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TAFT LAW SCHOOL

BABY BAR

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INSTRUCTOR: Good evening everybody and welcome tonight's Baby Bar series, and it will be on a question I sent out to you and multiple test questions.  
These sessions are recorded so any time you want to go back and lecture, they are all up there on task website on the student section and go to the mini Baby Bar series.  
The purpose of tonight is to how to attack an essay examination and we break it apart and give you the tools how you need to process and go through the examination questions, so you see these issues and give the information back the readers that it is being tested.  
Last week I wanted you to write these exams and I received one and there are 18 people listening at least last week.  
I highly recommended you write them and send them in.  
I can see your weaknesses and your issues or maybe your rule of law is wrong, I can give you direction on what you need to work on.  
That's for your benefit that will help you.  
You need do that to get your timing down and seeing the issues that the examiners are looking for as following the call of the question.  
Again the only way to get better is practice.  
The more exposure to examination and multiple choice questions will help you.  
Let's look at this Tort essay question, the first thing you will do is read the call of the question.  
On theory or theories might the injured consumer get damages from and ‑‑ in actions against and they break it up in a call 1, 2, 3. I see theories first of all.  
You should be thinking two or more.  
If I saw one theory, such as battery that didn't answer the calls because it said theories.  
It says no consumers recovered damages, we are thinking more than one.  
What defenses did they anticipate?  
What does defenses mean?  
They could be defenses as they mean them, contribute negligence, some risk, or could be a counter argument.  
You need to go in and determine based on the facts what the call is asking you for.  
That's important to not only answer the call but understand the call to be able to answer it.  
If you look at the calls number one, Grain Co. And farmer Johns does that give you an idea what this exam will be about?  
And the bar and Baby Bar examiners are generous by giving you those names.  
I am thinking Grain Co. and I'm thinking ‑‑ your response for Torts, context and crawl, it is a civil call and it is entity, so I believe it be a products liability, your mindset can go to products.  
What do we know about products?  
There are five different theories, you have your battery, your negligence, strict liability and Tort, ability and fitness and liability.  
If it says theories, I know I have three to address.  
You see products liability and it is a general call like this I will address the issue negligence, implied warranty and merchant ability and strict liability and Tort. Now my job is if I can grab onto other theories based on the fact.  
And based on this theory what within it are they testing.  
I have an idea about the exam before I read it.  
That will help you.  
You want a number start with the call of question and pay attention to what they are giving you, that will give you directions as to what issue is coming down.  
Any questions please put your question in the question/answer bank and I will answer those.  
We have theories two or more, damages two or more, defenses two or more and remember defenses can be true defenses or counter arguments.  
Be aware that.  
You will know based on the facts, who is suing.  
Let's go ahead and go through these paragraph number one.  
Grain Co. Pictures grain from farmers to resell as seed grain for farmer for spring planting.  
After a sentence, I stop and I circle the period to stop and reflect what they are trying to tell me.  
They purchase grain from farmers and their purpose is to resell it.  
Tell me what they are doing.  
Problems presented by parasites which attack and eat seed grain that is stored for a few months, Grain Co. like grain dealers treat the seed with a mercury based chemical.  
That's a big ‑‑ the problem which attack the grain, form more in a few months like all seed grain dealers what does that tell you?  
It is telling you this is customary something they all do, but that doesn't mean it is right.  
That is saying it is common.  
You want to point that out because that's their argument.  
It treats seed grain with what?  
Invisible mercury based chemical. Why invisible parasites won't know? Why don't they put a color, so I know it was treated with it?   
We will point that out with that sentence.  
They sell the seed lose by the truck. There is no package, so I can't put a label on it to make it clear what is in the seed, you sell it by the truckload.  
The Grain Co. Trucks display signs that say seed grain not for human products, that is their warning on their truck.  
How many of us read the lettering on trucks?  
Or pay attention, based on the truck we see or what the truck is, or what is doing?   
People sell vehicles else, you can come up with many arguments but the issue is a warning and is that indicated?   
That paragraph we get an idea of what Grain Co. does, they put the invisible mercury on this seed grain, and they want to manufacturer it and do they properly [Inaudible] but the other thing I would pinpoint out, whether you see a product exam I tell people look for two types of defect, we all see the warning defect?  
But what else can we argue here?  
Is this a design defect because it is invisible because if I spray this with the chemical, does anybody know I did it?  
It is danger in its design, I might make a mistake and mix up if they look at same.  
You could argue that if it is dangerous in its design.  
Those are the two different defects from the first paragraph.  
Farmer Jones bought a truck of the seed grain from Grain Co., we have purchase, she was present when the seed grain was delivered and supervised the Grain Co. Employees, what does that tell me?  
She was seen what was displayed on the truck, not for use on food products.  
Is that enough of a warning?  
She did not use some of the seed when she found she had some leftover. She gave it to the dairy cow.  
What is the purpose of the seed? For planting. And she gave it to her dairy cow that will produce milk, so now we have a food product coming.  
What did Farmer Jones do?  
That was defect, that would be a manufacturing defect.  
This exam has all three defects doesn't it, design defect, warning defect and manufacturing defect.  
Farmer Jones sold the milk to Big Food Stores, that's a retailer, and people became ill and the center of disease control(CDC), government agency determined mercury was the cause of their illness.  
CDC traced it back to the milk she sold to Big Food Stores.  
[Inaudible] we got the milk consumers suing Grain Co., add that to your checklist.  
After the big head note I ask myself is there battery to see battery which does come up once in a while on product exam, you need to show intent.  
Is there a way that Grain Co. knew that the farmer would put this in the food?  
No, so I can't sue them for battery.  
Negligence.  
Remember, hint hint negligence is very testable, right we need the duty, the breach, cause and ‑‑ but for the duty with manufacturer. We have different language, and the language you want to use as manufacturer, duty to inspect and discovery, any defect and that's for any foreseeable user of the product.  
You need to know that you understand ‑‑ duty is gain ‑‑ so Grain Co. Who sells the seed grain, manufacturer and distributor, they spray it, they have duty to inspect with this seed grain.  
Farmer Jones purchases. She would be the foreseeable user, because she is planting seed, so they hold her of duty and due care.  
Next I go into my type of defect under breach and I will come back to the type of defect under breach.  
It is fair to act reasonable rights and I will go to the type of defects I see in the exam, the first is the most obvious.  
That is the warning defect, where the product is dangerous but you fail to warn what that product can cause.  
It can't be used in one?  
Food products.  
So if you sell it in bulk and you have sign that says not to be used in food products, is that an adequate warning to Farmer Jones and others?  
My argument is because they failed to warn, it is on the side of the truck, who knew they read what is on the truck.  
What could they do ‑‑ I like to think of an alternative.  
If I sell it in bulk by the truckload, you learn if you haven't yet, in contract when you sell stuff, have it sign it with that disclosure on there so I'm aware that they aware they know they can't be used in food products.  
You have nothing here to be aware the farmer was aware of this.  
The other defect, is the design defect, people miss this, design defect it is inherently dangerous in its design.  
It is invisible.  
They did this a few years back about bananas in the Baby Bar sprayed on the skin, that's dangerous in its design.  
The way I look at it, I don't eat the seed grain but I touch it and then we eat.  
That's an argument you can bring up here, invisible poisoning is dangerous.  
They had no idea the poison was in it, it is not bright pink, or orange to indicate something is on it.  
You will argue that they could color this and make me aware.  
Remember the call said what?  
Defenses, Grain Co. has a defense here.  
And Grain Co. will come back and see this like all seed grain growers, but does it not make it dangerous.  
Since you can't detect it without the mercury ‑‑ they just need to put a color into it, which should be simple.  
If they make it orange, I think we would all see that and understand that?  
It has something else in it, mercury based poisoning.  
We have the warning defect, and design defect.  
Based on the facts too, you will go through actual cause but for Grain Co. failing to warn consumer would have been injured, is that an enough?  
What is Grain Co. saying?  
But for Farmer Jones using and fed it to her dairy cow that would make them injured.  
We have successive Tort user.  
Some reason students don't see it.  
If have two independent neglect acts that coming to that's a successive Tort.  
We are pointing our fingers at each other, now what?  
That's where your successive Tort 'feelers' come in.  
Adequately design a seed grain and Farmer Jones using it in her dairy cattle which should not be consumed in food products, but if not for their neglect acts people would have‑not consumed.  
I see how they successively coming to show the result of the actually cause.  
That is something to look at and it comes up quite a bit on the exam and worth points.  
If I know it I must get it.  
Two independent neglect acts that cause the result.  
That occurs a lot more often than we think.  
We have duty, breach, action cause, proximate cause, is it foreseeable.  
Is Grain Co.'s product a direct act?   
They failed to warn and design seed grain. Is it foreseeable if I don't warn about the poison in the food product?  
Yes, it is, it is foreseeable as ‑‑ it could end up in I food product, so you have the proximate cause.  
Damages, so I will talk about general and special.  
General damages pain and suffering for the milk consumer and special damages medical damages and source of income.  
Pay attention.  
It will be a linear one and special damages are foreseeable and could be foreseeable if you are sick to have a doctor.  
You could have medical expenses and lost income because you couldn't get to work.  
I do need to address it, why?  
Because of the call to question.  
I want to make sure I answer the call.  
You can see we did a good job in regards to going through our discussion for negligence.  
I want do a good job. Why? Because I will steal from it eventually.  
I see that Farmer Jones was a part of it, so you will go through indemnity and contribution, that happens in a lawsuit.  
Indemnity, a defendant can say I'm secondary liability and other defendant is primarily liable.  
Farmer Jones bought the truckload and didn't pay attention to not use it in the food and fed to the dairy cow, but she will argue she is primary.  
I don't think she is, and it doesn't matter as long you argue both sides.  
Contribution you have joint Tort users, you show they are joint liable, and of course point out they are would be liable will be a portion according to fault.  
Maybe they will say Grain Co. Is 60 percent at fault and Farmer Jones at 40 percent.  
I don't need to go into that, just tell me apportionment according to fact.  
Now, I'm done with the discussion of negligence and I only talked about one theory.  
So I go through my checklist again, I saw there is no battery, negligence how about warranty.  
You need to address that issue.  
It exists when the manufacturer launch the ‑‑ they describe the grain to seed dealers and of course it is chemically altered, isn't it? And Farmer Jones purchases the seed without adequate warning that produced the milk.  
‑‑ therefore you will argue Grain Co. breached the liability and you go to action cause, same party.  
Both party I have milk consumer and Grain Co.  
Proximate cause, general damages and special damages discuss, define super.  
Because it is the same parties on each side I can steal from any negligence.  
And it will make my analysis strong, you can do that.  
It will save you time.  
I highly recommend you do it, there is a lot to write in this exam within the hour time period.  
Running through my checklist.  
Implied warranty for fitness, expressed warranty?  
No strict liability and Tort, yes.  
With expressed warranty, and implied fitness, they usually go together.  
But what you have to see is a representation.  
I don't see any type of representation about the seed, so I don't need to bring it up.  
Strict liability, liability regardless where you place a defected product, in the stream of commerce, it is unreasonable dangerous that they will be strictly liable.  
I can steal from my discussion under the breach that they failed to warn.  
They have milk consumers of the actual product it was contaminated that had the grain that ended up in the milk, drank it and got sick, so they will say they are strictly liable.  
Grain Co. will say we had an adequate warning.  
The warning said not for use in food products.  
Is it adequate?  
Did you make sure the farmer was fully aware?  
When you can make a counter argument that's going to the defenses in this call.  
And your causation and damages and you can define and discuss consumer.  
In Grain Co. we discussed negligence, implied merchant and liability and strict liability and Tort, I addressed the theories.  
Damages I went through special and ‑‑ defenses I didn't talk about misuse or anything like that?  
Did I answer the call?  
Yes, we did.  
How did I know?  
Counter arguments.  
We had them in regards to Grain Co. saying we didn't go below the standard of care because it is common the industry, and everybody does this.  
We had a counter argument that common in the industry, adequate warning on the struck, but we knocked it back out but we brought it backup.  
That added defenses and the call of the question.  
Understand that?  
On this exam some students under negligence talked about contributory and consumption of risk.  
Waste of time?  
Who is suing?  
Milk consumers?  
What did they do? They just bought the milk and drank. We are wasting time. We don't understand the concept because they didn't do anything, no facts to put anything on them on their wrongdoing, going below the standard of care.  
In this case it was true counter arguments.  
Do you understand that?  
And we talked about indemnity and contribution.  
That is question number one as to Grain Co.  
Any questions for Grain Co. under products liability?  
You see why we have at least three theories?  
Battery you need to show intent so they had to have knowledge and the expressed warranty and fitness you needed to see representation.  
The only way you wouldn't talk about these three theories if the call was very specific.  
The call would dictate.  
I want to make sure with when it is a general call you better bring up three theories I just brought up, because if you miss 1 or 2, you are out.  
Second lawsuit.  
Milk consumer versus Farmer Jones.  
The other thing you should be aware of, I'm suing under products what is the theory I'm suing under?   
The Jones manufactured the milk so what type of defect was this?  
Manufacturing defect I will argue.  
If you see I'm suing again for the same theory of product and I talked about the product in call one, there has to be something different between them.  
I have different party here, I will need to look at distinguish what is the difference between them.  
Again regards to Farmer Jones, Farmer Jones did produce the milk that the consumer did drink and Farmer Jones has a duty as distributor to of the milk to discovery and correct for the production of the milk.  
Did she breach that duty?  
She bought this truckload of seed grain that had this poisoning and fed it to her dairy cow.  
Her cattle produced cow that was contaminated.  
It is manufacturing defect, if it is different in kind from the rest of the line, that is what we call manufacturing defect. What the milk produced before that grain and after, it is different because it is contaminated.  
You could argue warning defect.  
The farmer didn't know about it.  
Design defect?  
No.  
That's the only one I can only argue against Farmer Jones which would be manufacturing defect.  
And I go to my actual cause, mixing the grain with her dairy cattle need, it wouldn't be contaminated and we can talk about the successive super.  
Proximate cause will be different, it is foreseeable. If you manufacturer milk you can make consumers sick.  
It is foreseeable you fed it to your dairy cow. They can produce a contaminated milk that can get consumers sick.  
Damages I have the same plaintiff, don't I?  
But the same defendant?  
Can I discuss the damages here?  
Because it is the same plaintiff what they are suing Farmer Jones for, define and discuss, super.  
Whenever you can do that, that will save time.  
Going through my checklist.  
Next theory.  
Implied warranty.  
Farmer Jones is a manufacturer and the fact you sold to the grocery store Big Food you placed the product in the food of commerce and they drank it and got sick. She breached the manufacturing warrant ability, proximate cause, define, discuss super, damages are the same.  
Define, discuss, super.  
You see we are getting faster that's why you do a great job on the first call because I'm stealing from it, because time is against me.  
Make sense?  
We need to be smart.  
Regard to liability and Tort, Farmer Jones manufactured it and didn't give warning that it was contaminated with this poisoning.  
She mixed it, produced milk so put a defect product in the stream of commerce so they will be liable in Tort.  
Define, discuss, super, and define discuss, super.  
Since I attacked about indemnity and contribution I wouldn't do this at this point because I did it in my first suit.  
If you feel unsure you could define, discuss, super again.  
But I felt I did a good job on the first call.  
Back to call, did an address theories?  
Yes, negligence?  
Yes.  
General, special?  
What defenses?  
I feel comfortable answering the call and going forward to there.  
I have Big Food, milk consumers versus Big Food.  
Don't see battery.  
Negligence?  
What do we know about a retailer?   
Farmer Jones sold the milk to Big Food a grocery store and they are retailer, they have duty of care to do what?  
Their duty is different, they have duty to correct known defect associated with that product.  
Since the milk is sealed they have no knowledge it is contaminated.  
When you get to breach since they had no knowledge of the actual defect because it is still in the container they didn't breach the duty of care owed.  
Unless they have notice or recall or something, something that told them the facts they are aware of it, you will not hold a retailer accountable for negligence.  
You will knock it out under breach.  
Duty of breach, doesn't matter.  
You need to be aware because don't waste time when it is not there.  
Unless a retailer should have known about the defect we are not holding them accountable, and they knew for sure.  
You sold it anyway or something that ticked them off and did nothing about it, but they can't hide that in the facts.  
Does that get them off for other liability?  
What about strict liability?  
Or applied warrant ability?  
Because there is a manufacturing defect of the milk and the milk consumer became sick they are liability for warranty ability as well.  
Define, discuss, super.  
What about liability and Tort? They put a defected product in the stream of commerce.  
Since they are selling it they will be accountable.  
They will be liable in Tort.  
And your causation, but what can they do in this case?  
What makes it fair?  
It didn't seem fair. I didn't manufacturer it.  
They have identification.  
Big Food can show they are only secondary liable here they had nothing to do with the manufacturer.  
So it should be shipped Farmer Jones and/or Grain Co.  
Farmer Jones will argue is responsible for the consumers injury by placing the seed grain into the food product which caused contamination of the milk itself.  
That's the difference between three.  
Each have something different about them and make sure you pick that up if you are doing the same thing and identical I probably made a mistake.  
Why would they give me three different parties then, so go back and take a look and break it apart.  
This examination, you want to notice how warranties I went through causation and you look for defenses, don't forget that in regards to your warranties, if you can argue more than one defect, bring that up.  
If the call asks for defenses, but there is no facts, so I argued ‑‑ identification, there was adequate notice, that all counts to what the terminology is asking for in terms of defense.  
It wouldn't be battery because you have to see knowledge, the only way I have seen a test, there is an allergy medicine out there that you will lose your eyesight.  
Because you knew, that's a battery, they couldn't hide it.  
It could be one word but you knew.  
That tips you off to know the intent.  
Is there knowledge?  
And if not then I go to my next on my checklist is negligence and go from there.  
If you are using your tools, there is no way to miss battery in a product exam.  
It is one big issue when it is tested for battery for products, students miss it, but they told you they knew.  
They have the knowledge that's their intent, did a lot of you get the sealed container?  
If I saw your exams I would know.  
A lot of students don't get it.  
That is doctrine that is tested quite a bit, you will be seeing on the multiple choice questions.  
Hopefully you are.  
Hopefully you saw these issues on this exam.  
I'm seeing in exams I find you are not breaking apart your outline.  
The more we can dissect it.  
Bring out and correct and pull out facts what you will say about it.  
If you don't think about the relationship between the facts and the element, it will get you, because you don't think about the other side of the argument.  
We all saw the truck was labeled, but did you think why is it on the side of the truck?  
she is helping to delivering it, why are they telling me this?   
You thinking about the facts there is an argument she will bring it up, you were there helping us, of course you saw that was on the truck.  
That gives you the ammunition for the counter arguments.  
If I don't think about the facts of what I'm trying to prove, I don't bring it up and I lose 5/10 points there and it puts me in a 50 quickly.  
Look at the model answers, and I want to point out, it is a model you couldn't type it.  
You couldn't type it in that hour timeframe.  
The reason I like models, this is what you learn from to get a good foundation. If you have a strong foundation within things, you can shortcut it. If I have a weak foundation, my shortcuts will get me in big trouble.  
You want a strong foundation.  
You see the lawsuit, I have no products and negligence you don't need to define negligence, you can go right to duty.  
You don't get marked off.  
Mine is more pleasantry, you want my students to understand that's the elements we need to know.  
Regards to the discussion of duty give me your rule best you can and break apart of the elements and show you how the elements are supported based on those facts, and if you don't your analysis is weak.  
You need to do this on the first couple of pages so they know you can analyze you could argue could be argue that the farmer did see the warning but still fed it to the cows?  
That is a grey area.  
To show intent I will have to show absolutely knowledge.  
Nothing in the fact, but good to bring up in the negligence standard as a counter argument, Grain Co. will say we did not breach our duty, we gave adequate warning it was on your truck.  
That will come into play.  
We can't make an assumption the farmer read, it they would have to tell me.  
That's where my checklist helped me too.  
If I'm seeing something, I need go back to my checklist and see where I am out.  
That's a counter argument that Grain Co. did adequately farmer, you are thinking about the facts that are important.  
It will force you to where to put it.  
That's important.  
Going back the model answer, look at your head notes, how we are breaking apart each element and supported.  
I head note my warning defect, you can pick up what you want to read and the rest you don't have to.  
I want to point that I understand and they obviously will read what they want to, that's why I do a strong job at the beginning and it gets weaker at the end because of time.  
You are out of time.  
You want to start of strong get the issues and let your reader know what you are addressing and breaking apart what is important.  
Bury it, no point, good chance I will miss it.  
If you are snowballing issues together, separate it out so you show you understand.  
You get partial credit for each.  
On essays if you break this apart properly you should be getting 80/85 based on what you knew.  
This is straight forward product liability exam, you agree?  
You got your name, plain liability and Tort, you have counter arguments, but it wasn't horrific.  
The only thing hard for this exam was time.  
It took time to get it done within the hour.  
We had a lot to go through.  
We want to start off strong and let the examiner know I understand to this theory and concept.  
The other thing I can't stress, not seeing the outlining the exam, you need to outline and break it apart.  
You model for your answer is missing the counter argument.  
You didn't give your chance to think about the facts.  
That is like arguing from the top of your pants, won't work.  
Take the 15 minutes and have a good idea of what counter arguments are and you can argue.  
That will be helpful.  
Questions on this essay?  
A couple of MBE, I'm getting feedback that people are writing out the why, but are not understanding why answer is better than the other.  
You need to understand what they are testing.  
If you are seeing strict liability, but it is a negligence problem.  
Why are you seeking at strict liability or negligence? We need go back and figure that out.  
One question is question number two but stems off 1, 2, 3.  
Delta was a manufacturer of Delta Follicle for scalp and dandruff, he got it at Watson, say statement read this product will not normal affect scalp or hair.  
It is warning.  
More of a representation.  
Jonathan used the product as said, gave him pain and discomfort.  
Who is, the (reading the question) narrowing you down to strict liability.  
You should be thinking about the defenses.  
Defected product.  
Doesn't mean the consumer expectation and causation and damages and defense.  
Which following additional or facts references would be helpful to Jonathan's case.  
We will look at our ailments, I break them apart as a defected product, placed stream of commerce, caused damages.  
Those are my ailment.  
Which can I grab onto to support this kind?  
Sustained by Jonathan ‑‑ unless the manufacturer was neglect.  
Do I care that they are neglect?  
Is that element of strict liability?  
No, so forget that one.  
Prior to Jonathan's purchase of the product ‑‑ he should have noticed or be aware.  
That is not strict liability we get rid of that.  
Reasonable person would not expect it to result in ‑‑ that can go to foreseeable ‑‑ I like 'C'.  
The time of manufacturing the product was aware it could irritate the scalp, that would be a cause of action they were aware, that would be battery.  
It has to be 'C' because the consumer expectation.  
As a lawyer I like 'D' because I like to sue for the battery, but that's not what the call said.  
Pay attention to the call of the question and make sure you are answering the call.  
Number three.  
In action by Jonathan against Watson, remember Watson was retailer, which would be the Jonathan's most effective argument?  
How can I hold them responsible?  
‑‑ this point it is like true or false to me.  
That's false. Why?  
We know as a retailer you should have some knowledge because it was sealed.  
Defective as labeled?  
What was it labeled this will not harm normal scalp or hair, showing a warning defect because it did, it failed to say people with some type of condition, that goes to what theory?  
Strict, liability, and Tort liability.  
Watch and breach warranty, Watson never made an expressed warranty, Delta said it would.  
Drug store is under ‑‑ is that true?  
So I know by processes it has to 'B'.  
If you break it apart, and is it supported based on the facts you will get them right.  
You need to dissect it and break it apart.  
If you don't then I got you.  
Another one we look at is question number 12.  
This is something you should be seeing on the exam, dealing with defamation, it needs to be publicized to a third party.  
If I send you an e‑mail there is no defamation.  
What if your mother read it, if I knew she lived with you, they like to test that.  
You need to be aware of that.  
I have to know should be aware that I live with my mother and we have the same e‑mail account, she can read that e‑mail that would be counting a publication itself.  
And they have tricks on that, so understand that with defamation.  
Barry will be successful if, if you read the call defamation you should be thinking branch out my elements, I need it published, potentially or negligently to a third party who knew or understood that I was [Inaudible] and of course it lower myself esteem you will look to liable for slander and I go through the facts.

(Reading the Tort)

Now, first of all, is this liable or slander?  
That's a conversation, so it is slander.  
With that you need to show general damage unless you can get it into per say category which would be crime, low sum or disease, chastity of female or business.  
I can make this into business.  
Go with your elements.  
I go through my elements. What are they testing here?   
He is probably not incompetent, what is through a third party?  
They are at a party, talking with each other.  
Customer overheard it, should I be aware that the person is there?  
Would it be known or understood [Inaudible] competence, he cancelled his contract, I say general damages and I would say special damages on lost profits.  
I have an idea that we are deal with a publication of third party.  
Douglas should have known that the statement was [Inaudible] when he made it, even if I knew it should published a third party.  
He should have known the statement was false when he made it, it is the same as a ‑‑   
He should have known it would be overheard when he knew it, that goes to publication so I like it.  
He should have known it would result from the harm?  
'C' is my best answer, why?  
Best on the facts, think tell you I'm at a party, I approached you, customer overheard the conversation.  
Should I have been aware that he was in close proximity?  
'C' would be my best answer choice.  
You see I am breaking apart the elements and honing in on what is being tested.  
It is not enough to say defamation. What within defamation is being tested?   
You picked 'A' or 'B', because 'A' says he should have known the statement was [Inaudible] you need a false and 'B' says it needs to be false.  
It is like the same element repeating itself that can't be a good answer.  
You need to show it is a false defamatory statement but based on these facts, the customer hearing what are they putting on issue.  
You need to hone in on that.  
Will you go through these exams and this is what is missing, but that's not what they are testing.  
It narrowed down to proximate cause, there is no duty, that's not what they are tested.  
Understand what is being tested.  
And gear you based on the answer choices.  
You need to understand what is being tested within the question. If you don't, you won't get it right.  
Does everybody understand how to break it apart a little bit in detail?  
You want to break it apart.  
One question that student had a question on in regards to assault ‑‑ no battery and trespass, a neighbor got mad at the judge that lived next door, he when cutting his roses, he setup his ‑‑ letters and do you understand him?   
Would that be a trespass to land?  
Because your water is going on without consent.  
If you break it apart and even looking at your answer choice, which was, dissect those elements you will get is it correct.  
Any other questions anybody has on these?  
It is something you should be doing daily it is a lack of a better word, it is a game, a process.  
You need to learn how they test.  
It is not something, yeah I get it.  
None of us do.  
You need to know how they test the concepts.  
I hear this all the time I get it down to the two but I get the wrong one, you are getting there but you need a step further.  
You need to practice.  
If you have questions and don't understand let me know and we will go over it, and you can get a better understanding and narrow it down for you.  
You will be in the same boat over and over, and my score won't go up.  
At this point your score is not high, but going through an answer in your whys they should start to go up, 2, 3, 4, 5 percent and the more you keep doing it and breaking it apart, the better.  
Do it by sections.  
I need to know what it is.  
I need to know what I need to work on.  
If you are looking at it as a whole, I don't know Tort, everything comes into play, let's break it apart.  
That will help you resolve it and come to an understand of what you need to work on.  
Anybody have a questions?  
At this point what will happen?  
Next week we will go over contracts. We have lecture like you did in Torts. I will point out the issues and how they are tested and come up, and if they highly testable, so I want you to start studying contracts.  
That doesn't mean we are done with Torts. You need to get stronger and break it apart.  
When he get to contracts next week you feel confident in torts where you can start doing simulated exams in Torts, and we can do contracts and we will start with formation issues, and third party and et cetera.  
That way you get stronger and do the same process that we just did for Tort.  
Anybody have any questions?  
If anything comes up shoot me an e‑mail at jdadmissions@taftu.edu. I can help in any way I can.  
Practice daily, even five, that's more than none.  
Start practicing and working on your issue spotting no reason why we can't do that on weekend to get strong.  
I will see you guys next week.  
Take care.  
Good night.  
[CLASS ENDED]