Taft University, School of Law

MBE Review

April 3, 2018 6:00 - 7:00 p.m.

INSTRUCTOR: Don't make assumptions. Break it apart so one word can change the answer. For example, if I said that Joe had an a friend named Mary and he hurled a wallet at her; and you can see he commits a battery or assault, that one word, "hurled", I can make an inference that he had intent. Versus if I changed the word to "toss", that changes everything. That's something I want you to be prepared for, and also read the facts that make sense. You want to break that apart. Look for operative language in the pattern. The fact pattern often turns around the details and facts. You need to learn what is relevant and irrelevant. Most factors -- they are going to make you look in a different direction, so you need to break it apart.

The best way to read a multiple choice question is always start with the stem part of the multiple question. This will do a couple things for you, it will narrow down a subject. They are mixed. If you read the stem, you should have a general understanding of what is tort and what is contracts or crime. You should narrow down the specific question they are testing. So "guilty", or "battery", and, I know the crime. So I will break apart the elements and see what they are playing at issue. So I know that before we go into the total fact pattern.

Now in regards to -- now if you read, obviously, the stem, then you want to read the facts. And then read the fact pattern carefully, mark it up. If you see a contract question: Joe and Mary are in a contract where they are buying a car. Did we have an offer? An acceptance? A consideration? Don't make the assumption that it's valid right off the bat. We make an assumption that it's a valid contract, which we should have done, guess what, the examiners know this and guess which answer they'll have before you? We want to make sure to break it apart. Make sure you are answering the question. So you want to break it apart.

All right. Now in regards to the general rules. Number One, do not assume facts. Don't make the problem harder than what it is. Keep everything simple. If there are multiple ways to determine the question, go straightforward. We make it more complicated than it is because our mindset is, they are trying to trick me -- everyone hear me okay? They are not trying to trick you, make the problems straightforward. Look for triggering facts when you read the example. If you see a statute on the exam, you have to break apart the statute. Look at the statute and determine the elements, break it apart, read the statute carefully.

The problem for students is they don't look at the statute. The examiners know that and they are trying to set us up for failure. Pay attention if they give you statute, that's the problem you are going to use. And you will have to look for the facts.

If the questions is very specific. Say the example is what is the best defense or which claim will succeed. I always read the problem. What does that mean? Say it's a criminal law question, and what is the best defense. I will say, what facts will support the defendant not being guilty? A lot of times when we see the word "defense", what do we do? We went to self-defense. Crime prevention, just because they use the term "defense" doesn't mean it's a true defense. So if I ask what will make the defendant not guilty, I ask the question, what is the actual crime being tested? And also since I'm pointing that out, if you have an answer choice option that knocks out an element of the crime, versus the defense that will succeed, the better answer is knocking out the element of the crime. It's obviously best that the prosecution can't show your case; it shifts. You might show me the defense.

Let's take a tort question which states will the claim succeed. Again, I'll rewrite the fact and ask which will make the case successful on the facts. What is going to support the claim? I have to show the intent. The intention. Intention.

We haven't gotten to the example of Number One yet. We are still looking at the overview. But I will get there. Promise.

Again we will see the question, because there is an answer choice, there is an area you need to learn so you can shortcut your time. Anytime they use, "yes, because", "no, since", they are called "conclusions". They are conclusions, so that means everything after the "since" or "because" is going to be tricky. What does that mean for me? That means I can eliminate. So if they ask you when Joe hit Mary was he mad at her, and you have "yes, because" and "no, because", and I know it's yes, and I determined all the elements are met, I'm going to eliminate two answers right off the bat. Eliminate those two. Don't read them. Why? Because of time. You will get a short period of time. And you will most likely spend a few minutes on it. If you can eliminate the wrong answer choices right off the bat, you will take advantage of that. That will help you in getting the correct answer.

Now let's look at example Number One. Remember what I told you, and this is an example of what we just learned because of the sense of what? They are statements of conclusions. So first you are going to read the question. The call, the question. If Pete is charged with assault, he will be found? Does this call tell me anything? Yes, it did. First is used the word "charging", so do I know the subject matter? I do, it's law, it's criminal law. They don't charge tort, they charge crimes.

So you don't need specific intent for assault criminal law, it's a general intent crime. So I'm going to go through my elements and see if it's supported. Now an assault is defined, what did that tell me? They are going to give me the statute for assault. I will have to apply what they tell me. It's defined as an intent to commit battery. So assault is an attempted battery, isn't it?

What are the elements based on the statute? Let's see, this is what hurts people because they will see attempt, what do you need for attempt? Specific intent. So substantial step, preparation, perpetration. So I'm looking at my multiple choice, I want to make sure I go through the facts and show how they are supported. If not, then we have a statute. That's important, you have to break it apart.

Now let's read the scenario. As Pete was walking down Maine Street, he dropped his cell phone. As he went to grab the phone while in the process of dropping to the ground he hit Mary, who was jogging down the street, in the butt. And she thought Pete was being fresh and pushed him away. If Pete was charged with assault. I have to remember I'm looking at that statute. What do I need to show? Specific intent, substantial step. Apparentibility. Preparation. I have to break those apart. When you take a multiple state question, do I understand what they put at issue? The statute, yes. But of the attempt elements I just dissected you have to determine -- I call these three steps. What is at issue? I see in the attempt, what would be in the attempt that is being tested here? In specific intent, preparation versus perpetration.

And it looks like based on these facts, it's intent, why? Because he dropped his cell phone and he went to grab it. For intent crime, he needed specific intent. Did he have specific intent to assault Mary? Again you can make an inference based on the facts. He dropped his phone. And he didn't even know she was there. There is nothing to show he had a specific intent to touch her, and that's a reasonable inference I can make. So based to the fact I see, the elements they are testing specific intent.

This is crimes too, remember. You could have different a scenario if we were dealing with a tort issue. We are looking for the issue of specific intent. Did he have specific intent to assault Mary?

So we are honing in on what this question is testing. It's testing statute. Does that make sense? So now in regards to my answer choices, will he be guilty or charged with assault? If your answer is guilty or not guilty, do I find he is going to be guilty or not guilty? Since I feel the facts don't support specific intent, I'm going to say he is not guilty. So I can eliminate answer choice A and B, why? Because it's "guilty, because". So I know everything after the because is a conclusion, so I will not read answers choices A and B. So that will lead you to answer choices C and D that you have to read.

So look at answer choice C, "not guilty, because he had no intent to touch Mary." That looks good. D is, "not guilty because he did not intend to touch Mary." Which is the better answer choice? So you are looking at the answer choices, right? We have two we can do by process of elimination, and get rid of it all together because we know he is not guilty. So we are modified to the answers C and D, but what is the better of the two? And how do I know which one? What is being tested here? Intent, so which one really goes to the element for attempt? And that has to be option choice C. He had no intent. No intent because they are testing intent. So C, is even though it's subtle, is the best answer.

If you look at all the answers, the statute says that assault is defined as intent to commit battery. So you might be thinking tort and they will toss in a few hazards to making you make mistakes in regards to tort or questions of crime. So it's easy to slip. Criminal law is the one of the lowest scores on the test questions because people fall into the trap. So you have to pay attention. You can see why A is incorrect. Apprehension is not part of the statute. What is the mens rea statute? Specific intent. So you should be aware of a general intent. So C, "not guilty, because he had no intent" goes to the mens rea because it goes to specific intent and C doesn't have specific language. If you can pick up in the answer choices, like in the question earlier today. If I can pick actual verbiage from the law itself. He didn't have language or a statement to the fact that he didn't intend to do it.

So if you have a choice between factually correct and legally correct, the answer is darn good and pretty, but it doesn't observe the law. So you will have the better answer choice. Legalese is the one you will choose. We are choosing the best answer. The best answer based on the statute is the one is the better choice.

A lot of students notify me they are frustrated. The more you practice and break it apart and understand how the concepts are tested, the better off you will be, and you will get it. The only way to get it is by practice.

Again, we see the modifier because of the, since, you know the way they will jump to guilty or not, liable or not. Eliminate two answers right off the bat.

Any questions about what we just went through. There are other modifiers that they give you in the choices. "If" and "unless". So when you see a question using "if" as a modifier, remember, everything after the "if" must be true. What did I just say? When you see an answer choice using "if" as a modifier, everything after the word "if" must be true.

Now for answer choices using "unless" as a modifier, these are tricky. The best way to attack this is to rewrite the answer. To me it's like a negative, "yes, unless." So if they give you "no, unless", I cross out "no, unless", and I write "yes, if", because everything after the "yes" has to be true. So a lot of times after the "yes", they add a fact that changes everything. So the one we just went through, if I say, "not guilty", if we are putting in regards to not guilty, "no, unless", and I change that to "yes, if", he had a specific intent, that will change your answer choice. So pay attention. If it's "no unless", you will cross that out and write "yes, if"; if it's "yes, unless", cross that out and put "no, if." Everything after the if must be true. That will be work for a question with, "yes, unless" as a modifier. They will try to confuse you.

There is real pressure of the exam. We want to use as many tools as we can.

Remember Sam asserts a claim based on misrepresentation against Tammy, will Sam prevail? Do we know it's torts? Sam is asserting a claim against Tammy, so we know it's civil and it's misrepresentation against her. So what? So you can have a -- you can have false misrepresentation of material fact to a third party. So I have a general understanding of the elements, now I'm ready to what? Break apart the elements. In the example, I will see if the elements are supported. So you need to write a statement. So if I see this shows intent or publication, so I will break that apart.

So Tammy is a chemical engineer and has no connection to Chemco. So she sees a particular compound is part of its assets. The asset was listed at $100,000, and she knew that the compound was in short supply and that the current value was a million dollars. So if the true value of Chemco was known, the stock share would sell for $30 not $6. So will she be guilty or liable? You need to show a false representation of a material fact. Sam sold it to her. What element in the misrepresentation should we focus on? You can't go there and think misrepresentation, you have to hone in on what they are testing. She goes in and makes an offer, she doesn't make a representation. She doesn't have an fiduciary obligation. So it looks like they are testing or narrowing it down to was there representation at all. Will she be justified? We don't know. A says, "yes, because she knew the true value of the inventory." So we have the misrepresentation. Is Sam going to prevail? When we go through the actual element, we see she knew the true value, she has no relationship, there is no connection between her and Chemco. So there is no obligation to disclose, so we eliminate A. So everything after the "if" must be true. She didn't inform Sam about the inventory. Does she have an obligation to inform Sam about the true value of the inventory? There is no fact that she has a duty because she has no connection to Chemco. If she was an officer or director, it may be a different story. C says, "no, unless." What did we say about those type of qualifiers? I put in, "yes, if," and I put everything after the if must be true. If I read C to read yes, if Tammy told Sam it was not worth more than $6 a share, would that be a good answer? Yes, because that means she made a good representation. D says "no, if", so then everything after the "if" must be true. What are they testing you on? Did she make a representation? So we know D doesn't go to that. D can only help if it shows she didn't rely on that. So I know C is the best answer choice here because D goes to something else.

They are testing to whether there is misrepresentation. She can't misrepresent a company she doesn't work for. There is no duty that would require her to disclose. We have to look at the relationship so I don't have to disclose what I know. It's like when somebody comes and offers to buy your property. They don't have to disclose what they know.

If you are taking a multiple state question, it's important that you find the rules, that is, go through the element. In this case, it's misrepresentation. But what is the element or issue that is being tested? That's important, otherwise you may be too broad. You have to make sure we break that apart, and again, know what is being tested.

So look at example Number Three. See if we are getting the contents. Go to the question in question.

Tillie is a member of the Children of the Earth. The subject matter here is obviously torts. Going back to Example Two, if you picked D, you didn't break apart the elements. You have to go back and do that. You have to or you will get the second best answer choice. It will come with practice. You have to hone in the issue they are testing on. The more examples they give, there are so many examples I can give regarding particular elements.

What is false imprisonment? This is psychological confinement of another. If you weren't aware of it, you weren't damaging. If you are aware and were damaged, then you can recover.

Tillie was a member of the Children of the Earth; the leader Raj, knew that Tillie was a paranoid schizophrenic, and accused her of being disloyal to her fellow brothers and sisters. She fled and returned home to her parents that evening. Raj decided to employ a last ditch effort to get her to return. He had a billboard that read: "Tillie, the Children of the Earth command your return." Fearful that she would be abducted by her form brothers and sisters, she refused to leave her house.

It says, "recover, since", "recover since", "not recover", "not recover". I should be able to eliminate two. Which two can I eliminate? If you didn't break apart your elements, you probably jumped on the obvious. You have to satisfy each of the elements based on the facts. Do they have the actual intent to keep her at home? The answer is no, they want her out. The intent is lacking, so I can get rid of options A and B, and go to C. C says, "not recover since the defendants didn't intend for her to be confined to home." I don't like word "intend" here. These aren't very strong answers, but C is the best answer because it has the answer that they had no intent. Versus D is wrong, why? Because she is under no constraints. She didn't have to be because they had her psychologically confined.

This is how you need to break apart the elements to make sure the facts support the false imprisonment. If you don't do this, guess what? You will pick B. That's how they test. It's important to break it apart. At first this takes a long time, but eventually it won't, it takes a matter of seconds. Because you will get better at breaking it apart. The more you have a modifier -- if I know you will recover or not recover. You know which way the potential will go, if you have a "since" or "because", you know everything after that will be a conclusion. If I know she is not going to recover, I can get rid of B and D because they have "since". This will save you time.

Everybody have a general feel of how you are going to use qualifiers, and the "since" and "if", and "no, unless", and how you are going to change it?

Let's look at the test questions I gave you. I believe there are six. And we'll look at them together. First, you will read the call. This one, Question One, says, "may Thomas bring a lawsuit now?" You will see this on the baby bar. I already know what the issue is. Let's read the facts, some of them (reading) the agreement was for $25,000 for the evening. Mozart was popular and Thomas knew he would pack the nightclub. On December 29, Mozart told him he got a better offer and would not be playing. What is the issue? What they are testing is contracts. Subject matter. Breach. You need an expressed repudiation. And the contract must be in executory stages, that means neither of us has started performance or one of us has not fully purchased. It is a stage, if it's executory stages, then you can sue now, you don't have to wait until you perform. What two can we eliminate? A and B, because he can bring the lawsuit now. Thirty seconds will save me time. Option C says, "yes, because Mozart repudiated the contract," and D, "Thomas may lose profit." That may be true in fact but not in law.

So again, C is correct because you need a contract to be in executory stages, and you need words of express repudiation which exist here. So I know the document satisfies, so we know yes, he can. So if I change the facts here and told you that Mozart entered into the contract to play and he paid half the payment now. Now we have one party that has partially performed. And we now know both sides started performance. If I paid the whole amount, that is the rule. That is always tested because people don't know what executory contract means.

That's Question One. If you have questions let me know.

Question Number Two. Again, read the question. "The most serious crime that Biff could be convicted of is" -- I know the subject matter is crime. So the most serious, it's going to be the one to choose. Now it's based on the elements supported. Biff goes to Jackson's house at 3:30 p.m. intending to break in and take the TV. He finds the door wide open and he walks in and takes the TV. Do we know without looking? Remember on the time is 3:30 p.m. Now we are talking about common law. We need nighttime, breaking, entering, dwelling house of another, with the specific intent to commit a felony. We know it's not nighttime, the door was open so there was no breaking. He did go take the TV. No one is home, so it was not by force or intimidation. It was not by force, it was taking away the property of another with the specific intent. He went in to take it and left.

It looks like we have a larceny. So it's not a robbery. So larceny looks good. There was no force or intimidation. Embezzlement means you need what? You are not trusted by that person. So A has to be the correct answer. We want to pay attention and make sure you apply common law. They will have to tell you, there is no answer choices that go to common law. You have to apply the common law principles. For question Number Two, A is the only answer.

 You see how we just what? Broke apart elements. You have to break them apart and make sure they are supported. You cannot look at them as a whole or you will get the wrong answer choice.

So question Number Three. Read the call. It says, "charged with arson under most statutes," it will most likely be of modern statutes. He is charged with arson under modern statutes, meaning I'm applying common law. "Mel is surrounded by flammable chemicals and steps outside to take an as cigarette break." So he burns down the garage. Will he be convicted or acquitted? What do you need for arson? So the mens rea is maliciousness, burning of a structure. So modernly, will he be convicted or acquitted? So he fell asleep, so I feel he will be acquitted. I may go A, "convict, because". Let's read them: B says, "acquitted, because he didn't intend to burn down a dwelling." That's language for common law. B is common law too, and C, that's perfect. That goes to the statute, modernly. Again there are calls testing modern law. Unless they are changing, if they are testing common law. Of the four choices, what is the best? We know he can't convict because why burn down a garage, it's not a dwelling. But it's his own property, in common law you can't burn your own dwelling. That would be a better answer choice in that case. You have to pay attention to what they are looking at. If I took out the mens rea and I want to look at common law, the best answer is, you can't burn down your own property. Anything down inadvertently, it's common law. The correct answer for Number Three is D because of the modern law statute that you are supposed to apply.

As to choice B for common law, D would not be best because he didn't burn down the dwelling, it's better because it's his own property. That's a better choice. And garage could be attached to the house, so that again would mean C is the better answer choice.

Let's look at question Number Four. Is the man guilty of murder? That's a loaded question. I want you to apply an approach. You have intent to kill and cause great bodily harm and there are four ways to do murder. If you see a question like this, I want you to break apart facts and see which way I could show malice. You want to determine what they are really testing here. In this one, a man went into a high school and took an unattended backpack, what is the crime? Larceny. As he drove his car through the parking lot, sufficient mens rea, he hit and killed a student in the parking lot. Did he have an intent to kill? Or cause bodily harm? No, it was an accident. He was driving slowly.

What about felony murder rule? He was in the commission of a larceny. But it was not an inherently dangerous felony. Number one, it has to be collateral to the murder. So burglary arson, rape, kidnapping, I don't see anything here, so he is committing a larceny. So the murder, the death, did result from the commission of a felony.

So now I'm looking at the answer choices, I just narrowed it down as to what they are testing. So I generally look at the choices until I narrow it down to the issue itself of what is being tested. So it says, A, "no, because", C, "yes, because", so I could eliminate answer choices C and D, can't I? Right? I will eliminate it, won't read them because I don't want to second guess myself because of time. So answer A says, "no, because the man didn't intend to hit the student." He didn't, agreed, but what is the statement of fact? Did that go to intent to kill or cause bodily harm? Or B, because stealing the backpack was not an inherently dangerous crime? That to me is stronger. It goes to what they are testing which is a felony murder. You have to break it apart and see what they are testing. Did this occur within an inherently dangerous point in time?

It's been tested quite a bit. It's something you want to be aware it. It does come up on the multiple states and on the other states. They are testing, do you understand that it has to be collateral to the other crime? They hit that to see how you analyze facts. So question Number 4, B is the correct answer. See that?

Again the more you can break this apart, I promise you they get easier and easier. And you get a better understanding of how they test. And again, you are seeing murder or negligence, but we have to hone it in and see what theory is being tested.

Let look at Question Number Five. I again, I start with the stem. If Liz is suing Wong because she is most likely -- you know it's torts. That helps you because your mind set is in torts before you start reading the question. So your mind is all calmed down, and I can see it's torts and I can check to see what is being tested here. Liz and her boyfriend were eating at the Chinese restaurant and she got up to go to the bathroom. She went past a table where Elliot was seated and she slipped and fell on the floor. Do you think she has suing? So I'm thinking negligence, duty breach, causation, damages. When she fell, her head struck the serving tray in the aisle. She suffered a severe concussion. Elliot knew the egg roll was on the floor but he didn't warn Liz -- so you have to eliminate based on what? Recover A and B; "not recover unless," so I have to cross out and "recover if", "not recover if". So it looks like, I can't really eliminate. I'm going to have to read all the answer choices. So let's look at answer choice A: "Recover because the egg roll on the floor constituted a dangerous condition". B says, "recover because the egg roll was on the floor for a substantial amount of time." Do you see what element of negligence is being tested here? Keep reading.

What's wrong with C? It's more of intent. It's a substantial period of time to the floor. Remember you or an invitee, if it's on the floor for a substantial amount of time, you are not doing the job. D, that doesn't matter. The customer is not responsible for things on the floor. So B is the best answer because that goes to duty of the invitee. If it's been there for a substantial period of time, it means you are not doing your duty.

And you can go through the rest of the elements, they didn't do the duty, so they breach. It's conceivable that the customer would slip and recover damages.

If you can't tell, what I tell students to do, once you knew it was negligence, start with the first element, duty, and break it apart, is it special duty or? If you find elements that has to do with duty, most likely, take the hierarchy of your elements, if I can knock out a duty, that's the better choice. If one knew, that is going to go more for intent. Most likely I won't sue for negligence, if he knew and didn't do anything about it, it's more about more about battery.

These are details, you will start picking up whether it's intent or what other elements?

Number Five. On October 1, Arthur offered to sell a tract of land, acceptance was to be no later than October 10th. So you have a deadline. Madison posted his acceptance on the 3rd of October, the acceptance arrived on the 7th. Acceptance versus revocation in your mailbox, I see on October 7th that you actually sent an acceptance on the 3rd, so he actually sent it on the 3rd. We have a valid contract formed even though it arrived on the 7th. On the 4th Arthur sent him a revocation on the 4th. But we already have an acceptance. We know once you have an offer and if I sent an acceptance, that is dispatch. I can being breach of contract.

There are options. A says, there is a valid acceptance of the offer on the day of acceptance. B says, it was revoked by the sale of the land on the 4th. No, because on the 3rd, the contract was formed.

C is incorrect because there is no option here. D is not a true statement. A is based on the mailbox rule. You are going to see this on the baby bar. They are going to trick you. You will see acceptance and revocation and rejection, and you will just have to focus. Watch your time line because sometimes they will go back and basically try trick you and say was the revocation effective? The mailbox rule doesn't apply, there is an option created, if the acceptance is valid if it's received. In this answer, A is correct because the mailbox does not apply because there is no option.

This should give you an understanding of how to process and eliminate wrong answer choices. You want to make sure that you follow the stem and answer the question. You want to break apart the answers. If it's a crime, then you can dissect the elements. If it's frauds, you have to break it apart. You have to dissect it. You should be able to eliminate two answer choices right off the bat. That should be a skill you should already have. If not, we need to work on that and get a quicker pace. And we want to be able to pick the best answer choice. What I want you to do is start practicing multiple choice questions. You want to start studying your torts this week.

If you go through your torts say today and tomorrow, and especially in negligence, start doing multiple states in that area, and what I want you to do is when you miss one, I need you to figure out the why. If I saw this was negligence but I went to answer of proximate cause, and cause, I want to see what the question is, and I want to figure out why I was wrong.

So you want to break that apart. So the next one will be next week, so it will be the 10th of April. When you start recording or keeping a map of your multiple choice questions, you will narrow down specifically what you did wrong. If I said take fifty tort questions and you got 25 right, and you say I don't, I don't know torts down at all. Why bother? You are going to hone in where your weakness is. I have a problem with proximate cause, I don't understand it. Or I thought I understood defamation, but I don't. Do it by your checklist. Don't just dive in and break it apart that way. We need to determine a diagnosis. Otherwise you will be frustrated and you won't know what you are doing wrong.

So what is going to happen at this point, how it's set up, so you know, we will go over the black log next time and will be on torts. What I do is kind of go over, you can give me definitions, but I go over how it comes out, and how it comes up on the test, like I did on false imprisonments, I will point those out to you so you will see the pitfalls and you will know those points. And after we do the lecture, the subset of law, which will be torts, then you will be sent out an answer-question, and there is a practice. And I want to see the essays back and I can pinpoint what we need to work on. And you can shoot me an email as to why is A better than B because you need to understand that. Because if you can't answer that, you will be making the same mistakes. So the facts will be different, but you will see these over and over. That's the issue. Okay.

In regards to the sample questions, we have sample questions here that we will send out every week. If you want more, we have more, go to the Taft website, and we have more questions, and you can click on that and it will tell you, it will have baby bar questions, and some which are from the State Bar of California. Remember those are student answers, they don't have the best black letter law. So some weak or strong, so you have to expect that. And I want you to be aware of that.

So in the executory stages that means neither party has started it or either party has not fully performed. If I start and you didn't it, it's still executory. If I start and fully performed, it's still executory. It's odd. Once you have the black bill odds. Both parties started performance, it's not executory, one party started it's executory and one party fully performed, it's not.

Unless you have questions, I'll say good night. So start practicing, and start working on the timing because you will find that you have a lot of questions in three hours. We will meet next week, April 10th, same time. And we will go to the subject of the torts. And so get that in your mind set. And make sure you can understand the theories I will be discussing.

Shoot me any questions you may have. Have a good night.