Tuesday, October 10, 2018

Taft Law SchoolSanta Ana, CA

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

INSTRUCTOR: We will be starting in approximately five minutes. Make sure you have the essay questions that were sent out to you. That will be the primary focus of tonight's lecture. Again we will be start in approximately five minutes. Thank you.

We will be start in approximately three minutes. Make sure you have the three essay questions that were sent out to you it. They are the primary focus of tonight's lecture.

We will be starting in approximately three minutes. Thank you.

We will be starting in approximately two minutes.

We will be starting in approximately one minute.

Welcome to tonight's baby bar mini series. I want to point out a couple things. The sessions are recorded, so if you want to go back in listen to a lecture, you can go to the Taft website and the student section. Any handouts we sent out to you will be posted there as well. And if you have any questions, post them in the chat box and I'll help you however I can.

You are going to be given a set of directions, essay intersections generally what happened when you go to the baby bar the proctor will read this aloud to you. I want to go over these so you have a good idea of what the examiners are saying too. It's the same thing we repeat over and over. And sometimes we feel that that's not what they are looking for you, but they are. Your answers should announce your ability to answer the questions in the question, to determine the difference between the material facts.

How do the facts relate to the issuing meaning what issue is being raised based on the facts, and you are supposed to bring up what's relevant. You should be able to bring up the elements of the law. And you need to support your answer by showing how the facts support whatever theory you are addressing, say battery, how do the facts support the intent or the harmful touchings, you have been to show that based on your analysis to the examiner. You should be able to state the facts in a lawyerlike manner. So you need to identify your issue and give me your rule and show how that issue you are identifying is based on the facts and is supported by the facts in reception relation to the fact.

So again, they don't want you to bring up issues that aren't relevant. It has to be pursuant to the facts. They don't want you to give every issue you know, it has to be relevant to the facts.

You receive little credit if you just restate the facts. And you don't give time to break it apart and look at the elements, this is your answer should be complete but you should not volunteer information or discuss legal doctrines which are not pertinent to the problem. They are telling you bring up relevant issues. How do you know? It's pursuant to the facts. Your job on your examination when you go in there and take it in a couple weeks is to show the examiner you understand the concepts and you are going to show how the elements of what you are addressing is or is not supported by the facts given to you in the examination.

You don't want to bring up non-issues, you want to show the examiners you understand the concepts. By identifying those which the facts raise and you show support by showing how the facts support the elements. They say in the instructions several day of the ways to make sure the students understand the actual concept. That's your job. You want to break it apart.

From the exams sent in, follow your checklist. You want to make sure your negligence, you need duty, breach, proximate cause damages and you look toe defenses. That's your order. So you want to set it up in the hierarchy of the checklist, don't take it out of order. The other thing with the elements or the inner checklist, if you could knock out, say again negligence, you could show there was no duty, but you could show proximate cause is basically destroyed. What's the basic answer choice? It's the hierarchy of your checklist. There is a premise or reason why we set things up in the manner we are doing. So pay attention to that.

Let's go to the first essay question. Remember, I want you to be in good form. In what we have been going through in regards to practice. The first thing you will do is read the call of the question. One, we are all nervous when we take an exam. That should calm me down and I can see what they are asking. And I think our biggest fear in an exam, I won't know anything, I won't know the issue, I won't understand it. Obviously if you read the call of the question, you have an idea, I want you to write out your checklist. Write it on the scratch paper, any abbreviations you come up with, you want to focus on the subject matter which will help you identifying issues. Sometimes under the pressure we see it and don't write it down and think we talked about it and didn't. And a lot of times we see one finish, and you know what, these facts bring up other issues but we never questioned it. If you go back and look at the checklist you may pick up a sub-issue and get more points.

So let's look at the call. (Reading call) in an action for negligence, what is the issue? Is this a general call or specific call? It's very specific in regards to negligence. So at this point I'm writing out negligence. That tells me when I see a very specific call, go look for what elements and/or defenses are they testing. If I read it and it's straightforward and there is duty and breach a causation and damages, probably made a mistake. Because they gave me the theory. Your points are not coming to a definition of negligence. Your point value is going to come from you determining based on the fact what elements are being tested. Meaning the gray areas the arguments we have come up to that is where the point value is going to come from. That is what you need to pay attention to it and that helps me with time.

It says negligence, that's very specific. It says defenses. Remember defenses are two or more and defense can be what? True defenses, for negligence, contributory negligence, comparative or it could be counter arguments. We want to make sure we answer the call. It says, "roofer asserts" and what is the likely outcome. It means the fact that he raises it doesn't mean you will succeed but I have to break it apart.

So once you have a general understanding of the call of the question, and it's a specific call, and we will rook for the elements and based on the facts I'm ready to read the fact pattern. When you read it in the pressure of the exam, you will read one time through and get a good understanding and then mark it up. Because we are not familiar with the facts. The fact pattern they just gave you is new to us. So we need to think about the facts and the relationship, so I can see what is being tested especially sub-issues. So I want you to read it one time through to get a general understanding and then you are ready to mark it up.

Now we will pretend that we read it the first time and now we are ready to mark take up.

(Reading) I see there is a contract between the roofer and Hal, and the relationship is what I pull out here remember I noticed in the call that Ned is bringing the cause of action. One thing that makes me focus on that, what helps me, is when I read the call, I head down on my essay, Ned versus N versus R, I know I understand who the parties are. The first sentence, because I knew Ned was bringing the suit, there is a relationship between the roofer and Hal, how did Hal get in the picture? The reason it is important is remember I taught you if you have a remote plaintiff which we know we are dealing with the theory of negligence. When you see remote plaintiff that's a Cardozo Andrews problem. So I'm thinking of that. That comes based on what? Paying attention to the call. And breaking apart your checklist.

(Continues reading).

Remember I told you break it apart and I see usual practice. It's normal, it's standard in the industry. I'm thinking why are they telling me? Maybe you are in breach. Remember too, the other thing comes to mind, but not at issue here, custom things people do, things that don't create a duty but can. So I am thinking of what they are trying to tell me based on the facts.

(Continues reading) is that a breach based on the failure. It's not enough if for him not to have one. It has to result in harm. If nothing happened other than you didn't put it there, how did you breach? You want to carry it all the way through based on the facts.

As a result, many nails and old roofing materials fell into the grass of the backyard. So we see there is debris falling. At the end of the job, roofer did his best to clean up the yard but missed some of the nails in the grass. Is he in breach? Six months later, see that comma stop. We have a gap in the time period. It says Hal was mowing the lawn, and a nail was propelled into the next-door neighbor's house. How here comes Hal and what is that? We have another party. Remember Ned is suing roofer. So we have another party how did he come into the picture that's the proximate cause problem. So the one that actually caused the nail to propel is Hal is that an intervening act so I know they are testing proximate cause.

So see that, he is walking barefoot. Why are they telling me that? Are you assuming the risk or you contributing to your own injuries? If you are walking down the street you could step in glass or something, but you are in your backyard. Those facts really support for me to bring up a defense. I don't know if it will as you can, but you are walking barefoot. And it's a reasonable inference that you could step on something. But the counterargument is that it's his own backyard. There is your damages. In a call, in an action against roofer for negligence. What is the likely outcome? We know it negligence. We will start with duty. I told you, make sure you use your tools. The first thing you will ask yourself is there a special duty at issue. So is there a statute? Omission to act, land or occupier. Duties to a lesser land. Now I go to the general duty. First one is the reasonable and prudent person rule. Make sure obviously when he is doing a reroofing, everything is picked up, the roofer owes him the duty of cleaning up. Who is the duty owed to? Hal. So remember, we have Ned that is bringing the suit. How can I get a duty over to Ned? The reason I want you to understand this, if you go to the bar website and the exams, they talk about Cardozo Andrews. You went to understand when that is at issue. Do you see how Ned is remote he is not in a relationship between Hal and roofer. That triggers, and that's one argument, the roofer owes it duty to Hal, he is the one at a hired me. Who are you Ned. So can a doze says, you owe a duty to those in the foreseeable zone danger. So I would argue, yes. Versus roofer is going to say, wait, I contracted with Hal, it's his house and backyard. I don't owe a duty to his neighbor he is not foreseeable. Don't care how you conclude, just bring up both sides of the art because Andrews saves the day. You owe a duty to all. You are going to argue that the duty would be owed to him. Argue both sides. It's very rare. I want to make sure you understand what is being triggered. I don't want to scare you but most exams always talk about it but you would be wrong. See the remote plaintiff, that's the key. That's where you will understand it. When there is no relationship between the original parties. How are you in the lawsuit? You won't miss it.

Your big argument there. Remember I toll you element or elements are at issue when you have a specific call. Duty is the big ticket here. Andrews and Cardozo, give both sides. The breach they gave it to me. The fact that Ned got injured shows he was under the standard the care. Do I have your joint tortfeasors, can I use the but for rule? But for Ned stepping on the nail that the roofer didn't pick up, he wouldn't be injured. How about proximate cause? Now we have a problem. Is it foreseeable that if you leave a nail in the grass, that someone could step on it and get injured. But in this case, roofer would argue, it's not foreseeable that he would be mowing the lawn and hits the nail and it goes to the neighbor's yard.

Hal's act of hitting the nail is indirect of roofer, and it's independent of roofer's conduct the negligence of a party is relatively foreseeable. Therefore it will not be liable and you will find in this case that the roofer would be the proximate cause. And the damages they gave you, he sustained injuries so he can recover from his pain and suffering. And you can separate out the medical bills. You can, those are special damages. The call said defenses. I know some of you just left. The call said defenses. I had a counterargument in regard to the duty as well as proximate cause but they told you he was walking barefoot. Can we argue comparative or contributory negligence? Roofer is going to argue, if you has not be been walking barefoot you wouldn't have been injured. Put on some injuries. But he is walking in his own backyard. If you are in your own backyard,ish know what is back there. If I have a pine tree, I can foresee that I could step on a pine cone, but a nail? Also there is a six-month time period. So would I think about the neighbor and that issue. You want to argue both sides. If you bring up contributory negligence. Some people brought up the last clear chance doctrine. It's a plaintiff argument. So if you found that Ned fell below the standard of care. You could bring that up, and roofer wouldn't have gotten embedded and left behind and it wouldn't be in the yard. So the last clear chance doctrine is really an argument by plaintiff to knock out contributory negligence. It doesn't work for comparative. If you talk about contributory negligence, the next is to talk about the last chance. So the reader knows you know how the doctrine works. It shouldn't be argued for comparative.

I want you to do a good job for contributory negligence because we will steal from it for comparative. Head note them separately. But you can bootstrap the argument, as discussed. As discussed. The court will look to how the plaintiff fell below the standard of care. You want to do a very strong job on the contributory negligence so we can steal from it. That will help you.

And assumption of the risk. Assumption of the risk you have to have knowledge and appreciate the danger. So roofer is going to argue you are the one that went barefoot you should have knowledge you could step on things. You should be able to comprehend it's dangerous. And you could step on things, twigs rocks, glass, but it's in his backyard. Did he comprehend that there was nails in his backyard. He didn't have that knowledge based on the circumstances so he didn't have assumption of the risk. So that is no defense.

The point value on the exam would be where? The discussion in regards to duty. Proximate cause and go into your defenses. The other thing to point out in regards to defenses, see how the call said defenses, if you just brought of contributory negligence and is part of the negligence. I know we made a mistake, it's a difference of jurisdiction so I should address the assumption of the risk. If they give me a negligence action and I see defenses I have those three to discuss. And the one I look for is the last chance doctrine. Use the tools. Based to the call. Contributory negligence and comparative are a difference of jurisdiction, I know I'll address the issue of assumption of the risk.

Any questions on question Number 1?

Let's look at question Number 2. Again read the call. This one hurt people because sometimes they might ask specification under the UCC and if you don't know, I tell people take at a step back and use common sense. Maybe I can get credit by backing into it.

(Reading call) that's more narrow, isn't it. What do we know? Breach of the contract. At this point before I read the facts I'll write out my checklist. Also what is nice about the bar examiners. It says "Cotton Company". I know it's UCC you will know based on the facts and, of course, the party's names, that helps you. After you read it through one time through, you are ready to read and dissect and pull out the issues.

(Reading) stop, we know buyer is a merchant. (Reading) that's a good word. Unexpectedly. I ran out and everything stops. You might not know where they are going at this point (reading) he might be insolvent, why is he not paying. There is a question mark.

(Reading) what is this? First, I notice some of you didn't bring take up, even if it's satisfied. This is the statute of frauds. Even if you read the facts, see they fulfill their obligation. You still need to let the examiner know you know. Don't dismisses it in your mind, because there is an exception. You have to let them know you see the exception. (Reading) you want to look to terms. And we have the quantity, and time, identity. Price, very subject matter is the batting. So we have the terms, so this would be construed as an offer. (Reading).

There is your performance. (Reading) see he knew it prior to what? He could have rejected. (Reading) he knew it and still opened it and used it. (Continues reading) when they call and cancelled, what does that mean? Why did he order the batting in the first place? He ordered it to fulfill a contract he had. This raises issues like frustration of purpose and practice ability. They have a relationship. So the fact that they cancelled the order, the only reason he ordered the batting was to fulfill the order. So this would be an argument that buyer would bring up.

(Continues reading) if you sell it that's an issue of a bone fide purchaser. Does the UCC apply? It does. It deals with the transaction of goods so UCC applies. They are dealing with goods of a kind. So both parties are merchants. Your offer, you are going to write this and if you look at the model answer, common law offer first, if it succeeds we are done. Go it fails bring up the distinction. When buyer called us them and said they need this batting, that shows their intent to be bound by contract. We are demonstrating that the large bail is the quantity and the time and the parties and the price and the subject matter. The terms are stated and you made the telephone call so, so based on the facts we have an offer. Common law is satisfied. They go to the issue of acceptance. That shows -- the facts said they delivered. So get in and out. There is no gray area here. And consideration, no gray area. Top dollar in exchange for the bale of batting. So benefit on both sides. There is valid consideration so there is a contract that has been formed. Your job is to understand, a give-me issue, you still have to address it, but I can get in and out. There is no gray area and nothing to argue. Facts basically support the concept. Don't beat a dead horse, get in and out.

Some of you didn't bring you have the issue of frauds. And you were of the mind set that they performed. So we are dealing with a telephone call, it was $5,000 for the batting. And it was oral. And it's not in writing. You want to bring up your exceptions, and I want you to look for more than one if you can. Sometimes you might see there are two exceptions that work or maybe a gray area one. So bring up the next one and take it outside of the purview of the issue.

Buyer accepted delivery, so there is full performance on the cotton company side. So that takes it outside of the statute of frauds. So the contract is enforceable. Next I go to conditions. Is there any express conditions? No. How about implied? Yes. We have implied in law. Constructive conditions. Cotton Company needs to deliver before they pay. Cotton Company has done what? They performed. And they are going to say, the argument of impossibility. It excuses ones performance if the contract becomes objectively -- perform.

So Cotton Company will say, I needed this to fulfill the order that was placed. My whole production shut down. By Sleep Co cancelling the order, it's impossible for me to use the batting. Is it objectively impossible for the buyer to perform? Remember when you are looking at that, no one can perform. Someone can make the mattresses and sell them. So that's not a valid defense. In frustration the purpose, you need an unforeseen event. It has to be contracted for at the time of the parties. And your purpose is destroyed.

The buyer is going to argue that the only reason I needed the batting was the contract. The cancelling was an unforeseeable event. That destroys his purpose because he only wanted to fulfill that obligation with Sleep Co. He didn't make his purpose known to the batting company. So frustration of purpose is not a valid defense. So it doesn't reveal limited liability.

He is paying thirty percent more than his previous distributor of batting. It was not enough to negate the why. He didn't have any excuse not to perform. He will be in breach and then you go through your remedies.

The goods were delivered and accepted by the buyer, so expectation under the terms of the of contract would be the $5,000 they should receive.

Now in regards to call Number 2. Does Cotton Company have the right to reclaim the unused batting? What are the remedies when you find out the buyer is insolvent. There are -- they would have the right, however at the time that they knew of the insolvency. They would have a right to this remedy. You knew going in. The other issue I feel you could have brought up on this exam is the bone fide purchaser, say he sold it to another party. If that is the case does that cut off their remedies because the goods no longer exist. If you have what is called a bona fide remedy, the buyer of the batting paid money, that could cut off their rights.

I want to point out we had the statute of frauds based upon a communication by telephone. This is very rare of how the examiners test. I want you to be aware how they do test because I think it ripe for testing is generally incomplete writings. I could change this one, but the facts that buyer faxed over his purchase order form. And of course Cotton Company faxed back their acceptance. Or nowadays, I emailed back. And you emailed me back. Those would be incomplete writings.

Correct. Insolvency is rare in the essay. It's more likely to show up in the multistates. A lot of your remedies do show up as to prior to the acceptance of goods or after the accepts of goods from buyer seller. These come up on the multistates. They pop up on the essays.

I didn't know any of that, what does common sense tell you should they be able to get goods back. Based on policy if I didn't know you are insolvent, and you still have the goods, I should be able to reclaim them. I should get something. Even though I didn't know the specific rule of law. Using your common sense you can pull out something and get some credit. Versus I don't want to leave it blank.

Absolutely. Just like you see on the last baby bar, your special felony murder law. They pick some nuances, to take you out. That's why I need to go through my checklist and make sure I have an example to show how these come up. If you go back and look at the history, back through these exams, there is something that, this was hard to see. That's again kind of like your bell curve. That makes our bell curve and gets rid of those, we didn't know the issues and there comes my 20 percent pass rate for the baby bar.

That's why I recommend you can through the checklist and have a good understanding of how things come up. It's like you should be aware of the -- UCC. So be prepared.

Any questions on question Number 2?

Number 3. We will go over question Number 3, and there are a couple things to pay attention to, not just the calls but who is doing the acts. Crim law, in regards to the Pinkerton's rules it's highly testable. I want to make sure you understand this, it's going to be there. And make sure how you are going to write it back from the examiners. Call one says what criminal charges, two or more, should be brought against Art and Ben. They gave me two parties. If they are acting in concert. This they give me three parties, we understand it's something different. Pay attention.

Call two, what defense if any do they have. The person who sent this in didn't answer the second call. Before you submit go back and read the call of the question, and make sure you have answered it.

The more essays you review and understand memorizing can set up. It's not plagiarism. The law cannot be plagiarized it's the law. If your definition is the same as mine, that's fine, that's the law. Obviously how we analyze it, and if every single word of yourselves matches that, there is a problem, we don't all say things the same way. Some people because here they use that language, I don't.

Let's go through the facts.

After drinking heavily, comma what should we be thinking there? Intoxication. When you see intoxication, most likely it's voluntary. So diminished capacity, these have a relationship with each other. Especially when my call says defenses. Art then decided to rob an all-night convenience store. What does that make you think of? That's an issue you have a tendency to miss. It's a convenience store, you should be thinking of burglary. You are going to go through common law and if fails you go to modern law. If go in a store and commit a robbery, that's robbery. They drove the truck to the store, entered, yelled, this is a stick up. There is force and intimidation. They discovered that the only person in the store was Mark and Fran, a customer. So they run in brandishing their guns. And there are two people in the store. And art became enraged because she was his girlfriend and then is this provocation? Art announced, "we will chill these lovers out" and load them in the truck.

(Continued reading) we know they moved them. So that's kidnapping. Any movement, the other thing people missed, is they went into to rob, and they didn't take anything yet. So it's robbery or attempted robbery. So then, (continues reading) Ben didn't go along. We need to impute it to him. He took $250 from the cash register when he left the store. When he took that, what is that? It's larceny.

So you got to go back and think, robbery, this is something they test to the multistates, it has to be by force fear and intimidation. They are looked in the fridge. So it's not robbery, versus attempt. And the next day the store manager saw things and called police, and rescues them from the fridge. And Mark died as a result the pneumonia. (Reading) Fran was okay. What does that bring up? Thin skull plaintiff.

I see students that basically, you break it apart in three layers, but if you break it apart, you will see in 20/20, that's high, that's a great improvement. That makes a difference. If you break it apart -- here is step one, two, and three. Go through your layers like you are stating you will get the correct answer choice. So you had an ah-ha moment. Like the lightbulb came on. It's not that easy to get to. But you should be proud you got there.

(Continues reading) we see based on the fact pattern how to set it up. I see they went to the store together, I see the burglary. But the kidnapping and false imprisonment and the murder? I will probably impute that on to Ben. I'll probably separate him out because he didn't do all the conduct. The first issue is conspiracy. I will do a good job on that because I want to steal it when I talk about Ben. There is an agreement between two or more and they are going to rob, so that shows based upon them robbing, it's an unlawful act so I have a conspiracy.

Next, in regards to what happened, I'll talk about burglary. Remember common law first and then if it fails you bring up modern law. Common law you need night time, and dwelling house of another, and the intent to commit a felony. It's an all night store, so it's night. Open to the public, it's a store. However, but the breaking in the dwelling house there is no common law.

Modern, is the fact that they went into the store that was open to the public, but it's not trespatory. You will find we have a modern law burglary. Next, I will talk about the robbery. He did take the $250 from the cash register, so we had a taking and carrying away. But was it by force, fear, or intimidation. Where is Mark and Fran? They are locked in the fridge. You want to point this out, here is the problem, it wasn't by force fear and intimidation. I will fall back on attempt. You will have to have intent and substantial step. So they had the specific intent they went in, and shows a substantial step towards the perpetration of committing a crime but it was without force fear and intimidation, so it's attempt. So you will fall back on attempt. It doesn't come up a lot, but it does come up. So since the robbery is going to fail then you are going to fall back on attempt where there are some points. And you have false imprisonment, and you have kidnapping. There is unlawful movement of another and then go to murder. In regards to murder, do we have -- you need to show malice. Did he have intent to kill. He stated, "we are going to chill these lovers out." He had intent to cause bodily harm. This is a per perpetration. Any. Any felony murder rule, any intent inherently dangerous felonies, what are they? Burglary S arson, rape, robbery, any of these that are what we call an attempt which in this case we had the attempt to robbery will work as well as for the felony murder rule. If you wanted to argue the common law.

We have a counterargument here. He had susceptibility based on the viruses and the cold. We can argue it's not foreseeable. But you can argue the thin skull plaintiff. You take the plaintiff as you find them. He go what? The proximate cause of Mark's death. He is guilty of murder. Is it first-degree? We can ask based on the felony murder rule but he is going to argue, involuntary manslaughter. When a reasonable person would have been enraged they will lose their mental equilibrium. You need some conduct, it's not enough your own belief versus seeing something, that's a type of conduct. It's not going to work. You need some type of action we will not allow this to go mitigated to involuntary manslaughter. Another issue is the attempted robbery of Fran. What was his purpose? Did he have specific intent? I think he could argue either way but it didn't go through. That was all through showing conduct for art. Now we have Ben here. What is the big issue here with Ben? Pinkerton's. Ben did the larceny. We got that. In regards to the kidnapping and false imprisonment, how will we impute that to him? The burglary was foreseeable and the robbery and go through that and get rid of them quickly. The issue is, could he foresee based on the furtherance. Expecting who is going to foresee that when you are robbing a convenience store. You can argue it's foreseeable. That I could lock you in the storage area to make my get way, but the murder I would say that is definitely foreseeable. So you are trying to prevent being captured. The conduct of what he did, but is it foreseeable if you rob a store a murder could result.

Layer, there is battery, that's layer one. And intent is layer two. And what within the intent is being tested that's what she is trying to address. In regards to the confinement -- I'm not sure what you are talking about. All you need is the unlawful intent. I don't need force for false imprisonment. I went to unlawful confinement of another. It doesn't have to have force.

Does everyone understand in regards to Ben. It's going to be there. Is this foreseeable. You have to break apart the crimes for Ben. Why would they give you so many. Make the distinction and break it apart. He took part in regards to the burglary and the attempted robbery. The issue is what about the kidnapping and the false imprisonment and the murder. There is three there. One will fail, one is arguable, and one will succeed.

I call that my three rule that's how I look to it. You have to let them know you understand they are not all the same and argue your foreseeability and furtherance throughout. And students do a poor job and wonder why and it's always tested. So you should do well and get point on it. It will be there. They test it all the time.

In call Number 2, what defenses? I see voluntary intoxication only negated what? Specific intent crimes. So what crimes are specific intent? Well we have a robbery, attempts, what is the issue they are trying to get you to focus it. Were you so intoxicated that you couldn't perform the intent. And the fact that you got there and recognized Mark and Fran, I think you know what you are doing. Make your argument really negates. And he was smart enough to pick up the $250 out the door, so Ben knew what he was doing well.

Again is says defenses. Diminished capacity is the hardest one. But when you see intoxication, look for diminished capacity. Again, is his capacity so diminished they were not fully aware of what they were doing. He recognized Fran and Mark, based on the activities it seems clear that you understand your actions and what you are actually doing. So I'm going to find that it actually fails. So obvious they are not going to get off in regards to the crime being committed.

Everybody understand that? You have any questions on question Number 3?

Some people had questions on the multistates. We are running out of time. A couple things I want to point out in regards to the multistates so you understand them. One key thing is the requirements contract. They are not assignable. But the courts like assignability so they will allow it unless it's disproportionate.. as long as it's the same, you order fifty or fifty-one, that's okay. But if you ordered 00, they won't allow the assignment. The general rule is they allow the assignability. The other question students have in regards to the issue of embezzlement versus larceny. What you need to look for is the time line.

Well, if my employer said, go take this and get the clock fixed and before I take it, I know I'm keeping it. That changes things. I had the intent to take it. So I had larceny, but if I decided on my way to the repair shop, it's embezzlement. That's why I want you to break apart the rules and get a good understanding.

Another question was question 45, what this dealt with, and I'm not sure if you see it on the baby bar, it's on the verge of criminal procedure. It dealt with the defendant bringing up intoxication. He stated that he was so intoxicated he couldn't perform the necessary intent. It was diminished. You have to look to the underlying crime. If he is being charged the burglary or larceny, having the specific intent is an element of the crime and that burden is on the prosecution to prove beyond a reasonable doubt. It's not on the defendant even though I'm saying I'm intoxicated until that prosecution every element of the burglary or robbery, right, beyond a reasonable doubt, it's not my turn. Even if I'm saying I'm intoxicated. The burden is not shifted, yet they have to meet every one of those elements. Make sense.

That could be, but in regards to assignability they like the contract. To keep things going. They like the freedom of contract. Remember, even if the contract says it's not assignable you can still assign it. It doesn't mean you are in breach of contract either. It can make a difference in regards to the actual remedy.

Hopefully you have a good handle as to the last few weeks of what to study. You will be sent out a simulate exam. I would start take four essays back to back for the timing. And have a good understanding. If you run out of time, tell students to go for the jugular. So go to the point value to see what they are testing here. Some of us are faster than others. I need to let the examiners understand what is being tested. If I don't that in the exam, let them know you understand. Look at the parties and break things apart. And see if there is a difference for crim law, if you see three, you know there is pay attention to the call, make sure you answer the call of the question. If the call is basically asking for defenses, like the crim law one, it was a specific call, you can't afford to give up that type of point value. That tells me because of time pressure, we are leaving things out, and we can't do that.

It's very important.

Any questions? In regards to the examiners, it's again they accept what is called an IRAC, it's a narrative without the R, it's I, issue, analysis, and conclusion. This is why I express the general call versus specific. If it's general, it comes down to issue spotting and analysis. That's where the points are. Versus in regards to the specific call, it's all analysis. You don't get point values for seeing an issue.

But students have a tendency not to understand what they are looking at. Make sure you break out and show how the elements are supported. If I leave it out, and as long I bring it back in the analysis. They are restating the facts. You can't do that, you have to show the relationship between the facts and the elements. If I told you that John hit Mary because he was angry at her, and it's battery. And my analysis is the fact that John was angry at her, shows he is acted with intent. So I broke apart the elements and showed how the fact support the elements.

You have to break apart your elements. That's what is important. There is a lot of got an goods answers on the Taft website with prior baby bar questions and answers. If you are running out of time, and sometimes they are, you can go to the I A K always start strong with the exam. Let them know you are strong with the exam. And let them know.

If anything comes up in regards to the preparation, shoot me an email and I'll be happy to help if I can. Keep up your studying and work on the multistates, you have to get the scores up. I'm pleased with that. Break it apart and you will get there. The more you do the stronger you will get.

Best of luck on the up coming baby bar, and if anything comes up, feel free to contact me. Thank you and good luck.

(End 7:02:00 p.m.)