Taft Law School

Electronic Classroom – Baby Bar Mini Series

04/30/19 6:00 ‑ 7:00 PM

>> INSTRUCTOR: Good evening, everybody. Welcome to tonight's baby bar mini series. We'll be starting in approximately one minute. Thank you.

Good evening, everybody. Welcome to tonight's baby bar mini series. I do wanna point out these sessions are record so if you ever want to go back and listen to a lekture, sign into the student section and obviously go to the baby bar mini series. All the lectures are up there for you if there's any handouts everything's presented up there for you on the Web site as well.

Again, welcome. Our primary focus will be on the subject matter of contracts. Feel free to post questions.

Now, with contracts, either you love it or you hate it. Students either love the subject matter or they have a hard time with it. Actually, the one thing I want you to keep in mind about contracts are is is your checklist. The one thing I like about contracts you start from one point and work your way down. You can't start, like, in the middle. You don't start with C. Can yourself was there a contract formed and do I have to address the offer and acceptance. Go down the line. Beneficial for you. Take your checklist in order. When you see a contract question I want you to ask yourself several things. 1, look to the facts and even whether this is an essay or multiple choice questions look to see was the contract made between the parties? Obviously if it was you don't really need to address those issues. On a multistate, was a contract formed between the parties. So you want to focus on that. If you find there is a contract between the parties, look to see if there's any reason we shouldn't enforce it. You're looking for defenses such as statute of frauds or mistake or misrepresentation. Then look to see if there's any conditions or covenant under the terms of the contract. Terms ‑‑ any conditions. Look to see who's bringing the lawsuit. So if it's not one of the original contracting parties, then you've got a third party issue. So we're dealing with a third party beneficiary or an assignment delegation or maybe both. Depends in regards to who's suing.

If there has been a breach of contract, what is the available remedies? Remember on the baby bar you are gonna be responsible for more than just general damages. So you do wanna get to know your checklists and understand your general damages, can we rescind the contract, reform the contract, as well as specific performance. That is all fair game now on the up and coming baby bar so you want to make sure you understand those concepts. First thing I want you to do is take a step back, see if a contract was formed any reason not to enforce it who's suing for your third party rights and if there's a breach, what's the viable remedies applicable here?

Now, the first thing is start off with formation of a contract. For the baby bar the first thing I want you to ask yourself is does the UCC apply? A transaction in goods. Dealing with the leasing of a car, don't bring it up in your essay question because you're wasting time. If we're dealing with the purchase of corn obviously we're dealing with a transaction of goods so you'll define UCC and go through it. Another area they haven't tested in a while that I want you to be aware of is good versus service contract. What is a good versus service contract? You have a good as well as I'm providing a service. It's come down several times on the baby bar such as I'm providing you the fence as well as the installation. There will be a good versus service contract. Another one they did with the hotel in regards to redecorating. You're supplying the furnishings as well as repainting the hotel rooms. The issue is goods versus service. If that is tested then what you look at? 2 rules you should go through. The prominent factor test which is the majority or the test with the minority. Terms of the contract. What is the predominant of the good versus service? So was it the installation of the fence or was it the purchase of the actual fence? What's nice is they're gonna have to tell you. If I give you in a fact pattern the fencing's gonna cost $5,000 for the square feet you're purchasing and $2,000 to install total contract $7,000 the predominance of the contract is good because it's $5,000. You're going to know. The Graffman basically says what's ‑‑ fencing or I didn't install it? Whatever the party didn't do, was it the good or was it the actual service?

Generally how this is tested one of the test will put you into the UCC and one of them will not. So again you're gonna find that one will trig you are the UCC and one will not. Generally, too, when you see UCC contract on the baby bar exam you want to do the UCC and work it through your checklist but always address common law then if it fails bring up the UCC aspect. Again, predominant factor Graffman. You're looking to that? What's the basis of your lawsuit? Why are you upset? Once you find the UCC is triggered look to merchants. Hold themselves out to special knowledge or skill. You'll know what's a merchant. Another thing you'll see on multiple choice questions business colleges are considered a merchant. Cosmetology school. That is not a per chant. They have tested that on the multistate and even though they supplied you with the medicine, we don't consider them merchants.

[inaudible] negotiation. Invitation to deal. How do you see that tested? A lot of times it's definitely tested on the multi states. It does come up once in a while on the essay. How do I know if I need to address a preliminary negotiation? You're going to look for an ad, a reward. They like to test that on the multi states and how do you accept a reward? That's basically an invitation to deal. In regards to preliminary negotiation versus offer are the terms defined? Are they definite and certain? Your quantity, time, identity, quantity, and subject matter. The terms are definite in most likely you're gonna conclude that it is an offer in and of itself.

All right. So again, if the buyer's asking seller are you interested in selling your home? Well, do I have quantity time (speaking too quickly) that's what? A mere inquiry. Versus again I'll buy your home for $5,000 and it closes July 1st. Now you've got the actual terms so that's more of an actual offer. Termination of offer. I use the mnemonic old railroad. So OLDRR railroad for R. O stands for offer. You've got your lapse of time, death or disruption of the subject matter, your restriction and revocation. Those come up on the multiple choice questions. If they're testing more heavily on the formation, look to the language and' if they're making you go back and forth between an offer, counteroffer, counteroffer, and acceptance. They like to hit that area because students have a tendency to not do well because they lump it all together. There was actually one off, two counteroffers and the two issues whether or not there was an acceptance.

Lap of time. You look to determine if the offer is expired based on lapse of time. UCC if you're dealing with a perishable good we're going the look to their reasonableness. Death or destruction either the party dies or the sunt matter's destroyed that will what? Terminate the offer. Then of course a rejection or revocation. Rejection east from the offeree, revocation from the offeror. You have what's called an indirect that comes from an offeree. Run it through your checklist and see what's being tested.

You further have your issues that you could have come up in this area. If I have an offer, did it create an option contract? Remember, an option's an offer supported by consideration. Versus under the UCC they like to test us they like to test this on the multi states because people don't know the rule. Obviously the one that made the offer needs to be a merchant and of course it needs to be in writing and it cannot exceed what they call a reasonable period of time IE90 days. So won't be in writing or won't with in merchants. Go beyond 90 days yes. If it goes beyond the 90 day period the firm offer will be invoked up to that 90 days won't go beyond that.

You have your acceptance. Your unequivocal [inaudible]. Selling dolls on Facebook and the girl said don't contact me on Facebook because I'm at work and told another method. That would be argued a method of acceptance. If someone posted on Facebook, as the offeror, I can dictate how to accept. It's worth some points so you want to look for that. You could see your grumbling acceptance versus an actual inquiry. If Mary offers to sell her car to Mary I hope that you're willing to detail the car before I take it over or before you deliver it to me. Valid acceptance? So I only hope, that's more of a mere inquiry. Not conditional. Grumbling or an actual inquiry and we have a valid acceptance.

Mailbox rule. Big on the multi states. 90 days is firmed no matter what; rite? And then in regards to if it says 120 it's still good for 90 days. Actually what it is you say to respond which yes and no. Remember, in regards to when you get a firm offer, that means the offer will be open for that stated period of time so it can't be revoked. What's important about that? I just brought up the mailbox rule. If you have an option contract or firm offer, mailbox rule doesn't apply. If you affirm yes I'm going to buy it and on the 90th day and post it in the mail, sorry, mailbox rule does not apply. It wouldn't be on the period so we wouldn't have a viable contract.

The mailbox rule you want to be aware of its effect. Obviously you found an issue becomes when is it effective? I want two steps. People have a hard time with the mailbox rule. And I think it's because you put the acceptance and mailbox rule all together. 1 you find the acceptance which is okay there's an unequivocal sent. The second step is was the acceptance was effective? Now it's effective upon what? Dispatch. If you put it in the mailbox we have a valid contract at that point and that's very important because they're gonna test that and try to mess with you where you find later that based on the dates going back and forth trying to find that it didn't form at that period of time that it was later and that won't be the case.

The other area they like to play with this is a rejection. So in essence if I give you an offer and you put in the mailbox a letter saying you accept and call me before I get the mail and say never mind, I don't want the offer, do we have a valid contract or not? The answer's yes. You have an effective acceptance based on the mailbox rule. That can change on you if I rely on your rejection now we don't have any contract anymore because I relied on your actual rejection.

Nuances they're going to play with you to make sure you have a good understanding and a good handle on them so make sure you understand how they're tested.

UCC it's any reasonable manner. Valid forms. Students have a hard time with it. Last time quite a few years at least three that it's come up on the baby bar. What you have obviously is it's between merchants. If it's not it's a counteroffer. And of course you have an acceptance but the issue is you have an additional term. What do we do? That's the issue. So I as a merchant respond to your offer saying yes I'll buy the 10‑bushels of corn but I want you deliver it to me. That term was never stated. Do we have a contract? We had the offer, the acceptance based upon saying yes but what do we do with the delivery term? That's considered what we call an added term. If it temporarily offers the contract, it's not part of the contract. If you object to it within ten days, again, we don't have a contract. And of course if the acceptance is expressly conditional to you accepting the term, we don't have a contract. That is something obviously that does come up.

If you do find what we call the battle of the forms, fails. So you find no acceptance. It's a material term such as an arbitration clause. We don't have a valid contract. The second step is look to the party's conduct. Arbitration class you don't object to it but then I go ahead and ship the goods and we're doing whatever the terms of the contract are, under the battle of the forms that arbitration clause is not part of the contract. But based upon your conduct, we do have a contract. But it will exclude the arbitration clause, won't it?

You also have what's called different terms. People seem to think additional terms and different terms are the same thing. They're not. It has come up. What is it? Well, if I basically sent to you there's an exam out there that says okay I'll go ahead and buy your tires but I do want California laws to control the terms of the contract. You send over your acceptance and you say in there I want it arbitrated. That's different terms because ‑‑ true in regards to California law or California courts versus the arbitration. If I mandating court versus arbitration, those are two different terms. Do they majority rules they drop out because they're differing each other. The minorities they knock out if the offer term's difference than the acceptance term.

There's a small minority of [inaudible]. There is a difference between your additional terms and your different terms. So additional's obviously added different is is conflicts with something originally brought up in the offer. So if you look at it, you shouldn't mess that up. Consideration beware of certain areas such as your preexisting duty rule. That comes up more often than we think. So were you under [inaudible] the answer's yes. Then you'll look to a substitute for consideration to see if we can work our way around it. That is an area they have tested.

You also have your [inaudible]. They look illusory but you look to the exercise of good faith. If the facts tell you there has been a valid contract formed, what does that mean? Well, if you've seen the fact pattern and the facts state there's a valid written contract consideration. However, it doesn't mean there's no defenses to formation. I very easily could have an argument for parol evidence. Yet I can see prior to putting our agreement into that written contract we had a negotiation previously and that is not in a contract. Maybe it triggers a parol evidence rule you're trying to bring it in. If the facts tell you you have a signed writing, a signed contract entered into between the parties, that doesn't eliminate the formation I issues. The facts will dictate. I might have to do offer acceptance consideration. How do I know? If you see the term spelled out ‑‑ quantity time identity sunt matter if they don't really tell me all the terms I have to do mutual consent and then consideration. Timing. We're concerned about our timing. I don't want to write when they told me it's a valid written contract because that's killing my time. When I didn't have to. That's something that you want to be aware of. The more exams that you do and break apart and go through, that'll help you obviously understand when it's triggered versus can take the easy rout.

Now, once you form a contract, please always look for defenses to formation. It's an area that students have a tendency to discover look and it's worth quite a few points. Statute of frauds is a major offense. 1, get into the statute. Was it dealing with marriage? Is it dealing with an interest in land? Debt of another? Contract in which by its terms is not performed within one year of the making thereof. And the contract for sale of goods of over $500 in more.

By itself terms from ‑‑ not or contract for the sale of goods of over $500 or more. Those are the three main ones that come up.

You show the reader how you get into the statute of frauds you now need to see how to get out. See if the facts support a sufficient memorandum. Remember, a sufficient memorandum is memorandum with sufficient terms but it must be signed by the party to be charged. They must have signed that memorandum in order for me to see I'm taking it outside the purview of the statute. Like marriage would be sufficient memorandum. An interest in land would be sufficient memorandum or part performance. The debt of another or the main purpose doctrine. A contract which terms are not performed within one year of the making thereof. Sufficient memorandum (speaking too quickly) full or part payment full or part delivery. Those should be separately headnoted and broken apart.

The other that works for all of 'em that the bar likes to test that we have a tendency ‑‑ is called estoppel. It's a way to satisfy the statute of frauds. Based upon your considerate you did rely and based upon your conduct statute of frauds. Dealing with Rosso wine. CPA practice wanted to invite all these people because the wine had notoriety. The prices were going up and obviously the person at the vineyard wanted more money and told the CPA I'm not going to give it to you. The facts told you it was oral that he printed up napkins with their name on it, sent out invitations that he ‑‑ agreement? That's a lot of expense in regards to setting up a party and having their name on the invite what they're serving. That's a way of how estoppel could come up. It works for all of them: Marriage, contract in regards to interest in land, main purpose doctrine, contract which by its terms not performed ‑‑ $500 or more.

Also the other one in regards to the sale of goods remember between merchants uh, you can have your written confirmation. Dealing with each other as if we should know who we are and you fail to object to a written confirmation, you waived the statute as an issue of defense. That comes up in the multiple choice questions.

Mistake. They love mistake. If both parties are under mistaken belief that's mutual mistake and one party's under the mistaken belief and the other party knew or should have known makes the contract voidable based upon the party that did not know. Ambiguity's multiple interpretations. Remember with fraud that's a defense. They did test that a couple years ago in regards to the selling of property that had bat feces and stuff like that. He knew that it wasn't bird. That would be a form of fraud. Parol evidence is another big issue. 1 area I tell preliminary negotiation. I take a step back look at the facts and see if we're trying to introduce that conversation prior to putting this into writing.

You have your illegality and your minor capacity. With the minor they like to test that on the multi states. Disaffirmance on the contract. In regards to when can you disaffirm the contract? You can't unless it's for necessities. And of course what's the age and maturity and how much time can you disaffirm? Those are areas they like to test.

That's your formation. There's a lot there in regards to forming the contract and looking to your actual defenses. It's a good area to really focus on because most likely they test contracts formation's a good area. They like to test that area because there's some meat there they can pull out and test your knowledge to see if you can understand based upon the actual facts.

Third party rights. Third party beneficiaries as well as the [inaudible]. Email send you the questions for the third party beneficiary. They tested it over and over on an essay format and it hurt students. Okay. I'll come back to your question in a minute. In regards to looking at and understanding it will be on the multiple choice questions. But you need to understand when it's triggered and your setups are important. That's why your checklist in this area will lay it out for you. Follow the approach. Going to your question in regards to the parole evidence rule what I would go back and look at, was there preliminary negotiation? If there was, you're trying to get that statement in. An example I tell you I want my house painted I'm having a party for my daughter on July 1st. We contract and in that contract you say I'll paint your home within 30 days. By the time we both sign the contract 30 days will be July 2nd. I want to bring in that preliminary negotiation. Because of the party. Can I get that statement in as boom triggered parole evidence? I can only get it into what? General can't come in to change the four corners of the document but if there's an ambiguity, fraud, mistake, it can come in in regards to interpretation. In regards to illegality, that's not very testable but what that means is your contract's illegal. So I contract to sell you heroin. Don't sell it to you. Now you want to sell me for breach of contract. That's illegal. They tell you basically to go away. Or slavery or something like that. It's illegal. You'll know when it's something illegal.

Back to your third party beneficiaries. We're under third party contracts. You want to look so see what contract are we dealing with? Very simple. You look to formation stage of the contract. So having found a contract between A and B does it raise rights for C as a third party Benny rights must arise at formation of the original contract otherwise it's not a third party beneficiary. How does that couple? Let's say very common in multi states, by the way, is that I contract with a builder to build a home; right? So I'm gonna build the home and the contractor's charging me $50,000. I'd like you to give the money to her. No problem. Well, she was at the formation stage of our contract for building. So at that point she is a third party. Do you need privity? No. Was there an intent to benefit the daughter? Sure. She says she's getting married pay her. There was intent to benefit. Is she a predator? No. A donee? Yeah. Con firing a gift. Daughter so she would be a donee. Then of course did her rights vest in order for her to bring a lawsuit? Look to the facts to see if her right's vested and if so she can step in the shoes and bring that lawsuit just like the contractor could if I didn't pay him. So that's a third party beneficiary. A lot of times what they test the agreement I gave you I'll pay you $50,000 to build the house, supposed to pay the daughter month goes by builder says pay me and we do it. Can't modify if the beneficiary's right's vested. So you've got to go through the steps and see in this case the daughter's rights did they vest in if that's the case, then the modification's not valid.

So it could be illegal underneath the statute which is rare they're going to give you a statute. That's why it's not tested. I have to give you too many facts. They'll tell you something that you know. I hired a hit man to kill my husband. Not going to enforce that contract. That's why it's not tested it's too simplistic. I wouldn't worry about it.

Third party beneficiary what you're seeing is that third party's getting standing to sue under the terms of the original contract because they were a third party. In regards to when your rights vest you cannot modify without that consent of the baby bar beneficiary. If the beneficiary consents it's fine. The other area's your assignment and delegation. Assignment is a right under the terms of the contract a delegation's an obligation under the two. A lot of times on the exam they're going to state to you there was an assignment. It is your job to see was there an assignment and/or a delegation? They never use the term delegation. I know, mean. It's a right. It's a right under the terms of the contract. So what you wanted to do go through your steps. Define assignment basically it's a right urn the terms of the contract. Look to see well, remember, privity. You want to see is the right assignable? So terms under a contract can I sign my right urn the contract? Well, you can as long as it's not too personal a nature, prohibited by contract or law. Was it a valid present assignment? It has to be. And the effect is basically I step in the shoes. I can bring up the ‑‑ now, the trick with assignments the courts love assignments. They love to allow assignments at contract. You heard me tell you that the rights are assignable unless it's printed by contract, prohibited by law. Assignable. Can I still assign? Absolutely yes, you can. Okay. So you want to be careful about that. The courts like the freedom of assignability. If it's printed by law, obviously, no you can't do it because it's prohibited by law. Again, is it assignable? You want to break that apart and see obviously if we can. Even if the contract says no, we still gonna sign. So I want you to make sure that's clear.

So assignment does a lot of times come with delegations? It doesn't. If I'm being paid to do a job and I say I'm assigning my rights for you to pay my creditor, that's a straight assignment of giving my money to my creditor I owe. You've got to take a step back what's the right under the contract? Receiving the money. What's the obligation performing the services? So you can see one without the other. I want you to understand that because they will try to mess with you.

1 without the other.

The delegation, your obligation. Is it prohibited by contract? Prohibited by law? Did the party assume it? Was there an ovation? Ovation's important under the terms of what? Comes up on the multi states to see if we can release one of liability. If I have a contract to perform teaching services and I assign to Mary the right to the money Joe doesn't do the services. Now I'm being sued. Wait a minute. I what? Delegated, delegated. But I'm still on the hook. That's what they're gonna test. So unless there's an ovation where I obviously went to the contracting party Joe do it in my place and they accepted that, I'd be substituted out. If there's an ovation that can release me of liability. If not, still on the hook. You want to make sure you understand that. And of course what's the effects of the delegation? The obligation is transferred to another party but that does not release me of liability.

Now get out your little pencil. 1 area that they test on the baby bar. If I have a contract between A and B to build a swimming pool, now, B hires C to do the digging so he wants him to dig the hole. Now let's say obviously well let's break it apart. We have A and B for the swimming pool. C goes ahead and does the digging. Now he wants his money and A says forget it don't want it. Hole's already dug. So now C wants to sue A. How can C do that? C and A aren't in contract. So in this case C would have to do what? If C's trying to sue A, C would have to show that the B delegated to him based upon that delegation A gave him third party rights under the B C to go ahead and get A. Does that make sense? So we're looking at who can actually sue. Let's map it out.

I got A and B contract number one to build in regards to swimming pool. Pool anymore. Now let's set up our lawsuit. If we have C who's the plaintiff versus A how is he suing? And he'd be suing under the B C contract because C received it as a delegatee so he would go up into B's place under the original A B contract and sue under the delegation. If A was a plaintiff suing C, how does A get standing to sue C? He, A, would have to show the B and C delegation and then raise the issue third party beneficiary. That's the only way A can get connected to C. You'll have beneficiary to give A the ability to sue. Make sense? That's how they're tested several times. It does come up a lot on the multi states. They've done that several times on essays on the baby bar. I think it's ripe for testing. Shoot an email and I'll clarify this at tend too and I'll send them to you to take a look and compare. Good to go over because it's always multi states. They won't be able to trick you anymore. The key is to see who is suing under what contract? You should be in good shape. That's your third party rights. It have conditions big. Area you want to know. You have your express conditions versus implied. Your express conditions remember the courts find them very harsh. Any way around not to enforce it they'll do it. You see that with time of the essence clause. Promise not a condition itself.

Then you have your implied in law which is a constructive condition and is it pre[inaudible] you have your implied in fact. Implied in fact good faith but implied in law you can and that's where you look to your I use the meme I swim for Dave W. or if you're taking Flemings. Was it swamp dive I think. Take those and see how many you can grab onto. If you see conditions at issue, up to see if you can excuse it and excuses are triggered, look for two or more. Certain ones have a tendency to go with each other. You have impossibility. Impossibility performance is objective that means no one can do it. That has a tendency [inaudible]. Like each other. So if I see the one I definitely go look for those over two because they have a tendency to go together. Anticipatory repudiation. Versus voluntarily disablement you disable based upon your conduct. Those have a tend is I to go together. So you want to make sure you understand what goes with what and look for it. That will help you identify more issues. We have to get the issues in the examination itself that's important.

Other areas they like to test is substantial performance. It's a different beast. Tell you a trick: Look to see if the contract's 90 percent performed. If the answer's yes, it's at issue.

Don't tell that to the reader. Did you get substantially what you bargained for? Ask you be reimbursed from what you didn't receive? Probably let you use the argument of substantial performance to excuse your performance.

Another area they like to test heavily on the multi states is the doctrine of divisibility. We don't understand it. Very simplistic. With divisibility the contract can be divided by price, divided by units, and was not, was not bargained for as a whole. They test this a lot with installment contracts. So if I enter into a contract I'm gonna order 50 pounds of beef a week for the next year and I want it delivered each Friday, can it be divided by price? Yeah, by each week the 50 pounds. By unit in 50 pounds. Was it bargained as a whole? Yeah. For a year. You want to make sure when a contract can be divisible. The element they're always testing: Was the contract bargained for as a whole? If you look for that, most likely you'll get it correct. We have our impossibility remember I told you to look to objective. That means no one can perform. I canceled tonight because I was sick. Would impossibility get me off? No. Someone else can teach. It's not impossible. That means no one else can do it. You just can't. If you rent a particular hotel room and it burns in a fire. It's more likely objectively impossible they can't give you a room because there's nothing left to give. Wrongful prevention you hinder someone's performance. So you prevent them from performing. It does come up once in a while. You'll know based on the facts that I yell at you because you're swimming pool. I won't let you perform and you still have time to perform that would be an argument for wrongful prevention.

Of course it's commercially impractical meaning something's happened in terms of the contract it's costing me too much. Frustration of purpose. It has to be what? It has to be an unforeseen event, but your purpose needs to be known. If you never told me you can't argue frustration of purpose. Even know the reason you contracted is no longer in existence, sorry. It's not going to excuse you of your performance.

You also have the issue of estoppel that can cop up here. You'll see that based upon a party's reliance. Time of the essence clause and I told you I can't get that particular flooring by July 1st when you want it but I have to wait. I can get it and get it installed by July 5 and you say okay. Sorry you didn't perform. (speaking too quickly) relying on what you said besides the issue ofware. Look for two or more to try to excuse your performance under the terms of the contract.

Those are your excuses to performance implied in law contractually condition except never argue tell the reader it doesn't apply. Don't bring it up for an express condition. That's taboo. They don't wanna see it. It does not work. It's just law. The law won't allow substantial performance to excuse an expressed condition. Done. Don't even bring it up. Wasted time and the reader doesn't wanna see it.

Another area you're gonna have to add to your checklist is what I call UCC terminology. You are responsible for this. So it is an area that you do need to know. You have, like, your risk of loss. Your destination contract versus your shipment contract. You have your warranties. So you want to know those. They could be tested. You have warranty of title. UCC you have title to sell this object. You also have which is very similar to torts under products, in regards to your express warranty as to expressly warrantying this product you have your implied warranty merchantability. Familiar language. Like it. That's what you have where? Under torts. But it's a little bit different in regards to UCC because the issue is privity. Do you have privity? Then there's alternatives A B and C. A basically (reading from handout) that could be include ago corporation. C basically persons or property wherever they're injured. I call that or add it to my checklist UCC terminology. If it does come up, that's gonna dictate to me which party might fall into the breach category. So that's important to me to obviously have a good understanding as to who's the breaching party. Okay?

Then you have your breach. Now, with breach, I see a lot of times students spend a lot of time writing paragraph after paragraph for breach. Generally it's simplistic get in and out. Basically your failure of and whatever you did. See two or three paragraphs what are you doing? I'd rather see that somewhere else and spend that time somewhere else as to what's at issue. 1 or two sentences is generally enough.

Another area they could test you very rare that it's tested on the essay it comes up more on the multiple choice questions guaranty at least one what is called [inaudible] imputation or anticipatory breach. We hit under conditions repudiation based on your express language you repudiate the terms of the contract you're not going to perform. This is similar accept the issue becomes now? Or do you have to wait can see? Multi states dealing with hire a famous person to sing in my nightclub for the party. Now they're not gonna do it.

It's December 20th can I sue them now or do I have to wait and see if they're showing up? That's the area where you have to see it.

With that, what you're looking to is express repudiation but is the contract in executory stages? What does that mean? Most people don't understand ha that means. Executory stages what you're looking for if one party's fully performed sorry, the contract is not in executory stages. If both parties started performance sorry, the contract's not in executory stages. If one's fully performed or both have started performance it's not executory stages. How could that come up in regards to your examine? If you contracted to purchase a car, and the deal was your supposed to pay $15,000 for the car and I'm supposed to deliver title of the car. The contract right now is in executory stages. Let's say you gave me $5,000 as a down payment until delivery is supposed to happen on Friday. Is the contract in executory stages when I call you up and say not gonna deliver the car? The answer still is an executory stages why? Only one party started performance I haven't done anything on my end to transfer the title. So it would still be in executory stages so you could sue now versus waiting until due date to see if I delivered the title. It's up to plaintiff, wait and see or sue now.

The executory element is what they test. That will come up on the multiple choice questions.

Lastly, you have the area of remedies. Very, very testable especially on the baby bar. Unfortunately in law school you have a remedies class that comes later, but you are responsible for the baby bar. Use your checklist. Start off with your general damages. What's your expectation. Terms of the contract in if you're buying a good and you had a contracted price for $5,000 what's your expectation to pay $5,000 for that good? Pay for it somewhere else or let's say I got a good deal on it and it'll cost me $7,000 to get the same thing. Obviously the remedy in that case would be the $7,000 so I can go get the same thing. Versus your special damages you should be very aware of the case Hadley versus Baxendale. It allows for what? Special damages if they're reasonably foreseeable at the formation stage of the contract. It has to be at the formation stage of the contract. If it's not known at the formation stage, sorry. There's an exam out there where I contract to have a well put in my yard because I want pure fresh drinking water. Then of course I decide to plant a crop strawberry plants or something and of course there's a draught. Now I need that well water to water my strawberries but you didn't finish on time so all my strawberries died. Suing you for breach of contract (speaking too quickly) I want special damages for my crop. Am I going to get a recovery for my strawberry crop? Is the reason foreseen? Sure. They'll die without water. Was it nope at the formation stage no. This is how they get it buy you. You've got to make sure you focus on the elements. Yes, she should be able to recover for the strawberries and the answer's no. I said for the fresh drinking water. There's a difference so you want to make sure to look tot actual language. That is testable. They like to test Hadley versus Baxendale because they have students don't understand the rule. Look to what? Formation stage. Go back to the formation of that contract. It could come later. You're not going to formation of that contract.

A rescission is something you are responsible for. With rescission, we're undoing the contract. So we're undoing the terms of the contract. The primary ones testable are fraud, mistake, or ambiguity. Now, remember, when you rescind you're undoing the contract so putting us back to what we call the status quo. Even if you bring it up look to see is that really the best remedy based on the facts? If I want the contract enforced probably don't want rescission based on the terms of the agreement.

Reformation. Reformation's basically there's a mistake in the contract so you want the courts to re‑form it to reflect the party's intent. Looking for because you want to re‑form the contract. If there's a mistake in the written contract of the sales price and we agreed to buy the property for $10,000 but the secretary typed $15,000 we've got a problem. Reflect what our intentions were.

Restitution does come up. What's restitution? To prevent the unjust. So you've received something unjustly and I obviously wanna take it back from you. So let's say we contract for a good and you basically tell me let's say I go to an appraiser in regards to a painting. Painting's painted by Van Gogh worth $5,000. Buy it from you if you want. Something pretty I can put in my studio. I sell it for $5,000. I find out later it's worth quite a bit more. I would go through my general damages, see if I can get special damages. When I get to restitution, let's say he's taken that painting and sold it for $100,000. Maybe it's worth 50 but he got $100,000 for it. That's not going to make me happy because he's benefited from my wrong doing so I want restitution. He's been unjustly enriched based on the fraud he's committed from me on this contract so I want the courts to seek restitution and take that away from him. To prevent the unjust enrichment.

The other area they like to test and you do need to know the elements is specific performance. Specific performance. So basically you're looking for an equitable remedy. It's not a legal remedy like your general and special dangs. It acts in equity. What that means is you need to show why should we enforce this contract? So we're forcing the parties to perform which the courts don't like to do. Why should we? Land's unique or could be, like, multiplicity of suits you keep breaching every installment. Damages won't make you home for some reason. Maybe it's something dealing with your reputation. Damages won't make you hole. You can look to a reason as to why money won't fix it here. That's, you want to enforce the agreement. That shows inadequacy (speaking too quickly) if we're going to enforce the contract. Of course had then cans satisfied under the terms of the contract yes, they have. Always look for defenses. Which the baby bar has started to test. 1, they tested which I think was not nice was what's called a bona fide purchaser. It was with a sports call. Italian. The person sold it to one party and sold it to another party which they of course didn't know about each other. And so once he found out you sold it to another party, he's trying to enforce the contract through specific performance. You sold it to the other party who ‑‑ the $50,000 but did he have notice? No actual notice. Nothing to tip him off there is an inquiry notice. That BFP could cut off the original contracting party's rights because he didn't know about the existence. You still a remedy such as money damages but they can't award specific performance to mandate the terms of the actual contract. That's an area I want you to play with and get a good handle on because it's been coming up more and more on the baby bar exam. I don't know don't do well so they think it's a good concept to actually test so it's an area they want to play with. If you have questions on it, let me know. Break it apart.

There's a lot of good substance here; right? There's nuances is what I call them. If you start playing and it and understand how the concepts come up, pull out your essays, your multiple choice and start plugging it back in. Oh, I see the Facebook exam how they tested acceptance. Plug it ‑‑ assignment without a delegation? Plug it in. It can come from a multiple choice question. Essay. Doesn't matter. The more you get it in your mind set all about application. How it comes up. Do I understand how a firm offer comes up? Would I know it if I sought it in a fact pattern? You need to be able to identify these issues based on the facts.

The UCC terminology I'm assuming you're talking about before the breach. What the UCC terminology's areas you're gonna pull from in several things such as your risk of loss. Who bears the risk of loss? Buyer or seller? Specific rules you remembered the UCC. You have in regards to your warranties. Warranty of title as well as your warranty of the actual product which is very similar to torts under products liability so you have to know that. You have another issue that can come up such as the lost volume seller that you do need to know. So your shipment contract, your destination contract. You need to know what those terms are. The one thing you're gonna see with the UCC it's very rule oriented that's what I like about it. So your damages in regards to seller's damages prior to acceptance of the goods or after, you need to know that. They are gonna test it. But it's very rule oriented so it's not hard. I told you in the first lecture I would recommend you getting the sales Gilberts. All those terms are in there and that will help you. This is where I put my baggage under UCC terminology there to make sure it's at issue, I have a place to put it before I get to the breach and remedies. You'll see how you outline should be UCC merchants than your common law offer. If it fails go (speaking too quickly) should have your UC acceptance. The only other yeah just before breach is your terminology of risk of loss, destination contracts, shipment contracts. No place where common law's there. Put it somewhere so it makes sense to me. Hopefully that makes sense.

Again, highly testable and very language rule oriented so get that book and start learning it because that's something that's going to start helping you succeed. It's a little bit more difficult for first‑year students.

As you can see in regards to contracts run it through the actual checklist and break it apart in that matter. Issues come up. You can get more questions on Taft's Web site we got prior questions we got prior baby bar questions we have e‑classes that are actually baby bar or bar questions so there's quite a lot for you to pull from and look at model answers and get a good understanding fact pattern. The (speaking too quickly) you need to do the work. You need to obviously exercise and go through outlining the examination and comparing to the answer. Reading it oh, yeah. I would have done that. Easier said than done.

That's your contracts in a nutshell. At this point remember you're gonna be receiving an essay question. In multi states. I highly recommend you go over the essay question at least outline it if you don't write it. Why? Little things or details. It has an actual baby bar. Where am I missing things? At least outline it. Write it email it to me I'll take a look at it. Yes, I understand Flemings is starting this weekend and he'll go over introduction of how to write the essay which is good as well as torts. So those are the first two subjects you would have. You should be ready for torts. He's gonna have you outline I believe it is five questions. Outline 'em. Don't put them in your book. Write them on a separate piece of paper and put the correct answer in your book. Most students don't do that. No, you want the correct answer in your actual book so recommend that. At this point, you should be what? Strong because we have gone over torts. Okay.

All right. Any other questions before we say good night?

If any questions do come up please feel free to shoot me an email at jolly@taftu.edu. Shoot more tomorrow. Again at jolly@taftu.edu. You don't wanna see an issue. Gee that's the first time I've seen ‑‑ email otherwise I'll talk to you guys next week. Everybody have a good night.

 [END TIME: 7:00 PM]