CLASS: BABY BAR REVIEW

LOCATION: REMOTE

04/26/2022

(Captioner on standby).

>> Good evening and welcome to tonight’s baby bar miniseries and these sessions are recorded and for your convenience you can go to Taft's web site and go to student section and once you log in go to the baby bar miniseries. Anything I hand out tonight will be there for your convenience.

Primary focus tonight is on the tort essay question as well as multiple choice questionings that were sent out to you. Now as you are aware currently the baby bar examination is conducted online and that is how most exams in the future are going to lean towards. The difference when you take an exam online verse in‑person obviously you got to get used to it and you got to may make sure the software is downloaded and you are using exam soft and make sure you have files on exam date. And for the baby bar they will have you do a mock test and it is to make sure the computer is working and you need the to do that otherwise they will disqualify you from the exam and you want to start to look for the e‑mails that will take place in May in order for you to be prepared. Also in regards to taking an exam online what people don't understand is we think differently when we are looking at a computer screen verse looking at a handwritten don’t. You need to get to reading it on the screen and break it apart. And breaking things apart in your mind which makes it a little more difficult because I can't write down on the examination itself what I am seeing based on the facts.

On exam day you log in and provided a password from the California bar examiners and once you log in and get the password assigned to you, you can click and get the exam open and start the exam itself. You are able to not only to see a fact pattern you are able to outline with a virtual outline on the screen itself and you are also able to highlight. You will not be provided of a hard copy of the exam. This is why now you got to start to train yourself how to take an exam on the computer itself. It is a little different in regards to the format because I don't have the document in my possession. It is going to be on the computer screen.

What is going to happen is you are going to see the examination on the computer screen and you highlight and you will see. And tonight, I will show you how I highlighted my facts in order to get an idea this is where I jump to see a particular issue or facts is am going to use to support my position in the issue. You will have what is called digital scratch paper and not actual scratch paper. What that means is you have a little box off in the screen you can outline your exam. And a couple of things I am telling students to do. A lot of times we don't feel we have the time to outline and that is always a big fear and you do need to outline. Some students who have a timing issue. You can start your answer but do it in outline format and then go back and fill it in. Technically outlining right t? So, you do want to map things out because it is important. So, you understand the fact and see where the sub issues are. If you don't think b about the facts and the relationship to the question before you are going to miss issues and miss sub issues and that is going to hurt you in it.

As I pointed out you will be able to highlight but you done don't have the ability to cut and paste from the examination yourself. You have spell check and that is your advantage as well. When the examination begins what I want you to start out with is the call of the question and see what it is telling you. Again, for if baby bar remember they are not going to tell you what subjects matter it is. T when you read the call of the question that is going to help you determine if it is torts, contracts or Crim law. The call will dictate. Once you read the call read the fact pattern and break apart in detail and outline and once you basically have completed your outline go back through the exam one more time and of course before you click the submit button. Especially if you have time go back and read your answer. If you decide something is not an issue, I am a 110 percent sure before you delete it. You spent time on it.

On the baby bar you are going to get one essay at a time. My understanding of how it happens you get one essay and log in with the password and time is up and boot out and get a break and so on. And verses the multiple-choice question it is going to be done in sections. So, you will have fifty and then 50 multiple choice questions. In law school you are given one essay and 33 multiple choices for torts. Contracts and crim law. And you are done in two sections and you do the essay. Hours up. And relog in. And get the multi‑states etc. The baby bar is different as the four essays are independent and 50 multi‑states and then there is a break and 50 more multiple choice questions.

Remember if you have any questions feel free to put in the chat. More than happy to help in any way I can.

Now look at the examination obviously first thing you should do is read the call of the question. This particular essay is dealing with product liability. I have a strong feeling products liability is due. So, it is an area I want to get familiar with. And with products liability the reason I like it you can memorize everything and all you have to do is insert the facts and that is what is nice b about products liability. Remember if you see a products liability exam. And of course, have you a general call. What theory’s do I know exist before I read the fact pattern? Negligence. Strict liability and tort and I know the fact pattern. And you know the areas exist and you look for the others and that is important and begin can know that going in and if you look at this particular question. What theory or theory’s might be injured consumers recover damages from and what defenses should they anticipate in an action against green Co. Farmer Jones and big food.

So based on even the facts that they gave me and having read the essay question. Based on the call I can have a good understanding this is b probably products. You got consumers and then the entities going out to. That tells me what? I am leaning towards products liability without reading it. And look at the call does give things away. It says theories. Remember with theory’s two or more. If you write on one you know you made a mistake and also says danger asks p the baby bar exam is good at p putting that in a call but they give you no facts but the call says I must address damages and I know I must address general damages and special damages. Why? Because again it is in the call of the question. Isn't it? And what defenses?

Now, remember defenses can be what? True defenses. Tried negligence. Comparative negligence. Assumption of the risk. T or they can be counteroffers and you got to know that going in sometimes when we read the fact there is no true defense to argue against the plaintiff.

Now that I have read the call. I see I have multiple theories. And I know I have jail special damages. I say I need to go in looking for defenses and have a good understanding of what term means if I don't see true defense, I am look for a counterargument. And now I have a hand l I am ready to read the actual facts itself.

Now, again, you have the ability to what? Outline. You have the ability to mark up your examination. So, I would highly recommend it. This particular exam let's go through the facts and says grain co purchases grain from farmers each fall to resell as seed grain to other farmers for seed planting. And I marked up purchases grain from farmers. Resell the seed grain. And it is supposed to be for spring planting. This grain is supposed to be used for what? Planting in the dirt. Because of problems presented by parasites in the grain that is stored for more than a few months. Grain Co like all seed grain dealer es (Indistinct) with mercury-based chemical to poison the parasites. That is a good sentence. They have problems with the parasites. But like all seed grain dealer. They treat it with this invisible mercury-based poisoning and sounds to me it is a standard in the industry. Remember back in the old day’s cars didn't have seat belts either. Doesn't me it is safe right? And other thing it should tip you off here is invisible mercury and I can tell I have a counter argument. Everybody does this in the industry and why would I be different and it is invisible mercury base and had that means I can't see it and why isn't it a color? Purple. Green. Orange. Something so I can tell it has been treated with the mercury-based poison.

Continuing on states grain Co sell it is grain loose by the truckload to the farmer who will plant the seed. It is not in a package to have this stated on it. The grain Co signs state seed grain not safe for use in food products. And what am I thinking? We get a truckload of the seed grain and on the truck, it says seed grain not for use in food products. Is that enough warning?

Already in the first paragraph I got invisible mercury that is a design defect and of course you put it loose. You don't have it packaging and of course you put a notice not used for food products on your truck and it is adequate warning. What does that mean? Do I fully understand what that means? Do I know it has poison mercury in it? Not that close at this point based on the facts and that is a problem. I see on this exam I have a designed defect. And a (Indistinct) defect. Based on the first paragraph and we know it is products we have the theories of negligence. Strict liability. Tort. And implied merchantability, right? And farmer Jones brought a truckload of the seed grain from grain Co and was present when the grain was delivered and had supervised the grain Co employees who unload the seed grain in the silos and used some of the seed grain to sow her field and when she found he had some seed grain left over she fed to the dairy cattle. Now the issue is she was there when it was unloaded. Did she have notice? Should she be aware of the situation and of course it says not to be used what? Food products. What did she do? Fed it to the dairy cattle and that is a problem.

Next says farmer Jones sold the milk produced by dairy cattle to big foods store. There is your retailer. Several people who bought the milk became seriously ill. Goes towards damages. The center of disease control. The CDC. A government agency that investigates outbreaks of illnesses determined that mercury poison was the cause of the illness. They told you what the reason was. Why they got sick and we didn't have to anticipate. Certainly o because of the milk. They told you it was. Said the CDC trace the mercury to the milk that farmer Jones sold to big food. We know how they got sick and where it came from. And I want theory and theories and what defenses should they anticipate in an action against. First one. Milk consumers verses grain Co. I know the call asks for defenses and I am not seeing defenses jumping offer. That tells me I have to break this apart and look for what? Counterarguments. There has got to be counterarguments here. Right? I am going to have to dissect it. First thing I want to you do is outline the examination. And the I have milk consumers verses grain Co and products liability and first theory I address is negligence. Why? Because I spend time on that theory. Because then I can steal from it from the other theory’s and I spend a good amount of time. Remember with milk consumers suing grain Co as a manufacturer of a product. Distributor of a product you owe a different duty. Duty to inspect discover and correct. Since they have a duty to inspect discover and correct and treat the grain with the invisible mercury-based poison, they have a duet to let her know. And if you look at the outline. I have duty. Distributor of product which is grain Co. And owes it is duty and have it spell out and I would normally not do that on an outline. Why? Kills me on my time but if I start my answer. This is what I am going to do and make it coherent. After I get the whole thing outlined. Make sense?

Again, a shortcut is I can start my answer in an outline format and then go back and make it coherent and that is why I spelled things out. Otherwise, there is no way I would do it if I am handwriting on a separate outline because I don't have time.

The first theory we are talking about is negligence and we established the duty that grain Co owes milk consumers. Breach. Remember under products liability for the breach this is where you are going to address the type of defect and the general rules the to how they are testing currently is you always want to look for two or more defects. Two or more defects.

The first one I will bring up is the warning. Dead set give away was the invisible mercury. So, did they warn when they sold this seed. Right? To farmer Jones that it had this invisible mercury-based poison. Now you are going to break it apart and point out here. They failed to warn. Again, she bought the bulk of it in a truckload and the truck displayed the sign stating the seed grain not for use in food products but again is that enough letting the farmer knows you can't feed to dairy cattle because it contains mercury-based poison. That is a problem. Treat, it had grain with invisible based mercury and has poison although kills parasites hurts people too. Is that an adequate warning? I would say no. Again, you see trucks and signs on cars and doesn't mean that is what had it been. I can see an old U‑Haul truck and they stripped most of it off and it is not a U‑Haul truck anymore.

I see design defect. Why is it invisible. Inherently dangerous in the design. If you are selling regular seed as well as this with the invisible mercury-based poison to kill the parasites I could easily mix it up. How would I know the difference and as a farmer she buys grain to feed her cattle as well as to sow her fields and now the issue is based on the design it is inherently dangerous? Because it can easily be mixed up and it can with where I could not identify that this had the poison.

Again, even though the counter argument is all seed grain (Indistinct) use this invisible based poison. Even if it is standard in industry doesn't mean they didn't breach the duty of due care. You see under design defect I have a counter argument and that is important because of the call of defenses. That menses I have to have a true defense or a counter argument and based on these facts I see it is a counter argument and I say I answer it had word defense so far and feel confident.

Next you go to causation. Buffer the failure y you are to adequately warn and also buffer the failure to what? In regards to the design defect we have what is called success of tort (Indistinct) why? We have two independent negligent act that is cause a result. We got the independent negligent of grain Co for adequately warn about @ mercury-based poison on the seed grain and then we have the negligence of farmer Jones using it to feed the cattle. Which is not supposed to be used for food products and of course the cattle produce what in dairy cattle produce milk and that is a problem. So, we have two independent negligent acts. That causes results. But for the failure of grain Co as well as farmer Jones. Milk consumers would not have been contaminated in severe illness.

Proximate cause I told you in the past you want to take a step back and see if the I can argue if it is foreseeable. This is straightforward. Testing proximate cause heavily. I still have to go through it but don't have to bring up the indirect. Independent. Supervening. Intervene act. I can look to if it is foreseeable if you don't properly warn using the grain as food product and it can make somebody sick and obviously the answer is yes and I want you the to break apart in regards to foreseeable to fail to adequately warn. You put the seed grain into the feed for the dairy cattle and sold to milk consumers and it is foreseeable knowing this cannot be used in a food product and can cause illness. Mercury based poison and the answer is yes and such grain Co is the cause IE proximate cause of milk consumers injuries.

Then the damages. Do you see facts that go to damage and only thing that I have is I became seriously ill? Again, as I pointed out earlier the examiners like to test damages but they never give you any facts that is one of the favorite things to do on the baby bar and I don't know why. They put it in the call and don't give you the facts. They (Indistinct) won't do damages. General damages which is pain and suffering. And special damages they can recover medical expense r or loss of income. Or both depends on their cleeding what they can show they lost. Now that is my first theory. What else I go after? Well farmer participated and maybe indemnification. Remember with indemnity it is common indemnity and contribution are issues that you are dealing with on the products liability exam. You are having multiple parties and in this case grain Co is going to blame on farmer and farmer is going to blame on grain Co. The issue here is in this case grain Co secondarily liable or primary and based on what I see this is the one that did the poison. Mercury based poison even though it is invisible I feel they are primary responsible. Farmer Jones brought the truckload of grain and gave it to her cattle and didn't have knowledge I don't feel she is primary and you can argue either way when I see indemnity I will go through the issue of contribution. This is where you have the joint and several liability and proportion according to fault. Grain Co and farmer Jones are classified as joint tort teasers and the other way you know this is an issue. Causation. Since I talked about successive tortfeasor I will look for if I have an issue of indemnity and contribution. If you have successive tortfeasor, you have joint tortfeasor. That is a tip off to help identify and find another issue.

Now I am outlining my first theory against grain Co. It is negligence. Can I talk about in regards to damages? Yes. Did I see defenses? I see counter arguments and I feel confident. Go to the next theory. Implied warranty and merchantability. Remember you are implying that the product is fair and average in quality. Grain Co disputes, distribute the seed grain. But like all seed grain dealers they treat it with a mercury-based poison. Is there adequate warning? Because again it ended up that farmer Jones placed in the milk which sold to big food which sold to the milk consumers and we are going to argue since it is mercury-based poison milk it is not fair and average in regards to quality. Causation. Actionable cause. Proximate cause. Special and general damages. Since it is the same parties. Define. Discuss. Supra. I can supra it all back and that is fair game and something you want t to do because there is a lot of issues in this exam and I am still under can call one for the first lawsuit. I have talked about negligence. I have talked about implied warranty and merchantability. And next is strict liability and tort. If you place a product in the stream of commerce you are strictly liable what you need to do? You need to show what? It was defective based upon what you discussed previously. Design defect or a warning and in regards to place of stream of commerce. You sold it and you are liable. Good facts to failure to adequately warn and foreseeable users which are the milk consumers and the seed although not supposed to be used in food products farmer Jones didn't know this. Wasn't adequate warning and counterargument. I am taking care of the call of defenses.

Now I go back and milk consumers verses grain Co again I talked about negligence. Implied warranty and merchantability and strict liability and tort. I don't see that. Don't see any intent here. Nope. Anything in regards to express warranty. Nope. Usually with expressed warranty you argue the implied warranty of fitness for a particular purpose and eliminate that and I feel confident and ready to outline the next lawsuit which is what? consumer verses farmer Jones.

Now you will see we are suing under the what? Same theory. Products liability. I know since they gave me three different calls, they can't mirror each other that is impossible and I have to go in and look at what is the difference between the parties. Now again with farmer. She has a duty to inspect. Discover and correct. In this case she produced milk that that is manufactured with what? Mercury. Did she breach? Her breach is a manufacturing defect. It is different than what we found against grain Co. Design and warning defect. With farmer Jones it is manufacturing because her milk is different and kind from the rest of the line. Her dairy cows produced milk previously which was fine and then after the mercury is out of the system, I am sure this he will go back to producing proper milk. It is what we call a manufacturing defect. Different from the rest of the line. She brought the truckload of seed and fed to the dairy cattle and they produced poison milk. She is in breach. Actionable cause but for her mixing the grain for feed for the dairy cattle that had the mercury poison. Milk consumers were sick and foreseeable again if you have a mercury-based seed grain and feed to your cows it is foreseeable they are going to create mercury-based milk. Right? Therefore, she is be actual proximate cause and then damages should be the same because it is the same plaintiff define, discuss, supra.

Next theory you have implied warranty and merchantability. Is the product fair and average use. It has got mercury-based poisoning and a manufacturing defect and milk consumers because f of the mercury-based poison became and ill and she breached the implied merchantability. And causation and damages. I will steal as to what I did in the negligence and it is the same. Right and then of course the next theory strict liability and tort. Again, farmer Jones did what? She produced milk that had mercury-based poison. Didn't warn about it. Didn't know about it. And placed in the stream of commerce. It is defective. Right? And she is the one who mixed with the grain and she is strictly liable and causation. Dangers and defenses. Causation and dangers supra back.

Again, go back and look at the facts and I don't see battery. Don't see express warranty or imply warranty offended for a particular purpose. And third lawsuit. Milk consumers against big food. First theory is negligence. Now we have got a reteller here and you need to remember and this does come up on the multi‑states as well as the essay. What is the problem? Does a reteller have a duty to o inspect discover correct in a (Indistinct) defective product. Answer is that is not the duty. They have a duty to warn of known defects or something they should have known based on the product. How do they take a product like milking and determine if it is defective or not? They can't. In this case duty of due care to correct any known defects associated with the milk to eliminate any potential harm from the milk consumers. Did they breach the duty? They didn't have any knowledge. Under the sealed container doctrine, they are not liable for negligence. Game is over under this theory. Don't have to go to causation and don't have to go to damages and I will go to imply warranty and merchantability. What does the rule say? I don’t care if you are a manufacturer. If you place in the stream of commerce not fair and average use you are liable under the implied merchantability. And supra back. Damages. Causation damages and of course strict liability and tort same thing. You sold milk with the mercury-based poison. What does that mean? Liability regardless of fault. You are strictly liable and causation and damages and supra back this is why the indemnity is strong. Big food is the retailer and they are going to see indemnification and argue they should be indemnified by farmer Jones because she is primary liable party to make the argument.

So, again based on these facts’ farmer Jones is the primary liable party and therefore you seek indemnification and that is how with outline the examination. Right? Again, if you start your answer and do it in outline form on the computer when you are at the baby bar then you can write more and we go back and make these complete sentences and let's look at it. You will see in regards to the model answers I put more than I need to. Why? Because these are models and I am trying the to teach you guys. Milk consumers verses grain Co. Products liability and then negligence. And they don't give a definition for negligence you done to have to do that. You can go to negligence and then the duty and go right from there. Why do I do this? It is a pleasantry. If you have time fine if you don't forget immaterial. You don't get points from defining what negligence is. The reader knows what negligence is. Why? Because you are going to (Indistinct) duty. Breach. Actionable cause. Proximate cause. And damages. You are going to know there.

In regards to the duty. Inspect discover and correct. Foreseeable to all users. I take the outline and make coherent and I point out and go back to the facts that you outlined that grain Co sells seed grain. They are a distributor. And of course, they treat the seed grain with mercury-based poison like aural other seed grainer. All right? They have a duty to care inspect discover or warn of known defects. Did they breach? Again, they put invisible based mercury and you can tie in regards to fault to adequately design. Because I can't see it as well as the warning that I know for sure I couldn't use in food products and how can I make the warning more known? Had well when farmer Jones buys this. Am I saying the right name? Farmer Jones buys this should they make her sign a bill of lading and disclose with her initials she read and understood what it meant and want to keep it on the truck that is one thing. But again, make it aware to the farmer. Again, it can be mixed. Because I can't the tell from other grain that has got the poison on it.

Again, even though in this case we got a counter argument that you need to make. Grain Co is saying it is standard in the industry. Again, they had no knowledge and should have changed the color and doesn't meet the consumer expectation test. If something contains poison in it, we should be aware of whether it is the labeling or the color of the product or something. We don't sell poison in a poperee bottle we think it is pope ree. We need an indication we are going to know it is poison in and of itself in this case. Again, you have the design defect and again because of the invisible. Right? And then as we talked about your successive tortfeasors and grain Co failure to adequately warn to use in food products and as well as farmer Jones not knowing to use in food products and no consumers would become ill. Proximate cause. Is it foreseeable? It is foreseeable if you sell seed grain with mercury base poison and people can mix up and think it is true grain remember the negligence of a third party is always foreseeable in this case farmer Jones was. Therefore, the proximate cause and then your damages which we talk about seriously becoming ill. Pain and suffering and special damages which are lost income and medical expenses.

Again, what I am going back through is the outline and makings it through sentence form. Because I have done all of the logical thinking and mapped it out and that is important, I will seek indemnification and I feel this can go either way and feel grain Co shouldn't be indemnified from farmer because I feel they are a prime player in regards to the seed grain. I don't feel they are secondary liable and of course you go to the description. Basically, joint tortfeasors and you get contribution proportion to your share of liability and proportion to your fault and go from there.

Again, implied warranty merchantability. Again, grain co sprayed seed grain with invisible mercury-based poison and placed in the stream of commerce and didn't have adequate warning and farmer Jones ended up feeding to her cattle. Dairy cattle. They produced mercury-based poison milk and don't need fair and average use of the product and breached the implied merchantability. And as I pointed out to you. Actual cause. Proximate cause. General damages. Special damages. The same. I can define, discuss, supra. Steal from it.

Then I go to the next theory which is in regards to strict liability and strict liability remember it is liability regardless if you place a defective product in the stream of commerce and you are a manufacturer distributor or retailer. If I sell something at a garage sale that is don’t apply. Manufacture ore. Distributor or retailer. Done you are liable. If it is defective product and it was normal use in a foreseeable user and if it meets the element, you are held accountable. And of course, the actual cause. Proximate cause. Damages. General. I can supra back and other thing people get upset about is how is that fair in regards to holding everybody accountable. Well, they have remedies. Remember? So, we will and get to the lawsuit of big food. Indemnification and I will explain more when I get there. Did I answer the call? I did address theory’s and three for call one. Negligence. Merchantability. Strict liability and tort and talk about general special damages and defenses were counterarguments and as well as the indemnity contribution and I feel comfortable mastering the call and call number two milk consumers verses farmer Jones. Products. It is the same definition defined as supra tie in the actual facts and farmer Jones produced milk contaminate and had duty to inspect discover and correct and any defects associated with the milk, she need it is to disclose and she didn't do. Did she breach? I can supra the majority of the rule but I have to type it out as to what type of defect it is and, in this case, it is a manufacturing defect. As a manufacturing defect it is different and kind from the rest. And you pull out the manufacturing defect. Again, the actionable cause. Farmer Jones mixed in with the seed grain and proximate cause foreseeable if you put mercury-based poisoning in grain you feed your cattle that will result in the milk and it is foreseeable. Notice the causation here is different. Verses in the first lawsuit we talk about successive and the foreseeable based on the two of them. Verses against the farmer we are dealing with her individual act. As well as the foreseeable if you produce mercury-based poison milk that many milk consumers could get sick and your damages. Same plaintiff. Right? I am going to supra back.

Whenever you do supra. You to want to make sure you can. You don't want to automatically supra when it is not applicable based on it be situation and double check and make sure it is the same plaintiff and damages shouldn't have changed if it is a different or something and therefore I can supra back and same with applied warranty and merchantability. Contaminate and had become sick. Actual cause. Proximate cause. Go from there.

Same thing with strict liability. Mix your mercury poison-based seed grain and fed to your dairy cat and will they have produced poisonous mill and can therefore you be strictly liable and supra back. Actual, proximate and general damages. T you can see on this exam there is a lot to talk about and get through and you can see why I have the supra when I can because there is a lot, I have to get in the examination answer.

Last one milk consumers verse big food. Negligence. Now see again I want tow always be in the mind set. Got to be something different. Got to go back and look for that. What is different? We have big food and they are a retailer. What is the duty. They have a duty as a retailer to correct any known defects or something they should have been aware of. If a product is on recall you should have been aware of and you keep selling the product and that is a problem and you breached your duty. In this case they have a duty to warn of any known defects associated with the milk. Or eliminate it based on these facts had no knowledge and under the sealed container doctrine no duty to warn they didn't know it exists. Not in breech or liability for the theory of negligence and implied warranty and merchantability. Yes. They placed in the commerce. All you need. Foreseeable user. Not a fair and average use. They are going to be liable under the theory of implied warranty and merchant‑ability. And strict liability and tort. Again, placed a defective product in a stream of commerce. Therefore, think is going to be strictly liable. Which will be actual proximate cause supra and damages. This is where big foods going to claim indemnification. Because they really didn't do anything. Did they. This is where we will most likely (Indistinct) and I didn't address contribution because I find big foods secondary liable based upon the nature of the law in regards to the actual conduct and I find in this case indemnification of the work. Make sense? And that is your full answer.

You can see in the exam there is a lot to talk about. More than people think. It is a racehorse and there is a lot to get through and break apart. Anybody have any questions in regards to the essay question?

Now you do have 33 multiple choice questions and I hope you had a chance to look at those. If you have a question let me know. A student had had a question on the first one with the delta with the manufacturer which is products and a question in regards to number two. Let's look at the multistate question. Question 1 and 3 are based on the following. Delta ta is based on the ‑‑ Jonathan purchased a bottle of folic at Watson drugstore and statement read this product will not harm the scalp or hair. They have a representation here. It is not going to harm. What does that mean? It means in and of itself you are going to bring up. There is what? Some type of warning not going to do this. Jonathan, use it had product as direct and had because of a scalp (Indistinct) irritated to the ‑‑ let's go to question two for the student. In an action by Jonathan that is the consumer against delta and delta manufacturer on the theory strict liability and tort which is the following additional fact and inference if the (Indistinct) is true is most helpful to Jonathan's case. Looking for a way to support his position.

Well, again, they didn't have any idea. What? They got this product to help with the dry scamp condition. He is allergic to one of the ingredients and how would they know this? What is going to support his position?

A says entries of this kind sustained by Jonathan don't result from the use of a product. Unless manufacturer is negligent. We are suing under strict liability. B says purchase of the product (Indistinct) had appeared in a widely read journal. If you knew about it you are right. No. C reasonable person who you have not expected use of follicle to result in (Indistinct) of the scalp with the allergy. Supports proximate cause and consumer expectation test. [Reading]. That goes to battery. We know the best answer has to be C by process of elimination and the other question in regards to number three in an action by Jonathan against Watson. Pay attention to the name. Watson is retailer and bring action against Watson which is the following best argument. You know only thing they are liable for is strict liability and or implied warranty and merchantability. And looking at the answer choice get rid of A. No choice. C. Get rid of D. And even though B is sucky answer only answer product is defective as label and had that will support the implied warranty merchantability. And strict liability and tort. You, see? It is very important who you are suing and break apart the inners to go from there.

There is another one in regards to question number ten. And this one basically deals with proximate cause. Even if you have someone stealing from you. This dealt with someone break in a grocery store and they stole a six pack of beer on the way out and the beer was contaminated and had you can you sue for a product defect. Yes. The key thing there is although you feel what she is doing is criminal activity. Isn't how it works? It would be what? Viable cause of action itself.

The other one someone brought up was question number 11. This dealt with false imprisonment. What do we know about false imprisonment? False imprisonment you have to be, you have you to have intent. You have to have physical or psychological confinement. You have to be aware or damaged by it. And I want you to remember the elements and I am telling you it is going to be on the multi‑states. And students don't do well because they don't remember that and I want you to break that apart. Based upon these fact patterns he was basically unable the to get into the building. And was try to go get into the building and now claiming false imprisonment. The problem is they didn't let him in the building they didn't know who he was. Not confining and you are able to leave and go on your merry way and wasn't imprisoned is the best answer choice for that one.

All right those are the three that people e‑mailed me about. Anybody has any other questions on any of these. There is 33 of them I hope you took them. If you did miss any of these. I would find out why. You need to know why you missed it. You want to tot break it apart. That is important. Other thing to point out in regards to question and I notice the e‑mail didn't go out until Monday and sat in the send folder over the weekend. What I see in the past and I want to make sure you do not do in. Headnote the issue. An issue statement takes me too long and other thing I have seen in the past is once you start a theory and in this case negligence. Got to carry all of the way through. Duty. Breach. Actual cause. Proximate cause. Damages and look to see if there are any viable defenses and you can't jump on me. Remember you have three different types of warranty. Separate them out. All warranties have causation and damages you must address. Ren what you see in the call of defense could be counter arguments and this exam I see students argue assumption of risk and in this case compare and give contributory for negligence. But it doesn't exist and they are arguing and a lot of them did conclude it did work and it is hard to argue because it is not there because there are no facts. Remember defenses can mean true defenses or counterarguments. Okay?

And then of course always make sure you focus on the call. Theory’s. It is very frustrating when a student does an exam and let's say you are taking a products exam and you talk about one theory. No way you are passing that exam. That is frustrating and people, you might have written the best exam for negligence for that products liability theory but I can only give you what? Partial credit because you left two theories’ out and it is very important and the exam do state the reason people don't do well is they don't follow the call of the question. First, I used to think yeah right but the more exams I see in my lifetime. Yes. Go back to the call and make sure you answer the call and that is true also for the multiple-choice questions. What the are they asking and make sure you go back and look at that. That is very important. Snoek anybody have any questions?

Sorry we had such a small group. It can beside because we had a delay in sending out the e‑mail and that will hopefully not happen this week. Where do we go from now? You should have been studying torts and we had two weeks of torts and hopefully you master that and now we need to rotate into contracts and next week we will have the lecture of going over con track and key points of how it is test and had areas they trick you up on and you need to break apart and look for. And test b l areas and UCC terminology will be used next week and I want to make sure you did get the sales (Indistinct) it is something you are responsible for on the baby bar and we can talk about if you have questions. I want you to start to study the contracts and doesn't mean we are done with torts and remember we put in a rotation and still do some torts and keep up (Indistinct) exams and keep up in regards to doing multistate and now you got to add contracts and remember to break it apart by your checklist. So, I don't know to do contracts one day maybe formation and let says I have eight hours and I will do formation and go do multistate and issue spotting for torts. And, again, building block. That is the key. Anybody have any questions?

All right. So, look for the e‑mail and we will be sending out in regards to the link for next week as well as the contract checklist and anything comes you up in regards to preparation shoot me an e‑mail at jolly ‑‑ I will help any way I can. If there are no more questions, I guess I will say good night. Have a good evening. Good night.