unless, and then everything after technically the word unless, but if has to be true. Right because we do have a hard time obviously processing though so you want to break them apart and dissect that.

So again, if it is no unless... You will cross that out and put yes if. Look for the modifiers and a lot of time we have a tendency to miss those and they are the best answer. So obviously don't go pick them because I said that. Break it apart and make sure it is true. Everything after the if has to be true. And you are going to rewrite the call so you break it apart in that way.

 So there should be an example... That was sent out to you. And it tells you here again we should always look to the call, the stem. If Sam asserts a claim based on misrepresentation against Tammy will Sam prevail. Is this a tort, contract or Crim law multistate based on the call? Well Sam, asserting against Tammy. It's definitely not Crim law. It's very rare they write a contract question that way so I probably say it is torts. It says Tammy is a chemical engineer she has no interest or connection with Kimco. She noticed that Kimco was most recently published financial states listed part of assets as large chemical compound the asset cost $100,000 but Tammy knew the ingredients of the compound were in short supply in the current market value was 1 million. Kimco stock is currently selling for five dollars however the true value of the chemical was known then the stock would sell for 30. Tammy approaches Sam and offers to pay him six dollars a share for the thousand dollars a share for Kimco stock. The call, if Tammy asserts a claim for misrepresentation.

You should be breaking apart your elements for misrepresentation to see what is being tested. So is it intentional or negligent representation of a material fact which one justifiably relied to their detriment. We have to make sure all the elements are supported in order to find a claim for misrepresentation. And of course if Sam asserts the claim they are asking will he prevail. If I have A says using because as a modifier yes because because of the representation but what do we need to show? I needed to show all the... Was the representation she offered to buy it, she didn't say nothing about the true value so that is out. If is used as a modifier, that means everything after the if has to be true again she has an obligation is their fiduciary relationship in the parties and the answer is no. So B is out. It will write to yes if yes she made a false representation. She made a false representation if there was representation it would be material as to whether the value of the stock was 30. Obviously if he sold it to her he would justifiably have relied to his detriment because he lost money so C looks like a good answer choice I will put a plus there. Remember D everything up to the if has to be true, the fact that the financial stamens do not support a misrepresentation. That doesn't have anything to do it. So which answer choice will be the best? C.

 The only way he will prevail in a claim for misrepresentation is he showed show a false representation of material fact. Again break apart to your actual elements. That will dictate for you.

 So now let's look at a couple together and I know that some of you had some questions or the hundred that were sent out to you so we will see how many of those I can answer as well.

Eigen the first thing you're going to do unquestionable one is always read the call of the question. It says midterm is bring a lawsuit. Ask yourself this because this is tested a reasonable time in every bar you will get at least a question on this. They like to test this concept. At that point I don't know what they are testing so you have to read the facts, mark them up.

 It says on November 12009 Mozart entered into a contract with Thomas to play the piano at the nightclub on New Year's Eve, the agreement was $10,000 for the evening, Mozart was popular and Thomas knew he had representation, reputation as a big following and repack the nightclub as a headline appeared on December 29, 2009 Mozart called Thomas and told him he'd been offered more money to play at another club and would not be playing. May Thomas bring the lawsuit now?

what do I have to determine? what is the if you are looking at, do we have a viable contract between the actual parties. You will go back and look at the actual facts. It says on the first they entered into a contract so it looks like I got a contract between the actual parties. It doesn't like it's violated by the statute of frauds. It is an employment contract it looks like one time, New Year's Eve. So it's not more than one year or anything like that.

 The terms all seem to be spelled out there. Now what happens after we enter into the contract you basically called and said you would not perform. What is the issue? Can he bring the lawsuit now what does that mean? I use the terminology [inaudible] breach if the contract is still in executory stages can you bring a lawsuit that is what we are looking at. Or do you have to wait until New Year's Eve to see if you show up or not.

 So remember with anticipatory breach there are two elements you really need to pay attention to. Number one, was there an express repudiation and the fact that he called and said I've been offered more money to play somewhere else, I'm not playing, that shows there is an express statement of repudiation. And the contract must be in what we call executory stages.

What does that mean? Remember executory stages means that either neither of us started performance, only one of us started part performance. If we both have started performance or one of us is fully performed, the contract is not in executory stages. So, do I see anything in these fact patterns here that supports that either one started performance and the answer is no. So can he bring a lawsuit now? if you look at a and B it says no because, no since. Can I illuminate those two answer choices? Remember because our conclusions. So if I can narrow down to yes or no or true false because what have you I'm going to eliminate two right off the bat and that is going to save you time. So pay attention to that.

 I'm going to get rid of answer choices A and B. I’m not even going to read them and it will help me timewise because time is against me. That leaves us answer choices C and D. Let's go through them.

 C, yes because Mozart repudiated the contract. Well he did. Right, it is in executory stages looks like he could bring the action now because he repudiated I like that but let's read D. Yes Thomas may lose profit without a headliner. That doesn't have anything to do with anticipatory breach and we know based on the facts that is what is being tested. So you can help yourself when you don't specifically as to what is being tested and you know for sure it has to be C there is no option based on this question. For question number one, C is the best answer. Can everybody see how I got there and how you can eliminate and obviously we break things apart.

 Let's look at question number two. It’s like where is the call... Paul received a mild shock which would not have harmed an ordinary individual that has caused his pacemaker to malfunction. If Paul's estate asserts a claim against any of the wrongful death of Paul will the estate prevail so it is wrongful death. A member with wrongful death what do I need? You need to show underlying wrongdoing. The cause of action that you would have a cause of action. So the wrongful death action most likely is from a spouse or something to that effect suing for their losses but they still have to show there would've been a viable claim from the party.

All right, Daniel owned a restored classic automobile made in 1922. Tempering the car Daniel installed an electric device designed to give an electric shock. With that be an intentional tort? I think so. It says even enough to warm persons not to touch the car. Paul, a heart patient with a pacemaker saw Daniel's car and attempt to open the door. Paul received a mild shock which would not have harmed an ordinary individual but which cause the pacemaker malfunction resulting in a fatal heart attack.

 Again, you have Paul's estate suing Daniel for wrongful death. Should he be able to bring a viable cause of action. This is the first thing you need to determine. What is the theory of liability? if you go through negligence I guarantee are going to get the wrong answer choice. The conduct of installing electable device was intentional. Anybody who touches my car will get a shock. I have substantial certainty to make sure you don't touch it or you are going to get hurt. So the viable cause of action would be battery. It would not be negligence. You got to make sure you pay attention. The key thing I find with intentional torts is go to the intent. If there are facts to support the intent that I am most likely barking up the right tree. His conduct was intentional because he did not want you touching his car so that would be equivalent to a battery. Wouldn't it?

so what am I looking for intentional harmful [inaudible] touching of another. So if Paul's estate sues will most likely he prevail? probably. So I got answer choice A no, if you remember everything after if has to be true so I have to read it because it could change the facts on me. B, no because, conclusion. So I can get [inaudible] I have to read that, and yes if becomes what? True. Right. So I have to read what options? A, C, D. I cannot get rid of one, only one.

 Member we told you the viable cause of action is battery. Looks like we have all the elements of battery, but he is protecting his car from people touching it, tampering with it, anything rather than consider this a defense of property and can you defend your property, the answer is yes you can use reasonable force, not deadly force. So it happened to end up being deadly. The fact that it would not ordinarily harm an ordinary person, A looks good so I will come back and put a plus by it. Remember we eliminated B, we know it's not there. Plus if he quickly look at it says Paul was a trespasser. That is language [inaudible]. Do not fall into this trick. Your theory is battery, so stick to the language. They will not give you something that makes no sense, meaning trespasser does not belong with the issue of battery. C, yes because Daniels act was a substantial factor in causing Paul's death. That goes to causation. Doesn't it. Substantial factor we have more than one wrongdoer so I would never pick that answer. D, yes of Paul never had a reason to suspect the presence of electrical device. You might pick that answer but what is the problem? Do I need that, does it support any element of defense of property? based on the process of going through the facts and seeing what is really being tested here I just eliminated what? I eliminated as to what is being tested and what is being tested which is a defense for battery. So I know that cannot be the correct answer. So A has to be the best answer choice.

Seems easy, doesn't it? that's because you are applying your tools. Near you down specifically as to what is being tested. If you do not I guarantee that will get you because you are going fast and you are not breaking apart. That's what they hope for. Do not give them that.

 Let's look at question number three. Did Lynn commit burglary. Is that a general call? Or a specific call? Very specific. So right off the bat we know that I should going through my elements, need nighttime, breaking, entering, dwelling house of another. Specific intent to commit a felony therein for larceny at the time of entry. That is the key. So let's go to the facts bill borrowed a television set from Lynn to watch a football game on Sunday afternoon. He borrowed. He promised Lynn that he would return the set to her at 7 o'clock Sunday night because Lynn wanted to watch a program at 10 that night. When Bill had not returned the set by nine Lynn went to Bill's house, Bill is not at home and Lynn forced open a window. That looks like a breaking. Climbed in, that is an entry, and took his television set and walked out with it.

 Well who's set is he taking? and we got nighttime, we have dwelling house, we've got breaking and entering. But it is his television set. So it doesn't click we've met the owners of burglary. So, will he be convicted, you see A, B say yes because they have a conclusion so I can eliminate those two right off the bat. Again I don't have to read them. As to C, B, yes because Bill was not home when she entered the house. Is that an element of burglary. No. Lynn entered for the purpose of recovering his own television set. So that negates that he didn't have the specific intent to commit a felony therein at the time of entry. So D has to be your best answer choice.

 Let's say I change the facts on you, he goes and takes the set but he sees 100 bucks on the table and he picks it up and put that in his pocket. Now is he going to be convicted of burglary? The answer is no. You'd be convicted of larceny of the money. Why? Because her number four burglary it has to be at the time of entry. You have to have the intent to commit a felony therein at the time of entry and that is an element that the examiners like to test. So you've got to make sure again, all the elements of burglary coexist. And based on the facts, break apart and see if they do exist. Again for question number three, D is the best answer choice, isn't it?

let's look at question number four. Okay it says is Bruce guilty of violating the statute? What does that mean? That means there's going to be a statute obviously in the question. That means I'm going to have to break apart the elements and see if it is supportive in that statute. Right. Frederick threatened Bruce with physical beating unless Bruce personally wrote, signed and mailed a letter to the president of the United States threatening the president’s life. Okay so we've got a threat. Bruce complied. It makes it a felony to knowingly mail to any personal letter that threatens the president of the United States. So what do I need to show? What are the elements to show a violation of the statute? The first one is knowingly. Then it says you could put together mail any person... And then the next element would be threatened the president of the United States. I already have three. Do we have knowingly? Sure because Frederick threatened to browse Bruce up he knowingly did, did he obviously mailed to any person [inaudible] that he threaten the presidents life if he complied yes it does, so is he guilty? looks like he violated the statute but what am I overlooking here? Defenses. So, even though you find a viable crime you always look for defenses and what is the obvious one here. You are going to beat me up, physical beating, don't really want that. How about duress? Dress basically get some off as a defense yes it would. All right, so knowingly does exist. That is not where it is. We have a viable defense to show there should be criminal liability. Now we look at the answer choices and A and B says I will read those, DS because no CMD I feel you will not be convicted pursuant to the statute, so I will not read options C, D. I will only read options A, B. Let's go through A.

 No because he didn't intend to take the president’s life. Does that exist in the statute language at all? No it does not so it doesn't help with any of the elements. B no because the defense of duress which is the only answer choice we can pick because that's what I've got here. Again I don't see anything that really negates the elements. I know that we are testing a defense of duress so B has to be the best answer.

 Again, all I'm doing is process of elimination. Breaking things apart.

Let's look at question number five. Did Pete commit the crime of conspiracy to sell stolen car? conspiracy you need agreement, two or more, and you need to get it [in audible] admitted he had stolen a car and the engine had to be rebuilt before it could be sold. At this point anything wrong? No comment other than the one stealing the car. Pete agreed to work under the following terms, Pete would receive $300 upon completion of the job even though the normal fee was six. He received an additional 600 when Ed sold the car. Now you've got a problem. After rebuilding the engine when the car was sold. Pete and dad were arrested. You see is he helping him commit a criminal act? Yes he is. So what can I eliminate here. Yes because, yes because... I will have to read C, D, no because get rid of. Yes because he rebuilt the engine knowing that the car was stolen. I could agree to rebuild the engine knowing that the car is stolen as long as I'm not getting anything other than my normal fee for it. It's not morally right but it's not against the law. B, yes because of the profits he agreed to receive on the sale of the car. Yes. Why? now he is partaking. So basically he's helping others so he cannot do that.

 Remember when you miss a question what should you do? always figure out the why. Why did I pick B when it should be D etc. you have to break it apart. It's very important.

 If you find yourself at this point even you are practicing during multi-states but you feel you are having a struggle there could be a couple reasons. Number one. Do you not really know the law well enough, and have you spent enough time reviewing and breaking apart. That is something that I do want to break apart for. I will come to your question in one minute.

Number two, do you know the broad concepts but you are not breaking apart in details you have to narrow it down and see what's going on, are you not reading the facts carefully were following the call of the question. Of course you may not have practice enough to understand how the concept are tested based on the fact patterns. Again, the more I can get you to do the better obviously you will be. You will see most people say I get it down to the two choices and end up picking the wrong one. That's because we need to hone in and fine-tune the skill and break apart the steps. I think that is important.

Let's see here.

Well again for question number two was that testing negligence? Testing battery. Right. CI guess where they were trying to trick you and get you to focus on negligence. And no no no, his conduct was intentional. Not negligent. He installed the electrical device deliberately to get people a mild shock. There is no Again get to the issue of negligence. Again that's where you want to focus on the intent, make sure it supported with the facts and it is because this is a question they are deliberately trying to get you to... You know what probably this is negligence and it is not. Obviously if it was a negligence he had a duty act as a reasonable person, and there's not anything that really goes to that but under the circumstances would it be something that obviously a reasonable prudent person has a duty to protect their car in a reasonable manner? did he go beyond reasonableness? so to me that would be a jury call and a hard question for them to do and I don't think that's my think that's why they gave you the language for breaching a particular question.

 Right, so hopefully you guys are getting a better understanding of how to break us apart and dissected. That's very very very important.

Already had a couple people asked about a couple questions actually quite a few, but we will go through some of them really quick because we've got some time. Question number 17, I wrote it here based on your question. Honestly you want to look to strict liability and break things apart.

 A lot of times they are going to try to trick you, mess with you. You've got to break things apart. So it's as if Carol brings a suit against the circus to recover damages to her flower garden caused by the elephant she will most likely, let's break apart, Joseph [inaudible] were brothers, this summer nothing very exciting was happening in their lives because they were stuck inside their rented home studying for the bar exam. When a during the 30 minute lunch break however they heard on the radio that the circus was in town and that an elephant had escaped. Since the house was located in the hills lesson than a mild north of the densely populated circus grounds they decided to look at the back window. Only a few minutes later to the sheer delight and surprise there was the elephant walking right through the yard. Unfortunately the elephant trampled the landlord flower garden. Before it exited from the property. The circus in its quick action led to the eventual capture of the animal. At the prospect of having to replace the flower bed for which she had paid gardeners so much to maintain. Joseph remembered what he had learned in torts about wild animals and reassured Carolyn she could recover if she sued the circus.

 First thing. What theory of liability would she be suing the circus for? Would it be negligence, would it be trespass, which are resuming for. That's the first thing you need to determine. Remember it is an animal. Strict liability. Right, so in regard to strict liability with the wild animal obviously for their known propensity, whatever they do, elephants trample, you will be sticky liable for the harm. That would be my best theory. Negligence would not be my best theory because I have to establish the duty and the breach. Verses or member with strict liability, liability is imposed regardless of fault. That is the type of answer I will look for. Will they recover, looks like I have to read them all.... Recover because the circus is reliable for the elephant’s trespass. B, recover but the circus is subject to liability for trespass only. They give you the terminology trespass or member I told you you have to determine if it is intentional trespass or negligent, but the better theory still is what? strict liability because liability imposed regardless. C, recover but the circus is subject to liability [and audible] see that it's usually reoccurring non-isolated event, and D recover only if the circus failed to exercise the utmost care to confine the elephant or prevented from escaping. That seems to go to negligence and negligence [inaudible]

Question number 20 is next. This is one that students do obviously miss, and it is not an easy one but you have to break it apart. It's as if Hauser asserts a claim against Conroy's will the plaintiff prevail. Let's look at the facts. [inaudible] Heroin addict needed money to support his heroin addict. Armed with a pistol Duggan had decided to rub Conway's convenience store. Duggan entered the store, put the pistol into the cashier and demanded money. The cashier reached into the cash register and nervously handed Duggan and $500 but he then fled and ran down the street. When he left the store Duggan and was preferred by a security guard employed by con Rice who witnessed the later stages of the robbery. As he chased Duggan and silver pulled out the service revolver and said I've got a gun, stop you are dead meat. Duggan paid no heed to the warning and continued running. Silver then fire the revolver at Duggan and the bullet missed him it shattered the window in Hauser some. He heard the gunshots and saw the window break and became astutely frightened, and Lisa must try to kill her. Hauser went into shock from fear and as a result required hospitalization. Silver had been instructed by Conroy's never to shoot a gun at a fleeing suspect if Hauser inserts a claim against Conroy is will the plaintiff prevail. First step, what is the theory?

right, so he shot the gun and actually it went through her window and shattered the glass and frightened her. Was the conduct intentional or negligent? Did he act in substantial certainty shooting the gun. I think we are looking at intentional tort. They're trying to tell you trick you based on the language based on shock and fear in regards to showing what? Emotional distress, but remember with an negligent emotional distress you need to be either some type of foreseeable result because he doesn't know she exists. So I don't think that will work. And she would need some type of manifestation for intentional flexion of emotional distress. So I will grab onto the issue of battery. If the bullet hit her, or the glass of the window that the bullet penetrated through hit her we would have a viable cause of action. A battery. So let's look at our facts.

 No because, no unless, have to read B, yes because and yes if.I have to read B, C, D. I get rid of A because I feel she will recover. So let's look at option B.

No unless other was negligent in shooting at Duggan. That goes to negligence again. Was his conduct intentional? Yeah, he took the gun out and aimed and shot and said he will be dead meat and pulled the trigger. The conduct was intentional. That's where you've got to remember and break it apart if it is intentional versus negligent because they will play with you on these and if you go to negligence we have a problem because you got the wrong answer choice. Undersea, yes if her member anything after the F has to be.... Any of the glass touched Hauser, let's break that apart. Something it's a battery, intent. The fact that you pointed and shot the gun, harmful or offensive, did shatter, didn't touch, that would be harmful or offensive, and of another Hauser, so that looks good I will put a plus. The D yes because a firearm is inherently dangerous in retaliating. It has to be B. Because that is the only one that is going to the intentional tort. So B goes to negligence which the conduct was intentional. This is where you plug and why, how did I miss this, and break it apart. That's going to help you immensely because you got to understand as to what the concept of examiners are trying to get you to focus on. If you are missing out we will miss the problem. And that takes practice. Is something you need to again plug back in to how am I seeing this tested and break it apart. And other question somebody asked me about is 51. This one is dealing with burglary and I feel you need a break apart the elements and understand how breaking can occur. Let's look at this one.

 It says under common law definition has a man committed burglary. So basically they told you we are looking at common law, no way around it. Sarah was home and turn on the TV to watch a program at 8 PM. She heard someone on her porch thinking it was her boyfriend she open the front door. On her porch was a strange man who demanded she let him in the house. When she refused he pulled out a knife. Sarah, fearful for her life let him in. Once inside he searched the house for valuables, took her engagement ring and cash from the drawer and left the house. Now we are looking as to is he guilty of burglary. So we need have the 8 o'clock, 8 PM, breaking and entering. Well, she let him in, he did enter, but did he break in? she let him in, but there was a knife. So really what they are testing here is what we call a constructive break in.

 Remember you can establish a breaking by Willie call constructive breaking.It can be found by fraud or by a threat of using force. Or even if you go down the chimney, that is a constructive breaking. So I have the nighttime, breaking and entering, dwelling house that is there is, the intent to commit a felony therein evident by action, yes he searched for valuables and an engagement ring. I would say we would have a Berkeley so let's look at the answer choices. [inaudible] can I get rid of two right off the bat, I'm going to him absolutely I will get rid of option C and D, one type. Again I don't need to read if I can get away from it. Let's look at the options, yes because he constructively met all the options a burglary. I like that word. That looks good. Let's look at B. Yes because he rubbed her home. No, that goes to the element of what? The break in, so can you see that is a better answer choice because it sticks to the underlying element as to what they are testing here. So you do want to break that apart. So does everybody understand why that is the correct answer?

do you have a question in regard to question number 56? Let's see here. Does Cindy have a tort claim against Francine? so we know that we are under torts and we have to break it apart and see what is going on. College students into uses an old laptop computer with an operating system, archaic, despite some teasing from her social circle she is content with the laptop. One of her friends, Francine could not imagine how any laptop user could tolerate such low speed, poor screen resolutions and frequent system failures. One day when she knew Cindy was in class not using a laptop Francine went to Cindy's dormitory room. Francine told Cindy's roommate that [inaudible] about time said the remade Francine remain to her room and install the new system. She had it ready to go by the time Cindy returned to class. Much to Francine's disappointment Cindy expressed displeasure about Francine's behavior and it turned out that Cindy had planned to enter the laptop into a competition called the world's greatest clunker which featured prices in various categories for archaic computers. Cindy can prove that she properly would have one. Does Cindy have a tort action against Francine? What is the concept we are suing under?

Is it intentional torts? Yes. It's not negligence for conduct to go upgrade it was intentional. So you will look to the assault, battery, what is the theory. It has to be trespass to chattels. She has not had nor has she had substantial interference, so [inaudible] trespass to chattel, we need intentional conduct of what? Interfering with the chattel of another.

 So did she have intent? Yes Francine was what... upset with Cindy archaic laptop so she has intent obviously by her conduct in going to the room and lying to the remade and upgrading the system. Was it the chattel, laptop of another? yes, Cindy's. So it seems to me that we do have a trespass to chattels. Right, so now let's look at our options. Does she have a claim? No, because, no, because. So A, B I get eliminated right off the bat. So that leads me to C, D because it says yes and I have to read thereafter. All right let's look at C, yes for trespass to chattels if Francine's upgrade lowered the value of the laptop in the world's greatest clunker competition. What is that going to support?so, her conduct was intentional. Does it affect the chattel of another? I like it but I don't. So I'm going to read D. That's for trespass to land Cindy can establish the remade it never authority to prevent tree to the dormitory room for that purpose, again I know they are testing the fact of what it did to the laptop so it has to be C.

So C for question number 76 would be your best answer choice. And again, if you missed it... why? Were you thinking of negligent cause of action. Were you thinking no liability because no harm no foul with upgrade to the system. It's kind of like how you have seen tested conversion of services. You can convert services. Yes you can. You go place your car at a mechanic and you don't like the bill so you sneak off with an extra set of keys and you go there one night and put your keys in the car and drive away. You converted services. By practicing questions and understanding the concepts and how they come up you could say I didn't know you could do converted services we go to the drycleaner with the bill and you didn't pay for your close could you converted services. Something that exists that's why we practice these and understand how the concepts come up, how they are tested so we do a better job obviously and breaking them apart. Does that make sense?

at this point what do we do?You've got to keep practicing. Multi-states daily. If you are not doing well I want to know why. You've got to break it apart and say why am I picking A when it is B. What have you. If you don't you will keep doing the same thing repeatedly and that is where frustration sets in. You have to take the time to plug us back into check with and make sure you identify how is the issue tested. How do I know when it is a felony murder rule issue versus and m involuntary manslaughter. pretty much you should understand how every concept in the checklist is, based on the facts. That's important and obviously if you don't that is something you need to work on. Or we are going to miss a question and we don't want to do that [inaudible] I have to told you previously testable areas like felony murder rule and other things so you should be emphasizing those as well.

 Next week what's going to happen. You will be sent out three essays as well as multiple-choice questions You are going to spend time going through those questions and if you have trouble on any particular multiple-choice let me know because we will go over those as well. That's important. I hope you have a better understanding in regards to how to take an attack multi-states. I know it sounds easy and concept. It takes practice. It is one thing talking about something versus doing it. That's true with anything in life. So it is something that again you need to undertake the steps and break it apart. Again, during your preparation if you have any questions please feel free to always to shoot me an email at Jolly@TaftU.edu and I will be happy to help you in any way I can. Anybody have any more questions for me tonight?

all right again if anything does come up please feel free toShoot me an email and I will be happy to help you in any way I can. What will breed your success is keep plugging away and practicing those essay questions. Do take some time to exams. If you have not done that yet I was due a simulated or two before you hit the baby bar door because you will find I guarantee that the four hours for the essays will be the fastest four hours you have seen in your life and of course the 100 MBE's. It goes quickly so I would get the timing down on that. Look for the email tomorrow in regards to three essay questions as well as multiple-choice. All right everybody have a good night.