Tuesday, August 7, 2018

Taft University, Santa Ana, CA

Baby Bar Mini Series Review, 6:00 to 7:00 p.m.

INSTRUCTOR: We will be starting in approximately five minutes. Make sure you have the multistate lecture that was emailed out to you. That will be your primary focus for tonight's lecture.

Thank you. We will be start the in approximately two minutes.

We will be starting in approximately one minute. Make sure you have the contract multitorts in front of you. Again we will be starting in approximately one minute.

Good evening, welcome. I want to point out a couple things: First, the sessions are recorded. So if you want to go back to one or you can't attend, go to the Taft website and go to the mini series you would like to be listening too. This is Professor Jolley. Put them in the chat box, if you have any questions during this time. Post them in the chat box and I'll be happy to answer them for you.

Good evening and welcome to tonight's lecture. Our primary focus is on tonight's questions. Those of you who have practiced them, you can understand how frustrating they can be. You want to get your strategy down too as you can do well. The best way is to practice. There is no way around -- practice.

The way for the baby bar exam you will have three subjects tested: Torts, contracts, criminal. What you need to understand, say for example, torts -- torts actually if you do the multistate questions in this area, it goes towards the elements leaning toward black letter law.

It is important to break apart the theory to make sure it supports the facts. Versus contracts which depends on reading comprehension. They make us very confused because we don't break it apart and take time to understand what they are asking us, and it's because we worry about the timing.

At this point when you are practicing, we have time. Don't worry about your time now. Master how the issues come up and you can work on the timing closer to the end of September, beginning of October. With crim law, it focuses on the black letter law. If you see it's larceny, where you determine if all the elements are met and where the weaknesses are. So that's where they are testing meaning you deal with the specific intent.

The other thing I see with crim law multiple-choice questions, we don't pay attention to the call. They are going to have a tort answer and the tort answer will be correct if we were applying tort law. But the call dictated the crim law.

It's an objective exam. You will have four answers to choose from. And the subject matter won't be given you, they are mixed. They won't headnote them or give you all 33 torts and then switch to contracts. They are going to alternate. It's your job to determine what subject matter is being tested. They all have the same question value.

The key thing I stress with multiple-choice questions is, one, are when you are taking multiple choice questions, use your checklist. So narrow it down to where you are. If I see a tort question and the theory is negligence, what about negligence are they getting you to focus on. Is it a duty or proximate cause issue. You have to break on down the question and focus on where to choose the correct answer. If I see the issue is negligence, it's theory. Or it's a proximate cause problem and within proximate cause, they are determining whether it's an intervening act. And now I can understand what the question is testing and I should be able to pick the correct answer choice.

Remember, there is really no difference between the essay question and the multiple choice except the four answer choices. It's still the same analytical process. You still have to go through the steps. When we take a multiple-choice question, we tend not to do that, we don't break it apart and you have to. You can't make the assumption there is a larceny or you see that Joe or Mary contracted, you can't make the assumption it's a valid contract. You have to go through the process of seeing if there is an offer and acceptance.

Multiple-choice questions have three parts. You have a root, the stem, and the options which are the answer choices to choose from. When you are reading a multiple-choice question, I want you to read the facts carefully. What I notice is students don't mark up the fact pattern. You mark your essay, you want to break it apart and see what they are telling you. You need to read the question in great detail. If you don't break it apart, I'm going to get something wrong.

Look for operative language. You need to determine in the question what facts are relevant to the issues -- what we are trying to focus on that are relevant to the question. You want the read the stem, the call of question. You want to do this so it can narrow down the specific question. I'm going to read the fact pattern, and with that, in my mindset, I'm looking for murder, for example, and break it apart in my approach. Do we have malice and first-degree or second-degree, and mitigating circumstances. So once you read the call of the question, then you can read the fact pattern and break it apart.

So people break it apart and look at the answers choices, the problem is time. Mark up the fact pattern again from the facts is where the issue arises, so I want to break it apart and see what is tested. The other thing with multiple-choice questions is make sure you are answering the call the question. Sometimes examiners will do a good job in regards to the fact, and you break it apart, and you went left instead of right, and, for example, they are asking you what is the best defense of getting the defendant off, but the call is telling us to find the element that we have a problem with or do we have true defense to get him off, and even though the facts are that he is guilty, but the call is asking for something else. They are trying to lead us in a different direction. I want you to pay attention to the call of the question.

At this point people can ask questions, the only one you can hear is me. If you want to ask a question, post them up there.

Make sure with the multiple states you don't assume facts. You don't want to make the problem harder than it is. Keep it simple. Make it straightforward. Don't make it more complex. So you want to keep is straightforward. You want to look for triggering facts. If you see is a statute on the exam, what should you do? Dissect and break apart the elements of the statute. You want to determine what needs to be proven to show or support how you evaluated the statute. Most students don't determine the statute and determine what needs to be supported to show you did evaluate the statute or not. You have to read the statute carefully. If the question is very specific -- for example, which is the best defense? Or what claim will succeed? You need to focus on the call, maybe even rewrite the call.

For example on a crim law question, I ask which is the best defense? What are we really asking there? What is going to support the defendant not being guilty. I have been to negate an element of the crime or show a true defense that he is going to walk, versus a tort call, saying which claim will succeed. I'm looking at what only claim based on the facts will be supported and succeed. So it's narrowing me down to one. I need to look, is it a nuisance or negligence or whatever it is.

If you see multiple-choice questions in the answer choices "because" or "since", these it are conclusions. So if the answer choice says, "yes, because" or "no, because", this is a good example because everything after that is a conclusion. I can shortcut my time in learning process of elimination. Everything after the "since" or "because" will be true. If I can eliminate two answer choices without reading them, that will save me time. Those are conclusions and everything stated after that is going to be true.

Look at example Number 1 in what was sent to you. Remember the first thing we will do is read the stem or the call of the question. That's important. Here it says, (reading question) if Peter is charging with assault, he will be found. Is this a tort or crim law question based on the call? By the term? "Charged" most likely I'm thinking going to criminal. Also it didn't give me another party. So if he is charged with assault against John, but the word "charged" make me think crim law.

There is 14 people here, if you have questions, let me know. You are not alone. And you got me.

Again it's asking for what? The assault. He let's read the facts. An assault is defined as an attempt to commit battery. That's your crime. (Reading the question) again is Pete charging with assault -- he would be found. Most of us are thinking intent, and imminent apprehension. We have to dissect the statute because that defined the assault. What does it give me? Attempt to commit battery. You need to break it apart. Look at it, can you tell me the mens rea.

Those are the elements I need to meet in order to convict on assault. So break it apart and you will see. Going through it, did he have specific intent? If you look at the facts, he was grabbing his phone and he dropped it. It's more negligence not intent. Based on the facts, when they ask me, I will think, guilty or not guilty? So they tell me the intent. So I don't see that he has specific intent. I can determine based on the facts, they are probably testing the intent. Because it's conduct was more negligent standard. Did he have the intent to assault Mary? Now is guilty or not? If you look at the answers, A and B, say "guilty because", and C is D say "not guilty because". And I stated to you earlier, if I have the term "because", right, everything after is basically a conclusion. I can eliminate two right off the bat. And here I say he is not guilty. So I will not read answer choices A and B, and read answer choices C and D. Let's go through them to we can eliminate them by process.

A, guilty because he caused apprehension in Mary. Well, I don't see any facts to support apprehension. Because the statute stays specific intent, apparent ability -- are any of the elements based on the answer choice? The answer is no. We also narrow down what? Answer A only show us apprehension. That's an element requiring intent. That doesn't require that. With attempt -- they like to test that one by the way.

B says, guilty because he should have aware of people around him. What kind of intent is that? You need specific intent pursuant to the statute. B is out.

C, not guilty because he had no intent to touch Mary. Did he have the specific intent? It looks like it was inadvertent. So C seems good. But I'll read D. Not guilty because he didn't intend to touch Mary. D sounds good too. What is the best answer choice? Truly C and D are both correct. How do I know which one to select? If I can tag on an, element which is intent, that's a better answer choice than the one that is factually correct. C is the better answer choice because it goes to the intent element. That's the element of the statute. Did he have the specific intent, versus D is factual. That's how they test.

If I can pick a legally correct answer choice that's the better choice on the test. For Example 1, C is the best answer choice. See that? Understand why? C is the best choice not the intended -- we are looking at the best answer. Which again two or correct, one is better than the other.

Look at another modifier, "if" and "

unless". If "if" is the modifier, everything after the "if" is true, if they use if as modifier. Is he guilty, yes, if, everything after the "if" must be true. It can't be a false statement. If you are using the modifier "unless" -- the best way to attack these is to rewrite the question. If they say guilty, or is he guilty, yes unless -- and they give you a statement because he had no intent. Well then I'm going to put -- no, if he had no intent -- and see if that statement is true. Change an unless question to an if question. If it's no unless, I make it yes, if. If it's yes, unless, I make it no if. Everything after the if has to be true. This can be a little tricky, but break it apart and you won't falter. So yes, if. We will go through a couple of those so you can get a good understanding. Those are highly testable.

So what you are going to do is read the call. On Number 2, (reading the question) now again, you are on the baby bar. What's the subject matter? I see Sam against Tammy I'm thinking tort. I have a plaintiff and defendant. Before I read the facts, what do you need to show for false representation? Of course, the facts state Tammy is a chemical engineer, she has no connection to Chemco. (Reading the question) again they gave me the tort. So I need to break apart the elements. What do you think they are testing here? We see what is being tested here. Will she be responsible for the tort of misrepresentation? If you look at answer A, it's yes because; that's conclusion, and B is yes, if, so everything after the if is true. So C is no, unless. So D says no, if, so everything after the if has to be true.

Let's go through them. We have a modifier. And based on misrepresentation how is he going to prevail? We need to see what? The false representation. They told she has no connection with Chemco. She has no responsibility to disclose this. Get rid of A right off the bat. B has a modifier. Everything after if has to be true. Again go through the elements. She has to make a false statement. She didn't make a statement. And if she had a responsibility, she is not an officer.

C is no, unless. So cross that out and put yes, if, and everything after the comma has to be true. (Reading) oh, that shows she made a representation which would be false because she is representing its value and she knows its true value. So I like C. And D has a modifier, so everything after the if must be true. Okay, well, Sam should have known. But we are looking at misrepresentation. So it doesn't go to the issue or element where she made a representation where she relied and sold the stock. So we took the no and unless and rewrote it. So everything after the if must be true.

The key thing to remember especially in tort and crim law, break apart the elements and go through the rule; don't make assumptions, you have to make sure what is be tested. Determine the issue, misrepresentation but what within it. What is the inner element what is being tested? That's the step you need to get to. If you don't get to that, you will pick the second best answer. You have to go it step further and see what is in the issue that is being tested.

Look at example Number 3. Always read the call. (Reading) if an action for false imprisonment -- it has to be tort. They told me false imprisonment. You need intent, and you have the elements. Now I'm ready to read the facts and break it apart. We are on example Number 3. (Reading example) again we need to show intent, physical confinement of another. What element do you think they are testing here? Can we eliminate it? Anybody? Right? I see the physical or psychological confinement. He wants her to return.

A and B has a modifier "since". So C and D, will not recover since. So you should be able to eliminate two answers choices. A and B, I can eliminate because I feel what they are testing here. The elements that are lacking is he has no intent. Raj wants her out, not kept in the house. So I'll answer it down to answer C and D.

(Reading C) I don't like the fact didn't intend, it's a statement of fact, so I'll put a plus there. (Reading D) has to be C. They are both bad answers, but C goes to the answer more. They had no intent, but the process C has to be the best answer because it's closest that negates the elements of intent. A lot of times people will find B is the right answer because Raj knew she was a paranoid schizophrenic. But elements are missing. Make sure you can eliminate the wrong answers.

I know some students have a tendency to pick B because they jump in because they see psychological confinement. You have to break it apart and dissect it. Focus on the elements and break it apart. And I want you to hone in on the particular theory, what are they focussing on? If you are honing in on negligence, that's too broad. It's a duty, but what type of duty are they testing? You need to break it apart.

I also recommend you start plugging this back into your checklist. Especially if I miss a question. If you can relate it back to your checklist with an example, you won't forget it. So we tend to read them and say I know that, but by plugging back in the checklist weekly, it will stick and we will have a better understanding.

So let's look a question Number 1 together and see what we can eliminate right off the bat. Remember the first thing you will do is always read the call of the question. What's interesting is the more you practice this is that soon you will see that they test this all the time. So you will be able to hone in on the question quickly.

(Reading the example) it states here is question Number 1 (reading) what's the issue here? We see it's an anticipatory breach? Can you bring the lawsuit now or do you have to wait and see? You need to break apart your elements, what do you need to show? There is a repudiation. Express. And you need to show the contract is in executory stages. Neither party started performance or neither party has performed. It's in executory stages.

The other element and repudiation. That looks express. It looks like he can bring the lawsuit now. Now I can look at the four options and see if you can eliminate. Can he bring now? I'm saying yes, so look at A and B. A and B say no since, so everything has to be a conclusion after since. So that leaves me the answer choices C and D. Let's look a C, yes, because he repudiated the contract. And D says Thomas will lose profit. That doesn't matter. We are looking at the repudiation; the need for the contract to be in executory stages, and based on the facts we have that supported, so yes, C is correct. He repudiated the contract. I guarantee you will see a question like this. They like to bring this executory breach because students don't understand the problem. This is one to understand how it works because again they always test it.

For Question 1, C is correct. Again if you have questions on this let me know.

Question Number 2. (Reading) what I'm going to do is look to the facts and based on the crimes I'm seeing, see which one is supported and the most serious. If I have larceny versus robbery, robbery is more serious. (Reading) he is intending to break in, so that goes to intent I know he has specific intent. It's daytime, not nighttime. Burglary is out. When he arrived the door is wide open, that supports there is no breaking for burglary. He walks in and takes the TV. What do we need to do? We need to look at the crimes they are telling me and I want to break apart the elements and see the elements to support the facts.

(Reading) it's a carrying away, it belongs to another, and is there a specific intent. He broke in. So I'm going to put a plus by A. Robbery is same as larceny except with force, fear, and you have to be present. If you were present and you left, it's not a robbery. You have to be present. Burglary, it was 3:30 p.m. and the door was open. I can get rid of burglary. Embezzlement. You need custody. So by process, it has to be A.

You want to go through the elements and that's going to tell you the answer. That's how simple it can be. You have to break it apart and make sure the facts support the elements. They know you won't. And then you will pick the wrong answer choice. So A is the correct answer. Why is it larceny versus burglary? Remember you are looking at common law. On the multiple-choice questions, you have to go through common law unless the question dictated otherwise. So modern law, would be here, but in the multistates you are focusing on common law. So A is the best answer choice.

So question Number 3. What do we do? Start with the call of the question. It says here, charges with arson -- Mel will be -- we are looking at arson. (Reading the question) what's the trick here? Will he be convicted or not? They are telling you under modern statutes for arson. It's what? The malicious burning of a dwelling house of another. So it's a garage, so it's modern statutes, I'm going to look to can he be convicted or not? Was he malicious? Well, he fell asleep, I don't see that. So I don't need a structure dwelling, it's garage, it will work. But I feel he will be acquitted because I don't have the malice standard. I can get rid of A. B, C, and D say, "acquitted", so I will have to read them. So I can eliminate only one answer choice. B says he didn't burn down a dwelling. I have to make sure I follow the call of the question. And the call says modern statutes. C says, acquitted because the property was his own. That's true. But the law is modern. D, D has to be correct because the call of the question says modern.

Say I change the call on you, it says, charging with arson under common law. What would your best answer choice be? I most likely go with acquitted because it's his own property, and he didn't burn down a dwelling. That's a stronger answer choice versus B, so I will say C again, it's going a dwelling house of another. And the garage was his own property. Again D is the correct answer for 3, why? Because the call was modern. We are looking at modern law, so that gives you an example. So C.

Question Number 4. Is the man guilty of murder? When you see this, obviously you should be applying your what? Your murder approach. So think of it and break it apart pursuant to the facts. Look for malice, malice is intent to kill, intent to cause bodily harm, wanton and reckless conduct.

(Reading the question) what is that? If you took a backpack, what crime is that? Larceny, right? (Reading) let's look mens rea. Did he have the intent to kill? He is driving slowly and it says he accidental hit, no. So they told you accidental. He was driving slowly. So even though he was in the commission of larceny. He was driving slowly. How about the felony murder rule? The issue could be is he in the commission of an inherently dangerous felony? Looks like they are testing the felony murder rule. They have tested on this, you have the to determine that the murder occurred during an inherently dangerous felony.

So first, is larceny an inherently dangerous felony? Remember those. Go to the answer choices. We have A and B say, no, because, they are conclusions. And C and D say, yes, because -- are conclusions. You can eliminate two right off the bat. The only thing we can argue is felony murder, which larceny is not. So I feel he is going to be acquitted. We are looking at the murder approach, not manslaughter. We are looking at murder based on the call. So I would eliminate answer choices C and D. Look at A. No, because the man did not intend to hit the student. Does that support the felony murder rule? No, it's not a good answer choice. B looks good.

Another way they test this, and I want you to be aware it -- say he was committing a robbery. That is an inherently dangerous felony. If he is driving away slowly and a kid darts out from behind a parked car. It is inherently part of the felony. He is going slow and knows who he is. You have to be aware of it. He is guilty the larceny, but not murder. The call dictated murder. If they dictated murder or a lesser included offense, then you may have an argument. Look to reckless conduct, if the answer is yes, I might find involuntary manslaughter. I don't see that wanton or reckless, or criminally negligent. So if they changed the call, we would still have the statement, no, he is not guilty. You have to break apart the facts.

If you see murder being tested, do you know if it's murder in the second-degree or involuntary manslaughter? It's factually factual. If I tell you today after I teach. I'm driving home and I'm in a hurry, and I'm going ninety miles an hour in a school zone and I hit a child. Is that murder in the second-degree is or involuntary manslaughter? That would be involuntary manslaughter. I told you, after I left here. It's the evening. So based on the facts, children are not in school in the evening. If you look at the facts someone shoots a gun in the air, you see the same fact pattern, you will see him guilty of second-degree murder or involuntary? How do know if one told you it's an urban area, it's voluntary. But in a rural area, it's involuntary.

I want you to plug the facts back into your checklist so you understand. Why did I make the wrong turn. So you can learn from your mistake and you won't make it again. That's what I did in practice, I missed it because I always said everything was murder two.

Let's go to question Number 5. (Reading question) we can tell based on the calls is the issue is Liz versus Wong, so it's a tort. (Continues reading) we know Wong is the one in the call. (Continues reading) what do you think the theory is? Probably negligence, right. That's step one. (Continues reading) the first step is to use your checklist and narrow down it is theory that we are suing for is it's negligence. What do you feel in regards to negligence do you think we are trying to sue for. What element? She is an invitee. And as an invitee, Wong has a duty to warn her. It's foreseeable. And she has damages, I feel they are testing the element of duty. He has a duty to inspect and correct. So the issue is how long has the egg roll been on the floor? So B says if, C says not recover, unless. That is going to be changed to what? Recover if. Not recover if. So can I eliminate? Let's say we can't. Let's look at all of them and see. What answer choice goes to specific issue of invitee? A is true but he has to be aware, but if it just happened, we can't hold Wong accountable.

B says it was on the floor for a substantial period of time before the accident. That looks good. Because he had a duty to inspect and warn of dangers. If it's been laying there are awhile I can show he breached. C says recover if. If he knew it was on the floor, are what tort would that be? Intentional. And D says not recover, remember, under your causation. It's foreseeable that customers will knock food on the floor. So B is the correct answer. It's dead set on our issue of duty. And he had a duty of due care and he breached it because he didn't inspect and pick it up.

Question Number 5, does everyone understand why B is correct. Do you see how we honed in and determined the theory and what within the theory was being tested. Okay.

All right. Question Number 6. (Reading) that's pretty ambiguous. (Reading question) this is something you always want to mark up and look what's happening. We have an offer. I don't know if he received it yet. Acceptance was to not be later than October 10. Madison posted his acceptance on the 3rd of October. Let's go back. If he posted his acceptance, and he posted it on the 3rd, I'm thinking mailbox rule. The acceptance arrived October 7th. And it was effective on that date, so I find there is a valid contract between Arthur and Arthur and Madison. So revocation is effective on receipt. If we break it apart we have a valid contract. And they are going to test this. Why? October 1st, he mailed to Madison. And acceptance was communicated. Based on the mailbox rule, and we have conversation and I have a valid contract. So (reads A) that looks true. (Reads B) that's not true because of the acceptance dispatched first (reading C) why? That would be an option which needs to be supported by consideration, so that's not true. (Reads D) no, that's not a true statement because of the mailbox rule. A has to be correct.

This same question can change on you if I told you there was an option. If he received the letter on the 7th, there wouldn't be a contract. You see how I can change things by order and give you an different answer choice. That's how we understand how they test the questions and break it apart. You break it apart and you can say, wait this was an option, and is the mailbox rule doesn't apply to that.

I'll go through a few multistate questions. It shall tell you how to deal with the unless questions. Change them to yes, if. Everything after the if has to be true. You need to break apart the elements and make sure the facts support it. Don't just go in looking at the answer choices, what theory, what is being tested and break it apart. If you don't I'll get you. If it's negligence issue, what within negligence, do you? What about duty? There three steps. You have to break it apart. You should always be able to eliminate two answers. When you miss a multistate question, I want you to ask why. You need to figure that out. Otherwise you will see a similar question and make the same mistake and you won't know why. You have to break it apart.

Look at the answer choices and is determine, why I pick B and it should be C, write that down. Merely reading the answer choices isn't going to do it for you. I will make the same mistake again and again. Why do they say this is the duty owed and I say it wasn't. Break it apart. If you have time, make flashcards. And I like a notebook, and put down where you got it, and I review them weekly. So I get a good understanding of where the mistakes are. I'm sure you have at any a multistate question, and you miss a question, but you have to understand why. What I would too is write out your examples. Write them out. So you don't make the mistake again. The more I can understand how they test the concepts that will breed as you say in the multistates. It's a process, not like something in under grad, are where there is one answer. It doesn't work that way.

It deals with your analysis. You have to go through the process just like in the essay. And for some reason in the multistate we don't do that.

I know we haven't done any black letter law, but you had the questions. And I recommend, and first jump in and do multistates, I would take my check lists. Say I'm doing torts tomorrow night, I feel comfortable in the law, and I will apply multistates in that area. Say you do the multilaw, and you get 25 right. Then you don't know torts. I'm going to pinpoint where my weakness is. Maybe I have a problem with causation. Maybe beyond the intentional torts at all. You will pinpoint what you are going to work on. Once you get through the whole subject matter versus what I call mixed subjects. I recommend you do it in that manner.

I want you to start preparing for the baby bar exam or the bar exam. Review your torts and is substantive law. And you want to issue spot some exams. And then you should be multistate mixed.

The more exposure you get to essays and multiple-choice questions, the better you are going to do. You want to understand how the examiners work.

Any questions?

If anything comes up in preparation, let me know shoot me an email and I'll help however I can.

There are multistate questions and essay questions, pull those, and they are from the baby bar or bar exam and that will help you as well. The more exposure will breed as you say. I look forward to seeing you next week. Review the torts matter. I want you to be aware of how they actually test the concept. And the more you review and understand that, the more that will help you. Good night.

(Concluded 6:59 p.m.)