Mixed Subject Set 2

Expanded Answer Explanations · Diet Coke Esq.

50 questions — Contracts (9), Constitutional Law (8), Torts (8), Civil Procedure (7), Real Property (6), Evidence (6), Criminal Law (5), Criminal Procedure (1)

Question 1

Real Property — Covenants Running at Law

A landowner owned two adjoining parcels of land. The landowner sold the western parcel to a buyer by a deed that contained the following clause: "Grantee promises for himself, his heirs, successors, and assigns to not erect a structure over two stories on the land." The buyer recorded the deed and built a two-story house on the property and lived there for 30 years, after which he sold the land to a movie star by a deed that did not contain the structure height restriction. The movie star decided to tear down the existing house on the land and erect a three-story house. Her neighbor, who purchased the eastern parcel from the landowner 10 years earlier, discovers that the movie star's house will be larger than his and files suit to enforce the covenant. Who will prevail?

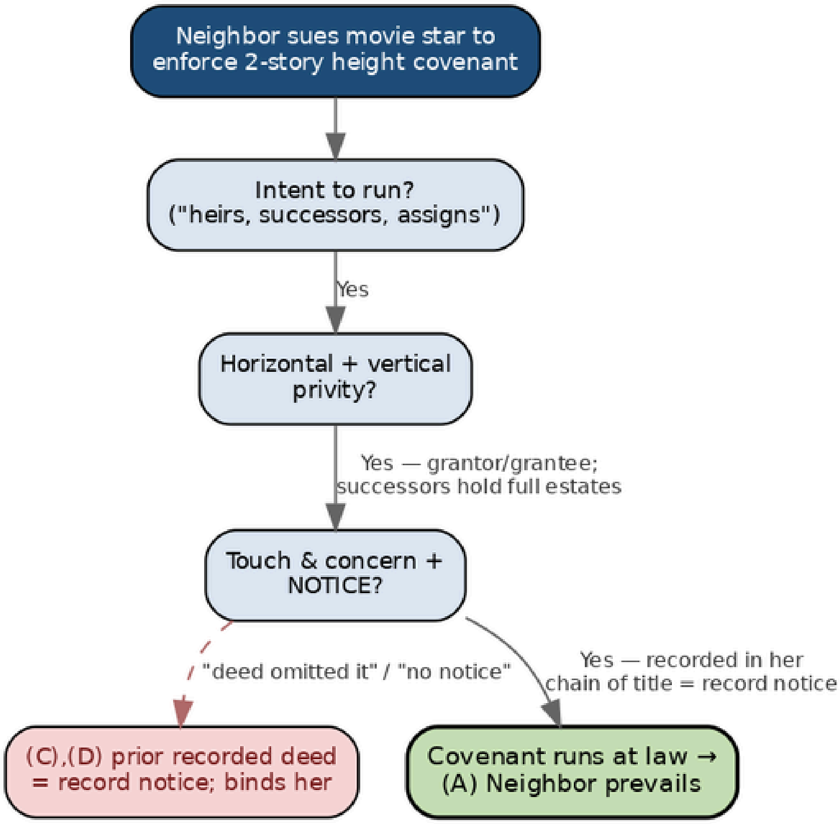
(A) The neighbor, because the restrictive covenant runs with the land.
(B) The neighbor, because privity is not required to enforce an equitable servitude.
(C) The movie star, because her deed did not contain the restrictive covenant.
(D) The movie star, because she had no notice of the structure height restriction.

> **Correct answer (A).** The restrictive covenant runs with the land, so the neighbor can enforce it against the movie star.

Rule. A covenant's burden runs at law, binding successors, when (1) the original parties intended it to run, (2) there is horizontal privity (the original parties shared an interest in the land apart from the covenant, e.g., grantor-grantee) and vertical privity (the successor holds the full estate of the covenanting party), (3) the covenant touches and concerns the land, and (4) the burdened successor took with notice. Recording the deed gives constructive (record) notice through the chain of title.

Application. 'Heirs, successors, and assigns' shows intent to run. The landowner and the buyer were in horizontal privity as grantor and grantee; the movie star holds the buyer's entire estate, so vertical privity exists. A height restriction touches and concerns the land because it limits the owner's use and enjoyment. The restriction sits in the movie star's chain of title (the landowner-buyer deed was recorded), giving her record notice. All four elements are met, so the covenant runs and the neighbor prevails.

Why the other choices fail. (B) is a true statement about equitable servitudes, but it isn't why the neighbor wins here: the covenant runs at law, and privity in fact exists. (C) is wrong because the restriction's absence from the movie star's own deed doesn't matter when it appears in a prior recorded deed in her chain of title. (D) is wrong because she had at least record (constructive) notice.



Decision path

Attack Sequence: Real Property attack sequence, §4 Easements, Covenants & Servitudes, step 5 (real covenant elements: intent, privity, touch & concern, notice).

Playbook: Real Property playbook, COVENANTS & SERVITUDES ("runs at law if: writing, intent, touch and concern, notice, horizontal + vertical privity").

How it lands: Run the covenant-at-law checklist from step 5: intent ("heirs, successors, assigns"), horizontal privity (grantor/grantee) + vertical privity (successors hold the whole estate), touch & concern (height limit), and record notice (recorded chain of title). All present → the burden runs → (A).

Question 2

Constitutional Law — Procedural Due Process

A public school teacher was hired without a written contract. The school district handbook provides that all newly hired employees are at-will employees for their first year of service and may be dismissed for any reason or without reason. Six months after being hired, the teacher was dismissed without any prior notice or a hearing. Which of the following, if true, most strongly supports the teacher's argument that she should have been afforded notice and a hearing before dismissal?

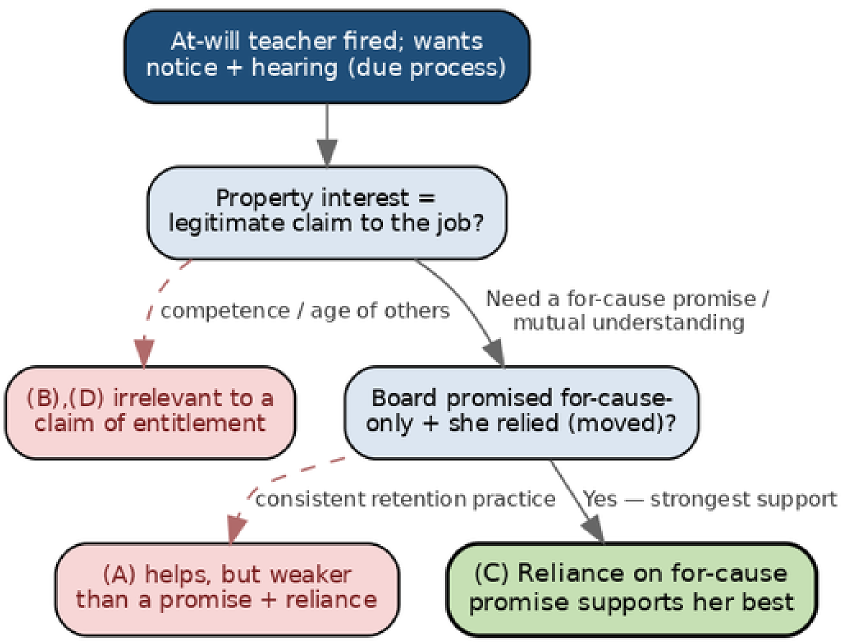
(A) She was the only newly hired teacher not to have survived the probationary period for the past three years.
(B) There is no evidence that teachers with permanent status are any more competent than this teacher.
(C) The teacher moved her household from out of state in reliance on an oral promise by the school board that the job would be permanent and that she could be dismissed only for cause.
(D) She was the only teacher there over the age of 50.

> **Correct answer (C).** Reliance on an authority's promise of for-cause-only dismissal can create a property interest triggering notice and a hearing.

Rule. Procedural due process requires notice and a hearing before the government deprives a person of life, liberty, or property. A public employee has a property interest in continued employment only with a legitimate claim of entitlement (not a mere expectation) to keep the job, arising from a contract, clear practice, or mutual understanding that removal will be for cause only.

Application. A promise by the school board that the job was permanent and terminable only for cause, on which the teacher relied by moving her household from out of state, is the kind of mutual understanding that can create a legitimate claim of entitlement despite the at-will handbook language. That property interest would entitle her to notice and a hearing. (C) most strongly supports her argument.

Why the other choices fail. (A) would also help (a consistent practice of retaining new hires), but it is factually weaker than a specific for-cause promise plus reliance, so it is not the best choice. (B) and (D) are irrelevant: the relative competence of other teachers, and her age, say nothing about whether she has a legitimate claim of entitlement to the job.



Decision path

Attack Sequence: Con Law attack sequence, §4 State Action & Due Process, step 2 (procedural due process: deprivation of a property interest).

Playbook: Con Law playbook, DUE PROCESS (property interest = legitimate claim of entitlement).

How it lands: Step 2 asks whether the government took life, liberty, or property. A public job is "property" only with a legitimate claim of entitlement — a for-cause promise the teacher relied on supplies exactly that, triggering notice and a hearing → (C).

Question 3

Contracts — Preexisting Duty / Modification

The owner of a summer cottage contracted to put new vinyl siding on the cottage for $10,500. Two weeks before the work was to start, however, the contractor called to say that there was a clerical error in the bid and that he could not do the work for less than $12,000 or he would lose money. The cottage owner agreed to pay the additional $1,500 but told the contractor that he was being unfair. After the work was completed, the cottage owner handed the contractor a check for $10,500, telling the contractor that that was all he would pay him because he had no right to raise the price. If the contractor sues the cottage owner for the additional $1,500, who will prevail?

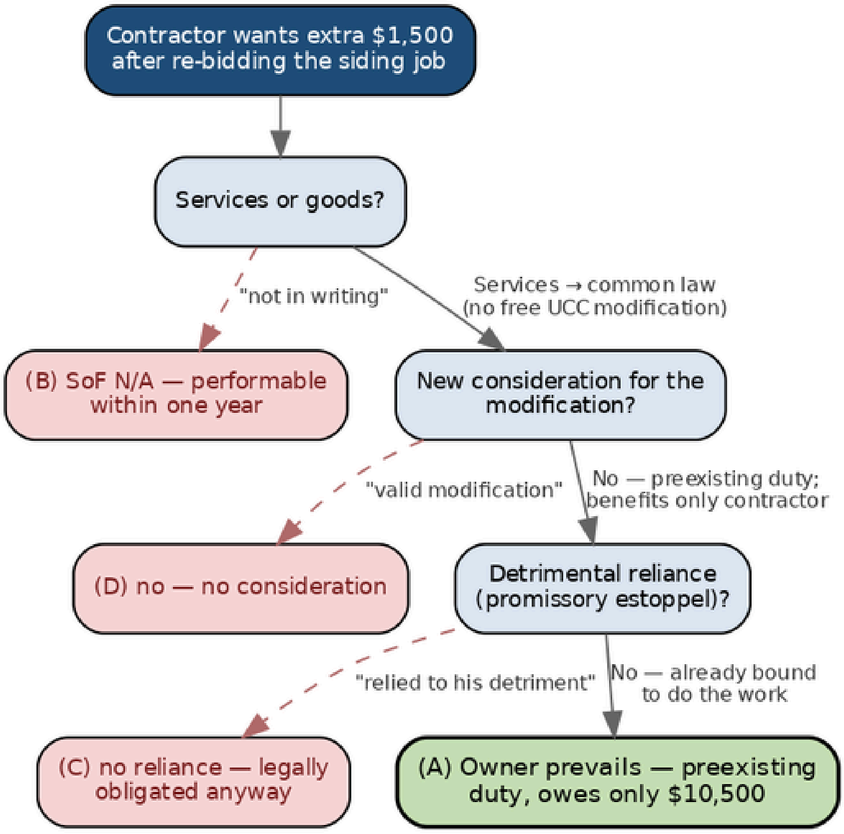
(A) The cottage owner, because the contractor was already under a preexisting legal duty to replace the siding on the cottage for $10,500.
(B) The cottage owner, because the promise to pay the additional money was not in writing.
(C) The contractor, because he relied on the cottage owner's promise to pay the additional money to his detriment.
(D) The contractor, because there was a valid modification of the parties' original contract.

> **Correct answer (A).** The contractor was already bound to do the work for $10,500, so the promise to pay $1,500 more lacked consideration.

Rule. Under the preexisting duty rule, performing or promising to perform a duty one already owes is not consideration for a new promise. At common law, a modification generally needs new consideration; a modification that benefits only one party, absent unanticipated circumstances, is unenforceable. (Services contracts are governed by the common law, not UCC Article 2, which would allow good-faith modification without new consideration.)

Application. The contractor was already bound to re-side the cottage for $10,500. A mere clerical error in his bid is not the kind of unanticipated circumstance that justifies a one-sided modification, and the extra $1,500 benefits only him. With no new consideration, the modification is unenforceable, and the owner owes only the original $10,500.

Why the other choices fail. (D) fails because the 'modification' lacked consideration. (B) is wrong because a services contract that can be performed within a year is outside the Statute of Frauds, so a writing wasn't required. (C) fails because the contractor was already legally bound to do the work, so re-siding was not detrimental reliance on the promise of extra money; promissory estoppel doesn't apply.



Decision path

Attack Sequence: Contracts attack sequence, §2 Formation, step 6 (consideration; preexisting duty) — and §1 (common law governs services).

Playbook: Contracts playbook, CONSIDERATION (preexisting duty; modification needs new consideration at common law).

How it lands: §1: siding is a service → common law. §2 step 6: a promise to do what you already must do is not consideration, and a one-sided modification without unanticipated circumstances fails → owner owes only $10,500 → (A).

Question 4

Torts — False Imprisonment / Shopkeeper's Privilege

One of the employees of a department store informed the chief of security that he suspected a customer of shoplifting. The employee pointed out the suspected shoplifter, but the security chief thought that the employee was pointing at a different woman. He waited until the woman had left the store and then followed her outside. He went up to the woman, pointed a gun at her, and told her she needed to return with him to the department store's security office. The woman did so, even though she insisted that she had not done anything wrong. The woman was kept waiting in the office for a few minutes until the employee informed the security chief that he had arrested the wrong woman. If the woman sues the department store on the theory of false imprisonment, she will:

(A) Prevail, unless the security chief's belief that she was the shoplifter is judged to be reasonable.
(B) Prevail, because she was intentionally detained.
(C) Not prevail, because the period for which the woman was detained was the minimal period necessary to establish her identity.

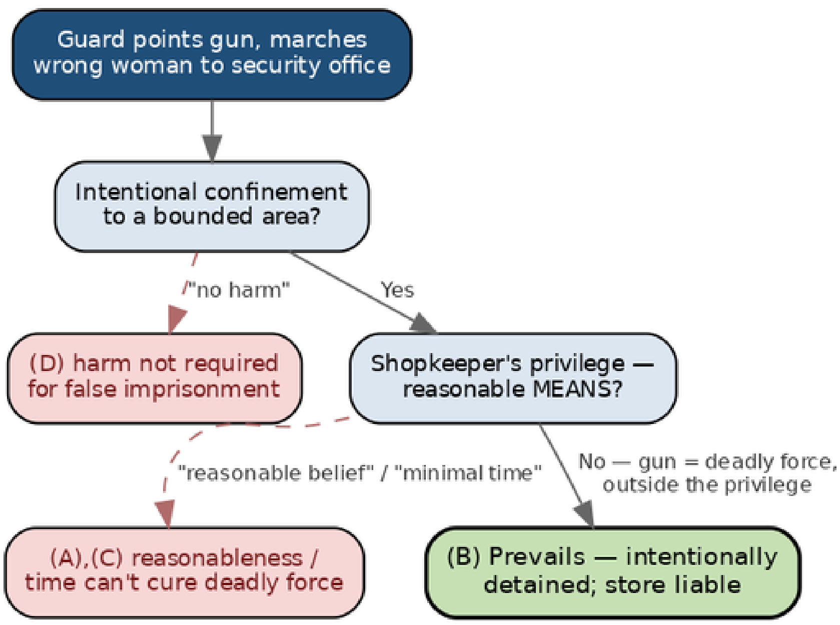
(D) Not prevail, because the woman suffered no harm.

> **Correct answer (B).** The woman was intentionally confined, and the deadly-force detention defeats any shopkeeper's privilege.

Rule. False imprisonment requires an act that confines or restrains the plaintiff to a bounded area, intent, and causation; no actual harm is required. The shopkeeper's privilege permits a reasonable detention, on reasonable suspicion, for a reasonable time and by reasonable means. Force intended or likely to cause death or serious bodily harm may never be used.

Application. The security chief pointed a gun at the woman and ordered her back to the store, intentionally confining her. Even if his suspicion or the brief detention were reasonable, brandishing a gun is deadly force, which is outside the shopkeeper's privilege. With no privilege, the store is vicariously liable, and she prevails.

Why the other choices fail. (A) is wrong because reasonable belief alone doesn't establish the privilege; the means (deadly force) were unreasonable. (C) is wrong because even a minimal detention loses the privilege when accomplished by threat of deadly force. (D) is wrong because harm is not an element of false imprisonment.



Decision path

Attack Sequence: Torts attack sequence, §2 Defenses to Intentional Torts, step 5 (shopkeeper's privilege: reasonable suspicion, force, time) — resting on §1 (false imprisonment).

Playbook: Torts playbook, INTENTIONAL TORTS (False imprisonment; Shopkeeper's privilege: reasonable suspicion + reasonable force + reasonable time).

How it lands: §1: intentional confinement to a bounded area = false imprisonment (no harm needed). §2 step 5: the shopkeeper's privilege needs reasonable force — a gun is deadly force, so the privilege is lost and the store is liable → (B).

Question 5

Constitutional Law — State Action / Equal Protection

To combat the problem of obesity among the nation's youth, a state adopted a statute providing funds to train a corps of nutritionists who could go to schools and run six-week seminars designed to encourage healthy eating and exercise habits. The administration of a private school that has a stated policy of admitting only white students has requested that a state nutrition corps member be sent to the school to run a six-week seminar. Which of the following is the best constitutional argument supporting the state's rejection of the request?

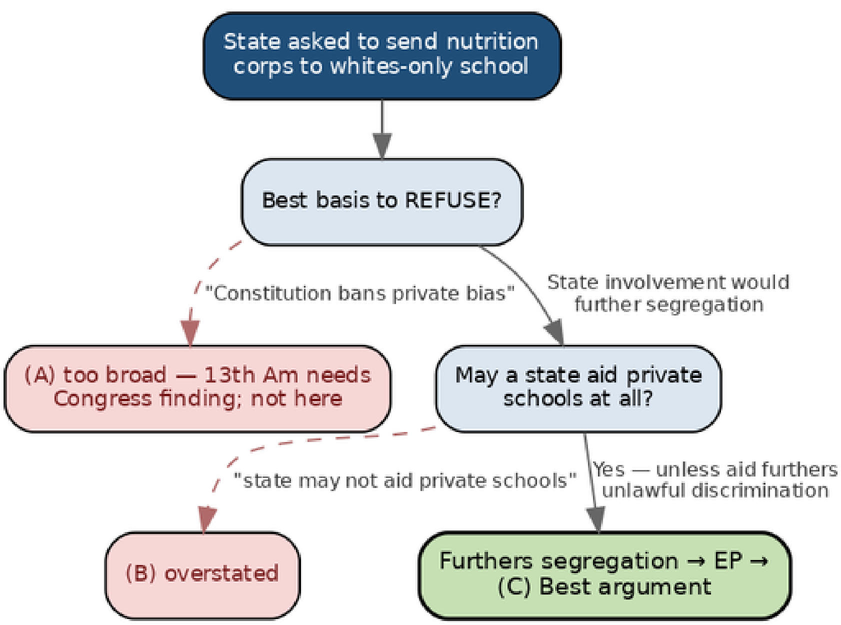
(A) The Constitution prohibits private discrimination.
(B) The state may not aid private schools.
(C) Segregation would be furthered by the provision of the seminar.
(D) No legitimate educational function is served by giving nutrition seminars at private schools.

> **Correct answer (C).** Sending a state employee to run a program at a whites-only school would make the state a participant in furthering segregation.

Rule. The Equal Protection Clause reaches only governmental action, but a state becomes responsible when it is significantly involved in or entangled with private discrimination. A state may not lend its resources in a way that furthers racial segregation.

Application. Providing a state nutrition-corps member to a school that admits only white students would significantly involve the state in the school's segregation, furthering it. That is the best constitutional basis for the state to refuse, so (C) is correct.

Why the other choices fail. (A) is too broad and inaccurate: the Constitution does not, by itself, prohibit all private discrimination (the Thirteenth Amendment lets Congress reach some, but nothing shows Congress acted here). (B) overstates the law; the state may aid private schools so long as the aid doesn't further unlawful discrimination. (D) is wrong because that is not the test a court would apply.



Decision path

Attack Sequence: Con Law attack sequence, §4 State Action (significant involvement/entanglement) → §5 Equal Protection.

Playbook: Con Law playbook, EQUAL PROTECTION + state-action concept.

How it lands: §4: the state becomes responsible when significantly involved in private discrimination. Sending a state employee to a whites-only school furthers segregation, so the EP-based state-action theory is the best reason to refuse → (C).

Question 6

Contracts — Unilateral vs. Bilateral Offers

In an attempt to induce her niece to improve her grades, an aunt told her niece that she would give her $50 for every "A" she earned in law school. Inspired by the opportunity to earn extra spending money, the niece studied like never before and ended up earning three "A's" the following semester. Upon contacting her aunt with the news, the niece learned that her aunt was "only kidding" about paying her for every "A" earned in law school. If the aunt's offer to her niece was held to be valid, it would be an offer for:

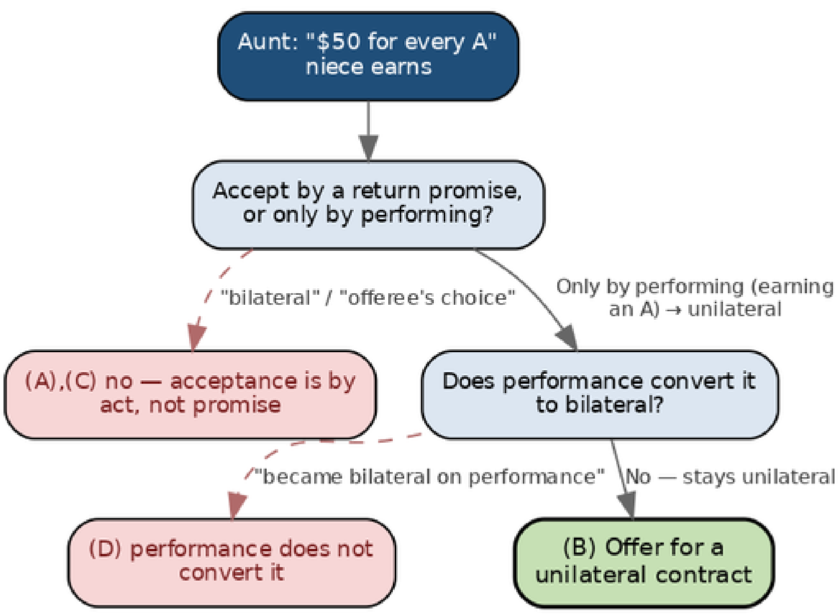
(A) A bilateral contract.
(B) A unilateral contract.
(C) A bilateral contract or a unilateral contract, according to the offeree's intentions.
(D) A unilateral contract that became a bilateral contract when the niece began to perform.

> **Correct answer (B).** An offer that can be accepted only by completing the requested act (earning an 'A') is an offer for a unilateral contract.

Rule. A unilateral contract is one in which the offer invites acceptance only by full performance of a stipulated act; a bilateral contract is accepted by a return promise. Acceptance by performance forms a unilateral contract and does not convert it into a bilateral one.

Application. The aunt sought a specific act — earning A's — not a promise to study. The niece could accept only by performing, and when she earned three A's a unilateral contract was formed. So (B) is correct.

Why the other choices fail. (A) and (C) are wrong because acceptance was possible only by performing the act, not by promising. (D) is wrong because performing the requested act creates a unilateral contract; it does not transform the deal into a bilateral one.



Decision path

Attack Sequence: Contracts attack sequence, §2 Formation, step 4 (acceptance — by promise vs. by performance).

Playbook: Contracts playbook, ACCEPTANCE (and unilateral vs. bilateral).

How it lands: §2 step 4: classify how the offer may be accepted. The aunt sought an act (earning an A), acceptable only by performance → unilateral contract; performing doesn't convert it to bilateral → (B).

Question 7

Civil Procedure — Full Faith and Credit / Collateral Attack

A minivan driver from State A and a semi-truck driver from State B were involved in a serious collision on a highway in State B. The minivan driver sued the truck driver in State A for negligence, and served the truck driver with the summons and complaint via first-class mail. Although the truck driver received the documents, he failed to respond to them or appear in court. The minivan driver eventually obtained a valid default judgment in state court. State A's requirements for service of process are the same as the requirements under the Federal Rule of Civil Procedure. If the minivan driver seeks to enforce the State A judgment against the truck driver in State B, will the driver be successful?

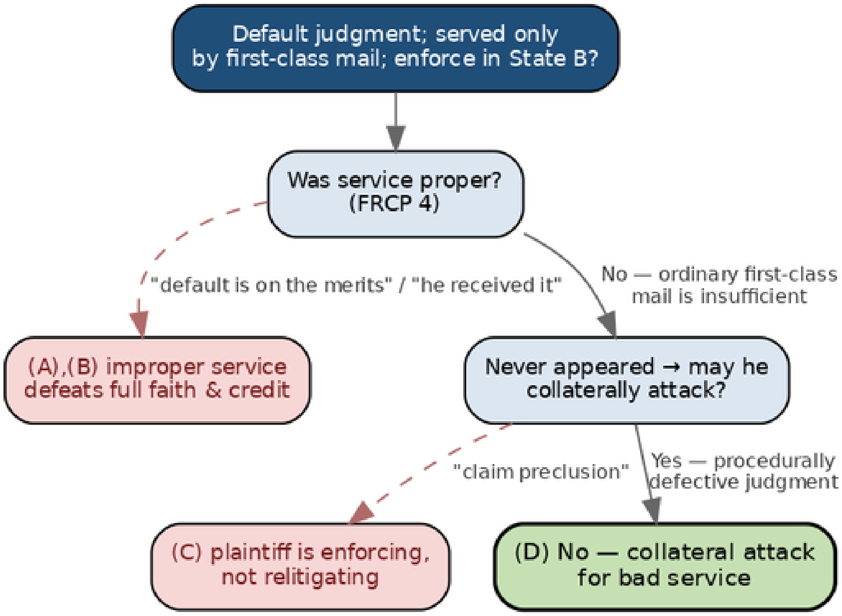
(A) Yes, under the Constitution's Full Faith and Credit Clause, because a default judgment is considered "on the merits."
(B) Yes, under the Constitution's Full Faith and Credit Clause, because the truck driver received the summons and complaint.
(C) No, because claim preclusion precludes the minivan driver from asserting two actions that involve the same parties and the same transaction and occurrence.
(D) No, because the truck driver may collaterally attack the default judgment for insufficient service of process.

> **Correct answer (D).** The truck driver may collaterally attack the default judgment because service by first-class mail was insufficient.

Rule. A sister state's judgment is entitled to full faith and credit only if the rendering court had jurisdiction and the judgment is valid. A defendant who never appeared may collaterally attack a default judgment that is constitutionally or procedurally defective, including for insufficient service of process. Under FRCP 4, service by ordinary first-class mail (without a waiver) is not proper service.

Application. The truck driver was served only by first-class mail and never appeared. Under Rule 4 (which State A follows), that service is insufficient, making the default judgment procedurally defective. He may collaterally attack it in State B, defeating enforcement, so (D) is correct.

Why the other choices fail. (A) is wrong because, although a default is a judgment 'on the merits,' improper service defeats full faith and credit. (B) is wrong because actual receipt of the papers does not substitute for proper service. (C) is wrong because the plaintiff is enforcing the judgment, not relitigating, so claim preclusion is not the obstacle.



Decision path

Attack Sequence: Civ Pro attack sequence, §7 Preclusion / enforcement of judgments — note: full-faith-and-credit and service defects aren't broken out as their own steps, so this leans on first principles.

Playbook: Civ Pro playbook, PERSONAL JURISDICTION (service) — the collateral-attack rule isn't spelled out, so flag it.

How it lands: Gap to flag: neither playbook has a full-faith-and-credit / collateral-attack step. The rule: a defendant who never appeared may collaterally attack a default judgment that is procedurally defective. First-class-mail service fails FRCP 4, so the judgment can't be enforced → (D). Worth adding to your materials.

Question 8

Torts — Lateral Support

A zoologist decided to install an artificial koi pond in his backyard. He asked his neighbor, a landscaper, for advice on doing the installation himself. After the zoologist dug a trench for the drainpipe, the neighbor complained that her garage, located only 20 feet from the trench, had developed numerous cracks in the foundation and walls. What is the zoologist's best defense to an action by the neighbor for the damage to her garage?

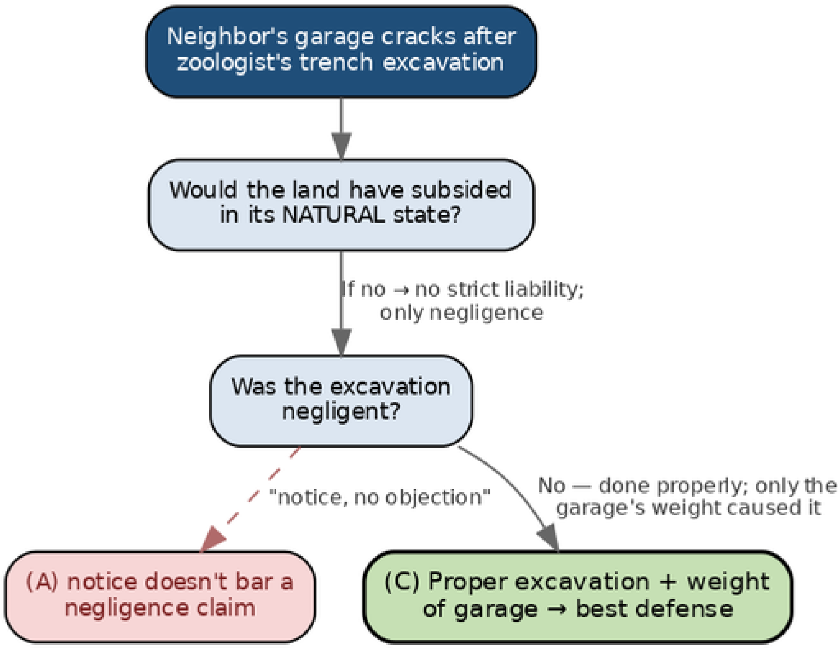
(A) The zoologist gave notice to the neighbor of his intention to excavate and she made no objection.
(B) A professional would have excavated in the same manner.
(C) The zoologist's excavation was done in a proper manner, and there would have been no subsidence except for the fact that the garage was there.
(D) The garage was made of solid concrete and thus was unusually heavy.

> **Correct answer (C).** The zoologist's best defense is that his excavation was proper and only the weight of the garage caused the subsidence.

Rule. An owner is entitled to have land supported in its natural state by adjoining land. Where land is improved with a building, the excavating neighbor is strictly liable for damage to the building only if the land would have subsided even in its natural (unimproved) state. If the land would not have collapsed but for the building's weight, the excavator is liable only for negligent excavation.

Application. If the neighbor's land would not have subsided but for the garage's weight, the zoologist is not strictly liable and is liable only if he excavated negligently. (C) both denies negligence and points to the building's weight as the cause, so it is his best defense.

Why the other choices fail. (A) is wrong because notice and lack of objection do not bar a negligence claim. (B) addresses only the negligence element and ignores that the building's weight caused the damage, so it is less complete than (C). (D) is weaker because even an unusually heavy garage doesn't help if he excavated negligently.



Decision path

Attack Sequence: No sheet has a lateral-support sub-topic — a genuine gap. Nearest is the Torts attack sequence's strict-liability/negligence framing.

Playbook: Torts playbook — lateral/subjacent support isn't covered; flag it.

How it lands: Flag: lateral support isn't in either guide. The rule: strict liability for excavation only if the land would have subsided in its natural (unimproved) state; otherwise liability requires negligent excavation. Here the garage's weight caused it and the work was proper → (C). Candidate to add to your Property/Torts playbook.

Question 9

Contracts — Minor Breach / Substantial Performance

A car owner was having problems with her car's brakes. The brake shop to which she brought her car told her that the entire hydraulic brake system needed to be replaced at a cost of $1,800. The car owner agreed to have the work performed, and the shop replaced the brake system. When the car owner picked up the car, she insisted on testing the brakes before paying for the work. During a test drive, the brakes squeaked when compressed but otherwise worked perfectly. The mechanic told the car owner that the squeak would disappear on its own in a few days. The car owner stated that she would pay the shop when the squeak disappeared and left with her car. A month later, the brakes still squeaked and the car owner refused to pay for the work. The shop files suit to collect the $1,800 contract price. The court should find that:

(A) The car owner must pay the shop the $1,800 because she got the substantial benefit of her bargain.

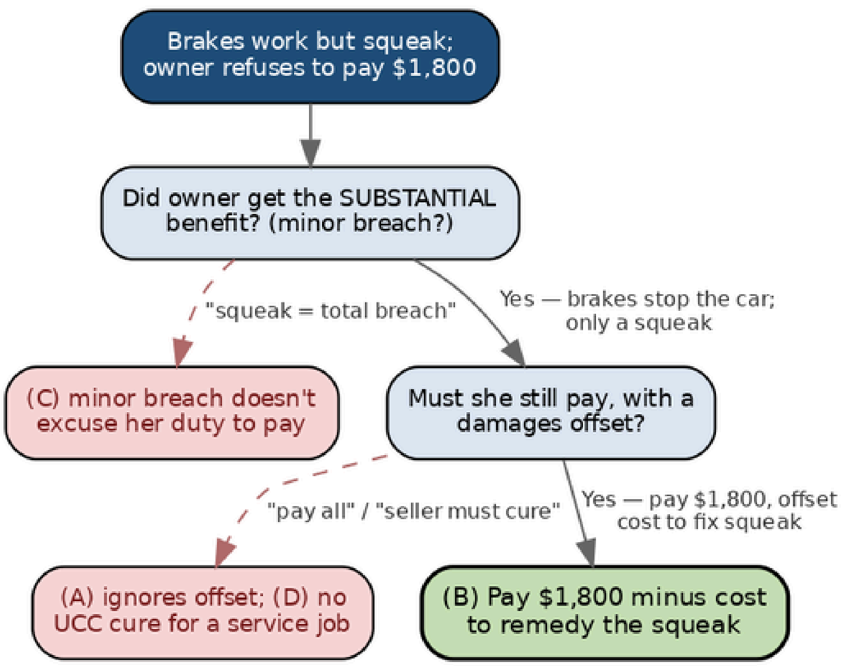
(B) The car owner must pay the shop the $1,800, but she would be entitled to set off the amount it would take to fix the squeak.
(C) The car owner does not have to pay the shop anything, because the squeak amounted to a breach of contract that relieved the car owner of her duty to perform.
(D) The shop must "cure" by providing the car owner with a new set of brakes that do not squeak, after which the car owner must pay the shop the $1,800.

> **Correct answer (B).** The squeak was a minor breach, so the owner must pay the $1,800 but may offset the cost of fixing it.

Rule. A breach is minor when the nonbreaching party still receives the substantial benefit of the bargain despite the defective performance. A minor breach does not excuse the other party's duty to perform; she must still pay, but may recover (or offset) damages to remedy the defect.

Application. The brakes worked and stopped the car; only a cosmetic squeak remained. That is a minor breach, so the owner got the substantial benefit of her bargain and must pay the $1,800, less the cost to remedy the squeak. (B) captures both halves of the rule.

Why the other choices fail. (A) is incomplete because it ignores her right to offset the repair cost. (C) is wrong because a minor breach does not relieve her of the duty to pay. (D) is wrong because a seller's UCC right to cure doesn't apply to a service contract, and in any event she accepted the car knowing of the squeak, so cure would be untimely.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance, Breach & Excuse, steps 1–2 (constructive conditions; material vs. minor breach → substantial performance).

Playbook: Contracts playbook, PERFORMANCE & BREACH.

How it lands: §5 steps 1–2: a minor breach (substantial performance) doesn't excuse the other side; she still owes the price but may offset damages for the defect. Working brakes + a squeak = minor breach → pay $1,800 minus the fix → (B).

Question 10

Torts — Strict Products Liability / Unforeseeable Misuse

The owner of a gardening service looking to purchase a lawnmower for his business asked a retailer if he would install a lightweight blade on a particular lawnmower that he liked, but which had a heavy duty blade on it designed for cutting thick weeds. The retailer agreed and installed a lightweight blade designed for lawn cutting, but the blade was not designed to be used on that style of lawnmower. Two weeks later, while a worker for the gardening service was using the lawnmower to cut through a patch of heavy weeds, the blade broke and a piece of it flew off the lawnmower and severely cut the worker's leg. Assume that the jurisdiction follows traditional contributory negligence rules. If the worker asserts a claim based on strict liability in tort against the lightweight blade's manufacturer, the strongest defense is:

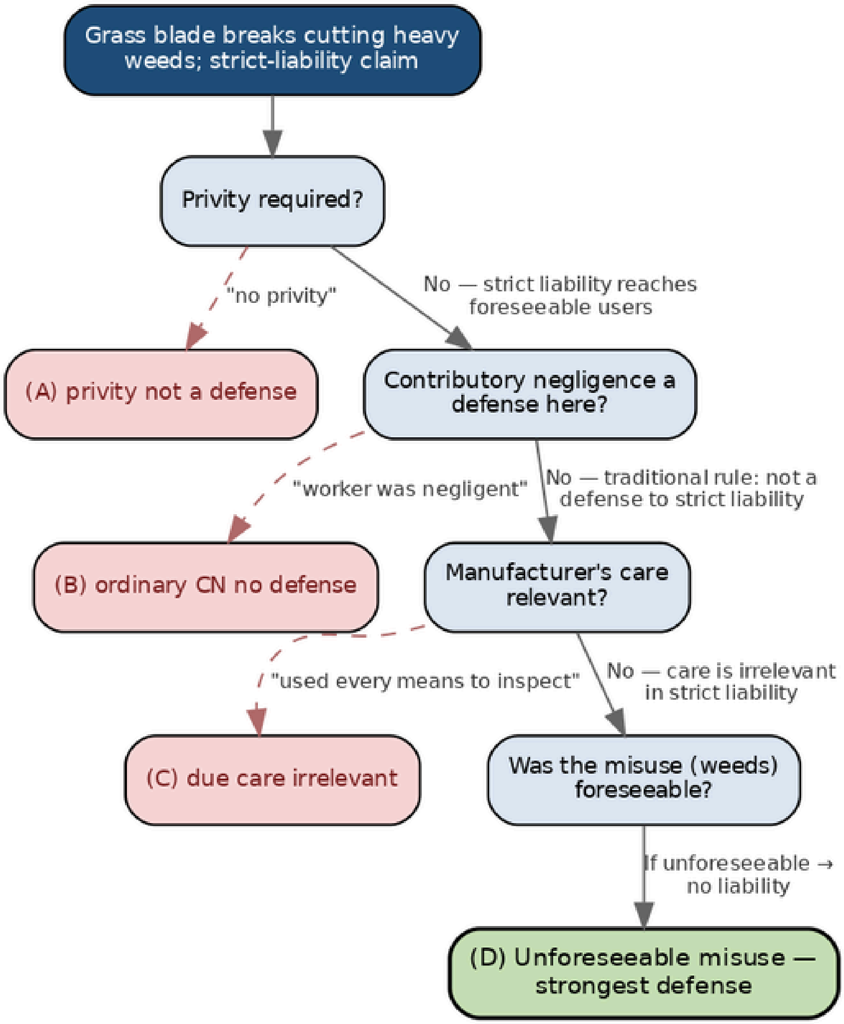
(A) The worker was not in privity of contract with the blade manufacturer.
(B) The worker was contributorily negligent in using the lightweight blade to cut heavy weeds.
(C) The blade manufacturer used every available means to inspect and discover defects in the blade.
(D) The blade manufacturer could not foresee that the grass blade might be used on heavy weeds.

> **Correct answer (D).** The manufacturer's strongest defense is that using a grass blade on heavy weeds was an unforeseeable misuse.

Rule. A commercial supplier is strictly liable for a defective, unreasonably dangerous product, and must anticipate reasonably foreseeable uses and misuses. But there is no liability where the injury results from an unintended and unforeseeable misuse of the product.

Application. A lightweight blade designed for grass, used to cut heavy weeds, may be an unforeseeable misuse. If so, the manufacturer is not liable. Among the choices, unforeseeable misuse is the only real defense to the strict-liability claim, so (D) is strongest.

Why the other choices fail. (A) is wrong because strict liability reaches foreseeable users regardless of privity. (B) is wrong because in a traditional contributory-negligence jurisdiction, ordinary contributory negligence (including foreseeable misuse) is not a defense to strict products liability. (C) is wrong because the care the manufacturer used is irrelevant in strict liability; supplying the defective product is enough.



Decision path

Attack Sequence: Torts attack sequence, §6 Strict Liability & Products, step 5 (defenses: misuse that is unforeseeable).

Playbook: Torts playbook, PRODUCTS LIABILITY (defenses).

How it lands: §6 step 5: foreseeable misuse is covered, but an unforeseeable misuse is a defense. Running a grass blade through heavy weeds may be unforeseeable — the only real defense among the choices → (D). (Privity, contributory negligence, and due care are all non-defenses in strict liability.)

Question 11

Real Property — Devices to Preserve Residential Character

In compliance with all applicable laws, and after receiving all necessary permits, a developer constructed a new housing development consisting of 100 single-family residences. The developer wants to ensure that the housing development retains its residential character. Which of the following methods, assuming it would be enforceable by a court, should the developer use to achieve her goal?

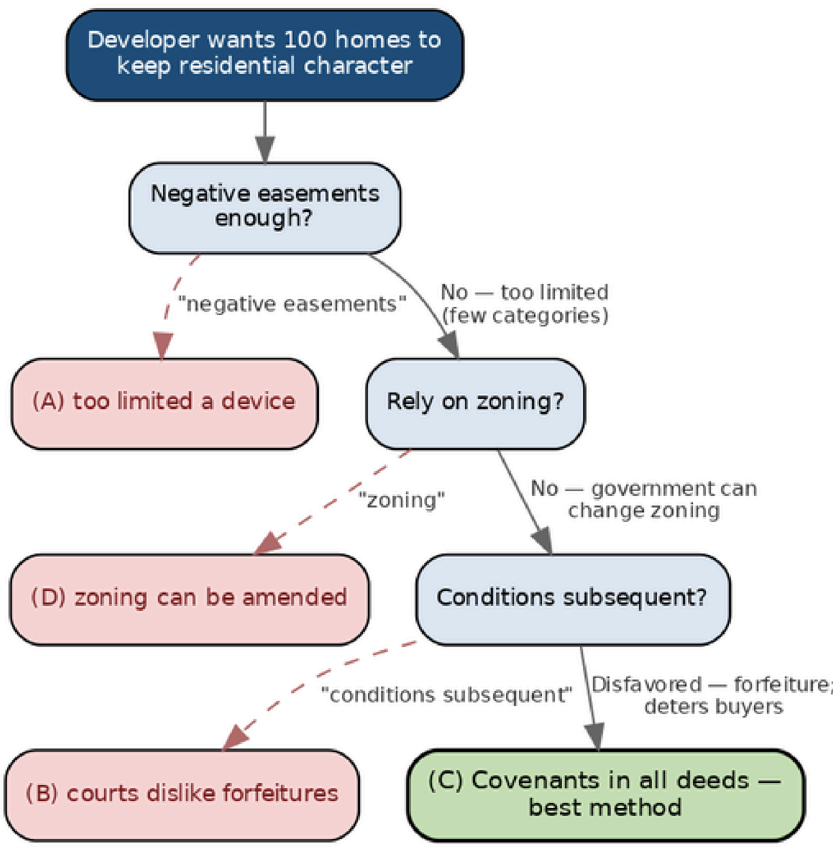
(A) All deeds should contain negative easements.
(B) All deeds should be subject to conditions subsequent.
(C) All deeds should include covenants.
(D) All lots should conform to the applicable zoning laws.

> **Correct answer (C).** Covenants in all the deeds are the best method to keep the development residential.

Rule. To bind all lots to a common use restriction that neighbors can enforce against one another, covenants (real covenants / equitable servitudes) in every deed are the standard, reliable device. Negative easements are limited to a few recognized categories (light, air, support, water); conditions subsequent risk forfeiture and deter buyers; zoning can be changed by the government.

Application. By process of elimination, covenants in all deeds best ensure the development retains its residential character and are mutually enforceable among owners. (C) is the best method.

Why the other choices fail. (A) is wrong because negative easements are too limited in scope to achieve a general residential restriction. (B) is disfavored because courts are reluctant to enforce forfeitures and buyers resist conditions subsequent. (D) is wrong because a governmental body can amend the zoning, so it doesn't guarantee the character.



Decision path

Attack Sequence: Real Property attack sequence, §4 Easements, Covenants & Servitudes (choosing the device) — plus §1 (defeasible fees) to see why conditions subsequent are disfavored.

Playbook: Real Property playbook, COVENANTS & SERVITUDES.

How it lands: §4: covenants/equitable servitudes are the standard device for a mutually enforceable use restriction. By elimination — negative easements too limited, zoning changeable, conditions subsequent risk forfeiture — covenants in all deeds is best → (C).

Question 12

Evidence — Present Recollection Refreshed

While driving east on a two-lane highway, a pickup truck collided with a westbound motorcycle. The accident was observed by a cab driver. Because the cab driver had a passenger, she did not stay at the scene of the accident but made some notes shortly thereafter. She made her statement to the police the next day, in which she stated that just before the accident, the pickup swerved into the westbound lane, hitting the motorcycle. At the trial of the motorcyclist's personal injury action against the truck driver, the cab driver was having difficulty remembering some of the facts. The motorcyclist's attorney sought to let her review the notes she had made. The court should rule this:

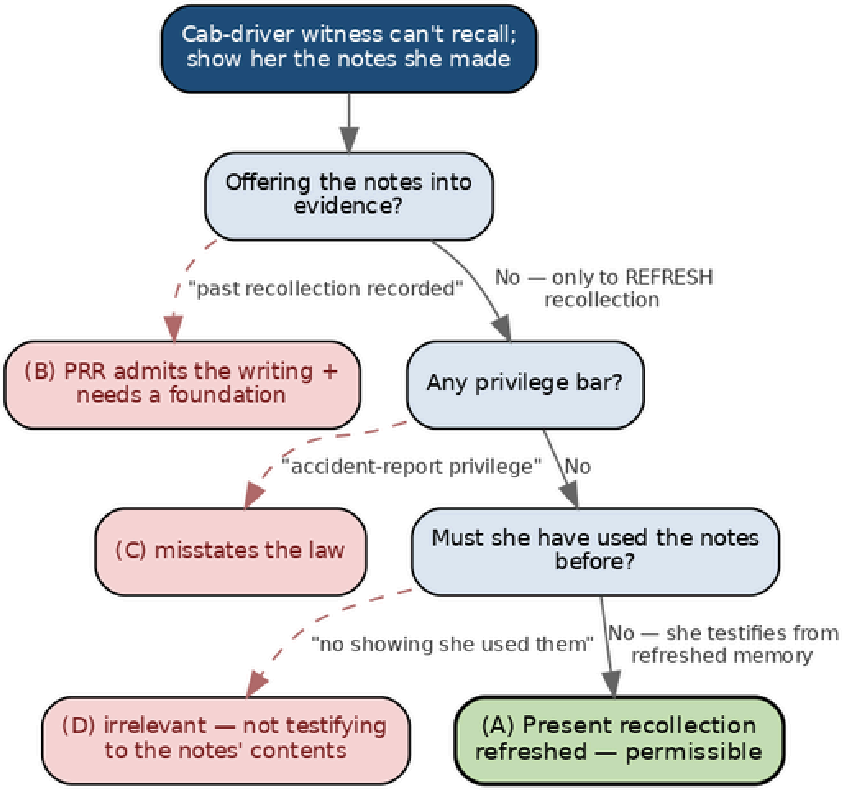
(A) Permissible, because it is a present recollection refreshed.
(B) Permissible, because it is a past recollection recorded.
(C) Impermissible, because the cab driver is required to report all accidents to her employer, and the record is thus privileged.
(D) Impermissible, because there is no showing that the cab driver had used her notes when she gave her statement to the police officer.

> **Correct answer (A).** The witness may review her notes to refresh her present recollection.

Rule. Under present recollection refreshed, a witness whose memory is incomplete may be shown any item — including her own notes — to jog her memory. The writing is not evidence; after refreshing, she testifies from present recollection. This differs from past recollection recorded, which admits the contents of a writing and requires a foundation.

Application. The cab driver couldn't remember some facts, so showing her the notes she made to refresh her memory is proper. She will then testify from renewed recollection. (A) is correct.

Why the other choices fail. (B) is wrong because past recollection recorded governs admitting the writing's contents and requires a foundation not at issue here. (C) misstates the law and makes no sense on these facts. (D) is wrong because she is testifying from refreshed memory, not to the contents of any prior statement, so it doesn't matter whether she used the notes before.



Decision path

Attack Sequence: Evidence attack sequence, §4 Exceptions distinguishes recorded recollection; this is present-recollection-refreshed (a technique, not an exhibit).

Playbook: Evidence playbook, EXCEPTIONS (Recorded recollection — contrast with refreshing).

How it lands: Distinguish the two: past recollection recorded admits a writing and needs a foundation; here the notes only refresh memory and aren't offered, so she may look and then testify from present recollection → (A).

Question 13

Criminal Law — Involuntary Manslaughter / Criminal Negligence

A woman had a history of epileptic seizures which came without warning over the last five years. One day, as she was driving to town, she had a seizure. She lost control of her car and struck a pedestrian who was lawfully crossing the street. The pedestrian died immediately thereafter as a result of his injuries. The woman is charged with involuntary manslaughter in a jurisdiction that follows common law principles. She will most likely be found:

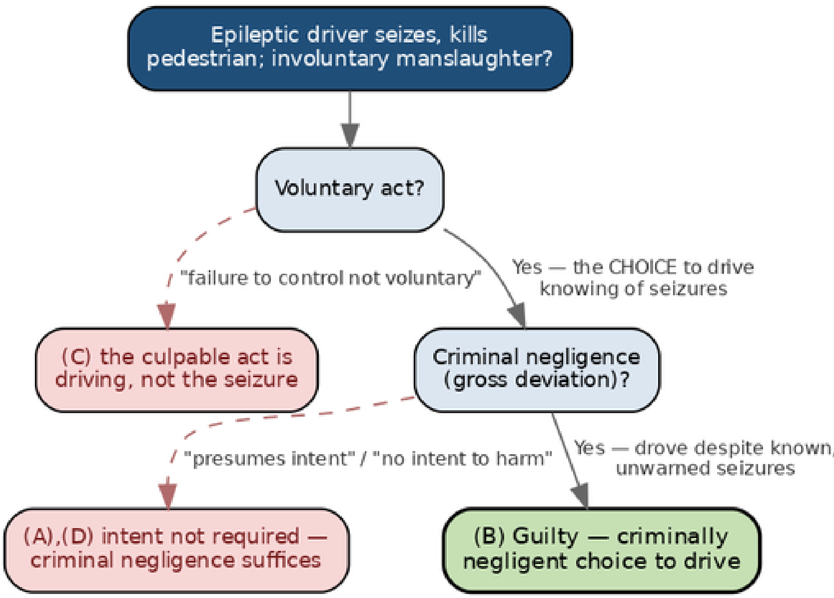
(A) Guilty, because the law presumes that a person intends the natural and probable consequences of her acts.
(B) Guilty, because she knowingly and negligently chose to drive her car.
(C) Not guilty, because her failure to control the car was not a voluntary act.
(D) Not guilty, because she had no intent to harm anyone.

> **Correct answer (B).** Choosing to drive despite knowing she could seize without warning is criminal negligence supporting involuntary manslaughter.

Rule. Common law involuntary manslaughter is an unintentional killing by criminal negligence or during an unlawful (non-felony) act. Criminal negligence is a gross deviation from the reasonable-person standard; some jurisdictions require subjective awareness of the risk. The relevant voluntary act is the decision to drive, not the seizure itself.

Application. The woman knew she had suffered unwarned seizures for five years, yet chose to drive. That choice was a voluntary act and a gross deviation from reasonable care, i.e., criminal negligence, supporting involuntary manslaughter. (B) is correct.

Why the other choices fail. (A) is wrong because a presumption of intending natural consequences doesn't relieve the state of proving criminal negligence, the actual mens rea. (C) is wrong because the culpable voluntary act was choosing to drive, not the involuntary loss of control. (D) is wrong because involuntary manslaughter needs only criminal negligence, not intent to harm.



Decision path

Attack Sequence: Crim attack sequence, §1 Homicide, step 4 (involuntary manslaughter: criminal negligence).

Playbook: Crim playbook, HOMICIDE (Involuntary manslaughter: criminally negligent killing).

How it lands: §1 step 4: involuntary manslaughter needs criminal negligence — a gross deviation from reasonable care. Driving despite known, unwarned seizures is that gross deviation (the voluntary act is choosing to drive) → (B).

Question 14

Contracts — Accord and Satisfaction

A homeowner contracted with a local heating company to install two baseboard heaters in an addition to his home for a total cost of $3,500. This figure included the heaters and labor costs for installation. Upon completion of the installation, the heating company sent an invoice to the homeowner for the $3,500. The homeowner did not immediately pay the bill because the heaters were too noisy. The heating company sent a repair worker to the home to service the heaters, but after several attempts to fix the problem, the heaters were still too loud. The homeowner contacted a qualified repairman to find out how to fix the problem and was told it would cost an additional $300 for new blowers and $150 in labor costs to replace the faulty blowers. The homeowner mailed the heating company a copy of the repair estimate and a check for $3,050 (the contract price less the cost of new blowers and labor to install them) and wrote prominently on the check "Payment in full for installation of two baseboard heaters." The heating company cashed the check upon receipt. The heating company then sued the homeowner for $450, the difference between the agreed contract price and the amount paid. Will the heating company be successful in recouping the $450 from the homeowner?

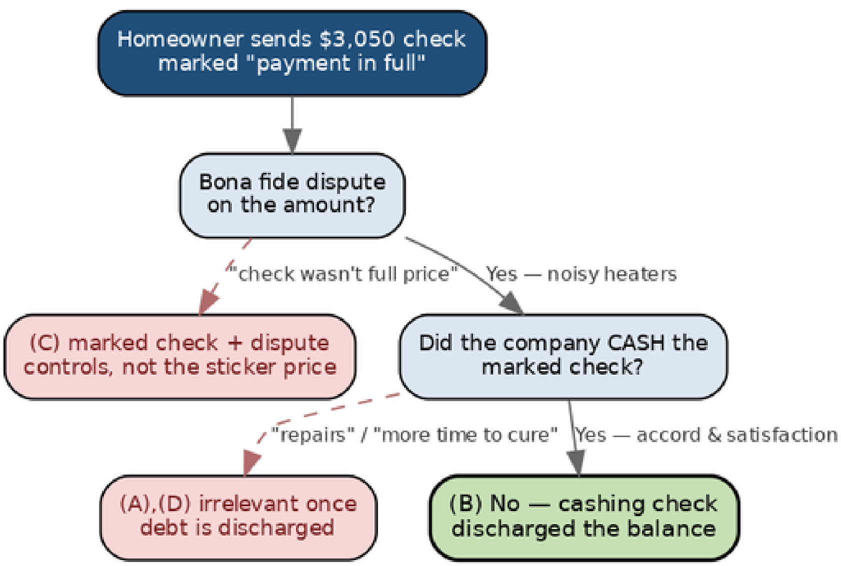
(A) No, because the heating company failed to fix the problem after several attempts.
(B) No, because the heating company cashed the check.
(C) Yes, because the check did not represent payment in full (i.e., the contract price) for the work done.
(D) Yes, because the heating company should have been given more time to cure the defect.

> **Correct answer (B).** Cashing the 'payment in full' check on a disputed debt discharged the balance by accord and satisfaction.

Rule. Where a debt is the subject of a bona fide dispute, a debtor's tender of a check conspicuously marked 'payment in full,' cashed by the creditor, operates as an accord and satisfaction that discharges the entire disputed obligation.

Application. The homeowner honestly disputed the amount owed because of the noisy heaters and sent a check marked 'Payment in full,' which the heating company cashed. That created an accord and satisfaction discharging any further duty, so the company cannot recover the $450. (B) is correct.

Why the other choices fail. (C) is wrong because, given the bona fide dispute, the marked check cashed = full discharge, regardless that it was less than the contract price. (A) and (D) are wrong because it is the accord and satisfaction — not the adequacy of the repairs or any right to more time — that ends the company's claim.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance, Breach & Excuse, step 5 (Excuse: accord and satisfaction).

Playbook: Contracts playbook, PERFORMANCE & BREACH (accord and satisfaction).

How it lands: §5 step 5: a bona fide dispute + a "payment in full" check the creditor cashes = accord and satisfaction, discharging the balance. The company cashed the marked check, so it can't recover the $450 → (B).

Question 15

Constitutional Law — Congressional Power to Investigate

Congress passed a law mandating standards for hybrid automobiles in an effort to encourage more citizens to purchase hybrid cars so as to improve environmental conditions. The same law established a commission, consisting solely of members of Congress, whose purpose was to obtain information from manufacturers of hybrid automobiles regarding the number, type, and costs to the consumer of hybrid automobiles used in the United States and report its findings on an annual basis to Congress. A manufacturer of hybrid cars objects to having to supply the government with any information about its cars and so resists a subpoena for its chief executive officer to testify before the commission. Insofar as Congress's power to investigate is concerned, the general rule is that:

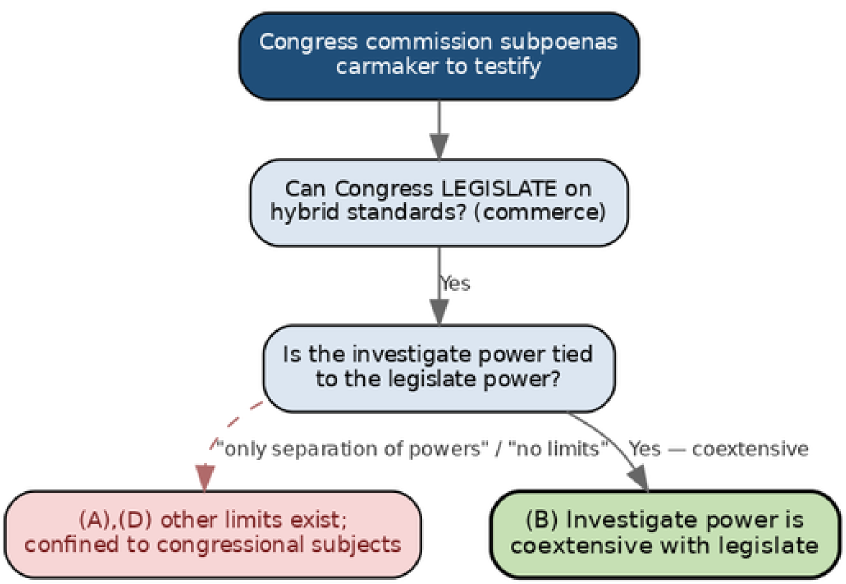
(A) The power of Congress is limited only by the concept of separation of powers.
(B) Congress's power to investigate is coextensive with its power to legislate.
(C) Congress's power to investigate is limited to the appointment of its own members to make such investigations.
(D) There are no limitations upon Congressional powers of investigation as to the domestic economy.

> **Correct answer (B).** Congress's investigatory power is coextensive with its power to legislate.

Rule. Congress has broad implied power to investigate in aid of its legislative function; the power to investigate is coextensive with the power to legislate under Article I. It is bounded by the scope of Congress's legislative jurisdiction and by individual constitutional rights.

Application. Because Congress can legislate on hybrid-automobile standards affecting interstate commerce, it may investigate to inform that legislation, including compelling relevant testimony. The general rule is stated by (B).

Why the other choices fail. (A) is wrong because separation of powers is not the only limit; the investigation must relate to a subject on which Congress can legislate, and individual rights also apply. (D) is too sweeping — investigation is confined to matters within congressional jurisdiction. (C) is simply wrong; investigative committees are not limited to appointing their own members, and members may even be drawn from other branches so long as separation-of-powers limits are respected.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism (implied powers in aid of legislation).

Playbook: Con Law playbook, CONGRESSIONAL POWER.

How it lands: §2: Congress's implied powers include investigating in aid of its legislative function — the investigate power is coextensive with the legislate power, bounded by congressional subjects and individual rights → (B).

Question 16

Evidence — Nonhearsay / Effect on the Listener

The plaintiff sued the defendant for battery. The defendant claimed that he was attacked for no reason by the plaintiff and that he hit the plaintiff with a pipe in self-defense. A witness was called to testify that on the day in question she heard the defendant and his roommate talking outside their apartment. The witness testified that the roommate told the defendant that the plaintiff had been flirting with the defendant's girlfriend, and that the defendant seemed very angry. The defendant's attorney objected to this testimony. The court should find the evidence:

(A) Admissible, to show provocation for the battery.
(B) Admissible, as a legally operative fact.
(C) Inadmissible, because it is hearsay.
(D) Inadmissible, because it is an opinion.

> **Correct answer (A).** The roommate's statement is admissible to show its effect on the defendant (provocation/state of mind), not for its truth.

Rule. A statement offered not to prove the truth of the matter asserted but to show its effect on the listener is not hearsay. Such evidence can show the listener's resulting state of mind (e.g., anger, motive, or a basis for self-defense analysis).

Application. The roommate's remark that the plaintiff had been flirting is offered to show it angered the defendant, bearing on provocation and who struck first, not to prove the flirting actually happened. Offered for effect on the listener, it isn't hearsay and is admissible to show provocation. (A) is correct.

Why the other choices fail. (C) is wrong because the statement is not offered for its truth, so it is not hearsay. (B) is wrong because legally-operative-fact (verbal act) treatment applies when the words themselves have legal effect (contract, defamation), which is not the case here. (D) is wrong because the witness's observation that the defendant appeared angry is proper lay opinion based on perception.

Decision path

Attack Sequence: Evidence attack sequence, §2 Hearsay: The Core Attack, step 4 (non-hearsay purpose — effect on the listener).

Playbook: Evidence playbook, HEARSAY – FRAMEWORK (non-hearsay: effect on listener / state of mind).

How it lands: §2 step 4: offered not for truth but for effect on the listener (it angered the defendant, bearing on provocation) → not hearsay → (A). ("Legally operative words" is a different non-hearsay category, for contract/ defamation words.)

Question 17

Civil Procedure — Where to File a Notice of Removal

A State A citizen filed a civil action against a State B citizen in a State B state court. The action arose from events that took place in State C. State C has only one federal district court (the District of State C). State B has two, the Northern District of State B and the Southern District of State B. The State B citizen resides in the Southern District of State B, while the state court action filed by the State A citizen is pending in a court located in the Northern District of State B. If the State B citizen wishes to remove the action to federal district court, in which federal district should the State B citizen file a notice of removal?

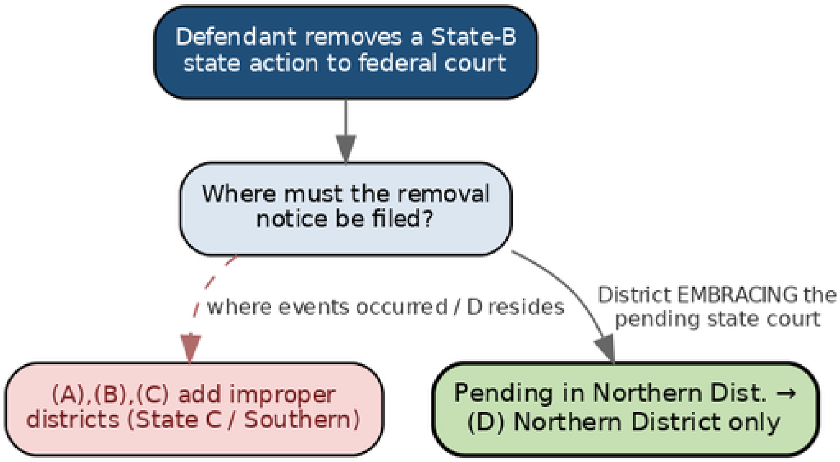
(A) Either the Southern District of State B, the Northern District of State B, or the District of State C.
(B) Either the Southern District of State B or the District of State C.
(C) Either the Southern District of State B or the Northern District of State B.
(D) The Northern District of State B only.

> **Correct answer (D).** Removal goes to the federal district that geographically embraces the state court where the action is pending.

Rule. A defendant removes by filing a notice of removal in the United States district court for the district and division embracing the place where the state action is pending. It is not filed where the events occurred or where the defendant resides.

Application. The state action is pending in a court within the Northern District of State B, so the notice of removal must be filed in the Northern District of State B, and only there. (D) is correct.

Why the other choices fail. (A), (B), and (C) all add improper options — the district where the events occurred (State C) or the district where the defendant resides (Southern District) — none of which is the district embracing the pending state court.



Decision path

Attack Sequence: Civ Pro attack sequence, §2 Supplemental Jurisdiction & Removal, step 4–5 (removal mechanics).

Playbook: Civ Pro playbook, SUBJECT MATTER JURISDICTION (Removal).

How it lands: §2: removal is filed in the federal district embracing the state court where the action is pending — here the Northern District of State B, and only there → (D). Not where the events occurred or where the defendant resides.

Question 18

Real Property — Adverse Possession / Prescriptive Easement

A doctor and a lawyer owned adjoining parcels of land. Ten years ago, the doctor installed a swimming pool on her land. The doctor obtained the lawyer's oral consent to run plumbing from the pool across part of the lawyer's land. Last year, the lawyer sold his land to a buyer. The buyer wants to plant a garden on the land under which the doctor's plumbing runs, and wants to eject the doctor and quiet title. The statute of limitations for ejectment is seven years. With respect to the land under which the plumbing was laid:

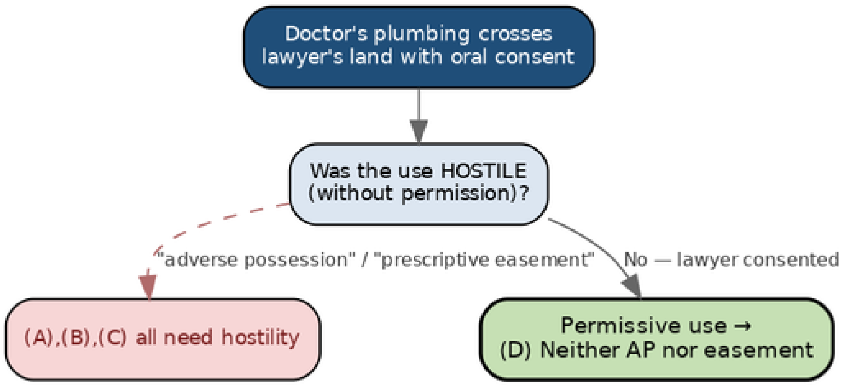
(A) The doctor has acquired title by adverse possession.
(B) The doctor has acquired a prescriptive easement.
(C) The doctor has acquired both title by adverse possession and a prescriptive easement.
(D) The doctor has acquired neither title by adverse possession nor a prescriptive easement.

> **Correct answer (D).** Because the use was permissive, the doctor acquired neither adverse-possession title nor a prescriptive easement.

Rule. Adverse possession requires possession that is actual and exclusive, open and notorious, hostile (without permission), and continuous for the statutory period. A prescriptive easement requires the same elements except exclusivity. Both fail if the use is permissive (with the owner's consent).

Application. The doctor ran the plumbing across the lawyer's land with his oral consent, so her use was permissive, not hostile. Because hostility is missing, she gained neither title by adverse possession nor a prescriptive easement. (D) is correct.

Why the other choices fail. (A), (B), and (C) are all wrong because each requires hostility, which is defeated by the lawyer's consent. The permissive nature of the use is fatal to every adverse theory.



Decision path

Attack Sequence: Real Property attack sequence, §5 Adverse Possession (steps 1–4) + §4 easements (prescriptive) — the hostility element controls.

Playbook: Real Property playbook, (adverse possession / easement creation — prescription).

How it lands: §5: AP and prescriptive easements both require hostile (non-permissive) use. The doctor ran the plumbing with the lawyer's consent, so use was permissive — hostility fails and she gets neither → (D).

Question 19

Contracts — Delegation / Third-Party Beneficiary

A small computer company contracted with a community college to supply computer tech support for all of the college's faculty and staff beginning September 1. Two weeks before the date that performance was to begin, the computer company received a more lucrative offer at a large university. In order to fulfill its contract obligations to the community college, the company delegated its duties under the contract to another computer company for $1,000 above the contract price. The community college agreed to allow the replacement computer company to perform the services, but on September 1, the replacement company refused to perform. If the community college sues the replacement company, what will the result be?

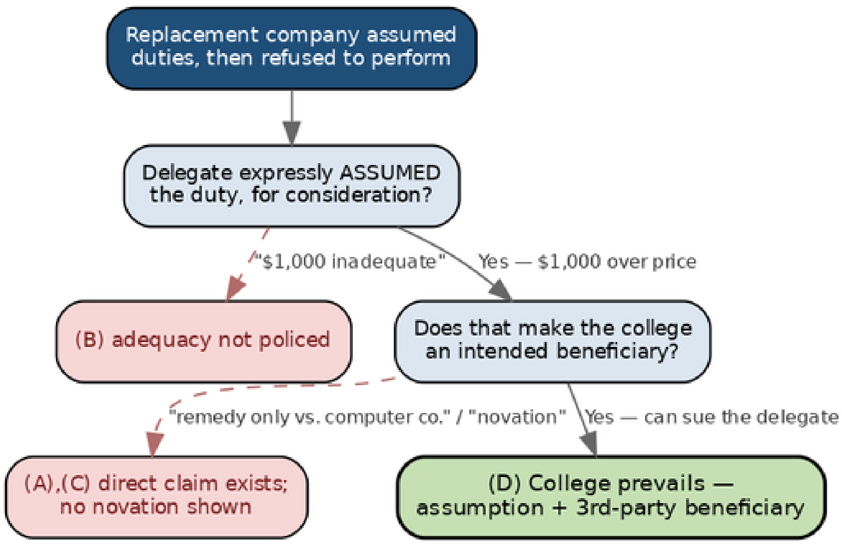
(A) The replacement company will prevail, because the community college's only remedy is against the computer company.
(B) The replacement company will prevail, because $1,000 is grossly inadequate consideration.
(C) The community college will prevail, because there has been a novation.
(D) The community college will prevail, because it is an intended third-party beneficiary of the computer company-replacement company contract, and the replacement company assumed the duty of performance under the contract.

> **Correct answer (D).** The replacement company assumed the delegated duty for consideration, making the college an intended beneficiary who can sue.

Rule. A party may delegate contractual duties. When the delegate expressly assumes the duty and the assumption is supported by consideration, the original obligee becomes an intended third-party beneficiary who can compel performance or sue the delegate for nonperformance.

Application. The computer company delegated its duties to the replacement company, which assumed them for $1,000 above the price. That assumption, supported by consideration, made the community college an intended beneficiary entitled to sue the replacement company for refusing to perform. (D) is correct.

Why the other choices fail. (A) is wrong because assumption of the duty gives the college a direct claim against the delegate. (B) is wrong because courts don't police the adequacy of consideration the parties found satisfactory. (C) is wrong because the facts don't show a novation (no agreement discharging the original company), so the theory is assumption/third-party beneficiary, not novation.



Decision path

Attack Sequence: Contracts attack sequence, §7 Third Parties: Beneficiaries, Assignment, Delegation (delegation + assumption → intended beneficiary).

Playbook: Contracts playbook, THIRD PARTIES / delegation.

How it lands: §7: a delegate who expressly assumes the duty for consideration makes the obligee an intended third-party beneficiary who can sue the delegate. The replacement company assumed for $1,000, so the college may sue it → (D). (No novation — the original company was never released.)

Question 20

Criminal Law — Larceny / Intent to Permanently Deprive

The owner of a garage and one of his mechanics had a dispute over the amount of wages due for work that the mechanic had done on cars. The owner alleged that he paid the mechanic for work that the mechanic did not perform, while the mechanic contended that she did the work. After arguing over the matter for over an hour, the mechanic quit. The owner did not allow the mechanic to take her tools with her, stating that he was keeping her tools until she repaid the money that he had overpaid her. The mechanic met with a friend and discussed the situation with him. After hearing what had happened, the friend, believing that the owner was unlawfully retaining the mechanic's tools, suggested that he could pose as a garage client and retrieve the tools for the mechanic, and the mechanic agreed. The plan succeeded, except for the fact that the friend took tools that belonged to a new employee. The owner immediately realized what had happened, and he gave the friend's license number to the police. The friend was arrested before he could show the tools to the mechanic. Of the following, which is the best argument for the friend as a defense to a charge of larceny in a common law jurisdiction?

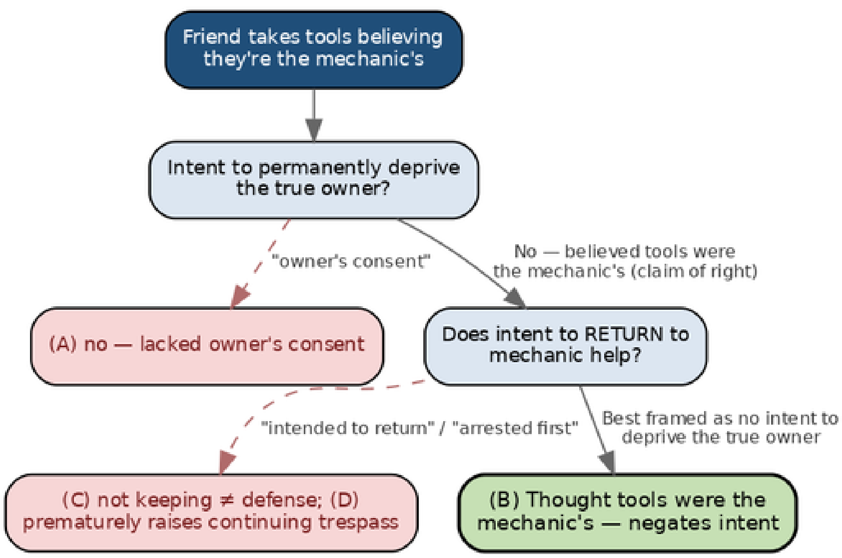
(A) He had the consent of the tools' owner.
(B) He thought the tools belonged to the mechanic.
(C) He intended to return the tools to the mechanic rather than keep them.
(D) He was apprehended by the police before the mechanic could inspect the tools.

> **Correct answer (B).** Believing the tools belonged to the mechanic negates the intent to permanently deprive, defeating larceny.

Rule. Larceny is the trespassory taking and carrying away of another's personal property with intent to permanently deprive, and that intent must generally exist at the time of the taking. A good-faith belief that the property belongs to oneself or to the person one is acting for negates the specific intent (a claim-of-right / mistake defense).

Application. The friend took the tools believing they belonged to the mechanic and intending to restore them to her. Lacking intent to permanently deprive the rightful owner, he has no larcenous intent — so his best argument is that he thought the tools were the mechanic's. (B) is correct.

Why the other choices fail. (A) is wrong because he did not have the actual owner's consent. (C) is wrong because it is no defense that he didn't intend to keep the property for himself; larceny covers depriving the owner even to benefit another. (D) prematurely invokes the continuing-trespass doctrine and doesn't address the intent issue.



Decision path

Attack Sequence: Crim attack sequence, §2 Crimes Against Persons & Property (larceny — intent to permanently deprive) + §4 (mistake/claim of right).

Playbook: Crim playbook, CRIMES AGAINST PERSONS/PROPERTY (Larceny*, * = specific intent).

How it lands: §2: larceny needs intent to permanently deprive the true owner at the time of taking. Believing the tools were the mechanic's negates that intent (claim of right) — his best argument → (B).

Question 21

Constitutional Law — Supremacy Clause / Preemption

A state passes a law allowing terminally ill patients to use marijuana under limited circumstances. Federal law, however, provides that marijuana may not be used under any circumstances. The state sues in federal district court, arguing that marijuana is beneficial for the terminally ill and should be permitted under these circumstances, despite the federal prohibition of marijuana use throughout the United States. The federal district court should rule that:

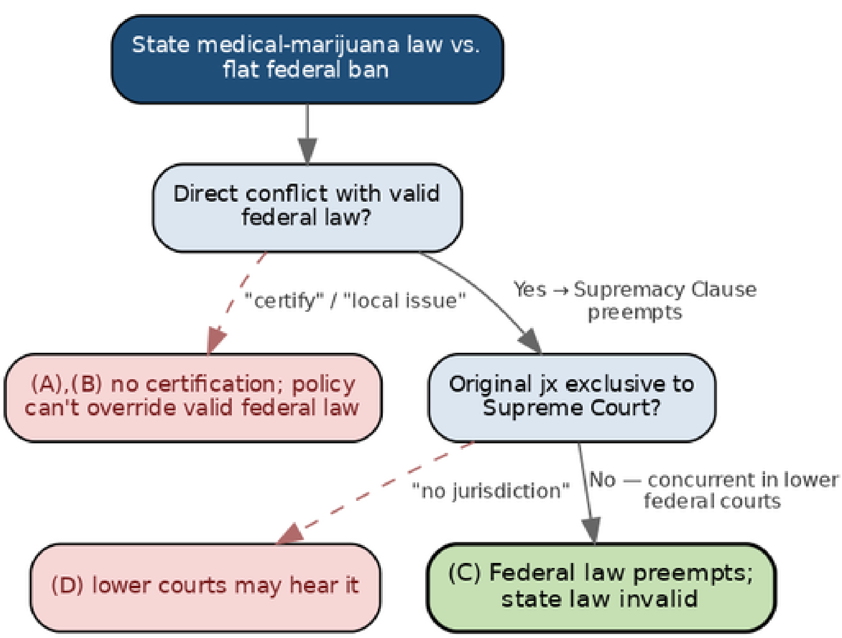
(A) The issue should be certified to the court of appeals immediately because of the importance of the issue.
(B) The issue is a peculiarly local one that is better addressed on a state level, and should enjoin enforcement of the federal law.
(C) The federal statute preempts the state medical marijuana law, and the state law is invalid pursuant to the Supremacy Clause.
(D) The federal court has no jurisdiction to hear the case, because a state is a party and original jurisdiction lies with the United States Supreme Court.

> **Correct answer (C).** The federal prohibition preempts the conflicting state medical-marijuana law under the Supremacy Clause.

Rule. Under the Supremacy Clause, a valid federal law supersedes conflicting state law. Where a state law directly conflicts with a valid federal statute, the state law is invalid. Congress's original-jurisdiction cases involving a state are not exclusive to the Supreme Court; lower federal courts have concurrent jurisdiction except in suits between states.

Application. The state law permits what federal law flatly forbids, a direct conflict. The federal statute preempts, and the state law is invalid. (C) is correct.

Why the other choices fail. (A) is wrong because nothing supports immediate certification. (B) states a policy preference the court can't indulge in the face of valid preemptive federal law. (D) is wrong because the Supreme Court's original jurisdiction over cases in which a state is a party is not exclusive here; a lower federal court may hear this United-States-versus-state dispute.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism, step 5 (Supremacy: valid federal law preempts conflicting state law).

Playbook: Con Law playbook, FEDERALISM / CONGRESSIONAL POWER (Supremacy).

How it lands: §2 step 5: a direct conflict between valid federal law (total ban) and state law (limited use) means the Supremacy Clause preempts and the state law is invalid → (C). (Lower federal courts share original jurisdiction here, so no jurisdiction bar.)

Question 22

Torts — Assault

A woman aboard an airplane informed a flight attendant that she had witnessed another passenger stealing several small bottles of alcohol from a serving cart. The flight attendant alerted the airline's private on-board security guard, dressed in plain clothes, who approached the passenger, displayed his gun, and demanded that the passenger step into a service area for further questioning. The accused passenger quickly complied. On further investigation, it was determined that the woman was mistaken, and what she had actually witnessed was another flight attendant from a different section of the plane getting more supplies for a serving cart. If the passenger sues the airline on the theory of assault, he likely will:

(A) Prevail, because the guard displayed his gun.

(B) Prevail, because the airline's belief that he was stealing was unreasonable.

(C) Not prevail, because he suffered no injury.

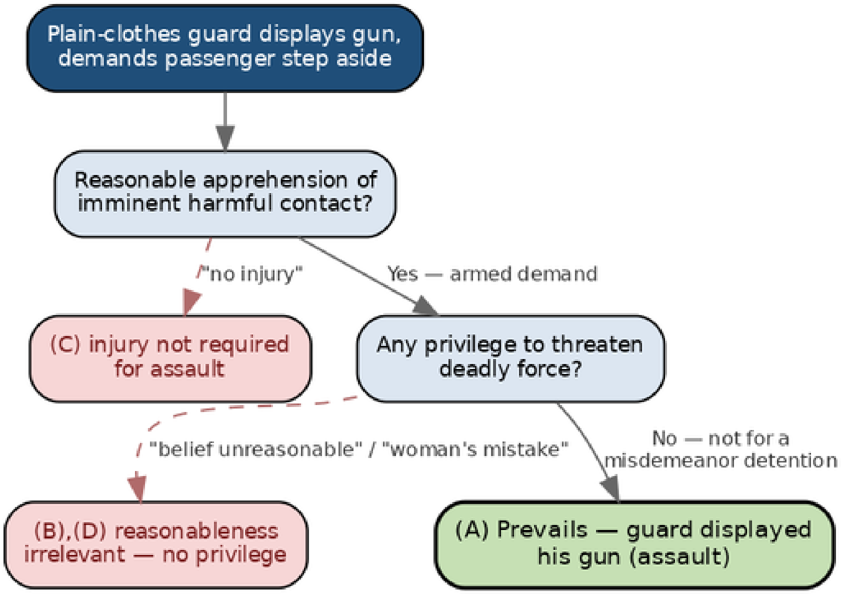
(D) Not prevail, because the airline is not responsible for the woman's unreasonable mistake.

> **Correct answer (A).** The guard's display of a gun with a demand created a reasonable apprehension of imminent harm, so the airline is liable.

Rule. Assault is an act creating a reasonable apprehension of imminent harmful or offensive contact, with intent and causation; no actual injury is required. A conditional threat backed by present ability (an armed demand) qualifies. An employer is vicariously liable for an employee's intentional tort committed within the scope of employment, even if the force used is excessive; the threat of deadly force is not privileged for a misdemeanor detention.

Application. The plain-clothes guard displayed his gun and demanded the passenger accompany him, creating a reasonable apprehension of imminent harm. That is assault, and the airline is vicariously liable. (A) is correct.

Why the other choices fail. (B) and (D) are wrong because the reasonableness of anyone's belief is irrelevant — no privilege permits threatening deadly force here. (C) is wrong because actual injury is not required for assault; nominal (and possibly punitive) damages are available.



Decision path

Attack Sequence: Torts attack sequence, §1 Intentional Torts, step 2 (assault) + §7 vicarious liability (employer for employee's scope-of-employment tort).

Playbook: Torts playbook, INTENTIONAL TORTS (Assault) + vicarious liability.

How it lands: §1 step 2: an armed demand creates a reasonable apprehension of imminent harm = assault (no injury required). §7: the airline is vicariously liable for its guard's intentional tort within the scope of employment → (A).

Question 23

Criminal Law — Conspiracy / Feigned Agreement

A man was approached by his cousin, who planned to rob a bank, to act as the escape driver. The man pretended to agree, and he planned to report his cousin to the police before the crime was committed. On the day appointed for the crime, the man picked up his cousin and drove him to the bank, and they stopped at a convenience store on the way. He left the car running with his cousin inside and from the store he called the police to warn that a bank robbery was about to occur. The police officer answering the phone thought it was a prank call and hung up. After another unsuccessful attempt the man went back to the car to talk his cousin out of the bank robbery, but he found the car missing. The cousin had grown nervous after a few minutes, driven to the bank, and robbed it at gunpoint. He fled the scene, but was apprehended soon thereafter. If the man is charged with conspiracy, the trial court is most likely to find him:

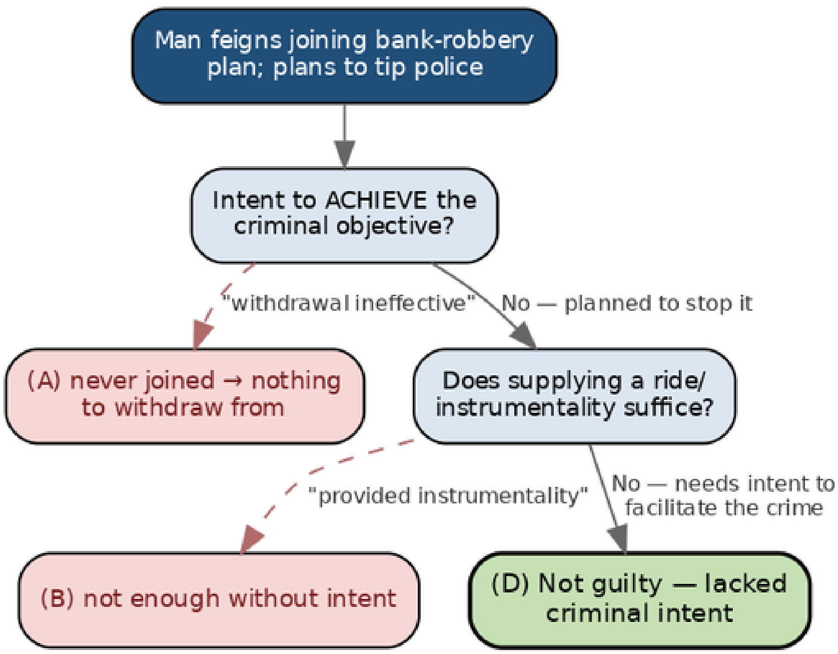
(A) Guilty, because his withdrawal was ineffective because it was not communicated to his cousin in time for him to change his plans.
(B) Guilty, because he provided his cousin with an instrumentality of the crime.
(C) Not guilty, because the man withdrew from any conspiracy.
(D) Not guilty, because the man lacked criminal intent.

> **Correct answer (D).** The man never intended to achieve the crime, so he lacked the intent required for conspiracy.

Rule. Conspiracy requires (1) an agreement, (2) intent to agree, and (3) intent to achieve the unlawful objective — a specific-intent crime. Someone who only feigns agreement, intending to thwart the crime, lacks the intent to achieve the objective and is not a conspirator.

Application. The man pretended to go along but planned to alert the police and intended to stop the robbery; he never intended to achieve the bank robbery. Lacking that intent, he is not guilty of conspiracy. (D) is correct.

Why the other choices fail. (A) is wrong because withdrawal is beside the point — he never joined a conspiracy, having lacked the intent. (B) is wrong because merely supplying an instrumentality, without intent to facilitate the crime, isn't enough. (C) reaches the right result by the wrong route; even setting aside withdrawal, the reason he's not guilty is lack of intent, and withdrawal isn't a defense to the conspiracy charge itself anyway.



Decision path

Attack Sequence: Crim attack sequence, §3 Inchoate Crimes & Accomplice, step 3 (Conspiracy: intent to achieve the objective).

Playbook: Crim playbook, INCHOATE & ACCOMPLICE (conspiracy — specific intent).

How it lands: §3 step 3: conspiracy is specific intent — it requires intent to achieve the criminal objective. The man feigned agreement and intended to stop the robbery, so he lacked that intent and never joined (withdrawal is beside the point) → (D).

Question 24

Contracts — Reformation for Mutual Mistake

A landowner orally agreed to sell 100 acres of land to a buyer for $10,000. As a condition of the sale, the buyer agreed to pay $5,000 of the purchase price to the landowner's creditor. The buyer's attorney drafted the contract, which both the landowner and the buyer read before signing. The signed document made no reference to the payment to the landowner's creditor, and neither party noticed the oversight. Which of the following would be most important for deciding the creditor's action against the buyer for $5,000?

(A) The buyer was negligent in not having carefully read the written agreement.

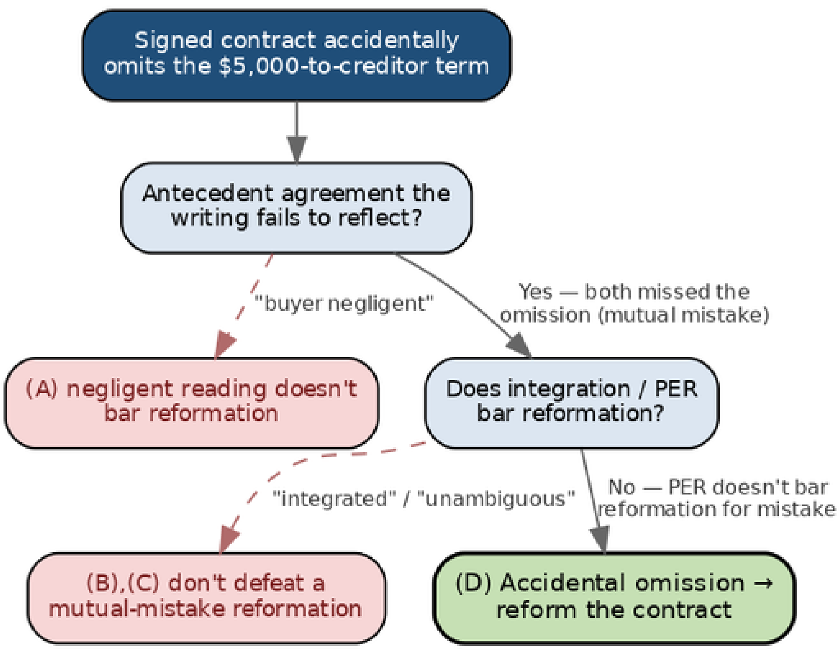
(B) The landowner-buyer agreement was completely integrated.
(C) The terms of the signed document are unambiguous.
(D) The omission of any reference to the creditor from the written document was accidental and, therefore, the contract may be reformed.

> **Correct answer (D).** The accidental omission the parties both missed is a mutual mistake permitting reformation to reflect the true agreement.

Rule. Reformation is available where there was an antecedent agreement that, due to mutual mistake, the writing fails to reflect. The parol evidence rule does not bar evidence offered to obtain reformation, because the claim is that the writing itself is wrong.

Application. The parties agreed the buyer would pay $5,000 to the landowner's creditor, but the drafted contract accidentally omitted it and neither party noticed — a mutual mistake. That the omission was accidental is most important, because it supports reforming the contract to include the creditor term. (D) is correct.

Why the other choices fail. (A) is wrong because a party's negligence in reading doesn't defeat reformation absent assumption of the risk. (B) is wrong because even a completely integrated writing can be reformed for mutual mistake; the parol evidence rule doesn't bar reformation evidence. (C) is wrong because the issue is a mutual mistake omitting a term, not an ambiguity in the existing text.



Decision path

Attack Sequence: Contracts attack sequence, §4 Terms, Parol Evidence & Gap Fillers, step 3 (parol evidence exceptions — reformation for mistake).

Playbook: Contracts playbook, TERMS / PAROL EVIDENCE (defenses / reformation).

How it lands: §4 step 3: the parol evidence rule doesn't bar evidence offered to reform for mutual mistake. The accidental omission of the creditor term, missed by both, supports reformation — the most important fact → (D).

Question 25

Constitutional Law — Commerce Clause

Congress enacted legislation prescribing the specifications for various types of containers that all suppliers of nonprescription drugs were required to use in marketing their products. Congress's power to pass this legislation is derived from:

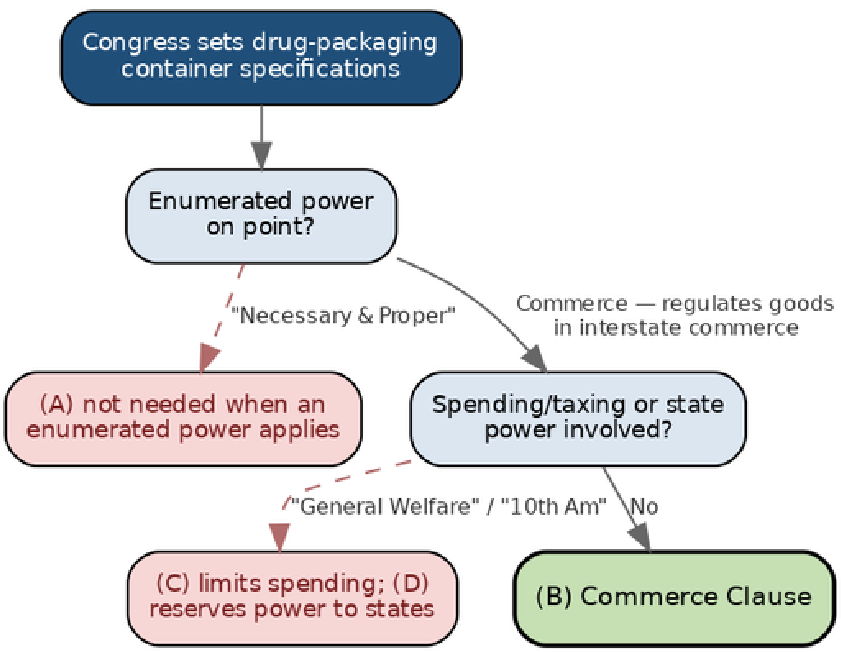
(A) The Necessary and Proper Clause.
(B) The Commerce Clause.
(C) The General Welfare Clause.
(D) The Tenth Amendment.

> **Correct answer (B).** Regulating drug-packaging specifications falls within Congress's broad Commerce Clause power.

Rule. The Commerce Clause is construed broadly to permit Congress to regulate activities that, in the aggregate, have a substantial economic effect on interstate commerce, including the marketing and packaging of goods.

Application. Prescribing container specifications for nationally marketed nonprescription drugs regulates goods in interstate commerce with a substantial economic effect, squarely within the commerce power. (B) is correct.

Why the other choices fail. (A) is wrong because the Necessary and Proper Clause is not an independent source of power and isn't needed when an enumerated power (commerce) applies. (C) is wrong because the General Welfare Clause limits the taxing and spending powers, which aren't at issue. (D) is wrong because the Tenth Amendment reserves power to the states; it is not a grant of power to Congress.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism, step 2 (Commerce power).

Playbook: Con Law playbook, CONGRESSIONAL POWER (Commerce).

How it lands: §2 step 2: regulating the packaging of nationally marketed goods substantially affects interstate commerce, so the Commerce Clause is the source → (B). (No need for Necessary & Proper when an enumerated power fits.)

Question 26

Criminal Law — Battery / Voluntary Act

A couple suspected of fraud spent many hours at a police station for the purposes of investigation. Having fallen asleep on her chair, the wife was awakened by a police officer, and, still groggy, she thought that she was being attacked, and she punched the police officer in the face before she realized the truth. Later, the husband was being interrogated. The interrogation officer accidentally touched a live electrical wire to the husband's armpit, which caused his arm to involuntarily twitch and strike the interrogator in her face. Which defendant(s) can be convicted of battery under these facts?

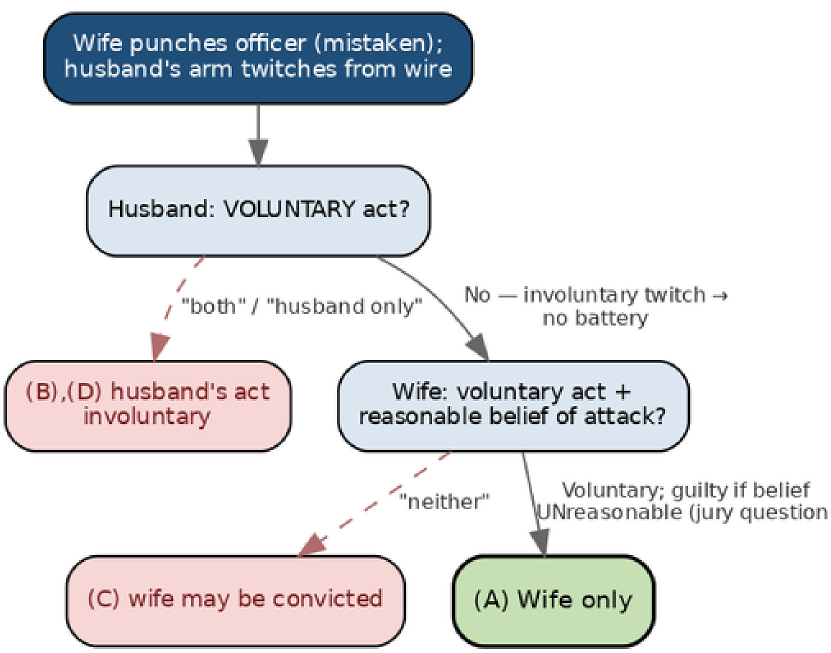
(A) The wife only.
(B) Both the wife and the husband.
(C) Neither the wife nor the husband.
(D) The husband only.

> **Correct answer (A).** Only the wife can be convicted; the husband's blow was an involuntary reflex.

Rule. Battery is the unlawful application of force causing bodily injury or offensive touching; it is a general-intent crime that can be committed recklessly or with criminal negligence, but it still requires a voluntary act. An involuntary bodily movement is not a voluntary act.

Application. The husband's arm struck the officer only because a live wire caused an involuntary twitch — no voluntary act, so no battery. The wife voluntarily punched the officer; whether she is guilty turns on whether her mistaken belief of attack was reasonable (self-defense) or unreasonable (battery), a jury question. Because only the wife's act was voluntary, only she can be convicted. (A) is correct.

Why the other choices fail. (B) and (D) are wrong because the husband's movement was involuntary, negating criminal liability. (C) is wrong because the wife did act voluntarily and may be convicted if her belief was unreasonable.



Decision path

Attack Sequence: Crim attack sequence, §2 Crimes Against Persons (battery) — plus the actus reus requirement of a voluntary act.

Playbook: Crim playbook, CRIMES AGAINST PERSONS/PROPERTY (Battery) — the voluntary-act requirement isn't spelled out; flag it.

How it lands: §2: battery is a general-intent crime but still needs a voluntary act. The husband's arm moved involuntarily (electric shock) → no battery; the wife acted voluntarily → guilty unless her mistaken self-defense belief was reasonable (jury question). Only the wife → (A). Consider adding a voluntary-act line to the Crim playbook.

Question 27

Real Property — Common Development Scheme

A developer owned a 100-acre tract of land, which he subdivided into 200 single-family residences. All deeds contained a covenant that the property would be used only for residential purposes. Two years after the last lot was sold, the developer purchased the 50-acre tract of land adjoining the subdivision. The developer constructed another group of 100 single-family residences on this land. To ensure their marketability, the developer desired to sell them like homes in the original development, and, to that extent, intended that the deeds to the new homes contain the same restrictions as those in the original development and be enforceable in the same manner by owners in both developments. Will the developer be successful in this plan?

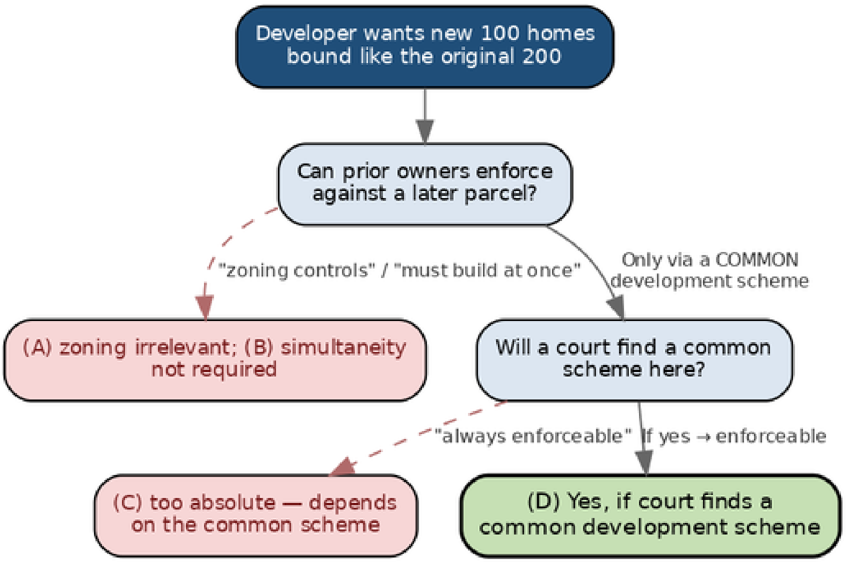
(A) No, zoning restrictions will control.
(B) No, because in order to have such restrictions, the entire project must have been built at the same time.
(C) Yes, the restrictions will be equally enforceable for this new project as they were for the original development.
(D) Yes, provided that a court considers this new project to be part of a common development scheme with the original development.

> **Correct answer (D).** The new lots can share the restrictions only if a court finds a common development scheme with the original subdivision.

Rule. Owners in one development may enforce restrictions against, and share restrictions with, a later parcel from a common grantor only where there is a general (common) scheme showing the developer intended the restrictions to benefit all the parcels together. Whether such a common scheme exists is a fact question for the court.

Application. The developer wants the new 100 homes bound by, and mutually enforceable with, the original 200 lots' residential covenant. That works only if a court finds the new tract is part of a common development scheme with the original. (D) states the correct condition.

Why the other choices fail. (A) is wrong because zoning does not limit the enforceability of private covenants. (B) is wrong because simultaneous construction is not required for a common scheme. (C) is too absolute; if a court finds no common scheme, the original owners cannot enforce the restrictions across developments.



Decision path

Attack Sequence: Real Property attack sequence, §4 Easements, Covenants & Servitudes (common scheme / implied reciprocal servitude).

Playbook: Real Property playbook, COVENANTS & SERVITUDES (equitable servitude from a common scheme).

How it lands: §4: owners can enforce restrictions across parcels from a common grantor only where a common development scheme shows intent to benefit all lots. So the plan works only if a court finds a common scheme → (D).

Question 28

Civil Procedure — Personal Jurisdiction / Fairness Prong

A college student from State A hit another car driven by a resident from State B when the college student was traveling through State B. The State B driver brought an action in State B state court against the State A college student, who has limited financial resources. The college student filed a motion to dismiss, claiming the State B court lacks personal jurisdiction. What is the best argument to support the college student's motion to dismiss?

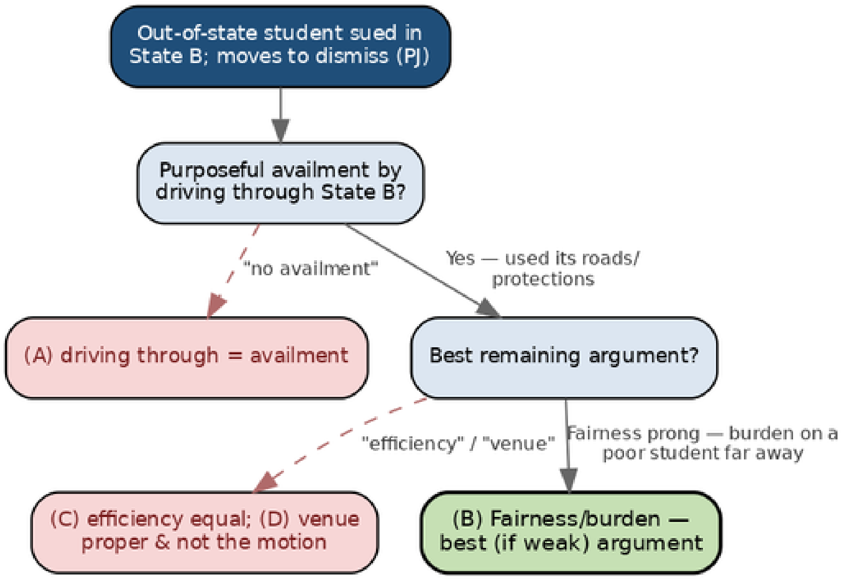
(A) The college student did not take actions to purposely avail herself of State B simply by driving through State B.
(B) It is unfair, inconvenient, and highly unreasonable to require a college student with limited financial resources to defend the action in State B for financial reasons.
(C) The interstate judicial system's interest in obtaining the most efficient resolution of the controversy is violated by requiring the college student to defend the action in the forum state.
(D) State B is not the proper venue to file this claim.

> **Correct answer (B).** The student's best argument is the fairness prong — that defending in State B is so burdensome as to offend fair play.

Rule. Personal jurisdiction requires minimum contacts plus consistency with traditional notions of fair play and substantial justice. Fairness factors include the burden on the defendant, the forum's interest, the plaintiff's interest, and judicial efficiency. Driving through a state is purposeful availment (using its roads and protections), so the contacts prong is satisfied.

Application. Because driving through State B is purposeful availment, the contacts prong is met, so the student's only viable argument is fairness: it is unfair, inconvenient, and unreasonable for a student with limited resources to defend there. Though likely a loser (the burden must be gravely difficult), it is the best of the four. (B) is correct.

Why the other choices fail. (A) is wrong because driving through the forum is purposeful availment, so a no-availment argument fails. (C) is wrong because efficiency is roughly equal in either state, so that factor doesn't help. (D) is wrong because State B (where the accident occurred) is a proper venue, and the motion was about personal jurisdiction, not venue.



Decision path

Attack Sequence: Civ Pro attack sequence, §3 Personal Jurisdiction, steps 3–5 (purposeful availment, then fair play and substantial justice).

Playbook: Civ Pro playbook, PERSONAL JURISDICTION (purposeful availment + fairness).

How it lands: §3: driving through State B is purposeful availment (contacts prong met), so the only argument left is the fairness prong — the burden on a poor, distant student. Weak but the best of the four → (B).

Question 29

Constitutional Law — Congressional Commissions / Appointments

Congress passed a statute that established a five-member commission to investigate issues relating to gun control and to make recommendations to Congress for new gun control laws. All five members of the commission were appointed by Congress. An entity that has organizational standing brings a suit to enjoin the commission from investigating and recommending new gun control laws to Congress. The appropriate decision for the court is to:

(A) Forbid the commission to take any action.
(B) Order that all members of the commission be appointed by the President by and with the advice and consent of the Senate.
(C) Allow the commission to investigate but not make recommendations regarding gun control.
(D) Allow the commission to continue investigating and making recommendations to Congress regarding gun control.

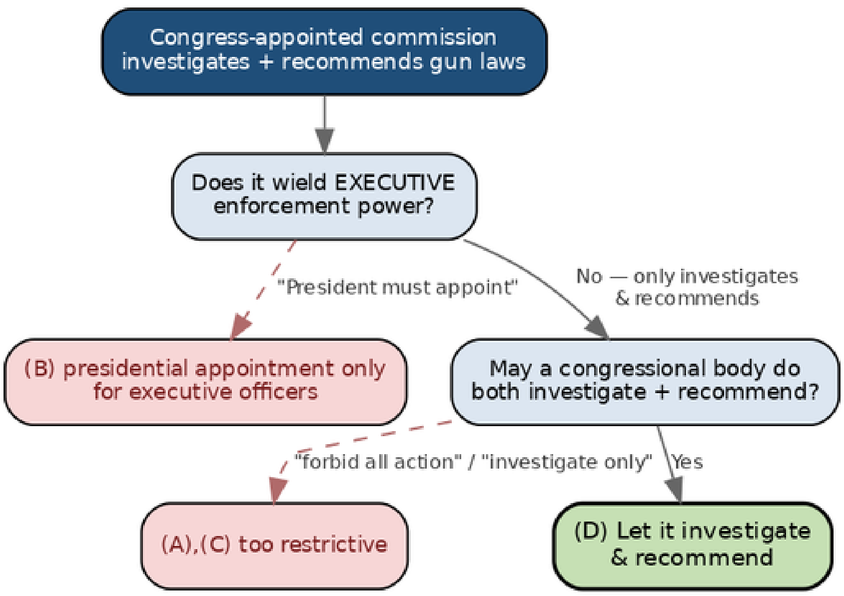
> **Correct answer (D).** A commission that only investigates and recommends, with members

> appointed by Congress, is constitutional.

Rule. Congress may create legislative/investigative commissions whose members it appoints, so long as the body exercises no executive enforcement power. Only officers who exercise significant executive authority must be appointed under the Appointments Clause (by the President with Senate advice and consent).

Application. This commission merely investigates and makes recommendations to Congress and exercises no enforcement power, so Congress may appoint all its members. The court should let it continue. (D) is correct.

Why the other choices fail. (A) is wrong because forbidding all action is too strong and not constitutionally required. (B) is wrong because presidential appointment is required only for officers wielding executive power, which this body lacks. (C) is wrong because a congressional commission may both investigate and recommend.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power (creating commissions) — appointments limited to executive officers is closer to §? (Executive power); flag lightly.

Playbook: Con Law playbook, EXECUTIVE POWER (Appointment/removal) + CONGRESSIONAL POWER.

How it lands: The rule: Congress may appoint members of a body that only investigates and recommends (no executive enforcement power); presidential appointment is required only for officers wielding executive authority. So the commission may continue → (D).

Question 30

Torts — False Imprisonment / No Confinement

A mother received a telephone call asking her to meet with the vice principal of her son's school because he was caught cheating. As she was waiting in the hallway to meet with the vice principal, the school's janitor, a big man who was an amateur body builder, introduced himself as the vice principal and asked the mother to step into his office, closing the door behind him. For several minutes, the janitor asked the mother a series of flirtatious personal questions, causing the mother to grow very uncomfortable. However, she did not leave the office out of concern for her son's academic standing.

The actual vice principal eventually returned to his office and ended the questioning. If the mother sues the janitor for false imprisonment, she is most likely to:

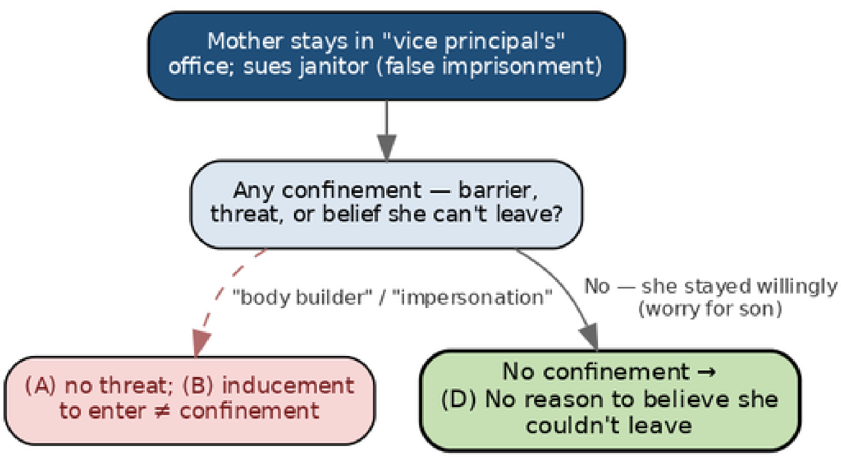
(A) Prevail, because the janitor was a body builder who could have physically harmed her if she tried to leave the room.
(B) Prevail, because she would not have stayed in the room if the janitor had not pretended to be the vice principal.
(C) Not prevail, because the janitor would have let her leave if she wanted.
(D) Not prevail, because she had no reason to believe that she could not leave.

> **Correct answer (D).** The mother stayed willingly and had no reason to believe she couldn't leave, so there was no confinement.

Rule. False imprisonment requires that the defendant intentionally confine or restrain the plaintiff to a bounded area against her will, by physical barriers, force, threats, or a false assertion of legal authority the plaintiff submits to. Staying voluntarily, without any restraint or reasonable belief that leaving is barred, is not confinement.

Application. The mother remained in the office out of concern for her son's standing, not because of any barrier, threat, or reasonable belief she couldn't leave. With no confinement, false imprisonment fails, so she likely does not prevail. (D) is correct.

Why the other choices fail. (A) is wrong because the janitor's physique isn't a threat, and she wasn't trying to leave. (B) is wrong because the impersonation induced her to enter but didn't confine her. (C) reaches the right result but is weaker than (D) because it speculates about the janitor's state of mind rather than resting on the absence of any confinement.



Decision path

Attack Sequence: Torts attack sequence, §1 Intentional Torts, step 2 (false imprisonment — confinement element).

Playbook: Torts playbook, INTENTIONAL TORTS (False imprisonment).

How it lands: §1 step 2: false imprisonment needs actual confinement — a barrier, threat, force, or a false assertion of authority she submits to. She stayed willingly out of worry for her son, so no confinement → (D).

Question 31

Evidence — Statement of Present Bodily Condition

The plaintiff was riding down a department store escalator when the escalator malfunctioned, causing the plaintiff to fall forward to the floor and injure himself. His companion, who has no medical training, tried to make the plaintiff comfortable. While waiting for the ambulance, the plaintiff said, "My left arm is numb and I have chest pains. I'm afraid I'm having a heart attack." Upon being taken to the hospital, it was determined that the plaintiff had not suffered a heart attack, but had sustained severe damage to his chest and to the nerves affecting feeling in his left arm. The plaintiff sued the department store for his injuries. At trial, the plaintiff called his companion to testify to the statement made by the plaintiff. The companion's testimony as to the statement is:

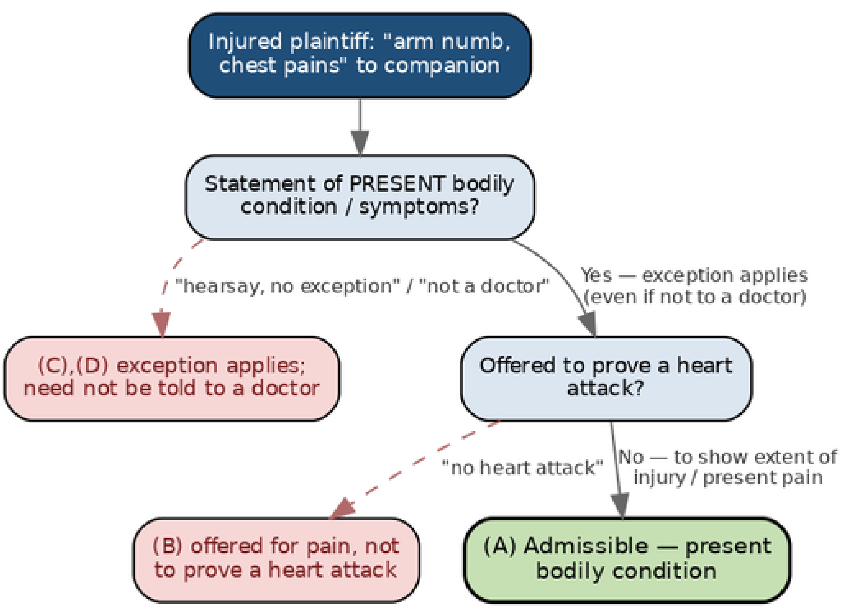
(A) Admissible, to prove the extent of the plaintiff's injuries at the time.
(B) Inadmissible, because the plaintiff did not suffer a heart attack.
(C) Inadmissible, because the companion is not a doctor.
(D) Inadmissible, because it is hearsay not within any exception.

> **Correct answer (A).** The statement of present pain/symptoms is admissible under the then-existing physical condition exception.

Rule. A declarant's statement of a then-existing physical condition, including present symptoms and pain, is admissible as a hearsay exception, even if not made to a physician. It comes in to prove the condition (here, the extent of injury).

Application. The plaintiff's statement about numbness and chest pain describes his then-existing physical condition and is admissible to prove the extent of his injuries. (A) is correct.

Why the other choices fail. (D) is wrong because the statement fits the present-physical-condition exception, so it is not inadmissible hearsay. (C) is wrong because such statements need not be made to a doctor. (B) is wrong because the statement is offered to show present pain and injury, not to prove he actually had a heart attack.



Decision path

Attack Sequence: Evidence attack sequence, §4 Hearsay Exceptions, step 2 (availability immaterial → then-existing physical condition).

Playbook: Evidence playbook, EXCEPTIONS – AVAILABILITY IMMATERIAL (Then-existing condition).

How it lands: §4 step 2: a statement of present bodily condition/symptoms is admissible even if not made to a doctor, to prove the condition — here the extent of injury → (A).

Question 32

Civil Procedure — Supplemental Jurisdiction / §1367(b)

While working on a site in State A, a State B construction worker was standing near a steel crane when the crane's boom swung near a high tension power line. The worker was electrocuted and severely injured. The worker filed an action in federal district court against the power company that owns the power lines. The action seeks $500,000 and alleges that the power company's negligent construction, maintenance, and operation of the power lines caused the injury. The power company is a State A corporation and all its operations are in State A. The power company filed a third-party complaint against the owner-operator of the crane, a State B citizen. The third-party claim is based on state law and alleges that the crane's owner-operator is liable to the power company for any liability the power company has to the injured worker. The worker amended his complaint to add a state law negligence claim for $500,000 against the crane's owner-operator. Does the federal court have subject matter jurisdiction over the worker's claim against the owner-operator of the crane?

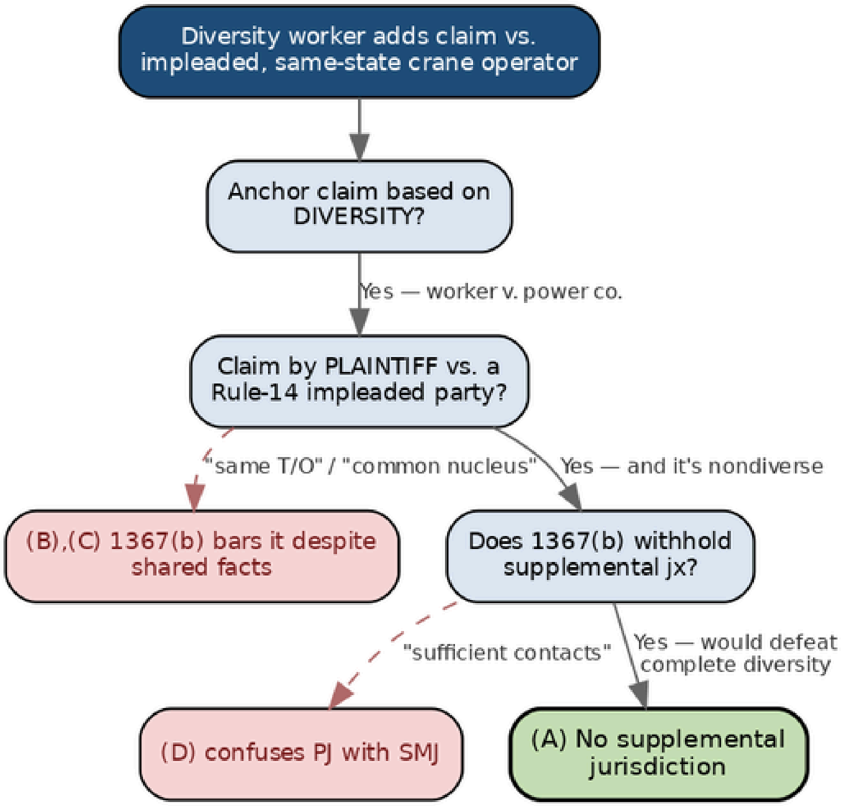
(A) No, because the court does not have supplemental jurisdiction over the worker's claim against the owner-operator of the crane.
(B) Yes, because the claim arose from the same transaction or occurrence as the worker's claim against the power company.
(C) Yes, because all claims asserted arose from a common nucleus of operative fact.
(D) Yes, because the State B worker has sufficient contacts with State A.

> **Correct answer (A).** No supplemental jurisdiction: a diversity plaintiff can't assert a claim against an impleaded, nondiverse third party.

Rule. When the anchor claim rests on diversity, 28 U.S.C. 1367(b) withholds supplemental jurisdiction over certain claims by plaintiffs, including a plaintiff's claim against a person made a party under the impleader (Rule 14) rules, when allowing it would defeat complete diversity.

Application. The worker's original claim against the power company was based on diversity. The crane owner-operator (a State B citizen, like the worker) was brought in by the power company's impleader. The worker's new claim against that nondiverse third party would circumvent complete diversity, so 1367(b) bars supplemental jurisdiction. (A) is correct.

Why the other choices fail. (B) and (C) are wrong because, although the claim shares a common nucleus of fact, 1367(b) specifically withholds supplemental jurisdiction for a diversity plaintiff's claim against an impleaded party. (D) confuses subject-matter jurisdiction with personal jurisdiction and misstates the law.



Decision path

Attack Sequence: Civ Pro attack sequence, §2 Supplemental Jurisdiction & Removal, step 3 (diversity-anchor limit) + §5 impleader.

Playbook: Civ Pro playbook, SUBJECT MATTER JURISDICTION (Supplemental) + JOINDER (impleader).

How it lands: §2 step 3: with a diversity anchor, 1367(b) withholds supplemental jurisdiction over a plaintiff's claim against a party impleaded under Rule 14 when it would defeat complete diversity. The worker's claim against the same-state crane operator does exactly that → (A).

Question 33

Contracts — Installment Contracts / Right to Cure

A bakery owner entered into a one-year written contract with a chocolate chip manufacturer whereby the manufacturer agreed to ship to the bakery owner 5,000 pounds of premium chocolate chips on the first day of each month for $12,500 per shipment. When the bakery owner opened the first shipment of chips, he found that 60% of them were tainted with rat hairs. He immediately called the manufacturer and reported the breach. The manufacturer offered to send replacements, but the bakery owner refused the offer and canceled the entire contract. Will the manufacturer prevail in an action against the bakery owner seeking contract damages?

(A) No, because the bakery owner was entitled to a perfect tender, and the manufacturer's failure to provide a perfect tender resulted in a breach of contract.
(B) No, because damages are speculative.
(C) Yes, because the bakery owner's notice of the manufacturer's breach was not in writing.
(D) Yes, because the manufacturer had a right to cure.

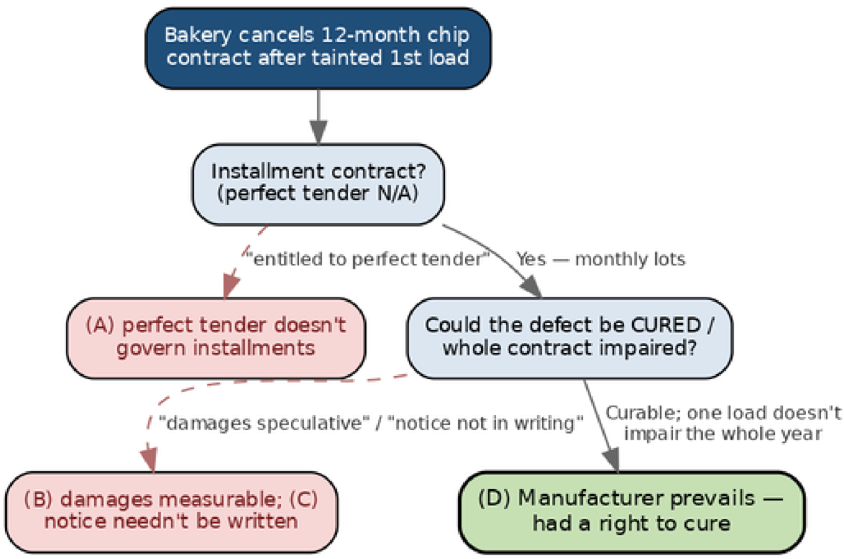
> **Correct answer (D).** On an installment contract, the buyer had to allow cure; refusing the offered

> replacement lets the manufacturer prevail.

Rule. For installment contracts, the perfect-tender rule does not apply. A buyer may reject a single installment only if the nonconformity substantially impairs the value of that installment and cannot be cured, and may cancel the whole contract only if the defect substantially impairs the value of the entire contract. The seller has a right to cure.

Application. Monthly shipments make this an installment contract. The tainted first shipment could be cured — the manufacturer offered replacement chips — and one bad delivery didn't substantially impair the whole year's contract. By refusing cure and canceling, the bakery owner breached, so the manufacturer prevails. (D) is correct.

Why the other choices fail. (A) is wrong because the perfect-tender rule doesn't govern installment contracts. (B) is wrong because damages could be measured by lost profits or standard contract measures, not merely speculative. (C) is wrong because notice of rejection need not be in writing.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance, Breach & Excuse, step 3 (UCC perfect tender vs. installment contracts + right to cure).

Playbook: Contracts playbook, PERFORMANCE & BREACH (Perfect tender; Cure).

How it lands: §5 step 3: perfect tender doesn't apply to installment contracts; a single installment is rejectable only if the defect substantially impairs it and can't be cured. The manufacturer could cure (offered replacements) and one load didn't impair the year → it prevails → (D).

Question 34

Evidence — Relevance

The defendant is charged with the murder of his employer. At the trial, the prosecution offered the testimony of another employee who testified that he had accidentally picked up the phone when the defendant was talking to an unidentified man who said, "I hear your boss is going to confess about the money you and she embezzled from the company. What are you going to do about it?" If the defendant's attorney objects to the employee's testimony on the ground that it is irrelevant, the judge should:

(A) Sustain the objection.

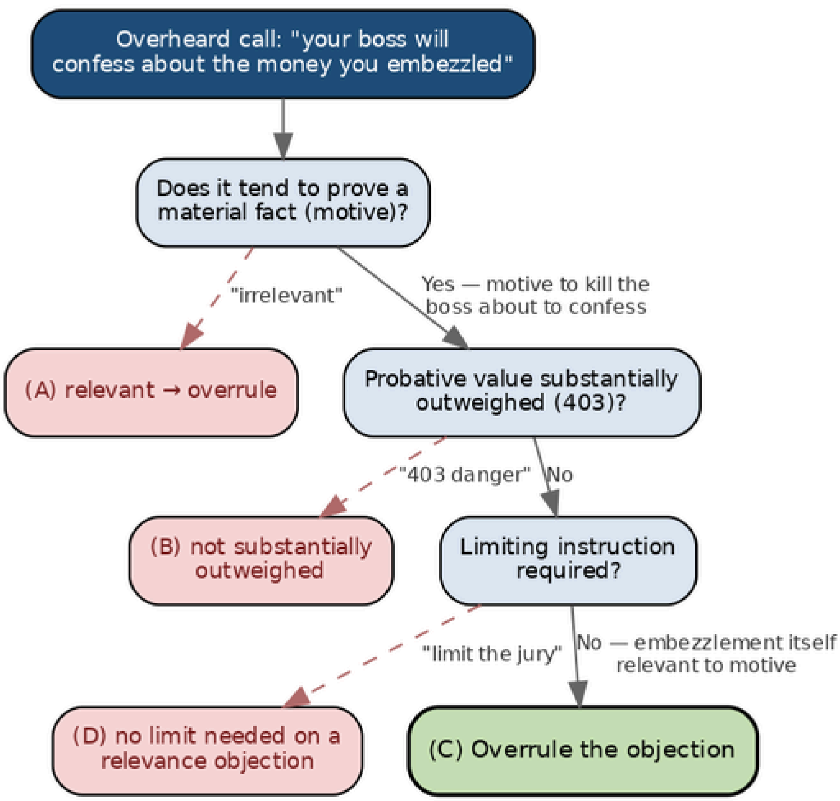
(B) Sustain the objection, on the grounds that whatever probative value the testimony has is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.
(C) Overrule the objection.
(D) Overrule the objection, but instruct the jury not to consider the employee's testimony as evidence of the defendant's involvement with any embezzlement of funds.

> **Correct answer (C).** The overheard statement is relevant to motive, so the relevance objection should be overruled.

Rule. Evidence is relevant if it tends to make a material fact more or less probable. Evidence bearing on motive is relevant and generally admissible. A relevance objection is overruled if the evidence has probative value on a material issue.

Application. The unidentified caller's statement suggests the defendant had money and an embezzlement to hide, which bears on his motive to kill the boss about to confess. That makes it relevant, so the relevance objection is overruled. (C) is correct.

Why the other choices fail. (A) and (B) are wrong because the evidence is relevant to motive and its probative value is not substantially outweighed by prejudice. (D) is wrong because the embezzlement involvement is itself relevant to motive, so no limiting instruction is required on a relevance objection (any hearsay concern wasn't the ground objected to, and it might qualify as an adoptive admission).



Decision path

Attack Sequence: Evidence attack sequence, §1 Relevance (Rules 401 & 403).

Playbook: Evidence playbook, RELEVANCE (401 any tendency; 403 balancing).

How it lands: §1: the overheard statement makes the defendant's motive more probable, so it's relevant (401) and not substantially outweighed by prejudice (403). A relevance objection is overruled → (C).

Question 35

Torts — Negligence / Reasonable Care

A passenger on a cruise ship went to the ship's spa for a hot rock massage. A hostess had the passenger lie on her stomach and placed warm stones on her back. The hostess told the passenger that the ship's licensed masseuse would be in to begin her massage when the rocks cooled, in approximately half an hour. Only several minutes later, however, a man came into her room and began rubbing her back. Unbeknownst to the passenger, the man was not the masseuse but another passenger on the ship acting on a dare from his friends. The man continued to massage the passenger awkwardly for several minutes, at times pinching her back uncomfortably. When the passenger finally spoke up in protest, the man ran out of the room, laughing hysterically. The incident humiliated the passenger and caused her extreme distress. If the passenger sues the cruise ship for negligence, which of the following defenses would most likely show that the cruise ship is not liable?

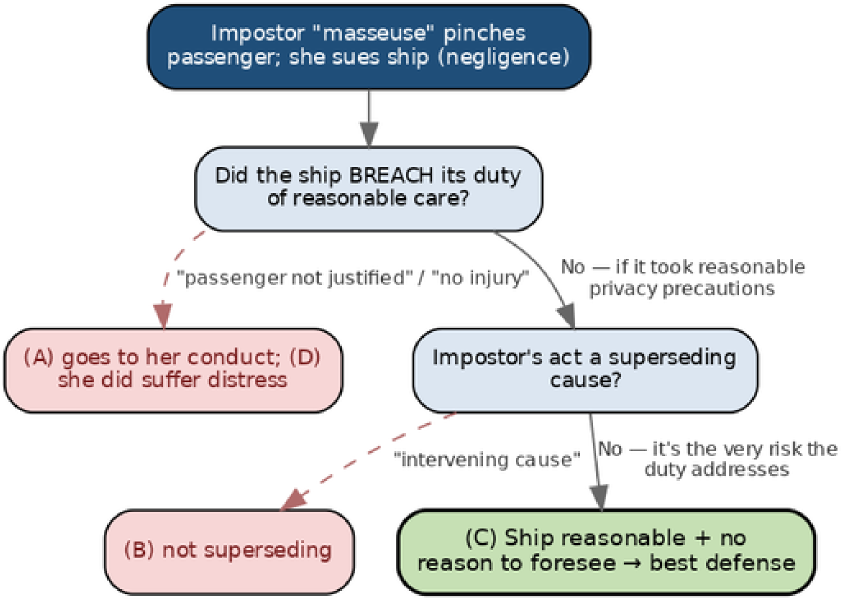
(A) The passenger had been told the masseuse would begin the massage in half an hour when the rocks had cooled; therefore, she was not justified in believing that the man was the masseuse.
(B) The man's conduct was an independent intervening cause that cuts off the cruise ship's liability.
(C) The cruise ship had no reason to believe that the man would impersonate a masseuse, and had otherwise taken reasonable precautions to insure privacy in the spa.
(D) The passenger was not really injured by anything the man did.

> **Correct answer (C).** If the ship took reasonable precautions and had no reason to foresee the impostor, it did not breach its duty.

Rule. A defendant is liable in negligence only if it breached a duty of reasonable care. A business owes patrons reasonable care, but is not an insurer; if it took reasonable precautions and had no reason to anticipate the harmful conduct, there is no breach.

Application. The cruise ship owed the passenger a private spa environment. If it had no reason to expect a passenger to impersonate the masseuse and otherwise took reasonable precautions to ensure privacy, it did not breach its duty, so it is not liable. (C) is the best defense.

Why the other choices fail. (A) goes to the passenger's conduct, not whether the ship was negligent, so it doesn't defeat the negligence claim. (B) mislabels the impostor's act as a superseding cause; it is actually the very risk the ship's reasonable care addresses. (D) is contrary to the facts, since the passenger suffered discomfort and distress, satisfying the damages element.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, steps 1 & 3 (duty, then breach — reasonable care).

Playbook: Torts playbook, NEGLIGENCE (Duty; Breach).

How it lands: §3: the ship owed reasonable care, but is not an insurer. If it took reasonable privacy precautions and had no reason to foresee an impostor, there is no breach — the best defense → (C).

Question 36

Contracts — Anticipatory Repudiation

An automobile manufacturer entered into a contract with a well-known tire distributor which provided that the distributor would deliver to the automobile manufacturer 1,000 tires on the 15th of each month for $50,000 per shipment, with payment due upon receipt. The automobile manufacturer and the tire distributor properly fulfilled their contractual obligations for two months. The day after the third tire delivery, the tire distributor's president visited the automobile manufacturer and found the automobiles produced with his company's tires to be a "disgrace." To protect the tire distributor's reputation, the president announced that he will not send any additional tire shipments. The automobile manufacturer immediately brought a breach of contract action against the tire distributor. Who will prevail?

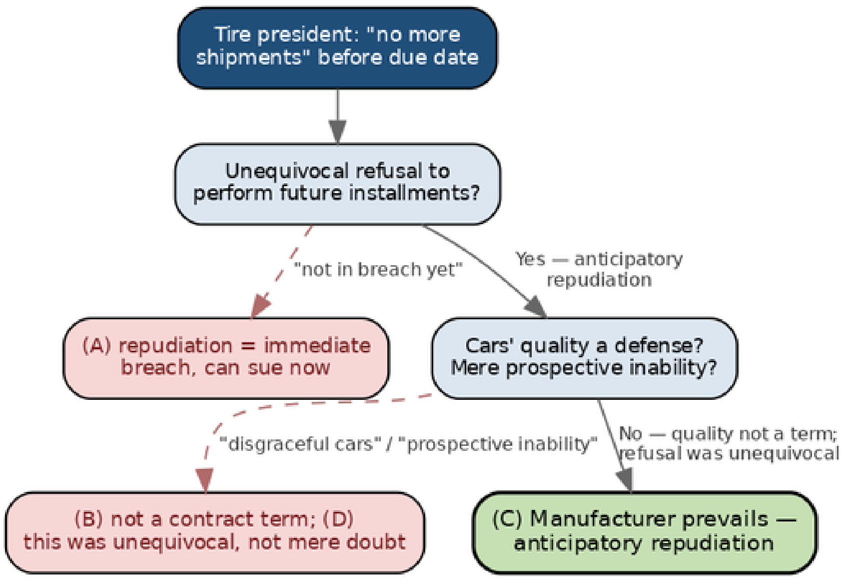
(A) The tire distributor, because it was not in breach when the action was filed.
(B) The tire distributor, if it can show that the automobile manufacturer made disgraceful automobiles.
(C) The automobile manufacturer, because the president's action amounts to an anticipatory repudiation.
(D) The automobile manufacturer, because the president's action amounts to a prospective inability to perform.

> **Correct answer (C).** The president's unequivocal refusal to ship any more tires is an anticipatory repudiation the buyer can sue on immediately.

Rule. Anticipatory repudiation occurs when a party, by words or conduct, unequivocally indicates before performance is due that it will not perform. The nonrepudiating party may treat it as an immediate breach and sue at once. A mere prospective inability (words/conduct raising doubts) is not an unequivocal repudiation.

Application. The tire distributor's president announced he would send no additional shipments — an unequivocal refusal to perform future installments. That is an anticipatory repudiation, so the manufacturer could sue immediately, and prevails. (C) is correct.

Why the other choices fail. (A) is wrong because an anticipatory repudiation is treated as a present breach even before a delivery date passes. (B) is wrong because the automobiles' quality was not a contract term and is no defense. (D) is wrong because the president's statement was an unequivocal repudiation, not a mere prospective inability that only raises doubts.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance, Breach & Excuse, step 4 (Anticipatory repudiation).

Playbook: Contracts playbook, ANTICIPATORY REPUDIATION.

How it lands: §5 step 4: an unequivocal refusal to perform future installments before performance is due is an anticipatory repudiation, treated as an immediate breach the buyer can sue on now → (C). (A mere prospective inability only raises doubts; this was unequivocal.)

Question 37

Constitutional Law — Intergovernmental Immunity / Federalism

A woman elected to a state legislature is prosecuted in federal court for violating the civil rights of a member of the janitorial staff of the state legislature's building in connection with a sexual assault that occurred in her office. The woman raises as a defense the claim that the allegedly wrongful acts were committed in the course of legislative business, and she is immune from scrutiny by the federal courts. Which of the following is the strongest constitutional argument in favor of the woman's defense?

(A) The application of federal civil rights statutes to state legislators would violate the Due Process Clause.
(B) A federal court must follow state law respecting the scope of legislative immunity.
(C) State legislators enjoy the protection of the Speech and Debate Clause of the United States Constitution.
(D) Because of the doctrine of federalism, federal law generally cannot be applied to state legislators

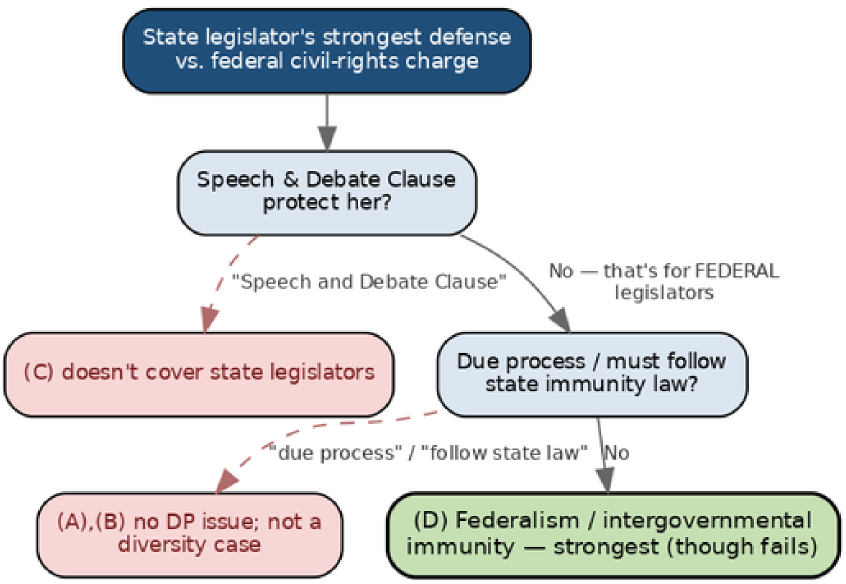
acting in the course of their official duties.

> **Correct answer (D).** Her strongest (though ultimately unavailing) argument is federalism-based intergovernmental immunity for official state duties.

Rule. Principles of intergovernmental immunity/federalism limit federal interference with a state's performance of core governmental functions. The federal Speech and Debate Clause protects only federal legislators. Federal courts follow state law only in diversity or where a federal statute incorporates it.

Application. Of the four, the federalism/intergovernmental-immunity argument is the strongest constitutional theory for a state legislator resisting federal scrutiny of official acts — even though it fails here because a sexual assault is not a legitimate legislative function. (D) is correct as the strongest argument.

Why the other choices fail. (A) is wrong because there is no due process problem in applying federal civil-rights law to her. (B) is wrong because a federal court need not follow state legislative-immunity law in a federal prosecution. (C) is wrong because the Speech and Debate Clause protects federal legislators, not state legislators.



Decision path

Attack Sequence: Con Law attack sequence, §2 Federalism (intergovernmental immunity) — the Speech & Debate distinction isn't broken out; flag lightly.

Playbook: Con Law playbook, FEDERALISM.

How it lands: §2 federalism: intergovernmental immunity limits federal interference with core state functions — her strongest theory, though it fails here (a sexual assault isn't a legislative function). The Speech & Debate Clause protects only FEDERAL legislators → (D).

Question 38

Civil Procedure — Pleading Fraud with Particularity

An elderly woman filed a complaint in federal district court, alleging that a salesperson "made fraudulent statements that induced the plaintiff to sign the contract to the plaintiff's detriment." The salesperson then filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted.

How should the court rule?

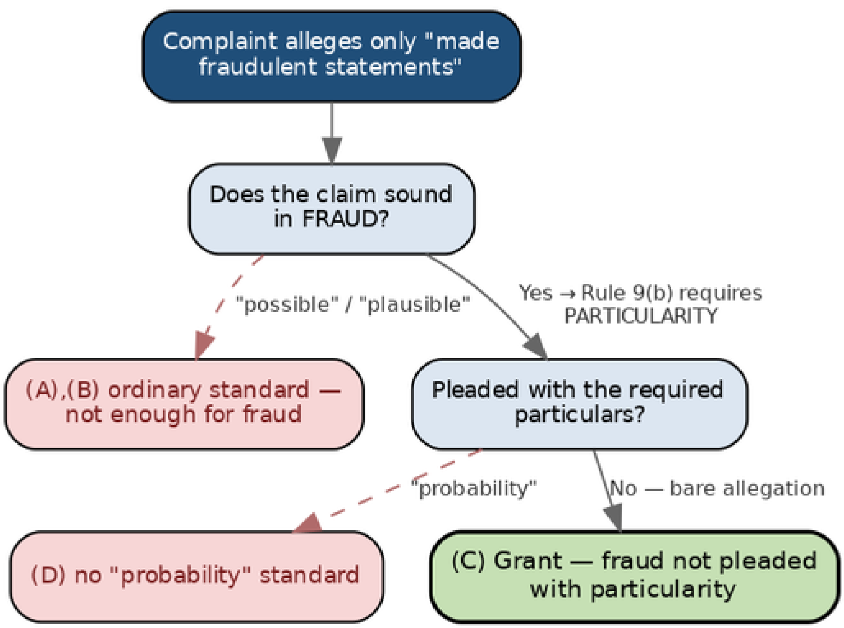
(A) Deny the motion, because the complaint stated a possible claim for relief.
(B) Deny the motion, because the complaint stated a plausible claim for relief.
(C) Grant the motion, because the complaint did not state the claim for relief with particularity.
(D) Grant the motion, because the complaint did not state the claim for relief with probability.

> **Correct answer (C).** Fraud must be pleaded with particularity, so the bare fraud allegation fails and the motion is granted.

Rule. Ordinary claims need only a short and plain statement giving notice. But Rule 9(b) requires that fraud and mistake be pleaded with particularity — the who, what, when, where, and how of the alleged fraud.

Application. The complaint alleges only that the salesperson 'made fraudulent statements' inducing the contract, without the required particulars. Failing Rule 9(b)'s particularity requirement, the complaint is dismissed. (C) is correct.

Why the other choices fail. (A) and (B) apply the ordinary plausibility standard, not the heightened particularity standard for fraud. (D) invents a 'probability' standard that doesn't exist. Only (C) states the special fraud-pleading rule.



Decision path

Attack Sequence: Civ Pro attack sequence, §6 Pleadings & Pre-Trial Motions, step 1 (complaint sufficiency) — the Rule 9(b) fraud-particularity rule sits here.

Playbook: Civ Pro playbook, PLEADINGS & RULE 11 (heightened pleading for fraud).

How it lands: §6 step 1: ordinary claims need only plausibility, but fraud must be pleaded with particularity (Rule 9(b)). A bare "made fraudulent statements" fails, so the motion is granted → (C).

Question 39

Evidence — Nonhearsay / Motive (Effect on Listener)

The defendant is charged with the murder of his accountant. At trial, the prosecution calls as a witness the defendant's business partner, who testifies that he overheard a telephone conversation between the defendant and the accountant, in which the accountant threatened to report him to the I.R.S. for cheating on his income tax return. The defendant's attorney objects to the business partner's testimony on the ground that it is hearsay. The judge should:

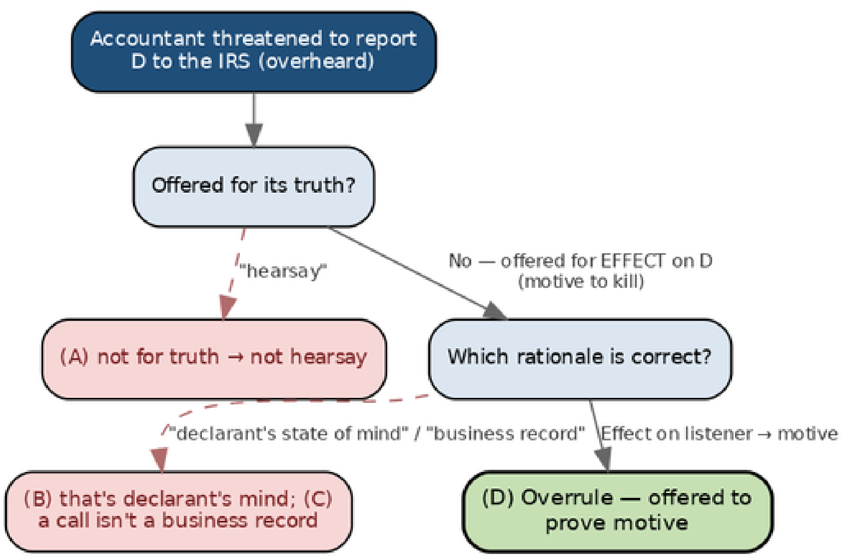
(A) Sustain the objection.
(B) Overrule the objection because the testimony, although hearsay, is being introduced to show the defendant's state of mind, a hearsay exception.
(C) Overrule the objection because the testimony, although hearsay, qualifies as a business record since the call was made during business hours on a business phone.
(D) Overrule the objection because the evidence is offered to help prove the defendant's motive.

> **Correct answer (D).** The accountant's threat is offered to show the defendant's motive, not for its truth, so it isn't barred by hearsay.

Rule. An out-of-court statement offered to prove its effect on the listener — including to establish the listener's motive — is not offered for its truth and is not hearsay.

Application. The accountant's threat to report the defendant to the IRS is offered to show the defendant had a motive to kill the accountant, not to prove he actually cheated on taxes. Offered for motive/effect on the listener, it is nonhearsay and admissible, so the objection is overruled. (D) is correct.

Why the other choices fail. (A) is wrong because the statement is nonhearsay. (B) is wrong because it invokes the state-of-mind exception, which applies to the declarant's state of mind, not the listener's motive; the correct rationale is effect on the listener. (C) is wrong because a phone call is not a business record just because it occurred during business hours.



Decision path

Attack Sequence: Evidence attack sequence, §2 Hearsay: The Core Attack, step 4 (non-hearsay — effect on the listener / motive).

Playbook: Evidence playbook, HEARSAY – FRAMEWORK (non-hearsay: effect on listener).

How it lands: §2 step 4: the accountant's threat is offered to show the defendant's motive (effect on the listener), not for its truth → not hearsay → (D). (The state-of-mind exception is about the declarant's mind, not the listener's motive.)

Question 40

Torts — Defamation / Slander Per Se

Two mothers were talking outside of a school one afternoon. One of them asked the other for the phone number of the woman she employed in her home to take care of her children. That mother, knowing that reliable childcare is hard to find, did not want to share the information with the other woman, so she instead said, "You don't want her number, we discovered that she was intoxicated last week when we came home from work." This accusation was false, but it quickly spread throughout the neighborhood. If the woman sues the mother for defamation and establishes the above facts, the woman must also show:

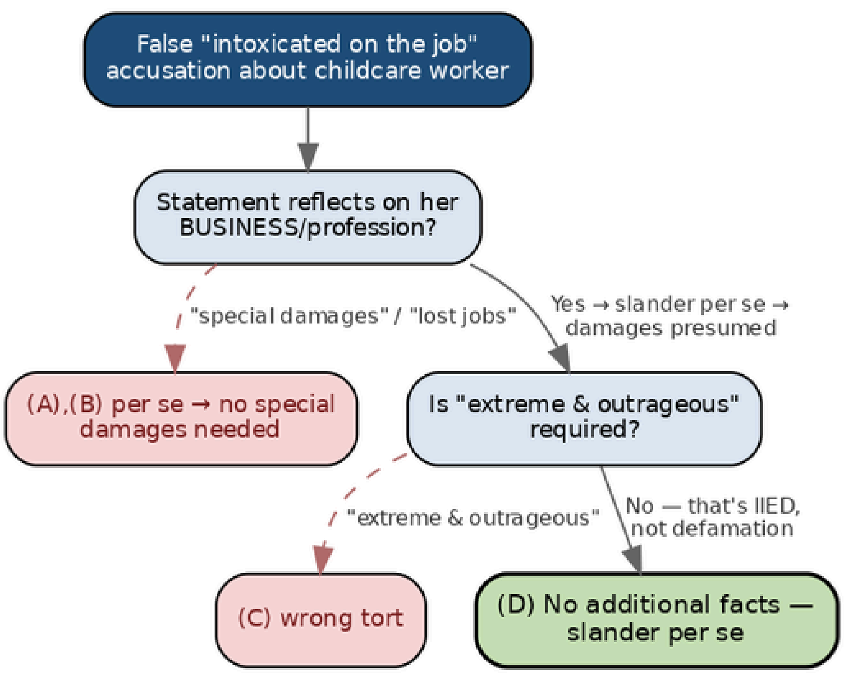
(A) That she suffered special damages by reason of the mother's oral statement.
(B) That she lost other childcare jobs because of the statement.
(C) That the statement was extreme and outrageous because any drinking of alcohol is against the woman's strict moral code.
(D) No additional facts.

> **Correct answer (D).** Accusing her of on-the-job intoxication is slander per se, so no additional showing (special damages) is required.

Rule. A false defamatory statement communicated to a third party that adversely reflects on the plaintiff's abilities in her business, trade, or profession is slander per se, for which damages are presumed at common law — so the plaintiff need not prove special damages.

Application. The mother falsely told a third party that the childcare worker was intoxicated on the job, which reflects on her fitness for her profession — slander per se. Damages are presumed, so the plaintiff need show no additional facts. (D) is correct.

Why the other choices fail. (A) and (B) are wrong because slander per se presumes damages, so no special damages (like lost jobs) need be shown. (C) is wrong because 'extreme and outrageous' belongs to intentional infliction of emotional distress, not defamation.



Decision path

Attack Sequence: Torts attack sequence, §7 Defamation, Privacy & Nuisance, step 1 (defamation elements; slander per se categories).

Playbook: Torts playbook, DEFAMATION / slander per se.

How it lands: §7 step 1: a false statement reflecting on the plaintiff's business/profession is slander per se, so damages are presumed and she need show no special damages → (D).

Question 41

Criminal Law — Common Law Robbery

Two friends entered a bar looking to get money to pay off a loan shark, but with no plan how to do so. They struck up conversations with two women. The first friend left the bar, having induced one of the women to return home with him. Once in his house, the first friend told the woman that she would not be allowed to leave unless she gave him all of her money. Fearing for her safety, the woman gave him all of the cash she had in her possession. Meanwhile, the second friend remaining at the bar noticed that the other woman left her credit card on the counter. When the woman looked away, the friend picked up the credit card and put it into his pocket. Shortly thereafter, the woman realized her card was gone and accused the man of taking it. The man pretended to be insulted, slapped the victim, and went off with the credit card in his pocket. Which of the two friends can be convicted for common law robbery?

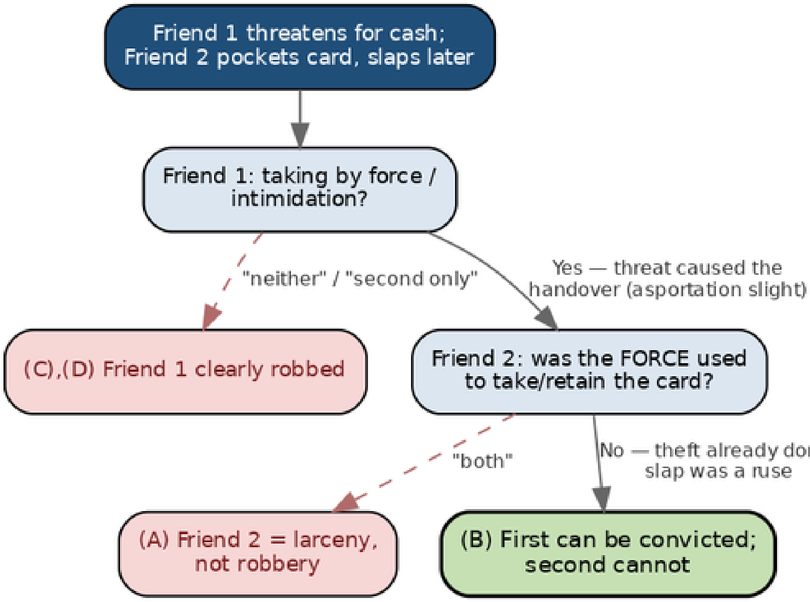
(A) Both can be convicted.
(B) The first friend can be convicted, but the second cannot be convicted.
(C) The second friend can be convicted, but the first cannot be convicted.
(D) Neither of the two friends can be convicted of robbery.

> **Correct answer (B).** The first friend committed robbery (force/threat to take money); the second did not (force came after the taking).

Rule. Robbery is a larceny from the person or presence of another by force or intimidation. The force or intimidation must be used to accomplish the taking (or the immediate retention). Force applied after the taking is complete, for a different purpose, doesn't convert the theft into robbery.

Application. The first friend threatened the woman so she would hand over her cash — force/intimidation causing the taking — a robbery (the slight movement satisfies asportation). The second friend quietly pocketed the credit card (a larceny already complete) and only later slapped the accuser as a ruse, not to take or retain the card, so it isn't robbery. Only the first can be convicted. (B) is correct.

Why the other choices fail. (A) and (C) are wrong because exactly one friend committed robbery. (D) is wrong because the first friend's threat-induced taking is a robbery.



Decision path

Attack Sequence: Crim attack sequence, §2 Crimes Against Persons & Property, step 3 (Robbery: taking by force/intimidation).

Playbook: Crim playbook, CRIMES AGAINST PERSONS/PROPERTY (Robbery).

How it lands: §2 step 3: robbery requires force/intimidation used to accomplish the taking. Friend 1 threatened to force the handover = robbery; Friend 2's larceny was complete before the slap (a ruse, not force to take) = larceny, not robbery. Only the first → (B).

Question 42

Civil Procedure — Seventh Amendment / Legal vs. Equitable

A gas station owner properly filed a breach of a noncompete clause in an employment contract case in federal court against a former manager, who began building a similar gas station across the street. The owner's complaint requested money damages and an injunction to stop the construction. The former manager wants a jury trial, but the gas station owner prefers that the issue be litigated before the judge. Can the former manager demand a jury trial for both claims?

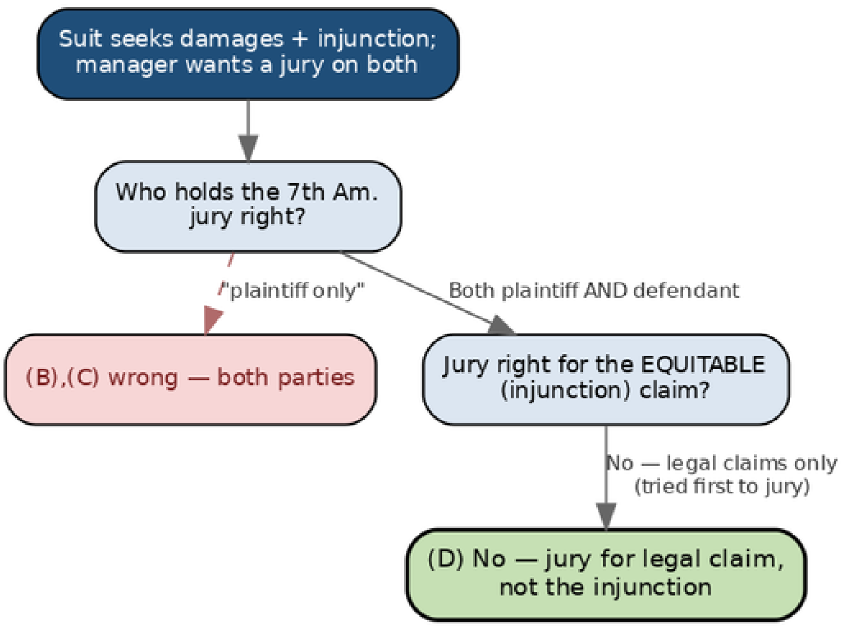
(A) Yes, because the Seventh Amendment gives both the plaintiff and the defendant the right to demand a jury trial in civil actions.
(B) Yes, because the Seventh Amendment only gives the plaintiff the right to demand a jury trial in civil actions.
(C) No, because the Seventh Amendment only gives plaintiffs the right to demand a jury trial in civil actions, and when a case presents both legal and equitable claims, the right is only preserved for legal claims, not equitable claims.
(D) No, because, while the Seventh Amendment gives both the plaintiff and defendant the right to demand a jury trial in civil actions, when a case presents both legal and equitable claims, the right is only preserved for all legal claims, not equitable claims.

> **Correct answer (D).** Both parties have the jury right, but only for the legal (damages) claim, not the equitable (injunction) claim.

Rule. The Seventh Amendment preserves the jury-trial right for both plaintiffs and defendants in civil actions at law. When a case joins legal and equitable claims, the jury right extends to all legal claims (tried first to the jury), while equitable claims go to the court, which is bound by the jury's fact findings.

Application. The suit seeks damages (legal) and an injunction (equitable). The former manager may demand a jury on the damages claim but not on the injunction. So he cannot get a jury for both claims. (D) states the rule completely and correctly.

Why the other choices fail. (A) is a correct but incomplete statement that doesn't answer the question (it ignores the legal/equitable split). (B) and (C) are wrong because the Seventh Amendment gives both plaintiffs and defendants the jury right, not just plaintiffs.



Decision path

Attack Sequence: Civ Pro guides don't break out the legal-then-equitable jury order — a genuine gap. It's the Seventh Amendment rule (jury for legal claims, court for equitable).

Playbook: Civ Pro playbook, TRIAL & POST-TRIAL (Jury demand) — the legal/equitable split isn't spelled out; flag it.

How it lands: Flag: neither playbook states this cleanly. Both parties hold the Seventh Amendment jury right, but only for the legal (damages) claim; the equitable (injunction) claim goes to the court. So he can't get a jury on both → (D). Same gap as Set 1 Q28 — worth adding.

Question 43

Real Property — Life Estates / Vested Remainders

A landowner was the owner in fee simple of a tract of land. The landowner conveyed the tract to her neighbor, "for life and then to the first child of my neighbor's only sister who shall reach the age of 21." The sister was unmarried and childless at the time of the conveyance. Five years later, the sister married, and she gave birth to a son the following year. When the son reached the age of 21, he brought an action in ejectment against the neighbor, who is still alive and living on the tract of land. The neighbor's best defense against the son's attempt to eject her is that:

(A) The neighbor's life estate was not subject to termination during her lifetime.
(B) The son has no claim to the tract, because he was not living at the time of the landowner's original conveyance.

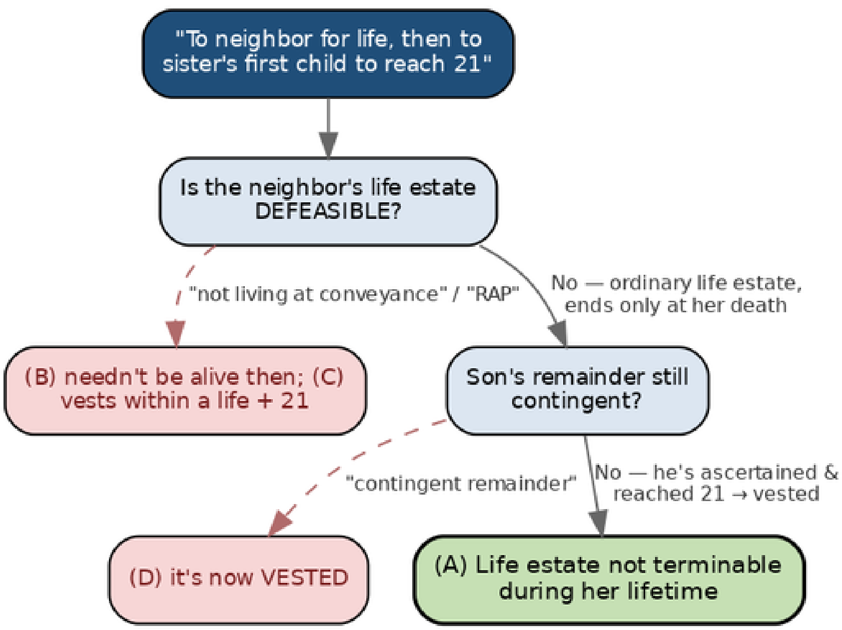
(C) A conveyance of the tract to the son violates the Rule Against Perpetuities.
(D) The son's interest, if any, would be that of a contingent remainder, and the contingency is the neighbor's death.

> **Correct answer (A).** The neighbor holds an ordinary (indefeasible) life estate not subject to termination during her life.

Rule. A life estate measured by the grantee's life ends only at her death unless it was expressly made defeasible. A remainder is contingent if held by unborn/unascertained persons or subject to a condition precedent; it vests once the taker is ascertained and any condition is met.

Application. The neighbor received a life estate that ends only when she dies; it was not made defeasible. The son's remainder was contingent until he was born and reached 21, but it has since vested — yet he still cannot take until the life estate ends (the neighbor's death). Her best defense is that her life estate cannot be terminated during her lifetime. (A) is correct.

Why the other choices fail. (B) is wrong because the son need not have been alive at the original conveyance to take a remainder. (C) is wrong because the interest vests within 21 years of a life in being (the sister), so RAP is satisfied. (D) is wrong because the son's remainder is now vested (he is ascertained and has reached 21), not contingent.



Decision path

Attack Sequence: Real Property attack sequence, §1 Estates & Future Interests, steps 1–3 (classify the life estate; vested vs. contingent remainder).

Playbook: Real Property playbook, ESTATES / FUTURE INTERESTS.

How it lands: §1: the neighbor holds an ordinary (indefeasible) life estate that ends only at her death. The son's remainder, once contingent, has vested (he's ascertained and 21) but still can't take until she dies — so her best defense is that her life estate can't be cut short → (A).

Question 44

Criminal Procedure — Search Warrant / Private Conduct

The president of a private college received a report that there was a great deal of cocaine use occurring on the second floor of the dormitory. The president persuaded the school security officers to place several concealed microphones in the second-floor student lounge. Conversations occurring in the lounge were monitored by the security officers and they recorded a conversation in which a sophomore at the college offered to sell cocaine to a freshman. A tape of the conversation was taken to the local police, who played it for a local judge. The judge issued a warrant to search the sophomore's room. While searching the room the police discovered a large amount of cocaine and the sophomore was arrested and charged with unlawful possession of narcotics. His attorney moved to prevent the introduction of the cocaine into evidence. The motion will most likely be:

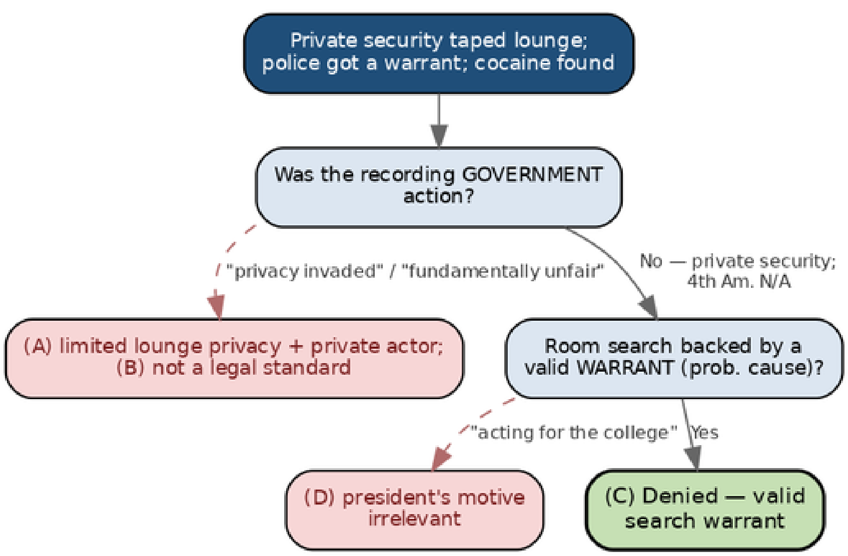
(A) Granted, because the sophomore's privacy was unreasonably invaded.
(B) Granted, because the electronic surveillance was "fundamentally unfair."
(C) Denied, because the police properly obtained a search warrant.
(D) Denied, because the college president was acting on behalf of the college population in general.

> **Correct answer (C).** The cocaine is admissible because the police obtained a valid warrant based on probable cause.

Rule. A search under a valid warrant supported by probable cause is reasonable. The Fourth Amendment restrains only government action; a search or recording by private parties (not acting as government agents) does not trigger the exclusionary rule, and its fruits may support a warrant.

Application. The college's own security officers (private actors) recorded the lounge conversation; that private surveillance gave the police information supporting a warrant, which a judge issued on probable cause. Because the room search rested on a valid warrant, the motion to suppress is denied. (C) is correct.

Why the other choices fail. (A) is wrong because the sophomore had a limited expectation of privacy in a common lounge, and any invasion was by private actors, not the state. (B) is wrong because 'fundamentally unfair' is not a governing legal standard here. (D) is wrong because the president's motives are irrelevant; the valid warrant is what defeats suppression.



Decision path

Attack Sequence: Crim attack sequence, §5 Fourth Amendment, step 1 (government conduct) + step 3 (valid warrant on probable cause).

Playbook: Crim playbook, 4TH AM – SEARCH + EXCLUSIONARY RULE (private conduct not covered).

How it lands: §5 step 1: the Fourth Amendment reaches only government action — the private security recording doesn't trigger it. Step 3: the room search rested on a valid warrant supported by probable cause, so the evidence comes in → (C).

Question 45

Civil Procedure — Cross-Claims Require Same Transaction

A consumer injured by a kitchen appliance he purchased filed a products liability action in federal district court against both the retailer from whom he purchased the appliance and the manufacturer of the appliance. The action seeks to hold the retailer and the manufacturer jointly and severally liable for $500,000 in damages. All three parties are citizens of different states. The manufacturer has an unasserted breach of contract claim for $100,000 against the retailer for the retailer's failure to pay for a shipment of power tools. Can the manufacturer assert and maintain its breach of contract claim against the retailer in the pending action filed by the consumer?

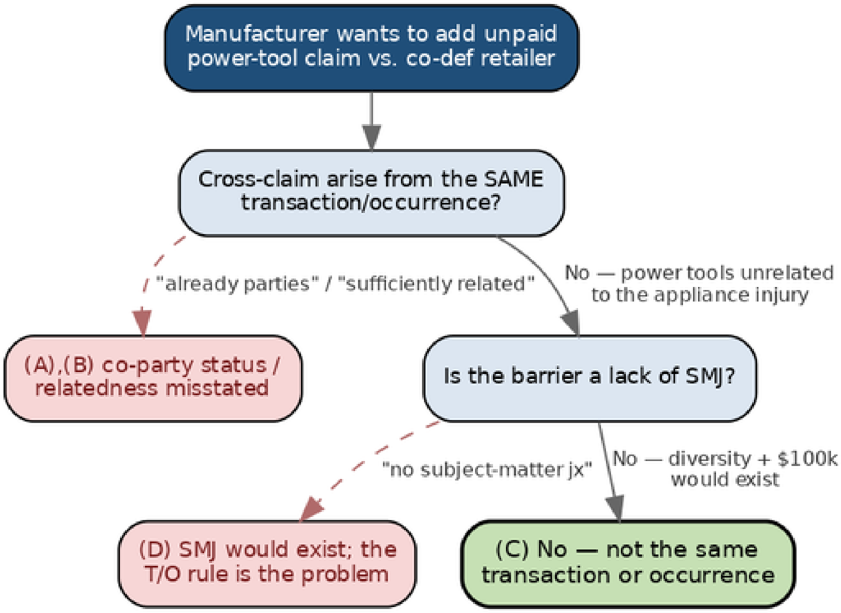
(A) Yes, because the manufacturer may assert any claims it has against the retailer since they are already parties to the consumer action.
(B) Yes, because the manufacturer's claim against the retailer is sufficiently related to the consumer's claim.
(C) No, because the manufacturer's claim against the retailer does not arise from the same transaction or occurrence as the consumer's pending claim.
(D) No, because the court lacks subject matter jurisdiction over the manufacturer's claim against the consumer.

> **Correct answer (C).** The manufacturer's unrelated contract claim against the retailer isn't a proper cross-claim.

Rule. A cross-claim against a co-party is proper only if it arises from the same transaction or occurrence as the original action or a counterclaim. A wholly unrelated claim cannot be brought as a cross-claim (even though the parties are already in the case).

Application. The manufacturer's breach-of-contract claim (unpaid power-tool shipment) is unrelated to the consumer's product-liability action. Because it doesn't arise from the same transaction or occurrence, it isn't a permissible cross-claim. (C) is correct.

Why the other choices fail. (A) and (B) misstate the standard — being co-parties isn't enough, and this claim isn't sufficiently related to the consumer's claim. (D) is wrong on the merits: the court would have diversity jurisdiction over the $100,000 contract claim between diverse parties, so lack of subject-matter jurisdiction isn't the reason (the same-transaction requirement is).



Decision path

Attack Sequence: Civ Pro attack sequence, §5 Joinder, step 3 (cross-claims must arise from the same transaction or occurrence).

Playbook: Civ Pro playbook, JOINDER (Cross-claim: same transaction or occurrence).

How it lands: §5 step 3: a cross-claim against a co-party must arise from the same transaction or occurrence. The unpaid-power-tools claim is unrelated to the appliance-injury action, so it can't be a cross-claim (jurisdiction would exist, but the T/O rule bars it) → (C).

Question 46

Real Property — Contingent Remainders / Destructibility Abolished

A homeowner conveyed her home "to my friend for life, and then to my brother's heirs." The brother had a young child at the time of the conveyance. Subsequently, the friend died. The brother and his minor child are still alive. The jurisdiction has abolished the common law rule of destructibility of contingent remainders. Who owns the home?

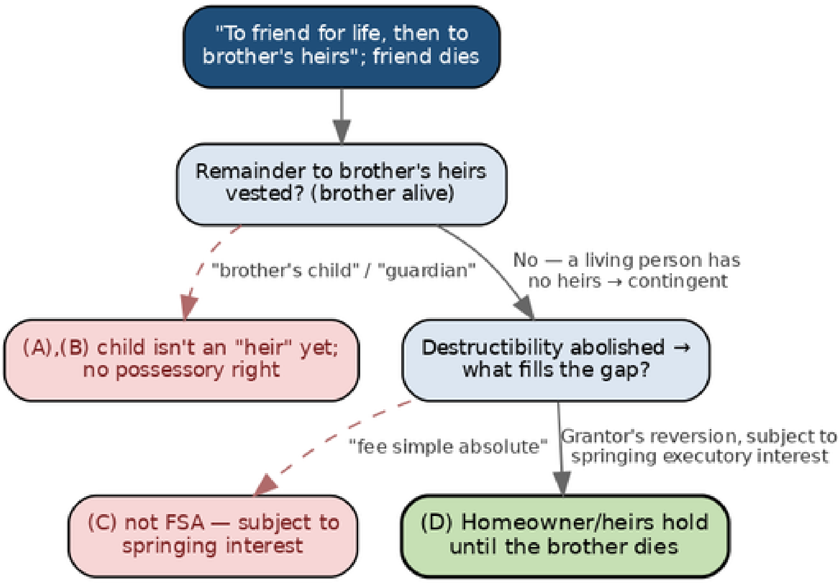
(A) The brother's child.
(B) The court-appointed guardian ad litem of the brother's child.
(C) The homeowner and her heirs in fee simple.
(D) The homeowner and her heirs would take the home until the brother died.

> **Correct answer (D).** With destructibility abolished, the grantor's reversion takes on the life tenant's death, later springing to the brother's heirs.

Rule. A remainder 'to a person's heirs' is contingent while that person lives, because a living person has no heirs. At common law a contingent remainder that hadn't vested by the end of the preceding estate was destroyed; where destructibility is abolished, the grantor's reversion takes possession, subject to a springing executory interest that divests it when the contingency later resolves.

Application. On the friend's death, the remainder to the brother's heirs is still contingent (the brother is alive, so he has no heirs yet). Because destructibility is abolished, the remainder isn't destroyed; instead the homeowner's reversion takes possession now, subject to a springing executory interest in the brother's heirs when he dies. So the homeowner and her heirs hold until the brother dies. (D) is correct.

Why the other choices fail. (A) is wrong because the brother's child is not yet an 'heir' (the brother is living). (B) is wrong because the child has no present possessory right, so no guardian can possess for her. (C) is wrong because the interest is not a fee simple absolute; it is subject to the springing executory interest.



Decision path

Attack Sequence: Real Property attack sequence, §1 Estates & Future Interests, steps 2–4 (contingent remainders; destructibility) — a nuanced springing-interest point.

Playbook: Real Property playbook, ESTATES / FUTURE INTERESTS (destructibility abolished isn't spelled out; flag it).

How it lands: §1: "to a living person's heirs" is contingent while that person lives. With destructibility abolished, the remainder isn't destroyed when the life estate ends; instead the grantor's reversion takes over, subject to a springing executory interest — so the homeowner/heirs hold until the brother dies → (D). The destructibility nuance isn't on the one-pager; note it.

Question 47

Contracts — Breach of Warranty Damages

A proud grandfather who planned to take pictures of his grandson's graduation purchased a camera from a camera store. He used the camera on several occasions over the next few weeks without incident, but when he used it on the day before his grandson's graduation, it caught fire and exploded, burning him and destroying an expensive coat he was wearing. Although the grandfather was in a great deal of pain because of his injuries, he insisted on attending his grandson's graduation. However, because he no longer had a workable camera, the grandfather hired a professional photographer to take pictures of the special day. In a breach of warranty action, which of the following represents the most that the grandfather may recover?

(A) The difference between the value of the camera accepted and its value if it had been as warranted.
(B) The difference between the value of the camera accepted and its value if it had been as warranted, plus medical costs for treating the grandfather's burns.
(C) The difference between the value of the camera accepted and its value if it had been as warranted,

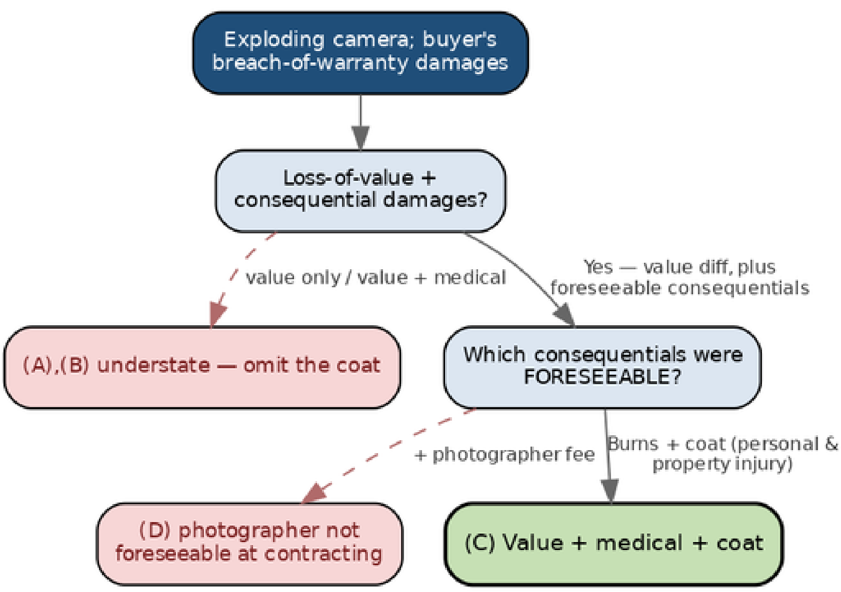
medical costs for treating the grandfather's burns, and the cost to replace the grandfather's coat.
(D) The difference between the value of the camera accepted and its value if it had been as warranted, medical costs for treating the grandfather's burns, the cost to replace the grandfather's coat, and the cost of hiring the professional photographer.

> **Correct answer (C).** He recovers loss-of-value plus foreseeable consequential damages (burns and coat), but not the unforeseeable photographer cost.

Rule. A buyer who accepts defective goods recovers the difference between the value accepted and the value as warranted, plus incidental and consequential damages. Consequential damages include injury to person and property proximately caused by the breach, and losses from needs the seller had reason to know of at contracting. Damages must be foreseeable.

Application. The grandfather recovers the camera's diminished value, plus his medical costs (personal injury) and the cost to replace the burned coat (property damage), all proximately caused by the exploding camera. The photographer's fee is not recoverable because the seller had no reason to know he'd need graduation photos and hire a substitute — that loss was unforeseeable. (C) is the maximum recovery.

Why the other choices fail. (A) and (B) understate the recovery by omitting the coat (and, for A, the medical costs). (D) overstates it by adding the photographer's fee, which wasn't foreseeable to the seller at contracting.



Decision path

Attack Sequence: Contracts attack sequence, §6 Remedies, steps 2 & 4 (buyer's damages; foreseeability limit).

Playbook: Contracts playbook, REMEDIES (buyer damages; consequential/foreseeable).

How it lands: §6: an accepting buyer recovers loss-of-value plus foreseeable consequential damages. The burns (personal injury) and coat (property) were proximately caused and recoverable; the photographer's fee wasn't foreseeable to the seller, so it's out → (C).

Question 48

Constitutional Law — Equal Protection / Gender / Intermediate Scrutiny

Hoping to help control a growing problem with violent all-male teenage gangs who frequented a youth center, a city council passed an ordinance forbidding any male between the ages of 13 and 19 to enter the center unless accompanied by a female. An 18-year-old boy who was new to the city went to the youth center to try to meet new friends. He was refused admission because he was not escorted by a female. Angered, the boy filed suit in federal district court seeking admission to the center and asking the court to strike down the ordinance as unconstitutional. Which of the following standards should the court use in determining the validity of the ordinance?

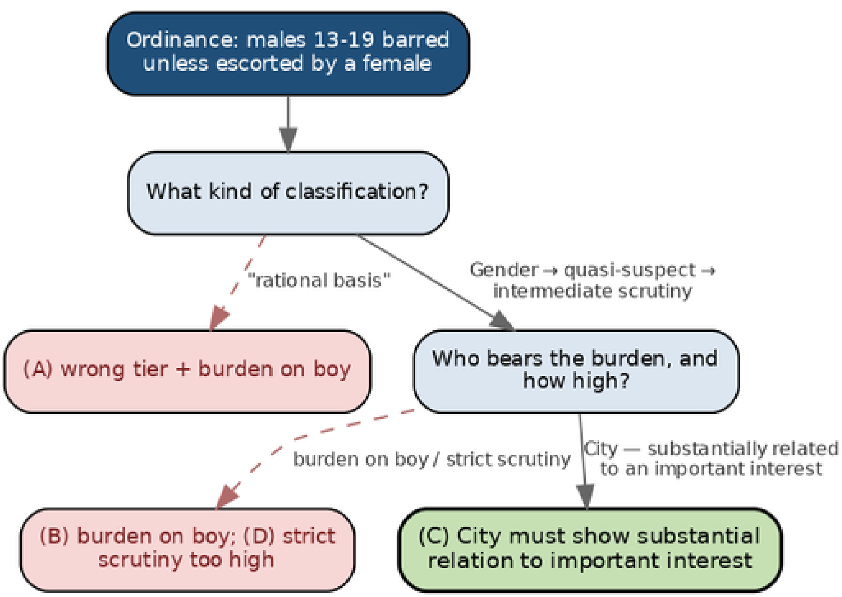
(A) The boy must show that the ordinance is not rationally related to a legitimate state interest.
(B) The boy must show that the ordinance is not substantially related to an important government interest.
(C) The city must show that the ordinance is substantially related to an important government interest.
(D) The city must show that the ordinance is necessary to achieve a compelling interest.

> **Correct answer (C).** Gender classifications get intermediate scrutiny, and the government bears the burden.

Rule. Gender is a quasi-suspect classification subject to intermediate scrutiny: the government must show, with an exceedingly persuasive justification, that the classification is substantially related to an important government interest. The burden is on the government.

Application. The ordinance draws a line by sex (males may enter only if escorted by a female), so intermediate scrutiny applies and the city must justify it. The correct standard puts the burden on the city to show substantial relation to an important interest. (C) is correct.

Why the other choices fail. (A) applies rational basis and wrongly puts the burden on the boy. (B) states the right test but wrongly assigns the burden to the boy. (D) puts the burden on the city but applies strict scrutiny (compelling interest), which is too demanding for a gender classification.



Decision path

Attack Sequence: Con Law attack sequence, §5 Equal Protection, steps 2 & 4 (trigger the standard — gender = intermediate; apply the tier; burden on government).

Playbook: Con Law playbook, EQUAL PROTECTION (quasi-suspect = intermediate; government's burden).

How it lands: §5 steps 2 & 4: a sex-based classification triggers intermediate scrutiny, and the government carries the burden — substantially related to an important interest → (C). (Rational basis is too low; strict scrutiny is too high.)

Question 49

Torts — IIED as the Only Viable Theory

A recent law school grad was discussing his new job at lunch with a former classmate, who was unemployed, and told him about some missing funds currently being investigated at his law firm. He was shocked and upset when his classmate bitterly replied, "I always knew you were dishonest. You stole that money." The new attorney may:

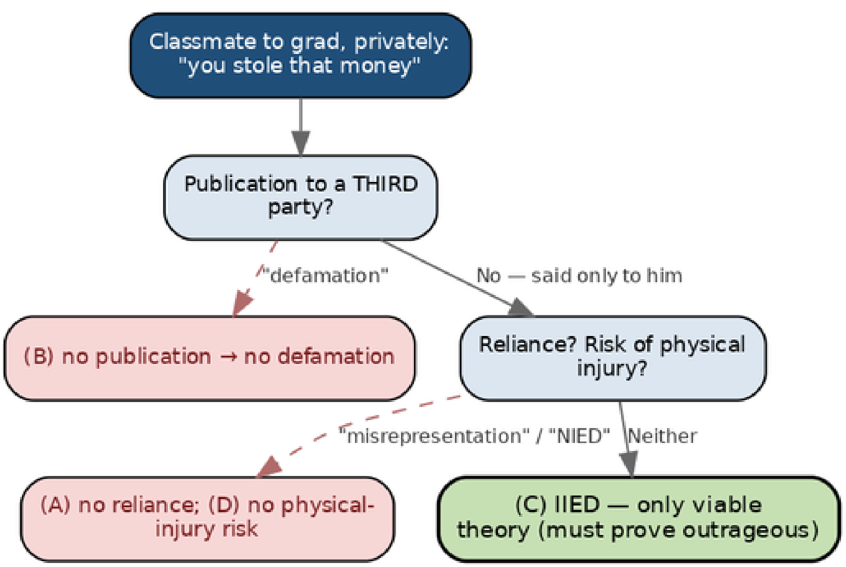
(A) Sue the classmate for intentional misrepresentation, because the classmate had no reason to believe that the accusation was true.
(B) Sue the classmate for defamation, because if the law firm learns of the allegation, the new attorney might be arrested for embezzlement.
(C) Sue the classmate for intentional infliction of emotional distress.
(D) Sue the classmate for negligent infliction of emotional distress.

> **Correct answer (C).** Only intentional infliction of emotional distress offers a possible recovery on these facts.

Rule. IIED requires intentional or reckless extreme and outrageous conduct causing severe emotional distress; it can reach intentional insults and indignities. Defamation requires publication to a third person. Intentional misrepresentation requires reliance. NIED generally requires a foreseeable risk of physical injury (zone of danger/impact).

Application. The insult was made only to the attorney with no third party present, so defamation fails for lack of publication; there was no reliance for misrepresentation and no risk of physical injury for NIED. IIED is the only theory that even offers a chance (though he must still prove the conduct was extreme and outrageous). (C) is correct.

Why the other choices fail. (A) fails because there was no reliance on or intent to induce reliance on the statement. (B) fails because there was no publication to a third person. (D) fails because there was no foreseeable risk of physical injury to the plaintiff.



Decision path

Attack Sequence: Torts attack sequence, §7 Defamation, Privacy & Nuisance (defamation needs publication) — plus §3/general IIED elements.

Playbook: Torts playbook, DEFAMATION (publication) + INTENTIONAL TORTS (IIED).

How it lands: §7: defamation needs publication to a third party — the insult was said only to him, so defamation fails; no reliance (misrepresentation) and no physical-injury risk (NIED). IIED is the only viable theory, though he must prove extreme and outrageous conduct → (C).

Question 50

Evidence — Impeaching One's Own Witness

The plaintiff filed a personal injury action against a restaurant. The plaintiff alleges that she suffered food poisoning after consuming the restaurant's daily special (extra-strong coffee and chili over eggs). The restaurant defends by claiming that the special on the day in question was an exotic tea served with a yogurt and fruit blend and that the extra-strong coffee drink was not even on the menu that day. Counsel for the restaurant called a former waitress to testify as to whether the extra-strong coffee drink was on the menu that day. The former waitress, who lives with the plaintiff, testified that it was always on the menu. The restaurant's attorney then asked, "Didn't you in fact, at your deposition, state that the extra-strong coffee drink was not on the menu that day?" The plaintiff's attorney objects. The question is:

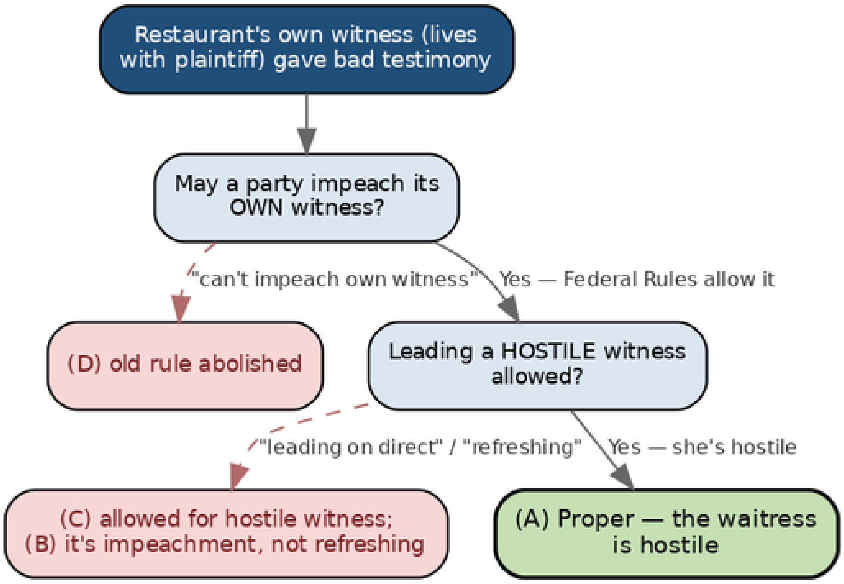
(A) Proper, because the former waitress is hostile.
(B) Proper, because it constitutes refreshing the witness's recollection.
(C) Improper, because this is a leading question on direct examination.
(D) Improper, because the restaurant cannot impeach its own witness.

> **Correct answer (A).** The question is proper: a party may impeach its own witness, and leading a hostile witness is allowed.

Rule. Under the Federal Rules, any party may impeach any witness, including one it called. Leading questions, normally barred on direct, are permitted when the witness is hostile or adverse. Confronting a witness with her prior inconsistent deposition testimony is proper impeachment.

Application. The restaurant called the waitress but may still impeach her, and because she is hostile (she lives with the plaintiff and gave favorable testimony), leading questions confronting her with her contrary deposition are proper. (A) is correct.

Why the other choices fail. (D) is wrong because the Federal Rules abolished the old bar on impeaching one's own witness. (C) is wrong because leading questions are allowed for a hostile witness. (B) is wrong because the examiner isn't refreshing her recollection; he is impeaching her with a prior inconsistent statement.



Decision path

Attack Sequence: Evidence attack sequence, §7 Witness Impeachment, step 1 (any party may impeach) + leading a hostile witness.

Playbook: Evidence playbook, IMPEACHMENT (any party may impeach; leading allowed for a hostile witness).

How it lands: §7: the Federal Rules let a party impeach its own witness, and leading questions are permitted for a hostile witness. Confronting the plaintiff-aligned waitress with her contrary deposition is proper → (A).