Taft Law School

Electronic Classroom – Baby Bar Mini-series

05/14/19 6:00 ‑ 7:00 PM

>> INSTRUCTOR: Good evening, everybody. We'll be starting in approximately one minute.

>> INSTRUCTOR: Good evening, everybody. Welcome to tonight's baby bar mini series. Our primary focus will be on the subject matter of crim law. I want to point out that these sessions are recorded so for your convenience if you miss one or you want to go back and review, they're up on Taft's Web site. Just sign in on the student section, and then go to the baby bar mini series and everything's posted there for you.

I also do wanna point out if you have any questions, please feel free to post those in the chat and I'll be more than happy to help you with those as well.

All right. Last subject matter we're going over. So we've hit torts, we've hit contracts, and the last one you're responsible for is crim law for the baby bar. Crim law's very much like torts. It's very rule oriented, and it's a different beast than contracts, isn't it? With crim law, I want to make sure of a couple things for you to remember, whether it's on an essay or multiple choice is make sure you look at the actual facts and make sure they support the crime that you're thinking of. So like an example let's say there's a larceny. Was there a trespatory taking? Was there a carrying away? Was the specific intent to permanently deprive there? You want to make sure everything's supported based on the facts. On a multiple choice question, definitely before you pick your answer choice.

The other thing is once you find the facts support a crime, I would like you to look for any applicable defenses. So if there's any defenses that can release one of liability, then obviously that might be a better answer choice than the underlining crime.

The other area that I want you to pay attention to is when we try to impute liability onto another party. That's generally dealing with, like, conspiracy or a [inaudible] liability. So they didn't actually do the act, but I'm trying to charge you with it anyway, even though you didn't do it. That's gonna raise conspiracy and then i.e. you're gonna bring up your Pinkerton's rule. Or you're gonna bring up accomplice. Depends on whether or not there's an actual agreement. So that's important so again, remember look to the facts and see, do they support the crime? If you do find that there is a charge there for the crime, look and see if there's any applicable defenses and then of course if the party didn't do it, we're trying to impute it through a conspiracy or a contemporary tort theory. Those are highly testable so I want to make sure you pay attention for that in regards to the examination.

Now, the first area in crim law that we're gonna look at is what's called inchoate crimes. For inchoate crimes you have solicitation, at a time conspiracy. These are highly testable. They're on the essays, they're on the multiple choice. So you do need to get to know them and understand them, and understand when they do come up. And this is important. The reason being is because obviously you don't wanna miss the issue, but they're gonna test little nuances such as merger, or legal and factual impossibility, so you're gonna have to understand that and break that apart so you get all the issues in there that you can based upon the fact pattern.

With solicitation it's what I call a sleeper. A lot of people don't see it. Solicitation's where one is enticing somebody. So they have the specific intent to entice you to do a crime. So if I come up to you and say hey, do you want to help me rob the bank tomorrow? That would be a form of solicitation because I have the specific intent to get you to help me, and I want to rob the bank so that would be a form of what we call solicitation. So, again, it is an issue that does come up. We have a tendency to overlook it because it's very subtle. Now, with solicitation you want to look and see if you can withdraw from it, and the majority rule it's no defense. But you are also responsible for the Model Penal Code so the general rule, especially on multiple choice questions, you're going to answer according to common law. And then of course if you're asked otherwise you will have to answer according to Model Penal Code. Versus the essay, you're gonna do common law first and then of course if there's a distinction, bring up the Model Penal Code. It's worth some points. Kind of like your burglary. You've got common law versus modern law. That's kind of like Model Penal Code, modern law. Again, it's worth points.

Now with your majority common law view for the issue of solicitation, you can't withdraw. There's no withdrawal. However, in the Model Penal Code you can as long as it's voluntary and a complete abandonment of the crime; right? So you have to see some party taking some actions. If I said yes I'd help you rob the bank then all of a sudden I decided no I won't do it and I made sure I was out of town that day it was going to transpire. You would argue, of course, was that a voluntary abandonment of the crime itself?

Now, remember, too, solicitation doesn't merge. So solicitation is what we know as a lesser‑included offense. So if I solicit you for, let's say, murder. I want you to murder my husband. That would be a form of solicitation. You try to ‑‑ and there's obviously it fails so there's an attempted murder. So now that solicitation can merge into that attempt and I would be charged with attempted murder versus the solicitation.

Now, the reason that's important ‑‑ I mean, if it's on an essay, you see it, that's great. But your call of the question you want to pay attention because that will dictate. The call could say something to the effect of what charges could be brought against defendant? So that's really broader. Versus what crimes can he be convicted of? So there is a difference. On an essay you'd bring up solicitation, say it merges so obviously it wouldn't be a charge or convicted of. But on a multi‑state that can change things for you because they're gonna list them out for you in your option choices. And if you don't apply the principles, you might choose the wrong answer choice. So the call, I can't stress it enough, dictates. It's very important to pay attention in regards to what that call's asking you. Right? So if the call says what's the most dangerous crime he could be charged with, most likely I'm narrowing it down to one and I'm going to look are we dealing with murder? Are we dealing with burglary? What are we dealing with and hone it in. Again, the call of the question does dictate, and I want to make sure you do pay attention to that. Again, that's solicitation and it is testable.

Attempt. Attempt comes up all the time. Students don't do well with an attempt and I think that's because they don't know how to write it. So that's why you do wanna look at model answers and get a handle on things and how you see issues come up and what you need to do. With an attempt, remember you still need to have the specific intent and you have to take what we call a substantial step, you have to have the apparent ability, you have to look at the preparation versus perpetration of the underlining crime. All right. So you do need to support all those elements. So specific intent, substantial step, apparent ability, preparation versus perpetration. And that's important. These, in regards to the attempt issues, do trick people on the multiple choice questions, so it is something I do want you to be aware of. So, again, go through your actual elements.

Legal and factual impossibility does come up. Actually, that's the defense to any of the inchoate crimes but it comes up quite a bit in regards to attempt. And don't make these rules harder than what they are. What do I mean? Well, factual impossibility general rule it's no defense. So if the defendant intends to commit a crime but facts unbeknownst to him makes the crime impossible, we're still punishing your mindset so we're not gonna allow factual impossibility to be a defense. One prime example is I want to steal your wallet; right? I'm gonna come up to you, reach in your jacket pocket, but you don't have a wallet. I'm being charged with attempted larceny, but I'm gonna argue factual impossibility because you factually didn't have the wallet, but as the facts I believe them to be, you did, so it's no defense. Is general rule it's not gonna work. Versus legal impossibility the defendant believes the act is legal but it's not. If I believe in regards to duck hunting this time of year is illegal, but it's not, if you're charging me with attempted ‑‑ even in regards to the statute ‑‑ bring up legal impossibility although I believed it to be illegal, it's not. It's not a crime. That's one I know.

Another prime example of attempt that you should be seeing is attempted murder. This comes up all the time on the multiple choice. So you are angry at your neighbor. You want to kill your neighbor. So you sneak into the house with a gun and shoot at your neighbor but little did you know your neighbor died an hour ago of a heart attack. Now you're being charged with attempted murder. You can't be charged with the murder because neighbor was already dead; right? So it would be attempt. So did you have the specific intent? Evident by your anger, sure. Did you take a substantial step? Sure. You took the gun and went over there. Did you have the apparent ability? Sure. You had the means, you had the tools. And was it preparation versus perpetration? Well, he was already dead so I couldn't perpetrate the murder, so in regards to my preparation so I would find an attempted murder based on those facts. Now, what else would that trigger? It's a prime example you would argue factual impossibility. It's factually impossible to kill somebody who's already dead. But as the facts you believe them to be, would your act be criminal? And the answer's yes. So guess what? No defense for you. So don't make it harder than actually what it is.

The other issue with attempt is withdraw. Can you withdraw? Majority rule, common law, not once you've gone within the zone of preparation ‑‑ or perpetration. You started entering into that. You got your gun, you've gone into your neighbor's house, you've gone too far. No withdrawal. Then of course under the Model Penal Code they will allow it. What I like t it, it's the same language as solicitation as long as it's voluntary and you successfully abandon the criminal activity.

Now, remember also, if you find an attempt but then of course I do the underlining crime, say attempted murder but I end up causing the murder. Attempt does merge.

It's very rare in regards to an exam you'll see I'm being charged with attempted and murder of the same party. That couldn't exist. That's a mistake. Remember when you're discussing attempt, you go through the elements of the attempt. So if it's attempted robbery, what elements am I focusing on? Substantial steps, specific intent, apparent ability, preparation versus perpetration. I'm not wasted on any elements of the underlining crime like the robbery. Now, the one key thing on the multi states, though, you want to remember ‑‑ this is what gets us in trouble on the multi states ‑‑ you have to have the apparent ability to do the act. So I do need to take a step back on the multi states and say gee, does she have the ability to commit murder? If the answer's no, then there's no attempted crime. You have to have the apparent ability. Do remember that just because I can apply all the elements you have to look at the underlining crime to see if I had the ability to do it. But you do not prove up the elements of the underlining crime so attempted murder, attempted rape. Just focus on the attempt.

The other thing I want you to focus on that, too, is the attempted rape. What's the mens rea? And the mens rea for attempted rape is specific intent. So they're gonna try to mess with you because you're focusing on the underlining crime that they tagged on there and you're gonna focus on that, which rape obviously is a general intent. So that'll make you choose the wrong answer choice. So I need you to pay attention to that so we get our full point value. It's all about points. I want my points, and it the reader to understand I do understand these concepts.

Now the big one. Huge. Conspiracy. It comes down all the time, so you should have it mastered. The likelihood of it being there is very strong. Why wouldn't I know it? With conspiracy you need an agreement, it needs to be between two or more, and it needs to be an agreement to commit an unlawful act. But remember, you could have an agreement by conduct, what we call a facet agreement, or what we call a unilateral agreement. And they are testing the agreement a little bit more in detail on the multiple choice questions because people don't know it. All right. So in essence, in regards to if I look at you and wink, wink, that could be argued as an actual agreement. Or with a unilateral agreement what they're actually testing is liability's going to be imposed if the defendant agrees to the act, but how do I agree if I didn't know you exist? It's unilateral. Well, one fact pattern's where boys are in a camp and they're mad at the counselor, and they're gonna go steal his asthma medicine. Another little boy who doesn't like him overheard their plan and went there and set it up so they could get ahold of the medicine. That would charge and impute their conduct onto him via unilateral conspiracy. So that's how it does come up, so you want to make sure you break it apart.

Also, another issue there would be let's say if you agree with the police officer. How could we ever agree with a police officer? Because they never have the mindset to commit the act that they're talking to you about or you're talking to the police officer; right? That, again, is another unilateral ‑‑ what we call buzz words. The argument is that it's a feigned agreement. That's the buzz words.

The other thing with conspiracy, you can withdraw if you communicate modernly is different than common law. Common law says you need to communicate to all coconspirators. So if I just tell one, that's not enough. You need to tell all those that are participants with the actual conspiracy. Under the Model Penal Code, you need to what? Voluntary abandonment and thwart the crime or take some action. So you call the police or you prevent the criminal activity. That's gonna come down. Now, the one key thing you have to remember with conspiracy, if I have the withdraw of the conspiracy, what effect does that have? Am I still gonna be charged with the conspiracy? Absolutely. The only effect withdraw has is it cuts off further liability. So it is important if the other parties keep going forward, but it cuts off further liability. Once you make that agreement, you're guilty for the actual conspiracy and there's no way to get rid of it.

Now, the other doctrine under conspiracy that's highly testable, Pinkerton's rule. And Pinkerton's rule students don't fully know the rule, and they don't analyze it very well. Pinkerton's, you want to dissect your elements. What does that mean? What do I want to show? I need to show that you're responsible for anything that's in furtherance of the agreement. So you're gonna break it apart, aren't you? So if you and I agree, three of us, to go rob a bank and then during the bank robbery you shoot the guard and now I'm being charged with the murder, well, I didn't do it. So is that in furtherance of the bank robbery? Yes, it is. Is it foreseeable natural result of a bank robbery? Yes, it is. And is it foreseeable? And yes, it is. Right? So you obviously would impute it onto that party based upon the Pinkerton's principle. You're going to find with Pinkerton's people don't analyze it enough on an essay, they don't break it apart and show it's in furtherance of and foreseeable based on the circumstances. And you do need to do that.

The other thing in regards to conspiracy, you have what's called the or ton's rule. Never really seen it tested on an essay, so I wouldn't worry about it. It could come up on a multi state. And what is it? It basically takes to commit the act so I can't charge you with conspiracy. That would be something like dueling or adultery, or something like that. So if it takes two to commit the wrongful doing, I can't charge you with conspiracy because the nature of the crime requires two. That's your or ton's rule. It doesn't come up very much. Remember, with conspiracy, it never merges. It's an independent crime that once you agree, if I show the elements that a conspiracy's been met, sorry. You're guilty of the conspiracy. If I can show a valid withdrawal, the only effects, again, gets you off of further liability. Liability down the pike, shall I say. It's a very highly testable concept. You need to know it. And Pinkerton's comes up all the time. The key thing there, too, you'll see on some of the baby bar essays is break it apart. So you're gonna see that ‑‑ let's say it's Arnold. Arnold did all these wrong acts and you're trying to impute it onto Ben. Well, I'm going to go through and prove up all the things Arnold did, then look to Ben but make sure you isolate the crime. If I can lump two or three together because it's natural probable result, foreseeable, I might be able to do that. But I know one or two have to be different, there has to be a different argument otherwise why would they set me up that way? So you have to make sure you break it apart and look at it and see if you really need to analyze it and separate it out. That's important. So those are your inchoate crimes. Again, highly testable. Get to know them. They will be on the multi states and they're definitely on the essay.

Another area in your checklist is what we call third‑party liability, and what comes up under there is vicarious liability, and accomplice liability. Vicarious, just like you learned in tort: Employer‑employee. So how can employee cause an employer to be responsible? Look to the nature of their relationship. You're a bouncer at a bar. Tell you to not let anybody in no matter what you have to do. Guess what? You hit somebody, might be vicariously liable based upon the wrongful doing. The other area's accomplice liable. Now, with accomplice, that's one who aids and abets in the perpetration of unlawful acts, and you have an accessory before the fact, an accessory after the fact, or an actual principal in the first or second degree. Generally, I don't break those apart unless the facts tell me. Otherwise I'm just calling you an accessory or an accomplice. The facts will tell you. If I help you, which you'll need to know for multi states, prior to your wrong doing, I'm an accessory before the fact and I'm gonna be responsible all the way down. As to an accessory after the fact, that's different. If I help hinder your arrest after your wrong doing, I can only be responsible for the acts that occurred after the wrong doing; right? From that point forward. That's what you do need to know for the multiple choice questions. Now, what is the difference between conspiracy and accomplice liability? Well, conspiracy has an actual agreement; accomplice liability doesn't. But, when you do see accomplice, you need to still argue the foreseeability. They're gonna be liable for the other party's act if it's reasonably foreseeable. So I'll be able to impute it onto them. Prime example as I recall an essay that I did see where these two brothers were dealing with transportation of illegal drugs. One of the partners hired a bodyguard to protect his brother because he was gonna get attacked because he was gonna deliver rare jewels. So obviously he lied to the bodyguard. And of course when a person did approach, which happened to be an undercover police officer, the bodyguard killed him. Now, how can we impute that on to the other brother, who had no knowledge? Well, we're gonna argue the accessory under accomplice liability because it's foreseeable that the other partner would take any steps or acts to prevent thing capture of our wrong doing. So that is a prime example of how the issue in regards to accomplice liability can come up where the other party what did I do? But again based on your inherent activity, what you're doing, it's a foreseeable result so we will impute liability onto you.

Everybody understand that?

Another example taking you back to conspiracy so you understand it, if you and I conspire to go rob a bank tomorrow morning 9:00 a.m. and on my way home tonight I get pulled over and police officer realizes I have a warrant for my arrest because I didn't pay any of my parking tickets so I don't show up tomorrow because I'm siting in the cooler there and you show up and obviously you commit the robbery, can that imputed on me? I didn't do anything. I wasn't even there. And yes, it can. Again, under the Pinkerton's rule, under the conspiracy. Obviously my withdrawal's not effective. I didn't call you and tell you I'm not gonna show up. So there's no effective withdrawal so I would be charged not only with the conspiracy but under Pinkerton's, the underlining robbery of the bank. That gives you a good example how it comes up.

All right. Murder. Murder's big. Murder was on the last baby bar; doesn't mean it won't come up on yours. They're very clever on how they're starting to test murder because they're putting subtleties where somebody else does the act, or my wrong doing causes an innocent party to do the act, such as the red line view, stuff like that, so you just need to be aware of it. It does come up. Remember, for the essay purpose, you're gonna start off with murder with malice. Malice can be shown by intent to kill, intent to cause great bodily harm, felony murder rule, as well as wanton reckless conduct. Argue all four if you can. It's gonna be dictated based on the facts. The facts will tell you. If I argue only three out of the four, that's fine. The facts will tell me. Make sure you go through as many as you can because it's worth points.

Now, the key thing they've been testing lately is a death occurring during the felony. What do I need to show? That the death results in the perpetration of inherently dangerous felony. So burglary, an arson, rape, kidnapping, robbery. There's one where the lady ‑‑ the guy went into a 7‑Eleven‑type store, convenience store thinking he was going back in the bar and demanding that the guy gives him a drink. Of course the people in the store panicked and ran out, and pushed this one guy out in the street where he got ran over by the car. Well, now we're charging the one committing the crime with that murder. So they're getting more clever how they're actually testing you. He was in the commission of what? Robbery. Modern law burglary because he went back to his car and got a weapon and was trying to force to get a drink and he went into the wrong place inadvertently. Obviously that's because he's probably drunk and didn't really understand once you bring up the defense in regards to intoxication remember intoxication doesn't always work. So that's a prime example of how you could see it come up or someone else really does it but yet because you're in the commission of an inherently dangerous felony imputed onto you.

Now, with murder two, always look to your causation. Actual cause and proximate cause, make sure your activity caused it. And of course is it first degree versus second degree? Remember, with first degree you have specific intent to kill with premeditation deliberation, or poison, bomb, ambush, torture, or felony murder rule. Those are the three ways you can show first degree. The other thing that could come up there is what we call the red line view, some people call it in Fleming's the specialty felony murder rule. This is where an innocent party did the killing but we're trying to impute it onto you as the felon. Can we do that? At common law yeah, we can. You're going down. Better view I think [inaudible] basically says if it's an innocent party and an innocent party was killed ‑‑ so if it was one of the co‑felons, no. In the better view, it needs to be in the hand of the felon which is the modern view, Model Penal Code.

Again, where's that go? It goes under your discussion in regards to first degree. Again, the other thing when you do your practice and you go through your checklist, you have to make sure you know where everything fits and where you're gonna talk about it. If you don't, then obviously you might put it somewhere or the reader might not see it or it doesn't make sense. So communication's what? Very important. Very important.

Now, if it's not murder in the first‑degree murder, then obviously look to your second degree, then go through your actual defenses. So your checklist or what I call your inner checklist is really a setup for your homicide, your murder exam. It'll lay it out nicely for you. Defenses obviously when you do see a murder, look for defenses. If there's facts that support a defense and it's gonna fail, still bring it up. So in regards to self‑defense, can I use reasonable force to protect my property, and then can it rise to the level of deadly force if my life's being threatened? And obviously yes, it can. Remember, there is a difference between modernly and the Model Penal Code. So in essence if you're the aggressor, do you have a right to self‑defense? Or do you have a duty to retreat? I've got a duty to pretreat. Minority's contra, but under common law in the Penal Code, you started this, you had a duty to get your right back. You've got to retreat in order to gain that right self‑defense. So the aggressor must retreat if the threat was non deadly unless you are threatened with deadly force but you have to get that right back.

Defense of others. Again, remember, you can use reasonable force and under the felony rule, you step into the shoes. So you're got to remember that for the multi states. If you come upon a scene and you feel this man's hurting another person, and you step in there to prevent it and then little did you know it was an undercover police officer, step in the shoes. So since obviously that person you're protecting had no right to be protected, you're going down. The defense of others is no defense. Modernly under the Model Penal Code, they're gonna allow for reasonable mistake. The reasonable mistake's based on objective standard. Would a reasonable person in your position have felt the same way based on what they're seeing in if the answer's yes, obviously it will be a defense for you. If the answer's no, again, no defense.

Crime prevention. Remember, you can use non‑deadly force to prevent a crime. The only way you can use deadly force is what? If your own life is being threatened. If there's an eminent threat of death or bodily harm. If you don't see it, then obviously you're not allowed to use deadly force.

Defense of property. Remember, you can only use reasonable force in defense of property. So someone breaks into your home, you can only use reasonable force unless there's a threat of serious bodily injury or death to you. Then it arises to deadly force.

Now, when you do see defenses triggered, I want you to look for two or more. If I see self‑defense, I'm gonna see can I argue crime prevention or defense of property? So go in there looking for two or more. Don't just bring up one and leave. See if there's multiples that you can get ahold of.

Other defenses would be like excuses. So what do we see is excuses? Your intoxation; right? And you have the difference between voluntarily intoxication and involuntarily. So voluntarily you just drank too much. It negates specific intent so that does come up. They'll test you that with attempted rape or they'll test you that in regard you broke into the wrong house thinking it's yours for burglary. It can negate the specific intent so you want to pay attention because there is difference between a general intent crime and a specific intent crime. That's why you need to look for the underlining charges otherwise I've tricked you obviously to get you to pick the wrong answer. Versus involuntary negates anything. You have your infancy. So remember, 0 to 6 is conclusive, 7 through 14's rebuttable, and over 14 you have the ability to commit a crime. Remember, who has the burden? And the burden's on the prosecution to rebut it, not on the defendant. So if I basically am charging a child who's 7 I'm going to say it's a rebuttal of presumption that they don't have the ability to commit the crime, the burden will be on the prosecution to show they did have the ability. So the burden really goes on to the other side.

Insanity's good. You want to know your insanities. Insanities will be on your multiple choice questions. It does come up every once in a while on an essay. If you do see it on an essay, you will have to do all four because they're not gonna tell you the jurisdiction. So you will need to do all four. On the multi states what they're going to do is make you pick which one it is but they're gonna interchange the language, and that's why it's important to know your rules. So an example with the Model Penal Code, all of them have one thing in common: It's based on the mental defect. But under Model Penal Code you need to show you lack the substantial capacity to conform. Versus the Durham you have the mental defect but your actions was the product of that mental defect. Or M'Naghten you don't understand the nature and quality of your actions. Or irresistible impulse. Again, based on your mental defect, you have the ability to control your impulse. And they're gonna take the language and mix it up. So basically if I tell you based upon the mental defect you didn't understand the nature and quality of your acts, and you lack a substantial capacity to conform, I just merged two together on you. So you've got to pay attention and make sure you know your language and that goes to what. It will make a difference.

I do find generally on the essays ‑‑ it's different on the multi state ‑‑ that most of the time when I do see the issue of insanity tested, it usually doesn't work. Even though I have to go through all four, it's usually not because of the mental defect. You do what you do. And how are you gonna know? They have tell you in the facts. How do they have to tell you in the facts? Well, one comes to mind. This guy's being charged for attempted murder. His landlord basically said you haven't paid, I'm evicting you. He went and got a bat and hit his landlord over the head. As soon as he did that, he immediately say oh, my gosh. I'm sorry, I'm sorry. I didn't mean to do that. They're giving me that fact showing me he's fully aware of what he did. Or else he wouldn't have responded in that manner, would he? So it wasn't because of his mental defect he was angry because you're gonna evict him and he didn't wanna leave. So generally you'll find because of the actual mental defect that's not really causing the underlining crime. But you do need to know all four. And I can guarantee you'll see one or two on the multi states. They add up.

Now, once you go through your murder, you went through your malice, you went can typed it in as first or second degree and looked to any viable defenses, look and see if we can mitigate to voluntary manslaughter. Mitigate to voluntary manslaughter there's two ways we can do this. One, [inaudible] provocation with insufficient time to cool and you lost your mental equilibrium. Or an imperfect defense. So let's look at these.

Adequate provocation's based upon a reasonable person in the same circumstances and would you have lost it based on those circumstances; right? Where you couldn't really control what you're doing evident by whatever action occurred. So you walk in on your spouse and they're cheating on you. That might be adequate provocation. Reasonable person might lose control.

Also in regards to the imperfect defense, remember how I said imperfect defense, what do I need to know about that? Any defense. So if it's self‑defense, defense of others, crime prevention. Any of those that I think I have the right to use by oops don't can mitigate my murder to voluntary manslaughter. But you have to have a right, it has to be reasonable that you had a right to use that defense.

An example. I decide to go rob a warehouse and of course the secret alarm went off and here comes the police and they fire at me. How rude. I turn around and fire back at them. So now of course when the officer's shot dead I'm gonna try to argue for voluntary manslaughter because I was defending myself under self‑defense. So that's an imperfect defense so they should mitigate to voluntary manslaughter and the law says no. I didn't have a right to even try to claim self‑defense since I was the wrongdoer. Since I didn't have the right, they won't allow me to use it as an imperfect defense to mitigate my murder to voluntary manslaughter. Okay.

The other thing I want you to pay attention to how they've been testing is sometimes you start off with the adequate provocation and then something else happens, you might have two issues within itself. There's one where the guy did see his wife cheating on him. Of course he was angry, but he was too sick to do anything about it and two days later when he felt better he went and bought a gun, found the person, and shot him. There's really two issues of voluntary manslaughter. The first when he came home and saw what he saw, that's adequate provocation, but he was too sick so he had sufficient time to cool off. Then when he went to purchase the gun and went to the place where the guy was and he accused him and the guy said no, adequate provocation you're lying to me based upon what I saw. But remember, words alone are not enough. Plus he had the sufficient time of cooling off period, so we're not gonna allow him to mitigate his charges to voluntary manslaughter. Look to the actual language, look to the actual conduct based upon the facts.

The other one is your involuntary manslaughter. Involuntary manslaughter, remember's the unintentional killing without malice. So it's like a criminal negligence or what we call a misdemeanor manslaughter rule. That would be charged obviously with involuntary. What do I need to know about these murders? I want you to pay attention to your malice. If I have malice shown just based on wanton and reckless conduct, that's the only one I can argue based on the facts, I know imus discuss involuntary manslaughter. It's really factual. It's a jury call. If I'm driving down a school zone and I don't see kids in the crosswalk and hit them, killing one, is that murder in the second degree? Or is that involuntary manslaughter? Depends on the facts. I didn't give you all the facts. Obviously for a multi state purpose if I told you it was crossing guard was there and the kids were on the way to school, most likely murder two. Versus if I told you that it was just after dusk. Gee, school's been out for a while. So that might be more of an issue of involuntary manslaughter but it's factual. So the facts will dictate. Obviously you want to know which way to go for the MBE, but on the essay, I would talk about murder, murder two and then get to the issue of involuntary manslaughter.

If you see your malice with intent to kill, intent to cause great bodily harm, and felony murder rule, will I ever get to the issue of involuntary manslaughter? Never. My malice is too strong so you're wasting your time. All right. As you can see, especially for those of you who started taking exams timed, you don't have the time. They don't mark you down for non‑issues, but you're wasting time in not gets the issue they're looking for. Now I'm frustrated. That's your murder.

Anybody have any questions in regards to how you're going to draft a homicide or a murder exam? You see how your inner checklist really lays it out for you. It helps you. That's why, again, use your tools.

All right. The other area we need to go over is what's called your theft crimes. Guess what? They're highly testable. They're all over the multi states and they're gonna be very specific and test you on the elements. Because do you understand the elements? So like larceny. Well, it's a trespatory taking or carrying away of the personal property of another with the specific intent to commit a crime. Well, what's the difference between specific intent and false pretenses? Or how will you know it's larceny versus embezzlement? They're gonna play with you. In regards to larceny, obviously you have no right to the property whatsoever. Versus in regards to embezzlement you had custody. You were entrusted with the property so there's gonna be a big difference in regards to what chance or choice you take. You need to know this and play with the elements. Let's say larceny by trick. What's the difference between larceny and larceny by trick? Well, you obtain the property with all the same elements as larceny except by how? You make a false representation by fraud in order to get the actual article itself. False pretenses, what's the difference between false pretenses and trick? Again, they're gonna test in this. False pretenses, remember, you make a false representation has to be a past or existing fact but you get title. Title transfers.

So an example if I tell you tonight after this lecture I'm gonna go to the grocery store and I would like to get a nice lobster tail. I look in my wallet and I've got seven dollars. That's not very much. And I see they're prepackaged and they're on sale, but the cheapest one there is 12 bucks. And I look other over there and I see a nice piece of hamburger for five bucks so I take the sticker off the hamburger and put it on that lobster tail over there, the other one that said 12 bucks. I take it up to the cashier, pay for it, and off I go. Now, have I committed a crime? If I have, what crime have I committed? So you're gonna have to break it apart. Now, ask yourself did I obtain just the lobster tail itself or did I get [inaudible] to the lobster tail? Since I conveyed even though it wasn't the right amount of money ‑‑ the sticker said four bucks ‑‑ and the checker did take it, she did have the intent to convey title. So I actually committed false pretenses.

Everybody see that? That would be an example of false pretenses.

Versus larceny by trick, let's say I went up there and said oh, I left my wallet in the car. Let me go get it and I'll be right back to pay you, and I took the lobster tail with me. Obviously title didn't transfer. So I tricked, basically, given the fact that I'm gonna go get my wallet knowing I didn't have anything in my wallet in the first place and off I went.

These are the areas that they're gonna test that you really need to know.

Look for your embezzlement. Is there a misappropriation of property that you've been entrusted? Now, other elements that you have to look at is did you obtain possession? What interest did you get? So was it custody? Something entrusted? Did you get title which would be more towards false pretenses, and then also the transfer and intent doctrine works here. So I'm sure you're seeing some of the multi states saying wait a minute, he lent it to you but why now is it larceny? Because we're implying the transfer and intent doctrine and going back on you. Okay.

So I do you to spend time in the theft crimes and break it apart in getting to know how they test. These are all over the multi states.

Another theft crime is your robbery. Robbery's just like larceny, but by force, fear, and intimidation. So again, you need to ‑‑ still need the trespatory taking, carrying away of the personal property of another, however, with the force, fear, intimidation with the specific intent to permanently deprive. So robbery's another theft crime.

Another one that's a sleeper, receiving stolen property. Where a party receives stolen property. What's the key? They have to have knowledge, which I thought was really odd because it's subjective. Not objective, it's subjective. So if you go back behind an alley and there's a guy in a van come here, come on, you want to buy this TV? I just wanna get rid of it because I need money for college for my child and I buy it. Gee, you think something's wrong? Probably; right? But if I truly believed in my own mindset that it's not stolen, I didn't receive stolen property. So it's subjective standard.

It is tested. Again, it's one issue ‑‑ it's worth some points ‑‑ that they have a tendency to test it that it's very hard to see. So just keep your eyes open for it.

Another area, burglary and arson. They like burglary, and they also like arson. With burglary, on the essay, always start off with your common law. Don't lump together your common law, modern law. Please don't. Start off with your common law, then if it fails, then bring up the modern law. If it doesn't fail, we don't have to do modern law, do we?

Now, with your common law, you need the nighttime, the breaking and entering if dwelling house of another with the specific intent to commit a felony therein. What do they like to test there? One element they like to test is you have to have the specific intent at the time of entry. So basically someone goes and breaks into a cabin because it's a freezing snowstorm and I see a nice, beautiful pocket watch on the table and take it. Have I committed a burglary? The answer is no. I committed a larceny, maybe a trespass, maybe a malicious mischief depending how you got in, but there's no burglary. Why? I did not have the specific intent at the time of entry to take anything. I was just going for shelter. That is the element they like to test so you need to pay attention.

Another area they like to test, which is kind of a weird concept, is constructive breaking, like, you enter through a chimney. They have one where a guy basically bangs on the door and threatens her if you don't let me in, I'm gonna kill your boyfriend so she's fearful and lets him in, that's a considered a instructive breaking. So that would still be equivalent to a burglary. So remember, you must have what? The intent at the time of entry.

Versus your modern law you still need the intent to commit any crime. Where they like to test there is sometimes the store is open to the public. What the law says is if you enter a store that's open to the public but with the intent to steal, it vitiates the consent of the owner. Therefore, your entry would be trespatory and that's how we're gonna get you in modern law burglary. So again, if the store's open to the public but you enter with the intent, you vitiate the owner's content, we will find modern law burglary.

People don't realize when people shoplift why are they charged with burglary? They can show you had no means. You went there with the intent to steal. They can show evident by what you have in your possession. No credit cards, no money. Kind of think if you're picking up that item you entered with the intent to steal and it's circumstance is usual. Another area that comes up on the multi states is your arson. Now, remember, with arson, it's the malicious burning. Has to be dwelling house and has to be of another. That's common law. Sometimes they're gonna trick you and basically there's a multi state out there. A guy hires a guy to burn down his house so he can get the insurance proceeds. Well, can he, the one that did the hiring, be charged with arson? No. Has to be dwelling house of another. It's his own premises. Modernly it's contra, but common law no.

What is an actual burning? They'll tell you there was charring, blackening of the walls. The furniture and everything was burnt to a crisp and there was blackening. Well, that sounds like the structure wasn't destroyed, wasn't burnt, so it doesn't sound like you can be charged with arson. You do want to pay attention to the elements and break it apart. Remember, modernly it's any structure so it can be a warehouse, a car. You could argue that and obviously convict them modernly in regards to the arson. But again, they like to hit them separately to make sure that you understand.

So the more you practice these on the multi states and play with them, you'll start seeing how the consent's tested, you won't make that mistake. But if I don't look at anything or don't understand how it comes up in an essay format or even an MBE, I won't understand. That's why I stress that when you take your multi states and essay, start plugging it into your essay and understand how it's tested. Once you see three, four, five, six different ways how it's tested you won't falter anymore. But if I haven't seen it, I'll mess up. There's another one on an essay where the guy was committing a robbery and they brought in their lanterns. Really? Of course they set it down and they heard a noise and he basically knocked it over, saw the fire starting, and ran out. Can he be charged with arson? The answer was no. Because, again, it was inadvertently done. It wasn't malicious. Once the fire started, he panicked, though. But again, he can't be charged in that case with arson.

Little subtleties.

Other miscellaneous kind of crimes like kidnapping or false imprisonment, assault and battery, they are testable. They come up more on the multi states. Rape comes up definitely on the multi states so you want to be familiar with that.

In regards to rape or statutory rape, you will be seeing that. With your kidnapping, you're gonna know it's unlawful ascertation of a person. So any movement from one place to another, I've got a kidnapping. False imprisonment's very similar to what you learned in torts. So you need intent, and it's unlawful confinement of another. That can come up if you feel somebody was stealing something in regards to theft and you wouldn't let them leave, we've got a problem. You might be charged with false imprisonment depending on the basis of the circumstances.

Assault and battery. Remember, with assault, it's either the intentional apprehension just like you learned in torts, or you had the intent to accomplish another crime. So it is different. Versus battery's the unlawful application of force. It's a general intent crime, so it's assault. So you want to make sure you understand that. Why? Because you're gonna sit there and say there was a battery in torts but you're relying on your rule for crim law. You have to be careful. They will mess with you on multi states. You've got to make sure is it a crim law question, or is it a tort question? That's why they test the assault and battery because they want to get you the trick you into torts because you didn't pay attention to the call of the question and it's really a crim law call. So you want to make sure you do pay attention. That's important.

Rape, as I told your, very testable. Attempted rape comes up quite a bit because the mens rea. Of course they're gonna test you in regards to mistake. Remember, statutory rape, strict liability. Sorry. But I thought she was 18. Sorry. Statutory. So it's a strict liability crime. So there's no way you're getting off.

Now, again, once you find a crime, I want you looking for defenses. So you've got ‑‑ we already went through legal impossibility, factual impossibility. You also have mistake of fact and mistake of law. They're very similar. So mistake of fact is if the facts you believe them to be the act you're doing wouldn't make it a crime. It's a valid defense, but most likely the facts as you believe them to be would make it a crime. So what mistake of fact of fact is doing is negating your intent. I didn't think I was doing anything wrong. So a prime example you go bowling tonight with your buddy. You bring your own bowling ball. You leave, you pick up someone else's bowling ball. Looks just like yours. You leave. Can I charge you with larceny? Gee, you had a trespatory taking, you had a carrying away personal property of another. Did you really have the specific intent to permanently deprive? Let's say we can get past that, but could you argue mistake of fact? Sure. I thought it was my ball. Looks just like mine. Same color, same size in the holes, whatever the case may be. That is an example of where that might work as an actual defense.

Versus if that was a tort call, would you be liable for your conversion or trespass? Absolutely. It's a different mindset, isn't it?

Mistake of fact generally is no defense so the only time if you show reasonable reliance but I've never really seen that tested where it works.

You have duress. Remember, duress is they have the eminency and it has to be an eminent harm to you or your family member. They tested one with Fluffy the cat. On an essay I'd argue both sides, especially if our examiner was an animal lover. But should we extend now to your animals? If you think about it, some people think their animals are like their children, so would that be a good argument to make? Argue both sides and give it conclusion. I would definitely do it if I saw it. On that exam, I did argue that way because otherwise why'd they give it to you; right? Remember, duress is not a defense, though, to murder.

So the application's general is different. So remember, for battery, it's general intent; right? So in essence I'm trying to ‑‑ I show you a ‑‑ we're playing around with each other, whatever, and I end up hitting somebody else. Would that be a battery for criminal aspect, or could that be an actual tort? The intent is different. So in that case I'm thinking more tort because I'm acting with assumption uncertainty to hit versus in regards to the general intent, what do you need to do? The unlawful application of force, so was I really trying to use force? I was just acting goofy. If I tried to prevent somebody from doing something and hit 'em, that would be a general intent crime of battery.

The other thing is, again, watch those calls. So I get calls from students and emails and several of the questions go back to you didn't pay attention to the call. The call asks you, what is his best offense? Then you're trying to get him off of liability for the criminal act. See if you can negate an element of create a defense. Versus you're seeing that facts support the larceny but that's not what the call asked you. So the call does dictate. I want you to pay attention to that. Very important.

Consent is a defense. Doesn't come up too much.

Entrapment is something you are responsible for. Can that come up? Sure. Hasn't been tested for a while, either, so it's something I would be prepared for.

If you see entrapment, you must do both views. You have your predisposition, which is the subjective test; and you have your objective which is based on the police activity. So predisposition you're predisposed to commit the unlawful act. They're gonna look to your surrounding circumstances. You're a prior felon, you have the instrumentality, whatever it is, and they're gonna look to the facts. Versus the objective or the police activity, they're gonna look at what the police did and would their activity overcome a reasonable person to succumb and do whatever act that you did? That's gonna be hard to show to actually find that there is entrapment. So generally you'll find on an essay when it comes up, generally it fails. But you do need to bring it up. And you won't know which jurisdiction you're in so guess what? You've got to do both.

You also have diminished capacity, which is the mental defect which lacks or shows you lack the mens rea. When you do see insanity unless the call basically said is sanity a valid defense, if the call was more defenses and I know it's insanity and the reason you know it's insanity you have to give you facts, the person had a mental defect, I also bring up diminished capacity because that's a small minority so I would bring up five issues in that case, the four insanities and the diminished capacity. Again, how am I gonna know? People bring up insanity all the time and it's not there. The facts have to tell you there's something wrong mentally; right? They have to tell me something. They can't really hide it from you. So you'll know that I got a defect. I have delusions, something. Hallucinations, something that's telling me something wrong with my mind, so that's important. And you will know it's based on the facts.

Again, go back and pull some essays and see how it's tested so you won't second guess yourself under the pressure of the exam.

That's your crimes in what I call a nutshell.

Now, couple things that we didn't hit. Let's say the examiners give you a statute on the exam. What do I do? So they actually give you a statute saying that murder is the killing of a human being with express or implied malice. And then they give you a definition of express and implied malice. Wow, that's new to me. What you're gonna do is break apart the statute and show based on the facts what's the mens rea? Mindset. And you have to look to the definition of express or implied malice. And then the act. The murder. So you would have to show if you see a statute on the exam for crim law, what's the actus reus and the mens rea? So don't forget that. You know in regards to mens rea has to be specific intent, general intent, or strict liability. They can't hide it from you. But you'll have to determine that.

Let's say the statute says it's unlawful for you to have any drugs in your car. You happen to rent a car and get pulled over and guess what's in that car? Drugs. And you had no idea. Okay. It's unlawful to have any drugs. Is that specific intent? Doesn't sound like it to me. General intent in sounds like more strict liability. I'm in trouble. Again, show the actus reus and the mens reas. The other thing I want you to pull out the understand is calls of the question. So if the call tells you, should David be convicted of murder or any lesser‑included offense, what I see there a lot of times students will talk about the murder, and then assault and battery. You're wasting your time. Assault and battery are a lesser‑included offense. They merge into the murder. So they're worth no points. Examiners don't wanna see it, so don't do it. What they're trying to do is trying to tell you with that call murder and any lesser‑included offense is, hint, hint, go look for voluntary or involuntary manslaughter. So based on their call, they feel they're giving you a hint to go look for something.

Again, your calls dictate. That's why, again, more exposure you'll understand how they're testing based upon the calls of the question.

If they gave a specific call ‑‑ can Jimmy be charged with burglary or robbery ‑‑ two separate issues. You'd go through the burglary and go through the robbery. Independent issues. The other thing, if I see this type of call, did Jimmy do the act? I might have to go through conspiracy as well. So sometimes with the calls of the questions they really mess with you. It's not structured or they have ‑‑ again, they're just playing with you to upset you during the pressure of the exam. Don't fall for it. They'll give you the party who didn't do the actions. Can Jimmy be found guilty of the murder? He did nothing other than the conspiracy but didn't show up. Well, I'm gonna have to prove the murder, then impute it to him through the conspiracy of the Pinkerton's rule. But let's say call two is the one that committed the murder. Then I'll do my conspiracy, I'll say define, discuss, infra about the murder, right, and then go through my Pinkerton's rule and then obviously bring up the murder in call number two because I have to follow the call of the question. But since you outline, you'll know the outcome. There's no way I can hide from that from you. So you will dissect it in regards to your outline, so no.

So you're gonna find crim law ‑‑ I like crim law. Most of us do like it. It's very rule‑oriented and it's not complicated; right? But nuances. They're gonna test such as your theft crimes. So your transfer and intent doctrine, stuff like that, I want you to go over that. Your discussion in regards to Pinkerton's rule. Do you fully understand it? And you want to work it. That's what they'll test. See if you fully understand the actual concept is.

Anybody have any questions on what we just hit? I'm assuming you really like crim law, just like you like torts. Contract's usually the harder one for most of us.

What's gonna happen at this point? Well, hopefully you've been studying; right? We've done torts, we've done contracts, we just now did crim law. So obviously start doing crim law essays as well as multiple choice questions. You'll be sent out a crim law essay to take a look at. I'm not getting many of you guys sending them in, so this is your answer. So send it in, and I can take a look at it. It gives me an idea as to what we're understanding or not. And remember, you learn a lot more from your mistakes. Not from our strengths, it's our mistakes, unfortunately. I would highly recommend you sit down and write the examination.

You need to start working on your timing. About five, six weeks out. You need to start working on your timing. That's important. And break that apart.

All right. Does anybody are any questions? If anything ever comes up, I'm here. Shoot me an email at jolly@taftu.edu. Be more than happy to help you in any way I can. Do make sure you start rotating your multi states among torts, contracts, and now crim law. You don't wanna lose what you've already learned. And then start plugging it in. People keep and me, well, how do you remember these things? Start plugging it back into the checklist. I still remember it today because I keep plugging it back into the checklist.

Okay. So one or two words of an essay or an MBE that you missed an issue on, pluck it back in. I can tell you one I missed ‑‑ it was torts ‑‑ or you can actually one in regards to a murder in regards to New York City and shooting a gun in the air. But the same hypo was in a desert area. So I learned at that point murder two versus involuntary manslaughter's factual. Because obviously New York City you've got crowds, it's busy, it's small, it's populated versus in the desert. Well, they didn't tell you that in the facts; they told you that based on the verbiage. So that's how you understand how it's tested and you get it. They don't always tell you up front. It's there, but indirectly, and that's why, again, the more that I can get you plug it in and see that, that's gonna help.

Does anybody have any questions? Do you understand in regards to the battery now? So do work on some multi states. Your Finn strategies intact has some indexes where you can just pull out certain questions so I would do that. It is different. Then you can contrast. So pull out a couple, like, three or four in torts and three or four in crim law can look at them. Then you won't make that mistake. And also pay attention to the call. That's where they get us.

Do you know crim law's one of the lowest multi state scores for the baby bar? I'm telling you, it's because of the call of the question. People are answering it under the tort because guess what? They have that answer there but it's not in the call. It's crim law call. So you want to pay attention to that.

All right. If anything does come up, please feel free shoot me an email, otherwise I'll see you guys next week.

Please look for that crim law essay question. Sit down and write it. Start getting your timing down. Okay. Wish you guys all a good night.

[END TIME: 6:59 PM]