Mixed Subject Set 1

Expanded Answer Explanations

50 questions across Constitutional Law, Contracts, Torts, Real Property, Criminal Law, Criminal Procedure, Civil Procedure, and Evidence.

Reading the decision paths: the **blue** box is the issue; **light-blue** boxes are the questions to ask in order; **dashed red** branches show where each wrong answer comes from; the **green** box is the correct choice.

Question 1

Constitutional Law — Equal Protection

A city has many parks, as well as a country club with a golf course. While the city's parks are accessible to all without a fee, the city charges a $1,000 application fee and $100 per month dues to belong to the country club. A resident of the city wishes to join the country club but cannot afford the application fee or monthly dues.

If the resident brings suit against the city on the ground that the fee and dues discriminate against the poor in violation of the Equal Protection Clause, who likely will prevail?

- **(A)** The resident, because a person cannot be deprived of a public right or benefit on the basis of inability to pay.
- **(B)** The resident, because the poor qualify as a protected class.
- **(C)** The city, because only de jure discrimination against the poor has been held to violate the Equal Protection Clause.
- **(D)** The city, because the membership privilege is not an important enough deprivation.

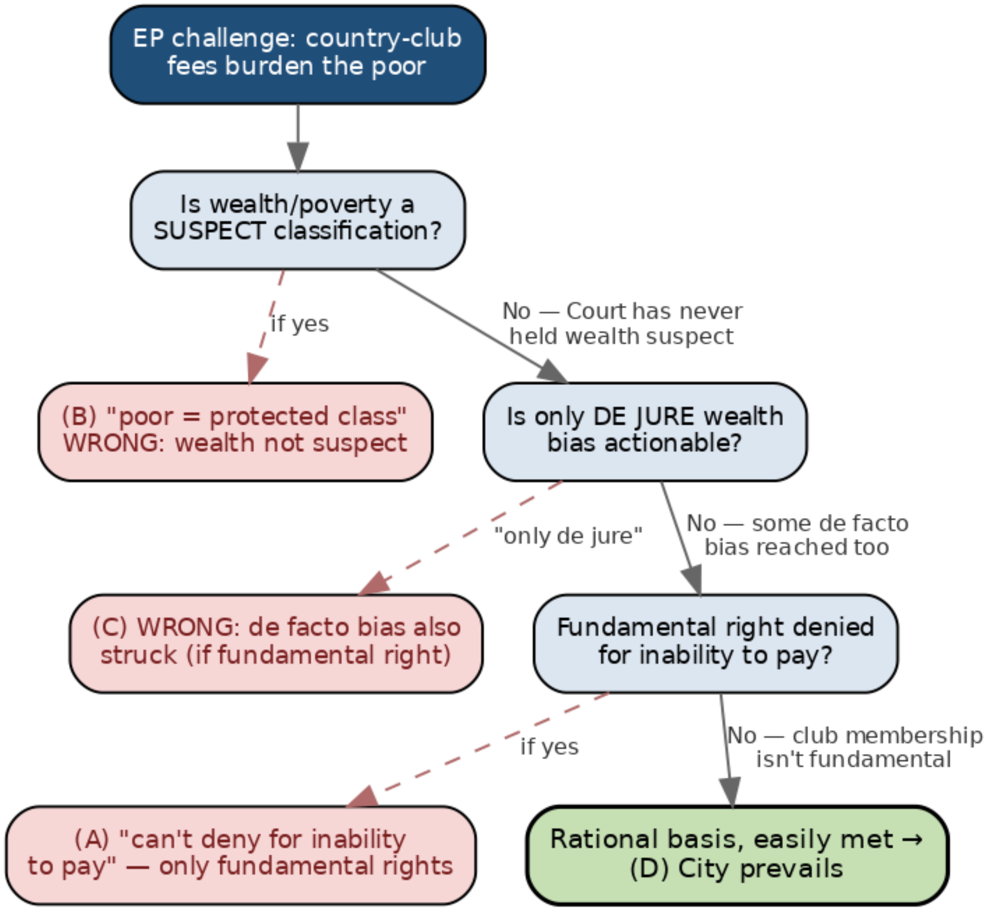
Correct answer: (D). The membership privilege is not important enough to trigger heightened equal protection scrutiny.

Rule. Wealth is not a suspect classification. The Supreme Court has never treated poverty as suspect, so government classifications that burden the poor get only rational basis review. There is a narrow line of cases holding that the government may not deny a benefit solely because a person cannot pay, but those cases are limited to fundamental rights and interests (for example, a fee that blocks access to a divorce or the ballot, or transcripts needed for a criminal appeal). Absent a fundamental right, the inability-to-pay principle does not apply.

Application. Belonging to a municipal country club and golf course is not a fundamental right. Because no fundamental interest is at stake and wealth is not suspect, the fee-and-dues scheme need only be rationally related to a legitimate purpose, which it easily is (covering the cost of an optional recreational amenity). The city prevails.

Why the other choices fail. (A) overstates the inability-to-pay cases; that principle protects only fundamental rights, not optional club membership. (B) is a flat misstatement of law: the poor are not a protected or suspect class. (C) is wrong because the Court has struck some de facto wealth classifications, but only where a fundamental right was implicated, so the 'only de jure' framing is inaccurate.

Decision path.



> **USING YOUR SHEETS**
>
> **Ordering guide:** Con Law guide, §5 Equal Protection — steps 1–2 (classify the class, then trigger the standard).
>
> **Rule sheet:** Con Law sheet, EQUAL PROTECTION (class → scrutiny; wealth is not listed, so rational basis).
>
> **How it lands:** Step 1 names the class (the poor); step 2 asks the trigger — wealth is neither suspect nor quasi-suspect, and club membership is not a fundamental right, so you drop to rational basis, which the fee easily survives → (D).

Question 2

Constitutional Law — Establishment Clause / State Action

To provide low-cost housing to the unemployed, a city has a policy of leasing empty city-owned buildings to social agencies that promise to convert or rehabilitate the buildings into habitable, low-cost apartments and to pay the city 10% of any net profit made from rentals. A church entered into such an agreement with the city and converted one of the city's abandoned office buildings into 50 small, low-cost apartments. The lease agreement used by the church provides, among other things, that the lessee must affirm a belief in God. The lease agreement was submitted to the city for approval prior to its use by the church, and it was approved. On the first day that the church made the apartments available for rent, the plaintiff, an avowed atheist, applied to lease a unit. The plaintiff's application was denied for the sole reason that the plaintiff refused to affirm a belief in God.

If the plaintiff brings suit against the church on the ground that the required affirmation of a belief in God violates the plaintiff's constitutional rights, who likely will prevail?

- **(A)** The plaintiff, because denial of a lease to atheists has been held to hinder the free exercise of religion.
- **(B)** The plaintiff, because the purpose and effect of the church's policy results in a violation of the Establishment Clause.
- **(C)** The church, because freedom of religion is not protected against acts of private individuals or groups or a private institution.
- **(D)** The church, because as an atheist, the plaintiff has no standing to challenge the lease requirement on religious grounds.

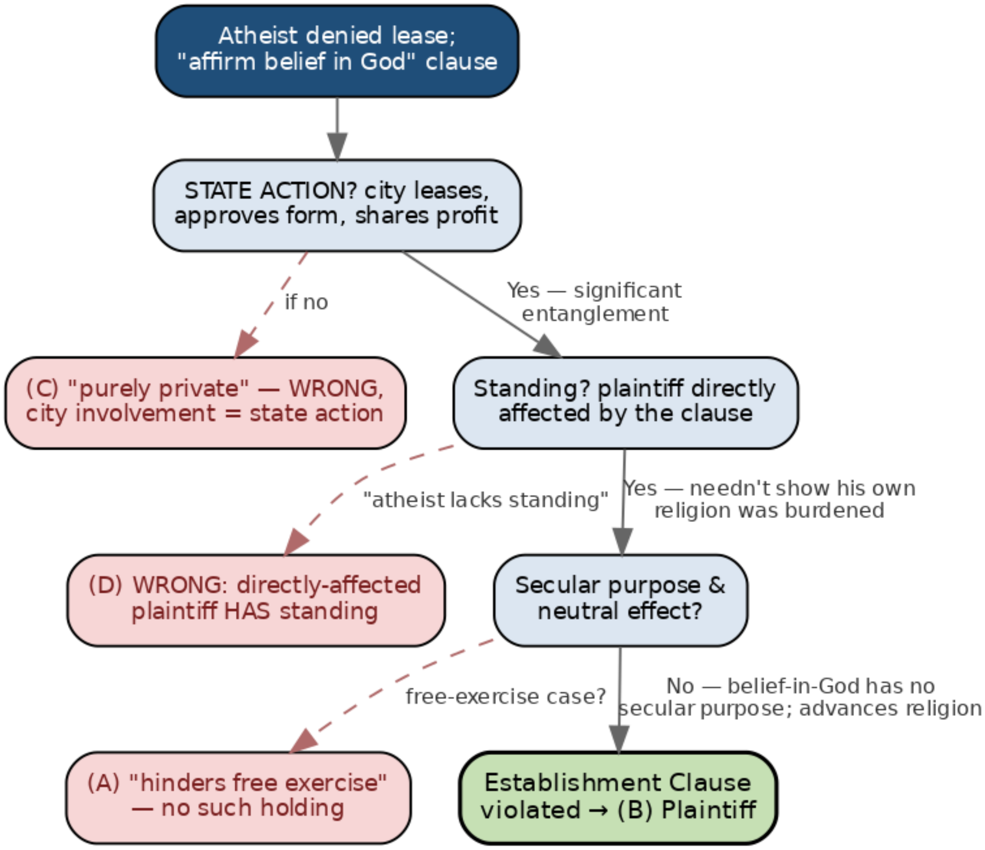
Correct answer: (B). The belief-in-God requirement has no secular purpose and its primary effect advances religion, violating the Establishment Clause.

Rule. The Establishment Clause bars government action that lacks a secular purpose, has the primary effect of advancing or inhibiting religion, or fosters excessive entanglement with religion. Constitutional protections reach only governmental conduct, but private conduct becomes state action when the government is significantly involved with, or entangled in, the challenged activity.

Application. The city leases the building to the church, approves the church's lease forms, and shares in the rental profits. That significant, ongoing involvement converts the church's leasing activity into state action. A requirement that tenants affirm a belief in God serves no secular purpose and its primary effect is to advance religion, so it fails the test.

Why the other choices fail. (A) invents a free-exercise holding that does not exist. (C) is wrong because the city's involvement supplies the needed state action. (D) is wrong on standing: a plaintiff directly affected by an alleged establishment of religion has standing and need not show that his own particular religious freedom was infringed.

Decision path.



USING YOUR SHEETS

Ordering guide: Con Law guide, §4 State Action (step 1) then §7 First Amendment: Religion (Establishment, steps 3–4).

Rule sheet: Con Law sheet, DUE PROCESS/state-action + FIRST AMENDMENT – RELIGION (Establishment).

How it lands: Clear the §4 threshold first: the city's leasing, approval, and profit-sharing supply state action. Then run Establishment — no secular purpose and the primary effect advances religion → violation → (B).

Question 3

Contracts — Assignment / Defenses of the Obligor

A woman decided to have a painting done of herself. She contracted in writing with an artist, who agreed to paint the woman for $10,000. The fee was payable on completion of the painting, provided that the painting was to the woman's "complete and utter satisfaction." On the same afternoon that the artist entered into the contract with the woman, he assigned the contract to his cousin. The artist then painted the woman's picture. After the job was done, the woman told him, "That's a very good likeness of me, but it shows my defects, so I'm not satisfied." She refused to accept the painting or to pay the artist or his cousin.

Can the cousin recover from the woman?

(A) Yes, because the condition in the agreement between the woman and the artist did not apply to his cousin.

(B) Yes, because otherwise an unjust enrichment will occur.

(C) No, because rights arising under personal services contracts are not assignable.

(D) No, because the woman was not satisfied with the painting.

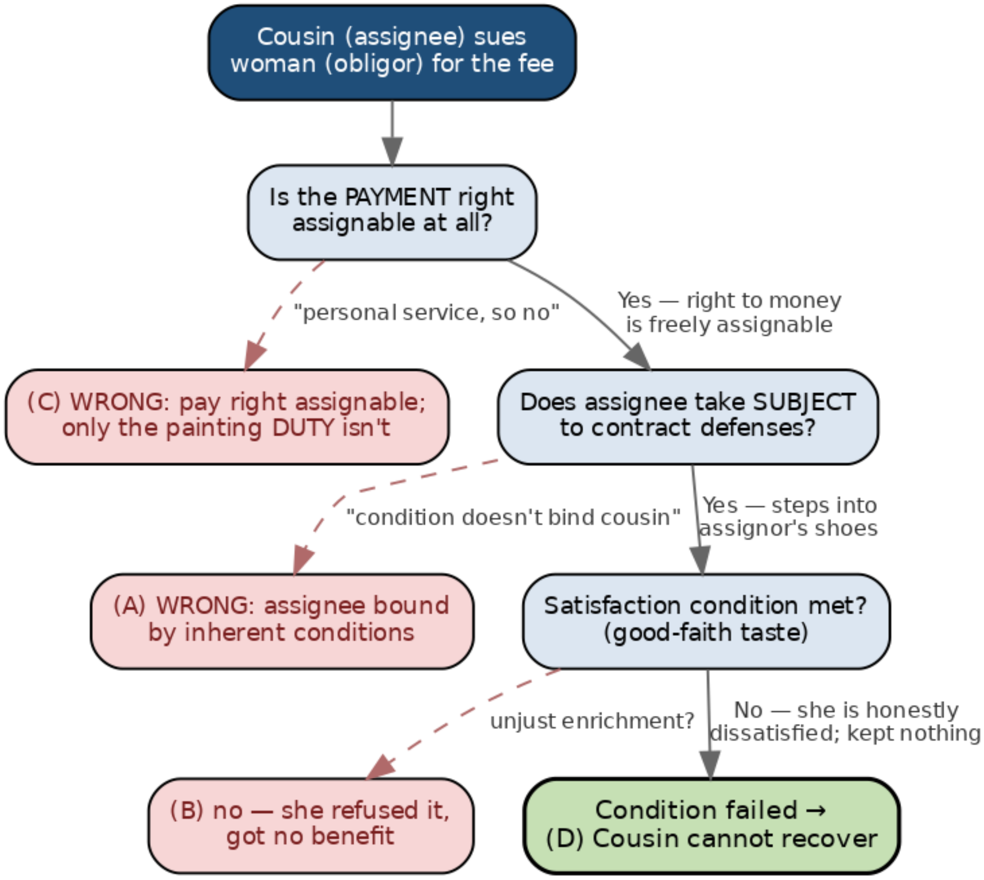
Correct answer: (D). The assignee (cousin) takes subject to the satisfaction condition, and the woman's good-faith dissatisfaction excuses her duty to pay.

Rule. When a party assigns contract rights, the assignee steps into the assignor's shoes and takes subject to every defense inherent in the contract, because those defenses existed when the contract was formed. A defense based on the failure of a condition is inherent in the contract and is always good against the assignee. A promise to pay only if the buyer is personally satisfied is not illusory, because the buyer must exercise the satisfaction judgment in good faith; for matters of taste (like a portrait), a good-faith assertion of dissatisfaction is enough.

Application. The artist assigned only his right to be paid; he did not (and could not) delegate the personal-service duty of painting, which he performed himself. The cousin therefore holds the payment right subject to the express condition that the woman be satisfied. She viewed the finished portrait, found it unflattering, and in good faith said she was not satisfied. Her condition failed, her duty to pay never matured, and the cousin cannot collect.

Why the other choices fail. (A) is backwards: the assignee is bound by conditions in the original agreement; only later-arising, unrelated setoffs are cut off. (B) fails because the woman kept no benefit (she refused the painting), so there is no unjust enrichment. (C) misstates the rule; payment rights under a personal-services contract are freely assignable even though the personal-service duty is not delegable.

Decision path.



USING YOUR SHEETS

Ordering guide: Contracts guide, §7 Third Parties: Assignment (assignee takes subject to defenses) + §5 Performance, step 1 (express conditions).

Rule sheet: Contracts sheet, ASSIGNMENT + PERFORMANCE & BREACH (conditions).

How it lands: §7: an assignee's right is no greater than the assignor's, so the cousin takes subject to the deal's terms. §5 step 1: personal-satisfaction is an express condition judged in good faith; it failed, so the pay duty never matured → (D).

Question 4

Torts — Defense of Property / Indirect Deadly Force

A company that provided electrical and communication services to industries determined that its main trunk line of copper conduit needed to be replaced. The line ran through an industrial park, and the company had access to it by an easement. At the end of the workday on Friday, the copper conduit that had not yet been disconnected was left exposed in the trench. In accordance with the company's policy, intended to discourage theft of the copper, the conduit was still electrically charged.

The next morning, a man was walking by the industrial park and saw the construction site. Ignoring the "no trespassing" signs, he came up to the trench and saw the copper conduit, which he decided to try to steal. He climbed over the barriers and climbed partway into the trench to try to pull out some of the conduit. He received an electric shock as he made contact with the conduit, causing him to fall into the trench and suffer severe electrical burns.

If the man sues the company for his injuries, is he likely to prevail?

- **(A)** Yes, because the company used unreasonable force to protect its property.
- **(B)** Yes, because force applied by mechanical devices may not be used to protect property alone.
- **(C)** No, because the company owed no duty to a trespasser.
- **(D)** No, because the man assumed the risk.

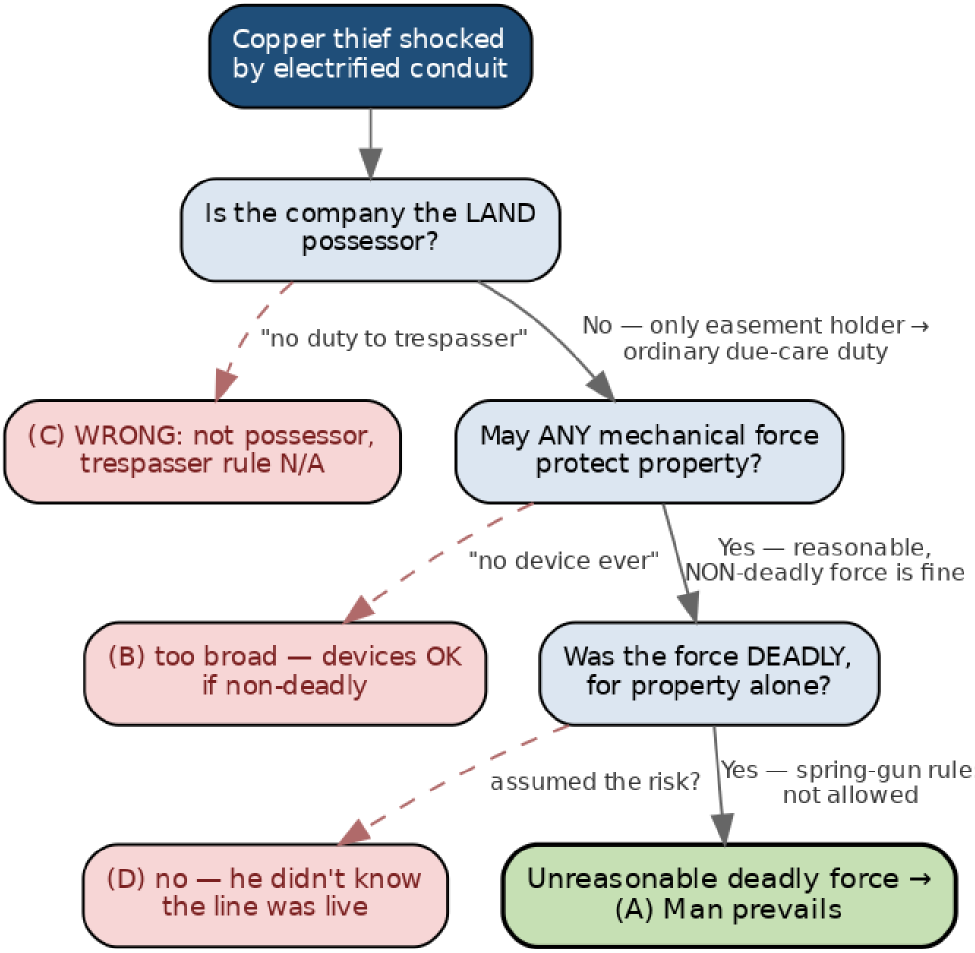
Correct answer: (A). An electrified line used to guard property is indirect deadly force, which the law does not permit in defense of property alone.

Rule. A possessor may use reasonable, non-deadly force to prevent a tort against property, but may never use force intended or likely to cause death or serious bodily harm merely to protect property. A person also may not do indirectly, through a mechanical device like a spring gun or an electrified barrier, what he could not lawfully do in person (the Katko v. Briney principle).

Application. The company kept the conduit electrically charged specifically to deter theft, which is exactly the deadly mechanical device the rule forbids. Because deadly force could not lawfully be used in person to stop a copper thief, it may not be applied indirectly through electrification. The man recovers despite being a thief.

Why the other choices fail. (B) is too broad; reasonable non-deadly mechanical devices are allowed, so the problem is not that a device was used but that the force was deadly. (C) is wrong because the company is not the possessor of the land; it merely holds an easement and owns the line, so it owes the ordinary duty of due care rather than the limited duty a landowner owes a trespasser. (D) fails because assumption of risk requires knowledge of the specific risk, and the man had no reason to know the exposed, under-construction line was still energized.

Decision path.



USING YOUR SHEETS

Ordering guide: Torts guide, §2 Defenses to Intentional Torts, step 3 (Defense of property: reasonable non-deadly force only; no deadly mechanical devices).

Rule sheet: Torts sheet, INTENTIONAL TORTS/defenses (defense of property).

How it lands: Step 3 states the rule almost verbatim — no deadly mechanical devices to protect property alone. The electrified line is exactly that, so the privilege fails → (A).

Question 5

Real Property — Defeasible Fees / Rule Against Perpetuities

A landowner conveyed 30 acres of property "To my brother, his heirs and assigns, so long as the premises are used for agricultural purposes, then to my cousin, his heirs and assigns."

As a consequence of the conveyance, the landowner's interest in the 30 acres is:

- **(A)** A right of entry.
- **(B)** A possibility of reverter.
- **(C)** A fee simple absolute because the conveyance violates the Rule Against Perpetuities.
- **(D)** Nothing.

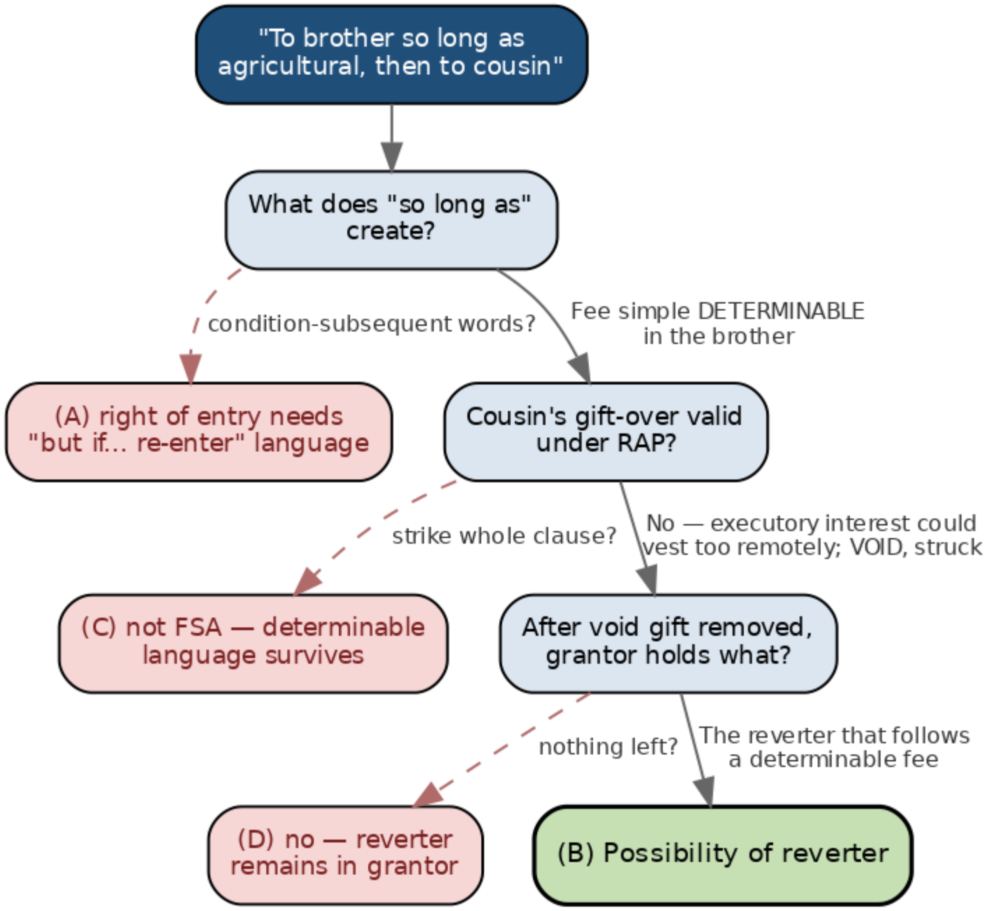
Correct answer: (B). The grantor keeps a possibility of reverter after the void gift over is struck.

Rule. Durational language such as 'so long as,' 'while,' or 'until' creates a fee simple determinable, which automatically ends when the stated condition fails; the future interest that follows in the grantor is a possibility of reverter. When land is conveyed to a determinable fee with a gift over to a third party, that third party holds an executory interest, which is subject to the Rule Against Perpetuities. If the executory interest could vest more than 21 years after a life in being (here, use could stop centuries later), it is void and is struck from the conveyance.

Application. 'To my brother, his heirs and assigns, so long as the premises are used for agricultural purposes' creates a fee simple determinable. The gift over 'then to my cousin' is an executory interest that could vest at any indefinite future time, so the Rule Against Perpetuities voids it. Striking the void interest leaves the determinable fee intact and the grantor holding the possibility of reverter that automatically accompanies it.

Why the other choices fail. (A) is wrong because a right of entry follows a fee simple subject to a condition subsequent, which requires condition-subsequent language ('but if... then grantor may re-enter'); the durational 'so long as' language creates a determinable fee instead. (C) is wrong because striking the perpetuities-violating gift does not convert the estate into a fee simple absolute; the determinable language survives. (D) is wrong because the grantor is not left with nothing; he retains the reverter.

Decision path.



USING YOUR SHEETS

Ordering guide: Real Property guide, §1 Estates & Future Interests, steps 1–2 (classify present estate + grantor's future interest) and step 4 (RAP).

Rule sheet: Real Property sheet, ESTATES/FUTURE INTERESTS + RULE AGAINST PERPETUITIES.

How it lands: Step 1: "so long as" = fee simple determinable, so the grantor keeps a possibility of reverter. Step 4: RAP voids the cousin's executory interest; strike it and the determinable language remains → (B).

Question 6

Criminal Law — Conspiracy / Bilateral Agreement

A man and woman agreed to burn down a neighbor's house in retribution for some wrong the neighbor allegedly committed against them. Both the man and woman were arrested shortly after they poured gasoline on the neighbor's front porch. The man revealed to the police that he participated in the plan to ensure that nothing bad would happen to the neighbor, and that he had made an anonymous telephone call to the police alerting them to the crime, which enabled the police to arrest him and the woman "in the act." The woman stated that she would not have participated if not for the man's encouragement.

If charged with a conspiracy at common law to commit arson, the woman should be found:

- **(A)** Not guilty, because she was not predisposed to commit the crime but for the man's encouragement.
- **(B)** Not guilty, because the man did not intend to commit arson.
- **(C)** Guilty, because there was an agreement, and pouring gasoline on the front porch was sufficient for the overt act.
- **(D)** Guilty, because arson is not a specific intent crime.

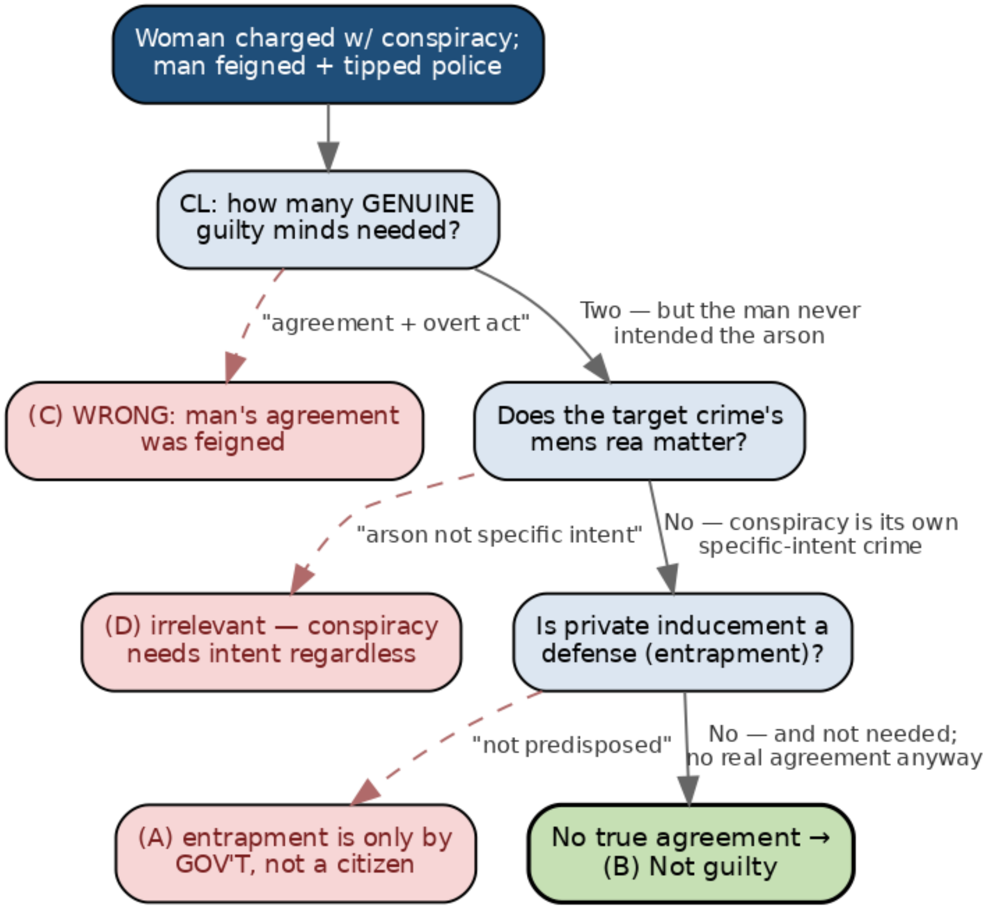
Correct answer: (B). There was no true agreement because the man only feigned agreement and never intended to burn the house.

Rule. Common law conspiracy follows the bilateral approach: it requires an actual agreement between at least two people who each genuinely intend to agree and intend to achieve the unlawful objective. If one of only two participants merely pretends to agree, there is no meeting of two guilty minds and no conspiracy, and the other participant cannot be convicted either.

Application. The man participated only to sabotage the plan and tipped off the police so both would be caught in the act; he never intended to burn the neighbor's house. With only two people involved and one of them lacking the intent, there was no genuine agreement, so the woman cannot be convicted of conspiracy.

Why the other choices fail. (C) is factually wrong because the man feigned his agreement, so the 'agreement' element is not satisfied. (D) is a trap: although arson itself is not a specific-intent crime, conspiracy always is, requiring intent to agree and intent to achieve the object, so the nature of the target crime is irrelevant. (A) is wrong because entrapment applies only to inducement by government agents, not by a private citizen.

Decision path.



USING YOUR SHEETS

Ordering guide: Crim guide, §3 Inchoate Crimes, step 3 (Conspiracy: agreement; common-law bilateral needs two guilty minds).

Rule sheet: Crim sheet, INCHOATE & ACCOMPLICE (conspiracy).

How it lands: Step 3 requires a genuine agreement. The man feigned his — so there are not two guilty minds under the bilateral rule, and the woman cannot conspire alone → (B). (Entrapment, in §4 Defenses, is only by government, not a citizen.)

Question 7

Civil Procedure — Supplemental Jurisdiction

As it approached the runway at an airport, a plane struck electrical wires and crashed. An injured passenger filed an action in federal district court against the Federal Aviation Administration ("FAA") under the Federal Tort Claims Act, alleging that the FAA was negligent in operating runway lights and performing its air traffic control functions. The passenger seeks to join in that action a state law negligence claim against the utility company that erected the power lines, alleging negligent placement of the lines. Both claims seek $1 million for the passenger's injuries. The passenger is a citizen of State A. The utility company is a State A corporation and all its offices and operations are in State A.

Does the federal court have subject matter jurisdiction over the passenger's claim against the utility company?

(A) No, because the claim is a state law claim between two citizens of the same state.

(B) No, because, while the two claims arise from the same event and same injuries, supplemental jurisdiction does not extend to claims against a different party.

(C) Yes, because the court has supplemental jurisdiction over the passenger's claim against the utility company.

(D) Yes, because a plaintiff may join in an action all claims that he has against a particular defendant.

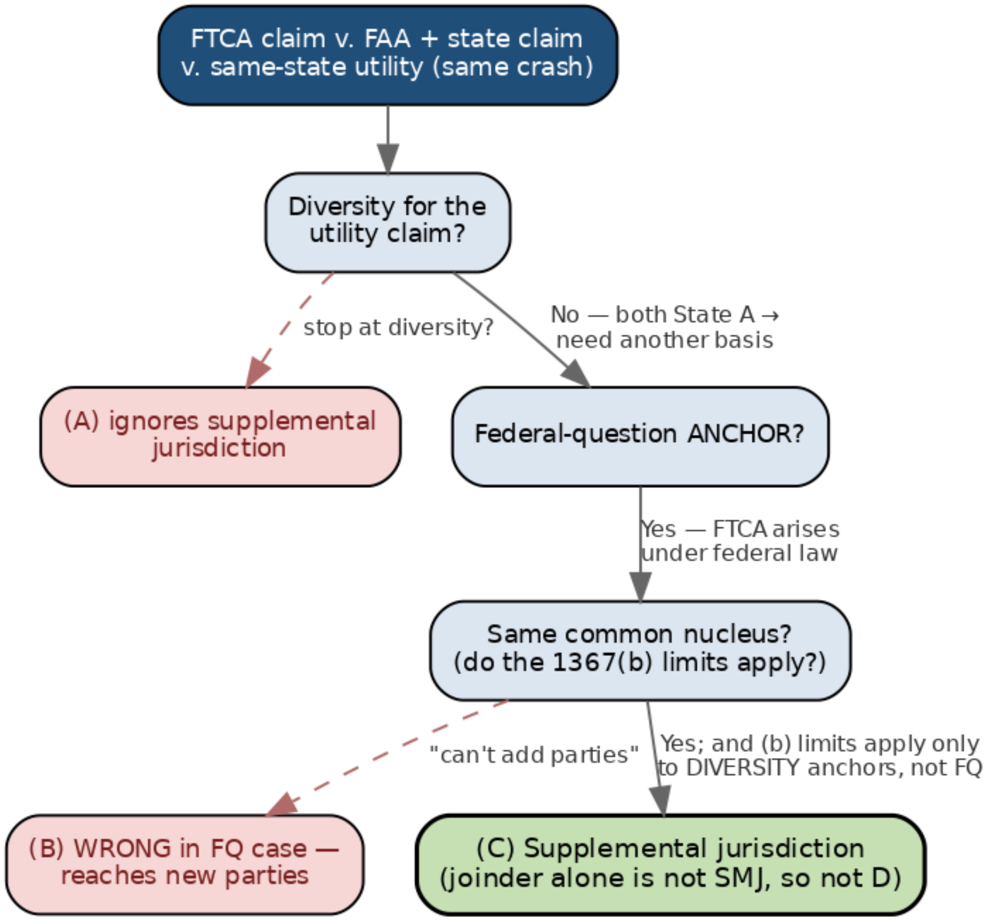
Correct answer: (C). The related state claim against the utility falls within the court's supplemental jurisdiction.

Rule. A federal court with original jurisdiction over an anchor claim may exercise supplemental jurisdiction over other claims that share a common nucleus of operative fact, such that they would ordinarily be tried together. The limits on supplemental jurisdiction in 28 U.S.C. 1367(b) apply only when the anchor claim rests on diversity jurisdiction; they do not restrict supplemental claims when the anchor is a federal question.

Application. The FTCA claim against the FAA arises under federal law, so it is a federal-question anchor. The negligence claim against the utility for the same crash (negligent placement of the very wires the plane struck) shares a common nucleus of fact. Because the anchor is federal-question, the 1367(b) diversity limitations do not bar the supplemental claim even though it is against a nondiverse, additional party.

Why the other choices fail. (A) correctly notes there is no diversity (both are State A citizens) but ignores supplemental jurisdiction. (B) is wrong because supplemental jurisdiction can extend to claims involving additional parties when the anchor is a federal question. (D) misstates the law: the joinder rules permit joining claims but never supply subject-matter jurisdiction on their own.

Decision path.



USING YOUR SHEETS

Ordering guide: Civ Pro guide, §1 SMJ (federal-question anchor) + §2 Supplemental Jurisdiction, steps 1–3.

Rule sheet: Civ Pro sheet, SUBJECT MATTER JURISDICTION (Supplemental).

How it lands: §1: the FTCA claim is a federal-question anchor. §2 steps 1–2: the utility claim shares the same crash (common nucleus). Step 3's diversity-anchor limit only bites when the anchor is diversity — here it is federal-question, so supplemental jurisdiction attaches → (C).

Question 8

Torts — Strict Products Liability / Duty to Warn

A man purchased a large flat screen plasma television and decided to mount it on the ceiling over his bed. The manual that came with the product included detailed instructions and illustrations on how to mount the television on different types of walls, along with all the required hardware, but contained neither instructions nor warnings regarding mounting on the ceiling. The man carefully followed the wall-mounting instructions and was satisfied that it would hold. In fact, however, the mounting was not appropriate for ceilings. The next night, a woman who was the man's overnight guest was seriously injured when the television came loose and fell on the bed.

Will the woman prevail in a suit against the company that manufactured the television?

(A) Yes, because the manufacturer had a duty to include warnings for all potential placements of its product.

(B) Yes, if the manufacturer knew that its television was sometimes mounted on ceilings rather than walls.

(C) No, if the manufacturer's manual had all of the customary warnings for this type of product.

(D) No, because the man was negligent in mounting the television on the ceiling.

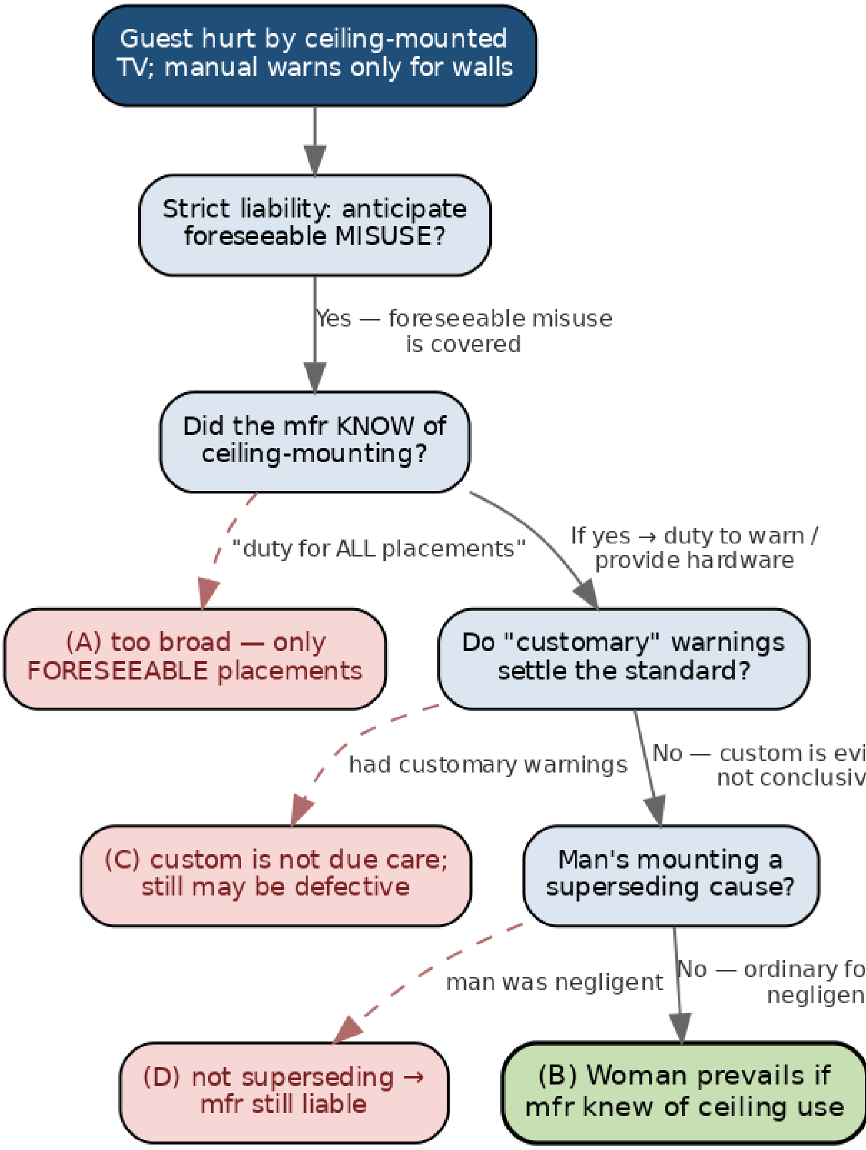
Correct answer: (B). If the manufacturer knew the TV was sometimes ceiling-mounted, it had a duty to warn against or provide for that use.

Rule. A commercial supplier is strictly liable for a product that is defective and unreasonably dangerous, and the duty extends to reasonably foreseeable uses, including foreseeable misuses. A product can be defective for failure to warn when the manufacturer knew or should have known of a danger that users would not appreciate. Foreseeable bystanders, not just purchasers, may recover.

Application. The manual covered wall mounting but gave no warning or instructions about ceiling mounting, and the hardware was unsafe for ceilings. If the manufacturer knew consumers were mounting these sets on ceilings, that use was foreseeable and the absence of any warning or suitable hardware made the product unreasonably dangerous. The injured overnight guest is a foreseeable plaintiff, and the defect actually and proximately caused her injury.

Why the other choices fail. (A) sweeps too far; there is no duty to warn of every conceivable placement, only foreseeable ones, which is why the knowledge qualifier in (B) matters. (C) is wrong because complying with industry custom is evidence of due care but is not conclusive; the customary warnings may still be inadequate. (D) is wrong because the man's ordinary, foreseeable carelessness is not a superseding cause, so it does not cut off the manufacturer's liability.

Decision path.



USING YOUR SHEETS

Ordering guide: Torts guide, §6 Strict Liability & Products, step 3 (type of defect → inadequate warning) + step 5 (defenses: foreseeable misuse).

Rule sheet: Torts sheet, PRODUCTS LIABILITY (warning defect).

How it lands: Step 3: a warning defect arises where the maker knew or should have known of a danger users won't appreciate. Ceiling-mounting is a foreseeable misuse, so if the maker knew of it the missing warning is a defect → (B).

Question 9

Real Property — Covenants / Equitable Servitudes

A developer subdivided a 25-acre tract of land into 100 quarter-acre lots. On each lot she built a two-unit townhouse. The deeds to each of the purchasers contained a covenant that "the grantee, his heirs and assigns" would use the property only for single-family use. All deeds were promptly and properly recorded. Subsequently, the zoning laws were amended to allow multifamily use within the subdivision. Six months later, a social worker offered to purchase an original owner's unit that was for sale. The social worker informed the owner that she planned to operate a halfway house out of the unit, an activity in conformity with the applicable zoning regulations. Therefore, the owner did not include the single-family restriction in the deed to the social worker.

If a neighbor, who purchased his lot from the developer, seeks to enjoin the operation of the halfway house, will he succeed?

- **(A)** No, because the deed from the owner to the social worker did not refer to the covenant.
- **(B)** No, because the social worker relied on the zoning regulations when purchasing the unit.
- **(C)** Yes, because the social worker had notice of the restrictive covenant.
- **(D)** Yes, but only if the neighbor can establish a common scheme for development.

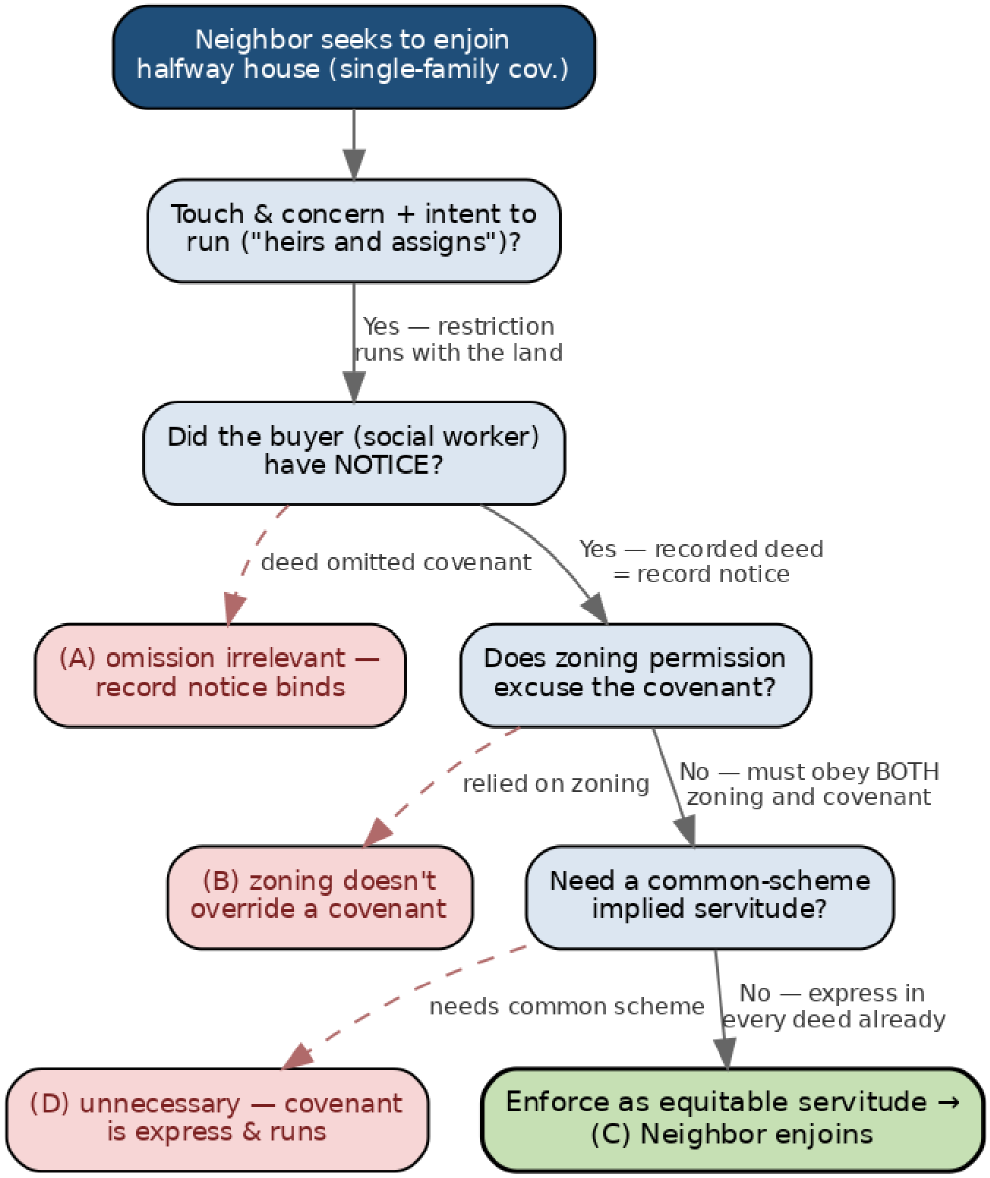
Correct answer: (C). The social worker took with record notice of a covenant that runs, so the neighbor can enjoin the halfway house.

Rule. A real covenant or equitable servitude binds a later purchaser who takes with notice, where the covenant touches and concerns the land and the parties intended it to run. Notice may be actual, inquiry, or constructive (record) notice. An equitable servitude is enforced by injunction.

Application. The single-family-use restriction was in every original deed and was properly recorded, giving the social worker record notice even though her own deed omitted it. Restricting use to single-family homes touches and concerns the land, and the 'grantee, his heirs and assigns' language shows intent to run. The neighbor may enjoin the halfway house.

Why the other choices fail. (A) is wrong because the omission from her deed is irrelevant when she is on record notice through the chain of title. (B) is wrong because zoning that permits a use does not override a private covenant that forbids it; both must be satisfied. (D) is wrong because the neighbor does not need to prove an implied common scheme, since the covenant was expressly written into all the deeds and runs on its own terms.

Decision path.



USING YOUR SHEETS

Ordering guide: Real Property guide, §4 Easements, Covenants & Servitudes, step 5 (equitable-servitude branch: touch & concern + intent + notice; privity not needed for an injunction).

Rule sheet: Real Property sheet, COVENANTS & SERVITUDES (runs at law / equitable servitude).

How it lands: Step 5, injunction branch: single-family use touches & concerns, "heirs and assigns" shows intent, and the recorded deed gives record notice — so it runs as an equitable servitude and is enjoinable → (C).

Question 10

Criminal Procedure — Fourth Amendment / Curtilage

The police entered a neighborhood suffering from increased illegal drug activity, accompanied by a dog trained to sniff out cocaine. The police entered the backyard of a home and brought the dog to an area immediately outside the back door. The dog acted as if it smelled cocaine. The officers knocked on the back door and a man answered the door and let them in. He was immediately placed under arrest. After a brief search, the police officers found and confiscated a small quantity of cocaine from the bedroom closet. The man is charged with possession of cocaine. At trial, he moves to prevent introduction of the cocaine into evidence.

This motion will most probably be:

- **(A)** Granted, because, under the circumstances, the police activity violated the man's reasonable expectation of privacy.
- **(B)** Granted, because this kind of detection by a trained dog has not been scientifically verified and cannot be the basis for probable cause.
- **(C)** Denied, because the man allowed the police officers to enter his home.
- **(D)** Denied, because the search was incident to a valid arrest.

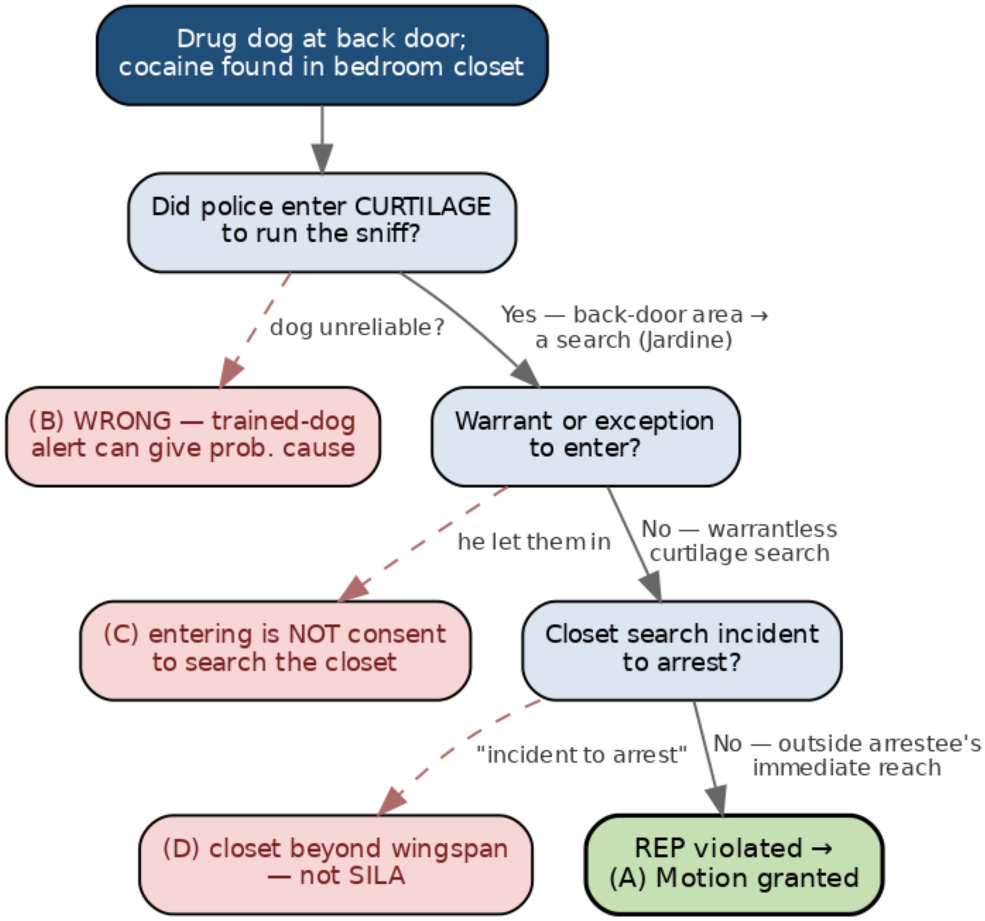
Correct answer: (A). Bringing a drug dog to the back door invaded the curtilage and violated the reasonable expectation of privacy.

Rule. The area immediately surrounding the home, the curtilage, receives full Fourth Amendment protection. Physically entering the curtilage to conduct a dog sniff at the door is a search that requires a warrant or a recognized exception (the Florida v. Jardine principle). Searches inside the home also require justification, and a search incident to arrest is limited to the arrestee's immediate reach.

Application. Officers walked into the fenced backyard and ran the dog at the back door. That entry into the curtilage to gather evidence was a warrantless search with no exception, so the resulting cocaine is fruit of the illegal search. The motion to suppress should be granted.

Why the other choices fail. (B) invents a rule; trained-dog alerts are an accepted basis for probable cause. (C) is wrong because letting officers step inside is not consent to search a bedroom closet. (D) is wrong because the closet was outside the arrestee's immediate control and cannot be justified as a search incident to arrest.

Decision path.



USING YOUR SHEETS

Ordering guide: Crim guide, §5 Fourth Amendment, steps 2–5 (REP + standing → warrant → exceptions → exclusionary rule).

Rule sheet: Crim sheet, 4TH AM – SEARCH + EXCLUSIONARY RULE.

How it lands: Step 2: the home and its curtilage carry a reasonable expectation of privacy. Steps 3–4: entering the curtilage to run the dog is a warrantless search with no exception (and the closet search is neither consent nor a valid search-incident). Step 5 suppresses → (A).

Question 11

Constitutional Law — Police Power / Rational Basis

A state conducted a study in which it found that many parents were moving out of certain areas of the state because they could not find affordable day care. As a result, the state legislature enacted a statute that created an agency to operate subsidized day care centers throughout these areas. These day care centers would charge parents a nominal fee compared to private day care centers in the area. A private day care center has discovered that its business has fallen off about 30% since the agency started operating a day care center in its city. It brings an action seeking to enjoin the operation of the agency.

What will be the probable outcome of this litigation?

- **(A)** The center will win, because operation of a state agency in competition with a private business violates the Due Process Clause of the Fourteenth Amendment.
- **(B)** The center will win, because permitting some citizens to do business with a state business while others do business with a private business violates the Equal Protection Clause of the Fourteenth Amendment.
- **(C)** The center will lose, because it lacks standing to challenge the legislation, having suffered no direct injury.
- **(D)** The center will lose, because the agency is a valid exercise of the state's powers.

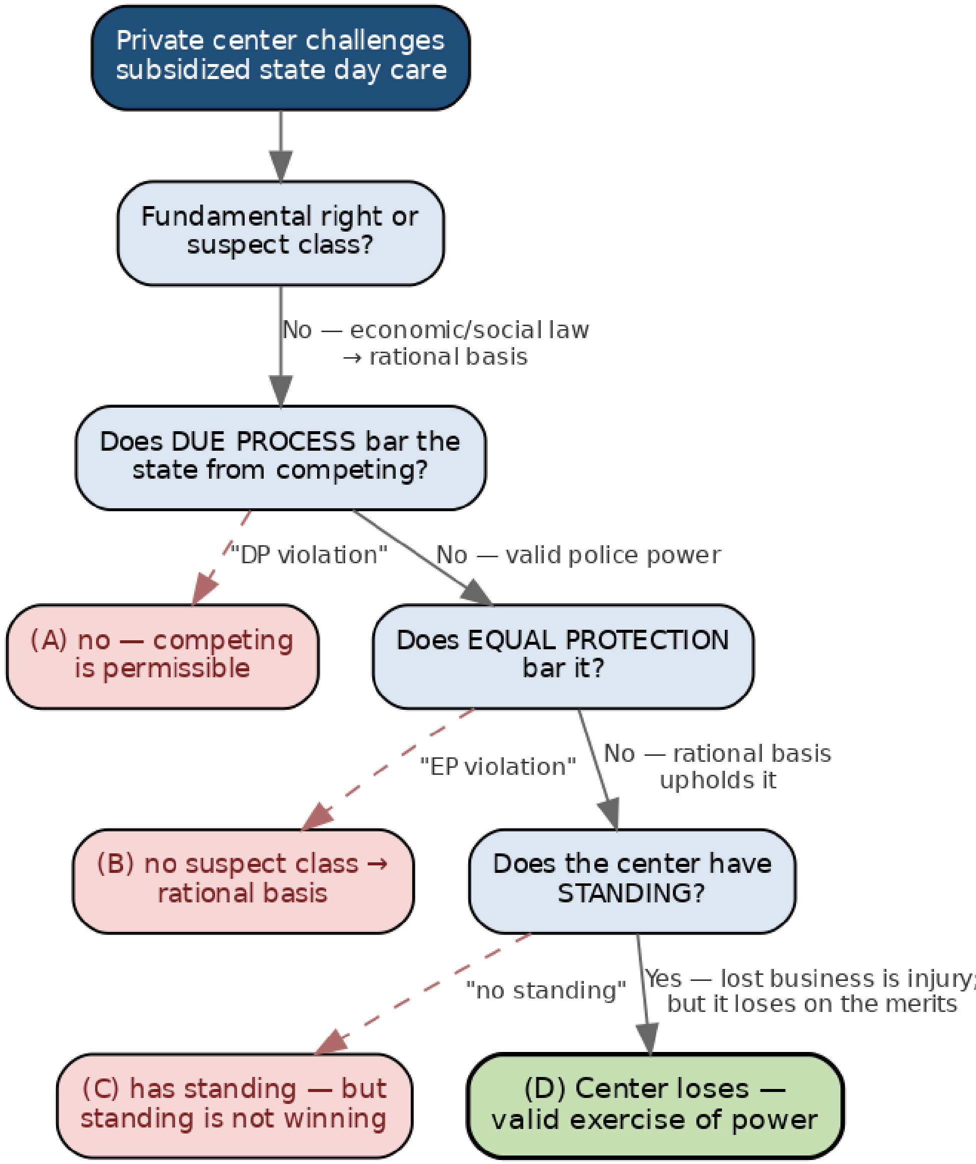
Correct answer: (D). Subsidized day care is a valid exercise of the state's police power and survives rational basis review.

Rule. States have broad reserved police power to legislate for public welfare, including undertaking activities that compete with private business. Facially neutral economic and social legislation is reviewed under rational basis for both due process and equal protection, meaning it is upheld if rationally related to any legitimate purpose. Standing is a separate, threshold question that has nothing to do with whether the claim wins on the merits.

Application. Providing affordable day care to keep families in the area is a legitimate objective, and operating subsidized centers is rationally related to it. The competitive harm to a private center does not make the program unconstitutional, so the center loses on the merits.

Why the other choices fail. (A) and (B) fail because there is no due process or equal protection violation; competing with private business is permissible and survives rational basis. (C) is wrong because the center has standing (it suffered concrete lost business), but standing does not help it win; it simply loses on the merits.

Decision path.



USING YOUR SHEETS

Ordering guide: Con Law guide, §4/§5 (substantive due process & equal protection → rational basis) + §1 Justiciability (standing).

Rule sheet: Con Law sheet, DUE PROCESS + EQUAL PROTECTION (rational basis) + JUSTICIABILITY (standing).

How it lands: No fundamental right or suspect class, so §4/§5 drop to rational basis, which a state business easily survives. §1: the center has standing (lost business) but standing is a threshold, not a win → (D).

Question 12

Evidence — Hearsay / Present Sense Impression

The defendant was on trial for trying to sell a stolen antique ring to an antique dealer. The defendant claims that she had bought the ring from a street vendor earlier on the day of her arrest. The prosecution calls to the stand a woman who had given a party in her home which the defendant attended, and who had discovered later that evening that her antique ring was missing from her bedroom. She seeks to testify that her friend, who is now backpacking in another country, told her three days after the party that she had seen the defendant the previous evening in a restaurant wearing a ring that looked exactly like the woman's ring. The defense attorney objects.

The objection should be:

- **(A)** Overruled, because the statement is a present sense impression.
- **(B)** Overruled, because the statement is relevant and the friend is unavailable, having gone backpacking in another country.
- **(C)** Sustained, because this is circumstantial evidence within circumstantial evidence.
- **(D)** Sustained, because the statement is hearsay not within any exception.

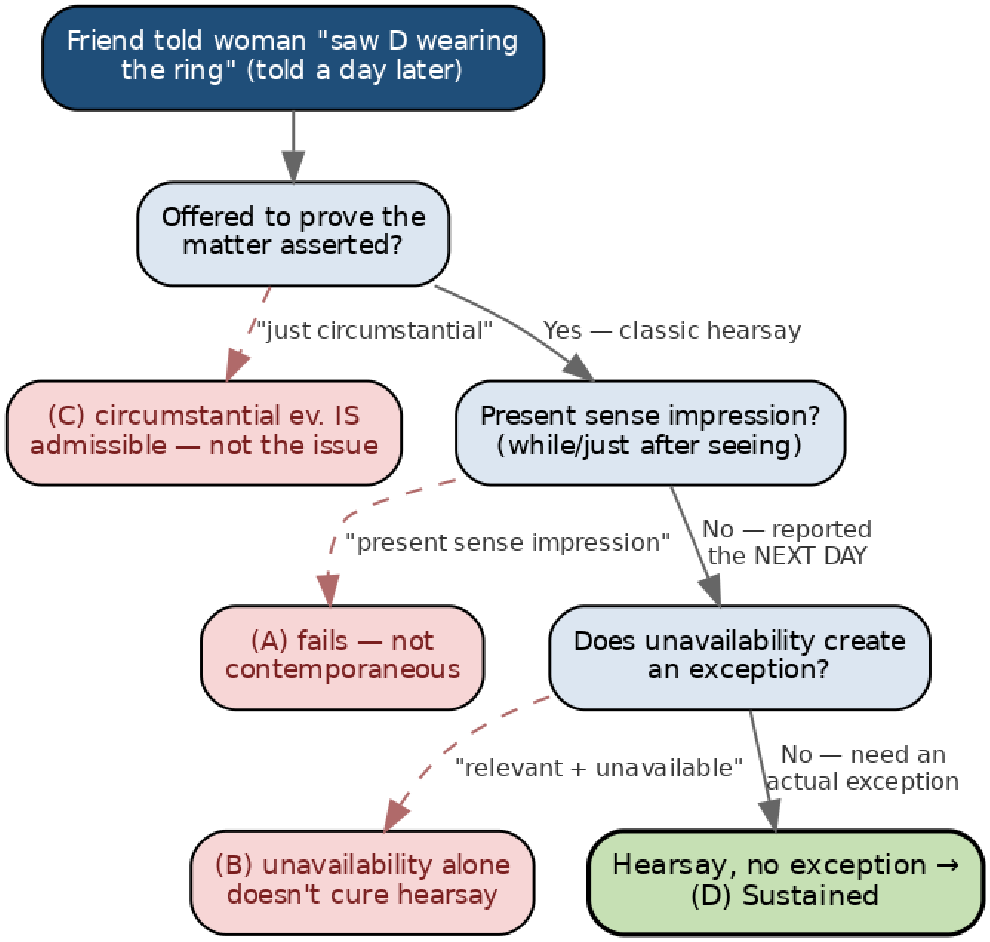
Correct answer: (D). The friend's out-of-court statement is hearsay with no applicable exception.

Rule. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and is inadmissible unless an exception applies. A present sense impression must describe an event while the declarant is perceiving it or immediately thereafter. A declarant's mere unavailability does not, by itself, make a statement admissible; an actual exception is still required.

Application. The friend told the woman what she had seen the previous evening, offered to prove the defendant was wearing the stolen ring, which is classic hearsay. The lapse of a full day defeats the present sense impression exception, and nothing else applies, so the objection is sustained.

Why the other choices fail. (A) fails on timing, since the statement came the day after, not contemporaneously. (B) is wrong because relevance and unavailability do not cure a hearsay problem. (C) misstates the law; circumstantial evidence is fully admissible, so 'circumstantial evidence within circumstantial evidence' is not a ground for exclusion.

Decision path.



USING YOUR SHEETS

Ordering guide: Evidence guide, §2 Hearsay: The Core Attack (steps 1–3) + §4 Exceptions (present sense impression).

Rule sheet: Evidence sheet, HEARSAY – FRAMEWORK + EXCEPTIONS (present sense impression).

How it lands: §2 steps 1–3: an out-of-court statement offered for its truth = hearsay. §4: present sense impression needs contemporaneity, but this came a day later; no other exception fits, and unavailability alone doesn't help → (D).

Question 13

Criminal Law — Aggravated Battery / Self-Defense

A homeowner was trimming his sidewalk-bordering hedge when a wasp began attacking him. The homeowner attempted to hit the wasp. During one of his swats, the homeowner struck a jogger in the face. The jogger, reacting to the unexpected blow to his head, reached into his pocket and pulled out a knife. The homeowner tried to shield himself by raising his arms in front of his body, but the jogger was able to stab the homeowner, seriously injuring him.

If the jogger is prosecuted for aggravated battery, he probably will be found:

(A) Not guilty, because he believed the homeowner was attacking him.

- **(B)** Not guilty, because he was adequately provoked by the homeowner.
- **(C)** Guilty, because he used a deadly weapon.
- **(D)** Guilty, because he intentionally created a reasonable apprehension of imminent bodily harm in the homeowner.

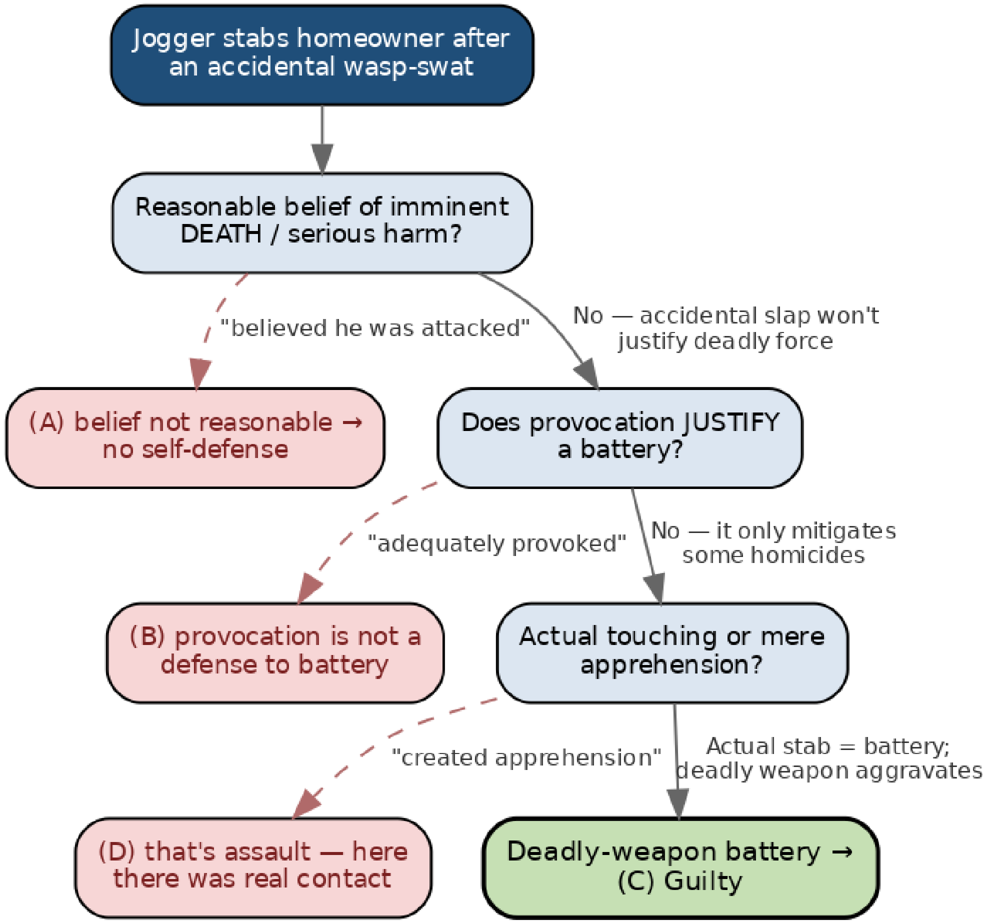
Correct answer: (C). Stabbing with a knife is a battery elevated to aggravated battery by the deadly weapon.

Rule. Battery is an unlawful application of force to another. Use of a deadly weapon elevates it to aggravated battery. Self-defense with deadly force requires a reasonable belief of imminent death or serious bodily harm; and provocation, while it can mitigate a killing to voluntary manslaughter, does not justify a battery.

Application. The jogger responded to an accidental, non-deadly swat by stabbing the homeowner with a knife. An accidental slap does not create a reasonable belief of imminent death or serious harm, so deadly force was not justified. The knife makes the battery aggravated, and the jogger is guilty.

Why the other choices fail. (A) fails because his belief was not reasonable; an accidental blow does not warrant deadly force. (B) is wrong because provocation is not a defense to battery, only a mitigator for some homicides. (D) describes assault (apprehension), but there was an actual harmful touching here, so battery, not assault, is the correct crime.

Decision path.



USING YOUR SHEETS

Ordering guide: Crim guide, §2 Crimes Against Persons (battery) + §4 Defenses, step 1 (self-defense: deadly force only vs. death/serious injury).

Rule sheet: Crim sheet, CRIMES AGAINST PERSONS + DEFENSES (self-defense).

How it lands: §2: a battery with a deadly weapon is aggravated. §4 step 1: deadly force needs a reasonable belief of imminent death/serious injury — an accidental swat doesn't qualify, and provocation is no defense to battery → (C).

Question 14

Real Property — Merger / Marketable Title

A rancher owned a 100-acre tract of land. Eighty acres had been devised to him by his father, and the rancher had acquired title to an adjacent 20 acres from a prospector by adverse possession. The rancher entered into a land sale contract in which he promised to convey the 100 acres to an investor. The contract listed the description of the property and was otherwise definite and certain as to the transaction, but the contract did not state the nature of the title that the rancher was to convey to the investor. At the time of closing, the investor paid the purchase price and accepted the deed conveyed by the rancher. Six months later, the prospector returned to the area and brought a successful action in ejectment against the investor for the 20 acres. The investor now sues the rancher for damages.

Which of the following statements would most accurately describe the investor's rights?

- **(A)** The investor's rights are based on the implied covenant contained in a marketable title.
- **(B)** The investor could bring an action for reformation of the deed with an abatement of the price of the land.
- **(C)** The terms of the investor's deed control the rancher's liability.
- **(D)** The investor could bring an action against the rancher for fraud.

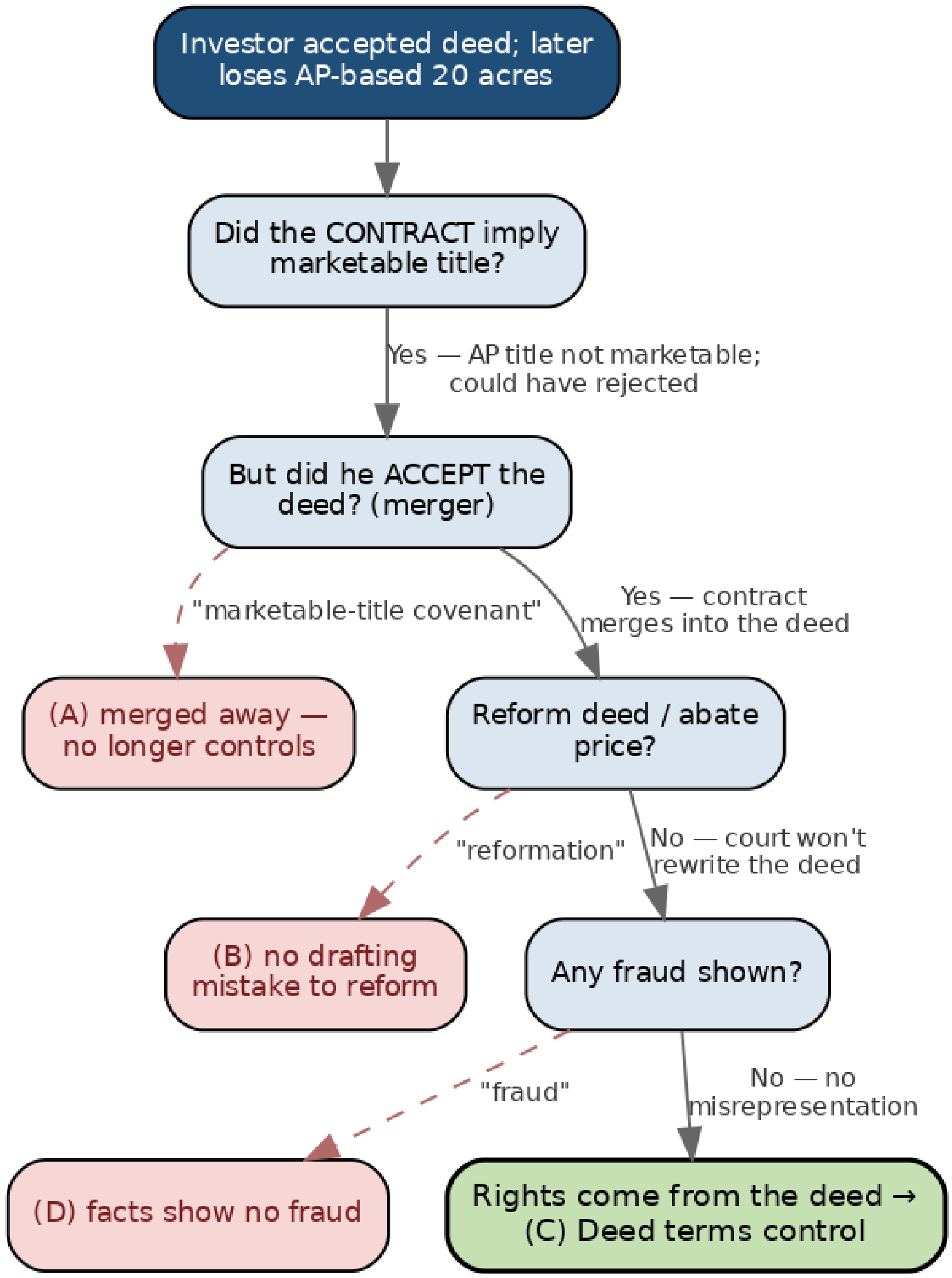
Correct answer: (C). Once the buyer accepts the deed, the contract merges into it and the deed's terms control.

Rule. A land-sale contract impliedly requires marketable title, and title resting solely on adverse possession is generally not marketable until quieted, so the buyer could have rejected it before closing. But under the doctrine of merger, once the buyer accepts the deed at closing, the contract obligations (including implied covenants about title quality) merge into the deed and are extinguished. The buyer's remedies thereafter depend on the covenants of title, if any, contained in the deed itself.

Application. The investor accepted the deed and paid, so the contract's implied marketable-title obligation merged into the deed. When the prospector ejected him from the 20 adversely possessed acres, the investor's rights turn on what covenants the deed actually contains, not on the vanished contract term.

Why the other choices fail. (A) is wrong because the marketable-title covenant is a contract term that merged into the deed and no longer controls. (B) is wrong because courts will not reform a deed that accurately reflects the deal; there was no mutual mistake in drafting. (D) is wrong because nothing shows the rancher misrepresented anything, so fraud does not lie.

Decision path.



USING YOUR SHEETS

Ordering guide: Real Property guide, §6 Conveyancing & Deeds, step 1 (marketable title implied) then step 2 (merger at closing).

Rule sheet: Real Property sheet, REAL ESTATE CONTRACTS (marketable title; Merger).

How it lands: Step 1: the contract implies marketable title, and AP-based title isn't — so he could have refused before closing. Step 2: once he accepted the deed, the contract merged into it, so his rights come from the deed's covenants → (C).

Question 15

Civil Procedure — Compulsory Counterclaims vs. Cross-Claims

A tourist from a foreign country rented a car from a car rental company that is incorporated and has its principal place of business in State A. The tourist then was in a traffic accident with another driver, a citizen of State B. The State B driver filed an action in federal district court against both the tourist and the rental company, alleging that both were negligent and liable for the injuries the State B driver sustained in the accident. The rental company believes that both the tourist and the State B driver were negligent and wants to recover from both for the extensive damage done to its car.

Are the rental company's claims against the State B driver and the foreign tourist compulsory such that it must assert them in the State B driver's pending federal action?

- **(A)** Both claims are compulsory.
- **(B)** The claim against the State B driver is compulsory, but the claim against the foreign tourist is not.
- **(C)** The claim against the foreign tourist is compulsory, but the claim against the State B driver is not.
- **(D)** Neither claim is compulsory.

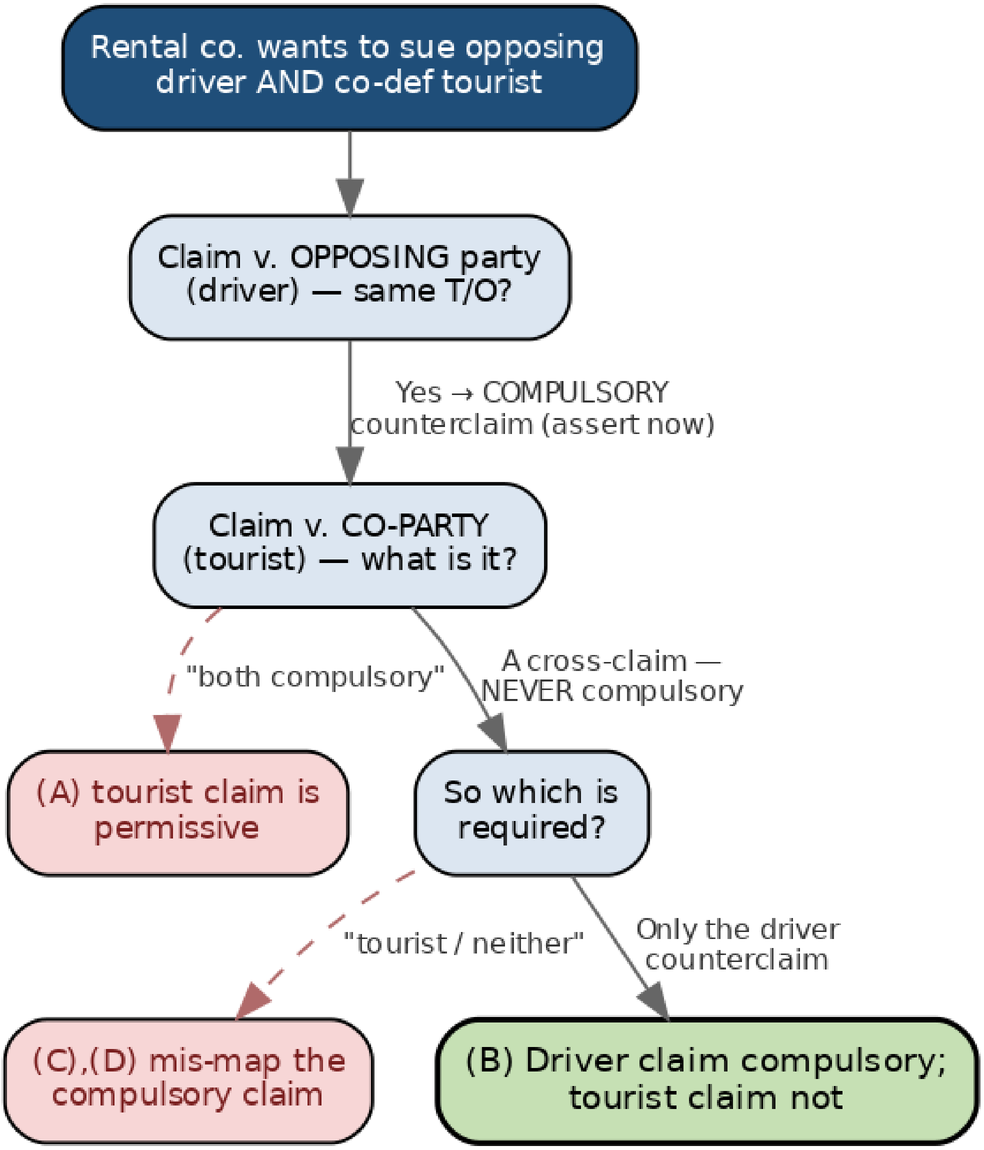
Correct answer: (B). The claim against the opposing State B driver is a compulsory counterclaim; the claim against the co-defendant tourist is only a permissive cross-claim.

Rule. A counterclaim against an opposing party is compulsory if it arises from the same transaction or occurrence as that party's claim, and it is waived if not asserted. A cross-claim is a claim against a co-party; cross-claims are never compulsory, so a party may assert one later or in a separate action.

Application. The rental company is a defendant sued by the State B driver. Its claim back against the State B driver arises from the same accident, so it is a compulsory counterclaim that must be asserted now. Its claim against the foreign tourist, a co-defendant, is a cross-claim and is permissive.

Why the other choices fail. (A) and (D) are wrong because exactly one of the two claims is compulsory. (C) reverses the analysis; it is the claim against the opposing driver, not the claim against the co-party tourist, that is compulsory.

Decision path.



USING YOUR SHEETS

Ordering guide: Civ Pro guide, §5 Joinder, steps 2–3 (counterclaims compulsory if same T/O; cross-claims against a co-party are never compulsory).

Rule sheet: Civ Pro sheet, JOINDER (Compulsory counterclaim vs. Cross-claim).

How it lands: Step 2: the claim back against the opposing driver arises from the same crash → compulsory counterclaim. Step 3: the claim against the co-party tourist is a cross-claim → permissive → (B).

Question 16

Constitutional Law — Thirteenth Amendment

To help alleviate discrimination in private contracts, Congress passed a bill providing:

It shall be unlawful to discriminate against minority race members in the making and enforcement of any public or private contract, of every kind whatsoever. Any person whose rights under this statute are violated may bring a cause of action against the party that has so violated the person's rights in the federal district court for the district in which he resides, seeking treble damages or $1,000, whichever is greater.

Several large banks that have been accused of discriminatory loan practices challenge the federal statute.

If the court finds that Congress had the power to enact the statute, the court most likely will find that the power arose from:

- **(A)** The Contract Clause.
- **(B)** The Thirteenth Amendment.
- **(C)** The Fourteenth Amendment.
- **(D)** The Commerce Clause.

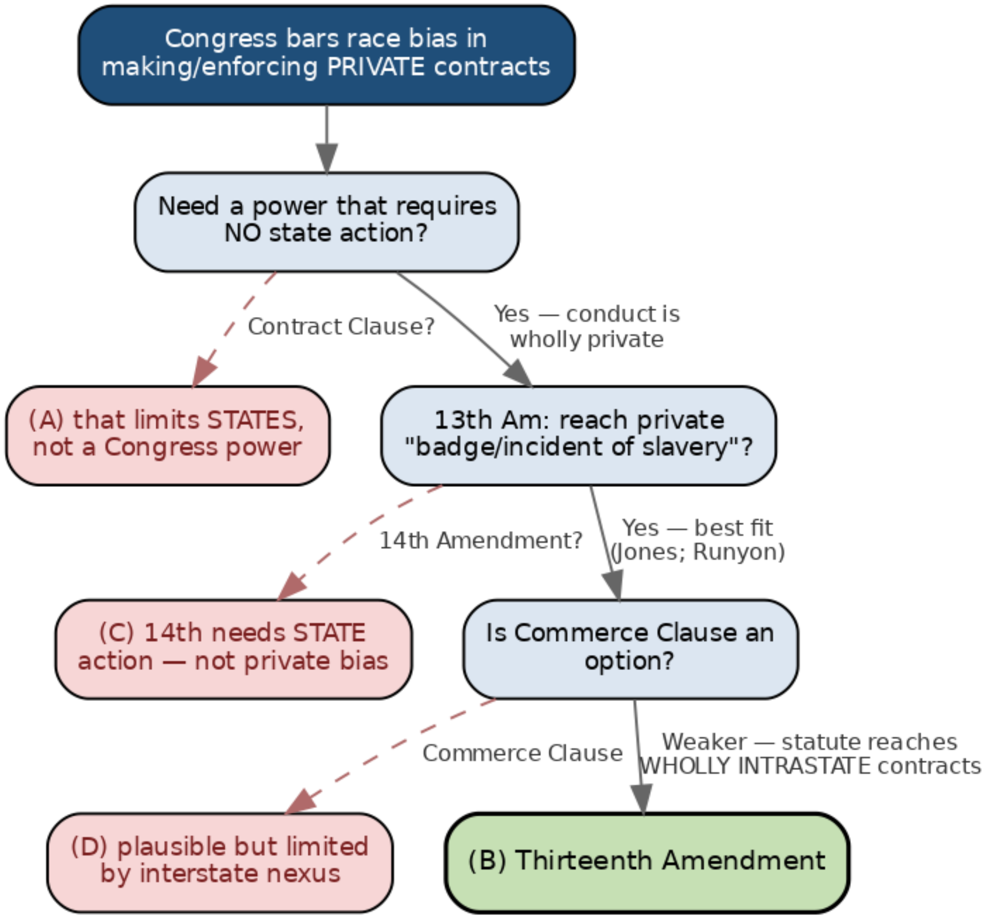
Correct answer: (B). The Thirteenth Amendment lets Congress reach private racial discrimination as a badge or incident of slavery.

Rule. The Thirteenth Amendment bans slavery and involuntary servitude and, unlike the Fourteenth, is not limited to state action. Its enabling clause lets Congress prohibit private conduct it rationally determines to be a badge or incident of slavery, which the Court has held includes racial discrimination in the making and enforcement of private contracts (Jones v. Alfred H. Mayer; Runyon v. McCrary).

Application. The statute bars racial discrimination in making and enforcing private contracts, precisely the private racial discrimination the Thirteenth Amendment's enabling power reaches. Because it applies to wholly private, wholly intrastate contracting, the Thirteenth Amendment is the cleanest source of power.

Why the other choices fail. (A) is wrong because the Contract Clause restrains states from impairing contracts; it is not a source of congressional power. (C) is wrong because the Fourteenth Amendment requires state action and does not reach purely private discrimination. (D) is tempting but weaker: the Commerce Clause requires a substantial effect on interstate commerce, and the statute reaches wholly intrastate contracts, so the Thirteenth Amendment (which carries no such limit) is the better answer.

Decision path.



USING YOUR SHEETS

Ordering guide: Con Law guide, §2 Congressional Power, step 1 (find the enumerated hook) — the 13th Amendment enforcement power reaches purely private conduct.

Rule sheet: Con Law sheet, CONGRESSIONAL POWER (and the reconstruction amendments; Boerne limits the 14th).

How it lands: Step 1 is a power hunt: the 14th needs state action (out), Commerce needs an interstate nexus (weak for wholly intrastate contracts), but the 13th reaches private "badges and incidents of slavery" with no state-action requirement → (B).

Question 17

Contracts — UCC Merchant Confirmation / Statute of Frauds

The owner of a sporting goods store noticed that her tent stock was running low. After consulting various manufacturers' catalogues, she decided to order from a large manufacturer of camping equipment whose catalogue listed the 9 x 12 tent that she wanted, at a cost of $70. On April 1, the store owner phoned the manufacturer and placed her order for 10 tents with the manufacturer's sales agent. The next day, the manufacturer mailed the store owner a letter informing her that the tents were now $72 and that they would be shipped to her on April 16. The store owner received the letter on April 4, but she never responded. On April 15, she received a catalogue from another tent company showing tents similar to the ones that she ordered, but for a cost of $50. She immediately called the manufacturer with whom she had placed her order to cancel it. Nevertheless, the manufacturer shipped the tents to her on April 16.

If the manufacturer sues the store owner to enforce the contract, who will prevail?

- **(A)** The store owner, because there was no meeting of the minds regarding the price term.
- **(B)** The store owner, because her promise was not in writing.
- **(C)** The manufacturer, because its April 2 letter was sufficient to bind the store owner.
- **(D)** The manufacturer, because the store owner's phone call on April 15 to cancel is proof that there was a contract.

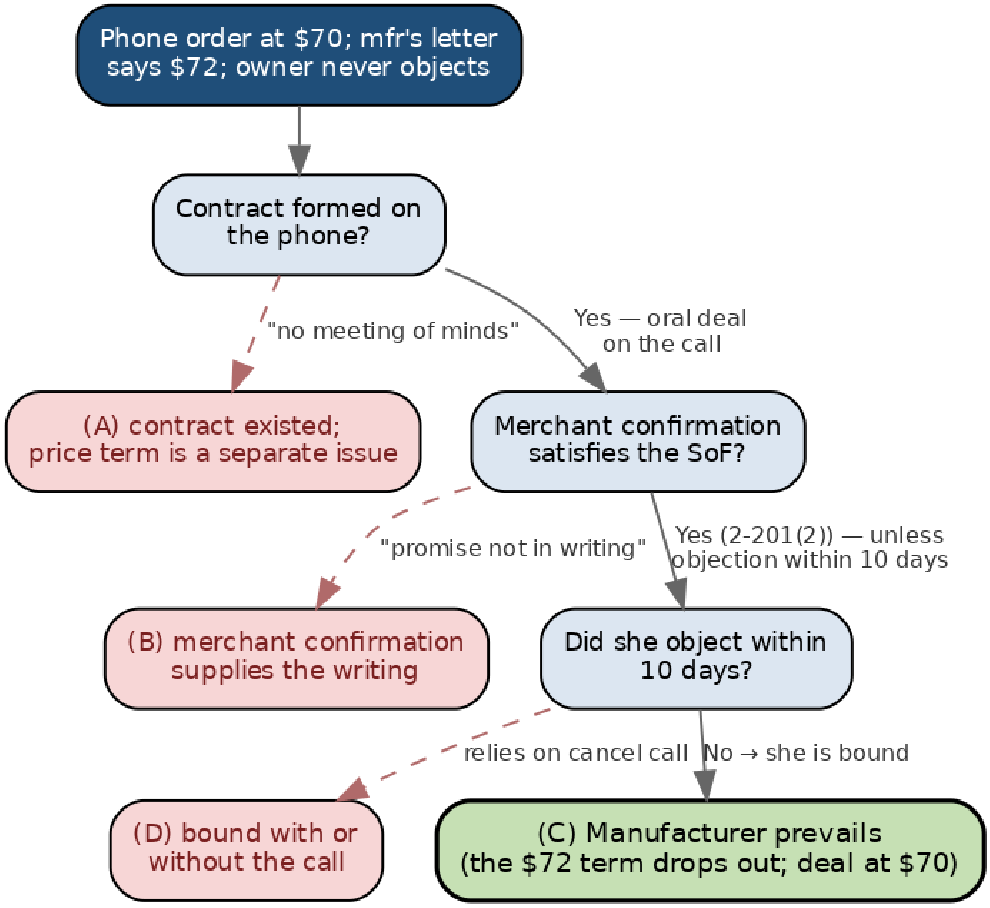
Correct answer: (C). The confirmatory memo binds the store owner under the merchant exception, so the manufacturer prevails.

Rule. An oral contract for goods is formed when an order is placed and accepted. Between merchants, a signed written confirmation of that oral contract satisfies the Statute of Frauds against the recipient too, unless she gives written objection within 10 days (UCC 2-201(2)). Under 2-207, an acceptance or confirmation with additional or different terms still operates as an acceptance; a material additional term (like a price change) simply does not become part of the contract absent assent.

Application. The store owner placed a phone order and the manufacturer confirmed in writing. That confirmation satisfies the Statute of Frauds because the store owner never objected within 10 days. A contract exists and binds her; the manufacturer prevails when it ships and she refuses.

Why the other choices fail. (A) is wrong because a contract was formed on the phone; the disputed higher price is simply a material term that does not bind her without assent, but it does not negate the contract. (B) is wrong because the merchant confirmation supplies the writing needed under the Statute of Frauds. (D) is wrong because her enforceability does not depend on the cancellation call; she was bound with or without it.

Decision path.



USING YOUR SHEETS

Ordering guide: Contracts guide, §2 Formation (UCC 2-207) + §3 Defenses, steps 3–4 (SoF: goods ≥ $500; merchant-confirmation exception).

Rule sheet: Contracts sheet, ACCEPTANCE (2-207) + DEFENSES TO FORMATION (merchant's confirmation binds if not objected to in 10 days).

How it lands: §2: an oral contract formed on the phone. §3: between merchants, the confirmatory memo satisfies the Statute of Frauds unless objected to within 10 days (she didn't). The $72 is a material added term that drops out, but the deal stands → (C).

Question 18

Constitutional Law — Establishment Clause / Aid to Religious Schools

A state enacted legislation providing for the testing of all high school students in the performance of certain adult-world tasks. In public schools, the test was administered at the school by government employees. In private schools—both religious and secular—the test was administered by school personnel, and the schools were reimbursed for the costs of administering the tests and reporting the results to the state.

An association with appropriate standing filed suit seeking to enjoin the reimbursement to the religious schools, claiming that the reimbursement violates the Establishment Clause of the First Amendment to the United States Constitution.

The trial court should:

(A) Grant the injunction, because direct state payment to religious schools violates the Establishment Clause.

(B) Grant the injunction, because the state may not require the religious schools to conduct tests that violate their religious principles.

(C) Deny the injunction, because the reimbursement has a secular purpose that neither advances nor inhibits religion and that will not entangle the state in religion.

(D) Deny the injunction, because the tests do not involve matters of religion.

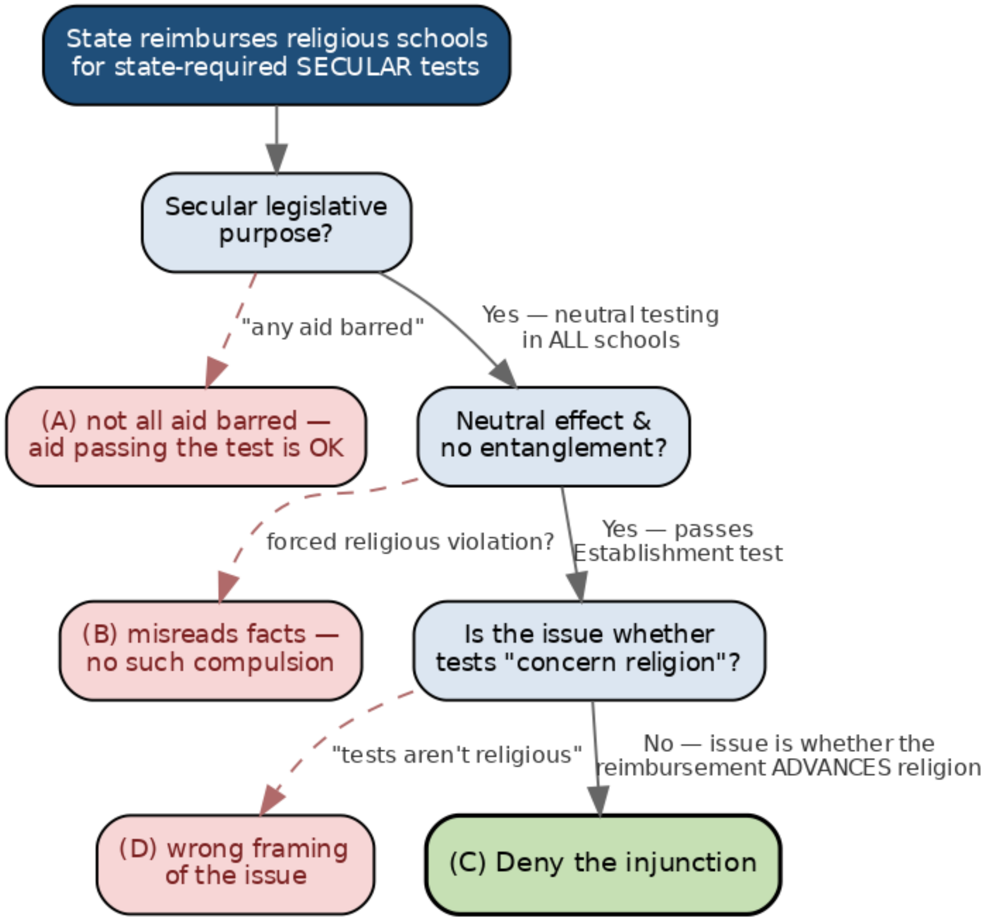
Correct answer: (C). Reimbursing schools for state-mandated secular testing has a secular purpose, a neutral effect, and no entanglement.

Rule. Government aid touching religious schools survives the Establishment Clause when it has a secular purpose, its primary effect neither advances nor inhibits religion, and it does not create excessive entanglement. Reimbursing all schools for the cost of administering state-required secular tests fits that profile (Committee for Public Education v. Regan).

Application. The state requires secular achievement testing of all high schoolers and reimburses public and private schools alike for administering and reporting it. The purpose is secular, the money pays only for neutral testing given in every school, and monitoring reimbursement does not entangle the state in religion. The injunction should be denied.

Why the other choices fail. (A) is wrong because not all direct payments to religious schools are barred; aid that passes the test is permissible. (B) misreads the facts, which involve an association's Establishment Clause challenge, not any compelled violation of the schools' religious principles. (D) is wrong because the issue is whether the reimbursement advances religion, not whether the tests themselves concern religious subject matter.

Decision path.



USING YOUR SHEETS

Ordering guide: Con Law guide, §7 First Amendment: Religion, step 4 (neutral aid: secular purpose, neutral effect, no entanglement).

Rule sheet: Con Law sheet, FIRST AMENDMENT – RELIGION (Establishment / neutral aid).

How it lands: Step 4: reimbursement for state-required secular testing given in all schools has a secular purpose, a neutral effect, and no entanglement → passes → deny the injunction → (C).

Question 19

Criminal Law — Conspiracy / Mistake of Law

After reading an article in a hunting magazine detailing a state's expanded season for the hunting of grizzly bears, a hunter called his nephew to see if he wanted to take a trip to the state to hunt grizzly bears. His nephew agreed. Unknown to the hunter and his nephew, the article in the magazine listed an incorrect ending date for the expanded grizzly bear hunting season; the hunting season had expired the day before. While still in their pickup truck driving to a campsite in the state, the hunter and his nephew were pulled over by a state trooper. They volunteered that they were on their way to hunt grizzly bears and were promptly arrested. A state statute made hunting bears out of season a strict liability offense.

If the hunter and his nephew are charged with conspiracy to hunt grizzly bears out of season, they will be:

(A) Acquitted, because there was no agreement.

(B) Acquitted, because they had not intended to commit a crime.

(C) Convicted, because hunting grizzly bears out of season is a strict liability offense.

(D) Convicted, because they took action in furtherance of the conspiracy.

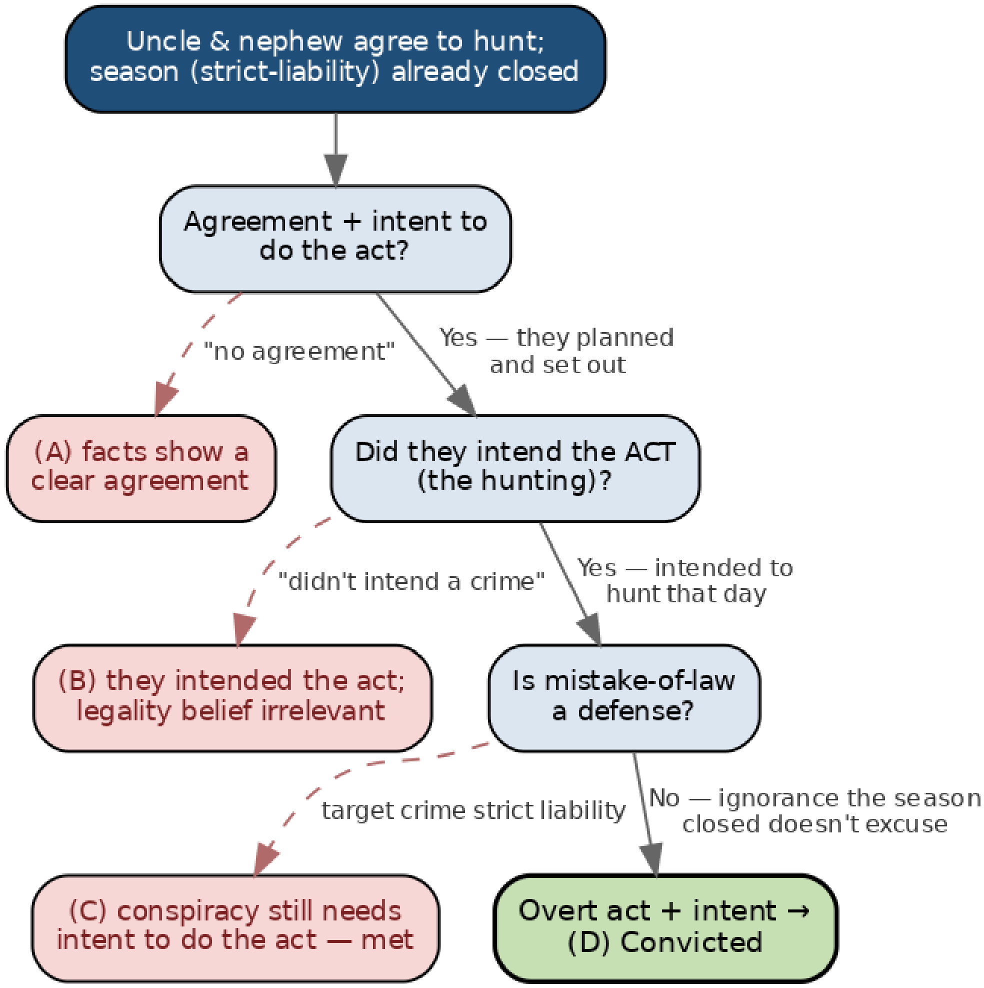
Correct answer: (D). They agreed and acted toward an objective that was in fact criminal; their mistaken belief it was legal is no defense.

Rule. Conspiracy requires an agreement, the intent to agree, and the intent to achieve the objective of the agreement (and, in overt-act jurisdictions, an overt act). The parties need not know their planned conduct is illegal; ignorance or mistake of law is generally no defense, and most courts reject the 'corrupt motive' exception. This holds even when the underlying target offense is a strict liability crime, because the conspiracy charge supplies its own intent requirement as to the agreed act.

Application. The hunter and nephew agreed and intended to hunt grizzlies on a date that was in fact out of season, and they drove toward the campsite (an overt act). Their reliance on a magazine's wrong date is a mistake about the law's coverage that does not negate their intent to do the act. They can be convicted.

Why the other choices fail. (A) is wrong because the facts show a clear agreement. (B) is wrong because they did intend to commit the act (hunting on that date); they were merely mistaken that it was lawful. (C) is a trap; the strict-liability nature of the target crime does not eliminate conspiracy's requirement of intent to achieve the objective, which was met here.

Decision path.



USING YOUR SHEETS

Ordering guide: Crim guide, §3 Inchoate Crimes, step 3 (Conspiracy: agreement + intent + overt act); mistake of law is generally no defense.

Rule sheet: Crim sheet, INCHOATE & ACCOMPLICE (conspiracy).

How it lands: Step 3: they agreed, intended to hunt that day, and drove toward the site (overt act). Believing the season was open is a mistake of law, no defense; the strict-liability target crime doesn't remove conspiracy's own intent, which was met → (D).

Question 20

Torts — Self-Defense / Reasonable Belief

While practicing their target shooting at the firing range, a man and woman got into an argument that almost erupted into physical combat, except that they were restrained and separated by bystanders. Later, in the parking lot of the range, the man shot the woman in the shoulder. Bystanders who rushed to the scene immediately after hearing the man's shot found the woman on the pavement with a black metal flashlight in her hand. The woman's pistol was in her locker at the firing range. At the trial of the woman's civil action for battery against the man, the woman established that the man intentionally shot her. In defense, the man testified that the woman approached him, saying, "We'll settle this once and for all, right now," and raised an object toward the man. He testified that he feared that the woman was about to shoot him with a pistol, so he fired in self-defense.

Assuming that the jury decides that the man is telling the truth, to find in his favor the jury also will need to find:

- **(A)** No additional facts.
- **(B)** That a reasonable person in the same circumstances would have believed that the woman was about to shoot.
- **(C)** That the woman was at fault in raising a black object toward the man while threatening him.
- **(D)** That the woman was the original aggressor.

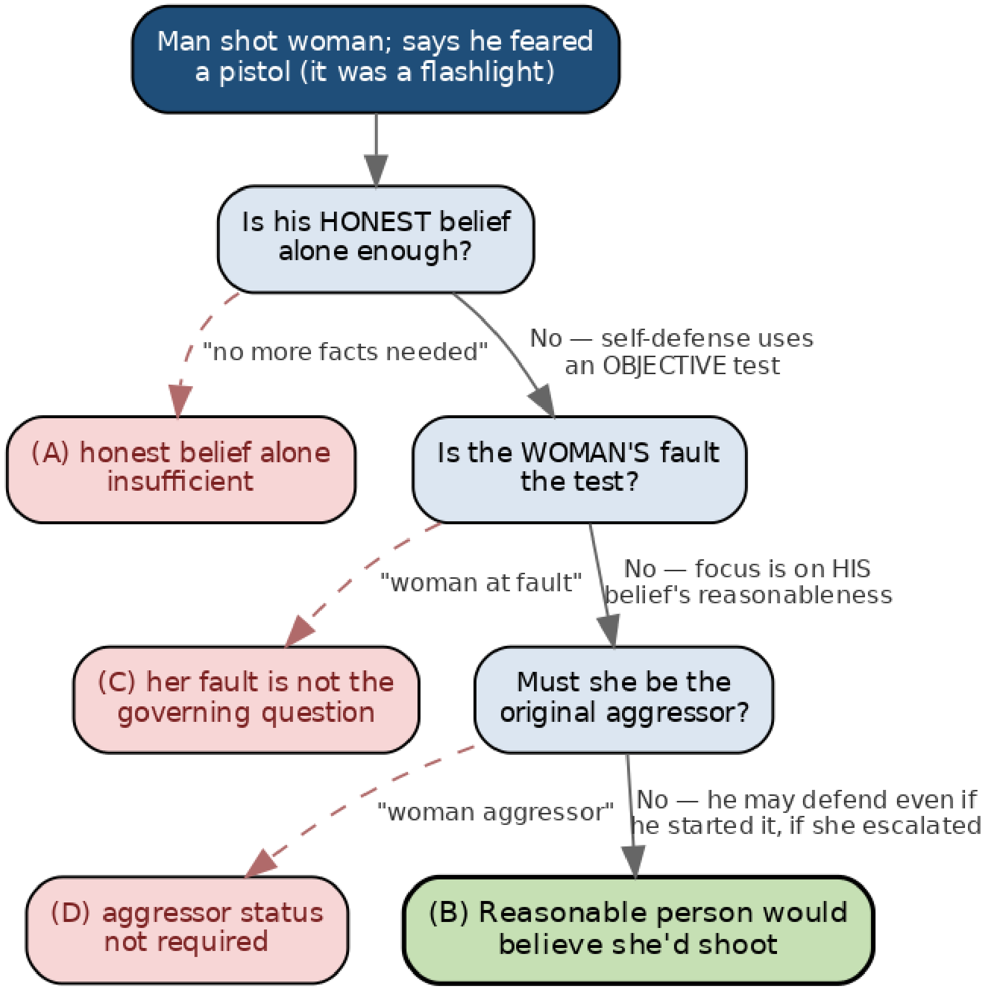
Correct answer: (B). Self-defense requires that a reasonable person would have believed the woman was about to shoot.

Rule. Self-defense justifies force where there is a reasonable appearance of danger, not only actual danger. Deadly force in response to a mistaken belief of attack is privileged only if a reasonable person in the same circumstances would have held that belief. The test is objective; the actor's honest belief alone is not enough.

Application. Even accepting that the man honestly feared the woman was raising a pistol, the jury must still find that his belief was objectively reasonable given what a reasonable person would perceive (she raised a black metal flashlight while threatening him). Only that added reasonableness finding entitles him to prevail.

Why the other choices fail. (A) is wrong because an honest belief alone does not satisfy self-defense; objective reasonableness is required. (C) is wrong because the woman's fault is not the governing question; the reasonableness of the man's belief is. (D) is wrong because he can claim self-defense even if he was the initial aggressor, so long as the woman escalated to deadly force, so aggressor status is not the needed finding.

Decision path.



USING YOUR SHEETS

Ordering guide: Torts guide, §2 Defenses to Intentional Torts, step 2 (self-defense: reasonable force + reasonable belief — objective test).

Rule sheet: Torts sheet, INTENTIONAL TORTS/defenses (self-defense).

How it lands: Step 2: self-defense turns on an objectively reasonable belief. Even crediting his honesty, the jury must still find that a reasonable person would have believed she was about to shoot → (B).

Question 21

Evidence — Hearsay / Vicarious Admissions

An employee of a grain company brought suit against his employer for injuries that he suffered in a fire and explosion in a grain elevator. The employer filed a counterclaim against the employee for damages, and alleged that the employee was contributorily negligent in that he cut through some electrical wires while working in the elevator, and the sparks from those wires caused the explosion. The employee denies these allegations. His employer calls the grain elevator operator, who was also working in the elevator, and he testifies that he helped the employee and his assistant out of the elevator soon after the explosion. The elevator operator intends to testify that, at that time, the assistant told him that the employee "should have been able to tell that that wire was hot." The injured employee's attorney objects to the elevator operator's testimony concerning this conversation.

The trial judge should rule that the testimony is:

- **(A)** Inadmissible, because it is hearsay not within any exception.
- **(B)** Inadmissible, because it is improper opinion evidence.
- **(C)** Admissible, as an admission.
- **(D)** Admissible, as being a prior inconsistent statement.

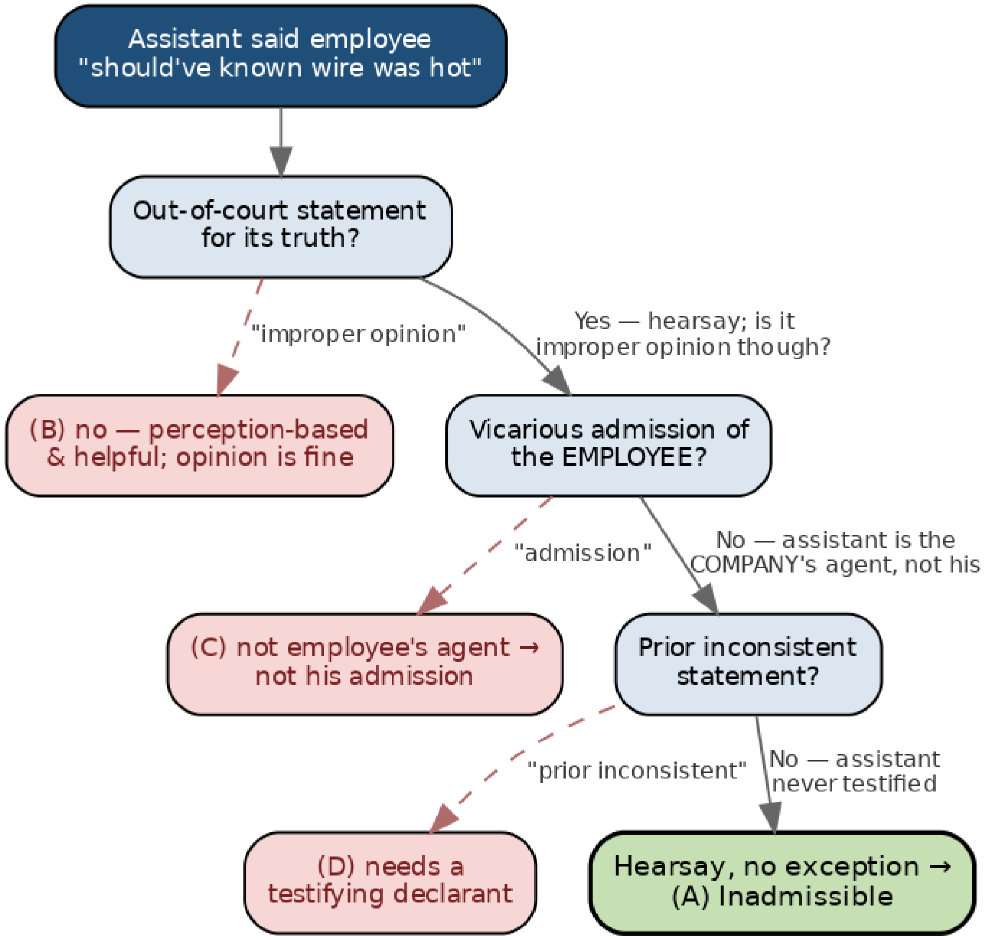
Correct answer: (A). The assistant's out-of-court statement is hearsay that fits no exception on these facts.

Rule. Hearsay offered for its truth is inadmissible without an exception. A statement is an opposing-party (vicarious) admission only if made by that party's own agent about a matter within the scope of the agency. A prior inconsistent statement requires that the declarant testify and be subject to cross-examination.

Application. The assistant said the employee 'should have been able to tell that wire was hot,' offered to prove the employee's contributory negligence. The assistant works for the grain company (the defendant/counterclaimant), not for the injured employee, so it is not a vicarious admission of the employee. The assistant never testified, so it is not a prior inconsistent statement. An excited-utterance theory is possible but the facts do not establish the required stress of a startling event, and that choice is not offered. It is inadmissible hearsay.

Why the other choices fail. (B) is wrong because the statement was based on perception and would help decide a fact in issue, so it is not improper opinion. (C) is wrong because the assistant is not the employee's agent, so his words cannot be attributed to the employee as an admission. (D) is wrong because the assistant did not take the stand, so there is no prior inconsistent statement.

Decision path.



USING YOUR SHEETS

Ordering guide: Evidence guide, §2 Hearsay Core + §3 Exemptions, steps 5–6 (opposing-party/vicarious — whose agent?) + §7 Impeachment (prior inconsistent needs a testifying declarant).

Rule sheet: Evidence sheet, EXEMPTIONS (opposing-party / vicarious).

How it lands: §2: out-of-court, for its truth = hearsay. §3: it isn't the employee's vicarious admission (the assistant is the company's agent, not his), and it isn't a prior inconsistent statement (the assistant never testified). No exception fits → (A).

Question 22

Civil Procedure — Erie / Rules Enabling Act

A restaurant owner in State A bought two large freezers from a manufacturer of commercial refrigeration equipment with its principal place of business in State B. Within one week and after being fully stocked with meat, one of the freezers broke down. The restaurant owner filed a state-based products liability action against the manufacturer in federal court in State A, and included a demand for a jury trial. Under the law in State A, jury verdicts do not need to be unanimous, but the Federal Rules of Civil Procedure require jury verdicts to be unanimous.

At trial, the restaurant owner makes a motion asking the court to apply the State A law.

How should the court rule on the motion?

- **(A)** Grant the motion, because applying the federal rule may change the outcome of the case.
- **(B)** Grant the motion, because, when a federal court has diversity jurisdiction, it is required to apply the substantive law of the state in which it is sitting.
- **(C)** Deny the motion, because the Federal Rules of Civil Procedure apply in federal court as long as they are consistent with the Rules Enabling Act and not unconstitutional.
- **(D)** Deny the motion, because the Supreme Court's balancing factors indicate that federal law should apply.

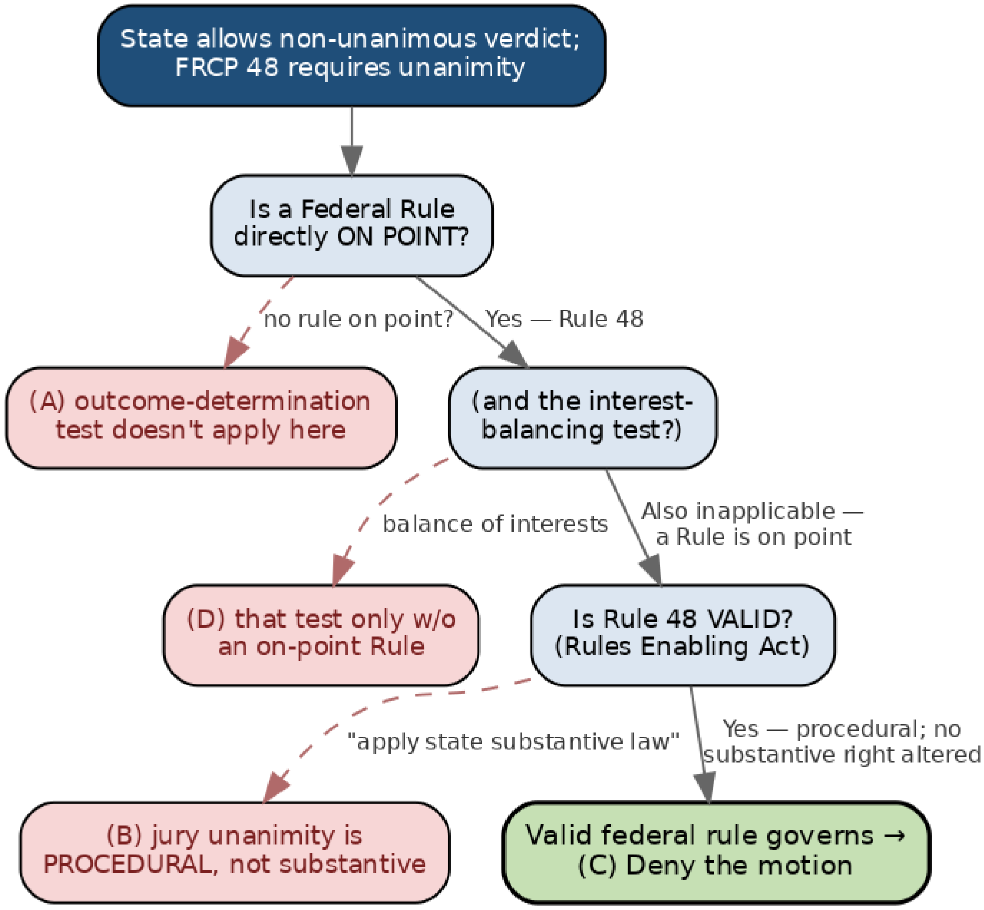
Correct answer: (C). A valid Federal Rule on point (unanimous verdicts) governs over conflicting state law.

Rule. In a diversity case a federal court applies state substantive law, but where a Federal Rule of Civil Procedure is directly on point, the federal court applies the Rule so long as it is valid under the Rules Enabling Act, meaning it governs practice or procedure and does not abridge, enlarge, or modify a substantive right. When a Federal Rule squarely applies, the outcome-determinative test and the balance-of-interests test drop out; those tests are used only when no Federal Rule is on point.

Application. Federal Rule of Civil Procedure 48 requires a unanimous verdict unless the parties agree otherwise, and it directly conflicts with the State A non-unanimity rule. Rule 48 is a valid procedural rule, so it governs and the court denies the motion to apply state law.

Why the other choices fail. (A) invokes the outcome-determination test, which does not apply when a Federal Rule is on point, and it reaches the wrong result. (D) invokes the balance-of-interests test, which likewise applies only in the absence of an on-point Federal Rule. (B) states a true general principle but misclassifies the jury-unanimity requirement as substantive; it is procedural, so the Federal Rule controls.

Decision path.



USING YOUR SHEETS

Ordering guide: Civ Pro guide, §4 Venue, Transfer & Erie, steps 5–6 (a valid Federal Rule on point governs; only then reach outcome/twin-aims).

Rule sheet: Civ Pro sheet — Erie is thin here, so lean on the ordering guide's §4 Erie tie-breakers.

How it lands: Step 6 tie-breaker: a valid Federal Rule directly on point (Rule 48 unanimity) controls, and you never reach the outcome-determination or twin-aims tests → deny the motion → (C).

Question 23

Criminal Procedure — Miranda / Automobile Search

A driver was operating her car on a city street when she was stopped by a police officer for speeding. As the police officer reached the driver's car, he saw her put something into her purse. The officer told the driver, "Ma'am, you were speeding; that's why I stopped you. I'd like your driver's license, and, by the way, what did you just put into your purse?" The driver responded, "It's just a marijuana cigarette, but don't worry, I've only had two and my driving judgment hasn't been impaired." The officer took her purse, removed the "joint," and charged the driver with possession of marijuana as well as speeding. At the driver's trial for marijuana possession, the prosecution seeks to introduce the marijuana cigarette into evidence. The driver's attorney moves to suppress the evidence.

The defense motion should be:

(A) Granted, because the cigarette is fruit of the poisonous tree.

(B) Granted, because the police officer did not have a valid search warrant.

(C) Denied, because the police officer's asking about the contents of the driver's purse did not constitute custodial interrogation.

(D) Denied, provided the police officer had a reasonable suspicion of criminal activity.

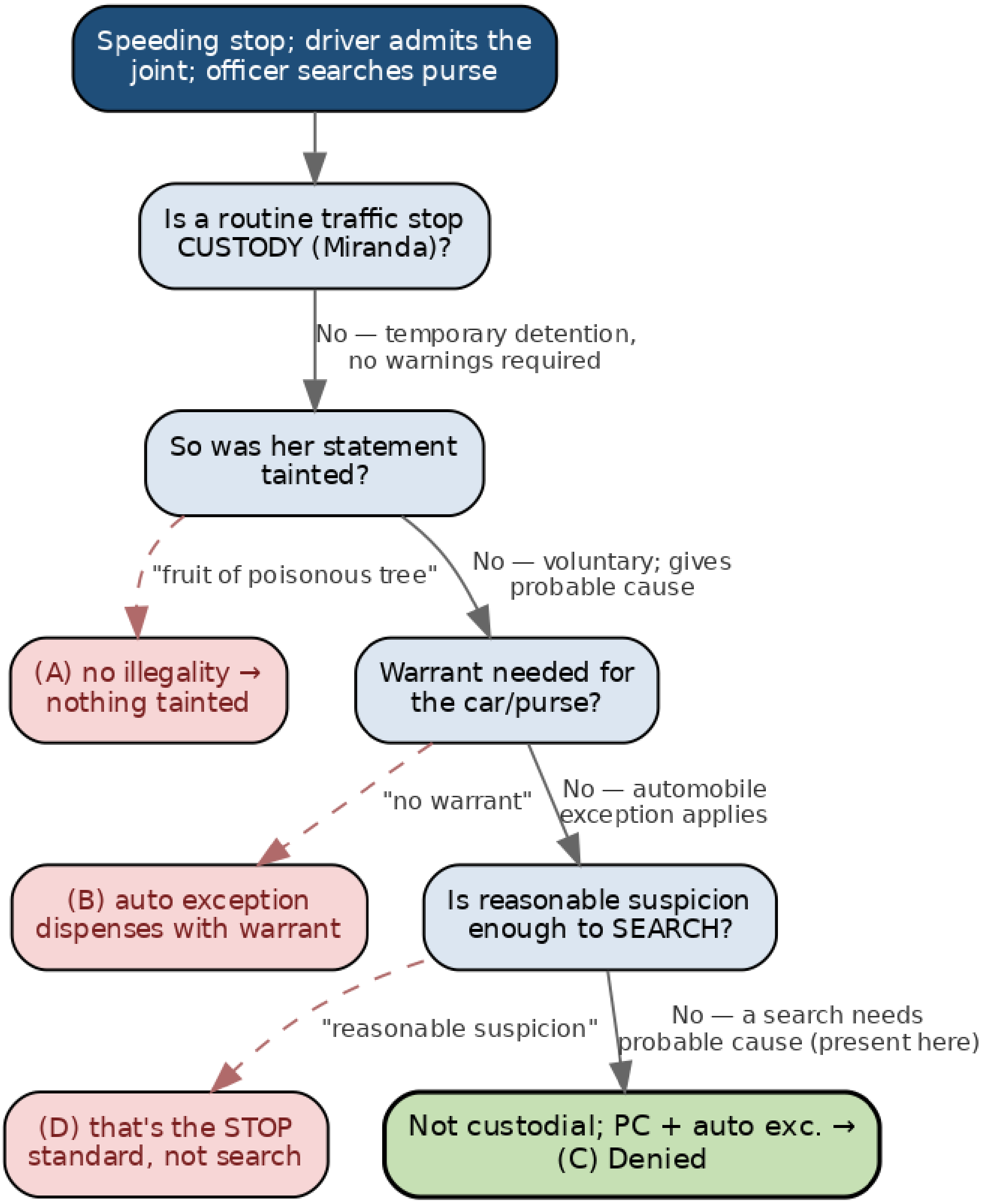
Correct answer: (C). A routine traffic stop is not custody, so no Miranda warnings were required and the statement supplied probable cause.

Rule. Miranda applies only to custodial interrogation, and a person temporarily detained in an ordinary traffic stop is not in custody. A voluntary, un-warned statement in that setting is admissible and can furnish probable cause. Under the automobile exception, police who have probable cause may search a vehicle and containers within it without a warrant.

Application. The driver was briefly detained for speeding, not in custody, so her admission that she had a marijuana cigarette needed no Miranda warning and was voluntary. That admission gave probable cause, and the automobile exception let the officer search the purse and seize the joint. The motion to suppress is denied.

Why the other choices fail. (A) is wrong because there was no illegality, so nothing to be fruit of a poisonous tree. (B) is wrong because the automobile exception dispenses with the warrant requirement. (D) is wrong because searching the purse required probable cause, which existed here, not merely reasonable suspicion (the standard for a stop).

Decision path.



USING YOUR SHEETS

Ordering guide: Crim guide, §6 Fifth/Sixth Amendments, steps 1–2 (Miranda needs custodial interrogation — a traffic stop isn't custody) + §5 Fourth Amendment (automobile exception).

Rule sheet: Crim sheet, 5TH/6TH (Miranda) + 4TH AM – SEARCH (automobile: PC as to containers).

How it lands: §6: a routine traffic stop isn't custody, so no warnings were owed and the statement is voluntary → probable cause. §5 automobile exception then permits the purse search → denied → (C).

Question 24

Contracts — Statute of Frauds / UCC Goods

A man and a woman met in a bar. The woman told the man that she greatly admired the diamond stickpin he had in his lapel. "Oh, this," the man laughed. "It's no diamond; it's only a piece of glass." The woman acknowledged his statement, but kept commenting on how nice it looked. After further conversation, the man orally agreed to sell the stickpin to her for $510. They agreed that in two days, he would bring the stickpin to the same bar, and the woman would bring the $510 in cash. The man duly appeared with the pin, but the woman failed to appear. The man filed suit against the woman for $510.

The woman's best defense is:

(A) $510 was an unconscionable amount to pay for a piece of glass.

(B) The agreement was not supported by consideration.

(C) The agreement violated the Statute of Frauds.

(D) Neither the woman nor the man was a merchant.

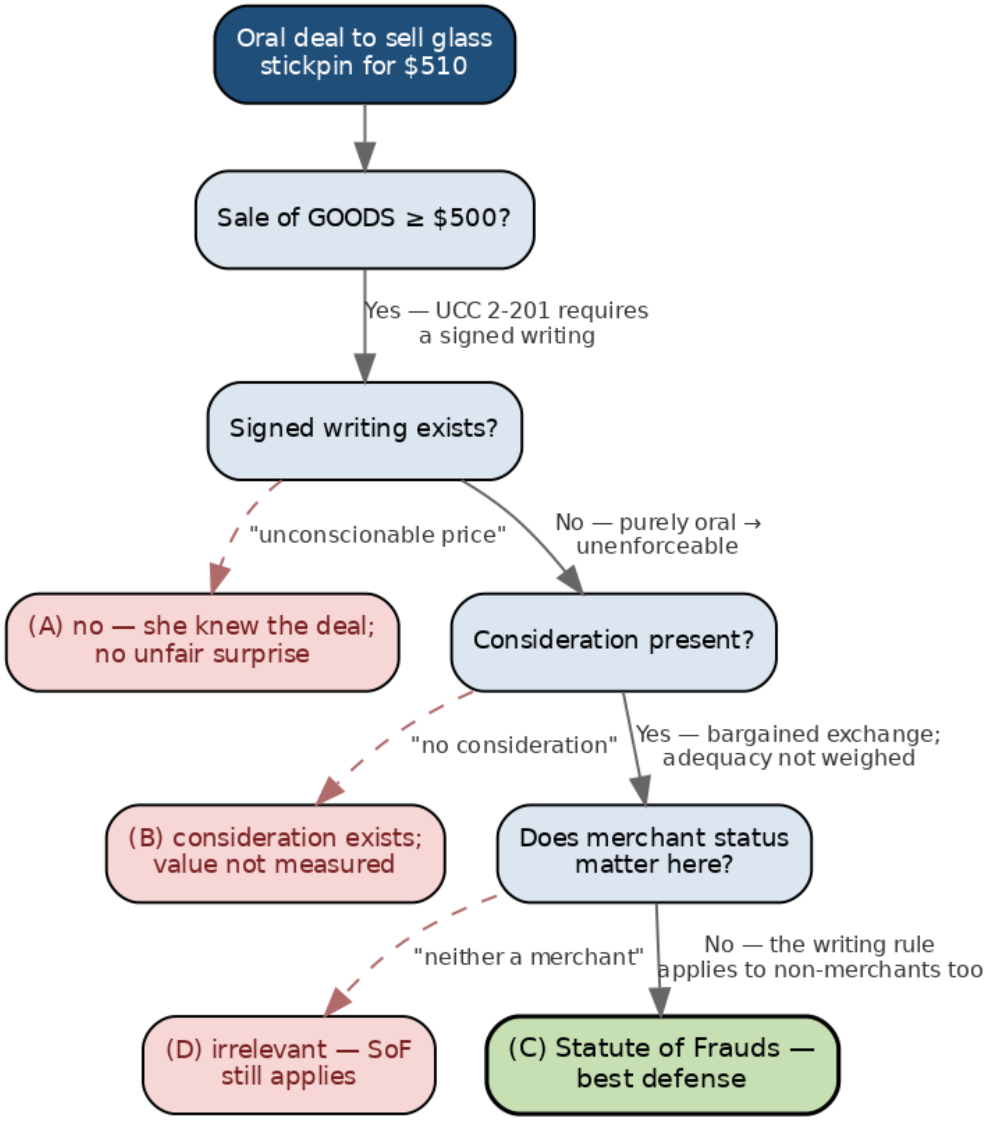
Correct answer: (C). An oral sale of goods for $500 or more is unenforceable without a signed writing, and merchant status is irrelevant.

Rule. Under UCC 2-201(1), a contract for the sale of goods for $500 or more is not enforceable unless there is a writing signed by the party to be charged. Goods are tangible, movable items. This requirement applies whether or not the parties are merchants; the merchant provision in 2-201(2) only relaxes the writing requirement for a confirmatory memo, not for a purely oral deal.

Application. The stickpin is a good, and the oral price was $510, over the threshold. Nothing was signed, so the woman's oral promise to buy is unenforceable. That is her best defense.

Why the other choices fail. (A) is wrong because unconscionability requires grossly one-sided terms or unfair surprise; she knew exactly what she was buying and neither party had superior power. (B) is wrong because there was consideration (a bargained-for exchange), and courts do not weigh the adequacy of consideration. (D) is wrong because the parties' non-merchant status is irrelevant; the Statute of Frauds applies to non-merchants too.

Decision path.



USING YOUR SHEETS

Ordering guide: Contracts guide, §3 Defenses to Formation, step 3 (Statute of Frauds: goods ≥ $500 need a signed writing).

Rule sheet: Contracts sheet, DEFENSES TO FORMATION (Statute of Frauds / MYLEGS).

How it lands: Step 3: a $510 sale of goods needs a signed writing; there is none, so the oral promise is unenforceable. Merchant status is irrelevant (that exception is only for confirmatory memos) → (C).

Question 25

Real Property — Covenants / Touch and Concern

An environmentalist divided her 25-acre property into 100 quarter-acre residential lots. At the time the environmentalist sold her lots, there was a recycling center about one mile from the western boundary of the development. She included in the deed of all 100 grantees the following provision:

Grantee covenants for herself and her heirs and assigns that all aluminum cans, glass bottles, and grass clippings of Grantee and her heirs and assigns shall be recycled. This covenant runs with the land and shall remain in effect as long as there is a recycling center within five statute miles of the development.

A buyer purchased a lot in the development. Her deed contained the recycling clause. Two years later, the buyer decided to give the property to her niece as a gift. The niece's deed to the property contained the recycling covenant. Shortly after the niece took possession of the house, the recycling center moved its location to a new site about four and a half miles from the development. When the niece put the house up for sale, she said nothing to prospective buyers about recycling.

The house was purchased by a veteran who had lost the use of his legs. The veteran's deed did not contain the recycling clause, and he hired a local disposal service to carry away his garbage and a landscaper to maintain the yard. The landscaper bagged the grass clippings and they were removed by the disposal service, which put all the trash and clippings in a landfill. When the veteran's neighbors informed him of his duty to recycle, he told them that he knew nothing of the covenant and that it would be difficult for a person in his physical condition to haul cans, bottles, and clippings to the recycling center. Unfazed, the neighbors filed suit to require the veteran to comply with the covenant or pay damages.

The veteran's best defense is which of the following?

- **(A)** The veteran's deed did not contain the covenant.
- **(B)** The covenant does not touch and concern the land.
- **(C)** An intelligent inspection of the neighborhood would raise no inference that the covenant existed.
- **(D)** The veteran's physical condition requires a balancing of hardships by the court.

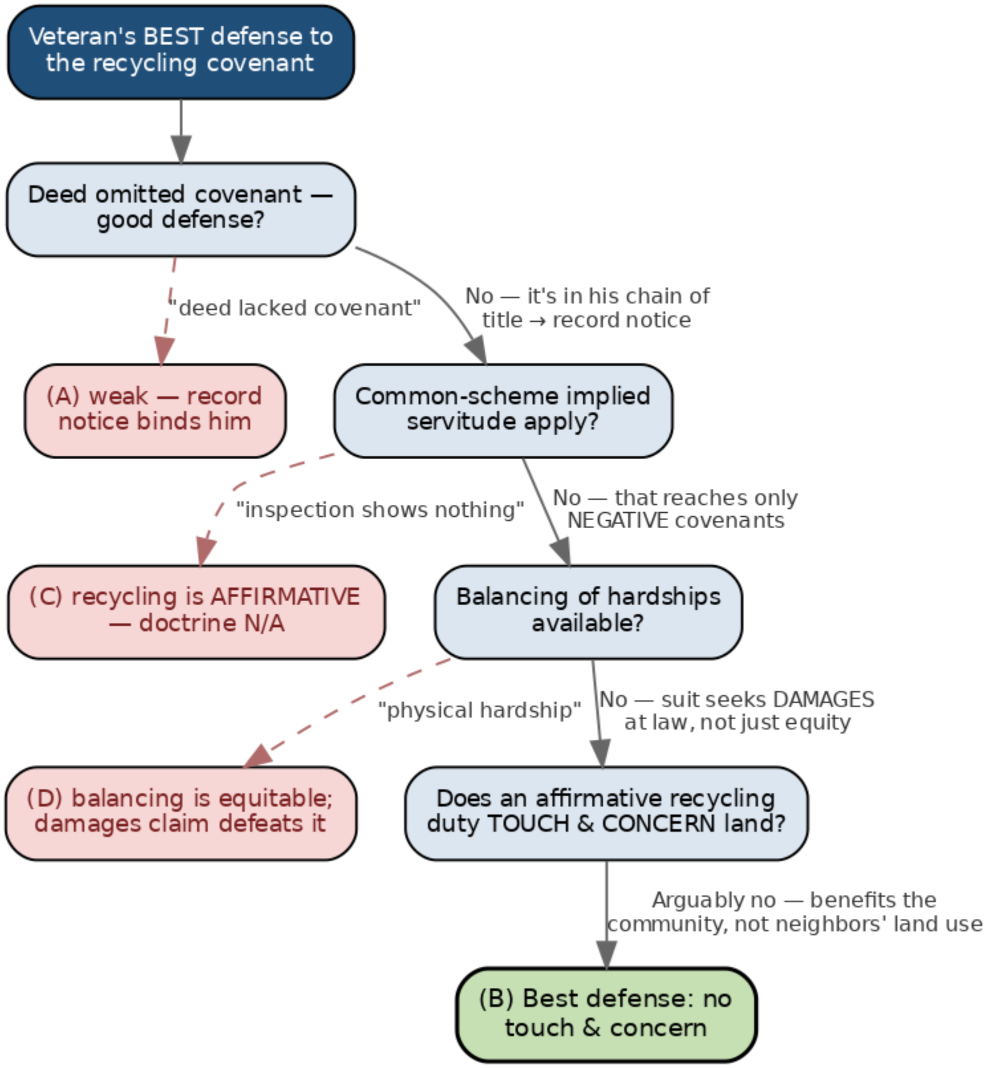
Correct answer: (B). The recycling duty arguably does not touch and concern the land, which is the veteran's strongest defense.

Rule. For a covenant's burden to run at law, it must, among other requirements, touch and concern the land, meaning it must relate to the parties' use or enjoyment of their land rather than confer only a personal or community-wide benefit. Servitudes implied from a common scheme apply only to negative (restrictive) covenants, not affirmative duties. In an action seeking damages at law, equitable balancing of hardships generally does not apply.

Application. An affirmative duty to recycle cans, bottles, and clippings benefits the community and environment generally but does not directly enhance neighboring owners' use and enjoyment of their own land, so it is vulnerable on the touch-and-concern element. That is the veteran's best defense.

Why the other choices fail. (A) is wrong because the covenant is in his chain of title, giving him record notice despite its omission from his deed. (C) is wrong because a common-scheme implied servitude reaches only negative covenants, and recycling is an affirmative covenant, so that theory does not fit. (D) is wrong because balancing hardships is an equitable doctrine, and the neighbors also seek damages at law, where it does not control.

Decision path.



USING YOUR SHEETS

Ordering guide: Real Property guide, §4 Easements, Covenants & Servitudes, step 5 (run the covenant elements to find the weakest one).

Rule sheet: Real Property sheet, COVENANTS & SERVITUDES.

How it lands: Step 5: checking each element — record notice exists (kills A), common-scheme covers only negative covenants (kills C), balancing is equitable while damages are sought (kills D) — leaves touch & concern as the shakiest for an affirmative recycling duty → best defense (B).

Question 26

Evidence — Expert Opinion / Basis of Testimony

A plaintiff brought suit against a manufacturing company, seeking to recover for damages he suffered when his car's engine burst into flames following the use of an engine additive made by the company. The plaintiff contends that the manufacturing company was negligent and in breach of warranty.

An automobile engineer sat in court while the plaintiff testified to the events concerning the engine fire. The plaintiff's testimony was not challenged or rebutted. The plaintiff calls the engineer to the stand and asks him whether, based on the plaintiff's prior testimony, it was possible for a car engine to burst into flames as it did.

The engineer's testimony would be:

- **(A)** Inadmissible, because the engineer's opinion was not elicited by means of a hypothetical question.
- **(B)** Inadmissible, because the engineer was in the court while the plaintiff testified concerning the engine fire.
- **(C)** Admissible, because the engineer was in the court while the plaintiff testified concerning the engine fire.
- **(D)** Admissible, as long as the engineer's opinion is based only on admissible evidence.

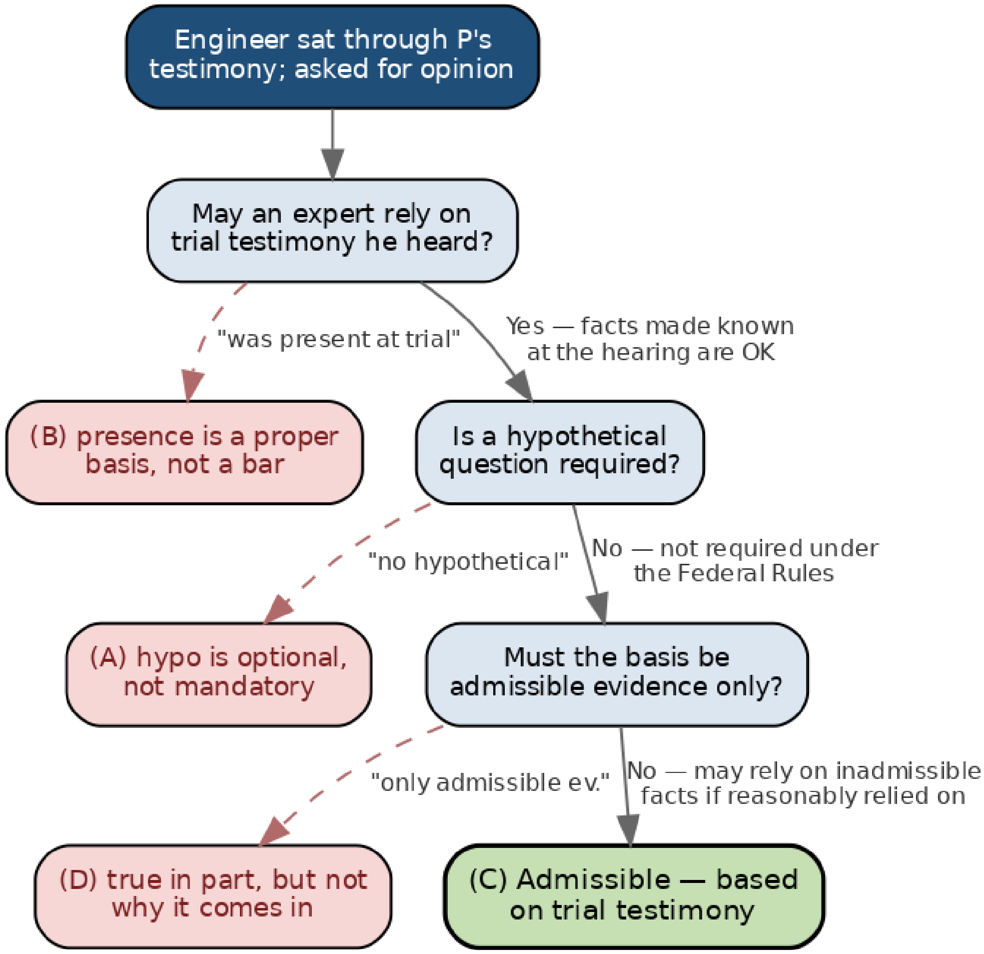
Correct answer: (C). An expert may base an opinion on trial testimony he heard in the courtroom.

Rule. Under the Federal Rules an expert may base an opinion on facts perceived or made known before or at the hearing, including testimony the expert hears in court. No hypothetical question is required to elicit the opinion, and an expert may rely on facts not themselves admissible if experts in the field reasonably rely on such facts.

Application. The engineer sat through the plaintiff's unchallenged testimony about the fire and is then asked whether, based on that testimony, an engine could ignite as described. Because he may form an opinion from evidence heard at trial, his testimony is admissible.

Why the other choices fail. (A) is wrong because a hypothetical question is one permissible method but is not required. (B) is wrong for the same reason the answer is right: hearing the testimony in court is a proper basis, not a disqualifier. (D) is an accurate statement in the abstract but is not the reason the testimony comes in here, because it may also rest on facts heard at trial, so (C) is the best answer.

Decision path.



USING YOUR SHEETS

Ordering guide: Evidence guide — no dedicated opinion sub-topic; this falls to the rule sheet. (Nearest guide steps are §4 recorded recollection, unrelated.)

Rule sheet: Evidence sheet, OPINION / PRIVILEGE (Lay / expert).

How it lands: The sheet's expert line controls: an expert may rely on facts made known at the hearing, and no hypothetical is required → (C). A spot where the ordering guide is silent and the rule sheet does the work.

Question 27

Constitutional Law — Time, Place, and Manner

A state statute prohibits speechmaking and loud public gatherings within 250 feet of the state's legislative chamber when the legislature is in session, but permits silent picketing at any time, as long as the picketing does not interfere with pedestrians or traffic. The nearest place to the legislative chamber where speeches could be made during a session is a large public park directly opposite the chamber. During a controversial debate on a proposed bill to ban abortions, a man in the park began voicing his support of the ban. As the man spoke, a crowd of about 250 gathered. When fervor built, the man urged the crowd to cross the street with him to the steps of the legislative chamber to make their voices heard within the legislature. When the chanting crowd reached the front of the chamber, the state police dispersed the crowd and arrested the man, who was subsequently charged with violating the statute.

If the man challenges the constitutionality of the statute under which he was charged, a court will most likely find the statute:

- **(A)** Constitutional on its face and as applied to the man.
- **(B)** Constitutional on its face but not as applied to the man.
- **(C)** Unconstitutional on its face, because a state's citizens have a right to take their complaints to their state legislature.
- **(D)** Unconstitutional on its face, because it permits silent picketing while prohibiting other picketing.

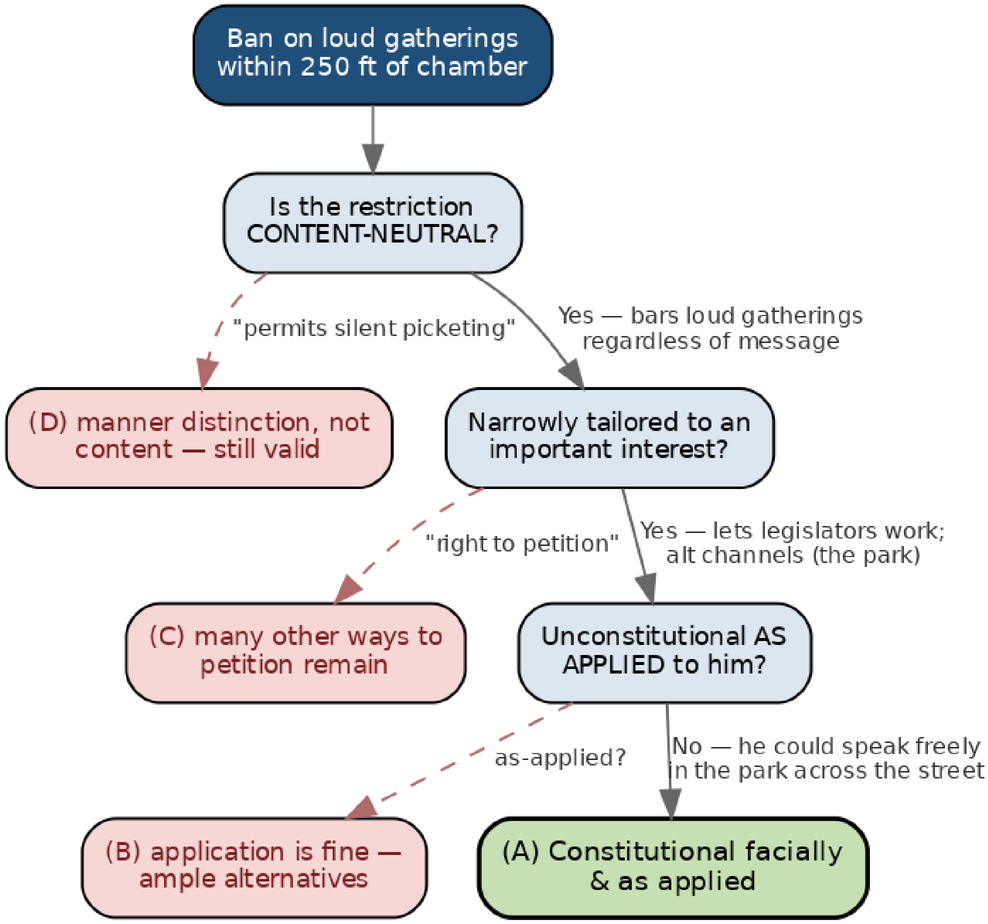
Correct answer: (A). The statute is a valid content-neutral time, place, and manner restriction, constitutional on its face and as applied.

Rule. In a public forum the government may impose reasonable time, place, and manner restrictions if they are content-neutral, narrowly tailored to serve an important government interest, and leave open ample alternative channels of communication. A ban on loud gatherings, applied without regard to the message, is content-neutral.

Application. The 250-foot ban on speechmaking and loud gatherings near the chamber while the legislature sits is content-neutral, serves the important interest of allowing legislators to deliberate and be heard, is narrowly tailored to loud gatherings close to the chamber during sessions, and leaves open alternatives (the park across the street and silent picketing). Applied to the man, who could have spoken freely in the park, it is valid, so the statute is good on its face and as applied.

Why the other choices fail. (B) is wrong because the application to him is constitutional; he had ample room to speak in the park. (C) is wrong because citizens have many ways to petition the legislature without a loud gathering at its doors. (D) is wrong because allowing silent picketing while barring loud gatherings is a permissible manner distinction, not content discrimination.

Decision path.



USING YOUR SHEETS

Ordering guide: Con Law guide, §6 First Amendment: Speech, steps 3–4 (content-neutral? then public-forum time/place/manner test).

Rule sheet: Con Law sheet, FIRST AMENDMENT – SPEECH (forum analysis).

How it lands: Step 3: the ban is content-neutral. Step 4: as a public-forum time/place/manner rule it is narrowly tailored to an important interest (legislative deliberation) with ample alternatives (the park, silent picketing) → valid on its face and as applied → (A).

Question 28

Civil Procedure — Order of Trying Legal and Equitable Claims

A restaurant owner properly sued a food supplier in federal district court for breach of contract and timely demanded a jury trial. The complaint asserted both legal and equitable claims.

Which of the following statements correctly states the proper order for trying both claims?

- **(A)** All legal claims should be tried first by the jury.
- **(B)** All equitable claims should be tried first by the court.
- **(C)** Legal and equitable claims may not be tried together, so the order does not matter since there will be separate trials.
- **(D)** It is up to the federal district court judge's discretion which claim will be tried first.

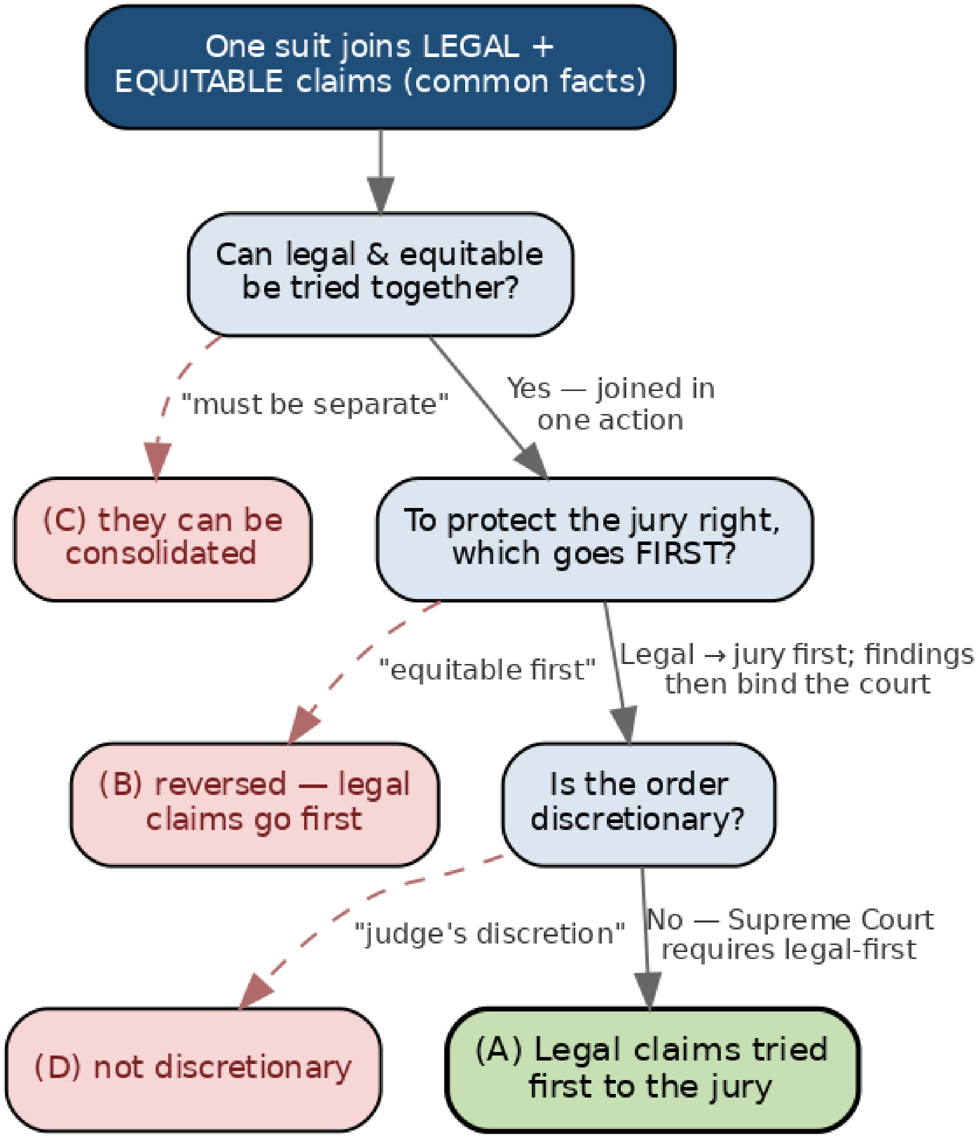
Correct answer: (A). When legal and equitable claims share fact issues, the legal claims are tried first to the jury.

Rule. To preserve the Seventh Amendment jury-trial right, when legal and equitable claims are joined and share common fact issues, the legal claims must be tried first to the jury; the jury's findings on those common facts then bind the court when it resolves the equitable claims (Beacon Theatres; Dairy Queen).

Application. The complaint joins legal and equitable claims. The legal claims go first to the jury so the jury, not the judge, decides the shared factual questions; the court then decides the equitable claims consistent with those findings.

Why the other choices fail. (B) reverses the required order. (C) is wrong because legal and equitable claims can be joined and tried in one action with common questions. (D) is wrong because the order is not discretionary; the legal claims must be tried first.

Decision path.



USING YOUR SHEETS

Ordering guide: Civ Pro guides don't break out the legal-then-equitable trial order — a genuine gap. It's the Seventh Amendment rule (Beacon Theatres): try legal claims to the jury first.

Rule sheet: Civ Pro sheet, TRIAL & POST-TRIAL (jury right) — supplement with the legal-first rule.

How it lands: Neither sheet spells this out, so flag it: when legal and equitable claims share facts, the legal claims go first to the jury so the jury's findings bind the court → (A). Worth adding to your materials.

Question 29

Contracts — Accord and Satisfaction

A patient went to a highly reputable dentist, who honestly told her that she needed a lot of dental work, some of it involving complex procedures. When she asked the dentist what the cost would be, he told her "about $3,500." The patient agreed to use him as her dentist and he began her treatment. When the patient's treatment was finished, the dentist sent her a bill for $4,100, explaining that the higher bill was because more expensive inlays were used, and that he carefully documented the cost of his materials and had sound medical reasons for his decision. The patient honestly believed that it was unfair for the dentist to charge her $4,100. Therefore, she sent the dentist's invoice back to him, along with a check for $3,500. On the check the patient had clearly written "Payment In Full." The dentist read the notation on the check and deposited it at his bank. The dentist made no notation of his own on the check other than his signature on the back as an indorsement. Two weeks later the dentist called his bank to make sure that the patient's check had cleared. He then immediately filed suit against the patient for $600.

Will the court award the dentist $600?

- **(A)** Yes, because the dentist merely estimated the cost of the dental work to be $3,500.
- **(B)** Yes, because the dentist can document that the precious metal inlays were medically necessary and that he charged a fair price for them.
- **(C)** No, because there has been an accord and satisfaction of the original debt.
- **(D)** No, because there is an account stated.

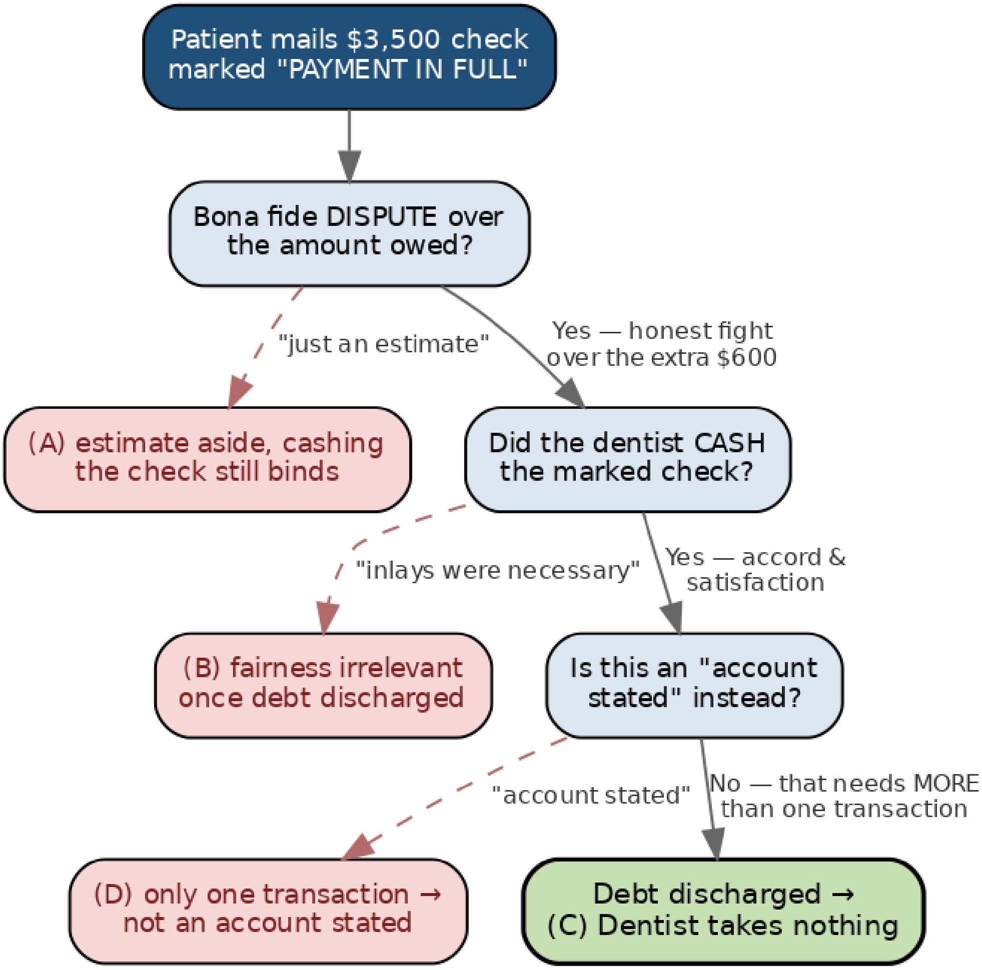
Correct answer: (C). Cashing a 'payment in full' check on a disputed debt discharged the obligation by accord and satisfaction.

Rule. Where there is a bona fide dispute about the amount owed, a debtor's tender of a check conspicuously marked 'payment in full' and the creditor's acceptance (cashing it) create an accord and satisfaction that discharges the entire disputed debt. An account stated, by contrast, requires more than one prior transaction between the parties.

Application. The dentist estimated 'about $3,500,' then billed $4,100, and the patient in good faith disputed the extra $600. She sent a check for $3,500 marked 'Payment In Full,' which the dentist read and deposited. His acceptance created an accord and satisfaction, discharging the disputed debt, so he cannot recover the $600.

Why the other choices fail. (A) is wrong because, even if $4,100 arguably fit 'about $3,500,' cashing the marked check still accepted it as full payment. (B) is wrong because the fairness or medical necessity of the higher charge is irrelevant once accord and satisfaction discharges the duty. (D) is wrong because an account stated needs multiple prior transactions, and there was only one.

Decision path.



USING YOUR SHEETS

Ordering guide: Contracts guide, §5 Performance, Breach & Excuse, step 5 (Excuse: accord and satisfaction).

Rule sheet: Contracts sheet, PERFORMANCE & BREACH (excuse / accord and satisfaction).

How it lands: Step 5: a bona fide dispute plus a "payment in full" check that the creditor cashes is an accord and satisfaction that discharges the whole disputed debt → (C).

Question 30

Real Property — Partial Condemnation of a Lease

A landowner leased 150 acres of farmland to a produce company for 15 years. The produce company used the land for crops along with several other contiguous acres that it owned or leased. About four years into the lease, the state condemned a portion of the leased property because it intended to build a highway. As a result, too little property remained for the produce company to profitably farm, although there still existed the farmhouse on the property, which was being used by one of its foremen. The produce company gave the landowner 30 days' written notice that it considered the lease to have been terminated because of the condemnation.

In a suit for breach of contract, the landowner would probably:

(A) Lose, because the condemnation made it economically undesirable for the produce company to continue to lease the property.

(B) Lose, because when there is a condemnation, the tenant's obligation to pay rent is extinguished.

(C) Win, because the produce company can still use the farmhouse, and the rental value would be adjusted accordingly.

(D) Win, because the condemnation did not affect the produce company's obligation to pay the full rental price, although it is entitled to share in the condemnation award.

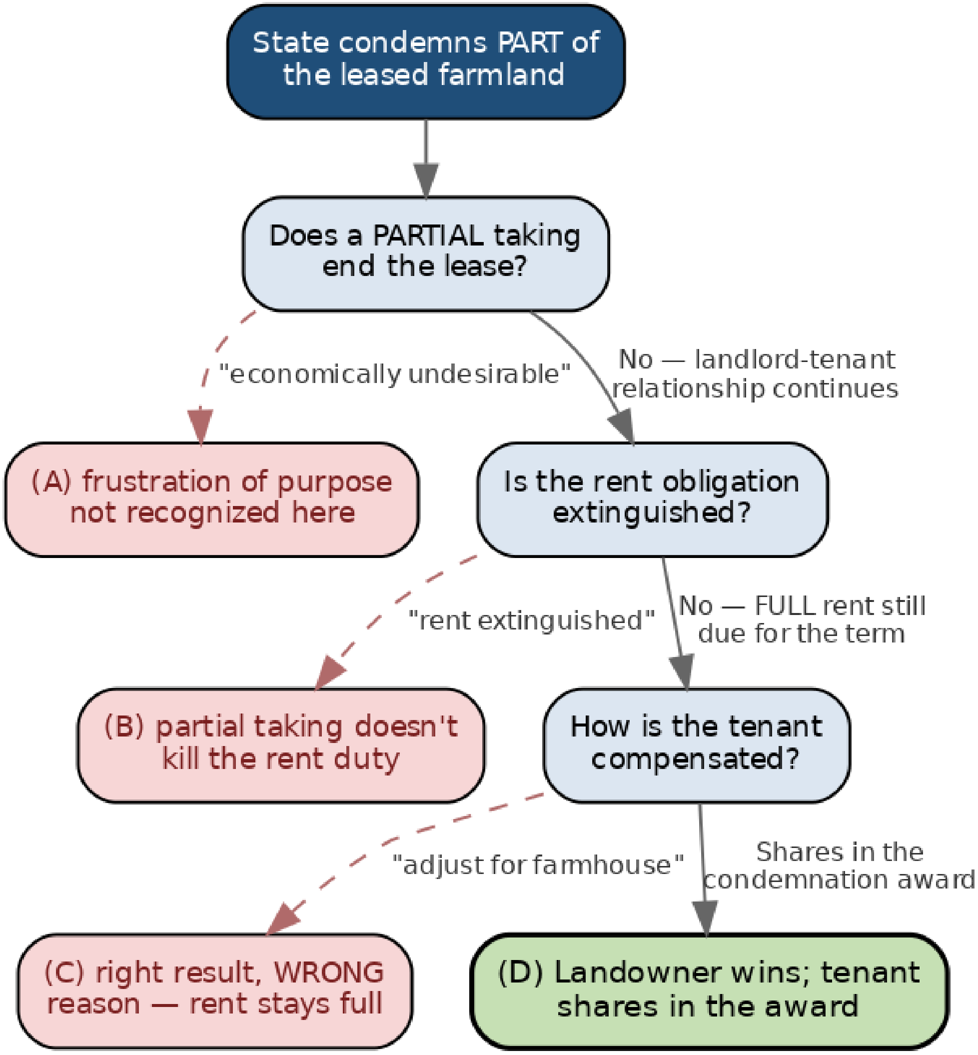
Correct answer: (D). On a partial condemnation the lease continues, full rent remains due, and the tenant shares in the award.

Rule. When only part of the leased premises is condemned, the lease is not terminated: the tenant must keep paying the full rent for the remaining term, but is entitled to a share of the condemnation award to the extent the taking impaired its leasehold. Landlord-tenant law traditionally does not recognize frustration of purpose as a ground to terminate a lease.

Application. The state condemned only part of the 150 acres. The produce company therefore may not walk away; it owes the full rent for the balance of the 15-year term and instead is compensated through a share of the condemnation award. The landowner wins the breach action.

Why the other choices fail. (A) is wrong because economic undesirability (a frustration-of-purpose theory) is not a recognized ground to end a lease. (B) is wrong because a partial condemnation does not extinguish the rent obligation. (C) reaches the right winner but for the wrong reason; the rent duty continues in full regardless of the farmhouse's continued use, with the tenant's remedy being a share of the award.

Decision path.



USING YOUR SHEETS

Ordering guide: Real Property guide, §3 Landlord-Tenant (lease continues; rent obligation) — partial-condemnation rule sits here.

Rule sheet: Real Property sheet, LANDLORD-TENANT (this precise rule is not spelled out — flag it).

How it lands: §3 logic: a partial condemnation doesn't end the lease or the rent duty; the tenant instead shares in the condemnation award → landowner wins → (D). The interest/award split isn't on the one-pager, so note it.

Question 31

Criminal Law — Attempt / Specific Intent

A man parked his car on a city street and entered a local tavern. While the man was inside, vandals broke the ignition motor on his car and smashed the taillights. Later that night the man left the tavern and attempted to start his car, but was unable to because of the vandals' actions, which he had not been aware of. Police in a patrolling squad car noticed him entering the car and attempting to start it. When the man got out of the car, the police approached him and asked him to identify himself. When he refused, he was arrested and charged with attempting to drive an automobile at night without functioning taillights.

The man's best defense is:

(A) Entrapment.
(B) Legal impossibility.
(C) Factual impossibility.
(D) Lack of requisite intent.

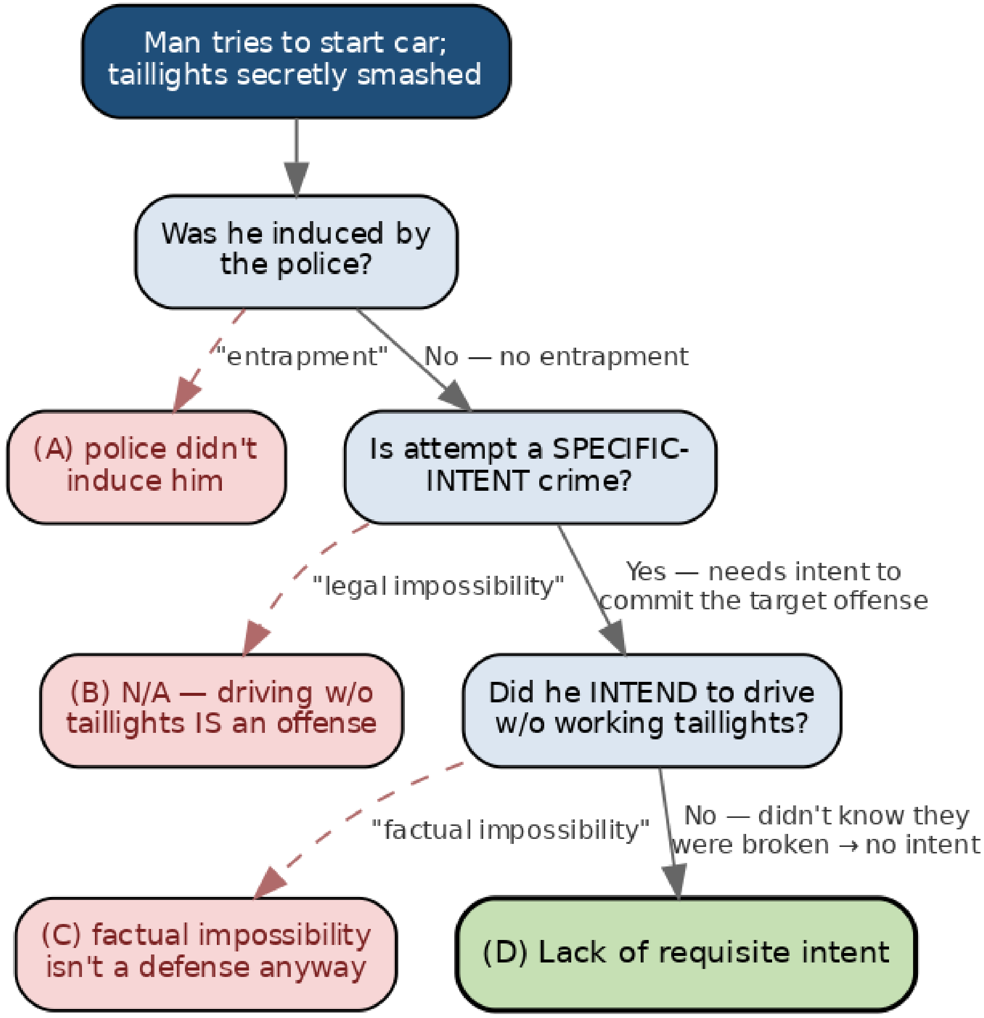
Correct answer: (D). Attempt is a specific-intent crime, and the man never intended to drive without working taillights.

Rule. Criminal attempt requires the specific intent to bring about the completed crime, plus a substantial step. Without that intent, there is no attempt, even if the person engaged in conduct that looks like a step toward the offense.

Application. The man did not know vandals had smashed his taillights, so when he tried to start the car he had no intent to drive at night without functioning taillights. Lacking the specific intent element, he cannot be guilty of attempting that offense. Lack of requisite intent is his best defense.

Why the other choices fail. (A) is wrong because the police did not induce him, so no entrapment. (B) is wrong because legal impossibility (where the intended act is not a crime) does not fit; driving without taillights is an offense. (C) is wrong because factual impossibility is not a defense to attempt, so it could not be his best defense.

Decision path.



USING YOUR SHEETS

Ordering guide: Crim guide, §3 Inchoate Crimes, step 2 (Attempt: specific intent + substantial step).

Rule sheet: Crim sheet, INCHOATE & ACCOMPLICE (Attempt*, the * = specific intent).

How it lands: Step 2: attempt requires specific intent to commit the offense. He didn't know the taillights were broken, so he never intended to drive without them → (D).

Question 32

Civil Procedure — Cross-Claims and Joinder

While driving in a city in State A, a citizen of State B struck a pedestrian who was a citizen of State C. The pedestrian sued both the driver and the State A city in federal district court, seeking $100,000. The pedestrian alleged that the driver was liable for negligently operating his car and that the State A city was liable for negligently maintaining a traffic signal. The driver, who owns an office supply wholesaler, also has a contract claim against the State A city for $80,000 worth of furniture that the city allegedly purchased and received but never paid for. Assume that State A has waived any applicable governmental immunity.

If the driver files a cross-claim for negligence against the State A city to recover damages for his injuries in the accident with the pedestrian, can the driver join with that cross-claim his contract claim for the purchase price of the furniture and maintain the claim in the same federal action?

- **(A)** No, because defendants cannot add claims against co-defendants that are not related to the original claims asserted by the plaintiff.
- **(B)** No, because the court does not have supplemental jurisdiction over the driver's contract claim against the State A city.
- **(C)** Yes, the driver must assert the contract claim or he will be foreclosed from asserting it later.
- **(D)** Yes, the driver may join his contract claim with his negligence cross-claim against the State A city, but is not required to do so.

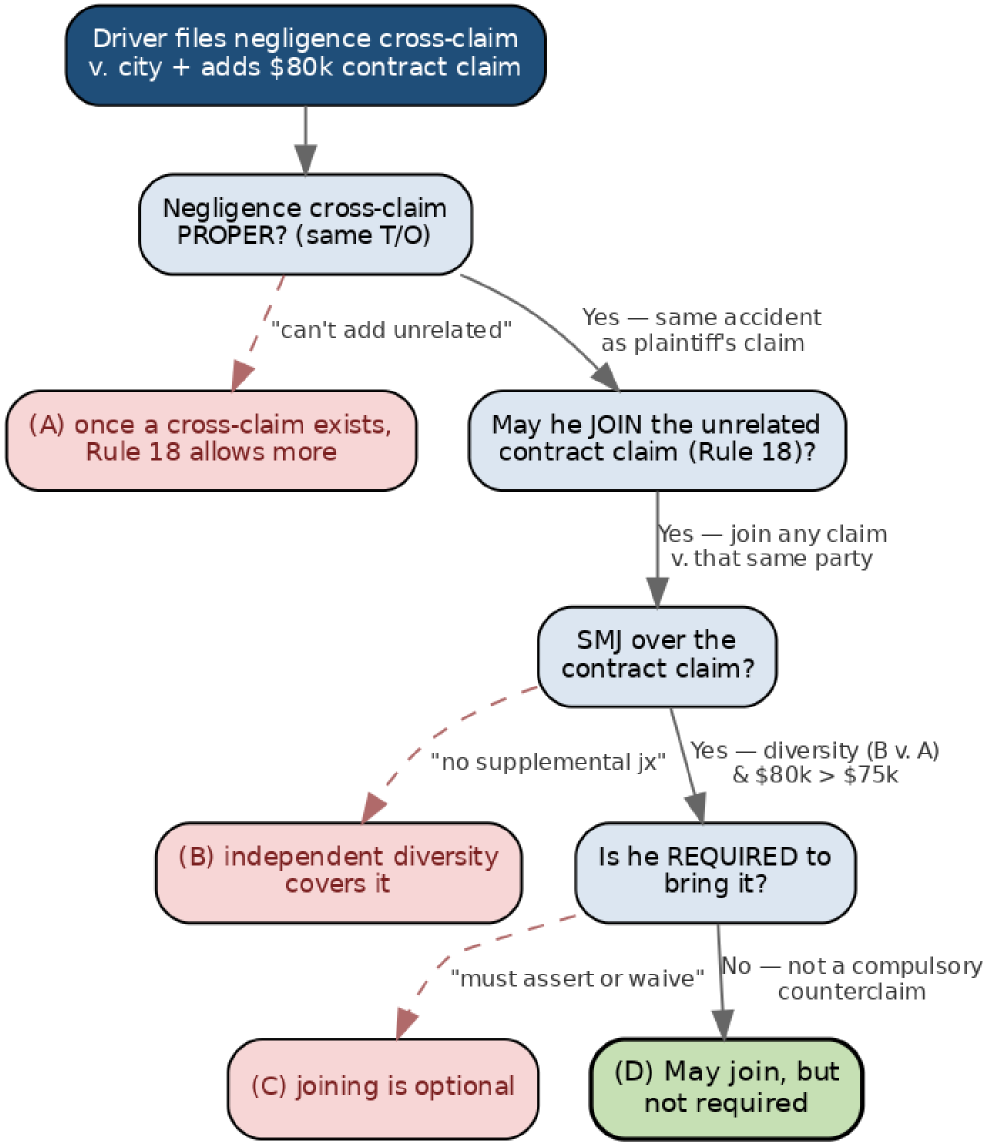
Correct answer: (D). Having filed a proper cross-claim, the driver may join his unrelated contract claim, but is not required to.

Rule. A cross-claim against a co-party is proper only if it arises from the same transaction or occurrence as the original action. Once a party asserts a proper cross-claim, Rule 18 permits joining any other claim the party has against that same co-party, related or not. That joined claim still needs its own basis of subject-matter jurisdiction.

Application. The driver's negligence cross-claim against the city arises from the same accident, so it is proper. He may then join his unrelated $80,000 contract claim against the city under Rule 18. Diversity supplies jurisdiction over the contract claim (the driver is a State B citizen, the city a State A citizen, and the amount exceeds $75,000), so it may be maintained, though joining it is optional.

Why the other choices fail. (A) is wrong because a party may add unrelated claims against a co-party once a proper cross-claim exists. (B) is wrong because independent diversity jurisdiction covers the contract claim. (C) is wrong because the contract claim is not a compulsory counterclaim; nothing forces him to bring it now.

Decision path.



USING YOUR SHEETS

Ordering guide: Civ Pro guide, §5 Joinder, step 3 (cross-claim same T/O) + step 1 (join any further claim vs. that party) + §1 SMJ (diversity for the contract claim).

Rule sheet: Civ Pro sheet, JOINDER (Cross-claim) + SUBJECT MATTER JURISDICTION (diversity).

How it lands: §5 step 3: the negligence cross-claim is proper (same crash). Step 1: once a cross-claim exists you may add any other claim against that party. §1: independent diversity ($80k > $75k) supports the contract claim → may join, not required → (D).

Question 33

Torts — Respondeat Superior / Reasonable Care

A landowner owned a large commercial building downtown and the vacant lot next to his building. The landowner agreed to let an inner-city Scout troop use the vacant lot to practice outdoor-type activities. One weekend while the landowner was away on business, the Scout leader asked the landowner's building manager if he would permit the Scouts to practice their archery. The building manager agreed, but insisted that the targets be set up against the building so that an errant shot would merely strike concrete and not injure someone on the streets bordering the lot. The building manager supervised the set-up of the targets and ensured that responsible adults were present to assist the Scouts, then left the area. One of the Scouts jokingly shot an arrow up into the sky, and it came down on the street next to the vacant lot, striking and injuring a motorcyclist who was riding past.

If the motorcyclist does not prevail in an action against the landowner for personal injuries, it will be because:

- **(A)** The landowner had no personal knowledge of the archery practice by the Scouts.
- **(B)** The precautions taken by the landowner's building manager were those a reasonable person would have taken.
- **(C)** The Scout acted recklessly by shooting the arrow into the air.
- **(D)** The failure of the adults present to prevent the Scout's action was a superseding cause of the injury.

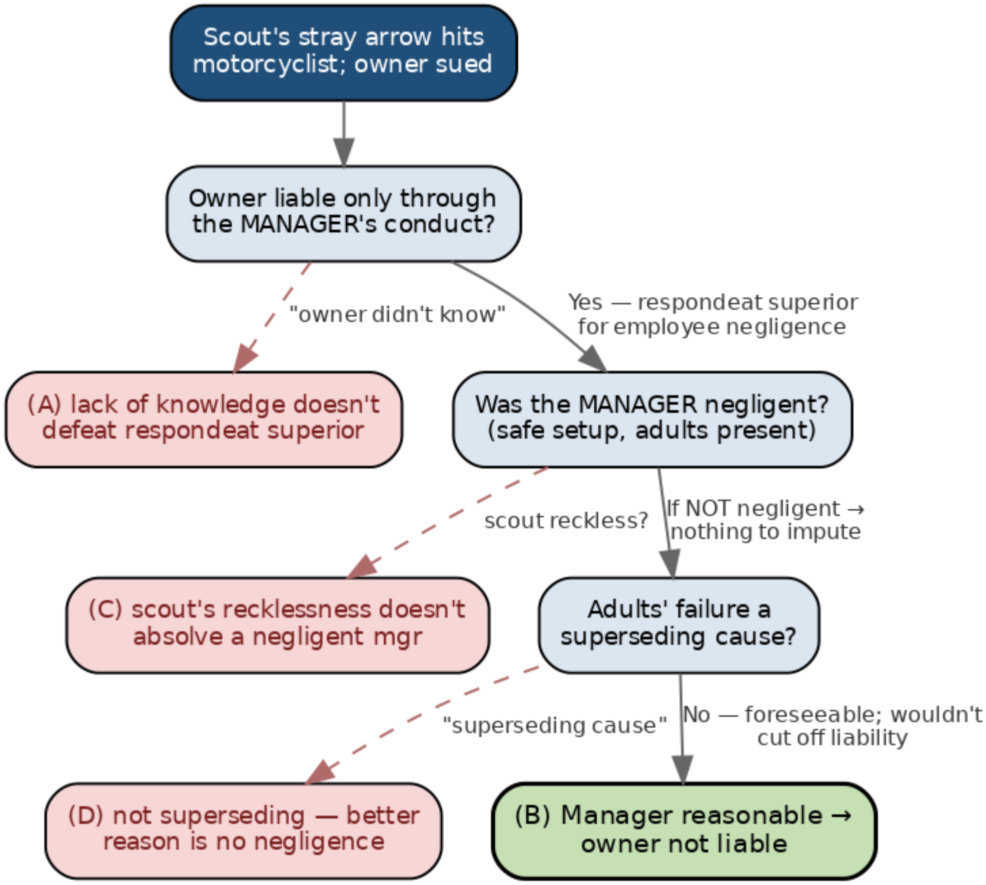
Correct answer: (B). The landowner escapes liability only if the building manager exercised the care of a reasonable person.

Rule. A landowner owes a duty of reasonable care to travelers on adjacent public ways, and can be vicariously liable for an employee's negligence under respondeat superior. The flip side is that if the employee was not negligent, there is no negligence to impute, and the landowner is not liable.

Application. The manager set the targets against the building, insisted on a safe orientation, and posted responsible adults. If those precautions were what a reasonable person would take, the manager was not negligent, and with no negligence to impute, the landowner is not liable. That is the reason the motorcyclist would lose.

Why the other choices fail. (A) is wrong because the owner's lack of personal knowledge does not defeat respondeat superior if the manager was negligent. (C) is wrong because the scout's recklessness does not absolve the owner if the employee failed to use due care. (D) is wrong because the adults' failure to stop the scout would be foreseeable and not a superseding cause; the sounder basis for a defense verdict is that the manager was not negligent.

Decision path.



USING YOUR SHEETS

Ordering guide: Torts guide, §7 Vicarious Liability (employer liable for employee within scope) resting on §3 Negligence (was there a breach?).

Rule sheet: Torts sheet, NEGLIGENCE + vicarious liability.

How it lands: §7: the owner is liable only through the manager's negligence. §3: if the manager took reasonable precautions there is no breach to impute, so the owner escapes → (B).

Question 34

Evidence — Adoptive Admission by Silence

A plaintiff sued a defendant for negligence when the tractor that he was driving at a construction site collided with the plaintiff's car. The plaintiff alleged that she was driving in a proper lane when the tractor collided with her car. The plaintiff's counsel called the responding police officer to testify that the defendant's employee made a statement to the police officer, in the defendant's presence, that the defendant "accidentally went too far into traffic," and the defendant did not say anything.

The trial judge should rule that this evidence is:

(A) Admissible, because the employee was working for the defendant, and as his agent, could make a statement against the defendant's interest.

(B) Admissible, because silence may be deemed an admission.

(C) Inadmissible, because the employee's statement was hearsay, and the defendant's silence is also hearsay.

(D) Inadmissible, because the employee has not yet testified to his statement.

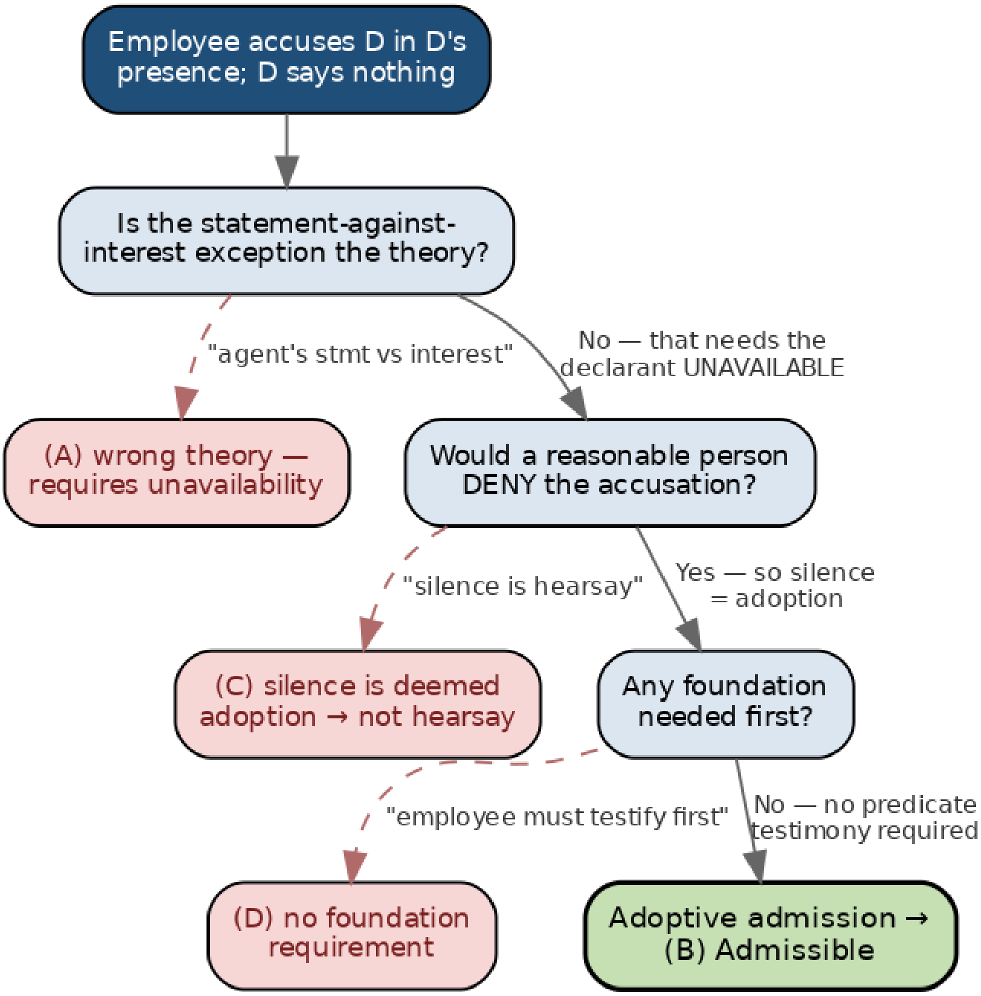
Correct answer: (B). The defendant's silence in the face of an accusation a reasonable person would deny is an adoptive admission.

Rule. A party's silence can be an adoptive admission (nonhearsay opposing-party statement) when the party heard and understood an accusatory statement, was able to respond, and a reasonable person would have denied it under the circumstances.

Application. The employee said, in the defendant's presence, that the defendant 'accidentally went too far into traffic,' and the defendant said nothing. Because a reasonable person would have denied such an accusation, the silence is treated as adopting the statement and is admissible against the defendant as an admission.

Why the other choices fail. (A) is wrong because the statement-against-interest exception requires the declarant to be unavailable, which is not the theory here; this comes in as an adoptive admission. (C) is wrong because the silence is deemed adoption of the statement, making it nonhearsay. (D) is wrong because no foundational testimony from the employee is required for an adoptive admission.

Decision path.



USING YOUR SHEETS

Ordering guide: Evidence guide, §3 Statements Defined as Non-Hearsay, step 5 (opposing-party statement — adoptive admission by silence).

Rule sheet: Evidence sheet, EXEMPTIONS (opposing-party statement).

How it lands: Step 5: silence in the face of an accusation a reasonable person would deny is an adoptive admission — a non-hearsay opposing-party statement → admissible → (B).

Question 35

Evidence — Statement of Present Physical Condition

In a claim for damages in a personal injury action, a plaintiff's attorney sought to introduce evidence of the plaintiff's testimony made to her boyfriend several days after her accident that "I must have sprained my neck when it happened because it hurts so much." The plaintiff is also planning to offer medical evidence that her neck was sprained.

The judge should rule the testimony:

(A) Inadmissible, because it is hearsay not within any exception.

(B) Inadmissible, because the plaintiff is not qualified to give testimony as to her medical condition.

(C) Admissible, because the plaintiff is also going to present medical evidence that her neck was sprained.

(D) Admissible, to show that the plaintiff had suffered physical pain.

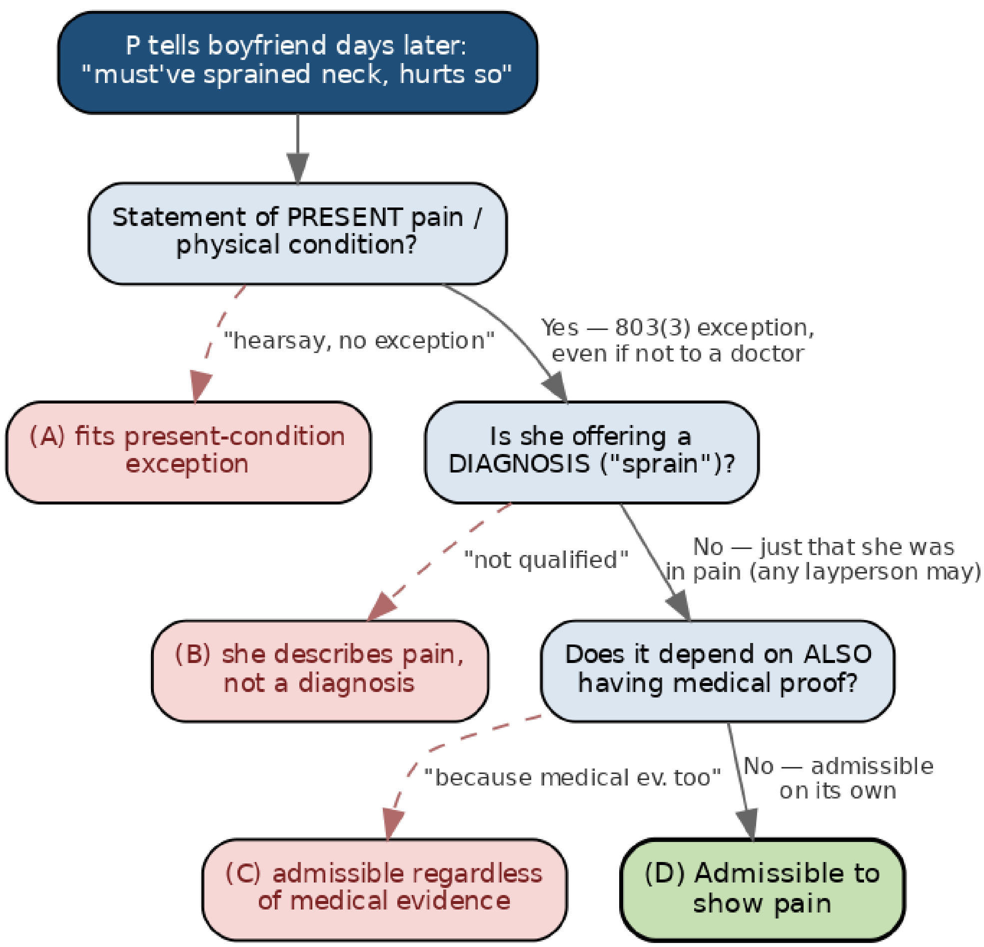
Correct answer: (D). A statement of present pain is admissible under the then-existing physical condition exception.

Rule. Under the Federal Rules, a declarant's statement of a then-existing physical condition, including a present sensation of pain, is admissible even if not made to a physician. Such a statement is competent to show that the declarant was experiencing pain.

Application. The plaintiff's remark that her neck hurt so much she 'must have sprained' it is admissible to show she was suffering pain, which falls within the present-physical-condition exception. It comes in regardless of whether she also offers medical proof.

Why the other choices fail. (A) is wrong because the statement fits the then-existing physical condition exception. (B) is wrong because she is not offering an expert diagnosis of a 'sprain'; she is simply describing her pain, which any layperson may do. (C) is wrong because admissibility does not depend on her also presenting medical evidence.

Decision path.



USING YOUR SHEETS

Ordering guide: Evidence guide, §4 Hearsay Exceptions, step 2 (availability immaterial → then-existing physical condition).

Rule sheet: Evidence sheet, EXCEPTIONS – AVAILABILITY IMMATERIAL (then-existing condition).

How it lands: Step 2: a statement of present pain is a then-existing physical condition, admissible even if not made to a doctor → admissible to show pain → (D).

Question 36

Criminal Law / Due Process — Burden of Persuasion

A defendant, on trial for robbing the victim of some jewelry, relied on the defense that he was only trying to recover property that the alleged victim had previously stolen from him. The trial court instructed the jury that the prosecution must prove guilt beyond a reasonable doubt, and that if the jury should find that the defendant had established by a preponderance of the evidence that he was only trying to recover his property, they should find him not guilty. After he was convicted of robbery, the defendant asserts that the instruction to the jury was error.

His conviction should probably be:

- **(A)** Reversed, because the defendant need only convince the jury of any defense to a reasonable certainty, not by a preponderance of the evidence.
- **(B)** Reversed, because the instruction put a burden on the defendant that denied him due process of law.
- **(C)** Affirmed, because the defendant's burden to show that he was trying to recover his property was not one of ultimate persuasion, but only to produce evidence to rebut the legitimate presumption that the robbery was conducted with the intent to permanently deprive the victim of the jewelry.
- **(D)** Affirmed, because the instruction was an accurate statement of the law.

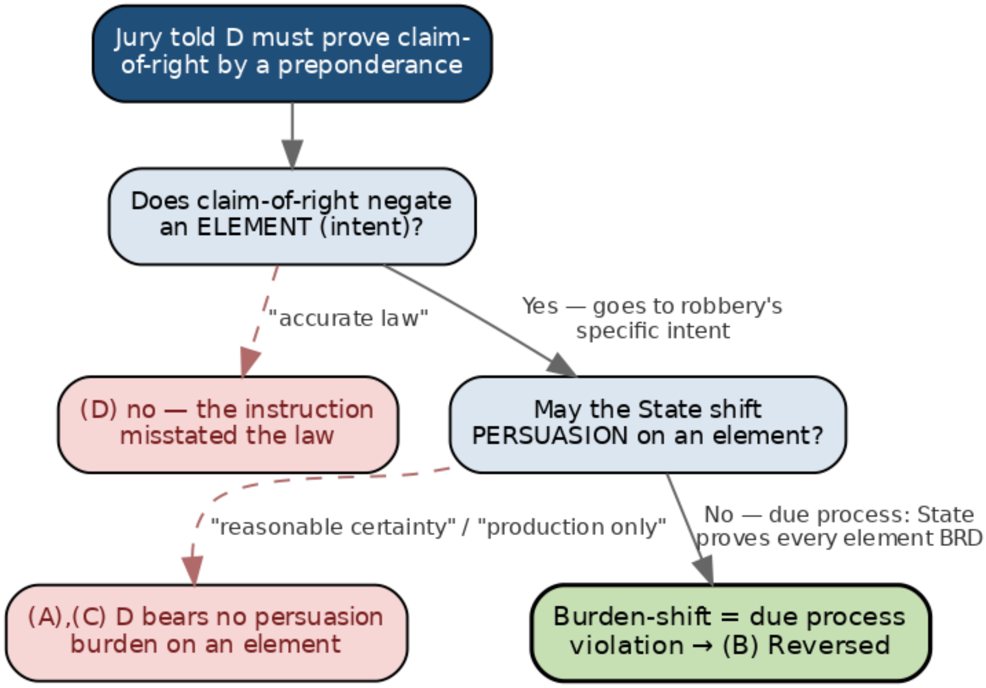
Correct answer: (B). Shifting the burden of persuasion on an element (intent) to the defendant violates due process.

Rule. Due process requires the prosecution to prove every element of the offense beyond a reasonable doubt. The state may not place the burden of persuasion on the defendant to disprove an element. Robbery requires the specific intent to permanently deprive; an honest claim-of-right belief that one is recovering one's own property negates that intent.

Application. The claim-of-right theory goes directly to the intent-to-permanently-deprive element. Instructing the jury that the defendant had to prove by a preponderance that he was only recovering his property shifted the burden on an element to him, relieving the prosecution of proving intent beyond a reasonable doubt. That denied due process, so the conviction is reversed.

Why the other choices fail. (A) is wrong because the defendant carries no burden of ultimate persuasion on an element at any level, whether preponderance or reasonable certainty. (C) is wrong because framing his showing as a mere burden of production still cannot relieve the state of proving intent; the instruction misassigned persuasion. (D) is wrong because the instruction misstated the law by imposing that burden on the defendant.

Decision path.



USING YOUR SHEETS

Ordering guide: No sheet breaks out burden-of-proof — a gap. It's the due-process rule (In re Winship): the state must prove every element beyond a reasonable doubt and may not shift an element to the defendant.

Rule sheet: Crim / Con Law sheets don't cover this — flag it as a first-principles due-process point.

How it lands: Because claim-of-right negates robbery's specific intent, making the defendant prove it by a preponderance shifts an element to him and violates due process → reversed → (B). Consider adding a burden-of-proof line to the sheets.

Question 37

Evidence — Lay Opinion Testimony

A defendant is on trial for arson of a restaurant. Chemical tests by the fire department indicate that gasoline was used as the igniting agent of the fire. The prosecution calls to the stand a waitress who works at a diner near the burned restaurant. She will testify that on the night of the fire, the defendant came into the diner smelling like gasoline.

Should the court admit this testimony over the defendant's objection?

- **(A)** No, it is inadmissible as the opinion of a nonexpert witness.
- **(B)** No, it is inadmissible because the best evidence is the result of the chemical tests.
- **(C)** Yes, it is admissible lay opinion testimony.
- **(D)** Yes, it is admissible expert testimony because everyone who drives a car is an expert as to the smell of gasoline.

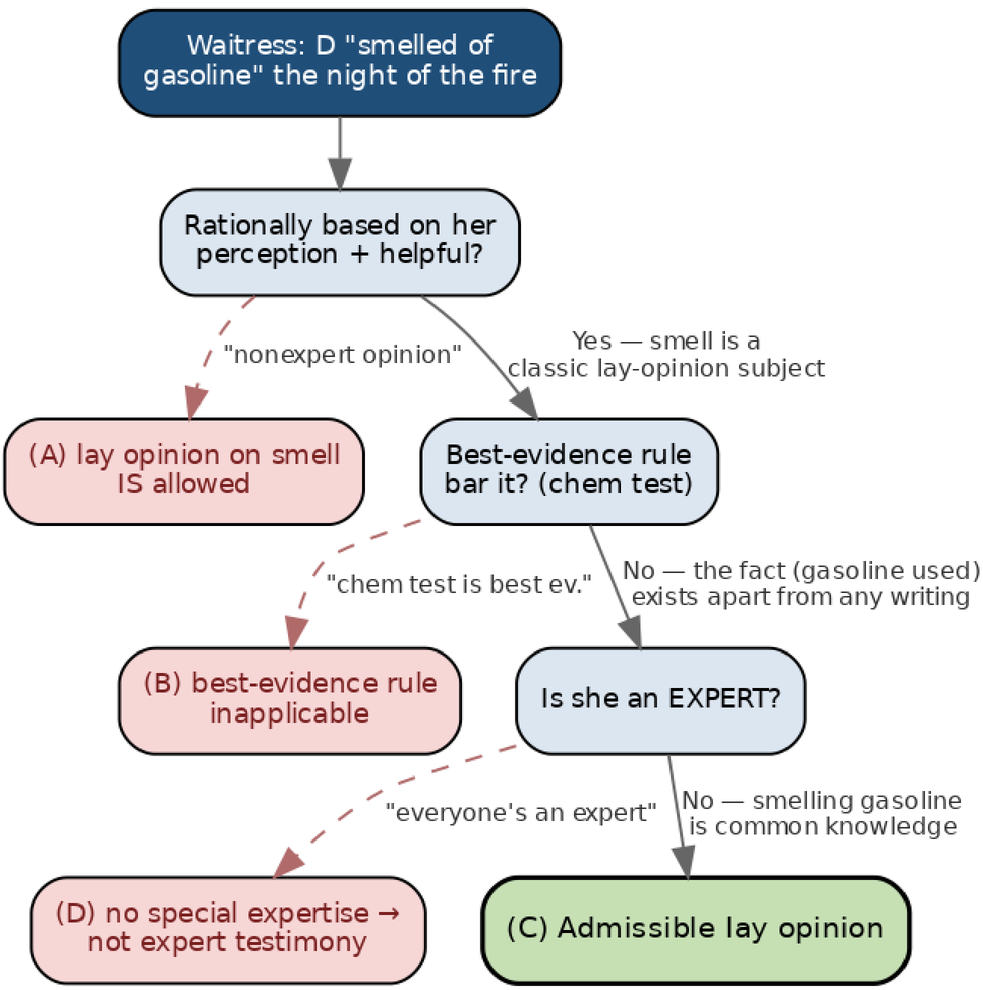
Correct answer: (C). Smelling like gasoline is admissible lay opinion, rationally based on perception and helpful to the jury.

Rule. Lay opinion is admissible under the Federal Rules when it is rationally based on the witness's own perception and helpful to a clear understanding of the testimony or the determination of a fact in issue. Sensory impressions such as how something smelled are classic proper subjects of lay opinion.

Application. The waitress perceived that the defendant smelled of gasoline the night of the fire; because gasoline was the ignition agent, that perception makes it more likely he set the fire, so it is material, relevant, and helpful. It is admissible lay opinion.

Why the other choices fail. (A) is wrong because a lay witness may give this kind of sensory opinion. (B) is wrong because the best evidence rule applies only when the terms of a writing are at issue, and that gasoline was used exists independently of the chemical-test report. (D) is wrong because recognizing the smell of gasoline is common knowledge, not specialized expertise, so it is not expert testimony.

Decision path.



USING YOUR SHEETS

Ordering guide: Evidence guide — no opinion sub-topic (use the rule sheet); §8 Best Evidence explains why the chemical-test distractor fails.

Rule sheet: Evidence sheet, OPINION (Lay) + Authentication / Best Evidence.

> **How it lands:** Rule sheet lay-opinion line: a smell is rational-perception, helpful lay opinion → admissible. §8 best-evidence: the fact (gasoline used) exists apart from the test report, so that rule doesn't apply → (C).

Question 38

Torts — Battery / Offensive Contact

A patient sought psychiatric treatment from a psychiatrist. During the treatment, the psychiatrist, unbeknownst to the patient, videotaped her. No sound recording was made of the sessions, but the psychiatrist was conducting a study on "body language" and planned to use the videotapes in those experiments. The patient learned that the psychiatrist had been videotaping their analysis sessions and brought an action against him for battery.

If the patient does not prevail as to this theory, it will probably be because:

- **(A)** She did not suffer any injury as a result of the psychiatrist's actions.
- **(B)** The psychiatrist had an implied consent to take the actions he did as part of the patient-physician privilege.
- **(C)** She did not suffer an offensive touching.
- **(D)** The psychiatrist intended that his actions would foster medical research.

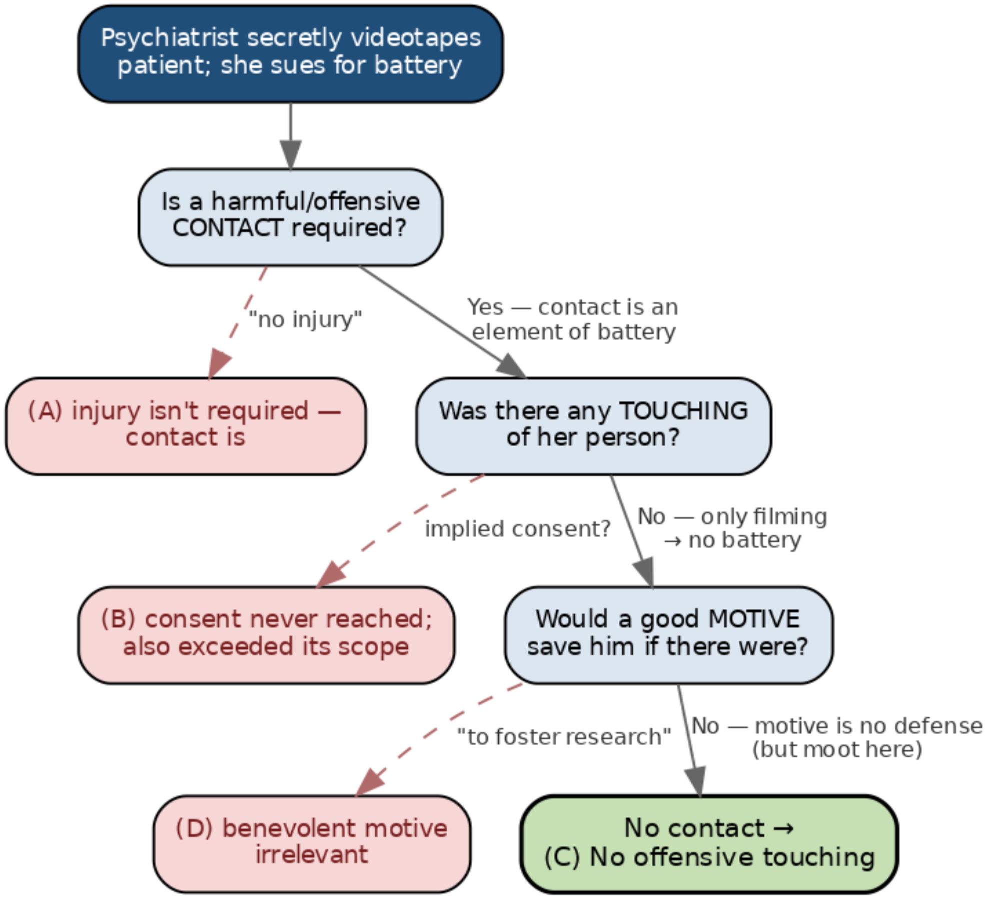
Correct answer: (C). There was no battery because the patient suffered no harmful or offensive touching.

Rule. A prima facie battery requires an intentional act by the defendant that causes a harmful or offensive contact with the plaintiff's person. Contact is an essential element; without a touching, there is no battery, regardless of injury, motive, or consent issues.

Application. The psychiatrist secretly videotaped the patient but never touched her. With no harmful or offensive contact, the battery claim fails on its face, so if she loses it is because there was no offensive touching.

Why the other choices fail. (A) is wrong because injury is not required for battery; the missing element is contact, not damage. (B) is wrong because implied consent to treatment would not extend to secret taping for an experiment, so privilege is not the reason she loses. (D) is wrong because a benevolent or research motive is not a defense; again, the real gap is the absence of any touching.

Decision path.



USING YOUR SHEETS

Ordering guide: Torts guide, §1 Intentional Torts, step 2 (match the tort — battery needs harmful/offensive contact).

Rule sheet: Torts sheet, INTENTIONAL TORTS (Battery).

How it lands: Step 2: battery requires a contact with the plaintiff's person. Secret videotaping involves no touching, so the element is missing → (C).

Question 39

Evidence — Present Recollection Refreshed

A defendant is on trial in federal court for the armed robbery of a casino. The defendant claims that he was out of town at the time of the robbery. The defendant calls an alibi witness to the stand to testify that she was with him on the trip. When asked where she was and who she was with on the date in question, the witness stated that she could not recall. She said she recalls spending a weekend at a bed and breakfast this spring, but she does not recall the date or her traveling companion. The defendant's attorney then showed the witness a letter written by her on stationery from the bed and breakfast, and asks her to look at it and try to answer the question again. The prosecution objects.

The objection should be:

(A) Overruled, because this is a past recollection recorded.

(B) Overruled, but the witness cannot depend on the terms of the letter when answering.
(C) Sustained, because the letter is hearsay.
(D) Sustained, because the letter has not been properly authenticated.

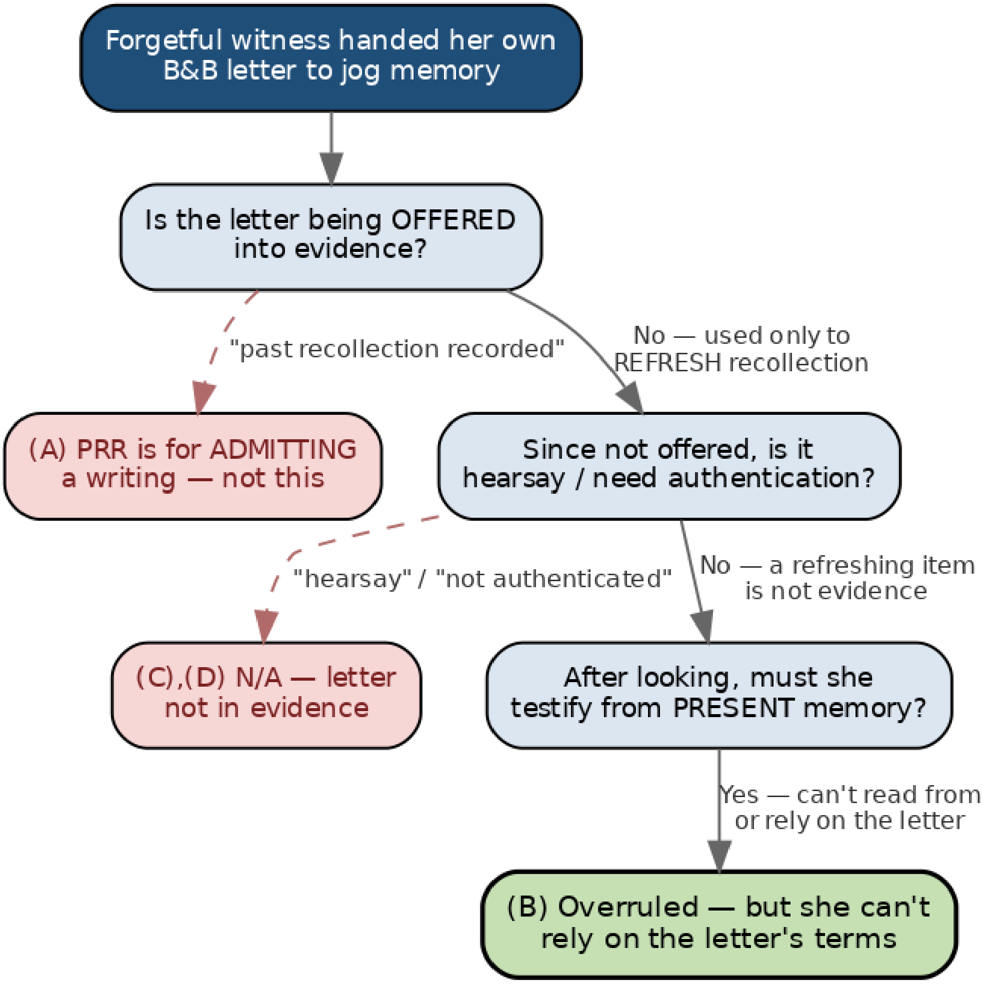
Correct answer: (B). The letter may be used to refresh the witness's memory, but she must then testify from present recollection.

Rule. When a witness's memory is incomplete, counsel may show her a writing (or anything else) to refresh her recollection. The refreshing item is not evidence; after looking at it, the witness must testify from her present, revived memory and may not simply read from or depend on the writing.

Application. The defense hands the forgetful alibi witness her own letter to jog her memory about the weekend. That is proper present recollection refreshed, so the objection is overruled, but she must answer from renewed memory rather than reciting the letter's contents.

Why the other choices fail. (A) is wrong because past recollection recorded is a different doctrine for admitting a writing into evidence, which is not what is happening here. (C) and (D) are wrong because the letter is not being offered into evidence; since it is only used to refresh memory, it need not clear hearsay or authentication hurdles.

Decision path.



USING YOUR SHEETS

Ordering guide: Evidence guide, §4 Exceptions distinguishes recorded recollection; this is present-recollection-refreshed (a technique, not an exhibit).

Rule sheet: Evidence sheet, EXCEPTIONS (Recorded recollection) — contrast with refreshing.

How it lands: Past recollection recorded admits a writing; here the letter only refreshes memory and is not offered, so no hearsay or authentication issue. She may look, then testify from memory → (B).

Question 40

Contracts — Liquidated Damages vs. Penalty

The owner of a semi-pro baseball team offered a former player a position as the team's manager. During negotiations, the owner agreed to pay the manager $300 per week, but insisted that if the manager quit during the season, he would have to pay a "penalty" of $200 per week for each week that he did not manage the team, because it would cost the owner several hundred dollars to replace him during the season. The parties agreed in writing to those terms. The manager managed the team for 14 weeks with only mixed success. Nevertheless, with 10 weeks left in the season, he was offered and accepted a job as manager of a professional baseball team. Fortunately for the owner of the semi-pro team, the manager's replacement had great success with the team, causing attendance to skyrocket.

If the owner of the semi-pro team brings suit against the manager to recover $2,000, the amount due under the "penalty" provision, the owner will:

- **(A)** Not prevail, because "penalty" clauses in contracts are not enforceable.
- **(B)** Not prevail, because the owner of the semi-pro team was not harmed by his breach.
- **(C)** Prevail, because the manager can be penalized for his willful breach.
- **(D)** Prevail, because the "penalty" provision is enforceable.

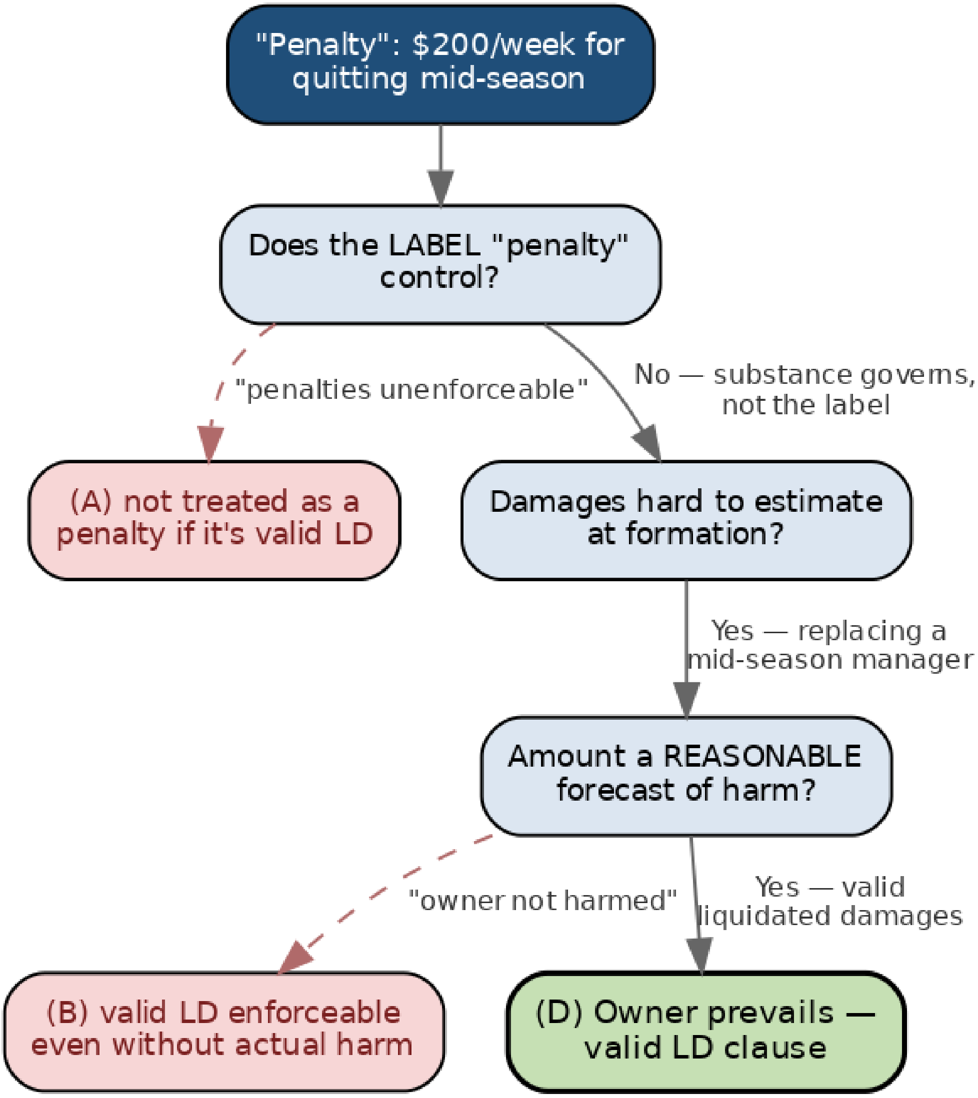
Correct answer: (D). Though labeled a 'penalty,' the clause is an enforceable liquidated-damages provision.

Rule. A stipulated-damages clause is enforceable if, at the time of contracting, damages were difficult to estimate and the amount fixed is a reasonable forecast of the likely harm. The parties' label ('penalty' or 'liquidated damages') is not controlling; the substance of the clause governs. A clause that meets both requirements is enforced even if actual damages turn out to be small or nonexistent.

Application. When the deal was made, the cost of replacing a mid-season manager was hard to predict, and $200 per remaining week was a reasonable forecast of that harm. The clause therefore functions as valid liquidated damages despite the 'penalty' label, and the owner recovers the $2,000.

Why the other choices fail. (A) is wrong because, although true penalties are unenforceable, a court would not treat this provision as a penalty since it satisfies the liquidated-damages test. (B) is wrong because a valid liquidated-damages clause is enforceable regardless of whether the owner suffered actual harm. (C) misstates the law; 'willful breach' is not the basis for enforcement.

Decision path.



USING YOUR SHEETS

Ordering guide: Contracts guide, §6 Remedies, step 4 (limits: liquidated damages must be a reasonable estimate, not a penalty).

Rule sheet: Contracts sheet, REMEDIES (liquidated damages).

How it lands: Step 4: the label doesn't control — if damages were hard to estimate and the amount is a reasonable forecast, it's valid liquidated damages, enforceable even without actual harm → (D).

Question 41

Contracts — Implied Conditions / Bonus

The manager of a monthly antique market was looking to hire a professional appraiser who would tell patrons, for a fee of $10 per item, what their antique is worth. Because the manager had had problems at other antique markets he had run because appraisers built up a popular following and then abruptly quit for a better job, he emphasized during the hiring interview the importance of honoring the contract to its completion. When the manager offered the job to an experienced appraiser, and the appraiser accepted, the written contract signed by the appraiser contained, in addition to an agreed-to salary, a liquidated damages clause for early termination of the contract. It also contained another clause providing that the appraiser would receive 5% of all gate receipts to be paid as a bonus at the end of the contract, which ran for one year.

Eight months into the contract, the manager's worst fears were realized when the appraiser got a more lucrative offer and abruptly quit, leaving the manager scrambling to find a replacement for him. In response to the manager's suit for breach of contract, the appraiser brings a countersuit to recover 5% of gate receipts for the antique markets at which he worked.

Will the appraiser be successful in his countersuit?

- **(A)** Yes, because his breach was not substantial.
- **(B)** Yes, because the manager's only remedy was the liquidated damages clause.
- **(C)** No, because working the entire year was an implied condition of the contract.
- **(D)** No, because working the entire year was an express condition of the contract.

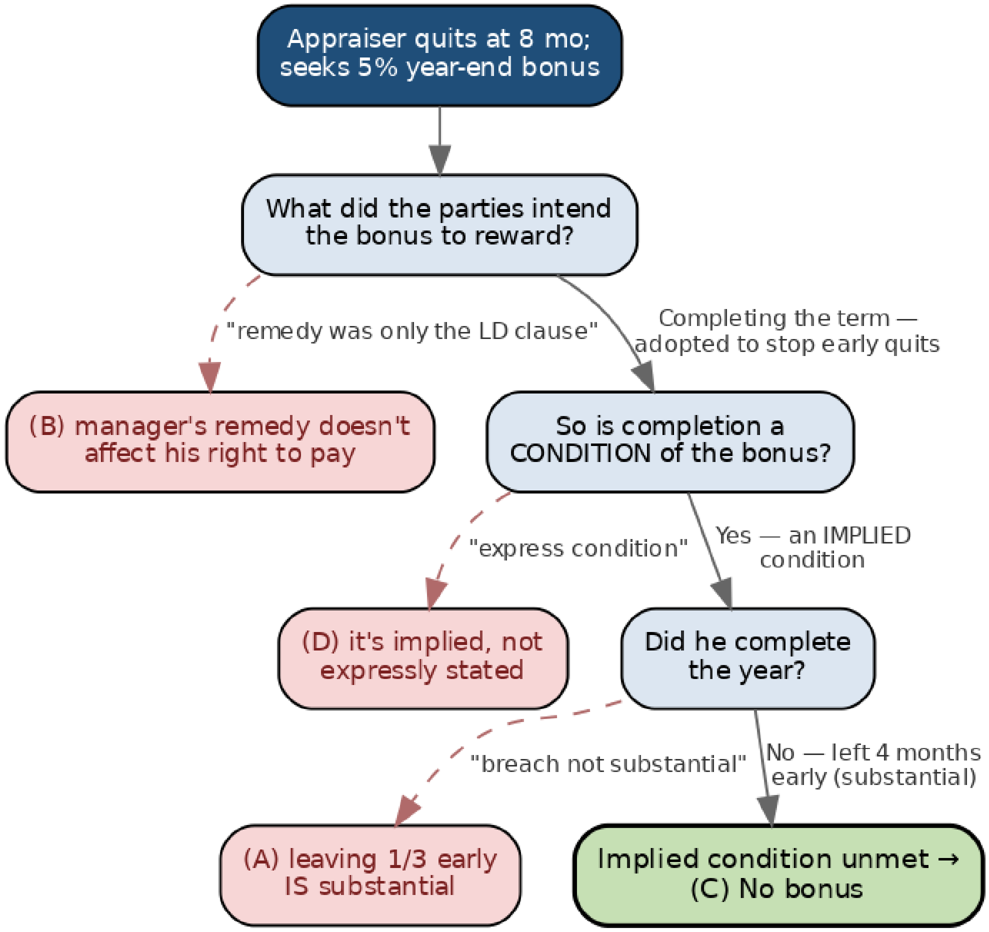
Correct answer: (C). Completing the full year was an implied condition of the bonus, so the appraiser who quit early cannot recover it.

Rule. Courts construe contracts to give effect to the parties' reasonable expectations and will imply a condition where the circumstances show the parties intended it. A completion bonus, especially one adopted to stop appraisers from quitting early, is naturally understood as payable only if the employee finishes the term, so an implied condition of full performance attaches.

Application. The manager emphasized staying to the end and structured a 5% bonus paid only at the contract's completion to solve exactly the early-quitting problem. The evident intent was that the bonus reward completing the year. Because the appraiser quit at eight months, the implied condition failed and he cannot recover the bonus.

Why the other choices fail. (A) is contrary to the facts; leaving four months (a third of the term) early is a substantial failure, not an immaterial one. (B) is wrong because the manager's damages remedy does not affect whether the bonus condition was satisfied. (D) is wrong because the condition here is implied, not express; the contract did not spell it out in words, so it is best described as an implied condition.

Decision path.



USING YOUR SHEETS

Ordering guide: Contracts guide, §5 Performance, Breach & Excuse, step 1 (conditions — here an implied condition).

Rule sheet: Contracts sheet, PERFORMANCE & BREACH (conditions).

How it lands: Step 1: read the parties' intent — completing the term is an implied condition of the year-end bonus. He quit at eight months, so the condition failed → no bonus → (C).

Question 42

Real Property — Easements in Gross / Scope and Restoration

A gas company offered a generous sum to a landowner in exchange for permission to run pipes over a 15-foot strip of the landowner's property to supply natural gas to a new housing development. The landowner granted the gas company and its "heirs and assigns" an easement over the 15-foot strip of property "for pipeline purposes." The easement was duly recorded. When the housing development was ready for utility services, the gas company laid the pipe across the 15-foot strip of property. Shortly after the gas company finished laying its pipe, the landowner planted a garden of trees and flowers on the 15-foot strip.

For the next 10 years, the gas company supplied natural gas to the housing development through that pipe. When the gas company no longer needed the lines that ran across the property, it sold its rights in the easement to an oil company that wished to run a crude oil pipeline across the same strip of property. Now, although the oil company confined its activities to the strip, it drove trucks onto the land, uprooted the trees, and tore up the flower garden in order to excavate for the laying of a larger pipe than the gas company had installed. The landowner filed suit to enjoin the oil company from further activities on the 15-foot strip and for damages for the destruction wrought on his property.

Is the landowner likely to succeed in this suit?

- **(A)** Yes, because the gas company's sale of the easement to the oil company was without the landowner's permission.
- **(B)** No, because the gas company had the right to assign its interest.
- **(C)** No, as to the injunction, because the oil company is using the land for pipeline purposes, but the landowner is entitled to damages.
- **(D)** No, as to the injunction and damages, because the use is for pipeline purposes and this obviously implies the right to excavate in order to lay pipe.

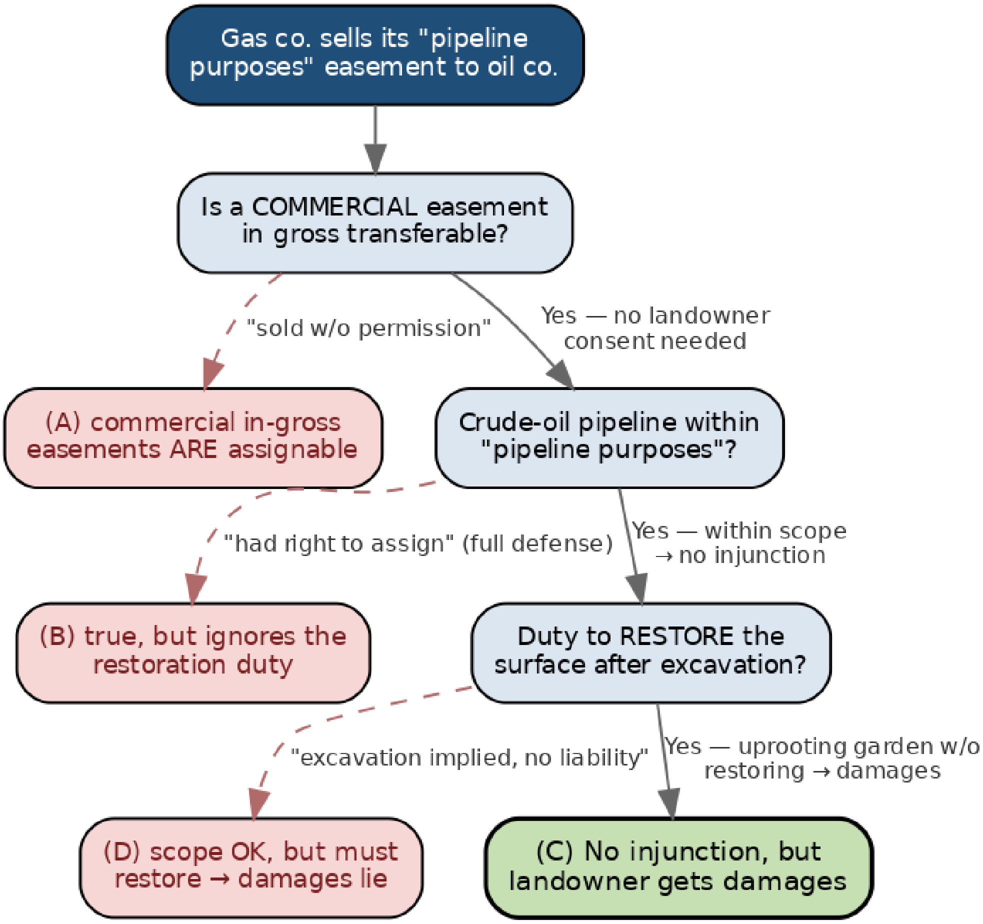
Correct answer: (C). The commercial easement was transferable and the oil company stayed within its pipeline scope, so no injunction issues, but damages lie for failing to restore the surface.

Rule. A commercial easement in gross is transferable, and the servient owner's permission is not required to transfer it. The holder may use the easement for its stated purpose, but must act reasonably and is obligated to restore the surface after excavation, remaining liable in damages for unreasonable or unrestored damage.

Application. The gas company's easement 'for pipeline purposes' was commercial and could be sold to the oil company. Laying a crude-oil pipeline is a pipeline use within the easement's scope, so no injunction will issue. But the holder must reasonably restore the surface, and uprooting the trees and tearing up the garden without restoration supports a damages claim.

Why the other choices fail. (A) is wrong because a commercial easement in gross is assignable without the landowner's consent. (B) and (D) are wrong because, although the transfer and pipeline use were proper, the holder still owes a duty to restore the surface, so the landowner recovers damages even though the injunction is denied.

Decision path.



USING YOUR SHEETS

Ordering guide: Real Property guide, §4 Easements, steps 1–3 (classify: commercial easement in gross; transfer) + scope/restoration.

Rule sheet: Real Property sheet, COVENANTS & SERVITUDES / easements.

How it lands: Steps 1–3: a commercial easement in gross is transferable without the owner's consent, and a crude-oil line is within "pipeline purposes," so no injunction — but the holder must restore the surface, so damages lie → (C).

Question 43

Torts — Excavation / Duty and Negligence Per Se

A construction company was employed by the city to repair a broken pipe under a main street of the city. As part of its work, the construction company dug a deep trench down the center of the street. Warning signs and flashing lights were positioned at both ends of the trench to warn cars of the danger, but, except for two unlit warning signs along the sides, no barriers of any kind were put up on either side. A college student was walking home from the bus depot along the same street after dark. A heavy rain started, and in an effort to avoid getting more drenched, the student jaywalked instead of going to the corner to cross the street, which was empty of traffic at the time. In the dark and the heavy rain, the student did not realize that the road was dug up where he was crossing and fell into the trench. The student was knocked out when he hit the bottom of the trench and drowned when the water from the rain gathered at the bottom.

The student's mother brought a wrongful death action against the construction company for the death of her son. The jurisdiction retains traditional contributory negligence rules and has a statute that makes it a misdemeanor for anyone to cross a main street such as this at any place except in the marked crosswalks.

The construction company is likely to:

(A) Prevail, because the student was negligent per se, and thus at fault for his own death.

(B) Prevail, because it had marked off its trench with warning signs.

(C) Not prevail, because a construction company is strictly liable for inherently dangerous conditions.

(D) Not prevail, because it left an open trench unprotected.

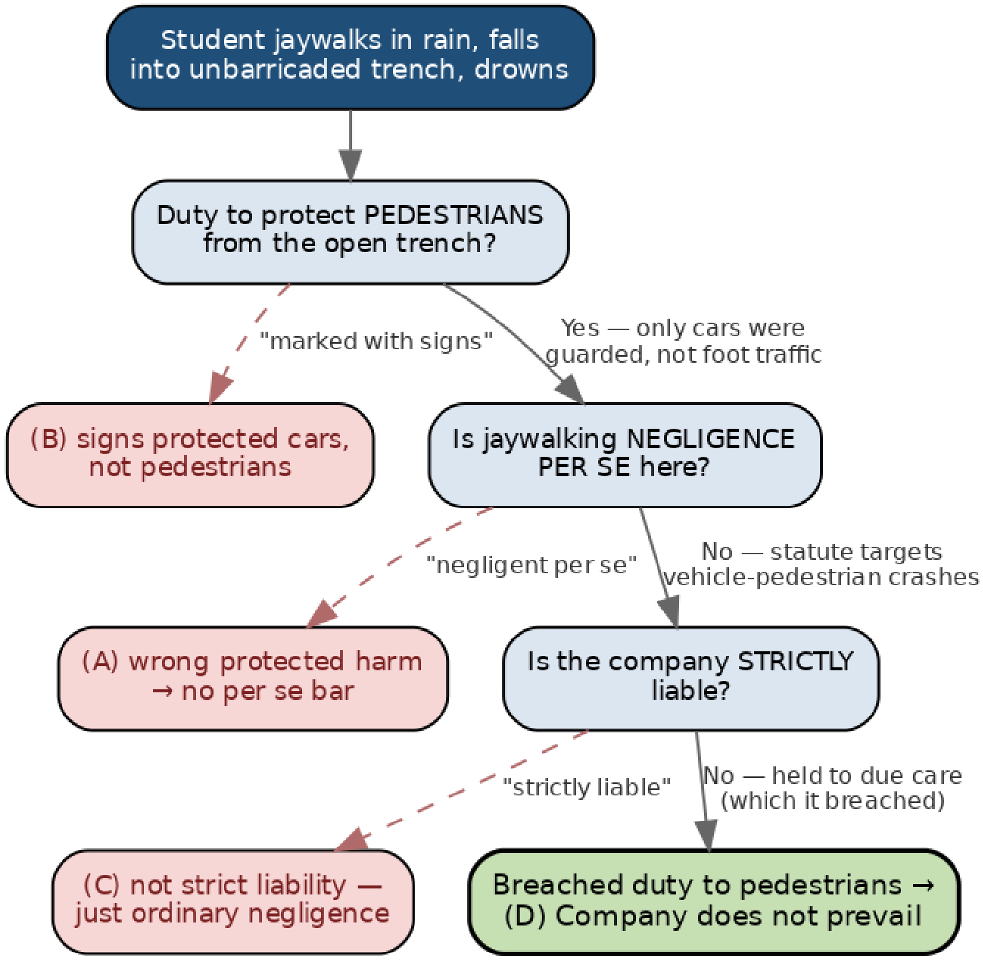
Correct answer: (D). Leaving an open trench unprotected against pedestrians breaches the duty of care, and the jaywalking statute does not bar recovery.

Rule. One who excavates near a public way owes a duty of reasonable care to protect users of the way from falling in, satisfied only by taking steps reasonably likely to prevent such accidents. Negligence per se does not apply where the plaintiff's statutory violation is outside the type of harm the statute was designed to prevent.

Application. The company protected cars with signs and lights at the trench ends but did nothing effective to keep pedestrians from falling into the sides of the open trench at night. That is a breach of its duty to foot travelers. The jaywalking statute aimed at vehicle-pedestrian collisions, not at people falling into trenches, so violating it is not negligence per se here, and no other conduct shows contributory negligence. The company does not prevail.

Why the other choices fail. (A) is wrong because the jaywalking statute's protective purpose does not cover this harm, so negligence per se does not apply. (B) is wrong because warning signs protected only vehicles, not pedestrians on the sides. (C) is wrong because an excavator is not strictly liable; it is held to due care, which it failed to exercise.

Decision path.



USING YOUR SHEETS

Ordering guide: Torts guide, §3 Negligence, step 2 (negligence per se — only if P is in the protected class and harm is the type the statute prevents) + §4 duty (excavation).

Rule sheet: Torts sheet, NEGLIGENCE (Negligence per se).

How it lands: Step 2: the jaywalking statute targets vehicle-pedestrian crashes, not falling into a trench, so it isn't negligence per se here. The excavator's duty to protect pedestrians was breached → company loses → (D).

Question 44

Criminal Law — Common Law Conspiracy / Withdrawal

A husband who believed that his wife was having an affair with his brother hired an arsonist to burn down the brother's house. They planned for the husband to take his brother to a ballgame so that the arsonist would be able to set the house on fire without detection. After the husband and brother left for the ballgame, however, the arsonist decided to abandon the plan and immediately left town without doing anything further. When the husband returned from the ballgame with the brother, he saw the house still standing and blurted out what was supposed to have happened. The husband and the arsonist were arrested and charged with conspiracy to commit arson. At the arsonist's trial, his attorney argued that he was innocent of the conspiracy because he decided not to go ahead with the plan, and nothing criminal had in fact occurred.

At common law, a jury should find the arsonist:

- **(A)** Not guilty of conspiracy, because going to a ballgame is not a criminal overt act.
- **(B)** Not guilty of conspiracy, because the husband, not the arsonist, committed the overt act.
- **(C)** Guilty, because the husband executed his part of the plan.
- **(D)** Guilty, because the arsonist agreed to set the brother's house on fire.

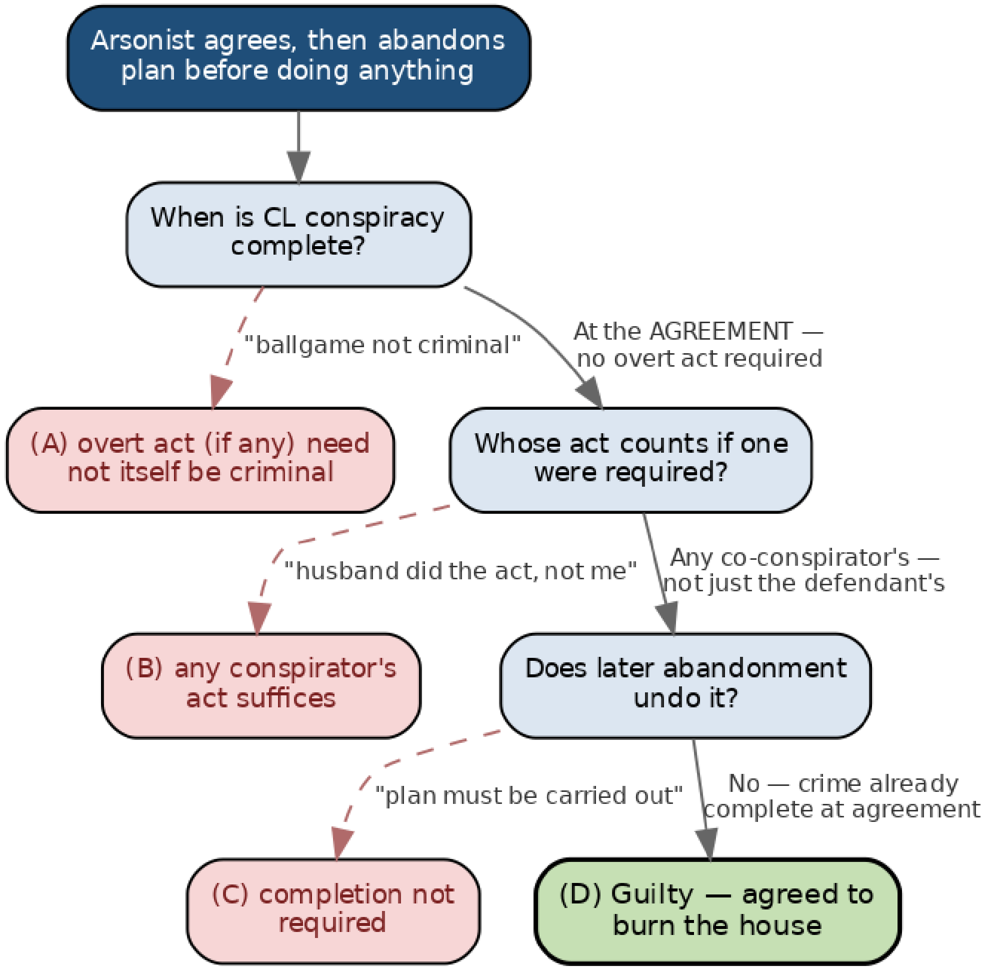
Correct answer: (D). The conspiracy was complete at the agreement, so the arsonist's later abandonment does not undo it.

Rule. Conspiracy is an agreement between two or more persons to accomplish an unlawful objective, entered with the specific intent to agree and to achieve that objective. At common law, conspiracy required no overt act; the crime is complete upon the agreement. Later withdrawal does not erase the completed conspiracy (though it may limit liability for co-conspirators' future crimes).

Application. When the husband hired the arsonist and they formed the plan to burn the brother's house, the conspiracy was complete at common law. The arsonist's decision to skip town and do nothing further came after the crime was already committed, so he remains guilty of conspiracy.

Why the other choices fail. (A) is wrong because, even in overt-act jurisdictions, the overt act need not itself be criminal, so going to the ballgame would suffice; and at common law no overt act is needed. (B) is wrong because an overt act, if required, may be performed by any co-conspirator, not necessarily the one on trial. (C) reaches the right result but for a flawed reason; completion of the plan is not required, since the agreement alone completed the conspiracy.

Decision path.



USING YOUR SHEETS

Ordering guide: Crim guide, §3 Inchoate Crimes, step 3 (Conspiracy — common law needs no overt act) + step 4 (withdrawal doesn't undo a completed conspiracy).

Rule sheet: Crim sheet, INCHOATE & ACCOMPLICE (conspiracy; withdrawal).

How it lands: Step 3: at common law the agreement alone completes the conspiracy. Step 4: withdrawal is not a defense to the conspiracy itself, so his later abandonment doesn't help → (D).

Question 45

Constitutional Law — Congressional Control of Federal Jurisdiction

Congress enacted legislation providing that, among other things, "federal courts shall not order any public educational institution to establish athletic activities or to modify existing athletic activities on the grounds that such activities are not provided on an equal basis to both men and women."

Which of the following is the strongest argument for the constitutionality of the federal legislation?

(A) Congress provides financial support for public educational institutions and is therefore empowered to place conditions on the expenditure of federal funds.

(B) Athletics involves tremendous amounts of money and the occasional use of interstate means of transportation, thus falling within the commerce power.

(C) Under Article III, Congress may restrict the jurisdiction of the federal courts.

(D) The Fourteenth Amendment authorizes Congress to define governmental conduct that violates the Equal Protection Clause.

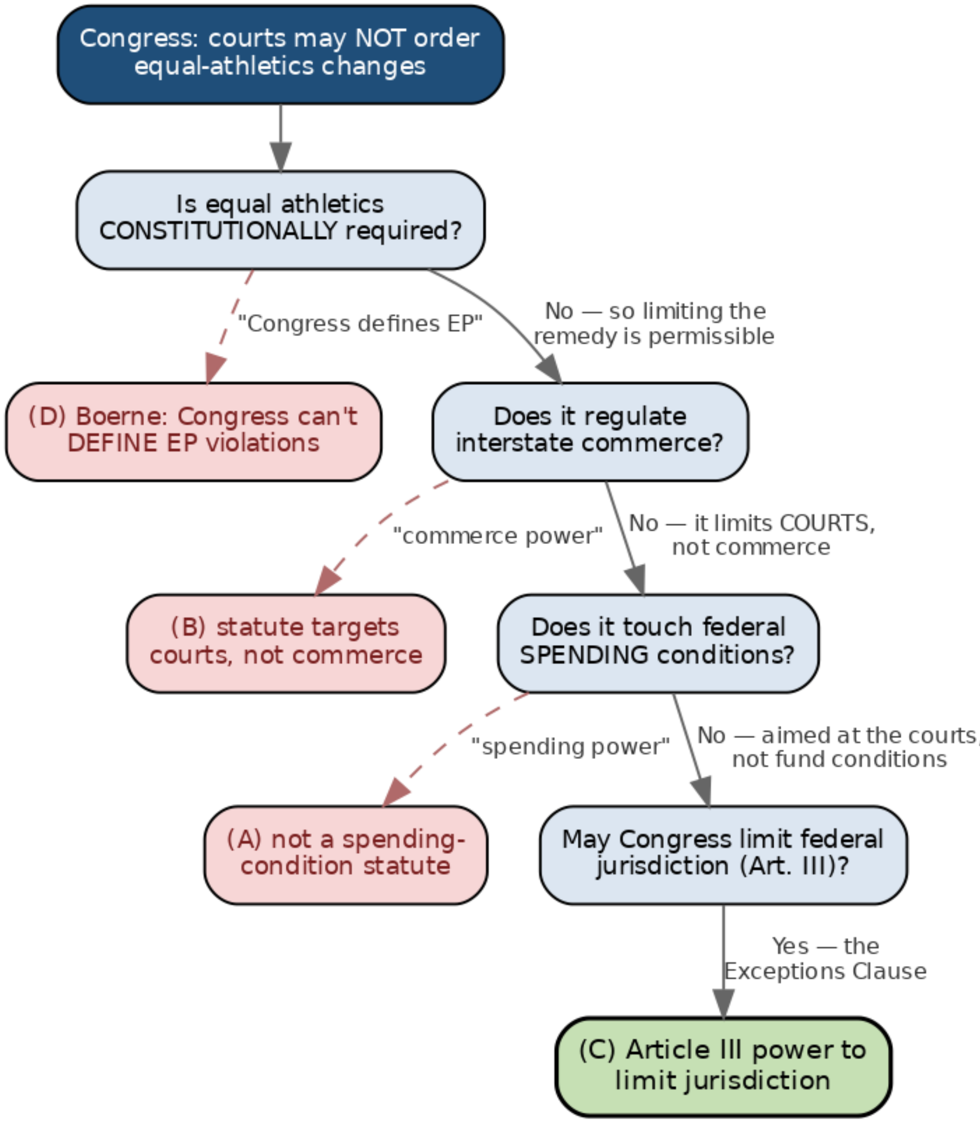
Correct answer: (C). Article III empowers Congress to restrict the jurisdiction and remedial authority of the federal courts.

Rule. Under Article III's Exceptions and Regulations Clause, Congress has broad authority over the jurisdiction of the lower federal courts and the appellate jurisdiction of the Supreme Court, and may limit the remedies federal courts can order, at least where doing so does not itself violate an independent constitutional command.

Application. The statute bars federal courts from ordering schools to create or modify athletics on equal-basis grounds. Because equal athletic offerings are not themselves constitutionally compelled, Congress is simply exercising its Article III power to limit the courts' jurisdiction and remedies, which is the strongest defense of the law.

Why the other choices fail. (D) is wrong because, under City of Boerne v. Flores, Congress cannot define what conduct violates the Equal Protection Clause; it may only remedy or prevent judicially recognized violations. (B) is wrong because the statute limits judicial remedies rather than regulating interstate commerce. (A) is wrong because the statute is directed at the courts, not at the expenditure of federal funds, so the spending power is not the basis.

Decision path.



USING YOUR SHEETS

Ordering guide: Con Law guide, §2 Congressional Power (Article III control of federal-court jurisdiction — the Exceptions Clause).

Rule sheet: Con Law sheet, CONGRESSIONAL POWER (and the Boerne limit under EQUAL PROTECTION).

How it lands: Because equal athletics isn't constitutionally required, Congress may use its Article III power to limit federal-court jurisdiction — the strongest defense. Contrast the Boerne limit: Congress can't define EP violations (that kills D) → (C).

Question 46

Constitutional Law — Separation of Powers / Judicial Remedies

Congress adopted legislation prohibiting the federal courts from ordering busing as a remedy for past racial discrimination in a public school district.

Which of the following is the strongest argument that the federal legislation is unconstitutional?

- **(A)** The courts, not Congress, have the primary responsibility for defining the minimum requirements of the Equal Protection Clause of the Fourteenth Amendment.
- **(B)** The Privileges or Immunities Clause of the Fourteenth Amendment prohibits Congress from limiting the forms of relief afforded by federal courts.
- **(C)** Congress cannot limit the authority of federal courts to hear and decide cases properly presented for decision.
- **(D)** The legislation unduly burdens interstate commerce.

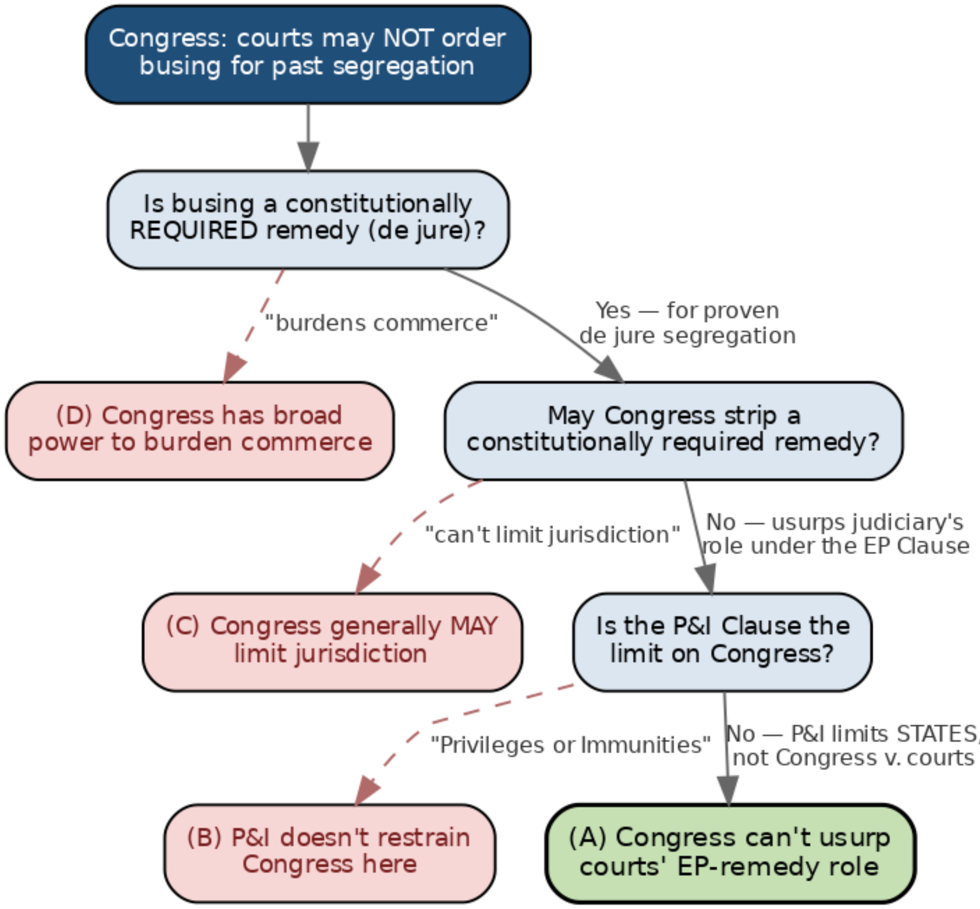
Correct answer: (A). Congress cannot usurp the courts' authority to define, and remedy, the requirements of the Equal Protection Clause.

Rule. It is emphatically the province of the judiciary to say what the Constitution requires. If the Equal Protection Clause requires a particular remedy for a proven constitutional violation, Congress cannot bar the courts from fashioning that constitutionally required remedy; doing so would let Congress override the judiciary's role in enforcing the Fourteenth Amendment.

Application. Where busing is a judicially determined remedy needed to cure past de jure school segregation, a statute forbidding federal courts from ordering it interferes with the courts' power to enforce a constitutionally required remedy. That separation-of-powers usurpation is the strongest argument against the law. (Contrast Question 45: there, no constitutional violation was at stake, so a jurisdiction limit was permissible; here the remedy is constitutionally compelled, so stripping it is not.)

Why the other choices fail. (D) is wrong because Congress has very broad power to burden interstate commerce, so that is no basis for invalidity. (C) is wrong because Congress generally may limit the jurisdiction of the federal courts; the true problem is interfering with a constitutionally required remedy. (B) is wrong because the Privileges or Immunities Clause protects individuals against state infringement and does not limit Congress vis-a-vis the federal courts.

Decision path.



USING YOUR SHEETS

Ordering guide: Con Law guide, §1 Justiciability & Judicial Power (it's for the courts to say what the Constitution requires and to remedy violations).

Rule sheet: Con Law sheet, JUSTICIABILITY / judicial power.

How it lands: §1: defining and remedying an Equal Protection violation is the judiciary's role, so Congress can't strip a constitutionally required busing remedy — the strongest argument against → (A). Contrast Q45, where no violation existed so a jurisdiction limit was fine.

Question 47

Civil Procedure — Removal and Remand

A State A citizen and a State B citizen were in a car accident. The State B citizen filed a negligence action against the State A citizen in a State A state court, seeking $500,000 in damages. The State A citizen immediately filed a notice of removal in the state court and in the appropriate federal district court.

If the State B citizen believes the removal is improper and that the action should properly remain in the State A state court, what should the State B citizen do?

(A) The State B citizen does not need to do anything because the removal is improper and will not be recognized by the courts.

(B) The State B citizen should file an objection to the removal in the state court.

- **(C)** The State B citizen should file in the federal court a motion to remand the action to state court.
- **(D)** The State B citizen has no recourse because, once an action is removed to federal court, the federal court will retain the case unless it lacks subject matter jurisdiction.

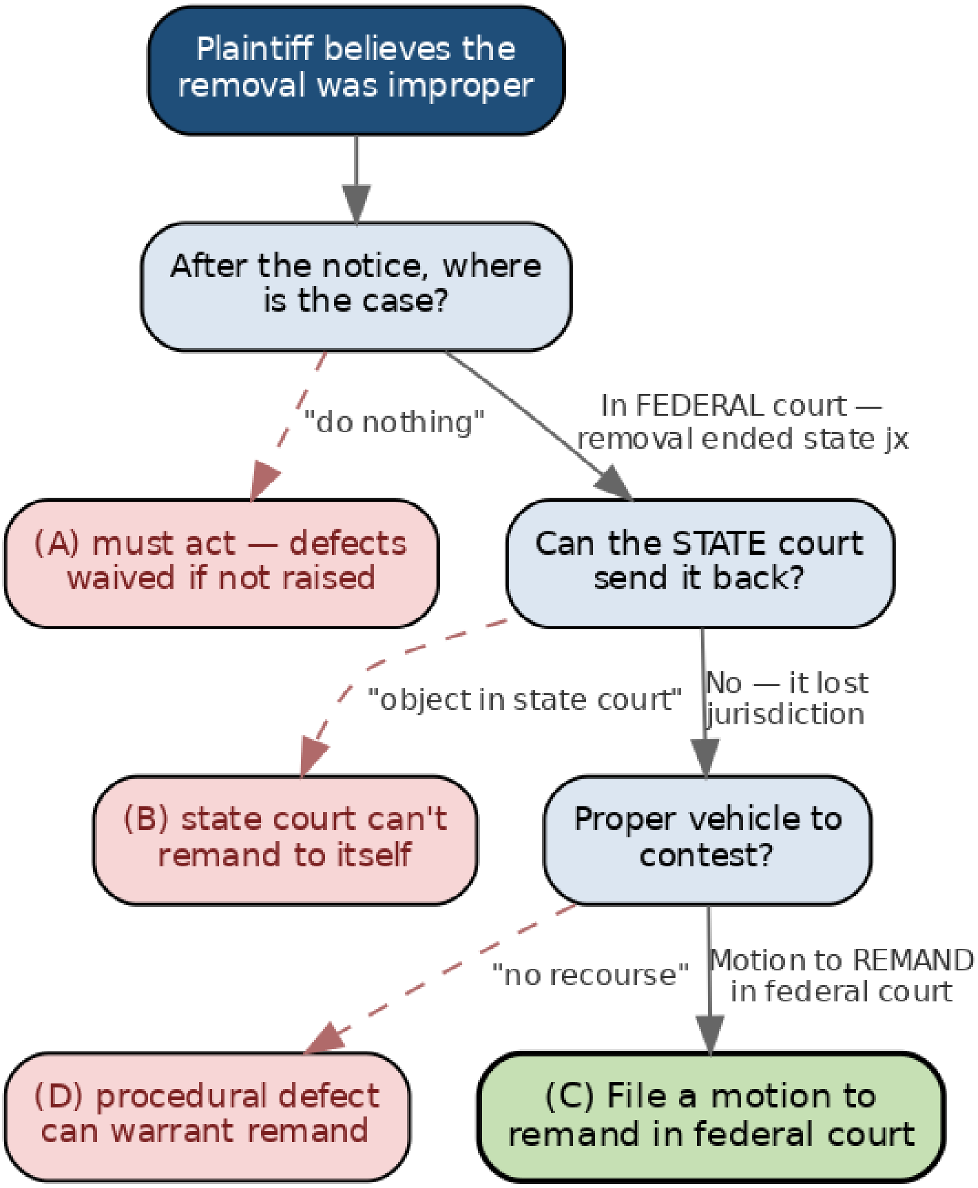
Correct answer: (C). To contest an improper removal, the plaintiff files a motion to remand in the federal court.

Rule. Filing the notice of removal in state and federal court immediately ends state-court jurisdiction. A plaintiff who believes removal was improper, whether for a procedural defect or lack of subject-matter jurisdiction, must file a motion to remand in the federal district court; procedural defects are waived if not timely raised.

Application. The State B citizen who thinks removal was improper should move to remand in the federal court. He cannot rely on the state court or on inaction, because the case is now in federal court and only that court can send it back.

Why the other choices fail. (A) is wrong because the plaintiff cannot simply do nothing; procedural removal defects are waived if not raised, and even jurisdictional remands are not always ordered sua sponte. (B) is wrong because the state court has no power to remand a case back to itself; the motion goes to the federal court. (D) is wrong because a procedural defect in removal, not just a lack of jurisdiction, can warrant remand.

Decision path.



USING YOUR SHEETS

Ordering guide: Civ Pro guide, §2 Supplemental Jurisdiction & Removal, steps 4–5 (removal mechanics → contest by moving to remand in federal court).

Rule sheet: Civ Pro sheet, SUBJECT MATTER JURISDICTION (Removal).

How it lands: §2: filing the removal notice ends state jurisdiction, so the way to contest is a motion to remand filed in the federal court → (C).

Question 48

Evidence — Hearsay / Parol Evidence and Fraud

A buyer entered into a written contract with a farmer to purchase the farmer's dairy farm. The contract contained a provision that the farmer's "land and inventory are valued at $175,000."

The contract also contained a provision that stated, "This contract represents the entire agreement between the parties. No other promises or representations have been made."

In a fraud action against the farmer, the buyer alleges that he purchased the farm only because the farmer had assured him that the land and inventory were worth $350,000, when they were in fact worth only $175,000. The buyer seeks to testify that during negotiations the farmer had said repeatedly that the value of the land and the inventory was $350,000, but at the advice of the farmer's attorney, he was going to list the value at $175,000 in the contract for tax purposes. The farmer's attorney objects.

The evidence is:

- **(A)** Inadmissible hearsay.
- **(B)** Inadmissible under the parol evidence rule.
- **(C)** Neither hearsay nor violative of the parol evidence rule.
- **(D)** Admissible hearsay, unaffected by the parol evidence rule.

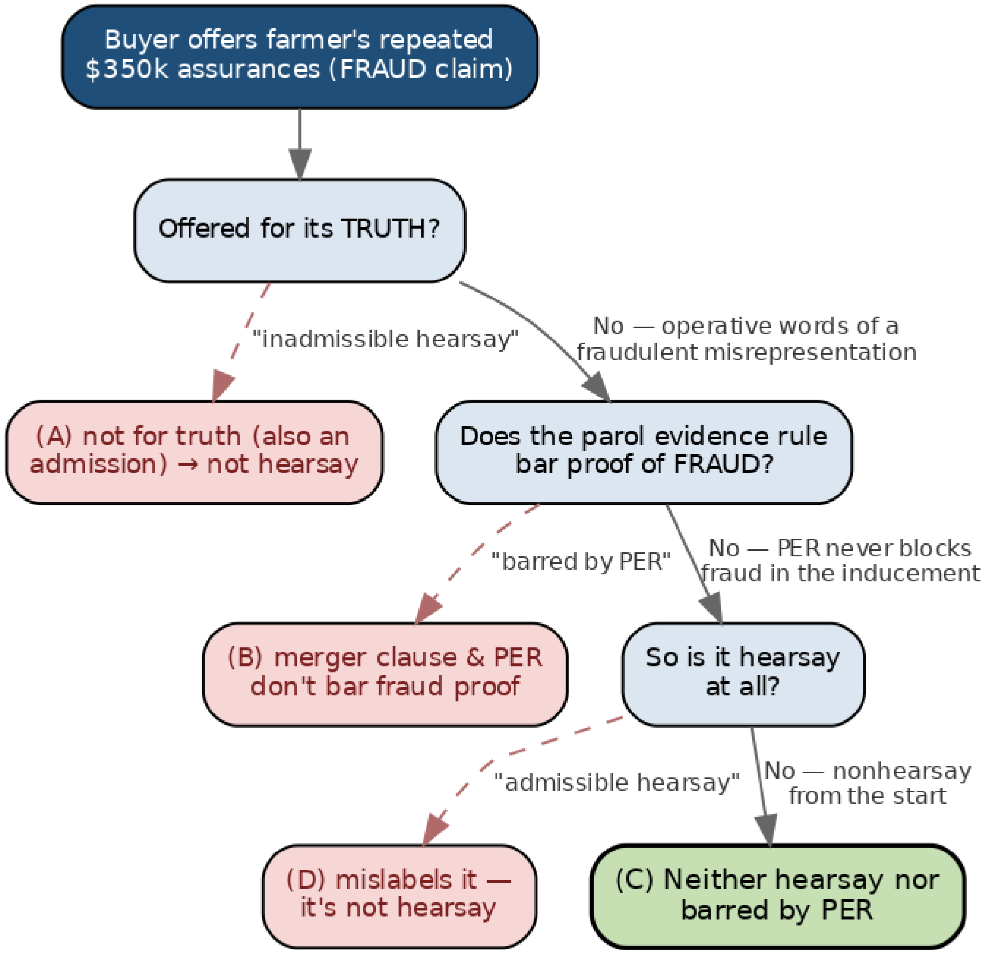
Correct answer: (C). The farmer's statement is neither hearsay nor barred by the parol evidence rule.

Rule. Words that are themselves legally operative, such as a fraudulent misrepresentation, are not hearsay because they are offered to prove they were said, not for their truth (and a party's own statement is a nonhearsay admission besides). The parol evidence rule bars extrinsic evidence to vary the terms of an integrated writing, but it does not bar evidence offered to show the contract was procured by fraud.

Application. The buyer offers the farmer's repeated $350,000 assurances not to prove the land was worth that much, but to prove the words of a fraudulent misrepresentation, so they are not hearsay. Because the buyer alleges fraud rather than trying to reinterpret the contract's terms, the parol evidence rule, and the merger clause, do not exclude the testimony. It is admissible.

Why the other choices fail. (A) is wrong because the statement is not offered for its truth (and is also an admission), so it is not hearsay. (B) is wrong because the parol evidence rule does not bar evidence of fraud, even against an integrated agreement with a merger clause. (D) is wrong because it mislabels the evidence as hearsay; the statement is nonhearsay to begin with.

Decision path.



USING YOUR SHEETS

Ordering guide: Evidence guide, §2 Hearsay Core, step 4 (non-hearsay purpose — legally operative words / verbal act) + Contracts guide, §4 Parol Evidence (fraud exception).

Rule sheet: Evidence sheet, HEARSAY (non-hearsay: legally operative words) + Contracts sheet, TERMS/PAROL (fraud).

How it lands: Evidence §2 step 4: the fraudulent assurance is a legally operative verbal act, not offered for truth (and also a party admission), so not hearsay. Contracts §4: parol evidence never bars proof of fraud, merger clause notwithstanding → (C).

Question 49

Real Property — Life Tenant and Remainderman / Mortgage

A landowner developed and built a large apartment house on property he owned. After the apartment house was completed, the landowner conveyed the building and the land to his son for life, remainder to his granddaughter; subject, however, to a bank's mortgage. The bank held a mortgage on the building for $17,000, payable in annual installments of $2,000 plus interest.

The son began to manage the day-to-day maintenance of the building as well as to collect rents. Despite the son's best efforts, the vacancy factor reached an unanticipated high and the rental income was not sufficient to cover the annual mortgage payment.

Who is responsible for the mortgage payments and in what amount?

(A) The son pays all.
(B) The granddaughter pays all.
(C) The son pays the interest and the granddaughter pays the principal.
(D) The granddaughter pays the interest and the son pays the principal.

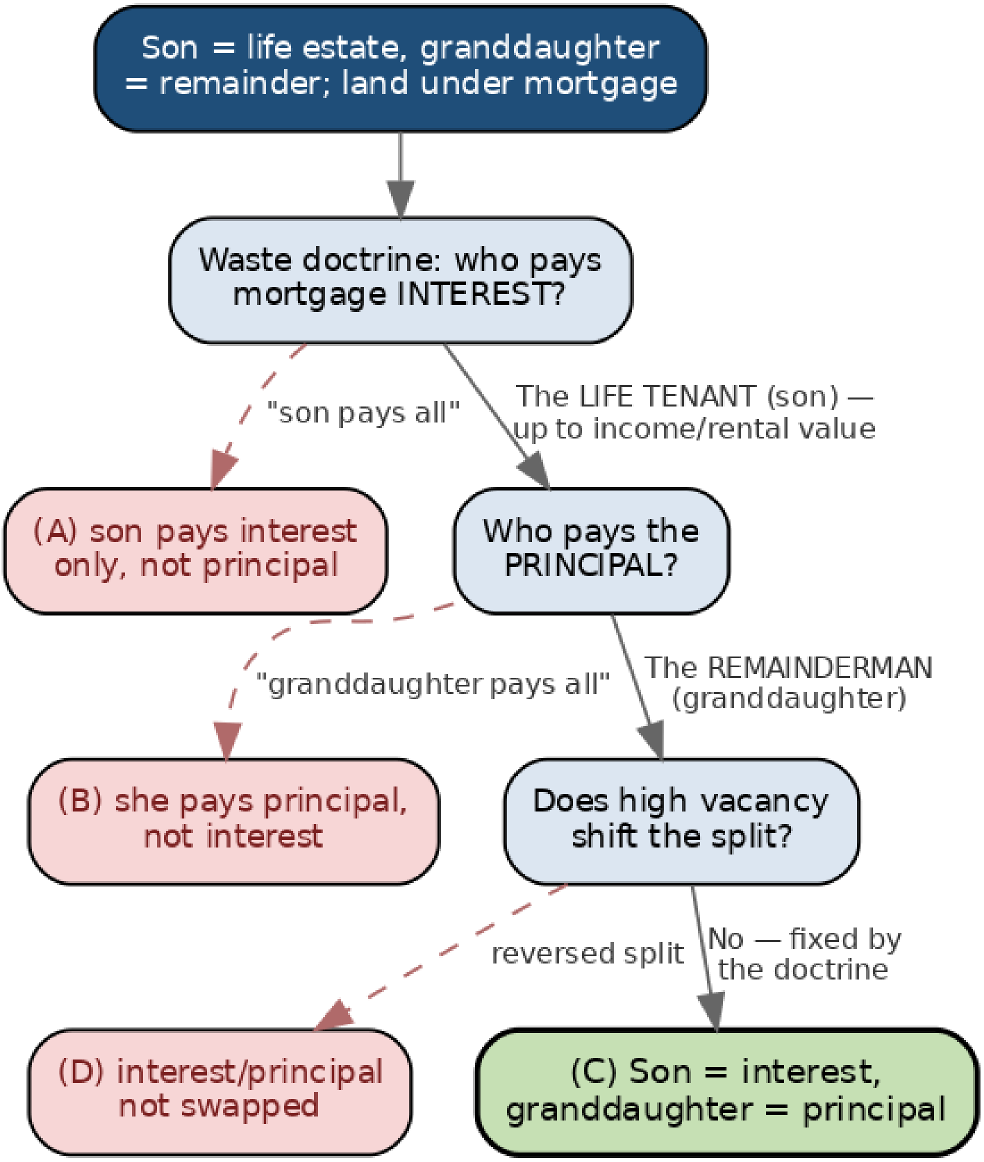
Correct answer: (C). The life tenant pays the mortgage interest and the remainderman pays the principal.

Rule. Under the doctrine of waste, obligations on encumbrances are split between the life tenant and the remainderman. The life tenant must pay interest on a mortgage or other encumbrance (but only up to the income or reasonable rental value of the land), while the remainderman must pay the principal to protect the future interest.

Application. The son holds a life estate and the granddaughter the remainder, subject to the bank's mortgage. The son is responsible for the interest portion of the annual payments, and the granddaughter is responsible for the principal. A high vacancy rate does not shift this allocation.

Why the other choices fail. (A), (B), and (D) are all wrong because they misallocate the split; the settled rule is interest to the life tenant and principal to the remainderman, which only (C) states.

Decision path.



USING YOUR SHEETS

Ordering guide: Real Property guide, §1 Estates (life tenant vs. remainderman duties) + §7 Mortgages (the encumbrance).

Rule sheet: Real Property sheet, ESTATES + MORTGAGES (waste allocation not spelled out — flag it).

How it lands: Waste allocation: the life tenant (son) pays mortgage interest up to the income/rental value; the remainderman (granddaughter) pays the principal → (C). The interest/principal split isn't on the one-pager, so note it.

Question 50

Civil Procedure — Relation Back of Amendments

A driver took her car to a garage to have her squeaking brakes repaired. The garage was owned by a corporation in which she held shares of stock. Unfortunately, rather than fixing the brakes, the garage made them worse. As a result, the driver had a bad accident when her brakes failed as she was navigating a tight curve. She brought a negligence action against the garage as a corporate entity in federal court, asserting diversity jurisdiction. She filed suit one day before the statute of limitations expired and served the garage with process one day after the statute of limitations expired. Eight months later the driver decides to add a shareholder's derivative claim based on corporate misconduct, but the statute of limitations has long expired.

May she add the shareholder's derivative claim?

- **(A)** No, because the statute of limitations on the derivative claim has run.
- **(B)** No, because the corporation was not served until after the statute of limitations had run.
- **(C)** No, because the other shareholders did not receive notice of the suit within the statute of limitations period.
- **(D)** Yes, because the original complaint and service of process in the first action were both timely.

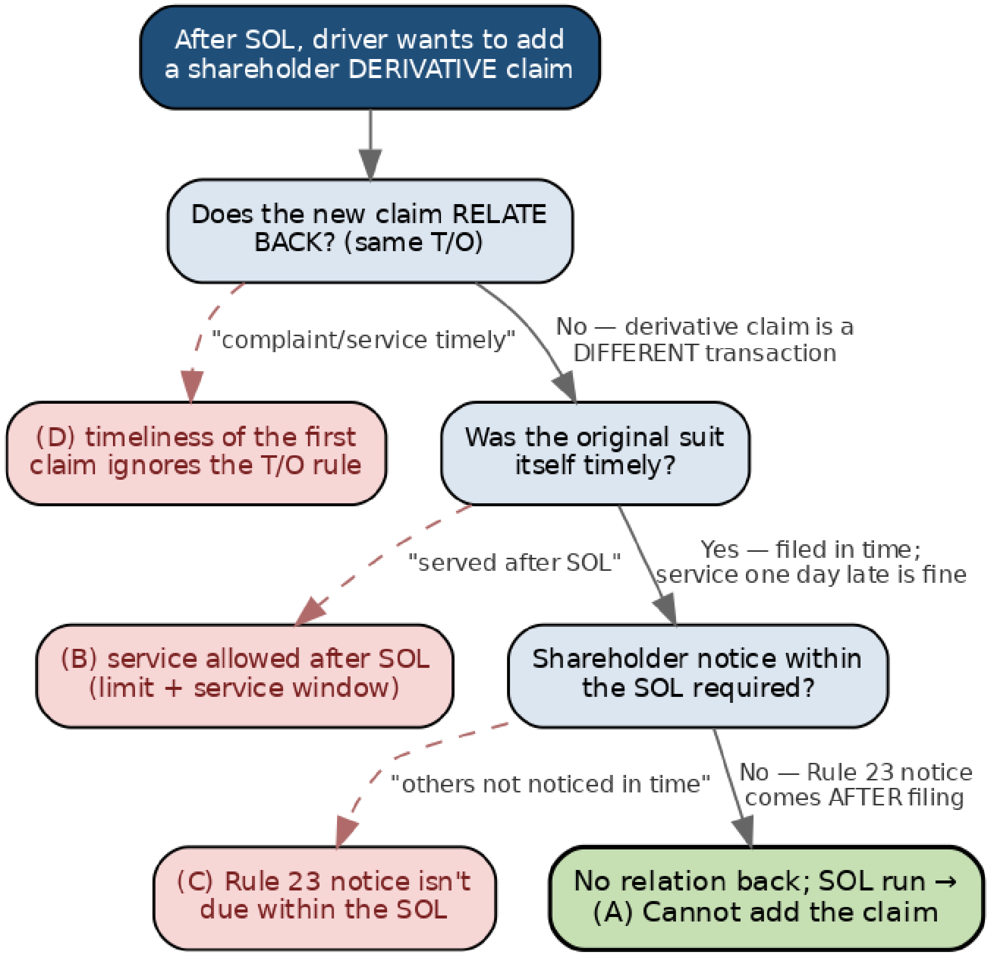
Correct answer: (A). The new derivative claim does not arise from the same transaction, so it does not relate back and is time-barred.

Rule. An amendment adding a new claim relates back to the date of the original pleading only if the new claim arose out of the same conduct, transaction, or occurrence set out in the original pleading. If the new claim rests on a different transaction, it does not relate back and is measured against the statute of limitations on its own.

Application. The original suit was a negligence claim about the botched brake repair and the resulting accident. The proposed shareholder's derivative claim rests on separate corporate misconduct, a different transaction entirely. Because it does not relate back, and its own limitations period has long since run, she may not add it.

Why the other choices fail. (B) is wrong because service one day after the limitations period was permissible; notice is judged by the limitations period plus the time allowed for service, and the complaint itself was timely filed. (C) is wrong because Rule 23 notice to shareholders is given after suit is filed, not within the limitations period. (D) is wrong because it ignores the controlling requirement: relation back demands the same transaction or occurrence, which is missing here.

Decision path.



USING YOUR SHEETS

Ordering guide: Civ Pro guide, §6 Pleadings & Pre-Trial Motions, step 2 (amendment; relation back only if same conduct/transaction).

Rule sheet: Civ Pro sheet, PLEADINGS & RULE 11 (Amendment / relation back).

How it lands: Step 2: relation back requires the same transaction or occurrence. The shareholder-derivative claim is a different transaction, so it can't relate back and the run limitations period bars it → (A).