CLASS: TAFT

LOCATION: REMOTE

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R. Farrell

(Captioner on standby).

>> Good even welcome to tonight’s baby bar mini‑series and primary focus is last baby bar held in October 2021. Four essays to get through. Quite a bit to get through tonight which is doable. If you have questions place in the chat and I will help in any way I can. For your convenience these sessions are recorded and if you want to go back and listen to the lecture everything is there for you. Essay question model answer as well as transcript or a recording of the actual recording itself. For those here you can let me know you can hear me loud and clear and I will use as a sound check before we jump in. All right.

Now you will see in the packet that I sent out to you that there are instructions for each essay. Since the exam is going to be conducted online this is the same format that you are if going to get. You will get basically here directions that you need to read and they are on the computer of course. Then you will go to question one. Log off. Break. Log back in with a password and again you will see the same directions and question two and etc.

What I would recommend is bs the directions and know what you are going to say. Look at the directions for the first question it says your answer should demonstrate your b ability to analyze the facts in the question. To tell the difference between material facts and immaterial facts and discern the points of law and fact upon which the case turns. What are they telling you here? What they are telling yuen only bring up which is relevant based on the facts what issues you are seeing that are relevant. And the answer should show you know and understand the principles of theories of laws and qualifications and limitations and relationships to each other another way of saying identifying the issue and show based on the facts how it applies to rule of the law ‑‑ manner for the permission to adopt a sound conclusion. That is the (Indistinct) identify the issue. Take the rule of law and break apart by the elements and show how each and every element is supported based upon the facts don't show merely legal principles and do not bring up something that is just based on the facts instead try to demonstrate proficiency and using and applying. Again, efficiency is you are able the to see based on the facts that this is an issue and supporting as to why and this comes up with the facts and in relationship to the elements and if then answer contains (Indistinct) in the conclusions and receive little or no credit.

People don't understand just see the theory of negligence and shouldn't be liable you are going to get nothing. Break apart based on the facts and reasons for that support your conclusions and discussions all points thoroughly. Break it apart to show me how you got there. The why. Right? Then answer should be complete and you should not volunteer information or discuss legal documents that are not per t innocent to the solution of the problem. They are telling you back (Indistinct) understand it is law and everything up on the exam. And show what is relevant again based on the facts.

You should answer according to legal theories and principles of the general application. Common law. For contracts. Common law. Torts. Common law. Crim law. Basically, common law and unless stated otherwise they have to tell you they wanted to ask in the question and call of the question answer according to model penal code or whatever the case may be. You are going to know based on the call of the question the essay. These are the general instructions and they will not change and that will save time unless they go and give you a minute to read them, I can get in my zone before I flip over and see the question it. I don't want to keep reading over and over the same instructions it is a waste of my time I want to get into my mind set. Those will not change. And something you want to get familiar with and you are fine you know it is going to say the same thing each and every time.

Question number one. Always start off with the call of the question. With what crimes may Dave be charged. Discussed. We know state verses Dave. Crimes it is two or more. And reasonably charged second‑degree telling me if there is a fact that support an element of a crime you need to bring it up even though it won't be successful you bring it up. Remember there has to be facts that raise the issue, right?

So, let's go through the facts. Dave suggested to Fred that they rob a bank. Remember I always want you to read this sentence by sentence. The fact he suggested I am thinking what? Solicitation. Fred agreed and said he would go along with Dave when he tries to rob the bank and there is conspiracy. Unbeknownst to Dave Fred didn't want to rob the bank and they are playing with you with a sub element of whether or not there was an agreement. Whether he was a member of a terrorist group who wanted to explode a hand grenade in a public place as an act of terror. When Dave asked to participate in the bank robbery. Frank saw an opportunity to fulfill his goal while having ‑‑ the solicitation and conspiracy and we see with the conspiracy whether or not there is an agreement. Next day Dave and Fred approached the bank carrying handguns and it is daytime and approaching the bank and Fred had a hand grenade in the jacket pocket Dave didn't know about. As they walked into the banks front door with the guns drawn, banks door. I am thinking of burglary and of course they have their guns drawn and think of robbery or attempted robbery. Dave’s astonishment Fred removed the grenade from the pocket pulled the pin and through into the bank. The explosion damaged the bank but didn't hurt anybody. When you see an explosion going on what you think of. Malicious mischief. Didn't hurt anybody. Bank guests (Indistinct) shot his gun at Fred killing him. There is murder. Look at who did all of the actions and Dave suggested and it is Fred doing the conduct. We have inner issues within the elements to talk about in regards to the conspiracy and agreement. Was this pursuant to Pinkerton or reasonable natural probable foreseeable result as you are agreeing to rob the bank itself and break apart and go through and you see in regards to the murder what is the underlying issue. The red line views. You the bail guard here who did the killing and that triggers when you have an innocent party doing the killing that is red line view or some people learn as personal felony murder rule. That is triggered. Can we impute another parties’ actions onto that felony that is the under-lining issue and we go through and issue and spot it and the they were ready to view the actual outline and don't forget to take the time to outline the examination?

Rule of thumb you have a general call with what crimes may Dave be reasonably charged and take it in the order of how it comes up and Dave suggest and had first thing I talk about is solicitation and then go on from there and that is very important. Okay? You take in order of the call.

First thing I want to talk about is solicitation. Remember with solicitation enticement or inducing of another to commit an act and the fact he suggested they rob a bank I have solicitation. This is what I call a given me. What I mean by that based on the facts it is there. All of the elements are supported based on the facts so I am not going to spend a lot of time on this issue because everybody should have seen the issue and I know it is not worth a lot of points and I want to shine where I need to shine and remember with solicitation, I would point out the to the reader it merges because it is a lesser and included offense. A merge will take place. Next the agreements. For the conspiracy. Go through conspiracy and Fred agreed with Dave and said he was willing to go along with him and goes to rob the bank and based on the paragraph told you what? He is a member of a terrorist group that wanted to explode a hand grenade in a public place and issue it was there an agreement? Asked to participate and saw an opportunity to fulfill his goal. And Dave had no idea about this. And this is what you call a fang agreement. Based on the facts you want to point out the to the reader this element is an issue. There is no agreement arguably and come back with the counterargument that Fred didn't want to rob the bank but went as back up and Dave went as back up and based upon Fred agreeing there was an actual agreement.

As you can see based on the facts the agreement is the big ticket here. You have got to argue both sides and moat of us would find there is an under-lining conspiracy. Assuming you didn't. (Indistinct) that will throw off the whole exam. We have Dave in the call being charged when Fred did a lot of the wrong doing.

Next you go to burglary and this is an issue students miss. You enter into a structure you talk about burglary doesn't mean it is going to succeed. Because you know there is as different between common law and modern law and something you are going to bring up. I have an argument in materials of common law berg and problem is it is the next day and no nighttime. They did approach and go into the bank and therefore no breaking but did enter. It was a bank not a dwelling house of another and intent to rob and specific intent but the lack of nighttime and the breaking the common law burglary will fail and you go to modern law.

Remember the rule of thumb is common law first if it fails then you bring up the modern law aspect. With modern law remember (Indistinct) to any structure to commit a crime in they have hand guns it is (Indistinct) the owner of the bank wouldn't want them there. The bank is a structure and specific intent to rob. And we do have a modern law burg. With the modern law burg, he is charged or guilty in this case Dave will be because he did participate at this point. Then the next issue is whether or not there was a robbery. Well, they didn't get to point the gun at anybody and demand funds and I will go through the issue of attempted robbery.

Wb remember with the crime of attempt you always focus on the elements of attempt and not the under-lining issue. Dave approached the bank. Had the handguns and drew the handguns and shows conduct specific intent. And did enter. Apparent‑ability. They walked obviously into the bank and drew the guns and substantial step. And therefore, based on the actions they are guilty of here he will be guilty of I attempted robbery.

Next, we have got the murder and no regards to the under-lining murder here. We have Gus who did the actions and when they approach and had gone into the bank and threw the grenade and there was an explosion. Right? Gus is active shooting. Fred and killing him. Right? Wait a minute. That shows I have wanted and reckless conduct. Didn't have specific intent to kill and premeditation and you are robbing a bank and the fact you are going in with guns drawn that could be argued as wanted and reckless and how you can show malice and Gus’s shooting Fred and died and foreseeable. You attempt to rob a bank one can die and then special or red line view. Why this is an issue if you have an innocent party doing the killing can we impute that killing on to Dave? Well Gus did the killing. However, based on your actions is it foreseeable when you try to rob a bank that a death could result? In common law yes. You are guilty under common law. Under modern view the answer is no. Okay?

The other argument here is maliciousness mischief because Fred is the one who threw the hand grenade and when destroyed how are you going to impute that act of Fred on to Dave and that would be through Pinkerton's rule. If you walk out on a Crim law exam and don't see pink r ton when you address conspiracy, I would be worried and go back and look it up and they love to test conspiracy and love to test the Pinkerton's rule. That is highly testable concepts. In this case reasonable and foreseeable. Again, hand grenade and drawing the guns and couldn't see the actual malicious mischief which is destroying because it exploded and caused damage and I orb argue Dave is not charged with malicious mischief based upon the conspiracy. Any question-on-question number one? I didn't feel this was a bad exam at all. I felt it was straightforward. Anybody have any questions on question one? I hope you felt the same way it wasn't that bad and straightforward.

Aggravated burg I wouldn't talk about that. That is set by statute. Have your common law and then the modern and that is all you are responsible for. I wouldn't go to aggravated.

Question number two. This is a contracts question. Look at the call and what claims if any Bret made against Sam and what damages could he recover. Call two what claims if any may pat or Bret make out of X Y Z motor company and two different parties and damages and general and special and most likely anything else that is raised based upon the facts and since Sam is owner of marvelous motors car dealer ship and sells cars by X, Y, Z motor company and went ‑‑ [Reading] ‑‑ so at this point we are looking at d that create an offer? Bret arrived today pick up the car and discovered ‑‑ [Reading] ‑‑ again, now he is giving actual reasoning. Sam offered to let Bret try out the car ‑‑ [Reading] ‑‑ what is he doing when he makes that is representation? That is misrepresentation. That is fraud. Right? And is it part of the contract. Bret didn't sign without reading it. Sam said it is a temporary use licenses and document is contract between Sam and X, Y, Z motor company the seller and Bret to buy the car $20,000. The contract stated in the same size font as the rest of the contract X Y Z motor company ‑‑ [Reading] ‑‑ here he made a recommendation in regards to a warranty and now disclaiming it. In regards to warranties what do we know about warranties? The rule of law says you cannot give an express warranty as a disclaim in the contract. You can disclaim implied warranties but not express and we have representation here that are falsely and based on the disclaimer is this something I am able the to, see? They did tell you it was the same font in the rest of the printing. And fully aware and (Indistinct) it is capricious. I can't tell when I am giving up my rights.

It says Bret got three speeding tickets and each time highway patrol officer told Bret the bright red color of the car caught their eye and otherwise wouldn't have seen him speeding and Bret had to pay a total of $1,700 in fines for speeding tickets and decided today return the car and before he could do so Bret had to pay a thousand to have the faulty transmission repaired. There are damages. With if fines and as well as the faulty car in and of itself. We know this is contracts and we start off and see we need to address the issues and does the UCC apply? Answer is yes. We have the X, Y, Z therefore it is good and UCC applies and next merchant. Well Sam is (Indistinct) marvelous motors car dealer ships and Bret is a buyer. He would not be considered actual merchant and only Sam would fall under the category and in regards to the offer with the offer when he went right to Sam's marvelous motors and said he wanted to buy the car and said he would have it by Friday who is the offeror here? Who would you argue the offer for and go look at the facts and I am and going to look at the facts and I am going to find that Sam is offeror I said I wanted today buy the car and anything but red and said he could have it there by Friday the 31 demonstrates it is intent? We have got the (Indistinct) terms as the 31st being the time period wrongs car being the quantity and Sam’s (Indistinct) price. We have the terms and of course communicating with the dealership and they are communicating offeree.

Acceptance I would argue is on the 31st Bret arrive it had to pick up the car and saw the bright red and refuse today accept it and Sam offered to him for three months without the actual guarantee and he signed it had document and as conduct signing the document unequivocal sense however he believed he was signing a temporary license and not an actual contract and playing with me with the actual acceptance and I don't see an acceptance here. I didn't believe I was signing a contract.

Next consideration the 20,000 in exchange for the snazzy X, Y, Z car. Next is a prevalence issue here. It comes ups if you have a written document, it cannot be oral. Here as to what the parties sign the contract was it fully integrate and had signed the document but thought it was signing temporary use of license and argument here Bret is going to say wait a minute I didn't know and I didn't read it. Which you should of. Was it fully integrated contract? You are going to have to make the argument and Sam will argue it was fully integrated and had expressions of the actual parties and Bret will say it didn't my actual intention was not to take a red car but you said I can have with a guarantee for the three months and I was signing a use license and it isn't fully integrated.

No matter what you will see if you find fully integrated, we want to see if there is an exception we need to try and bring in the statement of what he said in regards to what? He is making a guarantee. That based on a fact of the guarantee that you can have this for three months. Right? You won't get speeding tickets. Now I need to show the language. How do I get that in?

I will have the to go back and argue an exception in order to try to get that in and that is how it works in regards to the evidence rule. You have found the contract is integrated nothing can come in the to change the four corners of the document. And you look at the actual paragraph you want the second paragraph basically told him guarantee Bret would not incur any speeding related costs and had him sign a document which he said was what? A contract for implied license. Temporary license. I would bring up in regards it is to fraud as an exception. Based upon telling the use of a temporary license verses a cob contract for the sale of actual car it is material. Fraud you need to show representation of material fact which one justify lied and he didn't read the document and believed he was signing use license and it isn't material because I didn't think I was buying the car and mistake and wrongful belief. Whose mistake would this be? Bret is the one who didn't read it he is under mistake or belief. Unless the other party should have known the only other party that can get out is Sam and in this case Bret can what undo the contract. Then of course you go into the breach after signing a contract you return the car and Sam won't take back even after representations and in breach of contract and damages and bring up the nonbreaching party which is expectation and of course special damages which is transmission repair.

If you look at this you see I incorporated the representation of the warranties under the call number one based on what Sam represented. Call number two to what Bret can make against X, Y, Z motor company and that is different. How can I get ahold of them they are not basically the party of the selling of the car? This is a cross over with almost like products but under the UCC where you have warranties remember UCC you have warranties and first one I will talk about is imply warranty and in regards to being automotive company you have implied warranty product is fit for normal and avenue rang work v use. The red car wasn't fit for reasonable purpose use because the transmission failed and had X, Y, Z will bring up disclaimer that you signed a contract that exclaimed all expressed and imply warranties and number one you didn't know you were signing a contract and number two the better argument is two things wasn't capricious. I couldn't see it same font and blends in. Plus, in order to exclude disclaim the implied warranty and merchant‑ability. You have to use the term merchantability or something that makes it clear I don't have this warranty as is. Disclaim product warranty merchantability. Got to use the language or something close as is that we fully understand that we are giving up that right and you have an argument that the disclaimer is invalid. And you have implied warranty of fitness for a particular purpose. You knew what the buyer is intending to buy and Bret went into the sale of a contract for a red snazzy car and knew all of it. And the highway patrol officer said because the red car caught my eye and car had faulty transmission and not for the intended purpose and they are going to argue you breached the implied warranty merchant and go through the issue in regards to disclaimer which is a similar argument against not capricious and can't see it. With imply warranty of fitness you don't have specific language you have to use you say you are exclaiming the implied warranty. And same argument I know I am signing contract and not capriciousness and blends with all of the other stuff there. And therefore, obviously the disclaimer is not valid.

In regards to the contract question I didn't think it was too bad and I thought it was pretty straightforward if you took it by the call of the question and broke apart. Parole evidence is a testable issue in order to see it I am try to go bring something in that wasn't in the written contract and you look at the facts Sam wants to bring in the guarantee that I won't get any speed related because of the color of the car and that triggers and I get it in and it is a pr o evidence issue. Anybody has any questions in question number two.

All right. Question number three. Question number three is a Crim law question and they did have in October 2nd crimes and looks like you will have two torts or two contracts. And look at the call of the question with what crimes can Doug be reasonably charged and had again crimes two or more. Reasonable. Means the facts support. You can bring up an argument. Doesn't mean it is going to seed succeed and can Dan successfully assert the defense of insanity. When you see insanity, I told you need to do all four. Can't pick and choose which you want t and you will do all four insanity charges and now again based upon the call of the question what does that tell me? All crimes that I see based on the facts will be in call number one. All insanity defenses will come in call number two. McGnaw ton. Irresistible impulse. All will go in call number two and I got to take it in order of the call of the question.

All right let's go through the facts. Doug has a long history of serious mental illness. Gave it to you. No way I can hide insanity. Have to tell me there is a mental illness or defect. Can't hide it from me. Illness caused him to experience illusions ‑‑ [Reading] ‑‑ why they tell you that? Because he can have that control to prevent this. Right?

One day Doug stopped taking the medication because of the unpleasant side effects and two days later he was firmly convinced that he owned all blue bikes in the world. This is dilution. False belief. Following day Doug saw a blue dike in the garage at the Smith house across the street and Doug became convinced Smith stole one of his bikes and Doug went to the Smith's accused of theft and as he was taking the bike away, he shoved Mr. Smith. You are taking ago bike and that sounds like larceny.

In regards to shoving could you argue as a type of force and that could be argued as robbery and a lot of people will grab onto battery and see to me the fact you are taking the bike and shoved him you are using force to get away with it. The Smith's call the police and responding police officer gave the bike back to Smith and told Doug to stay away from Smith's garage. See the paragraph and I see larceny and robbery and some people might bring up battery. During the afternoon of the next day Doug enlisted the help of Kira. He is enlisting. A 14‑year‑old girl who lived in the neighborhood. Kira knew nothing b about Doug p's dispute with Smith’s and told Kira he owned it had bike in Smith's garage and need it back. With the fact he and the solicitation and he is try to go get her to do an unlawful act and told her he own it had bike and she is not in my call remember it is all against Doug and she basically offered to pay the $5 and give the bike back and she agreed and there is your conspiracy and she went and removed it had bike from Smith's garage and began to ride across the street to deliver to and failed to look at traffic and hit by a car and killed and there is your murder. Based upon Kira to get the bike back and hit by a car. No intent to kill. Wanted or reckless. Felony murder. I don't feel there is any malice and of course I will go to involuntary manslaughter.

All right. So again, you take in order of how it comes down in the fact pattern and first thing I see mental illness and paragraph one goes to call number two. Paragraph number two goes to paragraph or to call number two. Paragraph number three is first I am going to go use to support the facts for tr first crime which I am talking act larceny.

When you saw the bike and convinced it was, he went to take it and didn't have consent of the Smith’s and trustor taking and took the bike by shoving and carrying away and belonged to Smith and believe it had bike was his and even though he was convinced the fact it is not. That shows he had specific intent to deprive the Smiths of blue bike and we have a larceny.

Now general rule is once you prove a crime you do the defenses right? But the call dictates. Not doing insanity defense here and wait for call number two and next thing I bring up is actual robbery itself. Again with the robbery remember larceny is lesser included offense of robbery and went and took the bike and accused of a threat and owners didn't consent and belonged to the Smiths and shoved Smith to get the bike and use by force because Smith didn't try to stop him and they called it had police and fact he (Indistinct) ‑‑ arguably I feel there is enough facts to support the charge of robbery and point the to the reader that larceny is lesser included offense of robbery if the judge or jury found him guilty of robbery the larceny would be merged you are only convicted one or the other not both. What you learn with criminal procedure that is a double jeopardy issue.

Now another issue that is a sleeper for most people is if you look at it, they went over the to the garage. Burglary. Again, as I stated to you earlier if you see a structure be thinking burglary. Doesn't mean it is going to succeed. Right? One day stopped taking the medication and went over there. No nighttime. Enters the garage because he saw to get the bikes no breaking. Entered the garage. But it was not a dwelling house of another but believe it had blue bike was his taken by the Smith’s and shows when he took, he had intent to permanently deprive. No nighttime breaking of dwelling house no call and since common law fails fall on modern law and Doug is convinced Smith's took the blue bike and went over and accuse them and did enter garage without consent. Trustor. Structured. Garage and took the bike believing it to be his. Unlawful act of larceny and we would have arguably it could go either way a modern law burglary.

Then I would bring (Indistinct) by the fact he shoves him and that would show battery and the next step that come ups is solicitation because when Smith's call the police and police give the bike back to Smith, he enlisted Kira for her help and he told her he was true owner of the bike and asked and enticed her and encouraging her to help and offered $5. To take the bike from the Smith’s and this shows he is acting in commission of soliciting her the to commit the unlawful act and he can be charged with solicitation and then we have conspiracy. Again, he offers it had to pay $5 in order to get the bike back and she did agree. There is agreement with two or more but is it agreement itself because she didn't know about the dispute. Did she have specific intent to commit an unlawful act. Did have the agreement to get the bike which matches to Doug for the agreement but did she have specific intent to permanently deprive. She had no idea. Nothing about the dispute and Doug told her he was the owner to have the bike. And the she was only 14‑year‑old and based upon her being 14 and a minor that is (Indistinct). If you don't argue that way you can argue with (Indistinct) agreement. Based on the conspiracy let the reader know you are playing with me did you have an agreement to have the specific intent to permanently deprive that element is tested here and you need to bring it up and argue t. And it could go either way and you got to let them know that you see it. Death of Kira and remember with malice. Show intent to kill. Or create great bodily harm. And the look as many ways to show malice but if not there not there. Based on facts didn't have intent to kill Kira nor did he have intent to cause great bodily harm. (Indistinct) is that wanted or reckless. I don't feel that is wanted or reckless. She didn't look both ways I will argue there is no malice here. And remember you can argue felony murder rule. The other way to get the felony murder rule is through commission of what? Modern law burg. If you did go that route which is proper way in arguing the felony murder rule the issue is did this occur with the commission of under lying felony the burglary took effect previously and (Indistinct) it will fail. Either way get you to issue of involuntary manslaughter and remember it is unintentional killing without malice or forethought and again based upon she (Indistinct) looked for traffic and more of a criminal act and negligence’s and maybe heck be found guilty of involuntary manslaughter.

Next call number two. Can Doug successfully assert the defense of insanity. Go through all four. Key thing with insanity is mental defect and that is to cause you to do your acts. First is McGnaw ton because of a mental disease all four have the same thing in common. Must be based on the mental disease. Based upon Doug's mental disease. What (Indistinct). He has a serious illness. Illusions and false beliefs and don’t (Indistinct) objectively to society more subjective. Taking medication and decides to stop taking it and doesn't like the side effects and then became convinced he owns the blue bike. Is it because of the mental disease he didn't know what he was doing is wrong? The argument is because he stopped taking his many medications is what called the mindset. If p he was taking the medication, he wouldn't have had the mental lapse of believing everything is his. It could go either way. Right? Failure to take the medication illusion caused it had mental disease. However, you can argue either way it is mental defect because even though he stopped taking the medication his mind was going in that direction.

Irresistible impulse is when have you an impulse you can't prevent. Based on the false beliefs stopped taking medication. Irresistible impulse to take the blue bike. Modern penal code. Lacks substantial capacity to conform and make the argument and Durham was because of the mental mind set and the answer ss yes.

Actually, if you are argued both sides at the beginning under McGnaw ton and let him know wait a minute you look to the mind set and look to the mental disease. Would the mental disease cause the answer is yes and if you are taking a medication, you wouldn’t do it? Yes. But counter argument is because of my mental condition I don't want to take medication as a side effect and caused the mental defect for me do the act and therefore I should have had a valid defense and let the reader know you see this as an issue and key thing you need to remember is what? Argue both sides. Very important to argue both sides. Okay? Any questions on question number three. Doable right?

Last question which is question number four and this is torts obviously since we haven't seen torts yet. What claims can Paul reasonably assert against and what injuries could he recover damages from Aspen hospital. Dr. Johnson. Valley view hospital. When I see entity what should I be thinking of? Vicarious liability I see call number three vicarious liability I have to address. An entity can't act on their own. The facts. Six months ago, Paul had abdominal surgery as Aspen hospital to remove a lacerated section of the large intestine and Dr. Johnson it had surgery and told Paul there was no problems with the surgery and assured him, he would not have issues in the future. Dr. Johnson knew one of the surgical clamps was left Paul’s abdomen and would cause future problems and he knew about and it let it go. There is the first issue in regards to negligence and three weeks ago Paul experienced severe abdominal pains and went to an emergency room at the hospital and the doctor. Dr. Nor man performed surgery and removed it had old surgical clamp and it caused a massive infection in the abdomen and when you see the massive infection what should your p be thinking of? Proximate cause problem is it relatively foreseeable? Right? Other thing is Dr. Johnson knew to and did he commit a battery? One week after the surgery done by Dr. Nor man and Paul recovering in the post-surgical wing in the hospital it was discovered it had lungs were damaged by post-surgery preliminary embolism a blood clot that forms after surgery ‑‑ Dr. Nor man told Paul review of the chart it is nurses should have discovered it had embolism two days earlier than it did and if they had his lungs wouldn't be damage and had that is against valley view and nurses and Paul asked Aspen hospital about the first surgery and they denied it was #1307b8 for the injuries and Paul is going after Aspen. First thing you have to show you are suing on behalf of who? Dr. Johnson and go through vicarious liability. And whenever you see a doctor, you should think independent contractor verses employer employee relationship. Aspen hospital own it is hospital but they are the ones that contracted with Dr. Johnson and issue is responsible for an employer employee relationship. You can argue yes or no and continue on with the independent contractor and again do they have control in how he performs?

They did hire him. Performs surgeries and left a clamp there and you can argue they are responsible but I don't tell them who to book the surgeries with and have control of the surgeries and Aspen could be not vicarious at all goes either way. No matter what you continue on and you go through the theory’s and the first one is negligence. As a licensed doctor you have a reasonable and duty to perform surgeries and trick is how did the clamp get in there? Who left? It? After you perform the surgery realized it was left inside who left it. Didn't tell me it was Dr. Johnson or the nurse or surgical staff. I don't know. That is a rep sip is a. Paul wasn't sure the doctor or nurse did it. That is a problem and Paul has a hard time showing that these issues the ‑‑ if you can't point the duty to who breached the duty that is a rep sip is a problem. After performing the surgery there was a clamp left in. And negligence the clamp wouldn't be left in there. And in regards to the exclusive control. Control of the surgical team and did contribute to the injury? No. Ray sip is a will establish the breach. And surgical clamp in and surgery and foreseeable. Yeah, it is foreseeable. But now the argument is you suing not only for the clamp but what about the permanent lung damage. Negligence of third party is foreseeable and Dr. Johnson based on the conduct can be responsible for what happened at valley view and therefore she gives pain and suffering and special damages which is medical expenses and any lost income.

You see in regards to Dr. Johnson he is in call two and that is the battery issue and reason I brought up battery he is sure he doesn't have issues and he knew that a surgical clamp was there and didn't tell him. It was intentional based upon the knowledge. Ruth? Based on that knowledge that shows intent. The fact that it is in there and remains in there that is a touching of another. Right and then go through the damages which is in this case pain and suffering. Special damage. Medical expense and lost wages and I want punitive and you are fully aware and I want punitive damages from you and again you are knowledge. And he is able to obtain punitive damages against Dr. Johnson.

Last call number three. Valley view hospital. Again, you are suing under the theory of vicarious liability for the nurses and they are the ones that hire the nurses and of the employee employer relationship nurses are definitely employees with the hospital. Right? Because they are stationed and the doctors do travel to different hospitals and stuff like that. You know there is always going to be a difference if an issue comes up more than once and see vicarious in call one and vicarious liability in call three and something is off about it and I look nurses are contracted with the hospital and should have discovered the embolism so therefore they are within the course and scope of the employment and show the negligence’s and they have duty as trained personnel to watch the patients and make sure no blood clots after surgery if they caught on time and monitored properly it wouldn't have caused permanent damages to the lungs. Action clause. Wouldn't have been injured. Foreseeable? It is foreseeable you could get a blood clot but if monitored properly caught on time and will if it did develop, I would have mile nor damages. Foreseeable nurse could be innocent in the duties? Absolutely and of course the damages pain and suffering and special damages that is unique. Lost income and medical expenses and therefore valley view is liable for Paul's injuries.

Again, not bad, straightforward in my mind. I don't think these last baby bar for October was that difficult for students and that is it is good news and audiotape can l of tricks. Vicarious liability is difficult in this one and some of the counterarguments were harder but the facts dictate and show you and that is why I want you to go in there looking for the facts and see what they are testing and putting at issue and if you go in with the find set guess what you will see the issue and we are going to be in good shape. Any questions at this point? Question number four or any of them actually?

In regards to the doctor p's mall practice in regards to let's go back to the call of the question. Says what claims may doctor ascertain against and damages he could recover for. If you go through Aspen and bring up Aspen's own negligence itself. Yes. Necessary sense how I saw it Aspen is liable for the doctor's negligence which is malpractice and brought up in call number two as discuss and had talked about negligence and if you felt that you saw which I didn't see in the facts that Aspen was negligent on their own and you have negligent acts against Aspen hospital on their own for their own wrong doing and vicarious liability imputing on the to the hospital based upon the Dr. Johnson you also bring up under call number one and (Indistinct) between the hospital. In this case who are you indemnifying?

If you are saying the p hospital is going to say the doctor is primary or liable and they can seek indemnify and put in the lawsuit and you can bring it up.

So, you know too when you bring a mall practice suit it is basically negligence. With the mall practice you have the duty. Breach. Action cause and proximate cause under damages for the mall practice you have to show you have damage which we do have here in this case. If it is against a lawyer you have to show the damage that you would have prevailed in whatever case you are suing for and it is different. Mall practice primarily is what? Negligence. Any other questions?

I hope you did go over these and taking a look at them and saw the majority of the actual issues. We have a couple of more lectures left and the going over multi‑states again next week and I hope you are getting up your scores. It is important now we are getting down to exam dates and of course after that we are doing three essay questions to make sure you have your issue spotting down and stuff like that. At this point you should start to do timed exams and, on the weekend, sit down and do four essays and multistate and you will be amazed sitting for eight and a half nine hours how fatigued you get. I have to be on. This is exam day and my mental focus and everything has to be on it is something I would implement and practice it is hard for me to sit 3 or 4 hours at a time. I have to build that stamina up I am giddy and like the to keep moving. Any questions?

What I would recommend is go to Taft #'s web site and click on prior bar questions and there are prior baby bar questions with model answers and you can use those packets as they are simulate and had all four with the actual answers itself. That is a good way the to do simulate and had you don't know what they are until you open up yourself and I would do on the computer that is the same way you are going to do it for the baby bar and use the screens and get your timing down that is important. Do the same thing for the multi‑states p on Taft's web site I believe we have 200 up there but I think they might be mixed. We do have a hundred simulated up there and you can use that for simulated as well and that will help you. It is all important in regards to the timing. Anybody have any other questions?

If anything does come up let me know and you can shoot an e‑mail at jolly at Taft U dot EDU and I will help in any way I can. Stay focus and had work on the issue spotting and get your timing the down and let's go and pass the up-and-coming examination I will see you next week. Good night.