CLASS: BABY BAR

LOCATION: REMOTE

05/25/2021

6:00 PM – 7:00 PM

R. Farrell

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

>> PROFESSOR: Most current baby bar examine nation given November 2020. We have four essays to get through hold onto your hats and I want to point out the sessions are recorded for your convenience if you want t to go back and listen to a lecture you can go to Taft web site and the student section and baby bar miniseries and everything is there for you and posted for your convenience.

The reason I go over the current baby bar examinations is to give an idea how they test and it is important because they change the testing method and you will notice in the exam as I go over them a couple of key things that may come back for the June examination. And you want to be prepared and there are certain issues they like to test and I will point out to you.

All right. Let's go to the first question. Question number one. Remember if you have questions let me know and after each question, I will try to ask you if you have questions in regards to the essay before we continue to the next. And l also is from the baby bar examination you will do one question at a time. You will log in do the one question log out and a short break and log in and do question two. And you won't see all four at the same time and I want to make sure you are aware of that because things have changed.

Let's look at the question. Let's look at the call. Number one what crimes can they be reasonably charged. It is crimes. Crim law checklist. If you are doing virtual paper type in shorthand the checklist so my mind goes through the crim law issues.

The other thing to point out here is it says reasonably charge and had that means there is facts that raise an issue and not all of the elements are there and it could fail and you would still raise it in the examination. Reasonably charged and you will look to the facts to see if the elements are supported with those facts and that means the examiners want the issue.

Call number two what crimes could bob be reasonably charged. Same thing. Reasonably charged and you want to look to that and the facts and see whatever crimes are being raised based on the facts. Again, if there are facts that go to one element. Strongly I am going to raise it.

The key thing you should have noted in the question. Didn't ask for defenses. So, will I see any defenses and the good chances are no. But if it is obvious in the facts then you would raise them. Okay? The other thing is after you convict the party of a crime. Raise the defense after each crime. Don't wait until the very end unless the call dictates otherwise. Let's go through the facts.

Dave and ed were partners in D and E. D and E donuts. And ed was the baker in the back of the store and Dave waited on customers in the front. Dave would routinely enter less than the actual amount paid by the customers and kept the difference. Since his job is to be the cash year. First issue I see here is he could be charged with embezzlement.

Dave noticed every Friday morning at 9:00 a.m. Jane would go to the bank across the street and withdraw funds and come other to D and E and every time Jane came to the store she would walk up to the counter and order a donut and cup of coffee and talk to Dave for a few moments and sit at the table. Through the conversation with Jane Dave new she withdrew $250 to cover expenses. On Thursday morning Dave suggested to bob a regular customer that when Jane came in to the store on Friday, he should grab her purse and runaway. When he suggests. What is that? Solicitation. He is soliciting bob to conduct an unlawful act. Dave said they could later split the money and bob said he would think about it. And he said he thinks about it and there is actually no agreement.

Next day Jane came in to D and E as usual and order a donut and cup of coffee and set her purse down on the table. Bob walked past the table and took Jane's purse and ran towards the door. Based on his conduct we have an issue for the agreement for the conspiracy as you can see based on the facts, they placed agreement at issue. And I would argue in regards to his argument. Like I said think about it. Based on your conduct that you show support that you did agree.

Says another customer saw what was happening and tried to block the door. Bob knocked Phil over and ran outside. When he knocked him over you are thinking battery or maybe assault. Bob was looking back down the street to see if anyone was following him, he collided with Arlene knocking her to the ground where she hit her head on the sidewalk and died.

When I see knocked down, I think battery and then she died and I jumped. Battery is a lesser included offense and we would merge that and talk about the understood lying battery. If you look at the call to question you see David is being charged first. What did David do? Remember David did in the first paragraph embezzlement and solicited bob and didn't do other crimes, right?

So how do we impute that onto him and that would be through Pinkerton and I cannot stress enough conspiracy is highly testable and Pinkerton's is 99.9 percent of the time there. It is an issue you want to know. And I know going in it is tested.

In regards to crime for Dave the first one we are going to talk about is embezzlement and remember you do need to make a decision. If you are going to use a virtual scratch paper or start the answer and go back and make complete sentences. And this is what I would work on and what I hear people complain about they are not happy with the size of the box. They can't see the full essay as well as write their answer. And I get it.

How I want you to look at it and help you. If you notice in this exam I can take in chronological order. I would trick the box to look at the first paragraph the first issue is issue of embezzlement. I get to the second paragraph that sets me up for the solicitation and the second and third paragraph will support my issue in regards to solicitation and start to look in that manner so you can set up the exam and not be frustrated.

Again, rate it one time through to get a good understanding and then we can start to dissect it and wen had it is time to outline break apart by paragraphs and set up.

First paragraph we will pull out the first issue embezzlement. Remember it is a fraudulent conversion of rightly vested property. Based upon the facts even though they were partners. Keeps the difference and since they are partners, he is converting the other portion that belongs to his partner and it is a fraudulent conversion. And he can argue as a cash year since ed was the baker in the back and Dave is the cashier and he is entrusted with the property. And therefore, he is entrusted by him putting the money and taking it and putting in his pocket shows an actual embezzlement and you can see I can pull that out from the first paragraph.

Reading paragraph note 2 and 3 I would bring up the issue of solicitation. Why? Paragraph two is relevant it sets you up soliciting bob. And knows Jane goes to every Friday and withdraws the $250 to cover her personal expenses. So, when he suggests bob to still her purse, we know he is suggesting for him to either commit a larceny or robbery in regards to taking the purse at that point. And he is soliciting. And split the proceeds to commit an unlawful act. At this point with the second or third paragraph I am not sure if it is larceny or robbery but we know what is coming down as to taking the purse.

Now next we have the issue of conspiracy and if you look at that. We would pull that from paragraph number three. And paragraph number four. So, again if you can lay it out that way it is going to reduce your stress number one and you are not going to be so frustrate. The big frustration I am hearing is I can't see the full question. Try the o map it out based on the paragraphs and pulling out that way.

Again in regards to the conspiracy you need an agreement between two or more to commit an unlawful act and I want you to see what they are testing here. The agreement. The element is based on the facts of what is being tested. The argument is when he suggested he goes to Jane as the regular customer and grab her purse and run and he said he will think about it. There is no agreement. They never expressly agreed to the conduct. However, the next day when they were there, he walked past Jane and grabbed it had purse and ran and you want t to argue based on the conduct there is an implied agreement between the parties. Two or more. We have Dave and bob. An unlawful act of larceny and the purse and that wasn't the agreement and letting the examiners know the agreement is the big-ticket item.

This is where it gets tricky. We have kind of gone through most of the what? Crimes in which Dave has done or committed himself with his own hand. Other than blocking the door, right? We have in regards to the access of what bob did. Stealing the purse. And knocking in to Arlene and obviously she was dead. And so, how are we going to look at they this he has and what you need to do is point out that we can charge Dave through the Pinkerton rule. This is where outlining is important. You need to figure out if you are going to be successful in the charge on bob and can I impute on Dave through the Pinkerton rule. That is why outlining is important.

Now in regards to the issue here. Right? You want to argue Pinkerton and it is important (Indistinct) and was it foreseeable and for some reasonable students are r very weak in analyzing the Pinkerton's rule based on the fact the first argument I will make with larceny is agreement. You said sure I know she is going to have $250 in the purse and grab it and run. And it is forceable because that is what the agreement was about. When you commit larceny, it should be imputed onto me.

What about the death of Arlene? Is that forceable and you can argue it is foreseeable death could result because of robbery. But what about larceny. I feel it could go either way. The fact he knocked her down he is in the res jes ta of the larceny should we find he is guilty of the murder impute onto him based on the ability based on Pinkerton.

I would say no. Larceny is a lesser-known offense it is not you are looking behind you to get away with something ‑‑ I would argue Pinkerton's rule in regards to the murder and then we have got if you look at the last paragraph. As to the battery of Phil. Phil saw what was happening and blocked the door and bob knocked Phil over. Battery. Force. And knocking him down and those are the crimes that we find against Dave. Right? Any questions on the first call with Dave?

The second call in regards to what could bob b charged. That would go conspiracy. And then my issue to larceny. He did grab the purse based upon the facts. He gave it to you. Took the purse and ran out. It was Jane's purse. He fled. By the fact that he went out the door and purse or property we know it is Janes. With the intent to deprive. Since he agreed by his conduct, they would share the proceeds. I can show he has the intent to deprive. Larceny is straightforward based on the facts. The fact bob took Janes purse and ran towards the door and another person tried today block and we have unlawful force and bob could be charged with battery. And I can impute on him based on the Pinkerton's rule and in regards to murder of Arlene you will follow the murder approach. Malice aforethought. Look for intent to kill. Don't see that. Intent to cause wants less reckless conduct don't see that. Felony murder rule. I that can go either way. Felony murder rule I can argue larceny but it is not ‑‑ (Indistinct) ‑‑ so should I be guilty of first degree. Argue the felony murder rule. Larceny. The other issue you could have brought up here based on the facts and you did commit the larceny and I don't see it as an attempted robbery and I don't see any force, fare and where it failed. I will argue that larceny and therefore argue that the felony murder rule doesn't work with the (Indistinct) felony and murder second degree. And the involuntary manslaughter.

So, as you can see in regards to the exam there is more issues than you think at first blush and you want to go through and break apart based on the facts and see where the point value is. In regards the o Dave first call. Go through the embezzlement and the issue and the argument. I would say they will be playing with me. Is it a fraudulent conversion? You are the partner ask the other partner doesn't know about it and you are keeping the difference. That is what makes it fraudulent. Solicitation is next issue. Straightforward elements are satisfied. Conspiracy. Point value would be the agreement. Let the reader know you see there is a grey area here because he didn't agree. He didn't expressly agree. Wait you show up the next day and walk by the table and take the purse and I can argue implied agreement. And Pinkerton's rule and then the battery Phil.

As to the crimes against bob. Conspiracy supra. And then the issues in regards to the larceny. To me the larceny was given to be on a silver platter. And battery you imputed on the unlawful application of force based on the Pinkerton p's rule. Murder of Arlene. Go through malice. I don't see intent to kill or great bodily harm. And want and reckless. And the felony. And make the arguments. Causation is not a big issue. And no first degree if not arguing the felony murder rule. And find larceny fails and of course murder of the second degree to involuntary manslaughter.

There are quite a few issues here and I didn't find this to be too difficult of an exam. But I felt that you had enough to talk about and remember the conspiracy in Pinkertons that is the most difficult issue for students the to talk about you want to make sure you have a good handle on that. Any questions on question number one?

Question number two. This one hurts students and this was not a good exam. And this is what I call a negative exam. I don't like it when they give an exam and it doesn't work. When I give a contract exam and you can't form and the next call. I couldn't form the contract in the first place and I call that negative exams and I don't like that. But they that way and we got to deal with it.

If you look at the calls and after Martha graduated John told her he no longer could afford the condo and would sell and its what claims did mar that that bring against Karl and what defense does Karl have against Martha and what claims can Martha bring against John and what defenses can John assert against Martha if any discussed.

Call 1 and 2. Near 3 and 4 and they are at a different party. Other thing in regards to the question is claims. I don't like that. When you read it, you see it is a contract exam question and I only have one breach of contract and I think the examiners when they wrote it there is a sub issue of third party write and that is why we said claims of itself and you don’t necessarily have to do it with the you will. Let's go through the facts.

Martha is a college student living in a condo owned by her Uncle John. On various locations John proms Martha that he would give her the condo when she graduates which she will do in a few months. There is a promise. And it is not enforceable at this point. Martha had suggested to John that the condo needed repainted and John saw his friend Karl a painter and offered $3,000 if Karl would repaint the interior wall ins the condo. John said he would supply Karl with the paint and Karl agreed to do the paint thinking the condo was in the same city where both John and Karl lived and had that triggers a mistake and says the condo was 250 miles away. Two weeks later Karl’s painting truck with all of the equipment was destroyed in an accident that was not Karl's fault. Destroyed. Impossibility. Maybe impractibility. Or frustration of purpose.

When Karl called John and told him he would not be able to paint the condo as scheduled he learned for the first time that the condo was 250 miles away. Karl told John he very much doubted he would be able the to replace the truck and equipment quickly. Karl told John even then he would not be able to paint a condo 250 miles away. Unless John paid the travel, expenses and John told Karl let's forget about the whole thing and we undid the contract and Martha was disappointed to hear the condo wouldn't be repaint and had she told him she would pay someone else to paint the condo. And an additional 12,000. After Martha graduated John told her he could no longer afford to give her the condo and instead would be selling it. What claim or claims could Martha bring against Karl. Who is Karl? Karl is the one that what? John contracted with to paint. Why is Martha suing him? Through a third-party beneficiary.

And you will go through and prove up the original contract between Karl and John. Based on the facts when he saw his friend and offered to do the job for $3,000 and manifestation and intent. One condo being the quantity. And next three weeks being the time period. And John and Karl the price. 3,000 the price. And painting the interior of the condo. The terms are stated with definite and certain. And communicating and they ran in to each other. Offer. Orally agreed based on the facts. And exchange of $3,000 for painting the condo. We have a valid contract form between who? Karl and John. How can Martha bring this suit and that is where you go to the third-party beneficiary? It is where one confers a benefit to a third party. Remember the status that is to form at the formation stage of the contract. You orally agree he says repaint the walls in my condo where my niece Martha lives

Didn't say you were going to give it to her. Again, as base upon the agreements is it clear that Martha is going to benefit as a third party. Did status arise in the formation stage. Was there intent to benefit. Why did John enter the contract with Karl in the first place? He told her he was going to give her the condo when she graduates in the first place. What type of beneficiary is she? She would be a done. Remember under the restatement. Second what? We don't classify we use what? Intended beneficiaries. In regards to the how do your rights best.

The majority rules notice in assent. Did he give her notice in assent? When he contracted with Karl to repaint the condo. Did she give notice. There is nothing in the facts to show she was given notice. If she was given that then her rights would vest and I don't see any notice and they don't vest and when John told Karl he can't paint anymore he repute it had contract and you find her rights vest and you get t to the breach and damages. The reason I call this a negative exam is because I female Martha's rights never arose. Why is she suing Karl? This is to me what I call a negative.

If for the first call we went through improved up the contract between John and Karl and brought up the third-party beneficiary and you found her rights vested you do your breach and damages. Call two what defense or defenses can Karl assert. Again, Karl is looking at the original contract he made with John. Remember we had a mistake here. A mutual mistake because both parties agreed to painting and one party thought it was in the same town and it was 250 miles and I way. John believed Karl knew it was 250 miles away. And they didn't have a meeting of the minds and we can argue based on the agreement and the assumption they both made that the contract is voidable and in this case Karl can void the contract.

The other thing that you have. It did say what? Defenses is you would talk about conditions. Sometimes you will see in the call of the question. They address the term defenses and it is not true defenses. Remember defenses can be true or counter argument ores in this case excuse to conditions. Based on the facts what did he orally agree? Within the next three weeks. That is an express condition. You are going to paint within the next three weeks. Well, you are excused. You said forget about it. And I can argue waiver. And I can argue imply condition not paint before you pay. You can't pay because you destroy your truck and I can argue impossibility. Remember impossibility impractibility. They like each other and go together and the truck equipment is all destroyed and he can't get a truck and equipment fast enough and it is totally destroyed and impractical for him to paint and some people will bring up frustration of purpose if you did bring it up it is a non ‑‑ the answer is no. It wasn't made clear I go and paint as long as I have my painting utensils and my truck and stuff like that. Frustration of pump would fail. A lot of times you are taught if you see impossibility bring up frustration and impractibility of purpose. That is an issue you could bring up. That is call number two. As to Martha bringing an action against John it is only the first paragraph and I am looking at mutual assent. He said he would give her the condo. And consideration. He is giving it to her. Gratuitous. No bargain for exchange and I would argue did she rely on detriment. (Indistinct) can be argued here as a substitute for consideration. As this fact knowing she is going to graduate and hired her Uncle to get someone to paint and she didn't and she hired someone else and plus $12,000 for the kitchen floor and appliances and fixtures.

I would say that she did rely. Right? Reliance forceable and rely on the den triplet. That is an argument she can raise in order to force the agreement. Defense common (Indistinct) John asserting against Martha. What defense can he bring against Martha? Statute of frauds. This is oral. It says he promised. There is no written contract. So, remember under the statute of frauds certain contracts. Any oral or incomplete writing ‑‑

Remember any oral or incomplete writings and I want to stress that because the baby bar likes to test the incomplete writings and remember an incomplete writing can b I send you the facts and you send me a fax over. Two separate documents and they are not embodied in to one. And I where I you a card and you write me a note back. And I write you sell me this and you send a note back. Not embodied in one agreement. That would trigger the statute of frauds. In this case oral based on the response. And it needs to be in writing and remember a contract for an interest in land. Right for the sale of an interest in land. How do you take it out? I need a sufficient memo. Don't see any facts. Right? The other way to take it out is what? Hard performance and I don't see any facts. She did improvements but didn't move in. You need more improvements you need something. The only one I can argue that comes up more often than we think. Is stopple. Stopple is a way that base on a party conduct they show reliance that that will take the agreement out (Indistinct) statute of frauds and based on the conversation they had knowing that after she graduates, she is able to get the condo and she goes and has it pained as well as kitchen floor and appliances and bathroom fixtures and she is relying based on his promise and we can argue stopple.

This is difficult for most students why? I call naked exam because you have a third-party beneficiary come at you and look at the calls, they separated out the defenses for the formation of the contract for this exam you need the o follow the call to have the question. What claims might Martha bring against Karl. Have you to prove up the underlining contract. We have to show ‑‑ it is straightforward in the fact pattern. How John and Karl make an offer and acceptances and consideration and now the issue becomes and the more important value is third party beneficiary. Remember it is an agreement between John and Karl based upon painting the interiors of the walls was Martha's status create at that point. That was the argument.

Of course, you don't need privity. Was there intent to benefit. John benefits his niece said he would repaint it. Donee not a creditor. And did her rights vest. If her rights don't vest, she can't sue. And assuming that you continue on in regards to breach and damages itself.

As the defense as we talked about. Mutual mistake. Based on the misconception in terms of the actual contract and makes it voidable as to the party affected right. At least you should have known. In this case it is voidable and he can do that. And we have conditions and the defense is can I excuse those conditions and again, after you told me let's forget about it is a waiver and we can argue impossibility. And praktability. And if you want to put frustration of purpose. As to Martha against John. The formation of the condo for free. And the big-ticket item is consideration and no consideration look to reliance. When you see consideration fails rely on the checklist and go to the inner checklist which you look to substitutes, I have (Indistinct) stopple and ‑‑

Defense John against Martha and big statutes fraud issue. It was an oral agreement between the parties.

First blush going through together doesn't seem bad but it was a difficult exam pr most students. If contract comes back, I would still be prepared for a third-party beneficiary and I want to make sure I can handle one if one comes back and I have seen this tested 2 or 3 times in a row and I don't know why but they do. And I want to make sure you are prepared for that. Any questions on question number two?

Okay. Going to question number three. This one is a products liability. When you look at the call it is important on what theory of liability Alice could sue a manufacture and did the call tell me anything. It did. We know first of all theory’s two or more. Alice suing the manufacturer and we know the products. That is what is nice about the examiner they give by the name they choose ‑‑ products again. I know there has got to be something different. Whether a design defect verses manufacturing defect. Defense. Something has to be different between Alice and Bill. Can't mirror. There is something different between the parties.

Now, again, when you go through the facts and read sentence by the sentence and break apart and I want you to read one time thoroughly through and then dissect.

Manufacturers produces and sells fully assembled bikes directly to consumers. And the Alice purchased one of the manufacturers commuter bakes. A frame composed of alum numb tubes welded together and Alice is riding the bike to work and the frame collapsed and caused her to crash and suffer severe injuries. The fact she crashed and injury. What am I thinking of?  ‑‑ unless the call dictates other side. The call would have to tell me. Regards to the facts saying that the bike collapsed sounds like a manufacturer defect. Most bikes shouldn't collapse and Alice took the broken frame to bike mechanic who told her several of the tubes are not properly welded together and I know it is a manufacturing defect and the mechanic told Alice in my many years of repairing bikes I haven't seen such sloppy welds on this or any other brands of aluminum bike. The first two paragraphs go to Alice. Paragraph three. Be bill purchased a road racing bikes the frame of which is composed of carbon fiber making it much lighter than alum num. Many of the manufacturer’s competitors produce racing bikes with carbon frames in order to make the racing bikes lighter than any other similar bike on the market. Manufacturer reduced the thickness of the carbon tubing by one millimeter. Some of the reviews of the manufacturers bike in racing magazines suggest that although the bike is lighter using less materials made the bike less stable slowing the bike down. According to consumer the bike was weaker and sub t to breakage. Six months later during a race the frame collapsed and caused him series injuries. An investigation of the crash uncovered one of the tubes on Bill's bike had cracked and broken in half.

You can see in exam I can go to paragraph 1 and 2 for call 1 and 3 and 4 for call two. Knowing this we can go to what? (Indistinct) we know product liability. And we have to look at the difference between who? Alice and Bill. What is the difference between the two right? Same theory. I should say theories.

What is going to with be different in regards to Bill and what verses in regards to her. Well again in regards to the negligence what kind of defect. Hers is seen as a manufacturing defect this is what people use. Verses his case they reduced by one millimeter and that could be a design defect and it says in regards to base on the magazine slows the bike down and made it weaker for breakage. And sounds like to me a warning defect. You should let me know that. And I wouldn't get on the bike and race and cause injury.

The first theory we address here in regards to manufacturer. Product liability we are going to do negligence. Remember with product liability it is a testable issue and it is canned though I like that. It is negligence. You have to show a duty. A breach. T actual cause and damages and the duty is different than what you know in general language. As a manufacturer distributor your duty to inspect and cover and correct. And you owe the duty to distributors.

Notice I didn't include a retailer. They don't have the duty. Unless they have knowledge and knew and should have known. That is why their liability drops off as to the duty slash breach. I want to make sure you are aware of that.

In regards to the breach that is where I talk about the defect and I will call the manufacturing defect. It is different and kind from the rest of t line and I feel based on the facts that they gave you based on what the mechanic said in all of his years repairing bikes. Tells me it is different and kind than all of the rest of t bikes manufactured by the manufacturer. And causation improper welding. And foreseeable? It is foreseeable one could get hurt and damages she did suffer pain and suffering. And she could get expenses for damages.

Implied merchantability. Manufacturer, distributor, retailer. Warn when they place a product in stream of commerce. Fair and average in use. Since the bike broke. Obviously, it is inadequate and wasn't fair and average in regards to use as a bike and they breached the implied merchantability. And you will see in regards to going through that I should define and discuss supra. Actual cause. Proximate cause and you can define supra. I don't know what happened here. You do want to do that and let them know.

The other thing you will have to address is my strict liability. Strict liability will be another issue you address here and show you place a defected productive in the stream of commerce you are liable and go through strict liability. Make sense?

Now, again as to the first lawsuit. Any questions against Alice. Remember when it is products. Again, it is a general call and you are going to go through all three. Then look for the others based on the facts and there isn't any here to raise any other theory Rhode Island the other thing I want to make sure you are aware of is type the actual defect. Design manufacturing. Or warning or if you can bring up two or more that is fine too. The other thing is I want you to be aware of defenses. Anything that raises defenses no. Nor is it in the call I am safe. It is not in the call I look to the actual facts and nothing to show she did something she shouldn't have done and I know I am safe in regards to defenses. As for bill verses the manufacturer and we are going through products liability. And negligence and they have a duty to inspect and discover. Ask did the he breeches. Sure. Why? It is a design defect the facts tell you they shaved the tubing down by one millimeter and based upon the competitors thought it was a good thing but it made the bike weaker. The frame was weak. Could be a warning defect as well. Why? Again, based upon your reducing the thickness of the bike and comparing to the competitors and saying on the race bike it could be weaker and collapse. You should the el me that. If I decide to buy the bike and do it that is fine on me. But you have to give me the option. That would be a warning defect itself.

The difference that you see between the $2 parties. Bill is in regards to the actual defect in and of itself. So, Alice was a defect in regards to dealt with the design and of course manufacturing and design ‑‑ manufacturing defect for Alice. Design and warning defect for Bill in this case.

Then of course go through the causation. Then your damages. Your general and special damages and applied merchantability. I am a manufacturer of a bike and inadequate in the design. Because it collapsed. And breached the imply merchantability. Actual cause. Proximate cause. Supra. Strict liability and tort. And it collapsed and you are liable under the strict liability as well. And again back ‑‑ by this time you are probably running out of time. Even though there is six theory’s in total to talk about. There is quite a bit and of course time is always a factor itself.

You want to steal as much as you can. If I can define and discuss supra. If I talk about (Indistinct) I talk about the theory stronger. Because time is a factor and I want to make that and get through the exam and get the issues in the book that the examiners are looking for. Any questions on question number three? Okay.

Question number four. Guess what this is another contract. They did have two contracts on the last exam. That means most likely you will have two torts and not two con track and that is good news for some people, right? Majority of people I don't think like contracts.

All right. Good question number four. Again, they are getting more ‑‑ the way they test for correlating when they break things apart and that is a tendency, they are going for the last year now and that is something they are and going to stick with for a while verses any breach of contract claim discussed and the that could be a couple of reasons, they want to make sure you pay attentions to the call of the question. If you don't answer the call, they will mark you down. If you don't answer the call and supra everything back, they will not give you credit for it. If it belongs in call two it will be in call two.

Call number one. Buyer claims that the agreement to buy the custom banjo is invalid because it is not in writing. Two. Buyer claims that agreement to increase the price from 15,000 to 20,000 was invalid due to lack of consideration. Number three buyer claims that seller breached the contract because no touring banjo case was delivered as had been done before. Will buyer prevail on this claim?

Is that a mistake or a standard in the industry and number four? If seller prevails what damages if any somehow, he be award. Okay seller in is in the business of building and selling musical instruments. Buyer is a recording artist who tours giving concerts a living. Ten years ago, seller sold buyer a banjo for $10,000 with a written contract. It did not mention a touring banjo case seller gave one along with the banjo at no additional cost. This is a prior history.

Six months seller and buy we are agreed for $15,000 seller would manufacture a banjo with buyer’s name engraved on the neck of the banjo. What does that tell me? Special manufacturing good. An exception to the statute of frauds that is a rarity to test this way. Half way through the project seller and buyer agreed to increase the price to $20,000 with the increase of price in materials. Remember with modification have preexisting rule don't you. If you are dealing with merchants you look to the exercise of good faith.

Someone delivered the banjo buyer refused to accept it seller didn't include a touring banjo case. Because the name was engraved seller could only sell for $5,000 and seller had to pay commission to a music instrument dealer who found the purchaser and now the focus is on number one. The call asks you what claims the agreement to buy the custom banjo is invalid because it is not in writing and we will have to form the contract and the UCC deal with the transaction of goods. Merchant ls. Seller is in the business of building and selling musical instruments. He a merchant. And buyer plays. He is an artist. Does he hold himself out with goods ‑‑ that is questionable? I find seller the only merchant. He a musician that is my argument. As to contract I don't see the definite and certain terms, do you?

It says agreed for $15,000 a specifically manufactured banjo with the name engraved. I don't see. Quantity is one. And time period. Don't see that. Party. Seller buyer. Price. Subject matter. Custom manufactured banjo and you can argue offer and acceptance or mutual assent depending on how you feel. And the consideration they gave it to you.

Call of the question is asking for what? It wasn't in writing and that raises the issue of the statute of frauds. So, this is a contract for the sale of goods over 500 goods and remember it must be in writing. And this was oral. How do I get out? Well let's go through the checklist. Seller of good I argue memo. Written compensation doesn’t see that. Full or part payment. Don't see that. I can argue es stopple. He did manufacture and put your name on it and I can also argue special manufacturing goods.

So, remember if it is a specialty. As to what you are manufacturing. It is not suitable for resale why would you do this unless someone came and ordered from you. Why would you take a banjo and put somebody's name on it unless they contracted with you? There is no fraud here and the statute of frauds would be satisfied as to call number two in regards to increase that is modification and remember since (Indistinct) triggered here you go through common law here. Much which you will consent. New consideration. No, you are under preexisting duty to perform. And then go to UCC modification. Mutual consent and remember you need to look to exercise good faith. What is the problem. For the UCC modification to work both buyer and seller must be merchants. Depending on what you conclude previously if you found buyer was not a merchant than the modification is invalid.

If you find that they both are merchants the modification would be valid. Right? So newfound buyer not a merchant not a modification. If you found the buyer is a merchant you will find a valid modification.

Think about it. If that were the case what does the call say? Due to lack of consideration. So, what I have to talk about the statute of frauds. Remember the modification is oral. If the original contract requires a writing any modification requires a writing. Because the call is specific due to lack of consideration. And I know I am off of the hook and no matter how I conclude I am done with the issue and I want to make sure you understand that and the reason why.

As the to call number three. Buyer claims that seller breached the contract because no touring banjo case was delivered. Oh, is that a mistake between the parties. A couple of arguments you can make. It is a special manufacturing banjo you didn't bring up the case but previously you gave me one without mentioning it. Go back and look. He sold him what? Didn't say a custom. So maybe when he sells banjos it comes with a custom case. Verses custom. Argument is based on the mistake wrongful belief I am going to get the case and it is arguable.

Buyer basically feels he is under mistake and belief because of past history and then contract could be voidable. Verses custom. Should you anticipate you should get a case and it could go either way.

Last thing in regards to damages. He had to sell it. You contract for what? $20,000. But you found the modification. This is where the damage is different. I found the modification invalid. $15,000 and you sold for five. And that left ten and you had to pay a thousand to be sold and you are out $9,000. Right?

In regards to seller can only sell it for five and had to pay the 1,000. And it is going to depend on what you feel if the modification was valid or not. If you found $20,000 then you might find the damages to be $14,000.

The expectation of the contract was $15,000, right? If the modification is invalid. In regards to mitigation he had to pay an additional thousand dollars for the guy to sell it and he is up to 16,000 out of pocket. And subtract the 5,000 profit he made and that gives the $11,000 damage. Verses if you fand that the modification was valid. The damage is 20,000 plus a thousand out of pocket. And 21,000. Less the five and it will put you at 19,000. Depends on how you conclude above to the actual damages.

How you set up the exam. UCC. Transaction and goods. Merchants. Buyer verse seller. Buyer I don't believe holds out with special knowledge or skill but you can go either way. In regards to offer. Acceptance. Statute of frauds is the item they are asking for here and big ticket is how do we take it out. If there are multiple ways to take it out of the statute of frauds, I want you to multiple ways. While would manufacture a custom-made banjo with the name on the neck unless you rely on a promise here. And then the special manufacturing goods and in regards to call number two. The modification. You do UCC. Not first. Second. Do the common law first. Fails because words. Preexisting duty world and modification of the UCC and it depends since I find that the buyer is not a merchant and I can find that the common law fails because of the preexisting duty rule and the UCC fails because he is not a merchant and can't get use today good faith because you are not a merchant and in regards to call number three. Mistake. What was argued here between the parties?

Again, you gave me a case before. Does that mean you give me a case again? And lastly in regards to damages which again will depend on how you colluded up above in the modification issue.

So, these exams I don't think they are that bad and I think question number two is most difficult from what I have seen from the students and that is where they have had the hardest time in regards to the exam and they are doable and you break apart and do it. Any question on these?

Remember when you take the exam you are going to do one at a time. And again, like I told you earlier today please try to map out by paragraphs and that will help you. Or you can outline in t format instead of try to go look at the question at the same time and get frustrate and had that is what I am hearing from feedback. Have I ever taken an exam online no. From what I hear the box is too small. And I can condition myself where I can handle it and break it apart and that is something int you to think of and do in and of itself.

Any questions? All right we have done torts, contracts and law and have you done the last previous baby bar examination that has come down. You need to start to do the simulators. Break things apart that is important and if you don't you are going to be in trouble. The best way to prepare it for a virtual exam is practice. I would start to use my computer and I would download the essay question off of Taft's web site and put in a small little window frame myself and put in a word document and put in a window frame myself to use as a written answer or outline depending on how you are going to do it and time yourself. Have you one hour per exam. And the timer shuts it off and you log back in and starts again with question number two.

The other thing is please when you download the software there is practice exams. Do them. Because the more you get used to the software the better it is going to help you. Very important. All right?

In regards the o breaking things apart that is so important and I am glad it is going to help tremendously. That is our weakness we read things in clumps. If you break apart that could change everything. One fact could change the whole world. Especially being lawyers, you have to articulate and break things apart.

If you want more essay questions shoot an e‑mail or go to Taft's web site in the student section we have the prior bar exams. I would start off with the ones with model answers but I do want you to look at least the last three years going backwards at those exams. Because again, they change their testing’s strategy and how they wean things out. Currently they are giving more specific calls and I str to answer those and get used to those. That is important. Any other questions?

Next week we will be going over how to do a second lecture on the multi states and it is critical that you understand how to break things apart and how to eliminate if you can eliminate two off of the bat that is going to help you and speed up the time and unfortunately time is against us and that is where we have a hard time and we will go over multistate lecture next week. If you have questions ask me and shoot me an e‑mail ‑‑ and I will be more than happy to help you any way I can. Before I say good night any other questions? All right I hope you guys are obviously studying hard and using the checklist and working on the outline. That is important the more I can get you the to break it apart that will ensure your success on the exam and you need to practice your timing because it gets away from us. All right? I wish you all the best and I will see you next week. Good night.