Taft Law School

Electronic Classroom – Baby Bar Mini-series

09/17/19 6:00 ‑ 7:00 PM

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

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>> INSTRUCTOR: Welcome to tonight's baby bar mini series. Our primary focus tonight will be on the contract essay question that was sent out to you and obviously when time allows we'll go over multistate questions as well. These sessions are recorded so you can always go backlog onto Taft's Web site go to the student section log in and then go to the baby bar mini series and everything's there for you all the lectures, any handouts, as well as a transcript of the actual lecture.

All right. Let's get started in regards to the contract essay. The one thing I'm noticing in regards to essay questions in general for the baby bar is I need you to start paying attention to the call of the question. They're getting a little bit more clever. If you look at it, you can tell if it's singular versus plural, and that's gonna help you. Looking at the last baby bar in June you'll see they're changing some of the calls. If you pay attention to the call you'll know if I have to write on multiple issues versus all if they're asking about one issue because that will help you time‑wise.

The other benefit besides time is when you write on a nonissue, most likely what that means is that you're taking away time from an issue they're trying to get you to argue. That's important for you to understand how issues arise in your fact pattern, and that's important and how you can do that is use your checklist. What I mean is when you practice multiple choice questions as well as your essay questions, what I want you to do is start plugging in the facts, especially those that you miss. I didn't say preliminary negotiation. I saw a newspaper article. Now I remember that hypothetical if I see a newspaper article I should be asking myself is this a preliminary negotiation versus an offer. When you review that once a week you'll remember it and understand when you have to address the issue. It is a process, but that's how you learn.

Generally you'll find with contracts it's very analytical. You have to break it apart. The key thing with contracts is you have a lot of issues that could be tested and that's why I want to make sure you understand the call and what they're asking because you have formation, third party rights ‑‑ assignment, delegation, third‑party bennies ‑‑ you've got conditions, our breach, and our remedies. Again, I need to understand based on what they're asking and testing do I have to go through everything or can I narrow it down? That's what the call will help you with and I want you to pay attention to that because I find a lot of students go on a tangent and that'll hurt you.

Let's look at this contract question and go to the call of the question. It says (reading from handout). You see it's at the bottom of the screen there. Does this call tell me anything? Yes, it does. So it says was an enforceable contract formed? What'd that just narrow you to your checklist? Formation. By reading the call I should be thinking of you remember you're responsible for U.C.C. so U.C.C., merchants, preliminary negotiation, offer, termination of offer, acceptance, consideration, defenses to formation. That's in the back of my mind set based on this call.

The other thing that it asks you in this call is binding Seller to sell the doll collection. What does that mean? Well, this is something I told you the baby bar examiners are starting to test. Binding, forcing, enforcing the agreement. That would raise the issue of specific performance. So specific performance obviously is acts in equity mandates the parties to perform pursuant to the terms of the contract. So you're forcing the sale based on the facts. This call tells me enforceable contract formation issues and binding. I believe in my answer I do have binding. Technically damages is not in the call. I could have jumped in with specific performance because that's what the call is asking for so you want to pay attention to that. I need to know, again, how far do I have to go? So you'll see on the last baby bar I've only done one question but the call basically said in regards to limited you to his lawsuit, one, not in regards to multiple issues what have you. I saw lots of students that did well, they talked about multiple tort theories but the call eliminated you to one. That kind of told you what they were looking for, versus Call 2 gave it to you as intentional torts multiple in regards to your plural so you're looking for multiple two or more. The call can really help you and I want you to understand that and pay attention. Again, you'll see by the June baby bar as well as the previous October they're getting a little different in the calls of the question that we've seen. We've got to make sure we understand the call and answer the call otherwise we won't do too well. After you read the call of the question, I have a good understanding here. I got formation issues, and binding the Seller to sell the doll collection for the $15,000 so I feel I have a good handle.

At this point, do you know the subject matter? I would hope you'd say yes; right? What's that mean? I should write out my checklist. Right? So now I want to do is write out my checklist to help me so that'll make my mind set go into contracts before I read the fact pattern. That's important. Under the stress of the exam we do silly things. That's gonna reduce my stress level and get me focused on the subject matter. You don't have to write your checklist in full. Abbreviate. So F for formation, 3 for third‑party rights, whatever terms work for your shorthand, but write it out there on that scratch paper so you're using it and it will help you. The other thing I have a tendency to do so I don't miss an issue since I know this is formation I'd write out UMPOTAC ‑‑ so U.C.C., merchants, preliminary negotiation ‑‑ just the first letter to force myself to go through it so I make sure I don't miss anything. If you get a formation exam ‑‑ which they have tested a couple times so it is a good issue you should be prepared for ‑‑ generally you have to form a contract. It's just how much detail or nuances that they're testing with the formation issue. When you see that, what should you be thinking of? I'm glad I got a formation exam? There's got to be something within itself. It can't be straight offer acceptance consideration. I have to pay attention to the facts and look for termination of the offer or in regards to acceptance or method acceptance. There's got to be something within this fact pattern. Obviously how are they going to have that bell curve in they have to have issues basically buried in the examination. You know that going in and now use your tools.

Let's read the fact pattern. Now, remember, we're gonna pretend we read it one time through and you should always read the essay question one time through just to get a general idea as to what's going on. Why I'm stating that, I had a student ask me today because a review course they're taking said, "read all four". You can read all four essay questions and then pick which ones you want to do; that's fine. I don't. And the reason I don't is because I have a good memory and I'll remember facts from another essay. I might inadvertently put that in the wrong question. I take them in chronological order is what I do, but if you want to start from 2 and work backwards or whatever, that's fine. Reading them all that's something I would do in practice if that's how you feel you're going in there to take the exam to see what you do. In my case, I know I won't do well because I remember facts from a previous fact pattern. If I have two contract exam questions I might be pulling facts out of the other contract exam in another question. That's a problem so I don't want to do that. Again, it's based on the stress of the exam.

All right. Now pretending we read it one time through. The second time you're going to indicate and mark up your issues. Write on the fact pattern, write on the essay. Once you get done and have a good understanding then you can outline. Mark up the essay because that'll help you identify this area basically facts that support acceptance or whatever it is. So you've indicated it to you to where your mind pulls out for your outline based on the fact pattern.

It says here (reading from handout). Short sentence. What's that telling me? Okay, that's nice. She inherited this. Antique tolls so thinking the issue's U.C.C. Since she inherited most likely she has no knowledge. With merchants they have to either deal in goods of a kind or have special knowledge or skill. At this point I'm thinking Seller who inherited this collection has no idea. So I would say Seller equals a non‑merchant at this point. I see it's antique dolls so point out the U.C.C. The first sentence gave me some things. (reading from handout). We have the dollar value. (reading from handout). Remember, when a Seller writes a letter to multiple people, that's an offer to multiple people. So it is still an offer but it's going out to however many people she decides to send it out to. Your point is to go through and see what this letter states to see if we support everything element wise to show there is an existing offer.

It says (reading from handout). Period. Stop. Remember, after every and, or, period, I want you to stop and see what the examiners are telling you. So she's willing to sell. What does that support? The fact she's writing stating I'm willing to show shows the present contractual consent. She's interested in entering into a contract with you. It says to the first person lets me know he or she wants the collection. What does that mean? So it sounds like obviously to accept this you need to let me know meaning face to face or talk on the telephone I need to know. So I'm pointing that out. I may not know at this point in the exam but I would circle and put a question to go back to it but I'm thinking method of acceptance. You need to let her know. So she's dictating. So basically if I put it in Instagram is that letting you know in regards to the facts it looks like it's a method of acceptance issue.

Now it says this offer will be good for 30 days. What does that mean? It'd be good for 30 days you should be thinking of is this an option contract? I'll show you in this exam there's two different answers you could have wrote for this question for full credit. At this point since the offer's open for the stated 30 days is it a valid option? With an option it needs to be supported by consideration; however, under the U.C.C. ‑‑ supported by conversation ‑‑ you could argue firm offer. What's the trick with the firm offer? With the firm offer, the offeror who's offering has to be a merchant, has to be in writing, and cannot exceed 90 days. So we know based on this fact pattern I may bring up firm offer and show it fails because she inherited these dolls so we know Seller is not a merchant. Okay.

It further states (reading from handout). Okay. So we see in regards to this second paragraph it really supports my issues to whether or not I have an offer, it supports in regards to an issue as to option and whether or not if the option offer fails because of lack of consideration, do we have a firm offer? So obviously the option the firm offer worth some points they're not evidence based on the facts. If you break it apart and dissect by sentences, look at it what are these facts mean? What's the examiner trying to tell me? You will see it. That's why it's important not to read it as a whole paragraph. Break it apart then you'll see the actual issues.

All right. Paragraph three states (reading from handout). She has knowledge of the collection. She's familiar, wants to see the dolls. (reading from handout). But. Oh. I want to do some research. The issue there is when she showed up and did her inspection. Is she rejecting the offer? So you would bring that up and basically the terms I'm interested but ‑‑ well, the fact she wants to do more research doesn't show she's trying to reject the terms of the offer; she's obviously trying to solidify the offer, but you would bring that up as an issue.

It says (reading from handout). This is where the examiners are kind of flagging you for an issue. I'm selling to the first one I actually hear from who wants to buy the entire collection. Why is that sentence there? It's also in quotes. Remember, she said this offer would what? Be open for 30 days but she said that she'll sell to the first person who lets her know he or she wants the collection. Now she's saying the one I actually hear from. Now we have an argument of method of acceptance. How do you select the doll collector's offer is by actually communicating to Seller. Okay.

That's something I pull off the to the side. I don't see it triggered yet because I haven't seen facts supporting an acceptance, but it's definitely something I'm tinking it's coming down based on the facts. Now it says (reading from handout). Paying someone to evaluate the photographs I took. Is she relying on Seller to sell her the doll collection for $15,000? That's a reliance issue. Definitely reliance. Everybody see that? You paid $1,000. Why would you do that knowing that the Seller can sell it to anybody without you knowing or obviously pull it off the market, whatever the case may be. Probably wouldn't; right?

It further states in the fourth paragraph: (reading from handout). Period. What is that issue? So when Buyer called and said I like the dolls, is that equivalent to an acceptance? Remember, with an acceptance you need an unequivocal assent to the terms of the seller's offer. When she said I like the dolls are you saying to pay the $15,000 pursuant to what Seller was asking? Do these facts support that there is an assent to buy? There's a good argument they don't. You said I like the dolls. Seller doesn't know what that means. Are we going to negotiate? Are you going to pay the true value? Don't know. Based on the facts that's my first acceptance and I'll support it that it's not an unequivocal assent so an acceptance has not taken place, han so we still have the offer on the table but acceptance has not transpired.

It further states (reading from handout). Oh. That's a second issue of acceptance. So is that an unequivocal assent to the terms of the offer? I accept your offer looks like a good mirror image. That looks like valid acceptance. And it further states (reading from handout). What are you thinking of? Well, you post it in the mailbox. We know it's September 4th. Most of us would be thinking of the mailbox rule. Effective upon dispatch so you're going to say at this point the argument is on September 4th we have a valid contract between Seller and Buyer. That's an argument. We'll come back further states: (reading from handout). Now the issue is, is that a revocation? Remember, with a revocation it's effective when? It's an express revocation in the terms of the offer but prior to a timely acceptance. So if it isn't prior to a timely acceptance it's not going to be valid versus if it took place prior to the acceptance the revocation is valid. Buyer responded you can't do that. I ‑‑ (reading from handout). Again, was an enforceable contract formed binding Seller to (reading from handout)?

You read it. We've got a good idea of what we're going to outline. The first thing I see it's a doll collection U.C.C. So does the U.C.C. apply? And the U.C.C. does apply in transaction in goods we got antique dolls. So it would be a transaction of goods. Remember, the U.C.C. does not apply to whether it's $500 or not. Seen that in a couple answers. The U.C.C. applies to a transaction of goods doesn't matter if it's one dollar. The U.C.C. is triggered. Don't mix it up with the statute of frauds. That's a separate issue.

Next what I would go through is there merchants? Seller inherited the dolls. I don't feel she has special knowledge because she offered it for $15,000 not knowing the true value. What about Buyer? You could argue Buyer is a merchant. It could go either way without changing the answer. Buyer's familiar with the collection so she might have special knowledge or skill. You could find that buyer's an actual merchant. I have no problem with that.

Next issue here I don't see a preliminary negotiation. Going right through my checklist. Whether or not there's an offer. You need to, as the examinee, break apart the elements and show the reader that they're supported with the facts. Even if they make them obvious you still have to support it. The fact that Buyer sent the letter stating I'm willing to sell, pull out those facts which they gave to me to show that Seller has the power, manifestation, intent to be bound by contract. Then of course what are the terms? Well, we got a doll collection being the quantity. If you look to the letter it said the first person I hear from. That's the time period. Seller and all the doll collectors she sent the letters to shows the identity of the parties; the $15,000, the price; and the antique doll collection, subject matter. So the terms are definite and certain. She mailed the letter out to everybody [inaudible] Buyer calling to set up an appraisal shows it was communicated to the offeree. So I have a valid offer. Now, in going through that issue of offer pretty straightforward. I know it's not a lot of points but I still have to go through it and prove it up to the examiners.

Generally with contracts we take it straight in chronological order of your checklist. What's next on your checklist? Most of you might jump to acceptance. No. Remember, we have ways to terminate an offer like counteroffer, death or destruction, rejection revocation. Also have my issues of option contract or firm offer there. So based on the terms in this offer it says good for 30 days. To me, based on those facts, that's going to raise the issue of option contract. So remember, an option's an offer which is supported by consideration. So the fact that Seller represented they would keep it open for 30 days shows it's a promise to keep the offer open for a stated period of time, 30 days. However, is there any consideration? I said no. However, there's another examiner ‑‑ another issue that you could of brought up here the examiners would have taken. I find at this point nothing transpired so I always take it in chronological order. The issue they would take the $1,000 that you paid for the appraiser of the dolls. You could argue based upon what? Remember, consideration's a bargain for exchange of any legal detriment. We didn't exchange anything. Did we? So consideration fails but then you can look for a substitute for consideration. So remember, when consideration fails, look and see if you can fall back on a substitute, which in this case you could argue judgment and reliance because you told me you would keep it open 30 days otherwise why would I hire this appraiser for $1,000? Your argument is, based upon that detriment or reliance, reliance is foreseeable I relied upon it by paying $1,000 the option should be valid so that is one argument you could have made. I found the option not valid.

I definitely would go through firm offer. Seller wrote a letter. We have a written offer. It's in writing. The problem here is what? Seller's not a merchant. Remember, the original party that's creating the firm offer must be a merchant. Both parties do not have to be a merchant. The one that's creating the offer has to be a merchant. This is tested on the multi states. One element they like to test is oral, not in writing. It has to be in writing, can't exceed 90 days, and it has to be given by the one selling he has to be a merchant he or she.

The other thing to remember if it says they'll keep it open for 120 days it's still a valid firm offer if it's in writing the Seller is the merchant but it will only be good for the 90 days. So that's another way they test on the multi states. Okay. So here in regards to the firm offer it will fail in this case because Seller I found's not a merchant and I believe that's why they told you they're inherited. And of course later on she learned the true value so I know she doesn't have any knowledge about the dolls.

Taking it in chronological order, what happened next? Remember, the facts told you on September 3rd Buyer contacted Seller to do the inspection. Then when she did the inspection she said, "It's interesting, but I want to do some research." Is that a rejection? So rejection basically is the statement by the offeree showing your intent not to accept. So when she said I'm interested but, I want to do some more research I'll get back to you, that shows her intent not to accept. Is it words to show she's not going to accept it in time in regards to the terms of the offer? The answer to that is no. The rejection is not valid.

Next, again, taking it right in chronological order that's the best way to take a contract exam is the first issue of the acceptance. What I have a tendency to do I let the reader know where I'm at. Here I'm talking about the telephone call. Was the telephone call a valid acceptance? Again, what do you need? An unequivocal assent. When Buyer telephoned Seller and left the message on the answering machine stating this is Buyer I like the dolls, is that an unequivocal assent to the terms of the offer? "I like the dolls" doesn't tell me you're going to pay $15,000 for those dolls pursuant to the terms of my offer. That's not an unequivocal assent to the terms of my offer so I'll find that telephone call did not equate to acceptance.

What happened next? Acceptance in regards to the mailing the letter. Do we have an unequivocal assent? Buyer where I accept your offer; right? So that looks like an unequivocal assent for the terms of the offer. She spelled it out with the $15,000 term wise. That supports that there is an unequivocal assent to the terms of the offer. Now, they also told you she mailed it. Now we have a couple tricks. That's trigger? The mailbox rule. Very testable on the multi states, acceptance is effective upon dispatch. When she deposited the letter on the fourth, was a valid contract formed? The revocation came after the fact. That makes a big difference. But we have two problems here. What's the first? If you go back and look at the facts it says I'm going to sell it to the first person who lets me know. The fact that you put the letter in the mail you didn't let me know, further you have the statements when they were face‑to‑face on the third she says she's gonna sell it to the one I actually hear from. So we have a big argument here as to method of acceptance. I dictated it would have to be the one that actually made me aware. I'm hearing it. The fact that you deposited an acceptance in the mail I don't hear it until I receive it. The argument here is that I dictated the method of acceptance and you haven't complied. That's an argument. Everybody see that? Method of acceptance is a good issue to pay attention to. Comes up more than we think. We overlook it. It's worth good points so always pay attention to the terms of the offer and what they're dictating in regards to how do they want to be notified? And that I have tested this several times in regards to this exam. They test it with Facebook, and they've tested it with the term of using emails. Again, if I tell you to post on Facebook or not post on Facebook ‑‑ which was that exam ‑‑ you can't accept on Facebook because I can dictate the form of acceptance. Don't post on Facebook. Versus send me an email and you telephone me, again, I dictated I wanted it by email. That would raise the issue of the method of acceptance.

What's another issue I could bring up here? It depends what you decided on your option issue. If you argued option and then you supported it with detrimental reliance, you found the option to be valid, I didn't. Now the trick is, remember, with the mailbox rule it does not apply to option contracts. So if you found that option to be effective, now you want to tell the reader pursuant to the mailbox rule go through it and prove it up and point out options do not apply s the mailbox rule does not apply to an option contract. Okay. That's black letter law. Everybody see that?

Revocation. In regards to a lot of times people say conclusions don't matter, but see, if you don't understand in regards to your acceptance and back and forth as to whether or not we have a valid acceptance, make some argument, you straight would have gone through the revocation and probably knocked it out saying it wasn't timely. We had some good arguments here that could support that the revocation was timely. That's showing the examiners you understand the rules, the concepts. That's important.

The next issue here is the revocation. Remember, the revocation is an express statement by the offeror which is communicated to the offeree prior to time and acceptance. When Seller ‑‑ go for less than $35,000 she's revoking her previous terms to sell the doll collection for the $15,000. She telephoned Buyer so it's communicating to the offeree, now the issue is you need to make clear to the reader was it prior to a timely acceptance? Seller made the telephone call and Buyer placed an acceptance in the mail which didn't follow the method of acceptance, no acceptance has transpired so no contract's been formed, so I can argue revocation took effect timely so therefore it would be valid. Argue both sides don't care just let the reader know and you can continue on your exam. So you'll see in mine I found, I believe, that Buyer's acceptance was not valid and then I would continue on the exam et cetera because they're asking you about binding the Seller so I know based on the call I must get to the issue of specific performance; right?

All right. So argue both sides, then obviously you're next issue on the checklist would be revocation, then consideration, bargain for exchange of legal detriment. Here I got the $15,000 in exchange for receiving the doll collection which I wasn't previously ‑‑ had to give up my doll collection, versus I have to give up the $15,000 in exchange for you to get the doll collection. So there is valid consideration. At this point I feel pretty good in regards to forming the contract. I feel I've hit a lot of multiple sub issues. But I don't want to lose my head. That's mean? Please once you form a contract I always want you to look to defenses to formation. Now, obviously this is a letter. So know it's not parol evidence because it's not in complete writing. But could I see mistake, or modification, or statute of frauds, or illegality? Here, statute of frauds. This is a contract for the sale of antique dolls for $15,000 so this triggers the statute of frauds. Now, this is one example I told you how the examiners like to test. What do I mean? Well, the statute of frauds applies to oral contracts which we all know; right? So marriage, realty, debt of another over one year, contract to sell goods $500 or more. We've all been trained it applies to oral. Where we get lost and hurt is it also applies to what we call incomplete writings. We have a letter. If you find that acceptance placed in the mail, we have another letter. We have incomplete writings. It's not embodied into one document. So that triggers the statute of frauds.

Now, so in regards to how you need to know for a preliminary negotiation so he's going back up to the dear doll collectors letter. If you have the terms ‑‑ remember, with the preliminary negotiation the terms are not spelled out. So if you had the quantity, time, identity, price, subject matter that's the certainty of terms, right, you'll find that to be an offer. So even an advertisement general rules preliminary negotiation. If I have the certainty of terms it's construed as an offer. Even though I put it in a newspaper everybody reading it's potentially the offeree. So as long as my definite and certain terms are there, that would be equivalent to an offer. Okay. So sometimes they try to mess you up with this because there's multiple parties. I've sent it out to ten people, whatever. Don't let that trip you up. As long as the terms are there, we have an offer. So look at it as a multiple offer to multiple people; right? Which obviously you or I as the offeree only one can accept because you only have one collection. It stated in the offer the first one I hear from. That would be construed as an offer.

Now we're looking for defenses and seeing this is a statute of frauds. Everybody understand because this is a incomplete writing. A lot of times they test this with the U.C.C. Sale of goods. But how they get more sophisticated is we mailing, faxing, emailing obviously is more current so I email you an offer, you email me back great, got it. More than happy to think it so you tomorrow. That's not embodied in one document. Triggers the statute of frauds. That's highly testable. In this fact pattern we got a doll collection which is obviously goods, it's being sold for $15,000 so it's more than $500 or more. Needs to be in writing in order to be enforceable. How do I get out? Now, remember, for the contract for the sale of goods of $500 or more, we have several ways to get out: Sufficient memo, we have written confirmation between merchants ‑‑ oh, they're not merchants ‑‑ full or part delivery, full or part payment, and we have one more, which I'll get to in a minute.

So the first thing I'll argue here is based upon the letter. Can we argue a sufficient memo? Buyer might argue seller's letter contained the definite certain terms. What is the problem? The letter's the offer so it happened prior to. I mean, nothing was restated after the acceptance and this is what gets us in trouble. A lot of times people grab that letter and says that letter satisfies the statute of frauds and it doesn't. It's gonna be after the fact, meaning after you accepted now somehow I reiterated the terms. So in essence, after Buyer accepted Seller sent a letter, that's great glad you're buying my antique doll collection for $15,000 and sent that offer. Now I'll use that letter, but not the one that originated the offer; doesn't work that way. I would go through the sufficient memo and point out that's not going to work because the original writing that we're dealing with here was a letter from Seller which is the offer. So nothing was restated afterwards so it doesn't satisfy the statute of frauds. What do I do? A lot of us assumed that the statute of frauds was satisfied but what's another exception that works for all of 'em that I told you in the lecture the baby bar likes to test but we overlook it all the time? Estoppel. It's reliance based on conduct. That's where I put my facts to argue here versus in the option contract is when Buyer went and paid $1,000 to a doll appraiser. So I'm gonna argue that based upon our conduct you could foresee reliance. You said you'd sell it to the first one for $15,000 you heard from and now here I am and you won't sell it to me, you want $30,000. That's a good argument. So based on her conduct to estoppel you could argue she would rely, that will take it outside the purview of the statute of frauds, otherwise who would go pay an appraiser $1,000 if there's no offer on the table? Not too many people. So that's an argument to show that we do have a way outside the purview of the statute of frauds to make the contract enforceable.

Some people ‑‑ another issue people brought up here was a mistake. And I want you to have a good understanding with a mistake Seller did make a mistake. He priced it wrong, but that's seller's problem. Mistake will not get Seller out. You as to the Seller pricing the item sorry. Even though you didn't know true value that's not going to relieve you responsibility doesn't work that way.

Going through my checklist no other defenses. I know I can go to breach.

When Seller said you're not going to sell the collection for less than $35,000 which I feel we had a contract for $15,000 ‑‑ goes to the essence of the bargain, right ‑‑ so therefore we have a breach. We need to go through specific performance. Obviously the damages the problem there is it's unique. How do you prove the difference between the contract price and the value that you'd have to go pay for it now? That's hard to do because it's an antique. However, versus specific performance since the call did tell you binding Seller to sell, you will have to go through specific performance. The one thing that you are responsible for is how do we get to specific performance? I've told you it acts in equity. Well, you have to show that the legal damages, money, will not make me whole. Why can't we give the difference between the 15 and 35 and go on your way? She's gonna argue it's a rare antique doll collection. You can't get it anywhere. It's a unique good. We usually argue unique in regards to land, in regards to the goods because I can't replace it. Another way that you can get in specific performance is if I have to keep suing you like an [inaudible]. Damages, I'm going to have to keep back and forth to court. Damages aren't (speaking too quickly) let's hear it now. [TECHNICAL DIFFICULTIES].

Those ordered to get specific performance and that's by showing inadequacy of legal remedy. You do need to show inadequacy. In this exam, we're going to argue uniqueness of the chattel. Buyer can't go out and buy this same collection on the market based on its uniqueness so the issue is should the court who's acting in equity force the Seller to turn over the doll collection? Since she's the one that placed the issue in regards to the offer and placed it on the table, why shouldn't they force her to have to go sell it? Because, again, otherwise why'd she place the offer there in the first place? Most likely Seller will have to sell this to the Buyer and there's an enforceable agreement between the parties.

Before I go over the answer, couple things I want to point out issues that were missed such as the option and firm offer. I hope you have a good understanding why that comes up. I saw issues in regards to the acceptance. They're two separate acceptance. Don't lump them together. There's a difference between them; agreed? So you want to break that apart. Modification. Remember, with modification you have to see a contract was formed. Once it's formed, then you can look for modification. The contract wasn't formed yet so you can't argue the modification. As I pointed out to you in regards to the mistake. You made a mistake of value, too bad. Did you want relieve you of responsibility.

The other issue I wanna make sure you understand, whenever you see the mailbox rule at issue, talk about the validity of the acceptance first and then the mailbox rule. The mailbox rule only applies to if you have an acceptance when is it effective? Really two separate issues. If you don't want to write them as two separate issues, it's fine. First paragraph, show acceptance, second paragraph then go through the mailbox rule; that's fine. No combining of issues.

Look at the actual model answer. See the question, see the issues. The first issue I address in regards to the U.C.C. You'll see on my model, too, I put was an enforceable contract formed binding seller to sell the doll collection for $15,000? Discuss. Actual exam I would never do that. I would headnote in regards to my lawsuit. Not going to headnote the actual call. If I go back to the exam and they have the call numbered I will number No. 1 and then put my headnote. But in this exam they don't have it.

Now, remember, you're going to take the exam in chronological order. I don't know why people don't do that in contracts. You have to. So your inner checklists are very important. We'll dealing with the U.C.C. Transaction in doll collections so U.C.C. applies. Get in and out, they gave it to you. As to merchants, you'll have to talk about Seller as well as Buyer. Seller inherited the collection. She doesn't deal in goods of a kind. I found Buyer to have merchant to be a merchant. That doesn't change the problem. Absolutely not.

In regards to the first big issue in regards to the offer. If you go back, look how much I spelled out factual‑wise as to the terms of the offer, but it's not worth a lot, but I have to do it so do a good job on the first couple pages; this is where they make a determination of where you're going to pass or fail. Don't one‑line something. If you're running out of time near the end, different story. Not at the beginning. Never. This is where they're making the determination about you.

Next issue I went through, option. Again, the option needs to be supported by consideration. Remember, I told you this could go either way. So you could find in regards to it was supported by consideration because paid the appraiser or not. It's up to you. But CYA yourself and continue. That's a gray area isn't it? Why? Because the option was in the offer prior to. I didn't pay at the same time, I went from one date to September 3rd and obviously she wrote the letter on September 1st and that's how I read the facts. It's ambiguous. I want to continue just in case. That's why I went through the firm offer but, again, seller's not a merchant.

Then to my issue in regards to was there a rejection ‑‑ was it a timely rejection versus in regards to your acceptance. Acceptance by telephone call versus by buyer's letter. You would have to do both. I would recommend for you to separate them out. Two separate issues, two separate conducts. Then let the reader know what's the issue? Hit that element hard. You have your mailbox rule, going through revocation, consideration, then statute of frauds. Now, with the statute of frauds, the other thing I want you to be aware of always look and see if you can argue sufficient memo which most times you can. A lot of times it fails. It doesn't. But it has to have essential terms and the document needs to be signed by the party to be charged. But you cannot use the writing of the original offer to satisfy for the sufficient memo. So I want you to make sure you understand that.

Then your breach. I went through damages. Don't feel you have to. Then went through specific performance. I want you to study a little bit more. I'll get more closer to the end of this mini series to give you an idea more of what they're going to test because I haven't looked at all the essay questions from the previous exam. That specific performance I don't think it's tested on last bar. They like it because you buys don't know it so I do want you to get to know and play with it. Look at some exams. Go to Taft's Web site. Go to the prior e‑classes. Look to remedies. You don't need to know all those remedies, but you'll see how specific performance is written in those exams for contractual remedies because it deals with contracts, remember? Doesn't deal with tort. The terminology for tort would be an injunction. So keep that straight. With contracts, to enforce it to bind it it's specific performance.

The other thing is, look at your model answer and see how it's laid out ‑‑ my model answer. The reader can jump to what they want to go to, they can see it, it's concise, I've got good headnotes, I indicate what I'm addressing, which acceptance I'm under. Don't let 'em guess because that's gonna hurt you. We don't want them to be lost to where you're at. That's important. And I see that a lot of times people stick in an argument here. This doesn't make sense because it's under the wrong issue. Don't want to do that.

That's this contract exam in a nutshell. Anybody have any questions before I do a couple multi states on this essay question? It's a good one to review. They're tested similar with a doll collection an antique doll, several times on the baby bar. So I like familiarity. That kind of breeds success.

Any questions for me? So hopefully you have a good understanding option versus firm offer, the two issues of acceptance and your issue of statute of frauds. Those are worth points so I want to make sure you understand those. Carry through your checklist before you commit to writing the exam run your ‑‑ when you do your outlining go back and run everything through your checklist. You don't wanna miss that. Big issue that'll hurt you. Pay attention.

Let's go through a couple multistate questions. What I find in regards to the multistate questions, love 'em or hate them. Break it apart. Use your checklist. I don't care the subject matter. Break it apart by the checklist because that's gonna help you. You've got to narrow it down as to they're testing the issue of formation. What within formation are they testing? Let's say you narrow it down to acceptance. What within acceptance are they testing? You have to break it apart that much. So you've got 32 and 33. Let me go do the first ones ‑‑ looking at my time. I will do the first two that someone sent me then jump to 32, 33.

First question here was question No. 1. I have seen this question many times on the multi states, and I think you messed it up with how they twist it sometimes. Wait a minute, I remember [TECHNICAL DIFFICULTIES] (reading from handout). He wants to get married. (reading from handout).

Well, is there a bargain for exchange here? Yeah, giving up my right to get mar rid many exchange for ‑‑ (reading from handout).

It says (reading from handout).

Should they have to pay the $1,000? The answer is yes. This is testing consideration and remember, it has to be bargain for exchange of a legal detriment. Did you give anything up? And you have a legal right to get married, and he gave that up in exchange for that money. So D is your correct answer it's successful because it was supported by consideration. Now, another way they test this, actually, is that they'll give you that the uncle if your father passes away then I'll jump in. Then it's a different problem; right? Or they'll test it in regards to something illegal not taking drugs; right? Which that is not valid consideration. Those are the two ways you see besides this way coming up. You have to pay attention to the facts and break that apart.

You had a question on 32. Based on question 31 so here we go. It says (reading from handout). She's making an offer for the paintings. (reading from handout) signed, Anna. (reading from handout). Is that a modification and is that modification valid? (reading from handout).

Let's jump to question No. 32. Assuming for the purpose of this question only that... (reading from handout). Which of the following would be as most effective an argument in support of the action? If you look at the call of the question we're trying get Anna out. What would be the best way to get her out? Well, go back and look at 1 through 29. (Reading from handout) look at our options (reading from handout). B, true. But was there a revocation? Offer's going to be offered for a reasonable period of time so that's not gonna help Anna. (Reading from handout). Let's go back and look at August 2nd. She said she accepted your offer to sell painting Number 30 for the $2,000 so the only thing she accepted on August 2nd was for the one painting so the rejection of the rest that's a good argument. D, the (reading from handout). We know they weren't because we see the cover letter basically had all the terms. So the best way to get Anna out of this deal is what? Showing that Delia's telegram of the second was the rejection of the remaining 1 through 29 paintings. Always pay attention to the call 'cause they're asking you what's your most effective argument? We are trying to get Anna off the hook. So always pay attention to the call of the question.

Question 33 on March 1st (reading from handout). We see installation we see this is a service contract. (reading from handout). I might be thinking time of the essence (reading from handout). This is the trick. Buyer of the party without the other party's written consent. What do you know about assignments? The courts like assignments so they're allowed to be assigned even if the contract says you can't unless it's written explicitly stated that you cannot the contract will be null and void. We know if he assigns it's valid. (reading from handout). Which of the following (reading from handout)? I hate those. But what are we looking for? So what is what? So you have in regards to on March 15 Johnny sold his house to Hank assigning to Hank his contract with Chad. What's the action against the defendant? A, Chad finished the job in a workman‑like manner. Won't pick that answer. Did not receive payment. Chad instituted action to Johnny for payment. Good answer? No. Chad finished ‑‑ B ‑‑ the job (reading from handout) but did not receive payment Chad instituted an action against Hank for payment. Again, in regards to the least likely he can go against Hank for payment. (reading from handout). That's not gonna help him. That's least likely to be successful because the contract's [inaudible]. Out of luck. D, (reading from handout). It switched on you. Instead of Johnny instituting the action (reading from handout). He has that right. Assignment's valid. So the plaintiff's least likely to succeed in which Chad earns and Johnny instituted an action against Chad for breach of contract, that's your best answer choice which would be C.

Remember, it's tricky ‑‑ with assignments unless the language specifically states you cannot do this or we have no contract, contracts are assignable. Courts like the freedomability of contracts in regards to being assigned so you've got to pay attention to that because they try to mess you up with that by putting that express provision. You believed the provision was enforceable and it's not. I want to make sure you understand that. Okay?

All right. Any other questions? So we've done torts, contracts, we're next going to do criminal law. What I want to point out to you next week we'll be sending out the crim law. On September 26th ‑‑ next week. Obviously I missed a way being sick so I'm trying catch up because I want to make sure I get to the most current baby bar questions and I want to give your time to prepare for the actual baby bar. Next week Tuesday the 24th we'll be meeting as well as Thursday the 26th. I'll be sending you emails so you're prepared for. You've torts and contracts. Please start doing multi states. The more you do, the better you're going to accede. If you can only do ten a day, it's ten more than what you're doing. You've got to start doing those, and understanding the concepts, and learning from that. That's important so I want you to start working on that. Again, on the weekends, start issue spotting and writing your exams. October is gonna be faster than we know it. We've got to really baton down the ‑‑ batten down the hatches.

Okay. You guys have been great. If you have any questions while you're preparation, feel free to shoot me an email at jolly@taftu.edu. I'll be happy to help you in any way I can. All right. I wish you all a good evening and talk to you next Tuesday. Goodnight.

[END TIME: 6:59 PM]