Taft Law School

Electronic Classroom – Baby Bar Mini-series

06/04/19 6:00 – 7:00 PM

>> INSTRUCTOR: Good evening, everybody, and welcome to tonight's baby bar mini-series. Tonight our primary focus will be on the multiple choice question. You should have a handout that was e‑mailed out to you called the multistate lecture number 2. That'll be our primary focus for tonight's lecture. I do wanna point out that these sessions are recorded so for your convenience have you ever wanna go back and listen to the lesson or if you don't ‑‑ aren't able to attends one, you can always go to Taft's Web site, sign up in the student section, and then obviously go to the baby bar mini series. Everything's there posted for you for your convenience.

Remember, if you do have questions, please feel free to post them in the chat box. I'll be more than happy to help you in any way I can.

All right. First of all, kind of get reiterating what we talked about this first week that we had the baby bar mini series is the multistate portion of the baby bar, remember, it's objective; right? It obviously's going to have a question with four answer choices or options for you to choose from. Now, remember, the questions are gonna be mixed. So you have torts, contracts, and crim law; it's not gonna be 33 crim law and 33 torts. So at this point you might wanna start doing some simulations so you can make sure that you're identifying, gee, is it a tort question, or is it crim law; right in it's your job to determine. Remember, they're all worth the same point value so the score's gonna be based on the number you get correct; right? What you want to do is make sure you answer 'em all. If it comes close you have a minute left and you have ten questions remaining, bubble 'em in because you'll have a better chance versus if you just leave them blank. So make sure you get every one answered even if you have to guess at the last minute.

At this point in your studying, you should be preparing on doing multiple choice questions daily. Every single day. You've got to master the concept of, okay, this question's testing the issue of let's say it's consideration. But what within consideration are they testing in you've got to understand how the concepts are tested. Remember, it's not oh, do I know my rule of law? They're testing your analytical ability so that's what makes the questions a little bit more difficult for students because you have to do the application. You need to concentrate on mastering how the legal concepts are tested. This is the only way you're going to succeed. What does this mean?

Again, you're going to dissect if you see an issue in regards to negligence okay, what within next they're testing? Well, they're testing a duty issue. Well, what within a duty issue are they actually testing? Oh, they're testing nuisance. Okay. What within attractive nuisance is being tested here? You've got to break it apart in that detail in order to pick the best answer choice. So remember, there's always two correct answers, but one is better than the other. So that's why you've got to hone it down and determine obviously as to what is being tested here in order to choose the best option.

Remember, learning how to take a multistate's very specific. It's a very special game as to how the questions are written and how do I attack that particular question. Remember, one word can change your whole answer. The call of the question can change your whole answering call of the question can change your whole answer. You need to understand how the questions are written and what they're asking. So a lot of times when I get a call from a student frustrated they get a particular question incorrect, a lot of times we go back to the call and they didn't understand the call. So what's the defense best argument? Well, you're trying to get 'em off. So there might be liability in regards to maybe it's a contract or maybe it's a crime, but what's going to alleviate the problem here, whatever the facts they're testing. So it's very important that you understand what the call is asking, and that's why, again, we always tell you always start with the actual call. That's important.

Remember, when you're reading the multistate questions, you need to read the questions very carefully. The examiners know we don't read well, right? We're in a hurry, we let the pressure of the timed exam get to us. You want to break it apart in detail in order to determine it's what's being tested. You want to look for operative language. Remember, the facts turn around the detail of the actual facts they're presenting to you. Determine as to what's relevant facts and what's not relevant. So sometimes they give us so much minutia we don't need this we've got to be able to decipher that and look to what's relevant based upon what's being tested. So I'm sure in practice you've read a multistate and there might be a full paragraph of facts. What do I do with these facts? They're not relevant as to the issue they're testing here. You need to pull out what's relevant to support your position in order to find the correct answer choice.

Now, remember, when you take multistate questions, I do want you to always start with the call of the question. Remember, that's called the stem. Why? Remember, this can narrow you down to specific areas that are being tested so one it might give me the subject matter because remember I just told you they're all mixed; two, it might narrow me down to the specific not only subject matter but the area that's being tested. So in essence, did John commit the larceny? Not only do I know it's crim law, but now I know it's specifically testing the issue of larceny so now I'm gonna break apart those elements based on the facts and see if it's supported based on the facts. And then of course if I do prove larceny, what do I look for? I also need to see if there's any applicable defenses based on the facts. All right. So the facts are gonna tell me basically dictate for me. Now, once you read the call of the question, read the facts and read them very carefully. Mark up the fact pattern. Based on what you're seeing okay, here based upon the facts when John called Mary and offered. O, there's an offer. Pull it out. When John posted an advertisement. Oh, there's an advertisement. All right. There's a reward posted. Oh, reward. All right. So what is a reward? Oh the only way you can accept is by performance. All right. So it's a unilateral contract. So these are things that you should be marking up when you're reading the question, right, to hone down as to what's being tested. And that's gonna give you your best results because that's gonna give you the best answer choice to choose from, so that's important.

Now, again, I can't stress this enough: Make sure you're answering the call. So when you miss 'em in practice, you should always go back and see why. Why did I miss this question? And if that's a habit you're seeing that I'm not always paying attention to the call of the question, I want you to look at that because that's important. Because, again, sometimes we flip it on you and it's based on that call, not nice, but that's what we do. Do not ever assume facts. Right? So if they basically tell you there's a written contract, don't assume it's valid; I never said it was valid. Go back and prove and make sure it is a valid contract itself.

Remember, I told you, don't make the problem harder than what it is. Keep it simplistic if you can. Don't make it convoluted because that's gonna make it more difficult for you in regards to going through and finding the correct answer choice. In practice, remember, again, I want you to start identifying the issue that's being tested, make sure you're breaking apart the elements of whatever issue that you see is being tested, make sure you show those elements are supported based upon the facts, and hone in on which one ‑‑ whether it's an actual crime, or a defense, or a counterargument ‑‑ are they testing here, and break that apart. I call it, like, three steps. If you don't break it apart in that great detail, guess what? You're gonna get the second best answer choice, and that might be happening to some of you right now, right, that you're getting the second best answer choice so you're getting frustrated.

Well, as to the first question, well, remember, you're both gonna have the person next to you. You guys are gonna have two different tests. Same questions, but they're mixed; right? In regards to their setup of how they're gonna set you up, I don't think it's gonna be question one. I think it might be question ten. A lot of times in practice, too, you'll see people miss the first ten because they're so stressed so that can be the easy question but you're not really focused. And if that is you, I really recommend doing some before you walk in the door. Don't check the answer choice, but do some just to get your mindset for the multi states. I think they're really gonna load the heavy meat at the end because your stamina. You're getting tired now. You're on hour two, and now we're going to two and a half hours. So really gonna see they'll work you harder probably more towards the end of the examination. So ‑‑

Now, torts, specific subject; right? Now, torts is testing ‑‑ remember, it's directed towards the elements. It's the black letter law. You will see a lot of questions dealing with negligence. You should be thinking duty, breach, causation. But the[inaudible] itself ‑‑ if I say in negligence under breach, what shall you be thinking of? Well, I have a direct breach, or I have res ipsa, which is a circumstantial breach, and then see what's being tested based on the facts and once you pinpoint which one, what element of the one we just pinpointed is being tested here? That's very important.

The common type of questions that you'll be asked is what's the plaintiff's best claim? So then I'm trying find ‑‑ it doesn't mean it's gonna succeed though; right? But what's your best claim here based on the facts? So could I argue it's an intentional tort or is it mere negligence? A prime example you should be seeing on the multi states is trespass. So in essence, what's the plaintiff's best claim? You walked across my land; right? I didn't know it was yours. So is it a intentional trespass a better claim, or negligent trespass? Based on the facts that one sentence I gave you, it's most likely intentional is the better claim. Why? Because I didn't have to know it's your land or not; right? And it doesn't sound like there's any damage. With negligent trespass you need damage, so the best claim in this case would be intentional trespass.

So, again, you've got to break that stuff apart in order to get the best answer choice.

Also, you might see questions as to what is the defendant's best defense? Now, remember, if you see this in a tort question, you can see it in contracts, you can see it in crimes, it doesn't always mean a true defense. Like in crim law, I can negate maybe the specific intent for larceny. So that's my best defense. Let's say you see the facts that support a viable calls for a conclusion of burglary; right? But at the time of entry, you didn't have the intent to commit a felony you formed it once you got inside. But let's say I also have a defense of necessity. Rare, but let's say I do. What would be my best answer choice? If I can negate the element with the burglary, right, that's always gonna be your best answer choice. Or since we're talking about torts, if I can negate that there was no breach of my duty, or even causation, whatever's in that chain, before I get to a contributory negligence argument, that's always gonna be your better answer choice. That's why I always tell people, take your inner checklist in order. If I can knock it out on point B before I get to E, that's my best answer choice. Again, if you can knock it out earlier, because you have no viable cause of action so I don't even have to talk about defenses, meaning I don't even have to present my case because plaintiff, you didn't even prove up yours. And that would be the defense's best argument in that case. Does that make sense?

You can see calls as to will the plaintiff prevail? Now, the problem with these types of questions is, you're not always told the cause of action that the plaintiff's actually suing under, so it's your job to read the facts, determine what type of cause of action that the plaintiff is suing under in order to understand what the question's asking. And you need to break it apart. So a lot of times, again, this is where assumptions get us in trouble because we're gonna assume oh, wait, he had intent. Oh, wait, is there really intent? A lot of times, a basic car accident ‑‑ I get students saying that's a battery. No. Well, you intended to drive your car. That's not how it works. All right. So I want you to really break it apart and support your elements to make sure you've got the right theory. Obviously if I don't have the right theory, I'm not gonna gets the right answer; that's gonna hurt me. So you do wanna break it apart.

In order to do well, you need to know various causes of actions and torts, don't you? So you need to know is it negligence? Is it defamation? Or is it an invasion of privacy tort? Remember, invasion of privacy breaks apart in four so you can't just say invasion of privacy; right? False light in the public eye, intrusion upon seclusion; right? Break it apart public disclosure private facts, appropriation name or likeness. Those are your four. Break it apart and see what's being tested. And one they do like is appropriation of name or likeness because students don't understand that concept. So if I take your picture and put it in a magazine and sell it, am I liable for appropriation of name or likeness? The answer is no, that's not how it works. I have to be obviously using your image or likeness for a commercial gain, meaning look who buys my magazine. Now I violated the rule. So you need to understand the concept and, again, how it's tested.

This knowledge obviously will help you quickly eliminate right off the bat two wrong answer choices. So if you break it apart and you see the theory and you dissect your elements, you're gonna know what are the two wrong answers quickly. Because yes, you're liable for the tort or no you're not. And remember, the because and since we went over. So you want to eliminate if you can. That will help you.

Now, make sure you decide what legal concept's being tested. Run the facts through the elements, determine what element of the cause is being tested here; right? What element's missing? What's not present? Or is defense here being tested then you'll be set. For example, if I tell you Michael was rowing his boat on a lake when a severe rainstorm suddenly arose. So when I just see those facts, I see he's on a lake and we've got a severe rainstorm. So what are we already thinking? Well, I'm thinking what? He's in trouble; right? Fearful his boat might sink ‑‑ fearful, that's a good word ‑‑ Michael rode his boat to a nearby dock and tied his boat up to the dock. Rickey, the owner of a private dock, came from his neighboring home and ordered Michael to remove his boat because the waves were causing the boat to rub against the bumper of his dock.

Here, I parked my boat at your dock so I'm trespassing; right? And at this point I am fearful my boat might sink; right? It says when Michael refused, Rickey untied Michael's boat and set it adrift. Michael's boat sank. The heavy rains continued and Michael asked if Rickey could take him to his cabin about 1 mile up the road, and Rickey told Michael no, you can walk. After several hours of seeking shelter under a tree on Rickey's property, the rain stopped.

So now what we're looking at here is what do we think they're testing here? It sounds like they're testing the trespass. So the issue here is what necessary element do we need to determine if Michael's liable for his trespass? So is it an intentional trespass? Or is it a negligent trespass? Well, it sounds like to me ‑‑ especially since I know there's no damage ‑‑ it's an intentional trespass. He's sheltering himself from the storm. So does Michael have reasonable grounds to believe the property belonged to a private person gonna help him any? Doesn't matter if he doesn't know it's owned by anybody; right? So that isn't a good answer choice. Michael had reason to believe his boat might sink? Well, if that's the case, that seems to lean towards a defense; right? Versus Rickey clearly had no trespassing signs so you had no right to be here. Well, that's not gonna help. And then of course if Michael knew the property belonged to another. That doesn't matter. So the best issue here that's gonna support obviously the plaintiff to prevail is if Michael reasonably believed he had grounds to be there; right? Necessity. Private necessity because he's fearful for his life.

So, again, what is the best answer? We can see based on this question that it's not the true trespass being tested, it was a defense to the trespass; right? Based on his fear. Okay. So that kind of gives you direction in regards to torts.

Contracts. Different beast. Contracts is more demanding on your reading comprehension. In your practice, you should be seeing that the fact patterns are long and lengthy, aren't they? There's a wide variety how the examiners can ask you questions, so what's the best argument? Was a contract formed? What additional facts will strengthen Bill's claim? Can Joe orally ‑‑ can Joe's oral promise be admitted? So I'm thinking maybe that's parol evidence. You need to remember distinctions between common law and UCC. So hopefully you're seeing that at this point. So remember, like for an example for modification, right, you need mutual assent and consideration. But under the U.C.C., you just need mutual assent and good faith. Right? Or what about an option contract versus a firm offer? So they're gonna test these little nuances and you need to make sure you understand. What about additional terms versus a counteroffer? These are all highly testable issues and these are issues you should be seeing on the multiple choice questions. When you see many U.C.C. questions, since examiners know most of you don't know distinctions between common law and U.C.C., you've got to obviously know they're gonna be tested ‑‑ break those apart and make sure you understand the distinctions. So like an example which is one prime multistate that most students miss is if I'm sending an order of non‑confirming goods as an accommodation, or is it really an acceptance and I'm in breach of contract? What's the rule say; right?

So if you ask me, right, to send you let's say a brand of peas and I ship a different brand of peas automatically to you, the issue is, is that an acceptance and a breach, or is that an accommodation? And the rule says I need to have a letter of accommodation. That needs to be clear because remember under the U.C.C. guess what? You can accept by shipment, by sending the goods. So that's very important that you understand the rule and understand, gee, what portion of this rule, what concept's being tested here? Because if I thought it was an acceptance, I'm gonna go one direction versus wait a minute, no, this meet it is rule that it's a mere accommodation so it's like a counteroffer technically ‑‑ it's just an accommodation where the seller sent off to the buyer and the buyer doesn't have to accept. I need to know that, and that's what they're going to test. Now, once you determine the question's dealing with contracts, look and see if it deals with a transaction of goods, then you know the U.C.C. applies. Then you're gonna look for distinctions between the rules, aren't you? You need to read the facts carefully, diagram the facts to determine as to what each fact does legally; right? So for example, if you are diagramming and then you go to the call which states what was the effect of the May 12th letter? What? May 12th? So you should have that all mapped out where I see on May 1st you did this, on May 6th you did this, on May 12th you did this. So you should be able to reflect on your diagram and know how it effects your answer choice; right? And when I see something like that, I'm automatically thinking of the mailbox rule; right? Revocation versus acceptance because they will play with you there, which you should be seeing in your practice.

Again, when you diagram specifically with dates, right, or when you have third parties, that's a very important because that's gonna hone in as to what's being tested and you're gonna be able to see it.

If you find, again, the fact supports such as an offer, acceptance, consideration, don't forget: Look to see if there's any defenses to formation, look to see if any duties arise based on the terms of the actual contract, and if the party's excused or relieved from responsibility of those duties. That's where, again, your checklist will help you. Use your checklist. All right.

Again, if you actually find based on the facts that a contract was formed, right, then what were the terms of the contract and what must one party do before the other party's duty arises? So you do, again, wanna break that apart.

Okay. Now, further, if a contract question you're only told the party's names, however, the facts indicate something about one or both parties, take note of it. If I tell you one party's a merchant or one party's basically a dealer with cars ‑‑ I know he's a merchant ‑‑ he inherit add coin collection. Why are they telling me that? So basically if they ever narrow down a specific party and give him a name or direction, look at it and see what they're trying to tell you.

For example, if I tell you Tracey's an unemployed law student ‑‑ why is she unemployed ‑‑ and she called Timothy and said I will sell you my car for $5,000 cash, I will hold my offer open for five days as I need the money to pay my rent. The next day Tracey was offered a law checker job and she took it. She called Timothy and told him the deal's off because I sold my car to Daniel. So she lied; right? But she's basically revoking. Now, when Timothy learns she didn't actually sell her car and he calls her and says hey, I'm gonna bring the $5,000 over to you because I want the buy the car and she refuses, can Timothy bring a cause of action, and if he does, who will prevail?

What are they really testing here? Well, let's go back through it. So she made an offer, right, if you look at it, I will sell you my car for $5,000. So we've got the intent, it looks like we've got the definite certain terms. She stated she'd keep it open for five days but of course once she got a job offer, she called back and said nope, sold it to somebody else. So the issue is, do we have an option? Because if we have an option, then she couldn't revoke it for the five days. So the only way to show an option is what? Stated period of term ‑‑ time, which we have five days, and we need consideration. Now, remember, Timothy didn't pay her anything, did he? So it doesn't look like there's any consideration. Take a step further and say, wait, is there any facts to support reliance? Which there's not. So I'm safe to say there is no option. Now we can look to the revocation and basically see if it's supported, which basically she said she's not gonna sell the car. Sold it to another. So it seems to me that based on the facts we do have a valid revocation so he will not prevail.

If you try to argue UCC term of firm offer, remember, firm offer, number one, has to be in writing, it has to come from the seller ‑‑ which in this case would be Tracey ‑‑ and it cannot be revoked for the stated period not to exceed 90 days. Well, we've got several problems: It's oral, not in writing; but remember, firm offer doesn't need consideration. And a firm offer you have to have Tracey to be a merchant, which she's not. So it's gonna fail in two aspects so I know firm offer won't save it. So if Tim does bring a cause of action, since we know that there's no coconspirator contract, he didn't accept prior to the revocation, she will prevail. So you see how we just break it apart?

Crim law? Criminal law questions are not very difficult. They're very similar to torts. They're gonna test your black letter law. But how do we harm you? Because you don't pay attention to the call of the question. Be careful. Look and make sure the distinction between tort and crim law. That's very important. People have a tendency to answer as a tort and guess what, the call was criminal. That's gonna hurt you. So pay attention. I can't stress enough to the call of the question. Many students don't have a tendency to pay attention to the call and they answer it incorrectly; right? So you want to ask such as the call is the defendant guilty? Oh, that kind of puts me in crim law. Or what is the prosecution's best argument? Hmm. That's kind of a crim law. What's the most serious crime that the defendant can be convicted of? Right? So you do wanna break it apart.

Important areas you want to pay attention to is, like, your homicide with murder, felony murder rule. Love it. Love to test it. Make sure you break it apart. Your inchoate crimes, your theft crimes. And don't forget about defenses. So if I give you an example that Biff goes to Jackson's house at 3:30 intending to take Jackson's TV, at this point I'm thinking it's a burglary, but it's 3:30 p.m. When he arrives he finds the window wide open. Oh, no breaking, and no one home and walks in and take it is TV. What's the most serious crime he could be convicted of? Is it burglary? Is it embezzlement? Is it larceny? Is it robbery? Well, based on the facts, we know it's not burglary because it was 3:30 and the door was open. There's no one home so it can't be robbery. So the best answer here is larceny because he wasn't entrusted with it; right? Now, let's say they added a fact saying he was intending to break in to take back his own TV. Oh. That might change things. Right? So, again, the facts will dictate, and that's something that you do wanna look at.

Remember, the general principle's look for the triggering facts when you read the exam. Remember, if you see a statute on the exam, which could come up in crim law as well as torts, read the statute carefully. Make sure you break it apart and the principles apply. So let's say negligence per se. Does the statute or what is behind the statute show the intent of the legislation? Or you remember the class. And what was it designed to protect? Right? So there's one prime example where a guy can't find a parking spot to go pick up his lunch and parks in front of a fire hydrant, and another car comes along and hits it. So you're arguing negligence per se. But what's the intent of the legislature saying you can't park in front of a fire hydrant? Not to prevent another car from hitting you. It's obviously in case there's a fire the fire department can get there and get access to the water. So you do wanna break it apart.

Remember, if the question's specific like which is the best defense, or which claim will succeed, rewrite the call if you need to break it apart. Remember, you're supposed to choose the best answer. There's two correct ones, but one is always better than the other.

Remember, in regards to the modifiers, the difference between "since" and "because." Everything after it's an inclusion so everything after's basically gonna be true. So it's yes because. Yes because. Yes since. No because. No since. And if you know the answer's yes, you can eliminate the two noes and go right to the two yes answer choices and choose the best of the two. This will save you time.

Versus the modifiers "if" and "unless" which are much more difficult for most of us, remember, everything after the "if" must be true. Yes if, everything after the if has to be true. Versus if it's yes unless, oh, boy, that's where you're gonna rewrite it. So yes unless becomes a no if, and then everything after that if must be true. So you want to break that apart and obviously make sure you get the best answer; right?

So, again, let's break apart another question. All right. Tammy's a chemical engineer. She has no interest or connection with Chemco and Tammy noticed that Chemco's most recently publicly issued financial statement listed a part of a large asset, a large inventory of a special chemical compound. The asset was listed at a cost of a hundred thousand dollars, but Tammy knew that the ingredients of the compound were in short supply and that the current market value was worth a million dollars. Chemco's stock is currently selling for $5, however, if the true value of the chemical was known, then the stock would sell for 30.

Tammy approaches Sam and offers him $6 a share for his thousand shares of Chemco stock. Now let's say Sam sells it and he start assert as claim for misrepresentation against Tammy. What do you need to show for misrepresentation? Well, you need to show a false representation made intentionally; right? Or one justified or relied to their detriment. What are they really testing here? So if I tell you "yes because" versus "no if" what are we gonna hone it down to? Well, will she be responsible for a misrepresentation? Yes, because. Yes, because. Or no, because. No, because. Well, I'm gonna choose what? No. Right? We're not to a question yet. Just giving you an example then we'll get to the questions, the five that were sent out to you. We're just under the lecture.

So in regards to if we use "if" as a modifier, remember, everything after it has to be true. If I tell you yes, if Tammy did not tell Sam of the true value of the inventory, and then you want to go through the elements of misrepresentation, would this be a good answer choice? The answer's no, because she didn't make a representation. If I tell you "no unless" and write it to "yes if" yes if she made a misrepresentation, that can change your whole answer and that's a better answer choice because it supports the element of she made one, which based on these facts she didn't. But yes if she made a misrepresentation she would be liable, that's the answer. Right? Versus I put, again, "no if" and everything after the "if" has to be true. She did not disclose the financial statement. Well, again, the best answer choice here is gonna be if she made a misrepresentation, I have my elements of the misrepresentation. Because she didn't represent, but if I add that to the fact pattern, I've got you. So that's very important. Obviously you want to understand and break that apart. Make sense? So your "because since" modifiers. I want you to review those. And your "if" everything after the if must be true. And the "unless." You're gonna rewrite the unless to a yes or no if; right? Because then we can compute and break it apart.

Now, there's five multistate questions that were sent out to you, so let's take a look at it. Remember, the first thing you should always do on a multistate question is what? Read the stem; right? Read the call of the question.

So in question one, it says may Thomas bring the lawsuit now? Well, if you've been doing a lot of multi states in practice, do we have a general idea what's being tested here? Well, you should; right? Let's go through it.

On November 1st, 2009, Mozart agreed to play the piano on New Year's Eve. The agreement was for $25,000 for the evening. Mozart is very popular, and Thomas knew that had a big following and would pack the venue with Mozart as the headliner. On December 29th, 2009, Mozart called Thomas and told him that he had been offered more money to play at another club and would not be playing.

So what's he doing? He's repudiating the contract, isn't he?

Now, may Thomas bring the lawsuit?

So what's the issue? Well, the answer the faster you can find the answer, absolutely, the better. They calculate 1.8 minutes per question. That's true. Except for it's a contracts question. I need more than 1.8. So you're gonna finds your crim law and torts are usually where you can make up time and get 'em done in a minute or less. And then the lengthy ones I'll have to spend in contracts more time. But yeah. Your timing is something you should be watching now; right? Zone in on and get it down, obviously, so you get it down in the time frame.

Now, issue‑wise what they're testing here is anticipatory repudiation. Right? With anticipatory repudiation, what's the issue? Or I call it anticipatory breach. That you need to show the contract's in executory stages. If it is, you can sue now, otherwise you have to what we call "wait‑and‑see rule." Okay. So looking at your answer choices, can he sue now? We have A and B say no because "no since." C and D say "yes because" and "yes since." Can you eliminate two right off the bat? Sure. Right? Because you can sue now because why? The contract's in executory stages. Ha that means is neither party's started performance; right? And he called on the 2,929th ‑‑ and I haven't paid you ‑‑ he called on the 29th and do I have to wait and see whether he's gonna show up on New Year's Eve? Otherwise I'll be in trouble because I won't have any headliner whatsoever if I have to wait and see if he breaches or not; right? So I know at this point he can bring the lawsuit now so we can eliminate options A and B; right?

So now let's go to options C and D. C says yes because Mozart repudiated the contract. That's true, but let's read D. Yes, since Thomas will lose the profit without a headliner. Well, C goes to the direct point yet he repudiated. So that's gonna be my best answer choice is C because he did repudiate the contract. Since it's in executory stages, I can sue now. I don't have to wait and see. So for question number 1 does everybody see why C is your best answer choice?

Well, you are correct. So sometimes ‑‑ again, it comes on your facts and you gotta hone in on what they're testing. So if he basically calls Sam and tells him he's been offered more money to play at another job and would not be playing, that's pretty much absolute. If he called you he's been offered more money to play at another club and may not be playing, now it's a little bit more ambiguous. Is he saying he is repudiating or not? With this call, can he bring this lawsuit now? We can make the inference based on the answer choices, too, that he's not coming. They're testing anticipatory repudiation. That's another thing: Your verbiage is very important and when you hone in understanding what they're testing, you're gonna go the correct direction. Okay. That's a good point because they do do that. But stick to your theory of what you're seeing as well, because they want to trick you and have you go left when you should have gone right.

All right. Question number 2. Now, again, you should always read the call. Basically just says Paul's estate asserts a claim against Daniel for the wrongful death of Paul. Will the State prevail?

So remember, wrongful death is what? A way for you to bring a lawsuit for the death of a loved one, a family member, child, husband, whatever. Because it was untimely and basically under the underlining theory such as negligence or strict liability that you breached or whatever that responsibility to that party that died. Daniel owned a restored classic automobile made in 1922. To discourage tampering with the car, Daniel installed an electric device designed to give a mild shock, enough to warn but not to harm persons touching the car.

Now, at this point what are you thinking of? Well, I'm deliberately putting a shock device on my car; right? So would this be intentional tort or would this be negligence? Right? And he wants a mild shock enough to warn but not to harm a person touching the car. Paul, a heart patient with a pacemaker, saw Daniel's car and attempted to open the door. Paul received a mild shock, which would not have harmed an ordinary individual but which caused his pacemaker to malfunction, resulting in a fatal heart attack.

Now Paul's estate's suing. What is the theory for the wrongful death we're suing under? So would we be suing under battery, or under negligence? Well, his conduct here is what? Intentional. He installed that electrical device to deliver the mild shock so you don't touch my car. So he did obviously install this with intent. Was it harmful and offensive? Sure it was. Guy died from it. Was of another; right? Now that I show that there actually is what, a true tort, battery, look for defenses. So self‑defense, defense of others, crime prevention, defense of property. Hmm. Is there any one I can use here? How about defense of property? Remember, you're allowed to defend your property but you can only use reasonable force.

So now can the estate prevail? It says no if. So I know you're gonna have to show everything after the "if" is true. No because. Well, I know in this case he has a good chance of prevailing so I don't like B. Yes because. So do I feel I have a battery cause of action? Sure. And then D says yes if. So I'm gonna have to read A, C, and D for sure. The only one I really can eliminate at this point is B because I feel he probably has a right to prevail in this case. But I have to read the no if because the facts could change on me based on the scenario. So they can change or add a fact based on the answer choice, so you've got to pay attention. The ifs and unless are deadly. You've got to look to those. A says no if Daniel was not using excessive force to protect his car. Oh. Well, that sounds like it goes to negate, right, the battery charged based upon defense of property. So that looks good, put the plus there. I still have to read C and D. Yes, because Daniel's act was a substantial factor in causing Paul's death. Well, even if it was, we have the defense of property. And D yes, if Paul had no reason to suspect the presence of the electrical device. Well, that seems to go more towards a negligent issue, doesn't it? So A has to be the best answer choice; right? If you couldn't eliminate and went ahead and still even read B, Paul was a trespasser, that goes to the theory of negligence too. So sometimes when you can't tell ‑‑ I don't know what they're testing ‑‑ but I have an idea of the theory, stick to it. All right. Because they're gonna try to segue you to the negligence.

Yeah. So, again, it is a question that's out there. It's an actual bar question, and it is in a lot of books so it's good you see it. Now you see how it comes into play, and especially how they test defenses so I always want you to carry all the way through with your checklist and don't stop short on me and say battery. But wait, is there viable defense here as well? A lot of people ‑‑ and you'll see the answer choices in some of the books are written a little bit differently, too ‑‑ that they set you right up for negligence. So you'll have two answers dead‑set on for the battery issue and the defense, and then two to set on that will be supported if you went to the theory of negligence; right? Again, that's how they test. So if you stick to your guns, wait, I know this is battery because his conduct was intentional, and don't sway from that, you'll be able to get the right answer. Versus if you're, like, well, he did install it but he didn't intentionally deliberately shock him and you go to a negligent theory. That answer choice will be there, but it's wrong because his conduct was intentional. Again, too, when you get it wrong, write out the why; right? And then, again, too, if you're getting it faster, like, seeing in it ten seconds, et cetera, that's good because that tells me you're beginning to understand how they test the concepts. So the faster you get ‑‑ even though you're getting 'em correct ‑‑ your speed's getting better because you're starting to understand how the concepts are tested. The more I understand how they're testing the concepts, my speed should be there. That should help me. Okay.

So, again, for question number 2, A was your best answer choice. Okay.

Question number 3. Did Len commit a burglary? They gave you a very specific call. So should I be looking by the way common law burglary, or modern law? Remember for the multi states you answer according to common law unless dictated otherwise. Don't forget it, because they will set you up that way, too, and you're not supposed to answer according to the Model Penal Code or the modern rule unless asked. Okay.

[inaudible] borrowed a television set from Len to watch a football game on Sunday afternoon. Bill promised Len that he would return the set to Len by 7:00 Sunday night because Len wanted to watch a program at 10:00 that night. When Bill had not returned the set by 9:00, Len went to Bill's house. Bill was not at home. Len forced open a window, climbed in, took his television set, and walked out with it.

Let's look at your burglary. So my first element's nighttime. Well, it's after 7:00 so it's nighttime. We need the breaking and entering. Well, he forced open and window and went in, so I have the breaking and entering. Dwelling house of another. Well, we've got Len's house; right? Did‑the specific intent to commit a felony therein? Well, he went to get back his TV; right? Even though we don't like what he's doing, it negates the specific intent, doesn't it? And, again, that's one element on the burglary with the multi states they like to test because, remember, the specific intent needs to exist at the time of entry. So let's look at our answer choices.

Did Len commit a burglary? A says yes, because. B says yes because. C says no because. D says no, because. Can you eliminate two right off the bat? Sure. Because I feel that the element of the felony is not there because he didn't enter with that intent; he went to get his own TV set. So I can get rid of option A and B not reading. Why important? Because timing. C says because Bill was not at home when Len went to his house. Well, that doesn't matter. And then D, no because Len entered for the purpose of recovering his own television set. That's kind of a factual answer, but it's the best answer because it negates the specific intent.

Now, let's say I take this same problem ‑‑ so D is your best answer ‑‑ I take the same problem, same facts. A and B the same answer choices. C now becomes no, because Len entered for the purpose of recovering his own television set. And then D is no, because Len did not have the specific intent at the time of entry. Now what's your better answer choice? I've got the element stated in the answer choice. That's always gonna be better than a statement of fact. So, again, sometimes they can be that subtle. Not nice; right? But the best answer choice is where I negated specific intent because I used that in my decision, my answer choice. That's going to be better for pure statement of fact. Tricky, I know, but we've got to be aware because that's how they test the questions.

Okay. Let's look at question ‑‑ so everybody understands for question number 3 D is your correct answer choice.

Let's look at question number 4. Frederick threatened Bruce with a personal beating unless Bruce personally signed and mailed a letter to the President of the United States, threatening the President's life. What comes to mind right there? So see, remember, I told you when you read these questions you should be marking them up. What are the facts telling you? And at this point when he's gonna physically beat him I'm thinking this is under threat; this is duress. With duress, it has to be eminent. It doesn't say "tomorrow I'm gonna beat you." it looks eminent to me based on these facts. So I'm thinking duress.

Bruce complied. A statute makes it a felony to knowingly to mail to any person a letter that threatens the life of the President of the United States.

Okay. Is Bruce guilty of violating the statute? What do I do? How do I know? Well, remember, I told you when there's a statute you need to go through the elements. And the element here is knowingly you got a mail to any person threats tot President. Okay. So I gotta break that apart. Did he knowingly do this? Sure, he did. He was threatened; right? But he did comply and sign and send it off, so he knowingly mailed it. Obviously he's a person and he's threatening the President's life based upon what he said in the letter. So it looks like going through the element of the statute, he's violated the statute. But then we can look to the defense of duress. So is duress a valid defense?

Now, remember, duress basically you're correct is a defense to anything but murder; right? Remember ‑‑ and I'll come back to that in a minute so I'm glad you pointed that out. So duress, as long as it's an eminent threat to yourself or to a close family member, it's a valid defense. So would he be guilty of violating the statute? No. So I see A and B say no because. Those are conclusions. So, again, I have to read those two. C and D say yes because. Those are conclusions so I can get rid of those. I won't read them. Okay.

A says no, because he did not intend to take the President's life. And B says no, because of the defense of duress. Well, between A and B, what's the best answer choice? B dead‑set because it goes direct to duress. Tells me why it negates his liability, so I'm going with B. I mean A's not wrong, but it's not the best answer choice because it doesn't tell you I understood the reason it negates his liability's based upon the theory of duress.

Now, you're stating that duress is a good defense except for murder. The one trick I've seen on the multi states that you want to be aware of is that felony murder rule. So in essence if you find, right, if you're using let's say arson, right, and a death results because of an arson ‑‑ and you should be seeing this on the multi states ‑‑ and I'm using the arson in the felony murder rule to impute the murder onto you, right. But wait, I'm claiming duress. Well, when you go through arson, duress is a valid defense for the arson, so therefore you can't find the felony murder rule. That's a very common multistate. So most people will find you guilty of the murder because duress is not a defense to murder. But duress is defense to arson. So it negates the felony.

Yes. So you've seen that multistate. So absolutely. All right. So you want to pay attention to that. So that is an area that they do test. So if I'm finding you or trying to charge you with murder under the felony murder rule, look to the underlining felony ‑‑ don't take it for granted ‑‑ and see if it's supported by the facts and see if there's any true defense to negate that underlining felony. Then go to your answer choice.

Remember, I told you the multi states are very similar to the essays. You're still doing the analytical thinking. You have to go through the process, you just have four answer choices to choose from. But you're still going through those steps of wait, is there murder? Is there causation? Wait, I'm going to show murder based on malice with the felony murder rule. What's the underlining felony? Is the felony there? A viable defense? You have to still go through that. They assume you won't one because of time two in regards to people not being trained to break it apart. Which you have to. Then that's gonna give you the best answer choice. All right? So you've got to break it apart.

Okay. Question 4 B was the correct answer.

Thank you for the comment because that triggered my memory on felony murder rule for duress.

Question number 5. Did Pete commit the crime of conspiracy to sell the stolen car? This one's an odd duck. You'll see this and you've got to have a good understanding with regards to conspiracy because do we actually have an agreement? You should be also seeing a unilateral agreement being tested. So you want to be aware of that.

Ed told Pete, an auto mechanic, that he had stolen a car and the engine had to be repair built before it could be sold. No problem there yet. Pete agreed to perform the work under the following terms. Pete would receive $300 upon completion of the job even though his normal fee was $600, and he would receive an additional $600 when Ed sold the car.

Now, the fact that he knows it was stolen and if he just fixed it and charged his normal fee, we'd be okay here. But now he's making money off this wrongdoing, and it's 300 bucks. After rebuilding the engine and before the car was sold, Pete and Ed were arrested.

Now did Pete commit the conspiracy? So we have an agreement. Is it two or more? Sit an unlawful act? Sure. You're helping in regards to selling a stolen car and getting a profit off the sale of that stolen car.

All right. So we have answer choices A and B say yes, because. I'll have to read those because I feel he's going down for conspiracy. And C and D says no, because so I can eliminate those two and only have to read A and B. A says yes, because he agreed to rebuild the engine knowing the car was stolen. No. Even though I would know it was stolen, I haven't really done any conspiring; right? B says yes, because of the profit he agreed to receive on the sale of the car. Yes. Why? Right. Because he's receiving a benefit in helping him further in his actions there. So B would be your best answer choice. Okay.

Now, when you miss multistate questions ‑‑ so let's say you miss this one ‑‑ why? You need to figure out the why. Look to the answer choice you chose, and determine, okay, why did I choose A versus the correct answer B? And look at that and break it apart. Merely reading the answer choice asks not enough. A lot of times when you miss the question and go back and read the answer choice you're, like, oh, wait, I knew that. But why did you miss it? So it's not ‑‑ majority of time it's not because you didn't know the law. Something else happened, so I want you to break it apart and go through that. Well, it depends on what you're being charged with. So if I'm throwing your Molotov cocktail into a house under duress, knowing that people are living inside, what are you charging me with? I mean, if I threw it in there intending ‑‑ so you can show I have intent to kill so go through your malice. Did I throw it in there, knowing people were in there and you wanting know kill them, right, and have me do this. Well, now I might be in trouble; right? Intent to kill, intent to create great bodily harm, wanton reckless. Versus can I just argue the felony murder rule because of the arson? Because the guy wanted know burn down ‑‑ like the nightclub. Didn't have a choice. Knowing people were in there, that the felony murder rule would not work in that case. So duress would be a valid defense to the underlining arson. So the facts are gonna tell you ‑‑ even if I have knowledge that people are there, but the act you're trying force me to do is arson, duress is a defense to the arson. But if I have other fact that is support, like, specific intent to kill, great bodily harm, we're in trouble. Right? Because it's not going to negate that malice standard. Okay.

The other thing, too, so what I would like you to do is if you miss it, if time allows, write out a flashcard or make a note and go back over your notes once a week so it gets into your memory bank. If I just read the answer choice and bee bop by, I'm gonna miss it again. And I'm sure in practice ‑‑ have you done a question like I know it, but I don't. I know it's A or B, I can't remember which one. Because you haven't really got it to memory yet. That's something I want you to work on: Break it apart. That's important. And the why is very important because I don't want to make the same mistake over, and over, and over. I'm gonna be frustrated.

Now, if you find yourself not doing well on the multiple choice questions, is it simply because you don't know the black letter law enough? You haven't spent enough time going through your outlines and breaking it apart? Or you're too broad on your concepts, you're not dissecting enough and looking to the actually details that are being tested? Or maybe you're not reading the facts carefully. Maybe you're not following the call of the question. You need to know this. Have you practiced enough questions to understand the fact patterns and what the questions are actually testing on the multi states? Or are you always narrowing your answer down to two correct answer choices but always picking the wrong one? You need to figure out the why and narrow it down so you can work on it.

A lot of us get it down to the two, but why aren't we getting it down to the isolated one that's the best answer choice? And that's why your why is so important.

So you're saying in regards to this simulated? Well, most of these are actually derived from true simulated exams. So I would say if you actually get a true ‑‑ which Taft will be sending out to you a simulated multistate. It's an actually true simulated multistate, meaning that is basically what you'll see on the baby bar. You will have lengthy questions. They stem away now from ‑‑ which it used to be in the old days questions 1 through 4 are based on the following facts. What you'll see now is question 1 will have the facts, and when you get to question 20, gee, this sounds familiar.*déjà vu*. It's the same facts with something added to it. They're stretching it out to make it not so easy for you guys. So stem questions are kind of isolated now that they're not really testing that concept or breaking it apart.

Now, at this point; what should you be doing? Please, please start practicing multi states. You've got to. You have to. That can sink you. You've got to pass the multi states. So if I go in there and 69 I'm not passing. You've got to work on that. That's very, very important. And actually in going through it and breaking it apart, it's helping you identify issues as well: So that's something that transfers over to your essays. And you've got to work on your timing. You have to work on your timing. I know a person that took the last baby bar and he said 20 he had to guess. He was out of time. You can't get on 20. That's too many. All right. Five, six, okay. 20, no. That means you didn't practice enough in regards to getting your timing down, and that will hurt you. So you've got to sit down and take timed exams. And I would highly recommend doing at least one or two multistate simulations within that three‑hour window because you're gonna find that three hours goes rather quickly. It's amazing how quick they can go when you're focused on something and going through something. So obviously it's something I would highly recommend that you do. So what should you be doing at this point? We've studied torts, we've studied contracts and UCC, we've studied crim law. You should be working on what? Your weaknesses. So start working on your issue spotting. On the weekends you can do timed conditions and work on your weaknesses. Don't work on your strengths, please. So in essence if you feel in contracts I did really well in regards to formation issues but I have a problem seeing the statute of frauds. Then that's what we're gonna work on. I have a problem with conditions and there's excuses. I don't see them. That's what you're gonna work on. Right? You've got to pinpoint your areas of your checklist of what you're weak on and start working on it. Why? So we're proficient so we can go pass. Doesn't have to be perfect, but I have enough to do well and do it in the examination so that's important.

Prime example ‑‑ which I tell you's always tested ‑‑ is in crim law. For some reason, people are very poor at writing conspiracy with the Pinkerton's Rule. They just say Pinkerton's Rule and then it'll be imputed to him. No! Is it natural probable result, and is it foreseeable? And you've got to tie them in, and you've got to make your arguments. So that's something that might be my weakness. I've got to work on it and break it apart. If you don't, then obviously you're not gonna do well. We don't wanna go back; we don't wanna do this twice.

Does anybody have any questions for me? Well, if you need more exams, let me know. Shoot me an e‑mail. I'll send you some examinations. There's plenty up on Taft's Web site. If you go to the prior bar questions, click on that. There's baby bar questions there with prior ‑‑ actually, with Taft model answers. And if you go to the bar Web site, they have questions up there ‑‑ baby bar questions ‑‑ which I'd look to those first before you do any bar questions, because they are different. And then they have what's called student answers.

R these are student answers so these are under the heat of battle. So if they have some law that's wrong or weak, they sometimes have some non‑issues in there, but you can contrast and see and that gives you an idea. The other thing it actually gives you an idea about, gee, my exam doesn't have to be perfect. Some of those answer, yuck. But you look and see oh, this was under the pressure of the exam, it's doable. I can do it. And you want to remember that. That's important.

Anybody have any questions? All right. At this point, we will be sending you out three more essays so we can take a look at them next week. You'll also be sent out some multi states to do so I would highly recommend the more multi states the merrier. Look at your scores see if you're between 70 and 80. We wanna get those up there. I hope you can go in at 75, 80 level because that pretty much assures that you're probably gone pass the multistate portion, and then start working on your essays and your issue spotting to make sure you understand the concepts and how they come into the fact pattern. If any questions do come up, please feel free to shoot me an e‑mail at jolly@taftu.edu. Be more than happy to help you in any way I can.

All right. Keep your practice, keep your focus, you can do this. Pull that perseverance. Make that determination, and let's make it happen. All right. I'll see you guys next week. Good night.

 [END TIME: 7:00 PM]