taft law

crim law baby bar e class

9/13/16 6:00 pm

INSTRUCTOR: Good evening everybody. We will be starting in approximately three minutes. Good evening everybody and welcome to tonight's baby bar miniseries. We will be starting in approximately one minute.

Good evening everybody and welcome to tonight's baby bar miniseries. Tonight we will be focusing on the subject matter of criminal law so, so far we have already had torts, contracts and now we are on the last subject which will be her criminal law. Remember these sessions are recorded for your convenience so if you cannot attend a session or if you want to go review something they are on the Taft website. Go to the student section and click on the baby bar miniseries and whatever class you're interested in should be posted there for you.

Crim law. Well we did go over torts and you're going to find that Crim law is very similar to torts. But the key thing there is to remember in regards to Crim law is to make sure you are breaking apart the facts and make sure obviously they support the particular element for the issue especially in multiple choice questions.

 There are a couple things with Crim law I want you to remember. Remember as well if you have questions go ahead and pos tin the question and answer box. They will be more than happy to help you in any way you can.

 When I when you do an essay or multiple-choice question the first thing I want you to make sure you ask yourself is do the facts support the crime.? If you break it apart was there respiratory taking, did they have the specific intent to commit a crime because a lot of times we make assumptions. Oh yeah there is a larceny and by not breaking apart the elements they are not supported by the facts. So you have to be paying attention to that. Also on the essay it's important because you will see what is called the sub issue of what's being tested because there might be a gray area. There she was intending to return it tomorrow, she's borrowing it while she's at the nightclub and will return it tomorrow. That puts that issue did she have the specific intent to permanently deprive. So based on the facts you will know what element the examiners are playing with but if you don't break it apart you are not going to see it and let them know you understand with a gray area is. And that is important. They want you to think.

 We will be going over the last baby bar essay questions relatively soon.The one question which is the contracts I'm seeing students had a hard time with because they made you think. Because you could've gone different directions and when they do that to you on an exam that's where students get frustrated because they are not sure which way to jump. And that is again, if you focus on the elements and see what is being tested you will know when it is a gray area. Doesn't matter how you conclude as long as you argue both sides. So I want you to keep that in mind. There is not always an absolute correct one answer. Obviously on the multi-states you have to choose the best answer.

 So again, what is going to help you with that is the facts, breaking apart your elements and see if it is supported pursuant to the facts. That is so important.

 Once you find that there is a crime whether larceny or burglary, ask yourself is there any applicable defenses here.If you saw let's say defense of she didn't have the specific intent to permanently deprive, technically that's not truly a defense. That is an argument or counterargument you would bring up within the issue of larceny. Versus true defenses after you prove up the crime would be like self-defense, defense of others, duress, crime prevention, something to that effect which again you go through the fact pattern and see if it is supported with the facts. But just like a tort, once you find the tort, look for the defense. Once you find a crime, look for an actual defense. That is important.

 The other thing I want you to look out for is liability. Can it be imputed to another party? Highly testable area. What we are dealing with is accomplice liability and conspiracy with the Pinkerton’s rule. Heavily tested. Students do not do well in this area which I don't know why because you know it's heavily tested so isn't that something we should master? Absolutely. So it something you want to work with and make sure you understand.

 The other thing I want to make sure if the checklist was sent out to you if you don't have a checklist you want to start making one because it will help you with your issue spotting to make sure you do not leave anything out. It's very important you use your tools.

 With Crim law the other thing I want you to pay attention to on the multi-states, and try this in practice when you're doing some related exams, make sure you are paying attention to the call of the question. Is it a tort, multiple-choice question, or is it Crim law. And they are going to mess with you and a lot of times they read the answer choices and yet they told you the prosecution is suing Mary, bringing an action against Mary and you pick trespass to chattels. Even though it might be even though it's a short issue it's evident by the call, so pay attention to that. Sometimes you get a low multistate score on the baby bar and bar exam and that is because we suck it in and answer the tort when it's the call of the question specifically directing Mia crimes and I wasn't paying attention. What's interesting is if it was a tort call that probably would be the correct answer and it's not. You need to pay attention and that is important.

 The first theory we will focus on tonight is the inchoate crimes. I cannot stress this enough. It's highly testable. It something you want to have a good understanding, understand how it is tested. And of course the little nuances such as merger, withdrawal stuff like that. Because that is important. The first one we will look at is solicitation. With solicitation this issue to me is very subtle and a lot of students miss it what do you have to see somebody who obviously has specific intent that is enticing somebody to do an unlawful act. I want you to help me or do something with me. I am enticing you, so if I come up to you and say would you like to rob a bank with me I would bring up the issue of solicitation.

 Now, the one trick with solicitation remember it merges with the underlying crime so if we go rob the bank, right, it depends on the call of the question, you would bring up solicitation. You could bring up the robbery of the bank if they ask you as to what crimes will they be competitive, obviously solicitation I can bring up on the essay and see how it merges with the underlying robbery or burglary or whatever we address but it is something we want to pay attention to because again if it does merge then you can obviously charge with a solicitation. So the call of the question is going to dictate what crimes can be charged meaning something totally different than what crimes can he be convicted of. Big difference. I want you to pay attention to that so obviously crimes being charged, there might be some wiggle room, gray area here where I might not be able to prove everything but there are facts to support an argument versus in regards to what crimes can they be convicted they have to be supported with the facts, so that is where the call will dictate and you need to pay attention.

 Now with solicitation you want to look to withdraw. Gen. rules, majority rules, no defense. However what you for responsible in the model Penal Code you have to make a dissension between your common-law and model Penal Code. Remember on the multiple-choice you're going to answer according to common-law unless it tells you otherwise. Or as people have told me on the exam there's no other answer and you can tell they are only testing the model Penal Code so you will know. With the model Penal Code the rule is different. Can you withdraw? Yes. If it's a completely voluntary of the actual crime so you can withdraw from a solicitation and again as I stated earlier remember solicitation merges into the underlying crime so it is a lesser included offense. So can I be convicted of both solicitation and the robbery, the answer is no. Because it is a lesser included offense. Can I be charged with both, yes.

 See if the prosecution can make it stick but I cannot be convicted about because it is a lesser included offense. Another inchoate crime which is highly testable is attempt. I say this with attempt alone and for some reason the students don't pick it up and I'm not sure why. With attempt you want to make sure you understand, this is very important, you only focus on the elements of attempt. So, if I say attempted rape, what is the mens rea. Specific intent. Don't focus on the underlying crime which is rape, that's where they will try to mess with you because a lot of students think it's general intent because of the rate. That is not how attempt works because it is an attempted crime. He did not have filler complete the underlying crime. With attempt you want to make sure you break apart again do you have the specific intent, but you have to have a substantial step, you have to have the apparent ability, preparation versus perpetration, once you show all those elements obviously then you will look for a defense which we will get to in a minute.

 So if I tell you it is an attempted rape you are not going to define rape and go through rape and or attempted robbery and go through robbery, a lot of students do that. Why. Unless you do something in the fact pattern that I go into a liquor store to rob them and I go in there and I see a friend of mine and so I go talk to him and I basically don't do anything at this point now you might want to argue attempted robbery. But then I leave and come back up again and now I have two different actions I might see there's an attempt to the first one and show it fails and then go to the issue of robbery, you could go to an issue like that. But not through the same conduct. I want you to pay attention to that because for some reason students have a very hard time with this particular issue and it should not be that difficult.

 You do want to look for your defenses and this is where students mess up to and it's very simple. My motto in life is keep it simple so you have legal and factual impossibility.

 The general rule with factual impossibility is no defense. So, what you look at is you look to the defendant. Look to his mental state and see if the defendant intends to commit a crime but the facts unknown to him makes it not a crime. What does that mean. Let's say, let's give you an example of attempted murder. I give you a fact pattern and I'm really mad at my neighbor because he gossips about me and says mean things and so I said I'm going to get rid of the problem. I'm going to murder him.

 I go sneak into his house and I got my little pistol and I go upstairs and shoot him in the chest. Little did I know he died an hour earlier of a heart attack. Now I'm being charged with attempted murder. So you go through your specific intent. I was angry at him, wanted to get rid of the problem because of how he gossips. Substantial step, I took the gun and snuck into the house. To have the apparent ability, yeah the pistol. Was it preparation versus perpetration. He was already dead so I could not commit the murder. So the elements of attempt are satisfied.

Now I bring up factual impossibility even though I know it's not going to work the examiners want to see you understand it. So with factual impossibility look to the mindset and where the facts as I believe them to be my conduct would have been a crime. Would it have been a crime, the answer is yes because I believe he was alive. If I told you I knew he was dead and I wanted to shoot him for the heck of it we might have a different situation so with factual impossibility you look to the defendants mindset, and if the facts as you believe them to be with the activity be a crime, if the answer is yes obviously it is no defense.

 Another example is let's say I decide to steal someone's wallet and I reach into the back pocket. Little did I know there is no wallet there. So again, you're looking to my mindset. So you are really negating the specific intent. So were the factses I believe them to be would that make my activity a crime. If the answer is yes no defense. Does that make sense? No defense.

 Which if you think about it that's why some of these crimes don't exist, like it's my bowling ball by mistake I believe it can I charge you with intent no specific intent. Factually believed it to be a ball so that would not make it a crime and that's why it would make it a tort. So if you keep it that simple, defendant's mental state, and based on what the defendant believed, was his conduct, with the conduct be a crime. It is that simple. And of course you have legal impossibility and the defendant believes the act is illegal but it's legally not a crime it works as a defense. He does not come up too much. But in an exam let's say you decided to go dove hunting, I believe that opened up in our area and you believe it's against the law to go dove hunting because you think it does not start till October. Well, the law says it starts in September so you would be okay. So it's impossible to violate the law because the season open up in September.

 Now you can have a withdrawalfor an attempt. General rule, is not valid if you're in the zone of perpetration. Which makes sense, you've already started your activity. Versus the model Penal Code, and at least you are going to see with the model Penal Code they are consistent with the language and I like it because it makes it easier on you. What you need question mark the same thing we talked about in solicitation. You need a voluntary withdrawal. He basically had successfully abandon the crime. So can you withdraw from attempt.

 Yes. The key thing I want you to remember with attempt is make sure you are only focusing on the elements of the attempt. Right, don't obviously, it is an attempted robbery or it is an attempted rape because I want you to make sure you are on the elements of attempt and focusing on the mens rea for attempt which is specific intent.

 I guarantee when you start practicing this on multi-states they try to trick you. And we for some reason go pick a silly defense that will work for general intent but not specific intent. Or we don't because only it will work for specific intent because we did not pay attention to the underlying crime being charged with attempt. So you do want to pay attention. That's very important.

Another concept, I would be shocked if it was not on your baby bar exam, conspiracy. Comes up all the time so why do people not do well with this. Conspiracy in agreement, you need to or more and it has to be an unlawful act. It is that simple. Where they might play with you is what is in agreement. We have different types of agreements which you should be seeing on the multi-states. You have a tacit agreement, and waiting waiting in the car with the motor running, agreement. You can have a unilateral conspiracy. This is basically where liability will be imposed if the defendant agrees to commit an act or even by your activity. You should be seeing that on the multi-states because they are currently testing that way. So basically by your conduct you might, an example I've seen these kids were at a camp, and they hated the counselor, so they decided to take away his asthma medicine thinking he would have an asthma attack and die. Another little kid who hated him heard what they were going to do, but he beat them to it. That would be a unilateral conspiracy.

 Again for unilateral agreement you need to show the defendant thinks there is an actual agreement, that is why it is unilateral. Also that can work with a police officer. The police officer approaches you, he's undercover and basically offers let's commit a robbery or burglary or something like that and you agree. You do have a conspiracy even though you'd argue maybe the police officers feigned agreement you would have a unilateral conspiracy.

 With a conspiracy you can withdraw, but what does that mean? Under the majority rule you can withdraw if you effectively communicate to all co-conspirators. So if you have three of us and you just tell one of us we have got a problem. It's not effectively communicated to all. So you do want to watch that verbiage. And that is common law versus the model Penal Code you have to thwart, take steps on easily to renounce the crime.

 With withdrawal [inaudible] this is how simple it is. If you conspire you are there is no way around that you are going down. The crime will stay. What the effect of the withdrawal has is that it basically cuts off furtherance of liability. So, you can never withdraw from a conspiracy. And public policy make sense. They want to publish your mental state, they don't like people conspiring to do things so they are going to punish you for it. They don't like it. Which makes sense. So you cannot ever walk away from conspiracy once the elements have been met. You will be charged and most likely convicted for the conspiracy. The effect of the withdrawal is to cut off furtherance of liability.

 So remember with the conspiracy if you and I have an agreement let's say to go rob a bank and we meet in a coffee shop and talk about it, this is what's going to happen and you bring this and I bring that and I leave and on my way home I get pulled over by a police officer, low and behold I have not paid my parking ticket so I'm arrested is there's a warrant out for unpaid tickets and I get throat in the slammer. The next day you go to the bank, you do not see me there but you decide to go forward with it and you rob a bank and go forward with it. And you get caught, can I be charged with a bank robbery. And the answer is yes. And you approve of the elements of the conspiracy and point out under Pinkertons it is a natural probable result and its foreseeable consequences of our agreement that we rob a bank even though I was not someone else's conduct based on that conspiracy. As you can see why they test it. It is a good crime. Because again, you can do nothing other than conspire and be responsible for so many criminal activities. You know, the robbery, burglary, the murder what have you. And all you did was nothing but conspired.

 So again, the whole purpose in regards to Pinkertons is to impose liability, reach out and getthe person who did agree but obviously didn't do the actual [inaudible] imposed on them so can you withdraw from conspiracy I guess you could say yes or no, the effects of the withdrawal in the conspiracy is what you want to look at. You will still be charged with a conspiracy but it cuts off your liability for furtherance thereof, crimes coming out later. Does that make sense?

 Very important.

Also as I stated the Pinkertons rule is very testable and what I see with the Pinkertons rule, a lot of you don't talk about it. Some of you that bring it up shortchange it. It's like yeah, under Pinkertons it would be liable, what? You have to break apart the elements. So what am I going to be liable for? Anything in furtherance of the conspiracy or a natural probable result of the conspiracy. So if we conspired to rob and murder results is probably something relatively naturally probably foreseeable, despite how the killing occurred. That is foreseeable in and of itself. But if we decide to go steal let's say a gumball machine, that is our conspiracy, what is foreseeable in furtherance thereof/. What actions could we see?

Let's say you go to a store and you rob a gun store and take all the guns and ammunition. What? We are just taking a gum ball machine picking up and throwing it in the car what have you, is that something that is relatively foreseeable and natural probable result of our agreement. You tried to beat someone up before you rub the gamma machine. So you look to the facts and determine is that something relatively foreseeable. You decide to kidnap something while we are there. What? I mean, is that a natural and probable result of our agreement just to take the gumball machine. Gumball machine. And yet, while we are taking the machine a death occurs because we are trying to run away and not get caught that would be natural and probable because we would take steps or measures to prevent capture. That would be more in the realm of reality versus [inaudible] kidnapping.

But my point being with conspiracy need to make sure you look to the underlying act and see if it's a natural probable consequence of the agreement. Is this something relatively foreseeable and break it apart. I guarantee you are seeing this on the multi-states. Some of the weird bizarre things they come up with we agreed to rob a bank and I'm sitting in the car waiting for you and here comes my probation officer and he made it very clear to me if he sees me anywhere near a bank he will withdraw my parole. So of course I kill him. What is the probability of that occurring? But is it a natural probable result of the robbery that a death could based on the heinous activity occur? Yes, so that would be foreseeable and under Pinkertons, liability for that one that was inside the bank. And again, you're going to see this is how they test.

 With conspiracy remember your withdrawal issue and the effects of withdrawal and remember Pinkertons. Highly testable.

The other issue I see people talk about a lot that is not tested is Warren's rule. What is Warren's rule, it is so simple. Warren's rule basically says it takes two to commit the unlawful act so you can't conspire because it takes two to do it. So if you have people agreeing to do an unlawful act, but such as dueling, adultery big ring, something that effect, they cannot be conspiring they cannot be conspiring at all so there can be no conspiracy. What is the likelihood of you getting this on the exam? It is too simple. You're not. A lot of people bring it up I don't know, maybe they like the verbiage. It's highly untestable and you will know when it is being tested.

 So again, with Wharton's rule it takes two or more to commit the act so you can basically be charged with conspiracy because again to do the unlawful act you are agreeing to it takes two people so that is how Wharton's rule works. Is it highly testable? Absolutely not. I've seen it more on the multistate that I have seen it on an essay. It is not that testable.

 Okay those are your inchoate crimes. And again as I stressed to you it is highly testable it's an area I would spend some time and make sure you have a good understanding of how the concepts are tested how we withdraw the concept, helping her tin comes up, legal and factual impossibility which by the way, legal and factual impossibility are defenses to solicitation, attempt and conspiracy. The other doctor need to use his mistake of fact or mistake of law. They are so close together the bar allows you to interchange them, it won't be a problem but you want to look for them and make sure you have a good understanding. A lot of people don't understand that the legal and factual impossibility works for all three of them. They think it works for attempt and I think that sometimes the reason we believe that is because of how it is taught. But it works for solicitation as well as conspiracy so I want you to be aware of it because it is worth points if it is at issue so I want to make sure I have it in my exam if it's worth something.

Third-party liability, here you have vicarious liability, so one may be criminally liable based on the relationship employer employee you could see something of this come down like a bouncer at a bar or something to that effect. I've asked you to kick somebody out, depending on what you do to them can your conduct be imputed on the employer. Again if it is something I said you beat his brains out I will go down for that as well and then of course you have accomplice liability.

 With accomplice liabilitythis is where somebody aids or abets another person in perpetration of an unlawful activity. What you need to understand with accomplice, it's very similar to conspiracy except for there is no agreement. So I'm aiding or abetting in your criminal activity. They do test this. A lot of times how they test it is what did you do. So you will see fistfight and you are sitting there wishing in your mind I hate the guy he's fighting I hope he kills him. Is that an aider and abettor? No. You need to see some type of steps to aid or abet.

So if you see the fighting and you see a baseball bat and hand it to one of them, now you are an aider and abettor. Right, so based on the condo guess what. You just became an accomplice. Now you know there are common-law areas assessed before the fact principal in the first and second degree and accessory after the fact. These generally would come up, or your knowledge of them, you have to know them, come up more on the multi-states more than the essays.

 The key thing you're going to have to remember, with unilateral conspiracy remember that is where you have an agreement, the defendant at least thinks he has an agreement, so I would have to see that in my mind set versus an accomplice I'm not really agreeing with you, I'm just acting so there would be something different between the unilateral conspiracy versus accomplice liability. Accomplice liability with accessory before the fact remember anything that happens after that can be imputed onto me. So if I help you map out how to rob the bank and give you the map and the keys because I'm the manager or whatever and you do the act, anything you do thereafter I can be responsible for and I'm in trouble. And accessory after the fact, no liability until after. So I try to hinder your arrest. So it would be anything from that point kind of when I started to aid you, thereafter, that might be imposed liability upon. Does that make sense?

 A lot of times we don't classify you will know based on the facts if you have to someone is planning something up prior to your conduct or in your arrest helping you. You will up here, remember to accomplice liability look to the accident with a foreseeable based on their actions. So it is still foreseeability. And led to whatever activity is if I handsome but like I told you earlier, a baseball bat is a foreseeable that they would hit the person with a bat and kill them. Absolutely. Oh no, it is foreseeable that a death would result based on the answer mentality that you provided. And that is what you would actually argue.

So you can see third-party with accomplice... Vicarious comes up once in a while it's more multistate oriented, not that difficult though. But you do want to make sure you address the issue of conspiracy if it is at issue versus accomplice. So a lot of times people do both. I don't know why. If you have an agreement you've got the agreement, go with the conspiracy. If no agreement then go with accomplice liability but you want to call it what it is based on the facts. Otherwise you're going to get hurt because you will Mr. attends and obviously some issues in regards to withdrawal or whatever they are testing and get the wrong answer choice and we don't want to do that.

 Another area, murder. Murder on the baby bar they like murder. The area that they have been hitting quite a bit is the felony murder rule. And how they've been testing the felony murder rule is the underlying felony seems to be collateral with what you are doing. Usually have a set up. I set up with murder, homicide it doesn't matter. It's not worth anything, you want to start with homicide go right ahead I start out with murder and point out killing with malice and I go right to my malice is. Remember with malice what do we have? Intent to kill. Intent to cause great bodily harm. Wanton reckless conduct. And felony murder rule. If I can argue all four of those guess what? I will. So they basically tell you that I get angry at somebody and I go buy a gun and the ammunition and I show up at their house and shoot them could you argue intent to kill? Absolutely. Could you argue the gun obviously chose that I have intent to at least cause great bodily harm, Absolutely. So three out of the four I definitely could argue. The reason you want to look to that in regards to the facts as well, it will tell me how far I have to go.

 If I go through my malice and I see based on the facts that you are driving hundred miles an hour at midnight in order to get home to your wife is getting ready to have a baby and you hit a child on the way, is that intent to kill? No. Is that intent to cause great bodily harm? Is it wanton and reckless conduct, you are going 100 miles an hour so arguably that would be wanton and reckless conduct. Is it the felony murder rule question work no. Malice is based on wanton and reckless. What does that tell me? Most likely you are going on for murder two. Or involuntary manslaughter. So since my malice is based on wanton and reckless I know I'm going to have to get to the issue of involuntary manslaughter. That's why it's important to look at it to help you to know how far I need to go on my examination.

 Versus the previous example I gave you where I showed intent to kill, the intent to cause great bodily harm and wanton reckless conduct there is no way under those facts that you would ever have a discussion of involuntary manslaughter. Your malice is too strong. You cannot get there. So then it's going to save you time. Because you are not going to bring up a known issue and you know how far you need to go.

 The other issue we talked about is the felony murder rule. What does that mean? It's a way to show malice. With the felony murder rule but you need to show is that if the death results in a perpetration of an inherently dangerous felony I've got malice. What's an inherently dangerous felony? Burghley Rob robbery arson rape murder mayhem, those are what we call inherently dangerous felonies. If I find that I do have a way to show malice I would do my actual proximate cause. If I'm running out of time depending on the exam I might skip that if it is not really at issue and go right to my first degree.

 Actual and proximate cause does exist. It is the same test you learned in torts. So but for he would have died if it's foreseeable that you shoot somebody they will die. It is very rare they could introduce you, you will know when they do. Basically they will tell you something in the fact pattern that a police officer was giving me chase and of course I was driving my left wheel Went up on the curb and I hit a pedestrian. We have a causation problem here. There's no way to hide it from you. The facts are too strange.

 once you get through malice or murder then type in the first degree, the first degree can be shown by specific intent to kill with premeditation, deliberation, or poison bomb ambush torture. Or felony murder rule. Those are the three ways to show first degree. What you're going to do in your role a short cut it. I will look to the facts and see can I argue specific intent to kill with meditation, poison bomb torture, or felony murder. Let's say it is the felony murder rule that you are leaving a robbery scene and obviously a death results. So I will say first degree can be shown by felony murder rule. And then point out here the felony murder rule will show that you are guilty of first-degree.

 Now if I was arguing I'm still within the res gesti of the robbery it depends what your calls are and that's why the calls dictate. If the call of the question says is she guilty of murder and that's all it was, and her first-degree felony murder rule I would have to prove up the robbery was still within the res gesti and I have not reached a place of safety for the robbery, wooden type. Versus a call number one says that she guilty of murder and number two says is she guilty of the robbery, oh,... So the robbery discussion would come up under call number two. So I would have to infra, saying I would be convicted of first-degree for the inherently dangerous felony of robbery to be discussed infra. You cannot place it on call one because the call dictates. You want to pay attention to that. Everybody with me on how you are going to short the rule and how the call will dictate remember if it is a [inaudible] you cannot say it was a felony robbery you have to prove it up so you don't want to forget that.

 Here is another rule you need to know.It has not been tested in a while on the baby bar. Some people call it the redline view. If you are reading the horn books. That means I believe call is the special felony murder rule. What is this? It is not a hard concept. Just pay attention to the facts. And the only way it is triggered is if you have an innocent person that did the killing.

 So, you go rob a bank and the bank guard shoots somebody. Trying to shoot you, but they miss. That triggers what they call the special or redline view. What we are trying to do is, can we impute that innocent persons conduct of shooting although he made a mistake and got somebody else come onto the felon. That's what we are doing. In common-law you are guilty, you're going down goodbye. Because again we are trying to punish. Versus modernly, the law says no. Only if it's done by your own hand. Meaning you did the killing which is kind of contrary to the rule. So, modernly does it really exist? No you would have to see the felon that did the underlying killing. Since it was a security guard we cannot impute that the security guard wrongdoing or the death onto that felon. Is that making sense? That is called the redline view. That would be discussed as well under the felony murder rule for first-degree because if I do find it does work then you are guilty of first-degree. The only way it would work most likely is common-law. Which remembered they don't have degrees, modernly it will not work because it's not done by your own hand. Does everybody understand that rule? You'll most likely read in Gilberts, the redline special murder rule, understand where it is the innocent party does the killing.

 All right now we have gone through murder malice. We did our causation, first-degree. I killing done with a depraved heart. At that point before I jump to voluntary manslaughter depending on the facts I will look to see if there are any viable defenses. If I just charged with first-degree or second-degree remember voluntary manslaughter is a way to mitigate. So I've either pushed you with first degree or second degree and I'm trying to mitigate it down from there. Obviously I found you guilty of something. Then I looked to my defenses at that point. Because of my defense does not work I may be able to argue the imperfect defense to medicate to voluntary manslaughter let me show you what I mean.

 First let's look at your defenses, self-defense. One can use reasonable force to protect yourself. So if deadly force is being used against you, you can use deadly force. If your life is being threatened you can use the force, common-law you had a duty to retreat, modernly you don't. If you are the aggressor things change. Yes you do. You don't have the right to use deadly force unless you obtain the right back. Defense of others or member you can use reasonable force to defend a third party. Majority rule is step in issues if you are defending somebody who didn't have the right to be defended we have a problem. It's not a defense for you. If I come on the scene and I come on the scene and the guy is trying to rip the woman but the officer is trying to arrest her and I but in and help, step in issues she didn't have a right, he was arresting her and they had a warrant for her arrest. Hope you had a defense. Modernly they are being nice and allowing reasonable grounds for mistake. But another person who is reasonable like me came on the scene and saw what they saw and thought the same thing it would be a defense to my case, crime prevention member you cannot use violence you cannot use deadly force to defend a car or property, no no no unless it's imminent threat of your bodily harm. So they break into your house and now your bodily harm is being threatened, now you have an argument. But if they are trying to steal your car you have to let them have that. You can’t use deadly force.

 With these defenses I just went through let's say I believe I have a right to protect my car. So you are trying to steal my Mercedes and I'm upset and I take out my gun because I happen to carry a gun and I shoot at you. And I kill you. Can I argue in regards to I'm going to argue several things, crime prevention as well as defense of property? The law says no. It's property. We value life more than that. So they are not going to allow me to use it as a defense. We went through the whole murder approach. Obviously convicted of second-degree murder. Now I'm going to see if I can use this imperfect defense of defense of property or imperfect defense of prime prevention to mitigate to involuntary manslaughter because it's a lesser jail sentence. I want to try to mitigate if I can.

 So you can mitigate to voluntary manslaughter to an imperfect defense but it's not just self-defense but it is an imperfect defense, self-defense, defense of others crime prevention defense of property etc. Other defenses you could see which we don't mitigate is like intoxication. So remember voluntary negates specific intent versus involuntary works on either. You have infancy or insanity. Insanity has not been tested on the essay in a while. If you see insanity what does that mean? You must do a four. Because you will not know in what jurisdiction you are in. So you have to go through all four insanities. The one thing I can give you a good hint on, you will see this in the multi-states. Know your language because they are going to take irresistible impulse and model Penal Code and put it together and if you don't know the verbiage you will pick that is the answer choice and it's wrong. So you have to break it apart. What is the irresistible impulse, due to mental defect the defendant doesn't have the ability to control conduct. That's different versus the model Penal Code which is the defendant last substantial capacity to perform. Totally different language.

 You need to pay attention to that verbiage. If you have rules on the insanity is memorized and you understand them, you should have the multistate correct. You will probably see a couple of them on the examination. Again, on an essay you will not know which jurisdiction you are under. So guess what, you need to do them all.

 Now let's look to the voluntary manslaughter. With voluntary manslaughter I just told you, you can get there by mitigation, by imperfect defense. Or if you have adequate provocation where you lost mental equilibrium and had insufficient time to cool off. And you need to show those elements coexist. Notice I said coexist, so if I come home and my husband's having an affair that would make me upset and that would be adequate provocation. If I react at that point in time that would be insufficient time to cool off. So that would be if I killed him voluntary manslaughter. However, if I tell you in the facts that I came home and I just ran out of the house so upset and went away for a day and came back and then I took some action, wait a minute. Adequate provocation is there in regards to what I saw. But it has been a day so you had time to cool off. So that would not allow my actions to mitigate to voluntary manslaughter. Here is one more.

I come in and see he's cheating on me I'm upset and I ran out. I go away for a day and I come back and confront him and say I know I saw you sleeping with Susie and he says no. I shoot him. Well, adequate provocation. Well there was adequate provocation coming home and seeing him with somebody else. Insufficient time to cool off a day before I came back but then when I came back and he had the audacity to deny what I saw, is that adequate provocation? This is another way they test. I would like to think so as the wife but the answer is no. Words alone are not enough. You need some action. You will see there is one on the baby bar where the guy sets up the wife's husband because he knows that he is really jealous and kept saying all these things that she's doing at the office, having an affair and it made him mad and he goes to the office and kills her and all she's doing is working late. You need more than words. So even if somebody is telling you something they are doing you need to see some type of activity. Not enough with actual words. Words alone are not actually enough for adequate provocation. Those are three ways you can kind of see it.

Imperfect defense, adequate provocation with the time period. And then the re-initiation of the adequate provocation based on words, which again is not going to work, so make sure that you know that.

 The last murder is involuntary manslaughter. Again remember what I told you about malice. However you argue the malice is going to dictate if you're going to get to involuntary manslaughter. So if I have malice on modern love felony murder as well as wanton and reckless I probably would talk about involuntary manslaughter. If I have it based on wanton and reckless I'm definitely going to talk about involuntary manslaughter. Because is it really wanton and reckless or is it unintentional killing without malice like the criminal negligence standard.

Let me give you a hint for the multi-states. I know I missed this when I was studying. You see a fact pattern that says you are driving 100 miles an hour one night through a school zone and you hit a child. The child dies. Is that murder in the second degree. Or is that involuntary manslaughter. Actually it is involuntary manslaughter. Going 100 miles an hour. But I told you one night. So it is very factual. So I told you during the school day, or during lunch, or there was a crossing guard. That can change the whole fact pattern. You’re driving hundred miles an hour, and the crossing guard [inaudible] now that tells me most likely it is during school hours so that would be second-degree. So it really comes down to the facts. It's very factual which makes sense because it is a jury call. But on the multi-states, guess what? You have to make a decision so look to the facts and decide.

 Another way it comes down you know it's Fourth of July we are shooting guns in the air in a remote area, someone gets the bullet in the head. Okay would that be murder in the second degree or involuntary manslaughter? It is a remote area so most likely would be involuntary manslaughter. Let's say they tell you in the city, in the city it's a different story and you should be aware that there are people around so that would be second-degree.

 So it's very factual. And that is your murder. So again if you look at this the kind of has a nice approach how you are going to set things up

Another area that you will have to spend time on is what we call the theft crimes, they are all over. Students do not do well. They don't understand the difference between larceny and larceny by trade or false pretenses. You need to make distinctions and understand what it's false pretenses versus larceny. If you cannot make the distinction of easily we are going to get them wrong so you need to spend time in this area. It's highly testable. It will be all over the multi-states. Does it come up on an essay? Yes every once in a while here it comes.

 The one thing I do to help myself on multi-states for theft crimes is understand what is going on and I use a mnemonic called PITT. And I asked myself and I say Melanie okay did he obtain possession. The interest, so was it custody or control. Did he get title and time? And the reason I look at time, because unfortunately in criminal law kind of like you learned in torts there's a thing called the transferred intent doctrine. It's like what? Yes the transferred intent doctrine. I will ask myself did he get possession, interest, title, time. So possession of the object, what interest did he get with possession? So was it custody or just control, title, the actual title for whatever he took, the property and transferred intent based on the time. So if I basically borrow something from you knowing that I'm not going to return it and decide not to return it you can argue the transferred intent doctrine for larceny versus embezzlement and that is something that you should be seeing on the multi-states because they do like to test it. Let's break this apart.

Obviously larceny needs entrusting or taking away the personal property of another with the specific intent to permanently deprive. Make sure you go through all the elements and make sure they are satisfied before you conclude there is a larceny. With larceny what are you getting? You are getting possession, you're not getting title. You don't have interest in it such as custody, and obviously I don't see transferred intent based on the facts because they didn't give you any. You have to meet all these other elements.

What about larceny by trick? Again you are basically taking the personal property of another which is obtained by fraud with the intent to permanently deprive. What do we know by larceny by trick? Absolutely not. So title did not transfer, but you made some representation which was fraud based on a present fact. Past or present, not future. Has to be past or present. Okay so that would be larceny by trick. False pretenses is where you obtain the property of another by false representation of a past or existing fact. And you get title. So you're actually getting title. So how can that happen? how can you get title?

 Let's say I represent to you, or let's say I go to the grocery store and change a price tag and I go pay for it with the cashier and she rings it up and off I go. That would be false pretenses. I obtained property that belonged to the store by a false representation because I change the stickers. And I'm representing the current price, which is two dollars when it should have been $30 and did I obtained title when I gave her my two dollars of Easley she converted title on me so that would be false pretenses.

 So with false pretenses? Not only do you get possession, you got title didn't you? What about embezzlement. With embezzlement, it is a misappropriation of the personal property of another by one who is rightfully entrusted with the property. So I got possession. Did I get interest? You got custody. Custody and control over it. Didn't get title, don't have to worry about time. So therefore I would have embezzlement. This is one where you want to be careful with the transferred intent doctrine between embezzlement and larceny. Those are some multi-states we would like you to look at because they will tell you basically on borrowing the car to take my mother to the doctor and I end up going to Vegas and never come back. They will argue that larceny because I'm going to transfer the intent. So those are some of the multi-states that I do want you to work on because they come up.

 Another crime is robbery. Robbery is people's definition of larceny by four spirit or intimidation. I don't like the definition. Make sure you break apart the elements. Was it trespatory taking, carrying away of personal property of another, force or intimidation with specific intent to permanently deprive.? My do I say that if you are not focused on the elements they know you say larceny with four spirit or intimation so you don't focus on all the elements and you're not going to get the answer right. Or if it is on an essay you're not going to analyze it correctly. That is a problem. So we do need to obviously break this apart and go through it. That's very important. Cannot emphasize that enough.

 With theft crimes keep in mind did you get possession, interest, title and time.Look up for me please the transferred intent doctrine to understand how it works because it will be tested on the multi-states I guarantee it. Might as will get those correct. I want you to pay attention to your elements because the theft crimes are highly testable and if you don't pay attention you're going to pick larceny by trick versus false pretenses. How can I make that stick, where one obtains what title do I understand what title transfers. And it's a reasonable person test. What I have transferred title to you based on that representation. If I go to a gas station with an ATM card and say I want to fill up my card with gas knowing that car is probably symbiosis it reported it stolen, probably when you fill up the gas and he's going to charge it did I obtained title to the gas? Most likely title of transfer upon hinder, payment. Tender. Most likely I obtained it larceny by trick. By driving off and it is not paid for. So you want to make sure it's a reasonable standard as to entitle would transfer. Make sense?

Again the theft crimes, I do want you to know because they are highly testable. Another one in this area, they like to test on the essays, it's very subtle and people do not see it. Receiving of stolen property and this is basically where a party receives property knowing that it is stolen. So is it objective or subjective. It is subjective.

 So if I go l leave here tonight and I go buy a TV in the alley in the back of the van and I think they are clearing out some of their stuff in my receiving stolen property. If I truly believe it is stolen, no, it's another reasonable person standard which most people if it's in the back of the van it is subjective. So I have to have knowledge that the property is stolen. So this does come up every once in a while. You want to pay attention because they are subtle on how they test it. A prime example is I forget her name, but she goes to where she works, the employee of the grocery store with her boyfriend Mike and basically says my employer owes me money so I will go get it. She goes into the store opens the cast register and takes out $200, hands it to her boyfriend and they leave. That's how subtle it is. Not only is her conduct wrong, he just received stolen property so did he know or should he have known. That's the argument. That's why on the essay you could argue did he really believe she was owed the money. Even if he did could she really take it from the register when the store was closed the way she did. But that was an example of seeing the issue of receiving stolen property.

 Again it is very subtle and does not pop off the page but it's worth good points if you see it so make sure you understand how the concept is tested.

 Another area they love is burglary. They love burglary. Remember you have common-law burglary on the baby bar you go through common law first. Then if it fails, you bring up your modern. Do not bring them both up at the same time. Also do not just grab onto no, it is not nighttime and leave. Whatever the order of the rule you need to apply those elements. So you're not going to go for just this one fails, go for it and get out. No you will not get credit for the analysis because you didn't have any. The other thing you want to be aware of is constructive breaking could be a form of breaking. So there is one out there where the woman thought it was her boyfriend and open the door and it wasn't but he threatened her, she let him in, you are going to argue constructive breaking, she had no choice. Also what they test with burglary is you have to have the intent of the time of entry to commit a felony therein. So if you form it later, sorry. That's not a burglary.

The other check for burglary I want to make sure you know, I don't ever include it in my rule, is the specific intent to commit a felony therein, or a larceny. So, if you have the intent to commit a larceny I'm going to steal that guy's pocket watch, that works for common-law burglary as long as the other elements are there. I want to make sure you are aware of that but I never put that in my rule ever. So felony or larceny. I want you to be aware of it so you get the multistate correct. Again, remember the intent has to exist at the time of entry. So if I basically am trying to shelter from the storm and I break into the house and get in there and I see money on the table and take it, is it a burglary? No. Because I don't have the intent at the time of entry. I'm sheltering myself from the storm. So that would be just the issue of larceny. So you do want to pay attention to that.

 Could you have a burglary and a larceny coexist. Absolutely. If I intend to steal whatever I find in there, I have burglary and whatever I took there is a larceny. So those are not lesser included offenses of each other. Obviously if it's not common-law you go to the modern law which is still trespatory entry into any structure to commit a crime. How can that come up? How about a store open to the public? Yeah if you enter with the intent to steal a lot of jurisdictions say it vitiates the owner consent they do not want you in there so that would be to trespatory entry for the structure, the store and you still something which is a larceny so that could be in modern love burglary. So you do want to be aware of it.

 Another way, breaking into a car could be modern law burglary. Or a wall safe. Really, yes. That could be modern law burglary. So your goal is to do enough multistate sand essays to understand how they test the concepts because who would understand, think of a safe being a burglary but it is. How about I go in the house and open up the door of the bedroom within the house. That could be a second burglary. So, you've got to pay attention to the actual facts, or you could raise a second burglary as long as the elements are there and of course are supported by the facts.

Arson, remember with arsenate is the malicious burning of a dwelling house of another. They do this particular crime. Why? So how they test it in two areas, one you have blackening of the walls and all the furniture was burnt to a crisp. Is that an arson? No. Blackening near the walls. No, it needs charring. Or they will tell you in regards to I hire you to burn down my house for the insurance proceeds. Okay, charge me with arson. No. Has to be dwelling house of another. Common-law wise. So you got to pay attention to the actual elements because that is how they are going to test. So obviously you cannot charge me because it has to be the structure of another. And they know that we will pay attention to the elements and that is why they test the way they test.

 So again I want you to be aware of it.

There are other crimes that do come up here and there every once in a while. You want to be familiar with my kidnapping remember which is the unlawful transportation of another by taking from one room to another or taking from the house inside a car. False imprisonment is also a crime. So the intentional unlawful confinement of another. We also have assault and battery. Those are crimes so you want to make sure you pay attention to your elements.

 So, battery is a general intent crime. It is unlawful application of force which is a totally different definition than what we have for torts. Right you have rate, which is sexual intercourse without the woman's consent. We have statutory rape. They love to test data to a rape because the district liability. You are going down. There is no way out of it. But do we have a tendency to think there is a way out of it of course we do. Also beware of attempted statutory rape. So, let's say you're reading the fact pattern. They will not tell you it is statutory rate. You have two figure that out based on the age. But if it is an attempted statutory rape based on my reading of the facts is there a defense? Absolutely. Any defense you can argue for attempt. So, in regards to the difference in the assault there is not much really. It is the general intent, but you are creating the apprehension or the intent to accomplish another act or crime. So the definition is a little bit different, but I do have to create the apprehension or I'm trying to accomplish another crime based on my active assault.

Assault would be its own battery, lesser included defense of murder but that would be an example of I'm trying to accomplish the other crime of killing you. So I tie you up and beat you and hurt you, that would create imminent apprehension to complete my act of murder. But in real life and also on the bar depending on the call murder basically your assault and battery are lesser included defenses of your murder you cannot charge me for all of them. So again they are general intent crimes. You still can show us on imminent apprehension, or an intent to a commission of criminal activity which I gave you such as murder. Is that clear enough? I hope so

 the more you start playing with these and see how they test, that's where it clicks. This make sense, now I get it. They like to test assault and battery because they want you to think of tort. I'm not going to do that, going to pay attention to the call. I even circled the call and focus on it sometimes irate plaintiff defendant or irate prosecution defendant. Pay attention to who is bringing the action.

 Other defenses we talked about mistake of fact. So if the facts as oh yes it's very similar to factual impossibility. Mistake of law, general again, no defense unless reasonable reliance. Duress is a defense. Remember duress is a defense you have to have a threat of imminent harm to you. Or a close family member. But it is never a defense to murder. There is one exam out there where he threatened her cats, her beloved family cat. So obviously on an essay you're going to bootstrap an argument. Was there imminent harm to her, the individual. No. But to a close family member. It was a cat. Not a family member. But you want to go for the sympathy and say it is a family cat that she loved and everything else and make the argument. Don't care how you conclude as long as you see they are playing with you. You have consent, the willingness of the act that is about to occur and you have entrapment. Entrapment has not been on the test in a long time. If you see entrapment you have to do both views subjective and of course the objective, subjective is the predisposition. They will look to your history and whether you are predisposed to commit the c criminal act. The objectivist police activity. They look to what police activity was and what the reasonable person would commit the act. So is it where you gave up and commit the actual act, and that is kind of what it means, that is your cream line in a nutshell.

 A couple of things before we conclude if you see a statute on the exam I want to make sure you look to the statute to determine the actus reus and mens reus. That's the only time you actually talk about those is using the statute and you have to determine what you have to prove so if I give you basically is unlawful for anybody to have drugs in their car what is the act, driving the drugs in the car, so that is your actus rea. What is the mens rea, it doesn't look like they said, so if I said knowingly driving with drugs in the car now it is specific intent. So that's the only time you're really going to break that apart. The other thing I want to make sure as you pay attention to the call. So should they be convicted of murdering or lesser offense. What does that mean, basically you go through the murder approaching any lesser included offense means look for voluntary or involuntary manslaughter. Doesn't mean look for assault and battery and anything else. No, you look for voluntary and involuntary manslaughter. The other thing I want to tell you the specific calls with burglary or robbery you have to analyze both give me one at a time, you cannot pick which one you think is going to work. So sometimes the call has a tendency to trick the students. So you want to pay attention in the more I can get you exposed to that that's going to help you immensely.

 So I do want you to practice obvious leader cream line is a start working on the multi-states. Now we have done torts, contracts and criminal law. So everything is now fair game so I want you to start working on that and break it apart. Very important. You will be sent out another essay. The multi-states just on the subject matter of criminal law so I'm getting you to focus on that and we will take a look at that next week. Anybody have any questions for me at this time? If anything does, please feel free to shoot me an email at Jolly@TaftU.EDU and I will be happy to help you in any way I can. I I guess I will talk to you guys next week good night.