TAFT LAW SCHOOL

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INSTRUCTOR: You have lots of options. I would recommend that you would use in order to help you for your preparation. The first thing I understand is with torts or contracts or criminal law you should have a checklist. It's like actually going to help you identify issues. Also issues something if you don't have a checklist I recommend you create one. Taft does provide you one for your classes. You can make it your own. It's very important, especially, when you go in the examination of -- issues as well keeping things organized.

The purpose of a checklist to help you identify issues and make sure you don't leave out issues. An example that would be defenses to negligence. That's very common that people don't talk about defenses when issue. If you use your checklist, that will be your guide to make sure you are not missing anything. Now regards to torts. You will be tested on multi-state and essay question. When you read an essay or multiple choice, you start with the call of the question. It will give you direction. It's important if I can get you to do this. It will narrow you down to specific issues.

That's important. When we do go over the last baby bar, they asked under what theory of intentional tort charged with? That narrows you down on your checklist. You shouldn't be thinking of negligence or products liability. The call was very specific; so that can help you.

The more detail or specific the call is to be that's a trick you've got to break apart. Such as battery. What within battery is being tested? The call gives things away for you and helps you. Identify the subject matter as well if it gives awe specific call.

Again, our primary focus tonight not to go over the Black Law. You should know it. Give you an idea of areas how they test the Black Law. With intentional torts, you have intent. Did intend the results or the actual transfer and intent doctrine? You need to understand these doctrines. What's substantial -- with substantial certainty that means you intended to do the actual conduct, not necessarily the result; so if I play tennis and

I go into the bar afterwards and the person sitting next to me say -- with your intentional torts, they love to test them. I like them because, I feel if you break apart the elements,

you see what's being tested.

Like example or assault and what do they test for in the assault? So you need the intentional creation of an imminency. If I say I'm going to hurt you tomorrow, you claim an assault. That's one element they love to test. You want to look for that based on the facts and see if it is satisfied before you conclude there's an assault. Battery you need the intent or the harmful or -- physically touch the person and the answer is no? They could test things such as extension of one self. You are hold it it's an extension of oneself or a I get mad at you and I kick you. You've locked the door. You can argue.

False imprisonment.

If you go to the rule, it's the intentional physical or psychological of another. Words could confine another. That would be proper. With false imprisonment, what do they like to test? Two areas: First, if you're imprisoned, you need to be aware of it; so if you're aware then, there's no false imprisonment. If you're not aware but damaged by it, you still have an action as long as the other elements are for false imprisonment. You have to be aware or physically damaged by it.

You're in a dressing room trying on a dress. The store closes and everyone leaves me and I can't get out. I would have a cause of action of false imprisonment. She should have made sure everyone was out before they locked the door. Trespass. Land. You don't need to know the land belonged to another. You can trespass on other's land. It doesn't have to have knowledge. You need intent. I want to make sure you are aware on the multi-states they're going to use the words was there a trespass? It's your job to determine if it's an intentional negligent or -- there's a difference.

You need to know negligence trespass with the multi-states. With intentional trespass you don't need damage. You need to show the damage and the entry upon the land of another. Versus negligent trespass you need damages. If I inadvertently cross your land. If there's no damage obviously there's no recovery. What's going to tell you if it's intentional or not the facts. So if they tell you that an airplane needed to make an emergency land and landed on the farm's crop is that intentionally. Yes. Versus if they tell you the plane went down. There's no intent that would be a negligence trespass unheard to show that there was damage. The facts are very important to break apart and look at. Very, very important.

You have trespass chattel. The first five I gave assault, battery, false imprisonment, trespass the land and trespass to chattel or we calling -- what you need to know is that

those five are the only ones you can use doctrine for intent. You cannot use transfer intent for emotional stress or conversion.

With conversion remember it's a complete destruction. You need a substantial interference or complete destruction. You get an examine or conversion or it's fully destroyed I'm going with the conversion.

You have your emotional stress. When you see this you need to show intent extreme outrageous conduct and some type of manifestation. You need to break them apart torts. Look to the intent element. If facts show I can support my argument for intent, most likely I would bring it up.

Example she was angry at Peter. Driving at the store he saw Peter. He jumped out the car and pushed Peter down and ran over him. Do we have an intentional tort based upon the push of a battery. What about the fact he stood over him? That would be an argument.

Does not mean it's going to success but I would bring up the issue of at re as well as false imprisonment. Element of strong facts it's something you're going to bring up. The other thing about torts every tort actually has causation. Actual cause and approximate cause. On an essay we don't address it.

If you see there's a problem wait ape minute. There's a -- I problem probably have a caution issue. You need to address damages. People talk about battery but they never get to the damages. You don't need general damages. You still need address the issue as to damages. If you find the intentional torts look for defenses. Make sure you know which defenses go to what. Crime prevention, consent. Break those apart and make sure you understand and how they come into play. That's important. If you see an intentional tort carry through see if causation is an issue get to damage and look for defenses.

A lot of times intentional torts a lot of people confuse with crimes. Be careful. There's no way they can really hide it. The one thing you'll see -- the examine had last time the intentional torts if everybody got enough because a lot of times when you see intentional torts you have to break it apart and see tie or three or four. If you see -- have you to break them apart and look as the conduct and see what I can argue. Doesn't mean it's going to succeed but you need to bring it up. With an issue how do I know I need to bring it up? If there's an element that has strong facts then I know I'm on the right issue.

Those are you are intentional torts. Have any questions just pop it up there. The fact that they just intentional torts most likely you won't get it again doesn't mean that's true. They have tested issues several times. I would be prepared for. They're getting -- they could surprise us. It will help you on the multi ones anyway. It's a good area to get to know.

The next very is negligence. Negligence is highly testable. It's something you should know cold. With this you have a set up and that's where your checklist should help you. We start off with what we call special duties. You have a duty. Look there first. Do I have a violation of statute? Omission to act, land occupier, or duties owned. That's where I'm going to start see any trigger based. If the answer is no I go to my general duty? Why. If you have a special duty. Let's say you have a violation of statute.

They say you can't drive over the speed limit by a park. The person is doing it. It has to be at midnight. I go through the statute showing the intent. Remember the class. Type of injury. People go play in the park especially children during daylight hours. Most likely when I go to the violation statute. It's a gray area. I would fall back on the general duty. It's going to help you to organize your examine and make better form of communication. If special duty fails you go to the general duty. Violation of statute people don't know that rule. You have to show intent of the legislature. What's their intent behind? You have to be a member of the class which a statute was designed to protect. What are they trying to prevent. Know your elements and break them apart.

Land or occupier remember that's one when not someone comes on your land. Invitee. License see. Trespasser. You have attractive nuisance. You need to know California does not classify. It relies on the general principle. On an examine, if I see somebody coming on the land let's say to a hotel establishment I classify as an invitee. It says employees only. I would argue they're a trespasser.

I don't own a duty to a trespasser? Once there's no duty -- you have a duty to act reasonable under circumstances and again where you act depending on the facts whether or not you breeched that duty. You would break that apart. If there's no special duty you go to general duty and remember general duty breaks apart. You have your reasonable pew dent standards. You have common carriers. You've got children based on age.

An adult with a disability. You want to look at those and see if they're being tested and understand these.

Want you to show duty you go to breach. Res ipsa. You can't establish the breach. In an operating unconscious. There's a cell phone. Got put inside me that's -- there's no evidence to show what occurred for the breach that triggers a res ipsa problem.

They make it more difficult tore students to see. If you are looking at the facts and have no way of knowing how it occurred. You know it's that.

Remember res ipsa establishes your breach.

Once you establish the breach you go to your actual cause. We have your butt test. This is good language. Use it. They don't use the buffer test. That's the language they are looking for. You do have other areas that come into play here.

Success tortfeasors. If you are in a car accident. The doctor is negligent. You might be suing the car driving for everything. Why should I be responsible for the doctor? That's where this comes in. Con current tortfeasors don't come up too much. You have two independent acts. They cause no harm. Now we've got the actual harm. That's the spillage of the oil in the ocean and the guy --

[Interruption]

When they came together caused a fire and explosion. That caused somebody harm. That would be your concurrent tortfeasor. Proximate cause is huge. If you break it apart, pursuant to your steps it's not that hard. I want you to ask yourself. Is it foreseeable? If the answer is yes it's a direct act that means you are not really testing it. Get in and get out. If I run reply car and I hit the person in hit front of me. They didn't really test me on it. It's a direct act. Its foreseeable. I would be done on that. If we have a indirect act. I hit the person in front much me with my car.

The paramedics come. The paramedic is suing me. That's indirect. I didn't hit me. The other car did. It ran the red light. Is that dependent on my action? That would be dependent if I put the chain in motion. Would that be foreseeable or unforeseeable. The party ran the red light. The negligent acts of a third partied is foreseeable. Break it apart. Direct or versus indirect. Was dependent or independent or foreseeable versus unforeseeable. These acts are normal acts of God. Acts of animals and negligence of a third party. This could change on you. Generally foreseeable. Acts do not include criminal activity but I have knowledge about and don't do anything about it, it would be foreseeable.

The facts will dictate. Proximate cause is highly testable on the essay. Multiple choice

questions. I want you to work with and get a good understanding how it comes up in a fact. How you will apply T. I use that approach direct, indirect, independent, dependent.

That helps regard. It also helps you picking the right answer for the multi-states. Of course, after causation damages pain and suffering and property loss.

And then after you finish your prima facie case. Last clear chance. I use a mnemonic called CLARK. It stands for the contributory negligence the L is the last clear chance the A and the refresh and the last C comparative negligence. The reason I sat it up that way clear chance doctrine -- plaintiffs will say defendant you had the last clear chance. Contributory negligence and last clear chance doctrine have a relationship. You cannot use last clear for comparative negligence.

It only works up with comparative negligence. That's your prime facie negligent. When you take a multi-state guest what? You will ask was there a duty. Did they breach the duty? Is there any viable defenses. You'll get good enough. You'll see they are testing gist the duty here. You've got to make sure the facts support your elements. If you see a duty and a breach but there's no cause sayings there's no viable claim for negligence and that will be the better answer choice. The other thing taking the hierarchy of your elements. If I could show no duty that's a better answer choice than a defense. A contributory negligence. So you do want to break it apart.

Regards to the two issues. They had the intent to lock the door and leave.

In that case, they would find in and of itself there's false imprisonment. If they want to change it, we check the dressing rooms. Someone was hiding, then I locked the door. That wouldn't be false imprisonment.

You should see that on several multi-states. You can find it's not. Something like that. Everybody got a good handle on the negligence and again breaking it apart. Don't take it for granted. Break it apart on the multi-states. Make sure all the elements are satisfied in order to get the best answer choice. The next doctrine is strict liability. With animals. You want to focus on the animal's propensity.

But they're going to give you something common such as a cow. They won't lose something you can't handle. There's a difference between wild animals and domestic.

Dangerous activity. Toxic waste. You are dropping regards to poison. If you show I'm conducting an abnormal activity remember that's liability imposed regardless of fault but you still have to show cause sayings and then your damages. That's important.

Regards to the quiz and manager cleared out the market. The answer was yes. The manager probably didn't act reasonable if you were supposed to check it out. You can send that directly. If the manager either should have known that's going to be an on his conduct. He acted with what? To lock the door and leave. Does not mean he tinted to lock someone in. Based on his conduct.

Remember strict liability you still need cause sayings and damages. Know the two defenses. If I can see an answer they were negligent. Strict liability is best. I don't have to show duty and breach. Just the causation and damages. The other thing you want to be aware of is crossover. If I see strict liability on the land, I'm looking for private nuisance. They go together.

That will help you in regards to your issue spotting and breaking that apart. All right. Big umbrella. Products liability.

Products liability have several. Battery, negligence, warrant sees and strict liability and tort. In regards to products liability it's a manufacturer or distributor or retailer. Battery just like intentional tort. You have to have intent. You will know. There's one exam. This leverage medicine caused blindness. They didn't do anything about it.

That would be equivalent to battery. They have to know. Based on the fact you will know if it's battery or not. They have to tell you. There's no way to hide it. Versus negligence if you have a duty to inspect and you know danger of the product. What's the duty of a retailer? They have a duty to inspector. What about a retailer? You grow to the grocery store and buy milk. Do they have a duty to inspect discover and test to determine if that milk was contaminate? The answer is no. Retailer has a different duty. They have a duty to inspect discover based on knowledge, they knew or should have known. If they see some damage on the packaging or a recall they should have known and shouldn't have sold the product. Make sure you are where of the differences.

Breach this is where I type the breach. You've got a manufacturing, warning, or design. Manufacturing defect is a where it's a different kind. I was producing all of a sudden comes a few or allotment that's all different. That would be a manufacturing defect. Warning. The harm such as prison you didn't warn could be harmful if sprayed on the skin. They had one on the baby bar with a can of bug spray. It had flowers. It looked like an air fresher. That would be design. Of course warning effect roses and flowers on a can? If you can find multiply ways there's a defect, bring it up.

After negligence you show the breach you show your actual cause, proximate cause,

damages and again see based on the facts if there's any defenses. That's what we just talked about in regards to negligence. The elements are the same. The main difference is the language of your duty and your breach you type it. Manufacturing or warning design effect. I have warranties. Express warranties. They need to see a representation. You want to look for puffery. Both state of the art. She realized it was last year's model.

For that year it was manufactured you can argue it was state of the art. You would argue expressed representation versus puffery.

Remember with your warranties you have to show causation and damages. Proximate cause and damages look for your defense such as misuse or disclaimer. You have implied warranty. Manufacture -- the product is fair in average use. You are representing the product as fair and average use. Roller skating as an example.

Making an representation the product is fair and average. Causation and defenses they've got your implied warranty. If you see expressed warranty you see this one too because it's based on a representation.

That can come up by expressed words or by representation on the product itself or advertisement. Those are forms of communication. If they represent you to on the packaging that this will last through any crash like a bike helmet. It cracked in two once that accident hit and that would be your argument. When you see expressed warrant you discuss implied warranty of fitness. I see a question and I know it's product. What theories? I'm going after negligence, implied warranty media ability. I know that. I know it's the product.

What are they? Negligence, implied warranty, media ability. I read the facts. If I see knowledge, I might throw in battery. Expressed warranty or complied warranty for a particular purpose. I like products I pretty much know what I have to bring up.

You have strict liability in tort. You need what? Causation damage and look for your defenses. The other thing with products look to who you are suing. Can I sue an endorser of a product? Like tiger woods. Can I sue him for products? You sue them for negligent misrepresentation or negligence itself. Duty to determine if the product is safe before they make a representation to the public to buy it that would be your argument. Endorser you are suing for misrepresentation and or negligence. You cannot sue them for products. For products liability. That's your products liability. Any questions on this? Again it's a good theory because you can break it apart. So the last

clear chance doctrine is a plaintiff argument. How it works the defendant show that the plaintiff was contributory negligence. Remember contributory negligence is a complete bar of recovery. That's harsh. But the plaintiff comes back say and defendant you had the last clear chance. If the plaintiff can prove that it's not barred from recovery. That's why it's a plaintiff argument.

Does that make sense? You'll see some answers. A lot people don't see it. You'll see something in the facts they could have prevented. They could have stopped. They weren't watching. It wouldn't happen if you were doing what you're supposed to be doing.

I take into consideration liability. Employee and employer. You do have an independent contractor general what? No liability unless it's a non -- if you go to department store they have a company that comes and monitors the elevator. It's not working. You drop down and get injured. The elevator company did it. Why should have be able to sue the store? They're going to say we hired outside people. You will be responsible for it. Homeowners. Maintenance of your car? Still my fault. About the brakes.

You want to make sure you understand it because it does come up. A nuisance. You have public or private. If you see strict liability. I told you to look for private nuisance. Public nuisance. It's the attorney general. This is tested about four or three years ago with the siren. It was based upon sue essence. You have to pick your arguments. What if it's a public nuisance versus a private nuisance? It was a lot of analysis. Arguing the facts. It wasn't easy at all. Defamation.

It can be an intentional tort. I'm excited to see that fact pattern that baby bar just released to see any statements there. People don't realize when they say intentional torts. Defamation can be if it's intentionally. It can be intentionally or negligently. That will be interesting to see.

All right. In regards to defamation this is one tort students don't do well. I don't think you break apart of the elements. We clump all together. With defamation you need the false representation, of material facts. You need that statements which were published intentionally or negligently. It has to be understood by a third party, and either it's liable or slander. Break apart those steps and analyze them I should be in good shape versus clumping together. That’s what gets us in trouble. The other one people say since it's liable, we've got general damages and special damages. No, we don't. If you have a liable since if you want special damages you'll have to plea and prove them. We won't give those out. In regards to slander you need to prove for slander general damages. If

it's slander per se general damage will be presumed or special damages you have to plea and prove them. Again to liability it's permanent. Versus slander spoken and if you put it in a special category you can use CLUB. If it's dealing with a crime, if it's dealing with any those four they will find it slander per se. With defamation you prove your prima facie case.

It's a little broad what is a qualified privilege? What is an absolute privilege like on the floor with Congress it's an absolute privilege? If it's a divorce proceeding. Did your wife commit adultery. Is that protected? You do want to break -- make sure you break those apart and understand. Constitutional privilege that's means do I need to show mall Is? When you see a plaintiff suing a media defendant, you will talk about constitutional privilege. If you and I suing each other we will not talk about constitutional privilege. You see a media defendant that triggers whether or not you have to show actual malice.

Now when you see defamation, there's other torts that crossover with that. That's why it's important to see how the defamation occurred. Like an example if the defamation was intentional, what are you thinking of? I'm thinking of intentional emotional stress. You did it on purpose. That's another tort I bring up there. If I see defamation I think of? False light in the public eye. Remember as lawyers bring up as many as you can you're not going to -- each separate one and get the big general damage of money adding up. You will plea in the alternative in case the jury doesn't go for your story. In the essay see these facts raise multiple issues. That's why your facts are important. If you see defamation look and see. That's an umbrella that breaks apart into four.

You will false light in the public eye, intrusion upon seclusion. Appropriation name or likeness. False light in the public eye. That's pretty straightforward. You portray someone falsely in the public eye.

Public disclosure. This is like medical records. The appropriation of name and likeliness. People don't understand this tort. If I take a picture of a famous person and offer for sale? What you need to understand I have to be use that go picture for making me a commerce gain meaning I take that picture and say who eats at my establishment. I'm using your imagine or likeness to build up my business. Appropriation of name or likeness you're using to benefit your business.

You want to make sure you understand that. In a multi-states people pick it and they're wrong. It has to be monetary gain. Not the fact that I'm just selling your photo.

Other business torts you have.

Interference with contract. I haven't seen these tested too much on the baby bar.

Interference you know of an existing contract. You interfere with it. I've seen on the bar exam where it's dealing with packages like UPS carrier. You say I can get you a better rate.

Versus interference with advantage that's knowing we don't have a contract, yes, knowing we will get something together and you interfere with that. That's a no, no. Those are your main torts that you do need to know.

The other thing I want to make sure you know with your damages. We have general damages; we have special damages; we have punitive damages. You can have restitution for the unjust. I want to take that away. Prime example if I take your money and invest it and get lots of money. Here's your $10,000. You are a private individual. You see me. Prove it's your money. I just made a million dollars. Here's your money back. Are you happy? Not likely. You just made money off me.

I want to -- that's what restitution is about. We won't let you benefit from your wrongdoing and hurting somebody else. That's called restitution to prevent richness. When the money won't make you whole meaning you benefited I want to take that away.

That's very, very, important. In regards to your torts, there's consistency damages that's with every tort. Your defenses. They come up in products, negligence, strict liability.

They can come in nuisance the assumption the risk. There's continuity here. You want to get to know this. What I would recommend when I start studying, pull out my tort checklist. See if I can give an example the rule of law and see how it's tested. If you just sitting there and reading your outlines or notes, not helping.

You're not working on your application. You need to break this stuff apart and understand how the concepts are tested. If you don't, you'll never get there. It's all about do I understand the application of when a client comes in? The facts will be different with each client. That's what your essay is, your client. Break it apart and see what we can bring a lawsuit under.

Are we dealing with a product? Dealing with a representation? Did someone make a false for defamation? Break it apart and then look at it. That's important. The best way I find to study take out my check list and see what I can say about intentional torts. If I can name them all, transfer doctrine from victim to the actual victim, or from one tort to another. You can take the intent from an assault and move it to battery. I intended to harm you. It can take the intent to harm you and transfer to Karl.

Proximate cause. Is it indirect? Independent and foreseeable? I don't know. Break it apart. What would be independent. There's a car accident. There's a witness on the side that does something. Oh, that would be indirect. That would be independent would that be foreseeable? Prime example the paramedics are called to the scene. Here comes a guy. He thinks he's funny. Starts throwing water balloons. That caused damage. I'm being sued for the water balloons. Direct act or indirect? That's independent. Is that foreseeable or unforeseeable? I would say it's intentional. I'll use unforeseeable versus negligence. Based on the facts see what they say. It could be the other way but more detail and actual facts. The more I can get you it apply this and break it apart.

The results just came out. We're not narrowing it down to the best answer choice. That's going to be a problem. The only way to get better with that practice. Put the why? You had a question about the false imprisonment. There's something different in regards to the facts. It could be one word. It could be the call. I've seen one where it's fails imprisonment. I believe the answer choices here --

You are looking for intentional language. Look for the call. I would recommend you pick a day to do multi-states. What I would ask you to do is keep a notebook or a clip board and let's say you take 50 multi-states for the tort section. Put why did I pick A when it's B? You have to figure it out. If you don't, when that concepts tested again guess what? You're going to police it. The other thing I do I always put a word or two still I remember -- baseball diamond. I never thought of a baseball diamond being artificial condition. They wanted strict liability. Again, that's why you write it out. One or two words of the facts trigger you back to that multi-state, your subconscious is going through that for you and getting it in your memory bank so you won't miss it.

Who likes multi-states? None of us. You have to work through it and break it apart and again understand why A is connect versus B? What am I seeing wrong? You'll get better the more you apply it. It's all about application. It's frustrating. You have to know how to apply it. That's going to hurt you. Start working on obviously we've gone over torts. Start practicing multi-states. In the index of this book pull out the torts first. Do it by your checklist. Let's say you took a lot of torts what do you think about yourself based on the ones wrong?

Ten out of negligence and broke it apart that way I will see where my weaknesses are. You want to narrow down the weakness. See where you have a problem. I can add mix questions. I have to work on my weakness. Otherwise, I will be in the same boat.

This isn't easy. We're all in this together. Remember the rest of us are doing it with you. It's important. Trust me. Parry would recommend doing a study schedule. Religion stick. It's two hours tonight enough meaning that's all I have that's all I have. You want to be realistic. I go home and for get it. Why would I schedule myself for two hours to study if I know I can only do 30 minutes. The more I can get you to be specific you'll do it. If I only had 30 minutes I start off with intentional torts. Do five multi-states. That would take about an half hour or hour. Tomorrow I will focus on negligence. Break it apart so you will accountability.

You will see I did do something. You can look at your results. That's important. I would highly recommend that you do that and keep track of it. That builds you up versus tearing you down. We're good at doing this.

At this point, we've kind of hit torts. I want you to go back over it. I want you to start studying and work on your issues taking multi-states.

You will be sent out an essay question. I'm not really worried about your timing mark. This is where my hour was up. I can give you this is what you need to do to shortcut your time.

I need to follow that indicator. This is for you. I would recommend your sitting down and writing. This will help you with your time. You have four essays. You'll going to find hours goes by quick. You will be sent multiple choice questions. They are not that difficult. What do I do?

[Cell Phone Ringing]

INSTRUCTOR: Regards to going to the multiple choice questions. Write out your whys. Send them to me. We can talk about it as a group. We'll see everybody got question No. 5 wrong. What are we seeing that's incorrect? You will get an essay question. I want you to e-mail that back to me or Brandy. I'll give you some feedback. Multiple choice questions. Mark them out. I want to go over some. Some have consistency. I want to see those with you. We want to understand the whys. Does anybody have any questions for me at this time?

Remember. During this process if you do have questions, please feel free to shoot me an e-mail.

We want to make it easy on you. You do want to put in the time because we want to pass this test. It's not an easy test. If you give it your really work on it, you have to work

at it.

I tell people this. We're driving for the 85. I won't falter. I want to strive high if I'm going in with 85. Multi-states. Do you think I will pass? If I'm going with 85 and essays, that's why you have to strive for a higher score. That way I'm not out. I like my safety. I want to make sure I pass. That's my goal. Any questions?

If anything does come up, let me know. I'll be happy to help you. Do that study schedule. That will dictate your time. I find make it more efficient. I don't waste my time. Time is precious to us.

You want to make sure it's accounted for. Use it wisely. Study smart. You've been quiet tonight. Let me know your questions. I'll see you next week. Good night.

[End of Session] 6:58 pm