Taft law school.

Baby Bar mini series.

November 3rd, 2020,

PROFESSOR: Good evening everybody and welcome to tonight's Baby Bar mini series. I want to point out a couple of things.

Number 1. These sessions are recorded. So if you want to go back to listen to the lectures, it's in Taft website and log in to Baby Bar mini series.

Next week we will have essays to review. This is crunch time. Work on your Multistate and working on your issue spotting for the exam.

If you have questions, put in the chat and I will be more than happy to help you.

Let's get started. Again, the Multistate examination is an objective multiple choice exam which you will have four answer choices to choose from. The one thing you need to understand for the Baby Bar purposes is that the subject matter is mixed. You are not going to have 33 contracts and 33 torts. It's going to be mixed. All questions are worth the same point value. The score is number correct based on 400 point scale. So make sure, even if you have 1 minute left, bubble and get the answers in there. So make sure you have a better chance one out of four better than zero if you mark an answer choice. That's something you should be working on, it's your timing and checking your time. After you do so many, look at the clock and have that allocated in your mindset to know where you should be.

Baby Bar is 50 questions and 50 questions. That's how I recommend you practice it. That way, you have your timing down per 50 versus the full 100. It's going to be virtual online.

You should be doing multiple choice questions daily. You need to concentrate mastering the legal concepts are tested in order to be successful. This means that learning how to take multiple choice is very specific. And you need to understand how the questions are written. 1 word can change everything. So you need to understand that. You need to understand how the questions are written.

If I give you an exam, Mary gets on the bus, drops her purse. And Doug picks it and she says give me my purse and he hurls the purse at her. That's battery. Versus to say ‑‑ tossed it to her, that would be negligence. So 1 word makes a difference.

Multiple choice questions, you have to read the facts carefully. You are going to have the option of highlighting. So highlight key facts to see what they are trying to tell you. This is important.

The Baby Bar examiners know we don't read in detail. Guess what? They are going to make sure that there are details you will miss. The fact pattern turns on the details of the facts. So you need to understand what's relevant versus what's not relevant.

And that again by break it apart and see what's tested as to the actual issues.

On multiple choice questions sometimes there are a statement of facts that guess nowhere. So I want you to pay attention to that and make sure you understand that.

Further, when you are taking multiple choice questions, always start with call of the question. This will do a couple of things. One, tells you the subject matter.

Prosecution, what crimes can he bring, criminal law. Mary sues Johnny, torts. Then I will go in there and break it apart.

So that's important. Obviously it's to dissect that and see by reading the call if you can tell the subject matter tested.

After that, read the fact pattern carefully. Start highlighting the facts. Before I tell you to mark up the facts with pencil. Now they are online, mark with your highlight and focus to the key facts. And make sure you are answering the call of the question. Do not assume facts. Don't make the problem harder than what it is. Keep it simple. You don't want to over think it. That will get you in trouble.

They know ‑‑ battery ‑‑ wait. Was there intent? Was there harmful or offensive touching? They know we will jump onto the term. So always make sure you break apart the elements.

The other thing I want you to make sure that you understand is the specific subjects. Torts is testing or directed towards the elements. The Black Letter Law. So you will see a lot of questions dealing with negligence. And common type of question is what is the Plaintiff's best claim or what's the defendant's best defense. Will the defendant prevail? It's not told the cause of action. So you need to go to the facts, it's in your checklist and determine, what is the underlining theory that we are swinging for. The cause of action that the facts are raising but you need to determine.

If you see defamation, and invasion of privacy and infliction of stress. Those three can go together. But you need to look to the facts to see the best answer and what they are testing. So you need to look at and break apart.

If I give you an example that Michael is rowing the boat and docks the boat. And it's a private dock and the owner removes the boat. Michael refuses to remove the boat, he goes ‑‑ Nick unties the boat and boat sinks. Based on these facts, what ‑‑ if I tell you Nick ‑‑ Michael was the one rowing the boat, if he sues Nick for trespass, is this intentional or negligent trespass? He was fearful the boat might sink so it's intentional. Based on entry on the land of another? Yes. We have viable ‑‑ so he can argue necessity. If you use somebody else's property for necessity purposes, you are allowed to but you have to pay for the damage.

So again, you got to break it apart. It's important what theory are they testing and best based on the facts.

If I give you an exam, let's say products liability. And you see the facts in regards defective car engine. And it causes to injury and sues the manufacturer for the damage. She can sue under negligence ‑‑ what's the best theory? That's strict liability in tort. That's a better answer choice because liability regardless of fault. You don't have to establish the breach. Defective product. Stream of commerce. The best theory for liability because the burden of proof is smaller.

Contract questions as I pointed out before, they are reading comprehensive. The fact pattern tend to be long and lengthy. You want to has the contract being formed what additional facts do I need to support, is there any viable defenses. This is the subject matter on multiple choice to go through your checklist. Have the contract been formed?

Students proved up consideration. But the fact stated there's a valid written contract. So you want to look to the facts. They will dictate for you and you want to break it apart.

Does USC apply? Is it transaction of goods? Read the facts and determine what they are trying to tell you.

If the call of questions says, Joe sent Mary a letter offering for her to purchase the car, she sent a letter back saying ‑‑ May 12th, yes, I accept. What are they really testing there? Well, offer. Do we have an acceptance and when that acceptance is effective? Since they gave me the date, that date is going to be the date of acceptance and then I will go through my consideration.

It's important for you to look at as to what exam the question is trying to test you and break it apart.

Contracts, again, mostly demanding on reading comprehension. And formation, Red Box rule, acceptance, after acceptance. So these are nuances that you should be fine tuning at this point.

Criminal law, they will test you on the Black Letter Law. May attention to the call of question. Because there are similarities between torts and criminal law. Battery, assault. The rules are different but by paying attention to the call, you are going to understand, gee, this is criminal law question versus tort question. I really find and I told you that the criminal law multiple choice questions are one of the lowest scores on the exam. Why is that? I think you and I can agree it's not hard but the students don't pay attention to the call of the questions and they will have tort answer for you. But that's not the call. So you want to break it apart.

If Bev goes to Jacks's house and break in to take TV at 3:30 p.m. I'm thinking burglary. So are all the element of burglary met? He arrives, the door was open and no one homes and he walks in and takes the TV. Not nighttime ‑‑ there are elements for burglary. If he takes the TV and leaves with it, what crime did he commit? That would be larceny. That's the best argument I can make based on the specks.

I got to break apart the elements and dissect it. Very important. If you don't go through that, you will have more difficult time getting to the right answer.

General rules to the multiple choice questions. Look for trigger of facts in exam. If there's a statute on the exam, break apart the elements.

You got to read the statute carefully. One thing I have been seeing with students answer and questions, negligence per se, you guys are having a hard time with.

Number 1, negligence per se is a special duty. So remember, I told you if you see special duty being triggered you start there. If it fails you fall back on your general duty. With negligence per se, people would say there's statute. Remember there's element. Look at the legislature, and did you suffer the injury and are you a member that the class designed to protect.

You got to break apart those elements and show support to the facts. Again, you need to break it apart and dissect it, that's important.

Also, remember, you got to choose the best answer. So what people need to understand is what is the best answer choice. So the question is asking what's the best defense. What claim will deceive. Look at the call of the questions and pick the best answer choice.

Regarding modifiers. With your because and since, after the statement would be statement of fact. Yes because, state of fact. No because, statement of facts.

If I told you in that Bev question, can he be charged with larceny, no because, no since, yes, yes, if. I can narrow it down to the two. Yes, because it says. The yes if ‑‑ I cross out no, unless.

Or if I change the question on you to burglary, and we are thinking, we know it fails because there's no breaking. It looks like the nighttime fails. That answer choice could say, no, since. No because. Yes, if. No, unless. Oh, I got to read those two. Yes if, they are going to give me statement of fact.

No unless, if, it was during the nighttime and he need to break in. So I want you to be very careful about that.

The questions using if as modifier, answer after if is true.

So no unless is yes if. Yes unless is no if. And rewrite that and look to make sure if that's the best answer choice. We have a tendency to dismiss those right off the bat.

Because again, we don't like it. It's a negative the way it's written. It doesn't compute well in the brain. But now that I know how to rewrite the call, that should help me.

Because the since, if and unless. Because this will help you to narrow down to two answer choices so it will save you time. It is a timed exam. So we have to get through it. 90 minutes. So you have to break it apart.

Example. The first thing here is look at the call of the question. Will Sam prevail? Is this tort, contract or criminal law? I'm thinking it's probably torts. I guess she could do that in contracts but that's usually not the call they give me. And I see misrepresentation. Misrepresentation can be intentional, negligent. So I have to look at the facts to see which way to go.

Now that I understand the call, I'm ready to read the facts.

Tammy is a chemical engineer, she has no interest or connection with chemical co ‑‑ (*reading*) ‑‑ Tammy approaches Sam and offers him $6 a share for his 1,000 shares of chemical stock. Sam is suing for misrepresentation. Do we have an intentional representation of material fact which one just lie to their detriment? That's your definition.

With the facts, what's the problem here? Was there representation? So if we have the first answer choice is because modifier based on representation that Sam is going to prevail. You need to find the elements of misrepresentation and going through the elements, can we satisfy that there's a misrepresentation? He never made representation. Didn't make representation. The other thing is omission. There's no facts to show that there's a relationship between them. So like she is an officer or director of the corporation. No. A, can't be right.

B. Modifier, everything after the because since must be true. Since she didn't make any statements, we can't find her liable.

If we look at the unless, no unless, yes if. And then remember after the if, everything have to be true. Yes if, she made representation. Oh, I just added a fact. And if she made representation all the other elements misrepresentation are supported.

If it's no if, everything after no if has to be true. I state no, if, the facts after that will have to be true. No if, she made misrepresentation, well again, what's our best answer choice?

It's no unless that we change to yes if, because she made representation.

No if, because of financial statement supports misrepresentation. But she didn't make misrepresentation. C, if we want to put number down would be the best answer choice. If we add the facts of she made misrepresentation, then we have liability.

So that's a rehash of the multiple choice that we had weeks ago.

I want you to look to the call of the question. Thomas bring the lawsuit now. I don't know. It looks like tort. Contract. Not criminal law.

On November 1, 2009, ‑‑ (*reading*) ‑‑ may Thomas bring the lawsuit now? This looks like he just repudiated. Can I file a lawsuit now? That's anticipatory breach. That is a viable cause of action if you show what? You got to show that the contracts in executory stages. The party expressed repudiated. And facts is this in executory stages? This is the element they like to test. Executory means neither start of the performance, or one of hasn't performed. It doesn't look like anybody has done anything. It looks like he can bring the lawsuit now.

Let's see if we can eliminate two answer choices. A and B says no since. And my answer is yes. I will get rid of A and B knowing that C and D are yeses.

C, that's true but not to the element. So I will read D. If it's more specific, that will be a better answer.

D, it's true but that's not the reason.

C is the best answer because you need to show anticipatory repudiation.

Let's say I change it. C, Mozart repudiated the contract.

D says it's not executory stages. That's a better answer.

We get down to the two and we pick the one thing because one is better than the other. It went a step further and pinpointed the element within the theory that we were looking at. So I want to make sure you understand that. Because they do test this way. So you have to break it apart a little bit more in detail.

So again, for this question that I gave you, C is the correct answer.

But I want to give you an answer of how that could change on you based upon the answer choice. Be more specific. I want to make sure you or understand that.

With the anticipatory breach, I want you to go over that. It will be on the Multistate. Play with it a little bit. Fact pattern, you should be seeing on the exam and sometimes they will tell you, hired Dolly partner instead. So they will play with you so you need to know your rules.

Question two, let's look at the call. Wrongful death and survival action is something you should be aware of. And wrongful death is you are suing on behalf of something that happened to your spouse, husband, child or whatever, and the theory is negligence that I can bring but it cause me harm, my individual self. Versus survival, is you are bringing on behalf of the deceased.

Wonderful death is for my injury. And survival action is bringing on behalf of the decedent.

Daniel owned a restored classic automobile made in 1922 ‑‑ (*reading*) ‑‑ so it looks like if I'm giving someone a mild shock, that's a battery. And he can defend his property. But only with reasonable force ‑‑ it says enough to harm but not hurt the person touching the car ‑‑ (*reading*) ‑‑ so now you have Paul asserting wonderful death. Would he be able to prevail?

What are they testing here? The conduct is intentional torts or negligence? One thing that most of us go to is the guy received the shock which normally would not happen to any of us, plaintiff proximate cause. Every tort has causation. But that's not the issue here. What theory of liability do we have here? You have to start there.

And here based upon the facts, he is committing a battery. The intent, I don't want somebody touching my car.

Is it foreseeable? No.

He dies, that would be the damage.

Next is look for defenses. He is trying to do what? Discourage tampering. He is defending his car. Defense, self‑ defense of others, defense of property. So one can defense one's property but you need to use reasonable force.

It says if Paul claiming for wrongful death, will the estate prevail? No if, after it has to be true.

Can I eliminate any right off the bat? I feel in this case that they would prevail because he was using excessive force but I have to read the if to see everything after to see if it's true.

Daniel was not using excessive force to protect his car. That would give him the defensive of property. So that looks good.

B. That's negligence. That can't be.

C, we know that's not it. Because it wasn't multiple parties.

And D says, yes if, after that has to be true. Does that matter? And if that were the case, that is towards the case of negligence and argue contributory or comparative.

Here they are testing the defense of property.

So again, it's important. You have torts. But you got to hone in what's the question is asking and testing.

It's three steps. What theory, battery. What element with it are they testing, sub issue within that element? That's what we need to hone out in. Otherwise we get it wrong. And take the sidestep the wrong way and get the wrong answer choice.

Question 2, A is your best answer.

Let's look at question 3. Criminal law question. Did Len commit burglary? That's criminal law.

Let's go back to question 2. Someone has a question, C yes. What is substantial factor? We have multiple parties, not just one that cause the death. So it would be ‑‑ like an example, I'm on a motorcycle and so are you, we rev our motorcycle and horse rider gets thrown off.

What are they testing here? Can you defend your property? So I know I'm looking for that answer.

Successive tortfeasors should be multiple parties.

If you have more questions about that, let me know.

For question number 3, the theory of burglary. You should be ready to read the fact pattern. Element should be in mindset. I have the nighttime. The breaking into the dwelling house of another and intent to break in.

Common law is what you apply in multiple choice questions unless they dictate otherwise.

Let's read the facts, (*reading*) ‑‑ he borrowed. No problem there. (Reading, continuing) ‑‑ before you look at your answer choices, what element a burglary are they testing here? You should know that before you look at your answer choices? Is it nighttime? Breaking and entering, dwelling house of another or intent to commit therein.

Did he have specific intent to commit felony at the time of entry.

Did he commit a burglary. Look at your answer choices. A and B says yes, because. C and D says no, because. I will eliminate A and B and go to C and D.

Did it matter if you are home or not for burglary? No.

D, (*reading*). Even though that is the reason that supports he didn't have the intent to commit a felony therein.

Let's get more creative.

Let's look at the answer choices again, C and D. Unless he says no because ‑‑ let's see here. Len did not have the specific intent to commit a felony when he entered the house.

And D, recovering his own television set. Best answer choice? C or D? And it's C, why? D is not wrong, not the best answer choice.

C goes to the actual element of testing, it's a statement of law versus statement of fact.

So again, they will try to trick you. The fact sounds good. If it is a statement with the element that's being tested, that's your better answer choice. So again D is not wrong but not your best answer choice based on how I changed the calls on you.

For the one that's exhibited on the screen, D is the right answer. But if I change answer C to be more specific to the element, then that's the better answer choice. So these are little details that you have to learn so we learn from it and succeed. That's our goal to succeed.

All right. You guys are quiet tonight.

Let's look at question four. Is Bruce guilty of violating the statute? When you see violating of statute, what are you going to do? Look at the elements of statute and break it apart.

We are going to go through this one and show you a trick.

Is Bruce guilty of violating the statute?

(*Reading*) ‑‑ so did he violate the statute? He knowingly did it but he was threatened. Based on the letter says, threatening the president's life. He violated the statute. Does he have applicable defense? You have to go through the defense checklist. Do I have self‑defense, defense of other, defense of property and duress. Duress is defense to anything expect murder.

Now, it says no because. B, no because. C and D says yes, because. Is he guilty for violating the statute?

So I will not read the answer choices C and D.

A says no because ‑‑ again, does it say that in the statute?

B says, the defensive duress, that's dead set on, more applicable here. I want to make sure you understand that.

Let's change the facts a little. Let's say Frederick threatens Bruce. If he doesn't burn down the White House in order to kill the president, that he is going to beat him up. So Bruce burns the White House and the president ends up dying, can he be charged with murder? What's the issue? How are you finding the murder?

Well, the murder we are finding based on felony murder rule and most likely the arson. This is where it gets complicated. Since we are using arson, can I argue the duress to negate the arson? If I'm using an underlining felony on the felony murder rule ‑‑ you are off the hook. This is how they test multiple choice questions. They are not going to ‑‑ you are not going to go through the steps and they know that. And follow your approaches. When I saw the question, okay. Malice? Intent to cause great bodily harm ‑‑ felony murder rules. That's how you will convict him for the murder.

They will give you a statute which makes it a felony to mail a letter that threatens ‑‑ attempting, I got to focus not on the elements of statute. I have to focus on the attempt. Specific intent, substantial step. Apparent ability. If the call says attempt, based on these facts he did it. He went beyond the scope. So you can't charge him with attempt. It should be violation of statute should be the charge unless we have a viable defense. So these are different ways that you should be plugging in, gee, this is how they can test the content. So I gave you three different ways of how they can test the same concept.

The more I can get you plug into the test, they can't trick you anymore. Because you have seen how it comes up and that's important.

Let's look at question 5. Did Pete commit the crime of conspiracy to sell stolen car?

They made this call very specific. What does that mean? Well, conspiracy. You need to show agreement between two or more to commit unlawful act. So I will read the facts.

(*Reading*).

If you sold the car, I'm not responsible. I'm okay so far.

Pete agreed to perform the work under the following term. If I agreed to perform work, am I conspirator? No.

(*Reading*) ‑‑ additional $600 when he sold the car. That's a problem. Now he is profiting off of someone else's wrong doing.

After based the engine and car was sold, they were arrested. The conspiracy is the selling of a known stolen car. Will Pete will committed of conspiracy? The answer is yes. The agreement is the profit he agreed to. He agreed to rebuild the engine knowing the car was stolen. What's he conspireing to? It's not unlawful act. B says, yes because ‑‑ on the sale of the car, that's where I got him. Because he agreed to conspire to sell that stolen car. He is receiving money for the selling of that car. And C and D no because. So B is your best answer choice.

So you have to look at these and see what they are testing you. Conspiracy. What's within the conspiracy? The agreement. The unlawful act. What is the unlawful act? It might be morally wrong but that's not the unlawful act. The act that he agreed to make money off of stolen car. That is why B is your best answer choice.

Now you were sent out before I go over what you should be doing. Did you guys look at the questions that I sent out to you?

I hope you did. A couple of questions that did come up and I will go through them generally.

Products liability. You have several theories. With products liability, I want to make sure you have strict liability in tort. Technically you have battery. Negligence, warranties. So you have quite a few. But what I want to make sure you understand in regards to the multiple choice questions a manufacture, distributor, retailer will all be strictly liable if you can show defective product.

But if we are suing under what? Negligence, that changes the story. So if you are suing a manufacture and a distributor negligence for defective product, fine. If you are suing a retailer the rule changes on you. And what that rule is that the retailer have to have notice or knowledge of the defect. And that's the sealed container doctrine. I go buy a drink and it was poison. So sealed container doctrine will protect the market. They still be on the hook for complied merchant ‑‑ implied merchant liability. We buy stuff all over the world. If someone is bringing something in from China and it's defective, what am I going to do as little plaintiff? We have no jurisdiction with China. But I can go sue the manufacturer the distributor of the product here because they contracted with them. So they have a way to go after that company. But I don't. So I go after them to seek re‑indemnification to the original company.

If you sell defective product, you are on the hook. The best answer choice, liability regardless as long as I can saw defective causation and damages.

Negligence, duty, and breach.

Strict liability is always the best answer choice. And manufacturer, distributor, retailer, it doesn't matter.

Let's say the same problem. You are suing for the defect. And the call changes on you. So this is why I stress you have to pay attention to the call. What is the dealers best ‑‑ manufacturer's best defense? The car was defective. So how can I have a defense? Let's look at the facts. If they told you that the dealer altered the car, that cuts off the manufacturer's liability. What? Didn't know that. Yes.

So these are little nuances that I want you to play with. This is how they test. It's very important.

The question on products liability, hopefully that gives you more insight as to why and why is the best answer of itself.

Question 6. These are the ones that you have to practice. This is with bolt of lightening. It's a causation issue. That's an act of God. That is an act of God. So you have to look to see obviously if that meets causation. If you are doing an abnormally dangerous activity ‑‑ extermination and house explodes, dangerous activity. Let's say I'm doing extermination and the neighbor next door is lighting matches. Is that something I'm strict liability? No. They will impute negligence to me in that case. So you have to see what they are doing.

Let's say chemical, and flammable, and I'm in trouble.

If it's not based on what I'm doing, chemicals and someone steals it and throws it to the river. That's negligence and not strict liability. Is the nature of your activity? If it's hazardous material based on tipping over because of what other employee was doing or cause contamination cause in your normal line of business is strict liability. If someone stole it and dumped it into the river, that's negligence.

So you have to go through and plug back in to how they test.

And that's why I tell people to plug it in.

The student says, that make sense. Go back and plug in the checklist.

How do you remember? That's how.

If I see a fact or two, that triggers memory. The more I can keep reiterating, it's going to stick. By studying for the Baby Bar, when it comes bar time, it will pull forward.

Any questions on the ones I sent out to you.

I addressed the two that you guys sent to me.

The other thing in regards to attempt, I want to make sure I have questions on that, focus on the elements of attempt. What that means is too, you have to have the ability to commit the crime. In regards to challenging me with attempted ‑‑ violating a statute of making a bomb. I don't know how to make a bomb. Do I have apparent ability? No. You can't charge me with attempt. I want to make sure you have the ability to do it.

Strict liability. Because the hazardous nature. Strict liability on the land, dynamite, fumigation, toxic waste. All of that would be hazardous in nature.

The baseball diamond. It's strict liability. If there's unnatural use of the land that causes the harm based on what you are doing, that can still be strict liability.

Question 7. Let's see here. Is that your Romeo and Juliet?

So did Romeo ‑‑ writing a check of the current balance checking account. What's the problem with that? Did he anticipatory repudiate?

He promised ‑‑ let's see.

He offered to bring $2,500 cash to pick up the ring. He existed to bring the full cash ‑‑ (*reading*) ‑‑ since he had the funds to check ‑‑ in regards to executory stages, I gave you the ring, you have to wait and see to that due date.

So if you just give me the ring, it's still not if executory stages. Let's say we have agreement, I gave you the check. If I gave you the check, that's partial performance. So at that point you didn't give me a ring, you can show there's anticipatory repudiation. If both partially perform, it's not executory stages.

If you miss a Multistate question, what must you do? Look at the why. Look to the answer you have chosen. Go back and look.

You are reading the answer choices is not enough. I need to know why I pick that answer choice.

Like the question with anticipatory repudiation, what that tell us me you focus on the element of executory stages. That is a common question that student misses. We don't break it apart and look at the elements. Is it executory?

I would write it on the checklist and go forward from that. What should you be doing at this time? We have two more weeks. What you should be doing is Multistate every day. Please. As many as you can. You have to get the score up.

If I get 60, what will you get? Maybe 65. I need you to work on those and get the multiple choice up there. Many of you know the rules enough. Work on the application. If you don't know ‑‑ too many students I don't have my law memorize. Start applying it. Taking Multistate, this will help you. You want to know the broad concepts you don't need to know every nuance. If you feel overwhelmed, look at the bar website and at the student answer.

Remember, if you miss multiple choice questions, you are probably not reading the fact pattern carefully enough. Break it apart and keep on practicing. You got to narrow down to two answer choices and pick the best of the two. And I have given you some examples tonight. So hopefully you implement those so you do get the best answer choice.

I will send you 3 essay questions. If you want to write them, send me to me for feedback. Today is the 3rd, up until the 9th. We review on the 10th. This will give you idea of how you are writing. We had a power outage so we are off. I try to give you guys more time to work on the weaknesses. You can do this. Implement your tools. Learn from your whys and move forward.

Outline. Practice. Stimulated exam. 1 hour essay and 15‑minute break.

Any questions for me?

Remember, if anything does come up shoot me an e‑mail. I will be more than happy to help you any way I can. Just let me know. Stay focus. Please keep up the practice. And I wish you all the best and see you guys next week. Good night.

(Lecture adjourned)