Mixed Subject Set 3

Expanded Answer Explanations · Diet Coke Esq.

50 questions — Real Property (9), Evidence (8), Constitutional Law (8), Civil Procedure (7), Contracts (6), Criminal Law (6), Torts (4), Criminal Procedure (2)

Question 1

Civil Procedure — Erie / Statutes of Limitations

An electrician from State A was hired by a commercial builder from State B to install all the electricity in a new strip mall located in State A. Upon completion, the builder refused to pay the electrician, claiming the installation was not up to the building code. The electrician filed a diversity action in federal court sitting in State A against the builder for breach of contract. Although the action was filed within the applicable statute of limitations period, the electrician failed to serve the summons and complaint on the builder until after the statute of limitations on the claim expired. Under the law in State A, an action is "commenced" for purposes of the state's statute of limitations when the defendant is served with the summons and complaint. However, under the Federal Rules of Civil Procedure, an action is "commenced" in federal court when the plaintiff files the complaint in federal court. The builder filed a motion to dismiss the complaint for exceeding the statute of limitations period, arguing the state law governs. How should the court rule?

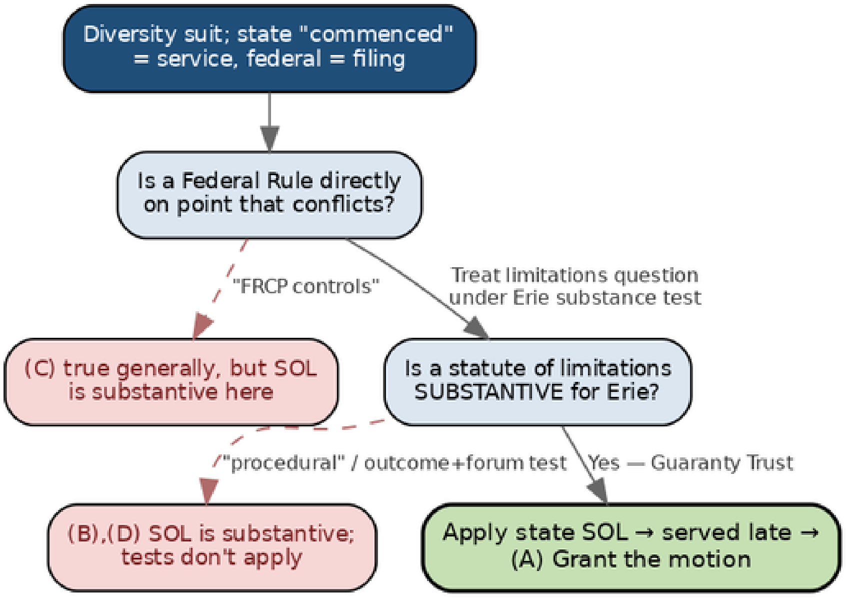
(A) Grant the motion, because statutes of limitations and rules for tolling statutes of limitations are considered substantive rules, and therefore the state law will apply.
(B) Grant the motion, because the federal rule will change the outcome of the case, and when applying a federal rule that will change the outcome, the federal court must apply state law to discourage forum shopping.
(C) Deny the motion, because the Federal Rules of Civil Procedure control over conflicting state law so long as they are procedural and not unconstitutional.
(D) Deny the motion, because the statutes of limitations and rules for tolling statutes of limitations are considered procedural rules, and therefore, the federal law will apply.

> **Correct answer (A).** A statute of limitations is substantive for Erie purposes, so the federal court applies state law and dismisses.

Rule. In a diversity case, the federal court applies federal procedural law where a Federal Rule is directly on point, but otherwise applies state substantive law under Erie. The Supreme Court has classified statutes of limitations and their tolling/commencement rules as substantive for Erie purposes (Guaranty Trust v. York), so a federal court sitting in diversity must follow the state's limitations rules.

Application. State A treats an action as commenced (for limitations) only upon service. Because limitations rules are substantive under Erie, the federal court applies State A's rule; service came after the period ran, so the claim is time-barred and the motion to dismiss is granted.

Why the other choices fail. (B) misapplies the outcome-determination and forum-shopping tests, which come into play only when no directive is on point and the substance/procedure line is unclear; here the Court has already fixed limitations as substantive. (C) states a true general principle but the limitations rule is substantive, so it doesn't control. (D) is a flat misstatement: limitations rules are substantive, not procedural, for Erie.



Decision path

Attack Sequence: Civil Procedure attack sequence, §4 Venue, Transfer & Erie, steps 5–6 (substantive vs. procedural; the Erie tie-breakers).

Playbook: Civil Procedure playbook, ERIE / VENUE — the SOL-is-substantive rule isn't spelled out; flag it.

How it lands: §4 step 5: in diversity, apply state substantive law. The Court fixed statutes of limitations as substantive (Guaranty Trust), so State A's commenced-on-service rule governs; served late → time-barred → (A). Worth adding the SOL-is-substantive line to your playbook.

Question 2

Evidence — Impeachment by Prior Inconsistent Statement

The defendant was on trial for driving while intoxicated and injuring a pedestrian. The pedestrian claimed that the defendant was driving the car; however, the defendant's spouse testified at trial that she had been driving the car at the time of the accident and had not consumed any alcohol that evening. In response, the prosecution calls a friend of the defendant's spouse to testify that the spouse told the friend that she and the defendant had changed seats in the car after the incident and that she remained in the driver's seat until the police arrived. The testimony is:

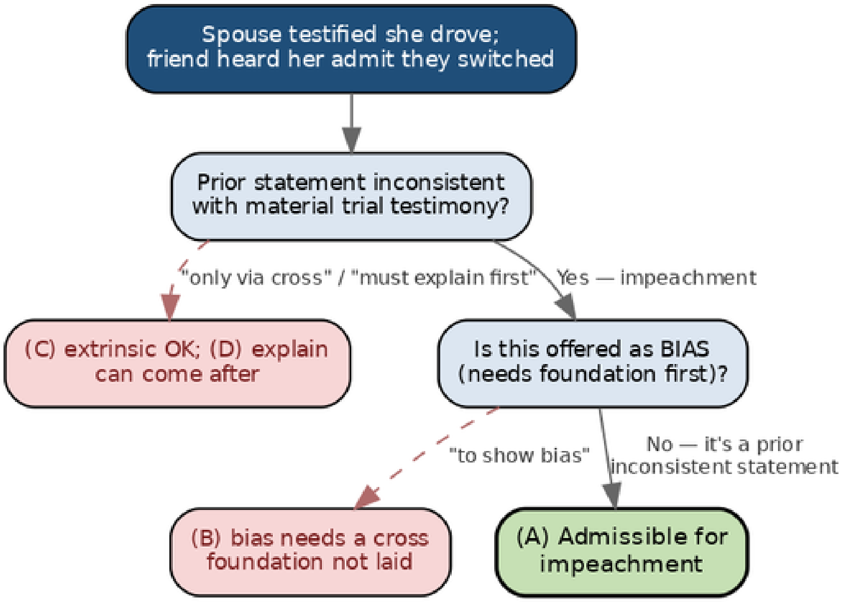
(A) Admissible for impeachment purposes only.
(B) Admissible to show bias.
(C) Inadmissible, because a witness who is available to testify can be impeached only through cross-examination.
(D) Inadmissible, because the witness must be given an opportunity to explain or deny the statement.

> **Correct answer (A).** The friend's testimony is admissible to impeach the spouse with a prior inconsistent statement.

Rule. A witness may be impeached by showing she made a prior statement inconsistent with a material part of her trial testimony. Extrinsic evidence of the inconsistent statement is allowed (subject to the witness having some opportunity to explain or deny, which need not come first). Extrinsic evidence of bias, by contrast, generally requires a foundation on cross first.

Application. The spouse testified she was driving and hadn't been drinking. The friend's account that the spouse admitted they switched seats after the crash directly contradicts that testimony on a material point, so it is admissible to impeach. It comes in for impeachment purposes.

Why the other choices fail. (B) fails because impeachment by bias generally requires first questioning the witness about the bias facts on cross, which wasn't done. (C) is wrong because a witness may be impeached by extrinsic evidence, not only by cross-examination. (D) is wrong because the opportunity to explain or deny can be given after the impeaching testimony, not necessarily before.



Decision path

Attack Sequence: Evidence attack sequence, §7 Witness Impeachment, step 5 (prior inconsistent statement; extrinsic evidence allowed).

Playbook: Evidence playbook, IMPEACHMENT (prior inconsistent statement; bias needs a foundation).

How it lands: §7 step 5: a prior statement inconsistent with material trial testimony impeaches, and extrinsic proof is allowed (the chance to explain can come later). The spouse's admission that they switched seats contradicts her testimony → (A).

Question 3

Contracts — Minor's Liability for Necessaries

A child lost her lunch on the way to elementary school. She walked to the local grocery store and explained her predicament to the manager. He told her that if she agreed to pay him back the following day, she could have a pre-packaged lunch. The child accepted the manager's offer, picked up her lunch, and promised to pay the manager the following day. If the child refuses to pay and the grocery store sues her for the cost of the lunch and wins, it will be because:

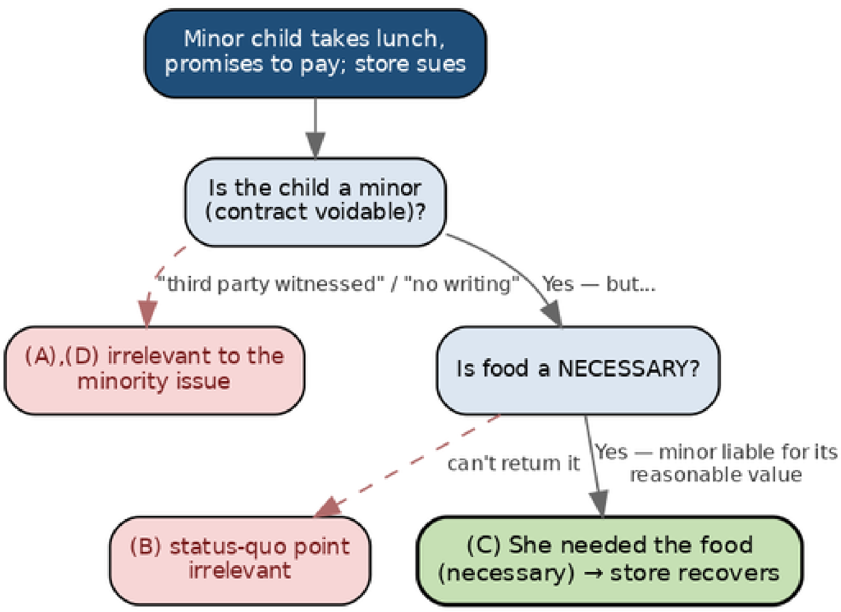
(A) A third party witnessed the child's promise.
(B) The child cannot return the lunch so she cannot return the store to the status quo ante.
(C) The child needed the food.
(D) The contract did not have to be in writing.

> **Correct answer (C).** A minor is liable for the reasonable value of necessaries, and food is a necessary.

Rule. A minor's contracts are generally voidable, but most jurisdictions hold a minor liable (in quasi-contract) for the reasonable value of necessaries actually furnished, such as food, clothing, shelter, and medical care.

Application. The child is a minor and could ordinarily disaffirm, but the lunch is food, a necessary. If the store wins, it is because food is a necessary for which even a minor must pay its reasonable value.

Why the other choices fail. (A) is wrong because a witness to the promise is irrelevant to enforceability. (B) is irrelevant to the minority issue. (D) is a true statement (no writing was required, since it wasn't a sale of goods for $500+), but it doesn't address the child's minority, which is the pivotal issue that lets the store recover.



Decision path

Attack Sequence: Contracts attack sequence, §3 Defenses to Formation, step 1 (capacity — infancy; liable for necessaries).

Playbook: Contracts playbook, DEFENSES TO FORMATION (Infancy: liable for reasonable value of necessaries).

How it lands: §3 step 1: a minor's contract is voidable, but she's liable for the reasonable value of necessaries. Food is a necessary, so the store recovers → (C). (The no-writing point is true but doesn't turn on minority.)

Question 4

Real Property — Void Deed / Forgery

A landowner embarked on an expedition into a remote jungle, leaving no means to communicate with him. Because property values suddenly began plummeting in the landowner's neighborhood, his son believed that it was imperative to sell his father's property before it became worthless. Having no way to speak to his father ahead of time, the son prepared a deed conveying the property to a buyer, but left the line for the buyer's name blank. He then signed his father's name on it as the grantor, and handed the deed to the buyer. The deed, however, did not include any language regarding the amount the father was to receive in exchange for the property. The buyer believed that the son was the owner of the property. When the father returned, he was happy that the property had been sold. If the buyer changed his mind and now wishes to have the conveyance set aside, which of the following would be his best argument?

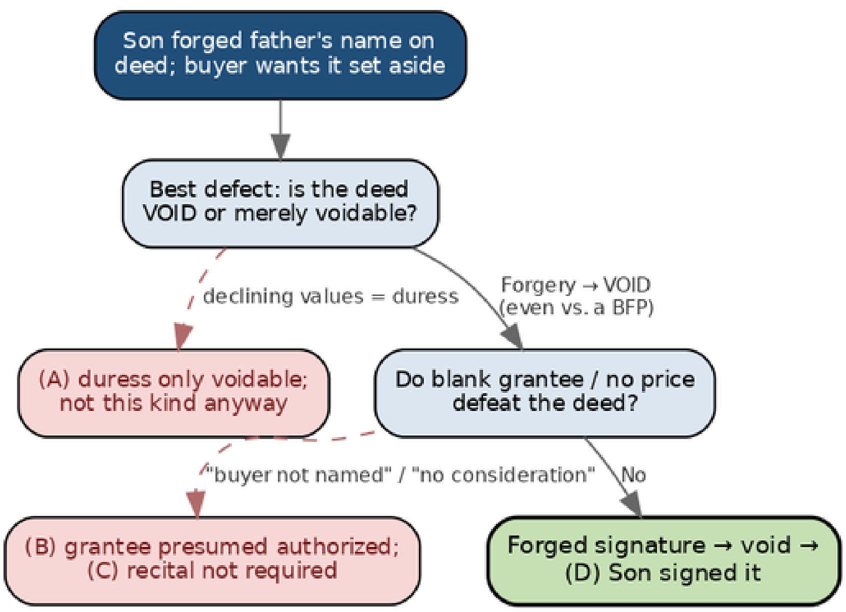
(A) The deed was not valid because the rapidly declining property values amounted to extreme duress.
(B) The deed was not valid because the buyer was not identified in the writing.
(C) The deed was not valid because the consideration for the deed was not contained in the writing.
(D) The deed was not valid because the son signed it.

> **Correct answer (D).** A forged deed is void, so the buyer's best argument is that the son signed it.

Rule. A valid deed needs a writing identifying the land and parties, words of intent, and the grantor's signature. Deeds that are forged, never delivered, or obtained by fraud in the factum are void (set aside even against a bona fide purchaser). Deeds obtained by duress, undue influence, fraud in the inducement, or mistake are merely voidable (good against a BFP). A blank grantee line and an omitted price do not defeat a deed.

Application. The son signed the father's name as grantor, a forgery, which makes the deed void, and a void deed can be set aside regardless of the buyer's good faith or the father's later approval. That is the buyer's strongest argument.

Why the other choices fail. (A) fails because declining property values are not the kind of duress the rule contemplates, and duress makes a deed only voidable anyway. (B) fails because a grantee taking delivery is presumed authorized to fill in his own name. (C) fails because a recital of consideration is not required for a valid deed.



Decision path

Attack Sequence: Real Property attack sequence, §6 Conveyancing, Deeds & Recording, step 2 (deed validity: void vs. voidable).

Playbook: Real Property playbook, DEEDS & RECORDING (deed validity).

How it lands: §6 step 2: a forged deed is void (set aside even against a BFP), while duress/mistake make a deed only voidable. The son's forgery of the father's signature is the void-making defect → (D).

Question 5

Constitutional Law — Time, Place, and Manner

To protect ready access to its capitol building, a state statute provides: The distribution and sale of any written material within 100 feet of the State Capitol Building shall be prohibited except where: (i) the person or organization intending to distribute the material first obtains a permit from the State Administrator's Office, which shall be issued at no charge to the first 10 persons or organizations requesting a permit each day, and (ii) the person or organization does not distribute or sell written materials within 10 feet of any entrance to the State Capitol Building. A state citizen who was unhappy with a law that was recently enacted went to the main entrance of the capitol building and handed out leaflets criticizing the law. He was soon approached by the building's security guards, who asked to see his permit. When he was unable to produce one, they cited him for leafleting without a permit. If the citizen challenges his citation on the basis that the permit statute is unconstitutional under the First Amendment, the court should decide that:

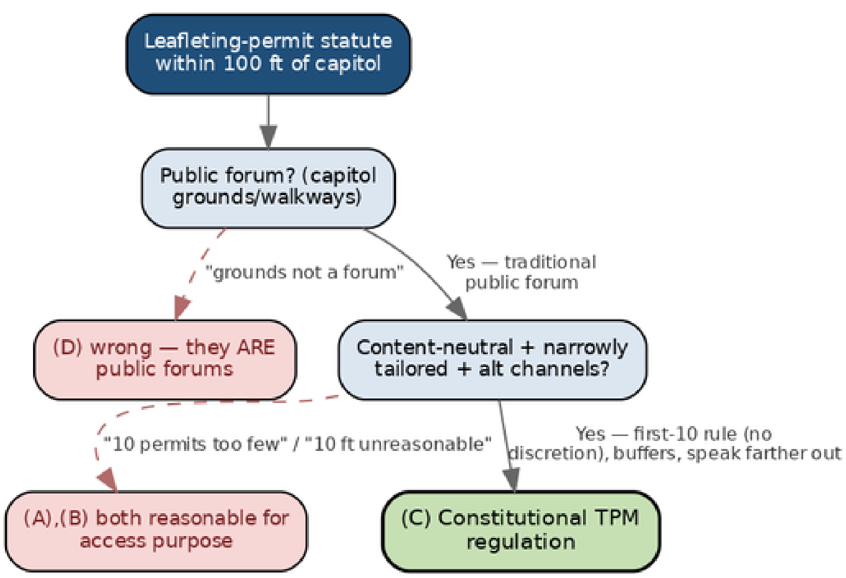
(A) The statute is unconstitutional because 10 permits a day is too few.
(B) The statute is unconstitutional because 10 feet from a doorway is unreasonable.
(C) The statute is constitutional because it is content neutral, narrowly tailored to serve an important government interest, and leaves open alternative channels of communication.
(D) The statute is constitutional because the grounds and walkways of the capitol building are not public forums.

> **Correct answer (C).** The permit statute is a valid content-neutral time, place, and manner regulation of a public forum.

Rule. In a public forum, the government may impose time, place, and manner restrictions that are content-neutral, narrowly tailored to serve an important government interest, and leave open ample alternative channels. A permit scheme is valid if it applies without regard to message and vests no discretion to discriminate by content.

Application. Permits go to the first 10 applicants each day regardless of message (no discretion, content-neutral), the 100-foot/10-foot limits are narrowly tailored to the important interest of keeping the capitol accessible, and other channels remain (speaking farther out). The statute is constitutional.

Why the other choices fail. (A) is wrong because a 10-permit daily cap is reasonable given the access-facilitation purpose. (B) is wrong because a 10-foot buffer at entrances is reasonable to preserve access. (D) is wrong on the law: capitol grounds and walkways are traditional public forums.



Decision path

Attack Sequence: Con Law attack sequence, §6 First Amendment: Speech, steps 3–4 (content-neutral? then public-forum time/place/manner).

Playbook: Con Law playbook, FIRST AMENDMENT – SPEECH (forum analysis; time/place/manner).

How it lands: §6 step 4: capitol grounds are a public forum, and the permit scheme is content-neutral (first 10 regardless of message), narrowly tailored to access, with alternatives → valid TPM regulation → (C).

Question 6

Torts — Negligence Per Se / Protective Purpose

Late one night two brothers took the older brother's new all-terrain vehicle for an off-road test drive on some trails at a county park. A county ordinance intended to protect hikers, bike riders, and horse riders prohibited vehicle traffic on any of the trails. While on a trail, the vehicle's tires slipped and the vehicle fell down a steep incline. As it fell, it turned over several times, but landed on its tires when it reached the bottom of the incline. However, the vehicle's roll bar, which was intended to protect passengers in the event the vehicle turned over, collapsed due to some cracks in the welded area of the brace. The older brother was killed in the accident, and the younger brother suffered severe head and back injuries. The younger brother brought a negligence action against the vehicle's manufacturer. The manufacturer cited as a defense the violation of the county ordinance by the older brother. Depending on the jurisdiction's contributory negligence rule, this violation of the ordinance will:

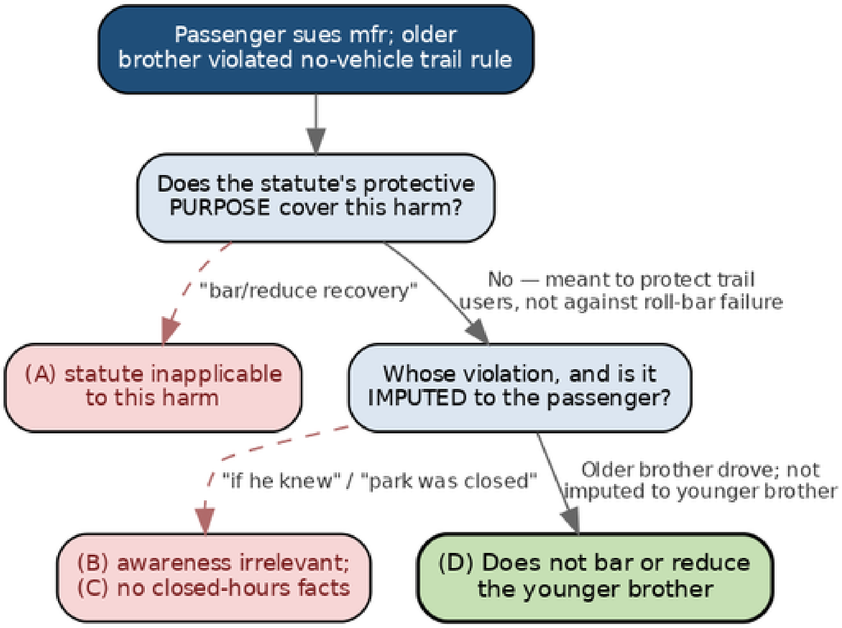
(A) Bar or reduce recovery by the younger brother.
(B) Bar or reduce recovery by the younger brother if the jury finds that he was aware of the ordinance.
(C) Not bar or reduce recovery by the younger brother, because at the time he and the older brother went into the park it was closed and no one else was on the trails.
(D) Not bar or reduce recovery by the younger brother.

> **Correct answer (D).** The ordinance won't reduce the younger brother's recovery: it wasn't designed to prevent this harm, and it was the older brother who violated it.

Rule. A statute sets the standard of care (negligence per se, and by extension contributory negligence per se) only if the plaintiff is in the class the statute protects and the harm is of the type the statute was designed to prevent. And one person's statutory violation is not imputed to another absent a special relationship.

Application. The trail ordinance was meant to protect hikers, cyclists, and equestrians (and the trails) from vehicles, not to prevent a rollover caused by a defective roll bar. It also was the older brother who drove in violation, and his violation isn't imputed to the passenger younger brother. So the violation does not bar or reduce the younger brother's recovery.

Why the other choices fail. (A) is wrong because the statute's protective purpose doesn't cover this harm. (B) is wrong because the younger brother's awareness is irrelevant when the statute is inapplicable. (C) is wrong because nothing shows the vehicle ban was limited to open hours, and in any event the statute still doesn't fit this harm.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 2 (negligence per se — protective-purpose limit).

Playbook: Torts playbook, NEGLIGENCE (Negligence per se: P in protected class + harm the statute prevents).

How it lands: §3 step 2: a statute sets the standard only if the plaintiff is protected and the harm is the type it targets. The trail ban protects trail users from vehicles, not against a defective roll bar, and the older brother (not the passenger) violated it → (D).

Question 7

Contracts — Third-Party Beneficiary / Vesting

A man loaned $10,000 to his good friend who was heavily in debt. He told his friend that he could have until the following June to repay the loan and to make repayment directly to the man's grandson. The man knew that his grandson, who would be graduating from law school in June, was hoping to buy a new car upon graduation and could use the money as a down payment on the car. Neither the man nor his friend told the grandson of this agreement. Before the friend repaid the $10,000 loan, the grandson went out and bought his dream car, cashing some savings bonds to make the down payment. A week later, the grandfather suffered a reversal of fortune and told his friend to pay the $10,000 to him after all, which the friend did. A short time later, the grandson learned of the aborted plan to pay the $10,000 to him. If the grandson sues the friend for the $10,000, will he prevail?

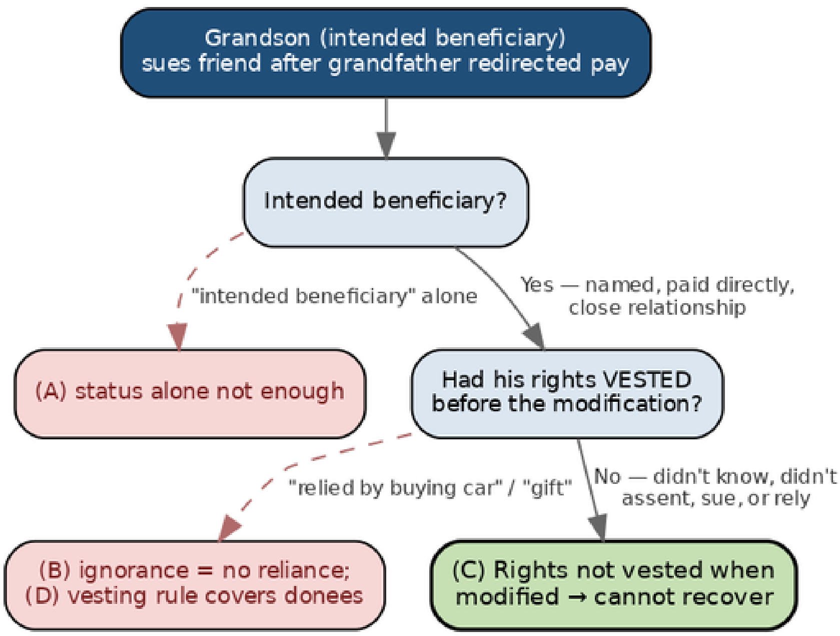
(A) Yes, because he was the intended beneficiary of the contract between his grandfather and the friend.
(B) Yes, because he detrimentally relied on the promise between his grandfather and the friend by purchasing the car.
(C) No, because his rights had not yet vested when the contract was modified.
(D) No, because the man intended the repayment of the $10,000 to the grandson to be a gift.

> **Correct answer (C).** The grandson's rights had not vested when the contract was modified, so he cannot enforce it.

Rule. An intended beneficiary can enforce a contract only once his rights vest. Vesting occurs when the beneficiary manifests assent to the promise as invited, sues to enforce it, or materially changes position in justifiable reliance on it. Before vesting, the original parties may modify or rescind.

Application. The grandson was an intended (donee) beneficiary (expressly designated, paid directly, close relationship). But his rights never vested: he didn't know of the arrangement, so he couldn't assent, hadn't sued, and didn't buy the car in reliance on a promise he was unaware of. Because the parties modified before vesting, he cannot recover.

Why the other choices fail. (A) is wrong because intended-beneficiary status alone is not enough; the rights must also have vested. (B) is wrong because buying the car in ignorance of the promise is not justifiable reliance. (D) is wrong because the vesting rule protects donee beneficiaries too, so the 'gift' framing doesn't defeat him; the vesting failure does.



Decision path

Attack Sequence: Contracts attack sequence, §7 Third Parties: Beneficiaries, step 2 (vesting of the beneficiary's rights).

Playbook: Contracts playbook, THIRD PARTIES (intended beneficiary; vesting by assent, suit, or reliance).

How it lands: §7 step 2: an intended beneficiary can enforce only after vesting (assent, suit, or material reliance). The grandson never knew of the deal, so his rights hadn't vested when the parties modified → (C).

Question 8

Real Property — Profit à Prendre

A landowner owned a tract known as Section 35. He subdivided Section 35, and sold a lot to a neighbor. The warranty deed that conveyed the property included the following language: "Purchaser shall have a privilege to hunt and fish on all lands owned by Seller in Section 35. . . . These covenants shall run with the land." Years later, the landowner sold the remaining land in Section 35 to a builder. Shortly thereafter, the neighbor died, leaving the lot to her granddaughter. The builder posted "no trespassing" signs on his land. The granddaughter brought an action for declaratory judgment against the builder to enforce the granddaughter's ability to hunt and fish on the builder's land. What would be the likely result?

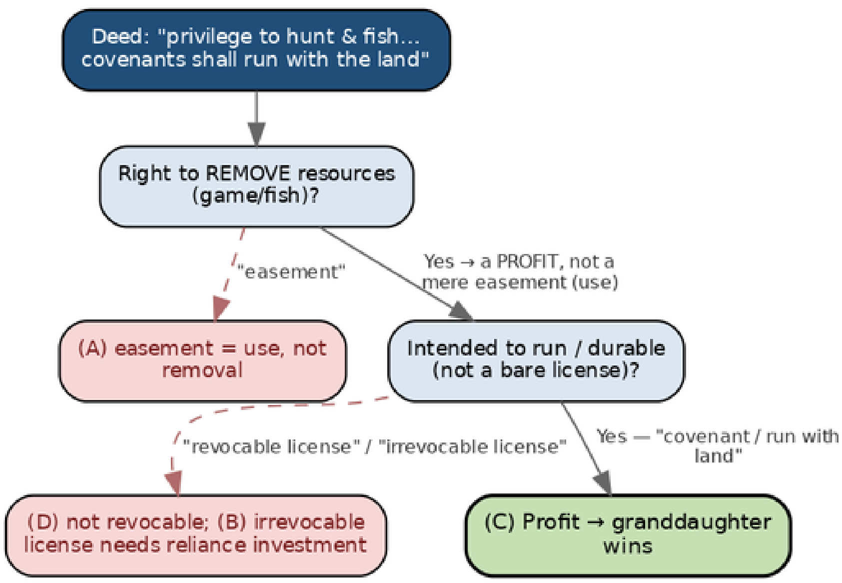
(A) The granddaughter will win, because the warranty deed granted her an easement.
(B) The granddaughter will win, because the warranty deed granted her an irrevocable license.
(C) The granddaughter will win, because the warranty deed granted her a profit.
(D) The builder will win, because the warranty deed granted a revocable license.

> **Correct answer (C).** The deed granted a profit (to take fish and game), which runs and passed to the granddaughter.

Rule. A profit is a nonpossessory right to enter another's land and remove resources (minerals, timber, game, fish). It can be created by deed, runs with the land when intended, and passes to successors; it terminates only by release, abandonment, misuse, etc. A right to remove resources is a profit, not a mere easement (use) or license (revocable permission).

Application. The deed's right to hunt and fish, coupled with 'covenant' and 'shall run with the land,' created a profit intended to run, which passed to the granddaughter. Nothing shows termination, so she may enforce it against the builder.

Why the other choices fail. (D) is wrong because the 'covenant/run with the land' language shows intent to create a durable interest, not a revocable license. (A) is close but wrong: an easement is a right to use, whereas removing fish and game is a profit. (B) is wrong because an irrevocable license requires substantial reliance investment, which isn't present.



Decision path

Attack Sequence: Real Property attack sequence, §4 Easements, Covenants & Servitudes, step 1 (classify — a profit allows removing resources).

Playbook: Real Property playbook, COVENANTS & SERVITUDES / easements (profit vs. easement vs. license).

How it lands: §4 step 1: a right to take fish and game is a profit (remove resources), not an easement (use) or a revocable license. The "covenant/run with the land" language shows intent to create a durable profit that passed to the granddaughter → (C).

Question 9

Evidence — Character / Pertinent Trait

At the defendant's trial for arson, a witness for the defense is asked whether the defendant has a reputation for honesty and veracity. The prosecution objects. How should the court rule on the objection?

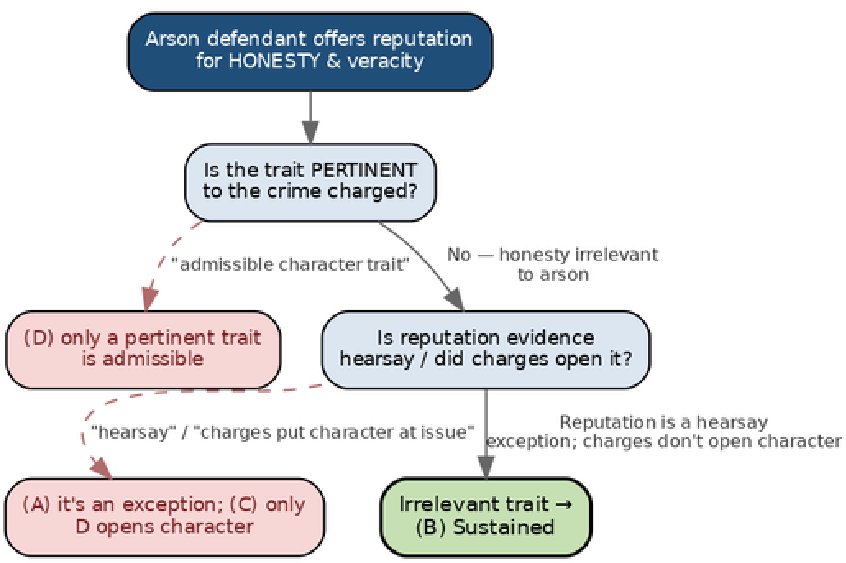
(A) Sustained, because the evidence is hearsay.
(B) Sustained, because the evidence is irrelevant.
(C) Overruled, because the prosecution put the defendant's character at issue by filing charges against him.
(D) Overruled, because the reputation evidence is admissible to establish a character trait.

> **Correct answer (B).** Reputation for honesty is irrelevant to an arson charge, so the objection is sustained.

Rule. A criminal defendant may offer good-character evidence, but only of a trait pertinent to the crime charged. Reputation evidence is a recognized hearsay exception, but it must still be relevant, meaning the trait must bear on the offense.

Application. Honesty and veracity have no bearing on whether the defendant committed arson, so the reputation testimony is irrelevant and the objection is sustained.

Why the other choices fail. (A) is wrong because reputation evidence is a hearsay exception, so hearsay isn't the ground. (C) is wrong because only the defendant can first put his character in issue; charging him does not. (D) is wrong because reputation evidence is admissible only for a pertinent trait, and honesty is not pertinent to arson.



Decision path

Attack Sequence: Evidence attack sequence, §6 Character & Propensity, step 2 (criminal-defendant character — a pertinent trait).

Playbook: Evidence playbook, CHARACTER (D may open with a pertinent trait; reputation is a hearsay exception).

How it lands: §6 step 2: a defendant may offer good character, but only a trait pertinent to the crime. Honesty has no bearing on arson, so it's irrelevant → (B). (Reputation itself is a hearsay exception, so hearsay isn't the ground.)

Question 10

Criminal Law — Battery / Voluntary Act

A defendant is arrested and tried for battery. At trial, the prosecution offers evidence showing that the defendant lightly punched the victim in the stomach. The victim was not injured in any way. The defendant claims that he was suffering from a seizure and had no control over his actions. If the jury believes him, should he be convicted of battery?

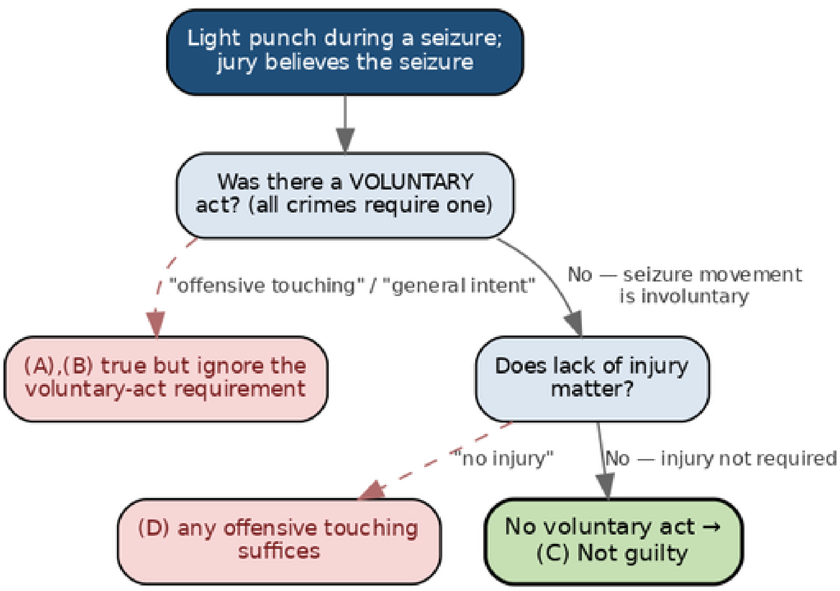
(A) Yes, because being lightly punched in the stomach is an offensive touching.
(B) Yes, because battery is a general intent crime.
(C) No, because the defendant did not act voluntarily.
(D) No, because the victim was not injured.

> **Correct answer (C).** A seizure negates the required voluntary act, so the defendant is not guilty of battery.

Rule. Battery is a general-intent crime (satisfiable by recklessness), but every crime requires a voluntary act. A bodily movement during a seizure is not a voluntary act, and it also negates the culpable mental state.

Application. If the jury believes the seizure account, the punch was involuntary, so both the actus reus (voluntary act) and mens rea are missing. He should not be convicted.

Why the other choices fail. (A) correctly notes a light punch is an offensive touching but ignores the missing voluntary act. (B) correctly notes battery is general intent but likewise ignores the voluntary-act requirement. (D) is wrong because injury is not required for battery; any offensive touching suffices.



Decision path

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

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

How it lands: Battery is general intent but still needs a voluntary act. A seizure movement is involuntary, negating both the act and the mental state → (C). Consider adding a voluntary-act line to the Crim playbook (same gap as Set 2 Q26).

Question 11

Civil Procedure — Removal / One-Year Diversity Limit

Three drivers were in an automobile accident in a city in State A. The drivers were citizens of State A, State B, and State C. The State B driver filed a tort action against the other two in a State A state court, seeking $300,000 from both of the other drivers. After extensive discovery over a period of one year and three months, the State B driver settled and dismissed her claims against the State A driver. After that dismissal, only the $300,000 claim against the State C driver remained. May the remaining State C driver properly remove the action to federal district court?

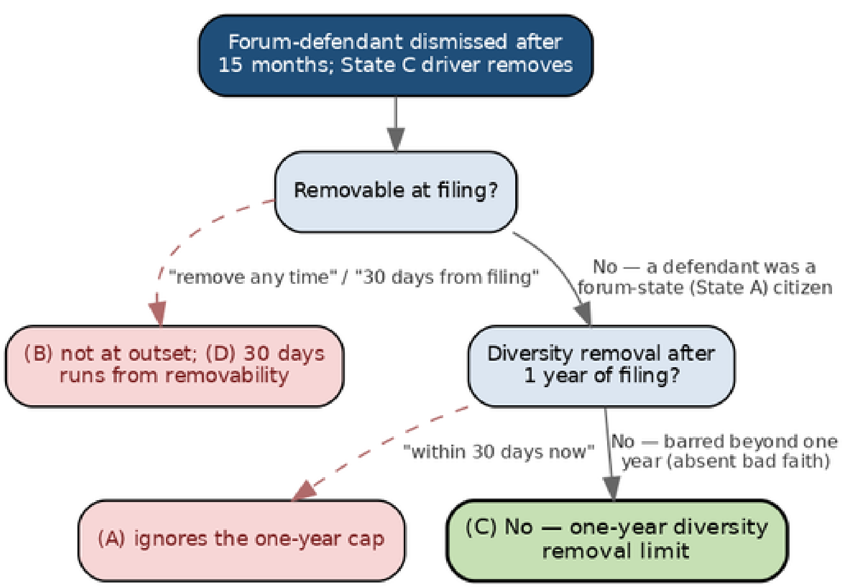
(A) Yes, if he files a notice of removal within 30 days, because there is complete diversity of citizenship and the requisite amount in controversy, and there is no longer a defendant who is a citizen of the forum state of State A.
(B) Yes, at any time, because complete diversity of citizenship and the requisite amount in controversy were satisfied from the time the action was filed.
(C) No, because removal on the basis of diversity of citizenship jurisdiction is not available after an action has been pending in state court for more than one year.
(D) No, because the State A and State C drivers did not remove the action within 30 days of the action being filed.

> **Correct answer (C).** Diversity removal is barred more than one year after the case was filed (absent bad faith).

Rule. A defendant may remove within 30 days of when the case becomes removable, but for diversity cases removal generally may not occur more than one year after the action was commenced. Diversity removal is also barred if any defendant is a citizen of the forum state.

Application. When filed, the case wasn't removable because a defendant (the State A driver) was a forum-state citizen. Dismissal of that driver after 15 months would have made it removable, but more than one year had already passed since filing, so the one-year limit bars removal.

Why the other choices fail. (A) ignores the one-year cap. (B) is doubly wrong: removal isn't available 'at any time,' and the case wasn't removable at the outset due to the forum-defendant. (D) misstates the rule: removal runs from when the case becomes removable, not merely from filing.



Decision path

Attack Sequence: Civil Procedure attack sequence, §2 Supplemental Jurisdiction & Removal, steps 4–5 (removal mechanics and limits).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Removal: could P have filed federally; 30-day window).

How it lands: §2 removal: not removable at filing (a forum-state defendant), and diversity removal is barred more than one year after commencement. Fifteen months had passed when the forum defendant dropped out → (C).

Question 12

Contracts — Modification for Unanticipated Circumstances

A builder and a wealthy landowner entered into a written contract whereby the builder would build on the grounds of the landowner's estate a mausoleum, using imported Italian granite, to hold the remains of the landowner's recently deceased wife. The cost of the mausoleum was set at $100,000. After the contract was signed but before construction began, the builder learned that an unforeseen embargo prevented him from getting the granite he planned to use to build the mausoleum. He could get the granite from another source, but it would cost an additional $25,000. The builder explained the situation to the landowner, who agreed to pay $125,000 to have the mausoleum built. The builder prepared a writing stating that the price for the mausoleum was now $125,000. Both the builder and the landowner signed the writing. After the work was completed, the landowner gave the builder a certified check for $100,000 and refused to pay one penny more. If the builder brings suit against the landowner to recover the additional $25,000, will the builder likely prevail?

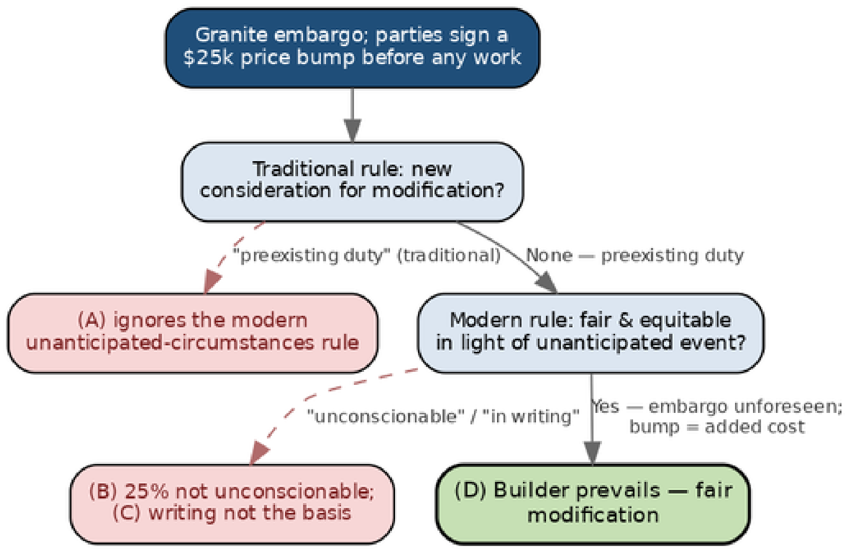
(A) No, because the builder had a preexisting duty to do the work for $100,000.
(B) No, because the 25% increase in price that the builder was trying to force on the landowner is unconscionable.
(C) Yes, because the later agreement was in writing and signed by the parties.
(D) Yes, because the modification was fair and equitable in view of the unanticipated increase in the cost of granite.

> **Correct answer (D).** Under the modern view, a modification is binding if fair and equitable in light of unanticipated circumstances.

Rule. The traditional preexisting-duty rule bars modification without new consideration. But under the Restatement (Second), a promise modifying a not-yet-fully-performed contract is binding without new consideration if the modification is fair and equitable in view of circumstances the parties did not anticipate when they contracted.

Application. Neither side had performed, the granite embargo was an unanticipated circumstance, and the $25,000 increase just covered the builder's added cost, making it fair and equitable. Under the modern view the builder recovers the extra $25,000.

Why the other choices fail. (A) states the traditional rule and ignores the unanticipated-circumstances exception. (B) is wrong because price alone rarely shows unconscionability, and a 25% bump between comparably situated parties isn't unconscionable. (C) is wrong because a signed writing doesn't matter if the modification otherwise lacks a basis; here the basis is the unanticipated-circumstances rule, not the writing.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance, Breach & Excuse, step 5 (excuse) and §2 step 6 (consideration/modification).

Playbook: Contracts playbook, CONSIDERATION (modification) / PERFORMANCE & BREACH.

How it lands: The modern Restatement rule: a modification of a not-yet-performed contract is binding without new consideration if fair and equitable given unanticipated circumstances. The granite embargo fits, and the $25k bump just covers the cost → (D).

Question 13

Real Property — Assignment vs. Sublease

A man had rented a woman's home from her for seven years. When the time came to sign a new lease, the woman decided that because the man had always been a quiet tenant, she would continue to charge him only $350 per month rent instead of the $500 to $550 she could probably get otherwise. The new lease was for a period of five years, and by its terms, the man was specifically prohibited from assigning the lease without the woman's specific written consent. About a year later, the man got married and moved into his new wife's home. Instead of giving up his lease, the man sublet the property to a friend for $500 a month. The man did not get the woman's permission to sublease the property. If the woman brings an action to either eject the friend from the premises or to recover damages from the man for subletting the premises without her consent, the woman most likely would:

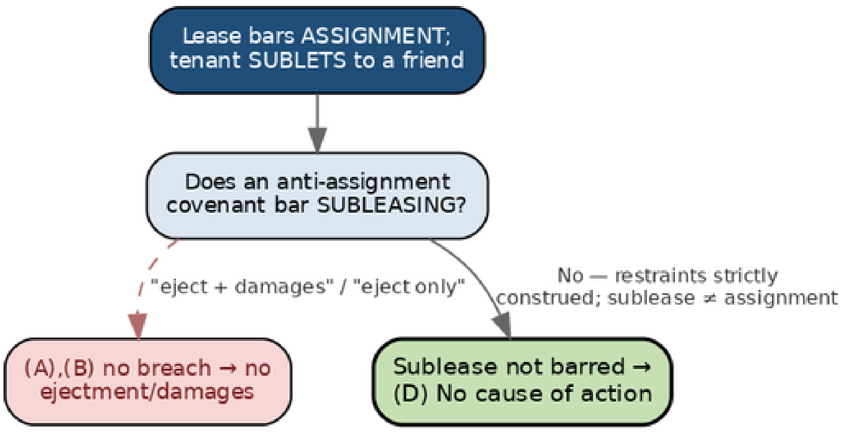
(A) Be able to recover damages and to eject the new tenant.
(B) Be able to eject the new tenant only, because she has suffered no money damages.
(C) Not be able to eject the new tenant because, although the man did not have the right to sublet, he had the power, but she will be entitled to recover the full rent paid by the new tenant because it would be unfair to let the man profit from his wrongful act.
(D) Have no cause of action for either ejectment or damages.

> **Correct answer (D).** A covenant barring assignment does not bar subleasing, so the woman has no cause of action.

Rule. Restraints on alienation in leases are strictly construed. A covenant prohibiting assignment does not prohibit subletting (and vice versa). A tenant who transfers in violation of a valid restraint does not void the transfer but may expose the lease to termination, if the restraint applied.

Application. The lease barred only assignment. The man sublet (he kept a reversion by transferring for less than the remaining term), which the assignment-only restraint does not reach. So the woman cannot eject the friend or recover damages for the sublease.

Why the other choices fail. (A) and (B) are wrong because the sublease didn't breach the assignment-only covenant. (C) is wrong because there's no cause of action at all here (subleasing wasn't prohibited), so the profit-recovery theory never arises.



Decision path

Attack Sequence: Real Property attack sequence, §3 Landlord-Tenant, step 4 (assignment vs. sublease; restraints strictly construed).

Playbook: Real Property playbook, LANDLORD-TENANT (Assignment vs. sublease).

How it lands: §3 step 4: restraints on alienation are strictly construed, so an anti-assignment covenant does not bar subleasing. The man sublet (kept a reversion), so no breach → no ejectment or damages → (D).

Question 14

Constitutional Law — Establishment Clause / Lemon

A state adopted a statute requiring all public school students to recite the Pledge of Allegiance. A parent of a public school student objected to the requirement because the Pledge includes the words, "under God." The parent brought suit in state court, seeking an injunction based on an alleged violation of the Establishment Clause of the First Amendment, as applied to the states through the Due Process Clause of the Fourteenth Amendment. In deciding the substance of the parent's claim, which of the following factors would be most relevant?

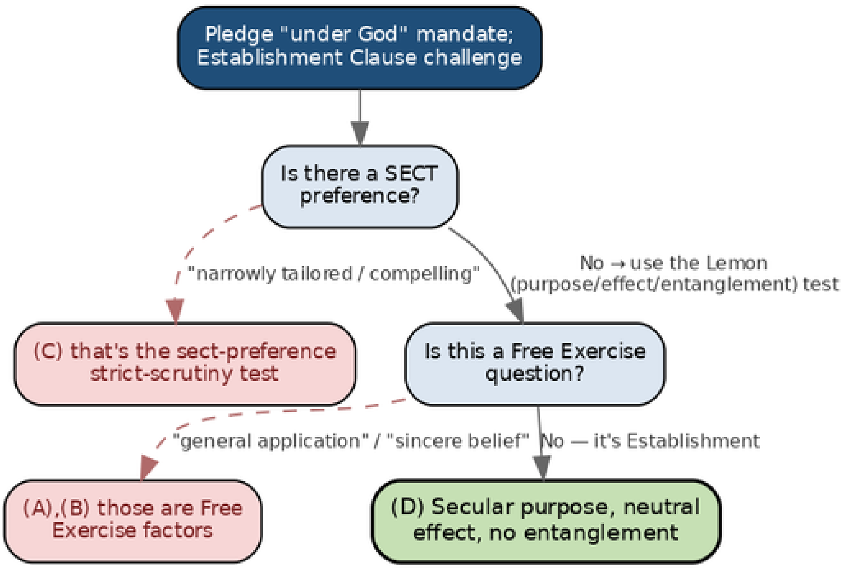
(A) Whether the statute constitutes a law of general application.
(B) Whether the student involved sincerely believes that reciting the Pledge is against the tenets of his faith.
(C) Whether requiring students to recite the Pledge is narrowly tailored to promote a compelling interest.
(D) Whether requiring students to recite the Pledge has a secular purpose, has a primary effect that neither advances nor inhibits religion, and does not produce excessive entanglement between government and religion.

> **Correct answer (D).** With no sect preference, the Lemon factors (secular purpose, neutral effect, no entanglement) govern.

Rule. For government action that tends toward establishing religion without preferring one sect, courts traditionally assess validity under the Lemon test: secular purpose, primary effect that neither advances nor inhibits religion, and no excessive entanglement. Sect-preferential laws instead get strict scrutiny; free-exercise questions turn on general applicability and sincerity of belief.

Application. The Pledge requirement is an Establishment Clause challenge without a sect preference, so the most relevant factors are Lemon's: purpose, effect, and entanglement.

Why the other choices fail. (A) and (B) are Free Exercise factors (general applicability; sincerity of belief), not the Establishment inquiry at issue. (C) states the strict-scrutiny test used for sect-preferential laws, but there is no sect preference here.



Decision path

Attack Sequence: Con Law attack sequence, §7 First Amendment: Religion, step 3–4 (Establishment: no sect preference → the neutrality/entanglement test).

Playbook: Con Law playbook, FIRST AMENDMENT – RELIGION (Establishment / Lemon-type factors).

How it lands: §7: with no sect preference, an Establishment challenge is judged by secular purpose, neutral primary effect, and no excessive entanglement (Lemon) → (D). (General applicability and sincerity are Free Exercise factors.)

Question 15

Criminal Law — Conspiracy / Bilateral Approach

A wife wanted to have her husband murdered in order to collect the proceeds from a life insurance policy. The wife solicited the services of a hitman, agreeing to split the insurance proceeds with him. The plan was for the hitman to shoot the husband at home and make it look like a botched burglary attempt, while the wife would be at her church hall playing bingo that night. However, when the hitman broke into the apartment, the husband was able to subdue him and call the police. The hitman was arrested and implicated the wife, who was arrested in the parish priest's office just after she had confessed the plan to the priest. The wife is charged with attempted murder and conspiracy to commit murder in a state that retains the common law definitions of these crimes. A psychiatric evaluation of the hitman after he was arrested revealed that he was legally insane, and he later committed suicide while awaiting trial. As to the conspiracy charge against the wife, which of the following would be her most promising defense?

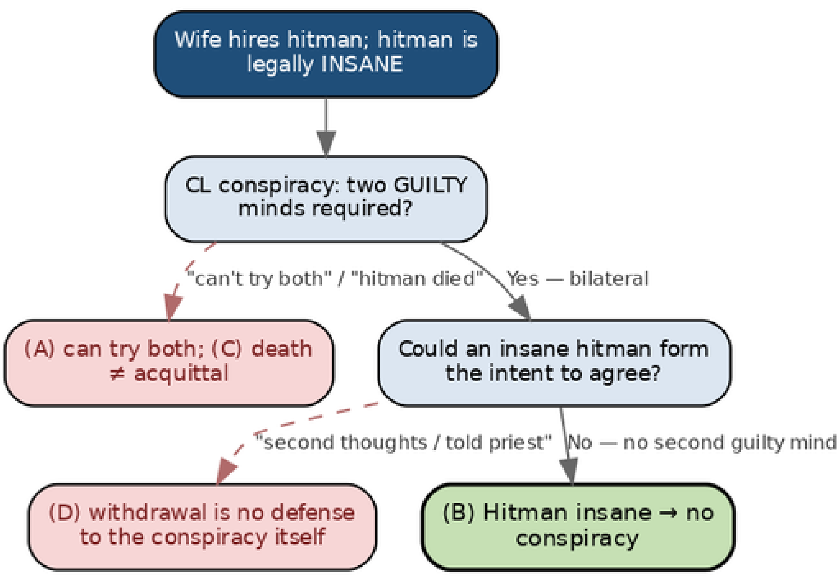
(A) She cannot be tried for both offenses; the prosecutor must choose between them.
(B) The hitman was insane when the conspiracy was formed.
(C) The hitman died in jail before trial.
(D) She had second thoughts about the plan while playing bingo and had revealed it to her priest.

> **Correct answer (B).** If the hitman was insane, there were not two guilty minds, so no common-law conspiracy.

Rule. Common-law conspiracy (bilateral) requires an agreement between at least two persons who each genuinely intend to agree and to achieve the objective, a meeting of two 'guilty minds.' A party who lacks capacity (e.g., legal insanity) to form that intent cannot be a co-conspirator.

Application. If the hitman was legally insane, he lacked the capacity to intend the agreement and its object, leaving the wife as the only committed mind. Under the bilateral rule there is no conspiracy, so insanity of the hitman is her most promising defense.

Why the other choices fail. (A) is wrong because one can be convicted of both conspiracy and the substantive/attempt offense. (C) is wrong because a co-conspirator's death is not an acquittal, and conviction doesn't require all parties be tried. (D) is wrong because withdrawal is not a defense to the conspiracy itself, and merely telling a priest isn't an effective withdrawal anyway.



Decision path

Attack Sequence: Crim attack sequence, §3 Inchoate Crimes & Accomplice, step 3 (Conspiracy — the bilateral two-guilty-minds rule).

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

How it lands: §3 step 3: common-law conspiracy needs two genuine guilty minds. A legally insane hitman can't form the intent to agree, leaving only the wife committed → no conspiracy → (B).

Question 16

Real Property — Joint Tenancy / Severance

A brother and a sister held record title to a home as joint tenants with right of survivorship. The brother moved out of the home shortly after conveying his interest in the home to his friend by quitclaim deed.

The friend did not record his deed. Several years later, the sister died, leaving her adopted daughter as her sole heir. Shortly after the sister died, the brother asked his friend to return his deed and give up his interest in the home. The friend agreed and returned the deed, which the brother destroyed. Who has title to the home?

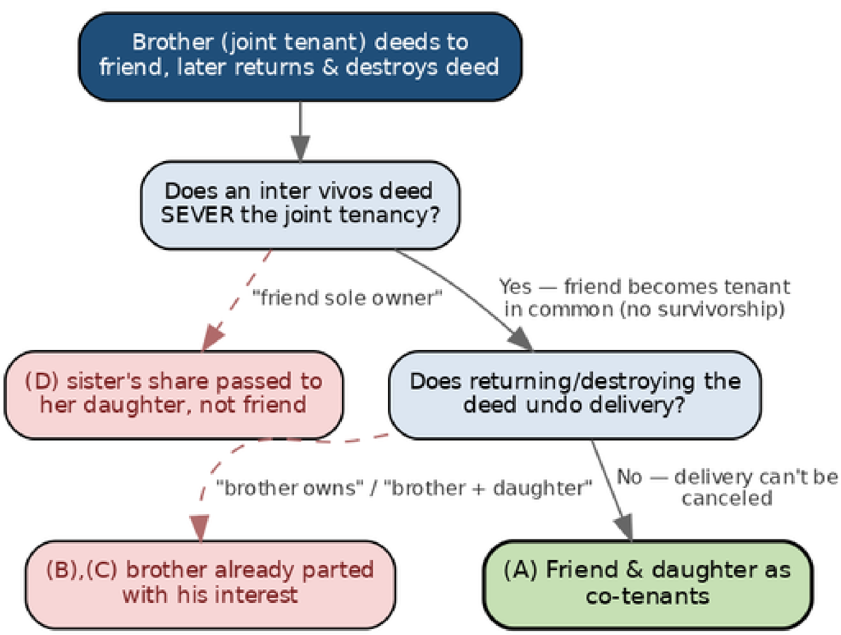
(A) The friend and the daughter as co-tenants.
(B) The brother and the daughter as co-tenants.
(C) The brother as sole owner.
(D) The friend as sole owner.

> **Correct answer (A).** The brother's conveyance severed the joint tenancy, so the friend and the daughter hold as tenants in common.

Rule. An inter vivos conveyance by a joint tenant of his interest severs the joint tenancy as to that share; the transferee takes as a tenant in common (no survivorship). Delivery of a deed cannot be undone by returning or destroying it; re-conveyance requires a new deed.

Application. When the brother deeded his interest to the friend, the joint tenancy was severed and the friend and sister became tenants in common. On the sister's death her share passed to her adopted daughter (no survivorship). Returning and destroying the friend's deed had no effect. So the friend and the daughter own as co-tenants.

Why the other choices fail. (B) and (C) are wrong because the brother already parted with his interest; destroying the returned deed didn't revest him. (D) is wrong because severance made the friend a tenant in common with no survivorship, so the sister's death passed her share to the daughter, not to the friend.



Decision path

Attack Sequence: Real Property attack sequence, §2 Concurrent Ownership, step 2 (severance of a joint tenancy by inter vivos conveyance).

Playbook: Real Property playbook, CONCURRENT OWNERSHIP (Joint tenancy; a transfer severs into a tenancy in common).

How it lands: §2 step 2: the brother's deed to the friend severed the joint tenancy, so the friend and sister became tenants in common (no survivorship). The sister's share passed to her daughter; destroying the returned deed did nothing → (A).

Question 17

Torts — Res Ipsa Loquitur

A homeowner contracted for construction of a custom-built, elevated deck in his backyard. The deck's designer supervised the construction, which was carried out by several employees of a local building company. The homeowner was pleased with the appearance of the deck, but the first time he stepped on it, a support on one side of the deck gave way, causing the homeowner to fall and be injured. The homeowner brought an action joining the building company and the deck's designer as defendants, alleging negligence. In his complaint, he alleged that he does not know which of the defendants is responsible for the damages. Which of the following doctrines would be most helpful against the designer?

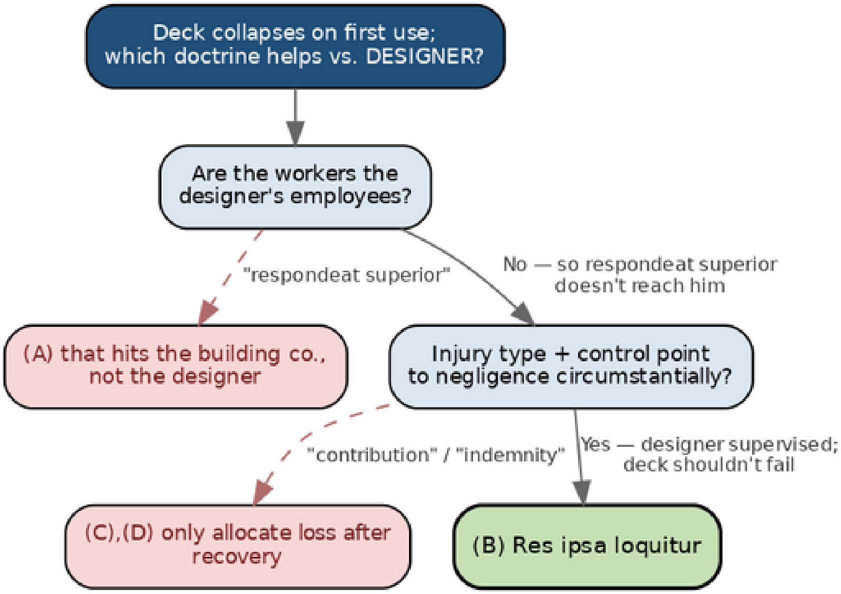
(A) Respondeat superior.
(B) Res ipsa loquitur.
(C) Contribution.
(D) Indemnity.

> **Correct answer (B).** Res ipsa loquitur helps against the designer, who controlled the deck's construction.

Rule. Res ipsa loquitur lets a plaintiff prove breach circumstantially where the injury is of a type that ordinarily doesn't occur without negligence and was caused by an instrumentality within the defendant's control. It can apply to a defendant who had control over the site of the injury even when the plaintiff can't pinpoint which actor was negligent.

Application. A properly built deck doesn't collapse the first time it's used absent negligence, and the designer supervised the construction, giving him control. Res ipsa loquitur is the doctrine most helpful against the designer.

Why the other choices fail. (A) is wrong because respondeat superior reaches the building company for its employees, not the designer (the workers weren't his employees). (C) and (D) are wrong because contribution and indemnity only allocate liability among defendants after recovery; they don't help establish the designer's negligence to the plaintiff.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence, step 3 (breach — res ipsa loquitur proves breach circumstantially).

Playbook: Torts playbook, BREACH / CAUSATION (Res ipsa: injury doesn't ordinarily occur absent negligence + control).

How it lands: §3 step 3: res ipsa fits where the injury doesn't happen without negligence and the defendant controlled the instrumentality. A deck shouldn't collapse on first use, and the designer supervised construction → res ipsa helps against him → (B).

Question 18

Evidence — Prior Consistent Statement / Bolstering

The plaintiff sued the defendant in a contract dispute. At trial, the plaintiff's sister testifies as a witness on behalf of the plaintiff, stating that the defendant agreed to sell a computer to the plaintiff for $250. To prove that the sister is telling the truth, plaintiff's counsel asks the sister on direct examination about a conversation she had with her mother, in which she told her mother that the defendant agreed to sell a computer to the plaintiff for $250. The defendant objects to the testimony. How should the court rule?

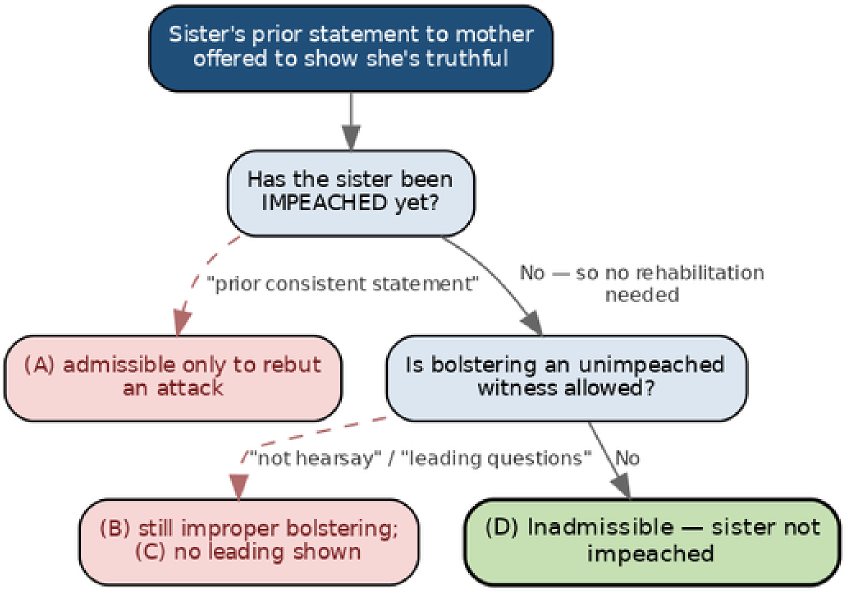
(A) Admissible, because it is a prior consistent statement.
(B) Admissible, because it is not hearsay.
(C) Inadmissible, because leading questions cannot be asked on direct examination.
(D) Inadmissible, because the sister has not been impeached.

> **Correct answer (D).** A party can't bolster its own witness with a prior consistent statement before she is impeached.

Rule. A prior consistent statement is admissible to rehabilitate only after the witness's credibility has been attacked (e.g., a charge of recent fabrication or improper motive). A party may not bolster an unimpeached witness with her out-of-court consistent statement.

Application. The sister's credibility hasn't been attacked, so offering her earlier statement to the mother, consistent with her testimony, is improper bolstering. The testimony is inadmissible.

Why the other choices fail. (A) is wrong because a prior consistent statement is admissible only to rebut an attack, which hasn't occurred. (B) is wrong because, even if the statement weren't hearsay, it's still barred as improper bolstering. (C) is wrong because nothing shows a leading question, and leading is sometimes allowed on direct anyway.



Decision path

Attack Sequence: Evidence attack sequence, §3 Statements Defined as Non-Hearsay, step 3 (prior consistent statement — only to rehabilitate).

Playbook: Evidence playbook, EXEMPTIONS (Prior statement of witness: consistent to rebut a recent-fabrication charge).

How it lands: §3 step 3: a prior consistent statement comes in only to rebut an attack on the witness's credibility. The sister hasn't been impeached, so this is improper bolstering → (D).

Question 19

Constitutional Law — Taxpayer Standing

A woman whose child attended a charter school learned that the children of the woman's neighbor who attended a parochial school received a hot lunch paid for, in part, through federal expenditures enacted under Congress's spending power. The charter school received no funding from the federal government. The woman challenged this federal expenditure as a violation of the Establishment Clause. For her to bring the suit, at the very least the woman must allege that:

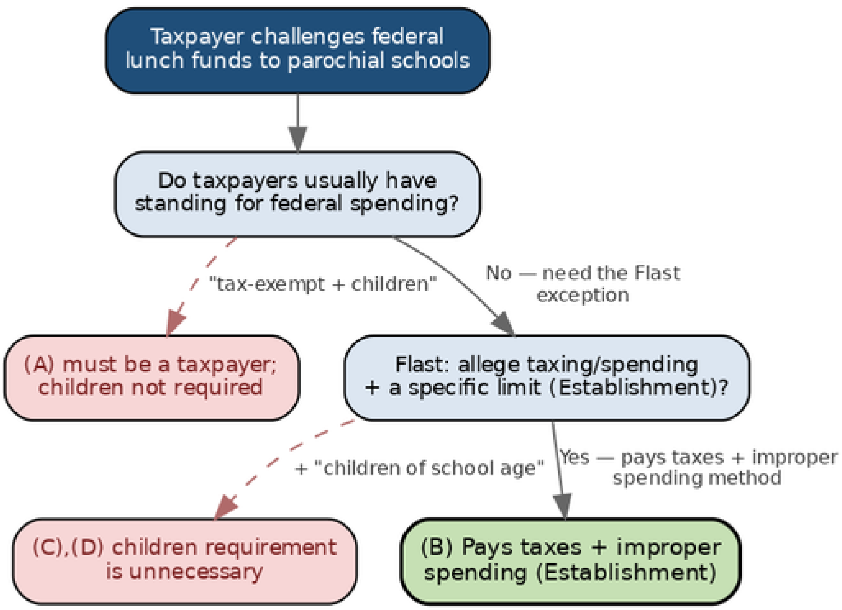
(A) She is exempt from paying federal income taxes and has children who are of school age.
(B) She pays federal income taxes and the use of federal funds in this manner is an improper taxing and spending method.
(C) She pays federal income taxes and has children who are of school age.
(D) She pays federal income taxes and has children who are of school age, and the use of federal funds in this manner is an improper taxing and spending method.

> **Correct answer (B).** She must allege that she pays federal taxes and that the spending exceeds a specific limit (the Establishment Clause).

Rule. Taxpayers generally lack standing to challenge federal expenditures. The narrow Flast exception requires alleging (1) the expenditure was under the taxing and spending power and (2) it exceeds a specific constitutional limit on that power, notably the Establishment Clause.

Application. To have standing she must allege she pays federal income taxes and that the spending on parochial-school lunches exceeds a specific limitation, i.e., violates the Establishment Clause. She need not have school-age children.

Why the other choices fail. (A) is wrong because being a taxpayer (not exempt) is required, and having children is not. (C) is wrong because it omits the required specific-limitation allegation and adds an irrelevant children requirement. (D) is wrong because the children requirement is unnecessary, though it correctly includes the taxing/spending allegation.



Decision path

Attack Sequence: Con Law attack sequence, §1 Justiciability & Judicial Power, step 1 (standing — the taxpayer-standing exception).

Playbook: Con Law playbook, JUSTICIABILITY (Standing).

How it lands: §1 step 1: taxpayers generally lack standing, except under Flast for taxing/spending that violates a specific limit like the Establishment Clause. She must allege she's a taxpayer and that the spending is an improper method → (B).

Question 20

Contracts — Substantial Performance

A contractor agreed to build a plant for a manufacturer. The contract required the contractor to use lighting fixtures from a specific company. Inadvertently, the contractor installed fixtures from a different company. The installed fixtures are generally considered to be of a slightly greater quality than the fixtures specified in the contract. The mistake was not discovered until the manufacturer did a final inspection of the building. As built, the plant is worth $2,000 more than it would be worth had the specified fixtures been used. Because of a downturn in the economy, the manufacturer no longer wants to move into the new plant and refuses to pay the contractor because of the breach regarding the light fixtures. It would cost the contractor $20,000 to replace the fixtures with the ones specified in the contract. If the contractor sues the manufacturer for specific performance, which of the following doctrines will be most important to a court's decision?

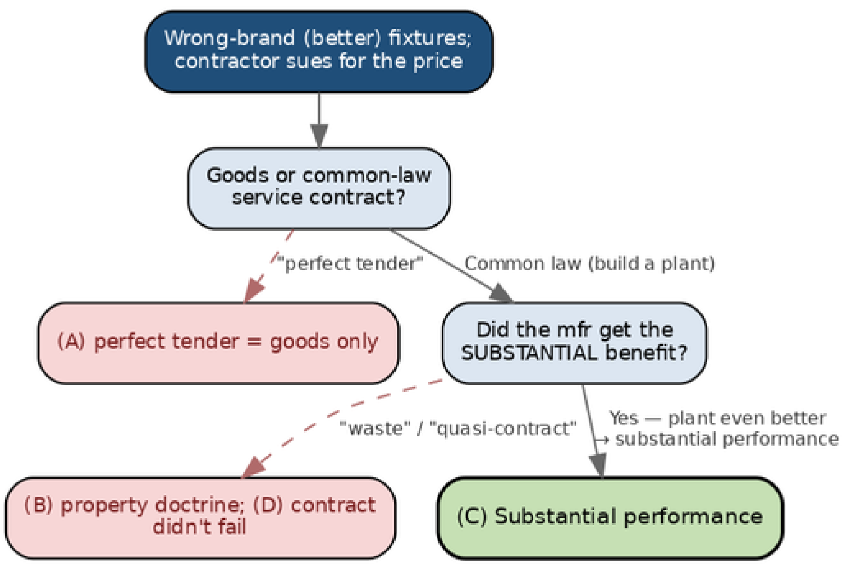
(A) Perfect tender.
(B) Waste.
(C) Substantial performance.
(D) Quasi-contract.

> **Correct answer (C).** Substantial performance controls: the plant was built with only a minor, beneficial deviation.

Rule. Under the common law, a party who substantially performs (the other side gets the substantial benefit of the bargain) may enforce the contract despite a minor breach, subject to offset for the defect. Perfect tender applies only to sales of goods.

Application. The construction contract is common law. The wrong-brand fixtures were a minor, even beneficial, deviation (worth $2,000 more), so the contractor substantially performed and can enforce the contract. Substantial performance is the key doctrine.

Why the other choices fail. (A) is wrong because perfect tender governs goods, not a building contract. (B) is wrong because waste is a property doctrine, not a contracts concept. (D) is wrong because quasi-contract applies when a contract fails; here the contract stands because the breach was minor.



Decision path

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

Playbook: Contracts playbook, PERFORMANCE & BREACH (substantial performance vs. perfect tender).

How it lands: §5 steps 1–2: a common-law builder who substantially performs may enforce despite a minor breach. The wrong-brand (better) fixtures are a minor, beneficial deviation → substantial performance controls → (C).

Question 21

Civil Procedure — Joinder + Subject-Matter Jurisdiction

A citizen of State A sued a police officer in federal district court pursuant to 28 U.S.C. §1983, alleging violation of her civil rights. The citizen sought to join a defamation claim against the police officer's wife arising from a public altercation in which the two were involved. The claim against the police officer seeks $100,000 in damages, and the claim against the officer's wife seeks $85,000 in damages. All three parties are citizens and residents of State A. The operative facts applicable to the two claims are unrelated. The police officer and his wife filed a motion to dismiss the action both for lack of subject matter jurisdiction and improper joinder of parties. How should the court rule?

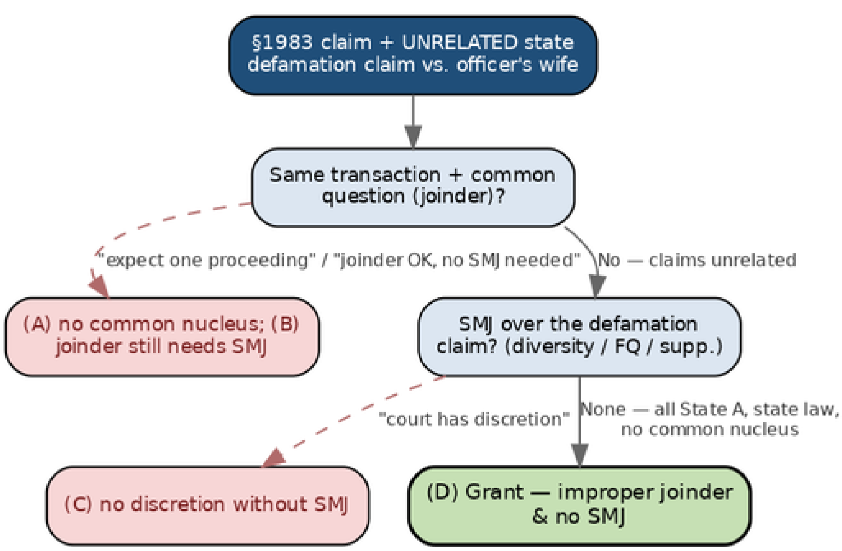
(A) Deny the motion, because joinder is proper and supplemental jurisdiction exists since the State A citizen should expect to try both claims in the same proceeding.
(B) Deny the motion, because joinder of the police officer's wife is permissible, so subject matter jurisdiction over the claim against her is not required.
(C) The court has discretion either to hear both claims or to dismiss them.
(D) Grant the motion, because the claims do not arise from the same transaction or occurrence, so joinder is improper, and the court lacks subject matter jurisdiction over the claim against the police officer's wife.

> **Correct answer (D).** Unrelated claims can't be joined, and there's no SMJ over the state defamation claim against the wife.

Rule. Permissive joinder of defendants requires a claim arising from the same transaction/occurrence (or series) and a common question of law or fact. Even proper joinder needs an independent basis of subject-matter jurisdiction over each claim; supplemental jurisdiction requires a common nucleus of operative fact.

Application. The §1983 claim and the unrelated defamation claim share no transaction and no common question, so joinder is improper. And the defamation claim (all State A parties, state law, under $75k relevance) has no diversity or federal-question basis, and no supplemental jurisdiction because it shares no common nucleus. The motion is granted on both grounds.

Why the other choices fail. (A) is wrong because the claims don't derive from a common nucleus, so no supplemental jurisdiction. (B) is wrong because joinder doesn't dispense with the need for subject-matter jurisdiction. (C) is wrong because a court has no discretion to hear a claim over which it lacks SMJ.



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder (permissive joinder: same T/O + common question) and §1 SMJ.

Playbook: Civil Procedure playbook, JOINDER + SUBJECT MATTER JURISDICTION.

How it lands: §5: permissive joinder needs a shared transaction and a common question; the §1983 and unrelated defamation claims share neither. §1: no diversity (all State A) and no federal question or common-nucleus supplemental jurisdiction over the state claim → dismiss on both grounds → (D).

Question 22

Evidence — Nonhearsay / Notice to the Listener

A plaintiff brought a lawsuit against a department store for injuries she suffered while riding an escalator that accelerated and then came to a sudden stop. At trial, a witness is prepared to testify for the plaintiff that he heard another customer tell the store manager the day before the plaintiff was injured that the escalator was speeding up and stopping without warning. The customer still lives in the area but she has not been called to testify. Should the court admit the witness's testimony?

(A) Yes, because it is a statement against interest.

(B) Yes, because it is relevant evidence that the department store was aware of the defect and did nothing to correct it.

(C) No, because the customer is available to testify.

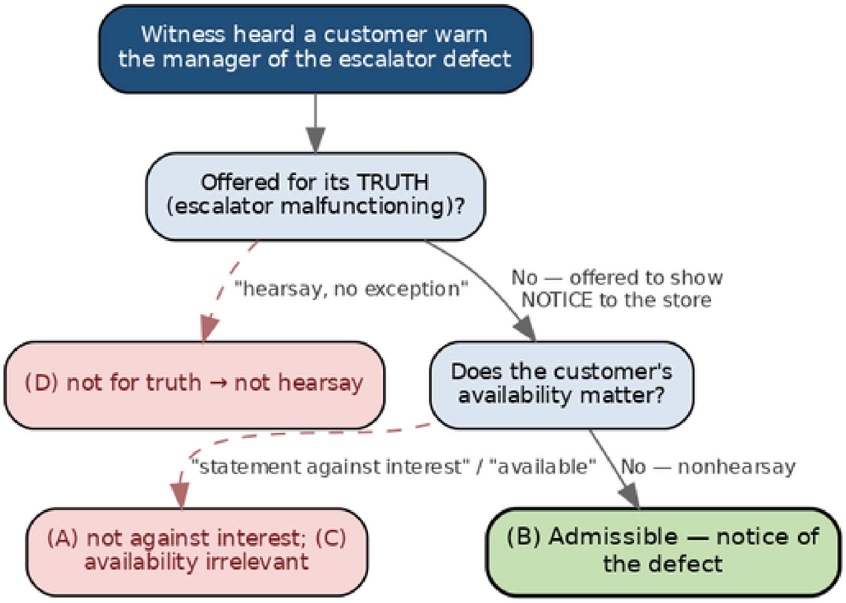
(D) No, because it is hearsay not within any exception.

> **Correct answer (B).** The customer's warning is admissible nonhearsay to show the store's notice of the defect.

Rule. An out-of-court statement offered not for its truth but to show its effect on the listener (e.g., notice or knowledge of a danger) is not hearsay. The declarant's availability is irrelevant when the statement isn't hearsay.

Application. The customer's remark to the manager the day before is offered to show the store had notice of the malfunctioning escalator, not to prove it was actually malfunctioning. Offered for notice, it isn't hearsay and is admissible.

Why the other choices fail. (A) is wrong because it isn't a statement against interest (and that exception isn't needed). (C) is wrong because the customer's availability doesn't matter for nonhearsay. (D) is wrong because it isn't hearsay when offered for notice rather than truth.



Decision path

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

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

How it lands: §2 step 4: the customer's warning is offered to show the store's notice of the defect, not to prove the escalator malfunctioned → not hearsay, and the customer's availability is irrelevant → (B).

Question 23

Constitutional Law — Federal Funding of Discrimination

Congress provided funds to a group of young scouts. A person believed that this particular scouting group practiced racial discrimination and brought suit to enjoin the federal provision of funds to this group. Assuming the factual allegation regarding racial discrimination is correct and that the person has standing to challenge the expenditure, how should the court rule?

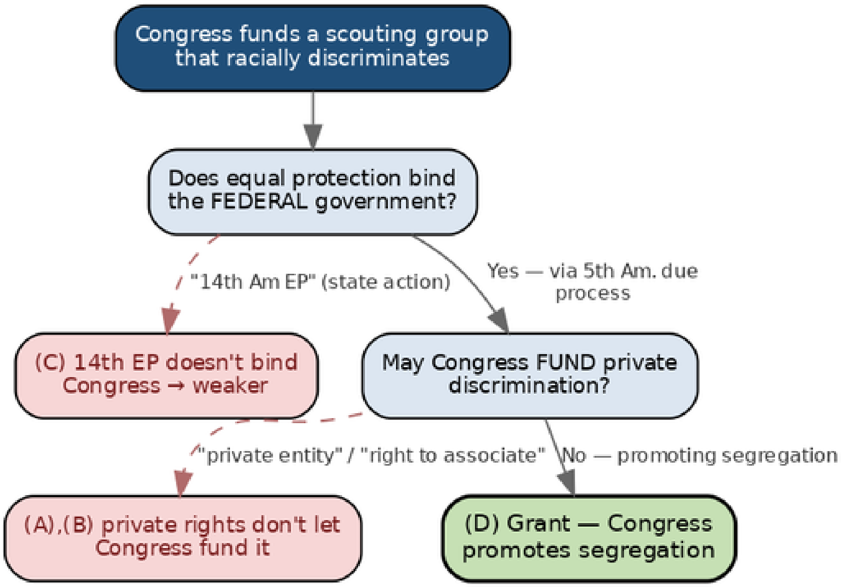
(A) Deny the injunction, because the discrimination is by a private entity.
(B) Deny the injunction, because the scouts have a First Amendment right to associate.
(C) Grant the injunction, because the scouts are violating the Equal Protection Clause.
(D) Grant the injunction, because by providing the funds, Congress is promoting segregation.

> **Correct answer (D).** By funding a discriminatory group, Congress promotes segregation, violating Fifth Amendment due process.

Rule. Equal protection applies to the federal government through the Due Process Clause of the Fifth Amendment. Congress may not act to promote invidious racial segregation; providing funds that support a group's racial discrimination violates that guarantee.

Application. Congress's funding of a scouting group that practices racial discrimination promotes segregation, violating Fifth Amendment equal-protection/due-process principles. That is the strongest basis to grant the injunction.

Why the other choices fail. (A) and (B) are wrong because, although the group is private and has associational rights, federal funding of its discrimination is what offends the Constitution. (C) is a weaker framing because the Equal Protection Clause of the Fourteenth Amendment doesn't apply to the federal government (and the private-action point is murky); the Fifth Amendment due-process route in (D) is the better answer.



Decision path

Attack Sequence: Con Law attack sequence, §4 State Action & Due Process (equal protection applies to the federal government via 5th Am. due process).

Playbook: Con Law playbook, DUE PROCESS / EQUAL PROTECTION (federal EP through the 5th Amendment).

How it lands: Equal protection binds the federal government through Fifth Amendment due process. Congress funding a group's racial discrimination promotes segregation, violating that guarantee → (D). (A Fourteenth Amendment EP theory is weaker because it doesn't bind Congress.)

Question 24

Criminal Procedure — Harmless Error

A defendant was charged with robbing and murdering a store clerk. A security camera had recorded the incident, clearly showing that the defendant shot the store clerk at point blank range, and that the defendant dropped the handgun immediately after shooting the store clerk. The gun, with the defendant's fingerprints on it, was recovered. Two eyewitnesses also were able to conclusively identify the defendant as the robber/murderer. After the defendant had been validly arrested, the police conducted a warrantless search of the defendant's home, and several items from the store were found. The items from the store were introduced at trial over the defendant's objection. The defendant was convicted after a nonjury trial. On appeal, the appellate court ruled that the warrantless search was unconstitutional under the circumstances. Must the appellate court also overturn the defendant's conviction?

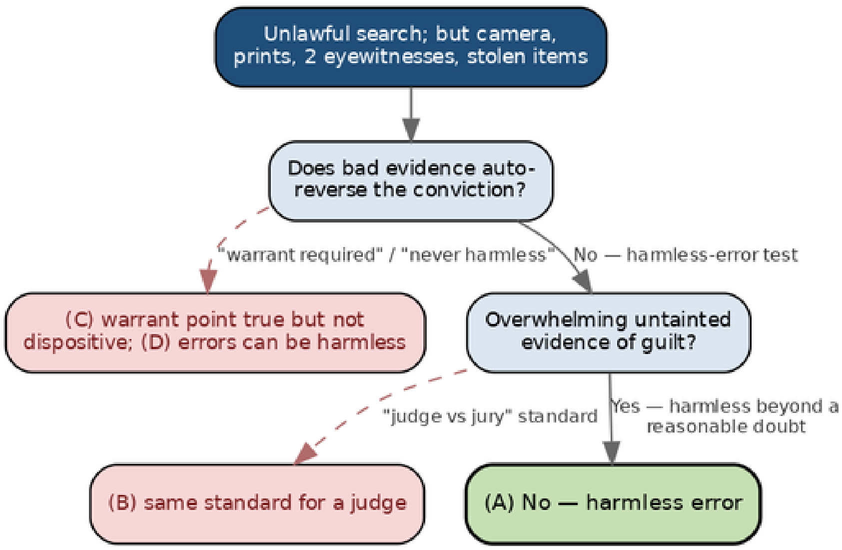
(A) No, because the error in admitting the evidence was harmless.
(B) No, because the tainted evidence would not have affected a judge's decision as much as that of a jury.
(C) Yes, because the police should have obtained a warrant before searching his home.
(D) Yes, because a violation of a constitutional right is never harmless.

> **Correct answer (A).** The error was harmless given overwhelming untainted evidence, so the conviction stands.

Rule. Admitting unconstitutionally obtained evidence does not automatically require reversal. Under the harmless-error test, a conviction stands if the government shows beyond a reasonable doubt that the error did not contribute to the verdict, i.e., conviction would have resulted anyway.

Application. A clear security-camera recording, the fingerprint-bearing gun, two eyewitnesses, and stolen items independently establish guilt, so admitting the improperly seized items was harmless beyond a reasonable doubt. The conviction need not be overturned.

Why the other choices fail. (B) is wrong because the harmless-error standard is the same whether a judge or jury is the factfinder. (C) is wrong because a warrant violation doesn't require reversal if the error was harmless. (D) is an overbroad misstatement: constitutional errors can be harmless.



Decision path

Attack Sequence: Crim attack sequence, §5 Fourth Amendment, step 5 (exclusionary rule) — plus the harmless-error overlay on appeal.

Playbook: Crim playbook, EXCLUSIONARY RULE — the harmless-error test on appeal isn't spelled out; flag it.

How it lands: Even with an unlawful search, a conviction stands if the error was harmless beyond a reasonable doubt. Overwhelming untainted evidence (video, prints, eyewitnesses) makes it harmless → (A). Worth adding a harmless-error line to the Crim playbook.

Question 25

Real Property — Joint Tenancy / Testamentary Delivery

A landowner and his friend owned a tract of land as joint tenants with right of survivorship. The landowner executed a deed conveying his interest in the land to his grandson. The landowner gave the deed to his attorney with instructions to deliver it to the grandson upon the landowner's death. The grandson first learned of the deed at the landowner's funeral the following year. The next day, the grandson recorded the deed. Who owns the land?

(A) The friend and the grandson, as joint tenants.
(B) The friend and the grandson, as tenants in common.
(C) The friend.

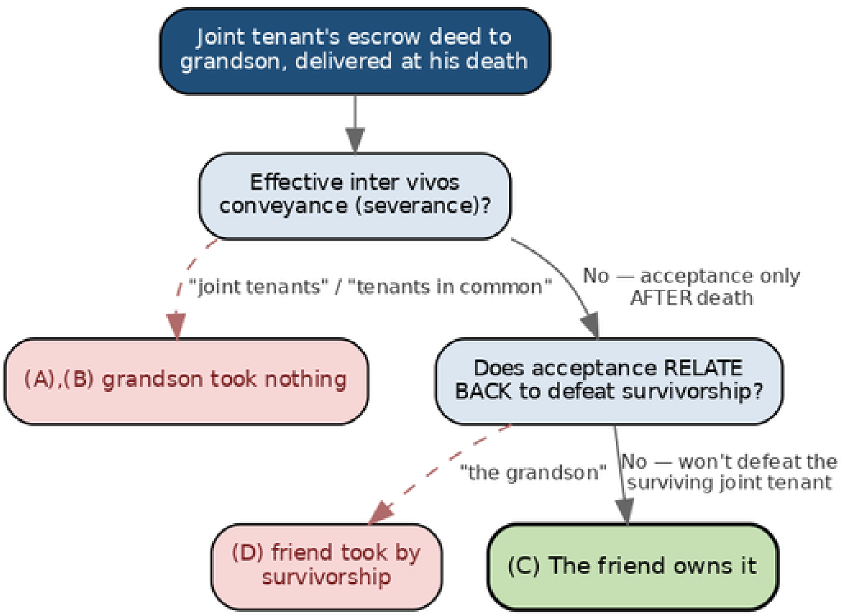
(D) The grandson.

> **Correct answer (C).** The grandson's post-death acceptance doesn't relate back to defeat the surviving joint tenant, so the friend owns all.

Rule. An inter vivos conveyance by a joint tenant severs the joint tenancy, but a deed delivered in escrow to take effect at the grantor's death does not effectively convey where acceptance comes only after death. Courts refuse to relate acceptance back where doing so would defeat an intervening third party's rights, such as a surviving joint tenant's survivorship.

Application. The landowner's deed to the grandson was to be delivered at death; the grandson didn't learn of or accept it until after death. Because acceptance won't relate back to defeat the friend's survivorship, the friend took the whole property by survivorship on the landowner's death. The friend owns the land.

Why the other choices fail. (A) and (B) are wrong because the grandson took nothing (no effective inter vivos severance). (D) is wrong for the same reason. Note: had the conveyance been effective, the grandson and friend would have held as tenants in common, not joint tenants.



Decision path

Attack Sequence: Real Property attack sequence, §2 Concurrent Ownership, step 2 (severance) and §6 (deed delivery/acceptance).

Playbook: Real Property playbook, CONCURRENT OWNERSHIP + DEEDS (delivery/acceptance).

How it lands: §2/§6: a deed to take effect at the grantor's death, accepted only after death, doesn't sever the joint tenancy, and acceptance won't relate back to defeat the surviving joint tenant. The friend took the whole by survivorship → (C).

Question 26

Criminal Law — Larceny

In lieu of a snack vending machine, a small company put candy bars into a box in the office kitchen. Using the honor system, employees were asked to put a dollar into an envelope in the box if they took out a candy bar. The office manager would periodically take the money collected in the envelope and use it to purchase new candy. One night while cleaning the kitchen, the company's night janitor impulsively took all the money from the envelope. His actions were recorded on the company's newly installed security camera. The janitor later admitted that he took the money to fund illegal dogfights. Which of the following crimes did the janitor commit?

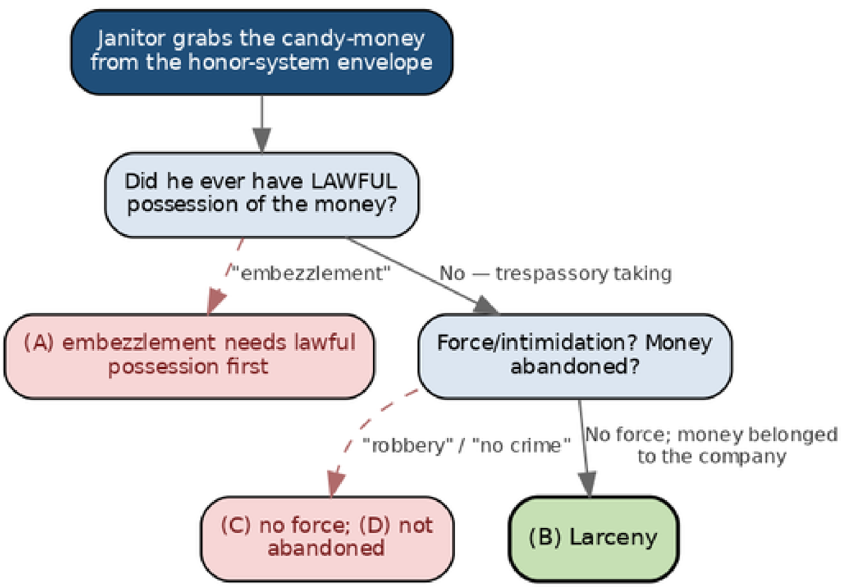
(A) Embezzlement, because the janitor took money that rightfully belonged to his employer.
(B) Larceny, because he did not intend to purchase replacement candy with the money.
(C) Robbery, because the theft was motivated by an underlying felony.
(D) No crime, because the money in the envelope was voluntarily abandoned by his co-workers.

> **Correct answer (B).** The janitor committed larceny by trespassorily taking the company's money.

Rule. Larceny is the trespassory taking and carrying away of another's personal property with intent to permanently deprive. Embezzlement requires the defendant to have lawful possession first; robbery requires force or intimidation; abandoned property belongs to no one.

Application. The janitor took cash belonging to the company (the money was exchanged for company candy) without any lawful possession of it and with intent to keep it. That is larceny.

Why the other choices fail. (A) is wrong because the janitor never had lawful possession of the money, so it's not embezzlement. (C) is wrong because there was no force or intimidation (his felonious motive is irrelevant). (D) is wrong because the money wasn't abandoned; it belonged to the company.



Decision path

Attack Sequence: Crim attack sequence, §2 Crimes Against Persons & Property, step 2 (larceny vs. embezzlement vs. robbery).

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

How it lands: §2 step 2: larceny is a trespassory taking with intent to permanently deprive. The janitor never had lawful possession (rules out embezzlement), used no force (rules out robbery), and the money wasn't abandoned → larceny → (B).

Question 27

Constitutional Law — Federal Question Jurisdiction

A state statute made it unlawful to sell soft drink beverages in any type of container except refundable glass containers. A violation of the statute constituted a misdemeanor, subjecting the violator to a fine of up to $1,000. An out-of-state corporation manufacturing and selling aluminum soft drink cans in the above state brought suit in federal district court contesting the constitutionality of the statute as an undue burden on interstate commerce under the Commerce Clause. The court should:

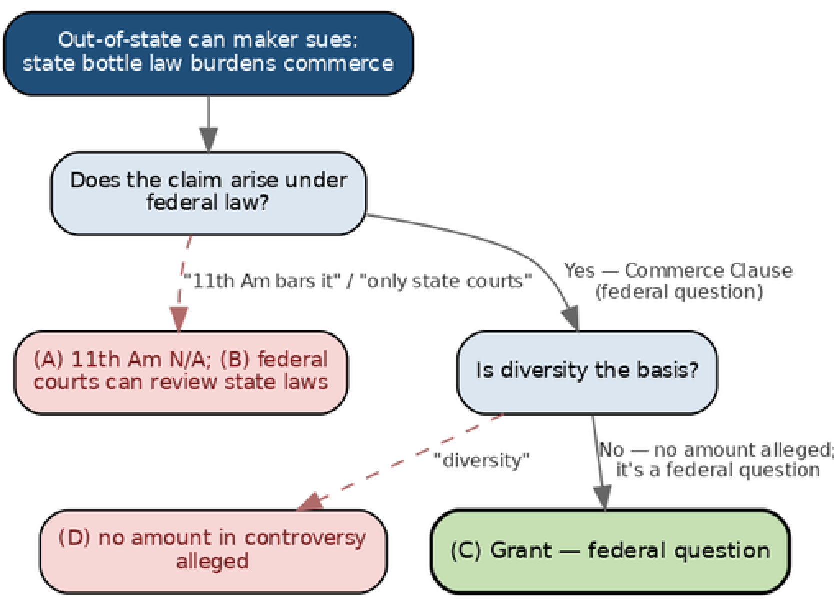
(A) Deny a hearing, because the Eleventh Amendment forbids the exercise of judicial power by the federal government in a suit prosecuted against any state by a citizen of another state.
(B) Deny the hearing, because only state courts may decide the constitutionality of state laws.
(C) Grant a hearing, because a federal question is involved.
(D) Grant a hearing, because jurisdiction exists on the basis of diversity.

> **Correct answer (C).** The court should grant a hearing because a federal (Commerce Clause) question is involved.

Rule. Federal district courts have jurisdiction over cases arising under federal law (federal question) or, in diversity, where the amount in controversy exceeds $75,000. A claim that a state statute violates the U.S. Constitution presents a federal question. The Eleventh Amendment bars certain suits against a state, but not challenges to a state law's constitutionality of this kind.

Application. The company alleges the state container law violates the Commerce Clause, a federal constitutional question, so the federal court has federal-question jurisdiction and should grant a hearing.

Why the other choices fail. (A) is wrong because the Eleventh Amendment protects states from certain damage suits, not a challenge to a statute's constitutionality here. (B) is wrong because federal courts may decide whether state laws violate the U.S. Constitution. (D) is wrong because no amount in controversy is alleged, so diversity isn't the basis (federal question is).



Decision path

Attack Sequence: Civil Procedure attack sequence, §1 Subject Matter Jurisdiction, step 1 (federal question).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Federal question).

How it lands: §1 step 1: a claim that a state statute violates the Commerce Clause arises under federal law, so the federal court has federal-question jurisdiction and should grant a hearing → (C). (The Eleventh Amendment and 'only state courts' points are wrong.)

Question 28

Evidence — Expert Basis / Facts Heard at Trial

In a personal injury action, a doctor sat in court and listened to all of the evidence regarding the plaintiff's injuries. The defense subsequently calls that doctor to testify as to his opinion about whether the plaintiff's injuries will prevent the plaintiff from ever working again. May the doctor testify to this?

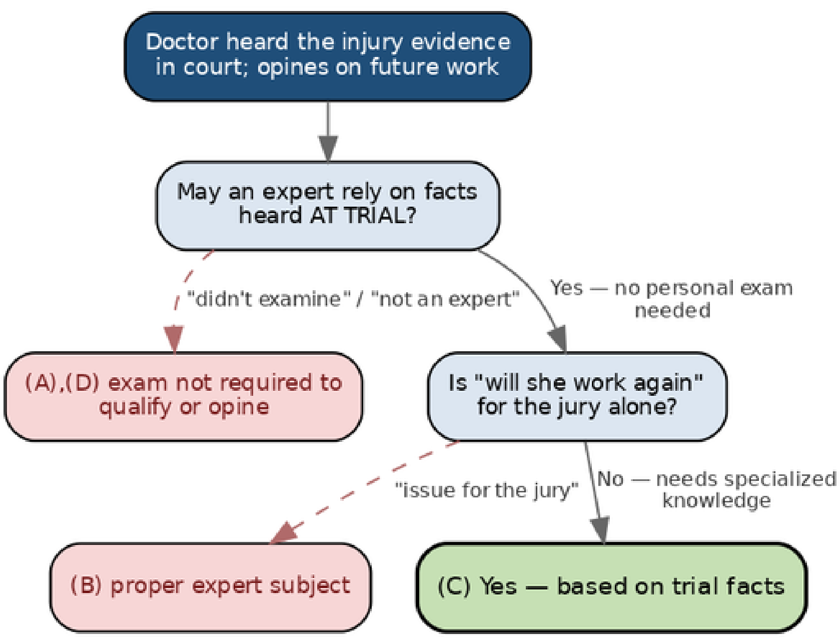
(A) No, because he has not examined the plaintiff.
(B) No, because whether the plaintiff will work again is an issue for the jury.
(C) Yes, because an expert's opinion can be based on facts made known to him at the trial.
(D) Yes, because the doctor is not testifying as an expert because he has not examined the plaintiff.

> **Correct answer (C).** An expert may base an opinion on facts made known at trial, without personally examining the plaintiff.

Rule. An expert may base an opinion on facts personally observed, facts presented in evidence at trial (including testimony heard in court), or facts reasonably relied on by experts in the field. Experts may opine on ultimate issues requiring specialized knowledge.

Application. The doctor heard the injury evidence in court and may opine on future work capacity based on those facts; no personal exam is required. His testimony is admissible.

Why the other choices fail. (A) is wrong because personal examination is not required to give expert testimony. (B) is wrong because future work capacity requires specialized knowledge and is a proper subject for expert opinion, not one reserved to the jury. (D) is wrong because the doctor qualifies as an expert through knowledge and experience regardless of any examination.



Decision path

Attack Sequence: Evidence attack sequence — no dedicated expert/opinion sub-topic; use the rule sheet. (Basis of expert opinion.)

Playbook: Evidence playbook, OPINION / PRIVILEGE (Expert: qualified + may rely on facts at trial).

How it lands: The rule-playbook expert line controls: an expert may base an opinion on facts made known at the hearing and need not personally examine the plaintiff → (C). A spot where the ordering guide is silent and the rule playbook does the work (same gap as Set 1 Q26).

Question 29

Torts — Statute of Limitations / Discovery Rule

A patient complaining of pain in his side underwent a physical exam and X-rays, which showed that the patient had a small surgeon's clamp lodged in his left side. It had been left in the patient during an operation nine years previously. The patient brought an action against the hospital and the surgeon who operated on him, alleging negligence. The hospital and the surgeon filed a general denial and a special affirmative defense alleging that the statute of limitations is a bar to the action. Recovery for negligence in the jurisdiction is limited to two years. The patient's attorney makes a motion to strike the special affirmative defense. The motion should be:

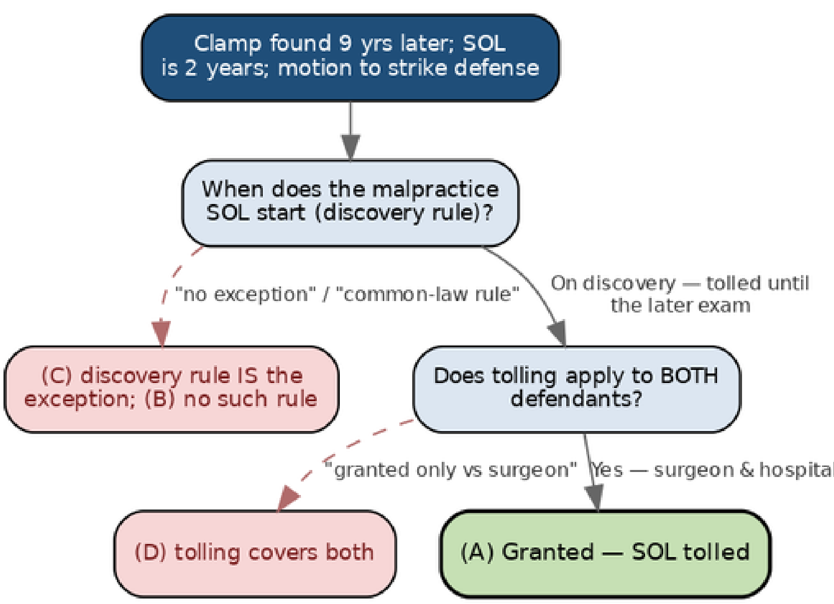
(A) Granted, because the statute of limitations is tolled under the circumstances.
(B) Granted, because of the common law rule that one must know of a wrong in order to have a remedy.
(C) Denied, because the facts do not present an exception to the statute of limitations.
(D) Denied as to the surgeon, but granted as to the hospital.

> **Correct answer (A).** The limitations period is tolled until the patient discovered the clamp, so the motion to strike is granted.

Rule. In many malpractice cases (especially foreign-object cases), the statute of limitations is tolled until the plaintiff knows or should know of the injury (the discovery rule). The tolling applies to all defendants responsible for the negligence.

Application. The clamp was discovered only on the later exam, so the limitations period began (was tolled until) then, making the suit timely. The affirmative defense should be struck.

Why the other choices fail. (B) is wrong because there's no such freestanding common-law rule stated as the basis; the applicable doctrine is discovery-rule tolling. (C) is wrong because the discovery rule is exactly the exception that applies. (D) is wrong because tolling applies to both the surgeon and the hospital, not just the surgeon.



Decision path

Attack Sequence: Torts attack sequence, §5 Defenses to Negligence — the discovery-rule tolling of the SOL isn't a listed step; flag it.

Playbook: Torts playbook — the malpractice discovery rule isn't spelled out; flag it.

How it lands: Flag: neither playbook breaks out SOL tolling. The rule: in a foreign-object malpractice case the limitations period is tolled until the plaintiff discovers the injury, and tolling applies to both defendants → strike the defense → (A). Candidate to add.

Question 30

Criminal Law — Unilateral Conspiracy / Protected Class

A minor entered a liquor store and asked the cashier to let him purchase a case of beer for a party even though he was underage. The cashier agreed as long as he paid double the retail price for the beer as compensation for the risks of the sale. As the cashier started to ring up the transaction, an undercover officer who overheard them intervened and arrested them. The state criminal code provides that it is a felony to knowingly provide alcohol to any person under the age of 21. If the state follows the unilateral theory of conspiracy:

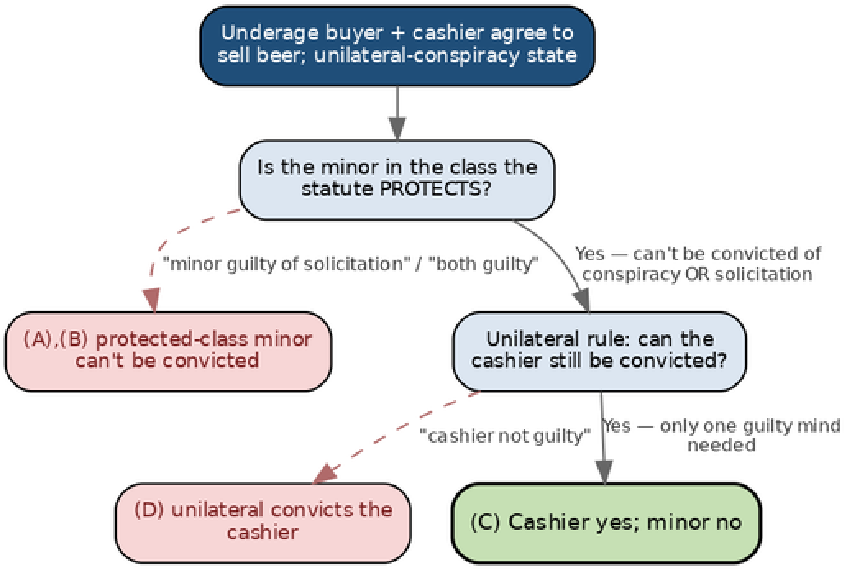
(A) The minor can be convicted of solicitation and the cashier can be convicted of conspiracy to violate the statute.
(B) Both the minor and the cashier can be convicted of conspiracy to violate the statute.
(C) The minor cannot be convicted of either solicitation or conspiracy, but the cashier can be convicted of conspiracy to violate the statute.
(D) The minor cannot be convicted of either solicitation or conspiracy, and the cashier cannot be convicted of conspiracy.

> **Correct answer (C).** Under the unilateral approach the cashier can be convicted; the minor (a protected-class member) cannot.

Rule. Under the Model Penal Code's unilateral approach, only one party need have genuine criminal intent, so a defendant can be convicted of conspiracy even if the other party is not guilty. But a member of the class a statute is designed to protect cannot be convicted of conspiring to violate that statute, or of soliciting it.

Application. The statute against providing alcohol to minors protects minors, so the minor can't be convicted of conspiracy or solicitation. Under the unilateral approach, that doesn't shield the cashier, who agreed to sell and can be convicted of conspiracy.

Why the other choices fail. (A) is wrong because the minor can't be convicted of solicitation either (protected class). (B) is wrong because the minor can't be a conspirator. (D) is wrong because the unilateral approach lets the cashier be convicted despite the minor's non-liability.



Decision path

Attack Sequence: Crim attack sequence, §3 Inchoate Crimes & Accomplice, step 3 (Conspiracy — unilateral MPC approach; protected-class rule).

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

How it lands: §3 step 3: under the unilateral approach only one guilty mind is needed, so the cashier can be convicted. But a member of the class the statute protects (the minor) can't be convicted of conspiracy or solicitation → (C).

Question 31

Real Property — Life Tenant's Mortgage / Waste

A landowner died, validly devising her land "to my son for life, then to my brother and sister in fee simple." Without obtaining the brother and sister's consent, the son borrowed $20,000 from a bank, secured by a mortgage on the land, to make improvements to the land. Five years later, the son died. The brother and sister took possession of the land, but failed to make any mortgage payments. If the bank sues to recover the delinquent payments, the court should render judgment for:

(A) The bank, because a life tenant is obligated to make repairs.

(B) The bank, because the remaindermen are obligated to pay the principal of a debt.

(C) The brother and sister, because the son committed ameliorative waste.

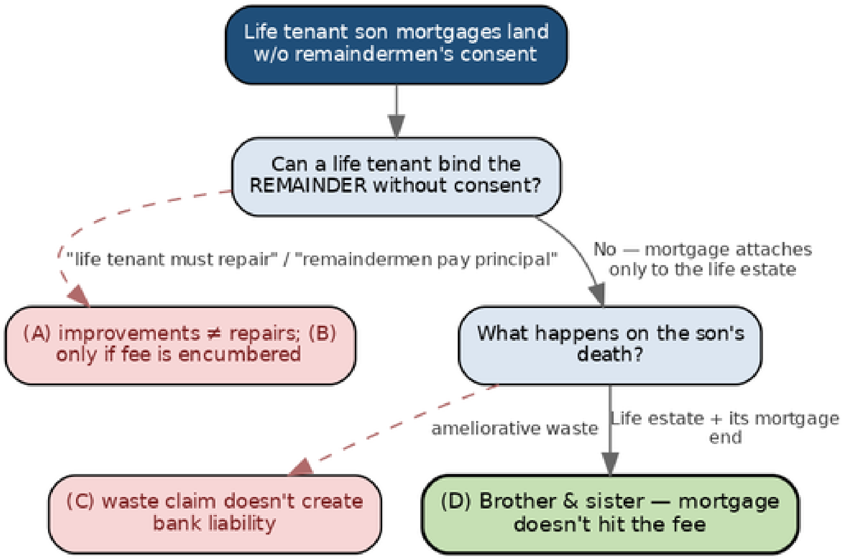
(D) The brother and sister, because the mortgage does not encumber the fee simple.

> **Correct answer (D).** The son's mortgage encumbered only his life estate, so the remaindermen owe nothing.

Rule. A life tenant may encumber his own interest, but cannot bind the remainder without the remaindermen's consent. A mortgage placed by the life tenant alone attaches only to the life estate and is extinguished when the life estate ends. (A life tenant must pay interest on encumbrances of the whole fee only up to income/rental value; principal falls on remaindermen only if the debt encumbers the fee.)

Application. The son mortgaged without the brother and sister's consent, so the mortgage attached only to his life estate. When he died, the life estate (and the mortgage on it) ended, so the remaindermen took the land free of it and owe nothing. Judgment for the brother and sister.

Why the other choices fail. (A) is wrong because the son made improvements, not repairs, and repair obligations don't put the mortgage on the remaindermen. (B) is wrong because remaindermen owe principal only if the debt encumbers the entire fee, which it doesn't. (C) is wrong because ameliorative waste is a claim the remaindermen might have, but it doesn't create bank liability; the reason they win is the mortgage's limited reach.



Decision path

Attack Sequence: Real Property attack sequence, §1 Estates & Future Interests (life tenant vs. remainder) — waste/encumbrance allocation.

Playbook: Real Property playbook, ESTATES / FUTURE INTERESTS (life tenant duties) — this allocation isn't spelled out; flag it.

How it lands: A life tenant can encumber only his own estate; a mortgage he places alone attaches only to the life estate and ends when it does. The son mortgaged without the remaindermen's consent, so on his death the mortgage vanished → (D). Note this on your playbook.

Question 32

Constitutional Law — Tenth Amendment / Generally Applicable Law

A state passed a law providing that legislative staff members in the state legislature were to receive an hourly wage that was less than the federal minimum wage. A legislative staff member filed suit in federal court challenging this state law. Which of the following is the strongest argument in support of the staff member's constitutional challenge?

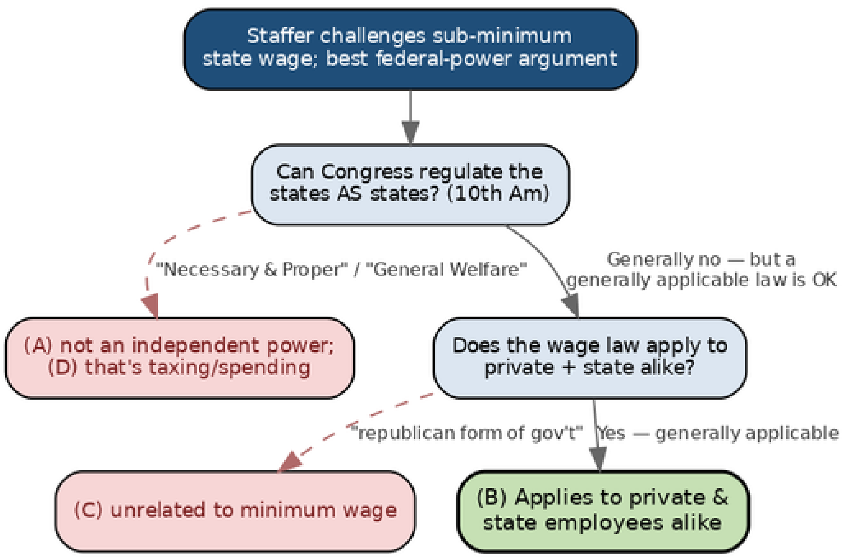
(A) Congress may extend federal minimum wage requirements to legislative staff members by virtue of the Necessary and Proper Clause.
(B) The minimum wage law applies to private sector employees as well as state employees.
(C) Congress may extend federal minimum wage requirements to state legislative staff members as a means of guaranteeing a republican form of government.
(D) Congress has plenary power to extend federal minimum wage requirements under the General Welfare Clause.

> **Correct answer (B).** The strongest argument is that the minimum-wage law applies to private and state employees alike.

Rule. Under the Tenth Amendment, Congress generally may apply a law of general applicability (reaching private and state employers alike, e.g., the FLSA minimum wage) to the states, but may not single out and regulate the states as states (anti-commandeering).

Application. Because the federal minimum wage applies to all private and government employers generally, it may validly reach state legislative staff. That generally-applicable nature is the staff member's strongest constitutional argument.

Why the other choices fail. (A) is wrong because the Necessary and Proper Clause is not an independent power; Congress must anchor to an enumerated power. (C) is wrong because minimum wage has nothing to do with guaranteeing a republican form of government. (D) is wrong because the General Welfare Clause is a taxing/spending authorization, not a minimum-wage power.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism, step 4 (Tenth Amendment / anti-commandeering).

Playbook: Con Law playbook, FEDERALISM (10th Amendment: generally applicable laws reach the states).

How it lands: §2 step 4: Congress can apply a generally applicable law (reaching private and state employers alike) to the states, but can't single out the states as states. The federal minimum wage applies to all employers → strongest argument → (B).

Question 33

Civil Procedure — Waiver of Personal Jurisdiction Defense

A patient properly filed a medical malpractice claim against a doctor in federal district court. The complaint simply asserted negligence as the grounds for relief without any facts supporting the claim. The doctor filed a pretrial motion for a more definite statement, which the court denied. Immediately thereafter, and without submitting an answer, the doctor filed a motion to dismiss, asserting that the court lacked personal jurisdiction. Will the court grant this motion to dismiss?

(A) Yes, because a defendant may file a motion to dismiss based on lack of personal jurisdiction at the time he files a motion or at the time he files his answer, whichever occurs later.
(B) Yes, because the lack of personal jurisdiction defense can be raised at any time, even for the first time on appeal.

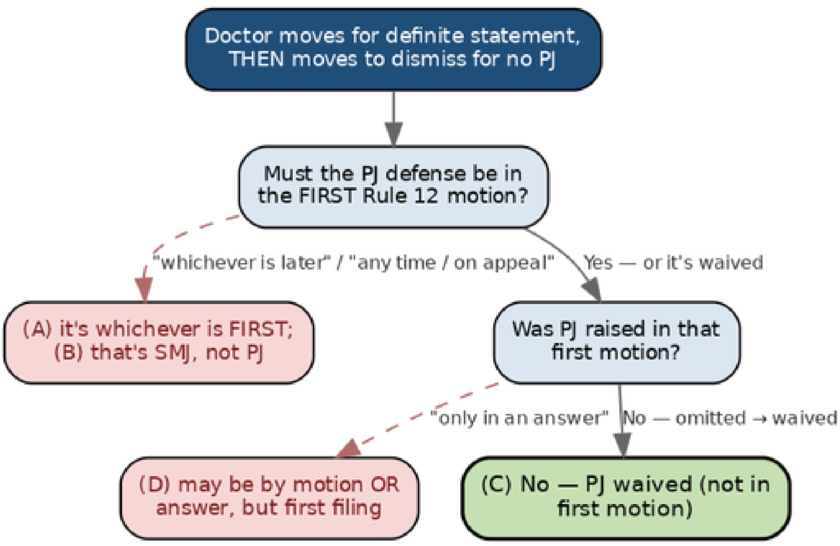
(C) No, because a defendant must file a motion to dismiss based on lack of personal jurisdiction at the time he files a motion or at the time he files his answer, whichever occurs first.
(D) No, because a lack of personal jurisdiction defense can only be raised in an answer or it is waived, and the defendant did not submit an answer.

> **Correct answer (C).** The PJ defense was waived because it wasn't raised in the first motion.

Rule. The Rule 12(b) defenses of lack of personal jurisdiction, improper venue, insufficient process, and insufficient service must be raised in the defendant's first Rule 12 motion or the responsive pleading, whichever comes first, or they are waived (the consolidation/omission rule). Lack of subject-matter jurisdiction, by contrast, is never waived.

Application. The doctor first filed a motion for a more definite statement without raising personal jurisdiction, then tried to raise PJ in a second motion. Because PJ wasn't included in that first motion, it was waived. The motion to dismiss is denied.

Why the other choices fail. (A) says 'whichever occurs later,' which is backwards; it's whichever occurs first. (B) describes the never-waived rule for subject-matter jurisdiction, not personal jurisdiction. (D) misstates the rule; the defense may be raised by motion or answer, but must be the first such filing or it's waived.



Decision path

Attack Sequence: Civil Procedure attack sequence, §6 Pleadings & Pre-Trial Motions, steps 3–4 (Rule 12(b) defenses; waiver vs. never-waived).

Playbook: Civil Procedure playbook, 12(B) MOTIONS (PJ/venue/process/service waived if not in the first motion/answer).

How it lands: §6 step 3: the personal-jurisdiction defense must be raised in the first Rule 12 motion or answer, whichever is first, or it's waived. The doctor omitted it from his first motion → waived → motion denied → (C).

Question 34

Evidence — Attorney-Client Privilege / Work Product

The plaintiff was injured when she slipped at the defendant restaurant. The defense attorney asked the manager on duty at the time of the incident to prepare a report of the accident. This report was given to the defense attorney prior to trial. During discovery, the plaintiff demands that a copy of the report be produced. Will the court order the defendant to produce the report?

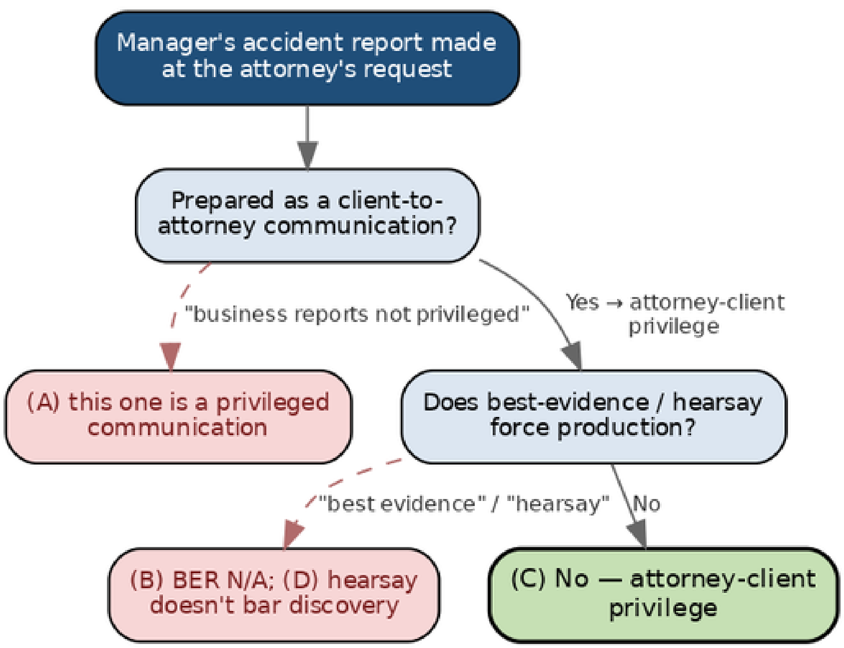
(A) Yes, because business reports are not privileged.
(B) Yes, because it is the best evidence.
(C) No, because it is covered by the attorney-client privilege.
(D) No, because it is hearsay.

> **Correct answer (C).** The report, prepared at the attorney's request as a client communication, is privileged.

Rule. Confidential communications between attorney and client made to facilitate legal services are privileged. A report a client (through its manager) prepares at the attorney's request functions as a privileged attorney-client communication and need not be produced.

Application. The restaurant's manager prepared the accident report at the defense attorney's request, so it is a privileged attorney-client communication and the court will not order production.

Why the other choices fail. (A) is wrong because, although ordinary business reports aren't privileged, this one was created as a client-to-attorney communication. (B) is wrong because the best-evidence rule is irrelevant (and privilege still applies). (D) is wrong because hearsay doesn't bar discovery; privilege is the reason it's protected.



Decision path

Attack Sequence: Evidence attack sequence, §8 Privileges, Authentication & Best Evidence (attorney-client privilege).

Playbook: Evidence playbook, OPINION / PRIVILEGE (attorney-client; work product).

How it lands: §8: a report the client prepares at the attorney's request is a privileged attorney-client communication, so it need not be produced → (C). (Best evidence and hearsay don't defeat the privilege.)

Question 35

Torts — Defamation / Truth Defense

An attorney won a large medical malpractice verdict against a doctor for a botched liposuction procedure performed on a patient. The patient was unaware that the doctor was board-certified only in dermatology but not in plastic surgery. In a televised interview in which he discussed the trial, the attorney stated that "doctors who are not board-certified need to notify their patients regarding their true qualifications." The doctor brought a defamation action against the attorney based on the statement. Who will prevail?

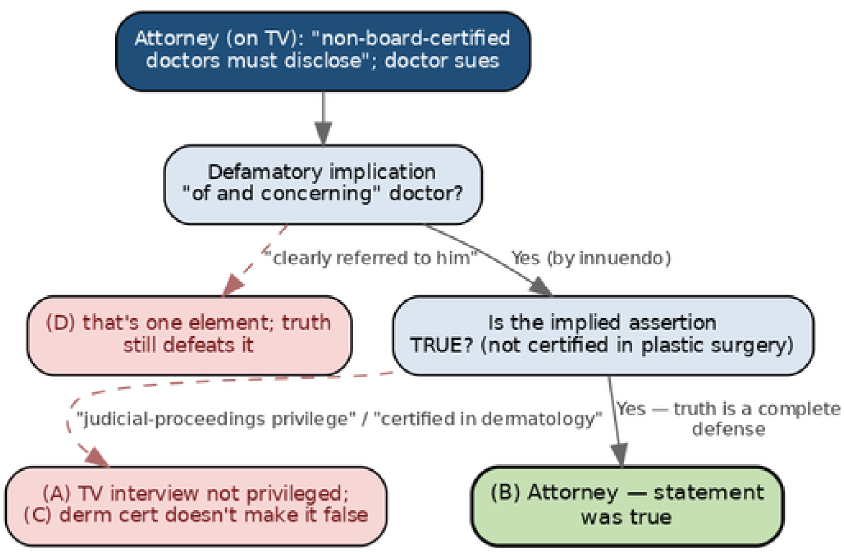
(A) The attorney, because the attorney's statement is related to judicial proceedings and thus is privileged.
(B) The attorney, because the doctor was not board-certified in plastic surgery.
(C) The doctor, because he was board-certified in dermatology.
(D) The doctor, because the statement clearly referred to him.

> **Correct answer (B).** The attorney prevails because truth is a complete defense: the doctor was not board-certified in plastic surgery.

Rule. Defamation requires a false and defamatory statement of or concerning the plaintiff, published, causing reputational harm. Truth is a complete defense. Defamatory meaning may arise by innuendo from surrounding facts, but if the implication is true, the statement is not actionable.

Application. In the context of a botched cosmetic-surgery case, the attorney's statement implies the doctor lacked relevant board certification, which is true, he wasn't board-certified in plastic surgery. Because the implied assertion is true, the attorney prevails.

Why the other choices fail. (A) is wrong because a statement about a proceeding made outside the proceeding (a TV interview) isn't covered by the judicial-proceedings privilege. (C) is wrong because dermatology certification doesn't make the plastic-surgery implication false. (D) is wrong because 'of and concerning' the plaintiff is only one element; truth still defeats the claim.



Decision path

Attack Sequence: Torts attack sequence, §7 Defamation, Privacy & Nuisance, step 1 (defamation elements; truth is a complete defense).

Playbook: Torts playbook, DEFAMATION (elements; truth defense).

How it lands: §7 step 1: defamation requires a false statement; truth is a complete defense. In context the attorney's statement implies the doctor lacked the relevant board certification, which is true (not certified in plastic surgery) → attorney wins → (B).

Question 36

Constitutional Law — Taxpayer Standing

Congress adopted a law granting a state university $2.5 million to study the properties of snowflakes. An outraged taxpayer filed suit to challenge the appropriation. Which of the following is the best argument against this challenge?

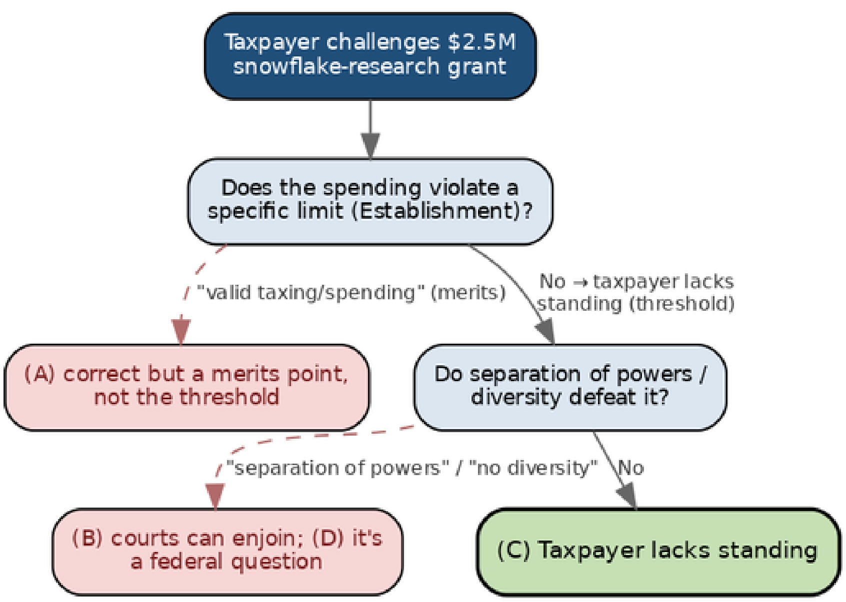
(A) The legislation is a valid exercise of the federal taxing and spending powers.
(B) The federal court lacks jurisdiction to enjoin such expenditures voted by Congress, under the doctrine of separation of powers.
(C) The taxpayer lacks standing to challenge the expenditure.
(D) There is no diversity in this suit because the spending appropriation being challenged is federal, and the plaintiff is a citizen of the United States.

> **Correct answer (C).** The best argument against the challenge is that the taxpayer lacks standing.

Rule. Taxpayers generally lack standing to challenge federal appropriations; the narrow exception is for spending that violates a specific constitutional limit like the Establishment Clause. A standing defense disposes of the case at the outset, before reaching the merits.

Application. A snowflake-research grant implicates no Establishment Clause (or other specific) limit, so the outraged taxpayer lacks standing, the cleanest, threshold ground to defeat the suit.

Why the other choices fail. (A) is a correct merits point (valid taxing/spending) but reaches the merits rather than ending the case at its inception, so it's not as good as standing. (B) is wrong because separation of powers doesn't bar courts from enjoining unconstitutional congressional acts. (D) is wrong because the case presents a federal question, so diversity isn't required.



Decision path

Attack Sequence: Con Law attack sequence, §1 Justiciability & Judicial Power, step 1 (standing — taxpayer standing).

Playbook: Con Law playbook, JUSTICIABILITY (Standing).

How it lands: §1 step 1: taxpayers generally lack standing to challenge appropriations absent an Establishment Clause violation. A snowflake grant implicates no such limit, so the best (threshold) defense is lack of standing →

(C).

Question 37

Criminal Law — Self-Defense / Felony Murder

A carjacker pulled a gun on a motorist at a stoplight, intending to force her out of her car so he could steal it. The motorist, however, was carrying a gun and shot the carjacker, killing him. The motorist was charged with violation of a concealed weapons statute, a felony in the jurisdiction, and with common law murder. Assuming that the motorist has committed a felony with regard to the gun, will she be found guilty of murder?

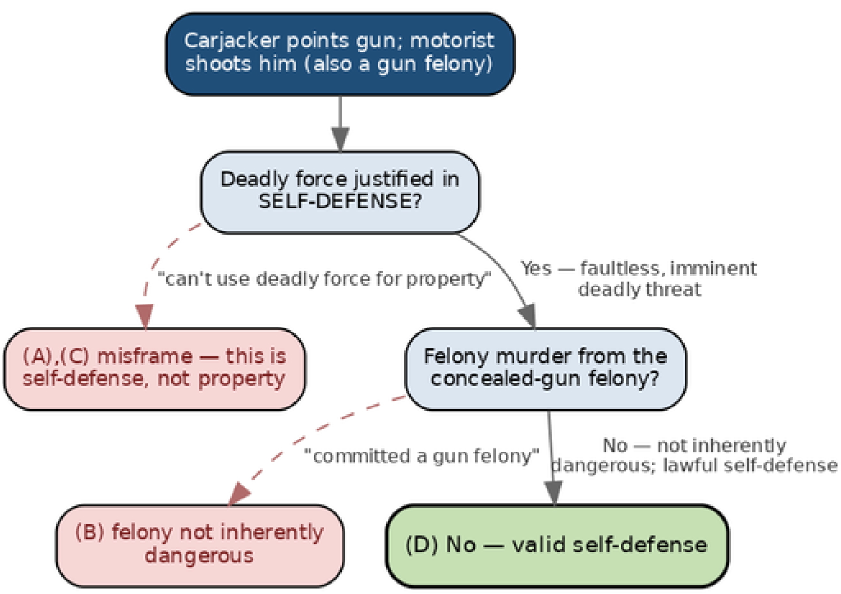
(A) Yes, because one cannot use deadly force in defense of property.
(B) Yes, because the defendant committed a felony by carrying the handgun.
(C) No, because one may use deadly force in defense of property.
(D) No, because she was defending herself against an imminent threat of deadly force.

> **Correct answer (D).** She isn't guilty of murder because she killed in valid self-defense against a deadly threat.

Rule. Deadly force in self-defense is justified when the defendant is without fault, faces unlawful force, and is threatened with imminent death or serious bodily harm. Such a killing is not unlawful and thus not murder. Felony murder generally requires an inherently dangerous felony (or one dangerous as committed).

Application. The carjacker pointed a gun at her; she was without fault and faced imminent deadly force, so her use of deadly force was lawful self-defense and the killing wasn't unlawful, defeating murder.

Why the other choices fail. (A) is wrong because, although deadly force can't protect mere property, deadly force is allowed in self-defense, which is what happened. (B) is wrong because carrying a concealed handgun isn't an inherently dangerous felony and wasn't used dangerously, so felony murder doesn't attach (especially given lawful self-defense). (C) misstates the law: deadly force generally can't be used to defend property.



Decision path

Attack Sequence: Crim attack sequence, §4 Defenses, step 1 (self-defense: deadly force vs. a deadly threat) and §1 (felony murder limits).

Playbook: Crim playbook, DEFENSES (Self-defense) + HOMICIDE (Felony murder — BARRK/inherently dangerous).

How it lands: §4 step 1: deadly force in self-defense is justified against an imminent deadly threat (the pointed gun), so the killing isn't unlawful → not murder → (D). Felony murder fails because a concealed-weapon felony isn't inherently dangerous.

Question 38

Real Property — Adverse Possession / Open and Notorious

A homeowner lived next door to a vacant lot owned by another neighbor. From the time the homeowner purchased his own property, he told other people that he owned the vacant lot. The homeowner had an underground dog fence installed under the vacant lot without the neighbor's knowledge. The homeowner also mowed the vacant lot regularly in the summer. When he had landscaping services performed on his own property, the landscapers dug up vegetation beds, which extended three feet into the neighbor's lot. After the statutory period for bringing a trespass action had passed, the homeowner brought an action to quiet title, claiming ownership of the vacant lot. Which of the following additional facts, if true, would be most helpful to the homeowner's case?

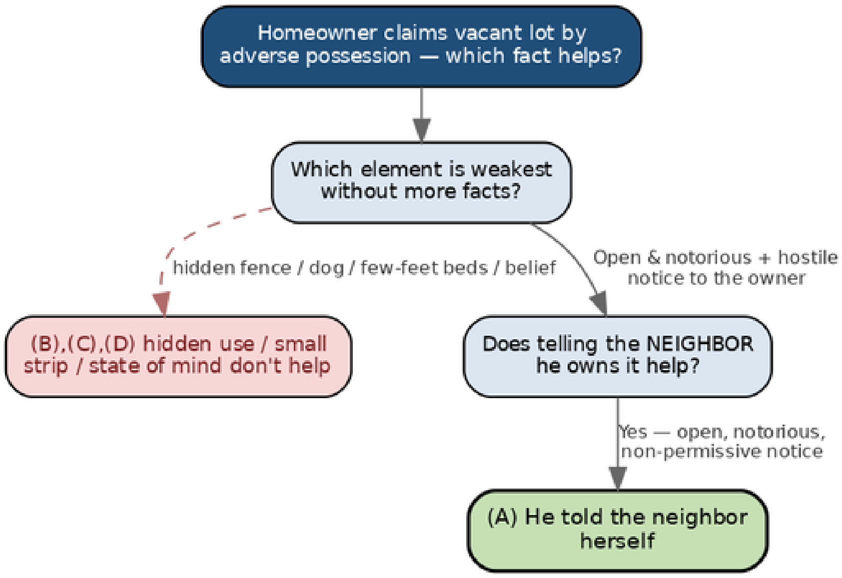
(A) One of the people that the homeowner often told about owning the vacant lot was the neighbor herself.
(B) The neighbor occasionally saw the homeowner's dog on the vacant lot, but never demanded that the homeowner keep the dog in the homeowner's yard.
(C) The vegetation beds continued to exist with the same dimensions, and were regularly maintained by the homeowner, for the entire statutory period.
(D) When he told people that he owned the vacant lot, the homeowner believed that it was true.

> **Correct answer (A).** Telling the neighbor about his ownership claim best supports the open-and-notorious, hostile elements.

Rule. Adverse possession requires actual and exclusive, open and notorious, hostile (without permission), and continuous possession for the statutory period. Open and notorious means possession visible enough to put the true owner on notice; hostility means simply without permission (subjective belief is irrelevant).

Application. Regular mowing plus telling the neighbor herself that he owned the lot makes the possession open, notorious, and clearly non-permissive, directly putting the true owner on notice. That fact most helps his adverse-possession claim.

Why the other choices fail. (B) is wrong because a hidden underground fence (and a dog wandering over) isn't open and notorious. (C) is wrong because a few feet of landscaping won't give constructive possession of the whole lot. (D) is wrong because the possessor's state of mind (belief in ownership) is irrelevant to hostility.



Decision path

Attack Sequence: Real Property attack sequence, §5 Adverse Possession, step 2 (open and notorious — notice to the true owner).

Playbook: Real Property playbook, adverse possession (open/notorious; hostile = without permission).

How it lands: §5 step 2: possession must be open and notorious (notice to the owner) and hostile (without permission). Telling the neighbor herself that he owned the lot most strongly supports open, notorious, non-permissive possession → (A). (State of mind is irrelevant to hostility.)

Question 39

Civil Procedure — Jury Demand / Waiver

An author of a book brought a copyright infringement action in federal court against a publisher of her book and is debating on whether she would like a jury to try her case. Which of the following statements is correct regarding the right to a jury trial in a civil action in federal district court?

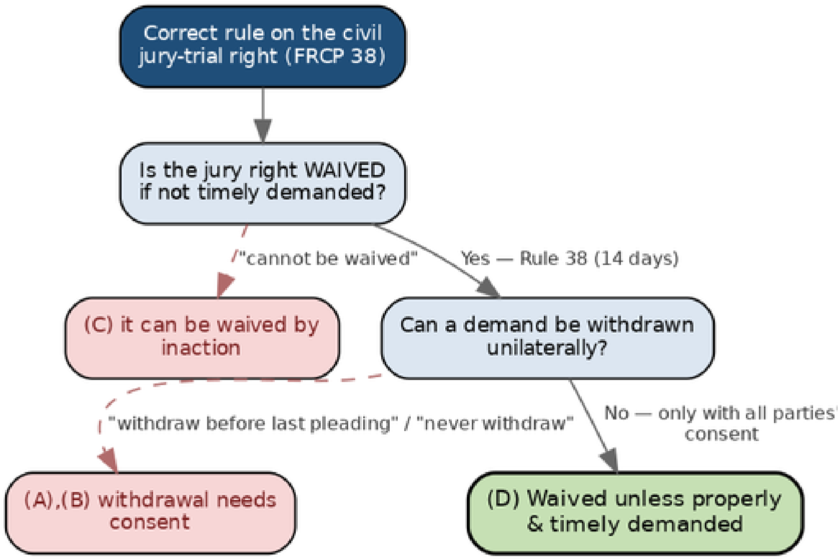
(A) A properly filed and served jury trial demand may be withdrawn if it is done before the last pleading is served.
(B) A proper jury trial demand may not be withdrawn once it is served and filed.
(C) The right to a jury trial must be preserved, and therefore, it cannot be waived.
(D) A party will waive its right to a jury trial unless it is demanded properly and timely.

> **Correct answer (D).** A party waives the jury right unless it makes a proper, timely demand.

Rule. Under FRCP 38, a party wanting a jury trial must serve a written demand no later than 14 days after service of the last pleading directed to the jury-triable issue; failure to do so waives the jury right. Once made, a jury demand may be withdrawn only with all parties' consent.

Application. The correct statement is that the right to a jury is waived unless it is properly and timely demanded.

Why the other choices fail. (A) and (B) misstate withdrawal: a demand may be withdrawn only if all parties consent, not unilaterally (and not merely because it's before the last pleading). (C) is wrong because the jury right can be waived (by failing to demand it), so it need not be preserved automatically.



Decision path

Attack Sequence: Civil Procedure attack sequence — the jury-demand/waiver rule (Rule 38) isn't a listed step; flag it.

Playbook: Civil Procedure playbook, TRIAL & POST-TRIAL (Jury demand within 14 days).

How it lands: The rule-playbook jury-demand line controls: under Rule 38 a party waives the jury right unless it serves a timely written demand, and a demand can be withdrawn only with all parties' consent → (D). The ordering guide is thin here; lean on the playbook.

Question 40

Contracts — Employment Damages / Mitigation

A recent college graduate landed her dream job teaching kindergarten at the same elementary school she had attended as a child. The woman's contract provided that she would be paid $40,000 for the school year, and that she could only be fired for just cause. Days before the woman was to begin teaching, the school's principal fired the woman, without cause, so that she could hire her cousin for the job instead. The woman submitted her resume to an employment agency, but was so depressed over the loss of her dream job that she turned down a nearby school's offer for a similar job paying a $30,000 salary, and instead spent the rest of the school year miserably unemployed. If the woman successfully sues the school for breach of contract, how much can she recover?

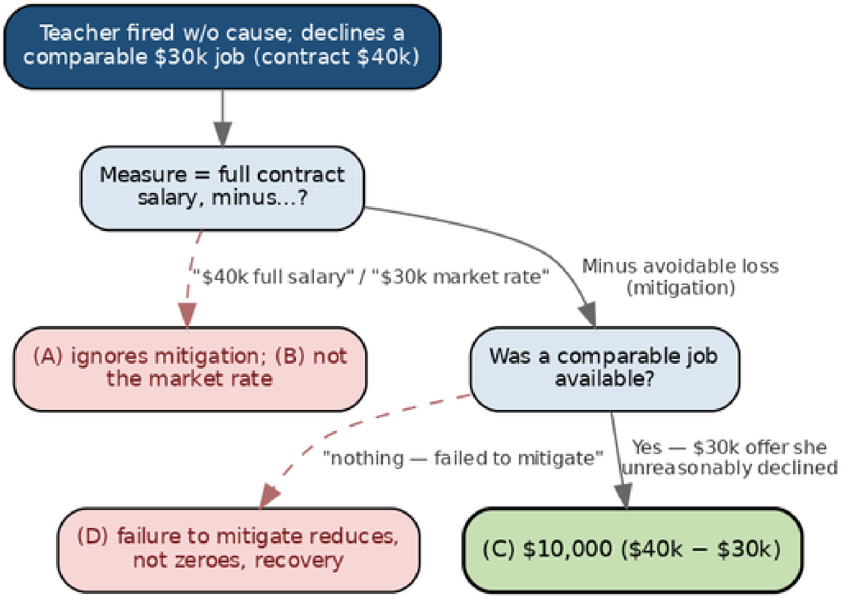
(A) $40,000, her full contract salary.
(B) $30,000, the going rate for other teacher positions in the area.
(C) $10,000, the difference between her contract salary and the salary of the other position she was offered.
(D) Nothing, because the woman failed to mitigate her damages.

> **Correct answer (C).** She recovers $10,000, the contract salary minus the comparable salary she could have earned.

Rule. For an employer's breach, the employee's damages are the full contract salary, reduced by amounts she could have earned in comparable employment (the duty to mitigate). If the employer proves a comparable job was available, damages are reduced by that available salary whether or not she took it.

Application. Her contract was $40,000; a comparable $30,000 job was available and she unreasonably declined it. Her recovery is reduced by the $30,000 she could have earned, leaving $10,000.

Why the other choices fail. (A) is wrong because it ignores the mitigation offset. (B) is wrong because damages are measured by the contract price minus avoidable loss, not by the market rate. (D) is wrong because failing to mitigate doesn't zero out recovery; it just reduces damages by the avoidable amount, leaving $10,000.



Decision path

Attack Sequence: Contracts attack sequence, §6 Remedies, steps 1 & 4 (expectation damages; the duty to mitigate).

Playbook: Contracts playbook, REMEDIES (mitigation; expectation).

How it lands: §6: employment damages are the contract salary minus what she could have earned in comparable work. She unreasonably declined a comparable $30k job, so $40k – $30k = $10,000 → (C).

Question 41

Civil Procedure — Diversity / Permanent-Resident Alien

A milkman who was a citizen of France decided to move to State A to personally supervise the acquisition of an organic milk company. To facilitate this venture, he applied for, and was granted, permanent resident alien status in State A. Meanwhile, a former citizen of Italy applied for and was granted United States citizenship, and he moved permanently to State A. There, he met the milkman and invested $500,000 in the organic milk venture. However, the milk company failed, and the investor sued the milkman in a federal district court in State A, alleging that the milkman mismanaged the operation. Does the court have subject matter jurisdiction?

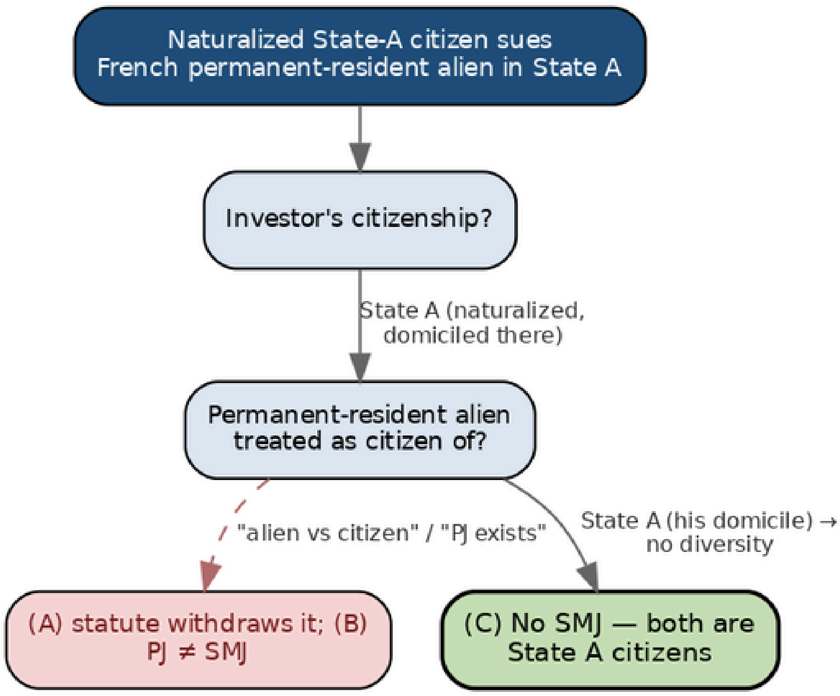
(A) Yes, because the suit is between an alien and a citizen.
(B) Yes, because a State A court has personal jurisdiction over the milkman.
(C) No, because the milkman resides in State A and the investor is a citizen of State A.
(D) No, because the exercise of jurisdiction is not constitutionally permissible in this case.

> **Correct answer (C).** No diversity: a naturalized State A citizen sued a permanent-resident alien domiciled in State A.

Rule. Diversity requires complete diversity. A naturalized U.S. citizen is a citizen of his state of domicile. Under the diversity statute, a permanent resident alien is deemed a citizen of the state in which he is domiciled, and jurisdiction is withdrawn where such an alien and a U.S. citizen are domiciled in the same state.

Application. The investor is a naturalized citizen domiciled in State A; the milkman is a permanent-resident alien domiciled in State A. Because both are treated as State A citizens, there is no diversity, so the court lacks subject-matter jurisdiction.

Why the other choices fail. (A) is wrong because the alien/citizen framing ignores that the statute withdraws jurisdiction when a permanent-resident alien shares the citizen's state. (B) confuses personal jurisdiction with subject-matter jurisdiction. (D) is wrong because Article III would permit a citizen-versus-foreign-national suit; the bar here is the diversity statute, not the Constitution.



Decision path

Attack Sequence: Civil Procedure attack sequence, §1 Subject Matter Jurisdiction, step 3 (citizenship — permanent-resident alien deemed a citizen of his state).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Diversity; domicile).

How it lands: §1 step 3: a naturalized citizen is a citizen of his domicile, and a permanent-resident alien is deemed a citizen of the state where he's domiciled. Both are in State A, so no diversity → no SMJ → (C).

Question 42

Evidence — Defendant's Good Character (Pertinent Trait)

During the defendant's trial for embezzlement, the defense calls a witness to testify as to the defendant's reputation for honesty and veracity. The prosecution objects. Should the court allow the testimony?

(A) Yes, because the prosecution put the defendant's character for truthfulness in issue by filing charges against him.
(B) Yes, because it is admissible character evidence.

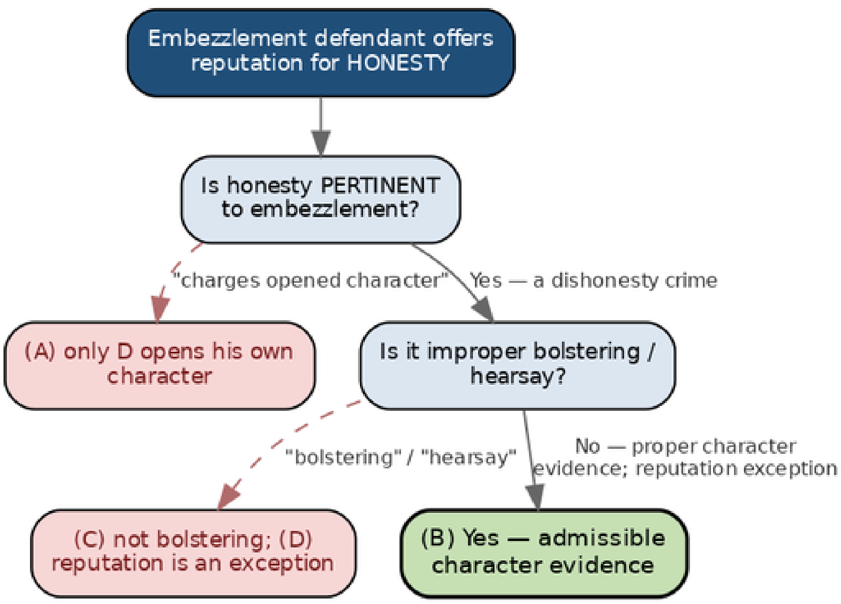
(C) No, because a party cannot bolster the testimony of his witness until he has been impeached.
(D) No, because the evidence is inadmissible hearsay.

> **Correct answer (B).** Honesty is a pertinent trait for embezzlement, so the defendant may offer good-character reputation evidence.

Rule. A criminal defendant may offer reputation or opinion evidence of a good character trait pertinent to the charged crime; the prosecution may then rebut. Reputation evidence is a recognized hearsay exception. (Contrast Q9, where the trait wasn't pertinent to the crime.)

Application. Embezzlement is a crime of dishonesty, so the defendant's reputation for honesty and veracity is a pertinent trait. The defense may offer it, and the prosecution can rebut on cross. The testimony is allowed.

Why the other choices fail. (A) is wrong because only the defendant puts his character in issue; filing charges doesn't. (C) is wrong because this is proper character evidence, not improper bolstering (no impeachment is required first for a defendant's character evidence). (D) is wrong because reputation evidence falls within a hearsay exception.



Decision path

Attack Sequence: Evidence attack sequence, §6 Character & Propensity, step 2 (defendant may open with a pertinent trait; prosecution rebuts).

Playbook: Evidence playbook, CHARACTER (D may open the door with reputation/opinion; reputation is a hearsay exception).

How it lands: §6 step 2: honesty is pertinent to embezzlement, so the defendant may offer good-character reputation evidence (prosecution rebuts on cross) → (B). Contrast Q9, where the trait wasn't pertinent to the crime.

Question 43

Real Property — Vested Remainder / Tenancy in Common

A mother died, bequeathing all of her property to a trustee "to pay the income to my husband for life, and to distribute the principal to my son and daughter if they graduate from college. If they do not graduate from college, then the principal shall be distributed to charity." Subsequently, the son and the daughter graduated from college. Upon their graduation from college, the interests of the son and the daughter in the trust principal would be classified as:

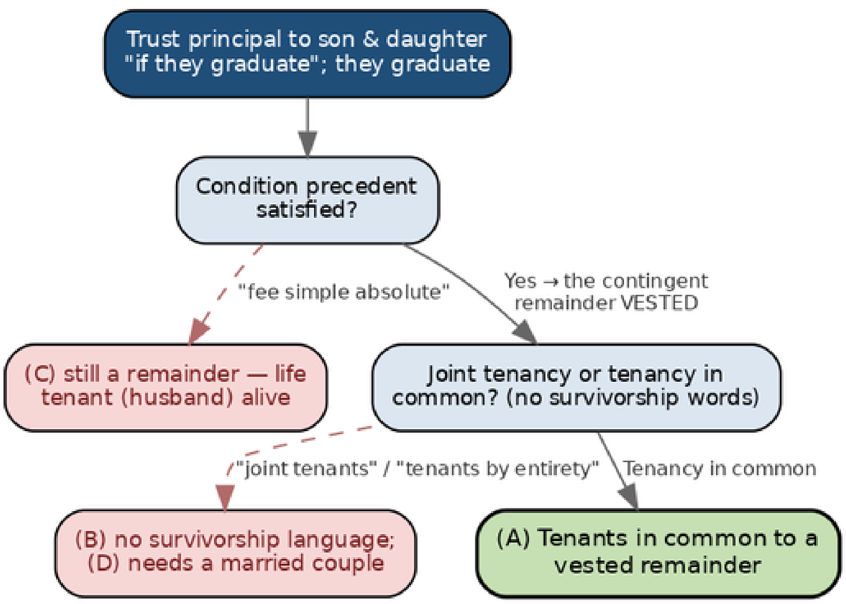
(A) Tenants in common to a vested remainder.
(B) Joint tenants to a vested remainder.
(C) Tenants in common to a fee simple absolute.
(D) Tenants by the entirety to a fee simple absolute.

> **Correct answer (A).** On graduation their contingent remainder vested, and they hold it as tenants in common.

Rule. A remainder is contingent if subject to a condition precedent; once the condition is satisfied it becomes vested. A conveyance to two or more persons is presumed a tenancy in common today (a joint tenancy requires clear survivorship language).

Application. The son and daughter's remainder was contingent on graduating; graduation satisfied the condition, so it vested. With no survivorship language, they hold as tenants in common to a vested remainder.

Why the other choices fail. (B) is wrong because nothing shows a joint tenancy (no survivorship language). (C) is wrong because it's still a remainder (the life tenant husband is alive), not a present fee simple absolute. (D) is wrong because tenancy by the entirety requires a married couple, which they are not, and because it's a remainder.



Decision path

Attack Sequence: Real Property attack sequence, §1 Estates & Future Interests, step 3 (vested vs. contingent remainder) + §2 (tenancy presumption).

Playbook: Real Property playbook, ESTATES / FUTURE INTERESTS + CONCURRENT OWNERSHIP.

How it lands: §1 step 3: the graduation condition (precedent) was satisfied, so the remainder vested; §2: with no survivorship language, they hold as tenants in common → tenants in common to a vested remainder → (A).

Question 44

Constitutional Law — Free Exercise / Neutral Law

Citing traffic concerns, a city passed an ordinance prohibiting residents from holding meetings in their homes with more than 15 persons unrelated to the resident. A resident of the city who belonged to a religious group with 50 members allowed the group to hold weekly services at his home. Between 30 and 40 people attended meetings at the resident's home each week. A neighbor of the resident who was upset by the number of cars parked in front of her home on the day of the services contacted the police. Police officers investigated and the resident admitted that he was holding services in his home in violation of the ordinance. When he refused the officers' requests to cease holding such services, they issued him a citation. At his trial on the citation, how should the court rule on the resident's claim that application of the ordinance to him violates his right to the free exercise of religion?

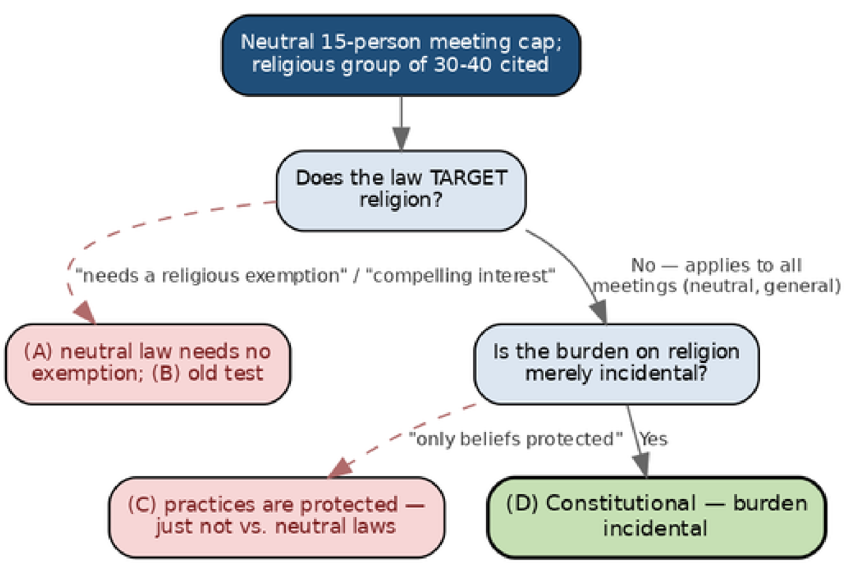
(A) The ordinance is unconstitutional as applied to the resident because it does not include a religious exemption.
(B) The ordinance is unconstitutional as applied to the resident because traffic concerns are not compelling interests that justify an interference with religion.
(C) The statute is constitutional as applied to the resident because the constitution does not protect religious practices, only religious beliefs.
(D) The statute is constitutional as applied to the resident because the burden on his religion was incidental.

> **Correct answer (D).** The neutral, generally applicable ordinance only incidentally burdens religion, so it's constitutional as applied.

Rule. Under the modern Free Exercise doctrine (Employment Division v. Smith), a neutral law of general applicability that only incidentally burdens religious practice is valid and needs no religious exemption. Strict scrutiny applies only when a law targets religious practice.

Application. The meeting-size ordinance applies to all gatherings, not just religious ones, and nothing shows it was aimed at religion. The burden on the resident's worship is incidental, so it is constitutional as applied.

Why the other choices fail. (A) is wrong because a neutral, generally applicable law needs no religious exemption. (B) is wrong because it applies the old compelling-interest test, which no longer governs neutral laws. (C) is wrong because religious practices (not just beliefs) are protected, just not against neutral, generally applicable laws.



Decision path

Attack Sequence: Con Law attack sequence, §7 First Amendment: Religion, step 1 (Free Exercise: neutral, generally applicable law is valid).

Playbook: Con Law playbook, FIRST AMENDMENT – RELIGION (Free Exercise: neutral law of general applicability).

How it lands: §7 step 1: a neutral, generally applicable law that only incidentally burdens religion is valid and needs no exemption (Smith). The meeting-size cap applies to all gatherings → constitutional as applied → (D).

Question 45

Criminal Procedure — Arrest Warrant in Third Party's Home

The police obtained a valid arrest warrant for a drug dealer. A reliable informant told the police that the drug dealer was staying at a friend's house until "the heat was off." Without having obtained a search warrant, the police went to the friend's house, knocked on the door, and asked the friend if the drug dealer was there. The friend replied that the drug dealer had been staying at the house for a few days but had left a few hours ago. The police pushed open the door and began searching for the drug dealer. They found him hiding in a closet along with two five-pound bricks of marijuana. They arrested both the drug dealer and the friend. Before his trial for possession of marijuana, the friend moved to suppress the marijuana found in the closet. Should the court grant the motion to suppress?

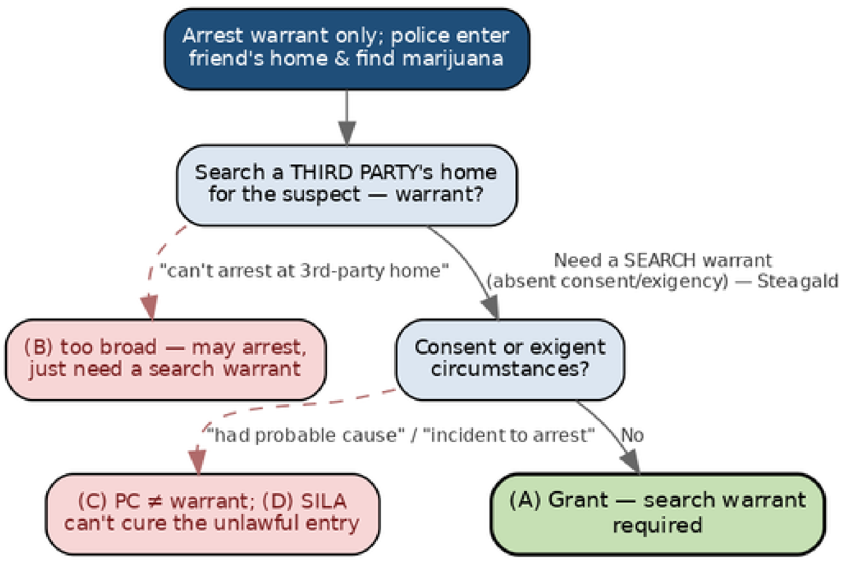
(A) Yes, because a search warrant was required.
(B) Yes, because the police may not execute an arrest warrant at the third party's home.
(C) No, because the police had probable cause to believe that the drug dealer was staying at the friend's home.
(D) No, because the police had a valid arrest warrant and the marijuana was found incident to the arrest.

> **Correct answer (A).** Absent exigency, police needed a search warrant to look for the suspect in the friend's home, so the marijuana is suppressed.

Rule. To search for the subject of an arrest warrant in a third party's home, police must (absent consent or exigent circumstances) obtain a separate search warrant for that home (Steagald). Evidence found there without a search warrant is fruit of an unconstitutional search as to the homeowner.

Application. The police had only an arrest warrant for the dealer, not a search warrant for the friend's home, and no consent or exigency. Their warrantless entry and search were unconstitutional, so the marijuana is suppressed as to the friend. The motion is granted.

Why the other choices fail. (B) is wrong because the police can arrest a person in a third party's home; they just need a search warrant to enter and look. (C) is wrong because probable cause doesn't excuse the search-warrant requirement here (it would have let them get one). (D) is wrong because a search-incident-to-arrest theory can't validate the unlawful entry into the home in the first place.



Decision path

Attack Sequence: Crim attack sequence, §5 Fourth Amendment, steps 3–4 (warrant requirement; a third party's home needs a search warrant).

Playbook: Crim playbook, 4TH AM – SEARCH (warrant requirement; exceptions).

How it lands: §5: to look for an arrest-warrant subject in a third party's home, police need a separate search warrant (absent consent/exigency) — Steagald. They had only an arrest warrant, so the marijuana is suppressed as to the friend → (A).

Question 46

Real Property — Joint Tenancy / Title Theory Mortgage

A landowner conveyed his land to his wife, son, and daughter "as joint tenants with right of survivorship." The daughter then conveyed her interest to a friend. The wife subsequently executed a will devising her interest to the daughter. Then the son mortgaged his interest to a lender, who promptly and properly recorded the mortgage. The wife died, then the daughter's friend died, leaving a will that bequeathed her entire estate to the daughter. The daughter and the son survived. If the jurisdiction follows the title theory, who owns what interest in the land?

(A) The lender owns the fee simple.
(B) The lender and the daughter own unequal shares as tenants in common.
(C) The son and the daughter own unequal shares as tenants in common.
(D) The son and the daughter own equal shares as joint tenants.

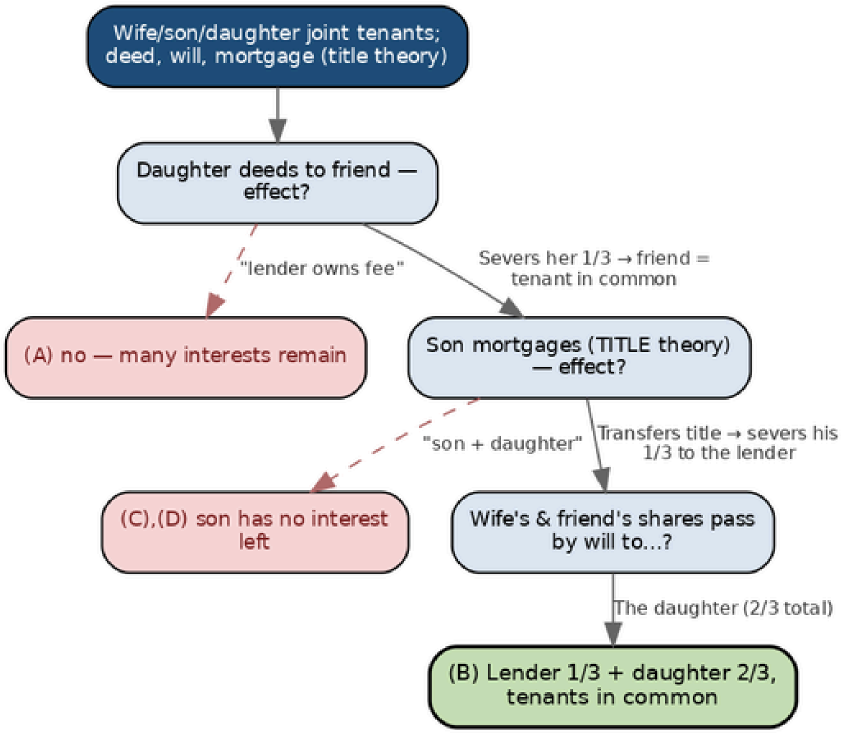
> **Correct answer (B).** After all the transfers, the lender and the daughter hold unequal shares as tenants in common.

Rule. A joint tenant's inter vivos conveyance severs the joint tenancy only as to that share; the transferee becomes a tenant in common, while the remaining joint tenants stay joint tenants between themselves. In a title-theory state, a mortgage transfers legal title and therefore also severs a joint tenancy.

Application. Wife, son, and daughter were joint tenants (1/3 each). The daughter's deed to the friend made the friend a 1/3 tenant in common; wife and son remained joint tenants as to their 2/3. The son's mortgage (title theory) transferred his title, severing his share to a tenancy in common (lender holds

1/3). Now wife, lender, and friend each hold 1/3 as tenants in common (no survivorship). The wife's will passes her 1/3 to the daughter; the friend's will passes her 1/3 to the daughter. Result: lender holds 1/3, daughter holds 2/3, as tenants in common (unequal shares).

Why the other choices fail. (A) is wrong because the daughter also holds an interest (2/3). (C) is wrong because the son has no interest left (his mortgage transferred his title in a title-theory state). (D) is wrong because the joint tenancy was severed, leaving tenants in common with unequal shares, not equal joint tenants.



Decision path

Attack Sequence: Real Property attack sequence, §2 Concurrent Ownership, step 2 (severance) + §7 Mortgages (title vs. lien theory).

Playbook: Real Property playbook, CONCURRENT OWNERSHIP + MORTGAGES (lien vs. title theory).

How it lands: §2/§7: the daughter's deed severs her third (friend = tenant in common); in a title-theory state the son's mortgage transfers title, severing his third (lender = tenant in common). Wife's and friend's shares pass by will to the daughter → lender 1/3, daughter 2/3, as tenants in common → (B).

Question 47

Criminal Law — Arson + Attempted Larceny

A student started a small fire in a trash can in the men's room at his university. His plan was to set off the school's fire alarms so that he could break into the computer lab and steal a laptop computer while the building was being evacuated. The student was stopped after he had set the fire and was attempting to smash in the glass on the computer lab door. The fire was quickly extinguished and no serious damage was done to the building by the fire beyond some charring on the walls in one stall of the men's room. A statute in the jurisdiction extends the crime of arson to buildings other than dwellings. Which of the following best describes the crimes of which the student could be properly convicted?

(A) Larceny only.

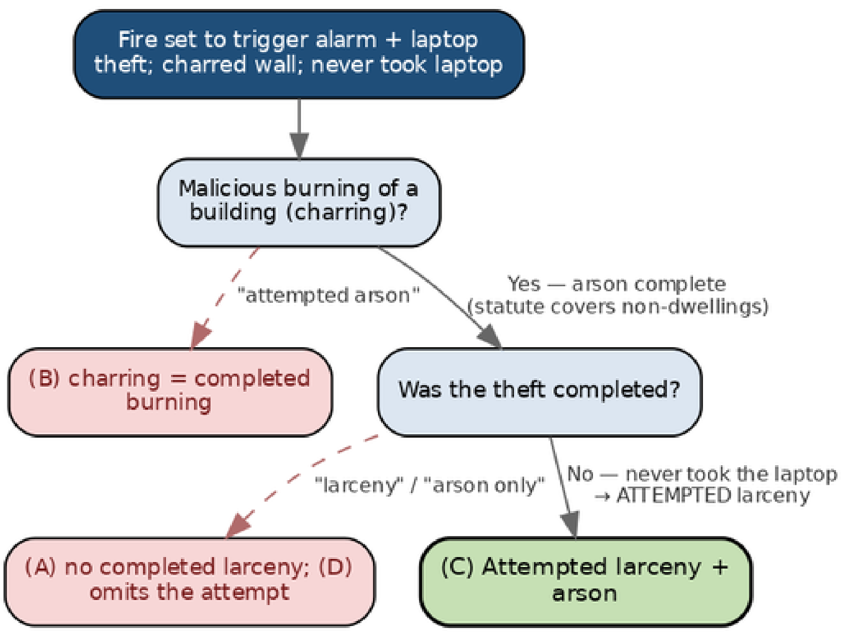
(B) Larceny and attempted arson.
(C) Attempted larceny and arson.
(D) Arson only.

> **Correct answer (C).** The student is guilty of attempted larceny and (completed) arson.

Rule. Arson (as extended by statute to non-dwellings) requires the malicious burning of a building; malice is satisfied by intending a burning that creates an obvious fire hazard, and charring of a building's material suffices as a 'burning.' Larceny requires a completed trespassory taking; without a completed taking, the crime is attempted larceny (specific intent plus a substantial step/proximity).

Application. The student intentionally set a fire that charred the men's-room wall, satisfying the burning of a building, so arson is complete. He never took the laptop, so the theft is only attempted larceny (he had the intent and took a substantial step by setting the fire and smashing the lab door). He is guilty of attempted larceny and arson.

Why the other choices fail. (A) and (B) are wrong because there was a completed arson (charring suffices), not merely attempted arson, and no completed larceny. (D) is wrong because it omits the attempted larceny.



Decision path

Attack Sequence: Crim attack sequence, §2 Crimes Against Persons & Property (arson; larceny) + §3 Inchoate (attempt).

Playbook: Crim playbook, CRIMES AGAINST PERSONS/PROPERTY (Arson; Larceny) + INCHOATE (Attempt).

How it lands: §2: a malicious burning that chars a building is completed arson (statute covers non-dwellings). §3: he never took the laptop, so the theft is only attempted larceny (intent + substantial step) → (C).

Question 48

Contracts — Revocability of Offers

A small business owner decided to retire, so she offered her long-time employee a chance to buy the business for $1 million. She promised in writing to keep the offer open to him for 90 days and to give him enough time to secure financing once he accepted the offer. Over the next few days, the employee cashed out all his retirement accounts and took a second mortgage on his home to raise the funds to purchase the business. When he approached the business owner to discuss the details of the sale, she said that she changed her mind and was revoking her offer because she did not want to retire after all. Was the owner's revocation of her offer proper?

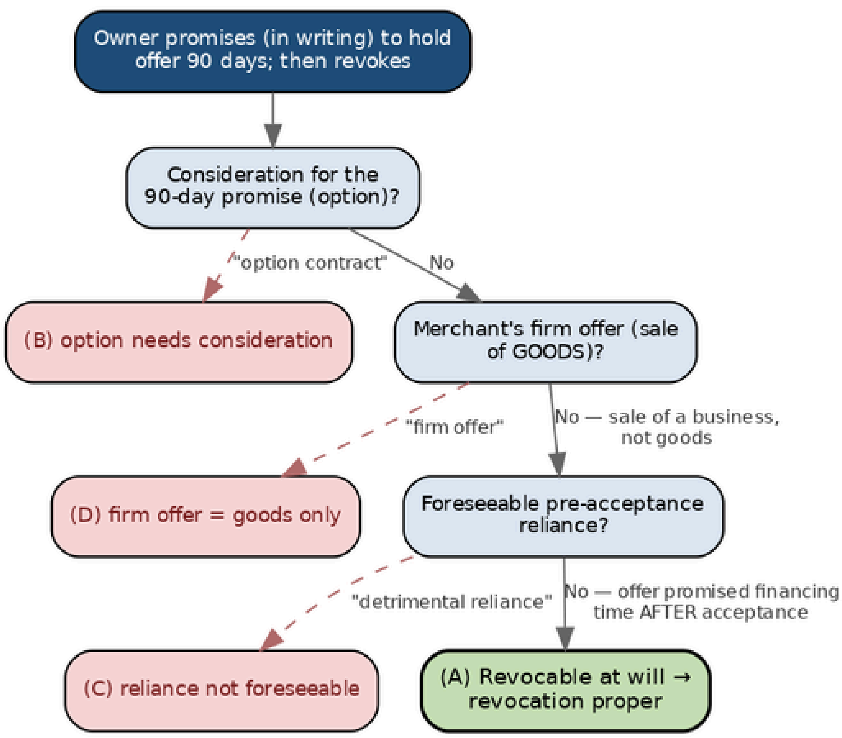
(A) Yes, because it was an offer that could be revoked at will.
(B) No, because the owner created an option contract by promising to keep the offer open for 90 days.
(C) No, because the employee detrimentally relied on the offer.
(D) No, because the offer constitutes a merchant's firm offer.

> **Correct answer (A).** The offer was freely revocable; none of the irrevocability doctrines applies.

Rule. Offers are generally revocable at will, even if the offeror promised to hold them open. Exceptions: an option (promise to hold open supported by consideration), a UCC merchant's firm offer (signed writing by a merchant re goods), a partly performed unilateral contract, or detrimental reliance the offeror should reasonably expect before acceptance.

Application. No consideration was given for the 90-day promise (no option), it isn't a goods sale by a merchant (no firm offer), and the owner had no reason to expect the employee to spend money before accepting, because the offer itself promised time to secure financing after acceptance (no reasonably foreseeable pre-acceptance reliance). So the offer was revocable at will, and the revocation was proper.

Why the other choices fail. (B) is wrong because an option needs consideration, which is absent. (C) is wrong because reliance before acceptance wasn't foreseeable given the promise to allow financing time after acceptance. (D) is wrong because a merchant's firm offer applies only to sales of goods, not a business sale.



Decision path

Attack Sequence: Contracts attack sequence, §2 Formation, step 3 (irrevocable offers — option, firm offer, reliance).

Playbook: Contracts playbook, OFFER & REVOCATION (revocable at will unless option / firm offer / reliance).

How it lands: §2 step 3: offers are revocable at will unless made irrevocable. No consideration (no option), it's a business not a goods sale (no firm offer), and pre-acceptance reliance wasn't foreseeable (the offer promised financing time after acceptance) → revocable → (A).

Question 49

Evidence — Impeachment on a Collateral Matter

In a lawsuit over ownership of stereo equipment between two roommates, the plaintiff testified that he purchased the equipment one year ago for his DJ business. The defendant offers the testimony of a clerk at the electronics store where the equipment was purchased. The clerk testifies that she remembers that the sale of the equipment occurred 10 months ago, not one year ago, because the purchase order was signed with such a distinctive signature. However, she cannot remember whether it was purchased by the defendant or the plaintiff. If the plaintiff objects to this testimony, should the trial court admit it?

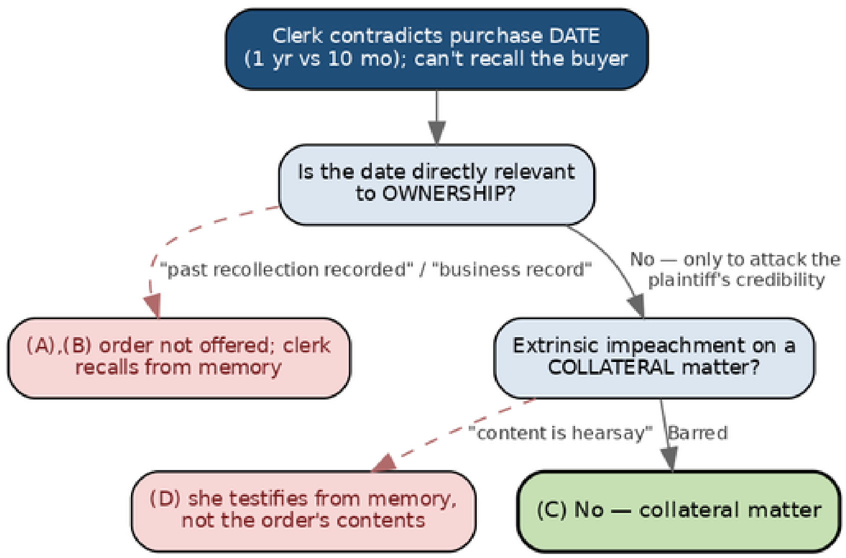
(A) Yes, because the purchase order is a past recollection recorded.
(B) Yes, because the purchase order is a business record.
(C) No, because the date of purchase is a collateral matter.
(D) No, because the content of the purchase order is hearsay not within any exception.

> **Correct answer (C).** The purchase date is collateral, so extrinsic impeachment on it is barred.

Rule. A witness may not be impeached by extrinsic evidence (or a prior inconsistent statement) on a collateral matter, one not directly relevant to the substantive issues. The bar prevents wasting time and confusing the jury on side points.

Application. Whether the equipment was bought 10 months or a year ago has no bearing on ownership; it's offered only to cast doubt on the plaintiff's credibility, a collateral matter. Extrinsic impeachment on it is barred, so the testimony shouldn't be admitted.

Why the other choices fail. (A) is wrong because the clerk doesn't lack recollection and the order isn't being offered, so it's not past recollection recorded. (B) is wrong because the purchase order isn't being offered into evidence, so the business-records exception is beside the point. (D) is wrong because the clerk testifies from her own memory (not the order's contents), so hearsay isn't the reason; collateralness is.



Decision path

Attack Sequence: Evidence attack sequence, §7 Witness Impeachment, step 6 (collateral-matter bar — no extrinsic evidence).

Playbook: Evidence playbook, IMPEACHMENT (collateral matters).

How it lands: §7 step 6: a witness may not be impeached by extrinsic evidence on a collateral matter. The purchase date is irrelevant to ownership and offered only to attack credibility → barred → (C).

Question 50

Civil Procedure — Issue Preclusion

A car driver was hit by a pickup truck driver and suffered severe injuries. The car driver properly sued the truck driver in federal court for negligence, based on diversity jurisdiction, claiming the truck driver ran a red light. The truck driver defended on the grounds that the car driver was contributorily negligent for speeding, which under the applicable law would completely bar the car driver's claim. The case went to trial, where all issues were vigorously litigated by the parties. The jury returned a verdict for the truck driver, specifically holding that the car driver was negligent for speeding. Thereafter, a passenger who was riding with the truck driver filed a diversity claim for negligence in federal court against the car driver for personal injuries from the same accident. The passenger wants to preclude the car driver from relitigating the question of whether the car driver was negligent. How will the court likely rule?

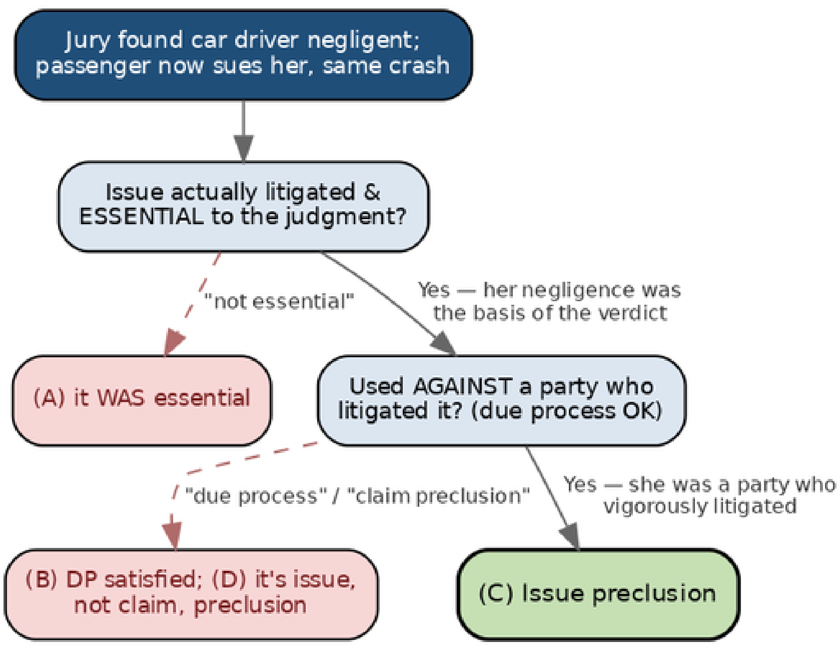
(A) Not preclude the car driver from relitigating the question of whether she was negligent, because that finding was not essential to the judgment in the initial claim.
(B) Not preclude the car driver from relitigating the question of whether she was negligent, because to do so would violate the car driver's due process rights.
(C) Preclude the car driver from relitigating the question of whether she was negligent due to issue preclusion.
(D) Preclude the car driver from relitigating the question of whether she was negligent due to claim preclusion.

> **Correct answer (C).** Issue preclusion bars the car driver from relitigating her negligence, which was actually litigated and essential to the first judgment.

Rule. Issue preclusion (collateral estoppel) bars relitigation of an issue that was actually litigated and determined and was essential to a valid final judgment, against a party (or privy) to the first case. A nonparty may sometimes assert it offensively where fair.

Application. In the first suit the jury specifically found the car driver negligent for speeding, an issue actually litigated and essential to the defense verdict, and she was a party who vigorously litigated it. The passenger (a nonparty) may use that finding offensively to preclude her from relitigating her negligence.

Why the other choices fail. (A) is wrong because the negligence finding was essential to the first judgment (it was the basis for the verdict). (B) is wrong because due process is satisfied, since preclusion is used against a party who litigated the issue. (D) is wrong because this is issue preclusion (a single issue), not claim preclusion (which bars an entire cause of action between the same parties).



Decision path

Attack Sequence: Civil Procedure attack sequence, §7 Preclusion, steps 3–4 (issue preclusion: actually litigated, essential; who is bound / who may use it).

Playbook: Civil Procedure playbook, PRECLUSION (issue vs. claim preclusion) — if thin, lean on the ordering guide.

How it lands: §7 steps 3–4: issue preclusion bars relitigating an issue actually litigated and essential to a valid judgment, against a party who litigated it. The jury found the car driver negligent (essential to the verdict); the passenger may use that offensively → (C). (This is issue, not claim, preclusion.)