Taft Law School

Baby Bar Review

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>> INSTRUCTOR: Good evening, everybody, and welcome to tonight's Baby Bar Mini‑Series. These sessions are recorded. If you want to go back, sign into Taft's Web site go to the Student Section and then go to the Baby Bar Mini series and everything's listed there for you. Any handouts is there as well.

You need to understand on the Baby Bar Mini‑Series they'll be mixed. Torts, contracts, crim law. With contracts, you are responsible for the U.C.C. Multistate is an examination with four answer choices which I'm sure you're fully aware.

At this point you should be doing multi states every day. It's difficult.

If you take a multistate and missed it, reflect why you missed it. Was it an element conspiracy and you should have picked on implied agreement. That will give a better understanding.

I want you to be very focused on the verbiage they're using. That can change everything. So I want you to pay attention to what they're asking in the call of the question as well as what are the facts stating to you? An example if I told you that John tossed his wallet to Mary and it hit her now she's suing for battery. I used the word tossed. If I said he hurled it at her, same facts, different verbiage. Now I can have a stronger element that he actually acted with the intent. Again, the verbiage is very important.

Again, when reading the multistate question you need, to read the facts carefully and try to get a good understanding what they're asking. The Bar examiners know we don't read in detail and as a lawyer as well as a test taker, you need to read in detail. Make sure you look to the operative language. Look to what the fact pattern turns around on. Determine what is relevant versus irrelevant facts that's important. And you will see on multistate questions, sometimes they just give you some background, sometimes they give you facts that why are they even here because they're not relevant. Don't let that sway and have you go in the wrong direction. The first thing I always want you to do is when you're taking a multiple choice questions, always start off with the stem. This should help you narrow down the specific area being tested. By reading the call, you can get a good idea if it's a tort question or crim law. Sometimes it can based on the call narrow down to specifically is what are they looking for. Can he be guilty of murder? They marrowed me down so I know what area in crim law that I'm looking for and that's important. Once you read the call of the question I want you to read the facts carefully. Mark up the fact pattern. I can't tell you how many students email me they have problems and when I go over it with them, call them up and say okay what are you doing exactly and let's go through the question. They're not marking them up. Mark up your fact pattern. If you see something you're reading and you understand that an offer was created, circle those facts and put the word "offer" or "owe" abbreviation or whatever. So you know okay these facts supported the offer. That helps you, too. If I make you go back on a multistate question was the letter of May 14th valid? Now you know where your eye can directly go and that'll help you save time. I want you marking up the fact pattern.

Make sure you answer the call. A lot of times people sway away from that call of the question. Pay attention to it and what they're asking. Don't assume facts and don't make it harder than what it is. Keep it very simple.

In regards to the subjects that you are tested on ‑‑ first subject, torts. Torts is basically directed towards the elements. Black letter law. You will see a lot of questions dealing with negligence. Common type of questions you'll be asked what is the plaintiff's best claim? Or defendant's best defense? Or will the plaintiff prevail? The problem with these type of questions, you're not told the call of the question. That's where your checklist helps you run through that checklist and say what is the actual underlining theory they're suing under? In order to do well, you need to know the various causes of action: Negligence, defamation, invasion of privacy. Make sure you understand based on the facts what theory's being tested. Do you understand it's a products liability versus it's a general negligence? You need to make sure you know that. And of course you need to know it quickly. This knowledge is going to help you eliminate the wrong answer choice and help you get through the facts faster because you honed in on a specific area in the theory. That's what's being tested so this'll help you.

When you see what's being tested such as negligence don't forget to run the facts through the elements. So is there a duty? Was there a breach of that duty? Sometimes we read facts we're like okay it's testing proximate cause. Maybe it is. Good. I see it. What within the proximate cause are they testing? Or if I paid attention to the facts there was never a duty. Maybe that's a better answer choice that there is no duty because your case is over versus having to prove up the rest of the elements.

In the hierarchy, if you can knock it out under duty versus that there is no proximate cause, that's always a better answer choice so I want you to hone in again as to what they're testing.

An example, let's say I tell you Michael was rowing his boat... (reading from handout).

Remember, I told you when they use trespass it's your job to determine are we looking at negligent trespass or intentional trespass? Since the facts told you that he's fearful of the rain and tied up his boat and sheltered underneath the tree, it's intentional. Now the key thing here is to determine as to whether or not there's liability. How will I know that? In your mindset you want to go through the elements. Was there intent? Sure he deliberately ‑‑ he's fearful in regards to the storm and sheltered himself underneath the tree. There was an entry. Obviously the land is owned by Michael so in regards to property of another. The elements seem to fit there exception for they told you he wanted a shelter from the rainstorm. That has a tendency to bring up a defense. You want to carry it all the way through once you find the theory show the elements were met look at applicable defenses. Defense here could be necessity because he was fearful. He would have reason to believe the boat was going to sink that would harm him, so then he'd have a right to be there. I want you to break apart the elements and make sure the elements are all supported. Remember, carry it through to defenses. We don't wanna forget about the defenses. The defenses are important so break that apart for me and look through it. Very important.

Now, in regards to contracts, I want you to understand contracts very reading comprehensive so I want to make sure you break that apart and look to the actual language of what they're using the fact patterns tend to be lengthy very long, also make sure you pay attention to what they're asking. Has a contract been formed? What additional facts will strengthen Bill's claim? Can Joe introduce his oral promise? With contracts, you need to know the distinctions between common law and U.C.C. I want you to r view the U.C.C. It's something that's very rule oriented and highly testable.

An example would be let's say I send you nonconforming goods. Well, there's a rule about that in the U.C.C. So if I send you nonconforming goods is that an acceptance? Or is that a breach? There's a specific rule in regards to that. If I send them with a letter of accommodation that would be a counteroffer. Pay attention to the detail. It's very important.

Once you determine a question is dealing with contracts, immediately look to see if it's dealing with a transaction of goods and look to the U.C.C. That's the first step you should take if you're dealing with the transaction of goods. Then read the facts and diagram break it apart. A lot of times what they're going to do the call's going to tell you again, is the May 12th letter effective? You go back in the fact pattern and determine. Remember, a lot of times we vacillate back and forth, back and forth in regards to communication. May 12th, you did this; May 14th, we did this; and May 16th, we did this, and then they'll ask you on a specific date as to what occurred. Was there a valid contract formed or not? Remember, I told you areas of formation to pay attention to is your acceptance, versus your rejection, versus your revocation, versus your mailbox rule all mixed in there. Again, it's going to go back and forth and vacillate and you need to make sure what transpired between the parties so that's important.

Now, the other area I want you to attention to under the U.C.C. is based on the facts is an option contract versus firm offer ‑‑ little details like that ‑‑ and remedies. Remedies are highly testable. I do want you to go over those.

Again, contracts, very demanding on your reading comprehensible. Those will be the most lengthy out of the torts and the crim law question so you want to start working on your timing and again mark 'em up.

Crim law's not very difficult. It's black letter law just like torts. Pay attention to the call of the question. The problem I see a lot of times with crim law is a lot of times students answer according to torts. There's usually an answer choice there for you to try and trick you to pick that tort answer but it's crim law call. There's no way if you pay attention to the call that you would think it's a tort question. Prosecutor. Defendant. Is he reliable in regards to the State versus the defendant. You'll know. There's no way I can really hide it from you so you are going to know it's a crim law. I want you to pay attention.

The other thing of importance of areas I want you to focus on is your homicide, your felony murder rule. That is highly testable so do break that apart. Inchoate crimes. They're always tested. Make sure you know the nuances. With conspiracy, can you withdraw? What's the effect of the withdrawal? With attempt, can we have legal or factual impossibility? These are all things I want to make sure you break apart and look at them.

Death crimes all over the multi states. Break it apart and make sure do I understand who did title transfer? If title transferred, we know it's false pretenses. Versus oh, you only obtained possession. If you just obtained possession, was it larceny or were you entrusted with it is it an embezzlement? They're gonna test those nuances. I want to make sure you break that apart and look at them. Why? Highly testable and those little details are important, obviously so it is something I want you to look at and break apart for me. Okay.

Now, when you're taking a multistate question, I want you to remember a couple things that you're choosing what? The best answer. The best answer choice. So the problem is, is there's usually two that are technically correct but one is always better than the other. And that's what you have to hone in. That's what makes it difficult for students.

Here's a couple things to help you in regards to your preparation. Multistate questions have what we call modifiers. So, like, the but, the because, the since, the if, unless, stuff like that. So what I want you to do is if you see a question that's using if as a modifier, then everything after the if, remember, must be true. Anything you read in the fact pattern and you're using the if as a modifier, everything after the if must be true. Straightforward. However, if the answer choice uses unless as a modifier, things change. We have to attack this question differently. What I do in this question if it's the ‑‑ it says yes unless, I cross that out and put no if. So everything after the if, what, has to be true. A lot of times these are a good answer choice because it adds or changes the facts. That's important to make sure you understand that and break that apart.

Again, to me, it's like a negative. I have to cross it out and put okay yes if or no if so I take that unless and I rewrite the question so it's something I want to make sure you understand.

Now, in regards to giving example, Tammy... (reading from handout). In this type of problem you'll start off with now it says misrepresentation. Remember, misrepresentation could be intentional or negligent. What are they really testing here? So we have a representation of a material fact ‑‑ the value of the stock would be good to know ‑‑ made intentionally or negligently to one who justified or relied to their detriment. What are they testing? That's where we need to hone in. We all saw misrepresentation, but out of these viable elements, what are we looking at? Here, we're looking at as to whether or not there was a representation. Remember, for a misrepresentation, you can have a representation or an omission. That's why the facts and why it's important to mark up the facts it told you she has no interest or connection with Chemco. She's not an officer or director; there's no relationship there, which would give her an obligation to disclose. She doesn't have that obligation.

If we're looking at because as a modifier if I told you using because will Sam prevail yes because based on the misrepresentation and going through the elements that she will be liable. The problem is, there's no misrepresentation. Or if I use if as a modifier, yes, if Tammy did not inform Sam of the true value. Well, she doesn't have to. Or if I use an unless as a modifier. So no unless remember which we're going cross out and put yes if yes if she made a representation. Oh. You see how I changed the facts? By that answer choice. That's sounds like a good. If she made a representation, now I've got her for misrepresentation evident by it being material of the true value of the stock. Versus if I have another if as a modifier no if financial statement was known and published. Doesn't help me. Again, the support of if she made that representation Sam would have a viable cause of action. That would be any best answer choice. You see how we can break it apart.

Remember, if the modifier's a because or since, everything after that's a conclusion. So if you know your correct answer choice and I can hone it in to a yes or a no and I have because or since as my modifiers eliminate two right without even reading off the bat and then go to that which is actually being tested and break apart that way. If I can eliminate two, that'll help you timing. That's important to do. It's something that we do want to work on. It is a timed exam and timing seems to be against us.

Remember, if you have any questions, please feel free to put them up there. Be I'll be happy to help you in any way I can.

Look at a few questions together. Now, remember, what's the first thing you're going to do? Read the call of the question. The call says may Thomas bring the lawsuit now? Those of you who've been practicing probably already know what's being tested. By bringing a lawsuit now, can I file it today or do I have to wait? On November 1st, 2009... (Reading from handout).

What is the issue? Well, we're testing as to whether or not it's an anticipatory repudiation. Remember, in anticipatory repudiation, what do you need? Express words of repudiation and this is what they test the contract must be in executory stages. What does that mean? That the contract neither of us performed or one of us has not fully performed. That would be in executory stages. If you look at the four answer choices, look at A and B no because no since. C and D yes because yes since. Can we eliminate two right off the bat? In my mindset in going through it analytically I point out anticipatory breach and point out here he can't bring the lawsuit now because no one has started performance. What are you supposed to do? Wait until New Year's Eve and see if he shows up? That might be a problem so he can bring it now. I can eliminate options A and B. Again, this is important because it helps with the timing so I have to just read answer choices C and D.

C says yes because (reading from handout). Okay. Looks good but I'm not sure.

D says no because ‑‑ (reading from handout). Well, is that the best answer choice? No. Doesn't make sense.

Yes, because Mozart repudiated the contract. Sounds like the best answer. This particular multistate is dealing with the repudiation isn't it? That's the best answer choice.

Now I can take this same question ‑‑ give an example and I can have C say yes because Mozart repudiated the contract, and I could have D say yes, since the contract was in executory stages. They're both correct but what would be the best answer? So I would always go to the elements if they always give an element that's always my best answer choice so sometimes it's like wow, this is a fine line here. Go with your element. Most likely that's the best answer choice.

So in this particular question, Question One, C is correct, again, because we're testing the anticipatory repudiation and you want to go through the elements and make sure they're supported pursuant to the facts.

Go to Question Two. (reading from handout)? Does this call tell me anything? Wrongful death. Where's that in your checklist? Torts. So I know it's a tort question. (Reading from handout). What is the underlining issue here? What are we looking at? What's the theory? Remember, you have to figure out the actual theory. Well, obviously he put the device in there purposely. So could I argue in regards to we're suing for what? He died. Assuming suing him for battery evident from what he did because conduct was intentional in installing the device. He had the intent. Was it harmful or offensive? Sure, it was. Guy had a heart attack. You could even say there's a proximate cause problem here. But remember, thin‑skull plaintiff. We actually satisfied the elements of battery. There was intent because he wanted the car to do the mild shock which the act was [inaudible] certainty that's what the car did. It was harmful. We had a fatal heart attack from the pacemaker and the touching of the car. It was of another in regards to Paul.

Now what do we look at? Defenses. So can we argue defense? Can you defend one's property? And you can if what? You use reasonable force. Has to be reasonable. Can't be deadly. All right. So now I'm looking at your answer choices I see I feel in this case he can not recover or recover. I feel he could. But I see A says no if. So I don't have to read it. Everything after the if has to be true. B says no because. I can get rid of B. C says yes because. D says yes if. I can only eliminate in this case one and that would be option B. So I'll have to read three out of the four.

A says (reading from handout). Well, if that's true, then we have a defense of property that would assert his defense and find no liability. That looks good so put a plus.

C says (reading from handout). Well, it wasn't a substantial factor. That's not how it works so that's not a correct answer choice.

D says (reading from handout). Everything after the if has to be true. (reading from handout). Does he have to? No. So in regards to this question, A is your best answer choice. Do you see how it really goes to your defense of property? One may use reasonable force to defend one's property. If it wasn't excessive, he wouldn't be responsible for the wrongful death of Paul. Everybody see that?

Again, carry it all the way through. Don't just stop at the elements of the battery. You might have picked battery, might have picked trespass. I think you got their either way because what they're really testing your defense of property. One can use reasonable force. That's for Question Two. A is correct.

Lest look now at Q three. (reading from handout)? What is burglary? So you have to break it apart. Remember, too, on the multi states, you're responsible for common law unless they ask otherwise. You have to show the nighttime, the breaking, the entering, the dwelling house of another, with the specific intent to commit a felony therein. So remember, you're going to answer the multiple choice questions pursuant to common law unless directed otherwise.

It says, Bill borrowed... (reading from handout). We see the issue is whether or not there is a burglary. They gave it to you in the call of the question so focus on that. What are they testing? What element? The nighttime? They told you it was 10:00 p.m. Is it the breaking? What'd he do? Forced a window open. He did go in the house so there was an entry. It was a dwelling house. It's his neighbors. Did he have the specific intent to commit a felony therein? No. He went to take his own television back. So it's going to falter there because there was no intent ‑‑ no specific intent to commit a felony therein.

Look at our answer choices. We have all conclusions, the because. Again, as conclusions as my modifier I can get rid of two out of the four. Is he guilty of burglary? I find the answer is no. So I can eliminate option A and option B, can't I? And I will just have to read C and D. Again, it's a good tool to use, why? Time. C says (reading from handout). Does that support any element whatsoever? No.

D says (reading from handout). Even though it says statement of facts that goes to the element of he had no intent. No specific intent at the time of entry. So D is gonna be your best answer choice.

Remember, in the crim law lecture I told you with burglary that's an element they like to test so remember you have to have that intent at the time of entry. So if I add some facts here and tell you that he went in to get his television set and saw $100 sitting on the couch and took it and the television set, would that change the answer? Did he commit burglary now? The answer's no. So in regards to going back to the contract, in regards to repudiation, remember, you have anticipatory repudiation you repudiate expressly and the contract must be in executory stages. Make sense? In regards to the answer choice for Question One, C was the correct answer. Yes, because Mozart repudiated the contract.

The way it would become not executory anymore if both of us started performance let's say I gave you down payment forward your performance and you performed let's say for two nights one of the two, that changes things. Make sense? That is an area you're going do see one or two multi states on that issue so I want you to go over it.

Going back to Question Three, again, what's the best answer choice? Do we have a burglary? And we feel we can get rid of A and B, and then look to C and D, and we fine D no because he entered for the purpose of recovering his own television set negates or supports that he did not have the specific intent to commit a felony therein at the time of entry. That's important.

The example I gave you in regards to taking the hundred dollars no that wouldn't change, either because, again, you have to have the intent at the time of entry. That is testable and you do need to know.

Let's look at Question Four (reading from handout)? Statute. Okay. They gave you statute in the fact pattern so I have to make sure I dissect the statute. That's one thing I see consistently is students ‑‑ the examiners give you a statute, we ignore it. No, you have to break it apart and see what he's giving you. Especially when you know this is guilty are we in torts or crim law? I know I'm in crim law so I need to break apart the statute and determine the actus reus and the mens rea. That's important so what act do I need to show and what's the mindset? So whenever you see a statute and you're dealing with crim law you should be telling yourself I have to find the actus reus and the mens rea of the statute in order to determine as to whether or not it's been violated.

Question Four let's go through the facts. (reading from handout). Sounds like a defense of duress. (reading from handout). Let's go through the statute. What do I have to show? Knowingly, and then you send the letter. So you actually have knowledge. Now, would he be guilty for violating the statute? I see my answer choices I have no because or yes because so jump one way or the other. Well, I feel based on these facts I do have a sense of duress since he's being threatened. It looks like physical beating that it's eminent. Remember, with duress, it has to be eminent, eminency. Looks like it is here. I'm going to say no because. So I can eliminate options C and D. Just read options A and B.

A says (reading from handout). Does that have anything to do with the elements? No. B says (reading from handout). Well, I know duress is going to work here so I will pick answer choice B as a correct answer.

So, again, when you break it apart, dissect it, look at it, that will help you. What I want you to do is when you miss a multistate question, figure out the why. If I put yes, why did I pick D yes because (reading from handout). Why did I pick that? What was I thinking? What's wrong with that answer choice? You have to look at it because somehow I might be off on the law or I didn't break it apart far enough. I need to figure out that why. We're all different; we all have different reasons why we miss a question. If I don't hone in on that, I'll keep making the same mistake. So I want you to figure out the why. That's very important.

Looking at the answer in regards to what you chose and what's the correct answer and figuring that out makes a big deal of difference. Merely reading the answer choice ‑‑ so you flip back in the book and read B is correct because one most likely you're not going to remember. A lot of times you kind of knew but you still don't know why you picked the other answer choice. So we need to figure that out; that's very important. Merely reading the answer choice is not enough. We need to figure out the why. That's very important.

Now, I know a couple of you emailed me saying you're not doing well on the multi states. What I want you to do is not keep practicing ‑‑ you have to keep practicing ‑‑ you either simply do not know the law well enough so I want you to go back and hone in on those skills. Maybe you haven't spent enough time in regards to don't just read your outlines or your Gilbert's, but are you really breaking them apart? If I see conversion for torts, do I understand the intent? Well, yeah, you can have actual intent, substantial certainty, desired result. Okay. What do you need to do? Wrongful dominion and control. Right? Property of another. Do I understand? Yeah, I feel good about it move on. Make sure you're looking at the elements and understand what they mean. The other thing I want you to do is plug it back in to how you've seen it tested.

Prime example on the last Baby Bar we went over last week, some of you wrote on conversion, some of you wrote on trespass to chattels. On a multistate, it's conversion or trespass to chattels. I don't get to vacillate. How do I know? Remember, with conversion you need substantial interference or complete destruction. Those are your rules so I have to make sure I break that stuff apart in order to determine yes, this is the best answer. So that's one area that maybe you don't know the law well enough.

Maybe you're too broad in your concepts. You need to hone it down more in the details. That's why I strive in regards to go back through the elements. If it's a tort or a crimes, dissect it, go through the elements. Are you reading the fact pattern carefully? Are you breaking it apart in detail? That's another problem if we're not doing well. Dissect it. Are you following the call of the question? What I want you to do ‑‑ we're all different, again, so some of us have done 500 multi states, some of us have done 5,000. What it comes down to is am I getting the best answer choice? How I hone in on those skills not only the why but I have to go back and say I'm answering the call; I feel I'm reading the facts and breaking it apart, but why am I still missing it? You have to start breaking it apart and plugging it back into what I call the checklist. So I've seen in regards to the baseball examination. Remember, that dealt with attractive nuisance. It'll trigger your memory, and you're going to remember from the ones you missed. I want you to break that apart and go through that. That's important. Dissect it and break it apart for me. Very important.

Look at the last question before we get to the ones you had questions on, which is Question Five. (Reading from handout)? What's the issue? I gave it to you. Conspiracy. This is an odd duck question, by the way. It says (reading from handout). You stole a car. No relationship there, is there? (Reading from handout). What's the unlawful act? Sharing the proceeds, the profit from the stolen car. Will he be convicted of conspiracy? Absolutely. He's conspiring. Get back to your question in a minute.

In regards to the conspiracy, will he be guilty? And I have yes because or no because. Can we eliminate two? Yes, he's going to be guilty so I'm going to read answer choices A and B. Yes, because he (reading from handout). No. Because it did you want show what crime I'm agreeing to. What's the unlawful act here? B says (reading from handout). Yes. That's the unlawful act. So of course we know B is the correct answer.

No. In regards to conversion, actually, couple things that that question raises to me. Remember, you can trespass to land technically you can trespass to chattel and not know that you're doing it. So if I mistakenly go pick up someone's bowling ball thinking it's mine ‑‑ and let's say I don't take it home but use it for a game or two ‑‑ that could be a trespass to chattel. I acted with a substantial certainty of using that ball, but I really thought it was mine. Remember, mistake is not a defense to an intentional tort. In regards to your conversion, you either are aware or not but you have to form the actual intent. Same bowling ball example if I took it home, put it in my closet and kept it there, a year goes by, that is a conversion because I had the intent to take the ball even though I thought it was mine and I had substantial control over it. So a substantial time period so that would be dominion control over the property of another. Make sense?

So, again, in regards to knowledge, not an element, not part of it. Does that make sense to you? If you have questions about it, let me know.

What we trigger, make our mindset look at or the issue of trespass to chattels versus conversion is there a complete destruction or substantial interference, we're going to go with the conversion issue. Remember, the last Baby Bar where the guy's car was damaged $2,000 worth? I don't know too many cars that don't sell for $20,000 $30,000, $40,000. That's why I went with the trespass to chattels because I feel it wasn't substantial. It wasn't complete destruction because the car did get repaired.

Okay. Going back in regards to your rules. Again, look at the why. So I ask some of you when you email me and stuff, have you looked at the why? I know you're having trouble with that too but always pay attention as to why did you get it wrong? That's very important.

Couple questions some of you asked about. I hope you guys have your multi states in front of you, and I hope you guys did well. Let me know your score. Put it up there or shoot me an email because this is where crunch time is. The twenty‑second's not too far off. This is where we need to really batten down the hatches and really focus on what we're doing and hone in on getting our skills down and prepare for the exams. That means our timing has to be down, good scores on the multiple choice questions and good skills in regards to writing the essays and understanding how the issues arise based upon the facts.

Now, the first question somebody asked about was Question Two, and the key thing here I put is look at the language. So pull yours out. Take a look. It says (reading from handout)... is it torts, contracts, or crim law? They said strict liability so we know it's torts. What else do I know? They said strict liability. They also use Cummings Motors. I like their names. The names have a tendency to give you a hint. I know it's products because they used Cummings Motors. It's very nice of them because now I know what I'm going to be reading and what I'm looking for. It says (reading from handout). Remember, the products liability, we've got Cummings Motors who's the distributor of the car. (reading from handout).

What are they really testing here? Not just strict liability. What happened? Tresh purchased the car, Tresh sold it to Boyer. Something could have happened. Maybe Tresh changed something in the car. As long as it was in the original state of how it left Cummings we got fair game. Look at your answer choices. (reading from handout).

So the only one I really can get rid of is C. Option C. So I will have to read A, B, and D. A says (reading from handout). That's the original purchaser so that looks good, but it's just a statement of fact so read the others. (reading from handout). Well, what language is that? Reasonable inspection? Do they have to make a reasonable inspection? No. Also, what theory are we suing under? Strict liability. Liability regardless so that's not going to help me. D says (reading from handout). That doesn't work either. We know option A is the best answer.

This same type of question they could clang on you and put not liable if Tresh altered the car. So you've got to pay attention in regards to what they're asking and your answer choices and then break that apart. This is dealing with products. They gave you the strict liability. A is basically a statement of fact, that's what it is. If there's any alteration of the car, then the answer changes.

Now, another question somebody had ‑‑ this deals with strict liability as well, but dealing with strict liability in what we call the lands.

This is Question Six. It's a tort question. Some of you had more problems on torts than contracts which I was surprised. Contracts are usually the most difficult. In regards to Question Six, this is dealing with strict liability and there's a couple things I'll point out to you that we need to pay attention in regards to the multiple choice. (Reading from handout). That didn't tell me much. Most likely a tort question. We've got Zeek asserting a claim by Hercules. (reading from handout).

What is the issue here? Obviously strict liability. Remember, strict liability you need to show liability is imposed regardless of fault because of the abnormally dangerous activity, and the storing of flammable materials is abnormally dangerous. Remember, you need to show actual cause, proximate cause ‑‑ got to be damages ‑‑ and always look for defenses. What are they testing here? Trying to trick me because they told you it was a bolt of lightning. That raises a proximate cause problem. The issue is, is that foreseeable? It's an act of God. The general rule is normal acts of God like a strike of lightning is foreseeable. Looks like we have a viable claim for strict liability. Looking at your answer choices, can I eliminate two? See, this would have helped you because you picked ‑‑ let me tell you what you picked in a minute.

I can eliminate options C and D because they say not prevail because. And just read answer choices A and B. A says (reading from handout). What's that have to do with vicarious liability? It doesn't.

D says (reading from handout). That's the best answer choice. The answer the student choice was C, (reading from handout). Why is this wrong? When you saw that we got a bolt of lightning thinking we've got a proximate cause issue here, but what is intervening, supervening? What cuts off liability? Normal acts of God are foreseeable so that's why C is not your best answer because it would be foreseeable because it's just a bolt of lightning. And you are storing flammable chemicals. So for Question Six, do you see why B is correct?

Another one this is an odd duck that students have a hard time with. So there's another torts. This one I feel that you have an issue with because you're seeing it in your multiple choice when you're practicing and you're seeing it either comes up with intentional infliction of emotional distress or battery. We'll go through this question and I'll tell you why the answer is what it is.

It says (reading from handout) .... So I have to figure out the claim. Remember, I told you it's your job. So we're going back just a minute to Question Six. So is he really assuming the risk of it exploding? Is he highly aware of the risk? Did he voluntarily encounter that risk? So in regards to expecting it to explode, not too sure ‑‑ he might be aware of it but I don't think he voluntarily encountered it, especially from a bolt of lightning. I don't feel I would find that assumption of risk would work in this case because otherwise that would be if anybody, that's a guard for anything almost.

Okay. Back to Question Eight. This is torts. Remember, Juan asserts a claim. Remember, it's your job now use your checklist and find what theory are we suing under?

(Reading from handout). Are we looking at battery or intentional infliction of emotional distress? Hmm. Most likely we're looking at battery. So A says (reading from handout). B says (reading from handout). That looks good. C says (reading from handout). D says (reading from handout). Well, it's not his desk. Going with the battery. Why is it not intentional infliction of emotional distress? You say he was embarrassed. What's the key thing you need to watch out for? It's based on the facts. This is a factual determination. Is the better answer choice battery or intentional infliction of emotional distress? What I mean by factual, they're going to give you somebody with recognition and they do it in front of their peers. So I'm at the Oscar and you do something like that. Now it's intentional infliction of emotional distress versus battery. It's factual. I guarantee if you go through your book you'll see this question come up one answer choice for Question One, say, is battery and then you see the similar question on Question Ten and it's intentional infliction of emotional distress. It's based on the facts. If you have some type of notoriety and you're in front of your peers the answer choice is going to be intentional infliction of emotional distress. Okay. So that's how you determine the distinction.

All right. So that was Question Eight.

All right. Let's see what else. This one is Question 11 is a torts as well. Students sometimes take the rules as they are. So this is dealing with battery. You need the intentional harmful or offensive touching of another. What you should be learning another Annie asks a guy to put out his cigar and taps him on the shoulder and he blows smoke in her face. That would be equivalent to a battery. Some people tell me there was no physical touching. You don't necessarily have to have physical touching. Remember in regards to your instrumentality. I can cause it to touch could be a battery. In regards to an extension of one's self. I can use that doctrine as well in regards to finding a battery so I want to make sure you understand that.

Yes, you're correct. So going back to intentional infliction of emotional distress, common law does require injury. So some type of manifestation. Modern law basically embarrassment, humiliation. Good point to bring out reflecting back to Question Six because it said for infliction of mental distress. Would that be enough? He told you he's embarrassed but that would work under modern law. Even if you couldn't tell, that's modern law and I'm supposed to be applying common law so sometimes we can back into the correct answer as well because there was no facts to support a physical manifestation which you need, which is a good point for common law. Good question.

Everybody understand in regards to your battery it doesn't have to have a physical touching. I guess that's something we take for granted, meaning we assume people know it and we don't.

All right. I have time probably for one more. Trying to find a contract that someone had problems with. Here's one that's dealing with the crimes. All right. This is Question 45. What crime has been committed? Dealing with your theft crimes. If you look at the question they give you a list of (reading from handout). What you actually need to do in this type of question is dissect the elements. Break it apart.

It says (reading from handout). They give her authority to do pretty much anything so when she took the plant home what would that be? She had possession of the plant meaning she had authority in regards to maybe containing it... (reading from handout). She took home a plant then she sold it. Argue she was in custody of the plant that's conversion. I believe your comment was the actual larceny. With conversion, you converted property of another that you're in lawful possession of. Since she's a manager and they gave her full responsibility in promoting the store, that's why they felt that she had custody, meaning she had the authority to take the plants home, whatever, water them, whatever. That's why embezzle would be the best answer choice.

In regards to false pretenses no, why? There's no force or fear. Those are obvious.

For those of you that still have questions, please feel free to shoot me an email at jolly@taftu.edu on any of these questions that you had trouble with. I'll be happy to help you in any way I can. I do want you at this point ‑‑ we have one more lecture left. This is time to focus. Batten down the hatches, get serious. We've got to do this and get this Baby Bar behind us. So I want you to please make sure you're doing multi states daily. If you have questions on 'em, I'm here. Let me know. I'll be more than happy to walk you through it.

You are going to be sent essay questions. Please they will be sent out so you can do them on the weekend. Yea! We know what you're doing on Saturday. Take them under time constraints and send them to me. This is your chance for feedback. And I can point out your strengths and weaknesses. If you're missing issues, let's look at why. Why did I not see that issue here based on the facts? We can learn from our mistakes. I beg you, please write them under time constraints and then send them to me for feedback.

If you are going over time, let me know that. If you want to finish the exam, I get it, but put in there it took me an hour and a half. That makes a difference in your answer too. Someone why spends an hour or two versus someone who truly spends the 60 minutes which one do you think's going to have more meat in it? Probably the one that spent the longer time. Point that out and knowing that you went over time I can work on what we can hone in on eliminate or maybe give you some tips on what I call shortcuts to get your exam finished on time because you've got to finish; you can't walk off. I've had one student actually wrote three out of the four exams. Yes, the Bar gives a zero. That is hard to recover from, getting a zero on an essay. Good luck. It's hard to come back from that so you have to get something in every book. Very important. Timing's important.

I want you to also reflect on a time piece you're going to bring. This happened to a student this last Baby Bar. They didn't realize it. Their time flew by. The proctor gives you an hour and five, ten whatever minutes. Don't tell you three hours you have one hour, you have three hours left. Work on a timing piece. You can go to the Bar's web site and it'll tell you what's allowed and what's not. You want the proper device. Start uh, using that in practicing so you're used to looking at it and making sure your monitor your time. What I did is, I put it at noon so I know, okay ‑‑ we had three essays in the morning ‑‑ after three hours it said 3:00 o'clock my time was up. I didn't want to have to calculate the time based on when they started, and that's because they never start on time and I just wanted an even number to make it straight for myself.

Any questions for me? If anything does come up, please feel free to shoot me an email at jolly@taftu.edu. I'll be happy to help you in any way I can. Look for the essay questions that'll probably be emailed out to you either tomorrow or Thursday. If you have questions on them, let me know. Please go to Taft's Web site. We have lots of prior Baby Bar essay questions. Some with model answers as well as the Bar answers. Make sure you're seeing the issues and understanding how they come up. That's important because if you can't see it can't write it the game is over.

If anything comes up, will the me know.

All right. You guys have been great. I guess I'll talk to you guys next week. Good night.

[END TIME: 6:58 PM]