TAFT

WEBINEX

ESSAY q&A

5/30/17

**INSTRUCTOR: Good evening, everybody. Welcome to tonight's Baby Bar Mini Series. Our focus will be going over the 2016 examination. There were four essay questions sent out to you.**

**These sessions are recorded so, if you want to go back to listen to a session you missed, you can go to the Taft website student section and click on whatever session you want to hear.**

**Remember, if you do have questions, put them in the question answer box because that's the one I'm monitoring. I will help you any way I can.**

**Let's start off with question number one. When you read the call the question should give you an idea this is criminal law essay question.**

**First thing is to always read the call of the questions. This will help you for several reasons. It will narrow down the subject matter being tested. The more familiar you are with what we're being tested, the better you'll do.**

*QUESTION 1*

*Reading CALL 1: Can it be reasonably argued that Beth is guilty of a. Theft? Discuss. b. Robbery? Discuss. c. Murder? Discuss.*

**If you look at theft, robbery, murder, these are very specific calls. Whenever you see theft, you should be going to the checklist and determine what is at issue. You can't just head note theft. You have to let them know which one is being tested.**

**I would call this more of a specific call. I told you specific calls you have to go in there and determine what elements and issues being tested. If you particular issue, the larceny or robbery and don't see one of the elements being tested or a defense, we probably made a mistake. Be aware of that.**

**The more specific the call, think what elements are they testing here.**

*READING CALL 2: Can it be reasonably argued that Carla is guilty of murder and, if so, what defense(s) can she raise? Discuss.*

**So the call says murder. Very specific. Defenses think two plus. You should be thinking of defenses which can be true defense, self‑defense, defense of another, or it can be of itself.**

**You have to read the facts and determine what's being tested. You have to make sure you do answer the call of the question.**

**On several of the student exams, I didn't see defenses. It's in the call of the question. Pay attention to that.**

**I have an idea I'm under crimes. I would read the examination one time through and go back and mark‑up the issues I see.**

**The key is when you go through the fact pattern, since it's very specific, what elements are being tested here? Let's go through the facts.**

*READING QUESTION 1: Al and Beth were sitting in Al’s apartment, playing video games and drinking beer.*

**Maybe intoxication can be an issue.**

*After finishing the last beer, Al said to Beth, “I need another beer. Can you lend me some money and drive me to the store?” Beth responded, “I can drive you to the store, but I don’t have any money.”*

**At this point they have no money they can drive to the store. At this point we have no idea to either party's intent.**

*Al laughed and said, “I have an idea for how to get some beer without paying for it. Drive me to the store and park behind it near the emergency exit.”*

**Okay. At this point we can determine that Al has intent to steal beer without paying for it. At this point, we have to see how Beth is connected. She's in my call. They are asking if Beth is guilty.**

*Beth drove Al to the Friendly Market and waited in the car near the emergency exit.*

**Can we argue there is a conspiracy? You do need an agreement, two or more, unlawful acts. Based on this conspiracy, what are they testing here? Is there an agreement? She never said yes. I agree she did the conduct of driving and obviously parking near the emergency exit knowing neither has any money. Driving him to the store and parking near the emergency exit. Her conduct is she agreeing. We're looking to both sides to get full value.**

*Al entered the store, picked up a six-pack of beer, and began walking toward the emergency exit. Carla, a security guard, was watching Al.*

**At this point what is he committing? It looks like larceny.**

*As Al approached the exit, Carla shouted, “Stop, thief!” Al put the beer on the floor and ran out through the emergency exit.*

**Now when he picked up the beer, we're thinking larceny: With the specific intent to permanently deprive. He didn't carry it away. He put it down and ran off. What's the law say? Point out his argument: I set it down and ran out the door. Any aspiration would be equivalent to carrying away. That's the point with the larceny. They want you to argue.**

*For a few seconds, Carla considered what to do. Then she ran after Al. In the alley behind the store, she shouted, “Stop or I’ll shoot!”*

*When Al did not stop, Carla fired a warning shot.*

*When Al kept running, Carla took careful aim, shot, and missed. As Al was about to run around a corner, Carla paused, took careful aim, shot again, and killed him.*

**There's your murder.**

**Now look at your call. Call 1 says Beth. Is Beth guilty of the theft? Beth didn't do anything other than drive the car.**

**The first issue to prove up is the conspiracy. There is an agreement between two or more to commit an unlawful act. The fact they are sitting playing video games, Al needed money, she doesn't have any, I can drive you. There's no agreement on her part to commit a crime. But he laughed and said I have an idea how do get free beer. She took the action of driving and waiting for him. Can we argue those facts based on her knowledge he doesn't have any money? Knowing his statements, I know how to get beer without paying for it. You need to argue and can argue based on her conduct that will be equivalent to an agreement.**

**Agreement is worth some points. You have to look at both sides. I didn't do anything but drive him to the store. History of facts playing games, having no money, wanting beer. Her fact is she drove him which is agreeing based on her conduct.**

**You got it between Al and Beth so it's two or more. She knew he didn't have any money and had an idea of how to get without paying for it. This is specific intent to commit an unlawful act. We would conclude there is an unlawful conspiracy.**

**Now I have to show the theft. The larceny. She didn't do the activity. I have to show, which is a different call, what Al did and impute onto her through Pinkerton's. I don't want to do Pinkerton's yet because I haven't proven the crime just the conspiracy. I will go through larceny with the specific intent to permanently deprive. Drove to the store, picked up the beer, and walking to the emergency exit.**

**Beth will argue he put it down. He didn't have beer in his hands when he was running toward her car. We're going to argue that there was no carrying away. Any movement would make it a trespassory taking and taking away. Beer is in the market and evident by his plan he didn't intend to pay so he had specific intent to permanently deprive. He committed a larceny.**

**Did I answer the call? No, Beth is in my call. I need to impute onto her and that would be through Pinkerton.**

**A co‑conspirator can be liable for all crimes committed within furtherance of the conspiracy. Based on her agreement, can she foresee that he would try to steal the beer? Is it foreseeable, based on what they agreed to? So we would find under Pinkerton's that we will impute the larceny onto Beth as a conspirator.**

**At this point whenever I find ‑‑ I'll get to your question in a minute.**

**At this point I can argue intoxication, which negates specific intent crimes. The problem is they are drinking beer and playing video games. She was aware they had no money, had the ability to drive the car, park near the emergency exit. So it's not a valid defense.**

**If you have an agreement that's the better argument. I had an agreement here. I don't need to talk about the accomplice because I've got her under its conspiracy.**

**I go through the conspiracy first. When the call says theories, Beth did not do anything. Beth did not enter the store. How do I get Beth guilty of the theft robbery and murder? The only reason is the conspiracy. If you didn't do conspiracy, how would you get Beth as a guilty party here?**

**That would hurt you. Pay attention whenever you see another party doing the actions and I'm trying to charge you for it. It's very testable. If you miss that, that would hurt you. You missed conspiracy several times as well as the Pinkerton rule.**

**The robbery on this exam you will define it. But it's the same definition as larceny except by force, fear, and intimidation. What are they testing here? Did he obtain the beer by force, fear, intimidation? No, He took it. Put it down. But there was trespessory taking and carrying away. Did he take it by force, fear, intimidation? When she yelled at him, he put it down; Therefore, there is no charge for robbery.**

**If there was, of course, it would be imputed onto Beth through the Pinkerton's Rule. This wasn't what we agreed to. Then make your argument. I wouldn't spend a lot of time on this issue because there's not a lot of facts. I talked about in it under larceny.**

**Next call is murder. You need to show me where I did most my discussion under Carla what's triggered here is the special felony murder rule or the red line ‑‑ if you have an innocent party that does the killing can one of the co‑felons be guilty of the murder. Basically common law, yes. Modernly which is the majority redline view it has to be what? It has to be at the hands of the felony. In this case Beth is not the one that did the killing. Carla did. She shot and killed Al. She's protecting the market from the stealing of the beer. Modernly since it wasn't done by their own hands there's no liability for the murder.**

**Common law? Yes, I have to go through Pinkerton's rule. Was it foreseeable and natural result of the larceny?**

**If I was committing robbery, you have a better argument that you see a death result versus larceny. Could I see an escalation of death, I don't think it matters as long as you argue pursuant to the facts.**

**Do you understand for the first call in regard to Beth that we imputed liability for Al's action onto her based on the conspiracy and under Pinkerton's doctrine? Do you understand how these special or redline view is triggered when you have an innocent party doing the killing?**

**It's frustrating if it's something they just tested and I'm not familiar with it and it's not on my exam. I want you to review it and make sure you understand it.**

**Any questions on call 1?**

**Call 2 we're looking at Carla. You look at murder approach. How she observed Al picking up an six pack of beer. She went after him and aimed took shot. There's a good argument there that she had intent to kill. In regard to cause great body harm. Red line only applies if a felony is killed it's triggered if an innocent party does the killing. That triggers the rule. Security guard not co‑felon kills another. It's not triggered. That rule applies when an innocent party does a killing.**

**We have three ways to show malice on her part. Death through result. Is it first degree. I don't see any premeditation deliberation. The fact that she said stop or I'll shot she had intent. Not first it would be second degree.**

**Well if an innocent party, if Carla who killed a felony, it's triggered. If a felony kills an innocent party it does not apply. That would be felony murder rule. You try to impute the murder based on the felony murder rule not the redline view.**

**In regard to Carla you didn't talk about defenses. We can argue crime prevention and defense of property. Common law defense of property. Modern law you cannot use deadly force.**

**He did put it down. But that wasn't satisfactory to her. He placed the beer on the floor and went out the exit she gave chase trying to steel the beer but was they acting reasonable in pulling the gun Knowing that the beer was placed back into the store. Fire a warning shot that might be reasonable he's only committing a misdemeanor. Shooting deadly force at him she went too far. Crime prevention is not a valid defense for Carla. When you see defenses look for two or more.**

**Defense of property you can use reasonable force to defend your property. It can raise to deadly Norse if life is threatened.**

**Knowing Al placed the beer on the floor and is fleeing his actions are over. Her actions of taking careful aim is that reasonable? No she used excessive force therefore, she doesn't have the defense of property.**

**Remember you just probably just convicted first or second degree. If you act in go faith which Carla is feeling she can defend that property that way. We can take an imperfect defense and argue manslaughter. She felt she could defend the store owner's property but it's not a valid defense. Since its an imperfect defense we can mitigate to voluntary manslaughter versus first or second agree?**

**It has a lot of good issues. The call was very specific. The conspiracy you did have to see that and go through. We're imputing Al's actions onto Beth based on that conspiracy. Okay.**

**Any questions before we go to question number 2 on question one.**

**Shop keeper privilege I don't have in crimes. I argue that in torts. I don't have delay reasonable time force an manner. Her using a gun is not reasonable manner based on what he is doing. Willful wanton conduct. When someone acts in disregard to surrounding life. It's like a depraved heart. If I take a gun shooting it in public. I should be aware of my surrounding the will punish me the malice based on my conduct. Does that make sense?**

*READING CALL 2: Buyer brings suit against Dealer for breach of contract, requesting specific performance. Is Buyer likely to prevail against Dealer in his suit for breach of contract? Discuss. If so, is the court likely to grant Buyer’s request for specific performance? Discuss.*

**Do you remember when we addressed the subject matter of contracts the Baby Bar examiners are testing continually on specific performance. It's something you need to know. It's here in the call of the question. It's something to focus on because it's highly testable.**

*READING QUESTION 2: Dealer operates an antique shop.*

**Dealer is a merchant.**

*While traveling, she buys a Union cavalry officer’s handgun for $1,500 from Seller.*

**So I'm already thinking goods because I see the handgun.**

*Dealer takes several photos of the handgun and Seller agrees to ship it to Dealer’s shop. When Dealer arrives home, she immediately shows the photos of the handgun to Buyer. The parties shake hands on a deal to sell the handgun to Buyer for $2,000, payment upon delivery.*

**Now shaking hands what do you think of? I have a agreement and statute of frauds. Contract of Sale of goods of over $500 this is statute of frauds. Pay attention to your check list. If you go through step by step you cannot go back up the chain. What do I mean? Based on the facts when dealer shows the photo and parties shaking hands can that establish that we have an offer showing the photos and then we agree to it manifestation of intent in regard to what? We have the handgun. Quantity one. Identity party dealer and buyer. Price $2,000. Subject matter is the union Calvary handgun. I have definite and certain terms. We're negotiating I shake the hand we accepted. $20,000 in exchange for the handgun. That's a contract. Right there in the first paragraph we formed the contract. I emphasize that because a lot of you went through rejection. We have a contract formed. What are they trying to get me to address after the fact. At this point you have a contract.**

*The next day, Buyer regrets agreeing to the deal without first having an opportunity to actually examine the handgun. Buyer tells Dealer that he will not pay the $2,000 unless she first allows him to have the handgun examined by an expert appraiser.*

**I'm changing the terms. You already have a contract. That's a modification or attempted modification because it's not going to succeed.**

*Dealer becomes angry and tells Buyer, “A deal’s a deal. I’ll expect my money when the handgun is delivered to you.”*

**Obviously he didn't ascent. Modification you need mutual ascent and consideration. There's no mutual ascent. A deal is a deal. Buyer reaction from dealer. At this point I still have the contract.**

*When the handgun arrives at Dealer’s shop, she does some internet research and discovers that the handgun was issued to a general who played a prominent role at the Battle of Gettysburg, which increases the value of the handgun by a factor of ten. The next day, Dealer receives a letter from Buyer stating, “Sorry. You’re right. A deal’s a deal.” The envelope contains a check for $2,000. Dealer sends the check back to Buyer with a note stating, “Buyer: Because you backed out of our deal, I will not sell you the handgun. //Signed// Dealer.” A few weeks later, Buyer learns that Dealer is offering the handgun for sale at her shop for $20,000 because of its connection to the Civil War general.*

**Now we're looking at first call is buyer likely to prevail breach of contract.**

**Does the UCC apply? Yes, I will address the issue. The UCC applies to transaction of goods. We have the handgun.**

**Merchant operates antique shop. Buyer I saw different answers. He was shown photo of the handgun. There's no facts to show an avid collector. Since he knew what the photos were he is a avid collector. I don't think they care. Is he fully aware and has special knowledge and skill you find they are both merchants. If you didn't, I don't think it will make a difference because it's grey. It could go either direction.**

**I go to my offer. Pay attention in regard to your facts. While traveling dealer buys takes a photoed shows to dealer. Shows intent. 2000 is the price. A dealer buyer identity subject matter gun. We have definite certain terms and they are talking to each other. We have communication. When buyer agree we have consent to the offer. $2,000 in exchange to the handgun. I have a formed contract.**

**Again that's why I emphasize you need to pay attention to your check list and contracts. You cannot take it out of order. You cannot go back up the chain. You can't go back down. You can't go back and talk about rejection if a contract is already formed. If you see another issue that's where your check list will help you.**

**I have a check list of statute of frauds. This is a handshake it's oral. Contract of $500 good has to be in writing. It violates not enforceable unless you find an exception.**

**Memo. You need essential terms and signed by the party to be charged. Dealer received a letter with check enclosed with check. Dealer signed that letter. I can argue that letter because it has description of the goods. We have the check. We have essential terms that would support essential memo.**

**What else can I argue. Another way to take it out side the statute is full or part performance. Based on the facts buyer sent a letter subject to rights deal is a deal with $2,000. We can argue that buyer is fully performed his portion of tendering over the $2,000. That's another way to take it outside the statute.**

**Now next taking in chronological order I talk about modification. Modification requires a change if exiting terms which requires mutual ascent and consideration. Buyer was having remorse by having to agree to this. He called to ask he's changing the terms. We already a contract of the $2,000. When I get the gun I'm turning it over to you in exchange for that $2,000. He wants it appraised now. In this case dealer did not agree. There was no mutual ascent and so modification will fail.**

**We have a condition that you pay the $2,000 before I turn over the gun. I gave you the $2,000 and the dealer didn't turn it over to buyer. He said you backed out of the deal so I will not sale you the handgun. We have ‑‑**

**Buyer sent the check back. Buyer performed him. It's he wants the gun. He could get damages of the reasonable value of the gun itself. If it's selling for $20,000 my expectation was the two thousand the difference would be 18. What's he want? Which is call number 2. He wants specific performance. Everybody with me in regards to the first call?**

**Second call specific performance. This is an equitable remedy. You need to show that damages are not going to make you whole. This is where you go back and forth to uniqueness of the goods. Buyer can be made whole by money. Contract price. It can be argued it's a rare handgun. What's the likelihood I can get the same thing? Slim to none. Based on uniqueness courts don't like to award.**

**Turn over the gun to find the dealer is the breaching party. Due to specific performance.**

**That's call number 2. That's question number 2. Anybody have any questions on that contract question. Again I felt that was pretty straight forward if you use your check list. That's the key. Keep it in order. They can't mess you up. Check list is beneficial. It will help you.**

*QUESTION 3*

**Let's look at question number 3. This was a tort question. Students didn't do too well on this. When the examiners are trying to look at your logic. That's something you need to pick up. Torts are pretty simple in regard to what that I recall asking. But you have to ask where is the trick what are they trying to get me to argue and break it apart. That's so important.**

**The first call [reading]**

*READING CALL 1: Is Moe likely to prevail on a negligence claim against Barry? Discuss.*

*READING CALL 2: Is Barry likely to prevail on an intentional tort claim against Moe? Discuss.*

**What's the issue? Negligence. They gave it to me. It doesn't say theories. It says negligence. Duty breach causation damages defenses. I know the inner check list is what I'm going to look at.**

**Contracts is the only one. One that has to go in that order. Torts and criminal law you can take out of order. This question negligence you do duty breach actual proximate cause damages. You would take in order. Do not ever take out of order. Contract you start point A and work done down.**

**Remember they gave you the issue. What does that mean. Element element and defenses everything in that whole group saw negligence. What element are they testing here. You have to look and identify for the reader to do well.**

**Call two is likely to prevail on an intentional tort claim. How many claims? One intentional tort. They gave it to you based on the call. The call dictates. Pay attention and make sure you're answering the tort.**

**Pay attention that's very important. That will guide you.**

**Let's go through the facts.**

*Barry is a licensed barber. Recently, he has considered changing from the straight razor that he has always used to a new type of electric razor. The primary advantage of the new razor is that it totally eliminates the possibility of the customer being cut in the process of getting a shave.*

**The new razor prevents what? Cuts. I can't cut my customers. That looks like a good reason to convert to the new razor.**

*In general, barbers prefer the tradition of using the straight razor to the electric razor because it allows them to better show off their skills as a barber.*

**Why would I not go to the electric? My skills.**

*Although not all agree, some believe that the straight razor gives a closer shave. The new razors have, however, been scientifically established to provide just as close a shave as the straight razor.*

**So the only difference is what? One can cut you and one cut based on the arguments. The other one if you use the straight razor I can show off my skills.**

*Barry continues to shave men as he always has because he enjoys the use of the blade, and because the electric razor is expensive. He is also concerned about the reliability of these new devices under the heavy use they would receive in a barbershop. Moe comes into Barry’s shop to get a shave. Halfway through the shave, Moe suddenly jumps up from the chair, cheering because he checked his Smartphone and saw his favorite baseball team score a run. In the process, Barry’s razor creates a fairly deep gash on Moe’s throat. Moe punches Barry, giving him a black eye.*

**And because see that comma.**

**Maybe you didn't have the money. They are giving you enough facts to see both sides. [Reading] That's a good point they made there. This doesn't mean it's used for commercial businesses. The new razor could be for individual households. You can bring that up in argument. Or else why did they tell you that.**

**[Reading call 1] The first thing you will look at is negligence duty. Look to special duties first. I don't see anything here. I don't see a ‑‑ I'm going with the general duty. As a barber you have a junior duty to shave your customers in the same or similar circumstances. That is berry's duty. Did he breach? This is a prime example of breach being tested. They've done this a couple times in the history of the Baby Bar.**

**Berry is considering changing his straight razor to the new electric type. Do they give the same type of close shave. Has it been established it gives you that close shave? Yes. He's still using the straight razor to show off his skills. He's continuing to use the straight razor because he enjoys it for himself. The electric one is expensive and he doesn't know how it will hold up under it's he have heavy use. While he's shaving mow and mow jumped up did you he fall under the standard of care. If mow was using the electric razor mow would never have been cut. What is the utility versus its risk. Did he follow the standard of care when he cut his patrons throat.**

**Mow was the one that jumped out of the chair. Mow will argue it's not reasonable customers squirm move whatever. This is arguable. You will look to both sides.**

**I feel it's grey.**

**You can go either way. If you argue customary. A custom can create a ‑‑ but I have to see something in his community that all barbers are using it. They have to give me more than that. It's a good thought but generally they have to give more information than that.**

**Can you see that the breach is your big item here. You have to argue both sides. You have to let them know that's the element being tested here. Proximate cause mow should have sat still in his chair. It's not foreseeable while I'm shaving you that you jump up while I have a blade in my hand. But customers can move sneeze anything you can come up with customers may use when you're using a straight razor blade. It is foreseeable and then go through the damages pain suffering and medical expenses.**

**Am I done? I have negligence claim but can I argue defense. Defenses are going to be what? Stated in the call of the question. Or obvious in the calling of the facts. Mow contributed to his own injuries. Berry will argue mow jumping up in the shave he he's contributory negligent. Can you argue that berry had the last clear chance? Berry could have taken precautions warned his customer. He could have used that electric razor. Whether I use this blade you need to be absolutely still because there's a chance it could cut you. He could have prevented the actual injury. It's a plaintiff's argue: It's an argument mow would make that berry could have prevented my injuries.**

**Compare different jurisdictions. Did mow fall blow the standard of care.**

**Assumption of the risk? Berry didn't give any warning to mow. Did he know the potential harm? It says a razor blade but he did appreciate that knowledge of using a straight blade. Make your argument. I didn't find it to be a valid defense.**

**The biggest item was the breach. That's worth some points. Make sure you do look to both sides. All right.**

**[Reading Call 2] There's only one battery. That's obvious.**

**[Reading] There's my intent. Punching somebody giving them a black eye is harmful. Battery pain suffering medical damages. To punish. He did battery.**

**Can I argue any defenses? Why did mow do that? Self defense. You cut me. Mow will argue he was acting reasonable and truly afraid berry cut his throat with a straight edge. But he jumped out of his seat. It was accidental. He wasn't using force. I was using force to protect myself. But it was neglect on the part of berry. I'm arguing self defense is not a valid defense. That's it.**

**So as you can see in question 3 pretty straight forward. How come the results aren't higher? You are not identifying within itself where's your point value. The more specific in the call of the question? Element element and or defenses brake that apart.**

**Diminished capacity is a small minority. I wouldn't do that. In the previous exam with the criminal law intoxication. It's a small minority. Do you bring up diminished capacity. In this particular crime they have to give you impaired by drugs intoxication schizophrenia it's told me based on mental abilities. That's an issue they can't hide too much from you.**

**Any other questions on question 3?**

**I'm sure you're looking at these. They are not too bad. Why don't people do well? You are not identifying where your point value is.**

*QUESTION 4*

**Third party beneficiary was tested in this question. I've seen the Baby Bar where they tested three times in a row.**

**Make sure you're prepared for it and understand it.**

**Always read the call first.**

*READING CALL: Owner sues Contractor for breach of contract. Son sues Owner for breach of contract, seeking damages for Owner’s failure to provide the two parking spaces.*

*Can Owner prevail in her lawsuit against Contractor? Discuss.*

*If so, can Owner recover a. The $10,000 in increased costs for the heating system? Discuss. b. The lost profits for the delay in opening the restaurant? Discuss. c. The value of the tax reduction? Discuss. Can Son prevail in his lawsuit against Owner? Discuss.*

**We know we're in contracts. This is where you need to break apart your ABC. A says the $10,000 in the increased cost for the heating system. B says the lost of profits for the delay of opening the restaurant and C says tax. These are different types of damages you need to identify properly break apart for the grader. I understand the call. Ready to go through the facts.**

*READING QUESTION 4: Owner wants to turn her warehouse into a restaurant.*

***Now you know it's a warehouse and I want to turn it into a restaurant.***

*She decides to install an innovative solar heating system, which Contractor agrees to install at a cost of $50,000. Contractor’s son (“Son”) wants to use two parking spaces in the warehouse parking lot for his (Son’s) business. If Owner agrees to designate two parking spaces for Son’s use for five years, Contractor will drop the price to $35,000. On November 13th, the parties agree to the latter arrangement in a valid written contract in which Contractor promises to start the job on November 17th and to complete it by January 1st State law requires that all installations of the new solar systems be done by a certified solar technician. On November 15. The contract includes a recital stating, “Timely performance by Contractor is important to avoid any delay in the opening of Owner’s restaurant.”*

**Now they told you it was a valid written contract. They wrote it out for you. Formation is done. I don't need to go through offer, acceptance, consideration.**

**Now it says it's supposed to start November 17th and conclude January 1st. What is that? Is it time of the essence but remember with expressed conditions ‑‑ the courts don't like them ‑‑ if they can push it back and find something else, that's what they will do. Remember with time of the essence if you don't perform you're in breach. This is ambiguous.**

**The contract includes a recited stating timely performance ... In the opening of owner's restaurant. Timely performance is important to avoid any delay. Does that make it clear that it has to ... It doesn't. *There's an argument is it expressed condition or an expressed promise. Which we will he go over.***

*Owner finds an alternative supplier of a similar system at a cost of $60,000, but he can’t start work immediately and the restaurant opens in February of the following year. Owner misses the deadline for the city tax break. the only certified technician who works for Contractor, Tech, is injured in a car accident. Contractor immediately notifies Owner and advises her that the start of the work will be delayed because of Tech’s accident. Owner replies, “You know that on-time performance is crucial. Yesterday, the city announced special tax breaks for businesses that open by the end of the year. Can you still finish by then?” Contractor says, “I don’t know when we can start. It depends on how quickly Tech recovers.” Owner tells Contractor that she is terminating the contract.*

**[Reading] I have to comply with state law.**

**[Reading] I'm already thinking impossibility impracticability you don't have a technician.**

**[Reading]. There's repudiation.**

**[Reading] Remember he contracted for 50 now she's going to have to pay 60 that's a $10,000 damage.**

**[Reading] Let's look at call one. Can owner prevail in her lawsuit against contractors. We're trying to address the contract. They told you there was a valid contract. She wants to change the warehouse into a restaurant and enters into a valid written contract for $35,000 with the two parking spaces.**

**Now the issue is time of the essence clause which on the owner's part is expressed condition. You start by November 17th and complete by January 1st the owner will argue it's an expressed condition. When tech was injured. You breached that expressed condition.**

**Contractor is going to counter it's a expressed promise. They will contended the agreement that timely performance by contractor. That term based on (Inaudible) rather than expressed condition mandating I have to have it done by expressed clause.**

**It's not an expressed condition. It's an expressed promise. They state time is of the essence. Parties have the understanding yes, it is an expressed expression.**

**Contractor has an argument of impossibility. The state law requires insulation of all solar systems to be done by received technician. The one he works with was in an accident. Is it what objectively impossible? Just because this is a technician that works with contract can he get another one? I'm going to argue it's not objective. Somebody else can install it. It will not excuse contractors performance.**

**What about impracticability. He's got the certified technician in a car accident he's not able to install the heat willing system. It's not foreseeable at the time of making the contract. It's not the fault of the contractor. His delay in starting the job. He could hire another technician so there would not be a delay. This will not discharge contractor from installing the insulation of the solar system.**

**The owner said what? They terminated the contract. There's a good argument that owner anticipatory repudiated. Owner finds another person at $60,000. I only need one system. You could argue that contractor that my performance is excused based opinion owner's anticipatory repudiation.**

**Owner can also argue based on November 17th and January 1st timeline that their purpose is frustrated. I want the tax breaks. I didn't know your technician would get in a accident. You can get another party to do it. So that I can get the tax breaks. With frustration of purpose. You can have unforeseeable event ‑‑ accident but your purpose has to be known at the formation stage of the contract. If you look at the facts in the first paragraph it was never mentioned. Did was mentioned in the second paragraph when contractor notified him in regard to tech's accident you know the one time performance is crucial. Yesterday the city announced special tax breaks. It wasn't known then. In this case the owner's purpose is not frustrated.**

**Breach: Owner did breach the contract. I don't think it matters who you put in breach it's how you argue the facts. In this situation it could go either way. In call number one we hit the issues ‑‑ formation was nothing. Express condition versus expressed promise and then excuses of performance. (Inaudible) There's quite a few there. That's your call one.**

**[Reading Call 2] Remember general damages are what? The expectation under the terms of the contract. He expected to pay 50. And he has to pay the actual price of 60. You point out general damages would be the $10,000. Contractors is the breaching partied that is recoverable. She's asking the profits in the delay of opening the restaurant. Owner contracted with contractor timely performance of opening statement the restaurant. It has to be foreseeable at formation stage of the contract. The problem is it's speculative because there's no track record. Owner is taking her warehouse and creating a restaurant. How can you show me lost profit. The owner would not be able to recover lost profit.**

**Call C is the tax reduction. That's a special damage. Why are they testing special damages twice. They has to be something different. Not the same. It has to be reasonably foreseeable at the formation stage of the contract.**

**The tax benefits weren't announced until after the contract was formed. It wasn't necessarily foreseeable at the formation stage of the contract therefore, the tax benefits are not recoverable.**

**Everybody under in regards to call two?**

**[Reading Call 3]... and most exams. We're running out of time what are they really testing in call number 3. [Reading] Obviously this is a third party beneficiary. When you have owner and contractor entered into the contract, owner agree to a lesser price ... When contractor and owner entered into the agreement was entered because of the son. The statute deny arise at the formation stage of the contract. You don't need privitiy.**

**To provide parking spaces it did intend to benefit son based on business. There was intent to benefit. We need to classify is he a creditor donee. A donee is the benefit is entered into for the third party a gift. (Inaudible) we do have a donee. With a donee (Inaudible) what's the majority rule. We need notice and ascent.**

**Based on the facts I don't see the son was told. I don't see any notices sent in regard to the son this is what I agree to, but you can use a minority. The minority says if you bring a lawsuit. Can son prevail in his lawsuit? Oh, he did bring a lawsuit. I can use that minority and his rights can vest and he could see owner and he can bring up any defenses that contractor and owner can bring up against each other.**

**That's another way to vest based on minority view. That's why they gave it to you in the call. Because how would he know.**

**I would say out of all four this one was the most difficult. It has your conditions and excuses. It was testing your knowledge in regards to the damages. I did tell you they like to test damages. Remedies.**

**Some did see. But they didn't get to the vesting. That's worth the most point value. I have no vesting unless your rights do vest.**

**Any questions on question number four.**

**I would say out of the four that one was its toughest. I want you to review third party beneficiaries. It's something ripe for testing. Go over it and make sure you have a good understanding on how to talk about it. To me it's like a can I can have it set up and understand how it comes up in a fact pattern and know what I will say. That's helpful in having steps to go through.**

**Any questions on the ones that we went over tonight. This is the most current. This is how the Baby Bar is testing. It's a good idea to stay current. I would say more of these for what? You have to think about the facts and see what within itself was being tested. You got to be able to identify that so you get the point value you deserve. Rather than just bopping through it and not doing well.**

**At this point I hope you are practicing Multi‑State every day. If you are at the 65‑70 you need to do more. I want you up there in the 70‑75 so I have room for curb. How you are doing in practice you will perform that way on the Baby Bar.**

**Issue spotting. You need to work on issue spotting and on the weekends people stay you can't finish these in the hour. You got an hour. You got four essays and you got an hour. You cannot run out of the time or you have to learn a short cut of how to get in and get the point value. If you don't answer half the exam, you're out.**

**Next week we will have another Multi‑State lecture to get you fine tuned on the Multi‑State itself. You will be sent out questions. If you have any questions let me know I will go over them with you. I will give you an overview of how to go over Multi‑State. Before I say good night does anybody have any further questions? If anything does come up feel free to shoot me an email at jolly dot Taft EDU. You all have a good night.**