Taft.

Baby Bar.

May 26, 2020,

PROFESSOR: Welcome to tonight's Baby Bar mini serious. Tonight is on contracts. The lecture is recorded. It will be posted in the student's website.

If you have any questions, point those out in the chat.

I will be going over contracts. The focus is to give you an idea of how things are tested, how they come up and what you need to know in order to write a successful exam on contracts.

On Baby Bar, you are responsible for contracts as well as Uniform Commercial Code. For all schools, that's upper class. You have to make sure that you understand the difference between common law and Uniform Commercial Code and incorporate that into your checklist to make sure you address it. That's something that can be tested.

On the Baby Bar, they test contract twice. One is common law and the other is Uniform Commercial Code.

Contract, one. Take the checklist in order. Never out of order. That's going to keep you organized and structure to write your examination. For offer, was there termination offer or acceptance. Consideration, you have proof acceptance first before consideration.

The battle of the form when you have additional or different terms and modification. A lot of people pick modification. No. You have not form the contract yet. So not modification. Modification can change in terms of existing contract. Acceptance and additional term that's the battle of forms issue. There's a hierarchy and you want to follow that to help you. That's very important.

A couple of questions to ask yourself when you see contract. First, contracts made between the parties. Look at the facts. Formation is testable. Determine, is it something to get in and out quickly or testing details within it, which you will know base on the facts.

Second, is there any reason the contract should not be enforced? Defenses, fraud.

Next, any conditions under the contract? Or who is bringing the action. Is there third party beneficiary? Look to see who is bringing the lawsuit.

Next, is there a breach of contract, what's the remedies?

You will broaden your spectrum here, not just general damage, special damage. See if you get restitution or special performance. It's something you are responsible for on the Baby Bar.

First, we are focusing on formation of contract. First is ask yourself, does is UCC apply? If no, go to the next step.

Where students make mistakes here. UCC applies transaction for goods for $500 or more, incorporate statute of fraud. If you buy something at garage sale for a $1, UCC apply.

Sub issue is goods versus services. And that has come up several times on the Baby Bar. And what you will see is bargain for the goods but install it. Fencing or carpeting or air quality equipment. The issue is, should the UCC apply or not? And you have two rules that you need to know. First one is the majority rule called the predominant factor. Predominant factor. If under the contract is goods, then the UCC applies. Versus minority, the Gravamen, what's the purpose or what's your complaint of the lawsuit.

For example, Pauline purchase fencing at a store and how much to install, the price is $500. Fence is $300 plus 150 to install. The dominance under the contract, the installation is 150. The predominant test, UCC apply. Now I tell you that she is upset because they didn't install it, that's installation. At that point, you would point out on the minority that ‑‑ one of the test will put you in the UCC and the other one will not. And why? Examiners want you to make sure that you understand the contrast of UCC.

On flash card, how do you write if the UCC applies? Baby Bar purposes, does UCC apply? Apply the facts. Next, merchants. Then common law offer first. If it succeeds, go to the next issue. If it fails, then bring the difference, aspect of it under the UCC. So again, common law first. If it fails, bring up the aspect of UCC. So make sure you understand that. Don't jump right into the UCC. You are going to do the common law, if it fails, bring the difference or whatever the issue may be.

Next is checklist merchant. Look to the facts. School or business college could be a merchant. Your doctor sell medicine, they are not a merchant. They don't hold themselves out goods of the kind. Law find them not to be a merchant. But college, they would find goods of the kinds so they are actually merchant and you will know based on the facts.

If I'm selling my car, I'm not a merchant, I have a car for sale. Versus hobby collecting rare coins, but that could be merchant. If you have special knowledge or skill for the goods, you could be a merchant.

Next step. Ask yourself preliminary negotiation. I always start off with advertisements, it's mere imitation ‑‑ QTIPS. Quality, time, independent parties, subject matters. If those facts are supported, I would find an offer.

If the buyer is interested in selling their home. Do I have a QTIPS? No. It's a mere inquiry.

After you find the offer, look for facts. If not, move on to your next checklist. Lapse of time, rejection reification ‑‑ these are things that you want you to know and break it apart. I use the OLDR ‑‑ O stands for counter offer. L, lapse of time. D, death of destruction, and revocation. Sometimes mnemonic help me.

Option contract or firm offers.

Option contract is offer supported by consideration. That's important. Versus firm offers, it's a Uniform Commercial Code, it deals with a written offer by a merchant which is open for the stayed period of time not to exceed 90 days. The key thing there, it must be in writing by the merchant. If it's not, then it's not a valid firm offer. The option fails, see if we can save it under the firm offer rule.

Acceptance. Under there is UCC. It states acceptance is going to be any reasonable manner. Also in regards to the offer or they can dictate the method of acceptance. Such as call me. Notify me. If you post on Facebook, there's a good argument, it's not the method I dictate for you to accept my offer. That's important.

Inquiry, if it's grumbling. If Mary offer to sell the car to Peter, and Peter accepts the offer by call. There's a mirror image. If I give you the same facts that I accept your offer, then I put but only if you detail the car, so is that a grumbling acceptance or counter offer. Did I add a term? Yes. That's in support counter offer itself.

The big issue that's tested on the multiple choice questions, the mailbox rule. People have a hard time with this. I don't know why. It's upon dispatch. They will play with you on the multiple choice question.

You send me an offer, and I put in the mail, I accept it but then I call you the same day, I don't want it. So I rejected it. But once I send that offer, a contract was formed. So if they ask you was the contract formed, the answer would be yes. But you relying on my statement of rejecting and sell it to somebody else. Can I sue for breach of contract? Because of the rejection, there was no formation of that contract. So there are nuances so make sure you understand.

You play with this area and under rejection or reification first. It's affected upon receipt. Versus mailbox is depended on dispatch.

Another area to understand. Mailbox rule does not apply to option contracts or firm offers. If I give you an option to buy my orange field and I say the offer opens until June 1st and May 31st, and you put in the mail you accept and I don't get it until June 2nd. No contract. Because mailbox does not apply to that option. That does come up to the multiple choice question.

All right. The next one. You need to be aware, UCC, acceptance. The big ticket matter is the battle of the forms. This has come down several times and bar testable.

There are two areas you need to know. If you have an additional or different terms to that acceptance. So like, an example. I sent to you purchase order to buy widgets. You sent back acknowledgment but you add that if there's any dispute of the contract, we will do arbitration. That's additional term. My offer sent to you did not have that in there. So that's additional term. The question becomes, what happens to that term? Did we have contract ‑‑ do we have contract or not? So will become part of the contract unless material alters the contract, you object to it within 10 days or acceptance was expressly conditional on that term and then we act on it.

Material alteration, I want to make you aware that it's something you are giving up a right to. Giving up a right to arbitration and going to court, that's material. If I'm giving up a remedy, that's material. So be aware of it. You have to object to the delivery of goods within a reasonable period of time. That's an added term. You have to object within a reasonable period of time. That's not a material alteration so that's part of the contract.

Versus different terms. There's an exam, where I sent purchase order, says if there's any dispute to this contract, that the California law will apply. Your acknowledgment sending it back saying Louisiana law would apply. We have two different terms. So which one will support if there's a dispute in the contract?

Dropout rule and knock out. Dropout is majority. In the ‑‑ if the term is different, it will dropout.

Knock out, consistent.

Louisiana versus California will be different regarding the outcome of the case. Battle of the forms is highly testable and it's an area you need to know. Because they know people don't do well on it so they will test it.

Formation of contract. Another area is consideration. Other areas I need you to be aware of. Preexisting duty rule. If I'm agreeing to do something for you, under preexisting duty you performed, then there's no consideration. The other thing I want you to be aware of is if consideration failed, look for the substitute. Can you reliance?

On the Multistate, she is ready to retire. And they say, you have been such a wonderful asset, we will give you additional $1,000 a month. Past consideration no consideration. So that would fail. But if the facts tell you she went and bought a condominium relying on that income, things will change. Now we have a substitute for consideration. That promise to pay $1,000 will be upheld where generally will not. The facts will tell you.

Another requirement output contract. If you see this tested? Is it requirement or output? Most likely is requirement contract. They can't coexist. You are looking for whatever I require you will deliver to me. Those are rare. The issue there is it looks illusory. If I require ‑‑ let's say selling cars, and I require specific car numbers for this number. It's illusory ‑‑ it has to base on good faith.

Puppies. So again, it's requirement contract. It's illusory but is he exercising good faith. He can get the dog elsewhere at better price, that's lack of a good faith. So the facts will dictate. So those are main formation issues that you need to break apart.

Once contract is formed, look for defenses. You need to be aware to allocate your time. If the fact pattern states to you that there is a valid written contract, formation is not an issue. No offer. No acceptance, no consideration.

However, if the facts basically say, that there is a valid written contract that does not mean there's no defenses. You can have a big pro evidence rule. For it to exist, you need to have a written contract. So when I see that, maybe I would look at pro evidence. It has to be written in greater contract. Even though it's valid written contract. That doesn't mean you don't have defense for formation. Don't dismiss it.

Another one is assigned writing. They didn't say valid. So see, could I do mutual sent consideration. If they don't spell out the definite term. So the facts are going to dictate for me. When they tell you there's a signed writing or written contract, and they have not used the term valid, be careful. You will have to prove. If it's valid, look for defenses. Defenses are highly testable in multiple choice and essay. Statute of fraud apply to oral or incomplete writings and the Baby Bar loves to test incomplete writings because students don't know the rules. What's incomplete writings? I faxed over the order and you faxed back acknowledgment. It's incomplete writing.

Our terms are not embodied in one document and signed. That's incomplete writing. And that's why they love to test you about that. So be careful about that.

You have certain contracts, marriage, contract for the sale of land, realty. What is interest thereof? It could be lease. Debt of another. Contract by its terms are not performable within one year or making thereof. If you see those relative to the terms and sales of goods over $500 or more. The key with statute of fraud, show me how you get there. In essay question, we have a contract of more than $500. Here you sent a document with his name document so you have sufficient memo. No. Do it in steps. You need to break it apart. First step is get into the purview of statue of fraud. Which one applies and does it work?

For example, a woman opens up a law practice and she hires a carpet cleaning service monthly. Three years go by and she gives up her practice and they are suing her for breach of contract. The facts? It's oral. By its terms, it's been going on three years. By its term, is it capable performing one year and thereof? Yes. There's a counter argument, it does not fall under the purview of fraud. So break it apart and don't make assumption. You have to break it apart and show me and you will get the correct answer. Once you see that the statute is triggered, what's the next step? Can I get out? Look for an exception.

Most don't look at the exceptions. You need to look at exceptions. There got to be at least one that you are going to argue. It doesn't mean it will always succeed but you will bring it up.

Yes, you are correct. So it is realty. Real estate. In regards to finding the exception. The one that works for all of them is sufficient memo. So with sufficient memo, remember, it has to have the essential term and signed by the parties be charged. Essentially terms ‑‑ what are the essential terms? That's Q‑tips. Quality time independent ‑‑ parties be charged, it means who are you using against? If we agree, am I using it against you? It has to be signed by you. I want you to understand that this works for what? All five ‑‑ marriage, realty, death of another, over one year, goods sold over $500.

So you will bring all those up, whatever applies and see if you can argue the sufficient memo.

In regards to realty, how to take it out of statute of fraud? Sufficient memo or ‑‑ what takes it outside of purview of statute of fraud? This is where you have to match them up. If you have fall performance, part performance, I move to the property, that's not enough. Move into the property and make substantial improvement or pay taxes. So you need more than just move in.

Debt of another. Sufficient memo. And then main purpose doctrine.

Why do you issue the death of another? The main purpose is for you.

Typewriter. The business college assures the debt. Business college needed those typewriters.

How about a contract which is not performed within one year or making thereof? Only full performance. You fully perform the terms of the contract. And contract of goods over $500 or more? You have sufficient memo. Under UCC, you have written confirmation between merchant and you waive statute or full/part deliver of payment.

In regards to estoppel, that will work on all of them base on reliance and base on your conduct.

So in regards to minimum qualities, with your definitely certain terms you have to have the quality. Statute of fraud, you have to have the essential terms. Do I have enough there to support it? And yes, your gap fillers can come in absolutely.

All right. So that's your statute of fraud. It's highly testable. And it comes up on Multistate and essay question. Make sure you know it.

Another defense is mistake. Mutual and unilateral mistake.

Mutual mistake, we are under assumption of fact. So the contract is avoidable by the affected party. Versus unilateral make is one party. If it's unjust, the contract is avoidable if that party knew or should have known that mistake. If you and I contract on the wrong price, it's under value, did I know or should I know, if the answer is yes, the contract is avoidable. If answer is no, then it's no.

The one that's buying it know? That's the contract that's avoidable.

Ambiguity.

Pro evidence, any oral or written evidence made prior to contracting cannot come in and change or alter the existing contract. So it's the four corner test. We are not going to let anything in based on the embodiment of the document. Unless there's fraud, mistake, or ambiguity.

For example, a lady bought a home and asked what are the droppings on the deck. He said birds but he knew it was bats. So he committed fraud. So you want to break apart.

For the pro evidence rule, any defense is an exception. So duress could be absolutely. Condition that's actually been performed. Any of those are fair game. So for pro evidence rule there are exceptions. The main ones tested are fraud, mistake, ambiguity.

Illegality. Capacity of minors. Unless for necessity. So if you sell a car to a minor and at the age of 18 which is majority, he decides to give the car back after 3 months, sorry. We don't have a contract. If it's necessity, rent, food, medicine, he is accountable for restitution.

With the actual car, and they give you the value of the car, and gave you the value of how much to lease the car, and when she reached the age of majority, can affirm the contract. So affirm of contract. Can you disaffirm?

Know your formation. You have to look at that. Avoidable not void and it's within the discretion of the minor. It's on the Multistate because students don't know the rule.

Third party beneficiary. They haven't tested this in a while. They did it three times in a row on the Baby Bar. Shoot me an e‑mail and I will send them to you. Why is this one different than this one? Because it's who brought the suite and the lout of the call ‑‑ lay out of the call. Third party beneficiary, it's basically is contract in and between parties for the benefit of somebody else. Their status has to arise at the formation state. If I go ahead and contract to purchase your car for the benefit of my daughter and she is aware of it. She would be a third party beneficiary to our agreement to our contract. So if you don't fulfill your obligation, could she sue under the third party beneficiary?

You privity. Reinstatement second uses ‑‑ and that determines the vesting. In regards to your creditor invest. That means, anything original contracting party can bring to each other, they are fair game thirty bring in suite.

Assignments and delegations. With an assignment, you are going to see ‑‑ what you are looking at is an actual right under the terms of the contract. So can I give or assign that right away? You can at least it's too personal nature or prohibitive by law. It's rare it's prohibitive by law or too personal nature. They might state to you the contract you might assign, the law likes the freedom of assignability. So the language in the contract states you can assign, does the wording itself destroy your right power of assignment? You can go ahead and assign but not breach of contract. The language must be very specific. If you assign this contract as null and void. It's non‑assignable and hit you between the eyes, if you do, we have no contract. It can say, if you do this, the contract will be in breach. It has to be clear. You have to have a present right, it has to be valid and existence, and the effect of time you step into the shoes. You have the same right whatever the terms of the contract were. The one thing, again, I told you the transferable right. The benefit of the contract. When I use the term Joe assign his rights, you have to look and say, did he assign his right as well as delegate his obligation? They will never use the term obligation, never on had the Multistate. Delegation is delegate obligation of the contract. If you and I contract to paint, you assign someone else to paint the house, you just assign your right to the money or delegate the obligation that they have to paint the house. So you see how subtle it can be. Is the duty delegatable? Was it assumed? The original contract and parties are on the hook unless I show novation.

Delegation deal with the obligation of the contract.

When I use the term Joe assign his rights, you have to look and see what are the rights under the contract? And what are the obligations and see what was transferred and it could have been multiple or one or delegation only of rights. So you need to pay attention to that, that's something they are going to test you.

How they have tested several times on the Baby Bar and you want to be aware of this, because if it does come up, you need to understand it. It will on the Multistate. And they have tested on the essay.

By contract with you, in regards to ‑‑ the girlfriend contracts to buy this gold chain and puts it on payment plan. And bought this for the benefit of boyfriend. He assigns the contractual rights to collect the money to creditor. And she doesn't make the payments and creditor is coming after her.

We have to girlfriend who entered the contract with the jewelry store and jewelry store assigned to creditor. And creditor wants to go after the girlfriend. That's assignment and delegation. Creditor is going to step into the shoes of a jeweler.

The necklace turn out to be defective. So if it turns out to be defective and the boyfriend wants to sue, how? He can go after jeweler as third party beneficiary. Let's say the girlfriend go after the creditor, how? She's going to argue, she is a third party beneficiary to that assignment delegation that the jewelry store gave to the creditor. So that's an assignment delegation. So that's how they will test it on the Multistate.

How did she get into that jeweler creditor relationship? She is outside. That's third party beneficiary and she is suing as a thirty. Girlfriend versus creditor. You have to prove the assignment delegation first. And girlfriend go through third party beneficiary assuming the assignment delegation. Be aware of it. That does come up on the Multistate and have tested that on the essay. And students did not do well because they did not see it.

Why is this setup differently? It look to who is bringing the lawsuit and look for defenses and the call.

The call says, she took out an order or they told you under assignment delegation, no obligation, so bring up defense in that suite. So it depends on hue they ‑‑ how they ask it. And be aware of it. It's testable and it could come back on the essay question. So be prepared.

Conditions are highly testable. Look for your types. Is it express? Can I argue express promise or not explicitly stated? It's going to be very specific. You must have this done by July 1st. That's harsh. You made it very clear, you got to comply by July 1st.

What you want to do with conditions, once I find the July 1st conditions, look for excuses first.

Can I also argue implied in law condition. Constructed condition, and implied in law and complied in fact. I can have both express conditions and implied in law.

Look for multiple excuses. Implied in fact. Either you do it or you don't. If I hire you to paint my home on the interior, paint on the floor. It's implied in law that you do the job.

Excuse from performance, you want to go through as many as you can. Grab on to two or more if you can. Hints. Impossibility comes up a lot. If you see that in an essay look for frustration, impracticability. Impossibility. With COVID‑19, there's impossibility today than in the past. How can you perform under the materials of the contract ‑‑ under the terms of the contract? So that's a good excuse. They say you could not open and not essential. So that would be objected because no one else could do it.

Substantial performance. You don't argue that with an expressed condition. The law says no. So don't bring it up.

With substantial performance, how do you know it's an issue? Complete 90 percent of the contract. If the contract is 90 percent performed, then break apart your element. Did you get what you bargained for and reimbursed? You will know based on the facts. What's the trick? Multistate, hire a builder and come and build four cottages. And you get three out of four done and fire burns them all done. Now what? Homeowner has been unjustly enriched, builder have to pay? No. Unjustment in that case. Test it? You need insurance. If they told you the homeowner had insurance for the building construction, it's unjustly rich. He got paid. And it change the scenario. So look for that based on the facts.

Let's say I give you the wrong login and it hinders your performance.

Impracticability. What we look at is the cost that we are not going to force the agreement. 10 times rule. If you contract to do some type of labor, and then you realize it's going to cost you 10 times more than you bid on it, not enforce the agreement.

Modification, change the term and condition.

Frustration and purpose. Your purpose has to know at the formation stage of the contract and unforeseeable event occurs. For example, if you contract for horse back riding lessons because you will be in a parade. And then here comes COVID‑19, no parade. It's unforeseeable event. That's an example where this would excuse your performance under the terms of the contract.

Occurrence of a condition subsequent.

Rescission. Rescind the term.

Divisibility come up. With this, the contract has to be ‑‑ bargain for as a whole and can it be divided by price and unit. So dissect it.

Installment contract. If I contract you for four years and I want you to deliver each month, let's say five cars to my dealership. Is that contract divisible? You can divide by price, by unit. So that looks like it's divisible. Was the contract bargain as a whole? Yes. It's an installment but I bargained for the whole year. So that's not divisible. Because you bargain for the whole. So look for that.

Anticipatory repudiation by conduct. I called you and I'm not going to perform because I took my personnel on another contract because there's more money. I disabled myself. I have nothing left.

I have also seen this tested where we have output's contract. And I realize I can make more money selling someone else so I sell my entire update to someone else. I disable myself so I have nothing left to sell you. So that's disablement example.

Estoppel. Excuse for performance.

And waiver. You are giving up a right. You have to know the right. I waive my right under the terms of the contract.

These are your excuses or conditions. You will argue for condition. And implied in law in constructive condition. Never excuse implied in fact.

Covenant. Look to the language. I promise I will do. That's a covenant. If I promise you to pay you and I don't, that's in breach. So you will know based on the language.

Now, the rule of thumb is when you do see conditions at issue and looking for excuses, I want two or more. It's rare that you have only one. So look for two or more. So use the facts and break it apart and see what you can come up with.

Next, breach. Present breach or anticipatory breach.

This will be on the Multistate.

Can I bring a lawsuit now or wait until due date? That's anticipatory breach is testing. You repudiate the contract prior to the due date. Do I wait? If the contract must be in executory stages, you can bring the lawsuit now. Certain Multistate, can see performance. You only have so much money. If you do show up, I have to pay you but then I can't have nobody. So can I sue you now or wait until you show up on Christmas Eve? You look at if the contract is in executory stages. One of us partially start performance is still executory stages. However, if both of us start performance, it is not an executory stages. So the example I just gave you, you showed up and I paid you your payment. And contracted for Christmas Eve and New Year's Eve. I have to wait and see if you show up on New Year's Eve. That's a Multistate question. You want to understand what is executory stages.

The last one. Remedies. You will need to know remedies. It's more in‑depth than in contracts. General damages, which is the expectation under the terms of the contract. What did you expect to get? Contract for the sale of goods, a car that's worth $5,000 and sold for $450. I expect a car that's worth $5,000.

Expectations. The key there is it has to be foreseeable at formation stage. So there's one out there in regards to I contract with you for better tasting water. You didn't install in time. And the crop I want to use it for didn't get irrigation. Well, you did not tell me. It has to be at the formation.

Your shipping contracts are different. And that's what I put in breach, UCC terminology. Is it shipment or destination. You need to type what kind of contract in order to determine your remedy. And in regards to your rescission, reformation, restitution ‑‑ you are looking to prevent the unjust enrichment. A painting you specified at the price and I sold it but it's worth more and you sold it to a museum and get more money. If I get the expectation, let's say $5,000, and you sold for $10,000. I want restitution. I want to take the $10,000. So give me the restitution.

Specific performance is something that you need to know. It's equitable remedy. Where someone breaches the contract you are trying to force the contract. They are testing involuntary servitude. So you show the legal remedy aren't going to make you whole. So you need to enforce the contract. Force them to comply the contract that you and I agreed to.

All that would go with ‑‑ apply to remedy.

I like things in structure. Prior to my breach, I put UCC terminology. And that would be my warranties, at title as well as product liability warranty. I put my destination and shipment contract ‑‑ prior to breach. If it's at issue, that's going to tell me, who is the breaching party, who is going to pay. It's something you are responsible for and it does come up.

Under the UCC, you will see the handout that's 4 pages, you don't have to know the codes but you need to know, if I have a breach of contract, what can I get? Who is breaching? Seller or buyer. If it's seller, if it's prior or after delivery of goods? They will test those nuances. It's very specific and warranted. The seller prior to breach, delivery of the goods, stop the goods in transit. So it's specific. It's rule oriented but you need to know the rules and go through them. That's the importance. It will be on the multiple choice questions. And it could be in the essay questions. So get to know it.

Get a hold of SALES, Gilberts for UCC. It's something you do need to know for the Baby Bar.

Is there any questions, I know it's a lot, that we kind of hit on tonight?

Contracts/UCC, you do need to know commercial code, you want to review it.

If you want essay questions for contracts for the third party beneficiary, please shoot me an e‑mail and I will get those to you. The goal is to go through the checklist and understand how do these concepts come up.

And tested on Multistate, these old antique chairs, and I put a price out there and you breach the contract. So I go sell them to somebody else. Can I sue you, the original contracting party for breach of contract? What's your damage? That's the only one you had. You can't get them anymore.

But if I change the facts, I have another shipment, then you pay the profit that I lost.

Shipment contract versus designation comes up. And that deals with your risk of loss, who bares the risk ‑‑ bears the risk of loss. Shipment contract, on the boat or train, loss of transfer versus designation. So that's important. And they will test and they are rule oriented. If you know the rule, you will get it right. If you know the rule, you will do well.

Any other questions?

So look for an e‑mail coming out with the contract essay questions. We will go over those next week. If you are doing these, you will be taking your exam online, the more I have in my mindset and break it apart will help me immensely. The checklist will help you greatly. And start plugging in how you are seeing them tested. The more you understand how the concept come up, there's no shaking it.

I wish you guys a good night. If anything come up, shoot me an e‑mail.

(Event adjourned at 7:00 p.m.)