CLASS: TAFT

LOCATION: REMOTE

06/14/2022

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(Captioner on standby).

>> Good evening, everybody and welcome to tonight’s miniseries and we have a butt to get through and let's get start and had we will go over the three essay questions that were sent out the to you and also if we have a chance, we will go over multiple-choice questions. I do want to point out that the sessions are recorded for your convenience if you want to go back and listen to a session, they are on Taft p's web site in the student’s section under the baby bar miniseries. Let's look at the first question. Question number one. Remember you always want to start off with the call of the question. That is important. When you are taking the baby bar, they will not be going to tell you the subject matter. By reading the call it should help hone in to what is being test and had says in this call in on brought by need for negligence.

This call told you specifically the issue is negligence and I gave you an idea as to what is there. Negligence, right? And also says defenses and remember defenses you look for how many? Two or more. Right? Always two or more. And then of course remember defenses can mean what? Defenses can mean counterarguments as well and make sure you are there. And can be counterarguments. Not only true offenses but counterarguments and this is a general call or specific and it looks very specific and that you are going to look for what element. Elements and defenses are tested here since they gave you the call of action.

[Reading]. So, it is usual that is normal and seems to be in the industry the standard. [Reading]. Now the issue is failure equivalent to a breach. [Reading]. Since he missed nails obviously did, he breech his duty.

Mind you my lawn mower ran over the nail and made it propel. That raises an issue of proximate cause. Is the fact that the lawn mower ran over the nail and caused it to propel an intervening act? [Reading]. There are your damages. Geb the first thing we are looking at is in regards to the issue of negligence.

Remember you have the ability since you are doing this online to highlight key pacts and help you focus on certain aspects relationship between roofer and hall and nails and cleaning up the backyard and call of the question is important to make sure I answer and first you will look at theory is negligence. Whether or not there is a duty. Roofer has a duty. A duty to act in a reasonable and safe manner to do nothing and properly clean up. Who is suing here? Ned. He owes that duty to hall. Now you need to bring up what is called Andrew car doe sow problem because you have a remote plaintiff. There is no relationship between roofer and Ned and Ned has to argue car doe so which says you are duty to those foreseeable in danger. Since a next-door neighbor. You can argue within the foreseeable zone of danger.

Either way when you do see this tested you should go through the minority rule of Andrews as well and Andrews says you owe a duty to those periods. Either way when you see an issue you should talk about Andrew and ar doe so you see how it is an issue because we have remote plaintiff. In regards to breach. Failed to pick up. The breach is relatively straightforward. Causation but for not having something to catch the nails and wouldn't have got run over the lawn mower. And have actual cause and now a proximate cause discussion here. We have a third party that came into play. Ned.

So, is it foreseeable if you leave nails embedded in the grass for someone to step on of course? If it is foreseeable someone mowing their lawn six months later and running into a nail and having it propel into the neighbor’s yard and you need to bring the argument. Roofers’ actions are what? Indirect and independent of him redoing the roof. Right? Is the negligence in this case running over the nail? Foreseeable. The answer ss yes. Proximate cause. And damages.

If you want to bring up pain and suffering and medical damages that is fine. If you notice in regards to the call the call said negligence and defense and doesn’t say damages and if it says damages you need to go through general and special damages based upon the facts and the call doesn't have that and I am safe with a generic damage and get out. Call says defenses and I look at the facts and don't see anything I am arguing back and forth and I know I have to go through two defenses and they did tell you he was walking barefoot in his backyard.

So, when you walk barefoot in your backyard are your contributory negligence. If you knew there was nail or beddings. The fact I am walking barefoot in my own yard I should continue to contribute to my own negligence based on what I know is in the backyard if I have a pine tree that dropped pine cones or something like that. Dint contributes to his own injury. When you see contributory negligence, you should discuss comparative negligence because it is a difference of jurisdiction and proportion to liability based on fact and again did, he follow standard of care or to himself and I feel Ned did not and then of course last chance which remember would be defense to contributory only. If you showed he was contributory negligent you could show having a chance to prevent the injury by having a trauplean. That should be move today the answer contributory negligence so the reader understands it only works for contributory negligence. Last one is assumption of the risk and did he know the risk and involuntary encounter it. What is in the backyard. I go in my backyard and I have bark and a swimming pool. What are my risks I could step on the bark and hurt my feet? But a nail?

He didn't have the knowledge. Ruth? So, he voluntary did not assume the risk and you notice it said defenses so I did talk about defenses. I have contributory. I talked about comparative which remember that is a jurisdiction issue. I know it counts as one and I know assumption of the risk and I did talk about all three and I feel comfortable based on the fact pattern. You can see in the question it wasn't bad and straightforward. Key thing is you needed to pick up the issue of cardoesa and Andrews and argue both sides and pick up in regards to proximate cause and whether or not intervening act and of course your defenses.

I do want to make sure because this is an exam you can finish in 50 minutes and now in your case since you are taking the baby bar and it is time, meaning you don't get all four essay questions at once and doing one by one. Don't shut off. Go back and read it. Make sure punctuation is correct and spelling is correct before you submit it so you have the time. If I can get through the exam faster don't submit until you are said debt certain everything is well pristine in regards to the exam. The point value comes to analysis and how I know that is because they gave me the call of the question. Negligence and as well as your defenses and gave me issue the point value is not issue spotting it is based on the analysis. Anybody have any questions on question number one which negligence is very ripe for testing and love to test the issue and should go in there strongly.

Question number two. This one people had a hard time with. This is an older baby bar and you can see this is testing UCC. Remember I explained to you, you are responsible. Okay? Look at the call can cotton company breach of contract against buyer. Does have the right to reclaim that is a narrow specific issue the unused batting and let's go through the facts.

[Reading]. Right there I know buyer is manufacturer and he is merchant. [Reading]. So, he need it is batting. [Reading]. That give us you a hint insolvent. [Reading]. What is this telling you? I am handgun to pay top dollar. I will pay anything. He is if giving the actual price. [Reading]. So, he knew and thought the price was too high and still went ahead and what? Used it.

[Reading]. There is your what? Here comes it is trouble. Cancelled the order. [Reading]. So, the fact that I obviously had to close because I lost the person buying the mattresses from the company. Right? I can't perform anymore and that should make you think of what? Possibility. Impracticability. Frustration of purpose. So, you can see in this contracts exam it has conditions.

[Reading]. So now let's break this apart and a couple of key things I noticed and noted telephone call. Think of the statute of frauds and the fact he sends a $5,000 invoice you are aware you are upset and you go ahead head and use in and of yourself. The fact that of course you have been insolvent for 60 days and that triggers specific under the UCC as the right to reclaim votes. Specific.

The first issue you will talk about in contracts and take in order of the actual checklist does the UCC apply? And the UCC applies to transaction of goods and here we are dealing with batting. Therefore, the UCC applies in this case. Next is issue of merchants and tells you cotton company is manufacturer and buyer manufacturers mat tress and both merchants in this case.

Taking right in the actual checklist and go to the issue as to offer and pull out the facts and on the first buyer telephoned urgent need. Shows present and intent. And we have definite and certain terms with batting being the quantity. Delivery of the day. End of the day being the time period. Buyer. Cotton company. Parties. Top dollar. The price and batting are subject matter and terms are stated with particularity and definite and certain and you called is and shows communicate lg the offeree and acceptance you delivered I am done. Get in and out and gave you the facts and of course the consideration exchange for paying top dollar. So, we have a detriment and benefit on both sides and we have valid consideration and go to the issue of statute of frauds and this is an issue that students have a tendency to miss and they shouldn't. How is the statute of frauds triggered and you know well nards to this case it is a contract of sale of goods of over $500 or more and needs to be in writing or otherwise it is enforceable based upon the statute of frauds if you have oral or incomplete writing and now the contract was for $5,000 and it was for a good and falls within the purview of statute of frauds and made it easy because he did if you will deliver. Remember full performance we will take outside of the purview of statute of frauds. For the contract of the sale of goods for $500 or more. Written memorandum. Written confirmation between servants and pull in part service or payments. And oud of the purview I grab on the to the one the facts are supporting and if it fails go for another in this case the full performance will succeed and I will go to the conditions and this is a condition exam. Formation wasn't bad.

As the to the conditions, it is implied that I deliver the batting and you are and going to pay and of course in this case cotton company delivered and had they have the right to be paid and of course they are going to argue buyer is going to argue wait a minute I can't pay because of impossibility.

Remember with impossibility it has to be what? Objectively impossible. The fact you don't have money and somebody else does and going to argue based on the unexpected cancellation. Going to call the thing off. Doesn't have the ability to perform. It is objective. Argue frustration of purpose because of unforeseen event. Cancellation of sleep co contract. But you never disclose this to cotton company. Because if you did disclose maybe it would work as a true excuse of performance and never let you know the purpose to buying the batting and argue the reason and argue practibility is practical based on circumstances and I think that is a (Indistinct) one but you can bring it up.

General rule if you see impossibility. Frustration of purpose. Possibility. And impracticability has a tendency to go together. And of course, you go to the discussion as to breach. They deliver and buyer is failing to pay and then the damages which would be expectation. And temples of the contract which is the cost of the batting. Call number one.

Call number two. Very specific rule UCC 2‑dash 702. Sellers remedies insolvent. Seller discovers after selling the goods and have no reason to know you are possibly insolvent and after a ten‑day period they have a right to make a demand on you to return the actual goods. You a couple of key things they can't know at the time of delivery. And small window of ten days to reclaim. Since he claimed he resold and he did. Can't reclaim anything I don't have. And nards to the time period based on the facts I do think he met the time.

So, this particular question basically it dealt with formation of the contract and conditions. Right? So, it wasn't a difficult exam. People didn't do well on, they missed statute of frauds which I am shock and had other thing is conditions and excuses. That is something that is test and believe you want to make sure; it is writing contracts checklist and you see excuses triggered and look for how many? Two or more. Two or more. Anybody has any questions on question number two. Go to question three.

Criminal charges if any should be brought against art and Ben. Criminal charges you are look for how many? Two or more. Says what defenses if any? Two or more. Key thing remember how you are taught is once us see you can convict a criminal of a crime; we generally talk about what? Defenses. But, based on this call defenses go on call too. You do not do them in call one and supra back. No. You must fall the call of the question.

Now since after drinking heavily. I think we can see the first offense. I am thinking intoxication. Remember I told you in the lecture what defense generally goes with intoxication. Diminished capacity. They like each other. I see intoxication and diminished capacity and haven't gotten off of the first sentence. Then decided they would rob the convenience store. Decided there is conspiracy to rob. Drove arts truck to store and yelled this is a stick up banishing the unloaded pistols. They went in the store what is the issue. Burglary. Went into a store and will fail common law and you brought up the modern law aspect. Brandishing the unloaded pistols and discovered the only person in the store was Mark who worked at the store and Fran the customer. Art became enraged. Enraged provocation. Right? And was jealous she is spending time with Mark announced and shoved these lovers out and loaded them into the truck. What are you thinking? Kidnapping and maybe false imprisonment. Art drove a short distance down the dirt road behind the store to a large refrigerator and locked Fran and art in the refrigerator and returned to the store to pick up Ben who took $250 out of the cash register on his way out of the store.

The fact that I return back. The force, fear, intimidation is gone. Took Fran and art for a ride and locked in the refrigerator. The fact that Ben took the 250 from the cash register is an act of larceny. You would go through the issue of attempted robbery and show it fails and bring up larceny based on the facts. [Reading]. Trying to get you to think of. Well have you a sensibility. That raise it is thin skull plaintiff rule. Yes. The thin skull plaintiff rule does work in crimm law and let's go through the answer and I take it right in chronological order because it is a general call and first thing, I saw in regards the o state verses art is conspiracy and then did decide to go rob the local convenience store and there is agreement. And of course, robbing is unlawful act and of course when they enter the store and talk about common law burglary. And remember even though you know. It is going to fail because of the (Indistinct) of another you have to go through the elements and you go through the elements based on your rule. So, my rule is the night time. Breaking and entering. Dwelling house of another with the specific intent to commit a felony therein. I am going to take it in that order. Make the presumptions it is nighttime. And they did enter the store. And it was open to the public and wasn't trespass. No break. Not a dwelling. It is a store. But entered with the specific intent to rob. However, based on the lack of elements of what? Breaking and the dwelling house of another there is no common law and you fall back on modern law and I want you to remember that. When common law fails on an essay fall back onto modern law. Multiple choice questions common law lets dictate otherwise.

The store is open to the public but the fact that you entered with the intent the to rob. You initiate the owner’s consent and therefore trespass entry and it is a store. It is a structure and intent to rob and intent to commit ‑‑ you are guilty of modern law burglary. They did brandish the guns and we will go through robbery. Robbery remember you need to take and carry personal property of another by force fear intimidation with the intent to deprive. Look at the facts and what happened here. Took the $250 from the cash register after Mark and Fran were placed in the refrigerator.

Since they left and it wasn't in their presence isn't force fear and intimidation. And that will make me fall back on intent. Remember this is an essay. With an essay I bring up as many theories as possible that you can be charged with. With the intent again art and Mark planned to rob the store and said this is a stick up. And took the money without the force and v the substantial step. So, again, we have an attempted robbery. Then of course we have false imprisonment. The fact that the confinement in the refrigerator. He took them in the car. Right? Drove them a short distance that is what? Unlawful that is why he told you he drove down the dirt road and you have murder because they told you he died. You could do homicide. I generally do murder and causation and homicide is killing of another human being and art died when Mark locked the refrigerator and you have a bigger issue with the proximate cause because he died as susceptibility of pneumonia and things fell apart and sorry take them as you see them and this is a particular exam with murder that we do know. Proximate cause is an issue.

Sometimes if I am in a hurry, I skip causation in this exam I need to discuss it. Next you go through murder with malice and remember with malice you want to show what? As many ways you can. Do I have facts for intent to kill? Said (Indistinct) how about the fact create great bodily harm. Yes. Harmful and reckless. Yes. And felony murder rule. Sure. You can use modern law berg and attempted. Which is in this case is attempted robbery. Don't forget that.

Remember any inherently dangerous felony. Burglary. Lar son. Rape. Robbery. Kidnapping or any attempted inherently dangerous felony. Do not forget it it is tested.

Now of course we have the fact that he was enraged. So, once I go through the murder for malice, I want to argue in regards to involuntary manslaughter and he consider her his girlfriend and became enraged when he saw her with Mark. Would a reasonable person lose the mental equilibrium? Was it truly your girlfriend and had I would argue no and he is convicted of murder in the second degree? And attempted murder of Fran and I brought up because he placed her in the fridge and left. Substantial steps specific intent. And of course, if you find you can argue attempt. It is an issue I would bring up.

Now you notice I did state verses art first. Why? Art can do all of these actions and then he took the money out of the cash register after Art picked them up. I am imputing everything that art did on to Ben how? Through the Pinkerton's rule. Remember I told you this is testable and likelihood it being there is great. Ben is going to argue the robbery or even burglary. Not the fact he kidnaps and it resulted in a murder. Is it foreseeable? A natural probable result of the conspiracy? If we are robbing someplace, you could foresee somebody could die. Murder might be foreseeable. Fact I might have to imprison you. You can argue that is foreseeable doesn't matter. As long as you argue. You have got to argue both sides. Because again one key factor here is Mark is jealous and that caused actions verses based upon prevention of being captured.

Argue both sides. I don’t care how you conclude. Pinkerton's again natural probable result and foreseeable and I need you to argue the elements based on the crimes make sense?

Since you actually, you see why Ben, I did Ben as separate lawsuit and I couldn't talk to them both together because it wouldn't make sense because art is doing all of the conduct. Remember that if you have one party doing all of the actions and I can start off both conspired and had there after you went awry. And I will talk about the other thing that is occurred and notice how it went back then to Ben. And that is why I took in the order I did and of course in regards to Ben I will talk about the larceny and he is the one that took the $250 out of the cash register and see if there is larceny and that could be imputed through the Pinkerton's rule as well. All right? Those are the crimes and now we have to do defenses, don't we?

Voluntary intoxication. It negates specific intent. Larceny could be negated. Burglary could be negated and had not the rape and not the false imprisonment. And not the murder. How do we know intoxication is not going to work here? We know because he reck needed mark and Fran and was able to put in the truck and move around and had in the fringe and take the money and leave. I will argue you are not fully intoxicating and had unaware of the actions. That is not a defense. Remember the can all says defenses. Two or more. If you can't find one remember I told you with voluntary intoxication diminished capacity is (Indistinct). Your capacity so diminished you can't form the specific intent and again, evidence as to what they are doing capacity wasn't so diminished and fully aware as to what they are doing. Therefore what? No defense.

So, these questions actually weren't too bad. Right and in regards to question number three the Pinkerton's rule is a relatively weak area students had and I will tell you be prepared. I know it is going to be there.

Students had questions and let's see what we get through on the multiple-choice questions and these are actual baby bar multiple choice exam. Older but it is truly one of the exams.

First question is question number seven and say the key thing that is consistent is you need to go through the elements and basically, they told you Wal‑Mart asserts damages for the wrongful death of Henry basis of which moonlight hotel is. She is suing because husband drowned and has to show underlying as to whether or not they are negligence and did give you statute in the exam and you can argue negligence per se what caused him to drown and we don't know. No witnesses. Answer choices. Henry assumed the risk. Did he know the risk of involuntary encounter? There is no life guard present sign. In regards to being contributory negligent. There is nothing to show he fell below the standard of care. Hotels is the absence of the warning sign is not the cause in fact. Without the warning sign he could have drowned. T no he could have drowned with the sign. C is best answer. As to D. That is not going to work because you have to show causation and the statute under negligence per se doesn't impose criminal liability.

Question number 12 and this is a UCC question you need the o understand and this is most likely on the multiple-choice questions if somebody send you an order and, in this case, it was shipped 175 model A hearing aids and you ship 175 model B hearing aids you just accepted by your shipment. Under the UCC goods can be an offer can be accepted by shipment. Unless you place in there a letter of accommodation saying I don't have what you need but here I am sending these if you want these instead.

If that letter of accommodation is missing you just accepted ask and breached the contract. So, in this case, by his shipment without the notice of accommodation he was in breach. If Anthony sues. Shipment of model B hearing aids caused acceptance of the offer to model A hearing aids. Absolutely and that is out of the UCC. As to question number 13. Not sure why we missed that question. Basically, dealing with negligence. The storm sewer owned and operated by cross field ran under the part of the house and escaped and had got in basement and flooding it they have to show you are negligent somehow. Silver linings are not under the theory of strict liability. No.

Next one was question number 31. So, will (Indistinct) claim against Dennis. Look at the actual facts. Was nine‑year‑old and a third-grade student in school while playing in the schoolyard ‑‑ [Reading] ‑‑ what tort is this? Got in a fight with Dennis, right? Seem to be committing what? Battery. Would he prevail or again I am defending myself? There is no liability. No unless Dennis used excessive force. I can use reasonable force to protect myself not deadly or excessive and I think in question number 31 you didn't narrow down specifically to what is being tested.

On question number 33 reading and comprehension issue. Question number 33 says Arthur asserts a claim against action will Arthur prevail. Look at the facts Arthur is a well-known film star and photographed while drinking a beer of his light beer. Right? Action is the one that produced the photograph.

I can publish and put a photograph of a movie star at any time any place, right? But then when someone else reproduced it and used it in its provocation (Indistinct) is the wrong jury here. You got the wrong parties and based upon yes because the action of using arts picture for commercial purposes that is fizz was in the call of the question. Action in the call and the answer in this case would be C.

Question number $.35 transferred intent. If I borrow a car. And I you borrow with the intent basically I am lying to you and I got consent from you under the wrongful pretext and then of course later I destroy the car and permanently decide to keep it would become a larceny and this is a good question to get to know. Question number 35 it would be the correct answer. Guess what? Highly testable. All right.

I didn't get through all of these. Question number 48. Remember this is dealing with (Indistinct) repudiation. Assuming on July 1st fails to ‑‑ [Reading] ‑‑ Why couldn't he. That meant your condition. If you look at the facts and says the contract specified July 1st is closing day. If I perform. Right? And give you the money. And you fail to deliver the deed. You are in breach. So, if Brian continues payment his condition is perform and had now it been what? Your turn. Embezzlement because you obtained it had property of the call by a falsity. You said I am going to buy groceries and that is not what you were doing and that is why it wouldn't be embezzlement. You didn't obtain lawfully possession of the car. That is why.

Question number 49 what that dealt with did larceny commit the attempted murder of Calvin you can't use transfer attempt for attempt. That usually works for the theft crimes. Larceny. Larceny by trick. Embezzlement and robbery and stuff like that.

Question number 15 dealing with the actual dog. Look at the facts and I had no knowledge that my dog did anything and you know it can't be strict liability. Basically, the leash did break based upon the explosion and unless you can show me somehow, I knew that the leash breaks or something and how was I negligent. Remember you are looking at the multi‑states basically as a whole and you got to break it apart. What theory. I am telling you now. If you say negligence. Strict liability and don't break apart the elements they are going to get you because they are tricking you. I have to dissect and make sure each and every element is supported based upon the facts otherwise I am wrong and that is going to hurt. Make sense?

Question number 16 and this is a good one for everybody. Let's go ahead and read this one for you. It is a good question and testable. [Reading]. It is conversion intentional tort [Reading]. The answer is no. Why? No contribution is allowed because between joint tortfeasors since Juan received full judgment against stan no right for stan to recover against (Indistinct). And that is common law doctrine. No contribution at common law.

Next, I have is 75.

In regards to coming to nuisance remember if a party is creating ago nuisance and even if you move there and know of the nuisance. Doesn't mean coming to the nuisance. Right? So even if I move there. And then you are continuing to bother me that would still be a nuisance. Come to the nuisance you do bring up on an essay never a defense and always fails.

Question number 88. Remember you thought you are calling John. Sorry I didn't directly solicit you. And I think that is the last one I got to. Question 89. Let's see. This is dealing with conspiracy you need to show the agreement between two or more in regards to the actual parties. So, let's go through and see.

This is question number 89. [Reading]. If Thomas read the note, we have agreement there. Shane left note in the apartment and Shawn was out of town. There is no agreement between these two is there? John's roommate Mark discovered the note and read it. That is called what? An (Indistinct) agreement if he acts on it. Mark thought the note was intend for him and went out to look for Thomas in the meanwhile ‑‑ [Reading]. There is your conspiracy between Shane and John. [Reading]. Call says was there a conspiracy to assault Thomas? Yes, it was. But who was I fit between? It was between Shane and John. It wasn't between Shane Jon and Mark. The only way I can hold Mark accountable by himself is under a theory of a unilateral conspiracy based on the note. But the agreement is between Shane and John.

Needs to be in writing to identify the is the statute of frauds that is correct and last one someone had was question 100. [Reading]. How did I obtain the money? With con isn't. Ruth? For was it no you didn't buy the equipment and give part of the proceeds and you are obtaining my money wrongfully let's go through the answer choices. That is contracts forget it. Larceny. Wait is there is taking ask carrying a way with the intent to deprive at the time the $200 was given. No. Embezzlement. Did you obtain possession of the property? Yes, you did. And then D says yes obtained by false pretenses. Remember false pretenses you get title property and at the time I made the representation to you with the $200 I was earnest why did you buy the stuff and this is the crime I am going to commit. I didn't obtain by falsely representing to you I was going to tell you what I was going to do which is the truth at the time and change my mind later and it wouldn't be false pretenses. Make sense?

Anybody have any more questions? At this point what you need to be doing is issue spotting and we are getting close. T we got two weeks exactly. All right?

At this point I would be fine tuning and practice multi‑states as many as I can and hopefully you see an increase in the score and working on the issue spotting and if you are having a timing problem, I would recommend on the weekend Saturday. Time yourself you got to get your timing down. Remember do it in the increments of an hour. Right? Because you will have one hour per essay and take a break and another hour and take a break and etc. Multistate are in increments of 50. You have 90 minutes practice multi‑states in 90‑minute window. Why you want to get the mind to continue thinking for the long stretch of period of time. Something like training yourself like a marathon in regards to getting my mind set. Anybody have any questions?

You do not need to memorize the number. A lot of times I will say the number for you guys. So, you know where to look it up afterward. Generally, no I use 2‑dash 207 or 2‑dash 702 or whatever the case might be. So, you know to look up in the UCC or gill betters so you can read it. You don't need to know the numbers at all.

Any other questions for me? All right I hope you guys are fine tuning now. Right? If anything comes up shoot an e‑mail at jolly dot Taft U dot EDU and keep me post and had you can do this. You got go to go in with the mindset. Take control of the exam. That is on you. Take the power. Anything comes up let me know and keep me posted I wish you the best of luck and I hope you did get the predictions if not shoot an e‑mail and I will make sure they sent out the to me that you did get it. Remember again everything that you have been taught in the first-year p plus UCC is testable and you need to be prepared and had I wish you a good night.