Tuesday, May 29, 2018

Taft University, Santa Ana, CA

Baby Bar Mini Series Review, 6:00 to 7:00 p.m.\

INSTRUCTOR: Good evening, we will be starting in approximately two minutes.

We will be starting in approximately one minute.

Good evening, welcome to tonight's Baby Bar mini series. Our focus will be on the questions e-mailed out to you. If you want to go back or if you happen to misa session, go to the baby bar mini series and pick whatever lecture you would like to hear.

Our purpose tonight is to go over the essay questions and give you an idea of what the examiners are looking for, and help you break apart the facts and make sure you understand what is being tested. We have four questions to go through. Let's get started. Remember if you have any questions please pop into the question answer box which I will be viewing.

So the first thing you will do is review the call of the question which will dictate the subject you are being tested. It's important to start there. Call one states what tort causes of actions that Paul will bring to the space travel company, and any defenses does Space company have. So I write on my scratch paper my tort questions. And that will help me with my nerves and it will help me go through the checklist.

The tort causes of action is Number 1 and Number 2, any defense you will have will go in call Number 2. Sometimes we will take approaches out of order and make sure you follow the call of the question. If you are not following the call you will get marked down.

Space Company is a new venture designed to send tourists out on a space capsule. And they have devices to have the passengers safe on the landing.

It's important to see what they are telling you. For instance, what happened when you get into the space, will that change things? The word usage in the exam is very important. The system is widely used and listed in the rocket -- a couple things you should be pulling out, "sufficient", what does that mean? Maybe it's not the top of the line, this is good verbiage for you to pull out to make your arguments. Recently a new system has become available to help the rockets get to the ground safely. However the system is more expensive than the parachute system, which will cost me more, and hasn't by tested in real-life situations. That's good to pull out.

So it has not been tested in real life, is that going to be a better system or not? We don't know the outcome. Space is sticking with its tried and true parachute system. Good language because they know it works.

Paula signed up for the trip. And although they have taken all measures for a safe voyage, they know that space travel is dangerous. So look at the language; "dangerous", what does that mean? Obviously if I get into space, I can understand it's more dangerous, but still, if we are dealing with the escape system, would I expect that to be dangerous?

On the day of liftoff, the day was beautiful, and shortly, after take off, a storm started, blew the ship off course. It caused the ship to crash and she was critically injured but survived. The new rocket escape system might have led to a better outcome. We don't know. The verbiage is important. The first thing says "what causes of action", that gives a lot of trouble. This is a product liability exam. A lot of people don't know, a lot of students don't know what to do, I saw straight negligence, strict liability, and negligence with dangerous activity.

And again this is straight products. Now with products liability it does say causes of action and I taught you when you see a generic call like this especially since I know it's products, I know I'm go to address the issue theory wise, the negligence, implied warranty merchant liability, strict liability and tort. And I need to break it apart and get my point value. I start with the theory of negligence, if you start with implied warranty and merchantability. I start there because I can use the other theories.

You need to show there was a defective product, and it was a manufacturer, distributor, or retailer. And you want to show that the space trip had a duty to inspect and warn of any dangers. Since they placed the space trip capsule into the stream of commerce, they have a duty to make sure it doesn't malfunction, and make sure they inspect it; they purchased the ticket, she is a foreseeable user, so Paula is owed a duty of care.

So the reason I picked that up, if you look, it says that it was beautiful weather and then there was an unpredictable violent storm. And isn't that something you should anticipate? You are saying, the system won't work in rough weather? So it's inherently dangerous in design.

After take off, unpredictable weather blew it off course, they state there was no way to correct the deviation, so they employed the safety system. And it crashed to the ground it and didn't work. They are going to argue it was to provide your safety back to earth, right, and of course we have an unpredicted violent storm, they might try to argue that it's not the design of the vehicle but a storm in and of itself. If you look at the utility versus the risk, the probability of actual harm, is there an actual breach? You will look to both sides and do a balancing. The use of the parachute system for the vehicle escape system allows passengers to return safely to the ground if there is a malfunction that occurs in the spaceship. However shouldn't it be able to navigate properly? And they could have used the more expensive system to get back safely to the ground. And you can come back and say it hasn't been tested and there is no way of knowing. Have they really breached their duty? I didn't find there was a design defective but you did need to address it.

What about a warning defect? There was a failure to warn. She did sign a contract and it stated they took all reasonable measures and she understood that space exploration was dangerous. Did that give adequate warning that it was dangerous? What could I foresee based on what I sign? That the escape system won't actually work. I will argue they didn't let her know what that means. What does "dangerous" mean? Meaning if you have a safety capsule, I will assume it will work, lead me back to safety. Then you have causation. But for the inadequate design. And proximate cause, you want to bring up the violent storm being an intervening act.

Also in regards to storms and winds those are relatively foreseeable. They are the proximate cause of the injuries. So you go to your damages. Which is pain and suffering and medical expenses or lost profits.

That's the first theory. You can see with the first theory of negligence I did a very strong job determining what type of defect it was. I did let the reader know there is a proximate cause problem here. And I'm ready to go to the next theory. And I get shorter in my analysis, and I'm stealing from what I already addressed. The next theory is the implied warranty merchantability. Remember the manufacturer, distributor, retailer warrants it's fair use.

Remember, they manufacture the spaceship with the safety vehicle, and she purchased the ticket to go, but it was inadequately designed as an emergency escape vehicle because she became injured. You are actual can you say, and proximate cause is supra back. It's same plaintiff, same argument, so define is discuss supra to save yourself time.

Then the last is strict liability and tort. A manufacturer, distributor, or retailer will be -- they manufactured the ship, and it was inadequate, and the dangerous condition could not be expected by an ordinary consumer, she didn't have adequate warning, the system didn't work, so it was dangerous. Obviously you could have used rockets instead of parachutes, or else bring me back to the ground safely, so she will argue it's dangerous. So you are strictly liable. And again, your actual can you say, proximate cause, damages, define discuss supra. And that takes you call Number 1.

If you go through products as stated, you have three theories. Negligence, applied liability, and merchantability.

There is no intent for battery; I know I'm safe as to what the theories I addressed and I can move on. That's your call Number 1.

Products liability is a good area to know well, they like to test it and you should relatively do well. It's like a conditioned exam before I go in the door. I can bag to the can you say of action, and I see three. So I'm ready for call Number 2. Since I did negligence first I will do your contributory, comparative, and assumption of risk. And of course in regards to implied warrant and merchantability, with contributory negligence, you want to point out the emergency vehicle was blown off course and there was no way to correct. Paula was injured, and she signed a agreement, it was dangerous, did her conduct fall below the standard of care owed to herself? And she will come back, yeah, it's dangerous, but a reasonable person will think that if you have a safety system in place, it it's going to be reasonable. Versus it crashed and caused me critical injuries. So direct cause will be actually your actual cause, yes, absolutely.

A comparative negligence, you can through your assumption and risk. That was a bigger issue here because based on what she signing, look at the facts, I she told you she signed in the contract, they have taken all reasonable measures to provide safe voyage, but she understands that it's dangerous. What does that mean? Maybe I can get hit by a meteor in space. It's leading you up for interpretation. She volunteered, and she knew it was dangerous. But she didn't volunteer the risk of the space capsule. She had no idea that it wouldn't work properly. So I'm going to argue she didn't assume the risk. Therefore there is no viable defenses. Basically I find she is {indiscernible} on this case.

Students had a hard time on the exam, it's straight products liability. They weren't sure. Go with your gut instinct. You go through an issues for defenses. Contributory negligence, comparative negligence, and assumption of risk. Any questions on question Number 1?

Made you think.

Let's go to question Number 2. Obviously this is criminal law, the calls gives it away. What crimes, if any, can Andy be reasonably charged? What defenses can Andy reasonable raise? Two or more, I'm looking for multiple defenses.

One night Andy went to a local bar, and had a large number of drinks and became intoxicated. A lot of times when I see involuntary intoxication, I look for diminished capacity. When the bartender refused to serve any more drinks, he when to get his gun. He got confused and stumbled into a convenience store next door. Also, he got confused, so I'm thinking mistake of facts. He believes he is going back into the bar. So I see three defenses so far. He pointed the gun, and said, give me a drink or I'll shoot. He pointed the gun at the ceiling and fired. Is he trying to commit robbery or is it intended robbery? At the sound of the gun, several customers fled. And one bumped into Walter and he fell in the street and he was struck and killed by an oncoming car. That's murder. The bullet bounced off a pipe and hit another customer.

Vickie was rushed to the hospital, and later died after contracting an infection. She got the infection, you are going to be responsible for a murder. All right, Andy claims he was so drunk he didn't know what he was doing. He insisted he didn't want to hurt anybody. That goes to his specific intent to make your argument. On this question I have to follow the call, and say what crimes. So I'm going to take it in chronological order of what I see coming up based on the fact. When he entered the store demanding a drink, that's burglary. You may fail with common law, you still have to bring it up. Burglary is a night time breaking and entry in the dwelling of another. They did it in a local bar, so we have night time, after getting intoxicated. And he got his handgun, and it was a store, and it's not breaking. And he entered with an intent to commit at felony. So did he have, he had a specific intent, he will argue, that he was upset, he didn't have intent not to pay for it, he just wanted his drink. You can argue both sides and give your conclusion. Since there is no breaking and dwelling house, we know we will fail at common law.

So we go to modern law. So burglary is entering into any structure to commit a crime. Most likely if you are going to perpetrate a crime, you are entering without consent. So it would be considered -- he intended to get that drink, it's a crime, so we will find that we do have a modern law burglary.

Going through the facts I see that he demanded a drink or he'll shoot, I'm going to argue it's attempt, you need to focus on the elements of the intent. You need to show the specific intent of the crime. And apparent ability. You don't focus on the underlying crime. My focus is on intent.

He shows that he had specific intent evidenced by the fact that he shot the gun up in the air. He pointed the gun at the cashier showing he had apparent ability. And he had substantial intent. I will find that we do have an attempted robbery. We went through attempt because he didn't get the drink. He never got the drink and that's why I feel the attempt is the better issue here.

Here comes the trick: Murder of Walter. What happens to Walter? If you look at the facts, the customer bumped into him in the street that resulted in his death. This is what I would call a special or redline view. First you are going to follow your murder approach. It's the unlawful killing with malice. Based on the facts, he shot the gun, obviously, up in the ceiling there, he didn't have intent to kill or cause bodily harm, but shooting when in a store with people in it you can argue it's wanton on reckless conduct. He can argue that he only wanted a drink, but didn't have an intent to hurt anybody, but shooting a gun in a crowd of people is inherently dangerous.

Now is it foreseeable? Now again if you have a gun and you are in a convenience store and you shoot, is it foreseeable that the customers will react? Sure. It's foreseeable that you shoot a gun in a convenience store, panic. So people will trample each other to get out of the way. So it's foreseeable that a death will result. I'm not sure if you are thinking of a chain the events of homicide, we are going to types which in this case is first-degree. This is a special felony murder rule. Where you have an innocent party which would have been the customer that caused the killing. She is the one that knocked Walter and left him there. That's an innocent party doing a killing. The issue is can we impute what the innocent person did onto a felon. That's the special rule. We have fleeing customers, Walter was run over and died. The innocent party, that caused the death. In common law jurisdictions he is going to hang. Running out in fear and bumping into people you would argue is relatively foreseeable. In regards to common law, you will find, Andy will be found guilty. It has to be done by the co-felon's hands. He didn't knock into Walter, and it was caused by the customer knocking him into the street, under that jurisdiction he will not be guilty of murder, see that?

The second murder which is of Vickie. When you see multiple issues, I see murder, it's tested twice. You know there is a difference between them. The first is the red line rule and special felony murder.

So what are they if we go to the focus on here. She was hit by a ricochet. And it bounced off the pipe and he is going to argue he was not the proximate cause of her injuries. But it's foreseeable, that one could get an infection that could result in death. It's foreseeable that you are a proximate cause and first-degree murder, we are argue the felony murder rule. I'm arguing the attempt.

It can be any inherently dangerous felony. Any attempted inherently dangerous felony. Robbery, based on on what I addressed, it was an attempt. Since he was still within the res gestae of the attempt, he will be guilty of the felony law of murder in the first-degree. I would definitely argue common law first, and then we could argue modern law burglary and go that way.

One was a special felony murder rule versus the regular felony murder rule. And they are using the issue of the attempt of the inherently dangerous felony. They are looking for the robbery and burglary, et cetera. Any attempted inherently dangerous crime will work for the felony murder rule. So I go back to my call. Crimes, we see quite a bit. We saw in regards to burglary and attempts, two murders, I think I answered the call. So I'm ready to go to call Number 2.

Any questions? Did most of you see the red line or the special felony rule? What defenses? Obviously one is intoxication. With voluntary intoxication, it only negates specific intent. Based on the number of drinks he had, we can make that inference because the bartender refused to serve him more, he flew into a rage, he didn't return, and it was evidenced by the fact that he was in the wrong place. However although he is intoxicated, does he really understand what he is doing? He was able to demand a drink and take the gun and fire it. So he was aware of his actions, so intoxication is not going to negate of specific intent. This is arguable. As long as you support it with the facts, you are okay. They gave you the issue too. Intoxication was not hidden in this exam.

Mistake of fact is generally no defense. He went to the wrong place, and he had no mens rea, so he was aware that he was shooting the gun in the store which could result in a death. With mistake of facts, this would still be a crime because he believed he was in a liquor store so a mistake of fact would be no defense. You could point out earlier, diminished capacity. Why? Does he fully understand his actions? Again he was able to fire a gun, he was able to communicate and demand a drink. So I think he was fully aware, he was not so diminished that he was not so diminished.

So people didn't see that in the murder. Those are the defenses. Any questions as to the defenses we did raise? Remember too, the call, crimes, defenses two or more, always look for two or more. The call dictates and helps you. So use it to help yourself.

Question number 3 is contracts. People had a hard time with this one. I think it was how they read the exam. If you don't break it apart you will you lump things together and that will hurt you. Firs,t let's read again the calls. What are owners rights and remedies for getting the right tiles from FloorCo.

They gave you the issue there, delegation. What are the owners rights and remedies for their cancellation. They gave the rights. Owner entered into a valid contract with FloorCo to purchase beige colored Acme brand floor tiles for the restaurant to be delivered in three weeks. Stop there, this is a valid contract to purchase beige colored Acme colored brand tiles. They gave it to me. The day after the contract was signed, FloorCo called and offered to install the flooring. It's a separate contract. It's not a modification. It's an independent contract for installation. That's a second contract where you have to prove there was an offer and consideration and they gave you that in these facts. Further it states, two weeks later, FloorCo called later saying it was buying is a new machine to clean the vinyl floors once a week for one year in return for $5,000. Owner immediately agreed, accepting the cleaning offer, and paid $20,000 for tiles and a cleaning. So you have three separate independent contracts based on the facts.

And what a lot of students do is see one and that hurt them because they couldn't get out. And it caused them to miss issues. They deliver all the tiles on the scheduled delivery dates. They were a different brand. I'm thinking, why didn't they deliver the tile. But they were better tile.

They sent an email. And said (reading) the manufacturer of the new vinyl cleaning machine has ceased all manufacture of the cleaning machine due to a defect. So we can't clean the floors.

So break it down. What are the rights and remedies. We are dealing with vinyl tiles so UCC are applies. Merchant sells, so FloorCo holds themselves out with special knowledge. So I'm going to find that she is not merchant. The fact state there is a valid contract, so getting it out. They are exchanging 10,000 for the floor tiles so we have consideration. So next, the contract says what? Purchase beige colored Acme brand vinyl floor tiles, is that an express condition? If it's facts state you have a valid contract, I break it apart a little more so I get the facts out for the reader. So we talk about the express condition, I stated it was for beige colored Acme brand tiles, it makes my discussion easier.

With the express condition, the issue is was it expressly stated. Remember if it was expressly stated, courts don't like express conditions, you either do are don't. Versus an express promise. You want to go to the actual language itself. Was it clear that I expressed a condition performance and if I don't get it you are in breach versus an express promise. Every contract has conditions, and the call says rights and remedies. I have to go through my checklist, saying was there a formed contract. So the call helps too. If you look at the facts -- which they were good at making it not obvious to you -- to purchase beige colored acme brand floor tiles. And they provide a more expensive brand, so the issue is, is this an expressed condition or promise? The covenant is different, I say a promise, so you will see it when they use the word promise, so it's rare we see that covered in contracts. If you talk about that in express condition, if you argue that was covenant and you say it's merely a promise, you may get credit. If you argue that. Meaning it's not expressly stated, so I'm not in breach. I don't care how you conclude, we have an implied condition, that you need to deliver the tile. And I'm going to pay and who is in breach. I did deliver the tiles but I see this as an express what? I see it as an express promise versus a condition.

Can you argue your way around this? You could argue what? Why did they get the approve brand? They didn't tell me, there is not much to grab on to because they didn't say why. A lot of times, they will tell me they could not get the supply or manufacturer would say it took six weeks, that's a problem. So you are going to point out what are your damages, you want to say why, that FloorCo is the damaging party. Remember with this you have only one merchant here. When the UCC is triggered both are merchants to be applied.

So for call Number 1, the big issue was your express condition versus compress promise. Call Number 2 dealt with delegation. When they use the term delegation, look at the assignment; there wasn't. With delegation, generally it's an obligation under the terms of the contract. Again, they are delegated the installation of the flooring. There is nothing in the contract that states they can't. It doesn't materially alter the performance and it's not prohibited by law. So they were letting the owner know. It was assumed, you could find there was an actual breach, which was the price was the $5,000 which would be the actual remedy.

Call Number 3 is the cancellation of the cleaning contract. You would have to see something specific the law basically says no, it is not too personal in nature. Unless they give something very specific that you are the only you one who can do that. It's very rare to find it's too personal. I need to find a why here for the cleaning. Two weeks for the contract for the cleaning, they called and said they were buying a cleaning machine, and they demonstrate the intent to be bound. And you look to the owner of the floor, and the cleaner, I do find there is a valid offer. Acceptance, they gave it to you. And consideration is you have $5,000 in exchange for the cleaning services. We have a valid contract.

A lot of students try to argue this as modification. You found it failed because there is no new consideration. You are done, and if you found it worked you will leave out conditions. Obviously it was believed that you pay me for the floor cleaning services. But the facts told you they cancelled making of the machine because of a design defect. In this case FloorCo is going to argue impossibility. Since the manufacturer was permanently ceased manufacture. It's impossibility. All we contracted for is cleaning. So does the cancellation of the manufacture of the machine make it impossible? No. If it was based on this machine it's a different story. So it's not objectively impossible.

With impossibility it's very rare. It rarely works. I also argue frustration of purpose. It's an unforeseen event. My purpose is to have this great machine to clean floors. Is the purpose destroyed? No. Because of the cancellation because they ceased production, you won't be able to clean my floors, that's unequivocal breach.

Obviously your remedy will be $2,500. They didn't give that in the facts. I'm going to ask for specific performance, I want the court to mandate you to clean my floors. However what is the problem? You need to show an inadequacy of a unique service. Money damages would make you whole. Most likely the court will not award specific performance, again money damage will make you whole and com compensate you. It's rare that the court will mandate physical labor.

That's contracts Question 3. Can you see how some students saw this as one contract. I saw that as pressure of the exam. But it will help you to outline your issues and it will help you see sub-issues.

Any questions on question Number 3? All right.

Question Number 4 was a tort question. This was an odd question for most students. There wasn't a lot there. And I think this one could probably be written in fifty minutes because there wasn't too many issues. What tort causes of action can reasonable be raised against Dan? What defenses can Dan reasonably assert? Two or more. What damages could they get? Two or more. We prove the tort and go to damages and then our defenses. The call took that out of the order you need to follow within the call itself.

(Reading Number Four) he had this knowledge. What do we think is coming down the pike? He has to find a place, I'm thinking necessity. (Reading) that's making me think consent or making that negates intent. (Continues reading) call Number 1, what torts causes of action? I'll take it in chronological order, one issue people don't see is trespass of land. Which is the intentional entry of the land in the possession of another. He acted with certainty to cross the land. Since he went across the shelter and land, you would find his conduct was intentional. Therefore you will find that we have trespass to land. At this point you can't talk about damages because of the call. So my first cause of action here is trespass to lands.

Next, he removed some wooden bookshelves, I'm seeing trespass to chattel. In this case when he took the bookshelves, we can argue he had the intent to interfere with her chattel. We can argue he believes it belonged to someone else. But did she give him permission to take the bookshelves? Since the actual person would be Jill, or the intended person and the actual person that ended up receiving the harm was Polly, you could argue transfer of intent doctrine. We can transfer from the intended victim to the actual victim. That can show he actually had the intent here and transfer from one party to the other. He did destroy it, showing the intentional interference.

And I'm going to argue conversion. It tells me causes, with conversion, is the wrongful exercise or intent of the control of the person or property of another. He used the bookshelves for firewood. So he was acting intentionally. We do have conversion? And a lot of times you know if they want conversion if there was a substantial interference or complete destruction. So he also burnt the books, separate issue. You argue trespasses to chattel and conversion as well. You want to make sure based on the facts, you would not lump together the burning of the bookshelves and the books. Each conduct counts separately. And let the reader know you see that.

So what issues do we have that I make sure we answer for call Number 1? I have trespasses to land, and trespass to chattel, conversion of the bookshelves and the transportation and conversion of the books. The harder the issues are to see, the more the point value. You see this is an intentional tort exam, go and see what is being tested. In regards to the trespass of chattel, you see the intent transfer doctrine. There has to be something different between them. If I see they are identical, I have to see, I have to go in and force myself to find the facts and break them apart.

One thing that will help is dissecting the elements. The baby bar does test this intentional tort, and dissect and look to actual elements. So intent, question yourself and see if that's something you can argue based on the facts.

Now call Number 2, what defenses can Dan assert? He is going to argue consent? It's a defense to an intentional tort. It's the willingness of the act that is to occur. He needed shelter in order to survive. And he is going to argue there was a willingness, but it wasn't Jill's, so it's going to fail.

With mistake, mistake is not a defense to intentional tort. He was mistaken to the right party. This is argued in two ways. You can argue in the intent argument, and based upon Dan, he had consent to use Jill's cabin, he did find the cabin, but wrong person, he entered the cabin, under the false belief, but it won't negate his intent. So we will find he is still responsible for the intentional tort.

So the main -- with private necessity, you have the right to interfere with a the challenge of another if it's reasonably necessary to protect yourself or another person. With necessity you are not responsible for the tort but for the damage. He knew he needed to find shelter, he found the wrong cabin, he went into the cabin for shelter. He did interfere, it was necessary to protect his life until the storm is passed. So it was necessary and all he would be responsible for was the damage to the bookshelves and the books. That's call Number 2 for defenses.

Two or more, if I see defenses, if I just see two, I look for the 3rd. There is very rare to use just two. You will pick up an extra point that way.

What damages, for the trespass the land, there doesn't seem to be any damages, the bookshelves, you have the fair market value of the shelves, and is special damages. He was under the mistaken belief he was in Jill's cabin. So should we warrant punishment based on his conduct? I would argue, no. And in regards to the books I would argue the market value of the books and based on the facts was his conduct really malicious? Punitive damages are there for wrong doing, was he really wrong doing? He needed it to protect his life otherwise he would not have survived.

Those are good facts for you to bring up in the exam based on damages in order not to warrant the punitive damages. The call narrowed you down to damages, so I would go to my checklist of torts. So I don't have to worry about restitution, or pleven.

Question Number 3 call said remedies. That opens it up more. Question? I'm looking at these, they are not that bad. Taking these under the pressure of exam, different. What would help, I can't stress enough is using your checklist, break apart your outline. That will help you too, why?

Now the books, special books, even if they were special books it's still a general damage, say it's a collector's books, you will still get the fair market value. Based on the conduct, even if they were special books, survival versus books? Survival. Even if they mean a lot. The law won't see it that way, you can be compensated. You will see somebody steal something, a photo album or ipad, sorry.

I didn't mention emotional distress, he didn't have any intention to harm Polly, I wouldn't bring it up. I would have to see in regards to intent in that she suffered some type of manifestation, I don't see it in the facts. You can look for it in the checklist, run it through and see if you see it, but I don't see anything strong enough to argue it. I look at the elements, he didn't know she existed. His conduct was extreme or outrageous. It was survival. I wouldn't address that tort.

I agree, it's survival, he is trying to survive based on the storm. It wouldn't be seen that way. You would know, if they toll you it was hot and sunny, and he destroyed the books, why would you burn them.

Any other questions? If anything comes up, email me, and I'll be happy to help you. Next week we will do a multiple state review and how to take and attack the multiple-states. Practice them every day now. You should be at 65 or 70 percent, if not, urban research and ask yourself why. 83 percent is great.

If you want more help on the essays, go to the Taft website and we have lots of practice questions there. And lots of bar questions, and there are a lot of sources you can use for your essay writing.

All right, good night.

(Session concluded of 6:59 p.m.)