taft law school

baby bar review

tuesday, november 10, 2020

>> INSTRUCTOR: Good evening, everybody. We'll start in approximately three minutes. Thank you.

Good evening, everybody. Welcome to tonight's Baby Bar mini-series. We'll be starting in approximately two minutes. Thank you.

We'll be starting in approximately one minute.

Good evening, everybody and welcome to tonight's Baby Bar mini-series. Hope everybody is doing well.

I want to point out that this is recorded so if you want to go listen to a lecture, sign on to Taft's website and go to the student section. Everything is there for you.

We also have other resources there such as our E classes. So if you want to get more essay questions or even multiple choice questions, all that is there for you as well.

Tonight our focus is to go over the three essay questions sent to you. These were a little bit odd, right? But we have to have a good understanding of how the issues come up.

If you have questions, put them in the chat. I'll be happy to help you in any way I can.

So in regards to the exam, I guess people have questions. It will be according to California time. For those taking the up and coming Baby Bar, that's scheduled on the 17th. Based on California time. Make sure you understand that. To some it's an advantage. If it starts at 8:00 and you're ahead of us, you don't have to get up so early.

But make sure you understand it's pursuant to California time. Sometimes we make that assumption that everybody knows but we're all in different time zones.

First question. Read the call of the question first. I did indicate to you that you can highlight the fact pattern. Remember, you're not going to have a physical copy. It's going to be your screen. But highlight the facts so you know what the call of the question is and make sure you know what they're asking. And raising key issues so you break that apart.

All right. Let's go over in regards to the first question with roofer.

All right. The call of the question. What defense and what's the likely outcome on each?

In regards to the cause of action, they're telling you it's negligence. When you see a call like this, they give you the theory. So you should be asking yourself when you go through the facts, what element, elements and/or defenses placed at issue based on the fact. Because they gave you the theory of negligence. Not going to give you points pointing out the theory of negligence.

What defenses. Remember I told you defenses can be true defenses.

Or could be counterarguments. So the facts will dictate. But I've got to make sure I address defenses because it's in the call of the question.

All right. Roofer contracted with Hal. So I see the relationship at this point is between roofer and Hal.

Your call net is against roofer. There's a problem because the relationship is between Hal and roofer. Yet, Ned is suing. Who's Ned?

The usual practice among roofers was to place tarpaulins on the ground to cash the nails and other materials scraped off during the removal of the old roof. So what's usual, the standard in regards to the industry.

On this occasion roofer did not have enough tarpaulins and failed to place one on the ground on the rear of the house.

The issue is based upon his fire. Would that be equivalent to a breach?

As a result many nails and old roofing materials fell into the grass of Hal's backyard. At the end of the job roofer did his best. That's a good word. To clean up the backyard but missed some of the nails embedded in the grass. He's doing his best. Is his best enough because he left nails behind?

About six months later, that's a big time gap. As Hal's mowing his back lawn... [Reading].

So I'm thinking there's approximate cause problem here.

With running over the lawn mower based on roofer's conduct leaving it embedded in the grass.

Few days later... [Reading].

There's your damages.

Now again the calls, the action by Ned against roofer.

The first thing you should be thinking of is your inner check list for negligence. Do we breach actual cause, approximate cause, and damages. You'll read it one time through to get a feel for the facts and second time you're ready to markup and see where they're placing an issue.

We have an issue with duty because the relationship between these facts is between roofer and Hal. And Ned is suing roofer. Ned is like who are you?

You have reasonable to act. That duty he owes is to Hal. To make sure he properly cleans up all his mess once he does the roofing. Make sure there's no nails and left over materials in obviously Hal's yard.

So that would be his duty. How does a duty extend? How do we get it attached to Ned?

This is a Cardozo problem. It's not an issue and this one is. I told you this is what we call a remote plain tiff. The relationship is between roofer and Hal.

Cardozo basically says foreseeable danger and foreseeable plaintiff.

Since he's in a property owner, you can argue he's in foreseeable zone. Things fly everywhere so can go to the neighbor's yard.

Doesn't matter how you conclude ‑‑ and it's a gray area. In regards to the zone. You'll go to Andrew's because Andrew said you owe duty to all. Would separate out the two. Make argument to Cardozo first because he's the rule.

We would find it's a duty do carod.

It's a big argument here for breach. Should have cleaned up after himself. I don't feel there's a big argument there. Actual cause, we have but for what?

If Ned didn't step on the nail, he would have been injured.

Of course is this foreseeable?

Again remember what happened?

Six‑month gap went by. Hal was mowing his back lawn and ran over the nail that propelled over to the neighbor's property. And of course resulted in Ned stepping on it and getting severely injured.

So is the conduct of Hal mowing his back lawn an intervening act?

Obviously roofers go yes, it is. So his conduct of running over and propelling is an intervening act. However, roofer was negligent leaving that nail embedded in the grass. His act is indirect of Hal's. Independent but is it foreseeable obviously if you leave debris or nails that it could be run over especially in the grass by a mower and propel.

Yes, that could result in somebody's injuries. I will find approximate cause and go to my dangers. He was severely injured and any medical expenses will be your general.

Back to the facts. Issue with duty. I feel comfortable with the approximate cause being at issue. So I know when they gave me negligence, I'm seeing two elements tested. I feel like I'm answering the call. The call also says defenses.

Oh, remember the pneumonic Clarc? C‑L‑A‑R‑C.

So first look at contributory negligence.

So based upon the facts he's walking barefoot in his backyard. Obviously roofers can argue you failed because you walk around in the backyard with no shoes on. However, I should be aware of my own backyard.

So based on the facts, did I really fall below the standard of care?

Can everybody hear me loud and clear?

Now in regards to my argument, you're going to bring up the facts that he walked in barefoot. And see if he fell below the standard of care.

If you find or it's a gray area, remember we have an argument of last clear chance.

Remember based upon the last clear chance is a plaintiff argument. So if roofer showed Ned was contributory negligent, Ned can bring up you had the last clear chance. If you cleaned up the mess in the first place, there wouldn't have been any injury.

So I would bring that up. Remember that is a plaintiff argument and only works for contributory negligent. Does not work for comparative. That's why I put it in that order and why I have the pneumonic.

Assumption of risk or comparative. In regards to comparative, proportion to fault. So I would steal from my argument that I made up above. And go through it that way. And of course assumption of the risk.

Again, if you go outside barefoot, you're encountering the risk of you might hurt your feet but you're in your own backyard. I should be aware of what's in my backyard. Six months has a big gap. If it was the day after, maybe I should have been more aware. But six months later.

So am I really aware of the risk and did I voluntarily encounter that risk?

Which I'll argue on these facts my conclusion is no. This examination has got good issues. When I go through the answer, you have Ned versus roofer.

Address the general duty and show it falters and rely upon Andrews and Cardozo.

I start off with the general duty. Reasonable person points out the relationship. It was between roofer and Hal.

So therefore, obviously the duty doesn't extend and rely upon Cardozo and Andrews.

In regards to Cardozo, foreseeable zone of danger and make your arguments. Eventually we all get there and argue that the duty due care.

Then in regards to ‑‑ no matter what. Let's say you find there is no duty. Do I continue?

Yes. And how do you know when I continue?

There's facts. There's other elements at issue.

Sometimes you'll see in an exam you have 3 or 4 calls dealing with negligence and call number four you can knock out. You'll know based on the facts. It will dictate. But if it's ever a gray area, you continue and make sure you pay attention to the call because I have to get to the defenses.

Breach. You can argue. They told you he did his best. But he still missed some. You breached your duty and obviously resulted in causing injury to another.

Your actual cause obviously. Then your approximate cause. Again, is it foreseeable?

You would argue intervening act because we have conduct running over the nail.

They do like that language. I broke it apart. If I see it as issue, I talk about intervening first. Makes it easier to write. Then I point out. Is it direct, indirect, dependent, independent.

Just makes it easier for my writing. That's the way I set it up. So I get my arguments in there.

Based upon his actions, it's foreseeable that someone can run over a nail that results in injury. Get to your damages.

Go to our defenses.

Contributory negligence.

I noticed students see an answer and actually broke apart with contributory negligence.

The reasonable person fell below the standard of care. That's what you want to grab onto and argue whether or not they're contributory negligent. You don't have time and we can get away from it in the bar exam and Baby Bar exam. Make sure you do that because it's time. You have a bit to write about.

Last clear chance. I want to make it clear that last clear chance doctrine works only for contributory negligence.

It's a plaintiff argument. That means you showed the defense of contributory negligence. So brought it up against the plaintiff and it worked. The plaintiff will try to argue the last clear chance doctrine. That's a good multi‑state too by the way.

Assumption of the risk. Did you fall below the standard of care?

Reasonable knowledge, voluntary encounter. But again it's my backyard. What dangers are you appreciating when you go to your backyard?

If you have a rock backyard, then you're probably obviously stepping on a rock versus grass and beautiful trees and plants, why shouldn't be anything embedded in my grass?

I found the defenses did not work in this case. This exam I don't think it's too bad. But the key thing is did I answer the call?

Saw two elements tested and I talked about three defenses. So I answered the call of the question. Feel good about it and on to go to the next question.

Couple of mistakes that I want you to make sure you understand.

You want to answer the call. The students will say a defense. The call says two defenses. Two or more. I want to make sure you carry it through. You don't want to lose five points. We all do odd things and that's where your check list will help you too. I don't want to leave anything behind.

All right. Any questions on question number one?

Hopefully you felt like me. It wasn't that bad of an exam. I thought it was pretty straightforward.

Question number two. This is a different beast. This is contract versus ECC.

Call of the question. Can cotton company ‑‑ have the right to reclaim very narrow call.

So that really narrowed you to reclaiming the goods.

One thing in question. Breach of contract. What I want to make sure you understand, you still go through your contract check list. You don't start with breach of contract.

You have to form the contract and the facts will dictate how far you have to go. Offer acceptance consideration or mutual consideration or valid contract.

It will tell me the facts but I still have to show a contract.

Buyer manufactures mattresses. Buyer is a merchant.

[Reading].

That's a dead giveaway. Telephoned.

Told cotton company he urgently needed a large bail and willing to pay top dollar.

[Reading].

So remember under the UCC, what do I need? The only thing I need is quantity. And here you're basically one large bail batting. So we will find the terms are certain.

On May first, cotton company delivered the bale... [Reading].

So he knew this and still proceeded to use it. If you're upset about the price, you should have returned it. Yet you're using it.

On May 2nd when buyer had five percent of the batting, sleep cocalled and cancelled the order.

Why did you get the batting in the first place?

Now that you cancel it, I don't need the batting anymore. So excuses for your performance of the condition.

This cancellation was such a major blow to buyer's condition that he announced he'll close his manufacturing plant.

[Reading].

So that's the first point we're going to look at.

Informed cotton company that he sold to another manufacturer. That's the second portion.

So we take our contact check list.

Pull out facts to show we're dealing with the transaction and cotton batting. The UCC will apply.

Merchants if you look to the facts, buyer's manufactures practices and calling company. So both parties here based on the facts are merchants.

Now, in looking at the fact pattern I didn't see. They told me there's a what?

Written contractor anything. So I will have to start with offer. And when buyer tell company that they need this bale of batting and willing to pay top dollar, that's strong language.

Further with the terms we got the bale of batting. He said by the end of the day be delivered. There's your time period.

Argues the price. So we do have the terms. So they are stated with particularity.

And telephoning. So we do have a valid offer. Acceptance. We can argue this two ways.

First in regards to they delivered it.

So that shows in regards to unequivocal sent.

And when he telephoned, we'll deliver the batting and we'll send the invoice later in the week.

Based upon the conduct you can argue performance which would show acceptance or based on the language. Either one will work.

Consideration. Top dollar exchange. We do have consideration on both sides.

Now, the next issue which is one that students have a tendency to miss. Statute frauds.

This is more evident because they told in telephone.

In regards to statute of frauds, this is a contract for the sale of goods of 5 hundred dollars or more. So the contract was for the sale of batting for 5 thousand dollars.

It was made over the phone. So it was oral. So does violate the statute of frauds unless I find an exception.

So sufficient memo. I don't see anything to hold on to.

I don't see anything to grab onto. So I look to four part performance in this case. Remember for contract for sale of goods, we can have full payment or full apart performance. In this case, he delivered the bail of batting. I do have full performance on cotton company's part.

So take it outside of statute otherwise why would you deliver the batting unless we had a contract?

This is the defense. He never entered into a forcible contract.

Go to my conditions. Cotton company has to deliver the batting before buyer has to pay.

Does that transpire what happens? Sure. So it's buyer's term.

The only reason that I ordered this batting was willing to pay top dollar because I had a contract with sleep co and they cancelled on me.

These facts raised impossibility, impracticality.

They have a relationship. So for excuse of performance, I want you looking for two or more. Two or more.

The first one was impossibility. Remember, it has to be objectively impossible. What must buyer do?

He ordered the batting. Argued sleep co cancelled so it's impossible for me to need the batting to pay for it. What are we going to do?

But is it objectively impossible?

The answer is no. Somebody else can pay for it.

You only ordered this because you had to fulfill the contract you have with sleep co. What's the problem here?

Unforeseen event. But your purpose had to be contemplated for at the time of entering this contract. You never said anything to cotton company.

So you got to remember that element because that's when they like to test. And you can argue impracticality.

It's 30 percent more than I pay in regards to my previous vendor. But again it's not extremely absorbent. So wouldn't work either.

In this case I would put buyer in breach and my remedy is contract where you received the $5,000.

So that's it for call number one.

And call number two is very specific.

Two things. One deals with seller's remedies. And that's when they told, after they delivered the goods they knew he was inn solvent.

Based upon this, once you discover the inn solvency, you have the right to reclaim the goods ten days after you delivered them. It's a short time period.

Let's say I get this and I don't know this rule. What I tell students to do, go back and see if I can reclaim. The answer is yes. Make it up if I had to pursuant to the UCC. When goods are delivered and the buyers inn solvent doesn't have the ability to pay.

That's going to give me something.

The other issue I see that you can bring up here, the facts did tell you he sold it to another manufacturer.

The problem there that other manufacturer can cut off your rights because they're bona fide purchaser. If I didn't have any knowledge that that bale of batting wasn't paid for, I could cut off their rights.

That's why you'll see in regards to opening a restaurant. You buy booze and stuff like that. They have to file a claim because they're not paid for yet. You don't have title in case something happens.

But pursuant to these facts could cut up the actual liability.

The first thing you talk about looking at the answers much does the UCC apply?

Based on these facts it's pretty straightforward.

In regards to merchants they gave it to you. Get in and out. What I call to give me, go through it quickly. You still have to prove it up but go through it.

Based on these facts, cotton company manufactures. So buyer makes mattresses so they have particular knowledge and skills.

How you're going to talk about it, you go through common law offer first. If it fails then bring up the difference in regards to the UCC.

Based on these facts it's supported. So the common law offer works.

Willing to pay top dollar.

Terms are there. The bail of batting is quantity.

So I have everything there.

Telephone that shows it was communicated to the offeree. So I do find I have a valid offer.

Next in regards to your acceptance. Again, they gave it to you. So you can use two things. They delivered the bail of batting which is the easiest way to show the unequivocal send.

Or they told them they would send. Valid acceptance and then your consideration.

You can see based on the discussion, the formation is not worth much. But you still have to prove it up. You still have to prove up the elements.

Therefore, we have a valid contract.

Statute of frauds. Feel was pretty straightforward because they asked you telephone. They gave it to you.

The way to get it out, full performance.

Again, look for multiple ways that you can take it outside the statute but there's no facts, there's no facts. Can't argue the memo or written confirmation. So go to full performance and says cotton company fully delivered. That takes the contract outside of the per view of statute of frauds.

It's factual. I would go to my conditions.

Every contract does have conditions. Your job is to determine whether I talk about it or not. The call of question. Further down the check list.

Was there enforceable contract. The other way I'll know, look for excuses if you see there's facts to excuses you're probably correct and they will want you to talk about conditions.

So based on these facts, I'm going to talk about the implied in law. It's implied you deliver before buyer's duty rises to pay. Cotton company delivered so it's full performance. Buyer, why aren't you paying? First excuse of impossibility.

This is a doctrine they do like to test. With impossibility, it's an excuse. Objective. No one can perform it.

Buyer will argue you can't perform. I purchased this to fulfill the order of sleep co. They answered. What's the problem? It's not objective.

Also, you can argue in regards to your frustration of purpose. Again, remember it has to be unforeseen events. Has to be contemplated for and your purpose is completely frustrating.

Well, I can see the unforeseen event. I didn't expect sleep co to cancel on me.

I can even go further and see my purpose is frustrating because no one is buying my mattresses. I'm already inn solvent but the element is was it contemplated? It wasn't. You never let cotton company know. If you did, maybe we'd have an excuse.

The other one I pointed out is impracticality.

You paid your other supplier. But it's not the ten times rule. It's not impractical.

The contact price which would be the remedy.

Everybody understand in regards to call number one?

Even though I emphasize. It says breach of contract. Can't start there. You're going through your elements proving your contract based on the facts. Carry through the check list and go from there.

I see answers. Breach of contract and go to damages and leave. And that means you missed quite a few issues.

Second call. Does cotton company have the right to claim unused batting?

We'll talk about in regards to the past 60 days they learned you're inn solvent. Oops.

And they have it right after they deliver. Ten‑day window though to reclaim those goods. Because you're inn solvency once they learn.

If they knew it prior, they wouldn't have rights. Unless they stipulated in writing. But they wouldn't have the writing if they didn't have the knowledge.

Use your common sense. I don't want you to leave a call blank. Can't do that.

Sometimes they give us some prizes. Don't like it. But we'll be able to handle it.

Any questions in regards to question number two?

So I don't feel that was a bad UCC exam. Right?

Use your check list, break it apart. Relatively straightforward using your tools.

All right. Question number three deals with criminal law.

One thing, pay attention to the calls. Call one, it says what criminal charges if any should be brought against art and Ben. Criminal charges.

You go through your check list. And I see it's against art and Ben.

So they could be acting in concert or maybe I have a conspiracy or one did an act, and impede to themselves to look at that.

Look at call number two. What defenses if any do art and Ben have?

They separated it out so I need to talk about the criminal charges first. Cannot talk about defenses. Must place in call number two.

It also says defenses which means two or more. I talked about one and most likely incorrect.

Defenses can be true defenses.

Or counterarguments. You have to remember that.

All right. Let's go through the facts.

After drinking heavily. What am I thinking right there?

First issue maybe of intoxication, right?

Art and Ben decided they'll rob the local all-night convenience store.

When they decided, what is that? That's a conspiracy. So I do see my first crime of conspiracy.

They drove art's truck to the store, entered and yelled this is a stick up while banishing their unloaded pistols.

Sounds like this is a burglary.

They discovered the persons in the store were Mark who worked in the store and frantic customer. Mark became enraged.

[Reading].

Now, when he loaded them in the truck, that's a form of kidnapping. That can be false imprisonment.

[Reading].

Now wait a minute, what? He's taking the money then. If you go look, they didn't take anything at that point.

Remember for robbery has to be by force, fear, intimidation. Has to be in front of the person. He picked it up later after he drove back. So looks like that robbery falters and would be argued as an attempt.

When he took the 250, that's an argument for larceny. Very subtle.

The next day the store manager saw things were A miss and called police who rescued Fran and Mark from the refrigerator. Mark soon developed pneumonia and died from it.

[Reading].

That raises the plaintiff.

Skull plaintiff, it's an approximate cause issue. And causation does exist in criminal two.

What criminal charges if any should be brought against art and Ben?

I'll take it in chronological order. First thing I'm going to bring up the underlying issue of conspiracy. First thing I see because art and Ben decided they'll rob a local all-night convenience store.

So you need an agreement and they decided it's between art and Ben. And robbing the store shows me specific intent that they want to do an unlawful act. So I do have a conspiracy. Pretty strong.

Next when they entered the store, it raises issue of burglary. Common law first and then if it fails you go to your modern law.

Common law. Based on these facts, it's an all-night convenience store. It's nighttime. There was no breaking. Store open to the public. But they entered with the intent to commit what?

A robbery. However, because there's a lack of breaking, there's no common law burglar. Then go to modern law burglary.

Based on these facts, store is open to the public. However, remember if you enter the time with intent to commit a crime, that's a trespassory enter. It's found ‑‑ it's a store. So it's a dwelling. Structure.

And intent to rob is an unlawful act. We will find based on these facts that modern law burglary will succeed.

Next I would go to the issue. Just taking it again in chronological order when they went in there. They said this is a stick up. A robbery. Need to show the taking away the personal property of another by force, fear, or intimidation.

With the specific intent to crime.

So taking the cash from the register. He did leave with the money. But what's the problem?

Was it by force, fear, and intimidation?

No, they were locked in the refrigerator.

So fall back saying there's no robbery and argue the attempt.

Based upon again specific intent, substantial step. The facts told you they decided to rob the store. Banished their unloaded pistol and took a substantial act. But by doing that, art became enraged based on seeing Fran with Mark.

So they did have the ability to obviously rob but they didn't go through with it based upon his rage. And therefore I would argue there's a valid attempt.

Then of course chilling the lovers out and put them in the truck, I argue false imprisonment. I argue you put them in the truck. You can also argue they put them in the refrigerator. Kidnapping, you drove them around.

With kidnapping, it's any unlawful movement. Even though it's right by the store, it's enough to find movement. False imprisonment and I talk about my murder.

With the murder, Mark dies. Killing of human being. Malice. Intent to kill?

He said he's going to chill these lovers out. Gray area.

Intent to cause great bodily harm?

Uh‑huh. Wanton reckless, sure.

And this is ‑‑ you can argue modern law burglary, attempted burglary.

For the ‑‑ any dangerous felony will work. Or any attempt of the ones I listed.

So I want you to remember that. Several to grab onto but if they all faltered and I had an attempt of one of those, that will, would. That's a trick. They try to trick us.

As to causation, yes. A lot of times I told you remember save time. I don't address causation. Why?

Because of time. But do I have to find this fact pattern?

Absolutely. Because they did put it in issue. Locking in the refrigerator he wouldn't have died and is this foreseeable?

In this case Ben is going to argue, no it's not. You had a rare susceptibility.

That's where you tie into the thin skull plaintiff doctrine. You take your victim as you find him and you still would be ‑‑ the facts did tell you he was enraged.

With volunteer manslaughter, you need prove occasion and ‑‑ Fran according to his mindset was his girlfriend when he saw her in the store with Mark.

So that is in regards to prove occasion. He's not really doing anything and he did lose his mental equilibrium but that's on him. And insufficient time to cool off.

I wouldn't mitigate to volunteer manslaughter. It would be first degree.

Since he said we'll chill these lovers out and left them in the refrigerator, that's an argument. And those are all the crimes I have against art.

What about Ben?

Ben I can do define, discuss supra. Talk about the conspiracy. And impute everything on him based on Pinkerton's.

You have to go back and marking things up and doing your virtual outline is going to help. We convicted art of modern robbery. False imprisonment, kidnap, murder. Can I impute those onto Ben?

I would define my discuss supramy conspiracy and argue my Pinkerton's.

It's reasonable foreseeable we banish guns, do an attempted robbery. It's reasonable foreseeable under the facts what's contemplated for that we might commit a robbery. Definitely a modern law burglary. But he's going to argue ‑‑ Ben, that wasn't contemplated.

They come back with the murder, the argument there is when you commit a dangerous crime, a death can result. So I will find poor little Ben here. He's going to be culpable for the burglary and robbery. And there's a good argument that he could be liable. It's arguable for the murder. Depends on how you see the facts.

In regards to what's contemplated, reasonably foreseeable, could a death result?

We can argue yes. Based upon the conduct on chilling lovers out, the answer can be no. But you do need to argue it and look to both sides.

Based upon the motivation was jealousy. It's foreseeable even though it's not specific to this detail, a death can result. Either one can work.

The other argument, they told you in that first paragraph last sentence that Ben picked up the $250 from the cash register. That conduct was on his own so that's a larceny. In regards to taking the money, belonged to the store of another. And of course by taking it leaving shows the intent to deprive. So we would have a larceny.

I go back to my facts. Quite a few criminal charges to raise. I answered call number one and Ben on the Pinkerton's rule. I'm comfortable so I'll go to call number two.

Call number two. What defenses?

The first thing we saw was drinking heavily and that's voluntary intoxication. Two things, one it's only defense to negate specific intent. Is that going to work?

Art recognized Fran so he knows what he's doing. He loaded them up. It's not going to negate specific intent.

Do you see any other defenses?

Call says defenses. Remember I told you in the lecture when you see voluntary intoxication, another issue to look for is diminish capacity. Have a tendency to go together.

So the issue is his capacity so diminished?

The answer is no because intoxication is not going to work. Those are your defenses.

Again criminal charges. I did state versus art first.

Art is the one that did the majority of conduct. What was nice about the calls aren't first too.

You've got to pay attention to the call of the question and see what they're trying to get you to answer and analyze.

You see the conspiracy was pretty straightforward. The burglary I don't feel was very hard. So get in and out and go to your modern law.

The robbery was tricky because you have to take personal property by force, fear, intimidation. He stopped mid-stream. So wasn't by force, fear, intimidation because he loaded them in the truck and drove them around. So I would argue in regards to attempted robbery. Again you didn't complete the full act itself to make it intent and of course go through with regards to false imprisonment my kidnapping and murder of the homicide and argue.

In regards to malice, remember I told you if you can argue all four ways of malice.

Obviously if it's first degree, see if you can mitigate or second degree. But what's going to tell you is the facts. You'll know based upon the facts.

When you look to malice, if you have intent to kill or intent to cause great bodily harm, you know you'll never get to involuntary manslaughter. Look to your malice. You want to know that so you make sure how far you have to go.

I don't want to waste time on a non‑issue. I want to get the issues to get points for.

The issue most people didn't bring up is attempted murder of Fran. It was an issue because he had specific intent to harm her and locked her in the refrigerator. You can find there is or is not an intent. But the facts put it at issue. Subtle issue.

Big thing there was your Pinkerton's. They love conspiracy and love the Pinkerton's rule.

You see I have a lot of crimes art did. I have to separate yeah these two we can foresee and separate the ones by a paragraph of I couldn't see kidnap because our agreement was to rob a store. You became enraged. And make your argument.

Again, the facts will dictate. The Pinkerton's is worth some good points.

Next, the sleeper was the larceny. He took the $250 after they were locked in the refrigerator.

This is good in multi‑states too. The force wasn't there. They weren't present.

Call number two in regards to your defenses.

Voluntary intoxication. And in what?

Diminished capacity. They had intention to go with each other. I want to make sure you break that apart.

All right. Any questions on this particular essay question?

Okay. I know one of you asked for some multi‑states. I want to get the 1 or 2 you're asking.

One student asked about question number 17.

So the key thing there in regards to what you need to understand is the theft crimes are highly testable in the multiple choice questions. You have to look to is it larceny?

Look to the how do I get possession? Did I get an interest in the actual asset?

These are key things you have to ask yourself.

Let's go over question number 17 first.

Moe was employed by... [Reading].

So far it sounds like it's probably going to be embezzlement.

Moe took the clock, did not deliver to the shop. Did he commit larceny?

Yes. He had the intentions at the time he got possession of it. That changes everything. If he obtained possession of it and then had the intent, the story will change on you and that would be embezzlement.

Prior to that would be equivalent to a larceny.

Question number 51 and 52.

It Warren commit a theft crime?

Theft crime, I want you to circle it and that should take you to inners of your theft.

Bernard o owes lance... [Reading].

Did Warren commit a theft crime?

So let's go back and look at the facts. There's a lot here.

So he borrowed the $5,000. Payment was overdue to lance.

So he got lance retained money ink to collect the debt. He signed ‑‑ so Warren assigned Ludwig an employee. Ludwig was supposed to collect it but for the benefit of money ink.

Apply the funds to discharge. That's the problem.

So you assign him to collect the debt but discharge to another party. That would be embezzlement.

So it says here, Warren in discharge ‑‑ jointly liable. When he collected the debt, he was rightfully in possession. He's actually committed embezzlement. Does that make sense?

So Ludwig collected it. He handed it over and he's going to assign to that debt and that was embezzlement.

That one I had to map out myself.

If a crime was committed by Warren, could money inc be convicted by the same offense?

Could they?

The trick you learn in corporations. So in essence if ‑‑ if Warren did commit a crime, who is Warren? He's the president of the company.

So they can impute that to the corporation. And you probably hear that too. Corporations are treated as people. It's people doing the conduct. But they can impute to the corporation as well and go after them criminally. And that's something that's kind of odd. I don't think I've seen that on the Baby Bar. That you might see on the bar because you haven't had corporations.

So both of these are actually answer A.

Does that kind of ‑‑ these are odd.

60.

Okay. So let's see.

Standard race saw a new automobile... [Reading].

So I'm thinking already that's conversion.

If Juan obtained a judgment against Stan based on conversion and Stan pays the judgment... [Reading].

Well, the answer is no. Why?

Remember you've got to apply common law. That's the trick to this question.

Since Juan received a full judgment, there's no right for him to go after recovery against the other party. And that's a common law rule. That's something you just know.

In essence, it has to be D. Juan's judgment was based on conversion.

Allowed no ‑‑ no contributions allowed. Modernly it is. So we can proportion according to fault or you can seek contemplation. But common law, no.

That's the other thing too, to remember. They do trick us with that. Because we'll have the correct answer choice and they do.

That would work modernly. But you got to remember, you've got to apply common law principles. That's definitely what you remember.

What's not nice is they will have that modern alliance there for you. That's how it's set up. You have to apply common law principles.

Now you've got about one week. So this is the time to really buckle up. I want you to make sure you're working on issue spotting. I'm hoping you do timed exams. You've got to get your timing down.

You have four essays. One hour take a 15‑minute break and log back on. Get your timeframe down. I also want you to remember this.

If you're having technical problems don't throw in the towel. Get it documented and go forward. If you find a question that God, what is this? Do your best because you can make it up in question 2, 3, 4. Remember that. Don't throw in the towel. You have to go in fighting. It's important.

During your last week ‑‑ the office is closed tomorrow. But shoot me an e‑mail. If you have questions or see a multi‑state you don't understand, please let me know. I want you going in there with a good mindset.

You never want to go in there ‑‑ maybe I don't want the issue but I don't want to ever go in there never knowing how to address the issue. That's important. Anything that comes up, please let me know.

Does anybody have questions at this point?

Again, if anything does come up, please shoot me an e‑mail. Be more than happy to help you. I wish you the best of luck. Go in there next week on the 17th and let's pass this examination and put it behind us.

Wish you guys all a good night.