Taft Law School

Electronic Classroom – Baby Bar Mini-series

08/27/19 6:00 – 7:00 PM

>> INSTRUCTOR: Good evening, everybody, and welcome to tonight's baby bar mini series. We'll be starting in approximately two minutes. Thank you.

>> INSTRUCTOR: Good evening, everybody, and welcome to tonight's baby bar mini series. . Our primary focus will be on the essay and the MBE questions sent out in the subject matter of torts. Couple things I want to point out. We have reviewed torts haven't we? At this point even though we may not feel we've mastered is subject matter, you want to consistently practice the multi states in torts, study them, and issue spotting in the essay's. That'll help. This is a building process. Not something that happens right away. You want to go through it. That's important.

I had several questions in regards to this question as well as the multi states so I'll try to get to those. If I don't fully answer them all, let me know and I'll be fully happy to help you. These sessions are recorded. Tonight's lecture will be up next week September. If you want to review a lecture it will be up there on Taft's Web site in the student section for you.

First is going to be on the tort essay question sent out to you. What I'm noticing is students aren't always paying attention to the call or really applying what you've learned orb what you know. I don't know if that's because of stress of exam. You want to break it apart. It's important. Seems silly, but the more I can get you to break things apart in regards to the essay and look to the actual facts, that'll help you see not only issues but sub issues or where the arguments are, which is gonna help you a lot.

That's important so I want you to be thinking about that and when you go through an essay question break it apart. I'll teach you that tonight and show you how to dissect it tonight. I notice in some of the questions you didn't pay attention to who is suing and why. That's important. If you and I ‑‑ I sell you my car and it breaks ‑‑ the brakes fail K you sue me for products liability? No. You have to pay attention to who the parties are. I'm not a manufacturer, distributer, or retailer of the car. Look to who's suing and the why.

Now, the first thing you always want to do on your essay question is read the call of the question. And if I explained to you in the past in your torts class I know it's torts contracts I know it's contracts. Opt baby bar it won't tell you. Read the call of the question that'll help you in a couple ways. One, you read something that you have a general idea of the subject matter your anxiety level comes down. You're more focused I know the subject's torts. That's important. The other thing I want you to keep in mind is when you read the call, I want you to determine as to what type of call it is. So if you look at this call, it says on what theory or theories might the injured (reading from handout). It lays out the three parties: Grain Co., Farmer Jones, and Big Food.

What does this call tell me? A lot of times people read this it doesn't tell me anything let's read the facts. This is a general call but it tells you several things that I want you to pay attention to. First thing it tells you is theories. Two or more theories. If you just see one theory, you made a mistake. It told you who's the plaintiff: Milk consumers. It's asking to recover damages. We've got damages, I'm thinking general or special. Look to the facts to see if I can find punitives or anything else. What you find when you read the facts they don't give you any facts for damages, but it's in the call so you better address it because that's telling the reader you're following the call of the question. Then it says what defenses should they anticipate? Remember I told you previously defenses can mean true defenses. So let's say the issue is negligence. I look to contributory negligence, comparative negligence, assumption of the risk; right? But defenses also could mean counterarguments. So when you go through this exam you'll see nothing the milk consumers did. You don't want to bring up contributory negligence and say why it's not there. You're getting no point value for it whatsoever. What this mean is that there's counterargument somewhere that I've got to go in there and look for. That's what they mean by the terminology here based on the defenses. So you'll know when defenses are at issue one based on the call of the question and if it is in the call and yourself is it a true defense or counterarguments. The other way you'll know may not be in the call but it'll be obvious in the facts. That's the only two ways it can come up so you want to know that going in.

Again, this is a general call but I know theories two or more, I know my plaintiff, I know damages I have to address, and then defenses which I'll have to see if t true defenses or actual counterarguments. Then I see Grain Co., Farmer Jones, Big Food. I know it's products based on the parties they gave me. That's an advantage, too. They give you names that kind of direct you somewhere so I know it's a products liability before I even read the examination.

Read the facts. Perfectly fine. When you read the facts, I want you to keep in mind you're gonna break it apart. You should be able to see the tort essay question on your screen. We just read our call. We see there's Call 1, Call 2, Call 3. Seeing that, this might be a racehorse. You know when you see products liability on an exam I know I need to talk about negligence, implied warranty and merchant ability, strict liability and tort. Three issues times three lawsuits. I know this might be a racehorse. Go in, dissect it, and go for the jugular, where the point value is.

Once you read the call of the question, the thing I would recommend for you to do is write down your checklist. So if I'm thinking it's just products I might dissect for products so you're using it to help you issue spot. Under the pressure of the exam we do odd things. Sometimes ‑‑ I can be guilty ‑‑ I swear I talked about it, it's not there. I went through it in my mind but didn't get it on that paper. Don't wanna leave anything out because we want the points.

Let's go through this question. First paragraph says Grain Co. (reading from handout). What do they tell me in that first sentence? I want you to break it apart. They resell. I know basically they're a seller of a good. And you see it's seed grain and they're selling it for spring planting. They kind of told me they resell it, gave me their purpose. I know we're dealing with somebody dealing with a good. We know this is torts when I'm thinking it's products. Second sentence says because of problems (reading from handout) ‑‑ stop there. They attack and eat seed grain. If I buy seed grain to resell and there's parasites that are gonna destroy my inventory, not too happy. It says that is stored for more than a few months. It's stored for more than a few months. If I'm buying it in the fall, we know if we're selling in the in the spring, more than a few months. It says further that Grain Co., like all seed grain dealers ‑‑ it's like custom ‑‑ always treats the (reading from handout). Stop. What are they telling you there? Standard in the industry. Everybody does it. What do they do? They place a poison on this seed grain to get rid of the parasites. Why is it invisible? That's a good word to circle. Why are they telling me it's invisible? You and I wouldn't know it's treated, would we? A child or anyone else you can think of because it didn't have any detection. That's what I'm looking at and that's a good term. Invisible. Why don't you make it a color so people who in the industry who do this know it is treated. It further says (reading from handout). So you picture this big truck filled with all this seed grain with this invisible mercury poison on it. How will I know? It further states that Grain Co. (reading from handout). What's that tell you right there? Is this adequate notice? Right? If I basically sell you something loosely in a store we have Sprouts out here. You can get things and put it in a bag and weigh it. Oatmeal and stuff like that. On the barrel they put this type of warning? Is that enough that I made sure I read it? When I go buy it shouldn't they put it on the receipt or indicate it so I know it's on the receipt or something. So you can see here the issue is, is that adequate warning? Is that enough to put somebody on notice that this seed grain's been treated with a poison to kill these parasites. Poison can hurt other people. It said remember not to use for what? Food products. So that means it can cause a severe illness and maybe death. It says do not use in food products that's a problem.

I have a good handle on it. It's Grain Co. that's purchasing the grain reselling it. Used in the fall but resell it in the spring. If they have it more than two or three months it gets parasites. So they really don't have any alternative but to spray it. Does it have to be invisible? There's good facts there.

Second paragraph: (reading from handout).

Now the issue is did she have the notice? And supervised the Grain Co. (reading from handout).

What do we know? It's not supposed to be used in food products. Dairy cattle. It'll produce milk and it's contaminated with this poison they used for these parasites. That's a problem. So I have a good understanding from this paragraph that she bought the truckload. The fact that she was there and supervised the unloading into her silos, did she have adequate notice in regards to the seed grain being sprayed with ‑‑ this chemical base which is poison?

Third paragraph: (reading from handout). There's your retailer, the Big Food. (Reading from handout) seriously ill ‑‑ there's your damage ‑‑ (reading from handout). Now, the reason they gave that is so you have the cause. How to we know it was from the milk if they didn't tell me? They didn't want to make that difficult for you. We know it was the milk because she fed the cattle the seed grain treated with this poison for the parasites. Gave it to you there.

It further states (reading from handout). They gave you the connection. We know it came from Farmer Jones. They're trying to write out issues for you how do you know it came from that cattle? That's why they gave that to you. Didn't want that assumption.

Let's look at our first lawsuits. On what theory or theories might the injured milk consumers recover damages? You can take products in several different orders but I generally start off with negligence and the reason why is because that's usually my heavy‑hitter. I type in regards to the duty and the breach and the type of breach and steal it from everything else. I want my exam to start off strong. Negligence is pretty strong. In regards to negligence, the first issue you need to show is the duty. We're going after Grain Co. who was the manufacturer or the distributor of the seed grain. As to the manufacturer distributor, they have a duty to inspect, discover, and correct or warn of any known dangers associated with their product that they're selling. And they owe that duty to a foreseeable user. If you look at if facts, the fact that Grain Co. put this parasite ‑‑ sprayed this parasite or put the poison on these parasites and Farmer Jones would be the one who purchased it, foreseeable user, do they owe a duty of care? Absolutely. They are a distributor. Again, even though they have a counterargument here ‑‑ remember it said defenses? You want to look for counterarguments. Based on our read, did we see the milk consumers do anything? No. Didn't say there was a notice on the bottle and they drank it anyway. Nothing to grab on to show they were aware and assumed the risk. So we know it has to be counterargument so I'm gonna break it apart very carefully. Is there counterargument here for duty? Duty to act as a reasonable distributor, they're gonna argue they are. They owe duty of care to inspect, discover, and correct. But this is standard in the industry. They treat the seed grain with invisible mercury‑based. Okay. So, again, the duty is here ‑‑ they have a duty to inspect, discover, and correct, and warn Farmer Jones if there's a defect.

In your breach ‑‑ remember, the breach is the failure to warn, design, whatever the issue may be. In this case ‑‑ and I would recommend in a products liability essay question, see if you can argue two types of defects. So the examiners they're looking for the two. So I want you to bring them up. The first one or the obvious one is definitely the warning defect. I think they flagged you. I don't know if you've heard the term see fact. Seer's a person who sees it, and I would say we definitely all saw the warning defect. That's something that shouldn't be missed.

Now, with the warning defect, it's basically the distributor fails to warn of the potential harm of the product. Based upon their knowledge that this has an invisible mercury‑based chemical to poison the parasites and shouldn't be used in food products, did they adequately warn the people buying the seed grain, in this case Farmer Jones? They sold it in bulk and on their truck what did they have? Seed grain not for use in food products. They're gonna say they adequately warned Farmer Jones so she's culpable here, not them.

Problem is, is that adequate warning? Do you know she even saw it on the signage on the truck? Or if you wanted to make sure, obviously you'll learn in U.C.C. they call it bill of ladling. They can have a warning and make her initial it is you know you're aware the seed grain is sprayed with this invisible mercury‑based poison. They didn't. Argue both sides. Don't care. Look to another type of defect. That's why believe they used the word "invisible." Can't see it, can't smell it, can't touch it. That's a design defect. This type of poison you're putting onto kill the parasites is dangerous. No one knows it's been treated. The argument here is you failed to let someone know such as Farmer Jones that this seed grain was chemically treated. What could they have done? Be clever in your argument. Why not purple, green, neon, something that would reflect why? A different color than normal seed grain? You'd question or know it's been treated with this mercury‑based poison; right?

Now, Grain Co.'s going to say wait a minute here. This is standard in the industry. Like all seed grain dealers, we treat the grain with invisible mercury‑based poison. But does that make it right? Just because everybody does it ‑‑ car are manufactured without seat belts. Does that make it right? Things change in life. Since they're using a poison that can't be used in food product which grain could be fed to animals that produce food products ‑‑ cows, goats, stuff like that. That's a problem. That would be inherently dangerous in its design because even if I knew it was treated, I could easily forget or mix it up with other seed grain that I have if they look alike. It's inherently dangerous in its design.

With causation, this is an issue the baby bar does like to test a lot called successive tortfeasors. You have two independent negligent acts that come together in the cause the result. Remember, based on these facts, who's suing? Milk consumers. Well, Farmer Jones was wrong for feeding it to her cattle as well as Grain Co. for what? Not adequately warn. That's why we have successive tortfeasors. Two independent negligent acts that come together to cause a result. Grain Co.'s failure to adequately warn or adequately design take your pick as well as Farmer Jones not adhering to the warning on the truck and feeding it to the cattle ‑‑ but for both the successive negligent acts of Grain Co. and Farmer Jones, milk consumers would not have been injured become seriously I'll; right? Therefore we have the actual cause.

Next issue is proximate cause. Remember, the proximate cause I told you in the lecture I want you to ask yourself first, is this a direct act or indirect act? And the fact that Grain Co. sold this with this poison on it that Farmer Jones ended up feeding it to her cattle and produces it would be what we call basically direct act based on their actions. I'll jump right to is it foreseeable? Because it means it's not a big issue here but I have to address it. Versus they're not playing with me trying to go through an intervening act and dependent independent stuff like that. But you want to look. If it's there, it's worth the points. In this fact pattern it's not. (Reading from handout) this seed grain with adequate ‑‑ failure to adequately warn could be used in a food products. Yes, it is. Therefore the proximate cause and milk consumers' injuries and then go through your damages.

Now, with your damages, I wouldn't spend a lot of time but I have to address it. Why? It's not call. So general damages, remember, are pain and suffering or property loss in this case I don't have property loss. They became seriously ill so I would say pain and suffering. Then your medical or special damages would be your medical expenses or lost income. I'll still talk about it here even though there's no facts why? Call says damages. Make sure you answer the call. Pay attention to your call. Special damages one sentence if they have any medical expenses and they can prove lost income, done.

The call also says defenses. The only thing we really argues here was that it was standard in the industry. Only have one. Go through my checklist. Grain Co.'s going to say it's Farmer Jones that's the primary responsible party. If you would have known what you were doing you wouldn't have fed it to your dairy cattle. She didn't know what she was doing. Can we seek indemnification? When you see products liability, indemnification [inaudible] should come up. I'm only secondarily liable for the plaintiff's injuries or in this case Farmer Jones is primarily liable. Since Farmer Jones is the one that bought the truckload of the grain which isn't supposed to be used in food products and fed it to her cattle, is she primarily liable and Grain Co. secondarily liable? To me, I think you could argue either way but I don't feel they're entitled to indemnification because I think they're both is at fault. I don't think the burden weighs heavier on Farmer Jones than it does Grain Co. So I find no indemnity. Then you fall back on contribution. When you have joint tortfeasors ‑‑ say you're seeing this on the exam ‑‑ if you have joint tortfeasors for contribution, it's portioned according to fault. If I'm seeing that issue, what should that have told me? Oops. I didn't see an actual cause issue. I'd better go up and look because if we did talk about successive tortfeasors ‑‑ which made it a joint tortfeasor issue; right ‑‑ go back and look at your actual cause. If you did the straight but‑for, you probably made a mistake. Come back and look I didn't address this here it is. Now I see how could I really argue joint and several liable for contribution if I didn't really see that in a causation up above? Checks and ambulances.

That's our ‑‑ balances. That's our full theory of negligence. There isn't any defenses. If the facts don't raise them, even though it's in the call, go look for counterarguments and don't just bring them up because you see the call headnote contributory negligence and try to make some argument. Doesn't look good and it's killing your time. Remember, these are timed exams so I don't want to bring up something there's nothing in the facts that show the milk consumers didn't fall below standard of care so there's no defense. We're up to three to five minutes. Can't afford it. Doesn't look too good to the reader anyway.

Sometimes you'll see true defenses don't apply.

Now, again, we're still under Grain Co. Who else could I sue? Implied [inaudible] and prod. Unless it's a specific call in any products liability when it says theories you're going to talk about implied warranty merchantability. When you talk about implied warranty merchantability, you need to show manufacturer, distributer, or retailer. They impliedly warned that the product is fair and average in quality. Here based on the facts we have seed grain and we basically are used ‑‑ so you can replenish. I'm advocating fair and average in its use. What's the argument? I sprayed it with the mercury‑based poison because that's standard in the industry. Gave it to your cattle which produced the mercury‑based poisoning of the milk. There wasn't adequate warning to know it shouldn't be used in food products. Therefore you breached the implied warranty merchant ability. Remember, which we did go over, with your warranties you still have causation. You have actual cause and proximate cause. Since you did an awesome job under your negligence, headnote it define, discuss, supra. Do that under actual cause, proximate cause, then look to my damages. Ooh, look. Same plaintiff. Should be the same damages. Define, discuss, supra. Fair game.

Then go to your next tort here is strict liability and tort. Now, with strict liability if you place defective product in the stream of commerce you'll be held strictly liable. But it has to be commercial seller, distributer, or retailer. And of course you have to show it's inherently dangerous. So there is a burden there. So, begun, the argument here is Grain Co. failed to adequately warn and ones that end up in the food products in the milk. Dangerous for its intended use. They breached the implied warranty. Wait a minute, we had this warning on our truck it's standard in the industry that this is how we treat parasites. We treat the grain with the invisible mercury‑based poison to get rid of them. Buy it in the fall and sell it in the spring. You know it's going to have parasites. Then make your arguments, define, discuss, supra back. That will save you time.

We did an awesome? Job. We had two different types of defects: The warning defects as well as the design defect. We had successive tortfeasors ‑‑s, we had counterargument in regards to whether or not this is standard in the industry or not to show they didn't fall below the standard of care or they breached the implied warranty merchantability, which I found is not going to uphold. So you had three different theories that you held Grain Co. for. Remember, in products you have, like, battery. Is there any facts to show intent they knew? No. Express warranty? Nothing stated in the facts they made an express representation. Remember, express warranty goes to fitness for particular purpose. Always ask, but nothing there in the facts. Safe to go to the next lawsuit.

Everybody with me on Call 1? There's a lot here. And, again, up to do a good job. Then I'm going to start stealing from it. Pretty soon that hour's here and you're on Call 2 that's a problem. You need to allocate your time because once it gets away from you, it's over. I've had students didn't pass spend an hour and a half on the first essay hour and 15 on the second. Can't do that. You've got to allocate your time that's important.

That's why I stress what? Timed exams. Do your simulations so you get your timing down. Those four hours are quick.

Second lawsuit. We got the milk consumers versus Farmer Jones. So what are they suing her for? Contaminated milk. Start with the theory of negligence. You have a duty to inspect, discover, correct. You owe that duty to foreseeable users. Any consumer why buys the milk is a foreseeable user. And of course it had this poison in the milk, you fed the seed grain to your cattle, which wasn't supposed to be fed or used in food products, so you can point out there's a duty owed.

Now, is there a breach? Now, would this be a warning defect? Well, she didn't know, did she? You can't say she failed to warn. Is it a design defect? She had no knowledge this grain she fed her cows is contaminated. It would be what we call a manufacturing defect. A manufacturing defect does not come up a lot but it does once in a while. What a manufacturing defect is where the product's different in kind. So the milk produced last week versus the this week are different. One's contaminated one's not.

Since she used the grain that she purchased that was mixed with the M it's a different kind ‑‑ didn't have that treatment. So it is a manufacturing defect different in kind.

Actual cover. But for Farmer Jones mixing her feed (reading from handout) you can say define, discuss, supra since we talked about it properly under Grain Co. under actual cause successive tortfeasors; right? So you can steal from that too. Is it foreseeable? Again, is it foreseeable if you produce milk that has a mercury‑based poison that people would become sick? The answer is yes, it is foreseeable.

Then your damages. With your damages, we have a different plaintiff ‑‑ same plaintiff, milk consumers, different defendant. I can usually steal it from up above. Define, discuss, supra. It saves me time and the bar examiners don't care as long as you are correct and it's the same plaintiff same damage I should be okay. So I'll take from it. That is your negligence.

Implied warranty and merchant, remember, again, you warrant the product's fair and average use. In this case, Farmer Jones manufactured milk. She's advocating its fair and average use to drink it as milk. Why wouldn't she? It's a safe drink. What's the problem? It was contaminated with this mercury‑based poison based upon the seed grain that she fed her cattle. So it was not a fair and average use; right? She breached the implied warranty merchantability since they became sick. Again, your causation: actual cause, proximate cause, damages. Define, discuss, supra. Now, if you don't do that, you're going to see your time will run out in this exam. So do a good job on the first lawsuit and steal it from there. That's important that you understand that. And you want to practice these to get that timing down.

Any other theory to go after? Strict liability and torts. Remember, again, when a (reading from handout) they're gonna be strictly liable. In this case, you've put a defective product because it's contaminated with invisible mercury‑based because it wasn't supposed to be consumed or used in food products and it was. So she breached ‑‑ she's gonna be liable ‑‑ placed a defective product in the stream of commerce. Therefore she's strictly liable. Your actual cause, proximate cause, and damages define, discuss, supra.

If you did a good job in the first lawsuit with Grain Co. I can probably steal back from my indemnity and cross‑examination. Define, discuss, supra. If you need to add a sentence or two, get in and out quickly. Time.

As you can see, we've hit two parties ‑‑ Grain Co. and Farmer Jones ‑‑ and of course in regards to looking at 'em, was there some difference? One was a manufacturing defect versus the first was a warning design defect. I know going into talking about products for the third time it can't ‑‑ they cannot mirror each other. Why not put them all together so I can have milk consumers versus these defendants there's got to be something different. I want you to go in looking.

Again, against Big Food, who's Big Food? Big Food is a retailer. What are we suing for? Always sue for negligence. Remember I told you when you see the call theories, for products liability, you'll always address negligence, strict liability and torts, and implied warranty and merchantability. The negligence here's a little different. This is a retailer. In this case, Farmer Jones produced milk and dropped it off at grocery store. What duty do they owe? In regards to retailer their duty's different. We can't say they have a duty to inspect, discover, correct, and warn. What are they supposed to do, open up the milk? So basically have a duty if they knew or should have known to inspect or warn of some type of defective product. Something would have to tip them off. They got the milk and it smelled funny outside the carton or something. Nothing here. In regards to their duty, right, they owe a duty to their milk consumers to correct any known defects associated with that product. And that duty's owed to foreseeable users which is their milk consumers. But there's nothing here in this fact pattern that tips them off we've got a problem. Right? And you want to know because guess what? It's MBE oriented. When you go through your breach, they have no knowledge. Some of us argue the sealed container doctrine. Nothing to indicate it's defective, off the hook as a retailer. You will knock this out that there is no breach. But you still have to address the theory of negligence.

So now you can see there's a difference between a manufacturer, distributer, and then your retailer. This is very common and you want to understand it because a lot of times students will find liability for Big Food showed they breached their duty and then go through their causation, damages, defenses and they're wrong because unless they have some type of knowledge, something had to tip 'em off. There has been some multi states out there ‑‑ I remember one with an airplane engine. Bolts still in the crate. Something's wrong. Why is there extra bolts? Knew or should have known something's up. You'll know based on the facts.

What else can we sue them for? Remember, a retailer is still ‑‑ again, they're a retailer. Fair and average quality. Since they had the defective milk because of contamination not fair and average use so they're strictly liable ‑‑ excuse me. Breached the implied warranty merchantability. Damages you can supra back. Then go back to the theory of strict liability and tort. A retailer that's selling merchandise if the [inaudible]'s dangerous and it's defective they'll be held liable if they placed it in the stream of commerce, which they did sell it to the milk consumers. It was contaminated so it was defective, so they're gonna be strictly liable in tort. And then your actual cause proximate cause and damages supra back.

Some people have a hard time with this. They don't think it's right. But it's fair because if you think about it if I buy products abroad like from China how are you going to sue somebody in China? Not going to be able to. They're holding accountability for the retailer because they have more remedies available than you would so they can seek indemnity or maybe go after breach of contract based on their relationship. It's basically policy reason, which makes sense because otherwise you're out of luck.

Those are your theories. Now I want to take a quick look ‑‑ you've got the essay question ‑‑ in regards to the model answer. You see I've got milk consumers versus Grain Co. for Call 1. I've got it headnoted "products liability", then go right to negligence. Let the reader know what theory you're addressing. Don't just assume products. Multiple theories under products. You could have the battery, warranty whatever it is. You've got to break that apart. Now, I did define negligence so you don't have to. It's a waste of time. If you have extra time, it's great. If not, headnote negligence and then go right to your issue in regards to whether or not there is there is a duty. Then analyze your duty, and your breach, et cetera.

What you'll notice, pleasantries, I break apart my type of defect. So warning defect, design defect so the reader can go to it. I don't want them reading my exams. But the more headnote and pleasantries I can give them, they see I'm breaking apart the issue from there. Separate headnote is my warping defect, design defect, I put successive tortfeasors. Do a decent job in my proximate cause and damages. Later on I'm going to steal from it. Time. I've got my indemnification. Boot strap back to your indemnity causation and damages. Same with strict liability and tort.

The first lawsuit I want you to be strong? And steal it if you can. Next one is your milk consumers. Products define supra. Negligence supra. Go right to your duty. And then look for the difference between them. In this case, it was the defect which is a manufacturing desk. You know it cannot be identical. Why? They wouldn't do that to you so I'm missing something if I see it's identical. Causation and damages, next theory implied warranty then steal your causation and damages, your strict liability and tort. Since Farmer Jones did do something as to manufacturing the milk, I do have to address it. It's not verbatim identical activity.

Then milk consumers versus Big Food. Again, the negligence. Knock it down under breach because of the sealed container doctrine so I'm done. It's an absolute. We're finished. If it's a gray area you would have to continue to the next element. In this case, it's not. So I'm moving forward. Go to my implied warranty merchantability and strict liability and tort and go from there.

Pleasantries are good too. First impressions is basically on your writing of what they're seeing. Make it clear as to what you're addressing. Don't bury your issue. They might be confused and have this big question mark in their mind.

Now, let's see where we're at. All right. Now, a couple people sent in multiple choice questions that they had trouble with. In looking at these, what I'm seeing with multi states you have to do two things for me. One, pay attention to the call what they're asking. If not, I got you. And apply your theories. A couple of these you're like you're kidding should have got it right. You went left and they wanted you to go right because they tricked you.

First question someone had was Question 3. This is a products liability. And of course got to read the facts 1 and 3 are based on the following facts. Reading Question 1 and jump down to Question 3: (reading from handout). He purchased so the drugstore's a retailer and delta's a manufacturer. (Reading from handout). Is that a representation? Is that a warranty? (Reading from handout).

Now we'll jump to Call 3 ‑‑ Question 3. (reading from handout) plaintiff's Jonathan. (reading from handout). Take a step back. This is what's important and you need to go through. If I look and go through it, how do I know the best answer? Could I hold Watson liable for negligence? No. Sealed container. That's out. Could I hold them accountable for strict liability? Sure. Could I hold them implied warranty merchantability? Sure. Could I hold them accountable for express warranty? No.

So kind of going through the process, now let's look at answer choices. Then you'll get the correct answer choice versus looking at it as a whole. What's the first one here? So A, any negligence (reading from handout). We know that's not true. So that's not gonna work. B, (reading from handout). Well, if it's defective as labeled what's that tell me? There's a defect. Remember, if you place a defective product in the stream of commerce I don't care what you did. Liable. That's a good answer for strict liability. C said (reading from handout). They didn't make the express warranty. That's false. D says (reading from handout). I don't know of any special duty they have to have. So we know by the process it has to be B because we know A can't work because they didn't breach. Negligence is not automatically imputed. That tells me what happened in this question because I believe you chose A versus B is you didn't go through your steps. What I'd like you to do ask what's important don't just jump in there and read the answer choices. Suing under products. Could Watson be responsible for negligence and go through your theories quickly. Implied warranty and merchantability, strict liability and tort. Pick an answer choice that lends itself to that.

Remember, also, if you have an answer choice of strict liability and tort versus negligence, what's a better answer choice? Liability's a better choice because it's imposed regardless of fault because you placed a defective product in the stream of commerce. There's a lesser standard that the plaintiff has to show. That's why it's a better answer choice. That's one you kind of marked down so we have a good understanding what we need to do and go from there.

So do you understand why B is the only answer choice here? If you're not ‑‑ I didn't get enough explanation there, let me know.

The next question was Question 10. You segued it on me. Read the facts and see what is the actual issue? Remember, these questions what I call more generic. If you read the call (reading from handout). Didn't give me much. They're tighter for the baby bar but we've got training wheels on right now. In looking at the facts it says (reading from handout). See already we're thinking Brenda broke ‑‑ thinking crimes. Thinking okay she broke into a grocery store burglary only in modern law. After stealing (reading from handout) ‑‑ larceny ‑‑ she blew (reading from handout). That's another burglary. (Reading from handout). Another larceny. (reading from handout). What is she showing Ace's for? Nothing to do with crim law. They led me down and took it away. She's suing under defective beer. Products liability. So would she be able to recover against Ace's? Of course she'll be able to recover. Even though she's a thief, she still has a viable cause of action for liability. I know Brenda's going to prevail. Ace if read D. Anything after if can change on me. A says (reading from handout). Well, you do need causation. Put a plus. B says (reading from handout). I don't see an express warranty here. No. I'm not going to talk about that. C says (reading from handout). Well, we already eliminate that one. Doesn't work that way, either. The clean hand doctrine deals with an equitable remedy. Don't have that here anyway. D says (reading from handout). That'd be true if trying to argue a crim law issue here or she intervenes somehow and someone's suing under her acts but she's suing the manufacturer. Suing the manufacturer yeah, it has to be the best answer choice. Brenda because her injury was caused by her negligence. The only one I can grab is the negligence with the proximate cause.

A is your best answer choice for Question 10.

Someone popped up in there 16. This one actually most people have trouble with but it wasn't asked for until now. Generally it is one that I do see a lot of questions with.

All right. Next we did Question 3. We did Question 10. Next thing look at Question 16. It says (reading from handout). What are you thinking of right now if there's termites? Negligent misrepresentation. Knew or should have known. You're the homeowner. (Reading from handout).

So what do you need for negligent misrepresentation? You need a representation that was made knowingly or you should have known. Like a lack of due care. There has to be material fact which one justifiably relied to their detriment. In this fact pattern what do you think they're really testing here? Did he rely on the representation there's no termites? Which of the following is (reading from handout)? What are we doing here? Trying to get him off. Barry was interested in buying Samuel's house. He asked this question, Samuel made the representation so if I can knock out an element showing it wasn't made with lack of due care or you didn't rely on it, then you have no cause of action. If I ask you a question you lie to me, but yet I know the answer anyway, I can't go ahead and sue you for misrepresentation. Doesn't work that way. If I knew the true answer, I couldn't justifiably rely, could I?

A says (reading from handout). Well, that could be true. But I'm not suing you for fraud. I'm suing for negligent misrepresentation. So you knew or should have known, and since you're the homeowner, it's like a lack of due care. It's your responsibility. Shouldn't have said anything, or I don't know.

B says (reading from handout). That's not true.

C says (reading from handout). Was it an opinion? Seems like to be more of a fact. No, I have no termites.

D says (reading from handout). So what's gonna be his most effective argument in defense to Barry's claim? If I can show a reasonable person would have done the same thing, that doesn't show a lack of due care so that's the best hope he has based on the answer choices. So D would be my best answer. Not going to win, but that's the best argument based on the facts. If another person would have done the same thing that shows a lack of due care in regards to your representation. D for question 16 would be correct. That fully answer your question? If not, let me know. It's important.

Two ‑‑ I'm saying why. When you miss these, I would highly recommend you go back and write out the why. So it could be in this question it says (reading from handout). So I'm looking for a way for him to get off. Maybe I didn't read the call right. Right? This is something for you to think of. Sometimes we don't toll the call. How's Barry going to prevail here and I pick the wrong answer choice because of that. Go back and look at the reasoning. Why did I pick A instead of B? What you're going do see we have a little habit so we need to go back and break that habit. I have an issue in regards to not really paying attention or answering the call of the question. You need to work on it. The more I can get you to break it apart and focus on it, that'll help you immensely.

Question 21. Now, if you look, it says (reading from handout). What are we looking for? We're looking for a way to get the defendant off. Once you find the actual tort they're testing, I want you to break apart those elements and see what one can I knock out? Maybe you have a defense. If I don't do that, I won't get the best answer.

It says (reading from handout). They said embarrassment. What are we thinking of? Intentional infliction of emotional distress or negligent infliction of emotional distress. Break it apart. In regards to intent did they know who she was? So we'd have to show based on their conduct or they had knowledge I guess this bathing suit could do that. I don't have that in the fact pattern, do I? So of course there's no facts to show knowledge, is there? I'm thinking there's an issue of negligent infliction of emotional distress. Now, we're looking for Sunset's best argument. If you have emotional distress, what do you need? Extreme outrageous type of conduct, foreseeable party ‑‑ which she is ‑‑ I need manifestation. A says (reading from handout). Don't need that for emotional distress; right? B, (reading from handout). Need that. So that's a plus. Common law; right? C, (reading from handout). Doesn't matter. And (reading from handout). They're not suing obviously in regards to negligence that you had a duty to breach causation. They're suing in regards to embarrassment, emotional distress. If at common law, you need some type of manifestation. The key thing to remember is what? When you answer the multi states, you're responsible for common law unless the call dictates otherwise. Pay attention to that. That's why that's the best answer choice. Okay?

The last one I think this person didn't pay attention as to why we're suing. This is Question 25 based on 24. It says (reading from handout).

Well, person picked A says (reading from handout). What's that go to? That's ‑‑ two things I have a problem with it. Products liability. Remember, strict liability is not because she used a defective product. If you're trying to hold her accountable for the biting of that dog, she's strictly liable for the propensity of that dog. Language is incorrect. Not going to fall for it. B says (reading from handout). Breach for negligence. That sounds goods. C says (reading from handout). She didn't know it was going to break. D, (reading from handout). Huh? So you're going to sue best argument here would be under negligence she had a duty but she breached it because she had the dog when she shouldn't have had the dog. Answer choice A you didn't imply your black letter law. What's the law say is strict liability for animals? Known propensities. That's why A is incorrect and B's the best answer.

By going through and writing up the why, why did I pick it so you don't make that same mistake. Same question's going to come down. I didn't learn from the first time so I miss it. You want to break it apart.

At this point, I want to make sure you're studying on your issue spotting on your multi states. Multi states aren't easy. It's something that takes practice. The more I can get you to practice and understand how the products are tested, that's ‑‑

Gone over substantive review, we've dope an essay question, some multi states. Do start preparing in regards to contracts. Contracts is very checklist oriented. Take it in order. Start with, okay, preliminary negotiation. If the facts start with offer, start with the offer and work your way down. You wouldn't with consideration and work your way back up. We don't do that so take the checklist in order; that's very important.

Anybody have any questions at this point? This is a good products exam. If you want more examples of products liability, shoot an e‑mail at jolly@taftu.edu be more than happy to send you more to look at. The more you understand how the consents are tested that's important. If you have any questions please feel free to shoot me an e‑mail as well jolly@taftu.edu I'll be more than happy to help you in any way I can. The best thing you can do for you is to keep studying. An hour a day. Keep practicing those multi states. They're doing okay on the essays and they get 45, 50 on the MBEs. Strive for 75, 80. If you don't understand the why, shoot me an e‑mail. Answering the why's very imperative. See you guys next week. Good night.

[END TIME: 6:59 PM]