Taft Baby Bar mini review lecture.

August 17, 2021,

PROFESSOR: We will be starting in 2 minutes. Thank you.

.......

We start in approximately 1 minute.

....

Welcome to continue's Baby Bar mini series. Our focus tonight will be on torts. It will be what I call mini review lecture. What I do, for those who are new, I go over the subject matter. I am not teaching the Black Letter Law but how it comes up in the fact pattern. These sessions are recorded for your convenience. If you want to review, log in Taft website, student section, and Baby Bar mini series. And there are resources there for you. We also have e classes, they are questions hold from the bar examination and Baby Bar. So these are useful tools for you. If you have questions, place them in the chat.

Let's get started.

In order to do well on tort examination, you need a checklist. If you have a checklist that you use for your preparation of finals, pull it out. You should use. If not, pull one from Taft. Number 1, it will help you with familiarity. Also it will help you in identifying issues. So you do want to use your checklist to break that apart and grab on as many issues raised.

With the pressure of examination, we do odd things, in regards we forget or analysis in our mind and they talk about the issues and we didn't, that's happened to me in law school. And I feel that's again because of the pressure of the examination that we put ourselves under.

The first series we will study is intentional tort. They can come up on an essay. It's rare but they do come up. If you see that, do the checklist and look for two or more intentional torts. When they test those, people do very poorly on the question. Which is sad because they are not difficult. But they can't see the issue. They see one and leave. You want to look for two or more. It's rare that there's only one. You want to break it apart and grab on as many as you can.

With intentional tort, what do I look for? The first thing is intent. Especially on an essay, I don't want to waste time on a none issue. I look through the facts to see any way to argue intent. A lot of times you drive your car on the freeway, you hit the car, battery. No there is no intent. You have the intent to do the actual conduct. Such as hitting the car or desired result of what occurred. Or you actually have physical actual intent to do what you are doing.

So that's where you are going to look at to determine if there is an intentional tort triggered.

First one is assault. Words alone are not actionable. The key thing there to watch out for that they like to test is the imminency.

So there is Dolly show up and friends will beat her up. Assault ‑‑ the imminent threat failed because ‑‑ that's testable.

Battery, you need intent. I understand some of the students are getting confused. Battery is the intentional touching. Harmful or offensive touching of another. What people are confused with because they feel it has to be physical touching. It doesn't have to be. So I blow smoke in your face, that could be battery. There's one on the Multistate where I PLANT roses knowing you are allergic. So you practice this and write it back in your checklist so you have a good understanding of how the concept is tested so you don't miss it. You don't need an actual physical touching for there to be a battery.

False imprisonment is another one they like to test you. Two things. You either need to be aware of the actual confinement or damaged by it.

Again, false imprisonment, you need to be aware of the confinement or damaged by it: So those are the areas they test you on. Words alone, not enough.

The store closes and they leave you locked in the store, is that false imprisonment. Yes, if you are aware. Or security guard finds you in the dressing room. No damage for false imprisonment.

Trespass of land. You don't need actual knowledge. So if you step off on someone's grass, that can be trespass. You don't have to have the actual knowledge that it belongs to another. Trespass to chattel. It's the interference versus conversion. You need substantial interference or complete destruction.

On essay, you determine trespass to chattels, conversion or both.

And what you will look at, is it substantial interference, complete destruction, if yes, I will talk about conversion. Common question on multiple choice, I go bowling, bring my own ball and I leave with a ball that looks like mine. Is that conversion? Yes. Mistake is not a defense. You can bring it up that ‑‑ bring it up that I was mistaken. But you act with certainty to bring the ball home. So that's conversion.

And another one. You will see on the fact pattern that you are in second grade, and chair pulled you fall and classmates laugh. This comes down based on the facts. Hypothetical, I just gave you, that would be equivalent to a battery versus if I told you, you had note spelling that would be intentional infliction of emotional distress. Same facts changing who the party is and who is hurt could change to a different tort. So you want to be aware of that.

When you do see an intentional tort, exam, you want to identify as many as you can. Break it apart.

For example, Tommy was angry at Peter. Angry is a good word. While driving to store to get milk. Tommy saw Peter, and he took over him in the alley. He pushed. There is battery.

When will I talk about assault? I would talk about assault when I know there's front to front face eye contact type thing. You push me in the back of my head, assault. Versus you pushed me where you hit my nose. That's assault.

And stood over him, that's a subtle issue, is that equivalent to false imprisonment. To do I have fear to leave or trapped.

The other thing I want you to understand, every single tort has causation. Actual cause and proximate cause. But do we talk about it? No.

Not in intentional tort. Fraud or misrepresentation. But causation does exist. What you need to do is look to the facts if it's at issue. If it is at issue then you need to address it. That's why I have it there is my approach. Intentional tort. I look at causation. Damages and defenses.

It's why don't you setup. Do I talk about everything? The facts will dictate for me as to what I do need to bring up. So I want you to be aware of that.

When you do find intentional tort especially on the multiple choice questions, please always look to see if there is viable defense. We have a tendency to over look that. So to look at that and break it apart and go forward from there.

Make sure you understand it's tort call of the question or criminal law? Why? Well, regards to examination, I'm looking at this in your exam, that if you don't pay attention to the call of the question, what happens? Most likely pick a tort question and crime question and the call of the question dictate the other. So make sure you break apart on what's important.

You will find in criminal law multiple choice questions are lowest scores for students on the exam. And it's not that you don't know the subject matter, it's that you don't pay attention.

It's the lowest score out of the three on the Baby Bar, it's the criminal law and MBE.

Negligent is testable.

With negligent, you want to start with special duty. Then general duty. If no facts trigger that, we go to general duty.

Mnemonic sole, statute. It's negligent per se. Omission to act. Land owner occupier, duty owed to lesser land.

It has to tell you in the fact pattern. It hasn't been there at least 25 years. But it's in Multistate. It could come up, when there is an accident can the guest of my car sue me for negligent. Then you need to show gross negligent. But they have to tell me. No way they can hide that from me.

General duty. Reasonable prudent person. If you do see this trigger, you will talk about Cardozo as well as Andrews. Cardozo is majority rule, and Andrews is minority. You have children based upon age. And common carrier. With children, adult activities takes it out.

Then you have your breach. Res ipsa. It's rare, walk through door falls on me. Who pushed it ‑‑ I don't have anything to point my finger at.

Causation, you have actual cause and proximate cause. But for and tort, two main things they like to test.

Successive tort, I one my car into yours, and gave wrong medication at the hospital. Two independent negligent acts that cause the harm.

And would be successive tortfeasor. That's testable and be aware in regards to the examination.

Further in regards to causation. We are at the Baby Bar mini series. Proximate cause. You look for the foreseeability. Is it a direct act or indirect act? Is it dependent versus independent. These are your steps. It's broken apart for you. So it's important to break it apart step by step. If it's direct act, foreseeable, get out. They didn't put in issue. If it's indirect, they are playing with you.

The fact that the doctor gave you wrong medication, indirect of me running into the car. But is it dependent on my action and it was. I put the chain in motion because I cause the action to cause to get aid. Dependent act and foreseeable or unforeseeable. Negligent act of a third party are always foreseeable.

You will know in the acts too. Criminal acts, not foreseeable. But if you have knowledge of criminal activity that's going to change things. So it's factual.

General duty, in regards to animal. If you know your dog likes to scratch somebody's face. You have knowledge. You knew. So facts are going to dictate. Use the general principle and go from there. Damages and defenses.

Remember, intentional torts you don't have general damage. Negligence, you must have general damages in order to recovery, pain, suffering or property loss. If you don't you get nothing.

Negligence, you need to have some form of damages.

Of course, your defenses, mnemonic Clark.

To say the plaintiff, last chance you can't bar me under contributory negligence.

Again, negligence is highly testable. So it's an area that you want to practice and get a good handle on because it comes down all the time.

Strict liability, does come up on the essay and multiple choice. Two ways. Animal. Look for the animal known propensity. Horses trespass, and cows trespass. And in regards to goats, buck, in regards to animals ‑‑ give you something you are familiar with or not snake. What kind of snake. That depends on propensity.

Known propensity. Generally look to see that they fail.

Restatement second and normally dangerous activity. This is where you are dealing with expositive, toxic wastes. BB day care. There was a day care. Strict liability for two reasons. Theory or the call. And if you hire someone to exterminate your home or put traps all over the place. Could I be responsibility under strict liability, in that fact pattern. The lady knew this and told her you can remove the boxes that had the rat poison, you can, shouldn't you tell her that you better remove them because she runs a day care. And kids might eat it?

You address it. And you still have causation and damages. And look for defenses. Strict liability is always a better answer choice than negligence, why? Because with strict liability, liability regardless of fault.

I don't need to show the duty and the breach.

It's liability regardless of fault.

If you do see strict liability on the land, the other issue is nuisance. And these are cross overs. You want to understand if I see this, I should look for this, this will help me identify issues. If you see strict liability on the land, look for private uses.

Dynamite. Vibration, cracking my pool. I can't use my pool. So these have tendency to cross over with each other. Strict liability on the land, look for private union argument. The only exception to that rule is if the call is very specific. Is your liability strict liability? That's very specific.

Patrol cars liability is very ‑‑ I don't mind the answers not being published but I would like to see the questions. I do know that there is two essays in contracts, tort and criminal law. People were not clear in regards to the facts.

If products liability were not test at the last Baby Bar, then I will prepare on. Four theories, battery, negligence, warranty, and strict liability and tort. Remember, with products liability, you go through at least three theories if it's a general call. So what theories a liability. It's product exam, negligence, strict liability and tort, and implied merchantability. Always use the four peddle case.

And actually, they knew that if the Pento was hit, rear impact, the gas container would explode. So when it did occur it's battery, based on the knowledge, they didn't warn the public. That is actual battery. You are going to see knowledge. And where they have tested on the bar is with the allergy medicine and they knew potential blindness.

Battery. The facts will tell me. It's not tort or product you can hide.

Negligence, testable. Is it a manufacturer? Distributor? Retailer?

With a retailer, under negligence, what's the duty? Unless they have some type of knowledge that there is something wrong with the product. Duty to act reasonable.

Manufacturer or distributor have a duty to inspect, correct, if you buy defective product from the grocery store? Can I sue the market? No. But if the facts told you they are aware that there is a leek leak in the can. That would change.

Generally you would bring a theory, but knock it out under concealed ‑‑ warranty. On the Multistate, this is a representation on the product itself. Your bike will survive any cracks. It's representation. Expressed warranty to sue under. Implied warranty of merchantability. The product is fair‑age in use. The key thing to look for is there misuse of the product. The key thing, and this was a case, a woman did use a stepladder, but she used it backwards. You walk up the stepladder to hold up to reach something. She put her butt against her and it toppled over and he was injured by the fall. It is average use? No it wasn't. But the argument is is that a misuse or foreseeable misuse. If it is, there is going to be liability on the manufacturer.

And another argument, a chair, how many use a chair as a ladder? Step on to reach something in a higher spot. We misuse chair all the time. So that would be an argument as something foreseeable. In regards to the implied warranty of fitness. If you see that and go back to argue the expressed warranty. Those go together. You need some form of representation.

Again, with products liability, if you have a general call, what near of liability, negligence, warranty merchantability and strict liability in tort. Three theories in and of itself. Regardless you show defective product, commerce, causation, damages, defenses.

With this, I love it. It's canned up. All I need to do is have my approach and put in the facts for the actual essay. So it's a good area I like they do test because I can go under remote and plug in my facts with my argument and do well.

If you have an endorser suing, I can't sue. Because he is not a manufacturer. You would sue them under negligence, general negligence we just talked about as well as misrepresentation. So again, negligence or misrepresentation and/or both.

Okay. So that's your products liability.

Vicarious liability. People miss it. Look at your call of the question. I go to Ralph and I am injured and box boy helped me and I he drops me. And suing Ralph, vicarious liability. I'm suing the employee independently. Pay attention to that to know when it's triggered versus not.

The other thing on the example, if melody is suing Ralph, how many theories? Vicarious liability for the employee of the box boy but also Ralph for their independent negligence because I see my second call is liability of the box boy. If you are imputing to Ralph the conduct of the box boy, you always have to show vicarious liability the underlying tort you try to hold them liable for. For your employee's negligence, you got to show their negligence. And through the store vicarious liability. If I'm suing employee separately. I'm suing Ralph on their own as negligence besides the employee's negligence since he is in a separate call. Good idea to look for that. That's testable.

Day care exam, sue the mother. Exterminator as well as her own negligence. He was in the call himself as to liability. The child's parent going after him, which would be independent negligence. That's a safety net to see I do need to talk about liability on their own whether or not as an entity failed below the standard of fail based on their own conduct.

With vicarious liability, you have independent contractor. There are certain things that's not delible. Maintenance of a car, for example. Anything that's geared to the public, elevators, amusement rides, escalators. The entity you are suing, I hired somebody else to do it. It's not delible.

And anything that has peculiar risk ‑‑ they are not going to get you off the hook.

Public policy type thing.

Parent‑child, general rule. Parent is not vicarious liability for the conduct of the child unless they have obligation or knowledge to make sure your child behave.

Nuisance. Public and private. Public nuisance seems to confuse people. It has to be the term general, you have to have harm different and kind. They test this a few years back, it's going on year six with a sound horn, a woman love to do bird watching. Emergency alert system that keeps blowing the horn. That's a full exam with nuisance. What do you say an hour on nuisance. Public nuisance as well as private nuisance. If that does ever come back, the key thing with nuisance is the balance the parties rights and how it's effecting her and bird watching and birds fly away because of the born versus emergency broadcast system, they were just testing the system and not emergency at that point and make your argument.

Defamation. Defamation does come up every once in a while. With defamation, I want you to look to the call of the question. If it says what theory or theories of liability, and I see reading the facts it's defamation, I also know I'm going to have invasion of privacy tort to talk about. The call will dictate for me. And you will know based on the call.

Defamation students don't do well because they don't break this apart.

With defamation it's a false defamatory statement. Published intentionally or negligently to a third party either libel or slander and look to your defenses.

They are going to test this on the Multistate and they will trick you. Such as you send an e‑mail and your mother reads it. Is that defamation. If that's all the facts, no. But could it be? Yes. If I knew your mother live with you, I send it anyway, that's a third party publication. What? Yes.

So again, the facts are going to dictate. It has to be a fact. So I think you are a snob. That's an opinion. I think you cheat at cards, that's opinion. Look at the facts itself and determine facts versus opinion.

It has to be published. Publication intentionally. I didn't know it was wrong. Or negligently I should have shown.

Nape and report ‑‑ newspaper and report about movie stars, they knew and should have but didn't, so that's negligent publication. The parties have to understand the defamatory meaning itself.

That's libel per qua. To show the defamation. Innuendo. The inducement and colloquial. I'm suing you for defamation. Not recoverable. I can't pinpoint what you actually meant.

Libel or slander.

I, the something you see, slander something you ear.

With libel, it's broader, things that are published where? Broadcasted. News, on the television. On your computers.

We can argue that's a form of libel. Radio. Because it's more permanent. And the more permanent we can argue, people don't forget and that's why again if it's libel we presume general damages. Spoken, people forget. So you have to show either slander per se or general damages to be presumed, or you show you general damage itself. Damage your reputation or whatever the case maybe.

When you do see slander and argue per se, you look to see disparaging in crime, low loathsome disease. When you do find defamation, same with every tort. Look for defenses and look for two or more.

I have listed qualified privileges, constitutional privileges, and absolute privileges.

Qualified privileges, acting in good faith. Disclose that I'm stealing money, for example.

And another prejudice, constitutional privileges. Show malice.

Absolute privileges, speed and debate claws congress on the floor.

And president maybe using his prejudice in regards to what he is speaking. Defamation on what he is doing. And they do come up more often than we have.

Truth as a defense and consent.

Those will be broken apart and you want to go through as well. Truth as well as consent.

Besides in regards to defamation, if you do see defamation published intentionally, I see intent. What other tort will be there? You would argue intentional infliction of emotional distress. Defamation does have a relationship with false eye in the public eye. The call is going to dictate for me.

So in regards to defamation, what theories, I will talk about false light. Then I go and determine was this published intentionally. If the answer is yes, then I know I have intentional infliction of emotional stress.

So you see how sometimes even the call, what theories tell us me already two or more theories, go through tort checklist, and see two or more torts to grab on and argue based on the facts.

Knowing how they come up and have a relationship will help you identify more. Spotting more.

With your invasion of private. False light in the public eye does come up. And public disclosure of private facts, and intrusion upon seclusion. And appropriation of name or likeness ‑‑ multiply choice.

Appropriation of name or likeness. If I take the name, tiger wood and I try to sell his picture, no.

If I print it out and post it in my dry clean, if I'm using that person or image to build my business, that would be promotion of name or likeness.

Taking a photo and selling it, no.

It's something you want to play with and understand how it's tested.

Public disclosure of private facts. Private facts, medical information.

One in regards on the Multistate where they broke into the Governor's office, broke into his safe and got confidential papers. So could I argue that public disclosure of private facts. They actually wanted you argue introduce upon seclusion. The reason the answer as to public disclosure of private facts is not valid answer. It's what he took the confidential pain was a report of the investigation that they were doing that was going to be disclosed. But until the investigation was completed, you can't conduct it. It's a tricky Multistate.

These are four independent torts under the umbrella of invasion of privacy. So again, if you see invasion of privacy, go in it and see which one or two that are being tested based on the facts. Break that apart. That's important.

You also have your business torts, interference with contract, and interference with prospective advantage. I have not seen them on the Baby Bar bar but more on the bar exam.

You know I have an employment contract and you interfered with it. That's wrong. If you think about it in life we do more often than we should. I have a contract with UPS and I contact FedEx to see if they can get me a better deal. You can't interfere with your own contract. So it has to be an outer or thirty party.

With the example, there's no liability. Versus a third party reaches in and tries to take my business, let's say FedEx contacts me how much UPS is paying you I will give you a better deal, that is interfere with contract.

Interference with prospective advantage. Negotiations on the table and you interfere with that, that will get the mention of the contract itself.

Both of these are intentional torts.

So if you have the call of the question as to intentional tort.

Improper lit Titian torts and those, don't worry about that. Use the legal system to your advantage. Lawyer brings a suite ‑‑ that's not what the system for.

Abuse process works civil and criminal. And malicious prosecution, criminal and civil. You would bring up both.

Misrepresentation. It does come up on the Multistate. Key thing, is it intentional equal to fraud. Deceit.

Negligence misrepresentation. When you get to your upper classes in remedies, you are going to learn the reason we have distinction between intentional negligent is the remedy. In regards to what you can recover. For your purposes for the Baby Bar you look to whether it's intentional or negligent. Don't worry about the remedy. You don't have that course yet. But, of course, if you have intentional, what does that tell me? I look to see if there is any other intentional torts I can grab onto.

The key thing they like to test is the relationship. So do I have an obligation to disclose something to you. Do we have a fiduciary relationship. If you and I run into the street and I happen to know that you have stock, that you are not happy with, and offer a price. I buy from you, did I commit misrepresentation? Answer is no. There is no representation at all.

If I was an officer or director of that corporation and didn't tell you, that's an omission. Oops. Different scenario. Because I have a relationship that would change everything.

So I would be accountable in the course and remedy would be the difference of stock price of what I paid for versus true value in and of itself.

This is what I called torts in a nutshell. You want to make sure when you practice now, and hopefully you have been studying torts, what I recommend is plugging into your checklist. When I do multiple choice question, I do essay, and I see something that wow, I didn't know happened this way. That's a battery. I will put on my checklist. Roses or planning the rhos that will trigger my memory that's battery. Of what you see in order to what understand how the concept is tested.

The more you practice and understand how these issues rise on fact pattern, I am not able to ratting your cage. Because you understand how it's tested.

So the more you understand six ways of how you can test me on battery, you are not going to falter anymore. So again, dissecting it.

What's going to happen at this point is that you are going to be sent an essay question, tort essay question, and you will be sent 33 multiple choice questions.

Recommendations. Number one. We are busy and the reason you will get it tomorrow, is I want you to at least outline the essay questions. So when I talk about to see if you are seeing the issue. That's important.

On the essay question, first thing is read call of the question first. Why? Two things. I will review that next week.

You want to determine if it's a general call or a specific call.

If it's a general call, your point value in two areas. Eye, the issue spotting. A, the analysis.

So I need to know that going in.

Specific call, all comes down to your analysis. Issue spotting. So I want you to make that determination.

I want you to read the call, general ideas to the general versus specific. Who are the parties. And it's torts. But on the Baby Bar you won't know. So you need to determine the subject matter tested. This is important before we read the facts because I want the checklist in my mind. I know it's tort, and familiar, and visualize the checklist. And read back as a whole, and read second time to dissecting.

I told you that the examination is taken online. So I would like you to do with the essay question save it on your desktop. Open it up when you are practicing and start using the highlight feature of the key facts as to what you would highlight in order to determine as to what the issue is. We got to understand how to do it, that's how they are testing.

When I talk to student today who gets special accommodation, but they treat it as online. She goes to the computer and everything on the computer, she doesn't get the documentation handed to her separately. She gets additional time that's it. Something again we want to be aware and practice in emulate what you are going to be doing on exam date.

Also the same thing with multiple choice question. 33. Save them on your desktop. And then read the call, and go through the fact pattern and pick your answer choice. This is what you will be doing on exam date. So get use to it and take in the format of how it's going to be tested on that date. It's very important.

Tort again, it's Black Letter Law. It's not a hard concept. Multiple choice questions, they are testing the nuances with the Black Letter Law. When you take the questions, dissect the elements and see if they are supported based on the facts before you pick your answer choice. That's important. If you don't do that, it will get you meaning you will get it wrong. You want to break it apart and dissect it and make sure there's battery based on the fact or whatever you are looking for, again, based on those facts.

Everybody has a good handle of what your assignment is before next week.

So when you get that essay written, if you don't, you should, send it to me, I will look at it and give you feedback as to your strengths and weaknesses so you know what to work on to make yourself successful on the Baby Bar.

Also, multiple choice questions, if you miss a few of them and want me to go over them next week, let me know and we can go through as a group. Break it apart.

A lot of times, we get it down to two correct answers but we don't pick the best answer choice. Why? That's something that we most of us need to work on.

Is there any questions for me at this time? Again, go back, we have gone through torts. Go back, tighten up on torts. Go ahead ready in regards to the essay and multiple choice. We will be rotating to the subject matter of contracts. But remember, you never leave torts. Review your checklist. Keep it fresh in your mindset. Doing Multistate. Once we move to another subject, you are still doing issue spotting in torts. You can do 3 or 2 in contract. You cannot abandon the subject matter. That's important.

If questions come up, shoot me an e‑mail. If you feel that you are really ready and do more essay questions, go to Taft website and go to the prior bar questions and click on it and there are some past Baby Bar questions. I recommend you do those. And it's good to have an answer, go back and read it and see what is it that you did miss or did not miss.

Shoot me an e‑mail if you have questions. Talk to you next week. Everybody have a good night.

(Event adjourned at 6:48 p.m.)