TAFT

WEBINEX

ESSAY q&A

5/16/17

INSTRUCTOR: Good evening. Welcome to tonight's eclass. We will be starting in 5 minutes. For those of you that just joined, please make sure you have the criminal law check list. I want to go over that with you. Once again we will start in about 5 minutes.

Good evening. Welcome to tonight's Baby Bar mini series. We will be starting in approximately 2 minutes.

We will be starting in approximately 1 minute.

Good evening. Welcome to tonight's Baby Bar mini series. Our focus is on the subject matter of criminal law. I do want to point out these sections are recorded. If you ever want to go back and listen or if you missed one go to the Taft website and click on the Baby Bar mini series.

If you have any questions for me place them in the Q and A box that's the one I have here and I will answer what I can.

You see that I sent out a criminal law check list. You want to use these to help you identify issues. Also look to the inner check list that helps you set up issue wise.

Murder: You go through malice, actual cause, type of degree and etc. That will help you. If you don't have a check list, get one and learn it. It will obviously help you see issues on the examination.

I've also taught students to use your check list for the multiple choice questions. If I can show no proximate cause, that's a better choice for murder rather than a self‑defense claim. There's no causation that's a better answer choice. It does have a premise in regards to help you on the essay and multiple choice questions.

We've gone over torts and contracts and now we're going over criminal law. This is the last subject you're responsible for. You need to do multi‑states in all subjects. You need to master and get them down. You need to expose yourself to the Multi‑State questions and the essay questions and have a better understanding of how they test the concept. That will help you. The only way to get better is by doing.

First of all, when you read facts, you know it's a criminal law question. The call will dictate. They can't hide criminal law from you. It's not a civil action and you will know.

When you see a fact pattern in criminal law, make sure the facts support the underlying crime you're seeing. Like in torts, when you break it apart, something is not there.

Burglary. If you didn't have intent at the time of entry, you will not have common law burglary. I want you to look at that.

Larceny. Was it as trespassory taking? Don't take it for granted in larceny. Break apart the elements and make sure the facts support the elements. Sometimes they don't. They know we're going to make an assumption and it gets us in trouble.

Once you find the crime, look for defence: Justification, mistake, crime prevention, defense of others, defense of property, self‑defense, duress, entrapment. These are all defences based on the facts. If they are triggered, you will apply them.

Show the underlying crime, then look to applicable defences. Dont ignore it. Then you will get the wrong answers specifically on the multiple choice questions. This is how they are testing. It's very important. Once you find a crime or defence, look and see if we're imputing liability on to another person. If so, it has to be accomplice liability or conspiracy. These concepts are very testable. You want to know and be strong in these areas because they come up on every examination.

Inchoate crimes.

SAC stands for: Solicitation, attempt and conspiracy.

These are highly testable on multiple choice questions as well as actual essay. You want to get to know them and their nuances.

Solicitations with specific intent to entice another to commit unlawful act. Can you withdrawal? No. Under modern Penal code, you can if withdrawal is complete and voluntary abandonment of the crimes.

I solicit you to commit murder and I do the murder what happens to solicitation? It merges. Solicitation merges to the underlying crime.

If I give you a call with what crimes could he be charged with versus which crimes can he be convicted with. It's very important to pay attention to the call. To make sure you know what the examiners are asking.

With attempt you substantial step, specific intent. You look for accountability. Preparation versus perpetration. Legal and factual impossibility.

With attempt students don't talk about it right. Why? They focus on the underlying crime. What's the mens rea of attempted rape? Attempted battery? What happens a lot of students will focus on what I tagged it into the rape or battery. It's a battery. Intent is a specific intent crime period. You want to make sure you pay attention to that. When you see that tested, it's focused on the attempt. You don't bring up accountability. You don't go to the underlying crime we tagged it into. They are trying to trick you.

With attempt, you have factual impossibility. It's general. No defence. You look at defendant. The defendant, basically on their knowledge of the facts, would their act have been a crime?

In essence, I'm mad at my neighbor and I want to murder him. I go over to his house, see him sleeping in the bed. He already had a heart attack and died. Then I shoot I him. Factual impossibility. You can't kill somebody already dead. I believe him to be alive. Would that be a crime or not? I believe him to be alive; therefore, it's a crime. Factual impossibility would not be a defence in that case, right. Does that make sense?

Legal impossibility. Defendant believes an act is illegal, but it's not. If I feel shooting ducks is illegal, but it's not. It's something you can do. It's duck hunting season. That one you're looking to negate the mens rea.

Intent is a good inchoate crime to know and understand. Attempt does merge as well. Solicitation and attempt merge. Then go to discussion in regards to conspiracy. It's the only one that doesn't merge. It's the only one that stands on it's own.

Once you commit the conspiracy, I have the agreement, conduct or implied; two or more; the unlawful act. Boom. You're charged with that conspiracy. You can have conspiracy by a tactic agreement, implied agreement, by conduct or even unilateral agreement. These are areas they do test.

Unilateral agreement. You need to show the defendant thinks there's an agreement. A policeman goes into a bar to buy drugs. That's an infamed agreement. That's unilateral, but they find conspiracy against the police officer.

With conspiracy several things that are testable in this area. Specifically on the multiple choice questions is withdrawal. What effect does withdrawal have on conspiracy? Once you conspire, you conspire. There's no way out. The effect if you show a valid withdrawal releases you from furtherance liability. That's any crime that are coming down the pike. Furtherance.

With the majority rule, it needs to be communicated with all co‑conspirators. With MPC that's if you try to thwart the crime and prevent whatever the crime is. With withdrawal, it only releases crimes in furtherance; thereof, not the underlying conspiracy. Very testable.

The Pinkerton's Rule. Each member of the conspiracy will be liable for all crimes committed in the furtherance of or which are in the natural and probable consequences of the unlawful act. If it's a foreseeable result of what they planned to do.

If I agree to rob a bank and sit in the get‑away car [indiscernible] can you impute it on to me? Can I commit a Pinkerton? Is that a foreseeable result? Yes, it is. Death is reasonable to see based on the activity we're committing in and of itself.

You and I agree to rob a bank. On the way home, I'm pulled over and I have a warrant out for my arrest. You show up to rob the bank without me and you go ahead and do the act. Now could I argue withdrawal as a defence? You have an agreement. We have conspiracy. The activity of robbing that bank would be imputed on to me based on Pinkerton's Rule.

It's something you should fully understand and, when you see it, know how it's laid out. It's an issue. It comes up every time on the exam.

Wharton Rules is very rare. You're not going to see. Wharton Rule is it takes two to commit the unlawful act. I can't charge you with conspiracy if it takes two to commit the act. Duelling or bigamy. It takes two. Two persons agree to commit an unlawful act, but it takes two to perform the unlawful act. It is an issue that people bring up a lot, but it's not there. I need you to understand how it's triggered.

Understand the underlying rule of the crime itself. The withdrawal and effect. Conspiracy with the Pinkerton's Rule. It's important to understand that.

Third Party Liability. You have enterprise liability, vicarious liability, and accomplice liability. Vicarious is like a bouncer, employee‑employer relationship. Accomplice can ‑‑ with accomplice, what's the difference between an accomplice and the conspiracy? It's the agreement. That's all it is. I want to make sure you understand that.

If you have the agreement, I'm going with the issue of conspiracy and not accomplice liability. Conspiracy I've got that as an independent crime to charge you with. Accomplice your an accomplice to the robbery. I'm only charging you with one particular crime. Accomplice is one that aids and abets with the perpetration of an unlawful act. You have to take an act.

On the Multi‑State, you see a fight breaks out and Jimmy is standing on the sidelines. [Indiscernible] kills Jerry, but Jimmy doesn't say anything. That's not an accomplice. Instead Jimmy's shouting words of encouragement and the man dies, he just became an accomplice. If you give aid or words of encouragement, you will be considered an accomplice.

With an accomplice, you show the issue on Multi‑State that way you have accomplice before the act. Principal in the act and accessory after the fact. If I see I'm at issue in the facts, then I separate out and talk about it.

Accomplice before the act, that's someone that aids you before you do the activity. You work at a bank, and a friend says to you I want to rob the bank, and you give the layout of the bank. You'd be an accessory before the act and liable for everything coming down the pike. Versus accessory after the fact, which is somebody that's aiding and abetting ‑‑ helping you ‑‑ in getting away or preventing capture. You are then liable for everything after that point. Not anything that happened prior to. That's important when you need to classify to impose liability. You will know when it's actually triggered.

The guy stole something, told his girlfriend. He took her to his friend's house, his friend was yelling at him to get out and a fire started. With the fact the friend was yelling at him to get out, he wasn't aiding him in the act itself. You have to break it apart and analyze it. There can be more than one principal depending on what you're doing.

Third party liability, vicarious liability, accomplice. As an accomplice, you can be responsible for acts of what? Those which are foreseeable based on actions. If we don't have an agreement, but we act and do something and it's foreseeable based on whatever act we're doing like a death, I will be charged with that death.

Conspiracy and accomplice. Conspiracy we use Pinkerton's. Foreseeable based on acts of other activities ‑‑ whatever you're doing with the gun or knife, it's foreseeable death could result in that case.

Next murder. Murder is very, very testable. Murder has a nice approach. With murder people don't always understand when to carry it all the way through. Looking at the check list there's a set up for you. You need to show malice aforethought.

First of all, look in the facts to see if that party showed the intent to kill or cause great bodily harm, conduct wanton and reckless, or murder felony rule.

With malice, if you can show ‑‑ you bring it up and argue with fact. Intent to kill, cause great bodily harm, wanton reckless conduct, you bring that up.

If my malice is that strong and I have three out of the four, I will never get to the issue of involuntary manslaughter. If I have wanton malice only, I will always get to the issue of involuntary manslaughter. What I've noticed is it has to be factual.

If I shoot a gun in the air on the 4th of July and somebody dies, is that wanton reckless or involuntary manslaughter? The facts will dictate. Am I in a populated city or in the desert? That will dictate where I go.

Felony murder rule. Remember any death that results in a dangerous felony will be liable. Show malice and get to first degree. What is an inherently dangerous felony? You need burglary, arson, rape kidnapping, mayhem. You bring all these up to see if they apply. What were you in the commission of? If so, I have felony murder rule for dangerous felony.

This is where the call will dictate. If the call of the question said if Johnny can be convicted of any lesser crime or included defence. Doesn't mean assault or battery. What it means, the reader is telling you to look to the issue of voluntary or involuntary manslaughter.

In regards to your discussion, if I'm going through the murder ‑‑ the call was murder. I see felony murder rule and I see burglary. And I want to show malice to convict for the murder. You will have to prove up the burglary. You would have to right then and there show the actual elements.

On some exams, they say murder then burglary. You can let them know you will talk about it in the call, which you should. You want to make sure you understand that.

Murder malice look to see if causation is at issue. That's similar to torts. Proximate cause. Foreseeable. Can I get this in first or second degree. First degree, remember it's the killing with specific intent with premeditation, liberation, or poison torture or the felony murder rule. If I prove that the burglary that I just talked about. And discuss it was in the commission of a dangerous felony. He would be convicted under the felony murder rule. That's all I would say and get out.

The last part the red line view or the special felony murder rule. This is something you are responsible for. It just came up. I'm not so sure it will be tested quickly again. But when you have an innocent party doing the killing like a bank guard does the killing. That bank guard act in killing the patron can it be imputed on the felony? Common law definitely. Modernly it has to be done by your own hand.

In essence, if done by your own hand, I'd be convicted. If you look at it today, it wouldn't apply because it's not the felony or co‑felony because the rule says it has to be an innocent party. You have to look between common law and modern law. You will see different names, red line view, which is under the fall or special felony rule. You might see different language, but they are talking about the same thing.

If I find that it's not first degree, then I plug it into second degree. I have a definition. I say the killing done with the depraved heart.

Once you have category murder first or second degree, you have to look for applicable defences. If you see, based on the facts, this defence isn't going to work, you still want to bring it up showing you understand it.

Primary defence is self‑defense using reasonable force to protect one's self. I can raise to the level of deadly force if I believe my life is being threatened. It has to be imminent not something happening tomorrow.

The issue there is I decide to rob somebody's house and the neighbor calls the police. The person shoots at me and I shoot back. He shot first. Self‑defense? I go through the steps get me guilty of first degree. Then I bring up self‑defense as a defence, can I use deadly force? Sure, he shot at me but I am the aggressor so I have no right to use that force. So self‑defense would fail. The only way to get it back is if I retreat and am threatened and get my innocence back to whatever I did. If I am the aggressor, self‑defense isn't going to work. But there's enough facts you better bring it up.

Since we're talking self‑defense too, I find it wasn't reasonable because I was the aggressor. Can I take that imperfect defence of self‑defense and mitigate to voluntary manslaughter? The rule is no. Why? Because it wasn't based on the good faith. I am the wrongdoer. A lot of this comes down, even if I know the law, it comes down to the facts. You can say wait we can mitigate an imperfect defence for manslaughter. But he's the wrong‑doer. So we're not going to allow that. It's factual and you have to know how to test. Even though we know the rules, but we don't know how to apply them.

You also have another defence. Defence of others. Reasonable force to protect a third party. The majority rule is you step in the shoes. You see that party has a right to receive a defence.

An example placed on the Multi‑State was somebody evading arrest. It's a plain clothes police officer and you think they are accosting a person and you punch them in the face. Defence of others is not going to work. They are the wrong‑doer, the ones being arrested. In the majority of jurisdictions, they are allowing for reasonable mistake. A reasonable person coming on the scene would they have reacted in a reasonable manner. But that is what? Modern. You go through the majority stepping on the issue.

At that point, I came on the scene that resulted in the death, but felt that person needed my aid. Then I can use defence of others to mitigate to voluntary manslaughter. It was based on good faith belief. I thought he needed protection. The more you play with it, the more it makes sense. Keep breaking it apart.

Another defence is crime prevention. Modern you can use deadly force only with imminent threat. A person comes into your house, points a gun on you, deadly force and prevention. Was I in imminent bodily threat? I could protect myself.

A burglary in your home and the imminency is there to threaten your bodily harm. Generally you do not have the right to use deadly force to protect your property. If someone wants to steal your car, give them your car.

We went through self‑defense, defence of others, crime prevention, defence of property. I hit four; didn't I? When you see defence is at issue, look for two or more. It's very rare you see just one. If you see just one, go back and run it through the check list. They generally come in pairs or more. A lot of times we see it and don't think about it. If we force ourselves to use our tools, go look for another one because they come up two or more, then you'll see them.

If you don't see this particular defence, I tell people to do Multi‑State. Do the strategies and break apart what's being tested. Understand how they come up in a fact pattern and plug into your check list, and you will never do it again.

Unilateral conspiracy. Each time you go through the check list, you have one or 2 words of multiple choice question, your mind is going through that process again. You will see it when it comes up you won't miss it.

Excuses and intoxication. Voluntary intoxication and involuntary intoxication. Involuntary negates specific intent: Burglary, larceny, rape ‑‑ no. Specific intent.

If I told you I voluntarily got intoxicated and being charged with attempted rape, could I argue intoxication there? What negates a specific intent? Which intent is? If it was just the rape, then the answer is no. Look to the underlying crime and what is the mens rea. Involuntary negates both. How does it come up? Somebody puts something in your drink. A date rape drug. You can't form the intent.

Infancy you have 0‑6. It's assumption is you can't commit the crime. Burden is on the prosecution to show you have the ability to commit the crime. 14 and above you are presumed to be an adult.

Another area you need to know, it comes up on the essay every once in a while, but always on the multiple choice is insanity. They will not tell you what jurisdiction you're in. You have to know all four. If you understand the language, you will do well. Memorize it. They will mix up modern legal code and McNaughton. You have to break it apart. The key thing they all have in common, it has to be based on your mental defect. That's one thing they all have in common.

Mental impulse. I didn't have the ability to control my conduct. My mental defect I can't conduct myself. It's based on the defect. But whatever the activity I do is the product of a mental illness. God tells me to go kill a particular race of people that's because of my mental illness. Modern Penal Code you lack a capacity to perform within the law. McNaughten you didn't know what you were doing was right or wrong. Look at the facts. A lot of times when you see insanity, they don't work. If I hear voices that command I go blow up a bank, but I don't want to do it because there's people there during the day. So I do it at night, will insanity get you off? You waited and did it at night. Durham was it the product of my mental illness? Modern Penal code did I lack the capacity to perform? Well I didn't want to kill people. Did I understand the nature and quality of my acts?

When you start to go through it, you will see a lot of times this might not work. That is a defence. Two things to take away: One, if it's an essay, you need to do all four because you will not know what jurisdiction your in. Two, you need to know the language. Because on the multiple choice, you need to make the distinctions and you need to know what jurisdiction it is. That's a free multiple choice you can get by knowing your rules.

Actual and proximate cause for homicide. If I am running out of time, I don't do it unless it's at issue. You will know. Evading arrest, speeding arrest, and a police officer shoots my tire and I run over a pedestrian. Your time will dictate. Sometimes I don't talk about it because of my time because they didn't give me much. I notice you said homicide.

When you go through defences, know when to mitigate to manslaughter. Imperfect defence. Not self‑defense. Defence of others. Prevention of crime. Any defence. Adequate provocation. Lose mental equilibrium. If someone comes up to you in a bar and says your wife's having an affair ‑‑ that would make people mad, but words are not enough. You need an action. If you come home and see your wife is having an affair but you are too distraught and can't do anything about it. There's sufficient time to cool off. You confront someone with a heated argument. We had a time delay and escalation. We had two issues of manslaughter. One of what you saw and then when you went to the house had a heated argument and shot the person. Was that adequate provocation? Words alone are not enough. You need some kind of action.

You need to pick that up because it's worth some points with manslaughter. With an affair, a guy sent an anonymous note telling him where to find the guy. They had a heated argument, then he shot him. I definitely will argue malice. Did they intentionally kill each other. Wanton harm? Yes. Why did they have the heated argument? If I went there to kill you, would I even talk to you? The fact are grey. Was it first degree or second or would I get to the issue of voluntary and involuntary manslaughter? The facts will dictate. It's very grey and they want to see how you think.

Last one is involuntary manslaughter. Killing without malice, Criminal negligence, or modern manslaughter rule. Before I jump out of murder. They test it quite a bit on the Baby Bar is the felony murder rule. Is it still in the [indiscernible] of the underlying felony.

There's one out there where her boyfriend threatens to kill her cat if she doesn't deliver drugs. Now she has to deliver the drugs because she's worried about him killing the cat. While she's driving to deliver the drugs, a little boy darts out and she hits him. She is the commission of delivering drug. I just robbed a bank but driving slowly but a kid darts out and gets hit. Once I got in my car and you don't know who I am is that [indiscernible] They want to see your argument there.

They've tested that quite a bit. It's something I recommend you be prepared for. They want to see your analysis and what you're prepared for. No one says you have to reach a physical place. It's a mindset. If I robbed a bank and don't see police behind me, so have I reached a place of safety?

That's murder in a quick nutshell.

You have to know your theft crimes. They are all over the Multi‑State. They do come up on the essay questions. You want to break it apart: Larceny, larceny by trick, robbery.

Robbery we all can get it's a larceny with force, fear of intimidation.

Larceny and larceny by trick or false pretenses or is it larceny or embezzlement. You have to look at:

1. Under the facts what are the underlying party receive? Possession. Did they have custody or control? Did they contain title? Transfer intent to back to the time you acquired the property.

With larceny taking and carrying away with the intent to deprive. Are you getting custody of the article? If I take something, I'm getting possession. Custody is where somebody gives it to you to do something with. I entrust you to take this to get it fixed, or evaluate it to sell it. Possession is you just got possession most likely you took it. If it's something in custody, I will lean more toward embezzlement. I entrusted you with it.

This is a good question they test on Multi‑State. You go to a pawn shop. I give them my diamond ring. I entrusted them. They take that diamond ring and put it in their pocket. Did they commit embezzlement? Yes. But if they sell it to a third party is that larceny or embezzlement? They've transferred title. You will find where there's a conflict of law between criminal and torts whether larceny can be conveyed.

These are little nuances you need to know. I change a price tag on a dress. It's a $150 dress and I change the price tag to $50. I pay for it and leave. Have I committed a crime? Yes, That's false pretenses.

How do you look for it? It's a reasonable person test. When would you convey title? If I see a price tag, take your 50 bucks, I convey you title to the dress. If you tell me you're taking it out to the car and will bring you a check. I'm not conveying title until you give me a check. That's larceny by trick. I didn't transfer title, but I did let you go out to the car with the article itself. That's larceny by trick.

Food. You go into a restaurant and order food and didn't pay for it. Title will not transfer until you pay the bill. But I pay the bill with counterfeit money. False pretenses. Unless I know, the one taking the funds knew. These are little nuances they will play with you.

Larceny by trick you're obtaining the object, possession by some fraud. It has to be a past or present. It can't be in the future. That's larceny by trick.

False pretenses. You're obtaining property by false representation, but you're gaining title.

Embezzlement. You misappropriate the property you are entitled to.

These theft crimes you do want to make sure you understand. I use PITT. Did you just get possession? What interest it did you get? Did you get custody or control? Did you obtain title? Can I go back in time to transfer that intent?

They are on the Multi‑State. You want to do well. 10‑12 of those are mine. Those are rules you should know in order to elements. Was trespassory taking? Without consent. That's the defendant's mindset. Did they have the intent?

One I always see coming up with this issue is one that is taking money from their employer and paying it back tomorrow. Is that larceny? Students say no. But yes it is. You took it. You left. You have the intent to deprive during the time frame. That's larceny.

With money unless you wrote down every serial number, how are you going to give that exact money back.

This was on the last Baby Bar. They tested where the guy took the beer. The security guard said stop. He set it down on the next isle. That's a example [indiscernible] to any movements. That's equivalent to larceny. Those nuances. It's good to think about and play with them. That would be good buzz words. That's aspiration. He set it down. Then ran out the emergency exit. Was it a larceny? It's a carrying away.

I can't stress it enough in regards to your theft crimes. Understand how they test particular elements. Intent to permanently deprive. False representation.

Another area is receiving stolen property. That comes up on the Baby Bar. It's a sleeper. Where you receive property with the knowledge that it was stolen. I have to know. I have to be fully aware.

If I go down an alley and I want to buy a TV and I buy it. That's receiving stolen property. Subjectively I have to have some type of knowledge that it was stolen.

I came back and told you I just robbed a store and asked if you wanted a fur coat.

Burglary. Remember you need to do common law first. Then if it fails, you bring up modern law. Do one at a time. Don't combine them. Do one first. If common law succeeds, you never have to do modern law.

Common law burglary. Nighttime. Breaking and entering into the dwelling/house of another with specific intent to commit a felony. Those must coexist.

I go to steal somebody's watch. They say burglary then leave. That's a larceny too. Larceny is a lesser included offense of burglary. You have two crimes.

If I go to break into somebody's house and steal their Rolex. You go through burglary and then have a separate issue of the larceny itself. There are two separate crimes. What you need to watch out for is how they test.

With common law burglary, I go to get my lawnmower back. I break in the house to go get it. Did I have the specific intent to commit a felony at the time of entry. No.

While I'm in the house, I see 50 bucks and take it. I wouldn't be charged with the burglary and then I go to larceny.

Constructive break in. Instant Santa clause through the chimney. Somebody makes a representation and you let them in. Pizza delivery and it's not a pizza. They force their way in or use instrumentality.

Remember common law, you have to have all the elements: Nighttime, breaking entering dwelling house of unknown, specific intent.

Modernly it's address prior to that entry into a structure committing crime. A department store. If I go in there with a intent to steal, that's a burglary. If I have no money in my wallet and walk out with a Gucci handbag, that's burglary. It's an entry. In regards to the crime, I didn't have any money and walked out of the store. They can show I had the intent to commit the crime. Modernly it's easier to show the underlying crime of burglary.

It's an area they do like to test. Remember common law first. Break apart the elements. They like to test the intent at the time of entry. People don't pay attention to it. Going through it. It's a no brainer it's simple. Make sure you break apart your elements. It's so important.

The other crime they like on the Multi‑State. It does come up is arson. The vicious burning of a dwelling against another. You're guilty of trying to get insurance proceeds or attempted fraud. For arson, no. It has to be the house of another. It has to be burning. It can't by blackening of the wall. You have to show malicious burning.

Something that happens inadvertently. We rob a house. I have a lantern. It gets knocked over and it starts a fire and burns the house down. Is that arson? No, because I didn't have the intent. If something happens inadvertently that starts a fire, you will not be guilty of arson.

Modern is the burning of any structure. That's the difference. Can I be convicted of arson of my own home? If I inadvertently started a fire, if I committed arson, and somebody dies, I couldn't use the felony murder rule. You will look at involuntary manslaughter. They are trying to trick you. Show the underlying arson and how it fails. Then point out how you cannot use the felony murder rule because the arson fails.

Other crimes that aren't too testable is kidnapping. False imprisonment. Assault and battery. And rape.

Rape will come on the Multi‑State. Rape is general intent not specific. They will test you on mistake. Mistake of facts I thought it was my wife. Consent would be objective. Be careful with statutory rape. Strict liability. I didn't know. She looked 25. It doesn't matter. You have to pay attention to that. I want you to be careful if it's attempted versus the rape.

Defences you will look at. Mistake of fact and mistake of law. Legal and factual responsibility. Kind of the same thing. Mistake of fact. Facts as you believe them to be would have been a crime. If I went to steal your wallet and there was no wallet there, there's no defence. It's the attempt of larceny.

Mistake of law. General rule no defence unless you show reliance or it's not against the law.

Duress. They did test duress with cats. Threat of imminent harm to you yourself or close family member. People are animal lovers. Bring it up. I don't care how you conclude. Show heart. What would you do if it's your cat. You didn't want your boyfriend to kill your cat.

Consent has to be the willingness of the act. Battery or something.

Entrapment has not come up in a while. You are responsible for entrapment. There are two views you need to know. If it comes up on essay you need to know both.

Are you predisposed? How will I know? Look to the facts that he was in jail for burglary just got out met up with friends. He's predisposed.

Police activity. Did they bombard you enough where a reasonable person would succumb and do the reasonable activity. This came about with child pornography. The police came around every day to sell pornography. And final the guy bought some just to get him to go away. It was entrapment.

Predisposed which is subjective. And objective police activity. Why both? It's a difference of jurisdiction.

A couple things I want to point is:

1. Statutes. You can see an actual statute in criminal law on the exam. You need to dissect the statute what's the mens rea. If I give you a criminal law statute that says it's illegal to have drug in your car. If I rent a car and there were drugs in there and get pulled over ‑‑ that's strict liability. I'm in trouble. You have to break apart and determine the statute.

They give you a statute for a crime apply it. You have to go through the elements of a crime for that statute. It's not knowledge you know for the law. A lot of times when they give you statutes a lot of times your familiar with.

Killing. Is the killing of the human being with malice. Malice can be shown expressly. Implied. We don't talk that way. But the statute is telling.

Strict liable. You're strict lie liable. There's no defence. There's no mens rea that will negate. Again that's like a minor with statutory rape. There's no way out of it.

Another is the call of questions. Should the call says ‑‑ look to voluntary and involuntary manslaughter. That's what it means. I want to make sure too manslaughter terminology, it's you're job to determine if it's voluntary or involuntary. They will never tell you. You have to go back through the facts: Wanton and reckless conduct or negligence.

If questions ask for charges in defences two or more. Charges means it could fail but I bring it against you any way. You bring up anything as long as there's facts in that case.

Counter argument to negate something. You believe you have the right because he owes you money to take it out of the cash register. Defence of others. Did you have the specific intent to permanently deprive.

Specific call. Let's say I ask can Jimmy be charged with burglary or robbery. You need to do both.

They just tested this with larceny and robbery. There was no robbery. But the call I had to do it.

If they give it to you in the call, you don't have a choice. You have to break it apart.

The best way to get a handle on this is by practice.

I see how they test. Conspiracy in regards to the unilateral or entrapment.

Pull multiple choice exams and see how it comes up. Entrapment is all over the place.

You want to work them and understand how the concept is tested. At this point we hit all subjects. Now everything is fair game. You need to work on all three subjects. You will be sent out an criminal essay question to do. We will give you feedback next Tuesday. Again going in there seeing how they test and the more exposure to how they test.

2000 multiple choice look how do it. You have to go in there by preparing. The more you do is the only way to get prepared.

Anybody have questions for me. If anything comes up or you have any questions, shoot me an e‑mail.

I wish you guys all a good night.