CLASS: BABY BAR

LOCATION: REMOTE

06/08/2021

6:00 PM – 7:00 PM

R. Farrell

 (Captioner on stand‑by. Ready to begin at 6:00 p.m.)

>> Good evening everybody and welcome to tonight’s baby bar miniseries and I want to point out these sessions are recorded and you can go back and listen to lectures. Log onto Taft's web site in the student section and go to the baby bar section. Everything is posted there for your convenience as well. It is hard to believe it has been ten weeks if you have any questions post there in the chat and I hope everybody is doing well and I hope your preparation is going well and things are starting to click for you. Because the baby bar is not too far away. We have three essay questions we are going to review tonight. The first is a tort essay. Remember the first thing you are going the do is look to the call of the question and I want you to get the habit. It is important because the call can narrow you and if you look in this call it says an action brought against Ned the roofer for negligence what reason might the roofer assert and what is the outcome on each and explain fully. They gave you the issue. Negligence. The thing you should ask yourself is this a general call or a specific call and it is very specific, isn't it? That tells me when I go in, I have to say melody look at what elements are being tested here.

If I go straight through and find a duty. The duty was breech and actual proximate cause of one's damage and arguments for the facts supporting all of the elements I know I made a mistake. When they give you a specific call you have to look within the inner checklist and look to see what is being tested within itself that is of importance. It also says defenses. What does defenses mean? Defenses can mean true defenses. Contributory. Comparative negligence. Or counterarguments and I want you to keep that in mind and they use the term as well in contracts and contract defense are statute of frauds and fraud mistake. Guess what sometimes call means excuses to conditions of performance and or counter arguments and we have to make sure we understand the call and answer the call and don’t get narrow minded and think the call means a true defense it that will hurt us. Let's go through the facts.

Roofer contracted with hall to replace the roof on the house. The relationship is between roofer and hall. The usual practice among roofers was to place planes on the ground around the house to catch the nails and other materials scraped off during the removal of the old roof. You see in the sentence we have usual. Practice in the industry. I would circle or highlight in this case. And look to that term and think okay it is normal. And it says object this occasion roofer didn't have enough tarp planes and failed today place one on the ground of the rear of hall's house. Is that enough to be equivalent to a breech. As a result, old nails and roofing material fell in the grass at the back of Hal's backyard. At the end of the job roofer did his best to clean up the backyard but missed some nails embed in did grass. Is his best enough. Six months later as hall was mowing the back lawn his lawn Moor ran over one of the nails and propelled over the fence in to the backyard of Ned. A few days later as Ned was walking barefoot in his yard he stepped on the nail and had is severe injury. An action brought about ‑‑ what is the outcome. Look to who is suing who?

The relationship is between roofer and hall for the contracting of and doing his roof. Now you see the lawsuits between the neighbor Ned and roofer. Now we know the first issue here is negligence what is the actual duty? You have you a duty to act as a reasonable prudent person who do u owe the duty to. Do the roofing on the house. (Indistinct) risk and harm, right? What is the problem here? Well, he was hired by hall. Roofers’ relationship is with hall. This is what we call a remote plaintiff. A remote plaintiff. When you see a remote plaintiff that triggers Cardozo. You will see it when you go to the bar web site and look at prior baby bars Cardozo is talked about a lot of time. A lot of time the students are correct. This is a prime example where it is here. Your duty under Cardozo ‑‑ now the issue here is Ned is a neighbor. So, he is I am within the foreseeable zone of danger. Right?

But again, he did his best in cleaning up the debris and who is the one in the foreseeable zone of danger. Probably Hal. You will ash reasonable site in this case. When you see Cardozo is tested you fall back on Andrews which Andrews say you owe duty to all. If we find it is not foreseeable. That the nail would propel and be in the backyard and step on it. We would argue in regards under Andrew you owe duty to all. And we go to the breech. The breech is straightforward. He left nails embedded in the grass and of course because of the result of leaving in the grass was able to be run over by a lawn Moor and propelled in the neighbor’s yard and I feel breach is given.

Actual cause? Well leaving the nail in the grass he wouldn't have stepped on it and you can argue successive tort teaser. But\for Hal ran over with the lawn Moor and letting propel over the fence as well as roofer he would not have been injured. You can argue the but for ‑‑ or the successive tort teaser. When someone runs over and propels that should be noticeable.

Proximate cause. This is the one that is an issue. Because roofer is couldn't foresee Hal is going to come out six months later in his yard and run over a nail and propel in the neighbor’s backyard and lands and neighbor steps on it in his bare feet. He is going to argue the conduct of Hal mowing his backyard is an intervening act.

Roofers’ actions are what? Indirect of Hal's and independent. There is no relationship and now the issue is it foreseeable. Remember the negligent conduct of a third party is always foreseeable. You see the roofers act is independent of what Hal did here and now the issue is foreseeable and foreseeable acts are normal acts of God. Acts of animals and negligent of a third party. We found out Hal is neg legible.

We go to the discussion of damages. Pain and suffering and of course special damages. Anything he leads and proves. Look at the call. Says negligence of what defenses. He knows to call in se with damages. With negligence remember in order to have prima facie cases you need damages. Remember when we went t through the answer we went through damage. I didn't go through special. And there were no facts and I get a no.

They ask for defenses and had this is what make it is exam rather odd. What did Ned do. He went outside in the backyard with bare feet and I say a lot of people do that in their yard. In this case you have you to make a reasonable argument as to Ned. As to the roofer. Arguing against Ned and the roofer will say you shouldn't be walking barefoot. If you walk out barefoot you are (Indistinct) to yourself that you can step on something and hurt your foot. But, again, did the roofer have a last ‑‑ if we (Indistinct) the accident would have never happen. If you see contributory negligence you are going to discuss comparative. Separated out is a separate issue. It is a difference of what? Jurisdiction. So, you do bring it up. Right? So, it applies obviously to the negligence. It is a jurisdiction and please bring it up. You can get in and out of the issue. You can steal from contributory negligence but it is something you want t to bring up and of course we have got assumption of t risk.

With assumption of the risk did Ned assume the risk? Was he aware and voluntary (Indistinct) and based on the facts we don’t have awareness? He is going in his own backyard. Nothing here to tip him off. If the facts told you, they had construction next door and he was mad because the construction workers always threw things in his yard things might change but we don't have that in the facts, do we?

A couple of key things number one look to the call. Number two defenses. When I see defenses, I want you to remember. For negligence I already know there is an issue. I haven't read the fact. Contributory and comparative for difference of jurisdiction and you will bring those two up. If to me that is like one that is difference of jurisdiction you know you have the issue of assumption of the risk and look is and see if you can argue what we call last clear chance. The other key thing I want you to remember. Lay out for the reader. It says Ned verses roofer. And I had no negligence and I give a rule and you don't have to. Time is of the essence. If your headnote your elements. They are going to know you know the rule. It is up to you and it comes down to timing. You should in this exam start off with the general duty. If you look to the checklist where does Cardozo fall? That is not a special duty. It is a general duty.

So, start off with the general duty to act as a reasonable and prudent person and you have the to take steps to make sure when you are doing the roof the debris don't fall in the neighbor’s land and breach that and say wait a minute my relationship here is with Hal and that is where you fall back on Cardozo and Andrews. Remember Cardozo says you owe duty to those in the foreseeable zone of danger and you are a neighboring property. And there is an argument you are in the foreseeable zone of danger and again can the roofer be seeing that and make the argument on both sides. This is a gray area. That means you go either way. As long as you bring it up it is a gray area

And you will bring up Cardozo and Andrews and give conclusion. Breach is straightforward. Actual cause is straightforward and then go to proximate cause. Proximate cause is a good issue here and they do test proximate cause and I want you to go in there and look for it. Is it an issue here? Was it foreseeable if you step on a nail, you pierce your foot? Yes, it is. What happened? How did the nail get there? Somebody else got it there based on somebody else's conduct and we know proximate cause is an issue. The argument here is when Hal went and mowed the backyard and propelled it that is a (Indistinct) act and what caused it to end up in Ned p's yard. Hour his conduct is indirect and independent but the negligence of a third party which again is Hal running over a nail and propelling in the neighbor’s yard would not cut off roofers’ liability and therefore he is proximate cause and then go through the damages and contributory negligence and comparative and you will see the abs. Last clear chance is a counterargument when you find that the plaintiff was contributory negligence. We find if the plaintiff is contributory negligence. Remember how that works. It is a bar. They get nothing. If you show the defendant had the last clear chance to prevent the injury it saves you and won't be a complete bar and your assumption of the risk. This question areas people missed Cardozo and Andrews and didn't do a good job in the proximate cause. The point value in the examination is in the analysis. That means have you to look to the facts and break the elements apart the to get your point value. That is importance. Okay?

Again, it is in the analysis. Now, most common mistake that is are seen in the exam are people do miss the Cardozo, Andrew’s issue and discussion in regards to the defenses are weak. Break those apart. This isn't a difficult exam and it is not a racehorse. That tells you there they are looking at the analysis. Again, the type of question you get dictates. You will have a clear understanding. Any questions. On question one? Okay let's go to question two.

This one is a little bit harder and obviously something your UCC and I feel you will get two torts this time. One contracts and one criminal law. Whether you get UCC or not is a 5050 chance. It is contracts but it is either common law or UCC but it will be on the multiple choice. So, you do need to know your battle of the forums and warranties and risk of loss. Shipment contracts and destination. Right? Those are things that are tested. Remedies are highly testable in UCC. Let's look to the call of the question in question number two.

Can cotton company breach in it shall did explain fully. Number two can cotton company have the right to claim the unused batting and says explain and that is a rule you know or don't. I tell state of the union if you don't know the rule take a common-sense stab to it and pursue to the UCC and make a Callable argument there is a good chance you are correct.

Let's go through the facts. Buyer manufacturers ma tresses which feature an outer layer composed of a cotton material called batty. Buyer manufacturer is a merchant and does this batting. Okay. Unexpectedly buyer supply of batting ran out which brought the entire production line to a halt at the time the buyer was try to go fill a large special order from sleep company. One of his customers. Buyer regularly supplied a batting and refuse today deliver anymore batting because buyer was behind on payments to the supplier. What do I do? I can't get the batting and production is shut down. First buyer telephoned. That is a good fact. Telephoned. What are we thinking of buyer is a merchant and we know it is dealing with batting which is a good? And I am thinking statute of frauds based on the telephone. Buyer telephoned cotton company and told him he need a large bale of batting and pay top dollar if will deliver the batting. On May 1st cotton company delivered the batting and send they would send the invoice later in the week. With acceptance it could be unequivocal con sent to the terms or conduct by the UCC. His conduct of delivering the batting we have an acceptance. Don't we. Buyer was upset because the price was 30 percent higher. But because of the urgent need buyer opened the bale and started to use the batting to make ma tresses. He was upset by why did he use it. He had no other choice.

On May 2nd at a time when buyer used about five percent of the batting sleep company called and had cancelled the order. The only reason I got this batting was for what? What are you thinking of? How am I going to perform now? You cancelled my order. This cancellation was a major blow to buyer financial condition he announced he would close the manufacturing plant and they took away the contract. What are you thinking? Impossibility. Impracticability. Frustration of purpose. How can I perform. It is impossible for me to perform. Again, I am making ma tresses for nobody now they breached the contract with me. On May 5th cotton company found out in fact buyer had been sol vent for 60 days on May 6th cotton company said to pay the invoice or return the batting immediately. Buyer refused saying cotton company never had a contract and sold the remaining batting to another manufacturer. Can cotton company prevail in action for breach. First thinning we will do is set up the contract. Take the checklist. First thinning to look at does the UCC apply. And it applies to a transaction of goods and here we are dealing with batting which is a transaction of goods and the UCC applies. An ex o'clock merchants we have buyer who manufacturing mattresses and buyer delivering batting and both merchants and was there an offer. That is right there in the second paragraph. When he telephoned and had said he urgently needed the bale of batting and only pay top dollar. Time period by the end of the day. Price top dollar. Subject matter. The batting. We have all of the terms and obviously you are calling and communicated ‑‑ the offer the straightforward. Next the acceptance. I delivered and then your consideration. Top dollar in exchange for the batting.

The formation of this contract is not a big-ticket item, is it? It is not worth a lot of points but I still have to go through it and prove it up. Now once you form a contract, please always look for defenses is there any defenses to formation and the big one here is the statute of frauds you cannot afford to miss the statute of frauds if it is tested on your exam. Toom points. Hard to come back. Here the contract of the sale of goods $500 or more must be in writing and this is telephone and enforceable and look for an exception. In this case they gave to me. Full performance they delivered the bale of batting and that made it straightforward. Other thing we want to continue. Other thing with the statute of frauds examiners is getting smarter. Statute of frauds applies to oral agreements or incomplete writing and a lot of times when you are dealing with the sale of goods. Factual or purchase order. You fax over acknowledgment or e‑mail. Those are incomplete writing and those will trigger the statute of fraud. I want you to be careful with that it is testable.

The next issue in the exam and you are going through the checklist. I don't see third party right. Conditions. And the condition is you deliver the batting before I have to pay. It is your turn to pay and why aren't you paying and this is where the buyer is going to have the excuse of possibility of performance. With impossibility of performance has to be objectively impossible. So, the fact that sleep company cancelled the contract for the ma tresses. Made objectively impossible for him to perform he should be excused. Someone else can manufacture ma tresses or buy them. It is not objective. Impossibility to ‑‑ one thing I want you to remember with the doctrine. Impossibility doesn't work most of the time because of the objectivity. Pay attention to that. Also, when you see the issue. Argue frustration of purpose. My purpose is to make money and sell my ma tresses and when they cancelled the order. Unforeseen events and you will argue my purpose were frustrated. However, your purpose wasn't made known to cotton company at the time of contract. You would have told them you are doing this to fulfill the contract we might have a better argument. You also brought up commercial impracticability. And it is not commercial. They told you it is 30 percent more and that will fail and obviously your breach. And then your remedies. In this case it would be the actual on the contract price is what we call it.

For column one it is going through the checklist. Issues with formation. Defense of statute of frauds. Conditions with excuses breach and remedy. Call two is harder in regards to the insolvency. What the rule is if you discover. As a seller that the buyer insolvent and you deliver goods to them you have ten days basically to get them back. You basically reclaim the goods and demand within b ten days. If you knew they were insolvent at the time you are out of luck.

If you didn't know. I tell people the o uses the common sense should they be able the to get it back. Yes, pursuant to the UCC have a good and insolvent. I should be able to reclaim my goods. In regards to the answer. Let the reader know of the lawsuit and this is nice to the checklist. UCC. Merchants. Offer. Acceptance. Consideration. Very specific. Very straightforward which is good. They gave it to me on a silver platter which I like and I go to the defense. Which is the statute of frauds and it is worth quite a bit point value wise. Be but this one wasn't very hard. It was straightforward. Verses I have seen it tested more difficult. But, again take it and run with it right and of course after that you go to your conditions. Look for your excuses for conditions. As to impossible: Frustration of purpose and you could have brought up impracticability. Breach and of course remedies and last call in regards to they are claiming of the unused batting which is very rule specific by the way.

This exam I would say is moderate. It is not a hard difficult exam. Point value is in the statute of fraud and senior excuses to conditions and that is important. And formation was not a p big issue. Can it be? Yeah. But how am I going to know that? Facts. Remember the facts are going to dictate to you. You want to know based upon the facts so you want to look for that. Okay? Any questions on question number two?

So, question is how do you learn to be better at analysis verses straightforward memorization. That is a good question. In regards it depends. I memorize my rules that is why I still know them today. I had them all memorized. But with will that allow me to p pass the exam and the answer is no. What people need to understand I say it is not a vocabulary test we are to find the rule. What is important is the analysis. Ask how do I get better at that. I would recommend. Pull answers with model answers. I would read the essay and mark up with my issue spotting and read a model answer anything I missed I will go back and see why I didn't see it based on the facts that will help with identifying issues and work on analysis if you are not seeing issues within a sub issue that is something to work on. And it takes practice which people don't understand. There is no way around it. I wish there was and say do this and boom you got it. The law is not that way. They are looking at your analytical ability and that is important as a lawyer. And they want you to see whether we agree or not. The law is not black or white. Right? Take a look around today and of course we want you to be able to see both sides. If you are prosecution or defense. You need to anticipate what the other side is going to argue and you are prepared and that is how you went.

I find in true life with law the more you understand the concept and look to the other side on how you the counter and you are prepared for that. And those are the people who win the cases and they are the big paid lawyers is what I say. Let's look at question number three. This is criminal law. This is a racehorse. There are quite a few issues here. Let's look at the call. Call number one.

Criminal charges if an issue brought against art and ben. Criminal charges how many? Two or more. Two or more. And then says what defenses do art and ben have to the criminal charges? Two or more. I want you to pay attention to that. That means if you see one your v made a mistake and I want you to look if for two or more. I see art and ben and there are two parties and I am thinking conspiracy. If they gave me three. I know there is absolutely something different between them. Why would they give me three verses two? A lot of times my call will help me. I have to pay attention to that. That will help me to open up and see other issues and says after drinking heavily, what is the first issue you are thinking of? Voluntary intoxication. Art and ben decided they would rob the local all-night convenience store. Decided is conspiracy and drove art's truck to store and entered and yelled this is a stick up while banishing an unloaded pistol. Entered in the store. What is another issue you are thinking of? Burglary. Right?

They discovered the only persons in the store were Mark who worked at the store and Fran a customer. Art became enraged if that is a good word. Since he regarded Fran as the steady girlfriend and jealous, she was spending time with Mark. I am thinking provocation. Because he is enraging and had jealous. Art announced we will chill these lovers out and loaded them in the truck. And what are you thinking of? Kidnapping. Art drove a short distance down the dirt road behind the store to a large refrigerator. Art locked Fran and Mark in the refrigerator. Now what is it? False imprisonment. Art then returned to the store to pick up ben. Who took $250 out of the cash register on the way out of the store? That is larceny. Look at the sentence. He went back to pick up ben. Ben one t with him when driving the truck around and putting in the refrigerator. Why? We have counterargue here. Next day store manager saw things were amiss and called police who rescued Fran and Mark from the refrigerator. Fran had no significant injury. But Mark develops pneumonia and died of it several weeks later. I put you in the freezer and caused your death what is that? (Indistinct) take them as you find them. Have you the ‑‑ you have pneumonia I am responsible for that. Coroner’s report showed Mark had acceptability to pneumonia and for the exposure of virus and intense cold of the refrigerator. What criminal charges. This is one I am going to take in chronologic order. First thing I assume is state verses art. Okay? Who did what to whom?

Art is the main leader here, right? When they basically decide today rob and first thing, I will talk about is the conspiracy. And they gave it to me. Conspiracy they did decide. There is an agreement. Two or more. Art and ben. Rob the store. Conspiracy is not a big item. Next, they went to the store, went inside and the said this is a stick um. That raises the issue

Now, don't forget (Indistinct) strong facts to bring it up. Was there a breaking. Entering. Dwelling house. Specific intent to commit a felony. There is a specific intent. Strong element. I will bring up common law ‑‑ it fails why. It is ‑‑ it is open to the public and I will fall back on modern law. That is here. Why? Remember what the law says if you enter in to a public structure with the intent to commit a crime you initiate the owner’s consent and therefore it is a trespassory entry.

Then of course when they pointed the gun. This is a stick up and you are going to argue robbery. We have a problem here. When ben took out the $200 from the cash register. Where was Mark and Fran? They were locked in the refrigerator. Wasn't by force, fear or intimidation. They were not around. It didn't occur in the presence of the clerk. The robbery is going to fail. Hold back on attempt. Remember with intent specific intent. Apparent‑ability. Or in this case they decide today rob and banished the pistol and took a substantial step and took the money without force. And I will fall back on intentive robbery and locked in the refrigerator. False imprisonment. And then the kidnapping because art drove Mark and Fran around. There is an aspiration. And of course, Mark died and I have to go through murder. And there is a killing of another. Is it the actual cause? If you put in the refrigerator and pneumonia and foreseeable if someone gets that they can die. Murder and malice. Intent to kill. He said chill these lovers out I am not sure he had intent to kill. Because he put in the refrigerator. Intent to cause bodily harm. Want and ‑‑ felony rule. Yes. What is the felony. Modern law burg. What can we use common law wise? Attempted robbery. We got to remember that.

So, remember you know your felony murder rule has to be inherently danger felony. Burglary. Arson. Rape. Kidnapping. But anything that I listed if they are done with attempt. Attempted kidnapping and burglary and robbery. That will work as well for the felony murder rule to show malice. Make sure you remember that because that is testable.

Of course, if I show first degree based on the felony murder rule I will fall back on voluntary manslaughter. Why? He was jealous and enraged. Make that argument and would a reasonable person react this way especially since it is not his girlfriend?

Other issue students didn't see and I feel it is there and I feel it is a bonus point. Attempted murder of Fran. He did put in the refrigerator with Mark. Be you did he result in her death and that is an argument there and that is an issue I would bring up. Now we answered state verses art and we have to look at ben. Why did I keep ben separated? Ben didn't do the kidnaping and the false imprisonment. The murder, did he?

So, what I will do is basically go through ben and bring up my conspiracy and say based on the conspiracy he committed the modern law burglary. But now the issue is can I impede onto him through Pinkerton's. The kidnapping and false imprisonment and the murder. Quite a bit. Right? And he is going to argue well it is foreseeable that we go and rob. Not that you would kidnap him. See two people and think your girlfriend is cheating on you and kidnap them and put in the refrigerator. I can't foresee that. That a death could result and the answer is yes. Appears based upon the actions. Right? That we can impute what Art did on the Ben through Pinkerton's. Again, we want to punish your mental state for you agreeing to do this crime. It is inherently danger. A death could foresee as to being the result. You will be accountable. The other issue we talk about against him is larceny. Trustatory taking away the personal property of another. This is a hidden issue. Why? If you go back and look at the fact’s art returned to the store to pick up ben who took the 250. Oh, that is why. Based on the sentences you will argue actual larceny. The other thing to be aware the last sentence in a paragraph read carefully a lot of times it raises an issue. It is an actual issue on its own or a sub issue within another and you want t to pay attention to that and see it and argue it. And those are the main crimes and call number two says what defenses. What defenses do we see?

We did see voluntary intoxication. So, we would argue voluntary intoxication. What do does that mean? Whenever you see intoxication, you want to argue diminish capacity. With diminish capacity it is similar to intoxication. Your capacity is so diminished you don't understand your actions. You knew who the people were and you are going to chill the lovers out and I don't think you are so intoxicated. And I will find intoxication is not a valid defense. Right? Let's look at the answer. There is a lot here. And again, you have to understand when you can lump the two defendants together. When in doubt separate and you can circle back.

And here we can talk about the conspiracy and I can steal when I get to ben. And common law burglary. What is the ticket item here? No breaking no dwelling house. Modern law. We have trustatory. You entered with the intent to steal. And robbery which you would bring up here. They agreed to rob and started to and it fell short and that is why I know they want the issue of not only robbing and you fall back on intent. Sometimes that is a hard line to see. And sometimes do I go straight to the intent or do I have to talk about the robbery first shows it fails. And general rules look to the facts and if I can argue anything based on the robbery in regards to the facts I am going to. He took the money based on the purpose he was going for and it was a trustatory taking and he did leave and carry away and personal property of the store and issue was it by force and fear and the presence of a third party and it wasn't. That is why I fall back on the attempt.

This comes with as you are pointing out earlier with your communication as to looking at things. Right and now, you are saying accomplice liability. Remember if I can show there is an agreement that is a better answer for conspiracy because you have the agreement. Remember once you are charged with conspiracy you never get out. The only affect Pinkerton's has is getting you off on anything in further thereof. With accomplice you are charging me with the underlying crime. Verse’s conspiracy I get two charges. The conspiracy on the murder and that is a better way to go based on the facts and you can argue that. That is important. Okay?

After attempted robbery and we go to false imprisonment and these are what I call give me. You get in and out. They give you lock in the fridge and confinement and unlawful there was nothing to support the reason behind it. Kidnapping. Reasonable (Indistinct) you put them in the truck. They give you what I call the false imprisonment. The kidnapping and assault and battery and crimes is 1 or 2 sentence and then you have the to go through the murder.

With murder you will see ‑‑ you can set up two ways. The homicide. Actual cause. Proximate cause and then go through the murder malice. Or you can start off with the murder malice and argue that and if then go to actual proximate cause. I do it that way because I eliminate the step of the homicide. Either approach is fine and either approach is correct.

Now the big-ticket item here with your murder is you did need the origin the underlining felony and what I want to let the rater know is you have burglary but it failed at common law and what will I rely upon? The attempt robbery and you have to remember any reasonable attempt of an inherently danger felony got you for the murder felony rule and that come up a lot. And I hope you did see that you did have to talk about voluntary manslaughter based on the verbiage. Enrage and had jealous. But would a reasonable person lose the mental equilibrium. It is not even your girlfriend and of course attempted murder of Fran is a bonus and state verses ben and big item there is Pinkerton's rule and I can't stress enough. They always test conspiracy and Pinkerton's. Students don't do a good job with this. I should ace this and know this going in. You should understand the concept. If I conspire the o do unlawful act, I am guilty of conspiracy. If I have a withdraw issue, I change my mind and I am still guilty of conspiracy. The effect of the withdrawal is cut off liability with Pinkerton's remember you have to make sure you break apart the elements. Is it a probable result? Natural consequence of the agreement and is it foreseeable. Break it apart and look. Probable natural result of what we agreed to. I want to make sure you are understanding that and break it apart and you have to let the reader know. The more crimes they lay out for you that I am trying to impute onto you through Pinkerton's separate out. I remember one exam. Or 2 or 3 of them. T yeah you are going down. Two others no. I come together as the first three and went to the other two and separated those out. That is a way to write it have the whole key here is you have to make sure the examiners know what is being tested that is important.

In regards to the larceny he took it on the way out. And ben did the act on himself and you could bring up if you have time going after art for Pinkerton's larceny. Those are the main crimes in call one. Call two. Defenses and voluntary intoxication. Remember call says defenses.2 or more. What I want you to look for is when you see voluntary intoxication you should think of diminished capacity, they go to go t and I want to make sure you remember that. They do go together and this is important. Okay? Anybody have any questions on this question? Again, what was missed in this exam. The attempted murder people don't see and the larceny and that was one people missed on this examination itself.

So, we have done a lot. Haven't we? At this point what should you be doing. We have to study smarter and can't study harder. That means have you two weeks before the exam. Go over the checklist. Pneumonic like somebody state and had break that apart and then of course do what? Issue spot exams and work on multi‑states. I don't want the multi‑states the o be your death now and what I would recommend is please do them on the computer that is how 90 percent of you are doing it. You are going to be on the computer and you have to get used to looking at the call of the question and breaking apart in that state. That is important.

So, in regards to this particular question you have to ‑‑ the question is do we have to break it apart. You have a call 1 and 2 you have to follow the call 1 and 2 you done to have a choice. If it was a generic call lumped together, I would do one crime and my defenses and the second crime and my defenses. Other question is in regards to state verses art and state verses art and ben. Look to the conduct. If you find one of the parties is not participating you have to separate them out. Can't lump together. Verses if you see three defendants probably two of them you can put together. Remember the one with pizza. With Angela and Brian. We do have the separate out. The conduct we could put together we did when we did it together but we separated out. If you can't tell what I would recommend us to do is separate it out and if you are talking about multiple parties doing the same act that is fine and super back. You don't want to super something that didn't exist. You have to talk about it. It is important and again that will hurt you. And the state verses ben. You see why that is separated. He didn't do the false imprisonment or the kidnapping. If you did state verses art and one crime. And state verses ben and went back and forth. One that is too hard. Time consuming and that was confusing to the reader and you want to take one party at a time and you have to take by order of the call. The pizza exam with Angela. All she did was call for the -- she was the first of the call. We were imputing the other conducts party through Pinkerton's. We know what the outcome is going to be. But they did it on purpose to make it harder for you. Again, we can deal with it and do it. In and of itself.

Again, I want to make sure you are working on the multistate ls. Your score is going up. If you are missing the multiple-choice questions. Why? You have to answer the question as to why. A lot of the times the students are e‑mailing me with questions is the call. You are not paying attention to the call. What is (Indistinct) defense? The (Indistinct) is the defendant. If the facts seem slam dunk and prosecution winning. That is not what the call tells me. The call tells me what is the best argue t. Or true defense. Please pay attention the call to the question. That is important. We are a few essays on Taft’s web site. Prior baby bars with Taft model answers and p baby bar miniseries. And a simulated multiple-choice question you can download and put on the computer. Have you to get acclimated of using the computer. That is important. If I don't break apart what is going to happen? I will be in trub l because I don't understand how to take the exam on the computer. We think differently believe it or not. Reading something on the computer. If I get an e‑mail that is lengthy I download and print it so I can read it. Same thing with a legal document. I am going to print it up to read it. I haven't been taught to do this. You have to get in the habit and break it apart and look to the verbiage that is important. All right anybody have any questions?

It is a tough exam and I will not kid you there. With the practice you are going to be able the to do it. In regards to the issue f of homicide and then murder. Some courses teach the approach of homicide first. Killing a human being by another. Actual cause. Proximate cause. Murder and go through the malice. And degree. First and second degree. Etc. Well homicide is not worth anything. Time is always against me. I start off with murder and I have a different murder approach. I start with murder with a malice and go through as many ways as I can show malice. Actual cause. Approximate cause and the type of degrees and now here is another hint. If the proximate cause is not tested and ‑‑ that is not a causation issue it is given to me. If I am running out of time. I will eliminate is causation to get to the big point value. It is not worth much. Homicide is worth nothing and they give you zip for it. That is why I developed my own on how I set up my murder to get my point value. I am slow and I need as much time as I can. And eliminate that it is not giving me the points. That make sense and answer your question?

So, in regards can you also rely on the kidnapping I am not sure what the question is. Necessary sense. For the felony murder rule? Absolutely. I would tell the reader. If you see multiple ways, we can use attempted robbery. Kidnapping T. let them know. I see them all. The more I communicate to the examiner the better the points and the more I understand the concept and I will do better.

As you can see out of all of the questions the last one criminal law is a racehorse. If you have a (Indistinct) bar absolutely. Adapt the bar give you what everybody else is doing and their percentage and when you miss. Say conspiracy they test over and over so you learn the concept and it is a good course.

Again, the more hidden the issue is. Like the larceny in the last exam. The more point value. You just have to break apart the facts. The rule of thumb I always dissect the last sentence in every paragraph. That is where they load it and I know it I am in a hurry and I will miss the same thing and I force myself the to dissect always. Sometimes there is no issue. But I force myself and they know how we read and know the lessons we gloss over and that is why they test the way they do. The harder it is to see the more points it is absolutely.

Remember a couple of things I told you throughout the process. Such as statute of frauds. Remember es stop l as an exception they like to test that. We hit Pinkerton's with conspiracy and they like to that. Break that apart and with assignment that will be on the multiple-choice questions. Can you assign your right. The contract says yes you can. Unless the contract makes it clear it is null and void if you do. These are things we will have to pick up on. And again, I don't know ‑‑

I will recommend though I do know one contract will be there. Glance over third party. And again, keep working on the checklist and issues planning and it is very important. Anybody have any other questions?

As always if anything comes up and shoot me an e‑mail and let me know and I will be more than happy to help you go to jolly at Taft U dot EDU and I wish you the best of luck. Break it apart and do the multi‑states. And don't lose the testing skills that is important and if anything comes up let me know and I wish you the best of luck on the up-and-coming baby bar. All right good night everybody.