UNDERSTANDING MCQ's – EPISODE 3

SLIDE 1.

Hello, this is Professor Dodge. Welcome to Episode 3 of "Understanding MCQ's." Understanding MCQ's is a series of six short videos designed to help you master Purdue Global Law School's multiple-choice questions.

If you haven't viewed Episodes 1 and 2, please view both Episode 1 and Episode 2 before viewing this Episode, as the complexity of the multiple-choice questions in this Episode builds on the basics that we covered in Episodes 1 and 2.

SLIDE 2.

As with Episodes 1 and 2, I went back and pulled the statistics from the resource quizzes – this time in Module 3 – of Contracts I and Torts I.

The questions that we are going to discuss are based off of two of the hardest questions from those quizzes; that is, two further questions that (based on student performance) were the most difficult for largest number of people. To be specific, of these two questions, on the "easiest" one, only 48% of students got it right; on the hard one, only 37% got it right.

Note that for Conduct Code purposes these are not the actual questions from the curriculum (which means that you can feel free to discuss the content in this video with your colleagues). Rather these are new multiple-choice questions, designed to present the same difficulties as two of the hardest multiple-choice questions from the third resource quiz in each subject.

Just a quick reminder: with the multiple-choice questions at Purdue Global Law School and on the Bar Exam, you aren't looking for the right answer. Instead, you are looking for the best answer from among the answer choices offered.

With that in mind, let's build on what we looked at in Episodes 1 and 2.

SLIDE 3.

We'll work with a Torts question, and we'll use it to talk about how to handle answer choices that use the word "because." When we see the word "because" in an answer choice it signals two things: first, that specific information is about to be articulated in the answer choice; and second, that the information articulated in that answer choice is taken out of the facts presented for that question, or is a rational inference or reasonable legal conclusion based on the facts presented for that question. In order words, "because" tells you that the information is nothing new, nothing that isn't already part of the question. Rather, "because" tells you (1) that there is a specific part of the facts or interrogatory for the question that supports this particular answer choice, and (2) due to that specific part of the question, this is the best answer choice. Of course, whether that's true or not is something that we have to sort out, in order to determine which one is the best answer choice.

Looking at this question, each of the answer choices has a "because," and each of them has a specific piece of information from the facts included in the question.

Now, before we analyze the answer choices, I want to point out a distractor that's baked into the question. What is the question asking about? Trespass to chattel. What do the facts of the question clearly support? Conversion. Which means what? It means that if we don't intentionally keep our focus on the correct tort, the slant of the facts themselves can lead to us unintentionally, unconsciously analyzing this as if the tort in question were conversion instead of trespass to chattel.

Keeping that focus in mind, let's walk through the answer choices. The approach that we're going to use for the "because" statements will be backwards. That is, given that these answer choices are set up as "Yes, because…" and "No, because…," we will look at the specified information, and then ask: Okay, does this information support an answer of yes (or no, as the case may be) to the question "Can Defendant be held liable for trespass to chattel?"

We'll start with choice A. The information is "because Defendant only intended to take Plaintiff's car for a quick test drive." Does that support an answer of "no" to the question "Can Defendant be held liable for trespass to chattel?" Actually, that is exactly the sort of mental state that would work for trespass to chattel. This information would actually support an answer of "yes." Given that the information doesn't support the answer, we can eliminate choice A.

Next, look at choice D. The information is "because Plaintiff left the keys in her car." Does that support an answer of "yes" to the question "Can Defendant be held liable for trespass to chattel?" Actually, this information, while true, is completely irrelevant to determining liability for an intentional tort. It cannot be used to support an answer of "yes," as it is not part of the prima facie case for trespass to chattel, allowing us to eliminate choice D.

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Now we're down to two choices, B. and C. Both speak to part of the prima facie case for trespass to chattel, Defendant's interference with Plaintiff's use and possession of her personal property. Choice B. is the better answer (and, in this instance, the objectively correct answer), because it correctly characterizes the level of interference as exceeding the level of interference needed for trespass to chattel, due to Plaintiff's car being totaled. And Choice C? It's a distractor, because it says something about the correct standard, but it does so in an inaccurate way, and with the wrong conclusion. As distractors go, this is one of the classic ways that distractors are constructed for the Bar Exam – with just enough accurate information to sound okay at first blush.

SLIDE 5.

Let's go to our other question for this Episode. We'll use the same facts as before, but this time we'll ask the question that the facts are begging us to ask: "Can Defendant be held liable for conversion?"

In addition to a different question, we've also got a different set of answer choices, and a different word to watch out for: "unless." In one sense, "unless" is kind of like "because," in that it signals additional information that's coming up in the answer choice. But in all other senses, "unless" is very different from "because." For starters, the information signaled by "unless" may or may not come from the facts.

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But the big difference comes in how you read an "unless" answer choice. Since we have a set of "Yes, unless…" and "No, unless…" answer choices, here's how we have to read them. We'll look at answer choice A., which says "No, unless Defendant intended to substantially interfere with Plaintiff's possession." We read that first word this way, as if "No" was a contraction, a shorthand for "No **[*is the correct answer*]**."

Now for "unless." We read "unless" as if we were translating it from another language, as if it was legal Latin like *ad hoc* or *res ipsa loquitor*, one of those things that has a lot of meaning packed into a few words. For us, while we're deciphering these multiple-choice questions, "unless" means "***but there is one (and only one) situation when it would not be the correct answer, if.***" Now, let's put it all together "No is the correct answer; but there is one (and only one) situation when it would not be the correct answer, if Defendant intended to substantially interfere with Plaintiff's possession." First, "no" is not the correct answer. What about the rest, if the "Defendant intended to substantially interfere with Plaintiff's possession." That's not part of the prima facie case for conversion. The Defendant need only to intend to interfere. Whether that interference is substantial or not goes to the actual impact of the interference. The general answer is wrong, the exception doesn't make it right, and we can discard choice A.

SLIDE 7.

Let's go to choice B., and do a little translating. Here's how we would read it: "No is the correct answer; but there is one (and only one) situation when it would not be the correct answer, if Defendant has not substantially interfered with Plaintiff's possession." First, "no" is not the correct answer. What about the rest, if the "Defendant has not substantially interfered with Plaintiff's possession." That's not part of the prima facie case for conversion, in fact that excludes conversion; interference that is less than substantial is either trespass to chattel or if it's truly de minimis, it's no tort at all. Again, the general answer is wrong, the exception doesn't make it right, and we can discard choice B as well.

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Skip down to choice D. Here's how we would read that one: "Yes is the correct answer; but there is one (and only one) situation when it would not be the correct answer, if Defendant intended to return the car after a few minutes." Here, "yes" is clearly the correct answer – so far, so good. What about the rest, if the "Defendant intended to return the car after a few minutes."?

Again, that's not part of the prima facie case for conversion. The Defendant need only to intend to interfere. Whether the intent is to interfere for a few minutes or for forever is irrelevant; whether the interference is substantial or not is not measured by intent but by the actual impact of the interference. Although the general answer is right, the exception doesn't work, and we can discard choice D.

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That leaves us with choice C. Here's how we would read that one: "Yes is the correct answer; but there is one (and only one) situation when it would not be the correct answer, if Defendant has not substantially interfered with Plaintiff's possession." As we said before, "yes" is clearly the correct answer. What about the rest, if the "Defendant has not substantially interfered with Plaintiff's possession." That's not part of the prima facie case for conversion, in fact that

excludes conversion; interference that is less than substantial is either trespass to chattel or if it's truly de minimis, it's no tort at all. That's perfect, because that represents, given these facts, the ONE circumstance in which these facts would not support conversion, if somehow the level of interference were not substantial enough to support conversion. And you're thinking: hold on, the level of interference in these facts clearly supports conversion. You're right. It does. But if magically, somehow, some way, it didn't, then this would not be conversion. Which is why C. is our best choice.

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That's all for our third episode of Understanding MCQ's. Look for Episode 4, where we'll talk about the special problems caused by words like "if," and more. Thanks for listening!