Taft Law School

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>> INSTRUCTOR: Good evening, everybody, and welcome to tonight's e‑class. We'll be starting in approximately two minutes. Thank you.

Good evening, everybody, and welcome to tonight's e‑class. We'll be starting in approximately two minutes. Thank you. Good evening, everybody. We'll be starting in approximately one minute. Thank you.

Good evening, everybody, and welcome. Our primary focus on tonight's lecture is basically how to take a multiple choice question. If you can make sure you have your lecture handout for multi states, that is primarily what we're gonna go over. These sessions are record so if you ever want to go back and listen to a lecture they're up on Taft's Web site in the student section, and then just go to the baby bar mini series. Everything there's for you so we have the lecture as well as any handouts. Everything's posted on the site for your convenience.

All right. First of all, our primary focus is to try to get you prepared for the baby bar examination.

For the baby bar I want to point out to you that you are responsible for the subject matter of torts, contracts, U.C.C., and crim law. So torts, contracts, and crim law you've had in regards to your first year. Now they've ‑‑ want you to expose yourself to the Universal Commercial Code, which is known as the U.C.C. That's an area that I would recommend you get a hold of the Gilberts, called sales, look at the black letter law there and match it to your different terms that you learned in contracts so in essence what's the difference between an offer under common law versus an offer under the U.C.C.? You need to know that under the baby bar. I wanna give you a heads up so you can start preparing now so you do well. Again, what are you responsible for? Torts, contracts, U.C.C., and crim law.

The other thing I had questions before I dive in here about the multi states is you are supposed to answer according to common law. So I've had questions today unless they tell you otherwise you do need to know obviously your torts and contracts, you need to know in regards to your Model Penal Code. But you're going to answer according to common law unless otherwise directed. That's important for you to understand. If you see a burglary ‑‑ which a student remembered on an exam and missed ‑‑ and it dealt with breaking into a police station, and he picked the issue of burglary. Common law it's not a dwelling house of another. They will have that wrong answer choice for you. So you have to pay attention common law and break apart the elements and go from there.

Now, in regards to the subject matter, I want us first to point out torts. Torts is directed towards the elements. It's black letter law. So when you see a tort multiple choice question, I want you to dissect your element. If the issue is in regards to fraud, break apart those elements and make sure the facts sport the fraud. Or a tort of battery, make sure that the elements of battery are present based on the facts. We have a tendency to look at it as a whole battery and we don't look was there intent? Was there a harmful or offensive touching? You have to break that stuff apart. Otherwise again you're not going to get the correct answer.

In contracts, contracts is a little bit more difficult. Very demanding on your reading comprehension. The fact patterns tend to be long and lengthy so you have to break them apart. I always tell students, mark 'em up. So if you see Joe called Mary and asked her was that an offer and go through the elements and mark that portion of the fact pattern as to whether or not you got an offer. Because especially when you get down to the end you realize what's the issue? That'll help you be more efficient in going through the fact pattern more quickly when you have to go back and review to find the correct answer choice. So that's something I would recommend. Crim law's more what? Focuses on the elements just like torts so it's black letter law. So they're going to test the nuances in regards to the rules.

With the multistate exam it's an objective test and you will have obviously four answer choices. On the baby bar, the questions are mixed. So you had a tort class we gave you tort MBEs. You had a contracts class, you had contracts multiple choice questions. On the baby bar, not going to tell you. It's very important that you read the call of the question and hopefully you can determine as to what's being tested itself. You need to break that apart. Again, if you're not paying attention and you're thinking tort when it's crim law, that'll hurt you. Again, they're not going to tell you the subject matter being tested. That's up to you to determine.

All the questions are worth the same point value. The score is based upon the number correct converted to a 400‑point scale. What's that mean? Answer all of 'em. Even if you're running out of time and they call two minutes, bubble it. Get something down so you have a one out of four in regards to odds of getting it correct. You've gotta put something down; it's better versus putting nothing. So you want to make sure you answer them all. Key thing there I tell students, too, is practice. Do simulateds. Do it in blocks of 33 and the closer it gets to your test date, sit down and take a hundred multi states in that three‑hour time window. That's the only way you're gonna get your time down, and that's important because, again, you don't wanna learn for the time your timing's off at the actual exam itself. Important, again, for you to break that apart to get your timing down.

Now, when you take your multistate question, what do we have a tendency not to do? Use our checklist. Run it through that checklist. Break it apart. If you see it's testing the tort of battery? What's in battery? Your inner checklist is going to help you. That's in your memory; right? Intent, harmful [inaudible] touching of another. If you find those are supported, is there any defense here, like consent or privilege, whatever the case may be. Look to the facts. Use your tools to help you pick the correct answer choice. Mark up those facts. We have a tendency I don't want to mark up my book. Who cares, you've passed. Mark it up with pencil and erase it later. But mark up and see what's transpiring in that fact pattern. It's very difficult to rely on your memory.

I tell students take courses like adapted bar online. That's not bad, but make sure you do multistate questions on a hard copy as well. So take exams of how you're actually going to take that day of the baby bar. Because we read differently on paper than we do on the actual computer so that's important to get those skills down. So, again, we can go there and ensure our success on the baby bar exam.

Now, the one thing students really don't understand, there's really no difference in taking an essay and multiple choice. The only difference is four answer choices. So what you need to understand is what? You're still doing the same analysis. If the issue's negligence, what is the actual duty? Well, is it a special duty being tested or general duty and pinpoint based on the facts. Okay, so I found a special duty, but was it breached? You're doing the same analysis in the multistate except you're not showing your work. That's the only difference. You have to still break it apart and go through it or you will get the wrong answer choice so make sure you understand that. Break it apart.

Now, multiple choice questions are comprised of what we call three parts. You have the root, which is the fact pattern; you have the stim, which is the call of the question; and you have the options which your four answer choices that you need to choose from. When you take multiple choice questions, the first thing I want you to do is read the facts carefully. Don't make assumptions; break it apart. The examiners know that we do not read in detail. Guess what? That's how they test, knowing you'll miss something. Look to the operative language. The fact pattern often turns on the details based on the facts. You need to determine what facts are relevant to the issue they're testing versus what's irrelevant. So you've gotta break that apart. Again, everything revolves around the facts.

Now, how are you gonna read a multiple choice question? When you take a multistate question, I always want you to start with the stim, ie the call of the question. Remember, I told you earlier, you're not going to know the subject matter, if it's torts or contracts until you start reading the question. If you read the stim, what's this do for you? Narrow down either the subject matter being tested or maybe even the specific issue. So sometimes a call will ask you was there a battery? Right? Or was there in regards to a breach of contract. Well, kind of gave it away as to what subject matter we're testing and I can think of that in my mindset, write out maybe cursory my checklist so I make sure I'm applying it, and choosing the correct answer choice. Once you read the call of the question, you're ready to read the facts carefully.

Remember, when you're reading the facts ‑‑ you get 1.8 minutes for multistate pretty much, mark it up. You have to dissect it and go through it quickly. When you're seeing facts, what are they supporting? And you're going to find in practice, torts and crim law you can probably get through quick. Contracts are the killers because sometimes they take me two or three minutes. I don't have that. You're going to make it up on the torts and contracts. It won't take you the 1.8. So I can get through tort quickly than I can in contracts so you want to make sure, again, you understand that, and that's why, again, we take simulateds ‑‑ mixed questions ‑‑ so we know if we have our timing down or not.

I guarantee you, when I was studying for the bar when I sat down and did them in hundred increments by subject ‑‑ torts, contracts, properties, the subject you're responsible for the bar ‑‑ I never ever got through in three hours all 100 multistates for property, ever. But I knew I'd have to make it up based on the other subjects. Keep that many mind so you don't get anxiety going. That's why doing simulateds closer to the exam will help and reassure you so I can eliminate that pressure, that anxiety I put myself under.

Again, once you read the call, once you read the facts and mark it up, what do I want to make sure you're doing? Follow the call of the question. What is the call asking? It's very important to understand the call. They actually tell you most people do poorly on the multi states because they don't fall the call of the question. Why aren't you following the call of the question? I think a lot of times students aren't paying attention to what they're asking. You go on your way and go to the left when they want you to go to the right because you didn't pay attention to the call. Make sure you answer the call of the question.

Now, general rules regarding multi states is No. 1 do not ever assume facts. Don't make the problem harder than what it is. Keep it simple; right? If the multi states in regards there are multiple ways to interpret the multistate. Take the straightforward one. A lot of times ‑‑ I think it's more a female thing too ‑‑ we always, no, it can't be the right answer. We always second guess ourself all the time. Keep it straightforward if the facts support whatever the issue you're seeing that's the answer. Don't make it more complexed.

When you're reading the multi states, look for triggering facts while reading the exam. Dissect it. If you see a statute, what's that mean? Most likely it's gonna have to be applied. You need to break apart the element of the statutes. Do you know how many people see a statute on the exam and ignore it even on the essay? What are you doing? They gave you the statute for a reason. That means you need to go look at it and break it apart if it's a crim law question, what do I need to show? What's the actus reas? What's the mens reas? Most students do not apply statute given in the fact pattern. Guess what? The examiners know this and they're going to test it.

Where would you see a statute? Very easily in crim law in regards to a crime. You can see it very easily in torts or negligence per se. Those are two areas they're going to test statutes, and you've got to be aware and be on and break it apart. Look to the language of the statute and what they're asking; right? A lot of times they'll give you a statute and some of the language is familiar to us based on definitions but it's not always verbatim so you have to look for the language. We'll go over one so you have a good understanding what I'm talking about.

If a question basically here is testing something specific. So, like, let's say the call says which is the best defense? Which claim will likely succeed? To me, that's something I have to go back and reread it and rewrite my call. What are they really asking here? So an example: Crim law question says what is the best defense? I rewrite the call to say, wait a minute here. Based on the facts what will support the defendant to go free? He's not guilty. So I have to either show the best defense will negate an element or there's a true defense but I have to get him off. In that type of question, too, if I can show ‑‑ let's say it's burglary and I can show he had no specific intent, versus I had a defense of intoxication, let's say the facts support both, both those answers are correct. Remember, intoxication can negate specific intent. What is the better answer choice? That's where your checklist is gonna help you. If I can knock it out in an element, that's always a better answer choice than a defense because I'm home free. I don't have the burden as the defendant to prove my prima facia case versus the prosecutor didn't meet their burden of showing I committed the crime.

Let's give another example. Let's say it's a tort call. It says, which claim will succeed? What? So what you want to do is look at it and say what only claim based on these facts will be successful? If they give you three or four, only one is supported based on the facts so I have to pull in those facts and look to which is going to be successful. That's important. Again, your call of the question dictates. That'll help you and you have to pay attention to it.

Okay. Couple things I want to point out to you to make your timing easier for the multiple choice questions. If you see multi states ‑‑ in their answer choices use the terms "because" or "since" ‑‑ they'll say "guilty because" or "guilty since"; right? These are conclusions, and what that means is that everything after the word "since" or "because" is gonna be true. Right? So everything after the word the "since" or "because", that can help me eliminate. Look at example No. 1 to see how this works. Always start with the call of the question.

Now, here, in regards to the exam, once you read the call of the question you're ready to read the fact pattern and break it apart. Here, it says, (reading from handout). Is this a tort or crim law? We don't use the word "charged" in tort. I know it's a crim law question based on the call. And I think sometimes this is a big fear we have. I'm not going to know what it is. Take a step back. If you start paying attention to the calls who's bringing the suit you'll know. And basically we don't charge people with assault in a civil action. You know, since it's being charged, it's coming from the prosecutor or the state. So I know based on this call. Why does that matter to me? The assault's different. Different definition. We don't need intent; what we need general intent in regards to assault. It's a little bit different.

The fact pattern states ‑‑ again, I understand the call ‑‑ (reading from handout). They told me what an assault is. That's not my definition. I'm sure it's not yours. They told me attempt to commit a battery. It says, (reading from handout).

What do I need to look at? Well, I need to show what? An attempt to commit a battery. They told me that based on the statute. What do you need for attempt? Specific intent, substantial step, preparation versus perpetration, apparent ability. This is what I'm looking for based on the facts. Based on these facts ‑‑ without even reading my answer choices ‑‑ is he going to be guilty or not guilty? Did he have the specific intent? Based on the facts, he dropped his phone and he was picking it up, he hit her. He didn't do it with the specific intent to touch her butt so it doesn't support the crime of assault, does it? So I'm gonna find that he's what? Not guilty. If I look quickly at my four answer choices A and B say "guilty because". I told you those are conclusions. Since I know he's not guilty I won't have to read those. If you can eliminate two answer choices right off the bat, that'll help your timing so that's important to understand.

However, the process in regards to learning ‑‑ let's go through them all and get a good understanding.

Generally we could eliminate answers A and B. Look at them both. A says, (reading from handout). Do you see that language? Where does apprehension belong? Tort language; right? So you've got to go back and look at the statute. It says attempt to commit a battery. No apprehension in that statute. They're trying to trick me and make me focus on torts. They will do this. I know A's wrong. As to B, (reading from handout) ‑‑ again, this is a specific intent tort being aware or should have been aware. Doesn't show specific intent. So we know B's out too. It's important, again, if I go through my rules, elements, I won't second guess myself. Stick to the black letter law I know. C says, (reading from handout). Well, that shows no specific intent so that negates it so I like C. And I'm still going to read D because it says "not guilty because". (Reading from handout). That's true too. So what is the better answer choice? C and D are both correct aren't they? You're going to find that C is a better answer choice because it negates an element of the statute. It negates specific intent. D just says he didn't intend. Not strong enough. Also, too, C really goes to an element versus D really goes to a factual statement doesn't it? Legally correct versus factually correct. Which is the best answer choice? Legally correct. So you can see how C and D are both correct answers but it's your job to choose the best. So C in this case would be the best answer choice.

So, again, what you're learning here is with your modifiers. The "since" and "because". Everything after it's conclusion so if you can eliminate ‑‑ you should be able to ‑‑ two answer choices right off the bat, then you can hone in on the other two and that will help you timing. Okay.

Let's look at another type of modifier. "If" and "unless". These are tricky. If as a modifier, everything after the "if" must be true. Okay. So everything after the "if" must be true. As for answer choices using "unless" as a modifier, the best way is to basically rewrite the question myself. So what do we do? Well, we take a question that says "no unless," I cross it off and put "yes if." That means everything after the if has to be true. "Yes unless" cross it out and put "no if". That means everything after the if must be true. To me, the unless are harder to compute in my mind. I can focus on getting the correct answer choice. So let's look at example 2.

What should you do? Read the call of the question. It says, (reading from handout)? Well, we know misrepresentation technically could be a crime. Definitely a tort. How do I know if this is tort crim law? Look at the parties. Sam asserts a claim against Tammy. You know it's a tort and with misrepresentation, this is something that you're gonna see on the multistates. Well, is it intentional or negligent misrep? I don't know until I really read the facts and break it apart.

It says, (reading from handout). Remember, we're suing for what? We are suing for misrepresentation. So if I look at my answer choices, will she ‑‑ will he be able to bring a cause of action for misrepresentation? A says "yes because, " B says "yes if", C says "no unless", and D says "no if". So can I really eliminate two right off the bat? I feel he's going to be responsible or liable, I would say no, so I would probably eliminate A. B, C, and D I'd have to read. They said "yes if". They might change the facts on me; right? If she made a misrepresentation. Now we've got a misrepresentation. I always know I have to read the ifs. The "because" and "since" modifiers I can get rid of right off the bat. In this answer choice, I can only get rid of A. Well, again, when you go through, you should be focusing on your elements of misrecommendation. Was there intentional representation? Was it a material fact one justifiably relied to their detriment? Those are my elements. If you look at answer choice B it has the "if" as a modifier. Remember, everything after the "if" must be absolutely true. So yes (reading from handout). Well, what element does that go to for misrep? The only way Tammy would owe him a fiduciary duty is if she's an officer or director for the corporation, then she has an obligation to disclose this. Nothing here to tell me she has that relationship. So does she have an obligation to disclose to him what she knows? The answer is no, she does not. I know B is not the correct answer. Okay.

C says no, unless. Oh. I'm gonna rewrite it aren't I? Put "yes if". So I'm going to take that "no unless" and make it "yes if". "Yes if" Tammy told Sam that the stock was noted worth more than $6 a share. Oh. If I change it to "yes if" and show that she just made a misrepresentation that supports the claim of misrepresentation because she made a false assertion didn't she? The fact she didn't disclose okay. The fact she lied and told him it wasn't worth more than six, she made a representation which he sold her the stock. He relied based on what she said. So C looks like a good answer choice. Goes to the element of the intentional representation.

D says "no if". Gotta make sure after the "if" is correct. Chemco's financial statement was available to Sam. Again, how does that help? It doesn't support the false statement. If they told me he saw the financial statement and she made the false statement, then maybe he couldn't have relied, but I don't have that in the facts. I can't make assumptions or kind of put things in the facts. Based on question, C has to be the correct answer. That supports that she made a recommendation. Make sense?

Again, the more I can get you to break it apart that'll help you. Now, remember, who you're doing the multi states, what do you need to do? Apply your rules. Break apart those elements and make sure the facts are supporting them. And then you want to hone in I see it's misrep. What within it's being tested? If you look at the question it's misrep, too broad. You have to hone in on what's being tested. Most of us get to the broad aspect but we don't go that step further and understand it's the misrepresentation that's being tested here. And you need to do that. Again, that comes with practice.

So basically what you need to not only determine the issue but what inner issue or element within itself is being tested? That's important.

All right. Let's look at example No. 3. Again, always read the call. Again, the call there's a couple things narrows the subject matter or specific as to what the issue is but also helps the anxiety level. I think our biggest fear is I won't know what' they're testing. When I read the call and get reassurance I feel I'm stronger reading the actual facts because I feel I understand what they're asking.

It says, (reading from handout). Okay. I see my call. What's it testing? False imprisonment. False imprisonment can be a crime; also can be a tort. Tillie's bringing an action against Raj and Children of the Earth. It's a civil action so I know it's torts. So I'm thinking read these facts and for false imprisonment you need to show intent, physical or psychological confinement of another. Then of course if there's any defense that's triggered, I'll apply that. But look to make sure those element of the false imprisonment are supported before I jump to a defense. Read the facts.

(Reading from handout). Again, they're asking you is there cause of action here for false imprisonment? What's our guess? Can she recover or not? So if you look at your answer choices. A and B say "recover since". Remember, those are conclusions. C and D say "not recover since". Which am I going to get rid of? A and B, or C and D? I'm going to eliminate A and B. I feel that they ‑‑ she cannot recover. Why? I see what element they're testing here? What element? Let's look at your answer choices.

(Reading from handout). D says, (reading from handout). Which is my better answer choice? Remember, do I need to be physically restrained? No. You can have psychological confinement. Afraid to go out because I'm afraid they're going to take me. He wanted her to go back. He doesn't want her to stay in the house. The element that's missing here that they're testing is the intent. No intent to keep her confined. They want her out so they can take her back to the commune. C is the best answer choice. People fall for this trick all the time. I see psychological confinement so they jump on the we can recover right off the bat; right? Because of the threat of the billboard they confined her. They don't think of the other elements. They go through the psychological confinement. They don't break it apart was there intent? So in regards to your recover, okay, when you read the facts, right, they had no intent. They want her out of the house so they can take her back to her brothers and sisters. So I know A and B since it says recover since remember, anything after "since" is a conclusion. Right? And I know in this case it's lacking intent for the false imprisonment so I can eliminate options A and B because the intent is lacking for false imprisonment. So then I would read answer choices C and D. If you did not break apart your elements I guarantee you chose answer A because you jumped on the one they flagged the facts with, psychological confinement. They do that. But make sure you break apart all the elements so see if they're supported with the facts. Don't jump for the obvious. They know that's our nature. You can't do that.

Let's say you got this wrong. What do you do? A lot of us read the answer choices, which is fine. I know false imprisonment and move on. Why? You have to figure out the why. Take a step back and say okay why did I not see this? If I got it wrong, most likely it's because I didn't break apart the elements and look to the facts and see if they're supported. Probably why I got it wrong. When you miss a multistate, you always need to look to the why. Why did I pick A when it should have been C? If you don't figure that out, not going to correct our problem. That's important.

All right. Now we've kind of gone over shortcuts of picking the best answer choice. Let's go through some questions together.

Look to Question 1. Again, look to the call. This doesn't tell me much. (Reading from handout). You'll see this issue likes to be tested on the baby bar and most multi states on a particular subject matter, contracts. I see Thomas bringing the lawsuit. I know it's most likely contracts or torts. Until I read it, I won't most likely know the subject matter.

Now, it says, (reading from handout). This is a breach of contract. You're calling me before New Year's Eve and saying you're not going to perform. That's anticipatory breach. Now, with anticipatory breach, can you sue now, or do I have to wait and see if you don't show up? That's the issue. With anticipatory breach, going through your elements what do you have to show? An express repudiation ‑‑ I've got it here based on the phone call ‑‑ and you need to show the contract's in executory stages. Executory stages means one of us didn't fully perform or both of us didn't start performance. Based on these facts, nobody's done anything. I know the answer is yes, you can bring a lawsuit on December 29th.

Now look at your options. A, B, C, D. A and B say "no because" and "no since". Can I eliminate those two right off the bat? I can, can't I? Now I have to read C and D. C says, (reading from handout). That's true. D says, (reading from handout). Which is the best answer choice? Although they're both weak to me, C's dead set as to the reason why. You're repudiated. That's support. For Question 1, C has to be the correct answer choice. Okay.

So do you see if you can eliminate two answer choices right off the bat it's going to speed up our time. Everybody understand for Question 1 why C's the best answer? Anticipatory repudiation/breach. I do want you to review because it does come up. It's one or two multi states on the baby bar; you want to understand how it's tested because it will be there, I promise.

Let's look at Question 2 (reading from handout) ‑‑ I'm thinking burglary, but it's not nighttime. (reading from handout) ‑‑ that supports he has specific intent ‑‑ (reading from handout). What are they trying to trick you with here? So for burglary ‑‑ even if you glance at your four answer choices, burglary you need the nighttime, there's no nighttime. The door's wide open, so there's no breaking. Two elements failed there. Robbery. No force, fear, intimidation. Embezzlement you were never entrusted with it. That leaves me with larceny. Let's look to see if the elements are supported for larceny. Larceny's the trespatory taking ‑‑ well, it wasn't his TV and he left with it ‑‑ personal property of another ‑‑ Jackson's ‑‑ with a specific intent to permanently deprive. Well, it says he intended to take the TV so all the elements seem to be supported for a larceny. A is the best answer choice.

No burglary why? Well, it's 3:30 plus what? There is no breaking. Could I change the facts on you? Sure. You could argue in regards to modern law burglary. Remember, you're supposed to answer according to common law unless they ask you otherwise. Right? So the facts will dictate, the call will dictate. If they want a common law answer that's automatic; if they want a modern law, they'll have to tell me. There's no way to trick me on this. They might say answer according to modern Penal Code, [inaudible]. So you will see based on the call itself.

So for question 2, A is the best answer choice. Your theft crimes, by the way, are highly testable on the multistates, and they will play with you. Is there custody versus actual title transfer and stuff like that, so it is something I want you to practice because they are there. They like to mess with us. Kind of like the mailbox rule in contracts. I might as well get the questions correct in that area.

Look at Question 3. It says, (reading from handout). What's the call? Arson. It says, (reading from handout). So is he gonna be convicted or acquitted? It asked you what? Modern. So what do you need for arson modernly? Doesn't have to be dwelling house. If it's a detached garage, it should work ‑‑ it's any structure. What's the mens rea for arson? Maliciousness. It seems to be he's foolish and fell asleep so it doesn't support the maliciousness. I see based on these facts that's the element that's missing.

So looking at your answer choices, is he gonna be convicted or acquitted? I feel he's gonna be acquitted. If I look at answer choice A convicted because, that's the only answer I can eliminate. I feel he's going to be acquitted. B, C, and D deal with acquitted. Let's read our answers. B says, (reading from handout). Remember, they asked you what? According to modern law. Doesn't have to be a dwelling. I know that's incorrect. C says, (reading from handout). Well, that was true at common law too. Couldn't be your own property for you to commit arson. Again, this is modernly, so that's not correct. D says, (reading from handout). That's gonna be my best answer choice. Especially because I know by breaking it apart and looking at it that the maliciousness was being tested here based on arson because it gave me facts to show he did this inadvertently.

The more I can get you to break it apart, you're gonna see it. And with arson, they do like to test you with that issue. Why? Because students don't break apart the elements. They'll give you there's blackening on the walls. Blackening's not enough. So you need a physical burning; right? In regards to the actual structure or they'll tell you all the furniture was burnt up but the walls are just blackened. Well, that's telling me the structure's still there. So sorry, there's no arson. So you have to pay attention and obviously make sure you break apart the facts and dissect it.

I've seen this tested several times when they're testing the maliciousness. Burglar's breaking in a house and he had a lantern and he heard a noise and knocked it over. It caught fire and he ran out. Well, you'll know based on the facts what direction they're testing, what element, and pinpoint it and break it apart.

For Question 3, you're going to see D is the only answer. If they asked you according to common law, that could change things. Again, always pay attention to your call. Remember, in this question it was asking modern law arson.

Let's look at Question 4. Is the man guilty of murder? Now, murder. That's a good issue. You should have in your mindset a murder approach. Some people start off with homicide, actual cause, proximate cause, and murder; that's fine. Some of us, like myself, I start off with murder with malice and I like to show my four ways of malice. Why? Because I need to determine based on that malice standard if you're first degree or second degree. That's important. It says, (reading from handout) ‑‑ that's larceny isn't it ‑‑ it says, (reading from handout) ‑‑ so if I look to my issue in regards to murder, what do I have to show for the mens rea? Did he have the intent to kill? It says he's driving slowly, he accidently ‑‑ so he didn't have intent to kill. Did he have intent to cause great bodily harm? Same thing: Same facts support that there's no intent to cause great bodily harm. Was his conduct wanton and reckless? Well, it was accidentally. He's driving slowly. So it wasn't wanton and reckless. The last thing I can jump on to is what? Was this committed during an inherently dangerous felony? Burglary, arson, rape, robbery, kidnapping. No, it wasn't. So most likely he's not gonna be found guilty of the murder.

Now look at our answer choices. A and B say "no because" and C and D "yes because". Can I eliminate two right off the bat? We can, can't we? And, again, this helps you with time. C and D said "yes because". And, again, based on my analysis for malice, I don't have a murder here; right? Now, if you go through your answer choice A, no, (reading from handout). That's true, but that would negate more of the intent element. D says, (reading from handout). That goes dead set to what we supported based on the malice that it wasn't an inherently dangerous felony. You know that's the correct answer. A's not wrong, but B is a better answer because that's what they're testing. You can tell based on the fact they told you he took an unattended backpack he's committing a larceny. So based on that commitment of a larceny, can we impute the felony murder rule? That's what's being tested here.

So it's important for you as a student to understand the broad picture murder but what within it's being tested? You focus on malice, you have to go that far. If you look to your malice you're going to get the second best answer choice. If you pinpoint they're testing what this in the commission of an inherently dangerous felony, you're going to get the correct answer choice. So that's important, and that's why it's important to break it apart.

The other thing I tell students to do, took into consideration ‑‑ especially if you miss a question ‑‑ plug it back into your checklist. Write a word or two next to that ‑‑ in this case, under ‑‑ my crim law checklist under felony murder rule, stealing unattended backpack. That triggers my memory to this fact pattern so I have a good understanding of how they test that concept, especially if I miss it. The more examples I understand how they test, that helps me. That's important.

This is something they like to test. They've even tested on the essay where he's doing something inherently and a child darts out or something results in the actual murder. They use the term "murder." If they wanted manslaughter, they will give you the term manslaughter. But with manslaughter, I want you to understand you have to determine based on the facts if it's voluntary or involuntary. They will never tell you. Again, that's where you apply your approach and that will help you eliminate to determine if it's voluntary, involuntary manslaughter. They're never, ever going to tell you. They will just use the term manslaughter. Knowing that it's your job to eliminate and try to determine, again, if it's voluntary or involuntary manslaughter.

Question 5. (reading from handout). Do I understand the subject matter? Liz is asserting a claim against Wong. I know it's torts. It's a civil action. Can't be crimes in regards to bringing a cause claim against Wong. Most likely not a contract call. It says, (reading from handout).

Now, first of all, what's the basis of the lawsuit? We know it's torts. What's the theory? That's the first place you've got to start. The theory is negligence, isn't it? Okay. After we go through negligence, what else could they be testing here? Well, was there a duty? Well, she's an invitee. You have a duty to inspect, discover, or warn of any known danger defects. Did you breach that duty? Were you the actual and proximate cause? And then your damages. So what could be tested here? I've got the duty. Next thing I'm gonna look for, did they actually breach? Not enough facts here to tell me the egg roll was lying on the floor. How long? Right? So the facts they use are gonna support. If it looked old and stepped on several times and was getting mold, I know it's been there for a long time. Versus they didn't give me those facts so I don't know if it's something that just happened or not.

Let's look at our answer choices. A says, (reading from handout). True, but Wong needs to be aware of it. So if it just was dropped he didn't have time to inspect and warn her of the danger.

B says, (reading from handout). That looks good because that supports ‑‑ she's an invitee ‑‑ that you should have discovered this and you failed to warn her. B looks good.

C says, (reading from handout). So recover if ‑‑ (reading from handout). So remember, the unless says we're gonna rewrite. Not recover unless becomes recover if he knew it was on the floor. Which is true. So C looks good except he doesn't have to actually know in order for her to recover. So I know B is a better answer choice than C.

Then D says, (reading from handout). Well, true, but wait a minute, it's foreseeable that people do spill things in a restaurant, knock things on the floor, so you have an obligation as a restaurant owner to inspect and warn in your restaurant to protect your patrons.

We know B is the correct answer choice. Why? It basically supports if it was there for a substantial period of time you breached because you should have discovered it and warned or put some precautions up so someone didn't slip and fall on that egg roll. Make sense? Again, we took apart the theory of negligence, showed she was an invitee, and based on the facts we had to determine as to whether or not there was a breach. So the issue here is did they breach their duty? See how we got there? You've got to break it it apart. You can see there's a similar fact pattern, but breach is an actual causation issue; right? That's why you have to hone it in so I pick the correct answer choice. That's important.

Again, for Question 5, B is your correct answer. Everybody see how we got there? Do you understand why C is not wrong but it's not the best answer because he doesn't have to be the actual knowledge. It's basically knew or should have known. Of course if he didn't discover it, we're going to impose liability.

Go to Question 6. This is a weird call. Which of the following is correct? Too broad. This particular type of question is very common on the baby bar. I want to make sure you play with it because it will be there in different forms. It says, (reading from handout) ‑‑ at this point, it seems like there's an offer; right ‑‑ (reading from handout) ‑‑ okay ‑‑ (reading from handout) ‑‑ posted he mailed it ‑‑ (reading from handout) ‑‑ okay. Wait a minute. We had the offer on the first you posted the acceptance on the third so I have a valid acceptance based upon the mailbox rule. I've got a valid contract here. It didn't arrive until the seventh we all know ‑‑ the acceptance is effective upon dispatch.

It says, (reading from handout). The revocation's effective upon receipt. Right? It says, (reading from handout). So do we find ‑‑ the issue is, do we have a valid contract? Based on the mailbox rule, yes. Why because he dispatched, right, on the third. So at October 3rd, we had a valid contract between Madison and Arthur. Guess what? When he sold it, he's now in breach. Okay. So was there a valid contract? Let's look at our answer choices.

A says, (reading from handout). That would have been on October 3rd. That looks true. Plus there. B says, (reading from handout). Well, that could be true except for your acceptance was effective upon dispatch. Nope, not true. C says, (reading from handout). Is that true? No. Why? Because if this was an option contract, you have to have support by consideration. I don't see that. Even though he said no later than the tenth, nothing to support it that you won't revoke it. Remember, with an option you need consideration. And it says D, (reading from handout) how would he have knowledge? We know D's incorrect. Best answer choice here is A. Facts didn't support an option. That's important why? Because you have ‑‑ if you have an option, needs to be support by consideration. Remember, consideration can be found by payment or money or reliance; right? But the other thing with option you need to know is that the mailbox rule does not apply to option contracts. So this was a true option until I actually got your acceptance in the mail he could have revoked. That's not what this is testing. Basically testing the mailbox rule and it's effective upon dispatch.

They like to test the mailbox rule. Why? We don't fully understand it. Or I sent you an offer, call me up and basically reject it. Then of course you send me an acceptance. They're going to play with you back and forth if the parties have a contract. Stick to your inner checklist. Once it's formed, no way, can't go back up the chain. Offer, acceptance, I'm done. Next issue is whether or not there's consideration. Stick to your guns. The mailbox rule is an area in contracts they do like to test.

Okay. So it's something I would heed my warning in practice so you get the three or four you're testing on correct. Once you see how they play with it, not that difficult as long as you stick to your guns.

Looking at these few MBEs wrong answer choices how to narrow it down to two specific answer choices versus having to read all four. That's important because that will save you time. Remember, I want to make sure you focus on the stim, ie the call of the question. That dictates. Make sure you follow the call. What is the least likely? I mean, I hate those calls but you have to pay attention and see what they're asking. When you read the call and start reading the facts, make sure you break apart your elements as to what within crime is being tested or what within contracts is being tested? If they tell you there's a contract they never said it was valid. Make sure you look to the facts and see if a valid contract was formed. Don't take it at face value. There's a written contract between the parties never said it was valid. You have to break it apart and look at it. Break apart the elements, make sure the facts are supporting it.

Work on eliminating two answer choices right off the bat that saves you time. The other thing that helps is a lot of times we second guess ourself. If you eliminate two and don't read them at all, you're guilty or not.

The other thing I'd like you to do is we have time. Baby bar's a few ‑‑ not quite two months away. When you miss a multistate question, I want you to look at the why. Don't just read the answer choices; right? A lot of times you'll see oh, yeah, I knew that. Okay. Great. Why'd you miss it? You have to understand not only the black letter law. How the concept's tested; right? Your analytical skill's really what we're testing. You can know every definition there is out there in law and still not pass because they're testing your analytical ability. So I need you to break that apart. Why did I not see this? One I always missed is in regards to the difference between murder in the second degree and involuntary manslaughter. Missed them all the time. Why am I getting these wrong? Factual. If I tell you I'm going down a school zone late at night 100 miles an hour and hit a child? Is that murder in the second‑degree or is that involuntary manslaughter? In my mind, that was murder in the second‑degree. No, it's not. It's involuntary manslaughter because I told you late one night. Shouldn't be children present. That doesn't support the wanton reckless conduct. It supports more of the negligence standard for involuntary manslaughter. Versus if I told you it was during lunch hour and crossing guard. Now children are more likely to be present, that would change it to murder two. Looking at why you got it wrong, you'll learn from your mistake and break it apart. That's important. Merely reading the answer choice is not enough. You've gotta break it apart.

You have time to do two things, make flashcards ‑‑ some people like flashcards ‑‑ and go back over them. Order two of the hypo. I'd review it once a week. I remember that baseball diamond hypo. Then I'm going back and learning from my mistakes. If I write it down and never look at it again, I'll make the same mistake again because it hasn't gone to memory. Takes time to go to memory, so that's something recommend you plug it back in. It's got to get into your memory.

That's your how to take multiple choice questions. It does take practice. It's not something you learn overnight. I know some of you have contacted me. You're frustrated because the scores aren't there. Start working on the whys. Start plugging back in of how the concepts are tested. The more you understand here's six different ways we test the conspiracy agreement, I can't trick you anymore. Something you have to start plugging in.

What happens at this point? Next week we're doing a tort review. So we'd like you to start reviewing torts, going over the subject matter. I will go over ‑‑ not going to sit there and read the black letter law but I will go over in regards to certain areas of how ‑‑ whether it's multistate tested versus the essay or versus both plus how the concepts are tested or, like, an example with false imprisonment of how they test false imprisonment, which give you a hint, they like to test it either because you have to be damaged by it or aware of it. That's how it comes up on the multi states. So I'll give you a bit of that so you have a better understanding. Anybody have any questions for me at this time?

Now, during your preparation if anything does come up, shoot me an e‑mail at jolly@taftu.edu. I'll be more than happy to help you in any way I can. Look for an e‑mail to go out because it will have a torts checklist and obviously the link for you to join the lecture next week. Again, if anything does come up, feel free to shoot me an e‑mail. All right? I wish you guys all a good night.

[END TIME: 6:38 PM]