Taft Law School

Electronic Classroom – Baby Bar Mini-series

05/07/19 6:00 ‑ 7:00 PM

>> INSTRUCTOR: Good evening, everybody, and welcome to tonight's baby bar mini-series. If you can make sure that you have the contract essay question that's with seller in front of you, that'll be our primary focus for tonight's lecture. Again, we'll be starting in approximately five minutes. Thank you.

>> INSTRUCTOR: Good evening, everybody. Welcome to on the's baby bar mini-series. We'll be starting in approximately two minutes. Thank you.

We'll be starting in about one minute.

Welcome to tonight's baby bar mini-series. I do wanna make sure that you have the essay question that was emailed out to you, because that'll be our primary focus for tonight's lecture. I do wanna point out these sessions are recorded so for your convenience, if you ever want to go back and listen to a lecture, sign onto Taft's Web site go to the student section sign on and go to the baby bar mini-series. We also have e‑classes that we do every month which, again, there's questions that will help you for baby bar with torts, contracts, and crim law. All that's there to help you and aid in regards to your preparation. It's a good source, and I would highly recommend that you do use it.

Now, in regards to this contract exam question, there's actually quite a bit in here, and usually the longer they are, they're not as bad. The shorter they are the more issues they generally do have. You have to really break apart the facts in this particular question and make sure it identifies as to what the examiners are trying to get you to identify as the actual issue. Remember, the first thing you're always gonna do on an essay question is read the call of the question. Remember, as I indicated to you previously, when you go to the baby bar, you're gonna be given four essays. It won't be headnoted torts exam, contracts exam. It's your job to determine what it is. By reading the call of the question, hopefully that gives you a great idea that okay, it's a contract question and you can write out your checklist and get focused on that subject matter when you go through the process of starting to read the examination so that'll help you.

This call says, was an enforceable contract formed binding Seller to sell the doll collection to Buyer for $15,000? Discuss.

We know for sure it's contracts. But what's this call specifically telling me? Binding. Right? So was the contract formed binding Seller? So we see we've got an enforceable contract. How do we enforce a contract? Put your formation issues triggered in your checklist. Am I looking at U.C.C., offer, acceptance, consideration, the defenses to formation? Defenses to formation are very testable and we have a tendency to overlook them so you want to pay close attention.

And then to bind somebody, to force somebody, right, what issue would that be? That would be specific performance. And I know with specific performance is new most of you. It's given in the remedies class, but it is something the baby bar's currently testing so it is something you'll have to get to know and understand to go through or say enough about it in order to get your credit. And specific performance in a nutshell is where the court's forcing the terms of the contract so both parties have to perform. The problem with that, if it's a service contract, it's almost like an involuntary servitude. That's a problem and again why a personal service contract, generally the courts will not gonna enforce it. You do need to show inadequacy, meaning money's not going to make you whole, that the court should go ahead and force the agreement itself. It's an area that you need to get to know. It has come up on the baby bar more often than not.

Looking at the call we see enforceable contract so we're thinking formation issues, and binding which we know we're focusing on non‑specific performance.

On this question, it not only gave you the subject matter, it narrowed your issue to formation and the enforceable contract narrowed you down to specific performance. If you have any questions, feel free to and I'll be more than happy to answer them for you.

Go through the facts. Now, it says seller inherited a collection of antique calls from her aunt. Period. Stop there. Well, seller we know's going to be doing the selling inherited a collection. If you inherit why are they telling me that? They're giving me that fact most likely you're probably not knowledgeable about dolls so I'd have to see facts within the essay itself that gave her some type of knowledge. At this point based on inheritance I can make the inferences she doesn't know anything about the antique dolls.

In her aunt's estate, the collection had been valued at $15,000. On September 1st, seller wrote, signed, and sent the following letter to several well‑ known doll collectors in her area you, as the offeror, can send out multiple offers. You want to see everything component‑wise in that letter; right? An offer you need the intent, death under uncertain terms, communication of the offeree, versus is it merely an invitation to deal? You're basically looking at, is it preliminary negotiation versus an offer without having to read it yet? That's where your mind should go to.

Dear doll collector:I now own a collection of antique dolls that I'm willing to sell for $15,000 to the first person who lets me know he or she wants the collection. This offer will be good for 30 days. If you want to inspect the dolls, I'll be happy to make an appointment. Phone me at 555‑1765.

Seller.

Now, the issue here which you'll pull apart these facts, was an offer actually created? If you look at the actual facts to the offer, what did it tell you? Will be good for 30 days. What does that make you think of? Maybe an option contract or if we're under the U.C.C. a firm offer; right? These are things, again, you want to be breaking apart with your facts.

Third paragraph states: On September 3, Buyer, who was familiar with the collection, received the letter and immediately called Seller to arrange to inspect the dolls on the same day.

Buyer appeared at Seller's home and inspected and photographed the dolls. She told Seller, "I'm interested, but I want to do some research. I'll get back to you."

Seller said, "Okay, but my letter went out to a number of other people. I'm selling to the first one I actually hear from who wants to buy the entire collection.

What did I just do? If you look up above in the offer, I'm willing to sell to the first person who lets me know, at the same time she just reiterated I'm selling to the first person that I hear from. That's from method of acceptance the first one I actually get to hear from.

It says, on September 4th, Buyer took the photographs to an expert doll appraiser and paid the appraiser $1,000 to evaluate and authenticate the collection. The appraiser told Buyer the dolls were authentic and worth at least $30,000. Buyer immediately phoned Seller, who was not at home. Buyer left a message on Seller's telephone answering machine saying, "This is Buyer. I like the dolls.

Please call me at 555‑8876 when you get home."

That issue's did she actually accept?

Also on September 4, and just to be doubly sure, Buyer wrote and signed a letter to Seller stating, "I accept your offer to sell your doll collection for $15,000. Buyer," and deposited the letter in the mail at the Post Office.

When you're depositing at the post office makes you think about the mailbox rule.

Soon after Buyer returned home from depositing the letter at the Post Office, she received a phone call from Seller. Seller said, "I got your voice mail message. However, I just want to let you know that I've had an appraisal made of the collection, and I'm not willing to let it go for less than $35,000." Buyer responded, "You can't do that. I accepted your offer of $15,000, so you have to sell it to me for $15,000." ,

Again, was an enforceable contract formed binding seller to sell the doll collection to buyer for the $15,000? Now, you're gonna see with contracts, what's important? Take it in order of your checklist. That's what I like about contracts. Very methodical. Start from step 1. What's the first thing on your checklist? Does the U.C.C. apply? What are we gonna start with? Step one, does the U.C.C. apply? Remember, the U.C.C. applies to a transaction in goods. What are we dealing with here? The sale of a doll collection. That would be a transaction of goods. U.C.C. would apply.

What's next on our checklist? Merchants. Remember, merchants are one that hold themselves out with special knowledge or skill, or dealing in goods of a kind. Since seller inherited this she doesn't deal in goods of a kind. But is she holding herself out on special knowledge or skill? Based on the fact that she inherited it, plus she had to find out later down the line that she had it appraised and found out the true value, doesn't sound like she has any special knowledge or skill in regards to an antique doll collection. Definitely going to find seller's not a merchant.

What about buyer? The facts that tell you that buyer's a well‑known doll collector. You could argue she might have special knowledge and skill, especially since she knew an appraiser to get it there and get it inspected stuff like that. Either way, I would argue heavily that seller's not a merchant and buyer is. If you found buyer's not, that wouldn't hurt you, either. I did find since they gave us different in regards to the fact of a well‑known doll collector that we had enough there to grab onto to show she has special knowledge or skill.

Now, once you trigger in regards to discussing your merchant now the issue is do we have to deal with preliminary negotiation or an offer? And that's why again we take our time and outline the exam because then I'll know before I write my exam if I'm on the right ballpark or made a mistake. I'm go through offer because I have all the terms. When seller sent the letter to buyer stating I'm willing to sell, if you look at the language I'm willing to sell, that shows her manifestation or intent she wants to be bound by contractual agreement. In the terms of the doll collection so you've got the quantity. She did state the first person to respond. I can argue time period. Buyer, seller, all the other people she sent the letter to would be the identity parties. 15,000's the price and the antique doll collection's the subject matter.

If you look at the terms since they're there, they're specified, that we do have definite certain terms I know they want me to find that letter to be an offer; right? Again, you're gonna look to determining do I really have to go through preliminary negotiation versus offer and look to the elements? If you have the definite certain terms that are solidified that are there, I know the rout I'm going's basically it's an offer. Obviously the facts told you that seller sent the letter. Of course, when buyer received it, she called her and said she wanted to inspect so we know it was communicated to the offeree. So we have a very strong offer.

Now, if you look at that, they gave you the facts. Your job is basically support the elements of the offer, pull out the facts, and show how they relate and move on. Don't wanna make assumptions or well, in this case, buyer's gonna argue it wasn't an offer. There's no facts. So if what I call it if they give it to you the facts support it show how it's supported and get out. That's not your big‑ticket item. That's not worth the most points. I want you to be aware of that.

Again, I take my checklist in order, and if I look at the actual offer it states in here this offer will be good for 30 days. What does that trigger? Now, there's multiple ways to go through this, but that triggers the issue as to whether or not we have an option contract. What is an option? An option's where the offeror promises to keep an offer open for a stated period of time but remember you do need to provide consideration. So seller basically represented she would keep it open for 30 days, but was there any consideration paid? No. Buyer didn't pay any consideration.

Now, you could take it a different direction and put a spin on it and point out since the offer said it would be good for 30, days and then the buyer went took photographs, and then went to an appraiser and paid $1,000 oh, you could argue promissory estoppel. They're substitutes for consideration. If you found consideration failed you could go the rout in regards to wait a minute here. We could argue this is promissory estoppel. That would support the issue of the option. See that? What you're gonna see sometimes on exams ‑‑ there's multiple ways to write them and you could go one way, I could go another ‑‑ we get credit. That's the benefit to it. I want to point it out so you see it. I use that fact to satisfy another issue, which we'll get to.

If you find the option failed or the [inaudible] continued with the firm offer rule ‑‑ I know you guys haven't gotten a lot of U.C.C.; right? Well, with the U.C.C., remember, it's a transaction in goods. So it doesn't matter if you have one merchant, two merchants, or no merchants. Because the rule says the U.C.C. applies to a transaction of goods. If I sell you something at my garage sale, U.C.C. Applies. However, there's specific rules that deal with just merchants. Okay.

Now, a firm offer here wouldn't apply because the seller's not a merchant. That's correct. Remember, if you read the rule itself it's not straightforward. Basically the offeror has to make the assurance it's gonna be open for a stated period of time not to exceed 90 days, and it needs to be in writing. That's a multi states. Cant exceed 90 days, and it has to be in writing. Let's say the offeror said they'd keep it open for six months. We still would have ‑‑ if seller was if you could a merchant and it was in writing ‑‑ a firm offer but it would not exceed the 90 days. If I gave you one for more than six months, it'll only extends to a three‑month period. That, again, is a multi state.

In this case, the seller's not a merchant. Plus, The other thing I would point out to the reader you didn't put it in writing. So the firm offer's definitely going to fail but you're going to bring it up. Why? Because I do know the UCC's triggered. We have option. If the option can go either way, I better continue on. Would that reliance of paying the appraiser save it and show promissory estoppel to support the consideration? Arguable. I would continue on in regards to my firm offer rule.

Yes. Both parties are not a merchant. U.C.C. still applies. Again, it's just a transaction of goods. Again, when you go to specific rules, then the rule itself will say you have to be a merchant like with battle of the forms. Both parties have to be a merchant. Versus a firm only one party, the offeror, has to be a merchant. The rules basically says transaction of goods. People mess that up all the time.

Remember, it's transaction of goods. Don't broaden it like lease of a car. No. Doesn't work that way. Again, they're trying to trick you.

What happened next? Seller basically said ‑‑ buyer said she's interested in the dolls and seller makes an argument here when she said she's interested, but she wanted to do some research. She rejected the offer. Seller wants to do everything possible to not enforce this contract. But what do you need for rejection? It has to be a statement by the offeree. In this case it would be buyer. It has to be clear that you have the language in their saying you're not going to accept. You're basically rejecting the offer. When she said I want to do some research I'll get back to you, that isn't words of rejection; right? The statement basically shows an intent of I'm in interest I'll let you know. So the rejection here would not be valid.

Again, taking this right in chronological order, what happened next? She went and had it appraised and then she called seller. Now, the one thing I saw on a excuse me exams, separate the issues.

First issue I'll talk about here is the acceptance based upon the telephone call. Right? That is a separate independent issue. An acceptance, remember, is an unequivocal assent to the terms of the offer. Look at the language when buyer telephoned seller and left that voice message. What did she say? I like the dolls; right? So that's nice. She liked the dolls. Please call me at, and left her phone number. Does that support an unequivocal assent to the terms of the offer? Buyer's gonna say of course you did otherwise why would I have called you? Seller's going to come back based on your language it's not quite clear. I kike the dolls. You might be calling you asking me to call you back because you want to offer $10,000 versus the $15,000 that I originally sent out in the letter. So it's what? Not an unequivocal assent ‑‑ no mirror image ‑‑ to seller's offer. That's correct. So look tot language. Very subtle and people miss this.

Now we also have the letter. Here comes a trick. With the letter, do we have an unequivocal sent? Sure. I accept your offer. That's pretty mirror image. That shows an unequivocal assent in terms of the offer. But where's the trick? Well, she emailed the letter so that makes you think of the issue of the mailbox rule. The mailbox rule says an acceptance is effective upon dispatch. So if you find that when she mailed it I believe on the 4th and she wrote saying that I accept your offer, that acceptance would be effective when? On September 4th. Right? So therefore at that point we do have a valid contract. However, we've got a "but". What? Two problems that could come up that you could raise. Okay. The first one is if you found an option, what's the law say? The mailbox rule does not apply to option contracts. So that's why it's important, too, to always look to how you conclude. You have to support your position. If you found there was an option, this acceptance absolutely is not working because the mailbox rule does not apply to option contracts.

If you found the option failed, right, then you're saying the mailbox rule works, but we've got another argument here. And what is it? This is where you've got to pay attention to the facts. Now, remember I told you in that second paragraph that dealt with the letter of the offer, the first person who lets me know he or she wants the collection. There's an argument of method of acceptance. What do I mean? The first person who lets me know. Just because it's in the mail I don't know anything about it. I dictated the method of acceptance. You've got to let me know. Until I know, there is no acceptance. That's a counterargument under these facts as well. Very subtle. Method of acceptance is an issue they love to test on the baby bar so I would be familiar with it. I want the points. Worth good points. This is all gonna dictate in regards to mailbox rule applied, if in regard to you argue the method of acceptance and it's not the proper method as to whether or not we find that there is a valid contract. But then what happened next? When buyer returned home, seller called and said I got your voice message. Basically seller's telling her I'm not gonna let it go for less than $35,000. That raises the issue of revocation. What do we know about the issue of revocation? Revocation needs to be expressed and it's effective when? Prior to a timely acceptance. So that's the whole issue. Do we have an acceptance? Because if so, then the revocation's not valid versus if you found that the acceptance ‑‑ because the mailbox rule didn't apply or you found basically on the method of acceptance ‑‑ the revocation would be valid. This is arguable. Good exam because it's got gray areas that you really need to think of. Obviously you're going to say why [inaudible] may continue after you argue in regards to whether or not the offer was properly revoked. Then go to consideration which is straightforward here. Bargain for exchange. $15,000 exchange for the doll collection so we have benefit determinant remit on both sides.

Now, am I finished with my exam? We just formed the contract didn't we? When you see formation at issue, please look and see if there's any applicable defenses. I know there can't with parole evidence. No written contract. How about the statute of frauds? Remember, a contract for the sale of goods for $500 or more must be in writing in order to be enforceable. Here, we're dealing with a contract for a doll collection for $15,000. The doll collection's good $15,000 is more than $500 so the statute of frauds is triggered. How do I get out?

Remember, with the statute of frauds I want you to look at the model answer. You want to headnote the statute of frauds and show the reader, the examiner how you get into the statute of frauds. Then headnote your exception see how you get out. Do not snowball. I see people, one or two sentences, and they get in and out. Oh, there was a writing so it's ‑‑ statute of frauds is satisfied. You're not gonna get good credit because you didn't really support it. Here argue the first thing is sufficient memo. Remember, for the contract, the seller $500 or more, you can take it out by sufficient memo, a written confirmation, but we don't have merchants here; right? Full or part payment, full or part delivery. What do I have here? Argue the memorandum. How? Well, can I argue the letter? But there's a problem here because the letter merely is what? The offer. And this is one thing you need to really look at here because a lot of students would find that that letter would take this contract out of the purview of the statute of frauds. The contract wasn't formed at that point. You need something after the fact. Can I use that letter of offer to support a sufficient memo? Remember, sufficient memo's basically an agreement with the essential terms of what we agreed to and signed by the party to be charged, which in this case we're using it against seller. That won't work here. You would still bring it up here and argue and point out why it fails. This writing will not satisfy the statute of frauds. The agreement is not enforceable.

Remember, one other exception I've taught you that works for all the contracts: marriage, interest in land, contracts not performed within the one year of the making thereof, your sale of goods. What is it? Remember I told you about the estoppel. What it is, is estoppel based upon your reliance and based upon your conduct you can take it outside the purview of the statute of frauds. So in essence, what you could argue here why would I have it appraised and spend a thousand dollars unless I was reliant on what you've told me in regards to being able to buy that doll collection? So reliance, estoppel's, another way to take it outside of the purview of the statute of frauds. Does that make sense? Again, I relied, paid the thousand dollars. You can show that. That will take it outside the purview of the statute of frauds. This is a very well‑written exam testing some good key areas that you do need to focus on.

Another person asked about the issue in regards to mistake and I can see why they came up with that. But remember, as the offeror, if I make the mistake, tough luck. You obviously made the offer, you're the one that dictated the price. Kind of like on the multi states find you'll see somebody going into an antique store and finding something that's a rare value but hey, the antique owner didn't know it and put a different price on it. Sorry. So that mistake is not gonna relieve one of responsible, unfortunately. That's not something I would argue here. Definitely argue here in regards to the estoppel and in regards to the reliance.

Further, what do we need to go to? Breach. You can tell me who you're putting in breach. Seller and buyer had an agreement for the collection. If seller's not turning it over, that's an unjust value to the essence of the bargain. So therefore seller's in breach and then of course damages. What would you get for damages? Well, your expectation but what's the problem? Antique doll collection. How am I gonna find out what damages are? They're obviously not three or four of them available for sale; right? If we're trying get straight damages, we can use the appraiser value and basically the difference would be the difference between $30,000 and the 15 that you offered to me so the difference in that case would be $15,000. If you look at the call of the question, she wants to bind the seller which means force the contract. That's your issue of what? Specific performance. Correct.

So anything ‑‑ so when [inaudible] to get into specific performance, you have to show what we call inadequacy of legal remedy. That means law court. Not gonna make you whole. The money part won't make you whole. You can argue it as uniqueness of the goods which would be an antique here. Multiplicity of suits. Something that keeps happening over, and over, and over. Or damages are too speculative. That's good if you see, like, trying to prevent a contract and the damages aren't gonna make you whole because it's too speculative so you're trying to enforce it that way.

Reliance damages, where would you ask for reliance damages? I'm not going through my remedies checklist but in regards to your reliance damage, you're saying for the thousand dollars but isn't that enforcing the agreement in the first place? I wouldn't really argue reliance damage unless I'm getting nothing. Basically I'm not getting the dolls.

[inaudible]? Tom Petty's? Might work based on the uniqueness. They have tested this not only with putting the antique dolls up for sale on Facebook. They've dealt with Italian sports car for the uniqueness. They come up with some buttes. They had a football that they thought was signed, some famous person. The football wasn't available in that year he played Super Bowl so they knew it wasn't that football. They're clever how they come up with this but that would be the uniqueness, yes, and that would trigger what you're asking in regards to the specific performance.

Now, specific performance remember, again, show uniqueness of the actual chattel. Don't basically tell me you can get specific performance. For the baby bar you're trying to bind the seller so you need to show the inadequacy. Can the courts afford the decree? Meaning you're both within the same jurisdiction. We make that assumption. And there was a viable contract between the parties. The other thing which has come up on the baby bar is defenses. Different defenses obviously for equitable remedies, which specific performance is one of them. The three defenses you need to know: Unclean hands is pretty straightforward. Don't see that too much. Both parties are doing it. Why would I enforce when you're both doing something you shouldn't be doing? Latches is another equitable defense here. It's not raised in these facts, but it's based upon like a statute of limitations. You waited so long and unduly prejudiced the ore party so they're not gonna ebb enforce it.

The other one they have tested on the baby bar is a bona fide purchaser. What that is, is where someone pays value ‑‑ so money or something ‑‑ and they have no notice of previous agreement. That one, they did on the baby bar a few years back was with the Italian sports car. So obviously if another buyer purchased it and he went in knowing that she sold it to someone else and tried to enforce it through specific performance, but the other buyer from whatever country he was from wasn't aware so he didn't have any actual notice inquiry notice or what we call constructive notice about the previous transaction between the parties so how can the court enforce it?

So if you're saying that we have an innocent ‑‑ see if I get this right. If you basically state we have an innocent BFP who already bought it so in essence I purchased it and you purchased it, who's gonna get it? Whoever can show the BFP. If I find that the latter one is gonna get it even though hey you're in good faith because the seller did something they shouldn't have done. Sorry. The BFP will cut off your actual rights. That's just how it works. Make sense? That answer your question?

So in essence the second one person that comes along, if they are true BFP, we'll cut off the first party's rights if they're an actual BFP.

In looking at this question, does everybody understand in regards to particular issues that came up and how we got there? This is a loaded question. It's a good one for you to practice if you didn't get to look at it. By the way, didn't get too many people writing it. Going through it breaking it apart. Issues that I did see missed like option and firm offer people did not headnote the second acceptances lumped them together. Cannot do that.

Method of acceptance was missed, parole evidence was brought up. With parol evidence I can't really hide it from you. You have to have a writing. So if you have an incomplete writing or an oral agreement, there's no way you can get to parol evidence. That's an area I would like you to look at it. Yeah, I do like you to turn in the actual exam so I can take a look at what you're doing as a group and kind of pinpoint where your weakness is and what you need to work on. That gives you direction, so it is very helpful if you submit them. I point out the actual mistake.

Now, in this particular, exam, too would you ever do conditions? No. The call kind of forced you as to what you need to address in and of itself. Do you see how you'd follow your checklist for contracts? Yes. Very methodical and go right through the actual steps. This will help you keep structure; right? In essence, if I don't follow it and keep my structure I'm bringing up in regards to offer, then acceptance, then I went back to firm offer, then I went back to acceptance ‑‑ second acceptance. That's confusing to the reader. So that's gonna help you. Yeah. You will be sent out ‑‑ we have crim law coming up as well as two other sets of exams. I'd like to take a look. That gives me an idea as to what's going on for the group. This is for you guys so I can structure it ‑‑ maybe you guys are smarter than the last group ‑‑ structure it to what your needs are, what's more beneficial to you.

Again, remember to separate your issues. Do not combined issues. That will hurt you. Again, you can't talk about two issues at the same time. It's basically impossible. So break apart your acceptance and you see between the one issue in regards to the phone call and the mailing of the letter night and day; right? So to talk about them at the same time that's very confusing and you won't articulate it properly to the reader so I won't get my full credit.

The other thing besides this exam and kind of understanding the actual issues and what should be raised based upon the facts, I do want you to look at the format how the answer's written. Headnotes are good. Especially under the pressure of the exam and I'm getting a little sloppy, at least the headnote they'll know where I'm at and give me something for it if it's relevant. So you want to be aware of it.

I want you to be aware of your statute of frauds issue. Separate it out. That's one of the worst issues that students write, and you don't articulate it and break it apart enough you won't get full credit. Merely seeing an issue doesn't warrant full credit. You've gotta go in and see what's being tested within the issue itself, and you see the sufficient memo. They were trying to trick you with that letter. They've done that many times.

Another student called today with confusion in regards to incomplete writings. If I send you an offer on a piece of paper, you send me an acknowledgments form on a separate piece of paper, that triggers the statute of frauds as long as it's over $500 for the goods. That is an area they like to test because students don't know about the incomplete writings. We all know the oral part, but if there's an incomplete writing, that can still trigger the statute of frauds. Okay.

Before we jump into a couple multi states, anybody have any questions on this exam? Don't you think this is a good, strong formation exam and get a good handle on it? This is simplistic if you break it apart. This is also almost like a multi‑state. This is what they're gonna do to you on the multi‑state as well, except there you have four answer choices. Really dissect and break apart the language and the facts. That dictates the issues; right? That tells you which direction you need to go. I like this exam for that reason. It's loaded with issues in regards to your formation. Everybody thinks formation of contracts so easy, but if you don't read the essay question properly, you miss issues and then it's not so easy, is it? You have to really break it apart.

Okay. I got a couple multi states tagged, I think I have three. Somebody else has any after I go over these three that you want me to review, let me know if we have time.

First one was question number 2. Now, the one thing I can say, this is obviously dealing with the U.C.C. that you guys haven't had it. Remember I told you to get the Gilbert's Sales and mesh it into your common law and bring up the U.C.C. difference between it. That's important. You will find which I think we isn't out the U.C.C. testable areas you should be looking at that one area on the multi‑state they love to hit is in regards to your remedies by the seller or remedies by the buyer prior to or after acceptance. That's acceptance of the goods, by the way. You need to know those. I find with the U.C.C. it's very rule‑oriented. If you know your rules, you can get the answer choice correctly. If I don't know my rule, I'm in trouble. Some of the rules, like, why would you allow that in and they do. I didn't know the rules so I'm not gonna get it correct.

Faith, a furniture dealer, had 500 barrel chairs for sale. The chairs had a fair market value of $100 each. The manufacturer had discontinued production of the chairs, however, and they were the last ones Faith had.

If you've been studying, you should get a good idea where this is headed.

For that reason, Faith advertised them at $75 each, even though at that price her profit would only be $10 per chair. Jason, an interior decorator, was contracted to provide furniture for a new hotel. On May 4, after seeing the barrel chairs advertised, Jason wired Faith, “please ship me 500 barrel chairs as advertised at $75 per chair COD.” On May 5, immediately upon receipt of the telegram, Faith wired Jason, “Accept your offer.

At this point he says, I want to buy your chairs, your offer. She accepted.

We do have what? A contract; right? We do have consideration. Now of course statute of frauds can be a problem here because they're incomplete writings. This is a good example of incomplete writings. Why? We have what he sent to us, and then she sent over an acceptance.

Now it says: Will ship 500 barrel chairs tomorrow.” Jason telephoned Faith immediately upon receipt of Faith’s telegram on May 6, saying that after discussing the chairs with his client he had decided to cancel the order. On May 7, Jason sold all the chairs to Ellen at $75 each. If Faith sued Jason for breach of contract, the court should award Faith.

This narrowed you down to damages so you see $5,000 (500 chairs at $10 profit per chair).

B says $37,500 (500 chairs at $75 per chair)

C says

$12,500 (fair market value of $100 minus contract price of $75 times 500 chairs).

D says nothing.

First of all, couple rules you should be thinking of.

I, as a dealer here, selling the chairs under what's called the loss profit rule, I'm able to get, if you breach the contract, my lost property. In this case, those chairs whatever her profit would be she should be able to get. But if it's the only goods I've got, then the answer changes. So if I have these other chairs ‑‑ let's say I have 10,000 of 'em ‑‑ then I could get my lost profit. However, since basically they're unique, meaning this is the last batch, I can't because I now have no damage because I sell them to somebody else; right? If she sold them at 65 each then she could try to go for ten dollars per chair. She sold them at a loss. D best answer choice. That's just black letter law. In essence, you do have the lost volume seller.

If you're in the breach of a contract, the seller's able to get their lost profits. So in this case would I get the $75 per chair? No. So B I could never get. Why? Your lost profit's $10 a chair. Otherwise you'd be unjustly enriched because you still had the sale from the chairs as well as the breaching party paying for 'em. So that had be a form of unjust enrichment. Again, this is more black letter law. If it's the only goods you have left you can only get whatever you sold 'em for if it's at a lesser value, or nothing because you had no damage. So in this case, no damages. Everybody see that?

And your loss volume seller ‑‑ look it up in your Gilbert's ‑‑ they do test it. Comes up on the multi states they've tested it twice on the baby bar that I'm aware of. People just don't know it. I believe it was dealing with printing presses was the last one they tested.

Let's look at question No. 10. Deals with an issues assignment versus delegation, or do we have assignment, or do we have a delegation, or do we have both?

Remember I told you in regards to the black letter law an assignment is a right, a delegation is an obligation under the terms of the contract. So a right versus an obligation.

Let's look at question 10.

Cory was the owner of a condominium, which consisted of an apartment with a patio and a small backyard.

So far what? No problem.

When he moved in, he entered into a written contract with Rick. Pursuant to its terms, Rick was to perform certain specified gardening services in the yard of Cory’s condominium each week for a period of one year, for which Cory was to pay the sum of $50 per month.

What'd that just tell you? Two things you should be thinking of. A period of one year. So I should be thinking by its terms is it performed within one year of the making of? That could trigger statute of frauds. They did tell me it was in writing so I'm safe. They basically just contracted for gardening services for $50 payable per month.

The contract contained a clause, which stated, “Cory hereby agrees not to assign this contract without the written permission of Rick.”

It has a non‑assigning clause doesn't it?

Three months after entering into the agreement, Cory informed Rick that he was selling the condominium to Adele, and asked Rick to consent to Cory’s assignment of the contract to Adele. Because the costs of landscaping materials had increased dramatically in the last three months, Rick was glad for an opportunity to be relieved of his obligations under the contract, and refused to consent to the assignment. Cory assigned the contract to Adele anyway, but Rick refused to perform any further work on the yard. After formally demanding performance from Rick, Adele hired another gardener to do the same work for $75 per month, which was the best price Adele could negotiate.

In an action by Adele against Rick for breach of contract, the court should find for...

What is the issue? The issue is whether or not that contract could be assigned. What's the law say? Contracts generally what? They lack the freedom of assignability. Generally, contracts are assignable unless prohibited by contract, prohibited by law. What's the trick here for too personal injury? It's prohibited by contract. But the courts don't care because it's a right. The right is here to receive gardening services. They're gonna allow the actual assignment. Doesn't mean Cory's not in breach, but they're going to allow the freedom of assignability. The contract was able to be assigned. Looking at that, who prevails here? A says Adele because Rick had no right to unreasonably withhold consent to the assignment.

Let's say you're not sure. Put a plus there.

B says Adele because the assignment was valid in spite of Rick’s refusal to consent.

That's stronger because that goes right into the face of the black letter law. Even if it has, you cannot assign; they're not gonna enforce that. Only one time which is when? If it's evidently quite clear that it states in the contract that you cannot assign or this contract will be null and void. You and I both have an understanding don't do it or we have no contract. Not the case here. They're gonna rely on assignment. B looks good.

C says Rick, because the contract prohibited assignment by Cory without Rick’s consent.

We know the law says don't care unless it's explicit.

D Rick, because the contract was for personal services.

That doesn't matter unless what? Too personal in nature, which this isn't too personal in nature in regards to gardening, so B is your correct answer choice.

This is a question especially if you missed it or got it correct for the wrong reasons look at it because you will find assignments and delegations on your multi states and they're going to try to mess with you. They like to test to the black letter law in regards to that anti‑assignment clause. I can give you the same question, but I can add a sentence of fact saying that both parties agreed the contract will be null and void if you assign the gardening services. That would change everything. You and I both know the contracting parties. Can't do it. It's quite clear, quite evident.

Again, on this question, you can, and that's why B is your best answer. Everybody get that?

Again, the assignment delegation they like to test. So it's something that you do wanna know and get to know. Very important. Very imperative. Why? Because I want to get it correct; right?

Okay. Let's see. For another one. Another question someone had was on question No. 10, and this dealt with a motion theater. Of course they decided to actually buy it after they did research and stuff like that, and of course they saw it advertised and interested in it. Later after they entered into the written agreements, the city council passed ordinance saying can't be zoned for the theater they wanted it to be.

What that was actually testing is ‑‑ obviously could you get out of the contract ‑‑ was an excuse to performance. So in essence if I contract with you to buy this lot knowing and you know I'm gonna buy it for the purposes of a theater, and then the city passed an ordinance saying guess what, can't do it, could I get out of the contract? You could argue what we call frustration of purpose. However, in this fact pattern you didn't let your purpose be known. With frustration of purpose, your purpose must be nope at the formation stage of the contract and obviously an unforeseeable event occurs. Remember, that has to be at the stages of formation.

If he doesn't do it anyway ‑‑ actually, this is a good question. So in the going back to the gardening question, right, she wants to force the gardener to do the services. So that means she would have to ask for specific performance. But this ‑‑ you're correct ‑‑ is a personal service contract, so the courts will not enforce it. Money will make her whole. She can hire another gardener and he's gonna have to pay the difference. Each month, he has to give her that difference that $25 difference she gets because she had to pay that gardener $75. That's a prime example where the courts aren't going to enforce it because it's a personal service contract. It's a type of involuntary servitude. That's a no‑no. That answer your question?

So cover. You could say that. But see this was a gardening services. Cover's usually language we use under the U.C.C., which covers the difference between the contract price and the fair market value.

All right. Did everybody understand in regards to that as well as the question with the theater? Okay.

Another one I had tabbed here, this deals with a minor. You're going to find this on the multi states as well. It's a simplistic rule that you need to understand.

Minors can what? If they enter into the contract, the contract's voidable based upon the minor. The minor can disaffirm the contract any time up until majority ‑‑ which 18 usually ‑‑ or a reasonable period of time thereafter.

There is an exception of that rule. So minors can get away but there is exception to that rule and that would be for a necessity. What's a necessity? Medical, rent, like, housing, food. Those would be obviously necessities.

Jessica, a minor, purchased a used car from Ugly Car Sales for $1,200. The reasonable rental value of the car was $150 per month.

Why are they telling you that? See, what people don't understand and you need to know it is even though the minor can disaffirm the contract, we have other remedies available to us. Should you get away scot‑free? That's what raises the issue in regards to restitution. This is question number 25.

It says After she had owned the car for two months, the steering failed while she was driving it, causing it to collide with a tree. Although Jessica was unhurt, the car sustained $400 worth of damage. Jessica returned the damaged car to Ugly and demanded her money back, but Ugly refused to refund her money. If Jessica asserts a claim against Ugly, the court should award her a judgment in the amount of...

What would our remedy be here? She paid $1,200 for the car. $400 worth of damage. The car rental value's $150 per month. How many months did she have it? Two months that's $300. She paid $1200 and she wants to disaffirm it. What should we give her? Her full purchase price? $900 (the purchase price less the reasonable value of rental value), $800 (the purchase price of the car less the damage which it sustained. $1200 less the $400 because she damaged it. Or nothing?

So again, we're on question 25 so she will get the $900 because ‑‑ she's been unjustly enriched. That's another area the law frowns on. They're not gonna let you be unjustly enriched in receiving a benefit and get away without paying for it. Another example would be let's say ‑‑ these people are funny. Someone comes can starts doing services to your front lawn, and basically cutting it and they put seed down and start making value to it by adding beauty and you sit there and let them do it. I didn't contract them. You're going to be responsible based on restitution because you received a benefit. It's not for free. You received a benefit. Same thing with a minor. Even though they can disaffirm the contract, they're gonna have to pay for whatever they received unjustly, which the fair rental value. Okay.

The other area they like to test on this in regards to when can you disaffirm? Well, again, if you look at I agree with you that sounds like there's a products issue here, but look at the call. Ugly the court should award her judgment in the amount of. Narrowed you down to remedies. That's a good question.

The other thing is when you take the multiple choice questions, you must own in as to what the issues are being tested here. I agree she's probably got a good strong products liability case, but that's not what they're asking. You need to break it apart. I see they're really asking can she disaffirm the contract? Go through your rule and see what will she be responsible for if she does disaffirm it? When can you? Let's say they told you in this fact pattern ‑‑ so I'm changing the facts ‑‑ that she went ahead and purchased the car a month went by she turned 18, then a month later the steering wheel failed. Can she still disaffirm? And yes, she can.

So well, in regards to she returned it, look at the language that they're saying here. Jessica returned the damaged car to Ugly and demanded her money back. Remember, she didn't sustain any personal injury. They told you that. She doesn't have any damage, she's unhurt. She's suing for products that would be a tort theory first of all. She's most likely not gonna sue under contract. Since she's demanding her money back and they refused, the issue is can she disaffirm the contract?

Yeah. So that's where, again, it makes it a little bit confusing. That's why, again, the more multi states you do and kind of see how they test the concepts I'm gonna be yeah, I get it. It is subtle so I have to get in the mindset of okay this is what they're testing here. It sounds easy. It takes practice. Not straightforward, not easy.

Okay. Anybody have any other ones that they had questions on?

Now, what I would recommend doing multiple choice questions every day, even if it's five or ten. Write out your whys. Why did I pick A when it was B? Why did I say she gets the damage $1,200 less the damage of the car? Why didn't I see that? In that case might be because I didn't know the black letter law, but a lot of times that's not the reason. The reason is you didn't hone in as the what the underlining issue was being tested. You have to break that apart and look to that. And a lot of times, again, when we go over these, we find we're not following the call of the question. I didn't break apart in regards to who was doing what to whom to get there and break it apart, or I didn't even ‑‑ you can on the multi states use your checklist. I made an assumption there's a valid contract and there wasn't. Can't do that. It has to be supported pursuant to the facts so they have to tell you based on the facts. I cannot hide that from you. I want you to be aware of that because obviously what? I want to get them correct.

What I would recommend you should be doing torts as well as contracts. Start writing out the why and let me know talk about it this is what's going on here. Because it is a method of practice. It's not something you can know all the black letter law can still fail on the multi states. What? How's that possible. There's two correct answers, one's better than the other. You need to learn how to choose the best answer choice. There are subtleties with these that you need to break apart. One thing is understanding the concept within the concept that the examiners are testing.

You'll have 100 questions, three hours basically on your own. They will give you one hour remaining and five minutes remaining and put your pencils down. You need to monitor your time. That's something to be aware of. A timepiece. I told you go to the bar Web site and look and see what you can bring in. They've gotten strict. You better have a timer in front of you because you will ‑‑ I mean, there's not a clock right there for you to look at. Your timed, that three hours will go by quickly and you need to monitor your time. The general rule is that you get 1.8 minutes per multi‑state. Am I only gonna spend 1.8 ‑‑ no. Crim law and torts are shorter so get through those faster. The contracts will be lengthy. I might be spending two or three minutes on those. Monitor your time.

Go to the bar Web site, check out what kind of timing piece so you can start using it now and watch your time for the multi states because it's gonna go rather quickly. Versus the essays, you can look on your computer. You have the time there. I won't have it on my multiple choice. Bring three or four pencils. You don't want it to break and you don't have anything else. They're not going to let you bring in a sharpener.

All right. What do we do now? Well, you've had torts. You've had contracts. Now we're gonna be going over crim law. You need to still study torts and contracts. Don't ever leave them because you'll forget everything you learned. Now you're going to progress your way through crim law. I do want you to start reviewing your crim law and getting the black letter law back into your mindset. We'll go over that next week in regards to how they test on the black letter law ‑‑ areas that you should focus on and approaches, like, for murder and stuff like that so you have a good handle on that. And then of course an essay question the following week and some simulated exams thereafter.

But you've got to keep practicing. The more exams you're exposed and understand how the concepts come up in a fact pattern ‑‑ same thing with multiple choice ‑‑ that'll breed your success. If you go to the bar's Web site, go with the most current baby bars and work backwards. You want to be current how you're testing now. If you went back to some that were tested in the '80s, different style so I don't want to be learning off those, and I may not obviously understand it when they give me one that's current now. So that's why you want to work your way backwards. Anybody have any questions?

All right. If anything does come up. Feel free to shoot me an email at jolly@taftu.edu.

Meaning he gave you 120 essays to write? I would write 'em all. All right. So obviously again the more exposure you get how these are tested, the better off. Yeah. And hopefully they have model answers. The one thing that you do wanna make sure, there is a difference between a model answer and a student answer. I wanna make sure you're aware of that. Student answers, especially on the bar Web site, aren't very strong, but it's under the pressure of the exam. Model answer's got everything but the kitchen sink and you want to learn from that because if you leave out one or two things, I'm still gonna do well on the exam. So that's important.

Okay. Again, if anybody has any questions, feel free to shoot me an email at jolly@taftu.edu. Happy to help you in any way I can. Remember, keep writing, issue spotting, practicing, learning your law because this is a tough test. The more exposure you start teaching yourself how issues come up, fruition's there. I wish you guys all a good night and see you next week. Good night.

[END TIME: 6:59 PM]