Taft College
Remote Cart ST
Baby Bar Review
June 6, 2017
Edris Lambert
6:00 p.m.(Start 6:24 p.m.)

CAPTIONER’S NOTE:

(Technical Difficulties explained after notes).

 INSTRUCTOR: Based on the facts and they say yes, if he had the actual intent, and you see, based on the facts that's the element that's a little gray area, that may be your best answer choice because that is the element that is weak. If we say yes, if, and that fact be true, and if you had the intent that could establish the existence of a battery, that is going to be the establish choice.

 The other one is when they use unless as a modifier. So yes unless, you are going to rewrite those. So yes unless is a no if. You are going to know it and you look to the facts to see if it is actually true. It is the way our logic is how he thinks, and you don't want to break it apart that way. The lesson is rewrite it. Don't take it for granted. You don't want to break it apart.

 Generally, what you will do is common law is the only way you can go. You have to answer pursuant to common-law, unless the facts common law otherwise. For Berkeley, you go through common-law. If the call says according to modern law, or let's say I read the fact pattern and the only answer choice is modern law, meaning there's no facts to lend towards common law at all. There's a question in my mind and I will pick a modern law answer. The general rule is you have to answer according to common-law. That gets people into trouble because they test that a lot with arson. There's a difference in common law and modern law. You can't burn down your own house, so you want to pay attention to that.

 The other thing to pay attention to, attempted arson. That's another curve ball. Attempt is specific intent. Can you be charged with attempted arson for trying to burn down your own house? Yes, you can because the crime is attempt; right? Versus, if it is arson, you can't burn down your own house. So you want to pay attention. Again, that is very, very important.

 Another one someone was asking me about. In criminal law, a lady lost her job and she comes into the bar. The guy says you look really down. The lady is telling a story about how she lost her job and lost some money. He said, well, there's a fur coat hanging on the coat rack. Why don't you take it and I will distract people? Then you can (Indiscernible). She is looking at him thinking is he kidding? And he says no. So she does this action. And, of course, they are asking was there a larceny, or the fact that he told you it was his coat.

 So the element they are testing is was it (Indiscernible) or a taking because he told her to go do it and he would distract people? So again, that's the element they would be testing arguably. He would obviously know because he gave her consent, so you wouldn't head note consent as a defense, would you? If you consent and you make that argument or a choice of taking. So if you are a student in that exam, head note it under your sub issue of was there a (Indiscernible) or taking? These are the ways we learn and the facts will dictate so that's important.

 Here's an example in regards to your modification. Tammy is a chemical engineer. She has no interest or connection with Chemco. Tammy noticed that Chemco’s most recent publicly issued financial statement listed as part of the assets a large inventory of a special chemical compound. The asset was listed at a cost of $100,000, but Tammy knew that the ingredients of the compound were in short supply and that the current market value was $1,000,000. Chemco’s stock is currently selling for $5.00. However, if the true value of the chemical was known then the stock would sell for $30. Tammy approaches Sam and offers him $6 a share for his 1,000 shares of Chemco stock. If Sam asserts a claim based on misrepresentation against Tammy, will Sam prevail? Remember from misrepresentation, what do you need?

 I need the intentional or negligent representation of a material fact of one justified relied to their detriment. Go back and look at the facts, was are their content intentional negligent? Hmm, it could go either way. What are they even testing, though? Did she even make a representation? Fiduciary duty would come into play if you have a fiduciary duty like a real estate agent for a client, then you have a fiduciary duty and if you know something you have to disclose. There is no relationship here.

 If you are looking at whether or not she's going to prevail or he's going to prevail, the answer most likely is no. Why? Because there's no representation. That's what you will go back and look at based on your answer choices. I see the issue is misrepresentation -- that is step 1.

 Step 2. What within the misrepresentation are they testing here? Was there representation?

 Step 3. What within that representation did she have a fiduciary duty, did she omit, or did she actually make the representation? Then I look, and the argument here is she omitted, but there is no relationship so she doesn't have to -- does not have to disclose. You should be able to go right to your answer choice and basically say can he/she recover? And the answer is no because she didn't make a representation, and that's the answer you are going pick.

 If you are racking on an issue and it is before you get to the actual defense section, then should I raise it? I think what you are saying if you see there's a counterargument to the element like the lesson I gave you, the trespassory taking, yes. You bring it up right then and now. Even a call in theory and what defenses, if it's not a true defense and it is a counterargument, you bring it up right where it applies, and that means you are still answering the call. You wouldn't prove up the whole larceny, and hinder the defense with trespassory taking, that wouldn't make sense. When it comes up, you talk about it right then and there.

 How are you going to know when you have to do an actual counteroffer? First of all, I told you when you see the causes what theories or defenses, the counter defenses can mean a true defense, as you know, or it can be a counterargument. It is your job to read the facts and see what they are testing. If it's a counterargument, let's say where it is a burglary and you didn't have the intent to commit a felony at the time of entry, once I argue you took the TV, I'm going to get the counterargument that you don't have the proper entry at the time at the house. I'm going answer that call. If think about it, and if you don't get it, please, let me know.

 It does take time. It's odd. You said defenses, and when you hear the word defenses, we think true defenses. That's not necessarily what it means. It's interpretation, and that's why I stress -- you have to practice these and understand this is how to test. Many times, oh, okay. I mean, we're going over one tonight. Now I get it, how they test. Didn't know it, but by asking the actual question, I did get it.

 A couple of other questions I gave you that should have been sent. Let's go over them real quick.

 Question 1. On November 1, 2009, Mozart entered into a contract with Thomas to play the piano in his night club for New Year’s Eve. The agreement was for $25, 000 for the evening. Mozart is very popular and Thomas knew he had a big following and would pack the night club with Mozart as the headliner. On December 29, 2009 -- now circle your dates and contracts because they told you they entered a contract on November 1st. Notice how they spelled out New Year's Eve. They don't want you to think January 1st. And I put January 1st myself because I pay attention to the dates. Thomas meets December 29. Prior to the date of performance. He calls them and tells them he has been offered more money to play at another club. May Thomas bring the lawsuit now?

 So what are they testing here? I call it a breach. You need to show there's an expressed repudiation and you need to show the contract in executory stages. What does is that mean?

 Me calling you up and saying I'm going to play at another I need more money. That is an expressed repudiation, but is the contract in executory stages? Remember, what that means is one of you have not fully performed or now you start a performance. If both of you start a performance, or one of you fully perform, it's not at the executory stages anymore. No one's done anything at this point so he can sue now.

He doesn't have to call wait and see. You look at your answer choices, no, because it makes no sense. Eliminate those and read the two yeses, you can look at C and D. C says yes because Mozart repudiated the contract, and D says yes since Thomas will lose profit without a headliner. The repudiation is what they are testing so that's going to be your best answer to the test question.

 Adequate insurance is a reasonable insurances. I wouldn't worry about it. Generally, you will see that where? In contracts. And you are going to see basically, (Indiscernible) insurances, and you see this question, and you know based on the facts. Otherwise, this is something that I don't have to address.

 Everybody see for question one, the answer choice C.

 2. Daniel owned a restored "classic" automobile made in 1922. To discourage tampering with the car, Daniel installed an electrical device designed to give a mild shock -- you should be seeing this on the multi states -- enough to warn but not to harm persons touching the car. Paul, a heart patient with a pacemaker, saw Daniel's car and attempted to open the door. Paul received a mild shock which would not have harmed an ordinary individual, but which caused his pacemaker to malfunction, resulting in a fatal heart attack.

 If Paul's estate asserts a claim against Daniel for the wrongful death of Paul, will the estate prevail? Remember, with wrongful death, they have to show the tort. So is it negligence, battery, et cetera, et cetera. What theory are we really suing under? He is trying to protect his automobile. Oh, I don't want anyone touching it. Trespass to chattels.

 You need to show the intent and show the intentional or interference or touching the child or another. In regards to Paul, he did everything so he trespass, but is there a viable defense. Can I defend my property and defend it based upon what? Reasonable force; not deadly force.

 Would he be able to prevail? No and yeses. I have no if, so I have to read that one. No because can get rid of that and No because I will have to look to them. And then the yes and the yes if, yes, will I have to read that one? Yes I will. I can get rid of yes because and then get rid of -- that's it. So I have to read A, B, and D.

 No. A Daniel was not using excessive force to protect his car. That goes to the reasonable force, and I like that one. No because Paul was a trespasser. It has nothing to do with trespass to chattel, does it? Get rid of it. It's a negligent issue. D. Yes. If Paul had no reason to suspect the presence of the electrical device. Paul doesn't have to. You are looking at whose comment? Daniel's. Can Daniel protect his property that way? Best answer has to be A.

 My point being, if you focus on the theory, the concept that is being tested, you will get the right answer. They will throw some red herrings at you, but stick to it. They are testing here defense of property, and it has to be reasonable force, you cannot not deadly force. It has to be reasonable so it has to be the best answer. That's for question 2.

 3. Bill borrowed a television set from Len to watch a football game on Sunday afternoon. Bill promised Len that he would return the set to Len by 7:00 Sunday night because Len wanted to watch a program at 10:00 that night. When Bill had not returned the set by 9:00, Len went to

Bill's house. Bill was not at home, and Len forced open a window, climbed in, took his television set and walked out with it. Did Len commit burglary?

 What are they testing with the burglary? Were there nighttime breaking, entering the dwelling house of another with a specific intent a felony while entering in? What's being tested? Did he have the intent to commit a felony? It is his TV, so that is what is being tested. So can he be convicted of burglary? No. I can eliminate A and B and have to read C.

 C says no because Bill was not at home when Len went to his house. Well that doesn't make sense. D. No because Len entered for the purpose of recovering his own television set. That goes dead set -- you know, it is not -- it is a state of the (Indiscernible) -- dead set to show he didn't have a specific intent of felony at the time.

 So that's going to have to be your best answer choice. So question D is correct.

 4. Frederick threatened Bruce with a physical beating unless Bruce personally wrote, signed and mailed a letter to the President of the United States threatening the President's life. Bruce complied. A statute makes it a felony "knowingly to mail to any person a letter that threatens the life of the President of the United States."

 Now we have to go through what? The elements of the statute. Is he guilty? He knowingly -- I made you do it, and he sent a letter of threat, so it looks like he's violated the statute. But remember, does he have a defense. What about duress? He's threatening him. He is going to physically beat him. It has to be imminent, not in the future. Is he guilty? I have no’s and yeses.

 A. No because he did not intend to take the President's life. That doesn't support of defense. B. No because of the defense of duress. That looks like a better answer choice to me so B is correct. Duress is the true defense, but it is not a defense to murder; right? Do you understand is not a reason for murder. B has to be right.

 5. Ed told Pete, an auto mechanic, that he had stolen a car -- this one people will have a hard time with -- and that the engine had to be rebuilt before it could be sold. So far no problem; right? Pete agreed to perform the work under the following terms: Pete would receive $300 upon completion of the job, even though his normal fee was $600 -- so he was charging less -- and he would receive an additional $600 when Ed sold the car. Now he has become an accomplice, hasn't he? After rebuilding the engine, and before the car was sold, Pete and Ed were arrested. Did Pete commit the crime of conspiracy to sell the stolen car? Yes, why? Because of the profit. He's conspiring in regards to helping him in regards to the selling a stolen car. A and B say yes, C and D say no. Get rid of those two. Go to A. Yes, because he agreed to fix the car knowing the car was stolen. That is not enough. So knowing the car was stolen, I agree. No. But the fact that he is taking more money now you have it.

 Look at B. Yes because the profit he agreed to receive from the sale of the car. That is why. That will be your best answer choice because shows intent --

 Now remember with multiple choice questions you look to why. Why did I get robbed? If A and B was not the answer there. Yes because he agreed to rebuild, you need more than that. If I know you stole something, but I agreed to fix it, that's not enough to culpable. Because what did I do? What is the crime? But the fact that I helped you get rid of stolen property, now have you a problem.

 Remember, when you miss these, if you find yourself not doing well, make sure you what? Are you too broad on the concepts? Are you reading the questions and fact pattern carefully? Have you practiced enough to understand how to the facts patterns the test? That is important. Do you understand what is being tested and what in that is being tested? You always wanted to narrow it down to two choices. How do you choose? Go to the sub issue within itself. That's very, very important. They are trying to trick you and that's the language they are actually using, so you have to be careful about that in breaking that apart.

 I know a couple of you had some questions you wanted me to go over that was sent out to you. The first one question number 2. This is a tort question and they do test, and you need to pay attention in regards to what they are testing here.

 Tresh purchased a new Buick Riviera convertible from Cummings Motors. After driving the car 2,000 miles, Tresh sold it to Boyer. Boyer loaned the auto to his friend, Ford. As Ford was operating the vehicle within the posted speed limit, the brakes suddenly failed. That sounds like a product. Unable to stop the car, Ford struck a taxi that was being driven by York. The colliding cars ended up on the sidewalk, injuring Cerv, a pedestrian. The collision was due solely to the defective brakes on Boyer's car. If Cerv asserts a strict liability action against Cummings Motors, the car dealer will most likely be.

 Now remember, if I'm going after a car dealer, I can sue them under the theory of strict liability. Negligence is going to be hard because you have to show, like a retailer, that have some type ever knowledge. Those two theories they can definitely get them under. They gave me the theory of strict liability. The only way though can cut off liability is someone altered the automobile. Such as Tresh, who purchased the car? The only way they can cut themselves out of liability is somebody altered it. Yes, I have 97 written down.

 Which one is your best answer choice? A. Liable if the car was defective when it was sold to Tresh. That one is good. B. Not liable because Cerv was not the purchaser of the car. That goes to what? Negligence so, no. C. Not liable because Cerv was not the purchaser. Remember you don't need purchaser; you don't need privity. D. Not liable, if Cerv had been exercising reasonable care, he could have avoided the accident, no. So it has to be A. Again, they are going try and trick us based on the verbiage. Stick to the rules and what you actually know.

 Question 6. It was another strict liability. This comes up and you need to pay attention. I'm going to give you a synopsis of this question. In regards to Zeke was employed as a night security guard by Hercules Chemical Company, basically deals with flammable chemicals. There's an electrical storm. Obviously, the lightning hit the warehouse, setting off an explosion, and the security guard was injured. Would that be strict liability? Yes, it would. Because they are dealing with normal, dangerous activity of dangerous, flammable materials, but some of what you are seeing on the multi states, it's not going to be dangerous as to what they are doing, so you need to pay attention to that. It might be something to prove, such as an electrical storm. Unless you are in an area that generally has them, generally, it would be a normal act of God, so it would be reasonable perceivable.

 Remember, strict liability on the land you still need to show actual cause, proximate cause and your damages. In this question, will still be strictly liable. Even though like C says, it occurred in an unforeseeable manner. What is the likelihood of them doing it, but it could be foreseeable.

 Again, I'm going through those that you asked. If you have questions. Another one I want to point out is Question number 8. I want to point out a distinction with this one. This is dealing with the tort of battering. It tells you Juan and Carlos were students at Culver Junior High School. In Latin class one morning, Carlos decided to play a practical joke on Juan. As Juan was about to sit down at his desk, Carlos pulled Juan's chair from behind. As a result, Juan fell on his rump. Although he was not injured, Juan was embarrassed by the incident. If Juan asserts a claim against Carlos, Juan will most likely;

 What would you be covered for? Assault, battery, recover for intentional infliction of mental distress, or covered for trespass: I see battery. Could it be recover for intentional infliction of mental distress? The answer for this particular case is B, battery. I could take the same facts, though, and change it and B battery would not be the correct answer. You could argue potential for emotional distress. If I changed the facts and told you it was Tiger Woods he was before his peers giving a speech, and then one of his buddies pulled a practical joke and the chair in front of his peers. That choice would be intentional infliction of mental distress. You have to look to the surrounding facts, and that is going to dictate. Do they want Battery or did they want to push emotional distress. I'm surprised some of you haven't come up with this.

 It's like wait, I know I learned this earlier, it was battery -- intentional infliction of emotional distress. He's embarrassed, trying to suck you in for intentional infliction, but if the surrounding circumstances are not surrounded in emotional humiliation, such as your -- someone with notoriety, like Tiger Woods, his peers, notoriety, that would change the answer to intentional infliction of emotional distress. I want to make sure you are aware of it because guess what? That does come up.

 Another one is Question number 11. I think if you read this where students -- this is testing battery. I want to make sure you understand with battery, it's intentional harmful or offensive touching of another. Smoking in your face would be equivalent to a battery. Walking your dog on a leash and I kick your dog, that could be a battery by the extension of oneself.

 I want to you remember that because they do test that way and I guess because of our definition, we get so hooked on -- it's offensive, smoke in the face, come on. That would be equivalent to a battery.

 The other one is Question 13 is testing the visibility. If you can barter for a price and if it wasn't bartered for as a whole, it can be divided. Here he is bargaining for each period of session for him to perform. It was not bargained for as a whole, it was per session, so that contact would be divisible. He would have an obligation to report it. That's important.

 Let me kind of jump ahead. I want to make sure you get to question 97; right? This is a good area, Texas, and this comes down to your elements. It is a good question. Remember, on estates, you will read the call and an action against the executors, Emily's estate to cover the percentage of her movie royalties, Lady Buffington will most likely can either lose or win. Obviously, we're telling you, what? She gets the movie royalties.

Aaron Amesway, the noted author, was writing a screenplay, which he was adapting from his novel Quiet Winter. He assigned in writing 25 percent of any future royalties, when and if the screenplay was made into either a movie or a stage play, to his friend Lady Buffington, who had subsidized him during his early years as a struggling writer. Shortly after the screenplay was completed, Amesway was killed in an auto accident. Seven Brothers Studio purchased the screenplay from the executors of Amesway's estate, and filmed the movie Quiet Winter, which was a great success. Obviously, the issue was in regards to the assignment. Now in regards to the assignment, what does the law say? It can't be a contract prohibited by law. Not too personal in nature. We don't need privity. Is it a valid, present assignment? That is the trick here. Remember, you can't assign something that doesn't exist. Since if said future royalties at the time you enter into this assignment, it's not valid. That's the trick here, otherwise she could recover.

 The other thing -- I'm glad someone brought this up -- another thing I want you to pay attention and they test you on with assignments, if I change the facts on this question -- obviously, she will lose because it's an assignment of future rights, it is unenforceable.

 Now I'm going to change the facts on you. Let's say I change these basic use royalties. The contract is signed and he is going to get royalties, so it is not future anymore. That right, what? It seems to be assignable. What if I tell you it states with the brother's studio that he cannot assign his rights under the royalty contract, would that change? So when you go through the assignment -- and obviously she's suing; right? She wants her rights -- that shows an existing right, not future, but that contract saying he couldn't assign the rights, can he still assign the rights?

 Is it created by contract? Yes, it is, but what does the law say? The law says even if it's privitive by contract, we like the enforceability of assignments, and they are going to allow it. Even if the contract says he cannot sign, it doesn't mean I'm not in breach, but they are going to allow it. The only way around that, is if it makes it very clear that if you sign this contract, your rights are null and void. If you sign this contract, you have to make it null and void, something. You have to make it very clear so people can continue to sign their rights unless it's very specific in your language that we agree there's no contract anymore. They do that in multiple states, so you want to be very careful.

 A lot of times -- a couple of things to pay attention to. 1. They say you assign your rights, look at the fact pattern, make sure… are we just dealing at the assignment of rights or the delegation of duty? They will never tell you.

 If I contract to have a swimming pool built and the contractor hires somebody to dig the hole. Obviously, he has given him some of the money, right? So the right to money, and he is delegating him to dig the hole. That's and assignment and of delegation, but they will never tell you. You would have to break apart the whole approach, and go through the assignments as well as the delegation. They will always use the terminology assignment, so I want you to be aware of that and they will never tell you.

 Usually assignments is money, confirming something, a benefit, so of course, they are going to allow it, and going to say you can't do it. I want to you be aware of that. They come up. I am sure assignments that is our weakness. So yes, they may assign, but can be in breach of contract, yes. It comes up several time on the multi states. I can't emphasize it enough, when they use the term assignment, look to see if they use the term delegation.

 The other thing I wanted you to focus on is your minor contracts. When can you affirm reasonable period of time after you reach the majority? Remember, as a minor, one in the car and of course, they get into an accident and I was 17 now turn 18, I still have to pay the reasonable value of unjust so I'm not off altogether, keep in mind that is on the contract and I want you to be aware of this.

 That's the hard thing, what's reasonable? Really? I see it -- I don't agree with it. After you reach the age of majority, three to four month it is reasonable this affirm. I have seen in multi states three to six months. I don't agree with that. I can't -- I mean, I have to look at the actual facts, to me six months is too long. I guess if I had that question at the bar and saw that, I guess I would say yeah, be reasonable. Much after that I would be very skeptical. 11 months has gone too far, but yeah, they do test it. It's something you want to be aware of it. It is so important.

 I hope you did take these multi states, and if not; I would highly recommend you do take them. Get a good understanding where you are at. You are right here coming across that finish line. This is why where you have to be in earnest, put everything in it right now. Say goodbye to everybody. It's a hard test. The only way to get there is practicing everything. You have to understand the game, unfortunately; right? You have to understanding the multi states and understand their concepts.

 You will be sent out -- I think it is three essays coming your way. You should be doing (Indiscernible), and if you need essay questions, shoot me an e-mail, for practice, what have you. You have to get the timing down. Before you go in there and you haven't done a simulated test, you are a fool. I guarantee that will be the fastest four hours in your life. I say, why didn't you do a simulate? I'm telling you, that time is going away from. When I crammed for the bar, I sat there for the bar took exams until 3:00 in the morning to get my timing downtown. I swear, it couldn't have been that --

 I need you to do the warning and obviously get the timing down or maybe a story you tell me afterwards, I hear it all of the time. Same thing with the multi states. We'll be sending more out, too. Not this week, but the following. They give you all four stakes at the same time. They will tell you 15 minutes 5 minutes, 1 minute, and what have you. People take their time on the first one and then three get to question 4 five, ten, 15 minutes. That's too much to recover from. You have to understand what the jugular vein is on the actual question.

 If I am running out of time and I have full lawsuit left, I had an offer, acceptance, consideration and the issue was, promise or estoppel. It was the same offer -- between the three or four people. As discussed it wasn't offered. In terms of the offer, and when he said thanks there was unacceptable terms in the offer and then it says accept. The issue wasn't the about the consideration and boom. Go right into the promise himself. I want the examiners what is being tested. If I didn't get that in my book, I'm dead. On the other hand, if I didn't get it -- these are little tricks you learn in practicing your writing, as well as your timing. Timing is important.

 Does anybody have any questions? I know it’s a lot, but we have to do it, don't we? Again, if you need more practice let me know. The more you can understand how the concepts are tested, that will make a difference to you because when you see the end, you will get it right.

 Each time, if I learn one or two or three or four concepts a day, pretty soon I will get to 80, 90, very important. You guys have been great and you have good questions and I'm very pleased to see that you guys are doing the work. This is one of the best groups I have had. You have great feedback, and it makes me nervous. I wish I could do it for you.

 If anything comes up and you have any questions in your preparation, please feel free to shoot me an e-mail. Call, I don't care. (Indiscernible). Taft -- 714 -- I don't know, call Taft. And I will be more than happy to help you any way I could. I look forward to looking at your comments, exam writings, please keep sending those in, and I will look forward to seeing you next week. Bye and have a good night.

 (End)