TAFT

WEBINEX

ESSAY q&A

5/9/17

INSTRUCTOR: We will be starting in approximately 2 minutes. If you can have the contract essay question out, that's what we will be focusing on for this lecture. Good evening, we will be starting in approximately 1 minute.

Good evening and welcome to tonight's Baby Bar Mini Series. Our primary focus tonight is on contracts and the essay question that was sent out to you. And if we have time, we will go over multiple choice questions.

These sessions are recorded so if you are not able to attend, you can go to the website and go to the Baby Bar mini series. Or if you want to go back and review, it's up there. Everything is posted on the website as well.

In regards to the first thing we will do is look at the contract essay question. I want to say thank you. I did receive six. That tells me some people are doing the work.

If you look at the exams, issue spotting, and write it that will help you understand what issues come up in fact patterns. It is something unfortunately we don't like do, but you do need to take time and write out examinations. Also those of you that did take the exam, it took them 2 hours. You don't have 2 hours. You have 1 hour per essay. It's something. You need to get your timing down in order do well and succeed.

Let's look at the contract question. As always, what's the first thing you do? Look to the call of the question.

The call asks was an enforceable contract formed binding the seller to sell the doll collection to buyer for $15,000.

When I read the call, I know I'm going to be tested in contracts. At that point, I would write on my scratch paper my check list. I write it cryptic: F ‑ formation of contract; 3 ‑ third party beneficiary.

Your mind will start thinking contracts before you read the facts itself. It helps your anxiety. We get anxious when we take exams and worry that will not see what we want to see.

This call does tell me something. There's two things to pay attention to:

One, enforceable contract. What does that mean? That tells me formation issues. I'm looking at formation of the contract, UCC, merchant negotiation, offer, termination of offer, acceptance, determination of formation based on the word enforceable contract formed.

This particular question also said binding seller to sell. How you bind somebody or force somebody to do something is through specific performance. Perform the contract and then talk about breach and remedy of specific performance that's the only way to force somebody to sell something to you is through specific performance. That's an issue that they've been testing on the Baby Bar.

It is a concept that you generally learn in your remedies class, but right now is fair game because the Baby Bar is testing it. It's something to be aware of. Even looking at the model answer, this is how to write it and communicate to the reader and the elements in the specific question to be answered. I will tell you the areas they do test.

I see formation, specific performance. Now I'm ready to read the fact pattern. Even though you are under the pressure of the Baby Bar, you read the facts one time fully through without marking anything up. You need to get familiar with the facts. If you start marking things up, you miss things. Or if you go to fast, you leave things out. One or two issues can cost me the exam. Go in strong and pull out everything I can see.

Once I read it one time through. Depends on the student you can read it twice. Then you can pick up your pen or pencil and mark up the fact itself.

Let's pretend we read it once through. Let's see a what the examiners are raising based on those facts. I always stop at the periods and reflect what are they telling me.

(Reading question: Seller inherited a collection of antique dolls from her aunt.)

This is telling me seller doesn't know much about antique dolls. You inherit tells me you are not a merchant. Antique dolls, UCC, a contract dealing with the transaction of goods triggers the UCC.

(Reading question: In her aunt's estate the collection was valued at $15,000.)

Gives me the value of the doll collection.

(Reading question... on September 1st seller, wrote, signed, and sent the following letter to several well known doll collectors in her area.)

Generally when we see the letter going out, you look to the language used in that letter. Is it a form of negotiation or offer? You look to the definite certain terms. You show quantity, time, identity, price, subject matter. You break that apart and go through it.

(Reading question: In regards to your dear doll collector, I now own a collection of dolls that I'm willing to sell for $15,000 to the first person that lets me know he or she wants the collection.)

That's a big sentence. I want to go back and look at what it really told me: Antique dolls. Willing to sell. Present and actual intent. For $15,000 to the first person who let's me know he or she wants the collection.

What does that mean? Whoever let's me know first will get the collection.

At this point I'm thinking of offer. I see the willingness to support intent.

Look at QTIPS: Quantity, time, identity of parties, price, and subject matter. Dissect that.

Quantity is doll collection. Time period is first one that let's me know. Identity of parties is doll collectors. Price is $15,000. Subject matter is antique doll collection. All the terms are there.

I'm going to look at this letter and determine if it's an actual offer itself, but we're not done with the letter.

(Reading question: This offer will be good for 30 days.)

She's holding the offer open for 30 days. You always address common law first. Then if it fails, you bring in the aspect of UCC.

I bring up option. Option is where you have an offer that's supported by consideration to stay open for a stated period of time.

I have an offer. Stated period of time is 30 days. What's the problem? The problem is I don't have consideration.

Keep that in your mindset because I will come back to it. There are tricks or directions that you could take with this exam. It depends on how you interpret the facts and your analytical skills.

It fails because there's a lack of consideration. Then I look to my firm offer rule under UCC.

Firm offer rule (hint, hint) does come up on multi‑state. The party that makes the offer has to be a merchant, has to be in writing, and cannot extend pass 90 days.

I point out seller inherited the dolls and she's writing the letter. She's not a merchant. She can't create a firm offer.

(Reading question: If you want to inspect the dolls, I'll be happy to make an appointment. Phone me at 555‑1765.)

We can see that indented paragraph number 2 supports several issues: Offer, option, and firm offer.

So I feel I'm understanding the fact pattern.

Paragraph 3. (Reading question: On September 3rd, buyer who was familiar with the collection received the letter and immediately called seller to arrange to inspect the dolls on the same day. Buyer appeared at seller's home and inspected and photographed the dolls. Shell told seller, I'm interested but I want to do some research. I'll get back to you. Seller said okay but my letter went out to a number of other people. I'm selling to the first one I actually hear from who wants to buy the entire collection.)

Buyer is familiar with the collection. The fact that buyer is familiar what's that emphasizing? She has knowledge. If you do something as a hobby or collect things or have knowledge and skill, I can find you to be a merchant.

At this point I see you want to check out and see the doll collection is good or not.

Buyer appeared at Seller's home and inspected and photographed dolls. Don't see anything.

She told seller I'm interested. Is she accepting? But I want to do research? Or rejecting the offer? I'll get back to you.

The examiners don't give you a sentence of facts that meaningful. The fact that she said I want to do research and get back to you is she rejecting? I'm going to find it's not a rejection, but more of a what? Not rejecting the terms of the actual offer. What am I doing? I'm showing interest, but want to do more research. I'm not rejecting the letter you sent with your original offer. But you have to bring it up.

If you do have any questions in regards to this particular essay we're going through, post it in the question and answer box. Limit it to contracts. If you have questions at the end not pertaining to contracts, we can bring it up.

Continue on. Third paragraph. (Reading question) Seller said okay, but my letter went out to a number of other people. I'm selling to the first one I actually hear from that wants to buy the entire collection.

This is the second time that's been iterated. She said what in the original offer? I'm going to sell to the first person that let's me know they want the collection.

Look the to first paragraph, the one who wants to buy the entire collection. Most people think that's means nothing. The offeror can dictate the method of acceptance. The methods of acceptance is the first one I hear from.

4th paragraph. (Reading question: On September 4th, Buyer took the photograph to an expert doll appraiser and paid $1000 to evaluate and authenticate the collection.)

Buyer is paying somebody to look at these photos of the dolls.

(Reading question: The appraiser told buyer the dolls were worth authentic and worth $30,000.)

Again, the fact that she paid a third party to look at these pictures, what issue does that raise? If you don't know go through check list. Is she relying on Seller's offer for the $15,000? Why would I higher an appraiser to determine the value of the dolls? That can go in several places in this particular examination.

(Reading question: Buyer immediately phoned seller buyer immediately phoned seller who was not at home. Buyer left a message on seller telephone answering machine saying this is buyer. I like the dolls. Please call me at 555‑8876 when you get home. Also on September 4th and just to be doubly sure buyer wrote and signed a letter to seller state willing I accept your offer to sell your doll collection for $15,000, Buyer. And deposited the letter in the mail at the post office.)

Now we have a letter. Now I'm phoning. I'm definitely thinking statute of frauds. She phoned seller who was not at home. Buyer left a message on seller's answering machine. This is buyer I like the dolls please call me at ...

Look at the language. When I call and say I like the dolls is that an unequivocal acceptance of the offer? That I'm agreeing to buy the dolls at $15,000? Look to verbiage. If I'm seller I say you like the dolls that's nice. Do I interpret that to say accepting. Are you ascenting to the terms of my offer to buy the doll collection?

We have the issue of acceptance. It's grey. Look to both sides. It doesn't necessarily matter how you conclude. You assume that and continue on in the examination because the facts will tell you.

Also on September 4th ‑‑ still the same day ‑‑ to be sure buyer wrote a note to seller saying I accept ...

Based on that language, right, I accept your offer. That shows an unequivocal ascent to the offer. That's an acceptance. If acceptance is prior to a rejection or revocation, then bring up the mailbox rule.

A couple of the exams you snowball that. Mailbox rule applies to a valid acceptance. I just showed a valid acceptance. I can show the mailbox rule. Mailbox rule acceptance is effective upon dispatch.

But we have a counter argument I will go through later.

At this point I'm feeling confident.

Last paragraph (Reading question: Soon after buyer returned home from depositing the letter at the post office. She received a phone call from seller. Seller said I got your voicemail message. However I just want to let you know that I've had an appraisal made of the collection and I'm not willing to let it go for less than $35,000.)

Is that a valid revocation? A revocation is effective upon receipt, but upon prior acceptance. Do we have a valid prior acceptance? That's the issue.

(Reading question: Buyer responded, you can't do that. I accepted your offer of $15,000 so you have to sell it to me for $15,000.)

You've read the facts and feel comfortable. We see issues. Mailbox rule, option, stuff like that. I promise you this, if you don't take the time to outline and break out the elements, I'm going to get stuff by you.

Sub issues. Those are worth quite a bit of points. It tests your analytical skills on your understanding of the question.

Also you should be getting a good understanding of how you read the facts. I tell students all the time, you fail because you can't read. You've got to break it apart. I'm giving you examples at how I stop at the periods, the ands and the ors. You have to look at language. If you think about it, isn't that real life. If we all see it the same way, we don't that's why there are lawsuits.

What's the first thing you always do on the exam? You pull out the contract check list. Which you wrote where? On the time of reading your call on your scratch paper.

Does UCC apply? In this fact pattern, it does. If it was not dealing with the transaction of goods, I would not bring it up.

Students make a paragraph of UCC versus common law that the UCC doesn't apply. That's worth nothing and killing your time. Time is very important unfortunately. You don't want to bring up your introduction for nothing. If they are not giving you points for it, I'm not doing it.

In this exam, this is a transaction of goods. Transaction of a doll collection. Therefore, this contract would be governed by the UCC. I get out. Is there any argument? No. Argument in goods and services? No. It's a give me issue even though I have to talk about it and prove it. But there's no grey area. It's transaction of goods and move on.

I follow my check list and inner check list. Are we dealing with merchants? A merchant is a person who deals in goods of a kind or hold themselves out with knowledge and skill.

I have a seller dealing with an antique doll collection, but she inherited the collection. Based on the facts that the estate valued the collection at 15 thousand and later seller learns it's worth $35,000, shows me she has no knowledge. So she's not one that deals in goods of a kind or has knowledge or skill. I'm going to conclude based on the fact that seller is not a merchant. That's the only way to go. She doesn't sell doll collections. It's just one she inherited. Her lack of knowledge is quite evident by the value she placed on the doll. I would find seller is not a merchant.

Buyer, on the other hand, is a different story. Buyer is a well‑known doll collector. They told you that. Buyer was familiar with the collection. She holds herself out with special knowledge, skill. She has knowledge in regard to this doll collection. I would conclude buyer is a merchant.

Buyer would be considered a merchant, but seller is not. That makes a difference if both are merchants or only one party is a merchant. Firm offer rules under the UCC that applies.

I'm taking in chronological order. Next is I see an offer.

I saw this consistently on the exams sent in. You need to show an outward manifestation of intent. Communicated the offer.

You have to prove in its importance that your first 2 pages really hit home. Let the reader know you understand not only the issues but I know how to show you the analysis. I know how to break this apart. In a time crunch, you get conclusionary at the end.

Factually pull out your facts. What facts can you pull out here to show we're looking at who? Seller.

Intent bound by contract. Seller wrote a letter sent to several well‑known doll collectors. I now own a doll collection and willing to sell. By writing this letter and sending out to doll collectors willing to sell. She wants to be bound in contract with one of the collectors.

First person to respond is the time period.

Buyer seller identity party.

15 thousand price.

Doll collection subject matter.

Seller sent it out to doll collectors. Evident by phone call we know it was [indiscernible]

Is the offer worth a lot of points? No, there's no grey area. By breaking out your elements, you know where the grey area is.

Option. That's the next thing I see. She said she'd keep it open for 30‑day. Offeror's promise to keep offer open for a specific period of time based on consideration.

Seller is stating 30 days. Offeror seller is promising to keep the offer open for 30 days but is there consideration.

Some will argue no consideration to support the option. But you could go in another direction. If consideration fails, don't stop. Look to the check list. Promissory estoppel. Alliance. You could find to this option contract it does succeed how. That will change some of the answers.

With the option she went and paid an appraiser a thousand dollars. She can argue she's relying on your offer saying that you are going to keep it open for what? 30 days.

Does that make sense? Then you'd bring up that we do have on her reliance substitute for consideration. That is a good argument. Did you have to bring that up? No but that's someone thinking about the fact an A fact versus a B fact. That's a good argument to bring up.

Then go to the firm offer rule. That makes a offer irrevocable between the party making the offer has to be a merchant, in writing and can't be revoked within a reasonable period of time 90 days. Seller's letter was assigned writing but seller is not a merchant. Seller can not make a firm offer because she is not a merchant. It would fail there.

Argument of reliance for substitution of consideration. It makes a difference doesn't it.

We are addressing firm offer rule because we found the transaction did fall within the purview of the UCC. You need to make that distinction. Under UCC at the beginning and go through common law then I'm done. Then consideration etc. Wherever it fails at common law, then I bring up the difference with the UCC code which is more liberal.

If you found the option failed, that doesn't need consideration. But you have to be a merchant so it would fail and bring it up that's an argument the other side might make but wouldn't hold water. She doesn't have knowledge skill and is not a merchant.

What do we see in the actual fact pattern. Buyer familiar with the collection stated to the seller I'm interested but want to do research. The issue is seller says you rejected my offer. When you told me you accepted the offer was terminated because of your rejection. You have to look to both sides. That's seller's argument. You said I'm interested but want to do more research says you had no intent to accept my knowledge.

Based on the language does it show buyers intent she wants nothing do with the collection? No evident by the language. Why what can you go back and grab onto? I'll get back to you. Obviously she was rejecting why would she get back to you. Her intent not to reject.

I'm taking it in chronological order to what occurred. I see next she took photographs, went to appraiser, then she calls seller. That raises the issue of acceptance. Based on the telephone call. Acceptance has to be unequivocal ascent to the offer. What she left as a message on seller's answering machine: She liked the dolls. Was that an unequivocal ascent to the offer. Buyer says it was. But seller said you like the calls. Is that enough to have an understanding that I have an understanding that unequivocal ascent of buying the dolls.

Buyers letter did state I accept your offer. That's a very strong unequivocal ascent to the terms of the offer. I have an acceptance based upon what? That letter.

Now it triggers the mailbox rule. I noted that separately. Mailbox rule dictates when acceptance is valid. Buyer brings up the argument I went to deposit my acceptance. Mailbox rule is applicable. When I dispatch that acceptance we have a binding contract.

But we have two different arguments we can go. One argument seller can say my offer dictated the methods of acceptance. Which I told you I would sell to the first person I actually hear from. I haven't heard from you. Even though you dispatched in the mail I haven't heard from you.

What's the other argument we can bring up here? If I dictate who I hear from it's only valid on receipt.

What's another argument that shows the mailbox rule isn't going to work here. This is something they do test on multiple choice questions. Earlier we went through the option. The thousand dollars she paid to a have it appraised and found the option works. Mailbox rule does not apply to option contracts. The acceptance is only valid upon the receipt of that letter. Mailbox rule does not apply to offer for firm terms.

They gave us multiple terms we can argue. They are trying to see how you can think.

Everybody understand the mailbox rule and several arguments we can make for that particular issue?

Then the issue of the telephone call I got your message ... Raises the issue of revocation. It has to be expressed. Seller is saying the language I'll let you know I had it appraised I'm not willing to sell for less than $35,000. That's expressed. It needs to be communicated prior to timely acceptance. They are playing with you here. You have to make an argument.

In this case seller says I got your phone call but it was ambiguous. It doesn't communicate to me that you are assenting to the terms of the offer.

Buyer says I mailed it as well. If you argue to the method of, there is no timely acceptance. You can argue that seller did effectually revoke the offer.

I have to let the reader know this is the problem. A jury could go either way. You have to argue articulate and let them know you know what's being tested.

If you didn't break apart those elements, students just same seller called and said I want to let you know I had it appraised and will not sell for less than $35,000 that's revocation. Well yes, but you didn't look to the other side. By breaking out the elements it forces you to look at the other side. You have to look at facts break it apart and see this is what they're testing. I can see the grey area. 9 cloud. That's what you need to bring up to the examines.

Bargain for exchange. I have a den fit detriment on both sides. I have consideration. Am I done? No.

This is where they trick you. You carry all the way through the check list. Defences to formation. Oh, yeah. I forget about those.

First one is statute of frauds. Remember the statute ought of frauds applies to oral contracts or incomplete writing. Dealing with this particular contract, a contract of the sail of goods over $500. This is $15,000. Statute of frauds would be triggered. Get in then get out. I would try to argue sufficient memo. Seller's letter contained the definite certain terms. That can satisfy. But you can't use the letter or offer. That's the initial offer. You need something taking the agreement and reiterating it somehow. You cannot use that letter sent out to you to show contract. That's just an offer. I want you to be very clever. You can never take the initial written offer and argue that as a sufficient memo.

You want to be careful. If you found no valid acceptance there's too many facts telling you to go forward. The call said to force. Bind the seller to sell the collection. That tells me. Sometimes examiners write examines that fail all the way through.

I didn't answer the call.

Making assumption to that court's begging for statute of frauds. You must get to specific performance. I want you to be aware of that. You need to know when the game is over or when to continue. That will hurt too many issues to miss.

Written confirmation. Can I argue in this examine written confirmation. UCC applies. The answer is no. Can you tell me why? Why can I not argue written confirmation. If you know your rule, you'll know why. There's a written confirmation between merchant. Both parties have to be merchants. They are not merchants. This will not work.

How can I get out of statute of frauds. Go back to check list. Sell of goods. How do I take that outside the purview of statute of frauds.

Full or part delivery of the goods. Nobody delivered anything.

Full or part payment? You haven't paid anything toward $15,000.

There's a sleeper that the Baby Bar likes to test does anybody remember what that is? Estoppel. Reliance by conduct that will take it out side the statute of fraud estoppel reliance the bar will take it as long as you argued.

She paid the appraiser a thousand bucks. Could we argue she's relying. Why would she do that? That's a good argument to take it out of statute of frauds. It comes up more than people think. We forget about the estoppel.

Point out here in regard to based on her reliance of hiring an appraiser, it should be a stop to denying the existence of a contract.

We didn't want fraud. Based on buyers conduct of hiring something is there fraud? No she relied. Otherwise who would spend a thousand dollars to appraise something that could turn out to be nothing.

Based on reliance by hiring that expert estoppel will take it out side the statute of frauds.

Do I see fraud, mistake, ambiguity, capacity? I don't see any of those. Don't see conditions. Especially since they narrowed me to formation.

I go to breach. Essence of the bargain. Seller agree to sell the collection for $15,000 now she wants $35,000. It goes to the essence of the bargain seller is in breach.

Damages could be the difference between the contract price and fair market value which from what seller is saying is worth 35. It's either 30‑35 so you could give the difference between the 15 and $35,000, but the call says binding the seller. What does that mean? Specific performance. That's why in this exam specific performance is at issue.

This is an equitable remedy. Money is not going to make me happy based on this contract. Why? This is an antique do you live collection I can't go out and get this doll collection nor at that money. Money will not make you whole. Then the Court looks at the contract and says should I compel or force binding the party to perform to the essence of the contract.

In this case we're dealing with antique doll collection. Since it is unique the Court will order the seller to sell to the buyer. Specific performance most likely would be awarded.

With specific performance I want to make sure you understand there are two areas tested: You need to show there's an inadequacy of a legal remedy. Damages will not make you whole. They do test that. In this case the uniqueness 69 goods. That does come up a lot. Or dealing with real property land is unique.

The other aspect they have tested for Baby Bar that you want to be aware of is if it's a service contract. Under the 13 amendment involuntary servitude. You don't force a person to work if they don't want. If it's a service contract with specific performance most likely the Court will not award specific performance unless you can show it's really unique. There are a few exams out there this is the only person in this half of the world that could perform the service. Then the Court might.

There's one supply install air quality equipment the fact pattern told you that they were the only ones that had the means to install and monitor in this specific ocean. In that case, they will be more likely to mandate specific performance.

That's the two areas of specific performance for you that they do like to test. You need to get used to it and how to write it back in your examine. It keeps coming down to issue. You need to be prepared for it. It's really a remedy that you get in your remedies class. But it's something to read and get a better understanding. If you don't understand, shoot me an e‑mail and I'll go into it more detail for you.

The exams I did see a couple things I did see people introduced offer common law offer versus UCC discussion. Go into offer to common law if it fails bring up UCC. You tried to argue both but it doesn't work.

Issues I didn't see addressed: Option contract. I didn't see people address the second issue of acceptance. You only grabbed on one.

The biggest issue that you missed was statute of fraud. The sufficient memo did work but did doesn't work that way if you send out 9 initial offer you can't use that offer as sufficient memo

Other issues in regards to set up for statute of frauds. I want you to break it apart for the reader. Don't snowball it. I want you to show me how to get into T. Selling of goods over $500. It was oral. It was invalid. Whatever you want to say. Note that and break it apart.

Seller changed offer based on more money. No if I just use the offer, where's the acceptance. I have to have a sufficient memo that's reiterating what we agree to. You can never just use the offer and say that's a sufficient memo. It doesn't work that way. Melody sent a acceptance that said yes I'll buy your collection. Whatever. Now I can show the existence to that contract. I need a relationship between the two of us offeror and offeree.

It is an issue that people bring up all the time. You can't use the offer.

I did tell you about the statute of frauds and how to lay it out.

Mailbox rule. You have to prove up the acceptance first. If you don't have a valid acceptance mailbox rule won't work. Look to the language of the offer. Mailbox rule says acceptance is effective upon dispatch. If that's true we have a binding contract. Versus if the mailbox rule is not going to apply, that's going to change everything. Those are nuances of the law that do come up more than we like on the multiple choice. They do come up on the multi‑state. They do come up on the essay. But be aware of it on the multiple choice questions because that's where they hammer.

If I have an option mailbox rule cannot apply. That's changes the whole answer choice. You have to pay attention in contracts to the little nuances of the detail.

One thing in this particular exam follow your check list. Don't combine issues. Separate it out. Take check list in chronological order. Once you form the contract you can't go back up the check list. I see people argue offer or counteroffer. You already formed the contract. So maybe it's a modification that's going to fail.

If you enter into a contract the Court will enforce that contract they won't let you back out just because you can get more money. It's arguable. If we haven't found a binding contract should seller be able to back out of the deal just because they could get more money. No they will force you to go through.

Let's say you enter in a contract today where whatever you were selling went up triple time in value. You still contracted.

Any questions on this particular essay? I hope by breaking it apart the way I did how the issues come up, the fact pattern, and how to write examinations.

I could go different ways option working with reliance. You can write different ways. What a model will do is give you ideas of how to analyze present. This is how I would art dick late it or lay it out.

The bar examiners don't want you to. An acceptance under UCC is any reasonable manner. Would they consider that a reasonable meaner? Yes. If common law works move on. If they were and found it failed and relied on the UCC, UCC has different ways to accept any reasonable method in this case sending a letter it would work.

I know it's a an odd concept. UCC why are we talking common law? They want you to know the distinctions. It's the way it's always been. They want you to write it that way. You need to understand the distinctions between the concepts.

Any other questions?

Notice in your check list you start off with the UCC to show it's triggered. If it's a UCC exam then go to common law and whatever is at issue and go.

2‑207 battle of the forms UCC merchants offer acceptance. It's not unequivocal because there's an added term.

You want to make sure you understand how you write and articulate.

Let's see if we can hit a couple of these multiple states. You should be doing them every day. You are reasonable for the Baby Bar torts, contracts, UCC, and criminal law.

I've had question about civil procedure. You are not responsible for civil procedure on Baby Bar or criminal procedure on the Baby Bar. Torts, contracts, UCC and criminal law.

Stay focused on those. I don't mind answering those questions but if you're taking the Baby Bar I'd focus on those things they think are important.

Question 3. The key thing with multi‑state I want you to look to see what they are testing. Look to the call.

[Reading: Alex instituted an action against John for damages resulting from breach of contract and that John asserted a defence on impossibility of performance.]

They just gave it to you. Impossibility of performance. What are you looking for with impossibility of performance? It has to be objectively impossible. We want to look to that. If it's not objectively impossible. If no one can do it, then it's a valid excuse for your performance. They do test this a lot on essays and multiple choice.

(Reading facts for question 3 &4: On March 12th, Alex hired John to construct a 3‑car garage on Alex's realty. After negotiation, they entered into a valid written contract which fixed the price at $8,000. According to the terms of the contract, Alex was to pail $4,000 when the work was half completed on or before April 25th and to pay the balance upon completion. All work was to be completed by June 1st. On April 10th, when the work was one‑quarter complete, the partial structure was totally destroyed in a fire, which started without fault by either party. The damage done by the fire made it impossible to complete construction on time. Because he was committed to begin construction on a hotel in June 1st, John notified Alex on April 12th that he would people no further work for Alex. Alex subsequently hired Terance another contractor to build the garage at a price of 9 thousand dollars.

It says basically Alex is suing John for the damages, which obviously damage would be the expectation of the contract. He contracted for 8 and now he paid 9 so it's a thousand bucks. We're looking to impossibility. So will impossibility excuse him of his performance?

Now you break it apart. What do we need to show? Is it objectively impossible. The problem is if it was destroyed by fire. I've seen this question written differently: It was started by without the fault of either party. John has an excuse. The fire was not his fault so I'm starting all over so how can I get it done by the due date.

A. [Reading: John because the fire was not his fault] Shows objective.

B. [Reading: John because he has not yet received any compensation from Alex] That doesn't mean anything.

C and D if you knew it was for John because of the conclusion because.

C. [Reading Alex because the work was only one‑quarter complete when fire destroyed the structure.] That doesn't matter.

D. [Reading: Alex because John's obligation was to work for Alex until June 1st.] Again he's telling you he has another job he can't possibly complete it. It is objectively impossible would relieve him as a defence.

It was the fault of the developer. Now it's not objective anymore. Plus you will read in the explanations that's something you should have insurance for etc. Be careful to what they are asking and what they give you factual wise because it could change the answer choice.

It says here that it was a valid contract. It says they agree based on the terms that he would have the work completed by June 1st. What's that make you think of? Do we have an expressed condition? They've tested this a couple times on the Baby Bar recently. An expressed condition the courts don't like. If I can argue it another way, I will. Try to get away from it. Is that an expressed condition or expressed promise. Saying I will get it done. Look to the actual language they give you. If there's any way around it they will find expressed promise versus expressed condition. You didn't comply with it unless you

On the last ‑‑ he said he promised to get it done. There's your argument. Expressed condition versus expressed promise.

Does everybody understand for question number 3 that A is the correct answer?

Another one someone had a question with question number 25. This one is more black letter law. Basically it says (Reading question : Jessica a minor purchased a used car from ugly car sales for 1200 dollars.)

Let's go through the facts. Jessica is a minor. Minor's cannot contract. (Reading question continued: The reasonable rental value of the car was $150 per month.

Remember the minor has the right to disaffirm the contract not the sales people.

Why are they telling me that?

(Reading question: After she had owned the car for 2 months, the steering failed while she was driving it causing it to collide with a tree. Although Jessica was unhurt the car sustained $400 worth of damage. Jessica returned the damaged car to ugly and demanded her money back, but ugly refused to refund her money.]

Let's go look at the facts. How much did she pay for the car? $1,200. There's $400 worth of damage. Don't care that's not relevant. She's had the car for 2 months. She has unjust enrichment because she's had the car for 2 months. She had 2 months of use of the actual vehicle. It's $150 a month for the rental of the car. Since she got to use the car for 2 months, we take the $300 off the $1,200.

A. [Reading: $1200 the full purchase of the car] Not correct.

B. [Reading: $900 the purchase price of the car less its reasonable rental value] Yes.

C. [Reading: $800 the purchase price of the car less the damage which it sustained] They are trying to make you take off the damage of the car. That doesn't work.

D. Says nothing.

The $900 or she would be in offset. Otherwise she has been unjustly enriched.

At this point, we have hit torts and contracts.

What's happening is the snowball. That have you two subjects you should be working on. You should be rotating between torts and contracts. Going over check list and practicing multi‑state in both areas. Now you have to start learning criminal law. You still have to keep practicing in regard to torts and contracts/UCC or you will forget everything you learned and you need to keep, again, building blocks.

We take a step up again. Now I need to do more multi‑state. Otherwise you will not get through. You will not get strong enough to pass this examination.

You will be sent a criminal law check list. If you don't have a check list use what you've got. Use the check list is identifying issues whether essay or multi‑state.

The inner check list you need to know that cold. That's going to help you see issues. If you see a lack of consideration what's on your inner check list. Reflect I could argue promissory estoppel. You will understand that and know where it comes to play. If you don't then that's where you lose points.

Does anybody have any questions in regard to what we just went through. A lot of information I know. Reflect on it. Go back through it. Go back through the model answer. Go back to option and detrimental lines.

If you have any questions shoot me an e‑mail. Your success is my success as well as Taft.

At this point, you should be doing multi‑state every day. Issue spotting exams. On the weekending start writing an exam or two. And start reviewing criminal law. It's a review. Next week when we go over the subject matter have you a good understand of what I'm going over.

If anything does come up shoot me an e‑mail. I'd be more than happy to help you any way I can.

Good night.