Taft law

baby bar essay review

10/11/16 6:00 PM

INSTRUCTOR: We will be starting in approximately one minute. Again if you can make sure you have the three essays that were mailed out to you that will be the primary focus for tonight's lecture. Again we will be starting in about one minute. Good evening everybody and welcome to tonight's baby bar miniseries. Tonight we will be going over the three essays that were primarily sent out to you so that will be the primary focus. I do want to point out that the sessions I recorded so again you have a couple weeks prior to the actual baby bar exam date so you can go back and listen to any lecture that you feel will help you and benefit you. Go back over essay questions. At this point the more you work on issue spotting and understanding how issues arise in a fact pattern is well is how to take the multi-states and obviously up the scores that will help you so now it is crunch time and you really do need to work on that. You shouldn't at this point be spending a lot of time reading your Gilberts outline, your outline, you should be implementing. The issue spotting in regards to exams, multiple-choice questions, that is what is going to make you strong. Don't waste time, you want to get to the exams.

The first question we are going to look at is the Roofer examination so let's take a look at that. Remember you've heard me say over and over what are you going to do on an essay question, first thing is to read the call of the question. This is something you need to get in the habit of doing and obviously few read the call and you know the subject matter because remember I have told you in the past on the baby bar they will not tell you it is a tort question or contracts. It's labeled essay question one. If you know by reading the call with the subject matter is, stop and immediately write out your checklist. That's going to help you in multiple ways. Your mindset will go to the subject matter. Also the anxiety level. It is something unfamiliar with and it will call me down and I can pay attention when I'm reading the facts.

 The first question basically referring to that exam question number one. Let's look at the call, it says in an action brought by Ned against Roofer for negligence what defenses might Roofer reasonably assert and what is the likely outcome on each. Explain fully.

What type of call is this? it told you negligence. It's very specific. So what I want you to remember is when they give you something like this, element(s) and/or defenses, you have to break it apart and see what within negligence is being tested. So you've got to break it apart, the elements and see okay is a duty being tested, is it a proximate cause issue. Because if you prove up the prima facie case of negligence and show all the elements have been satisfied there's a good that you made a mistake.

 Right, because they give you the issue of negligence you have to go in there based on the facts and determine where the point allocation is. What are the facts, [inaudible] you make it a gray area where you have two arguable sides and you want to pay attention to that. But of course it says defenses, remember two or more. You want to look for that. I told you in the past that defenses can mean true defenses, or negligence, contributory negligence, comparative and assumption of the risk.

 Or it could be counter arguments. If you read a fact pattern and you do not see a defense look for counter arguments because it means you are satisfied in the call. The facts will dictate. You've got to remember that. You don't want to make something work or stick in your examination that is not there. It is a waste of time on a nonissue and it doesn't really look so good to the actual reader.

 Remember if you have any questions during the lecture please please feel free to ask me I will be happy to help you in any way I can. Place those in the question and answer box. Okay. Let's go ahead and go through the facts.

 When you go through the fact pattern look how short it is. I've told you in the past as well, the shorter they are the harder we fall, meaning we've got to really look at those facts and see what issues are raised based on the facts. It tells you in this fact pattern, paragraph number one, Roofer contracted with Hal to replace the roof on Hal's house. So we see what? Roofer and Hal have a relationship in regards to repairing the house.

 The usual practice, that is a good word, usual, normal, things standard in the industry. That's a good word to pull out. Practice among Roofers was to place tarpaulins around the grounds around the house to catch nails and other materials scraped off on removal of the old roof. So it is something standard. On this occasion Roofer did not have enough tarpaulins and he failed to place one on the ground at the rear of house. So if he failed to do something the question there is by his failure since it is normal and usual did he breach? We don't know at this point but it is a question.

 As a result, many nails and old roofing materials fell into the grass of Hal’s house. As a result many nails fell into the grass of house backyard. At the end of the job Roofer did his best to clean up the backyard but missed some of the nails that were embedded in the grass. So again, did he breach his duty? He did the best he could, right?

Second paragraph. About six months later, so that is a big time gap. Why are they telling me that six months have gone by? As Hal was mowing his back lawn his lawnmower ran over one of the nails and propelled it over the fence into the backyard of Ned. His neighbor. Who propelled the nail? It was from Hal who was mowing his yard. Right, a few days later his neighbor was walking barefoot in his backyard, he stepped on the nail, which pierced his foot, causing him severe injury. In an action brought by Ned against Roofer for negligence what defenses might Roofer reasonably assert and what is the likely outcome of each?

 Who is suing? You have Ned bringing an action against Roofer, not the neighbor, so Hal is not in the lawsuit. You have Ned versus Roofer here. Well obviously you need to show that there is a duty you breached, that you breach the duty there is an actual and proximate cause of one's damages. If you look at the actual duty, does Roofer owe a duty of due care to Ned?

Remember I told you in the past this is an issue a lot of students talk about all the time when it is not at issue. But if you see a remote plaintiff than it is at issue. So Roofer really owes a duty of care to act as a reasonable and prudent Roofer as regards putting on tarpaulins to make sure nails don’t go in the wrong places to Hal. Because that's who he contracted with. That's who he has a relationship with. So really the general duty arguably is owed to Hal so he will argue that he does not owe Ned any duty of due care.

 But that is what triggers Cardozo. So with Cardozo, remember Cardozo basically is a general duty. And Cardozo says that you owe a duty of care to a foreseeable plaintiff in the zone of danger. Tonight you have to argue based on the facts is need within the foreseeable zone and Ned is a neighbor of Hal. And so the fact that if you are redoing somebody's roof and you throw off tarp paper and the nails is a foreseeable that that could relatively go into the neighbor's yard and you could argue absolutely it is. Roofer is going to argue he didn't have enough tarps. He went into the back of the house to clean up the debris but he did pick up as best as he could. Six months went by and of course what happens? the discarded nail propels over the fence. Is he really within the foreseeable zone of danger and is he is a foreseeable plaintiff and make your argument. Either way if you find Cardozo works, great. If you find that it is a no, you go to Andrews and basically he says you owe a duty of care to all. So based on the fact that a duty of care would be established.

So based on this exam, what we are seeing so far, negligence, the issue of duty is one of the ticket items. Remember I told you and they gave you a specific call, element, elements and offenses something's got to be at issue and so far we do see they place the duty at issue. Which most students would argue reasonable prudent person standard and no, reasonable relationship.

 Do you understand and see how he is remote? Whenever you see a relationship between two parties and their somebody outside the relationship suing, that is what raises the issue. So I don't know why students have a hard time with it. If you just keep that mindset and what I stated that should help you see what is being tested. Again if it's not being tested and you talk about it it is a nonissue. But it just kills your time. Because you can see how much we have to talk about and I just don't have the time if it is not at issue.

 Breach, remember the breach you have to show he fell below the standard of care. What did he do? they told you it is usual in practice. Those are good affects to pull up that he should have a tarpaulin. He didn't. And the fact just because he didn't have a tarpaulin, but nails did get embedded in the grass pretty failed to pick it up. And so that is what caused obviously it going to the neighbor's foot. And so he breached the standard of care to act reasonably under the circumstances. That is how he breached. It's not enough in the facts to say that he failed to use a tarpaulin because I did not cause an injury but by his [inaudible] action because he did not have the tarp is what cause the actual injury.

 In regard to actual cause pretty straightforward. The but for test. But for failing to pick up the debris including the nail it would not have propelled over the neighbor's fence and resulted in Ned stepping on it.

 Proximate cause, is proximate cause at issue here? can I argue if it's worse you that if you step on a nail it would hurt and pierce your foot, you would get cut, serious injury. But how did the nail get there? So based on these facts if you look that is why paragraph number two says about six months later Hal is mowing his yard and he runs over the nail and propels it over the fence. You absolutely have an argument as to was this an intervening supervening act. And so again they put proximate cause based on the facts at issue in this exam. And so basically remember the steps we kind of went through, is this an indirect or direct act. Who are we looking at? we are looking at the Roofer, so it is an indirect pact to Roofer. It is independent. And argue your foreseeable versus unforeseeable.

 The first thing you argue here that Roofer will argue, it is an indirect act that it is Ned that ran over the nail it is independent of my act of failing to pick it up because he ran over the lawnmower, and it propelled into the neighbor’s yard. So he will argue house conduct is the intervening act. However Roofer's conduct of feeling to pick up the embedded nail, leaving it there is an indirect act. It is independent of what Hal did in running it over and propelling it over the fence but it's perceivable that if you are mowing your lawn and there is a nail embedded that you could run it over and propel it over the fence. If you feel in this case that Hal was negligent, remember the negligent act of a third party is always foreseeable. So therefore you will find that Roofer is the proximate cause.

But you do need to let the reader know that we understand proximate cause is at issue here.

 Damages you're going to have to talk about it but they did not give you much.He sustained injuries from stepping on the nail so we can talk about pain and suffering and if you want to bring a picket claim special damages for medical bills and get out. Do not spend a lot of time there.

 What about the time period of six months? that is what triggers the proximate cause issue. Because there is a big gap in time in regards to Roofer's contact. So there is your foreseeability and cutting off lability argument there. Does that make sense? Because again, six months have gone by. And how can I be responsible for

Remember the call also says defenses. These are all the defenses you have for negligence. Let's look at contributory negligence. Remember what contributory negligence you need to show that the plaintiff's conduct which in this case would be Ned fell below the standard of care is a reasonable person that you owe to yourself. So Roofer is going to argue you are the one that went out in the backyard barefoot. This is where you have got to think wait a minute, here I think we'll do this, right? go out in our backyard barefoot. Is that something that is really falling below the standard of care owed to yourself? Just picture yourself in your own backyard and it's reasonable that I walk in my backyard barefoot do I have grass Tracy construction and neighbor’s yard, do I see anything going on to a seating being thrown consistently in my yard. There's nothing to take me off at the could be something in my backyard. Also as you stated earlier the six-month time period. So what I be aware of, you know he just had his roof redone I should be aware that maybe there could be debris on my side. It's a six month gap.

 There is a good argument here that Roofer is going to argue Ned did fall below that standard of duty of care to himself by walking barefoot. By your walking barefoot obviously you are still falling below the standard of care that whatever you step on can hurt you. However again it is his backyard. He should be aware of the events that occur in his backyard or if he has tree limbs that fall whatever food you should be aware as to what is there. He's going argue he did not fall below the standard of care in regards to walking in his backyard.

 If you find it is arguable, as you can as to contributory negligence you also can bring up the last clear chance doctrine. Remember the last clear chance doctrine is a plaintiff argument to basically negate rebuff, contributory negligence. Because her mother contributory negligence is a complete bar. If you find that you are contributorily negligent you are out and you get no recovery whatsoever. But in the plaintiff which in this case would be Ned is trying to save it through last clear chance. And if Roofer could have avoided the incident in the first place which if he had the tarps or properly picked up his mess this would not have occurred. You had the last clear chance to prevent them injury. That is an argument that Ned could raise to save himself from contributory negligence. And of course you have comparative negligence. A portion according to fault. If you did a good job discussing and a contributor negligence than I can steal for it under my comparative negligence as discussed in kind of wrap it in there that way.

 The other defense you would bring up is assumption of the risk. Remember, the one who knows of the risk voluntarily assumes the risk so you have to have knowledge and conversation of the risk. That is an issue obviously should be seeing obviously on the multi-states with danger and biting rescue type things. Roofer will argue that you are barefoot you are assuming that whatever is out there you are going to step on it and it will hurt your foot. But in this case does Ned know of any risk? rocks twigs branches whatever I have in my backyard that I am assuming the risk that I might step on so if I have a type of tree that has if I have berries or anything on it it could drop off the tree and I can step on it, sure. But do I have knowledge of the nail? that is in my grasp? again it is the six month gap. Abby slammed aware that there's construction going on because of the time to later. So based on that argument I don't have any knowledge of this so Ned will argue that that he did not voluntarily encounter and assume the risk. That would be the defense.

 A couple things in regards to defenses. Two or more. Based on the call it says defenses. In her memory contributory negligence and comparative are a difference really of the jurisdictions I really feel that that is really one, it's not really answering the call. And so I always look for assumption of the risk. I want you to be aware that generally if you want to separate it out you will have three. It's very rare just to say contributory and assumption or contributory comparative. Assumption of the risk is there a lot more than people realize. It's something I want you to look for because it is worth good point value.

 And remember in regard to breaking up the elements. Did you comprehend the risk? Did you voluntarily encounter the risk? for some reason a lot of students are just like oh he assumed the risk. How do you assume the risk? I need you to be breaking apart the elements and your analysis and let the reader know I understand. As to what is going on here.

 Looking at this exam here what is your point value. Point value is in the duty, proximate cause, and your argument of your defenses if you notice defenses it is weird, meaning what did the guy really do, but it is at the call. Obviously if I didn't there would be much to talk about in this examination. So that's why they went in the facts and told you that he went in his backyard barefoot. When you're barefoot are you assuming something or falling below the standard of care owed to yourself and that would be an argument that you would bring up.

A big issue here is number one the issue is whether or not Roofer owed Ned a duty of care and that triggered Cardozo and Andrews and you need to argue both. The argument in regards to proximate cause. Intervening act. Was it foreseeable versus unforeseeable? And of course your defenses. Remember to use the facts and make sure you type them into your elements and let the reader know you are strong in regards to your analysis.

 In regards to all four defenses I only know of contributory negligence, comparative negligence, last clear chance, which is only a defense. It is a counterargument from the plaintiff to knock out contributory negligence. So it is not really a defense on its own. Remember I told you use the mnemonic Clark. CLARC that is to keep in my mindset of what are my defenses. I have contributor negligence and last clear chance. They have a relationship. But last clear chance is not always there. Assumption of the risk and comparative.

 Your attractive nuisance is not a defense. Your attractive nuisance is a duty issue. That's why the inner checklist are very important to understand where everything fits. If you see an attractive nuisance that is discussion belongs under duty, so most likely you talk about landowner occupier as to invitee licensee trespasser and then of course you have a youth, child going on the land and it triggers your attractive nuisance. With attractive nuisance make sure you know the elements. In regards to the owner knew or should have known that you were unlikely to trespasser utility versus the risk. You do want to know obviously or elements so you go through them and support it because it is something if it is tested they are going to want to see.

So again, work on the inner checklist to make sure that you understand where everything fits. Because then that tells the reader you understand the legal concept.

Are there any questions on question number one?

three exams that we are going over our baby bar examinations. So it came right from the bar examiners themselves on the baby bar but then going over these obviously gives you a good understanding about the test. Obscurity sometimes.

No questions for question number one, let's go to question number two. Her memory you will definitely have contracts. I'm pretty much leaning toward what? You will have two contracts in the upcoming exam so you want to be prepared. Generally you will see one triggers the UCC annual probably have another one in regard to common law. Anything in contract is fair game, the formation issues, the defenses to formation, the conditions and excuses to conditions. Remember I told you they haven't tested a third-party beneficiary so go over the issues and make sure if you understand if triggered you know how to address the issues. There is a gap, since it actually tested that. They one, hit hard one year after the other after the other so they stay away from it so now after the time gap it is something you want to be prepared for. We want no surprises. We want to be prepared for whatever issues they do give us and obviously have the ability to handle it.

 Let's look at question number two. This is a contract question. Beasley if you read the first call, can Cotton Co prevail on an action for breach of contract against buyer [inaudible] I told you it is contracts. At this point I go through the contract checklist. Anxiety level is going down. As the call number two asks, does cotton company have the right to reclaim the unused batting? Explain fully. You can see in call number two narrows you down to reclaiming and that is an issue that most of us do not know but I will go over it with you because if there is an issue that comes up that I have no clue about it we will fudge it shall we say. So there's a way to had known it on the facts and seasoning about it so use common sense and argue versus leaving it blank.

 All right let's go ahead and go through the facts. Buyer manufactures mattresses. What does that tell me? buyer is a merchant. Which features an outer layer composed of a cotton material called batting. Unexpectedly, that is a good word. Buyer supplied batting went out so it was something he was not aware of. It says, which brought the entire production line into a halt at a time when buyer was trying to fill a large special order for sleep Co. So obviously [inaudible] for an order he has with another company called sleep Co., another one of his customers. Buyer's regular supply batting [inaudible] refuse to deliver more batting because buyer was behind on his payments to the supplier. So, obviously if you are not up on your payments I have a right not to deliver, right?

On May 1, buyer telephone cotton Co. and told cotton Co. that he urgently needed a large bill of batting and he was willing to pay top dollar with cotton company could deliver the batting by the end of the day.

 Now let's break that sentence apart. First of all he telephoned. What does that tell you? Looking for the statute of frauds. Looks like we have an oral contract coming down. Will he be willing to pay top dollar. Those are your terms in regards to the contract and the offer. And of course as long as you get into the condition of by the end of the day. That looks like that is your formation. On May 1 cotton company delivered the batting and told buyer it would send him cotton companies invoice for $5000 later in the week. Buyer was upset because the price was 30% higher than a charged by his regular supplier but because of his urgent need buyer opened the bill and began using the batting to make mattresses. So he was aware of it, knew about it and still use it. You could have said no and taken aback, rejected it. He didn't. On May 2 at a time when buyer had used about 5% of the batting, sleep Co. called and canceled the order, why did he get the batting for sleep Co.'s order? what just happened? The whole reasoning that he got this batting just ceased. Stopped existing because they are basically canceling the order does not raise frustration of purpose, doesn't it was such a major blow to the buyer's financial condition that he announced he would immediately close his manufacturing plant.

 So if he cannot function now because of the financial problem, impossibility, commercial impact ability what is he going to do? He's shutting the plant so these issues were all raised based on the facts. It further states buyer refused to state [inaudible] he and cotton company never entered into a forcible contract and informed cotton company that he'd sold her remaining batting to another mattress manufacturer. By sale to another party obviously I don't have it and that you can get it back. Versus if I do have is that something I need to get back?

now with contracts remember take it right in chronological order. Use your checklist. Use your tools. So the first thing, the does the UCC apply, they give it to the transaction with cotton batting those are goods. The UCC would apply. Merchants, to give you buyer manufactures mattresses, which features a layer of batting so they deal with goods in a kind, and cotton company manufactures the batting so we do have both parties being merchants.

 Another was a contract, no. I do not see any fact pattern they told me there is a valid written contract. I don't see anything telling you there was a contract. I'm going to break apart into the offer, acceptance, consideration paid with the offer obviously have the telephone call and basically he explained his urgency of the need for the batting. Saying that I will pay top dollar. That shows his outward manifestation of intent. He wants to be contractually bound by cotton company. The term is obviously deliver by the end of the day that batting is the quantity. Top dollar is the price, and batting as a subject matter so all the terms are there. Alright so that supports the definite and certain terms and obviously you have the phone call shows communication to the offeree so we do have an offer.

 Now, factually we have cotton company delivering the batting so does that show the acceptance? Sure. Unequivocally acceptance of the term of the offer based on the contract and I go for bargaining, top dollar in exchange for the batting so I do have consideration.

 Now do you notice in my formation of my offer and acceptance consideration, I did not really bring up the distinction of UCC. I don't have to. Why? Common-law works.

Remember in your examination even though it is UCC essay you will go through the UCC merchants and startup of the common-law issue of offer. If anything fails there than bring up the aspect under the UCC. So can you just go right through and until it is time to show the distinctions as to the UCC. You will know based on the facts.

 The next issue obviously is the statute of frauds. I feel that is what I call the gimme issue on this exam. Why? Telephone. Remember the one thing I told you I want you to watch out for is incomplete writings. 90% of the time that is how they test. And so obviously over the I send over the purchase order form and you sent me the confirmation that is not a complete writing. That's incomplete writings. That would trigger this session prospered as highly testable. In this particular contract was a telephone. They fight you for the member contract for the sale of goods for $500 or more need to be in writing otherwise it's not enforceable unless you can find an exception.

 So here we have got the facts of the cotton batting was $5000.Obviously this is a contract for sale of goods over $500 or more. So needs to be in writing. This was done pursuant to the telephone so statute of frauds was violated. Then go to your exceptions.

 Run it through your checklist. Do I see anything in regard to my exceptions such as the sufficient memo to argue? No. Full or part payment or full or part performance. We have full performance on cotton company side. And so obviously cotton company wouldn't have delivered this and you actually opened it and started using it unless you had a contract. So that will take it outside the purview of the statute of frauds, so the contract will be enforceable. Statute of frauds will not bar it.

 That is by defenses to formation. I don't see any other defenses I'm going right down the checklist. Do we have conditions? Yeah we do have a condition. What are conditions under the terms of the contract cotton needs to deliver the batting before the end of the day and they have to pay for. Cotton company to do their portion, they delivered the batting so they needed to send the invoice. Now it is buyer's turn. Buyer, you need to pay. Buyer will argue I cannot pay. Why? Remember it would be impossibility performance.

 Remember when a contract becomes objectively impossible to perform obviously that is going to excuse your performance. In buyer's argument is sleep: exactly canceled the order and to put my production into a halt and I don't have the order to fill anymore, it's impossible for me to pay for the batting because that was my financial stream there. Cotton company will come back and argue that you lost the contract to sleep Co, okay I agree they did cancel the contract. But it does not make it objectively impossible for you to pay. Right?

so buyer's performance to pay for the batting will not be excused by impossibility. And with the doctrine of impossibility need to understand, and this does come up on the multi-states it has got to be objective. Nobody can do it. That is a hard element to satisfy. Because you have got to show, sorry, no one can do it. It's just like it says it is impossible. There is no way to do it. It is either against the law or does not exist. Something and you will know based on the facts. It has to be objectively impossible. And again, that is the element they like to test which is not going to work.

 Remember I told you when you see impossibility look for frustration of purpose and commercial impact ability. Those three have a relationship. So that will help you identify more issues.

 Frustration of purpose. Remember with frustration of purpose it is due to unforeseen event that a purpose would be contracting for will contemplated with each other no longer exists or is destroyed so we have a problem here. The bargain will argue look, the only reason I ordered the batting was to fill this order I have for sleep go. I ran out of batting. Sleep Co called me up and canceled their order so it was an unforeseeable event so my purpose has been frustrated. But what do we need to show? Was the purpose of buyer contemplated at the time of forming the contract?

all you hang onto is that the buyer told cotton company that he urgently needed a large bill of batting and he was willing to pay top dollar. He didn't mention anything about the contract with sleep go in the purpose of buying the batting. There's nothing to grab onto to support that cotton company knew of the purpose. And so since it wasn't contemplated for the formation of the contract, sorry, frustration of purpose will not be a valid excuse for the performance, buyer. Does every buddy see how that works?

so you need to show an unforeseen event and remember the purpose needs to be known. At the time of forming the contract. That is important, and guess what element they usually test, the purpose being known at the time of forming the contract.

 Again, you could argue impact ability. It’s commercially impractical to perform the contract. You will me to pay $5000 and he is financially broke, but is it again 10 times you want to make the argument and most likely I'm going to find that is not going to... What? Relieve him of his responsibility so it's not going to excuse his performance. So I put buyer in breach. Buyer must pay for the actual batting by his failure to do so goes to the essence of the bargain and unfortunately I look for my remedies which in this case would be the contract applies plus incidental damages which cotton company can show.

So this call number one was not really bad in regards to your issues. What do you primarily have to deal with? forming the contract and your defense is the formation.

 One thing I see obviously, you see merchants, merchants, they did not put it at issue or torment you with the facts to argue and element to look to both sides, but you still have to do a good issue. Statute of frauds, student Mrs. on the exam, tells me you're not paying attention to the facts. It's really obvious. The one mistake I do see is students will snowball the statute of frauds and they will talk about how it is falling in the statute of frauds and how there is full performance, so it's out. What? You want to separate it out, show me how you get into the statute of frauds and carry it all the way through in your analysis and had note as to what exception you are addressing and show me how that works and get out. Do not leave them altogether in regards to your analysis of the paragraph. A lot of times it doesn't come across properly to the actual reader so you want to pay attention to that.

 Conditions, remember with your conditions... Look for them and make sure you understand how they come up in a fact pattern and your excuses. Excuses. How many, two or more. So remember impact ability, impossibility, frustration of purpose. They have a natural relationship... Voluntary disablement, they have a natural relationship. You want to keep that in mind to help you see more issues and again that is why your checklist is written out, to help you see more issues.

Now let's go to Conover two. Most students had a very difficult time with this. Call number two really deals with UCC2 – 702. It's basically sellers’ remedies after they discover the buyer is insolvent. What can I do?

if you did not know the role what are you going to do? I'm not going to panic but what would be common sense? if I find out later... That I delivered you goods and you don't have the means to pay for it can I demand them back and [inaudible] yes I can but look at the terminology of UCC reasonable. Of time generally not to exceed 10 days. Oh, and that is what the rule is basically about. So under this rule upon tendering those goods and if you find out within a reasonable. Of time with and attend a window that the buyer doesn't have the ability to pay for those goods... Then you obviously based on good faith can reclaim those goods. Remember in regards to seller has to discover that the buyer is insolvent, has to be based on good faith. Right? And of course within 10 days of you delivering those goods you can have the right to reclaim them so you have a 10 day window, shall I say.

 But again, if you didn't know that rule, go pull out the facts in regards to from the call, reclaiming the goods. And I'm pointing it out so you didn't have a right to claim the goods since you deliver them in buyer did not have a means to pay for them, you will get something. So I go pull out those facts and have a decent headnote I will get something. So don't just leave a call blank. That will really hurt you.

In regards to this question, call number two obviously did not know what to do, that will hurt you. It's a very specific call. Some students brought up unconscionability with the 30%. How is that unconscionable? remember with unconscionability it has to be grossly disproportionate. I mean it's just got to be outrageous and it does not come up testing why so it is not one that really, this is how it is tested because again, it has to be really grossly I mean shocking, shocks your conscious type of situation.

 That's question number two, contracts, you cc. To me it's very straightforward.

I don't think it's difficult as long as you read the facts and break it apart. Anybody have any questions on question number two? Let’s go to question number three.

Criminal law, criminal law generally has a lot of issues. You want to break it apart. What issues generally will you see on a criminal law exam. Conspiracy, Pinkertons, we talked about this before. So what should I have mastered? conspiracy, Pinkertons so students leave those out and do not analyze them. And it is something they always test. Something to get the jargon down and understand how to argue it before I go take the exam because they keep consistently hitting you over the head with it all the time. So to me it is a gimme, it's an issue I should be prepared for. That is important.

First thing again, what do we do is read the question or the call of the question, we are on essay question number three. Call number one. What criminal charges if any should be brought against Art and Ben.

 I see criminal charges. Two things I'm looking for charges, two or more. Right, and it is charges, not convictions. So that means if an element fails I'm still going to bring it up. Because it says charges and it says art and Ben. Two people. When I see two people I'm going to see look and see if there's something between them if they gave me three people I know there is something wrong. But for two you have to question and go look for it. Call number two, what defenses if any do art and Ben have to the criminal charges. So, defenses. After each crime I can't do the defense I have to do it in call number two. And I have to make sure that if I see a defense to... Let's say conspiracy will the defense also work for larceny. If is not going to be the same defense all the way through I have to let the reader know for conspiracy this would be the defense, as for larceny this would be the defense and break it apart that way otherwise if I just list the defenses that could confuse the reader thinking they work for all of them so you want to pay attention to that as well.

 Let's go through the facts. After drinking heavily, circle circle circle what does that tell you? remember intoxication we have seen this issue before remember when you see intoxication what is the issue I always talk about? Diminished capacity. And so I see two issues right off the bat. And I haven't finished the sentence. Art and Ben decided that they would rob the local all-night convenience store. So they decided, what is that? that is an agreement. We have a conspiracy right there to rub the all-night convenience store right after the first sentence of the facts I have a conspiracy and I already see two defenses intoxication and diminished capacity. So I feel all right in this exam. It says they drove arts truck to the store and you this is a stick up while brandishing their unloaded pistols.

 This is where students get hurt. Visualize. They drive the truck, enter the store and yell this is a stick up. What is that? Burglary. You're going to argue a burglary. Remember if you enter with the intent to commit a crime and a felony there in a common light even though it's not in the dwelling house which we will still have to go through it that would be argued as a burglary. So you bring a burglary. Now they are banishing their guns. Now do we have a robbery?

right, and it says they discover the only persons in the store were Mark who worked in the store, and Fran, customer. So we have two people. Art became enraged that is a strong word. So whatever he's going to do now he will do it delivery with the specific intent. Since he regarded Fran as his steady girlfriend and was jealous that she had been spending time with Mark. Jealous. Spending time with Mark. What does it make you think of? Thinking angry, adequate provocation to have a good idea what's coming down the pike here. It says art announced I will chill these lovers out and loaded them into the truck. If I took them and put them into the truck what is that? So we got a type of kidnapping because there is transportation, movement and drove a very short distance behind the store to a large refrigerator. Art locked Fran and Ron in the refrigerator Folsom prison and return to the store to pick up Ben. So Ben was not even along. Obviously with a conspiracy the other conduct in which Mark just did you want to try and impute it on to whom? Ben, so they kidnapping, the false imprisonment, he did not do any of that. Because he was obviously still in the store. So that is what raises the Pinkertons rule.

 After he locked them in the store he went to pick up and who took $250 from the cash register on the way out of the store. If I take money on the way out, what is that? that is a larceny. It can be a robbery, why? There is no force fear or intimidation because where are Mark and Fran? Locked in the refrigerator. So that would be a larceny. And I go back and think what were they doing this is a stick up banishing the unloaded pistols but they didn't carry through the activity so that might be an attempt at robbery.

 Further the facts state the next day the store manager said things were amiss and called police who rescued Fran and Mark from the refrigerator. Fran suffered no significant injury. Why did he lock Fran in refrigerator? He was jealous. He was angry. Could I argue that may be an attempted murder? But Mark developed pneumonia. And died as a result several weeks later, now we have a homicide, murder. The corner report showed that Mark had an extra ordinary susceptibility to pneumonia and it was triggered by exposure to the combination of viruses and the intense cold of the refrigerator. What does that raise? You take your client or victim as you find them, that's a plaintive rule under proximate cause. Remember we do have proximate cause in crimes. So the best way to test this, tacked the exam is who's in a lawsuit, state is raising charges against art and Ben. Some going to talk about the conspiracy and set it all up right from beginning a taken chronological order. Obviously I don't sever the defense because that is call number two and I need to always prove up a crime first before I bring up an actual underlying defense.

 So the first thing we will talk about is conspiracy. Remember conspiracy we need to show an agreement between two or more to commit an unlawful act. What do the facts tell you? They agreed to rub the store. They decided they would rob the all-night local convenience store. So that is an agreement between art and Ben, so there are two or more to commit robbery. So I've got the conspiracy. Then of course when they drove over and entered, brandishing their guns that would trigger a burglary and this is an issue that students miss. I want you to understand how burglary can come up. So when anybody enters into a story with intent to do something you should be thinking [inaudible] always start off with common-law burglary first and if it feels good to modern law. Remember, we need nighttime breaking entering the dwelling house of another two with specific intent to commit a felony therein. They told you it was a local all-night convenience stores I'm going to bet that it's nighttime. They entered brandishing their guns, there are no facts to say they broke in. There was an entry. It is a store, not the dwelling house of another. They have the intent to rub so they have the intent to commit a felony therein but lack of breaking into the dwelling house the burglary would fail. So then I go to modern law burglary.

 Remember with modern law burglary you need to trespatory entry to any structure to commit a crime.Well, the fact that they entered a store is that trespatory? What the law holds is that if you enter with the intent to steal the majority jurisdiction finds that the owner is vitiated. So therefore your entry was Presbytery. We have the store is the structure we would find my mom burglary.

They brandish their guns and basically said this is a stick up so I would raise the issue of robbery the problem with the robbery is they did not take anything at that point. Why? Mark got upset because he saw..., Then got upset because he saw Mark and Fran. So based on those facts they didn't carry through with the robbery. Ben took the $250 later. Not by force fear or intimidation, so I would argue and attempted robbery and I would make that clear to the reader.

 Remember when you argue and attempt what you focus on? elements of the attempt only. Was there a specific intent substantial step, preparation versus perpetration. You want to break apart the elements and see if they are supported there. Brandishing the unloaded pistols they took a specific step and they had a specific agreement. And of course evident by what he saw... You could argue that that would basically be an attempt because he was angry so he didn't get the money by force fear or intimidation because he was jealous. He decided to chill these lovers out so his actions pretty much stopped at that point. So we would have attempted robbery.

When I take it in chronological order. They place him in the truck I would argue kidnapping or member the intentional unlawful movement of another drove a short distance but still move them, still kidnapping, lock them in the refrigerator, those facts would support false imprisonments. So there is confinement of another. It is unlawful obviously he did not have any grounds to. Then I see here in regards to the homicide… I didn't talk about the larceny because Ben is the one who took the money on the way out of the store, and so I'm talking about my first lawsuit with art based on the call that I will go over in regard to the homicide.

 In regard to the homicide were they placing an issue? a couple things. Number one, proximate cause. In this case what is are going to argue? This is not foreseeable it was just refrigerator. It was not a freezer. But what does the law say? He had an extraordinary susceptibility to pneumonia and you take the plaintiff as you find them. So you are the one who caused the death evident by what the coroner testifies to so you are the proximate cause. And how can he show malice? What about the language chill these lovers out. Did he have intent to kill? He did stick them in a refrigerator so that's arguable that he had intent to cause bodily harm. It definitely was wanton and reckless conduct, and could we argue the felony murder rule? Absolutely.

Remember with the felony murder rule it basically says any murder that is done in the commission of an inherently dangerous felony. Also any attempt of inherently dangerous felonies so we Already talked about the attempted robbery. We can use that for the felony murder rule or use modern law burglary that we have already proven. Or we can use, but I want you to understand that this does come down, the felony murder rule applies to anything inherently dangerous or attempted anything inherently dangerous. Do not forget that.

 So here based on the facts I would find murder based on intent to cause great bodily harm, wanton and reckless conduct and the felony murder rule. Would he be convicted of first-degree? I would argue yes pursuant to the felony murder rule. But then what do the facts tell you? he was enraged. I would have to bring up the issue of voluntary manslaughter based on the facts. And since he is enraged because he thought Fran was his girlfriend and he became jealous was that adequate provocation?

what you're looking at is what the reasonable person lose the mental equilibrium what they saw? he didn't really see anything, she's in the store. So reasonable person would not lose their cool and act the way they did. And of course you want to bring in sufficient time to cool off, well he didn't. The fact is a reasonable prudent person would not use their mental mindset there as he did so to voluntary manslaughter.

 Matthew issue I felt was a sleeper was attempted murder of Fran, why? She was placed in the refrigerator. The fact that I see I want to chill these lovers out that Mark ended up dying I'm going to bring it up and go through my elements of attempt. I'm not going to spend a lot of time with it, but again chill these lovers out, he had the specific intent, he took the substantial step, he shoved them in the refrigerator and lock them up. And then break apart your elements.

So crime wise what do I see against art? We have the conspiracy, we have the common-law modern law burglary, the robbery which fails and I point out it is an attempted robbery false imprisonment, kidnapping and murder in the attempted murder of Fran. There is a lot there. So now when you get to ban you're going to have to what? Bootstrap.

 State will bring up conspiracy as discussed in the issue with conspiracy, is he liable for all the conduct which art did based upon in furtherance of the conspiracy. Was it unnatural and probable result of what they conspired? They conspired to rob the store so I can see what? robbery, I can see attempted robbery, I can see burglary. Could ice for see the kidnapping, false imprisonment and murder? with kidnapping and false imprisonment I think we have a strong argument it was not in furtherance of the agreement because he got angry. He got enraged. Those are good facts. He saw them and basically lost control. I would argue that. What about the murder? And that something reasonably foreseeable?

remember it doesn't have to occur the same way as the fact pattern if you are robbing a store could someone foreseeable and I? Absolutely. You have to break it apart and argue that. Under the Pinkerton's rule he could be responsible and let the reader know that you see that. Is he responsible for the burglary, absolutely. Is he responsible for attended robbery absolutely. And then I will bring an independent charge for larceny because he was still in the store when art came back and he took the $250 and went out. Was there to trespatory taking and carrying away of personal property of another. So good facts to support the larceny for Ben.

Everybody understand with Ben the primary focus was just on the Pinkerton's rule. But how we had to really look at the differences of the crimes and see if, you don't want to look at them altogether because I think we have a different argument in regards to the false imprisonment and kidnapping as to whether or not that was in contemplation of the conspiracy versus a murder. And so you want to let the reader know you see what is being tested and break that apart. That is important.

 All right that pretty much takes care of call number one. Call number two, basically asked for defenses. You want to pay attention to defenses two or more. So you have to use the facts.

 The general rule is if you see intoxication what are you going to talk about? diminished capacity. With voluntary intoxication remember it's only a defense to a type of crime? Specific intent. Right, so the fact that he went to the convenience store and continue to rub them is burglary a specific intent?is larceny specific intent? And then of course what you need to show that they are so intoxicated that it negates the specific intent. And based on these facts, does it? there is a good argument that no, they knew how to get in the store he was honestly able to identify Mark and Fran and drive them around and lock them in a refrigerator so they are not so intoxicated that they are not fully aware of their actions.

 I will find that the voluntary intoxication is going to be a defense for either one of them. To negate the specific intent of the crime. Right, so obviously no defense. And diminished capacity is where you show the capacity is so diminished that you cannot form the specific intent. Same facts.

 They are fully aware of what they are doing. Chill the lovers out, put them in the car, drive them around I will argue you are fully aware and have the capacity to form the specific intent so diminished capacity would not be a valid defense.

So if you brought up larceny under art I guess you could but the problem is it was never completed until Ben went and took the money. You could as long as you explain it to the greater because technically we could impute it to art based on Pinkerton's. You are right. But I'm looking at the facts and say why do they tell you that and it is in the lessons of the paragraph, usually those are problems. So that is why I set it up the way I did but I think you could do it the other way as well.

You will see some of the exams he gets frustrated you will look and start writing and you said I could write it this way or this way or this way and at a pressure of the exam you need to pick away and write it because even myself I see some exams and I say I could write it this way or this way and it will drive me nuts. Just pick away and write it because there are probably multiple ways you can write it. Not just one way. There is an issues we are looking for but is not like a look she didn't do it this way or he didn't, what have you. I do want you to be aware of that.

 On this particular examination there were a lot of issues. Burglary is an issue that students have a tendency not to see. I want to make sure you are aware of here is a prime example how it comes up. Attempted robbery people did not see. They took the money without force fear or intimidation so you need to be aware of and the defense or member the plaintiff that comes back in crimes as well you have got to be aware of that in and of itself so that is important. Anybody have any questions on question number three?

you can see again that it is loaded, lots of issues. All right at this point what should we be doing? Shouldn't be panicking, go over, have a plan of study. A plan of attack. You have approximately two weeks before the exam. You want to make sure you are consistently going over your checklist, working on your issue spotting one of your examinations and I hope you are doing at least 50 multi-states a day. You want to look to why, why am I missing this. Look into that. And a good understanding as to I see Wade is B versus C. You have to look at that. That's the only way to correct the problem or rectify it. So again you have to do the process and the work.

 The other thing is I would highly recommend take some simulated exams one or two before you go in there and take the exam. You must get your timing down and sometimes we take for granted I assume you all have a timepiece you are bringing in. I heard from a student the other day I did not know I could do that. You better have a timepiece with you. It cannot have any bells or whistles or make any noises but you have got to have one that you are looking at constantly on your desk that you are bringing into the baby bar so you can monitor your own time. Do not rely on anybody else because number one there are a lot of people there and good luck seeing the clock that's in the beginning of the room and you are in the back and you cannot see it. So get used to that, start timing the simulating exams that is important.

 You will find I promise that the essays... That would be the fastest four hours you have seen in your lifetime. Because time will fly because you are just going going going and trying to get the issues in the book. So that is something obviously to practice. And you have got to learn shortcuts in regards to how do I know if I have to break as a part for detail or if I can go this direction.

 You can use your computer. The only problem I have with the computer that I'm looking at my nuts is 657 right now. If they said on your mark get set go I have 657 in my brain. To sit there and compute what is a four hours from there. I would rather put my watch piece at 12 o'clock knowing that it stops at four and the exam is over it for so I don't have to think about this time, how much time do I have left. I don't want to have to compute that I want to keep it simple prayer that's why I recommend people have a timepiece there. Because their clock won't match the computer and they move there timepiece I've seen it before that they will put it to an even hour before they start. So it's something I want you to be aware of. I would still recommend a timepiece.

 Any other questions?

you guys feel prepared? At this point you probably feel like okay I'm ready for it, I'm getting there. I've got a few more things to tighten up on but you've got to go in there and take the tiger by the tail. Make it happen.

 During your preparation if anything’s up or you have questions please free to call or email I will be happy to help you in any way I can. My email is Jolly@TaftU.edu this is crunch time this is where you put everything together. This is what I call the bow on the package so it is all ready and it looks nice and you go in there and make this happen. Any other questions before I say good night?

I wish you guys all the best on the upcoming baby bar. Remember, keep control of the exam and let's make it happen. Right. Hopefully I hear from you talk to you later.