Taft Law School

Electronic Classroom – Baby Bar Mini-series

09/24/19 6:00 ‑ 7:00 PM

>> INSTRUCTOR: Good evening, everybody, and welcome to tonight's baby bar mini series. We'll be starting in approximately one minute. Thank you.Good evening, everybody, and welcome to tonight's baby bar mini series. Our primary focus will be on the subject matter of crim law. Let's get started. These sessions are recorded so if you want to go back and listen to them you can log into the Student Section and go to the baby bar mini series. Everything's there for you. If we handed out a checklist, MBEs, essay question everything's there.

Main subject, crim law. One, you should have a crim law checklist just like torts and contracts. I recommend it. That helps you under the pressure of the exam to identify issues. Other thing sometimes we see a fact not sure why it's there. Running it through the checklist will help you find another argument based on looking at it and helping you. It's a good way to identify other issues we weren't thinking of based on the fact pattern.

Also, the other thing about the checklist is your inner checklist. You see your murder. That's your setup. That's how you write a murder exam. It's a good tool and something I want you to go in there knowing. You want a checklist to help you, especially under the pressure of the exam.

This is similar to torts. When you see a fact pattern that's testing crim law, I want to make sure that you go through the facts and make sure the facts support the crime. We have a tendency to get so excited about seeing the crime we don't think about let's see if it's supported based on the facts. Maybe you didn't have the specific intent based on the entry. Make sure especially on the MBE each element is based on the facts. If you have questions, post them in the chat and I'll be happy to help you in any way I can.

All right. Once you look and see if there's facts that support the criminal activity, look and see if there's applicable defenses. Again, run it through your checklist and see if facts support it, such as maybe a waiver issue in regards to withdrawing from conspiracy, or intoxication, whatever the facts support and see if it's something that you can argue. And always look and see if we're imputing liability onto another. This happens more often than you think. How do you impute liability on something I didn't do? How do you impute it onto me? You should be thinking that's through conspiracy or accomplice liability; those are two highly testable concepts. They love conspiracy, and when we go through conspiracy, you're gonna see they love the Pinkerton's Rule. You' so You do need to know it to support yourself.

The first theory we're going to work on is inchoate crimes. Highly testable. They test it all the time on the baby Bar; so it is something you do want to know. It also comes up on the multiple choice questions, so something I do want you to be very aware of. With your inchoate crimes ‑‑ the first we're going to look at is solicitation. With solicitation, you have to have the specific intent to entice one to do an act. A lot of times it's very subtle in a fact pattern. I go up to Joe and I say look, I want to rob the bank and borrow your truck. Could I argue the issue in regards to solicitation? The last Baby Bar, which we will go over next week, you could argue solicitation except Ava wasn't in the call of the question but she did solicit Ben to do a criminal act, but they only asked you about Ben ‑‑ very odd, but that's what they did do ‑‑ so you wouldn't talk about the issue of solicitation. When you read that fact pattern, if you add Ava to the call yes, that's a subtlety that you can see that when she went and approached him saying she's going to take some paintings and she would like him to drive her to the home in order for her to load up his van with the paintings that's a form of solicitation. It's very subtle, as you can see. Remember, with solicitation, you can't withdraw what happens it happens under the common law and if you voluntarily band and ‑‑ the crime then it can be a defense. That's the Model Penal Code. Remember, you are responsible for common law first, then your Model Penal Code. Talk about both on an essay. On a multistate always common law unless it specifies otherwise. Be aware of that. Don't get it wrong, which some of us do because we're busy applying the Model Penal Code when we should be applying the common law.

Remember, too, solicitation merges into the underlying crime. Somebody looked at the question in regards to Thursday for Thursday. The call of the question says what crimes can they be reasonably charged with, bring up the solicitation and then you can tell me in regards to the murder. That's perfectly fine but you would bring it up because that could be reasonably be charged with. If it merges, it merges, but you want to address the issue to get your point value so that's important. So you want to make sure you carry it all the way through and get all the value you can. That's your solicitation. Attempt is highly testable. The problem I see with attempt is students don't always know how to write it. Focus on the elements of the attempt. You have to with an attempt understand do I have the specific intent? So obviously the facts will support what am I trying do? Do I have the apparent ability to carry it out? So if I'm saying that I'm gonna take my Tommy gun and rob a bank, I don't own one could I take a substantial step to do that? Look to the actual facts. You want to make sure whatever I'm saying I'm going to do, have the ability to do so. Of course, after your substantial step, did they have the apparent ability? So you want to look to the actual facts and break it apart. If someone's saying they're going to rob a bank but they have a disability where they can't get out of bed, can they really go rob a bank? They might have specific intent [inaudible] on what they're saying. Did they take a substantial step in maybe they bought all the ammunition and floor plans for the bank but do they have the apparent ability? Obviously not. You want to carry it all the way through and make sure all the elements are supported with the facts before you find attempt. What I see a lot of times is people that say attempted robbery or attempted rape. They will go through attempt but also the underlying rape or robbery. You don't wanna do that. Focus on the elements of the attempt.

The other thing I want you to pay attention to is the defenses. Legal and factual impossibility. These come up all the time on the multi states and students don't understand it. It's not that hard of a concept. So factual impossibility the general rule no defense. So the defendant intends it to commit a crime but facts unknown to that defendant it wouldn't be a crime. The prime example on the multi states you're mad at your neighbor and you decide you're going to shoot them because you're angry. You break in and shoot at them in the chest, in the heart; little did you know, they died of a heart attack an hour earlier. Now instead of murder, because the person's already dead, you're going to be charged with attempted murder. Now the issue is you're going to argue is factual impossibility. It's factually impossible to kill somebody who's already dead, but you had the intent and as the facts you intended them to be ‑‑ you thought he was alive ‑‑ would it be a crime? Yes, it would. So factual impossibility is not a defense. If you intend in regards to steal a man's wallet you reach behind in his back pocket but there's no wallet there. Larceny in this case unless you see force and fear but will factual impossibility relieve you of the underlying crime? No. You believed it to be there ‑‑ they're looking at your mindset. We're going to punish you because that's an attempt. They don't want people doing wrong things. Factually if it's impossible because the wallet wasn't there but you believed it was there, no defense so if you keep that in mind, you'll get it correct on the multi states. Again, it is something they do like to test.

Legal impossibility could be a defense. If the defendant believes the act he's doing is illegal but it's not a crime ‑‑ duck hunting, and you think it's a crime because it's not duck season. Well, it's legally impossible for you to break the law because guess what? There's no problem because it is duck season. So you want to make sure you understand when legal impossibility you bring it up but it's not against the law so what you're doing is fine. It's an odd duck too.

So when you go through your elements in regards to attempt, prove it up based on the facts take a step back see if you can argue legal or factual impossibility. They are heavily testable on the multi states. Then an issue of withdrawal. So how does it work? Once you enter the zone of perpetration meaning you're taking the steps to commit the unlawful act you can't. Under the Model Penal Code, which is very similar to solicitation, if you take steps to voluntarily abandon the underlying crime, it would be a valid defense. Remember, too, just like solicitation, attempt merges into the underlying crime. You can't charge me with attempted murder as well as murder. Not for the same person. If I shoot at you miss and hit Debbie and kill her they can charge the attempt for you and the murder for Debbie. If I shoot at Debbie, I can't charge me with attempted and then once the bullet hit and killed her, murder as well. Attempt does merge so you want to make sure you understand that.

The key thing I want you to remember with attempt because it's such an issue that students don't do well break apart the elements of the attempt and go through it. The other thing I want you to pay attention to this would be for the multi states do not focus on the underlying crime. So a lot of times they'll give you attempted rape. What's the mens rea for attempted rape? A lot of you will take general intent the answer is no. You focus on the intent. It's specific intent. So don't focus on the underlying crime because you'll choose a defense that won't work or overlook something. I want you to pay attention to that.

Now the biggy: Conspiracy. Conspiracy is huge. It's tested all the time. Those of you taking the Baby Bar guess what? I would be prepared for conspiracy. Guess what? It was on the last Baby Bar as well. With conspiracy, what are we looking at? Well, was there an agreement? Was it between two or more? Did you agree to do an unlawful act? If the answer is yes, then we have a conspiracy. What are they going to test? Agreement. They like to test the agreement so even on the last Baby Bar, when she questioned and asked Ben if he would do this, he said he's gonna think about it, then he picked her up and drove her to the house where she was going based on this conduct, so you would bring up the fact there's two issues there which when we go over it you'll see the fact he said he'll think about it at that point in time there was no agreement. Then when he showed with his truck on Saturday and picked her up and drove her to the house to get the paintings, based on his conduct now we have an agreement. So they like to test the agreement. So you can have an agreement expressly you can have an agreement by your conduct you can have what's called a facet agreement, a feigned agreement. If you're agreeing with a police officer still find an agreement. A unilateral agreement. So I want to make sure you understand that that's an element they like to test because they know we're not that strong in that area. Two or more is quite simplistic. Unlawful act, we all know our crimes so we know what it is so the agreement is the element with conspiracy they like to test.

Another issue they like to test, again, on the last Baby Bar, can you withdraw. Majority rule, you have to communicate ‑‑ which is common law ‑‑ all coconspirators. If there's just two, you and I, I have to tell you I'm withdrawing. But remember this: It has to be timely. That was the issue on the other exam. I can't be committing the actual underlying crime and say oh, by the way, now that I know I'm getting caught, I withdraw. Doesn't work that way. That wouldn't be timely in that case. It has to be effectively communicated to all coconspirators and timely. Versus the Model Penal Code. Again, you've got to take steps to thwart, Involuntary banned and time itself. That's the modern Penal Code.

What's the effect of the withdraw? If I withdraw from conspiracy can I still be charged with the conspiracy? The answer is yes. Again, they don't like people agreeing to commit unlawful acts. So based on that, they're gonna punish. If I can show all the elements of the conspiracy coexist you'll be charged with the conspiracy. The effect of the withdraw is to release you from further in furtherance of that conspiracy, further liability; right? So you want to make sure you understand that. What's a prime example? Well, let's say I agree with you to go rob a bank. On my way home tonight, I get pulled over and the police officer realizes I have ten tickets not paid for so they throw me in the slammer. I don't show up tomorrow with you to rob the bank. I'm going to say withdrew because I didn't show up.  Well, was there an agreement? Were there two or more? Was it an unlawful act? Yes. I will be charged with a conspiracy. But I wasn't there. Doesn't matter. And I didn't effectively communicate to you that I wasn't going to show up.

If I got thrown into the slammer and said look, I won't be there because and you're on your own that would be an effective withdrawal but I would still be charged with the conspiracy. Very testable.

The other area they love to test and students, again, I don't know why don't do well on this, Pinkerton's Rule. What's so hard about Pinkerton's? What it's saying is that each member of the conspiracy whether it's two, three, four, you're gonna be liable for all the crimes that are committed that are foreseeable and a natural probable result and in furtherance of that conspiracy. So you have to take a step back and say what does that really mean? So if you, I, and Mary agree to go rob a bank, I sit in the car, you two rob the bank, I see the police coming and I drive off and off I go, you come out and start shooting at the police and kill a police officer, now we're being charged with a bank robbery, probably burglary as well ‑‑ modern law burglary ‑‑ as well as the murder of the police officer. Well, I didn't do anything. That triggers Pinkerton's because remember, someone else did the conduct, you're trying to impute it onto me. Now what do I need to show? Well, is that a ‑‑ based on the conspiracy and what we agreed to robbing the bank ‑‑ a foreseeable, natural probable result in furtherance of our agreement? Yes. If you and I agree to rob the bank we'll take any steps we can to prevent capture. So the fact that he'd shoot back at a police officer is something that would be a natural probable result of our agreement. I will be charged through Pinkerton's with that murder. Highly testable you need to know it. It's pretty guaranteed to be there for you in some so know it.

Wharton's rule, not very testable. People like to pick that answer I don't know why. Maybe they don't know what it is, but Wharton's rule, all it's saying is it takes two to commit the crime so I can't charge you with conspiracy because it took two to do it in the first place. Dueling, bigamy, adultery, stuff like that so if it's illegal to duel in the public streets and you and I agree to duel in the public streets, they cannot charge us with the conspiracy of dueling and dueling because it takes two to do the unlawful act. That's all it is. Is it very testable? No. It is an answer choice on the multi states and usually it's wrong because people say I've heard of Wharton's rule, I know what it is so they pick that as the answer choice. No. Don't do that. Just because it's familiar to you unless you know what it is, don't ever pick that as an answer choice.

Remember, merger applies to solicitation and attempt. It does not apply to conspiracy. Like I told you, conspiracy stands on its own so if you commit the act of conspiracy even if you withdraw you're going to be charged with conspiracy. Now, what do I want you to take back with conspiracy in know it. The agreement's highly testable. They test withdraw. And Pinkerton's. So knowing. They were all on the last exam. I've seen a couple example exams. Did you indicate that to the reader or did you go right through it? You're playing a game here. When he said I'll think about it you want me to tell you there's no agreement at that point which we all should know but the examiners don't know you know it. Do that form of communication and break it apart important. Again conspiracy's highly testable.

Third party liability what comes up with vicarious liability and accomplice liability. Vicarious, haven't seen that in a long time. Employee, employer, a bouncer at a bar that you hire, you would know; right? A hit man that might be employer employee. You'll know based on the facts so it doesn't come up too much. Employer just like in torts can be criminally liable for the criminal acts of another party through vicarious liability. If I hire somebody ‑‑ obviously a bouncer at a bar ‑‑ and I want you to throw people out who get intoxicated and I said make sure that you hit them really severely so they know never to come back in my bar and do that, and they hit somebody too hard and give a concussion. Do you think I'm responsible for that as an employee? Yes. How about as an employer? Absolutely through vicarious liability. Too many facts generally they have to tell you so that's why I feel it doesn't come up a lot.

Also, you have your accomplice liability. Now, what is the difference? Think about it. What is accomplice liability? Let's look at that first.

An accomplice is one who aids and abets in the commission of an unlawful act. What's the difference between accomplice liability and conspiracy? An agreement. So accomplice liability you don't have anything to grab onto to show there was an agreement. I can be an accomplice. A lot of times we're in the store and we notice there's no clerk at the cash register. I look at you you look at me I open up and I make sure no one's around. That's a form of accomplice. We didn't agree. They didn't tell me I winked or anything. That's one that's aiding or abetting in regards to the criminal activity.

Common law we divided accomplice liability into sections: Accessory before the fact, accessory in the first degree, accessory in the second degree, as well as an accessory after the fact. I never classify unless I have to. What does that mean? If they tell you somebody who gives you the plans to the bank, but they're not going to participate, they're telling you that's an accessory before the fact and they're trying to get you to communicate as to are they going to be responsible for the acts that happened after that as an accomplice? And the answer is yes. Versus principal of the first and second degree yes, they're going to be responsible. Versus an accessory after the fact that somebody who comes up after the criminal activity's occurred and they're probably trying to hinder your arrest by sheltering you or something to that effect. Well, at that point I'm only responsible for once I connected. Became an accessory after the fact to protect you from being arrested. I'm responsible for acts thereafter, not for the original act or robbery or whatever it is. Accomplice liability remember, too, whatever the principal in the first degree does, the principal in the second degree can be responsible or even accessory before the fact. Why? If it's foreseeable based upon their actions.

If we're acting in concert and decide to rob somebody and the gun accidentally discharges and kills somebody doesn't matter it's a foreseeable result based on our wrongful activity so we will be responsible, both of us, the principal of the first and second degree even though first degree's the one who discharged the gun as an accomplice for that murder.

As you can see it's very similar to conspiracy except for the actual agreement. Make sense? So it looks like my IT guy's playing a game with me and putting an extra slide that doesn't belong. That was torts.

Jump to murder. Highly testable. What I see a lot with murder, start off the with the murder's a killing with malice. Look at your malice and see if there's anything to argue. If I could argue all four ways to show malice, should I? Absolutely. So if I take a gun to rob a bank and the guard's starting to pull his and I shoot him dead, could I argue intent to kill? Absolutely. Could I argue intent to cause great bodily harm? Wanton and reckless? You bet. Shooting's wanton and reckless. And I also could argue the felony murder rule because I'm in the commission of a bank robbery.

Those all good ways to show malice that's important for two reasons. Point value's one. The other thing when I look at my malice how strong is it? That's gonna tell me how far I have to go on my murder. So in essence the one example I just gave you going through all four where do you think this game's going to stop? Probably at first degree, isn't it? Definitely. Probably not going to talk about second degree, voluntary manslaughter, involuntary; my malice is too strong. If I see malice let's say based on wanton and reckless conduct so driving 100 miles an hour down a school zone hit a child. Is that wanton and reckless? I would think so. You're speeding. Could that be equivalent for criminal negligence for voluntary manslaughter? Need more facts. In regards to an example for my malice just being based on wanton and reckless ‑‑ I call it it's a jury call based on their testimony ‑‑ if we're going to convict you of murder in the second degree or involuntarily. I know in my essay exam I need to address involuntary manslaughter. I will have to get there. So it's important, again, to look at your malice. Again, that's gonna dictate.

Remember your felony murder rule. It was tested again. They have been testing the special or the red line view. Didn't this last Baby Bar but you want to know both. With the felony murder rule the key thing to remember, the death must occur during the perpetration of inherently dangerous felony so burglary, arson, rape, robbery, mayhem. All this stuff is what you need to look at and if the commission of the killing occurs during that, obviously the felony murder rule will apply. Something's inherently dangerous. Okay.

Again, that's highly testable.

It has to be, remember, within the res gestae so that means you haven't reached a place of safety, and it can't be part of the act. In essence if I go in to murder Mary and I break down her door and shoot her dead could I argue in that case the burglary in regards to murder of Mary? They're not gong to use that; it's got to be something independent of the murder. If I went there to burglarize and then she was there and shot her dead, that would be independent so make sure you look at it and make sure it's independent.

Another issue which a student did actually ask about is causation for crim law. With causation what you need to understand a lot of times we don't talk about it in crim law except for in murder. What I do depends on my timing. If I'm running out of time and too many issues and it's factually not really at issue ‑‑ you shot me dead but‑for shooting me dead I wouldn't have died. It's foreseeable when you shoot me I die ‑‑ and running out of time, I'm not going to talk about it.

You will know when it's a big issue. They will give you something saying I've got to really make this argument. Something during the course of whatever wrongful activity you were doing that caused the murder or the death [inaudible] proximate cause of it. A primary example would be rob a bank, police are called, I jump in my car to get away and run into a utility pole that falls on someone and crushes them dead. You would make that argument in regards to the felony murder rule was I still in the res gestae because I'm giving chase actual versus proximate cause is that not foreseeable to cut myself off liability? Those are the facts you can tell that put it at issue.

After I do that, I always type it. Can I get it in first or second degree? With first‑degree, remember, it's the killing with specific intent with premeditation deliberation. Or poison, bomb, ambush, torture, or felony murder rule. What I do is I headnote first degree and I look at those three choices and see what the facts raise. Last Baby Bar, oh, I'm going to argue felony murder rule so I point out to the reader first‑degree murder can be shown by felony murder rule and I go right to that analysis. Why? I don't want to go through all three of them because it'll kill my time especially when they're not at issue. If the person has reached a ‑‑ if they're not ‑‑ what we see the is if you're in the res gestae of the criminal activity you're accountable for whatever occurs. If you reach a place of safety is what we call it ‑‑ you're not within the res gestae ‑‑ it's going to cut off that liability. If I commit a robbery and they're giving chase but I reach a place of safety and the police don't know where I'm at, I'm calm, cool, and collected yet the police are running around seeing if they can find me and 20 minutes later they crash their police car into somebody else sorry not accountable because I've reached a place of safety. They play with you on that with some clever essay questions on the Baby Bar such as you're driving slowly after you robbed a bank. They want you to that I can that argument. Police have no idea as to my site am I safe at that point? There's your argument. So on an essay a lot of times they kind of tweak it and put it at issue to see what you can argue. That's been tested several times so I hope that answered your question.

In regards to your discussion with first degree, again, grab on to which it is. Felony murder rule has to be independent and it's inherently dangerous felonies. The other issue that falls under the purview of first degree which they've tested in the last October and the previous June, what's called the special felony murder rule or the redline view has been tested. How do I know that's triggered? What's that mean? When an intent party does the killing. Somebody else who's innocent like the security guard, customer, does the killing and the issue is can I impute it onto you as the felon, the wrongdoing? In common law, yes. Modernly, no. Modernly, it says it has to be in your own hand so if I rob a bank and a security guard pulls out his gun and shoots at me but hits a customer they won't impute that customer's death onto me as the felon.

Second‑degree killing it's not first, it's second basically done with depraved heart. Okay.

Then of course after that, if I classify it first or second degree I look for defenses. Don't forget your defenses. We have a tendency to overlook them. Could I argue self‑defense? Remember, maybe you look at the facts you don't have a right to defend yourself because there was no eminent threat. Don't dismiss it in your mindset; bring it up and tell that to the reader. You can use reasonable force which can escalate to deadly force if I'm threatened. An eminent threat I'm going to be hurt. I can preserve my life in that case.

Do you have a duty to retreat if you're the aggressor in common law? Absolutely. If I'm the one who goes to burglarize the house and the homeowner comes down with a gun I pull mine and shoot him self‑defense? No. I was the aggressor. I have a duty to retreat to gain my right back for self‑defense. You cannot be the aggressor and use deadly force under the common law or the Model Penal Code.

Defense of others. Remember, you can use reasonable force to defend another. The majority rule is basically you step in the shoes. What that means is did that person have a right to be protected in the first place? You came up upon a scene where you thought somebody was molesting this woman yet it was an undercover police officer arresting her. Step in the shoes. Oops, got a problem. She didn't have a right to be defended. Versus now the law's more liberal so if it's grounds for a reasonable mistake. Would a reasonable person coming upon that scene think the same thing? If yes, I've got a defense. On an essay you'd like to do both. That's your defense of others.

You also have crime prevention. Again, can you use deadly force to prevent a crime? No. You can use non‑deadly force. The only way you can get away with deadly force is eminent of threat or seriously ‑‑ meaning threat of death, or serious bodily harm. And defense of property can't use deadly force unless they're in your home and you feel you're a threat in yourself. Let's say someone's trying to steal your car, you cannot use substantial force, deadly force in order to save your car. Sorry. You can only use reasonable, not deadly force. So you cannot use deadly force.

Now, with the defenses what I want you to keep in mind, defenses singular or plural? Look for two or more. A lot of times they come up in pairs and we have a tendency to overlook it. Self‑defense, maybe I can argue defense of others, or maybe I can argue crime prevention. Run it through your checklist because it's very rare you're gonna just see one defense because it's very rare you'll see just one defense so I want you to break it apart.

Intoxication, the only thing I want you to remember there, it's multistate if anything. It comes up far and few on the essay question, but voluntary intoxication only negates specific intent. Robbery, burglary, larceny ‑‑ not rape ‑‑ versus involuntary obvious negates general or specific intent. You also have your infancy. You'll know that based on the facts. In regards to the child can they commit the criminal act?

Another area I want you to get to know is insanity. Insanity is tested on the multiple choice. Know your rule. Memorize them. You have your irresistible impulse, the Durham, the Model Penal Code, and the M'Naghten. What's the difference? What all of them have in common has to be your mental defect; that's the one thing they have in common. Versus the irresistible impulse is because of your mental defect, something overcomes my free will and I don't have the control myself. You'll see that in the facts.

The Durham Rule it's a product of my mental illness. The Model Penal Code I don't have the substantial capacity to comply with the law. The M'Naghten I don't understand what I'm doing's wrong. So as you can see, if you know these you'll get 'em right. If you see this issue on an essay, you will do all four because you will not know what jurisdiction you're in. Versus on a multistate what they'll do is test you and combine some of these and say, okay, will the defendant get off based upon the insanity defense? Due to his mental defect and the product of his mental illness, he lacked the substantial capacity to conform. I've just merged two rules together for you so you've got to know your rules because that's what they're going to do. They're going to pull part from one rule so the Model Penal Code and part from M'Naghten. If you know the language, you'll probably see at least two on your multiple choice so you want to get to know. Remember, on an essay, you need to do all four versus MBE, pick one that's going to work.

Once you've gone through your murder, we talked about malice, went through causation, looked to first degree versus second degree. Any way to get off on defenses? Next thing you ask yourself is can I mitigate to voluntary manslaughter? You mitigate in two ways. You show adequate provocation, loss of mental equilibrium and intime to cool. What's adequate provocation? Someone cuts me off on the freeway? Not adequate provocation. It's something that a reasonable person would be upset about. Find your wife's committing adultery. Having an affair on you. That would be adequate provocation. Did you have sufficient time to cool? Look to the timeline. Reasonable person lose their mental state? Mental equilibrium? The other way it comes up is an imperfect defense. Not imperfect self‑defense, it's an imperfect defense. So self‑defense, defense of others, crime prevention, any of those if I believe I had the right to protect and I was wrong, I can argue an imperfect defense to mitigate to voluntary manslaughter so I want to make sure you pay attention to that. So you have provocation versus an imperfect defense. It is an area they like to test so it's something that you want to be prepared for.

There's a good exam out there where the guy came home sick from work and his wife was having an affair ‑‑ laid on the couch for three days when he felt better, he remembered when he saw. He went to the ammunition store, got some ammunition for his gun and went to his next door neighbor and said I know you were sleeping with my wife. His neighbor said no, I wasn't. Well, when he first came home and saw what he saw that's adequate provocation, but I told you he stayed on the couch for three days so you would address that issue and say he had sufficient time to cool off. The fact that he went to his neighbor's house and accused him and said no, he lied to me, would that be adequate provocation? The law says no. Words alone are not enough. So you would bring up both the instances I just told you and break it apart.

I'd have to look at that case. I don't have all the facts and which one you're referring to. Again, remember, too, police officer might have a viable defense. Remember, some of the stuff in true life shall I say, set by statute itself. Okay.

Everybody have a handle on your voluntary manslaughter? Involuntary, again, basically criminal negligence or misdemeanor manslaughter. One thing I learned during my prep for the Bar I always missed murder with murder in the second degree and involuntary manslaughter. Why am I missing these? So it's factual. So you need to pay attention to the facts. If I tell you I'm Driving 100 miles an hour in a school zone and a boy darts out at night and I run him over and kill him, is that murder in the second degree or involuntary manslaughter? Well, because I said it's at night, it's involuntary manslaughter because the kid shouldn't be at school. Versus if I told you it was during school hours or lunchtime or when they just got out, then that would be murder in the second degree so it's a factual issue. The facts will dictate so you want to break that apart.

That's the same thing you should be seeing on the multi states fourth of July people shoot guns in the air. Where are you? Desalated area? Or are you in a popular New York City? It's going to change on you as to what crime going to be charged with whether murder in the second degree or involuntary manslaughter. Keep that in mind.

Another big area that you need to know, theft crimes. Huge. All over the multi states. They pop up all the time on the essay so you want to get to know them. You'll see I have a mnemonic up there, PITT. This is what I always ask myself when I'm doing multi states because sometimes they can mess me up with is it really larceny by trick or false pretenses? Did you obtain actual possession? I have the object in my hand. That could be larceny. That could be false imprisonment, that could be embezzlement. Did I get the actual interest in the on the? You gave it to me, looking at embezzlement. Did it get title? Looking at false pretenses. What time? Remember, the transfer and intent doctrine can go back on you and you thought it was embezzlement but it turned out to be larceny because the time you said you wanted to borrow it and I gave it to you and you decide to keep it, then of course the whole story you told me at the beginning wasn't true in the first place. You weren't taking your mother to the doctor; you were driving my car to Vegas and going to live there. That's going to change things so you want to break it apart and ask yourself again, is it possession, interest, title, time in order to determine whether it's larceny, larceny by trick, false pretenses, or embezzlement. Remember, with false pretenses you get title. Subtlety prime example tonight I leave and go to the grocery store and I want to buy lobster and I only have 10 bucks in my wallet; lobster's 22 bucks. I take a steak label off the package and put it over the lobster label and go pay for it and off I go. Have I committed a crime? Sure. What have I committed? That, in that case, would be false pretenses. Once I tendered the money, title transferred so understand that. Once I tendered the money, title transferred so it would not be larceny by trick. Sounds like it might, but the title transferred. Do you really have possession versus the actual title? If you have the title, the better answer choice is larceny by trick. They know we don't know these strongly. That's why I think they test them heavily on the multiple choice questions so you do want to break them apart. Again, I do want you to be aware of the transfer and intent doctrine because it works for all of those ‑‑ larceny, larceny by trick, false pretenses, and embezzlement.

The other theft crime you should be very familiar with is robbery. Same thing as larceny except for force, fear, intimidation so you'll know based on the facts. Look to the facts. I've seen a multistate where a purse snatcher's going to grab a purse and the lady had it in the basket on the back of a bicycle. He grabs it and off he goes. Or they tell you he catches his foot in the back wheel of her spokes. Again, you snatch the purse so that's not an argument for robbery; that's more an issue of larceny.

If he pushes you off the bike and takes it, argue that's a robbery. You'll know based on the facts.

Another sleeper that comes up every once in a while on an essay and it's worth some points is receiving stolen property. If a party receives stolen property with the knowledge ‑‑ they have to have knowledge that it's stolen ‑‑ they're culpable. If I have no knowledge, can't charge me with it. Odd, but that's the case.

Couple biggies. Burglary. Remember on an essay with burglary you're going to go through common law first then if it fails go through your modern law. Common law first, then if it fails, then obviously go through your modern law. If someone lets me borrow your TV you're not home and I want it back and go inside to take it back, what are you thinking? I'm thinking burglary which we're talking about now. Was there a nighttime? Yes. Breaking? I forced my way into your home. Was there entry? Sure. Did I have the specific intent to commit the felony therein? My TV, so no. You want to break it apart so in that case, can't have larceny in my own property so on the rule as you know, no crime. Crime set by statute such as trespass, stuff like that, you don't need to know.  based on what your knowledge ‑‑ and that is a true multistate ‑‑ there's no crime there because it was mine and I didn't have the specific intent to commit a felony therein.

The one thing you want to understand with burglary they like to test that specific intent to commit the felony therein because it has to exist at the time of entry. They'll tell you that I'm driving along a mountainside in the middle of nowhere, car stalls, can't get it started. I see a cabin off to the left, run over there, knock on the door. No one's answering so I break in, shut the door, and sit inside, burn some wood to stay warm because it's cold and then decide when the snowstorm ends to leave and see a pocket watch there and I pick it up and leave. Have I committed a burglary? The answer is no because I didn't have the intent at the time of entry. I wanted shelter. They'll give you facts like that. The only thing I committed a larceny of taking the watch. I guess you could argue maybe larceny of the wood but argue necessary in that case too. As for the watch, no. Pay attention to the facts and break it apart so you get your full point value and let them know you understand. So the specific intent to commit a felony therein is one element they like to test.

The other in regards to be aware of is the breaking. Is it a constructive breaking? On this last Bar, she had a duplicate key. Is that really a breaking? You had a key. Good argument is there was no breaking. So therefore there's no common law burg. You'd fall back on your modern law burg. Remember, it has to be trespatory entry. Any structure, any crime. One thing that people don't realize, if you decide to go steal something from Nordstrom's and go in there and steal a shirt and leave, is that a burg? Yeah, it is. Was it a trespatory entry? What they find in a lot of jurisdictions if you enter with the intent to steal, you viciate the owner's consent so your entry was trespatory. It's a structure and you had an intent to steal, commit larceny so you can go down for a modern law burg. That's what you'll see a lot of people with theft like that are charged with burglary modernly because that is a felony. Higher jail time, higher penalty.

Remember, with your burglary, common law first, then if it fails fall into your modern law. When you do the questions that'll be out to you, look at them and make sure you have a handle on it.

Now, next in regards to issues, arson. What about arson? Well, arson is very testable in regards to common law versus modern law. They like to trick you on it and it comes up on the Baby Bar. What do I mean? Well, they'll tell you that ‑‑ what do I mean ‑‑ the curtains were burnt to a crisp but it blackened the walls. Is that really a burning? It's not. You have to pay attention to the facts they use. The other thing they like to trick you with is you burn down your own house for insurance proceeds. Can I be charged with arson? Not at common law. It's a multistate issue we miss because we don't break apart the elements. You're at home. It's not the dwelling of another. They didn't think about it and they were frustrated didn't understand why they got it wrong. They didn't apply it to common law, not just the burning of the structure like modern is. Remember, on the multi states, you're going to answer according to common law unless they tell you otherwise has to be a felony of another. That's the key element they like to test. Make sense? So I want you to look at that.

When you practice that, too, write out your why. I'll bet a lot of times it's because I applied modern law instead of the common law. On an essay question you would do both.

They've been testing the malicious bushing. A lot of exams where they Inadvertently started a fire. Not malicious. They break into a home with a lantern and they heard a noise and knocked it over and they started a fire. Ran away because they were afraid. Could they be charged with arson? Inadvertently, no malicious even though the house burned down, malicious is not there. They will not be charged with arson.

It's a good crime that they like to test in the MEBs that you want to be aware of. Other crime that is come up, kidnapping. Remember, unlawful transportation of another. Any slight movement. Move you from one room to another, technically a kidnapping. It's been a year now, Baby Bar where I dragged you out of your car because I wanted a getaway car. Kidnapping. False imprisonment. Confining another. Very similar to tort. Assault. Apprehension. Very similar to tort. Intent to accomplish another crime ‑‑ force. Unlawful application. More of a general intent. I don't need the specific intent or the intent of substantial certainty like you do in tort. Pay attention to those because what the examiners are going to do, they're going to have tort language there for you and the call is criminal. Pay attention because then you'll pick a tort answer can you're wrong because of the call of the question. So I need you to pay attention to that and make sure; right? And it's funny because when you look at students' scores you have torts, you have contracts, and U.C.C., as well as crim law. What do you think the lowest score is in? Crim law. Like what? Everybody likes crim law. Not that hard. They're not paying attention to the call. Under the pressure of the exam they're not paying attention and they're missing two, three, four, five. Easy. Can't afford to do that, need to pay attention.

I circle and even sometimes rewrite my call so I'm focused it's in my brain. Again, under pressure trying to beat the clock we forget things too big of a hurry. Normal, but I can't do that or I won't do well on the exam.

Oh crimes you also have too is in regards to rape. So remember, with rape, it's a general intent so be careful. Versus attempted rape. I don't want you to miss that.

Then in regards to rape it's just sexual intern course can you mistake about the intent? Statutory rape is stet by statute. No defense. You're going down. Anything set by statute it's strict liability. Sorry. Can't help you.

Other defenses that I want you to aware mistake of fact comes up on the multi states. Mistake of fact very similar to factual impossibility; right? So even if on an essay you called it mistake of fact versus factual impossibility examiners would take it your looking at the facts. What did you believe the facts to be and if they would make it not a crime, you've got a defense. If the facts as you believed them to be made it a crime, no defense to you. Again, it only negates the intent. If I believe that ‑‑ negates the intent ‑‑ I believe this dog I see walking around the park is abandoned and I pick it up and take it home. Being charged with larceny of the dog. Did I have the specific intent? No. I believed that dog to be abandoned. I would have a mistake of fact to support my larceny P.

Duress eminent threat usually has to be to yourself or a close family member. Cannot be something to the future. If you don't do this I'm going to hurt you next week. They test that way so be careful. Not a defense to murder rather you die first rather than hurt somebody else. Makes sense. They have once in regards to the guy gets mad because he's not allowed into this bar where they're playing music so he goes home and makes a bomb and then pulls somebody off that's in the line and says you're going to throw this in there or I'm going to kill you. The guy throws the bomb in there and it blows up the place and kills people. Is that a valid defense in regards to the murder? Remember, in regards to duress, it's not a defense to murder but the same token he's arguing maybe the arson. It would be a defense to the arson wouldn't it?

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

Entrapment hasn't been tested in a while. I want you to be aware of it. It's a true issue that people overlook. With entrapment, you have two views you must do both views because just like insanity you are not going to know what jurisdiction you're in. You have the predisposed which is subjective. So they're going to look to you as the defendant and were you predisposed to commit the criminal act? No. I never did a burglary before, yet you have a rap sheet of all these burglaries, probably looks like you're predisposed. Versus the objective they look to the police activity. In essence where the police keep badgering you finally gave up I'm going to do the act.

That came up on a case in regards to child pornography they were trying to sell him this child pornography going to the guy's door over, and over, and over, and finally he said I'll buy it because he was tired of answering the door and they kept bugging him every day. That was an argument of the police activity that succumbed, meaning made me succumb to commit the unlawful act, so it was a valid defense in that case so you want to make sure you understand if you do see entrapment we have two views go through both.

A lot of times you'll find entrapment's not going to work but still bring it up. Another defense diminished capacity you lack the mens rea. They'll give you something in the facts in regards to you're hallucinating, took too many drugs, you're drunk, something to that effect. Usually when I do see intoxication, I do talk about diminished capacity. If I see insanity and go through all four I will talk about diminished capacity as well. Still your mental impairment, your mindset. It's a good defense to look for in that case as well.

That's your crim law in a nutshell. Good subject, a good way to do well just start practicing your multi states and your essays and your issue spots because it's a good subject. It's not very convoluted, not hard as long as you're applying your tools. Remember, this Thursday we'll be going over the crim law essay sent out to you with Angela, Brian, and Carter. Two of you have written it. Write it send it over and we'll take a look at it. Be doing that at the same time on Thursday which Thursday's the 26th at 6:00 o'clock so we can catch up on our schedule and then the following Tuesday which I believe is the ‑‑ October 1st we'll be going over the previous Baby Bar which would be the June Baby Bar exam of 2019.

So if you're saying the essay questions versus the multi states, so in essence I always want to focus on what I call my weaknesses. I'm not going to abandon everything. Still going to look at essays. I'm weak in multi states. Work harder at those and plug in the facts and why I missed it. But still work on my issue spotting on my essays so I don't lose it. I don't want to abandon one to work on the other, and yet maybe I'll do 75 percent more on the multi states and 25 percent on the essays because I'm good at it and what have you. You have to balance but I've got to correct my problems on the multi states. If I don't, I'm going to have the same boat. The one consistent thing I see in practice if you're getting 50 or 60, score on your multi states, what do you think you're going to get going into that Baby Bar? Probably the same thing. It's not magic. You need to work on that and understand okay why did I hiss this question? Why did I pick A when it's B? You have to break that apart and go through it. If you don't, the same issue will happen. Even though it's a different fact pattern testing the same concept, I'm going to miss it over and over. Why? Because I haven't figured out the why. It's important to really look at that. People have a tendency not to; they just read the answer choice and move on. No. You probably knew the rule, didn't realize, but don't know why you pick that had answer. You have to look at that. That's important. Any other questions?

At this point we've done torts, contracts, and now crim law so everything's fair game. So you should start doing mixed multiple choice questions. Make sure you understand it's a crim law question versus a tort and make sure you're paying attention to the call of the question. They say that's the Number 1 reason people get them wrong. Why aren't you paying attention to the call in break it apart and look to the call. I want you to do that. Work on the issue spotting and start writing to get your timing down. We're coming up on October so we've got to fine tune and get prepared.

Any other questions before I say goodnight? All right. If anything does come up, please feel free to shoot me an email at jolly@taftu.edu be I'll be happy to help you in any way I can. Please keep up your preparation, please keep working on your issue spotting and multiple choice questions. That's what make it is difference when you go in there and pass this exam.

It's a tough exam. Not gonna kid you there, but if we work on it diligently and use our tools and look at why am I missing this and figuring that out, you should do relatively well and you should start seeing your score start to go up especially if you're looking at the whys then you'll start understanding how the concepts are tested and see it in a different fact pattern and a ha I've got it. That's how it works. I hope I see you guys all Thursday night have a great rest of the evening. Goodnight.

[END TIME: 7:00 PM]