taft law

crim law essay baby bar e class

9/20/16 6:00 pm

INSTRUCTOR: Good evening everybody we will be starting approximately one minute. Good evening everybody and welcome to tonight's baby bar miniseries. As you know the primary focus will be on the criminal law essay question and the multi-states that were sent out to you previously.

I do want to point out that the sessions are recorded say for your convenience you want to go back and listen to the lecture or if there is one you cannot attend you can always go to Taft’s website, go to the student section and click on the baby bar miniseries and choose whatever lecture you would like to hear. Also if there are any handouts that we reviewed during the lecture all of that is posted online for you for your convenience as well so there is nothing you actually miss.

Let's go ahead and dive right into the Crim law essay question. Remember if you have any questions at any time please post them in the question-and-answer dialog box and that is what I will be monitoring. I will be happy to help you in any way I can.

As you are aware, you have heard this from me over and over when you first get the essay question the first thing you do is read the call of the question. Remember on the baby bar examination you will have no idea as to whether it is torts, contracts or Crim law essay, so if you read the call that should give you good indication that by reading the call if you understand the subject matter you are in at that point you should write on your scratch paper the checklist. And again the checklist is going to help you in regards to identifying issues. So it will be a tool that you need to you so don't think it is something that you do not need because under the pressure of the exam we need every advantage we can get and having a checklist to help us identify issues as well as setting up particular issues will help you. And it does make a difference on the exam. So that is something you should be practicing to get in that habit.

The first thing you're going to do is read the call. With what crimes if any can Angela, Brian and Carter reasonably be charged and what defenses if any can each of them reasonably assert. Discuss.

Okay so what does the call tell me?We know it is a Crim law essay so at this point I read at my checklist enter member you want to shorthand as much as you can with the checklist so you are not spending time writing out the full checklist because that will kill your time in getting the exam done. I do see it says crimes. So I will circle that and put two or more so I know there are two or more crimes I better see in the fact pattern. It is against Angela, Brian and Carter so I have three different defendants. Now what does this tell me?

first of all I have to separate the parties. So state versus Angela. State versus Brian. State versus Carter. If I ever see a call of the question that basically lays out three different defendants there's got to be something different between them because why don't they just give me two. Why didn't they give me three. So there's got to be something different here. The other thing you need to pay attention to because when you read the fact pattern you will not like the order of the call. It says Angela, Brian and Carter. So the first lawsuit you must discuss based on this, the question is state versus Angela. You cannot take that out of order. You cannot start with Carter, you can't start with Brian. You need to take the state versus Angela first. So you want to pay attention to the call and keep it in that order.

So again, what is it?The call dictates your order.

Once you've read of the call of the question and to know the subject matter right down the checklist on scratch paperand that will help you and of course we see it says crimes. It also says reasonably be charged. You do need to pay attention to that. So it means it could falter. It means there could be an element that is gray or falls out but it's reasonable so I would bring it up in my exam. If the call said could be convicted of, that is going to change what I bring up on my exam. Those are more absolute that I will have to support based on the facts. It is very rare that they do that on an essay. More likely they will give you reasonably be charged. But on a multiple choice be careful because they might say reasonably be charged or be convicted. I will mandate a different answer choice that you would choose.

So again make sure he not only pay attention to the call of the question but that your answering the call of the question. Again, I cannot stress this enough, under the pressure of the exam we do odd things so that is why I want you to use your tools and mark things up and really break it apart pursuant to the elements so that you know that it satisfied or maybe not based on the facts.

But it also says what defenses. Two or more. They even put the parentheses there for you. So if I saw two or more that I know I made a mistake remember we've learned previously's as well in previous exams defenses could mean true defenses and we are in criminal law so self-defense, defense of others, right, insanity defenses, entrapment. So we have a lot of defenses we could raise. Or remember, other than a true defense it could mean a counter argument. Right, so we could have a true defense, or counterargument in this exam but again if you see counter arguments and you do not see true defenses I do not want you panicking because that is answering the call of the question.

Again, the more of these you do and understand how they test, that is going to help you.

So I'm going through it, I see we have three different parties.We see we have to take the call in chronological order. We see that we have crimes two or more as well as defenses which we know are two or more. Now that I've understood the call of the question and ready to read the fact pattern. If you ever get an essay question which is rare but you might, you never know the way the examiners test and you see the call and you don't quite understand it, don't panic. What you want to do is go ahead and read the facts and then go back to the call of the question. So read the facts and go back to the call. I promise you will figure it out eventually. But again, sometimes we stress and let time factor in worrying about the time and you must maintain control of the exam at all times to succeed. Again I read the call I have a good understanding of wrote on my checklist and I have a good understanding of the facts. Remember that you should read the facts the first time through without any markings. Remember, these are new to you. It's not like you've been studying and you know what larceny is. Of course you do. You have a definition, you have it memorized. But you have not seen these facts before so you want to read them and let your mind work on them a little bit because that will help you see sub issues.

So again, read it one time through please and then you canpick it up on the second read and start picking up what's going on. We have read it the first time through because we all should have read it before tonight's lecture and now we are ready to pick up the pen and start marking it up.

Let's go through it together, Angela Brian and Carter were at Angela's house drinking beer. What does that tell you right off the bat? Remember the call of the question said defenses, drinking beer the first offense I see is intoxication. Intoxication. Unless there are other facts and going to go with voluntary intoxication because they are drinking beer. So unless the facts change in him going to talk about voluntary intoxication. With intoxication obviously you get drunk, not fully understanding what you are doing, could negate the mens rea, that means I could bring up the issue of diminished capacity. That is another defense, so remember that is a small minority and if your capacity is so diminished obviously it could alleviate from the crime.

So far after the first sentence seeing beers I have two defenses I know I'm going to address, voluntary intoxicationas well as diminished capacity. And how do I know I have to address this? The call told me. Remember there are two ways that defenses come up. Based on the facts or it's in the call of the question. And even though drinking beer is not in the facts it's not evident that they want defenses but the call tells me as they do. So I better bring it up. Again remember, do not bring it up if it's not in the call and it's not evident in the facts because you're wasting time on a nonissue. Even if you bring it up and say it does not exist you are w wasting time which most of us don't have the pressure to do under the pressure of an examination.

That is the first sentence, so let's go to the next sentence, they wanted to order a pizzaand have it delivered but they did not have enough money to pay for it. What does that tell us question they are fully aware they have no money. So, if we are thinking above they are drinking beer and they are intoxicated or they are so intoxicated and don't fully understand what they are doing no. They knew. They did not have enough money to have a pizza order and delivered. So they told you in the facts. That will be a sub issue argument to the element.

It says Carter suggested they order the pizza and grab it from the pizza delivery person without paying. What is the crime?so when Carter suggested, this is one issue that does come up more than we like, we have a tendency to overlook it. Rather than me suggesting let's grab the pizza and without paying for it that is a form of solicitation. So you would bring up solicitation. That is a crime that I see evident by the facts. That is my solicitation based on his digestion. What do we know it solicitation? remember merger. Mergers, but I would bring it up obviously in regards to the exam.

It says Brian told Angela to callthe pizza parlor. So Brian, Carter is the one who suggested but Brian is telling Angela to call the pizza parlor. She did so and ordered a pizza knowing that she could not pay for it. So she's under the direction of Brian who tells her to do this and she does it. What is that?

So again, Carter suggested, Brian tells her to make the phone call. That is a conspiracy. So we've got a conspiracy by their conduct, so when Carter suggested Brian tells her Angela, make the come phone call, order the pizza by his conduct in her conduct picking up the phone knowing they cannot pay for it, agreement by conduct evident by her actions. And the facts are there for you. Again, telling her, knowing she didn't have the money, she ordered the pizza.

It says Brian and Carter waited outside the house.So we see in the first paragraph we have an issue of intoxication, diminished capacity, solicitation, conspiracy and the fact that they order the pizza and probably are going to take it without paying for it I am thinking larceny. Right, but again they will have to give me more facts but at this point these are the crimes that I'm seeing. That's five. Quite a bit in the one little paragraph. How do you get there?do you see how we are breaking apart pursuant to the sentences. The ands, ors, commas, semi colons, after I hesitate and look at the checklist to see if the facts have raised particular crime or defense. You want to keep the mindset otherwise you miss things.

It says when the delivery person arrived with the pizzaCarter pulled out a gun out of his jacket pocket. I can, what was the agreement? To grab the pizza and not pay for it. Brian had no idea Carter was carrying a gun. Does that matter? Remember in regards to your conspiracy you are responsible for anything in furtherance thereof. Here he has got a gun. With that be something that is relatively foreseeable and the natural probable result of the conspiracy. That's why the facts are there. Carter fired the weapon into the delivery person's vehicle but did not hit anybody.

This is one sentence that people say what do I do with this? he's got a gun, the delivery person shows up, he fires a gun into the van. What is he doing. I would lean toward maybe it is attempted murder. We don't know who the delivery person is, is he or she still in the van. I would argue in regard to an attempt issue and the fact that he is using the gun, is that equivalent enough for a robbery?

So, we have escalated from a larceny when you grab the pizzatwo, did we rise to the level by the force fear and intimidation to the level of robbery evident by what Carter is doing.

It says Carter told Brian to grab the pizza and run. Brian was shocked by Carter's actions. Stop at the end. He is shocked. So I'm filling out aware as to what's going on. I'm stunned. Right, and did not move. So the fact that he was shocked and did not move, what can you argue that as? if we know at this point what do we do mark the facts obviously and come back to it and see what you can order. But then it tells you Brian then grabbed the pizza and Carter and Brian fled the scene. So, why did he grab the pizza? He turned the gun on Brian and told him again to grab the pizza and run. That is a form of duress. We can argue duress. That is the only reason at least he's going to argue the only reason why he got the pizza. Because again, I was shocked come mortified as to what was going on and he turned the gun on me and told me to grab the pizza and run. What other choice did I have. At least that is Brian's argument. Otherwise you are going to shoot me. That is in his mindset. There's an argument there as to the issue of whether we have a defense. Of duress.

It says Brian and Carter return to Angela's house through the back doorand they all ate the pizza. This is a sleeper issue. This is an issue most students miss. It is not a hard concept but the fact that you grab the pizza without paying for it, went back and all ate it, what crime has just been committed? At least by Angela. You could even argue maybe for Carter here because he didn't take the pizza. But definitely argue it for Angela. How about receiving a stolen property. They know it is stolen here she is eating the pizza knowing that they did not pay for it. That's another crime you could bring up.

It says later the police arrested Angela Brian and Carter. Now, what is the problem with this call? Who is the first person ? Angela. Did Angela take the pizza? No. Did Angelo use the gun? No. But they put her first in the call of the question so unfortunately we are going to have to write about her first and if there's anything we are going to have to infra, that is what we are going to have to do we don't have a choice. Remember not only following the call of the question, how do I set up my examination? And you take it in chronological order. So the first thing I start off with is what did Angela do because that's what I focus on. The first thing I can grab onto here is a conspiracy. I would not address the solicitation because that is Carter. That is against Carter so I could not bring it up at this point even though it is the first crime that did take place.

Also remember even though we saw based on the facts the drinking of the beer as a defense you always must prove up the crime first before you ever actually bring up an applicable defense. So even if chronologically it came up first what is the crime? You have to prove up the crime first.

Based on these facts the first thing I address under state versus Angelawhich is going to be a headnote. I will separate them out even though they didn't give you 123 I really got one lawsuit here which a state versus Angela. The first issue I'm going to address is conspiracy. Remember with a conspiracy you have an agreement between two or more persons to commit an unlawful act.

What I want you to do is, when you break this apartobviously outlining before you commit to writing your exam, look and see what elements are they putting at issue. So they do have Angela Brian and Carter who are at their house. They wanted pizza, they knew they didn't have money and of course Carter suggested they order it and grab without paying for it. The fact is that Brian requested Angela to call the pizza parlor and order the pizza and she did. So what element are they really playing with you and agreement. She's going to argue I never said a word. I did not agree to anything. But evident by your actions, knowing what Carter just suggested, Brian directing you to call the pizza place and order the pizza and you are doing and evident by your actions there is an agreement. Again they want to make sure you understand what they placed at issue and based on the facts, there is no verbal agreement there is there. It is based on conduct. You make it clear to the reader that you do see, agreement is a big-ticket item here, right, and based on her actions, based on the facts I just gave you there is an agreement by conduct. Let the reader know you see that. It is between Angela Brian and Carter, so two or more I'm done, and breath grabbing the pizza is a larceny they had the intent to commit an unlawful act. Those two elements are straightforward.

The agreement is where the point value is. You want tolook to both sides and argue pursuant to the facts and let the reader know you understand and that is what is going to give you the highest point value.

I hear a lot of time from students I discussed the issue why didn't I get credit.If you saw conspiracy and went right through the elements quickly and showed they exist should you get the same credit as a student who pinpoints the sub issue of the agreement and argue both sides even though you might conclude the same? Should you get the same point value? Absolutely not because you're not letting the reader know that the prosecution has an argument and so does the defense. But who is going to prevail? You need to bring both sides of the argument and let the reader know you know where the gray area as, where is the problem.

That is why people do not get thefull point value. We need to break it apart and let people understand you know what is being tested. Counter arguments would pertain to torts--- now I can just see it popped up. And again, remember hopefully you can hear me but obviously I cannot hear you. You have to type it in the question-and-answer box.

Remember if you find we have a conspiracy in this case or even if it is a gray area and let's say for some reason which I wouldn't you conclude that there's not but it's gray, you would do any applicable defenses. So pursuant to the facts you want to bring up any applicable defenses and what can I bring up here? The first one we talked about earlier in the first paragraph, first sentence is intoxication. Remember, intoxication, voluntary intoxication is a type of defense to what crime? Specific intent.

So if she being Angela can show she lacks the mens reato negate the specific intent she's got a valid defense to the conspiracy. Now we are going to have to argue. In her argument based on the facts they have been drinking. Now they decided to order a pizza but she's going to say have been drinking so I'm not fully aware as to my activities. The prosecution will bring up that way to minute unit before you place a phone call you didn't have money to pay for the pizza. You are fully aware you didn't have money and yet you went and made the phone call and order the pizza to be delivered. Of course Carter suggested you grab it and not pay for it and based upon his suggestion you follow through. And made the phone call. You are fully aware of what you are doing.

And if you go back and look at the facts they told you twicethey had knowledge. They did not have enough money, they told you in the first or second sentence and they told you when she called she ordered knowing she could not pay for it. So there flagging you, letting you know we have a problem here. That she does have the specific intent intent, the intoxication will not negate the lack of mens rea

therefore intoxication is no defense. You also bring up different diminished capacity. That's the second offense you bring up... You have to be aware of your actions based on the fact she is aware, she made the phone call knowing that she didn't have the money to pay for. Those are all good facts to support that there is a lack of diminished capacity is not a valid defense.

Am I done with Angela? No I have to bring up as many times that I can against her. What else happened? This is where it gets sticky for people. We see that basically they shot into the van, the delivery person's car. So going to argue attempted murder. We saw that they grabbed the pizza, was it by force fear and intimidation. I make the distinction between robbery and larceny.

But who did these actions?Brian and Carter. So how do we get this to Angela? the Pinkertons rule. So you are going to have to go through now the Pinkertons rule but since Angela is a co-conspirator will she be liable for all crimes committed in furtherance of the conspiracy? The first when I look at is in regard to attempt, the attempted murder. She was in agreement to grabbing the pizza and they are using a gun but that was never discussed. Even Brian was shocked that he had a gun, that Carter had a gun, right? So shooting the pizza delivery person's vehicle she's going to argue is not in furtherance nor was it reasonably foreseeable.

So this one you argue both sides. However they did grab the pizza they didn't pay for it. Foreseeable is a co-conspirator would they take some acts to get the pizza since that is what they have agreed to? Could it result, or rise to the level of you taking some type of force enough to be attempted or attempted murder--- this when I find is definitely gray and you could go either way but you do need to bring it up.

Also what about the robbery? was this unnatural probable result of the conspiracy and was it reasonably foreseeable? You knew you did not have money. If the pizza person is coming to your home are they going to give you the pizza without paying for it? With there could there be some type of force fear or intimidation in order to obtain the pizza. I would think so. That is something that would be reasonably foreseeable in regards to the facts. You can conclude either way. Was it by force fear or intimidation for the robbery versus no force fear or intimidation where going to include, conclude that there is a larceny.

But again we are not talking about those crimes at this point because we have to do them later. Because Angela did not do the conduct. We are imputing this on to her based upon what? based upon her agreement. Based on the conspiracy under Pinkertons. The other crime I would bring up independently against her because she did the actions as receiving stolen property. Remember this is a subjective crime that has to do with her mind state. She knew it was not paid for and based on her actions she ate the pizza. We know she has knowledge and I would argue she receive stolen property and that's a crime she would be convicted of.

That is my first lawsuit. That is the state versus Angela.So we did talk about conspiracy and hopefully you did a good job because you want to steal it later on down the pipe. We talked about intoxication, diminished capacity, we talked about Pinkertons rule for the issue of attempted murder, robbery, as well is the issue of receiving stolen property. There is a lot here. And you want to make sure you do a good job and always make sure you start off strong in your analysis because this is where we are making our determination. Are you going to do well or not. Obviously want them thinking good thoughts about me because I want to do well.

Second lawsuit, state versus Brian. That is the call. The first one I looked to his Carter so I will go to conspiracy. If you did a good job above and brought in Brian showing the agreement and what he did, we can steal that argument here. Define, discuss supra. And I can steal my defenses, intoxication as well as diminished capacity defined discuss supra because of my time. Killing my time if I'm going back over something of already stated.

You would not bring a Pinkertons rulellater in this exam, why? Angela did not do the conduct so the only way you can impute that onto her under her own lawsuits would be based on Pinkertons rule. The examiners did that on purpose because it frustrates you because you want to talk about Carter first because he did the wrongdoing as well as Brian but you cannot because of the call, the way fli laid out, that is what you formulate it and because otherwise if I just art writing had I know she's going to be liable for attempted murder because really the one who did it would be Carter. I have not gotten that far in my analysis but by outlining I will know my resort and I can conclude properly there wouldn't type. But again Angela did not do the conduct. The only way you impute the crimes on her is based on Pinkertons so you have to bring it up now, so you have to say what crime can reasonably be charged. To bring it up. Does that make sense?

I cannot stress it enough in regards to conspiracyand the Pinkertons rule, there is no way. It's going to be there. Students do not do well with the concept. I don't know why. Something you want to master and understand how it is tested and make sure you understand the different types of agreements, feigned agreements, tacit agreement, agreement by conduct, implied, agreement unilaterally. These are things that will be tested. It comes up all the time every time so why should I master it and do well. That's something you should have a good understanding, good handle on understanding the black letter law and understand the different ways they test. It's pretty well 75% done for you. You need to read the facts and figure out which one applies based on what you have studied. So it is something you do want to know and I cannot tell you that are emphasized enough.

If you have any questions as to whywwe did Pinkertons for her her first let me know.

Again, we did Brian we will talk aboutthe attempted murder and did he do it, did he shoot the gun? Pinkertons. You have to bring a Pinkertons and again if you did a good job bootstrap from it and say as discussed was it unnatural probable result evident by the conduct. However you conclude it. You want to be consistent though. How could you find the Angela was within the course and scope of the agreement for Pinkertons and Brian not. That would not make it sense. Let's say you found Carter not liable for attempt, but you convicted Brian and Angela based on Pinkertons. That is where you have to have your consistency. Further, what about the robbery? So what do we need for robbery? Again you need it trespatory taking and carrying away of the personal property of another by force fear or intimidation. You can either bring up the robbery here or bring it up under Carter so it depends on how you see the facts and are you imputing it on to Brian based on his conduct, or define discuss infra and talking about it, the issue of defense or duress. Because we definitely to bring that up. That's a different offense that Brian can use versus Angela.

Remember I told you earlier when you have three different partiesthere's got to be something different. Angela had the defense of intoxication and diminished capacity we can use the same thing for Brian to do has to be something different for Brian, he can have the added defense of duress.

Remember that duress is a defense for the defendant to show that he's under some type of threat that puts them under caution basically, the threat is so high that he does ask that he would not normally do so Brian will argue that he did not know that Carter had a gun. Evident by the fact that when Carter pulled out he was shocked, he kind of froze. And then he took the gun and shot it into the delivery person's vehicle.

But then of course Brian didn't grab the pizza. Carter turned the gun and aimed it at Brian and told him to grab the pizza. So was Brian acting under the belief that Carter is going to hurt him, is he under the threat of his physical being that coerced him to do the acts. Of taking that pizza. And you have to argue and guess what. You're going to have to argue both sides. Because Brian is going to argue wait a minute. I didn't know he had a gun, he pointed it out, what was I supposed to do versus what is the prosecution going to say. You were only shocked for a minute and you are able to react. What did you do? You gave the pizza back to Angela and said eat it. If you are that shocked, how come you're eating pizza. Were you under such duress that it overcame your free will? The coercion? And make your arguments. I find there is no defense, I find that dress fails. Remember your intoxication,

diminished capacity or defenses you would bring up for thedefense as well define, discuss s I did a good job on Angela addressing it based on the parties drinking heavily earlier and I don't have to go back through it. Why? It is going to kill my time. So you want to pay attention to that.

Same thing with larceny. How are we imputing it to him? Through Pinkertons. And defied supra supra your other issues. The diminished capacity, duress as well as your intoxication. So I'm going to feel that above. Everybody understands a lawsuit as to Brian?

Now we get to the heavy hitter, state versus Carter.The first issue I see there remember in the first paragraph was what? Solicitation. What you need for solicitation?solicitation is the inducement of another to commit an unlawful act. You are enticing want to do an unlawful act. Based on the facts, what could he do. Drinking beer, they want to pizza, knowing they don't have money they suggest he order pizza and grab it without paying for it so he is inducing him. Of course based on his suggestions Angela and Brian ended up committing the act. Larceny is an unlawful act. We do have solicitation. Solicitation is a lesser offense this solicitation will merge into the underlying crime. If you find in a robbery or larceny whatever you conclude this solicitation will emerge. So you still bring it up as to what he would reasonably be charged with any point out the merger rule to make sure the reader knows you understand the concept.

Obviously if there is a multistate and solicitation was one as to what he could be convicted of I would not bepicking that. I would make sure that litigation wasn't in my answer choice because it merges. You would have to apply the doctrine based on the multi-states.

The first action I see he shut the gun, attempted murder.A couple of things that we have talked about before, with attempted murder what do you go through? You only go through the elements of attempt. You do not go through the underlying elements of the murder. You just focus on the attempt. So remember you need specific intent, substantial step toward the completion of crime, and you need to have So those are the four elements that you want to focus on and go through.

The fact that Carter pulled out his gun and fired at the delivery personvehicle shows what question he had the specific intent to commit some type of crime, didn't he question the you can even bring up the facts--- grabbing the pizza and running for it so he did have specific intent. He is taking out the gun and pointing at the vehicle did he have the apparent ability to kill a person ?s are heated. And of course the prosecution can argue that his act of firing the gun into the vehicle but missing showed he had a substantial step toward the perpetration of the murder. Although he was unsuccessful.

What is Carter going to say?this was a gray area that they put at issue. Why did he fire the gun into the vehicle? He's basically showing his dominance that I plan on taking the pizza. Did he really intend to kill and harm the pizza delivery person? He's just basically instilling fear in order to get the pizza. He had no intent to kill whatsoever so he will argue no specific intent to kill. So therefore the specific intent is lacking. Argue.

Does it matter if you conclude there is an attempted murder or not. It doesn't.As long as you support it with the fact you should be okay. But make sure you conclude however your argument is. There is nothing worse than when you say there is an attempt versus if you go back and look at urinalysis and it shows there is not any. So be consistent with how you see the facts and how you argue. Because that shows on your exam and that's not good writing in regards to being inconsistent with your own analysis.

At this point if you find the attempt, what should you do?Your defenses. What do we have? Voluntary intoxication, diminished capacity, supra it back but let them know you understand that it's a defense to attempt although it's going to fail b you want to do that.

Next I would go through the robbery.Trespatory taking, carrying away personal property of another force fear and intimidation with the intent to permanently deprive. Again, look to see what they are really placing at issue. Do we have eight trespatory taking? They took pizza and without paying for it and they fled to Angela's house to eat it. And so we do have a trespatory taking keyring away personal property of another. Was it by force fear and intimidation? tthey obviously had no money to pay for it. They shot the gun into the delivery person's vehicle so I'm sure he was a little fearful. They grabbed it from the person. Is that enough to instill fear? You have firing the gun and grabbing, make your argument. So even if you find the gun basically did not instill the fear the fact of grabbing and running you could argue that his force. I see that as fear. I would find they should be convicted of robbery which is consistent with my conclusion supra when I talked about Angela and Brian based on Pinkertons because I'm imputing it to them based on their conduct.

And of course they ate the pizza, so that the headset shows that they did have the intentto permanently deprive.

But I still would go through larceny.And see myself because of the robbery feels they would be charged with larceny. Same elements, same argument as above. If Carter is now not to be charged with a robbery then since all the elements of larceny are present he would be charged with larceny. Remember larceny is a lesser included offense of robbery. You could not convicted both but it's either robbery or larceny but based on the facts I would bring up both depending on what the jury decides whether or not they had force fear intimidation. That is kind of what they put at issue.

Again, make sure you supra back to the actual defenses to let the reader know that you understandthat these apply to the robbery i.e. to the larceny as well.

basica defense. You learn that in double jeopardy in criminal procedure. It's a lesser included defense you cannot charge me for both. You can only charge me for one or the other. If you are charged you for larceny and for the same conduct they try to charge and convict you of robbery they cannot do it because you've been convicted of larceny so it is a lesser included offense and you can tell the reader if you know that. That is good.

Now in regards to looking at this exam first of all, what are common mistakes that I see on this exam which you I should be writing. I didn't see anybody send any in this time. You've got to write it. Get the timing down and understand how to discuss the concepts. Especially like the Pinkerton's rule. Things I've seen in the past to grab onto, first of all they don't take the call in order. They do not do Angela first and you have two. You don't have any choice based upon the evident call of the question.

The other thing I see in regards to the exam they don't know how to arguePinkerton's rule. Pinkertons is simple. You're actually taking some else's conduct and imputing it on to a third party. So we are taking what Brian and Carter did and imputing it under Pinkertons.

So foreseeability, natural and probable result is so important and that's why you have to look to and argue the facts. A remember that it does not have to be dead set on meaning, what's the likelihood that Carter would have a gun? It does not work that way. What you are looking at is it foreseeable that some force would be used to obtain the pizza without paying for it. Since the agreement was to grab it and get it and eat it without paying for it yes it is foreseeable. It is reasonable that some type of force whether fist or gun what have you would be used. It does not have to be that specific method that was used, just is it foreseeable that force could be used based on what we agreed to and the answer is yes. And obviously would argue that based on the actual facts. So that is important.

Issues missed in this examination would be like your solicitation issue.In regards to the merger doctrine as well. And of course a lot of people did not see multiple defenses which you would need to go through and receiving stolen property is another one that students do have a tendency to miss. And that is a subtle one but it is worth some good points. So might as well address it so I get my point value.

does anybody have any questions as to the issues that these particular facts brought up?

As you can see the more I can get you to focus on your outlining you will seethe sub issues like the foreseeability under Pinkertons or regards to the agreement under conspiracy. If you do not give yourself a chance to reflect and think about it you will miss it. You will not see it, and that's what's frustrating because then you go home and all of a sudden the lightbulb comes on because your mind has been working on it. Give yourself a chance. So outline the examination.

Again, is it foreseeable if you have a gun, you're looking at it you narrowly. What you are looking at it is based on the agreement we are going to grab the pizza without paying for it. We are arguing was there a robbery or not? Is it foreseeable that force, we need force fear and intimidation to show the robbery. Is it foreseeable that some type of force fear or intimidation will be used to obtain the pizza whether it is a gun, whether it is your fist, whether it is that you are screaming and yelling at the top of your lungs. It is foreseeable that some type of force would be used to obtain the pizza. That is how you are looking at it. Don't directly look at it as what is the probability that Carter would have a gun and would use it. That is too narrow. That's not how it works. It has to be brought up. Was it foreseeable based on the agreement between Angela Brian and Carter that force would be used to obtain the pizza? The answer is yes and you would argue based on the facts.

Now it makes sense, doesn't it?

So again, you noticed on fact what is the probability that this would occur, one in 1 million. But you want to make sure you understand the rule. Forced fear and intimidation is it foreseeable based on the agreement, not the fact that he pulled a knife and stab somebody to death. We are not looking at the knife. We are looking at the conduct and what we agreed to and see if force fear etc. could be foreseen.

Let's quickly look at the model answer.

The key thing with the model answer is you want to make sure you make it easy on the reader to follow alongs. Had note the lawsuits. So even though they did not do that they look to the call and listed the parties Angela Brian and Carter you have got to separate this out. State versus Angela. Let the reader know that I understand this is a separate lawsuit and go through the issues.

Had note your issues, let them see it.Do not bury this stuff. Sometimes even when I start analyzing when I see a sub issue within the element like conspiracy to the agreement I might analyze that in a separate paragraph so the reader can go to that and see that I did understand and I have both sides. Lots of times I bring a plaintiff's argument, Because again I'm arguing the actual facts. Make sure if you do find that there is [an audible] do not save it for the end because now the reader is second-guessing you understand this applies to each one or all of them they don't know and you are explain that to them. To break it apart.

Look at the Pinkertons rule and how it relates to natural probable foreseeable result and look how it is broken apart by the attempt versus robbery versus larceny. You need to break these apart. You cannot say Pinkertons and link them altogether to the different crimes. One of them I not be related to the original crimes. But if they are, to get to the first one and steal from your earlier argument.

Brian, do you see how we are arguing Pinkertonsand of course in regard to Carter he has an added crime basically is the solicitation because he's the only one that solicited but based on merger he would go to the underlying crime of robbery or larceny, whatever we concluded based on the facts.

Are there any questions on this particular essay question?

Carter is charged with solicitation as well as conspiracy. So we are going to get both with Carter. Worth regards to conspiracy we have Brian Angela and Carter, all three are done for conspiracy, slamdunk. Maybe the answer does not say define discuss supra but it should. He's only responsible for solicitation because he is the only one that suggested. So you would bring up against Carter so you know that I would bring up solicitation, conspiracy, the attempted murder, robbery, larceny and you can bring up receiving stolen property because technically you could argue that Brian is the one that took it although he aided and abetted but that is arguable. So I would bring up all those crimes against Carter. There's a lot here.

So it's not just one or two per party.There's quite a bit. And going back to look at the particular call do I see a difference between Angela Brian and Carter. Yes. Angela had what? I guess counterargument whether or not based on what she did on her conduct, Brian had the argument of solicitation and Carter had the dress. Between three I feel confident that I can move forward. If they are identical I should be worried because why would they give you three? They would not, they just would give me two that means there's something I am missing and again you notice what do we do? Dissect the facts break apart pursuant to the sentences. That is going to help you see one, two or more issues as well as the sub elements that they are testing.

And again remember these examsare testing your analytical ability. So if you cannot show them that on the exam you're dead. You've got to break that apart. That is important.

Before we jump to some multistate questions, time flies, does anybody have any questions on this particular essay?

It is a good one for you to write because I feel it is a resource. It's got a lot of issues. I've got to get my timing and because you only get one hour.

All right, the first question I will go over is question number three. In this particular question what I have experienced in the past, people miss it because I don't feel that you break apart the elements.

Remember I told you previously with torts, when you see like battery or salt, whatever it is, negligence, does not matter, you've got to break it apart and make sure that each and every element is satisfied before you pick the answer choice. So on a multistate always read the call and says much of the following crimes majorly be properly convicted. We will go through it and explain the different so you understand. Can she be convicted. That means slamdunk the facts support all the elements of the underlying crime that we are going to bring against her.

The key is when he read the FAQs, let's sayyou are seeing whether larceny or embezzlement or false pretenses, whatever it is I don't care. You've got to dissect and make sure each and every element of the crime is supported based on the facts. Because if it is not no conviction.

Let's look at theFact here. Julie lost her job and needed to make money quickly. She ran into Charlie and old friend. When Julie told Charlie about her financial problems Charlie pointed to an expensive looking coat which was hanging on the coat rack and said why don't you steal that coat. It looks like you should be able to sell it for at least $100. Julie said she was afraid that the coat would see heard Charlie agreed to sing in a loud voice to create a diversion so Julie would steal the coat while everyone was watching Charlie. As soon as truly began to sing, Julie took the coat from the coat rack and ran from the tavern.

In fact the coat belonged to Charlie who had been joking when he told Julie to steal it. Which of the following crimes can Julie be properly convicted... If you do not know you can quickly read the answer choices larceny, conspiracy, larceny and conspiracy or neither.

First of all, is there conspiracy? He's joking, so obviously there is no agreement with him. So I can get rid of B and C right off the bat. So that leaves me larceny or neither larceny nor conspiracy. Really what we are looking at larceny. I will break apart my elements ANSI was there trespatory taking, carrying away, personal property of another with the specific intent to personally deprive. What elements did they put at issue? Whose coat is it? So based on the facts was there a trespatory taking? No. You basically kind of gave consent, didn't he. So there actually is no larceny. The elements are not met so she can be charged with anything. So the crime... May Julie properly be convicted of neither.

Now, if theychanged two things I'm sorry if they change the call with properly be charged then I would probably put larceny because she could be charged with larceny although we have a problem with trespatory taking. Or if the call says or the answer choice were changed she could probably commit the attempted larceny, then I'm going to go for attempt. The elements of attempt are met. Specific intent substantial step, preparation versus perpetration. Apparent ability. Go through those facts and I would argue it in regard to the actual attempt in that change.

Does everybody there understand question number three? Student miss this by not going through the elements. The same thing I taught you in torts with crimes you need to dissect the elements and go through them and show they are supported pursuant to the facts. It is very very very important.

Here's number five looking at the same issue. In theory. Read the call, what is the most serious crime of which Dennison can be convicted, properly convicted. That means you have to show support for the elements of the underlying crime are there. It is not great. It's pretty black-and-white.

Dennison was having dinner in a restaurant with his employer. Vail, when veil left the table to go to the restroom as veil walked away Dennison noticed that veils wristwatch had fallen off veils wrist onto the table since it looks like a rather valuable watch Dennison decided to steal it. Picking up the watch he put it into his pocket. What did he commit at that time, he decided to steal it, he put... It in his pocket, do we have a crime at that point?

The person I'm thinking of is larceny, was there a trespatory taking. Usually there wasbecause you didn't have consent and you saw I dropped it and you pick it up with the intent to steal it yes it is Carrying away, putting it in your pocket, personal property of another, your employer. By having a specific intent to permanently deprive, you decided to keep it. So I do have larceny supported at this point. Does everybody agree?

A few moments later he began to feel guilty aboutstealing from his employer so when veil return to the employer Dennison returned the watch and said here you handed this and put it into his pocket for safekeeping. That's nice. Is he still guilty of larceny? All the elements are met simultaneously aren't there. So even the you changed your mind there is no such element as I am changing my mind there is no such defense to negate the specific intent. It all has to occur which it did based on these facts. He's going to be guilty of larceny. So that is answer A versus there is no attempt, embezzlement, no, he was not given in custody and a crime. We have the illness.

Now, let's say I change the facts on you and let's say we change the facts that he noticed the employer drop the watch, he picked it up and intended to return it and he put in his pocket. Then he changed his mind and decided to keep it, would that still be a larceny?

Again he was not given custody so yes it would still be larceny. Could be transferred intent doctrine.Remember transferred intent doctrine does work for contracts, or Crim law as well as tort so that is something you want to be aware of.

Let's see if we can get one more before we have to say good night. All right, let's look at question number 22. One that comes up for most people. This is I feel that people are, it is the rules of people do not understand the rule.

Again, if Delbert is charged for the murder of Nora, the court should find himeither guilty or not. Let's go through the facts. The facts are based on question 21 and 22.

Pollen has just been released from prison after serving a three-year term for aggravated assault.In need of money, he called his friend Delbert and asked whether Delbert would be interested in joining Collin in the robbery of Perry's pawnshop. Delbert agreed, but only after making call and promise that they would, there would be no violence. Upon Delbert's insistence they carried realistic looking toy guns and when they entered Perry's pawnshop they drew the toy guns and ordered. To give them all the money in the cash register and all the gems in the safe. Perry then aim the pistol who fled the store, as parent out in the street with his pistol in his hand Delbert jumped into the car which he and Colin had left parked at the curb. Speeding away from the scene Delbert accidentally struck Nora, a pedestrian who died of her injuries. By statute of the jurisdiction is adopted the felony murder rule.

They just gave it to you.With Delbert being charged with Nora's death be responsible for her death and he is the one who jumped in the car. He is the one who ran over her accidentally though. But the issue is, is he still within the res gesti of an inherently dangerous felony?

And if you are still in the res gesti of an inherently dangerous felony or an attempt of an inherently dangerous felony then yes you will be guilty under the felony murder rule. If you look at the answer choices not guilty... Not guilty because get rid of, C says not guilty if he was in reasonable fear for his own life That's not going to get him off. Meaning, he is on his committing a felony. A guilty because Nora's death resulted from Delbert's attempt to commit robbery. That looks good. B only if he drove the car in a criminally negligent matter. That does not support it, it sounds more like involuntary manslaughter. Which the call is asking you for murder. Not manslaughter. So it has to be A. And remember when you are in an attempted inherently dangerous felony or committing an inherently dangerous felony, those both work. For the felony murder rule. So the death incurs during the attempt of or during the commission of an inherently dangerous felony. Then you are going to be responsible for the murder under the felony murder rule. And that is important to because then what degree will he be charged with? First agree. Right because it is a death that occurred in an inherently dangerous felony.

Again the moral is, you understand how they test the concepts you get the same issue, different fact pattern, but the same issue that is being tested concept wise and you know that they are testing basically an attempted inherently dangerous felony. Felony murder rule and go through it. They do it also on the essays and it has been one of the biggest issues. They keep hitting on the essays. Felony murder rule was in the commission of the inherently dangerous alley or is it collateral to the underlying felony and they keep hitting the issue so it is something that I would be prepared for on the exam.

All right. Okay so where are at right now, we have hit other subjects, torts, contracts, criminal law. We have hit all the subjects were everything is fair game right now. That means you should be practicing essays in all three as well as multiple choice. If you only have time to do 30 per day do 10, 10, 10 and each subject matter. But you have to keep practicing and mastering the multi-states. Issues about the essays and on the weekends start writing. Get your timing down.

If you only have limited time start issue spotting and work on the weekends of writing the exams. That is the only way you're going to get there and do well on the exam and pass it. It is not an easy test you have to apply yourself it's very important.

At this point you will see what will happen is we will send out the most current baby barthat just came down, that would be June 2016. The question of the three as I recall was criminal procedure so we will not be going over that. The question basically was thrown out. The bar examiners gave everybody 100 points on it so it's not one that we will waste time on because you are not responsible for criminal procedure. It was a mistake on the bars part, so I'm not even going to send the essay question out. I don't why you to be panic if you go look it is not anything you are responsible for.

So we have actually question one, two, four, torts, contracts and I believe the other one is back to torts that is the one we will be reading and going over because Crim law they made a mistake and tested criminal procedure was not really tested I want to make sure you realize that.

Those are the three essays we will go over with each other next weekwhich again I like to go over the current exam so you have an understanding of how the examiners are testing. At this point again you should be looking at all three of your subjects consistently working on multi-states as well as issue spotting. Fine-tuning at this point the black letter law. You should not be just reading in your Gilberts you have got to start applying during the application. Anybody have any questions for me at this time?

Remember if anything does come up always feel free to shoot me an email at Jolly@TaftU.EDU and I will be happy to help you in any way that I can or memory to keep issue spotting and practicing the multi-states because the more you get exposure that will read your success. I look forward to seeing you guys next week. Everybody have a good night.