TAFT LAW SCHOOL REMOTE

BABY BAR

8-24-2021 6:00PM – 7:00PM

INSTRUCTOR: Good evening. We will start in approximately five minutes. Thank you. Good evening. We will be starting in three minutes. Thank you.

Good evening. We will be starting in approximately one minute. Thank you. Good evening. Our focus will be on the essay question. Before I jump in, a few things. These sessions are recorded. If you want to go back to a lecture, go to Taft's website. Click on the student section. Go to the baby bar miniseries.

The other thing I want to point out. I will go over how to take an essay online before we jump into the tort question. Taking exams online is new to us. Some of us are having a harder time or we don't know what to expect. I always want to know what to expect. For the baby bar, you will sign in. You will get an essay question.

You get an hour to write it. You take a break. You sign in and get the second essay question. You get an hour. When you are done, you get a break. Sign in for the third one. You don't get all four at the same time. You get one at a time. Some students fail because they never get to essay four.

That may not be good for some students. It depends on if you are good at watching your time. Taking exams online, you have exam soft. You will download it prior. They have practice tests. You do take it. They are playing with the software. Making sure you understand how to use it. Do your spell check. I highly recommend. One student said they did all five prior to. I would recommend that to you.

Once they say, go. You will see your essay question on your screen. You can highlight keywords. I recommend this. You will have digital scratch paper. The only problem I have is you can cut and paste from it. That is good. But again, a lot of times people don't want to put enough there. That is where you are doing your thinking. If you feel you can't, start putting it in your exam answer.

Then go make your scratch paper that you are using in your exam answer sheet. A coherent essay. There is plan A and B. You need to map this out, so you understand what is going on. I would highly recommend it. You will not be able to cut and paste from the essay question.

You do have access to spell check. You can cut and paste from scratch paper. You will read the call of the question. Read the fact pattern. Mark it up with keywords. Then you have ready to outline your examination.

Remember the baby bar only administers one essay at a time for an hour. You want to practice this now. You get your time frame down. After the hour, it will shut you out. Let us go to the exam for tonight. This is a good, strong products liability essay question. It is a racehorse.

This is a real baby bar. This exam they gave twice. They said former on one. Farmer Jones on another. They gave it within a few years of each other. You need to learn how to break it apart.

It says what theory or theories may the injured consumer recover damage from. What defenses should they anticipate in an action against Grain Co., Farmer Jones and big food. Do I know anything from reading that? Product liabilities. Theories, two or more. If I saw negligence, I probably made a mistake.

Recovering damages, is that singular or plural? In defenses, two or more. Remember, I have told you previously defenses can be defenses of what we learned, or it could mean counter arguments. You need to learn to determine that and break it apart. We will pretend we read it through. I highlight key things as theories.

I am ready to read the facts. I will mark up my fact pattern. Grain Co. purchases grain from farmers to resell for Spring. Parasites eat the grain after a few months, Grain Co. always treats the grain with an invisible mercury-based chemical to poison the parasites. Like all seed grain dealers. They all do it.

It treats it with what? An invisible mercury based chemical. I can't tell you. Maybe it should be colorized. They sell it by the truckload. The trucks display signs that state seed grain. Not for use in food products. Is that adequate. Sometimes you see the postal service. What it says on the truck doesn't mean it to be true.

She was present when the seed grain was delivered and supervised the employees who unloaded it. She used some on her field. When she had some left, she fed it to her dairy cattle. It says not to be used in food products. It will make milk. That is a problem. It will be contaminated.

Farmer Jones sold the milk produced to Big Food Stores inc. People became ill. The center for disease control determined it was the cause of their illness. The contaminated milk. CDC traced to the Farmer Jones. Will the milk consumers recover damages? What should they anticipate in an action against?

We are looking first at Grain Co. They are the manufacturer. They are putting it on the products. They are held accountable for products liability. What I grab onto? I am most likely going after negligence. Implied warranty and strict liability and tort. I will break that apart. I will go through all three of those theories. They are a distributor.

Negligence. Strict liability. Tort. Same theories. I have to go in looking. I see big food. Who are they? A retailer. When I see the retailer, I will go negligence. Implied warranty and strict liability and tort. What is the difference? Big Food is the retailer. The milk came packaged. I am thinking of the sealed container.

Holding the retailer accountable. They had to have some knowledge. They should of known something was defective. They can't open each package before they sell it to consumer and determine if it is contaminated or not. That would be hard. Once I read the fact pattern, I am ready for my virtual outline.

You will see I write it a little bit more. I do it so people know what my terms mean. If you do this on exam day, it is okay. If you cut and paste it into your answer, the terms are great. This is something I want you to practice with and see again what will work for you.

With products, I talk about negligence. It is not right. The reason I do it first, I want to do a strong job and steal from it. I want to do a good job at the start to infer back to what I discussed.

With regards to negligence, they sell the seed grain. They sold this to farmer. They have a duty to make it clear that this is sprayed with the chemical. Did that breach? Remember you have a design defect. We have a good argument here for a warning defect. Did they fail to warn? Farmer will say yes. You didn't give me a bill. That said sign here. Make sure you don't use the seed in food products. Is that enough for adequate warning? You treated it with poison. Did you make it clear that you can't feed it to the cattle?

Is it easy that I can make a mistake? Can I tell the difference? I could mix it up. That is a problem here in regards to your inadequacy of warning me. This is a design defect. It is invisible. No one knows if this seed grain was treated. How will I know? Why don't they make it a neon yellow? We can tell then that it was treated. Make sure I don't mix it up and feed it to my cattle.

I definitely see this as a design defect. Here is where the call of defenses comes into play. Grain Co. will say why are we held culpable? That brings your successive. You have two independent negligent acts. Farmer Jones using this in her dairy cattle feed. We have successive tortfeasors. Each is pointing to the other. Two acts that cause the result.

It is foreseeable that it could end up in a food product that the result could be in consumers becoming ill based off the poison yes. Damages. Pain and suffering. The milk consumers did get ill. If you notice, I don't have a lot of facts under damages. I talked about general damages. I talked about special damages. Why? The call of the questions said damages. For some reason you will learn, they love that call. They figure you will mess up. Look through your damage checklist and see how many. I want you to break it apart

We have a tendency to not address it. The call of the question. I am still talking about milk consumers. They will argue. Indemnity. When a defendant is secondary liable, they will argue that the farmer is primary liable. This is a gray area. I don't care how you argue. I fall back on contribution. If the court finds you both culpable, (inaudible). When I see contribution, that should tell me it is a joint issue.

I should of had an actual cause problem. Either successor or concurrent. If I just did a buffer, I knew I made a mistake. I am addressing indemnity and contribution. That is a way to make sure I am seeing the issue. That is the first theory I am outlining.

Next is implied warranty of merchantability. You are warranted it as fair use. The seed grain is fair and average use. You failed to tell me it was contaminated. I didn't know it was treated. You have your causation. Since I am dealing with the same plaintiff, I can define, discuss. That is permissible. I will run out of time.

Break it apart and go through it. That took care of my implied warranty. It is a foreseeable use. You will be strictly liability. They were failed to be adequately warned. It made him ill. That is my first outline for Grain Co.

I always look back at the call of theories. I talk about negligence. Damages. Defenses. Did I cover that? Indemnity. Contributions. I am ready to call number two. The key thing is you have the milk consumers. Some people do want to argue. There is nothing there in the facts. They set us up through this.

The milk consumers had no knowledge. They didn't do anything. Milk consumers versus the farmer. Product liability. She has a duty to inspect for dangers. This is a manufacturing defect. You fail to warn. You could

It is where the product is different than the rest. Here the cows produce good milk. They have the new seed grain. Different seed grain, everything will go back to normal. The product is different and kind. She fed the grain that was treated with the poison.

The milk produced was different from what was previously produced. You notice I am focusing on Farmer Jones. Her dairy cattle would not have produced contaminated milk.

Is it for seeable if you produce milk with the mercury poison? Absolutely. Your damage, I can define. You want to know when to get rid of it versus talking about it. I can define and discuss. It is the same plaintiff. She manufactured milk with a defect. You have causation damages.

In regards to strict liability, she made the milk without warning. It had the poison. She mixed it up with the improper field and gave it to her cattle. Milk consumers are foreseeable users. Causation. Damages. Go back to the call. Did I answer theories? Yes. In regards to Farmer Jones, you could of brought up contribution as well.

Negligence. What is the difference here? They sold contaminated milk. They have a duty to discover anything they are aware of. It is different for a retailer. They have to have some knowledge. Because of this sealed doctrine. When something comes packaged, I am off the hook. It is tested quite often. Look to see if the retailer had some knowledge. When they took it out, they saw pieces in the crate it came in. Look to the facts.

You had a sealed container. Big Food is still accountable for implied warranty. They sold the milk to the consumers. You will see at this point, I will get in and out. Big Food can get. They are not the primary party. Big Food should be able to seek indemnity from the two of them.

If you think about it, what people don't understand, people buy products from all over the world if I go to a store and buy something in China, how do I sue? Do I even have jurisdiction? If you sell this, you will be strictly liable. You have a remedy to seek indemnity. They have a relationship with the distributor.

In regards to your answer, a few questions came up as well, in regards to your milk consumers, I will tell the reader it is products liability. Negligence. Strict liability in tort. Express warranting. Implied warranty of fitness. You have to let them know what theory.

You noticed in my answer I put negligence requires that a duty was breached. Is that not nice? That is a pleasantry. It is a time factor. Does the definition give me points? No. You will have no duty breach. It won't give you anything. If it is a time issue, get rid of it.

You didn't finish the exam. Get rid of all this fluff. What facts prove this element? It is important. How will I know that is based on the facts? In regards to milk consumers and Grain Co., they have a duty to inspect. They treat this with mercury-based poison. Sold it to the farmer.

Since the farmer produced the milk, the users do owe a duty to care. A warning. Did you fully warn, if you use the seed grain, which results in a food product that will be poisonous? We provided adequate warning. You treat it like every other grain seller. Shouldn't we know it has been treated? Life happens. We all make mistakes. It easily could get mixed up with other seed grain. There is a good argument here.

As a design defect, there can be a mix up. I don't know which seed grain was treated versus not. Especially since it is sold in bulk. It is probably sold in bulk. I put it in my silo. Off we go. How will I know which is which? It is a problem. Actual cause. This is a counter argument that supports the call of the question for defenses.

Do you see that? They are trying to make something fit. There is nothing to show. The farmer is using this in a food product. The milk consumers would not have drunk the milk that was contaminated. Your approximate cause is foreseeable. It is treated with this poison‑based mercury. Whoever I sold it to could use it as regular feed.

It is foreseeable that the milk to market can be come seriously ill. They can get through pain and suffering. Why didn't we talk about special damages? Were there any facts? No. I will make you aware. I will seek in regards to indemnity. Farmer Jones is the liable party. You could argue both sides.

Did you really warn her? She fed it to her cows. Maybe she should of looked. You can argue both sides and then conclude. Next is your contribution. Then you move to the next theory. You want average equality of the product. We treat this with an invisible‑based chemical like all other seed grainers. You didn't make it clear when she bought it.

You need to show it is an effective product. You did sell it to Farmer Jones. Based upon your inadequate warning, you will be held liable strictly in tort. I look to my first call. I do a good job in the first lawsuit. I will steal it. Define for the rule. This exam is a racehorse. There are some products worse than this. Most you will find racehorses.

It is something right for testing. I believe the tests were not products. There wasn't negligence. I know there was strict liability. I will go through it so we are prepared. Negligence. She is a manufacturer of that milk. When she sold that milk, that was treated with the poison based, she did breech her duty. For her failure to properly keep it separated.

Is it foreseeable? If you feed the cows the wrong grain. It is pretty straightforward. Causation is in and out. They are identical plaintiffs. The product is fair and average in its use. There was a defect. It was placed into the stream of commerce by Farmer Jones. She is responsible. Your causation and damages. Sold to the milk consumers with inadequate warning. The product was sold to the milk consumers without letting them know. The causation and damages.

In regards to contribution, you could of done it there. It is a timing issue. If you did do it there, one or two sentences refer back to the beginning upfront. It is important. They have a duty to warn them of any known defects. There is nothing to say the milk is contaminated. You can knock this out under duty or breach.

You are what? Running out of time. They still won't be accountable. The milk is not a fair and average use. Damages I am stealing. The milk contained the mercury poison. It is a defect. Big foods will be held strictly liable. They will seek indemnification. They had to control in regards to the making of the milk. They are not the primary liable party. Farmer Jones and Grain Co. are. They will go after Farmer Jones. Once I found it was an absolute, I was done.

Non‑issues don't get you marked down. I would get in and get out. Does anyone have questions in regards to this products question? It is loaded. It has a lot of good issues. No one asked about question nine but one student. I will go through a few questions asked.

When it is appropriate to give explanations addressing specific views? For some reason, if you go to the bar website and look at prior questions they talk about Andrews and Cardozo. It is not always is there. It is a waste of time. Remote plaintiff. It is always a first addressed under the duty.

If you can't show that I am in the foreseeable zone, we are done. No duty. We didn't breach the duty. That is why you fall back on an essay to Andrews. Andrews says you owe a duty to all. That is why it is causation. It humors you. Was it foreseeable? It could be. On an essay question you talk about them.

You are supposed to answer according to common law. You always answer under majority rule. The rule of thumb. If they get you into modern law, you go through majority rule first. For essays, you do both.

I will only focus on Cardozo on an MB. You. Some courses teach at the beginning. They give you all cases that in regards to that you can sue under tort theory. You don't need it. The only time I have done that is if products exam wasn't a racehorse. They bought a car. When he was driving it, it caused a serious injury.

It is very rare. I have seen that twice on the baby bar. You will know based on the facts. That tells me I have to argue an issue here. You will know. How do I know when I get in and out? The key thing is facts. If I can show you are warning me, I am in and I am out.

Contribution, it does belong, it is usually after damages. You should have release, contribution. All that falls after the damages. Some people call it a defense. All that would come after the checklist after your main damages.

You can have a releaser liability. The liability released for this claim. Generally that is a causation issue. If you see that, look for contribution and indemnification. Those terms come up with products. Any questions? We have a good handle in regards to the essay. Remote plaintiff.

The guy has a shotgun in his car. The gun goes off. It hits someone. It hits glass. She is terrified by it. There are two questions. The glass didn't hit her. In regards to the liability for the gun going off, if you go through, is she a remote plaintiff? Yes. You will look to the actual facts. Have they tested that? Yes.

Anything you don't feel strong on, plug it back into your checklist. Where liability would be cut off versus not cut off. It can only go so far. A few questions people did ask about.

One through three. You have to pay attention to the call of the question. Look to the call. In an action for negligence, which is the following to get delta off? You have to look at the call. In regards to another one, Eddy lived in a neighborhood with crimes. She is suing because she was attacked. Does he have a duty? If I let a burglar in, do I breach my duty? I don't know there are crimes going on. When someone comes on my property, they are a licensee. Other people may have known.

People are not paying attention to the call. Look to see what is the defendant's best defense. The first thing, I will see if I can knock out the tort. The call says what is the best defense. If I can show I didn't breach a duty, those are all stronger arguments take it by the hierarchy of your checklist.

She broke into a grocery store. She took a six pack of beer. It was contaminated. She became ill. She is suing the beer company. Will she be able to sue? She can sue them for negligence. Express warranty, no. She can't because of unclean hands. You are not responsible for it. It doesn't work that way. The fact that the beer is unforeseeable.

Another question is number 12. Publishing for defamation. The key thing here is it is a false defamatory statement that was published intentionally to a third party. If I send you an e‑mail, I am not responsible for the defamation. If I am saying all these false accusations, there is no defamation. If your mother reads it, different story. Now I can be held accountable. Most likely, I can't foresee that someone would overhear the conversation. If it is reasonable, that is publication of a third party.

The mayor met and talked in a both in the corner. They were being recorded and didn't know it. Accusations came out. Where is the publication? They didn't know they were being recorded. If they knew, that would change everything. Another one is a governor. He was doing an investigation against another official. He had the documents in his safe.

A robber broke in and got the contents out of the safe. It was published. Would he be responsible? No. It was an ongoing investigation. Little nuances. You practice the questions and understand the why and go back and plug it in. Then you get a better understanding. Emotional distress.

They will use the term. It is your job to determine if it is intentional or negligent. Look to the facts. Look to that. If someone is upset, humiliated, sorry. You need physical injuries. As I pointed out to you, multiple choice questions, you answer according to common law unless the call dictates otherwise.

You address the common law. Keep that in mind. They will trick you on that stuff. The other area is trespass. When you see that, you stop, ask if it is intentional. I can sue you. Negligent you need actual damage. If someone shoves me on your property, I didn't do anything. You want to look for that. They usually give you something with the airplane. Airplane trouble. Versus if I fall out of the sky, that is negligent. You need to show actual damage.

This is stuff to be aware of and plug in. Any other questions? I would recommend you practice in regards to products liability. If you want more, shoot me an e‑mail. I will send you some exams to take a look at to get an understanding of how they are tested different ways. That is important to contrast.

At this point, you have had torts. You have to keep up on it. Now, we are going into contracts. You will study them. You have to visit torts or you will flush everything. Put your checklist and inner checklist in rotation. I have an understanding of how it comes up in a fact pattern. It is stuck. It sticks with you. Keep doing that to get it in your memory.

I want you to review contracts. Go through it. See where you get stuck. If I don't understand what the mailbox was, I would go read about it. I wouldn't sit there. Don't just read. We have to do the application. Any questions for me? You are silent tonight. Shoot me an e‑mail if anything comes up. Look for that checklist tomorrow. Anything comes up, let me know. If not, I will talk to you next week. Have a good night.