TAFT LAW SCHOOL REMOTE

BABY BAR

9-14-2021 6:00PM – 7:00PM

INSTRUCTOR: Good evening. We will be starting in two minutes. Thank you. We will be starting in one minute. Good evening.

These sessions are recorded. If you want to go back and listen to the lecture, go to the student section. Everything is posted there for you. If you have questions, post them in the chat. I am happy to help you. A lot of students don't pay attention to the call of the question.

A few key things, do not assume facts. Look to see if there are facts that actually support the crime you think is being tested. Larceny. Is there a trespassory taking.

You want to go through all the elements before you conclude there is larceny. Don't make an assumption. Use the facts. Make sure it is supported. If you do find the crime, see if there are any applicable defenses.

We tend to not look for defenses. What is the most likely crime? We go look at them. You need to carry through with your approach. Maybe there is information to negate. You need to carry that through.

Can liability be imputed to another? Accomplice liability and conspiracy. Conspiracy is a testable issue. You want to understand the concepts. This comes down all the time on the examination. Pinkerton's rule. The difference is where accomplish liability, there is no agreement. Conspiracy, you do. There has to be an underlying crime. You are charging me for the murder. Conspiracy, you can charge me as an independent. That is why it is a better answer and better way to find more sentence time.

The first is inchoate crimes. I go into an exam looking for sac. Solicitation. Attempt. Conspiracy. A few key things you need to remember. You can't withdraw once you do it. It is a lesser included offense. If I solicit you to help me murder someone, it does merge. You can't withdraw from it. The multiple choice questions, you are responsibility according to congressman law, unless asked.

Majority is no defense. That is your solicitation. Another big issue is attempt. Attempt is highly testable. They have a tendency to test to mess us up. It is a specific intent crime. Show you can take a substantial step. Did you have the ability to commit the crime? The key thing to remember is a lot of times you have an example. Attempted rape. What is the mens rea? Specific attempt.

Always look to the attempt. Did you have the apparent ability to commit the act? If you are trying to charge me with attempted rape, did I have specific intent? Did I have the apparent ability? Women continue commit rape. I would look to the underlying crime. That is the only time you look to it. Your elements with the issue of the attempt are the attempt elements. The only time you like underlying is do you have the apparent ability to commit the crime.

Generally, factual possibility is no defense. It is simplistic. If the defendant has the attempt to do the act, reaches in your back pocket and you don't have a wall let, can he argue he attempted larceny, but he didn't have a wallet. The facts as the defendant to believe he attempted to steal the wallet. Joe is upset with his neighbor.

He goes to shoot him dead. The neighbor died the night before. He can be charged with attempted murder. No defense for him. It is pretty straightforward if you keep it simple. Legal possibility. How can you charge me with attempt if it is legally not a crime?

If you go to Texas and believe it is against the law to hunt deer, you argue in attempt of the violation. Impossible. They don't have a law. If in doubt, no defense. If you can't tell, it is no defense. Can you with draw? No. If you are in the zone of perpetration.

Under the model penal code, you can again. It has to be voluntary and successful abandonment. You go through the elements of attempt only. The only time you look to the underlying crime is to determine the element of the apparent ability.

Make sure we got that straight. Conspiracy is the big ticket here. An agreement between two or more to commit a lawful act. You have an agreement unilaterally. Several boys at a boys camp decide to hide the counselor's asthma medicine.

Another boy overheard this. He got the medicine and put it close to where they would find it to destroy it. When he died, that third child that heard the conversation would be charged with conspiracy. He didn't agree physically, by his conduct he did.

Another way is famed accomplish. He is there to entrap you. He is a police officer. With the conspiracy, you will know when this is usually based on the facts. You can't hide that. When they place it at an issue, let the reader know you do see it. The women didn't want to help him. He said he would hurt her son. She decided to help.

First she said no. Then things changed. That is the element they are testing. Spend my time doing the analysis. With draw is common law. Has to be communicated to all coconspirators. Model penal code. Take steps to thwart. What is the effects of a with drawl? Once you conspire, that is it. You are guilty and never get off of it.

The effects cuts off further liability. Once you commit it, you will be charged. With drawl with not relieve your liability. The other is Pinkerton's rule. It is saying everyone is liable for all crimes that are natural probable result.

If you agree to rob a jewelry store and a death results, is that natural consequences? Yes. You could foresee someone could shoot. Based on Pinkerton's, you can be charged. Look to the nature of the crime. Based on the robbery, that is a pretty magnified crime. Warren's rule. It takes two or more people to do a conspiracy. It never merges. Solicitation merges. Attempt will merge. Conspiracy will never merge. It stands on its own. No merger rule for conspiracy. It works for the attempt.

These are your highly testable ones. It will be there. Third party liability. Vicarious is a term we know. You can be criminally liable. How can that come up? With a murder for hire. With a bouncer at a bar. That is vicarious liability. Accomplish liability aids and abets in the perpetration of a crime.

It doesn't stand on its own. The one thing you want to know is do I have to break this apart as an accessory before or after the fact? Generally, no. If you see on an essay, they all go to a liquor store. One waits in the car. The other two have no money. They grab a bottle and point a gun at the clerk, the man in the car is an accessory before the fact? No. He had no chew at the time. They formulated the stealing of the liquor. If you are an accessory before the fact, you are responsible down the line as to anything that is naturally foreseeable. Versus an accessory after the fact.

Anything after you are held accountable for. This is important to impose liability that would be your accomplice. The main difference is the agreements. As to imposing liability, we have, is this foreseeable. We don't use the term Pinkerton's under accomplice ever. Next is murder.

They like to test the rest line view. An innocent party does the killing. Can I charge the felon? With murder, it is killing with malice. Intent to kill. Intent to cause great bodily harm. Reckless conduct. Felony murder rule.

The facts will dictate. If you can argue all four ways to show malice. If a death occurs during a dangerous felony, it shows malice. You will know based on the facts. Once you show it, do I have causation? You go into your degrees. First versus is second. First. I have intent to kill. I will grab which is being tested. If I see the felony murder rule, it is be shown.

I curtail my rule based on what is being tested. With the felony murder rule, you have the red line view. When an innocent party does the killing. A robs the store. Security guard shoots a customer and he dies. He was the innocent party. He killed a customer. The killing has to be done by the felon's hands. You have an innocent party that does the killing.

If it is not first degree, you have classified as second-degree murder. Once you trigger into first or second degree, look for viable defenses. You can get me off. You have self‑defense. You need to know the distinction between modern law and the minority. If you are the aggressor that starts the wrongdoing, do you have the right to defend yourself? No. Unless you regain that right.

You have self‑defense, defense of others, nondeadly force. You can't defend unless you are within your home and you feel there is bodily injury that can come to yourself. An area they life to test, they don't like you to take the law into your own hands. A robber breaks into a house. The wife says let us call the police.

The neighbor says I am tired of being broken into. He shoots the guy. He argues his property was being threatened. The law will say, sorry, you had a duty to prevent the situation. We put life above property. You should of called the police from your neighbor. He would argue that defense. What would he be convicted of? An argument of imperfect defense. He could get first degree. That would mitigate if you found it to involuntary manslaughter. Voluntary will negate specific intent.

14 above you have the ability. Who bears the burden? The prosecution to rebut the presumption. It is not on the defendant. It is on the prosecution. Insanity has not been tested for a while. Something to get used to. It is right for testing. With insanity, you must do all four. This is a difference of jurisdiction. You have resistible impulse.

These are four rules I would get to know. They will give it to you and change the verbiage around. They will is you which will get the defendant off. If you are not dead set, you will get it wrong. It must be based on your mental defect. The impulse is you have a mental defect. You have to react on the words you are hearing.

Whatever my mental disease is creates this issue. That is a little different. The model penal code, I lack the capacity to conform to society. If I shoot at someone because they said he is an alien, do you think I knew what I was doing is wrong? Probably. Sounds like it won't get you off. Was it a product of mental illness? Could be? If I said I didn't mean to kill him, maybe I had the capacity.

You will find one or two will work but not all four. The one thing they all have in common is it has to be based on the mental defect. Your mind. If you see this on the test, you need to do all four.

You see if murder is justified to mitigate it to voluntary manslaughter. We can mitigate based upon an imperfect defense. It can mitigate the murder charge to voluntary manslaughter. Words alone are not enough. I came up and said I had an affair with your wife, words are not enough. They won't let you justify to voluntary manslaughter.

This comes up in regard to the facts or if we have an imperfect defense. The one thing I like to point out. Some courses teach imperfect self‑defense. It is imperfect. Any defense. I want to make sure you are aware of that. Involuntary manslaughter. You have no malice. You are committing a misdemeanor.

What is the key thing to remember? One. How many ways to show malice? Four. You will go through all four. How do I know I need to address the issue? There is a lot to talk about here. You will look to the malice. If it can only be shown by want and reckless conduct, you will get to the issue. If it is reckless conduct, I will never get to involuntary. Malice is too strong.

You want to know this. I don't want to waste time on a nonissue. I have to get in that book. That is important. That is your murder approach. I would get to know it. It is highly tested. Theft crimes are all over the multistates. Possession, interest, title, time. I borrow your car for the hospital. I take it to Vegas. It is larceny. They will trick you on this stuff. I have to play with this. Larceny is very testable. They know we don't know the difference. Embezzlement. Did you get possession, interest, title?

Prime example. Tonight I decide to leave and go buy a lobster tail. I only have five dollars in my wallet. It is 14.99. I peel a sticker and put it on the package up and pay for it. I have committed a crime. Larceny by trick? Embezzlement. Did I obtain possession? Yes. Did I get an interest? No. Title? I got the change. That would be what? Larceny. By changing the price tag. She did convey title to me. That would be larceny.

False pretenses. You are getting title to it. If I give you a counterfeit bill. That will test these things. With theft crimes, we have transferred intent. Be aware. The main difference between larceny and false pretenses is did you get position versus title? Possession of the article. If I gain title, it is false pretenses. Lobster tails is false pretenses. In regards to larceny, you only get possession. False pretenses, title.

Robbery is another form. Larceny by force, fear, or intimidation. Another sleeper is receiving a stolen property. It is a good issue to see if you see it. People have a tendency to miss it. It is subtle. Stolen property is subjective. If you buy a television out of a van, can't charge you with stolen property. Objective versus subjective.

Another issue is burglary. It is very testable. You have congressman law. You will start off with it first. If fails, go to modern law. Take the elements in the order of your rule. If facts go to another, show me there is no nighttime. You don't want to talk about it. If I am running out of time, I may jump on the vein to what element is being tested.

That is not a good form of practice. You need the nighttime. They are breaking the entering with specific intent. What they like to test is you have to have the specific intent. At the time of entry. I want to make sure you know that. They like to test that.

If I use tricky, use a device to unlock the door, constructive breaking. You have to have intent at the time. If not, there is no burglary. If you break in for shelter, you steal something in there, that is larceny. If common law fails, you go to modern law. What the law says is that if you enter with intent to steal, it is trespassory. It is not a felony. Arson.

What is the mens rea? Maliciousness. You need an actual burning. Has to be structure of another. It is a mind. There would be no arson in that case. What about attempted arson. It has to be the dwelling house of another. I have the apparent ability to commit. It will be on your multiple choice questions. They will tell you that the curtains were burnt to a crisp.

All the furniture was blackened. Is that an arson? The answer is no. It has to burn the structure. They come up in the essays. You will know based ton facts. False imprisonment. They were not on the last baby bar. It is something that can come up. You will know based on the facts. There is your kidnapping. Pointed a gun at him.

You want to make sure you break it apart. These are good issues. They are in and out. You don't spend a lot of time with them. Rape is highly testable. They trick you with the mistake. Strict liability.

They hike to test you on it. Attempted is specific intent. You have to pay attention to what is being charged. You want to practice and play with it. Next is other defenses. If you see mistake of fact and you call it factual possibility, it is the same thing. It is only an affective defense if it negates the crime.

If I believe you have a diamond ring in your pocket and it is not there, I can't argue mistake of fact would be charged with attempt.

Mistake of law. No defense unless you can show alliance. Too many facts. Duress has to be imminent you will see there was a test. We didn't say anything. You can argue. As a parent, will I take the risk. A consent is an act that doesn't come up too much. Entrapment has not been tested for a while.

It is right for testing. Entrapment, you will do both. You will not know the jurisdiction. Predisposed, we look to the defendant. If you are out of jail for robbing banks and now we look at you for murder, did you have predisposition to commit the murder? Would I reasonable person succumb to the activity.

Another is diminished capacity. Intoxication and insanity. You are mentally impaired. Drinking too much, you can make that argument. The question says what crimes and defenses. I will be talking about diminished capacity. It goes together. That is important. Another thing is let us say you see on the examination a statute. You have to read it and see what it is stating. Go through it. It is illegal to possess firearms.

What is the mens rea? Possession. What do you have to do? Possess a firearm. That is the fact. It sounds like a strict liability statute. What is the mind set? Strict liability. What is the act you have to do? Call of the questions. Should they be convicted of the murder? It is not battery. Look for voluntary and involuntary manslaughter. We will see if they can get it through. It doesn't mean battery.

A specific call, what does that mean to me? What elements or defenses is being tested? It will come down to analysis. I have to pay attention to the facts and see what element are they putting in issue. I need to argue both sides. If not, that is a problem. I need to break it apart myself. It is not a bad subject. It is usually eight weeks.

Make sure you look to the underlining of the elements. Look to see for applicable defenses. I did tell you conspiracy is highly testable it is something to understand. The difference between the concepts. Whatever the case may be. That will come by practice. Start breaking those apart. You should be rotating.

You should be reviewing contracts. I am studying six hours. I will spend an hour on torts. I map it out. I am doing 50 multiple choice. I will have some in torts and contracts. You have to keep rotation.

Write out a list. You get more structure. Two, you feel down on yourself. If you look at your list, it builds confidence. You did some stuff. It will make you feel better.

You will be sent a criminal law essay question and 33 multiple choice questions. I would like you to do them on the computer. They are like a 5/10. They are not the red herrings. This is to get you started. If you have questions, please let me know. Does anyone have questions for me? Criminal law is pretty basic. Get to know your rules. Understand the concepts.

We know torts, contracts, and criminal law will be there. We can't all guarantee a particular subject. Shoot me an e‑mail. Look for that essay question. Try to take it look you would on exam day. It will on your computer. This is important. Very important. I hope you have been paying attention to the bar e‑mails. I believe tomorrow is the last day. I hope you are signed up.

They will be certifications. Those went out yesterday. The bar is still in the process. If anything comes up, send me an e‑mail. We will be going over the essay question. If you have multiple choice questions, let me know. Talk to you next week. Goodnight.