TAFT

WEBINEX

ESSAY q&A

6/13/17

INSTRUCTOR: Make sure that you have the three essay questions in front of you that are our primary focus for tonight's lecture. We will be starting in approximately 1 minute.

I hope you had time to review them at least issue spot them and do some writing this weekend to get your timing down.

These sessions are recorded so for your convenience preparing for the upcoming BABY BAR. You can go back through the lectures there's a transcript, recordings whatever's helpful to you. It's in the Taft website student section.

The first question we're going to look at is the [indiscernible] exam. These were not marked as to what they were but going through them I'm sure you can all agree that you can tell the subject matter. That's one fear you should eliminate by reading the call and reading the facts what subject matter is being tested. That's one fear we all have that you won't know what's tested. But by looking at you will see there's no way they can hide it from you whether it's criminal law, torts or contracts.

I've emphasized that you start out with the call of the question. It will narrow it down to the call of the question. It dictates your point value.

Let's look at call. [Reading call essay one] Of course we know we're in torts. They told you negligence. That's very specific. That tells me I better look at negligence to determine what elements have they placed at issue. If I look to generally duty breach ‑‑ no. There's something a duty they are testing, the breach, the actual proximate cause. These have to be at issue basted on the facts otherwise the questions is too straight forward. Why should I get point value by seeing the call of negligence.

Do I determine do you understand based on these facts what element have they placed at issue? That's important to understand. Especially if you're ruining out of time. Where's your point value. The facts will dictate.

It also says defences. Circle it ‑‑ two or more. If you only see one defense most likely you have made a mistake. Defenses two or more. Break it apart.

More specific call based on the negligence, again that's telling you there's an element or elements at issue that you need to go in and look for based on the actual facts.

When you go through the examination whether practice or actual baby bar. Read it one time through to get a good understanding as to what's being said. The facts are new to you not the law. You've been studying the law. You have to read the facts to get a feel for the facts of the examination. It's something I highly recommend that you get in regards to that habit of reading it through. Get a understanding of who did what to who.

We're going to pretend that we read it one time through and are going to mark it up based on what the fact are telling me.

If you have any questions place them in the Q and A and I'll be happy to help you any way I can.

Reading question one: Roofer contracted with Hal to replace the roof on Hal's house. The usual practice among roofers

Was to place tarpaulins on the ground around the house to catch the nails and other materials that

Were scraped off during the removal of the old roof. On this occasion, Roofer did not have

Enough tarpaulins, and he failed to place one on the ground at the rear of Hal's house. As a result,

Many nails and old roofing material fell into the grass of Hal's back yard. At the end of the job,

Roofer did his best to clean up the back yard but missed some of the nails that were imbedded in

The grass.

About six months later, as Hal was mowing his back lawn, his lawnmower ran over one of the nails and propelled it over the fence into the back yard of Ned, his neighbor. A few days later, as Ned was walking barefoot in his back yard, he stepped on the nail, which pierced his foot,

Causing him severe injury. In an action brought by Ned against Roofer for negligence, what defenses might Roofer. Reasonably assert, and what is the likely outcome on each? Explain fully.

 I know it's negligence. The relationship based on the facts it's between roofer and Hal. They are the ones contracted with each other.

[Reading ...roof] It does say usual. It that normal, custom standard in that industry. That's something I want to look at. It doesn't mean have you to it's just usual. That's something I will pull out to determine if it's normal practice. If you don't do it it's might be a good argument that they are in breach. I need to look at how it may come into play here.

[Reading ...house] Now if he failed to do that would that be equivalent to a breach? We dont know.

[Reading ...grass] Again is that a failure. Tells me what's normally supposed to be done. If you fail to do it, is that an actual breach that causes someone's injury. The second paragraph. About 6 months later that's a time delay. Whenever I see 6 months ‑‑ why?

[Reading ...neighbor] The fact that roofer left it behind in the grass 'em bedded. Hal comes along and propels it. Is that foreseeable. Or is Hal's conduct intervening. This is a proximate cause problem. That's something you should be picking up.

[Reading ...injuries] We have damages. Remember the call is telling you that Ned is bringing an action against roofer for negligence. Negligence I need to show the duty, breach, actual proximate cause and damages. The call of the questions told me defenses. I care all the way through.

I've told you when you see negligence start with duty and you want to determine do I have a special duty at issue here. Special duties statute omission to act don't see that. Land and occupier ‑‑ Notary Public. And duty owes to less oar or land.

I go to general duty in regards to roofer ‑‑ replacing the roof on Hal's house. Notice it's Ned suing. How did Ned get in this picture. This is a remote plaintiff. There's no relationship between roofer and Ned. That triggers a Cardozo issue. It comes up. But every student talks about it on every Baby Bar. But diagnose not there.

This is how it comes up. There's no relationship between the plaintiff that's suing and the defendant. I contracted with roofer why are you suing me Ned.

Roofer owes Hal due care. Replacing the roofing on his roof. Owes a duty to act responsibly on those circumstances. But those don't act on Ned.

Cardozo is the majority rule. Foreseeable zone of danger. Now you need to analyze as to whether or not Ned with be in that foreseeable zone of danger. He's a neighbor. My house butts Hal's. Ned will argue I'm in that zone of danger. I know since it's a specific call is there a plausible argument for roofer? Yes there is. You look to his argument.

Action occurred 6 months later after I did all my work. Are you still in that foreseeable zone of danger. Is that still a duty owed to you.

Argue both sides. Ned's and roofers. As long as you support it with your facts. He's in the foreseeable zone of danger because he's a property owner. Some people might see it differently which is okay as long as you argue and support with the facts.

Then you fall back on and rues. If Cardozo works, you still go to Andrews the minority. You owe a duty to all. Andrews doesn't get you off the hook. A general rule is be careful of proximate cause. You will have a proximate cause problem. I know that because they tested Cardozo and Andrews in this essay. Will it knock it out under proximate cause or not.

Cardozo says no. Under duty you need to show within that zone of danger. Andrews says let's continue in a lawsuit and see if we can knock it out in proximate cause.

But at this point I know I have to address. If you truly see an Andrews Cardozo problem, there is a proximate cause issue.

You owe duties to all. He's foreseeable. Roofer owes due duty to Ned.

Did he breach? He did leave nails 'em bedded into the grass. [Indiscernible] if he had one at the rear of the house then that nail wouldn't have been 'em bedded in the grass. Is it a breach on roofers part by not having tarp at the back of the house. The tarp wasn't clean but he left a nail. If he did use it and there was still a nail you argue he was in breach. It comes down to you left 'em bedded nails to the house you did roofing on. So you did breach your duty of due care.

Next what do you go to? Actual cause. With causation use your buzz words. Butt for ‑‑ leaving a nail 'em bedded in Hal's yard it wouldn't have been run ore over and cause an injury to Ned.

Proximate cause I told you when you see Andrews and card triggered you will have a proximate cause triggered. I have to address it. I argue it's foreseeable if you leave nails 'em bedded in the grass someone can step on the nail. Hal came out and mowed it and propelled into the neighbor's yard. It's not foreseeable that Ned would be injuries. What will you break it apart.

With proximate cause is it a direct act or indirect? The fact that roofer left the nail is Hal's yard looking at Ned it's an indirect act? Is it dependent or independent? It's independent. It's not connected to Hal and roofer and what he did the reroofing of the actual house. But is it foreseeable. Hal did the mowing. In roofer's mindset, ran over and propelled to the neighbor yard is an intervening act.

It's independent of his actions but is it foreseeable that if you leave a nail 'em bedded someone that mows the lawn because it's in the grass could propel into somebody's yard. The answer is yes.

Even if you found on Hal's conduct. If you ran over a nail you should have a good idea of what occurred, a neglect act is always foreseeable and not cutoff liability. You will find that roofer is the proximate cause.

Then your damages, they gave it so you. He stepped on the nail pierced his foot causing damages. Pain and suffering. Would be the medical. Losses get out.

Don't spend a lot of time. Torts generally need damages unless they are intentional I. If you don't damages, you don't get any recovery. Even though there's not many facts, it is something you have to go through and articulate to the grader. That's something done a lot of on the Baby Bar they don't tell you about the damage but you still have to address it.

Duty was at issue. Proximate cause. Then the equal asks for defenses. This is an exam where you have to be clever. What did Ned do? Give a little play. Ned went outside barefoot. If you are walking barefoot are you falling under the standard of care to yourself? Yes if you walk on the street or out in the public. But this is your backyard. Should I be allowed to not walk in the backyard. I have a swimming pool so I'm barefoot all the time. Walking it in his own backyard barefoot. There's a good argument that no. Picture your own background yard you have a good idea what's back there. If I'm neighboring a construction site. You know how construction workers are throwing things in the trash. I can foresee there's something in my backyard. Is he really falling under the standard of care? I'm going to argue he didn't fall below the standard of care.

If he did I can argue the last clear chance doctrine. That's a plaintiff. If Ned did fall blow below the standard of care. By making sure there was no nails or debris left 'em bedded in Hal's neighbor's house which could eventually be propelled over to Neds yard and cause hard.

It's a plaintiff argument it comes into play when the defendant proved that the plaintiff contributed to his own injury. Contributory negligence is a complete bar. Ned comes back with the last clear chance. To prevent this injury therefore, I'm not barred from my injury.

Contributory negligence and last chance go together. Look to see if you can bring up. Remember it is a plaintiff argument not a defense. It's a plaintiff's argument to save himself.

See contributory, comparative, difference of jurisdiction. The examiners will never tell you what jurisdiction you are in. [Indiscernible] it should be proportioned accord to go his fault.

Assumption of risk. You have to have knowledge, appreciation and comprehend what that risk is going to be. He's walking in his own backyard. Did he know about those nails imbed in his grass? There's nothing there to show he's aware or to appreciate the danger. Then he did not knowingly and voluntarily know that risk.

These defenses we went through are backwards. They don't work. There's nothing to grab onto factually to make a plausible argument.

You have to take a step back to make a plausible argument using inferences you can understand to argue to the examiners.

That's question number one. Andrews and Cardozo are at issue. Proximate cause you needed to argue intervening direct or indirect act. Is roofer's act foreseeable.

Contributory comparative assumption of the risk. The call told you. You need to make sure you tie in those elements.

A couple of the exams sent to me you brought it up. You have to say something and point out that he is going out in his own backyard. He didn't voluntary encounter. He didn't comprehend. You have to let the reader know you understand this stuff and break it apart.

Point value comes down to duty. Proximate cause. And how you argued the defenses. In looking at it, it doesn't seem that difficult. If you really understood your stuff you could probably write it in 50 minutes. I can't always tell which is short on the exam and move onto the other question itself.

That's question one dealing with negligence. It's highly testable. I will spend time on this because it does come up a lot on the Baby Bar exam itself.

Any questions on essay one? All right if anything does come up let me know.

Question two contracts/UCC. This was a harder question for most students. Let's look to the call of the question.

1. Can Cotton Co. Prevail in an action for breach of contract against Buyer? Explain fully.

2. Does Cotton Co. Have the right to reclaim the unused batting? Explain fully

 You can see call number one told you breach of contract. That opened up my contract check list. At this point when I read the call of the question, contracts, I'm going to write out my check list on scratch paper. My mind will be in contracts and identify issues. There are a couple of issues on this exam that we talk about but didn't bring it up.

Call number two is more narrow. If you don't know what they are asking, go with common sense. If I give you something you can't pay for should I be able to get it back? Most of us would say yes. As long as you know your thinking, say something rather than nothing at all.

Pretend we read it Through 1 time and then be ready to mark up the examination.

Reading Essay 2: Buyer manufactures mattresses, which feature an outer layer composed of a cotton material called "batting."

Buyer is a merchant.

Unexpectedly, Buyer's supply of batting ran out, which brought the entire production line to a halt at a time when Buyer was trying to fill a large, special order from Sleepco, one of his customers.

His whole entire production line stopped. He needs that matting.

Buyer's regular supplier of batting refused to deliver any more batting because Buyer was behind on his payments to the supplier.

That should tip me off. Why are you behind on your payments.

On May 1, Buyer telephoned Cotton Co. And told Cotton Co. That he urgently needed a large bale of batting and that he was willing to pay "top dollar" if Cotton Co. Would deliver the bale of batting by the end of the day.

I see telephoned. Telephoned. Oral. Begin statute of frauds. Right off the bat ‑‑ it's not always there ‑‑ but is statute of frauds at issue there? It's by telephone. I know I have an oral contract coming. If you

 (Technical issues)