INSTRUCTOR: We will be starting in 5 minutes. We will be starting in about 1 minute.

Good evening. Welcome to tonight's baby bar mini series. We're going to focus on the essay tort question and the multiple choice questions sent out to you.

If you ever miss a session or would like to go back and listen to one, go to the baby bar mini series and click on whatever lecture you would like to hear.

Remember if you have any questions, post them under the question answer box because that's the one I can see and monitor. I will be more than happy to help you with any of your question.

Remember read the call of the question first. I want you to always start there.

This particular essay what theory or theories might they recover from and anticipate an action against?

[Reading Question] Grain Co. Farmer Jones and – First of all, it's a general call. The reason it's important to dictate what kind of call is my point value. I know with a general call, I will get point value on seen issues. Assault, battery, trespass gives points versus a narrow specific call like imprisonment, which isn't point specific.

A general call, a lot of times people don't pay attention. I want you to break it apart. This general call gives you what theory or theories. How many should I be looking for? Two or more. If I just raise one theory, most likely I made a mistake.

Is that singular or plural? We're looking for general, special, or whatever the facts tell me. I know I have to separate that out to damages.

It says what defenses. How many are we looking for? Two or more based on the facts or the call.

Remember too, I told you previous defenses can mean true defenses, negligence, contributory negligence, comparative assumption of risk. [Audio fail/cutting out] or counter arguments. Pay attention to that. It's important. If you don't see what we call a true defense, don't make it work or fit because it's obviously not there. The facts will dictate for you.

I need theories, damages, and defenses I'm ready to read the facts. Read it one time through to get a general feel for the question. You are under pressure and haven't seen the fact pattern before. Then mark it up for actual issues. Then slow down your read, reflect, and see what the examiners are trying to tell you. It's in the facts.

[Reading Tort Essay] Grain Co. Purchases grain from farmers each fall to resell as seed grain ‑‑

They tell me Grain Co. sells grain for resale. That's their purpose. [Audio fail/cutting out]. Distributing, selling of a product.

[Reading] presented by parasites that is stored for more than a few months. Grain Co. Like all dealer always treats ‑‑

that's a big sentence. Let's break it apart. They have problems with parasites.

[Reading] We need to use poison an invisible Mercury base. –

I don't like it because it's invisible. How would I know it's been sprayed? That is a defect in and of itself.

[Reading] Like all seed grain dealers ‑‑

Why's that's there? It's standard in the industry but just because everyone does it, doesn't mean it's correct. It's an argument to support their conduct of what they're doing, spraying the grain with the invisible Mercury chemical.

[Reading] Loose by the truck load to the farmer that will plant the seed. ‑‑

We sell it loose. There's no packaging.

[Reading] Seed grain not for use ‑‑

Picture a truck with the statement on it. Is that an adequate warning? Do you see vehicles on the highway that has verbiage that's not relevant to the vehicle? Is that adequate warning to this product cannot be used in food products?

After the first paragraph, I have an idea as to the purpose of what they're doing. I'm thinking design warning type defect by invisible chemical warning label. [Indiscernible] one that deals in selling the product.

This is the second paragraph. [Reading] Farmer Jones bought a truck load of seed grain from Grain Co.. She was present when the seed grain was delivered and supervised the Grain Co. ‑‑

She has knowledge.

If the trucks have the display [Audio fail/cutting out]. The fact that she is present in helping the employees would that give her knowledge? That again, there's a problem you cannot use in food product ‑‑ that goes to knowledge.

[Reading] She then used some of the seed grain to sew her field. When she found that she had some seed grain left over, she fed it to her dairy cattle.

Now you create a food product with that invisible based Mercury poison chemical.

Now it says [reading] Farmer Jones sold the milk produced by her dairy cattle to Big Food Stores, inc. Big food. Several of the people who bought their milk at big food became seriously I will and the centimeters for disease control CDC a government agency that investigates outbreaks of illness determined that Mercury poisoning was the cause of their illness. CDC traced the Mercury to the milk that farmer Jones sold to big food. ‑‑

They are telling you it's related back to the milk versus no proof. They are giving it to you.

[Reading] Farmer Jones sold to big food ‑‑ that's their connection.

What theory are we going to bring up here? We're under products, product liability. We have battery, negligence, warrants, and strict liability in tort. There's four. You want to go through the check list.

Battery: I don't see any intent. Did they deliberately sell it to her to put in food products? No.

On the purpose of causing milk to be contaminated.

Negligence: We can start with negligence. First lawsuit with milk consumer versus Grain Co. You can start with negligence. We need to establish a duty. That duty was breached, that the breach was the actual and proximate cause versus your products.

As a distributor or manufacturer of a product, you have a duty to inspect, discover, and correct any defects to all foreseeable users of the product.

Grain Co. sells the grain and all other seed grain dealers treat with the poison. They have a duty to due care ‑‑ let her know of the actual problem. They have to eliminate the problem this can cause. Since Farmer Jones purchased this and produced milk sold to Big Foods, the milk consumer would have been a foreseeable consumer of the product. They did need to show due care.

Breach: Go into your types of defects. You have manufacturing defect. You show that whatever you manufacturer is different in kind. Design defect and/or warning defect.

Based on these facts, we're looking at the seed grain remember. Argue it's a warning defect. They told you in facts they have trucks displaying a warning seed grain not good for food products. And the other defect is invisible. If you treat something with any chemical maybe you give it a color so that people are aware that it's been sprayed with a particular chemical.

Two types of defects: Manufacture fails to warn of product. The problem here is she used left over of the seed gain to feed her cows that produce the milk.

Grain Co. sold in bulk. Displayed a warning Seed grain not for use in food products. They will argue that they have adequate warning.

Although it's treated with Mercury an invisible based poisoning. The truck was labeled with this. That's not adequate warning that Farmer Jones didn't know she shouldn't use in her product. Maybe on delivery of a seed grain, you sign a bill lading between merchants. Couldn't that be the point of actual disclosure. So is it efficient to have it on the truck? How do you know she read it?

There is insufficient warning. So they breached the duty of due care.

If you can find multiple ways to show multiple defects, bring it up. On these facts, design defect on the word invisible. I would bring up design defect does exist when the product is inherently dangerous. It's contaminated. It's invisible poison. It's inherently dangerous.

Grain Co can say we treated it like all other grain dealers. But is there a way for us to eliminate inherent danger? They can give it a color so that everybody in the industry knows that it's been process the with this chemical. It's been sprayed. That's what you would argue here.

Grain Co will argue, again, because all grain dealers do this. But poison can't be detected. If you can create or eliminate an inherent risk by making a color so that people are aware, you breach your duty of care by the defect in the design.

Does everybody understand how we have two different types of defects here? We have the warning defect in the design. Do you see how the facts told you that? That's important. If you don't understand what the facts are telling us that's where we miss issues.

We did duty and breach. What's next on check list: Actual cause. Grain Co is being sued by who? Milk consumers.

Grain Co didn't give the seed. Successive tort pleasers buck for Grain Co. to adequately warn or design Mercury based poisoning as well as Farmer Jones using it for feeding her cattle, which she should not have done. But for those acts, the milk consumers would not have been injured.

Based on these facts, it's not just Grain Co. This trigger successive tort pleasers.

How does it get to the milk consumers? Based on these facts, you have successive tort pleasers.

Further you have proximate cause. You can't use this in a food product. The farmer that purchased it could use it, which would result in getting other sicks. And yes it is.

I don't see an argument for an intervening act. I wouldn't bring it up because of foresee ability Because it's invisible, it's foreseeable that someone can misuse the product.

Negligence of a third party is always negligent deliberately.

Damages. I told you in the lecture last week. There's no damage. They don't give it to me. I have to look at the facts and pull something out.

Since they became seriously ill, they get pain and suffering. But the call says damaging. I will go through damages because of the call of the question.

There's no facts of lost income or medical expenses. Milk consumers will be able to recover for any lost income or health coverage. Do I have to do this? Yes, because this is in the call of the context.

Go through your check list not just your main and inner.

Grain Co is not the only one culpable Farmer John is to. Indemnification and contribution. Indemnity secondary liable can seek reimbursement for the primary party. Grain C o will say Farmer Jones is. I don't think it will fly.

Farmer Jones is the one that purchase it and she fed it to her dairy cattle which caused poisoned milk. The truck displays to not use in food product. Secondary liable or in this case Farmer primary liable.

Did she have adequate notice? She may not have seen the notice on the truck especially if it's loaded on the back. Whatever you come up with, you argue both sides. Is it adequate enough? No Grain Co. can't seek indemnification, but then contribution. It's joint and liability proportioned according to fault. Damages to milk consumers according to fault. Therefore, Grain Co. can recover from Farmer Jones.

That's our first theory in products. That's a lot isn't it? When you do address your first theory, you want to do an awesome job because you will steal from it because time will get away from you. You want to be strong in your types of defects, causation, damages. A lot of times when you go to the next theory, I will be circling back so start off strong.

The next on my check list is warrants. I don't see any facts here to raise the issue of expressed warrant. So I won't. It's a waste of time. You can't afford to waste time under the pressure of the exam.

Implied merchant-ability Remember implied merchant-ability does exist. Manufacturer or retailer warrants that a product is safe in fair and average it achieves [audio fail/cutting out]. Distributed the seed grain sprayed with the poison. They altered it. Farmer Jones purchased it. Warning fed to the cattle, contaminated the cattle, which made the milk consumers ill. We will find there's an implied merchant-ability

[Audio fail/cutting out]

Is that the same discussion we had under negligence? Define, discuss, supra.

Then go to proximate cause. Define discuss supra.

Damages general or special? Yes it is. Define discuss supra.

It's the same plaintiff? So there shouldn't be any difference.

Defenses, don't see any a assumption of risk.

Next theory. I don't see implied warrant or fitness or purpose. Strict liability tort in tort. Manufacturer, distributor and retailer can be held strictly liable. All you need is to show a defect product in the stream of commerce.

Grain Co. failed to adequately warn users of its product to [audio fail/cutting out] to kill the parasite. It was not to be used in food products. It is unreasonably dangerous for lack of warning. It was defective and did cause harm in the normal use. They are going to be strictly liable.

Although Grain Co might argue I did have notices on the truck and this is a standard of all seed grain dealers. In effect what? There are steps to take to prevent this. The notice is not adequate and they can alternate it in giving it a different color so that the world can know it was treated with this particular poison. Grain Co is held liable under strict liability. Show causation same as negligence. Define discuss supra.

Defenses, what can we use defenses for strict liability? Assumption of risk and I can use comparative negligence. I want to go back and make sure I answered the call.

Theories? Yes. Negligence. Implied warrant. And strict liability.

Damages I talked about general and special.

What does that mean? We counter on the warning defect. Was it adequate warning based on the truck? We have a successor tort pleaser. [Indiscernible] It could be counter arguments. If you brought up in your exam counter [indiscernible]

There's nothing here in the facts to grab onto. You will know based on this type of call. Defenses, if there's no facts to go to defense, you know it's counter arguments.

It comes up more than people think. You are arguing [indiscernible] but it doesn't exist because it doesn't exist.

That's it for Grain Co in regards to liability of milk consumers.

You can see there's a lot there on the first lawsuit. You will have two others coming down the pike, you want to do a strong job because I'm going to steal from it: The causation, define discuss supra, and damages. You can do that. You don't have to rewrite it. They don't want you cutting and pasting what you did previously.

Now I have for the milk consumer suing Farmer Jones.

What are we suing for? Why? so Farmer Jones manufactured the milk that got them sick. We just talked about products in regard to Grain Co. That tells me there's got to be something different. If you see the same theory in the exam coming up two or three times there's an element that's different. Elements in our defense If it's verbatim. Why did they give me farmer Jones as a separate lawsuit.

This will help you. This is a tool that will help you see things to get more points. Again we're going after farmer Jones for manufacturing the milk.

It was manufactured defectively, how? Design, warning ‑‑ I'm leaning toward manufacturing. Design defect has to be inherently dangerous in its design. Manufacturing defect it's product is different than the rest of the line. In the first batch of milk the cows produced was okay. Then the last one that the grain got through them is okay. Manufacturing defect is rare. They don't test this type of defect very often. The product is different in kind than the rest of the line.

We need to show duty. Farmer Jones produced it. She has a duty to inspect, discover, and correct.

The milk consumers purchased it so there are users.

Breach, argue the manufacturing defect. She bought a truckload of seed grain. She also used the grain to feed her cattle. The milk was poisoned based on the grain. It's different than the rest of the milk produced by the cows previously. Manufacturing defect.

Can I put define discuss supra? I could because I talked about the first lawsuit under Grain Co. successive tort pleaser. I brought up Grain Co. and Farmer Jones. It's up is to you and depends on time. The proximate cause can I define, discuss, supra? No, I only talked about Grain Co. In my first question.

Contaminated with the Mercury poisoning based on what you did [indiscernible] So farmer Jones is the proximate cause.

Damages: Can I supra my damage? General and special damage? Absolutely. Same plaintiff, the milk consumers, it's identical. Define discuss supra.

Next theory. Implied merchant-ability Farmer Jones manufactured the milk sold to the consumer. She's the manufacturer. They purchased it defective with the Mercury. It's not of a fair and average quality. She will be held liable. Then your actual cause, proxy cause, general damages, special damages. Go back to my lawsuit under the lawsuit I just addressed it and will not do it again. That will save you time.

This is a racehorse. This has a lot of issues. I've got to get it done in the hour. Not an hour and 15. You have to pay attention to your timing.

Define, discuss, supra the rule. Farmer Jones did manufacturer the milk sold. She didn't warn about the invisible poisoning. She didn't know. But she used the grain that was mixed for her dairy cattle that had the poison. Since they produced the milk containing poison, she didn't tell about the actual defect. The defective product sold to the consumers she is strictly liable.

Then my to my proximate cause can be supra backed. Looking at Farmer Jones do I see the lawsuits mirror? No, hers is a manufacturing defect. That's a lot of different. There's a lot of issues here.

Milk consumers versus big food. Will I bring up the theory of negligence? Yes, I am. Negligence. You owe a duty to what? Manufacturer shall [indiscernible] You owe a duty as a retailer to care, correct known defects or defects you knew or should have known. The duty is a little bit different. This comes up on the multi‑states.

A retailer to hold accountable to negligence. They should have known of the defect and didn't take any steps to prevent the harm.

The breach was failure to give actual knowledge. but in this case they didn't know.

When you go in a grocery store to buy something, how do they know it's defective? That's sealed. The sealed container doctrine, and there's nothing to tip them off that they should know something is defective. Therefore, they are not in breach.

In this case they have no idea it has the Mercury poisoning. Yes, the burden is on the plaintiff to show. The plaintiff does have the burden to prove that they breached that duty. Based on these facts, I don't have it, do I?

I have seen in multi‑states that they tell you facts that they should or could have. Bolts left in the crate, how can there be any bolts left over? [Audio fail/cutting out]

In regards to big food, I'm done in breach. I would not continue on because I don't have the time and second reason the reader is going to think I don't really understand the concept. A retailer has a different due duty under products sold.

Big food did sell it to the milk consumers. By being a retailer, you warrant that the product is a safe and average for use in it's quality.

It was not a fair and average use; therefore, they will be liable and implied warrant and merchant-ability Liable cause, I don't have time. Damages should be the same.

In regards to strict liability. They placed a defective product in the stream of consumers [indiscernible]

The other thing they could bring up is that they didn't do anything wrong. They can seek indemnification. Farmer Jones is primarily responsible. They are going to seek indemnification against Farmer Jones.

There's a lot of issues here. This examination is straight forward.

Product liability is something you should be prepared for. With product liability, when you see a general call like this, you're guaranteed to see the issue of negligence, implied warrant and merchant-ability and strict liability and tort. Based on facts, you go look for the others.

When you see a general call like this, you have the three to discuss. Be careful the call could change. It could tell you we're suing under negligence. Then you're limited under negligence. You can't do any other theory because they've limited you.

Theories, we saw two or more. Damages, we talked about general or special. Defenses ‑‑ this is what counter arguments

[Indiscernible] there's nothing here in the fact pattern that shows milk consumers did anything wrong. You need to be aware of that. People bring that up but it's not there. The facts show that they didn't do anything. You're wasting your time.

Make sure you head note your actual issues. Make sure you do one theory, then go to the other. Keep it separate in and of itself. Follow the calls. Address multiple theories. Break apart your lawsuit between your theories and actual parties.

I would like to tell you the issues that students missed, but no one submitted your essay questions. You need to write these. This is an area of weakness or someone brought of expressed warrant because of seed grain not for use on the truck. That's not in the expressed warrant. E‑mail it to me or admissions where they send out the essay questions either works. But this gives me a idea of what the group's dealing.

If you understand this, these are the steps. It's straight forward. It's given to you. I go ABCD right through my steps. You want to make sure you understand it.

You want to do contrast. I see this a very general products liability question. Have you seen the one with the car and roadster? How is that different than this one? Or dealing with the one with allergy medication or cold blender with hot soup? What's different? You want to determine a difference between the two or three or four you're contrasting. If you use your check list, break it apart.

If I ask you all the same question product liability examination and call says theories, what theories are you going to address? Negligence, implied warrant and merchant-ability and strict liability in tort.

How much time for each lawsuit should be spent? That's a judgment call. Since they gave me three, the first one I have to be strong and steal from. I have to steal from it. I do a good job at the beginning. In any examine start off strong. They understand we're under time restraints. First impressions are everything. You know how to articulate and analyze. Because of time you've got to start off strong and show you know what's being tested that you know how to analyze and break apart.

Did most of you see these particular questions in these?

In this case, when they have the three rule, Grain Co. Farmer Jones and Big Food that tells me there's something wrong. Meaning there's got to be a difference between the three lawsuits. It cannot be verbatim or that means I made a mistake.

Hopefully with torts it's not your worst area. Use your check list and break it apart and use your inner.

Negligence, duty, breach, causation your check list does that for you. That should be helpful.

Contribution, indemnification come up under damages, failure to mitigate, avoidable consequences, damages. You want to know your inner check list. What is in my inner within damages? Negligence, special. I've got avoidable consequences, collateral source. You've got to know that. Knowing your check list; hopefully, you have check lists and outlining the essay. If you need an actual physical outline, that's good but you got to pair that down. That's too much like Gilbert's and I won't have time to get it on the exam itself. Does anybody have any questions on this particular essay?

I had a couple people e‑mail with questions. What I would like in the future is let me know the ones you are having trouble with.

With multi‑states we don't read them properly. We don't look to see what's being tested. We need to do that. It's so important. When you do a multi-state what do we need to do. Always read the stem. Once you read the stem, then read the facts. Then break it apart to what's being tested. If the theory is negligence, what's being tested?

The first question we will look at is question one and two, I guess. Delta the manufacturer. Let's go through the process and see if we are understanding or getting this. You have to rule ‑‑ you have to pick the best answer. There can be two correct answers with one better than the other.

Read the stem. [Reading] In an action for negligence which of the following additional facts are inferences if there's only one true would be the effective in Delta's defense ‑‑ what does that mean? A negligent action by Jonathan and he's suing Delta. We're looking to get the defendant off the hook. Delta's defense can be a true defense Or it can negate an element of the theory that Jonathan is suing under. If I didn't breach the duty or was the actual proximate cause. If I can knock down to duty, but have a breach answer, duty is the better answer.

Reading fact:

Delta was the purchaser of a product known as Delta follicle which was sold over the counter for the treatment of dandruff –

So I know there's negligence in products. The duty to inspect discover and correct. That's changes things.

[Reading fact cont.] Jonathan purchased a bottle of Delta follicle at Watson's drugstore. – Jonathan purchased , that's our purchaser .

[Reading fact cont.] A statement on the label read: This product will not harm normal scalp or hair ‑‑ what is that statement? That's an expressed warrant. This product will not harm normal scalp or hair. But we're being sued under negligence. Why is this? They are probably trying to trick you.

There's no miss use. Because of the scalp condition making him allergic ‑‑ again in an action for negligence by Jonathan against Delta which of the following inferences would be true?

This is one we have to read each one. We can't eliminate.

Reading A. Jonathan did not read the statement on the label. Would that be a good answer choice? I can say no, why? That would go to express warrant. Remember with expressed warrant ‑‑ this is why you need to know and practice your law ‑‑ you have to have knowledge of that warrant to claim it. If I didn't know it existed ‑‑ so A is wrong.

Reading B. The reasonable person in Delta position would not have foreseen a person with Jonathan's allergy. That looks good. I'll put a plus there.

Reading C. Would that get me off liability? No. Manufacturer distributor ‑‑ no. C is out.

Reading D. Would that get me off? No. Again in regards to your statements, it's foreseeable that someone could have an allergy.

B is your best answer. We're trying to get them off of liability. So the best answer would have to be B.

Let's try 2. [Reading]

In an action by Jonathan against Delta on the theory of strict liability in tort --

Strict liability in tort. Our liability changed. Liability for defective product placed in the stream of commerce.

[Reading] which of the following additional facts or inferences, if it was the only one true would be most helpful to Jonathan's case?What does that mean? We want the plaintiff to prevail we have to show what's helpful to him.

Reading A. Do we care? We don't. He's suing under strict liability.

Reading B. That means they would know. Does that help with strict liability? No you don't have to know or not.

Reading C. Would that help him? He's suing under strict liability. So we need to show a defective product placed in the stream of commerce, actual cause, proximate cause, and damages. So this reasonable person would not have expected seems to show that what? Causation issue. That looks good to help him.

Reading D. Is that good? What is that support? What theory? It supports the theory of battery. If you pick D that's because ‑‑ it's a good answer for battery ‑‑ because it goes to an element of knowledge. If they are aware and placed the product in the stream of commerce without disclosing that's a battery.

They tricked you because you didn't pay attention to the theory that they gave you that they were suing under. You have to go back to a particular theory that they directed you to.

Do you see why D is wrong? That goes to intent which supports the claim of battery which exists under products.

So C consumer expectation is the best because he wouldn't expect the product to do what it did. You have to break that apart.

Let's look at number 12.

They knowingly placed the product in the stream of commerce. Knowingly I'm looking for battery. I didn't know it was defective that's strict liability. I knew the product was defective ‑‑ and sold it anyway, but sued under strict liability sued under the wrong theory. They will mess with you and see facts to support an intentional tort but that's not what they are suing under. That's why you need to understand your reading properly. You need to pay attention.

That's why I tell you to mark it up.

If Perry asserts a claim against Douglas for defamation, Perry will be successful if – They gave it to you: Defamation. A false defamatory statement published to a third party is that understood it.

[Reading question 12] Perry who owned an appliance repair shop was at a cocktail party when he saw Douglas one of his competitor. Approaching Douglas, Perry said I'm glad to run into you. I was hoping that we could discuss the possibility of going into partnership instead of competing with each other. Douglas responded, I wouldn't go into business with you because you're the most incompetent person I've ever known. Aaron a customer of Perry's overheard the conversation. As a result the following day Aaron canceled a contract which he had with Perry.

Is there a false defamatory statement? The fact that he was an incompetent person. Was it published? Aaron. To a third party? Was it published intentionally or negligently? Maybe negligently to a third party. Would it lower his esteem? Yes. We have a prima facie case. I'm thinking yes, but the answer could change. I have to read each one.

Reading A. Does it matter that the one that's making the statement that I knew or should have none? No.

Reading B. Does that make sense? No, it's a false statement.

Reading C. That looks good and why.

Reading D.

So which is the best answer choice. If you and I are talking to each other do I expect people to overhear what I'm saying? That's what it's coming down to you. Should I expect someone to overhear our conversation, or should I whisper or talk quietly.

If you knew it could be overheard, then he shows intent to publish it.

As long as it's you and I, It has to be published to a third party.

If you're at a party and standing in a corner talking to each other would you expect someone to overhear you.

The mayor and another party of a union were sitting in the corner of a restaurant were being recorded. They didn't know. Was the publication done ‑‑

This is something tested on the multi-states that you need to be aware.

When do you hold accountability? If I told another person, even if it's false, would that be another publication? That's within the job task. It is an area that does come up.

The other area with defamation that does come up is damages. If it's liable general damages presumed versus slander you have to to prove up general damages unless you get slander per se.

Publication is basically where it's publicized to another party. If I send you an e‑mail that was defamatory and your mother read it would that be defamatory? I would have to know your mother could read it. I would have to know it's a family e‑mail account versus I thought it was your personal e‑mail account and didn't know your mother checked your e‑mail account. It can be in print, broadcast, chatting at a party.

That's why I need you to contrast how they test the concepts. So how many ways. You can say I could sky write it, that's a publication. You know they are joking.

Go through the elements. Is it a false defamatory statement, published intentionally, did it cause you to lose yourself esteem in the community? If all those are answer go to defenses, privilege [indiscernible] Even if you're joking, you can be held accountable. Chatting could be a publication.

The answer in regards to 12 is C.

It is something I want you to go over because it's very easily overlooked. The the more I can get you to understand misrepresentation, I can change a word or two that changes the answer. A was correct here and now C is correct we changed something on you: The call, whatever the party is contending. You have to pay attention. Students think there's one right answer and that's not how it works. The plaintiff's best argument left, best defense

The answer for 12 is C.

Question 18. Let's try number 18. [Reading call] If Janis asserts a claim against Mike for assault, the court should find for? This is obviously torts. For assault we're looking for intent. We need imminent threat of harmful or offensive touching.

[Reading] Ally a 13‑year old girl was a member of Fireside Scouts, a national young people's organization. As part of a Fireside Scout project, she planned to spend an entire weekend camping alone in the woods. Mike, who knew about the project, phoned Ally's mother Janis the day after Ally left home. Mike said we have your daughter. We've already beaten her up once just to hear her scream. Next time we might kill her. Mike instructed Janis to deliver a cash ransom to a specified location within 1 hour. Since there was no way to locate Ally's campsite in the woods, Janis could not find out whether Mike was telling the truth. Horrified that her daughter might be beaten and injured or killed, she delivered the ransom as instructed. She remained in a hysterical state until Ally returned from her camping trip, and Janis realized that the ransom demand had been a hoax. Janis who already suffered from a heart ailment had a heart attack the day after Ally's return.

What are your elements for assault? We need intentional. Did he have intent? I think by his conduct. We need an imminent apprehension of harmful touching? Do we have immanency? Yes we do. To Ally. To Janis we know you're going to hurt my daughter emotional distress. We have no imminent threat that he is going to harm her. Will Janis recover or Mike? Mike is.

There's an immanency harmful touch or threat to Ally.

Reading A. Janis because Mike was aware that his conduct would frighten her.

Reading B. Janis because the court will transfer Mike's intent. She had no imminent threat of being harmed by Mike.

Reading C. Mike because Janis did not perceive injure being inflicted upon Ally.

Reading D. Mike because Janis had no reason to expect to be touched by Mike.

So D is the correct answer. He did harm her but emotional strive absolutely. You have to pay attention to that.

Again you got to break it apart.

Good. What I want you to do now is we're going over contracts next week. We reviewed torts spent time on essays now you need to outlining writing exams and torts. [Audio fail/cutting out] You will be including contract essays as well as torts. If you don't start practicing audio fail. Of how we fall for something we know better because we know the law but look how easy it is to fall.

Does anybody have any questions at this time.

We will go over contracts and hopefully we will clear that up.

If you do have any questions in your preparation shoot me an e‑mail. I'd be happy to help you any way I can.