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TAFT LAW SCHOOL

BABY BAR

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INSTRUCTOR: Good evening everybody and remember tonight's Baby Bar miniseries we will be going over contracts and how they are tested on the essay and multiple choice. I want to point out theses are recorded for your conveniences or if you want to go back and review a session that we had, go the task website to the student's section and click on Baby Bar miniseries.  
If you have any questions, you can ask and put them in the question/answer versus the chat, because I can't monitor both.  
If have questions you want me to answer, place it there.  
You should have received a contract check list.  
Something it is something you took a look at.  
If have a checklist, use what you have.  
You don't want to undo what you memorized.  
If you have it.  
The checklist, the purpose is to help you, number one, with your organization.  
Contracts is methodical, you start from .1 and work your through it.  
So if Joe called Mary and asked if she wants to buy a car, you have to start with offer, you take your inner checklist in that chronological order, contracts are organized for you.  
When you see contracts or contract questions which you will.  
I want to ask yourself several questions.  
We make assumptions that we shouldn't make.  
Was there a contract between the parties made?   
If you see based on the facts there was a written valid contract, then they gave you it to you, or if there is a contract between the parties.  
They didn't tell you it was what?  
Valid. So you still look to whether it is mutual since or offer acceptance and consideration.  
You will know based on the facts and that's where you start.  
You find there is a contract, ask yourself any reason the contract shouldn't be enforced.  
What you are looking for there is defenses.  
Is there statute of fraud or mistake or ambiguity, something to that fact, which the last Baby Bar did test mistake?   
So you find the contract should not be enforced.  
If you can't find offenses or you do, ask are there any conditions under the contract?   
We will go over that.  
You have expressed conditions, which is implied.  
And you will look who is bringing the lawsuit, which we will go over the last Baby Bar in the last couple of weeks. Who is suing you and that brought up a third part beneficiary, that can have assignment delegation and order assignment beneficiary, you want to understand how that comes up based on the facts.  
Once you find there is a contract and there is defenses and conditions et cetera, you ask yourself is there a breach of contract and what remedies are available to the parties.  
That will help you and identify issues.  
That is important.  
If you don't look for it, you won't get the highest points which will be frustrating.  
First you see formation, that is testable on essays and multiple choice, you will see Baby Bar shifts, let's just test formation issues or sometimes they open the whole ponderous box of your checklist, but you will know by the call of the question, so pay attention.  
And the next thing that starts with formation of contract, you are responsible for UCC, Uniform Commercial Code, that is separate class, but you are responsible for it in Baby Bar.  
You need to review and I would recommend if you don't have already to buy a sales/UCC guideline to help you, it is rule orientated so you need to know the rules.  
The first thing in regards to you that you take a contract exam you will ask yourself does the UCC apply, if it doesn't, don't bring it up.  
If the answer is yes, bring it up.  
The UCC applies to the transactions and goods, so you need to show we are bargaining for something like a saleable car, or something to that effect.  
You will know what is a good.  
It has been tested on the Baby Bar and it has been awhile so it is right for testing.  
Good versus services.  
Let's say you want carpet for my house, and I want to install it, well I'm bargaining for the carpet and the installation, that's a good versus service contract.  
Does the UCC apply or not?  
You have majority rule which is the predominate factors and that says what was the predominate of the factor, the price of the carpet or the service?   
And the minority has the gravamen test, why are you upset?   
Was it how I installed it or the quality of the carpet?   
And based on the facts you will know where to go.  
What you will see, one issue will put you into the UCC and the other one will not.  
The reason they do that the examiners want you to write common law and see the UCC distinguishes to see if you know both areas.  
So Pauline goes to purchase fences ‑‑ and it was $350 and to install it was $150, we can tell under the predominance that the good is the promise because it cost more.  
Under the predominance factor test, the UCC would apply.  
But the [Inaudible] test ‑‑ you UCC would not apply because that is not the basis of her lawsuit.  
You need to know both those test and if you see it on and say you will talk about both.  
Do both.  
If the UCC does apply ask if you are dealing merchants, those with special knowledge or skill.  
If you are someone, I picture on E bay, you keep selling a product, it is something you do on the side but I will think of you as merchant because you understand it and you are selling it to the public.  
If the UCC triggered and they are not merchants we are done because the rules under the UCC apply to merchants.  
Then you next checklist [Inaudible] is it invitation to deal, these are tricks you want to pick up on.  
Example multiple choice question I see someone place and add that the person to Macy's can buy this turquoise necklace for 50 bucks it is true value is $500.  
It is an invitation to sale.  
They will dictate that to be an offer.  
They do test that on the multi test, you want to know the general rule, yes, but it could rise to the level of an offer.  
If you go to Taft website and click on the Baby Bar questions they tested this several times, preliminary versus offer, so what we will classify it as?   
You will have the terms, quantity, time, price and subject matter and if those are satisfied you will conclude it was an offer.  
Next would be your offer and you want to make sure you want to break apart on the essay and the multiple choice. If he is interested in selling his home is that an offer or an inquiry.  
If you don't dissect the information you will miss it.  
Seller says I am and you can buy it for $50,000 and you lump all that together, technically you are not correct.  
You want to see if you pickup another issue or two.  
‑‑ offer was is it acceptance versus counteroffer, versus another counter officer, that is worth points.  
All that comes how you read the fact pattern.  
Do you understand counter offer? You probably do because you miss it because you don't read the facts and break it apart.  
That's important in contracts, one word can change everything.  
You want to pay attention.  
You have ways to termination the offer ‑‑ you revocation you have direct versus indirect, these come up and they come up on multiple choice questions, so you need to understand the rule.  
The death or destruction of the subject matter or acceptance destroys the offer.  
You have that comes under the head note, option as well as firm or offer.  
Offer by consideration to keep the offer open, or they test with option, there are several areas. I need to consider even if it is a dollar it will be open for that stated period of time.  
You need to determine was a valid option created?  
The other thing which we will get to the rule in a minute, option contract you cannot apply the mailbox rule and they like to test on multi test.  
I want option to buy your house for $50,000 and you say here is the option open until September 30th and I write you acceptance and deposit it on the mailbox on September 30th, but mailbox does not apply to an option so there is not a binding contract between the parties.  
If it is passed that deadline because it is when you receive it. The other issues is firm offer, that is under the UCC they play on it, a firm offer has to be in writing one has to be a merchant, all four, can't trick me, and not to exceed 90 days.  
So even if I give you an offer as merchant I will keep it open for 120 days. Do I have a valid form offer?  
Yes, but it is limited to those 90 days.  
Remember it needs to be in writing, which people forget, one party needs to be a merchant and limited to 90 days.  
Acceptance.  
Acceptance is your unequivocal sense, you can test method of acceptance, offer or you dictate.  
I can say you want to buy my car, call me.  
If you want to buy my car, text me.  
You can dictate the method of acceptance, that is something you can argue based on the facts.  
The other issues have [Inaudible] acceptance, versus a mere inquiry.  
What is grumbling acceptance, she offers to sail the car, and she accepts it, that looks like an offer, but he states I hope you detail it before you give it to me.  
Was that an added term? No, by the terminology hope.  
He hopes is more?  
Inquiry.  
Versus only if you detail it for me, that's an added term that would be a counteroffer.  
The language is very important to dictate whether we have a counter offer or acceptance with grimly acceptance.  
And again I can't say it enough it comes down to what?  
The facts.  
You need to break it apart.  
Remember the mailbox is something you will see on the multiple choice questions.  
Practice them.  
No reason I should get them wrong.  
You will see 2 or 3 easily.  
What is the issue with the mailbox rule?  
When is it effective, on dispatch.  
Where they will play with you.  
I will send you an offer, you send me letter of accepting, but then you call me and say I don't want it.  
Wait a minute.  
We go through our rule I offered you acceptance, that is effective on dispatch, we have contract the fact you are calling and saying you changed your mind is more of a breach, but then look to see if I relied and sold it to someone else that will change the situation.  
Based on the facts. We will vacillate the mailbox and revocation and rejection.  
I know students aren't good with those rules.  
They will be there on multiple choice.  
Other area is the UCC, 2‑77, the battle of forms.  
With battle of forms and general how this comes up you will see a merchants sends a purchase order you send it and send an acknowledge you fax it over.  
We have two separate writings.  
Your purchase order gave dates and deliver and quantity but if has litigation we will go to state court.  
My acknowledgement says on my form if we have dispute we are going to binding arbitration.  
So we have inconsistencies here.  
What I just gave you, do we have additional terms or different terms?  
So additional terms is something you are adding to contract and different terms you are changing.  
This is different term to me, because you said state and I'm seeing binding arbitration because I'm limiting where we can litigate.  
You will go to through your rules knock out drop out versus material operation.  
The same facts I gave you, but it says California law will apply.  
That would be additional term, you look to see the material alters the contract or object to it within continue days or acceptance was conditional.  
The material operation is where they like to test.  
If you are giving up a right like litigation, remedies, warrants, it is material.  
You want to make sure.  
It is a reasonable able period of time, that's not material, that's what the code says anyway.  
Again if you are giving up something you have the right to you will find it is material and not part of the contract and of course you can look to what?  
Well, if the court needs to they look to gap fillers to fill in the terms.  
You have consideration under consideration, you have preexisting duty rule.  
If they are under pre‑‑ substitute for consideration.  
And you will see based on the facts, the party does something to rely.  
They test on multi states you are retiring and your boss says if you do a great job I will give you $1,000 a month.  
There is no consideration you already terminated your employment but let's say they went and bought a different condo minimum to live in based on that payment, you can argue the promise foreseeable, then the courts will enforce that, but there was no consideration.  
That does come up.  
Once you find a valid contract you will look to defenses but before look at the facts.  
Facts give a way things you need to pay attention.  
If there is a valid written contract, what?  
There is a valid written contract.  
I give a few facts about it to set a stage for my story.  
You don't want to go through offer and acceptance as you are ‑‑ your time.  
And they said it was valid.  
If they told you there was written contract they didn't say valid you will have to do mutual consent consideration or [Inaudible] if the examiners example out the materials, quantity, time, the parties, the price and the subject manner then that means the direction they want you to go off of.  
If they don't spell out the terms, then we can go through what?  
Mutual sent and consideration.  
Now remember in regards to a contract whether there is a valid contract or not, if they say there is valid written contract that does that mean there is no defenses.  
That's a trick.  
So a lot of times you will see that and what?  
Pro evidence is there.  
Statute of fraud will be there unless there is a modification.  
Go look at your checklist, based on the facts parol evidence arises.  
Be careful with the terminology.  
If the facts say there is a signed writing entered into between the parties, do I have formation issues?  
There could be.  
You want to break it apart.  
Again these are issues you want to be aware of and look to the call of the question.  
If I ask you was there a valid contract formed?  
Most likely my formation and my checklist is issue as well as defenses is an issue.  
They are not testing conditions, breaches and damages because they asked was a valid contract formed?  
That call limited you.  
That is good to understand and why, because I won't waste my time on none issues that will hurt me.  
It is all about time so that's important for you to have good understanding how it does apply.  
Good handle on your formation.  
It is something you need to know unfortunately, because it is on the multi states they tests it on the essay question, just break apart of the facts.  
I like the formation exam because I'm prepared you should do well.  
Once you form a contract always ask yourself if there is a valid defense, they hide these from you.  
The number one that is the statues of fraud because people don't understand the rule.  
You are like what?  
All oral contracts that fit into marriage, debt of one year [Inaudible] that's true.  
But what we leave out any incomplete writing triggers the statue of fraud as well.  
What is incomplete writing?  
I fax you a purchase order you fax me an acknowledgment, it is not bodied into one contract.  
I fax you a bid for something my offer and you call me and say you accept.  
We don't have complete writing.  
Part of it is in writing.  
You need to look to that and what is being tested.  
That's the number one issue when it comes to the Baby Bar examiners, do you test the incomplete writing?   
Because they know the students don't understand it.  
Statue of fraud you need to show me how you got into the statue of frauds.  
First step.  
Are we dealing with marriage, which I doubt they will test.  
Contract dealing with reality or interest therein.  
Or [Inaudible] or debt of another.  
Or contract by its terms not being cable of being performed in making thereof.  
Or $500 or more.  
That's are your five.  
That's the only five you need to know.  
I guess if I go through employment contract, some people put that in their checklist you can look to the terms, is the performed in one year of making of, and they are termed what will, so you would say yes, you will say [Inaudible] outlines but you just need to know these five.  
Once you see that statue of fraud is triggered because it is oral or incomplete writing show me how it fits into one of these. Mary is buying Joe's car for $5,000 and they orally agreed, selling of car over 500,000, and it is unenforceable because ‑‑ my next head note should be exception.  
You snowball this and you can't do it.  
Break it apart.  
We will break these apart one by one.  
Some people use a pneumonic   
[Inaudible] the g is the good of over 500,000.  
Marriage, if you see which I doubt you will see, marriage being triggered you will have to show an exception and the only one can grab to sufficient written memo, and the they most have the essential terms, quantity, time, price and subject matter and signed by the party to be charged.  
Who you are using it against, so you better have signed it.  
That could flip, it is not always the defendant, you look to see who is enforcing.  
Who are suing it against?   
For the marriage the only way we get out it is the sufficient memo.  
The sale of land or interest therein, you can use the sufficient memo that will take it out of the purview of the statue of fraud, you can use part performance what does that mean?  
That you moved in as well as paid taxes or moved and did substantial improvement.  
It is not enough to move in.  
You could be leasing it for all I know or not buying it and said I sold it toy.  
We need more than just moving in.  
In regards to the debt of another, you can use a sufficient memo or the main purpose doctorate, what?  
If you show the party assuring the contract, to best themselves they will say fraud.  
Let's say Taft needs book for class and I say the manufacturer won't give them to me and I call the manufacturer and I say give them to bookstore and I will assure their debt, if they don't pay you, I will pay you.  
I agreed to pay for other, and fall out of the statue of fraud I can say it is benefitting me somehow.  
Based I'm in the need of the actual books.  
So the main purpose for Taft itself so outside the purview of fraud.  
The contract which is not performed in one year and making thereof, I'm picky on my language there.  
You have to get in and when they test this on the Baby Bar it is something you could perform in less than a year.  
They tested where a lawyer contract for her carpet to be cleaned in her office every six months as long as I'm in practice.  
Three years she said I got better carpet cleaner, and when you bring up the statue of fraud by its term is that contract between the attorney and carpet attorney can be performed in the one year and the making thereof.   
Yes she could have quit after six months.  
Was capable?  
It doesn't fall into the purview of statue of fraud.  
If it does how do we get?  
You will argue the sufficient memo or full performance.  
Only two ways.  
There is one that will apply to all and I will get to last of the ‑‑ for the sale of goods for $500 or more.  
Sufficient memo is common law.  
You bring up sufficient memo and you will not be signed by the party charged and bring up a written confirmation, to take it outside of purview of fraud if you can show written confirmation should know you have a contract with each other and you failed to object, you waived it as defense.  
There is one more that the Baby Bar does like to test that work for all five‑year to take it out of the statue of fraud.  
It is called an estoppel, that is called reliance by your conduct will take it out of the statue of fraud.  
One they did test, he contracted for rustle wine and he would have this big party with the wine and put out invitations to know what he would be serving.  
His agreement was oral with the wine vineyard and they figured they could sell it for more and he is suing.  
But it was oral.  
We didn't have I written confirmation the only thing we could argue was reliance.  
Because there must have been an agreement why would he print up his invitation unless he had an agreement with you.  
And the napkins had the wineries name.  
Why would he do that.  
Based on those facts that shows absence of fraud so that contract would be enforced.  
The facts will dictate and help you, can't hide from you that's your statute of fraud and I want to take away break it part.  
I stress it so much and see people snowball it and get half credit.  
Lack for multiple ways to get outside the statue of fraud, could you argue full performance or estoppel, look on based on the facts.  
So if you see one and it is argue able look for another, you are pleading in the alternative.  
I want to win.  
The only way to do that plead as much as I can see what they will buy, so to speak.  
That is your statue of fraud.  
Any questions?  
It is highly testable.  
you want to be aware of it.  
Mistake.  
That was on the last Baby Bar and you will see it on the multiple choice questions.  
It was tested on the last Baby Bar on question number one, the one the people had the most difficulty with, lowest scores I'm seeing so far.  
Is mutual mistake?  
Or [Inaudible] mistake.  
Because a mutual mistake they are can avoid the contract.  
Unilateral one party is under mistaken belief, and you don't have contract unless it is unjust, you should not been able to void this agreement.  
[Inaudible] even though I didn't know about it and contracted you for the right price and you should have known for mistake and signed contract anyway, I should be able to void it if I want to, because I will be the injury injured party, based on the agreement.  
I don't think you could, you could see it again on essay, because they tested it.  
It is on multiple choice so you need to know it.  
Ambiguity, multiple interpretations.  
This comes up as accession of pro evidence.  
If I contract you to paint my garage floor black there will be different types of black you can argue what I described and I see something different and want to pay for it, we weren't clear as to the color so it is ambiguous.  
Fraud that does come up on multi test, and that is tested a lot did you rely?  
If look it's a pattern he already knew so he can't rely.  
They are asking regards to your property and does is it have terminates? And you say it doesn't but he does this.   
You can't show there is fraud, and they did test this a year ago in regards to the Baby Bar, and if I know it and I ask you and you tell me a lie that can't be fraud. I knew the truth in the first place.  
Fraud you need unintentional misrepresentation and where one justifiably relies they hit because people don't pay attention to it.  
Part of it we don't break apart the rule in the multi states, you need to do that and make sure each and every element is supported before you pick that conclusion.  
It is easy to suck in and say there is there, backup and dissect and make sure it is and break it apart.  
Parol evidence that's a hard issue for most students, you are looking for oral or written evidence made prior to that contract and can't change or alter the existing the contract, it does not come to the four corners but there are exceptions.  
You need to prove fully integrated contract, then look to see if there is exception to get that testimony in.  
a lot of times what tips me off I look at preliminary stage and see preliminary it is important that we are bargaining this gets down at a particular time and date and this particular color.  
I look at contract it is not from there, that's a parol evidence issue.  
Does mean that testimony is coming in, but I'm bringing up that issue.  
If there is a fully integrated contract and you can't get anything in because of four corners and see if you have fraud or mistake waiting around it to get that testimony in.  
The last one from the Baby Bar is a woman sold land and she had two joining pieces of land and the one that is buying it for the carpet store, and I billboard ‑‑ she agreed to move everything, in the contract it says she would remove the debris.  
She wanted to bring that discussion in the preliminary stages she would remove all three.  
How will we get that in?  
He was under mistaken belief, what does debris? Old used tires, that's debris.  
Dilapidated green house?  
 ‑‑ you need to go through and make your arguments.  
Absolutely not for the billboard, the billboard would not be debris, you break it part and see and you will argue it and get it in.  
It is a big issue you should play with and you can do really well.  
If you look at prior exams we get in and out and this one has pages.  
If the only main issue on the exam is parol evidence you will massage those in facts and argue versus it is a race horse and not testing exceptions I'm probably getting in and out more quickly.  
Will you see that on some of the answers, some are one page and some are three, it is all the about the facts. You can't stress it enough, we look at prior exams and get a good understanding when I have to go into this full argument or I can shortcut it.  
By experience.  
Like everything else.  
You also have I defense legality, they are enforceable or minor.  
They love minors.  
Can a minor enter a contract?  
General, no, but if you do?  
Who gets disaffirmance?   
The minor not you.  
if you made a mistake to the price, the minor sorry is the one that can disaffirm the contract.  
Disaffirmance the rule they like to test a minor cannot enter the contract until the age of majority, 18 but they can disaffirm the contract after they read the age 18?  
Yes they can, a reasonable period of time.  
You want to look for that.  
The other trick with this let's say I minor enters a contract for a sale of a car, he is using the car to drive to work or whatever and then at 18 he disaffirms the contract.  
There is always another alternative you can go after him for unjust enrichment.  
You want to look for that it is preventing him from receiving something for free.  
Courts frown on that.  
I have seen value to tip you off, rental value, and you had it for a year that's what you will use as your damage.  
Any questions in regards to your defenses?  
Go through your checklist based on the facts and see if you can grab 1 or 2 and don't make an assumption because that will help you.  
Beneficiary was tested and be prepared for it.  
I have seen where the examiners test the same issue again and again.  
the third party beneficiary, how did you get rights to sue me?  
formation stage of the contract and don't need previously and intent to benefit and that's based on the language, classify my creditor [Inaudible] they don't classify.  
And intended beneficiary is creditor done [Inaudible] that's common law ‑‑ do they test that?  
Yes they do.  
You need to look what they are asking based on the call and based on your answer choices.  
They couldn't say creditor done intended unless they said [Inaudible] but I have seen them say intended and basically other types of language you know you are answering the restatement second.  
No vesting whatsoever, and you know the rights are vested.  
And in dental they never vest.  
Remember once they vest you steps in the issues and you have the rights ‑‑ that third party can assert.  
I want to get to know third party beneficiary. We will look to assignment delegation. That was just tested on the last Baby Bar as well the previous this is an area which will be on multi states that people don't understand.  
You can have assignment and delegation that can create rights in a third party.  
The last Baby Bar there was a contract for sale of football he couldn't come with money and is a signed to a friend of his.  
He delegated the assignment for him to pay the football, [Inaudible] so you see assignment delegation contract can create a third party.  
How do I know?  
Look who is suing.  
Let's go through the assignment.  
The assignment is existing right and you want see is it assignable?  
Two personable in nature, prohibited by nature or by law?  
It needs existing right.  
I will write a book next year and give you royalties, don't work like that.  
And you will get the benefits.  
Ask example I give you was the football.  
When a signed to his friend the football his right he was giving up was to that autograph football.  
What about the delegation?  
Contract $10,000.  
Is the duty delegable?  
Prohibited by contract, law?  
And they brought it down and sent a copy to her, was there notification shows the [Inaudible] allows the original contract party?  
No, there wasn't.  
Now you are the obligee that has to pay.  
You have an assignment delegation, did it raise rights in the woman selling football?   
That's the issue.  
So let's break it apart.  
More simple it clicks.  
I have A and B enter into contract for a landscaping.  
So B will do the landscaping.  
B get a chance to go to Europe for free and live in a castle for a month and assigns his contract to C.  
If I see in a lawsuit that the landscaping is done improperly and a sues B and essay also sues C.  
How can you sue c?  
Because a can show that B assigned the rights to the money to C and delegated obligation to form to C based on assignment delegation it gave a rights as third party beneficiary because the rights rose at the time of assignment delegation.  
Make sense?  
Let's change the facts.  
A have A and b, enter a contract for landscaping.  
B is a signed and delegated his rights to C.  
A doesn't pay C.  
C sues A.  
Issue?  
On assignment delegation C steps in the shoes of B.  
So after I showed the assignment delegation all I did was give him rights under the A/B contract.  
No third party there.  
Look to see who bringing the action.  
I diagram and see if it stays on the same side.  
it has to be assignment.  
Does that make sense?  
That is highly testable.  
Play with it and if have questions let me know.  
It is something you will see multi states on again. They just tested on the Baby Bar and when we go over that, I have seen them test it multiple times so I am worried it will come back.  
I can give you third party exams.  
They tweak it a little and they tweak it enough that it confuses you because you think you have grasp on it.  
You want to play with the third party exams.  
If you want some of those shoot me an e‑mail at and look for the distinguishes between the four because everyone is different but they are still testing the same concept.  
If you understand those nothing I can throw your way that you can't handle.  
More by experience and understanding that will help you.  
It is something will be on multi states I need to know it.  
That's your assignment delegation and third party beneficiary.  
I do want to make sure you have good understanding for exams purpose they will use the term he assigned.  
It is your job to term if he just assigned a right or did he assign his will delegate, they will never tell you, never use the word delegation you need to go back and look at the facts and see what was given up.  
Right to receive the money or pass onto perform.  
You have to look at it.  
Can you just have assignment?  
Yes.  
Just delegation?  
Yes.  
They will never tell you.  
Your job to determine.  
How you will remember?  
Assignment deals with a benefit, delegation is obligation, something you have to do.  
Conditions: You have several times, express that has be stated in the contract and remember express conditions are harsh, the court doesn't like them so the bar likes to test them.  
It has to be so explicit, you don't understand what it is, we don't have an expressed condition.  
I want my house painted by July 1st, I will argue that's expressed condition you will argue no it is not.  
You will say it is expressed promise, because you didn't say you are not paying.  
The verbiage is important to understand.  
One will argue express promise, less harsh so we can move on and find a contract, versus express condition, you breach because you didn't comply with that so you can show some type of your excuse which will extinguish.  
They generally with time of the essence causes and satisfaction, but a lot of times I argue for time but it doesn't say time of the ‑‑ you have applied in‑law and applied in facts.  
Applied of law is made up of the courts [Inaudible] what I usually do I grab onto the presences, it makes it easy for me and the writing versus the defendant is writing and he ‑‑ play with it.  
And you have implied in fact [Inaudible] you can never ever excuse an implied in fact.  
If you contract somebody that said paint the interior of your home for $5,000 and the walls are beautiful and the paint is all over, you didn't tell me you need drop cloths and not get it on your furnishings.  
It is in good faith.  
That is implied that is something generally don't think about, do we, better put in the contract that you will use drop cloths, clean up your mess and not get paint on other furniture.  
If you find it is an expressed condition or implied in‑law or contractive condition, look to see if can excuse it.  
Substantial performance you cannot ever use for expressed condition.  
Don't even tell the reader that they won't read it, they assume you don't know your law.  
In regards substantial performance this is tip for you when you see the contract 90 percent performed, bring it up. If see it half or two thirds, don't.  
You have to show you have got substantially bargained for.  
Bargained for means it is performed.  
Don't put the 90 percent in your rule either, that's to help you.  
Substantial performance what you bargained for, reimbursed for what you didn't receive and deviation wasn't lawful.  
You have excuse for performance, that excuses me and my condition.  
Impossibility comes up a lot, you need to have objectively improbable, nobody can do it.  
They pass a law saying you can't use gas in cars they are all electric.  
We have a contract of you supplying me gas, it is against the law, it is impossible.  
Tonight's lecture, I get sick.  
Can someone else perform?  
If the building burns down, go lecture in a different building.  
Needs to be objective.  
Impracticable, they go together and impracticability, they are impracticable to enforce, I contract with you in doing work, let's say construction and let's say that all of a sudden a tax is put on embargo steel and everything else coming in and instead of ‑‑ 25,000 I will be paying $25,000 to build your home.  
Should the court enforce that contract or something I need to eat and do?  
Could you foresee what was happening based on the facts I gave you probably not.  
Impracticability, frustration of purpose, there is two ‑‑ it's you need to remember, it has to be unforeseen and your purpose must be known.  
Everybody knows the Rose Bowl parade.  
I go to the horse lessons because I get to ride in the parade.  
But they cancel the parade that was unforeseeable event because it has been going on for how many years? If I tell the person teaching me why, frustration of purpose will let me off the hook.  
You will find it won't work but you still need to bring it up.  
Visibility, that comes up on, the contract was can be divided by price, unit and was not bargained for as a whole.  
They like to test that.  
I contract with you to supply my restaurant with 50 pounds of beef weekly at this price for the next year, is the divisibility you can do it by unit.  
Was it by whole?  
It was bargained for a whole so it is not divisibility.  
To fix the door on my barn for 2,000 and replaster the pool for 3,000 those weren't bargained for as a whole, they would be divisible.  
If you break it apart you will get it right.  
If have construction with bleachers and football stadium and things like that is how they are testing.  
Anticipatory as well volunteer [Inaudible] is by your conduct.  
So I basically offered to sell you my car. You accept. Before I deliver it to you I sell to someone.  
"I said I sold it sorry", that's an anticipatory, and if I sold it to somebody else that's a voluntary disablement.  
That is argument for excuse of argument under condition, that would be your excuse not mine, the one that sold it.  
Estoppel.  
And I waiver, you relinquish a right.  
Usually construction contracts.  
A there is a floor you want and it is too hard to get so you change it, you gave it up.  
So even though it was stated in the terms of condition and you knew you had a right you said, no.  
Before we get to breach another thing to add to your checklist, is warranties, under the cc, warranties of title that you owned title of what you are saying and of the product itself to what we want over the torts.  
[Inaudible] main difference if you sue under contract, the biggest argument is your ‑‑ argument because you have different alternatives than a, b, c.  
A in regards to persons foreseeable, B is natural person expected and C is any person which can include a corporation now.  
That's the main difference you will see under Torts.  
But put those warranties on there they could come up on the multiple choice.  
Breach you have present breach to perform whatever it is.  
The other theory is anticipatory breach, that does come up on the multi states we are testing can you sue now or do you need to wait.  
You will see this with singers you contract with them to sing at your nightclub on New Year's Eve and they say they will not be there.  
Wait a minute.  
We are December 30th and you are saying you will not be there New Years Eve.  
Do I sue you now or see if you show up?   
If it is executory stages you can sue now.  
What does that mean?  
Neither of us has started a performance or one of us has not fully performed.  
I cannot sue now I have to bait and see.  
Remedy and general damages and expectations in terms of the contract.  
Special damages, you need to know highly ‑‑ the formation stage of the contract if the party was aware.  
If I offer to do irrigation to do my corn crop, but I know I will use it for my apple crop and you don't do it on time and my apple crop dies.  
Was I supposed to offer water for my apple crop?  
No, I wasn't.  
I will have other areas which I will make you aware of restitution, if you receive something like the minor example as well as ‑‑ what you have to show with specific performance we have contract we formed the contract.  
Went through the contract checklist what was issue defense? Formation and conditions were they excused we got to breach and now remedies you need to do that and why are you here in equity, money will not make you whole.  
There is one they test on Baby Bar antique Italian race car.  
money won't make you whole, the goods are unique.  
You trespass on my land, that would work for Tort, specific performance I want to force you to sell me something because the land or goods is unique.  
Enforceability the same jurisdictional, one thing they haven't tested yes I saw with the classic Italian race car bfp, ,if I offer you my car that's a classic then I go sell it to somebody else can you get specific performance with me, bfp can right of our rights, they can notice that would cutoff you are rights, but if I have it in my position but didn't sell it, your courts will have you abide by your contract.  
Your contracts in your nutshell.  
There is good meat that you need to know and it is important you work on it and practice that will help you.  
What we have done?  
 Torts and contracts so that means you should be practicing Torts in multi starts and now we up it with contracts.  
Do multi states, don't abandoned Torts.  
If I can do 15 a day, I will do 5 and 10.  
You don't want to leave behind what you learned either.  
Next week we will go over contract essay, that will be e‑mailed out to you and you would like to see you writing them.  
I can't help you and weaknesses if I can't see them.  
It is by doing.  
It is allowing you to have a chance learn weaknesses.  
Write the questions and send it over, so we can have a look at it.  
Questions?  
All right as always if you have questions feel free to shoot me an e‑mail at jdadmissions@taftu.edu I will happy to help you anyway I can.  
This is a tough exam, look at the multi state, use Taft tools, go to website, pull the prior essay questions, this is to help you pass the exam.  
It is not easy test.  
The more I can get you prepare and willing to get prepared you get better chance.  
I will see you guys next week.  
Good night.