TAFT LAW SCHOOL REMOTE

BABY BAR

10-12-2021 6:00PM – 7:00PM

INSTRUCTOR: Good evening. Welcome to tonight’s baby bar. I want to point out that these sessions are recorded. It is on the website. I want to point out these sessions are recorded. We have three essay questions to go over tonight.

If you have questions, pop them in the chat. I will be more than happy to help you. Let us stArt off with question one. This is a true baby bar question. It does give you negligence. You have to look to the elements and see what is being tested.

The call states, [Reading]. This is what we call a specific call. When they give you the theory, you need to take a step back and say, what element or elements are being tested? Defenses were said too. You want to see what defenses were raised.

I told you when you read a call, they could mean true defenses, contributory, or counter arguments. You are missing the counter argument that you got to go in there and look. Since this is specific, the facts will be important to us. There has to be some sub issues here. This is a specific call.

If this was a general call, that will get point value in seeing the issue of negligence. Let us go through the facts. Roofer contracted with Hal to replace the roof. We see the relationship. The usual practice among them was to place it around the house to catch nails and other materials. He failed to place one at the rear of his house.

I put breech question mark. Many nails fell into the grass of his backyard. Roofer did his best to clean up the yard. He missed a few. Did he breech? Six months later he was mowing the lawn. A nail propelled his mower into the next yard. That is a proximate cause. He put in motion the nails being propelled into his yard.

He neighbor stepped on the nail. It pierced his foot. They have been doing this. This is a true baby bar. Since the baby bar is online for this administration, you want to mark up your key facts as to what you are seeing. I want to answer the call of the question.

We want to pay attention to the call and answer the call. I have to mark this up. I can go forward and make an outline. I would recommend you make an outline since you are doing this online. You can make an outline and do it in their virtual scratch paper or stArt your answer online and use that.

You can copy and paste so it isn't a waste of time. You can write more of your definition. You will see negligence and point it out. That shows the duty was breached. This is a pleasantry. If you have time, do it. We will see what duty is owed here. He will make sure he cleans up after the roofing job. Who is that duty owed to? This is a remote plaintiff.

The relationship is between roofer and Hal. We have Ned suing. This is a number one issue. This is a true fact pattern. We have a remote plaintiff. Can you see that hear? You will go through that first. You owe duty to those in danger. He did his best to clean up. He has a duty for those in the foreseeable zone of danger. Is he within the foreseeable zone? I would argue yes.

You could foresee it going into a neighbor's yard. We will argue it is. You can come back and say how did it get there in the first place. You need to show a duty to everyone. The nails were embedded in the grass. We can argue that under Andrew's a duty due care is owed.

I stArted off with reasonable prudent person's standard. I worked my way in. How that comes up with a remote plaintiff. It stArted because the relationship was between roofer and Hal. There is your duty breech. He left mails embed in the grass.

He failed below the standard of care. Leaving the nail when you were doing the roofing job. Now you have proximate cause. The issue is was Hal's conduct of mowing the lawn a intervening about? The roofer's act of leaving the nail embedded is an indirect independent act.

Is it foreseeable? It is negligence of a third pArty. It will fly somewhere. That is not cutting the chain of liability. Damages two things. I will do generic damage. I won't do special damages with your medical expenses, lost income.

If the call did state roofer for negligence what damages and defenses, I will go through general and special defenses. I just changed the call on you, you will have to bring up general and special damages. They like to do that on the baby bar. There is no facts. Given the one sentence and get out. Is there any true defenses?

This is a weak exam. The issue is, did he fall below the standard of care? It is my backyard. I should be aware. The fact that I am walking barefoot, I should be aware of the condition. Did I fall below the standard of care because I wasn't aware that the nail was there?

You need to address comparative. You will see I will steel from it and weave in and argue. The other is the last clear chance. The last clear chance is a counter argument.

A plaintiff argument. The defendant showed that the plaintiff failed below the standard of care. Wait a minute. You that had last clear chance to prevent injury. Comparative is a portion according to fault. We wouldn't have to have that. Contributory negligence only answered the call of defense.

This is a difference of jurisdiction. I always know when I see a call, I will look to assumption of the risk. You have to show knowledge and comprehension. He is walking barefoot. What does he have knowledge of? Whatever is in the yard.

I don't see danger. Nothing here to show I was aware. I will show assumption of the risk will not work. It is a straightforward exam. Does anyone have questions on number one?

This one is difficult. Use you contract checklist. It a UCC exam. There is a lot of source issues. If they tell you there is a valid contract, doesn't mean there is no defenses. I want you going in there looking for that. We will stArt off with the call of the question. [Reading].

I can tell this is a contract question. This is important because my mind set can picture contracts. I will be thinking about contractual issues. Buyer manufacturers mattresses.

Buyer supply of batting ran out. It brought the production line to a halt. Buyer was behind on his payments to supplier.

On May first, they told him that he needed batting. He was willing to pay top dollar if they would deliver by the end to have day. The cotton company delivered. They said they would send him the invoice. The buyer was upset. It was 30 percent higher than the regular supplier. He opened the bail and stArted using it.

On may two, he had used five percent, sleep co cancelled the order. He announced he would close his plant right away. They demanded he pay the invoice or return the unused pArt immediately. He refused. He asserted that they had never entered into a contract. He said he had sold the remaining batter.

We are issues within formation. Since you are doing this online, what do we need to do? We need to break a pArt the facts. Mark things up so we know what is transpiring. Both pArties are merchants. Batting is dealing with a good. How you will write this is common law first. If it fails, UCC.

I go through my checklist. If it works, I go forward. If not, I bring up the aspect. I want you to understand that. Common law. If it fails, it goes to the UCC. Buyer who is a manufacturer. It says telephone. This is a standard way of testing the statute of frauds.

I can take the same fact and bring up buyer facts. Buyer e‑mailed. It is not embodied into one. It says key facts in your marking. Top dollar hill pay. When he got the invoice, he is upset.

He used it. Sleep co cancelled the order. It is a major blow. You should be thinking of excuses to conditions. If I can't see conditions being tested, why did they tell me it was such a major blow that he is closing the plant?

I told you those have a relationship. They go together. That is the facts in a nutshell. Follow your checklist. You would never stArt with breach.

The UCC applied to transaction goods. Merchants. You hire this buyer. He deals with mattresses. Both pArties are merchants. Next issue of common law offer. When the company told him he needed this bail of batting, that is the manifestation of intent. He said the end of the day. Cotton company and buyer are the pArties. Price is top dollar. You phoned him.

The offer is there. I still have to prove it up. I go to acceptance. I am in and out. I can spend a lot of time. Consideration. You need to exchange. The company operated itself to deliver for top dollar.

The formation was straightforward. They gave it to me based on the facts. I will get some points. The next issue is going through my checklist. It is straightforward.

It is worth more points. I want to look to the number of issues regard to my point. I want to make sure I don't spend a lot of time. This contract is oral.

The statute requires certain goods to be in writing or they are enforceable. Here, he called. He telephoned. He ordered the batting. It is a contact of sale. It violated the statute of frauds.

I want you to take your checklist. There are no facts to grab on sufficient memo. We can take it out by sufficient memo. If that fails UCC confirmation. If we didn't have an agreement, why would you deliver it?

Next is conditions. You will follow the checklist. Do I see express conditions? I will fall back. You have implied in fact. Within fact, that is cooperation. Good faith. You will never see the facts of who does what first. You say who should perform first. I would say cotton company must deliver the batting. I will argue that since they have to first, the company’s condition before buyers obligation arises to pay.

The company fully performed. Now buyer is looking for a way to get out. Since they cancelled his contract, he has to close his plant. We will argue. It has to be objectively impossible. That is the key.

What must buyer to? He must pay you will bring up impossibility performance. He is trying to fill it. That is why he ordered it. You didn't make us aware. Your excuse will not be what? Excused. It is an unforeseeable event. You can argue that is a not foreseeable event.

The pArty needed to know the purpose of the contract. Based on these facts, they were never told. If you look at the facts, it is 30 percent higher. The contract will be enforced. You go to breech. You fail to deliver. You will pay the damages. That would be the contract price. Pretty straightforward.

Call number two was the kicker. If you didn't understand the call, I tell people there is a way around it. Do they have the right to reclaim the unused battery? Take a step back. I delivered it to you. You are telling me I won't pay. Do I have a right to get that back? Since I didn't know you couldn't pay, I should have the right to get it back.

If a seller delivers the goods but the seller doesn't know this. He gives it to him on credit. You can reclaim the goods within ten days of receipt. You didn't know that were insolvents. You can always put goods under Title 9. Like with restaurants. It is all recorded so the world knows. Any questions on the contract question?

This is good to go through in regards to conditions. I see students didn't talk about statute of frauds and conditions. Always look for excuses. Two or more. Always look for excuses. Last question. Criminal law. What criminal charges should be brought against Art and Ben? We see criminal charges. I see two defendants. There could be something different. If I saw three, I know something is wrong. With two, I don't know. They put the defenses in call two. You don't discuss a general rule. I cannot do that. The call of the question.

After drinking, they decide to rob the convenient story. Think of intoxication. Look for diminished capacity. I would argue this. They drove his truck to the store. They drove to the store. This is a stick up. They have the intent to commit at least larceny. The only people in the store were Mark and Fran. Art became enraged that she had been spending time with Art. Art announced we will chill these lovers out. He is kidnapping them. He loaded them in the truck.

Art locked them in a fridge. He returned to the store to pick up Ben. What is driving around? Mark. He committed the kidnapping. We will talk about Ben. He was at the store. The store manager called the police. They rescued Fran and mark. He caught pneumonia and died. It was triggered by the combination of viruses and cold of the fridge.

What charges should be brought against them? Mark up key facts. I will talk about state versus Art. I try to get conspiracy out of the way. They decided to rob the store. I take it right now in order. It says they drove his truck to the store. They yelled this is a stick up. There was no breaking. It is a store. They had intent to felony. There is that. Since it was open, they will argue it is not tressatory. They would be guilty of modern law burglary. The fact that he took $250 from the register, since he left with the money, this occurred when they were locked in the fridge.

The forced fear was not there. He waited there based on the facts until Art came to pick him up. Robbery will fail. This is a prime example. We go through robbery and fall back on attempted robbery. They decided to drive the truck to the store.

They intended to do the robbery. They did try to take the money. There is an attempt. Did they go beyond the preparation? They couldn't finish the act of robbery. False imprisonment.

Kidnapping. They put them in the truck. That would be kidnapping. Is it foreseeable? The facts told you he has an extraordinary susceptibility. You take the plaintiff as you find him. With malice, he is placing him in the fridge. He wants to chill these lovers out. Did he intend to do harm? You have an argument.

You could argue the felony murder rule. We have modern law burglary. We have attempted robbery. Either would work for felony murder rule. Can we mitigate to involuntary manslaughter? A reasonable person would have to intent to kill. Appearances aren’t enough. We need some action.

I brought up attempted murder of Fran. He stuck her in the fridge. Was he trying to kill her? I would bring up attempt. That is for the first lawsuit as to Art. He is the main wrongdoer. Now, we are going after Ben.

Is it foreseeable that someone may kidnap another? They may take a hostage. Is it foreseeable that a death can result? It is. Someone may try to defend themselves. Based on his susceptibility, could I see that? What is the large change? Larceny. The facts told you to talk the $250 on the way out.

We can't charge him with robbery. The intimidation was not at a time of taking the money. We would charge him with larceny. He left knowing he had the intend to deprive. That is why he went in the first place. There are a lot of issues. What defenses? Intoxication. That locked them in the fridge.

Will this negate specific intent? Burglary is specific? Yes. Robbery. Attempt. Specific. Larceny. Specific. Will I negate those crimes? I am able to go to thestore. They are not so intoxicated. Intoxication is not a valid defense.

A lot of people have a hard time. Now, what do I talk about? You are full whether I not aware as to what is going on. That could be a valid defense. They are fully aware. Any questions on question three? The more exams I can expose you to, the easier it will get. We have two weeks out. Go over your checklist. I hope your rules come natural to you. I want you working on multiple choice. 50 daily would be great. Weekends, I would sit down as if I am at the baby bar.

I would shut it down and do two. I have to get use today what is coming. The more familiar I get, the better I will be. Work on your weaknesses. If mine are essays, spend more time on them. If it is MB, I will spend more time on those. Determine it out. You have lots of tools to be using.

There are 100 simulated questions. I highly recommend it. People tell me they see several. We have many questions up there. I would be doing those. The more exposure you get to essay questions as well as model answers to help you.

You need more, go to the bar website. They are given under conditions and are student answers. A lot of times they are weak. They are not strong. It is under the heat of the battle. That does change things. Work on your weaknesses. It is crunch time.

If you need simulated questions, I can send you a prior bar. Shoot me an e‑mail. I would be more than happy to send one to you. They have a tort section. We have one here we will send out to everyone. It has some essays and multiple choice. Any questions for me? Make sure you have an example in your mind. I hope your prep is going well. Stay focused. This is marathon time. You can see the finish line coming. Stay positive. Get a good night rest the day before.

Make sure you follow the bar e‑mails. Do the mock exams. Watch for their e‑mails. I wish you all the best. Shoot me an e‑mail if you have a question. I wish you luck. My prayers are with you. Good night.