Taft Law School

Baby Bar Review

10/15/19 6:00 PM ‑ 7:00 PM

>> INSTRUCTOR: We'll be starting in approximately two minutes. If you could please get out the three essay questions that were sent out to you. Again, we'll be starting in approximately three minutes. Thank you.

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

>> INSTRUCTOR: Good evening, everybody, and welcome to tonight's Baby Bar Mini‑Series. Well, we're at Week Ten. It's hard to believe time west so fast. I hope your preparation for this upcoming Baby Bar is going relatively well. I hope you're staying focused. We're at the stretch now so this is where you need to batten down and stay focused in order to make this happen. I do want to point out this session is recorded so for your convenience you can go back and listen to it if you'd like. It's gonna be located on Taft's Web site go to the Student Section log in and then go to the Baby Bar Mini‑Series.

Remember, anything that I do hand out such as the essay questions and model answers are posted up there for your convenience. That makes it relatively straightforward and easy for you guys.

Our primary focus on tonight's lecture is going to be on these three essay questions sent out to you. As you know, most essay questions that we do review are Baby Bar questions. You look at some of these, what the hack? It's not from Taft, it's from the Baby Bar examiners, but it gives you an idea of how they test, and what are they actually looking for? It's a good thing to look at it and go through it. That's important.

Can everybody hear me loud and clear? I hope you can. First of all, look at Question One. Now, remember, I do want you to always read the call of the question. When you go into the examination on Tuesday, you're not going to know the subject matter. They're not going to tell you it's torts, not going to tell you it's contracts, or crim law. It's your job to determine. So if I can get you to focus on the call of the question, that should narrow you down to the subject matter being tested. The reason that's important is because that'll help your mindset go to that subject matter to write out your checklist to help you identify issues and again eliminates the stress. I don't care who we are, we all get stressed especially taking timed examinations, some of us more than others ‑‑ I won't mention my name ‑‑ but you need to elevate that. It needs to be reduced so I can focus and do a good job on the examination that's very important.

In this particular question it says, (reading from handout).

Call's kind of generic but it tells me negligence. Remember, I taught you way back that you look to the call of the question and you need to determine if it's a general call or a specific call, and somebody was asking about this today. With a general call what you need to understand is your point value's going to be in your issue spotting and your analysis. Versus a specific call it's going to be just in your analysis. Now, in this particular exam it's almost what I call a hybrid. It gave you negligence didn't it? So you are seeing a specific issue being tested but they're not telling you what within negligence is being tested; that's your job to determine it so it's more prevalent for you finding what I call the inner issues. Everybody taking this examination saw the issue of negligence didn't they? You need to go in there and look and say is it the duty being tested? Is it the breach, is it the actual cause? Is it the proximate cause? Is it the damages or defenses? Hone in to see what element's being tested.

If you go through this and you don't see anything being tested you've made a mistake. There's your safety net. So if I bebop through it and show there's negligence and I'm done, I know I've made a mistake because it can't be that straightforward; that's not how they test.

Now, the other thing I want to point out, it asked for defenses. This is so important, why? How many are we looking for? Two or more and can you believe exams I critiqued this week talked about one. It tells me you're not paying attention to the call of the question. Remember, I told you that examiners say people fail because they don't pay attention to the call. Well, if the call says "defenses" and you only talk about one, how many points do you think you're down? There's really four that could be tested. If you only saw one, you missed three, down at least 15 points at least, and no one writes a stellar exam. I think the highest score I've ever seen ‑‑ well, I've seen a 90 once but generally between 80 and 85. Let's say I'm even at an 85 if I miss three issues I'm at a 70.

I can't afford to do that. I've got to pay attention to the call of the question and look to see what they're asking. That's important. So, again, in this call, is it general or specific? Again, I call it more specific but it's a hybrid because it's telling me negligence. When you see a specific issue, what element, elements are being tested? Ask you have to go and look. It told me defenses so I'll look at defenses.

Now, if this just said in this exam ‑‑ it doesn't, but if it did ‑‑ Ned against Roofer for negligence, period, discuss, I still would look for defenses, but how would I know their at issue? It'll be obvious in the facts. In this exam I read it not quite obvious and I think that's why they put it in the call of the question. Remember, pay attention to the call and how do I know when I need to address the issue of defenses is either in the call of the question or it's obvious in the facts, remember that. They're worth some good points and we have a tendency forget them and we can't do that.

Let's go ahead and go through our facts. We know it's more specific, the issue's negligence. Now break apart my inners and think, okay, what are they really testing here?

(reading from handout) ‑‑ usual. That's good language. Normal, standard in the industry, shall I say ‑‑ (reading from handout) you put your traplines down so you can catch the debris and nails and stuff like that. Makes sense.

(Reading from handout). Those facts go to you did your best. Is that enough? Or did you fail below the standard of care of what you owed? Second paragraph states, (reading from handout). Remember, who is our plaintiff? Ned is, and their relationship is between Roofer and Hal. Now, Hal basically runs this over with his lawnmower and it propels over into his neighbor's yard. So we have a party interacting with what Roofer's conduct was which is leaving nails embedded in the grass. What does that raise? A proximate cause problem doesn't it? It says, (reading from handout). There's your damages.

Now we're looking at the cause of action in regards to negligence. Now, in regards to negligence, remember, we do have to show what? A duty, breach, causation, and damages. Then you look to defenses. That's your order. That's your structure, isn't it? One I'm going to look at first is, is there a special duty here? Remember [inaudible] that we went over? So is there a statute, omission to act, landowner/occupier, duties owed to lessors of land? There is not. None of this is being tested so I know I don't have to address the issue of special duty.

So look to my general duty which most of you grabbed onto general duty that Roofer has a duty to act as a reasonable and prudent Roofer in regards to doing the roofing of the house. I agree, he does. But to whom is that duty owed to? What we have here ‑‑ and this is how Cardozo's triggered is when you see a remote plaintiff. Unfortunately, you read the Baby Bar exams and student answers, they talk about Cardozo's and Andrews all the time. And generally it's not at issue but this is an exam where it is. Why? You have a remote plaintiff so Ned. The relationship if you look at the facts was between Roofer and Hal wasn't it? They had the contractual relationship, they had the relationship amongst each other. How did Ned get in this picture? That's what's called a remote plaintiff that triggers Cardozo.

What I would do in this case is point out that Roofer owed Hal a duty of due care to clean up the materials and act reasonable and prudent contractor and clean up his mess. That's owed to Hal, now how I boot strap that onto Ned? And the problem is, here I can't in regards to you were the general duty. He's going to the duty's owed to Hal, not you, dude. You're neighbor. That triggers Cardozo, and Cardozo says you owe a duty to those plaintiffs to act reasonable. You owe a duty of care within those plaintiffs within the foreseeable zone of danger. You're looking to the foreseeable zone of danger. I'm going to come back to what that means because someone in their exam had a misunderstanding. Let's go through the duty first and then we'll come back to it.

In regards to the foreseeable zone of danger you'll argue Roofer's working on Hal's house. We have Ned who's an actual neighbor. He'll argue that he had enough traplines but not enough to put them in the back. And of course I don't owe a duty of care to Ned. Is he in the foreseeable duty of the foreseeable zone of danger? So when you're doing roofing ‑‑ and I really think he could argue this either way especially if you're in construction ‑‑ when roofers do roofing, do you expect falling debris? Sure. Do you expect it to go into neighboring yards? Probably. Wind, stuff like that. Make your argument. Don't care as long as you argue and look to Cardozo. Now you could say yes, he's owed a duty of due care based on Cardozo because he's in that foreseeable zone of danger, or you could say no 'cause Andrews is gonna get you there anyway. Either way, you'll get there because you must talk about ‑‑ on the essay ‑‑ Cardozo, and if it fails, you go to Andrews so majority/minority's always being tested so you will do both. It's an argument based on the facts so you'll do both. Based on Andrews you owe a duty to all and the duty's there.

Before I go to the breach what I want you to remember is with Cardozo and Andrews it's remote plaintiff and you're not really focusing on is it foreseeable you step on the nail? It's not the conduct. It's different than proximate cause so some of the exams you were arguing when you did hit Cardozo that it's foreseeable that a nail could go in your yard, you're looking at the plaintiff in this case Ned is he within that zone and is it foreseeable that he could be harmed based on your conduct? Since he's a neighbor, he's within that foreseeable zone and anything such as debris off the roof, throwing roof tiles ‑‑ whatever you've got ‑‑ nails and stuff it is within that area, proximity, that he would be within that zone of danger. That's how Cardozo works. If it's not fully understood, let me know, especially the one that was confused on that; I want to make sure I answered your question.

Now we got the breach. So the breach is relatively straightforward. [inaudible] nails. It's not a breach. This is, again, what you need to understand. He didn't have enough trapline that is didn't cause the harm. His breach is he failed although you didn't have enough traplines, although you did your best to clean up, you failed and you left a nail embedded in the grass which ended up hurting Ned. You breached the duty of due care owed. Then go to your actual cause.

Now, with actual cause, remember to use your but‑for test. Use the language and show the facts to support your position. But‑for being short on traplines and not finding that nail embedded in the grass that was left in Hal's backyard, but for that, it wouldn't have propelled, severely injuring Ned's foot. That's your actual cause. Now we have proximate cause.

Now, is proximate cause at issue here? We see duty was; right? Well, in proximate cause is it foreseeable that if a nail's embedded that someone would run it over with a lawnmower and it'd fly over into your neighbor's yard and he'd step on it? That's called proximate cause problem. The argument here is, Roofer's going to argue it's not foreseeable, meaning I left this nail in Hal's backyard. Ned's at his own property so how can I foresee that? Then you'll argue, however, it is foreseeable even though you're going to argue that Hal running it over with the lawn mower is an indirect independent act and try to argue it's intervening it is foreseeable because based on the conduct of Hal. It was negligent that he ran it over and let it impale and obviously didn't do anything about it so you have a proximate cause discussion here so I want to see you use and argue the language. Based on the facts, you can argue that Hal running over the nail is an intervening act. It's a third coming into play as to what Roofer did, isn't it? However, Hal's conduct of running over the nail is indirect and independent of Roofer leaving that nail embedded in the lawn.

Its foreseeable third party would be negligent ‑‑ third party's Hal here. Therefore it does not cut off liability so therefore Roofer's the proximate cause of the injury. So do you see how that works?

A lot of your answers basically went into the foreseeability. It's foreseeable you leave a nail in the grass, someone runs it over, it flies in your neighbor's yard they could step on it. You didn't let the reader know that we do have a proximate cause problem here. You've got to. You've got to let them know there's a problem here. That's where your point value is. Remember because they gave you the theory of negligence, I have to see what elements are being tested here because those are my points. You had duty at issue here as well as your proximate cause. Damages, pretty straightforward. You stepped on it and they told you he had what? I believe severe injury to his foot so he gets paid pain and suffering, special would be medical bills. Done.

The call said, which I think is kind of funny, defenses. He's walking in his own backyard. Go through defenses because it's in the call. And argue them. Look to both sides. Safe place is at issue. In essence, did in this case Ned fall below standard of care owed to himself for contributory negligence? Well, do many people walk around barefoot? Yes and no. Especially if you live in California close to the beach. Is it foreseeable that he would be walking barefoot? Roofer's going the say no. He's walking around barefoot in his own backyard; he's basically fallen below standard of care because he could be stepping on rocks, and twigs, and stuff like that; however, he has no way of knowing there's a nail embedded in his grass. It's his backyard, he should be aware what's in his backyard. I walk barefoot in my backyard but I'm aware what's out there, versus I guess if I really did step on something, am I falling below the standard of care unless I should be aware it exists? Such as let's say you have a tree and it has little balls that fall off. I step on one that would be normal versus the neighbor propelling a nail in my backyard.

Once you talk about contributory negligence ‑‑ which I find fails ‑‑ I would bring up the last clear chance. It's a gray area; could go either way. So if the court does find that Ned did contribute to his injuries, he's gonna argue in this case last clear chance Roofer had the last clear chance to prevent this from happening if he properly removed the debris and the nails, stuff like that, or had enough tapelines. If he found he didn't, he should have got some. Go buy one. He's going to argue that in this case Roofer had the last clear chance to prevent the injury. Then of course go through comparative. Apportion according to fault and steal from your contributory negligence to save time. Did he fall below the standard of care? Again, he didn't because it's his backyard and he can walk barefoot, knowing what exists in his backyard.

Remember I told you, you have contributory negligence. With contributory negligence, you look to see if we can argue last clear chance because that knocks out contributory negligence doesn't it? Remember, the last clear chance is a plaintiff argument. So when you find the plaintiff was contributory negligence, you don't get recovery in that jurisdiction. That's what the last clear chance is all about, kinda saves it, doesn't it? Versus comparative is a different jurisdiction like California. We proportion according to fault. To me, contributory negligence and comparative doesn't answer the call defenses why? Because it's really a difference of jurisdiction. So I know I must talk about assumption of the risk. So whenever I see defenses, and I see true defenses being tested, guess what? I know I'll have contributory, comparative, assumption of the risk right off the bat, and then I look for something else. And you should know that going in. Point value. Again, the more you understand in regards to not only how the concepts are tested but when I see this, talk about this and this, that'll help you because you'll get it into the exam. You'll get it into the examination for the reader to see.

Now, assumption of the risk you have to have knowledge for comprehension of the risk, and voluntarily encounter it. What does Ned know? Again, I know whatever's existing in my backyard if I have fruit trees and I walk barefoot I know I have trees I'm appreciating the knowledge dropped from the trees. Twigs, branches, whatever you're aware of and make your argument. Am I aware that there's a nail that was propelled from my neighbor especially six months later in my backyard and I step on it? Answer's no.

The other key fact they gave you six months later. If it was the day after, might have a better argument. Things do fall into the neighboring yard but I don't have that argument here. Why? They told you the six months. Ned obviously is going to argue had no knowledge of the nail being embedded in the grass, especially since the time period is six months had lapsed so therefore he didn't voluntarily, knowingly assume the risk so therefore it's not a valid defense. That's your first essay in regards to Ned versus Roofer.

So it wasn't bad, was it? But, again, they had sub issues in there that you needed to get into the examination. So what's the key thing? Well, you did need to talk about Andrews and Cardozo in this exam. You needed to argue both to do well in this exam and you also had to argue the proximate cause argument; right? So that was your allocation for your point value and hit those defenses.

Remember, with defenses what I'm seeing, too, you guys aren't arguing the facts. Argue the facts and make sure you tie in those elements support your position. Remember, the first two pages are very important. This is where the reader's making a decision about you pass or fail. So if you hit 'em strong off the first two pages in blue book one, then you do the first two pages in blue book two, let them know you really understand this. When I get sloppy ‑‑ later, shall I say ‑‑ later I'm running out of time. They kind of get it, but I cannot start out that way; I have to let them know what's really being tested; it's worth it. Your point value in this exam is really with your analysis. Again, they did what? They gave you the issue so I want to make sure you understand that's important.

If you look at the model answer, you'll see I headnote negligence. That's nice, right, pretty? You don't have to do that. You can headnote negligence and forget the rule and go right to duty. Time. I'm into time. I have to save my time. Duty. In this case, you'll see I went through general duty showed how it failed and talked about Cardozo and Andrews. You'll notice I put them together in a difference of a paragraph. You can headnote them if you have time, or separate them out at least into paragraph form so the reader can understand or see ‑‑ their eye will go to it ‑‑ and make your argument.

Breach, in and out. They gave it to me so don't spend a lot of time.

Actual cause, in and out. Don't spend a lot of time.

Proximate cause was an issue. You can see I headnote it intervening supervening cause. Why? Don't want the reader to read it; that's important. In essence by breaking that apart then they can see that I understand it. That's important. Make sense? Like why did it go off?

Okay. Does anybody have any questions in regards to this question?

All right. Let's go to Question Two. Okay. Now, Question Two's buyer versus manufacturer. What's the first thing we'll do in the question? We're going to read the call. Always read the call of the question and get a good understanding of what they're actually asking for.

It says, (reading from handout). We know the issue is contracts. How does that help me? It helps me because I'm going to do what? Write out my contract checklist. That's important. Some reason it went blank so I had to get it up for you guys. Technology.

Then in regards to call two, (reading from handout)? Now, this wasn't a fair call for most people. Why? Because that's a specific rule under the UCC So that's very frustrating because why? Students didn't know it. So if you didn't know it then what do you do? The best you can and use your common sense. I don't want you panicking if you don't know what it actually is. We're going to use common sense and go from there.

Let's go ahead and read the facts. I'm sorry. I don't know why it's not coming up; it keeps going blank on me. I apologize. It says, (reading from handout) ‑‑ batting. Stop right there. We do have batting. What's that tell me? Does the UCC apply? The UCC applies to what? A transaction in goods. So with the transaction in goods, I see mattresses, seeing batting so I'm thinking UCC I see buyer manufacturer so I'm definitely thinking merchant. It says, (reading from handout) ‑‑ unexpectedly. That's a good word. That means I'm not aware. Why are they telling me this? That's something I circled I put a question mark. It'll come into play somewhere I have to figure out where.

It says, (reading from handout).

First paragraph seeing UCC I'm seeing that we do have buyer who manufacturers mattresses so he's a merchant. Obviously needs to call somebody in regards to the batting; they would be a merchant. I'm definitely thinking this is a contract UCC exam aren't I?

In regards to Paragraph Two, it says, (reading from handout) ‑‑ why do I care it's telephoned? This is contract so what must I pay attention to? Statute of frauds. It says, (reading from handout). Do we have the definite uncertain terms? Quantity, bale of batting; time period, the end of the day; parties, you've got Cotton Co. and you originally called Buyer, [inaudible] Cotton Co.; price, top dollar. Subject matter, batting. We have everything there. Surety don't we? We have an actual offer. (Reading from handout).

Now, how do you accept under the UCC? So remember, common law it's an unequivocal assent. Here, it just says he delivered. Under the UCC, you can set by performance; right? The bale of batting (reading from handout) ‑‑ by their conduct they accepted by performance; right?

(Reading from handout) ‑‑ so he knew ‑‑ (reading from handout). So even though he is upset it was 30 percent higher, he still used it. By his conduct he could have rejected it but he used it so guess what? It's his now. (Reading from handout). He didn't expect this. So here I ordered the batting and I didn't expect my big client here that I'm making this for is going to cancel on me. What does that raise? What's that make you think of? Well, it's an unforeseen activity, unforeseen event isn't it? You should be thinking of an excuse to performance. All right. So in regards to what? I'd be thinking of impossibility, maybe impracticability, maybe frustration of purpose? Will this get him off for his responsibility for paying?

(Reading from handout). That's Number 1 ‑‑ and informed (reading from handout) ‑‑ that goes to Number 2 doesn't it? You would bifurcate your calls there.

Start off with, first of all, setting this up pursuant to your checklist and you always start off, does the UCC apply? Now, if this was a service contract, I would never start it off with does the UCC apply. What would I do? Go right to the first issue, preliminary negotiation or offer, whatever it is. In this case, I'm gonna start off with Cotton Co. versus Buyer and argue does the UCC apply? Remember, the UCC applies to a transaction in goods.

Next, I look at merchants ‑‑ I like to get it out of the way. Merchants are one who deals in goods of kind. Cotton Co. manufacturers the batting and buyer manufacturers mattresses that use the batting. Both deal in goods of a kind so I'm gonna find both parries are merchants. Specific rules work between merchants. Remember, for your exam purposes, we're going to talk about once we get the UCC and merchants out of the way, common law first so if it's a preliminary negotiation go through common law preliminary negotiation first; or if it's an offer, which in this case it it's an offer at issue, I'd go through common law offer first, then if it fails, I'm going to bring up the aspects or the difference for the UCC So I'll talk about common law offer first. With a common law offer, you need manifestation of intent, definite and uncertain terms, communication to the offeree. Well, when buyer telephoned and said I urgently need this batting, that shows his intent; he must be bound by contract. And of course we did go through the terms in regards to buyer and Cotton Co. are [inaudible] parties, at the end of the day being the time period, top dollar being the price, the batting being the subject matter, the bale of batting being the quantity so we have all the terms so they're definite and certain. And he's telephoned so communicated to the offeree so we do have a valid offer. Looking at the facts they gave it to me but I still have to go through it and support my position.

Next it says ‑‑ in the fact pattern when he telephoned he delivered. Do we have an unequivocal assent to the terms of the offer? Well, he never said anything but under the UCC you can accept by performance. So the fact that he delivered the large bale of batting shows what? Unequivocal assent. He did assent to the terms of the contract so we have a valid acceptance.

Next consideration bargain for exchange of a legal detriment. Again, I'm giving up the bale of batting in exchange for paying top dollar. So there's a benefit and a detriment on both sides so therefore a valid contract does exist.

Now we look to our checklist. What's next? Is there any defenses to a formation of the contract? In this exam, I think they made it relatively easy. Dealing with the statute of frauds. I don't know if I made it this easy thinking people would dismiss it and not talk about it or what. So you dismiss it in your mindset so you'll miss the issue; right? Don't want to do that. Even though we see it satisfied, we still have to go through it like a formula. Based on these facts this is contract for the sale of goods over $500 we know it's for $5,000 for cotton batting which is a good. Statute of frauds applies to any oral which is easy to see, right, or incomplete writings. In this case, we've got an oral contract. And I'm going to come back to it in a minute.

In regards to that being oral because it's by telephone how do we take it out? Common law, sufficient memo or under the UCC written confirmation. Full or part performance, full or part payment. Buyer used it ‑‑ opened it up and started to use it, and he used up to 5 percent. We do have the performance to take it outside of the purview of the statute of frauds.

Now, before I go on to using my checklist what else would be at issue or what's next? I don't see any more defenses to formation I trigger conditions. Before we go there, I want to point out an issue with statute of frauds and I want to make this clear in your mindset. I want you aware with the statute of frauds with incomplete writings. I feel UCC contract's ripe for testing right now. And how they trick us is I will send an email and you send an email back, or fax over to you and you fax back. You have to be careful because those are incomplete writings they need to be embodied into one document. I want you to pay attention to that because it's very easy to get the statute of frauds bias when we're dealing with incomplete writings so I want that in your mindset. Too easy to miss.

Going back to the Buyer exam we have conditions here. Remember, you have express conditions or implied conditions. I don't see anything explicitly stated do you? Not going to talk about express conditions. Going to talk about applied in law, constructive condition perceived. You need to deliver the bale of batting before buyer's duty arises to pay. Well, Cotton Co. did deliver. They had full performance so it's your turn buyer, pay us. Buyer's going to show he's satisfied meaning I paid you or some type of excuse that will get him off for liability.

The first one I'll argue here is impossibility. Remember, with impossibility, it has to be an event that occurred that was unforeseeable and it makes it objectively impossible for the party to perform. So buyer's going to argue he only ordered the bale of batting because he had this Sleep Co. order to make the mattresses and of course the canceled the order. That was an unforeseen event, and the fact they canceled makes it objectively impossible for him to perform because I'm not going to be making my money from Sleep Co. because they canceled. However, is it objective? Could someone else pay? The answer's yes. Someone else could pay. It's not going to excuse buyer's performance is it? Then I would go to frustration of purpose. Again, remember, unforeseen event and your purpose has been totally frustrated. But what's the key thing you need to remember there? Your purpose needs to be known. Contemplated at the formation of the contract. And when buyer called Cotton Co. and ordered this, he didn't make it clear this is only going to be used and I need this because I have a contract with Sleep Co. I didn't make it clear as to my purpose, did I? So although they canceled, which is unforeseen, and of course now what do I need the batting for? I don't. Your purpose is frustrated. The purpose wasn't contemplated between the parties. Since they didn't know, Cotton Co. didn't have any knowledge, it was never contemplated so therefore frustration or purpose in this case would not be a valid defense to excuse his performance.

A lot of times when you see impossibility and impracticability what else do we address? Impossibility, impracticability, frustration or purpose, they all have a tendency to go together so you could argue if you wanted to in regards to impracticability I didn't really see it at issue. I've seen some students argue it. Is it commercially impracticable for him? And they did tell you ‑‑ this is what they're grabbing onto ‑‑ it was 30 percent more. It won't get you off. If you did argue I don't see it being a problem, but it's not going to excuse your performance. So since buyer has no way of excusing performance and Cotton Co. delivered the bale, he owes the $5,000 so therefore they're in breach and of course they can collect the damages. So remember, it's the expectation of the terms of the contract which would be the contract price of the goods which would be $5,000 so that would be your remedy.

That's call Number 1.

Call Number 2. Reclaiming. Now, if you don't know, it's seller's rights and [inaudible]. I told you that the Baby Bar loves to test remedies for UCC They know you guys don't know them. It's something I would review it so you have a good handle on it. Comes up quite a bit on the multiple choice questions so I want you prepared. Every once in a while, as you can see, pops up here on an essay question.

First of all, I'll go through this with you in regards to the rule. What it says is once the seller knows, has knowledge the buyer's insolvent, you have ten days to reclaim your goods or guess what? Get in line like everybody else so to speak.

In this case, since they learned on the sixth or the fifth ‑‑ was it the fifth, the fifth they learned that buyer has been insolvent they had knowledge they demanded on the sixth they're within that ten‑day limitation so they can reclaim the unused batting. They would have a right and they would have first priority. You have other debtors and that's the whole issue here.

Let's say I didn't know this rule. What should I say based on the call? Can they reclaim? And use your common sense there. Headnote reclaiming the goods. Use the call of the question and then basically point out that since Cotton Co. did perform pursuant to the terms of the contract and just learned about the insolvency they would have a right to reclaim their goods at least I'm saying something. I don't know the rule but I'm saying something and should get something for it because the reader sees I see something. Whereas some students just didn't answer. No. Put something. Please. And use the call. Use the headnote reclaiming the goods. Something that you feel you can grab on to and pull in those facts. Factually you have in regards to they learned that he was insolvent, demanded. Pull in that language. Sounds like you know what you're talking about. At least they can give me something for it. If you don't know the rule, don't panic. Be calm and use our common sense and pull in something so I can at least get half credit versus nothing. So I'd rather have something versus nothing.

That's your contract essay two. Any questions on this one? Again, I want you to be prepared for UCC because I feel it's really ripe for testing.

In this particular question most common mistakes seen in this exam people left out the statute of frauds, which that goes right to my heart and I think that's just because it was obvious so they figured just dismiss it. And of course people didn't always type the conditions before they excuse the performance. For excuses to be at issue, you always need to address a condition. So what type of condition is it and go through it. You need to break that apart.

All right. Let's go to the last question, Question Three. You guys are awful quiet tonight unless I'm missing it. Hope not.

All right. Question Three. Read the call. (reading from handout). Now, remember, when you see multiple defendants what should you be thinking? Got to be something different. If there's three, absolutely something different. Got to be something different between them otherwise why don't you just give me Art? Something's up and I'm going to go looking for it. If they give you three, absolutely something's up.

It says (reading from handout)? So in this particular question, they told you go through the crimes in Call One and then do all defenses in Call Two. Dictated. Generally, what do we do? We prove up a crime if there's a defense we do it right after that crime and go to the next crime. If there's a defense, do the defense and so on. This call dictates so I can't do that. I think sometimes they do that to mess with us. Sometimes it works and sometimes it doesn't.

Go through the facts. After drinking heavily, comma. What's the I first issue you should be thinking? Intoxication. Remember I told you in the lecture when you see intoxication, what are you looking for? Remember? Diminished capacity. So intoxication which in this case would be voluntary and diminished capacity generally go together so that answers my call of defenses so pull those out at this point.

It says Art and Ben decided... (reading from handout). What do we see? Conspiracy; right? It says, they drove (reading from handout). Drove the truck to the store. What should you be thinking of? Don't dismiss it in your mindset. Burglary's what you should be thinking of. You see it's a store, don't dismiss it. I'll talk about common law burglary then if it fails ‑‑ which it will ‑‑ go to modern law but don't dismiss it in your mindset. Argue that's a robbery. It says, (reading from handout). Enraged. Good word. Shows me you're acting probably with specific intent. (reading from handout). Loaded them into the truck. Hmm. I'm thinking of kidnapping. It says, (reading from handout). False imprisonment. (reading from handout). Larceny; right? (reading from handout). That is a proximate cause problem. I know a student called me today saying that they were told that only works in torts. It only works in proximate cause. Remember, torts as well as crim law as well as it's a proximate cause issue you can use thin‑skull plaintiff when it's at issue. It is proximate cause issue ‑‑ a sub issue of proximate cause. Murder, you have causation don't you? Thin‑skull plaintiff could come up on a criminal exam for murder so you want to make sure you understand that.

All right. It's asking me in regards to which criminal charges. Start with the first lawsuit, State versus Art. Why? That's the order they gave it to me; right? They put Art first in the call. First thing to talk about is the conspiracy because defenses go in call two. And they decided to rob the convenience store robbery. They agreed. They had an agreement. Talked to Bob, it's two or more, unlawful act, it's robbery so I definitely have the agreement and the conspiracy don't I? And they laid it out for me in the facts. Agreed? So the conspiracy's straightforward.

Next I go through because it says here that they entered the store. I'll talk about burglary. Again, remember, you're going to go through common law first if it fails then go to your modern law. Common law you need the nighttime, the breaking and entering, the dwelling house of another, specific intent to commit a felony therein. Now, based on these facts, it's an all‑night convenience store, you go the nighttime. They entered the store, the problem is, they entered it's open so it's not a breaking they entered it's an entry it's a store, not the dwelling house of another. They did enter with the intent to rob; however since there's no breaking nor dwelling house, common law would fail. When you find an element fails, still continue through the rest of the elements of your rule and give your overall conclusion. Don't just stop, ooh, look, I can knock it out here. Continue with your analysis because there's facts. Since it failed, I can now go to my modern law burg and remember, it's a trespatory entry in any structure is a crime. In this case, they entered into a store open to the public but the law says if you enter with the intent to steal or commit a crime you vitiate the owner's consent so it's trespatory entry, we've got the store being a structure, and again, the intent to rob so we have our modern law burg don't we?

Next issue: (reading from handout) robbery. Again, what's the argument here? Well, Ben did take the $250 so there was trespatory taking. He did leave, that's personal property of another. Was it by force, fear, intimidation? This is the trick. Ben took it after Art got all upset and took him for a ride and put him in the refrigerator so it wasn't with the force, fear, intimidation so there is no robbery here. Now, remember, with robbery, you need to get whatever the property you're stealing under the force, fear, or intimidation. Eminent threat they're locked away. That'll fall back on the issue of attempt. So did you take a substantial step? Did you have the specific intent? Preparation versus perpetration, and apparent ability? In this case, you'd go through the attempt elements, wouldn't you? Since they decided to rob the store, they entered, brandished their pistols. They did take a substantial step. They wanted to rob a store so that shows there's specific intent; right? They had the apparent ability because they had the guns and went to the store so they will be guilty of attempted robbery.

Everybody see how I actually showed and you need to understand I went to a robbery and how it failed so I fall on the attempted robbery. A lot of times you'll find just attempted issue or robbery. How do I know when I have to do both? If I see there's elements like in this case to the robbery but it falters in this case there's no force, fear, intimidation. They have tested there several times on the Baby Bar so I want to make sure you're aware. They get it bias and you miss an issue, down at least five points so you'll talk about the attempt or the robbery, but you won't talk about both.

How do I know to do both? Look at the elements. If you have strong elements for robbery but it's gonna falter because you know you've got the attempt. So the elements and the facts always tell you. Rule of thumb is, if I can't tell if there's facts that strongly support an element most likely they want the issue. If I can't tell, that's what I'm going to rely on. If there's facts that support an element strongly, most likely they want the issue so you'll go through it. Okay?

Now, again, you notice I'm just taking this right in chronological order of what occurred. That's the best way because most likely the examiners that's grading your exam has it in chronological order. I don't want them to think too much other than pass me. That's my goal: Pass me.

Now, it says here, (Reading from handout) so you have your issue in regards to kidnapping even though it was a short distance. There was an asportation, unlawful movement, we have a kidnapping. Locked him in the refrigerator so that's a confinement ‑‑ unlawful confinement. He has no grounds. Nothing here in regards to showing authority so we have false imprisonment. Then of course the biggest issue here is your murder. So in essence with murder you need to show what? Well, we have a killing of a human being by another so you notice in this exam answer we go through homicide, actual cause, proximate cause, then our malice. That's one way to write it and we'll go through it this way and I'll show you another way to write it.

Mark did die, so it's the killing of a human being; Art's the one that caused him to die by locking him in the refrigerator so it's by another, homicide. Actual cause, but for locking him, he wouldn't have gotten pneumonia and died, proximate cause is it foreseeable in well, no. It's not. It's not foreseeable because obviously you had the susceptibility but you take the plaintiff as you find him so therefore what? Thin‑skull plaintiff you would argue in that case because you take them as you find them. So proximate cause then go through your issue in regards to malice.

Now, with malice, in this case did you have the intent to cause great bodily harm? Chill the lovers out? Was it wanton and reckless? Sure. Can I argue the felony murder rule? Yes. I can argue burglary modernly. I can argue in regards to the larceny. Or attempt. Remember, any attempted inherently dangerous felony will work, too, so you need to remember that. The attempted robbery will work too.

Notice in regards to the murder, you look to four ways to show malice. Grab onto as many as you can this to support it with the facts. And three out of the four in this fact pattern are supported with the facts, respect they? I will argue three out of the four. My malice is very strong so I know I'm never going to get to involuntary manslaughter but it did tell you in fact pattern it was enraged; thought it was his girlfriend so we know we'll talk about voluntary manslaughter. Would a reasonable person seeing his girlfriend in a store with a worker, Mark, get so enraged that they would lose their mental equilibrium? She's not even his girlfriend, for one. Why would you use your mental equilibrium? There's nothing going on. Maybe if they gave you more facts. Based on these facts, no. Then I see in regards to he's going to be guilty of murder in the first‑degree in regards to the killing of Mark.

Then I argued attempted murder of Fran. A lot of exams didn't have this. Why'd they tell you he locked her in the refrigerator as well? Was he attempting to kill her? That's an argument you could bring up in that exam as well.

If you look at the second call, State versus Ben, what did Ben do? He agreed to the conspiracy so I can steal that, defined, discussed up above. What he agreed to was go rob the store. I can see the burglary, robbery, or attempted robbery. What can I not foresee? And that's the argument. Under Pinkerton's can you impute the false imprisonment, the kidnapping, and eventually the murder onto him based on the Pinkerton's Rule? He's going to argue I can foresee the robbery and the burglary, but not the kidnapping; it wasn't part of our agreement. Obviously not the false imprisonment. But, again, is it foreseeable ‑‑ if you burglarize a store is it foreseeable that obviously you might imprison people, might kidnap or even kill people? And make your argument. I don't care how you conclude, as long as you argue both sides. Remember, under Pinkerton's, you argue it's foreseeable and a natural probable result. And do you see why I put it under the lawsuit of Ben? He's the one that didn't do the actions. Art did everything. Ben did some of them but not all of them. That's why it's under his call. That's when it's triggered. I want to make sure when I bring it up. Some people bring it up right after conspiracy. No. Why? Unless that person didn't do the act, right, then I would bring it up. Come back to it in a minute to give an example.

In regards to Pinkerton's, argue both sides. Of course he's the one that took the $250 so you would argue the issue in regards to the issue of larceny against Ben.

Now, do you remember last ‑‑ two weeks ago we went over the last Baby Bar with I believe Ava and Ben who drove her to the store to get some clothing for free and the call narrowed you down just to him and not her? Right? So in essence in regards to all the actions he did we would just go through the underlining crime he did it all. If she was in the call, Ava, I would still talk about Ben, prove up all his crimes then headnote Ava, and bring up the conspiracy. Define, discuss, supra and then the Pinkerton's because she didn't do anything. Versus if she did do all the actions what am I arguing? Can I impute it onto Ben? So you have look to look to who's doing the conduct, and that's the key.

If I didn't do it and you're trying to charge me with it, it has to be a Pinkerton's problem or accomplice. But remember, I told you Pinkerton's Rule is very testable it's going to be there. You need to know it. No way to hide it.

That's your call one. Everybody understand in regards to the crimes and why we addressed the crimes?

The other way, before I jump to call two for murder, you could forget the homicide and start right off with murder for malice, argue all the ways to prove malice, then actual cause, proximate cause, and then murder in the first‑degree. So the homicide's superfluous. We find it's not worth anything so my approach I do the murder first then my actual and proximate cause. Sometimes if it's not at issue because of time I don't even talk about that. I go right to murder in the first degree. I look to timing. It was an issue in this case you needed to have it in the examination.

Again, the more of these you issue‑spot and understand when it's triggered versus not, that'll help you make your judgment call. Sometimes, again, time's against us.

All right. Let's look at call Number 2. In regards to what defenses... (reading from handout). Obviously we're going to talk about intoxication. So, again, if one is voluntarily intoxicated it negates specific intent. So the attempt crime if we found robbery they can negate burglary the specific intent. Since they drove the truck, they're able to point their gun saying this is a stickup load up the truck and drive the victims around lock them in the refrigerator, do you think they know what they're doing? Kind of. So in essence it's not going to negate in regards to specific intent they're fully aware of their actions. And then of course no defense then of course since it said defenses, gonna grab on to diminished capacity. So is your capacity so diminished you don't have the specific intent to commit the underlining crime? They knew what they were doing. Able to drive the truck, lock them up. I'll argue your capacity's not so diminished. Negate the specific intent. Therefore, neither party have a valid defense. They'll be charged with the crimes as discussed supra.

In this particular question obviously most people did see most of the actual issues the main exam ‑‑ or mistake I saw in this exam was the argument for Pinkerton's Rule. You need to spend more time and argue it foreseeable in furtherance thereof. That's the key.

Any questions on this essay? A lot wasn't it? Good issues here for you to get a good understanding how they come up.

At this point what should we be doing? Prep time. You have a week to go before that Baby Bar we can do it. I want you to work on your issue spotting. If you haven't done any timed exams ‑‑ I'll be sending out more ‑‑ do them timed you have to get your timing down. Last Baby Bar a gentleman ‑‑ I feel bad ‑‑ he got three out of the four essays done and got a zero on the fourth essay. Impossible to recover. He was close but that zero nail that had coffin there. Now he has to take it again. You don't want to do that. Work on your timing that's important. Work on those multi states. If you're not getting a good score, meaning you're at 60, 65 still, why? Go back and figure out the why. We have time so you can get that 60 up to 70 don't give up. Just start chipping away. That's important.

If you have any questions, I'm here for you. And your success is mine. That means I'm doing my job so I want to make sure you understand the concepts. If anything comes up, shoot me an email at jolly@taftu.edu. I'll be happy to help you in any way I can. Okay. You guys go in there and let's make it happen. I wish you the best of luck on the up‑and‑coming Baby Bar. Keep me posted. You guys have a good night.

[END TIME: 6:57 PM]