Taft Law School

Electronic Classroom – Baby Bar Mini Series

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04/09/19 6:00 ‑ 7:00 PM

>> INSTRUCTOR: Good evening, everybody. We'll be starting in approximately two minutes. If you can make sure that you have the multistate lecture that was emailed out to you, that will be our primary focus for tonight's lecture. Again, starting in about two minutes. Thank you.

>> INSTRUCTOR: Good even, everybody and welcome to today's baby bar mini series. We'll be starting in approximately one minute. Thank you.

>> INSTRUCTOR: Welcome to to want's baby bar mini series. Our primary focus tonight will be on the multistate lecture that was sent out to you. Kind of give you an idea how to take and attack multiple choice questions. I do want to point out these sessions are recorded so for your convenience, if you ever want to go back and listen to a lecture or if you miss a session you can go to Taft's Web site, sign in to the student section, then click on the Baby Bar mini series and everything will be listed there for you.

If you have any questions, please feel free to post them in and I'll be more than happy to help in any way I can.

The first thing we're gonna focus on, obviously, is multiple choice questions which unfortunately, multiple choice questions for most students are rather difficult. They're hard to do. It's something that comes with practice and understand how the concepts are tested, obviously you'll become more successful. But they aren't straightforward. Especially those of you who've had undergrad with multiple choice. The problem is, there's two correct answers but one is better than the other. So it's not like you're taking a math test where you have multiple choice and you know the actual answer's going to be there. Law's different, and that's what makes it rather hard for students.

Now, on the baby bar you are responsible for torts, contracts, Uniform Commercial Code or the UCC, and crim law. So although consider that three subjects, UCC obviously is a subject you haven't really mastered. That is something ‑‑ I would recommend get ahold of the Gilbert's and look at the rules in there, because it's highly testable. It's called sales for the Uniform Commercial Code. I would recommend you purchase one of those to help you in regards to the preparation for this examination.

Now, in regards to torts. When you see a tort multiple choice question, you'll see a lot of the questions are directed toward elements, the rule of law. They're more of what we call black letter law orients it. The one thing that students don't understand is they're gonna test your knowledge. So in essence if you see a battery or an exam on a multiple choice question, it's not jus do you understand the definition of battery? No. It's do you understand what really is intent? Or we can have the transfer and intent doctrine. Or do you understand really what substantial certainty is to form the intent? They're really gonna test your analytical skills and see if you understand that, even though it is oriented towards the black letter law.

Contracts for baby bar purposes is more difficult for most students. You will find those questions are very demanding on your reading comprehension. The fact patterns you're gonna find are very lengthy. What I would recommend obviously is to break the facts apart. In any multiple choice questions, you want to dissect it. When you're reading it, if you find that the facts support an offer, circle what created the offer and put O off in your column so you know an offer's been created and go from there. Oftentimes we go through a contract multiple choice questions, we make assumptions. We assume that they said there was a contract. Oh, it's valid. They never told you it was valid. You need to pay attention and break things apart. That will help you immensely. That's important. Don't may assumptions and assume that the contract's actually valid, because that's not the case.

And your crim law. You're gonna find your crim law's more focused on the elements, i.e. the black letter law. On the multiple choice exam, what you need to understand it's an objective multiple choice exam where there's four answer choices for you to choose from. The questions you're gonna find on the baby bar are mixed so they're not 33 tort, 33 contract. You won't know. It's your job to read the question and understand what the subject matter that's being tested. Now, all the multiple choice questions are the same point value so you want to answer them. They're scored obviously on the same number of correct and they convert it to a 400‑point scale. No matter what, finish. Even if they start to see a minute left and you have five to go, bubble them in. The better chance ‑‑ the better your odds if you didn't answer 'em, versus at least I guessed something and I might get one or two of them correct. You never know, maybe all of them. You don't leave any blank. That's important obviously to finish the examination. That's why, too, it's important for you to take what we call simulated exams. You want to take 100 multiple choice questions a couple times before you go sit for that baby bar exam. Why? You'll find that three‑hour window goes quickly, and you have to master your timing. That's very important.

Now, when you do take multiple choice exam use your checklist. It's funny how students I don't use it for multistates. I only use it for the essay. Why? A lot of times your checklist will gear you towards the answer especially in contracts. Why? Contracts, you take them in order. If you form a contract there's an offer, a acceptance, and consideration. Obviously there can be what? A counteroffer so the issue's gonna be really a modification. So your checklist will guide and help you as well. Mark up the fact patterns. I can't tell you how many students I talk to they don't mark it up. Why? You want to break it apart so you see what's going on based on the facts, just like you do with an essay question.

To be honest with you, no real difference between essay versus multiple choice. The only difference is what? You have four answer choices versus an essay you have to write 'em all and come to your raw conclusion. So it's the same analytical ability they're testing here.

Your multiple choice questions are comprised of three parts. We have the writ, which is the actual fact pattern; the stem, which is the call of the question; and then the options, which are your answer choices. That's how it's broken apart. Again, when you are taking multiple choice question, read the facts very carefully. The examiners who write these know we don't read in detail. You need to read in detail, and they know we don't so that's how they're gonna test. We'll miss a word or two or misinterpret it, and then they've got us.

Look to the operative language. The fact pattern often turns on the details that are based on the facts. You want to determine what's relevant and what's not relevant in the facts. You want to break that apart. A lot of time, knowing how the human brain works inflammable, flammable. They'll use words like that to confuse us. Or one [inaudible] multistate, they tell you it's a uniformed police officer, and I can't tell you how many people find they're undercover police officer. That's not what it says so you have to really pay attention to the facts, break it apart and see what they're trying to communicate to you. Slow it down and dissect it.

Now, when you read a multiple choice question, I would highly recommend you want to get into the habit now is read the stem, i.e. the call of the question. It's imperative why? A lot of the times it'll narrow you down to the specific subject matter being tested or maybe even the actual issue that's being tested. The other thing when you read it, it could be giving you a direction. Today a student was calling in asking about a multiple state question. I said, because you didn't follow the call, and the call said what is defense best argument? You're looking for a way they can prevail, not the prosecution. So your call kind of dictated you're looking for a way out. You're looking for a defense or something to negate the element of the crime whatever it may be based on that call. So that's important to understand that.

Now, in regards to reading a multistate question, after you read the call of the question then you can read the fact pattern carefully. Mark it up. Break it apart to see what the facts are telling you. Then at that point you should have a very good idea as to what's being tested and you're ready to go look at your answer choices and choose the correct answer.

Now, the general rules that I want you to keep in mind when you're taking a multiple choice question is number one, don't assume the facts. Never, never make any assumption. Don't make the problem harder than it is keep it simple. If there's multiple ways to interpret the question, we'll the call straightforward and not making it more complex, go with the straightforward.

When you are reading a question, you want to look for [inaudible] facts. If you see a statute on the exam, what's that mean? You have to apply the statute. You need to break it apart and determine what it's asking for because that's the elements of the crime or the tort. So you do wanna dissect it and read it carefully to see what's the burden of proof if it's in crim law. Or if it's in torts, what's the prima facia case that needs to be shown based on the statute?

Now, they do know most students when they put a statute on the exam, they don't apply it. I don't know why that is. Most students read it and that's it. We just ignore it in and of itself. If they give you a statute in the fact pattern, break it apart and that is your rule of law. Apply it. A lot of times what's nice about the examiners is what do they do? They'll give you a statute that's something you know, such as murder is, or murder can be established by expressed or implied malice. We generally don't use that language. Malice can be compressed by the intent to kill. Then, of course, implied is by wanton reckless conduct. So they're giving you something that's familiar. You have to follow it. You're stuck in regards to the statute and you want to break it apart. If the question is is very specific, make sure you follow it. So what is the best defense? What are you looking for? What claim will succeed? If you have to, rewrite the call of the question. I usually circle it and say I'm focusing on the defendant, I'm focusing on the plaintiff. Whatever it is. The call dictates. We have a tendency not to answer the call. That happens all the time. A lot of time when students contact me, you didn't follow the call. They went on the opposite side. Their answer would be correct if the call wasn't what it was. That is something that I do want you to pay attention to.

An example, if a crim law question states to you what is the best defense, what are you gonna look at? Well, if I'm looking for a defense, I'm looking at based on the facts I'm gonna be reading, what supports the defendant not being guilty? That means I'm going in there and looking to see if I can negate an element of the crime. Maybe the specific intent or there's got to be a viable defense where he can walk. So based on that call, what's the best defense I wanna negate something and have the defendant prevail. Versus let's say it's a tort call of the question. It says, what claim will succeed? What I'm gonna do is rewrite that. What is the only claim that will succeed? That means, based on the facts, what do I have to pull out? The elements. Whatever claim I'm seeing, whether it's battery or negligence, and make sure based on the facts it supports each and every element. All right?

Seems simplistic, and it is. We got to apply, obviously, our tools that we're learning and make sure we break it apart.

If you see a multiple choice question with what we call modifiers, we need to learn shortcuts. If you see modifiers with the word "because" or "since" in the answer choices, everything after the "because" or "since" are what we call conclusions. This is a way to get usually rid of two answer choices to help you in your process so you just read the other two that you know are basically one of the two that'll be correct. This is to help with your time. If you see, again, your multistate question with a modifier because there's "since" in the answer choice, everything after that is basically conclusion. That means what? Everything after the "because" or "since" is gonna be true.

Look at example No. 1 and see how this kinda works. Now, remember, the first thing you're gonna do is what? Look to the stem, i.e. the call of the question. That's always the first thing we're going to break apart. After you read the call of the question which here: If Pete is charged with assault he will be found ‑‑ and obviously look to the answer choices. Based on the call, he's charged with assault. What am I thinking? Thinking of elements of assault. He says "charged with assault". Am I in torts? Or I'm in crim law? Well, generally we don't use the language "charged". I know I'm in crim law. That's important. You see a lot of students on the baby bar is mix up torts and crim law. That will hurt you, so pay attention to the call. Even though there's similarities between the two, you gotta pay attention to the call. So am I answering this pursuant to crim law or tort law? Pay attention.

Now I'm ready to read the facts. "In the state of X, an assault is defined as an attempt to commit a battery." They gave me a statute. What is my rule for an assault? An attempt to commit a battery. That's the rule; right?

"As Pete was walking down Main 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 Main Street, in the butt. Mary thought Pete was being fresh and pushed Pete away. If Pete is charged with assault he will be found... Will he will found obviously guilty or not guilty?"

Quickly look at your answer choices. I see I've got "guilty because" or "not guilty because". So you know he's guilty or not guilty you should be able to eliminate two wrong answer choices right off the bat and read the two that are correct. That will eliminate and save time. So let's look at all of them so I can teach you the process of elimination.

Now, if you believe the answer's not guilty, you would eliminate answer choices A and B and only read C and D; right? Why? Because of the modifiers. "Because" or "since". So everything after that's basically a true conclusion, so I know I can eliminate that.

Now let's look at the answer choices they have here. Answer choice A states guilty because it caused apprehension in Mary. Looking at that, let's say I didn't know if I was guilty or not. I'm pressuring you trying to learn the multistates. What do I look at here to determine if this is a good answer or not? Look at the language. Everything after "because," he caused apprehension. Go back to your statute. What do I need or what are the elements of that statute? One element apprehension? Absolutely not. Even though you're familiar with that language, it's not in the statute so I know that's not a correct answer choice. I wouldn't take that as an answer choice. In regards to answer A it's telling me I have to show the apprehension, and that doesn't meet the mens rea of this statute they gave me. Why?

What is the mens rea? Look at the applicable statute. What do you need? An attempt to commit a battery. Now, battery's a general intent crime isn't it? It says attempt. What is attempt? Specific intent. Oh. So you do need to show specific intent. So the fact that he didn't show apprehension or did is not part of the actual elements so I know it's not correct.

Remember, with attempt you need to know specific intent.

Let's look at option B. Guilty because he should have been away of others around him. Look at the mens rea. You need to show what? Specific intent. Does answer B suggest, based on the language of the statute, that he needs to be aware? No. It's more of general intent statute. We know B's incorrect. If it was tort, would things change? It could very easily for the general intent if he's being charged with battery itself. We're answering this pursuant to crim law pursuant to the statute that they gave me. We know B's wrong.

C says not guilty because he had no intent to touch Mary. Again, what do I need to show? Attempt to commit a battery. So specific intent, substantial [inaudible], apparent ability, preparation versus perpetration, had no intent. That would negate. He had no intent for specific intent. That looks plausible so put a plus there.

D says not guilty because he did not intend to touch Mary. Choice C looks good. They both look correct, don't they? Which is better than the other? C or D? Answer choice C is going to be better. Why? Not D, C. If you look at D, it's a statement of fact. He did not intend, versus answer choice C negates the specific intent because it says he had no intent. Very tricky question. C would be your better answer choice. When you have legally correct versus factually correct, your legally correct trumps. That's the best answer choice. C in this case is the best answer. And it seems like wow, it's not ‑‑ the question's not fair. This is how they test. Remember, they're trying to test your ability in what is the best answer. In this example, there are two correct answers which are C and D. But C is your best answer based upon legally correct because it negates the specific intent in the attempt element. Does that make sense?

Does everybody hear me? If you can't ‑‑ okay, good. All right. Someone can type in to the other student maybe they should check their speaker. That could be their problem.

Again, for the first example everybody understands why C's your best answer. Do you see with the modifier "since" or "because" how you can eliminate two right off the bat? That saves you time. It is something you wanna master because time is everything. They allow 1.8 minutes per multistate. You're going to find some will be shorter and some will be more lengthy. Contracts might take your three minutes, so I have to get my timing down.

Now, let's look at another modifier. These are a little tricky for students. It's the "if" modifier and the "unless". So again, it's the "if" modifier and the "unless". What's that mean? Well, when you see a question that is using if as a modifier, everything after the "if" must be true. Right? So if I change the example up above, yes, if he had the specific intent. Then that would change; right? He would be obviously guilty of the statute violation, wouldn't he? Everything after the "if" must be true.

As for the answer choices using unless, these are a little bit more tricky. When they use "unless" as a modifier the best way and the only way I can attack the questions, I read and write the call of the question. If it says "no unless", I cross it off and put "yes if", which means yes if everything after those facts are true, that is my answer choice. If it says "yes unless", I cross it off and I put "no if". Everything after the if has to be true. If they don't seem that difficult but to me, they are more difficult I think because they're kind of to me backwards like a negative question. "No unless" is really "yes if". So you've got to remember that and break that apart.

Let's look at example No. 2 and see how this works. Glad you can hear. That's good. All right.

So it says here: Sam asserts a claim based on misrepresentation against Tammy. Will Sam prevail? Based on that call, can you tell me the subject matter you're in? Sam asserts a claim based on misrepresentation of Tammy. It's a civil action, isn't it? Since it's misrep, I'm most likely gonna think it's torts. Could it be contracts? It could. But I doubt they could put this call in manner specifically with misrepresentation. So I've got a good feeling it's a torts question.

Now that you know it's misrepresentation, what should you do? In your mind set or even if you need to write it down, you should be dissecting the elements of misrepresentation, which is a false representation of material facts which one justified or relied to their detriment. That's my generic definition for misrepresentation.

It says Tammy's a chemical engineer. She has no interest or connection with Chemco. Tammy knows that Chemco's most recent publicly issued financial statement listed as part of the assets a large inventory of a special chemical compound. The asset was listed as a cost of $100,000, but Tammy knew that the ingredients were in short supply and the current market value was 1,000,000. Chemco stock was currently selling $5; however, if the true value of the chemical was known, then the stock would sell for $30. Tammy approaches Sam and offers him $6 a share for his 1,000 shares of Chemco stock. Now if he asserts a claim based on misrepresentation, is she gonna be found liable?

If you look at your answer choices, it's got yes because, yes if, no unless, and no if. Can I eliminate any of these answer choices? Obviously she's not going to be liable, so the only one I feel she could eliminate is A. I'd have to read option B, C, and D because it says "yes if" and after the "if" they may change the facts on me to make that a better answer choice. Versus "no unless", I would change to a "yes if". The "no if", I have to read. Depending on the answer choices I can eliminate A. Let's go through to make sure I understand.

A says yes, because Tammy knew the true value of the inventory. Does that go to any elements of misrepresentation? So you have to make a representation of a material fact that has to be false. Justify or relied, obviously to their detriment, which caused damage. No. Even though she knew it, would she have to disclose it? Only if she [inaudible] somehow to what? Sam. It says she has no interest or connection to Chemco. She's not an officer, not a director. That duty does not exist, so we know A is incorrect.

B says yes if. Remember, everything after the "if" must be what? True. If tammy did not inform Sam of the true value of the inventory. Well, looks almost like option A what's that mean? She has a duty to inform him. Does she? No. She has no connection with Chemco so we know B is incorrect.

Tammy told Sam that the stock value was not worth more than $6 a share. No. Would that change things? So she made a representation to Sam knowing of the value of the chemical that he doesn't know about and said well, it's not worth more than $6, but she knows it's worth 30 because they've made a mistake in regards in regards to their inventory on a special compound. She would then be making a misrepresentation based on her knowledge, which would be what? False. So C looks good. So "no unless", "yes if" Tammy made a representation is what C is saying. Looks good. Put a plus.

D says no, if Chemco's financial statement was available to Sam. No. Again, does that really support an element of misrepresentation? It doesn't. A lot of times, obviously, even if the financial statement was available, doesn't mean he read it. So that might be if I changed the call what's her best defense if she made a misrepresentation, that answer choice must be the best, but it's not going to uphold. In this answer choice, C is your best answer.

See how we took the no unless and made it a yes if. Everything after the "if" has to be true. Yes if she made a misstatement, we caught her. For example No. 2, C would be your correct answer choice. Everybody understand that? How did we get there? Process of elimination of breaking it apart. Again, you'll start seeing how they test in certain areas or specifics in what's being tested, and you'll be able to hone in and work quickly. It is a timed exam.

I wouldn't worry about your timing in practice. In practice, even it's five multistates, it's five multistates a day; it's something. You have to work on your skills. It is a process and pretty soon the skills start getting there. Oh, it's not so bad. But it is a process to get there. It does take most of the time in regards to practice and understanding what they're obviously testing on. Again, when taking a multiple choice question make sure you break apart your elements of your rule. A lot of times, people look at it generically and pick an answer choice. I can't do that. I need to dissect the element and focus on it or I'll miss the question I need to break it apart. I need to dissect. Most of us are the same way in breaking it apart. Even when I have a student call me and read me a question over the phone that's hard for me. I'm scribbling down all these facts because I really need to visualize and see and break it apart in order to do well on the question. Again, use your tools.

Let's look at example No. 3. In an action for false imprisonment against Raj Reel and Children of the Earth, Tillie most likely. What is the issue? False imprisonment. So we've got an action against Raj Reel, Children of the Earth and Tillie most likely. We know it's civil. We know it's tort. For false imprisonment, what do you need? The intentional physical or psychological confinement of another. No I'm ready to read the facts and see if the facts support those elements. If the elements are supported, most likely Tillie's going to recover. If they're not supported, most likely she is not. Let's go through the facts.

Tillie Taylor was a member of the Children of the Earth. During one of the organization’s group encounter sessions, Raj Reel, the groups leader who knew that Tillie was a paranoid schizophrenic accused Tillie of being disloyal to her fellow “brothers and sisters”. Tillie’s disloyalty stemmed from the fact that she had telephoned her parents in disobedience of the group’s code of conduct. Ostracized from the group, Tillie fled the commune and returned to her parents' home that evening.

After unsuccessfully trying to lure Tillie back to the group’s movement, Raj decided to employ a “last ditch” effort to secure her return. Raj leased a billboard located across the street from Tillie’s house. Raj had the billboard printed to read:

“Tillie, the Children of the Earth command your return”

As a result of the billboard, Tillie suffered a nervous shock and refused to leave her house, Fearful that she would be abducted by her former “brothers and sisters.”

Again, in an action, she's bringing for false imprisonment. Look at your A B C D answer choices. A and B say recover since. Remember, because or since are conclusions so everything after that's a statement of the conclusion. Versus C D say not recover since. Can you eliminate two right off the bat? Is she gonna recover or not? Whatever way you jump, obviously eliminate C. So if you're saying she can recover. Let's look at our four answer choices. Now, A says recover since Tillie's confinement resulted from implicit threat of the billboard. What element of false imprisonment does that support? Psychology confinement. I have one element there supported. B says recover since Tillie's confinement was phycological and Raj Reel knew Tillie was a paranoid schizophrenia. That would support the confinement. C says non recovery since defendant did not intend for her to be confined in her house. That goes to the element of what? Intent. Did Raj Reel had the intent to keep her in her home? No, he didn't. He wanted her out. Last‑ditch effort was to get her to try and come back. C looks good. D says non recovered since Tillie's under no constraint to remain in her house. Remember, psychological restraint does work for false imprisonment, so we know D is not correct.

C is best. Why? You need to show all the elements. Based on the facts, did he have the intent? Well, he obviously caused a psychological confinement but based on the facts they wanted her out. So there was no intent. So C in this case is your best answer choice. Does that make sense? So remember, with false imprisonment this is where you again take multistates and practice. How do they test this area? Well, you need intent. So I have to get the desired result. With false imprisonment, remember, the transfer and intent doctrine works. Okay. You also need physical or psychological filings. You also which is a sub issue not in my rule, need to be either aware of the confinement or damaged by it. That's another area they like to test where you weren't aware, weren't damaged, no recovery. That's why it's important to break apart your elements and see if they are supported. In this case, there's no intent I know there's not gonna be recovery.

Also, with an intentional tort based on my experience, when you go through the actual elements if I can't ‑‑ in essence say I can knock it out in intent and under confinement, intent's going to be the better answer choice. Again, you learn this by what? Doing.

Now, if you find obviously you picked the wrong answer, why? Always go back and look to the actual reasoning, otherwise you make the same mistake over and over.

Now that you've gotten a quick overview in a nutshell your modifiers, your since, because, and your unless and your ifs, take a couple of questions. I think there's six total for us to look at and break it apart and see if we can eliminate it ourself and obviously give the correct answer. So if you don't include all the elements ‑‑ very common by the way you. Have to start doing that as a habit. If you catch yourself not doing it, stop yourself and start over.

Let's look at the first question number one.

You're gonna see this is tested always on the examination. That call doesn't tell me much. On November 1, 2009 Mozart entered into a contract with Thomas to play the piano in his nightclub for New Year’s Eve.

What's the subject matter? Well, contracts.

The agreement was for $25, 000 for the evening. Mozart is very popular and Thomas knew he had a big following and would pack the nightclub with Mozart as the headliner. On December 29, 2009 Mozart called Thomas and told him he has been offered more money to play at another club and would not be playing. May he bring the lawsuit now?

What are they testing here? We know it's contracts but what issue can I narrow it down to in regards to contracts? Testing, it's [inaudible]. I guarantee you'll see one on the baby bar. What you have to look for in the breach category there is contract has to be executory stages. Expressly repudiate showing you're not gonna perform and it has to be in executory stages. Executory stages is what they like to test because people don't understand what that means. What that means is, neither you started or one you might have started but didn't fully perform. If both of us start or one fully performs, it's not in executory stages any more. At this point, you're supposed to play and I'm supposed to pay. Instead of waiting to see if he's gonna show up or not, you may bring the lawsuit now.

I understand the law and material based on the facts, and I'm gonna look at the answer choices. So can I eliminate? Can he bring the lawsuit now? A says no because, B says no since, C says yes because, and D says yes since. Can you eliminate two off the bat? By the process of what I went through, I felt under anticipatory repudiation, right, he can bring it now because the contract is in executory stages. We eliminate what? Answer choices A and B. Don't read 'em. Why? Because time's against me. So I will go obviously to C and D and eliminate the best answer choice. C says yes because Motzart repudiated the contract. Well, that looks true. Black letter law. D says yes since Thomas will lose profit without [inaudible]. Does it have anything to do with anticipatory repudiation? Absolutely not. I know C is the best answer choice. Now, the key there and that's something I want you to play with is executory stages because that's the element they love 'cause students don't know. Going through it, it's not that difficult so I'm not sure why it's an area that students have a hard time with. Executory means neither of us started the performance or one of us hasn't fully perform. It would be in executory stages.

Question number 1, C's your best answer.

Look at question No. 2. Now, the call says the most serious crime that Biff could be convicted of is. What's that call telling you? Well, we know we're in crimes. It says serious crime. So the most serious crime convicted. That means that all the elements of the crime must be substantiated based on the facts. If the call was changed on you and said could be charged, oh, I might have multiple crimes, they might have a weak element but I would still bring it up or include it in my answer choice. In this case, it says convicted. That means everything needs to be satisfied. Right? And absolute.

Okay. Biff goes to Jackson's house at 3:30 p.m.arrives he finds the door wide open and no one home. He walks in take it is TV. Most serious crime that Biff can be convicted of is. Well, let's look. We've got larceny. What do you need? You need a breaking ‑‑ sorry, larceny trespatory taking and carrying away the personal property of another with specific intent to permute a crime. So do we have a larceny here? So do we have a taking and carrying away? Yeah. He went in, took the TV, and he left, that's a taking and carrying away. It's the personal property of another? Jackson's. Did he have specific intent to permanently deprive? He left; right? Since he went in there intending to take it, that can show the mens rea's specific intent. I feel we do have a larceny.

Answer choice is B, robbery. What is robbery? Robbery's a form of larceny but by force, fear, and intimidation. So there any facts since we know larceny is supported, any facts to support the force, fear, intimidation? Door was wide open no one's home. It wasn't taken by force, fear, intimidation. We know B's out.

Burglary. Burglary meaning what? Nighttime. It's 3:30 p.m. don't consider that nighttime. You need a breaking. The door was wide open so don't see a breaking. The elements fail there.

Then D the embezzlement. What do you need for embezzlement? Lawfully entrusted with the property. I don't see lawful entrustment so therefore there's no embezzlement so it has to be larceny. A is your best answer. Now, why is larceny better? All the elements are there versus burglary we needed what? The elements. There's no nighttime and there was no breaking.

Now, let's say they asked you to answer according to modern law. You don't need nighttime. Would that change your answer choice? Again, we have the problem with trespatory entry. Remember, modern law enter with the intent to steal initiates consent. So we will find modern law burglary based on these facts. But remember, you're responsible for what? Common law unless dictated otherwise. So remember that. So a lot of times when you start applying modern law you'll get it wrong because you're supposed to answer according to common law on the multiple choice questions unless it stays otherwise.

The other area they like to test you here is remember with burglary you could have a burglary and a larceny coexist. What do I mean? If they change the facts and told you it was 10:30 p.m. and he busted open the door, we would have a burglary in that case. We also would have the crime of larceny. Obviously burglary is a felony is that would be a better instance in the call which he would be convicted of. It's more serious, burglary, but our answer choice is larceny. But my example to you, I want you to understand, you can have a burglary and a larceny. A lot of people think one versus the other, and they don't. Burglary's independent crime in itself.

Again, for question No. 2 A larceny is your best answer choice.

Question No. 3. Again look to the actual call. Charged with arson under most modern statutes, Mel will likely be. What did the call just tell me? Do we know the subject matter? Yes. Criminal law. They told me arson. What else do they tell me about the arson? Modern law. So there is a difference, isn't there? What other distinctions? So does it have to be the dwelling house of another? No. So you want to make sure you know the distinctions between the two because they can be tested.

Mel is painting his car in his garage, surrounded by flammable chemicals. He steps outside to take a smoke break, and falls asleep with a cigarette in his hand. The cigarette ignites some fumes and burns the garage down. Charges with arson under most modern statutes, Mel will likely be. Now, would he most likely be acquitted or convicted? What do you need for modern law arson? Well, you need malicious. Malicious burning of a structure; right? So it's malicious. In common law, still need malicious but it has to be the dwelling house of another. So ‑‑ all right? His garage, maybe we can argue it's a dwelling but it's most likely his so there will be no common law. The call's asking me for modern.

A says convicted because his actions were reckless. Sufficient mens rea for arson. That's not the standard. We know it's incorrect.

B says acquitted because he did not burn down a dwelling. That's correct. He what? Burned down a garage but it's asking for modern.

C says acquitted because the garage was his own property. That's true for common law, but not modern.

D says acquitted because he did not intend to start the fire or manifest extreme disregard for the danger. So it has to be B because it negates what? Modern once you enter malicious. So maliciousness. It has to be malicious. D is your best answer choice. If you do something that is really stupid [inaudible] that's not the equivalent to an underlying crime modernly for your arson.

Again, that's an area they like to test too. But I want you to pay attention, arson comes over all over your multiple choice questions. Pay attention to the elements and the call of the question. Students don't pay attention. When you have somebody else burning down the dwelling ‑‑ their own dwelling ‑‑ for insurance purposes. Can't commit an arson on your own home based on common law. Make sure you recall what they're asking. For we No. 3, D would be your best answer choice.

If I told your they're testing common law, what's the better answer choice? Would it change? B, acquitted because it did not burn down a dwelling. What you want to do is really look at your answer choices. Didn't burn down a dwelling, the garage was his own property, that makes it a little bit harder. But I probably would go with you can burn down your own property. But you would need what? Malicious. I would keep my same answer choice because that is common law arson.

Question No. 4. Is the man guilty of murder? What's murder? Murder you need to show malice. Malice, you need to show intent to kill, intent to cause great bodily harm, wanton reckless to felony murder. So I have a general idea of what I'm looking for. Ready to what? Go through my answer choices once I read the facts.

A man entered into a high school and took an unattended backpack. Theft; right? How about larceny? He's not entrusted. As he was slowly driving his car out of the school parking lot, he accidentally hit and killed a student that ran out behind a parked car.

What's the mens rea? If you're saying malice, did he have intent to kill? No. He's driving slowly. It was an accident. Did he have an intent to create great bodily harm? Driving slowly. It was an accident. No. What about the felony murder rule? Can we argue felony murder rule? It has to be what? An inherently dangerous felony. What's an inherently dangerous felony? Burglary, arson, rape, kidnapping. Is larceny an inherently dangerous felony? No. So it doesn't look like he's gonna be guilty of murder.

So if you look at your answer choices no because and yes because. Can we eliminate two answer choices right off the bat? Sure. I find what? No malice. Right? So I'm gonna eliminate answer choices C and D and have you read answers A and B. A says no, because the man did not intend to hit the student. Well, you ‑‑ we have no malice. No because the larceny of a backpack is not an inherently dangerous felony. I'm gonna go with that because it goes direct to an element of malice. We know that's what they're testing because they told me he picked up an unattended backpack. We know B is the best answer choice, don't we?

A's not necessarily wrong. He didn't intend to hit. But we know this is testing on the felony murder rule based on the facts, don't we? The answer choice has to lean towards the felony murder rule. It does not, obviously, support an inherently dangerous felony for larceny backpack. So I know B is my best answer choice.

For question No. 4, B is correct. The other thing I want you to know about the felony murder rule, remember any attempted inherently dangerous felony would work for malice as well. Attempted burglary, attempted rape, all those ‑‑ as long as there's an attempt ‑‑ will work for the felony murder rule as well. That's a nuance a lot of students don't know. It's an inherently dangerous felony but it's an attempted inherently dangerous felony, it will work to find malice. Okay?

All right. Let's look at question No. 5. Now, it say if Liz asserts a claim against Wong for the injuries she suffered from the fall, she will most likely. What subject matter will we looking at? We got Liz versus Wong. So a plaintiff defendant so we know we're in tort. Again, that gives you more reassurances when we read the call. I know I'm in tort, I know I'm in crimes, I know I'm in contracts. That helps why? Before you read the actual facts, your mind can go there. You can focus on your checklist to help you narrow down the specific issue. Once you start reading the facts and you see in this case what tort's being committed I want you to break it apart. Why? To make sure the elements are supported pursuant to the facts. You don't just wanna say this is testing torts. Use my tort checklist. What is being tested here? Once I find the tort, go a step further. What does that mean? What within that tort is being tested? What elements? Okay. So you need to break it apart.

Liz and her boyfriend, Lucas, were having dinner at the Golden Dragon Chinese restaurant in Chinatown when she excused herself to go to the bathroom. The restaurant was owned and operated by Wong. As Liz was walking past a table where Elliot, another customer, was seated, she slipped and fell on an egg roll that was lying on the floor. When she fell, her head struck a serving tray, which was located in the aisle. The fall caused Liz to suffer a severe concussion. Elliot knew that the egg roll was on the floor and, although he could have done so, he did not warn Liz. If Liz asserts a claim against Wong for the injuries she suffered from the fall, she will most likely.

Now, what is the tort? So she's going after the restaurant owner so we know the tort is what? Negligence. And she's basically an invitee in the restaurant. As an invitee, you have a duty to inspect, discover, and warn of any unknown dangers. We know that's Wong's duty. Now we need to determine did he breach that? Go look at our answer choices. A says recover because the egg roll on the floor constituted an unsafe condition of the premises. That's true, but we know that you have to be aware of it; right? So if it's just dropped on the floor, Wong wouldn't be able warn of any danger of the egg roll being on the floor. B says recover if ‑‑ remember, everything after the "if" has to be true ‑‑ the egg roll was on the floor for a substantial period of time before the accident. Recover if the egg roll was on the floor for a substantial period of time before the accident. That looks good why? Because if it was there for a substantial, period of time, Wong would have knowledge and have the duty to either correct the situation or warn patrons, which would include Liz, there was an egg roll on the floor.

C says not recover unless. Uh‑oh. Remember, B says "recover". Now C's going to say recover unless. No. Recover if Wong knew that the egg roll was on the floor. Mm. Does he have to have actual knowledge? No. He should have known. It's a standard. He doesn't go walk around and check his restaurant, and things are on the floor for his patrons, he's still accountable if it's there for a substantial period of time. We know C is not correct. But notice how not recovered unless. We changed it to recover if. If everything after "if" could be a correct answer, but it's not because he doesn't have to have knowledge.

And then D says not recover if Elliot was responsible for knocking the egg roll off the table. That doesn't support the element of breach for negligence. We know ‑‑ the negligence of the third party's always foreseeable as well. We know B goes to support what? Show a breach. That's my best answer choice.

Let's say I couldn't tell, meaning I know it's negligence, but I don't know. Are they testing due to breach actual [inaudible] cause damage or in chronological order? Go [inaudible]. Can I find the breach? B supports the breach. Is there any [inaudible] that goes to actual cause, no. Even if there was an answer that went to actual proximate cause ‑‑ technically you can argue knocking off the table, but since this is not recover, no. Let's say you see an answer choice that shows causation, most likely means the tort's breeched, [inaudible] my elements. Choose that answer choice. If you can't tell, use that as a rule of thumb. Generally a good rule to follow. B's your correct answer. It supports in regards to the breach in your duty in order to find liability, and that will allow Liz to recover.

This is a process. You want to break it apart.

All right. Hopefully you're starting to get a handle on this and how to break it apart and how to eliminate. I'm portioning through what theories are being tested, what element within the theory.

Last question. Question No. 6 says which of the following is correct? Doesn't really help me.

On October 1, Arthur mailed to Madison an offer to sell a tract of land located in Summerville for $13,000. Acceptance was to be not later than October 10. Madison posted his acceptance on the 3rd of October. The acceptance arrived on October 7. On October 4, Arthur sold the tract in question to Larson and mailed to Madison notice of the sale. That letter arrived on the 6th of October, but after Madison had dispatched his letter of acceptance. Which of the following is correct?

What are we testing? Mailbox rule. So on October 1st when he mailed him an offer, and then it says acceptance was supposed to be no later than the tenth but he accepted on the third. When he posted on the third ‑‑ as long as it's unequivocal set to the terms ‑‑ hat contract was formed on the third of October. That acceptance is in effect. So when he sold it on the fourth, he's in breach because the contract was already formed. This is an area they're going to play with you and you need to how they do it. They will test the mailbox rule and in several ways. For example, let's say he said he'd keep the offer open 'til October tenth for ten bucks. You gave him ten bucks, that became an optional contract. Sent your acceptance on October 3rd do we have a contract? No, we don't. Mailbox rule doesn't apply to [inaudible] offers. You have to really look at these nuances because that's something they test.

Another way they test is if I tell you the same facts offered to you need the acceptance by the tenth. They you call me up, basically saying I don't want it, and I rely, then you post an acceptance. Sorry. Acceptance is not valid because I rely on your revocation. Or you posted the acceptance ‑‑ it's in the mail so we have a valid contract ‑‑ but you call me and say I really don't want the property so I rely on that and go sell to another. Again, no contract. They're going to play with you in regards to the rejection revocation in effect of the mailbox rule. That's good for testing so get to know it. In this case, what's the best answer choice? A says it's about acceptance of the offer on the day he posted acceptance, which is the third. Yes. That's true. B says Arthur's offer was effectively revoked by the sale of the track of land to Larson on the fourth. It was revoked, but you're in breach because there was already a contract under the mailbox rule.

C says Aurthur could not revoke the offer to sell the land until after October 10th. There was no option here so the answer's no that's not correct.

D, Madison's acceptance was not valid since he was deemed to have notice of revocation prior to the acceptance. No. That's not true because his acceptance was the third when he posted it. We know A is the best answer choice. Based on the mailbox rule, acceptance is effected upon dispatch and that an area they like to test so be sure to know it. Seems straightforward, but again, sometimes can be a little tricky.

Now I'm going through some of these multiple choice questions, I hope this gives you an understanding of how you process the multistate and the call of the question, how you break apart the facts and how you can eliminate hopefully two wrong answers right off the bat. Remember to break it apart. Figure it out in regards to the theory, is it negligence, is it battery? Then dissect the elements to make sure they support the actual facts. That's important. If it's a breach of contract, where are you in contracts? Was there a contract formed? Were the conditions performed excused or satisfied? You have to break this apart to make sure the facts are supporting it in order to what? Pick the best answer choice. Right? So make sure you focus on the stem or call of the question. Break apart the theory, the elements of that theory that you're finding that is at issue, and make sure they are supportive of the facts and of course eliminate two answer choices right off the bat.

When you do miss a multiple choice question what I would highly recommend is look to the why. If I picked A and the answer's B, why did I not see it's B? You have to take a step back and reflect on that. If you go and read the answer choices what's the problem with that? You didn't learn from your mistake. I read the rule. I understand. Why didn't you know that in the first place? A lot of times once you study the law, you know the law. You just didn't apply it right. What am I seeing differently in the facts? What did I miss? What nuance? I usually find when I do my multistates and I to a flashcard but I wrote on a piece of paper and I always number my paper 1 through 100 and where I got the multistates from, and what I got wrong I put the why on my paper and I looked at it every week. Why? So I could condition my brain to not make that mistake again. So go back over them and say why is A the correct answer over C? You have to start learning how they test the actual concept. That's very important to understand.

Talking about the first example we went through dealing with Mozart? That's the one you were talking about, C was the correct answer because the repudiation was still in executory stages. First question we did, C was the correct answer choice, not D. When you do miss these questions, go back and obviously learn from your mistakes. Pretty soon, you'll get an idea how they test the concepts and pitfalls. You're not going to fall for them anymore but you're going to catch on to how they test.

What I would recommend and I felt very helpful is you want to go through your checklist and make sure you have a good understanding of whether it's from a multistate or essay and help you test the concepts. How do they test option contract? How do they test offer? What example have I seen in books, essay questions, then you're understanding how a concept's tested and you won't miss it. You'll have a good handle on it. Again, use your checklist to answer these multiple choice questions. That's gonna help you. Okay.

In regards to example No. 1, intent really went to the actual element itself didn't it versus I didn't intend to hit. So if it's factually correct versus legally correct, what's the best answer choice? Legally correct. So since it goes direct sent to an element, the intent, it's gonna always be your best answer choice.

Tricky, huh? That's, again, how they test. Anybody have any other questions at this point? If you have any questions at any time during your preparation shoot me an email at jolly@taftu.edu. I'll be more than happy to help any way I can. Jolly@taftu.edu.

Also, in regards to next week, we'll be going over torts. So I'll kind of give you an idea how the subject matter's tested. Go ahead and review torts. You have the subject matter but that'll be our primary focus next week. All right. There's no other questions, I guess I'll wish you guys good night and see you next week. Have a good evening.

[END TIME: 7:00 PM]