Mixed Subject Set 4

Expanded Answer Explanations · Diet Coke Esq.

50 questions — Evidence (9), Torts (8), Civil Procedure (7), Constitutional Law (7), Real Property (6), Contracts (6), Criminal Law (5), Criminal Procedure (2)

Question 1

Criminal Law — Accomplice Liability / Mens Rea

A friend knew that a man and a woman cared deeply for each other and encouraged the man to ask the woman to marry. Unbeknownst to the friend, the man was already married. Finally, after continued encouragement by the friend, the man went through a marriage ceremony with the woman, and the friend was the man's best man at the ceremony. If the friend is charged with being an accessory to bigamy, he should be found:

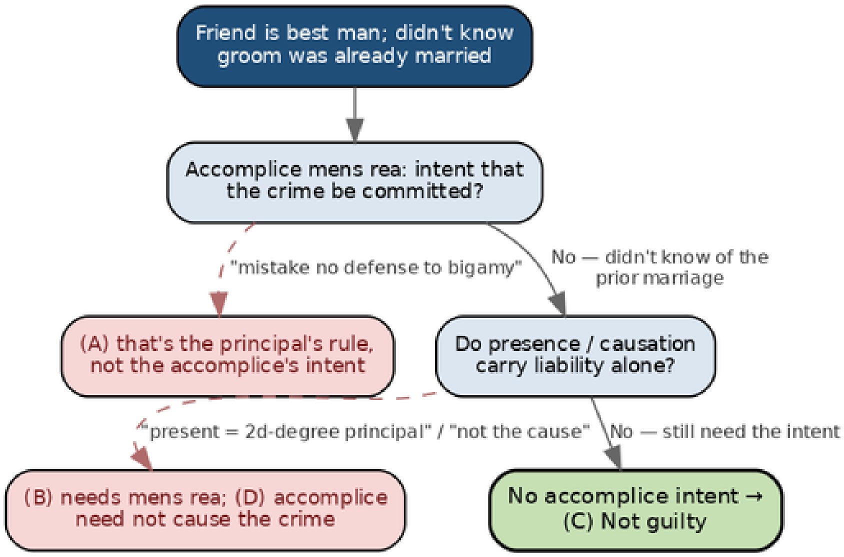
(A) Guilty, because he encouraged the man, and his mistake as to the existence of a prior marriage is no defense to a charge of bigamy.
(B) Guilty, because he was present when the crime occurred and is thus a principal in the second degree.
(C) Not guilty, because he did not have the mental state required for aiding and abetting.
(D) Not guilty, because his encouragement and assistance was not the legal cause of the crime.

> **Correct answer (C).** The friend lacked the intent required for aiding and abetting, so he is not guilty.

Rule. To be liable as an accomplice (accessory), the defendant must give assistance or encouragement with (1) the intent to assist the principal and (2) the intent that the principal commit the crime. The required mental state is dual intent; mere encouragement without knowledge of the criminal circumstances is not enough.

Application. The friend encouraged the marriage but did not know the man was already married, so he never intended to help bring about a bigamous marriage. Lacking the intent that a crime be committed, he did not have the mental state for accomplice liability and is not guilty.

Why the other choices fail. (A) is wrong because, although the principal's mistake about a prior marriage is no defense to bigamy (a strict-liability-leaning offense), the accomplice still needs the required intent, which the friend lacked. (B) is incomplete: presence as a principal in the second degree still requires the accomplice mental state. (D) is wrong because an accomplice can be liable even if his conduct was not the but-for cause of the crime; the flaw here is the missing mens rea.



Decision path

Attack Sequence: Crim attack sequence, §3 Inchoate Crimes & Accomplice Liability, step 5 (Accomplice: aiding/encouraging WITH intent that the crime be committed).

Playbook: Crim playbook, INCHOATE & ACCOMPLICE (accomplice mens rea).

How it lands: §3 step 5: an accomplice needs intent to assist AND intent that the crime be committed. The friend didn't know of the prior marriage, so he never intended a bigamous marriage → no accomplice intent → (C).

Question 2

Civil Procedure — Relation Back / Changing Parties

A homeowner discovered that the siding on his house was defective and had allowed water to enter the structure, causing damage to the wood framing. The homeowner tried for some time to negotiate a settlement with the corporation that the homeowner believed had manufactured the defective siding. When no settlement was forthcoming, the homeowner filed an action in federal district court against the corporation one week before the statute of limitations expired. Service of process was effected on the corporation several months later. After inspecting the home, the corporation filed and served its answer in which it denied manufacturing the siding used on the homeowner's house. Upon examining the corporation's evidence, the homeowner conceded that the siding was manufactured by another company. With leave of the court, the homeowner then filed an amended complaint substituting the actual manufacturer of the siding for the original incorrect defendant. The amended complaint was served on the manufacturer approximately seven months after the original complaint was filed and after the statute of limitations had expired. The manufacturer was unaware of the action until it was served with the amended complaint. The manufacturer filed a motion for summary judgment on the grounds that the homeowner's claim against it is barred by the statute of limitations. How should the court rule on the motion?

(A) Deny the motion, because the homeowner is entitled to recover from the actual manufacturer the damages caused by the defective siding.
(B) Deny the motion, because the amended complaint relates back to the time the original complaint was filed, which was before the statute of limitations expired.
(C) Grant the motion, because the amended complaint was filed after the statute of limitations expired and the actual manufacturer did not receive timely notice of the action.

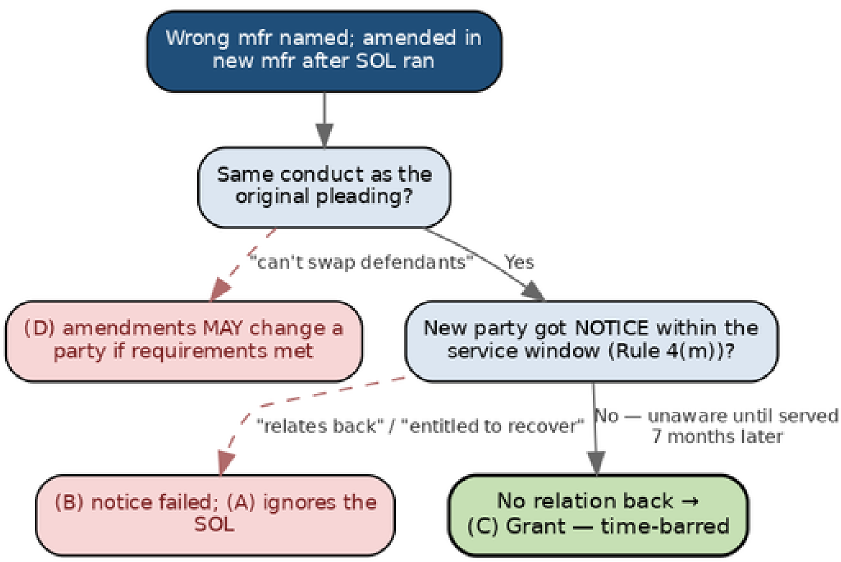
(D) Grant the motion, because amendments to pleadings may not be used to substitute an entirely new defendant unrelated to the one originally named.

> **Correct answer (C).** The amendment doesn't relate back because the new manufacturer got no timely notice, so the claim is time-barred.

Rule. An amendment changing the party (or the naming of the party) relates back only if the claim arises from the same conduct set out in the original pleading AND, within the period for serving the original complaint (Rule 4(m), 90 days), the new party received notice of the action such that it won't be prejudiced and knew or should have known that it would have been named but for a mistake.

Application. The actual manufacturer received no notice within the service period and had no reason to know the homeowner had sued the wrong company; it first learned of the suit when served with the amended complaint seven months later. The relation-back requirements fail, so the amendment doesn't relate back and the claim against the manufacturer is barred. Summary judgment is granted.

Why the other choices fail. (A) ignores the limitations problem, which is dispositive. (B) is wrong because a party-changing amendment relates back only if the notice requirements are met, and they weren't. (D) misstates the law: amendments may substitute a new party if the relation-back conditions are satisfied.



Decision path

Attack Sequence: Civil Procedure attack sequence, §6 Pleadings & Pre-Trial Motions, step 2 (amendment; relation back — same conduct/transaction, plus the notice test for changing parties).

Playbook: Civil Procedure playbook, PLEADINGS & RULE 11 (Amendment; relation back).

How it lands: §6 step 2: a party-changing amendment relates back only if the new party got notice within the Rule 4(m) service window and knew it would have been named but for a mistake. The manufacturer got no timely notice → no relation back → time-barred → (C).

Question 3

Evidence — Authentication / Foundation

The police set up an undercover "sting" operation in which they posed as fences of stolen property and bought and sold such property to anyone who came into their warehouse. A defendant is being prosecuted for receiving stolen property in connection with his arrest by the undercover police officers, and the prosecution attempts to introduce a videotape showing the defendant offering to sell a television set to one of the undercover police officers. If this evidence is held to be inadmissible, the most likely reason is that:

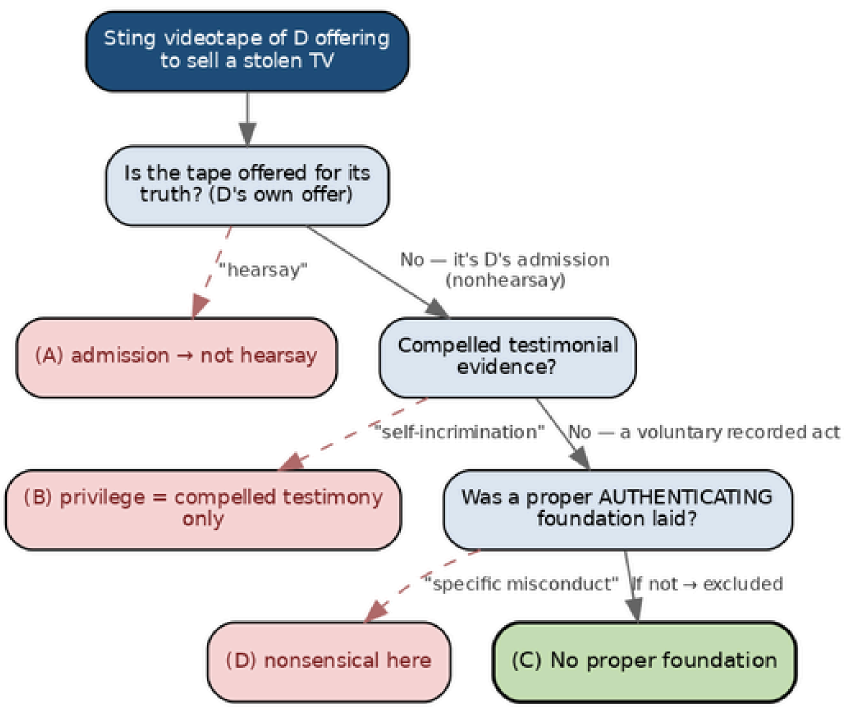
(A) It is hearsay not within any exception.
(B) It violates the defendant's privilege against self-incrimination.
(C) A proper foundation was not established for its introduction into evidence.
(D) Criminality may not be proven by specific instances of misconduct.

> **Correct answer (C).** If the videotape is excluded, it is for lack of a proper foundation (authentication).

Rule. Videotape, like photographs and recordings, must be authenticated: the proponent must lay a foundation showing the item is what it is claimed to be. Without a proper foundation, otherwise admissible evidence is excluded. A party's own statements/conduct captured on tape are admissions (nonhearsay), and the privilege against self-incrimination reaches only compelled testimonial evidence.

Application. The defendant's offer to sell stolen goods is a nonhearsay admission and not compelled testimony, so hearsay and self-incrimination don't bar it. The only sound ground for exclusion is that the prosecution failed to lay a proper authenticating foundation for the tape.

Why the other choices fail. (A) is wrong because the tape captures the defendant's own admission, which is nonhearsay. (B) is wrong because the privilege against self-incrimination applies only to compelled testimonial evidence, not a voluntary recorded offer. (D) is nonsensical here; the tape is direct evidence of the charged conduct, not improper propensity evidence.



Decision path

Attack Sequence: Evidence attack sequence, §8 Privileges, Authentication & Best Evidence, step 3 (authentication — a foundation is required).

Playbook: Evidence playbook, OPINION/PRIVILEGE (Authentication / best evidence).

How it lands: §8 step 3: real evidence like a videotape must be authenticated with a foundation. The tape is the defendant's own admission (nonhearsay) and not compelled testimony, so the only sound exclusion ground is a missing foundation → (C).

Question 4

Constitutional Law — Equal Protection / Rational Basis

A woman and a man had lived together for several years but had never married because the man was already married. During the time the woman and the man lived together, they had accumulated property. One day, the man told the woman to move out. The state in which they lived recognized in general the validity of property agreements entered into by unmarried couples who lived together, but there was a statute that provided that such agreements were void as being against public policy when one of the parties living together was married to another. The woman brought suit against the man, alleging that they had an agreement to share equally all property accumulated by them during the time they lived together, and challenging the constitutionality of the statute. Will the woman prevail in her challenge to the statute?

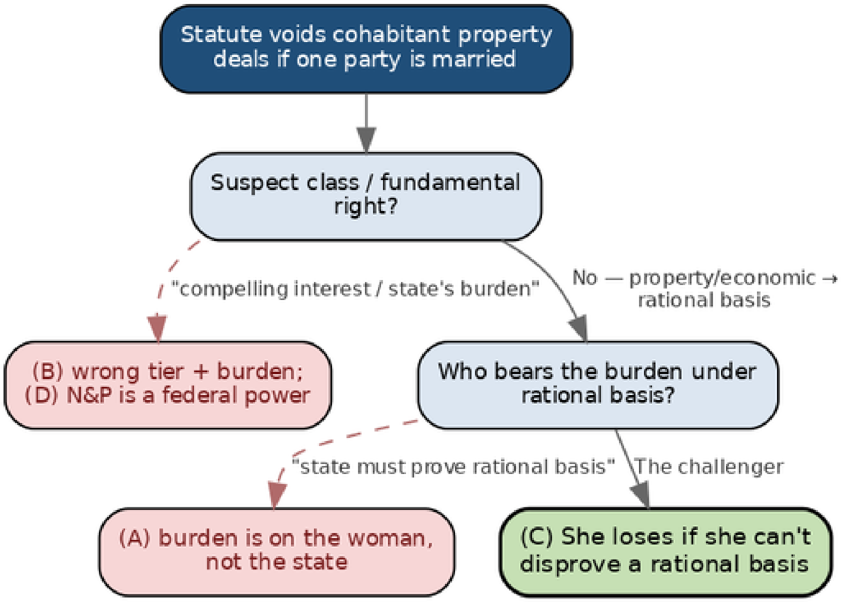
(A) Yes, if the state fails to prove that the statute is rationally related to a legitimate state purpose.
(B) Yes, if the woman can prove that the statute is not necessary to effectuate a compelling state interest.
(C) No, if the woman fails to prove that the statute is not rationally related to a legitimate government purpose.
(D) No, if the state proves that the statute was necessary and proper.

> **Correct answer (C).** Property/economic rights get rational basis, and the challenger bears the burden, so she loses unless she disproves any rational basis.

Rule. Laws affecting economic or property interests (no suspect class or fundamental right) are reviewed under rational basis: they are valid if rationally related to any legitimate government purpose, and the challenger bears the burden of proving no rational basis exists.

Application. The statute voiding cohabitation property agreements where one party is already married affects property/economic interests, so rational basis applies and the woman must disprove any rational relationship to a legitimate purpose. She loses if she fails to carry that burden.

Why the other choices fail. (A) is wrong because the burden is on the challenger, not the state, under rational basis. (B) applies strict scrutiny (compelling interest), the wrong standard, and misassigns the burden. (D) is wrong because the Necessary and Proper Clause is a federal congressional power and has nothing to do with reviewing a state statute.



Decision path

Attack Sequence: Con Law attack sequence, §5 Equal Protection, steps 2 & 5 (trigger the standard → rational basis for economic/property; challenger bears the burden).

Playbook: Con Law playbook, EQUAL PROTECTION (rational basis: challenger shows no legitimate interest or no rational relation).

How it lands: §5: property/economic rights get rational basis, and the challenger carries the burden. The woman loses unless she disproves any rational relationship to a legitimate purpose → (C).

Question 5

Constitutional Law — Public Employee Speech / Due Process

An accountant employed by the Federal Communications Commission was offended by various jokes and cartoons that employees would post in the office cafeteria. The Commission did not have any rules regarding what employees could post in the cafeteria, and none of the cartoons were pornographic or harassing. Nevertheless, the accountant lodged a number of complaints with his supervisor that went unheeded. Finally, the accountant posted his own notice chastising the hypocrisy and immorality of the agency for allowing such cartoons when it was charged with ensuring a standard of decency on the public airwaves. The notice prompted a great deal of debate among employees and a great deal of displeasure on the part of the accountant's supervisor, particularly after it was posted on another employee's blog and received some media attention. A labor contract between the agency and the clerical workers' union contained a policy for providing for termination of union employees only for certain specified grounds, but the accountant was not a member of the union and was not covered by the policy or any other employment agreement. Which of the following statements is most accurate regarding the agency's right to dismiss the accountant?

(A) The accountant has a liberty interest in the exercise of his First Amendment rights that entitles him to a hearing to contest the grounds of his dismissal.
(B) The accountant has a property interest as a public employee that precludes him from being fired without notice and an opportunity to respond.
(C) The accountant has no right to a hearing because his statements were not an expression of views on public issues.

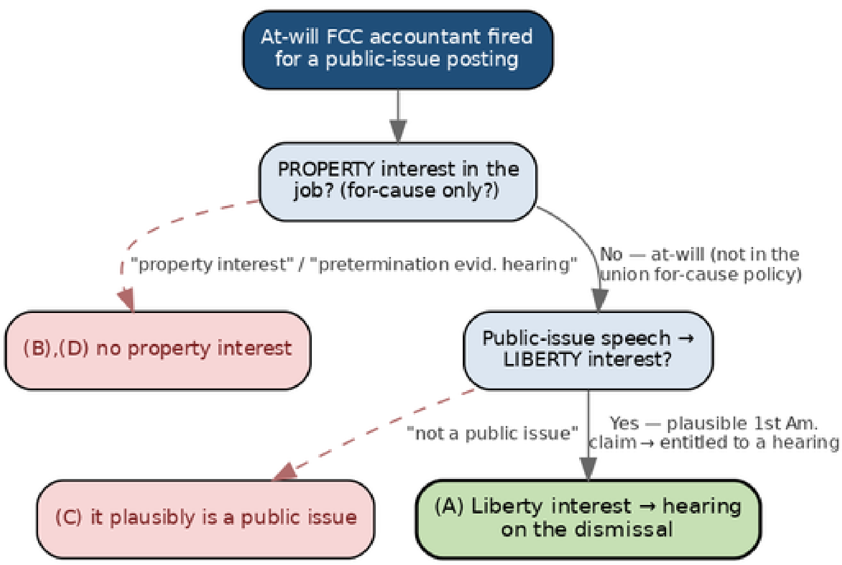
(D) The accountant has both a liberty interest and a property interest that entitles him to a pretermination evidentiary hearing.

> **Correct answer (A).** The accountant has a liberty interest in his First Amendment rights entitling him to a hearing to contest the dismissal.

Rule. Under Fifth Amendment due process, a person has a liberty interest in exercising constitutional rights, including free speech. A government employer may not fire an employee for speech on a matter of public concern (unless it disrupts operations). A property interest in a job exists only where removal is limited to cause; without that, the employee is at-will and has no property interest, but a plausible free-speech claim still supports a liberty-interest hearing.

Application. The accountant's posting on agency hypocrisy touches a public issue, so he can make a prima facie First Amendment claim, giving him a liberty interest and a right to a hearing on whether the firing violated his free-speech rights. He has no property interest because he was at-will (not covered by the union's for-cause policy).

Why the other choices fail. (B) is wrong because he had no property interest; he was at-will and could be fired for any reason. (C) is wrong because his statement plausibly addresses a public issue and is protected, so he is entitled to a hearing. (D) is wrong on both counts: no property interest, and due process here calls for at most a hearing (a post-termination evidentiary hearing is likely sufficient), not necessarily a pretermination evidentiary hearing.



Decision path

Attack Sequence: Con Law attack sequence, §4 State Action & Due Process, step 2 (procedural due process: property vs. liberty interest) + §6 Speech (public-employee speech).

Playbook: Con Law playbook, DUE PROCESS + FIRST AMENDMENT – SPEECH (employee speech).

How it lands: §4 step 2: an at-will employee has no property interest, but a public-issue free-speech claim is a liberty interest supporting a hearing on the dismissal → (A). §6: government can't fire for protected public-concern speech.

Question 6

Evidence — Opposing Party's Statement (Vicarious Admission)

The plaintiff is suing the defendant to recover for damage to the plaintiff's garage, which burned down from a fire that started in the defendant's bakery. The plaintiff alleged that the fire was started by one of the bakery's employees, who was known to come into the bakery after an evening of drinking at a nearby bar to experiment with recipes. The defendant denied the allegation and claimed that the fire was the result of arson by a local gang member. At trial, the plaintiff called to the stand a court reporter, who will testify that he recorded the testimony of the now-deceased manager of the bakery at a preliminary hearing on a criminal charge of arson against the gang member, and the manager testified that the fire was the result of the employee's drunken experiments. The defendant objects to the court reporter's testimony. The court should rule that the testimony is:

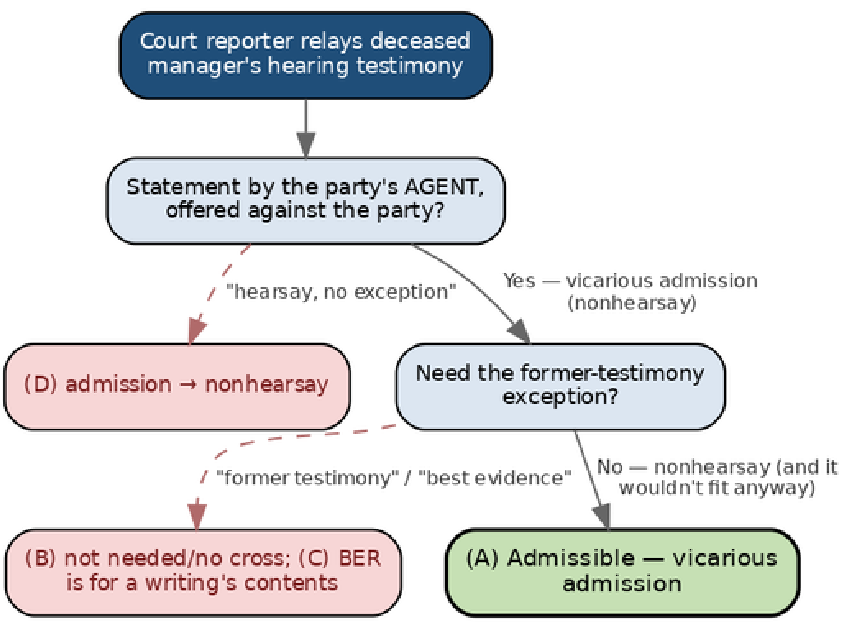
(A) Admissible, as substantive evidence of the cause of the fire.
(B) Admissible, under the former testimony exception to the hearsay rule.
(C) Inadmissible, because the court transcript would be the best evidence.
(D) Inadmissible, because it is hearsay not within any exception.

> **Correct answer (A).** The manager's statement is admissible nonhearsay as an opposing party's (vicarious) admission.

Rule. An opposing party's statement (admission) is nonhearsay and admissible as substantive evidence. A statement by a party's agent or employee, made within the scope of and during the agency relationship (or by one authorized to speak), is a vicarious admission attributable to the party.

Application. The bakery manager, an agent of the defendant, stated at a hearing that the bakery employee's drunken experiments caused the fire. Offered against the defendant, that is a vicarious admission and admissible nonhearsay, provable through the court reporter who heard it. It comes in as substantive evidence.

Why the other choices fail. (B) is wrong because the statement is nonhearsay (an admission), so the former-testimony exception isn't needed, and it wouldn't apply anyway (the criminal arson case involved different parties/issues with no chance to cross-examine the manager). (C) is wrong because the best evidence rule applies only when proving the contents of a writing; the manager's oral statement exists independently of the transcript. (D) is wrong because the statement is nonhearsay.



Decision path

Attack Sequence: Evidence attack sequence, §3 Statements Defined as Non-Hearsay, steps 5–6 (opposing-party statement; vicarious admission by an agent).

Playbook: Evidence playbook, EXEMPTIONS (Opposing party statement; vicarious — agent within scope).

How it lands: §3 steps 5–6: a statement by a party's agent within the agency is a vicarious admission and nonhearsay. The bakery manager's statement, offered against the bakery, comes in as substantive evidence → (A).

Question 7

Criminal Procedure — Fruit of Unlawful Arrest

Acting on an anonymous telephone call, the police went to a woman's apartment, pounded on the door, and demanded to search it for possible stolen property. The woman refused. The police then kicked open the door and placed the woman under arrest. The woman then offered to give the officers some inside information in exchange for her release. Before she could say anything else, the woman was given Miranda warnings by the police. Thereafter, she told the police that she knew of a large supply of stolen property stored at a nearby warehouse and said that she and a friend had been selling the stolen property out of the warehouse for years. The police raided the warehouse and recovered the stolen property. The woman was charged with conspiracy to sell stolen property and for possession of stolen property. At her trial, the woman moved to suppress the statements. Which of the following is the woman's best argument in support of the motion to suppress?

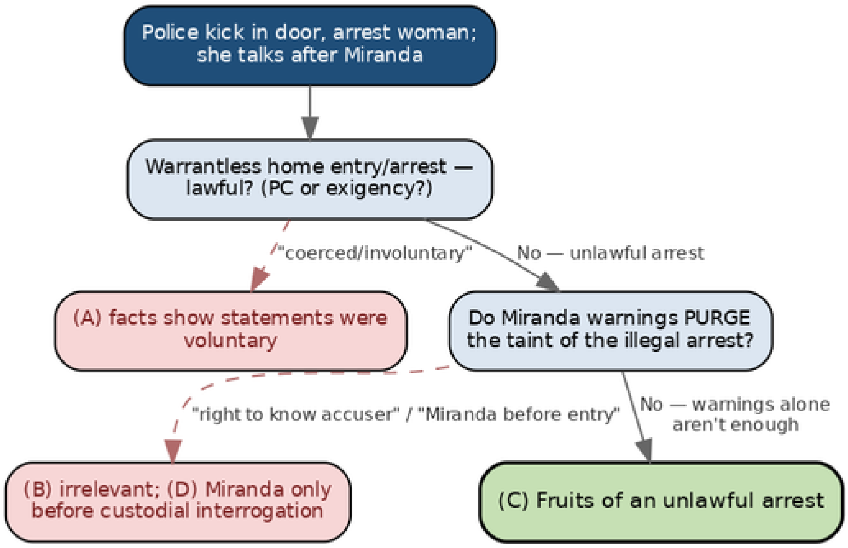
(A) The woman was intimidated by the forced entry into her home and, because her statements were involuntary and coerced, their use against her would violate due process of law.
(B) The woman is entitled to know the identity of her accuser, and the state cannot supply this information.
(C) The woman's statements were fruits of an unlawful arrest, and although the Miranda warnings may have been sufficient to protect her right against self-incrimination, they were not sufficient to purge the taint of the illegal arrest.
(D) The police should have given the woman Miranda warnings prior to entry into her home, and the warnings were ineffectual once the woman offered to give information.

> **Correct answer (C).** Her statements were fruits of an unlawful arrest, and Miranda warnings alone did not purge the taint.

Rule. A warrantless, nonconsensual entry into a home to arrest, without probable cause or exigency, is unlawful. Statements obtained after an illegal arrest are fruit of the poisonous tree and must be suppressed unless the taint is purged; giving Miranda warnings, by itself, is not sufficient to purge the taint of an illegal arrest.

Application. Police kicked in the door and arrested the woman without a warrant, probable cause, or exigency, an unlawful arrest. Her subsequent statements are fruits of that illegality, and the Miranda warnings did not purge the taint. That is her strongest suppression argument.

Why the other choices fail. (A) is wrong because the facts show her statements were voluntary, not coerced, so a due-process/voluntariness theory is weak. (B) is a true statement of confrontation rights but irrelevant to suppressing these statements. (D) is wrong because Miranda warnings are required only before custodial interrogation, not before entering a home.



Decision path

Attack Sequence: Crim attack sequence, §5 Fourth Amendment, steps 3 & 5 (warrant requirement; exclusionary rule and fruits) — a home arrest needs a warrant/exception.

Playbook: Crim playbook, 4TH AM – ARREST & STOPS + EXCLUSIONARY RULE (fruit of the poisonous tree).

How it lands: §5: the warrantless, nonconsensual home entry and arrest (no PC/exigency) was unlawful, so her later statements are fruits of it. Miranda warnings don't purge the taint → (C).

Question 8

Torts — Invasion of Privacy / Appropriation

A geologist was studying the land formations in and around a mountain. One day, he opened a newspaper to find that he was in an ad for a brand of cigarettes. The ad headline "quoted" the geologist as saying, "They make you feel like you're in the mountains." The geologist is certain that it is his picture, but he never posed for the ad for the cigarettes. The geologist brings an action to recover damages against the cigarette company. Most likely his best cause of action is:

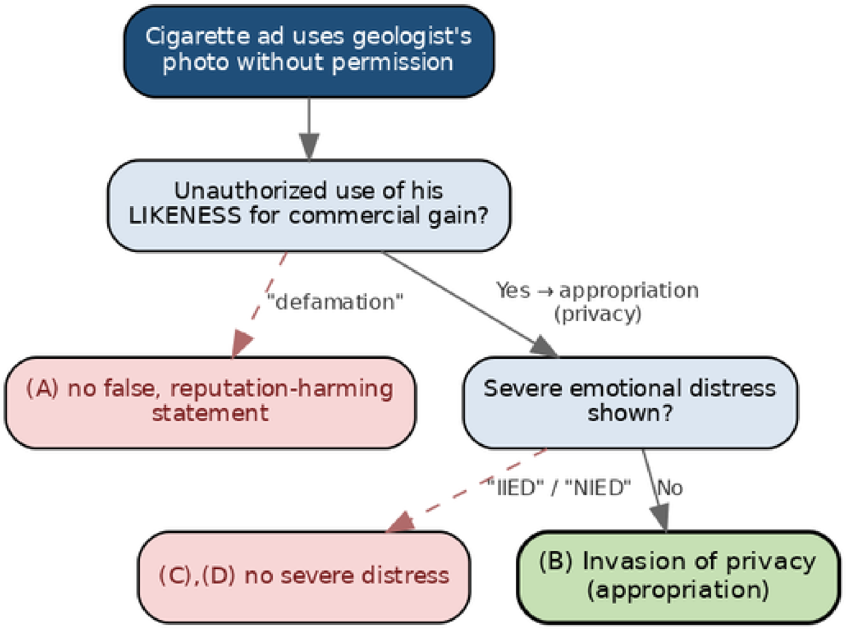
(A) Defamation.
(B) Invasion of privacy.
(C) Intentional infliction of emotional distress.
(D) Negligent infliction of emotional distress.

> **Correct answer (B).** His best claim is invasion of privacy by commercial appropriation of his likeness.

Rule. Appropriation (a privacy tort) occurs when a defendant makes unauthorized use of the plaintiff's name or likeness for the defendant's commercial advantage. Defamation needs a false, reputation-harming statement; IIED and NIED need severe emotional distress.

Application. The cigarette company used the geologist's photo in an ad without permission for commercial gain, the classic appropriation claim. Nothing shows a reputation-damaging falsehood or severe emotional distress, so appropriation is his best cause of action.

Why the other choices fail. (A) is wrong because the facts don't establish a defamatory, reputation-harming falsehood. (C) and (D) are wrong because there is no showing of severe emotional distress required for IIED or NIED.



Decision path

Attack Sequence: Torts attack sequence, §7 Defamation, Privacy & Nuisance, step 3 (privacy torts — appropriation).

Playbook: Torts playbook, DEFAMATION / PRIVACY (Appropriation).

How it lands: §7 step 3: appropriation is the unauthorized use of a person's name or likeness for commercial advantage. The ad used the geologist's photo to sell cigarettes → his best claim is invasion of privacy → (B).

Question 9

Real Property — Constructive Adverse Possession

Twenty-five years ago, a man purchased a vacant tract of land from a woman. Unbeknownst to the man, the woman did not own the land. Someone else owned the land in fee simple. Shortly after the purchase, the man built a house on the northwest corner of the tract, leaving the rest of the tract vacant. Recently, the actual owner of the tract died, still without knowledge that the man had built a house on the northwest corner of the tract. The actual owner's will left all of his property to his son. The relevant statutory period for adverse possession is 20 years. If the man brings suit to quiet title to the tract he had purchased 25 years ago, the court should decide that:

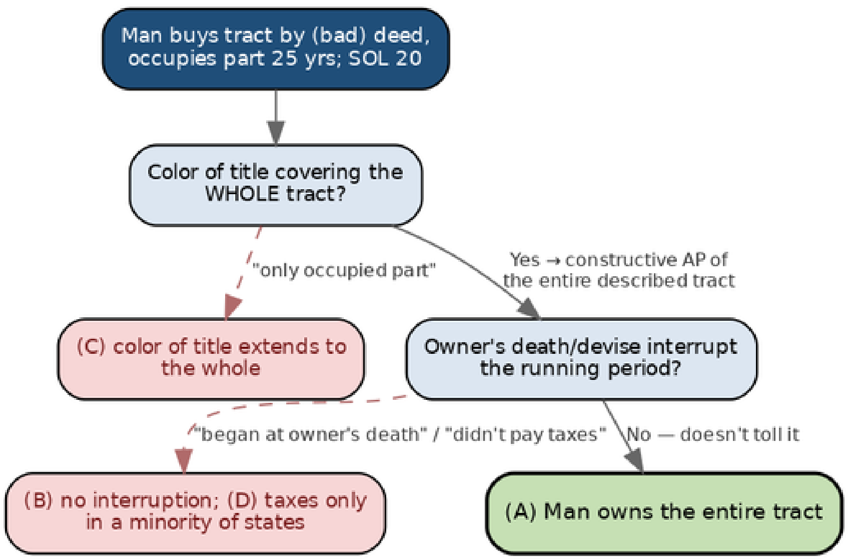
(A) The man is the owner of the entire tract.
(B) The son is the owner of the entire tract, because as to him, adverse possession began when the actual owner died.
(C) The son is the owner of the entire tract, because the man only occupied a portion of the tract.
(D) The son is the owner of the entire tract, if the man did not pay the property taxes on the entire tract.

> **Correct answer (A).** Under color of title, the man's possession of part is constructive possession of the whole tract, so he owns it all.

Rule. Adverse possession requires actual, exclusive, open and notorious, hostile, continuous possession for the statutory period. Under constructive adverse possession, one who enters part of a tract under color of title (a defective deed describing the whole) is deemed to adversely possess the entire described tract, even portions not actually occupied. A transfer of the true owner's interest does not interrupt the running period, and most states do not require paying taxes.

Application. The man held a deed (color of title) to the whole tract and occupied part (the house) for 25 years, exceeding the 20-year period. Constructive adverse possession gives him the entire tract, so the court should quiet title in him.

Why the other choices fail. (B) is wrong because a change in the true owner's ownership (the owner's death and devise to the son) doesn't interrupt the statutory period, which had already run. (C) is wrong because color of title extends possession constructively to the whole tract. (D) is wrong because only a minority of states require the possessor to pay taxes.



Decision path

Attack Sequence: Real Property attack sequence, §5 Adverse Possession, steps 1–4 (elements) — constructive AP under color of title.

Playbook: Real Property playbook, adverse possession (elements; color of title).

How it lands: §5: entering part of a tract under color of title (a deed describing the whole) gives constructive adverse possession of the entire tract. The man held for 25 years (over the 20-year period), and the owner's death didn't toll it → he owns it all → (A).

Question 10

Real Property — Adverse Possession / Disability Tolling

A man owned a tract of land in fee simple. Fifteen years ago, he built a barn on five acres that he believed were part of his property. One year later, the man discovered that the five acres on which he had built his barn were not part of his property. The five acres actually belonged to a woman. The next year, the woman died, leaving all of her property to her one-year-old daughter. Now the man brings a quiet title action against the daughter. The statutory period for adverse possession in this jurisdiction is 10 years. Who will prevail?

(A) The daughter, because the man did not pay the property taxes on the five acres.
(B) The daughter, because her status as a minor would toll the adverse possession statute until she reached her majority.
(C) The man, because he honestly believed that the five acres were part of his land.

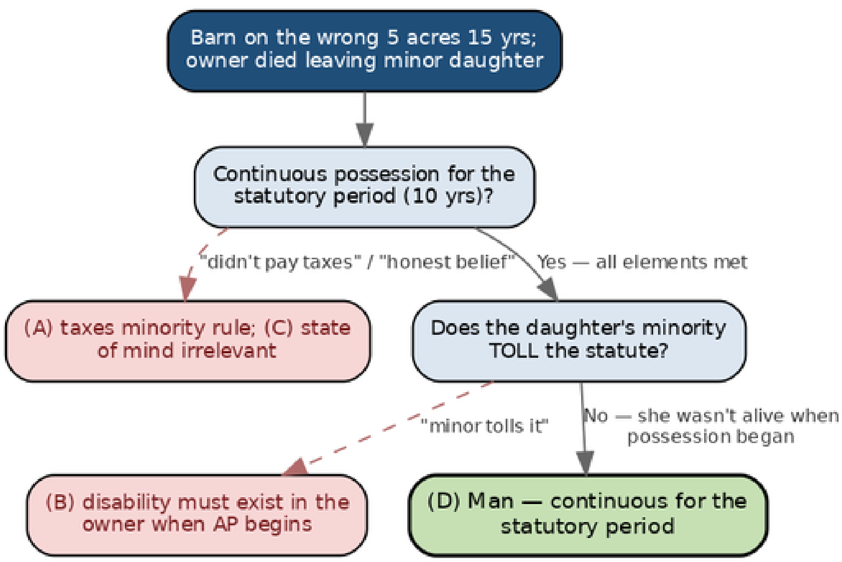
(D) The man, because he was in continuous possession of the five acres for the statutory period.

> **Correct answer (D).** The man completed the statutory period, and the later-born minor's disability doesn't toll it.

Rule. A disability (such as minority) tolls the adverse-possession period only if it existed in the true owner on the day the adverse possession began. A disability arising later, or one belonging to a successor in interest, does not stop the clock. Most states don't require the possessor to pay taxes, and the possessor's subjective state of mind is irrelevant under the majority view.

Application. The man possessed the five acres continuously for well over the 10-year period, satisfying adverse possession. The daughter's minority is irrelevant because she wasn't even alive (and had no interest) when the possession began, so it doesn't toll the statute. The man prevails.

Why the other choices fail. (A) is wrong because only a minority of states require paying taxes. (B) is wrong because the tolling disability must exist in the owner when possession begins; a later-born successor's minority doesn't toll it. (C) is wrong because the possessor's honest belief (state of mind) is irrelevant under the majority view.



Decision path

Attack Sequence: Real Property attack sequence, §5 Adverse Possession, step 5 (effect; disabilities toll only if present when possession begins).

Playbook: Real Property playbook, adverse possession (tolling/disabilities).

How it lands: §5 step 5: a disability tolls the period only if it existed in the owner when possession began. The daughter wasn't alive when the man's possession began, so her minority doesn't toll it, and he completed the 10-year period → (D).

Question 11

Real Property — Covenants of Title

A woman purchased a tract of land from a man by warranty deed. Unbeknownst to the woman, the man was not the actual owner of the tract. The woman built a home on the tract and moved into it. Two years later, the actual owner learned of the man's transaction with the woman and prevented the woman from entering the tract from that point forward. This led to a costly court battle. When the woman notified the man and told him that she thought it was his duty to straighten this out, he ignored her. The woman would succeed in a suit for damages against the man for breach of which of the following covenants of title?

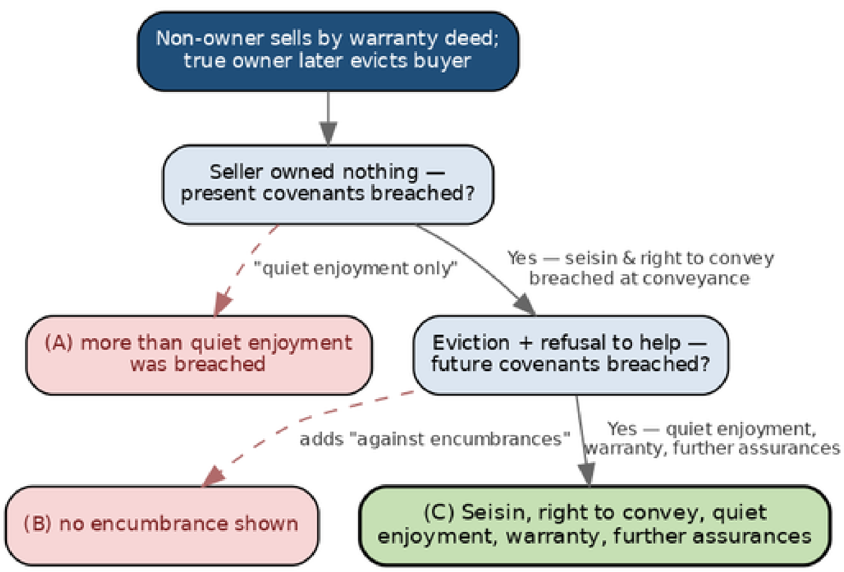
(A) The covenant of quiet enjoyment only.
(B) The covenants of seisin, right to convey, quiet enjoyment, warranty, further assurances, and the covenant against encumbrances.
(C) The covenants of seisin, right to convey, quiet enjoyment, warranty, and further assurances.
(D) The covenants of seisin and right to convey only.

> **Correct answer (C).** The seller (non-owner) breached seisin, right to convey, quiet enjoyment, warranty, and further assurances, but not the covenant against encumbrances.

Rule. A general warranty deed contains six covenants: seisin, right to convey, against encumbrances (present covenants, breached, if at all, at conveyance), and quiet enjoyment, warranty, and further assurances (future covenants, breached when the grantee is disturbed). Selling land one doesn't own breaches seisin and right to convey immediately; eviction by the true owner breaches quiet enjoyment and warranty; refusing to help perfect title breaches further assurances.

Application. Because the man owned nothing, he breached seisin and right to convey at conveyance. When the true owner barred the woman from the tract, quiet enjoyment and warranty were breached, and his refusal to straighten it out breached further assurances. No facts show any encumbrance, so the covenant against encumbrances wasn't breached. That is exactly the five listed in (C).

Why the other choices fail. (A) is wrong because more than quiet enjoyment was breached. (B) is wrong because it adds the covenant against encumbrances, which wasn't breached (no encumbrance shown). (D) is wrong because it omits the future covenants that were breached by the eviction and refusal to help.



Decision path

Attack Sequence: Real Property attack sequence, §6 Conveyancing, Deeds & Recording, step 3 (deed covenants — general warranty's six covenants).

Playbook: Real Property playbook, DEEDS & RECORDING (general warranty covenants).

How it lands: §6 step 3: a general warranty deed carries six covenants. A non-owner breaches seisin and right to convey at conveyance; eviction breaches quiet enjoyment and warranty; refusing to help breaches further assurances. No encumbrance means the against-encumbrances covenant isn't breached → (C).

Question 12

Criminal Law — Deadly Force to Arrest a Fleeing Felon

A police officer saw an unarmed thief grab a coat off the rack of a store and run. As the police officer gave chase, the thief ducked into an alley. When the police officer came to the alley, she saw movement behind some boxes. She yelled for the thief to come out or she would shoot. When the thief did not, the police officer shot at the boxes. A bag lady had been asleep behind them, and she was killed. The police officer is charged with homicide. A jury should find the police officer:

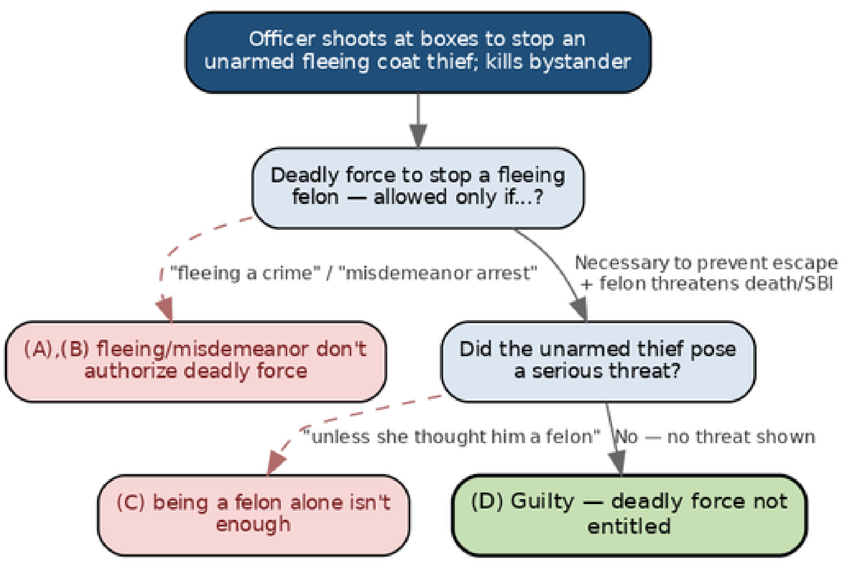
(A) Not guilty of homicide, because she was attempting to catch a thief who was fleeing from a crime, and the police officer had the right to use deadly force.
(B) Not guilty of homicide, because she saw the thief commit a misdemeanor, and therefore she had the right to use deadly force if necessary to arrest him.
(C) Guilty of homicide, unless she had reason to believe that the thief was a felon.
(D) Guilty of homicide, because she was not entitled to use deadly force.

> **Correct answer (D).** The officer wasn't entitled to use deadly force, so she is guilty of homicide.

Rule. Under the Fourth Amendment (Tennessee v. Garner) and modern criminal law, an officer may use deadly force to stop a fleeing felon only when necessary to prevent escape and the felon poses a significant threat of death or serious physical injury to the officer or others.

Application. The thief was unarmed and fleeing after grabbing a coat; nothing indicates shooting was necessary to prevent escape or that he posed a threat of serious harm. Deadly force was unjustified, so the officer is guilty of homicide.

Why the other choices fail. (A) is wrong because merely fleeing from a crime doesn't authorize deadly force. (B) is wrong because deadly force is never permitted merely to arrest for a misdemeanor. (C) is wrong because even a fleeing felon may not be shot unless he poses a significant threat of death or serious injury; being a felon alone isn't enough.



Decision path

Attack Sequence: Crim attack sequence, §4 Defenses, step 1 (use of force) — deadly force to arrest a fleeing felon (Tennessee v. Garner).

Playbook: Crim playbook, 4TH AM – ARREST & STOPS (use of force) / DEFENSES.

How it lands: Deadly force on a fleeing felon is allowed only if necessary to prevent escape and the felon threatens death or serious injury. An unarmed coat thief posed no such threat → deadly force unjustified → guilty → (D).

Question 13

Evidence — Best Evidence Rule / Judge Decides Availability

A plaintiff sued a defendant for breach of contract before a jury. The parties disputed the existence and terms of the contract. The plaintiff's lawyer called the plaintiff to the witness stand, intending to elicit testimony that the plaintiff and the defendant met on a certain date and reached an agreement, which was reduced to a writing. The plaintiff then intends to testify: "The writing, which was subsequently destroyed, provided that the defendant would purchase 300 widgets from me at a price of $1,000." The quoted testimony is admissible only if:

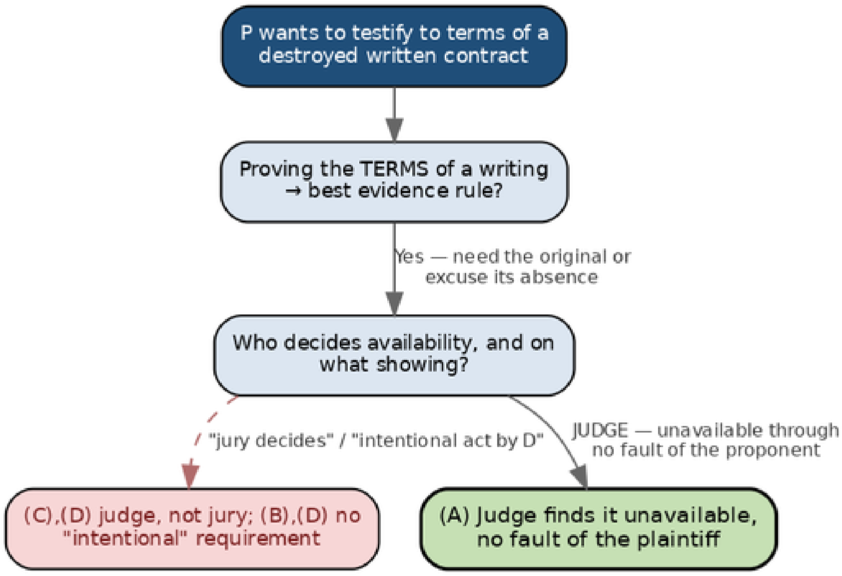
(A) The judge finds that the writing is unavailable, through no fault of the plaintiff.
(B) The judge finds that the writing is unavailable, due to an intentional act by the defendant.
(C) The jury finds that the writing is unavailable, through no fault of the plaintiff.
(D) The jury finds that the writing is unavailable, due to an intentional act by the defendant.

> **Correct answer (A).** Testimony about the writing's terms is admissible only if the judge finds the writing unavailable through no fault of the proponent.

Rule. The best evidence rule requires the original writing (or an accounting for its absence) to prove the material terms of that writing. Secondary evidence (like testimony) is allowed if the original is lost or destroyed, but not through the proponent's bad faith. Whether the writing is unavailable and the proponent is at fault is a preliminary question for the judge under FRE 1008/104(a) (the jury decides certain other 1008 issues, but availability is for the judge).

Application. The plaintiff wants to testify to the destroyed contract's terms. That's allowed only if the judge finds the writing unavailable and the plaintiff is not at fault for its loss. The judge, not the jury, makes that preliminary determination.

Why the other choices fail. (B) and (D) add an unnecessary requirement, that the defendant intentionally destroyed it; the proponent need only show the loss wasn't his fault. (C) and (D) wrongly assign the determination to the jury; the judge decides admissibility/availability.



Decision path

Attack Sequence: Evidence attack sequence, §8 Privileges, Authentication & Best Evidence, step 4 (best evidence rule; who decides availability).

Playbook: Evidence playbook, OPINION/PRIVILEGE (Authentication / best evidence).

How it lands: §8 step 4: to prove a writing's terms you need the original or an excuse for its absence, and the JUDGE decides whether it's unavailable through no fault of the proponent → (A).

Question 14

Constitutional Law — Commerce Clause

Congress determined that there should be a uniform law for handgun registration throughout the United States and enacted the Federal Firearms Act. Which of the following constitutional provisions could most easily be considered the basis of such enactment?

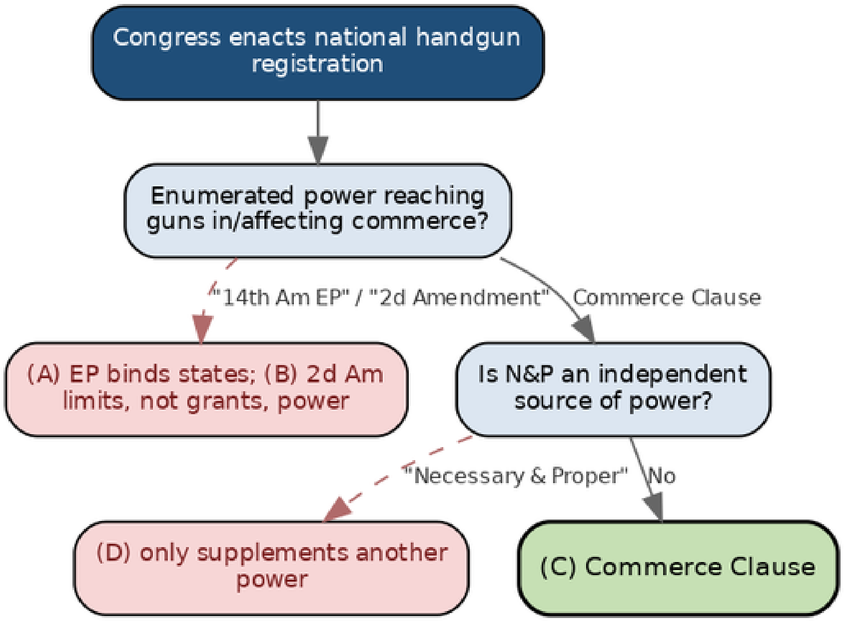
(A) The Equal Protection Clause of the Fourteenth Amendment.
(B) The Second Amendment.
(C) The Commerce Clause.
(D) The Necessary and Proper Clause.

> **Correct answer (C).** A national handgun-registration law is most easily grounded in the Commerce Clause.

Rule. The Commerce Clause lets Congress regulate the channels and instrumentalities of interstate commerce and activities substantially affecting it, which readily covers firearms that move in or affect commerce. The Fourteenth Amendment applies to states, not the federal government; the Second Amendment is a limit, not a grant, of power; and the Necessary and Proper Clause only supplements another enumerated power.

Application. Handguns are goods that move in and affect interstate commerce, so a uniform federal registration law fits comfortably within the commerce power. That is the easiest constitutional basis.

Why the other choices fail. (A) is wrong because the Fourteenth Amendment's Equal Protection Clause restrains states, not Congress. (B) is wrong because the Second Amendment restricts, rather than grants, power. (D) is wrong because the Necessary and Proper Clause is not an independent source of power; it must attach to another enumerated power.



Decision path

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

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

How it lands: §2 step 2: guns move in and affect interstate commerce, so a national registration law fits the Commerce Clause → (C). (The 14th Amendment binds states; the 2d Amendment limits power; N&P only supplements another power.)

Question 15

Contracts — UCC Anti-Assignment Clause

A store sold office equipment and supplies to various businesses in the area. The store entered into a written agreement with an electronics company to purchase all of its monthly requirements of printers for a period of five years at a specified unit price. The agreement contained a nonassignment clause. Shortly thereafter, the electronics company assigned the contract to a finance company as security for a loan. The store subsequently ordered the printers from the electronics company and paid the electronics company the agreed price for the printers for the first month of the agreement. Which of the following accurately states the legal effect of the covenant not to assign the contract?

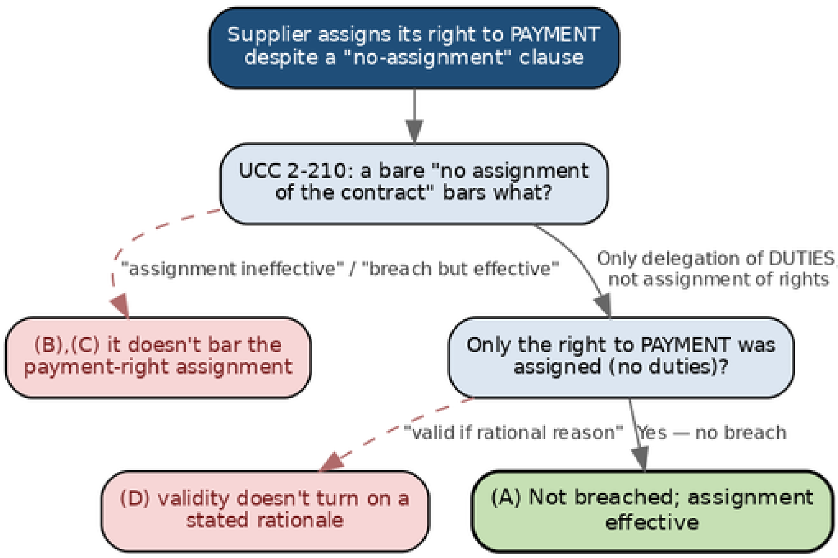
(A) The covenant as properly interpreted was not breached, and the assignment was effective.
(B) The covenant made the assignment to the finance company ineffective.
(C) The electronics company's assignment was a breach of its contract with the store but was nevertheless effective to transfer to the finance company the electronics company's rights against the store.
(D) The covenant is effective if the parties can establish a rational reason for including the covenant into their agreement.

> **Correct answer (A).** Under UCC 2-210, a bare 'no assignment of the contract' clause bars only delegation of duties, so the assignment of the right to payment was effective and not a breach.

Rule. Under UCC 2-210(3), unless circumstances indicate otherwise, a prohibition of assignment of 'the contract' is construed to bar only delegation of the assignor's performance (duties), not assignment of the right to receive payment. Assigning the right to payment is generally effective.

Application. The electronics company assigned to the finance company only its right to receive payment from the store, not its duty to supply printers. Under 2-210, the anti-assignment clause doesn't bar that; the assignment was effective and no breach occurred.

Why the other choices fail. (B) and (C) are wrong because the clause, properly read, doesn't make the payment-right assignment ineffective or a breach. (D) is wrong because the covenant's validity doesn't turn on the parties articulating a rational reason; the issue is what the clause covers.



Decision path

Attack Sequence: Contracts attack sequence, §7 Third Parties: Assignment & Delegation (a bare 'no assignment' clause bars delegation, not the assignment of rights).

Playbook: Contracts playbook, ASSIGNMENT (UCC 2-210: 'no assignment of the contract' bars only delegation of duties).

How it lands: §7: under UCC 2-210, a prohibition on assigning 'the contract' bars only delegation of duties, not assignment of the right to payment. The supplier assigned only its payment right → effective, no breach → (A).

Question 16

Civil Procedure — Cross-Claims / Claim Preclusion

A three-car accident occurred in which the drivers were a citizen of State A, a citizen of State B, and a citizen of State C. The State A citizen filed a negligence action against the other two in federal district court and lost his case. After judgment, may the State C citizen assert and maintain a negligence action against the State B citizen seeking damages for the injuries the State C citizen sustained in the same accident?

(A) Yes, because, while the State C citizen could have asserted the claim as a cross-claim in the prior action, he may wait and assert it as an independent action.
(B) Yes, because the State C citizen could not have asserted the claim in the prior action and thus may assert it independently.
(C) No, because the State C citizen's claim was a compulsory cross-claim in the prior action and, since it was not asserted as a cross-claim in that action, it is now barred.

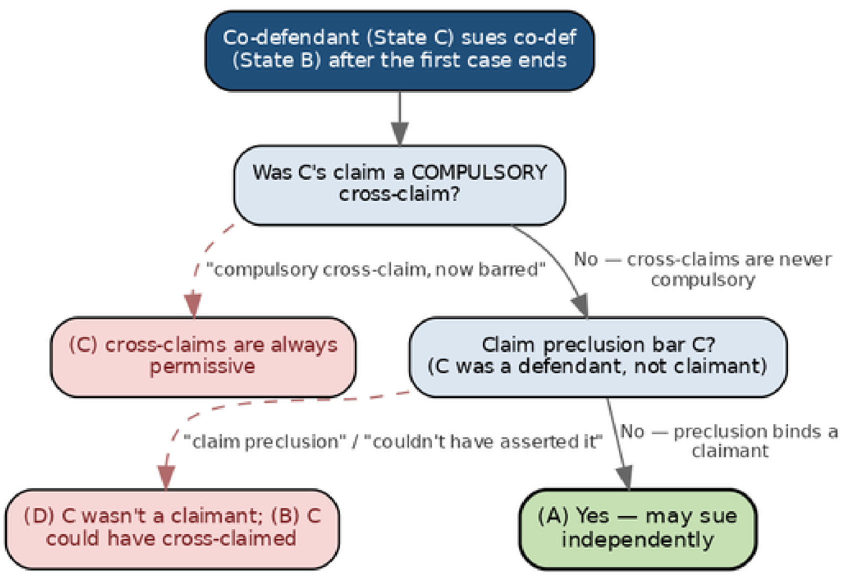
(D) No, because the State C citizen's claim is barred by claim preclusion.

> **Correct answer (A).** Cross-claims are never compulsory, and claim preclusion doesn't bar the State C citizen, so he may sue independently.

Rule. A cross-claim (a claim against a co-party arising from the same transaction) is always permissive; a party is never required to bring it, so failing to do so doesn't bar a later action. Claim preclusion bars a claimant from splitting a claim against the same defendant only where the party was a claimant in the first suit.

Application. In the first suit, State C and State B were co-defendants; State C's claim against State B could have been a cross-claim but was optional. Because cross-claims aren't compulsory, State C may bring it now. Claim preclusion doesn't apply because State C was a defendant, not a claimant, in the first action.

Why the other choices fail. (B) is wrong because State C could have asserted the claim as a cross-claim (same accident); it just wasn't required to. (C) is wrong because cross-claims are never compulsory. (D) is wrong because claim preclusion binds a claimant, and State C was a defendant in the prior case.



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder, step 3 (cross-claims — never compulsory) + §7 Preclusion (claim preclusion binds a claimant).

Playbook: Civil Procedure playbook, JOINDER (Cross-claim) + PRECLUSION.

How it lands: §5 step 3: cross-claims are never compulsory, so State C wasn't required to bring its claim in the first suit. §7: claim preclusion binds a claimant, but State C was a defendant there → it may sue independently → (A). (Note: the answer key labels this 'Contracts,' but the doctrine is Civil Procedure.)

Question 17

Contracts — Third-Party Beneficiary / Vesting

A retailer and a wholesaler entered into an agreement under which the retailer would make payment to one of the wholesaler's creditors. Before the creditor became aware of the agreement, the retailer and wholesaler decided instead that the retailer would pay the wholesaler directly. The creditor sued to enforce the original agreement between the retailer and the wholesaler. Which of the following statements is correct?

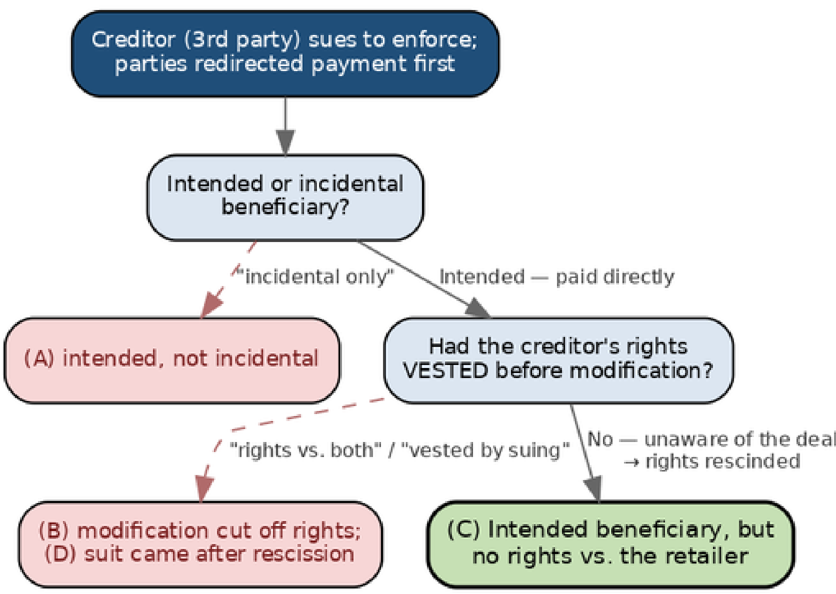
(A) The creditor was an incidental beneficiary only and has no rights under the agreement between the retailer and the wholesaler.
(B) The creditor was an intended beneficiary and has rights against both parties under the agreement between the retailer and the wholesaler.
(C) The creditor was an intended beneficiary of the agreement but has no rights against the retailer.
(D) The creditor's rights as a third-party beneficiary vested when it brought suit to enforce the agreement between the retailer and the wholesaler.

> **Correct answer (C).** The creditor was an intended beneficiary, but the pre-vesting modification cut off its rights against the retailer.

Rule. An intended beneficiary can enforce a contract only after its rights vest (by assenting, suing, or materially relying). Before vesting, the original parties are free to modify or rescind, extinguishing the beneficiary's rights against the promisor.

Application. The creditor was an intended beneficiary because payment was to be made directly to it. But it didn't know of the deal before the retailer and wholesaler modified it (redirecting payment), so its rights never vested and were extinguished as to the retailer. (The creditor can still pursue the wholesaler on the underlying debt.)

Why the other choices fail. (A) is wrong because the creditor was an intended, not incidental, beneficiary (performance ran directly to it). (B) is wrong because the modification ended the creditor's rights against the retailer. (D) is wrong because the creditor's rights had already been rescinded before suit, so bringing suit vested nothing.



Decision path

Attack Sequence: Contracts attack sequence, §7 Third Parties: Beneficiaries, step 2 (intended beneficiary; vesting).

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

How it lands: §7 step 2: an intended beneficiary's rights vest only on assent, suit, or reliance; before that the parties may modify. The creditor didn't know of the deal before it was modified, so its rights against the retailer never vested → (C).

Question 18

Contracts — Requirements Contracts / Good Faith

A vineyard and a wine distributor enter into a valid written agreement whereby the vineyard is to supply the wine distributor with all of the distributor's requirements of wine for a period of five years. The agreement contains a non-assignment clause. Nonetheless, a few months after the agreement is entered into, the vineyard assigns its rights under the contract to one of its creditors. After one year, the wine distributor decides that it wishes to purchase its wines from a different vineyard and terminates its contract with the original vineyard. If the creditor of the vineyard sues the distributor, will it prevail?

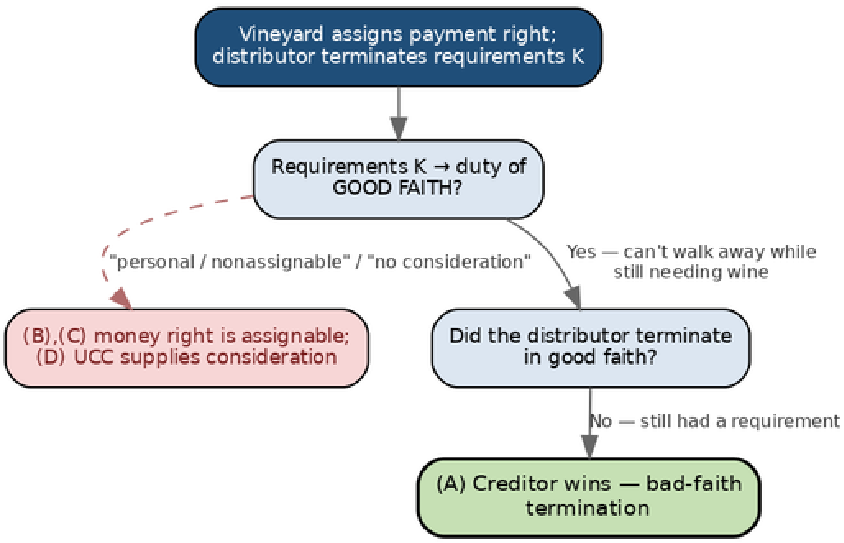
(A) Yes, because the distributor did not terminate the contract in good faith, because it still had a requirement for the wine.
(B) No, because the vineyard's "assignment of the contract" to its creditor would normally be interpreted as a delegation of duties under the contract as well as an assignment of its rights, and its duties owed to the distributor were personal and therefore nondelegable.
(C) No, because the vineyard's rights under its agreement with the distributor were personal and therefore nonassignable.
(D) No, because the original contract between the vineyard and the wine distributor was unenforceable by either party for want of a legally sufficient consideration for the vineyard's promise to supply the wine distributor's requirements of wine.

> **Correct answer (A).** The distributor breached by terminating in bad faith while it still had a requirement, so the vineyard's assignee prevails.

Rule. Under the UCC, requirements contracts are supported by consideration and impose a duty of good faith: the buyer may not arbitrarily walk away while it still has genuine requirements. The right to receive payment (money) is freely assignable because it involves no personal performance.

Application. The distributor still needed wine but terminated to buy elsewhere, which is bad faith under a requirements contract. The vineyard's right to payment was validly assigned to the creditor, so the creditor (standing in the vineyard's shoes) prevails against the breaching distributor.

Why the other choices fail. (B) and (C) are wrong because the assigned right was the right to money, which is not personal and is freely assignable. (D) is wrong because requirements contracts are supported by sufficient consideration under the UCC.



Decision path

Attack Sequence: Contracts attack sequence, §4 Terms & Gap Fillers (output/requirements: good-faith quantity) + §7 Assignment (payment rights assignable).

Playbook: Contracts playbook, PERFORMANCE / requirements contracts (good faith) + ASSIGNMENT.

How it lands: §4: a requirements buyer must act in good faith; the distributor still needed wine but walked away → bad faith. §7: the vineyard's payment right was assignable, so the creditor (in its shoes) wins → (A).

Question 19

Torts — Negligence / No Breach

A pilot was flying his airplane, which he always kept well maintained. Due to a flock of birds that suddenly got in his way, the pilot was forced to seek an emergency landing area and glided toward a field where children were playing. As the pilot made his landing, he was unable to avoid striking and injuring one child. If the child brings an action for personal injuries against the pilot, what is the pilot's best defense?

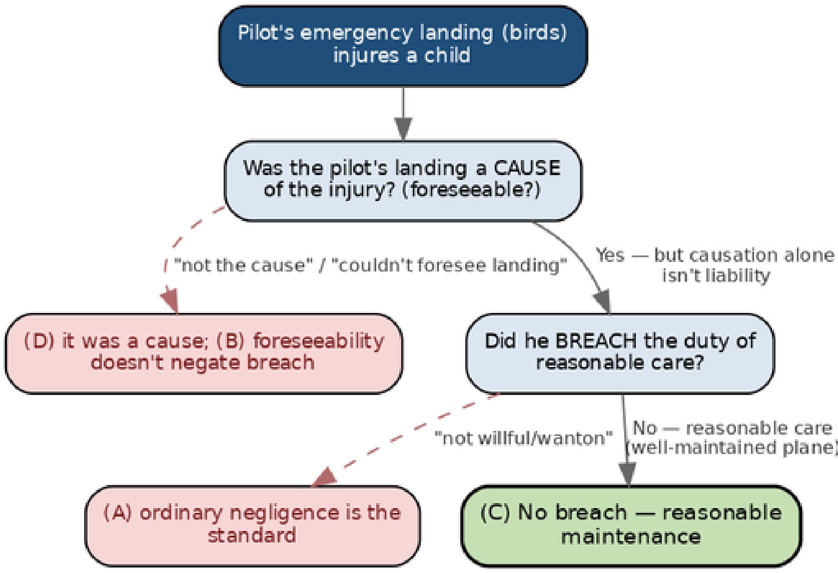
(A) He did not act willfully and wantonly.
(B) He could not reasonably foresee that he would have to make an emergency landing.
(C) He used reasonable care in the maintenance of his airplane.
(D) His conduct was not the cause of the injury to the child.

> **Correct answer (C).** The pilot's best defense is that he wasn't negligent because he used reasonable care in maintaining the plane.

Rule. Negligence requires duty, breach, causation, and damages. Even where the defendant's conduct is a cause of the harm, there is no liability without a breach of the duty of reasonable care. A defendant negates liability best by showing he met the standard of care.

Application. The pilot was forced into an emergency landing by birds and struck a child, so his conduct caused the injury and the harm was foreseeable. His best defense is the absence of breach, that he exercised reasonable care (here, in maintaining the plane), negating the negligence element.

Why the other choices fail. (A) is wrong because ordinary negligence, not willful/wanton conduct, is the standard, so disproving willfulness doesn't defeat the claim. (B) is a foreseeability point that doesn't negate breach and is weaker than showing due care. (D) is wrong because his landing was in fact a cause of the injury, and the harm was foreseeable, so a no-causation defense fails; the winning point is no breach.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 3 (breach — the reasonable-care standard).

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

How it lands: §3: negligence needs a breach, not just causation. The pilot's landing caused the injury and was foreseeable, so his best defense is no breach — he used reasonable care (maintenance) → (C).

Question 20

Torts — Negligence / Foreseeable Intervening Cause

A woman took her car in for scheduled maintenance. The mechanic certified that the car was in perfect working order. Later that day, the woman was driving beyond the posted speed limit when her brakes failed, causing her car to strike a pedestrian. If the pedestrian brings an action against the mechanic who certified the woman's car as operable, what will be the probable outcome?

(A) Judgment for the mechanic, because the pedestrian was legally a bystander.

(B) Judgment for the mechanic, because the woman's negligence was an independent, superseding cause.

(C) Judgment for the pedestrian, if the mechanic was negligent in inspecting the car.

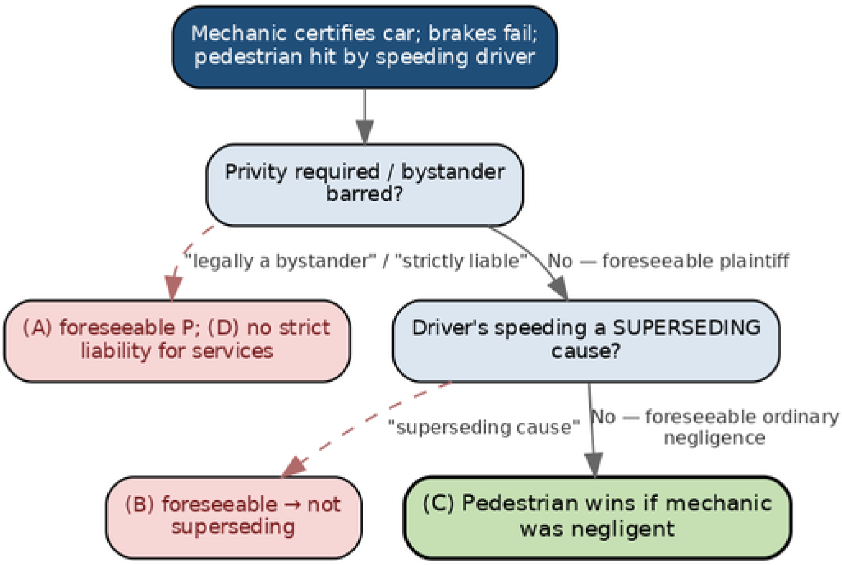
(D) Judgment for the pedestrian, because the mechanic was strictly liable in tort.

> **Correct answer (C).** The pedestrian recovers if the mechanic was negligent in inspecting the car; the driver's negligence isn't a superseding cause.

Rule. A negligent service provider is liable to foreseeable plaintiffs harmed by the negligence; privity isn't required. A later, foreseeable negligent act by a third party (like ordinary negligent driving) is an intervening but not superseding cause, so it doesn't cut off the original tortfeasor's liability. There is no strict liability for negligent services.

Application. The brakes failed shortly after the mechanic certified them, suggesting negligent inspection. The pedestrian is a foreseeable plaintiff, and the woman's speeding is foreseeable ordinary negligence that doesn't supersede. So the pedestrian prevails if the mechanic was negligent.

Why the other choices fail. (A) is wrong because privity isn't required and the pedestrian is a foreseeable plaintiff. (B) is wrong because the driver's foreseeable negligence is not a superseding cause. (D) is wrong because there is no strict products liability for a service transaction like an inspection.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence, step 5 (proximate cause — foreseeable intervening vs. superseding cause).

Playbook: Torts playbook, BREACH / CAUSATION (Superseding cause cuts off liability; foreseeable ones don't).

How it lands: §3 step 5: a foreseeable intervening negligent act (ordinary bad driving) is not a superseding cause. The pedestrian is a foreseeable plaintiff and there's no strict liability for services, so she wins if the mechanic was negligent → (C).

Question 21

Criminal Law — Statutory Interpretation

A man was arrested by a police officer when he was found carrying an ice pick concealed in his pants. The man stated that he carried the ice pick only for protection. The man was convicted of violating a state statute prohibiting the carrying of a concealed "knife or dagger." The man appealed his conviction on the basis that an ice pick is not a "knife or dagger" as defined in the statute under which he was convicted. The appellate court will hold that:

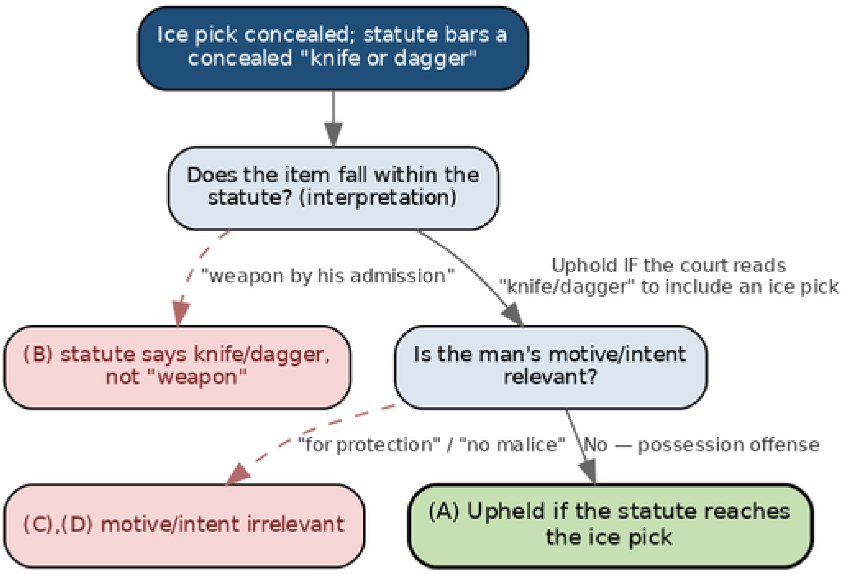
(A) The man's conviction should be upheld if the appellate court finds that the statute sought to outlaw the classic instruments of violence and their homemade equivalents, such as an ice pick.
(B) The man's conviction should be upheld, because an ice pick is a weapon, by the man's own admission.
(C) The man's conviction should be overturned, because he was carrying the ice pick for protection only.
(D) The man's conviction should be overturned, because he harbored no malicious intent.

> **Correct answer (A).** The conviction stands if the court interprets the 'knife or dagger' statute to reach an ice pick.

Rule. Whether conduct falls within a criminal statute is a question of statutory interpretation. If the court construes the statute's terms to cover the item, the conviction is proper; the defendant's motive or intent is irrelevant where the statute simply prohibits carrying the specified item.

Application. The issue is whether an ice pick is a 'knife or dagger' under the statute. If the appellate court reads the statute to outlaw classic stabbing weapons and their homemade equivalents (like an ice pick), the conviction is upheld.

Why the other choices fail. (B) is wrong because the statute bars a 'knife or dagger,' not any 'weapon,' so the man's calling it protection doesn't make it fall within the statute by admission. (C) and (D) are wrong because the man's motive or lack of malicious intent is irrelevant to this possession-type offense.



Decision path

Attack Sequence: Crim attack sequence — statutory interpretation isn't a listed sub-topic; this is a construction question, so lean on first principles.

Playbook: Crim playbook — statutory construction of a possession offense isn't spelled out; flag it.

How it lands: Flag: the playbooks don't cover statutory interpretation. The rule: whether the conduct falls within the statute is a construction question, and motive is irrelevant for a possession offense. If the court reads 'knife or dagger' to include an ice pick, the conviction stands → (A).

Question 22

Real Property — Stream as a Boundary

A buyer is interested in buying the northern half of a large tract of land from its current owner. The land has a stream running across it that eventually flows into a river on the northern half of the land. The buyer and seller eventually agree on the price, and the seller conveys by deed to the buyer according to the following description: "The upper portion of my land, from the northern boundary to the stream." In determining the exact boundaries of the portion of the land purchased by the buyer, which of the following would be the most accurate?

(A) The seller retained the entire stream as part of her portion of the land.
(B) The seller and the buyer each own one-half of the stream bed.
(C) The buyer owns the entire stream because of the rule interpreting the words of a deed most stringently against the grantor.

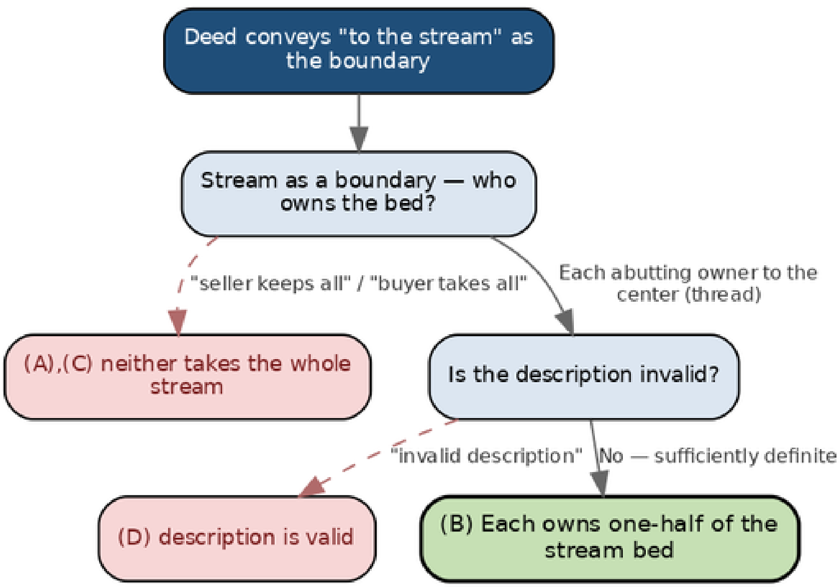
(D) Because the description is invalid, the ownership interest of the seller and the buyer in the stream cannot be determined.

> **Correct answer (B).** Where a stream is the boundary, each abutting owner owns to the center, so seller and buyer each own half the stream bed.

Rule. When a non-navigable stream serves as a boundary between two parcels, the general rule is that each abutting owner owns the land to the center (thread) of the stream, i.e., each owns one-half of the stream bed.

Application. The deed conveyed 'from the northern boundary to the stream,' making the stream the boundary. By the general rule, the seller and buyer each own one-half of the stream bed.

Why the other choices fail. (A) and (C) are wrong because neither party takes the whole stream; the center-line rule splits it. (D) is wrong because the description is sufficiently definite to be valid; the boundary is simply the stream.



Decision path

Attack Sequence: Real Property attack sequence, §6 Conveyancing, Deeds & Recording (deed descriptions/ boundaries).

Playbook: Real Property playbook, DEEDS & RECORDING (boundary descriptions).

How it lands: Where a stream is the boundary, each abutting owner takes to the center (thread) of the stream, so seller and buyer each own half the stream bed → (B). The description is definite enough to be valid.

Question 23

Civil Procedure — Statutory Interpleader

A single man with a life insurance policy that pays his designated beneficiary $70,000 upon his death was killed in a car accident. His former girlfriend, a resident of State A, was named as beneficiary, but his mother, a resident of State B, also filed a claim for the life insurance proceeds. The insurance company, a State C corporation having its principal place of business in State B, filed an interpleader action in federal court to protect itself from potentially multiple and inconsistent claims. Does a federal court have subject matter jurisdiction over the action?

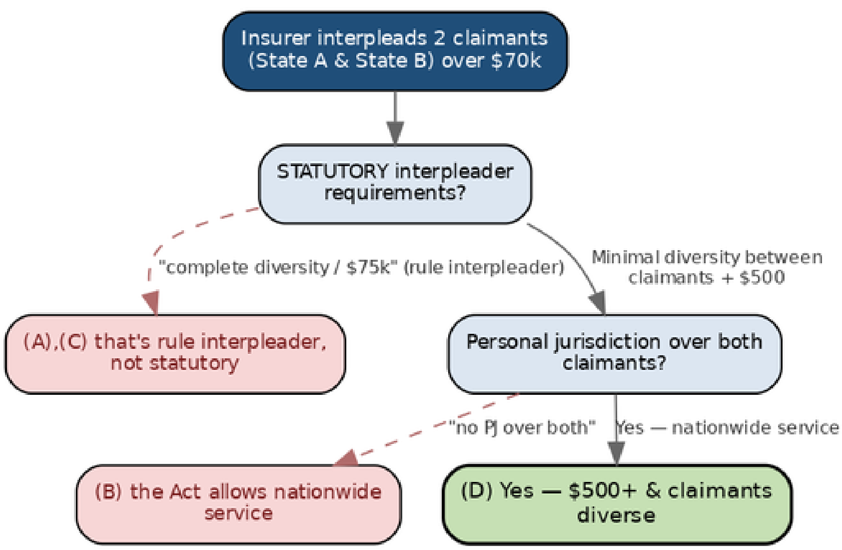
(A) No, because the amount in controversy does not exceed $75,000, and there is no diversity between the insurance company and one of the claimants.
(B) No, because there is no federal court where the insurance company will be able to establish personal jurisdiction over both claimants.
(C) No, because the insurance company is not diverse from one of the claimants.
(D) Yes, because the amount in controversy is $500 or more, and both claimants are diverse from one another.

> **Correct answer (D).** Under statutory interpleader, minimal diversity between claimants and $500 suffices, so the court has jurisdiction.

Rule. The Federal Interpleader Act (statutory interpleader) requires only minimal diversity, that any two adverse claimants be citizens of different states, and an amount in controversy of $500 or more. It also allows nationwide service of process for personal jurisdiction.

Application. The two claimants (the former girlfriend in State A and the mother in State B) are diverse from each other, and the $70,000 stake exceeds $500. So statutory interpleader jurisdiction exists, and nationwide service solves personal jurisdiction.

Why the other choices fail. (A) states the ordinary diversity requirements (over $75,000, complete diversity), which apply to rule interpleader, not statutory interpleader. (B) is wrong because the Act permits nationwide service, so personal jurisdiction is available. (C) is wrong because statutory interpleader requires only minimal diversity between claimants, not complete diversity from the stakeholder.



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder, Impleader & Class Actions (interpleader) — statutory interpleader requirements.

Playbook: Civil Procedure playbook, JOINDER (Interpleader).

How it lands: §5: statutory interpleader (the Federal Interpleader Act) needs only minimal diversity between claimants and $500, plus nationwide service. The two claimants are diverse and the stake is $70,000 → jurisdiction exists → (D).

Question 24

Constitutional Law — Executive Agreements

The President of the United States and the leader of a bordering foreign nation agreed that each should appoint three members to a special joint commission to deal with a wildlife problem. The President of the United States, acting in concert with the foreign leader, named the joint commission as a permanent enforcement agency for the regulations that were adopted by both nations. Although the President received prior congressional authorization to enter into this agreement, the Senate did not ratify the agreement by a two-thirds vote. The President then entered into an executive agreement with the foreign leader whereby the joint commission was granted adjudicative as well as enforcement powers with respect to a particular issue. The executive agreement by the President is:

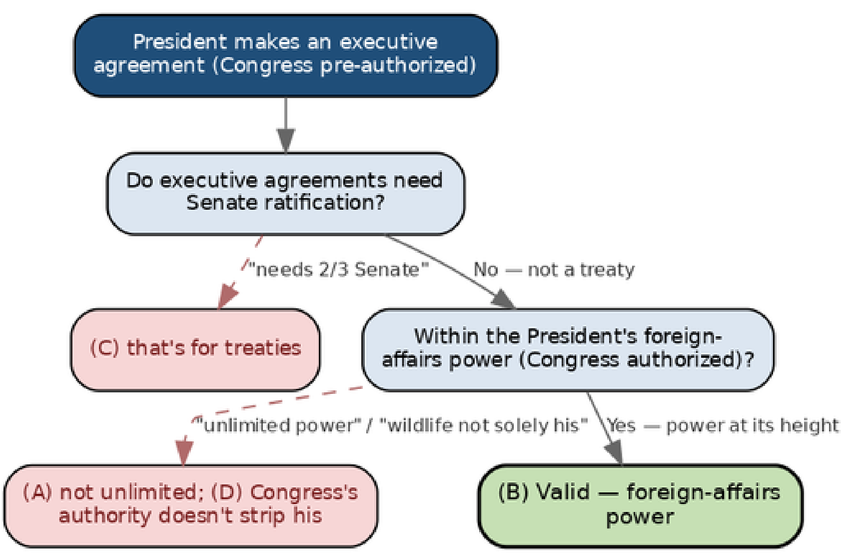
(A) Valid, because the President has unlimited powers in entering into executive agreements.
(B) Valid, because the agreement is within the President's powers in the area of foreign affairs.
(C) Invalid, because the Senate did not ratify the executive agreement by a two-thirds vote.
(D) Invalid, because wildlife is not an area left solely to presidential discretion.

> **Correct answer (B).** The executive agreement is valid as within the President's broad foreign-affairs power, especially with prior congressional authorization.

Rule. The President has broad authority to make executive agreements with foreign nations; they do not require Senate ratification. Presidential power is at its height when Congress has authorized the action (the Youngstown framework).

Application. The President entered an executive agreement over a shared wildlife problem, with prior congressional authorization, placing the action at the peak of presidential power. It is valid as an exercise of the foreign-affairs power.

Why the other choices fail. (A) overstates the law; the President's power to make executive agreements has some limits, so 'unlimited' is wrong. (C) is wrong because a two-thirds Senate vote is required for treaties, not executive agreements. (D) is a true statement (Congress may protect wildlife) but doesn't strip the President of the power to make this agreement.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism / executive power — executive agreements need no Senate ratification.

Playbook: Con Law playbook, EXECUTIVE POWER (Privilege / treaties / executive agreements).

How it lands: Executive agreements don't require Senate ratification, and presidential power is at its height with prior congressional authorization. The wildlife agreement is a valid exercise of the foreign-affairs power → (B).

Question 25

Civil Procedure — Diversity Between Two Aliens

Two cars collided in State A. One driver, a citizen of Jordan, was in the United States for only two years to study. The second driver, a citizen of Spain, was a tourist in the United States for only one month. The Jordanian student filed a negligence action in a federal district court against the Spanish tourist seeking $100,000 for his injuries. The Spanish driver filed a motion to dismiss the action for lack of subject matter jurisdiction. How should the court rule?

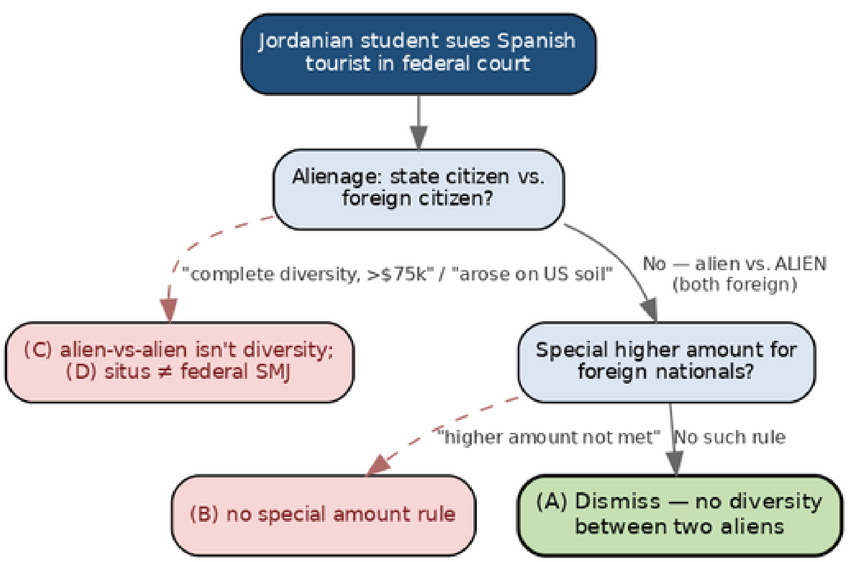
(A) Dismiss the action because federal diversity of citizenship jurisdiction does not extend to actions between citizens of foreign countries.
(B) Dismiss the action because the higher amount in controversy requirement applicable to actions between citizens of foreign nations is not satisfied.
(C) Deny the motion to dismiss because there is complete diversity of citizenship and the amount in controversy exceeds $75,000.
(D) Deny the motion to dismiss because the cause of action arose from events on United States soil.

> **Correct answer (A).** There is no diversity jurisdiction over a suit between two citizens of foreign countries, so the action is dismissed.

Rule. Alienage jurisdiction under the diversity statute covers a suit between a U.S. state citizen and a foreign citizen. It does not extend to a suit between two citizens of foreign countries (aliens on both sides destroys the required alignment).

Application. Both drivers are foreign citizens (Jordan and Spain), so this is an alien-versus-alien suit. Diversity jurisdiction doesn't reach it, so the court should dismiss for lack of subject-matter jurisdiction.

Why the other choices fail. (B) is wrong because there is no special, higher amount-in-controversy requirement for foreign nationals. (C) is wrong because alien-versus-alien is not 'complete diversity' under the statute. (D) is wrong because the situs of the accident (U.S. soil) may support state-court jurisdiction but does not create federal subject-matter jurisdiction.



Decision path

Attack Sequence: Civil Procedure attack sequence, §1 Subject Matter Jurisdiction, steps 2–3 (diversity / alienage — no jurisdiction between two aliens).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Diversity/alienage).

How it lands: §1: alienage jurisdiction covers a state citizen vs. a foreign citizen, not two aliens. Both drivers are foreign citizens, so there's no diversity → dismiss → (A).

Question 26

Criminal Law — Self-Defense Against Improper Deadly Force

While in a department store, a man picked up a sweater and slipped it under his shirt. The man then started for the door. A woman, who also was shopping in the store, saw the man take the sweater. The woman grabbed a baseball bat from the sporting goods aisle and chased the man into the parking lot. The woman began swinging the bat at the man's head, hoping to knock him out and thus prevent the theft. The man pulled a knife from his pocket and stabbed the woman, killing her. The man was arrested and charged with murder. At trial, the man will most likely be found:

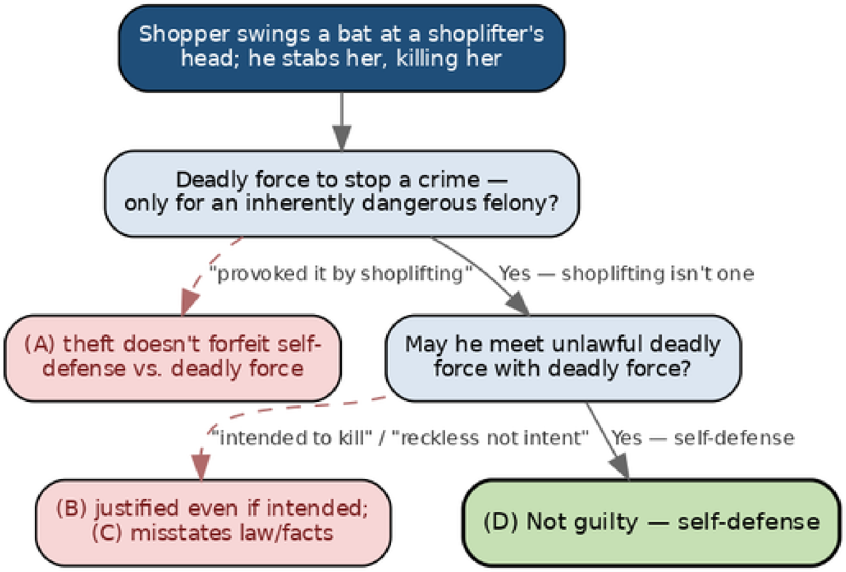
(A) Guilty, because the evidence shows that he provoked the assault on himself by his criminal misconduct.
(B) Guilty, because the evidence shows that the man intended to kill or cause serious bodily harm.
(C) Not guilty, because the jury could find that the man acted recklessly and not with the intent to cause death or serious bodily harm.
(D) Not guilty, because the man was acting in self-defense.

> **Correct answer (D).** The shoplifter could lawfully defend himself with deadly force because the store patron's deadly force was not privileged.

Rule. A private person may use deadly force to prevent a crime only if it is an inherently dangerous felony. Shoplifting is not inherently dangerous, so deadly force to stop it is unprivileged. A person facing unlawful deadly force may respond with deadly force in self-defense.

Application. The woman swung a bat at the shoplifter's head, unlawful deadly force to stop a non-dangerous theft. The man was therefore entitled to defend himself with deadly force (the knife). He acted in self-defense and is not guilty of murder.

Why the other choices fail. (A) is wrong because the man didn't initiate a deadly assault; shoplifting doesn't forfeit the right of self-defense against unlawful deadly force. (B) is wrong because even an intent to kill is justified when defending against unlawful deadly force. (C) misstates the law and the facts.



Decision path

Attack Sequence: Crim attack sequence, §4 Defenses, step 1 (self-defense) — deadly force to prevent a crime only for an inherently dangerous felony.

Playbook: Crim playbook, DEFENSES (Self-defense).

How it lands: §4 step 1: a private person may use deadly force to stop only an inherently dangerous felony; shoplifting isn't one, so the bat-swinger's deadly force was unlawful, and the shoplifter could meet it with deadly force in self-defense → (D).

Question 27

Evidence — Then-Existing State of Mind

A wife is on trial for the murder of her husband. She is accused of pushing him from the window of their 13th floor apartment; she claims he committed suicide. The wife called an operator for a suicide-prevention hotline to testify that the deceased husband had called the hotline on more than one occasion threatening to "end it all." The judge should rule the testimony:

(A) Admissible, because the statement was made in "contemplation" of death.

(B) Admissible, because it tends to show that the husband intended to commit suicide.

(C) Inadmissible, because it violates the psychiatrist-patient privilege.

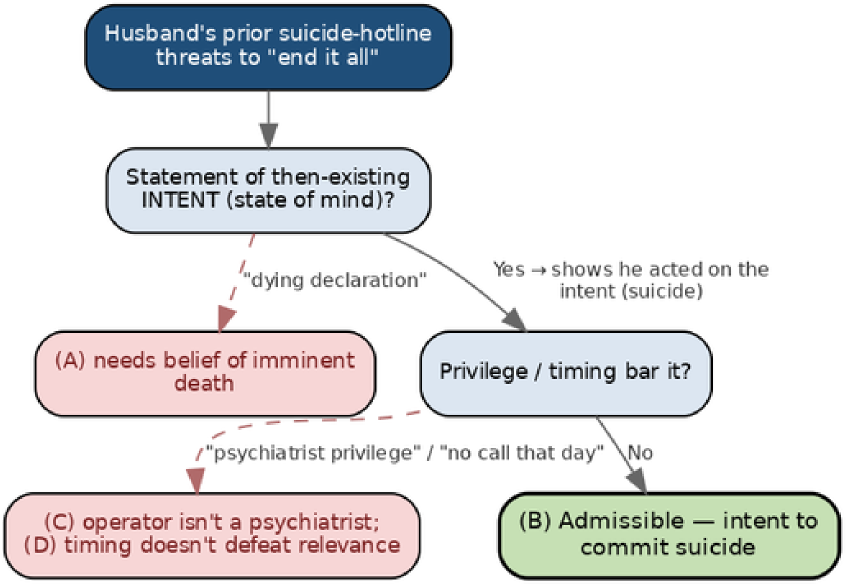
(D) Inadmissible, because no phone calls were made to the hotline by the husband on the day he died.

> **Correct answer (B).** The husband's suicide threats are admissible under the state-of-mind exception to show he intended to commit suicide.

Rule. A statement of the declarant's then-existing state of mind (including intent or plan) is admissible under a hearsay exception as circumstantial evidence that he later acted in accordance with that intent. It need not have been made at the time of the event.

Application. The husband's repeated threats to 'end it all' show his suicidal intent, admissible to make it more likely he acted on that intent (jumped) rather than being pushed. It supports the wife's suicide defense.

Why the other choices fail. (A) is wrong because a dying declaration requires belief in imminent death, which these earlier calls don't reflect. (C) is wrong because the hotline operator is not a psychiatrist and no privilege attaches. (D) is wrong because the state-of-mind statement is relevant even though not made on the day of death.



Decision path

Attack Sequence: Evidence attack sequence, §4 Hearsay Exceptions, step 2 (availability immaterial → then-existing state of mind/intent).

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

How it lands: §4 step 2: a statement of the declarant's then-existing intent is admissible to show he acted on it. The husband's suicide threats show suicidal intent, supporting the wife's defense → (B).

Question 28

Real Property — Race-Notice Recording Act

A large tract of land was located in a jurisdiction that has adopted the following statute: "No conveyance or mortgage of an interest in land is valid against a subsequent purchaser for value without notice thereof whose conveyance is first recorded." The man who owned the land owed money to a woman, and in satisfaction of this debt, the man conveyed the property to her. Although the woman intended to have the deed recorded, she mistakenly failed to do so. Two years later, the man borrowed money from a bank and, to secure the loan, executed a mortgage deed on the property. The bank promptly recorded this mortgage. Three months later, the man, just before he died, donated the property by general warranty to his son, who did not know about the prior events. The son recorded the deed and entered into a contract with his friend to sell him the property. The next month, the woman discovered that the deed in her safe was not recorded, and so, without notice of any of the prior transactions, the woman recorded the deed. A month after that, the friend paid the son full value for the property, and without actual knowledge of any of the other transactions regarding the property, the friend had the deed duly recorded. By the end of the next year, the friend had expended substantial sums of money on the property. However, when he put up the property as security for a loan from the bank, he learned for the first time of the woman's claim. In a suit between the friend and the woman, which of the following statements most accurately describes the probable outcome?

(A) The friend would prevail, because the money he paid for the property, along with the money

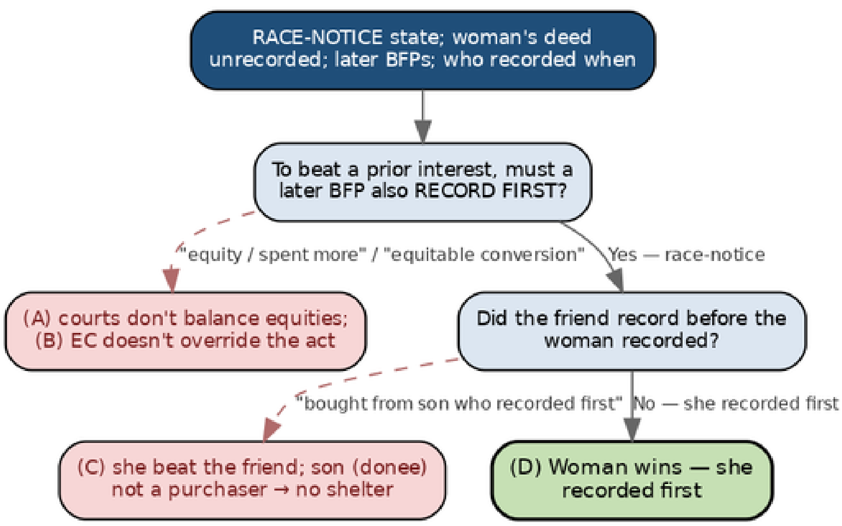
expended since then, was far in excess of what the woman paid, and under equity, the friend would be deemed the owner; however, he would have to reimburse the woman for what she paid for the property.
(B) The friend would prevail, because under the doctrine of equitable conversion, his "right" to the property preceded the woman's recordation, and thus whatever right she may have had would have been terminated before she could record.
(C) The friend would prevail, because he purchased from the son, whose deed was recorded before the woman's deed.
(D) The woman would prevail, because she recorded first.

> **Correct answer (D).** Under this race-notice statute, the woman prevails because she recorded before the friend.

Rule. A race-notice statute protects a subsequent bona fide purchaser (one who pays value without notice) only if she also records before the prior grantee. To defeat a prior interest, the later BFP must both lack notice and win the race to record.

Application. The woman's deed was first but unrecorded. The friend was a BFP, but he did not record before the woman recorded her deed. Because a later BFP must record first to prevail under a race-notice statute and the friend failed the race, the woman wins.

Why the other choices fail. (A) is wrong because ownership under a recording act turns on BFP status and recording order, not on who spent more (courts don't balance equities that way). (B) is wrong because equitable conversion doesn't override the recording statute's race-notice rule. (C) is wrong because the friend can't rely on the son's earlier recording: the woman recorded before the friend did, and the son (a donee) wasn't a purchaser for value, so the shelter rule doesn't protect the friend.



Decision path

Attack Sequence: Real Property attack sequence, §6 Conveyancing, Deeds & Recording, step 4 (recording acts — race-notice: later BFP must record first).

Playbook: Real Property playbook, DEEDS & RECORDING (Recording acts; BFP; shelter).

How it lands: §6 step 4: under a race-notice act, a later BFP prevails only if she also records before the prior grantee. The friend didn't record before the woman did, so the woman wins → (D). (The son, a donee, isn't a purchaser, so no shelter.)

Question 29

Civil Procedure — Joinder of Claims (Rule 18)

A book dealer (who is a citizen of State A) sold a number of rare comic books to a collector (who is a citizen of State B) for $90,000. The collector paid $10,000 upon delivery and agreed to pay the balance in eight monthly installments of $10,000 each. Two weeks after the sale, the dealer and the collector were involved in an automobile accident that was unrelated to the comic book transaction. More than eight months pass and the collector failed to pay the $80,000 owed on the comic books. If the dealer files a contract action against the collector in federal district court to collect the $80,000 owed on the comic books, can he join in the same action a negligence claim in the amount of $100,000 for injuries incurred in the automobile accident?

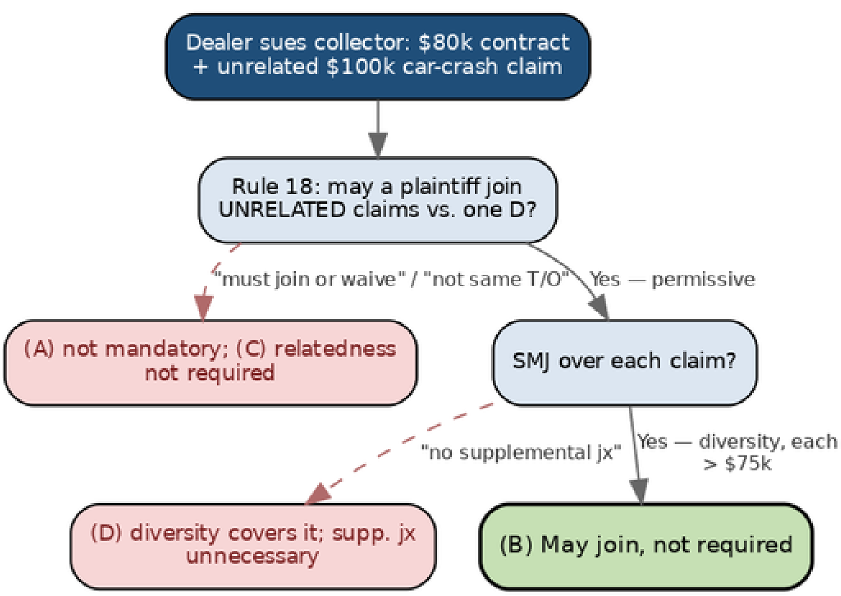
(A) Yes, the dealer must join the two claims in one action or else the omitted claim will be waived.
(B) Yes, the dealer may join the claims in one action but is not required to do so.
(C) No, because they do not arise from the same transaction or occurrence.
(D) No, because the court does not have supplemental jurisdiction over the negligence claim.

> **Correct answer (B).** The dealer may join the unrelated negligence claim under Rule 18 but is not required to, and diversity covers both claims.

Rule. Under FRCP 18, a plaintiff may join as many claims as it has against a defendant, whether or not related. Each joined claim still needs subject-matter jurisdiction; here diversity supports both because the parties are diverse and each claim exceeds $75,000.

Application. The dealer (State A) and collector (State B) are diverse, and both the $80,000 contract claim and the $100,000 negligence claim can be joined under Rule 18, with diversity supplying jurisdiction over each. Joinder is permitted but optional.

Why the other choices fail. (A) is wrong because Rule 18 joinder is permissive, not mandatory. (C) is wrong because Rule 18 allows joining unrelated claims. (D) is wrong because supplemental jurisdiction is unnecessary; the negligence claim independently satisfies diversity.



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder, step 1 (claim joinder — a party may join any claims against an opposing party) + §1 SMJ.

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

How it lands: §5 step 1: Rule 18 lets a plaintiff join any claims (related or not) against one defendant. §1: diversity covers both the $80k contract and $100k tort claims → may join, not required → (B).

Question 30

Torts — Directed Verdict / No Breach of Duty

A small cruise ship struck a whale swimming underwater, causing the ship to suddenly lurch sideways. A passenger on the ship who was walking down a corridor lost his balance and bumped his head on the edge of a doorway. Because of a previously existing medical condition that made him susceptible to bleeding on the brain, he suffered a cerebral hemorrhage and permanent mental impairment, despite prompt medical attention on the ship. The passenger brought suit against the cruise ship owner for his damages. At trial, the passenger presented evidence of how he was injured as he walked down the hallway, his previous medical condition, and his medical expenses and other damages. The cruise ship owner presented evidence that the cruise ship was following its approved route and that the whale could not have been detected before impact, and that the bump would not have injured someone in ordinary health. At the close of the evidence, the cruise ship owner moved for a directed verdict. The court should:

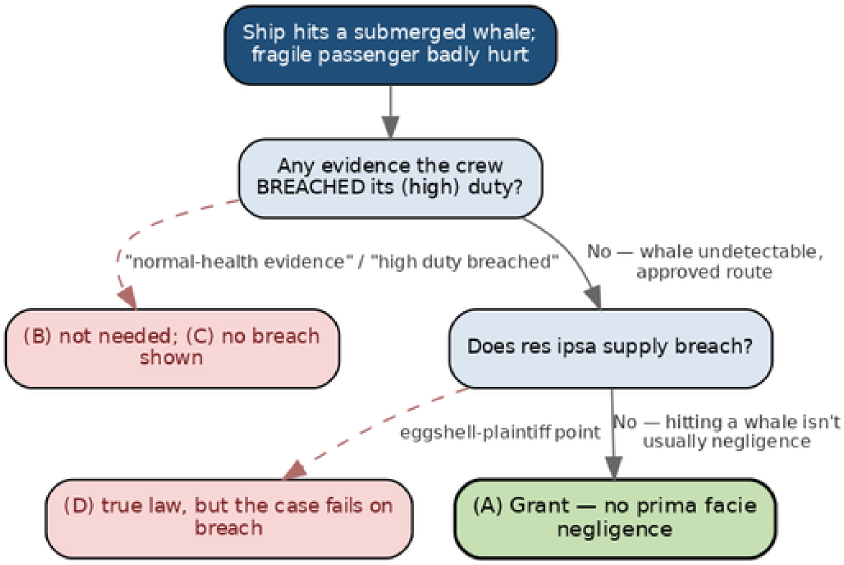
(A) Grant the motion, because there is no evidence that the crew operated the ship negligently.
(B) Grant the motion, because the cruise ship owner introduced uncontroverted evidence that a person in normal health would not have been injured by the bump.
(C) Deny the motion, because the jury could find that the cruise ship owner, as a common carrier and innkeeper, breached its high duty of care to the passenger.
(D) Deny the motion, because the fact that the severity of the passenger's injuries was not foreseeable does not cut off the cruise ship owner's liability.

> **Correct answer (A).** The passenger failed to prove breach, so the directed verdict should be granted.

Rule. To survive a directed verdict, the plaintiff must present a prima facie case: duty, breach, causation, and damages. Even a common carrier's high duty of care is not liability without fault; res ipsa doesn't apply where the injury (hitting a submerged whale) is not the kind that ordinarily bespeaks negligence.

Application. The passenger showed the injury and his fragile condition but offered no evidence the crew was negligent; the whale couldn't be detected and the ship was on its approved route. With no evidence of breach, no prima facie case exists, so the motion is granted.

Why the other choices fail. (B) is wrong because the cruise line doesn't need the 'normal health' evidence to win; and if it had breached, the eggshell-plaintiff rule would make it liable for the full harm. (C) is wrong because, despite the high duty, there was no evidence of breach. (D) is a true eggshell-plaintiff statement but not the reason to deny the motion; the case fails for lack of breach evidence.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 3 (breach) — plus the eggshell-plaintiff rule (step 5).

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

How it lands: §3: even a common carrier's high duty needs proof of breach. The whale was undetectable and the ship on its route, and res ipsa doesn't fit — no breach evidence → directed verdict for the ship → (A).

Question 31

Evidence — Defendant's Good Character (Pertinent Trait)

A defendant is on trial for aggravated assault. The defendant claims that he was merely a bystander and that another person was the actual aggressor. The defendant calls a witness to testify that the defendant has a reputation for being a "good and loving person who would never hurt anyone." The trial judge should rule the testimony:

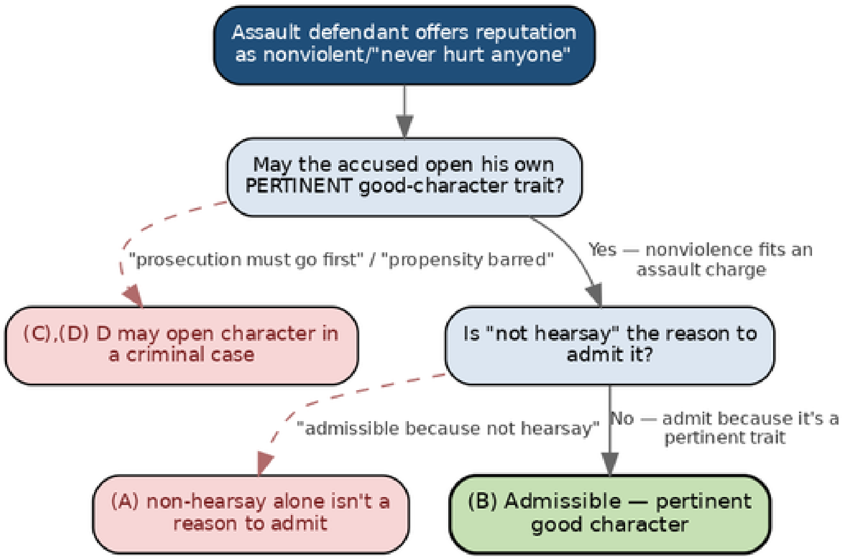
(A) Admissible, because it is not hearsay.
(B) Admissible, because this is a criminal matter, and it tends to show the defendant's relevant good character.
(C) Inadmissible, because the prosecution has not introduced evidence concerning the defendant's reputation.
(D) Inadmissible, because character evidence is not permissible to show that an accused has acted in conformity with the character.

> **Correct answer (B).** In a criminal case the accused may offer good-character evidence of a pertinent trait, here nonviolence for an assault charge.

Rule. A criminal defendant may, at any time, offer reputation or opinion evidence of a good character trait pertinent to the charged crime to show he probably didn't commit it. The prosecution may not initiate character evidence against the defendant, and reputation evidence is a hearsay exception.

Application. Aggravated assault is a crime of violence, so the defendant's peaceful, nonviolent reputation is a pertinent trait he may introduce to support that he wasn't the aggressor. The testimony is admissible.

Why the other choices fail. (A) is wrong because merely being nonhearsay isn't a reason to admit it; the point is that it's permissible pertinent-trait character evidence. (C) and (D) misstate the law: the defendant may open his own character in a criminal case, and character evidence is allowed for that purpose when a pertinent trait is involved.



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 the door with a pertinent trait; reputation is a hearsay exception).

How it lands: §6 step 2: the accused may offer good-character evidence of a trait pertinent to the crime. Nonviolence is pertinent to an assault charge, so the reputation testimony is admissible → (B).

Question 32

Civil Procedure — Where to File a Notice of Removal

A State A citizen and a State B citizen were in a car accident in State C. The State A citizen filed a negligence action against the State B citizen in a State C state court, seeking $500,000 in damages. If the State B citizen wishes to remove the action to federal district court, in which federal district should the State B citizen file a notice of removal?

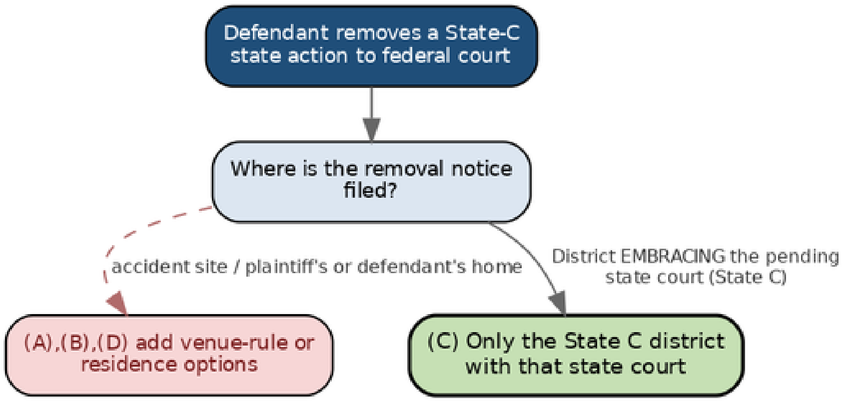
(A) In either the district in State C in which the accident took place or the district in State B in which the State B citizen resides.
(B) In either the district in State C in which the accident took place or the district in State A in which the State A citizen resides.
(C) In only the district in State C in which the State C state court is located.
(D) In only the district in State B in which the State B citizen resides.

> **Correct answer (C).** Removal goes to the federal district that geographically embraces the state court where the action is pending, here in State C.

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

Application. The action is pending in a State C state court, so the notice of removal must be filed only in the federal district in State C that encompasses that state court.

Why the other choices fail. (A) mixes in the general venue rule (defendant's residence) and adds an improper option. (B) improperly relies on the plaintiff's residence, which is irrelevant to venue or removal. (D) points to the defendant's home district, which is not where removal is filed.



Decision path

Attack Sequence: Civil Procedure attack sequence, §2 Supplemental Jurisdiction & Removal, step 4 (removal mechanics — file where the state court sits).

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

How it lands: §2: a notice of removal is filed in the federal district embracing the state court where the action is pending — here the State C district only → (C). (Residence of the parties and the general venue rule don't govern removal.)

Question 33

Constitutional Law — Adult-Business Zoning

A city amended its ordinance to require that "adult theaters" could not be located either within 100 feet of each other or within 500 feet of any residential area. This zoning requirement was passed to protect the residential character of neighborhoods from destruction. A company owns two adult theaters in the city. One is about 1,000 feet from another adult theater. The second theater is adjacent to a residential area, in violation of the zoning ordinance. The company has filed an action to have the zoning requirement declared unconstitutional. The court should hold that the zoning ordinance is:

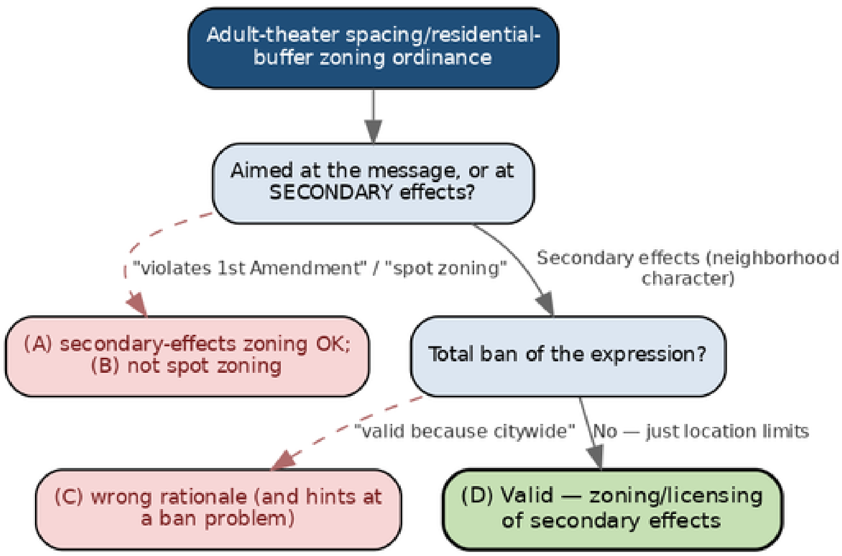
(A) Invalid, because it violates the First Amendment.
(B) Invalid, because it is a form of spot zoning.
(C) Valid, in that it covers the entire city.
(D) Valid, because the protections afforded by the First Amendment are subject to zoning and licensing requirements.

> **Correct answer (D).** The zoning ordinance is valid: the First Amendment doesn't bar reasonable zoning/licensing of adult businesses that doesn't ban them outright.

Rule. Zoning ordinances that regulate the location of adult businesses to combat secondary effects (protecting neighborhood character), rather than to suppress the message, are valid content-neutral regulations so long as they don't totally ban the protected expression (Young v. American Mini Theaters; Renton).

Application. The spacing/residential-buffer ordinance targets secondary effects on neighborhoods, not the films' content, and doesn't ban adult theaters citywide, so it's a permissible regulation subject to zoning/licensing. It is valid under the First Amendment.

Why the other choices fail. (A) is wrong because such secondary-effects zoning does not violate the First Amendment. (B) is wrong because a citywide adult-use spacing rule isn't spot zoning. (C) is wrong reasoning: covering the entire city isn't the basis for validity, and could suggest a total ban problem; the correct rationale is (D).



Decision path

Attack Sequence: Con Law attack sequence, §6 First Amendment: Speech (content-neutral regulation; secondary-effects zoning of adult businesses).

Playbook: Con Law playbook, FIRST AMENDMENT – SPEECH.

How it lands: §6: zoning that targets the secondary effects of adult businesses (not their message) and doesn't ban them outright is a valid content-neutral regulation (Renton) → (D).

Question 34

Torts — Negligence Per Se (Standard Applies)

A woman was jogging along a jogging path. Suddenly, a driver pulled out of an alley perpendicular to the jogging path and failed to stop at a stop sign. He hit her with his car, injuring her. The woman sued the driver. A city code provided that drivers must stop at all stop signs perpendicular to the jogging path. On the basis of which standard of care will the driver be judged?

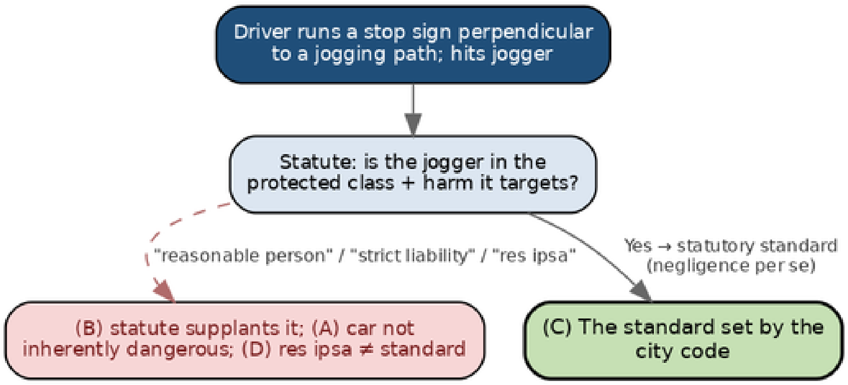
(A) Strict liability, because an automobile is an inherently dangerous instrument.
(B) That of a reasonable and prudent person under the facts of this situation.
(C) The standard set by the city code.
(D) The doctrine of res ipsa loquitur, because it can be presumed that nobody would fail to stop at a stop sign in the absence of negligence.

> **Correct answer (C).** The city-code stop-sign statute sets the standard of care because the plaintiff and harm are within its protection.

Rule. When an applicable statute provides a specific duty (negligence per se), it replaces the general reasonable-person standard if the plaintiff is in the class the statute protects and the harm is of the type the statute was designed to prevent.

Application. The code requires drivers to stop at stop signs perpendicular to the jogging path, protecting path users like the jogger from exactly this kind of collision. So the driver is judged by the statutory standard.

Why the other choices fail. (A) is wrong because an automobile is not an inherently dangerous instrument triggering strict liability. (B) is wrong because the applicable statute supplants the general reasonable-person standard here. (D) misstates the law; res ipsa is a method of proving breach, not a standard of care, and isn't the correct framing.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 2 (standard of care — negligence per se from a protective statute).

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

How it lands: §3 step 2: the stop-sign code protects path users like the jogger from exactly this collision, so the statutory standard replaces the reasonable-person standard → (C).

Question 35

Torts — Negligence Per Se (Statute Inapplicable)

A woman was driving carefully but with an expired driver's license, in violation of a statute requiring license renewal. When she stopped at a stop sign, another driver, who was speeding, crashed into her car. The woman suffered injuries and sued the other driver. The fact that the woman had an expired driver's license would not affect her claim against the other driver because:

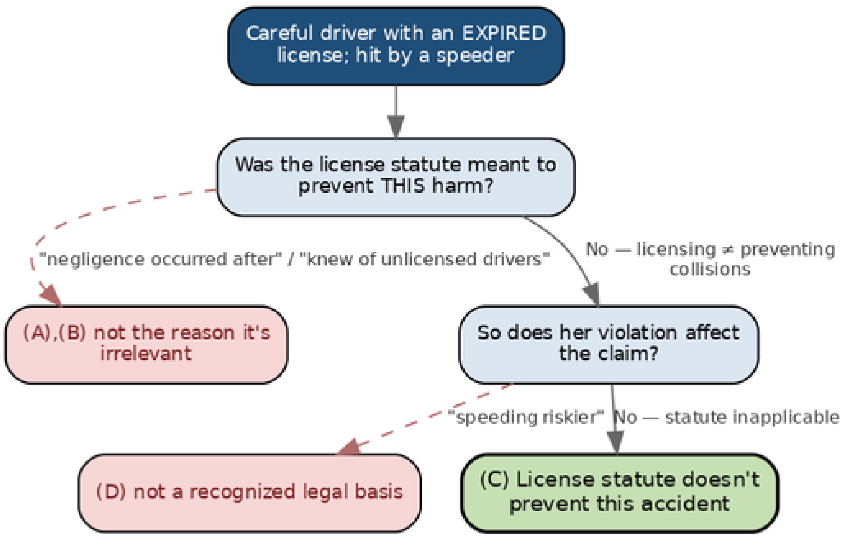
(A) The other driver's negligence occurred after the woman's.
(B) The driver should have known that there are some unlicensed drivers on the road.
(C) The prevention of accidents of this sort is not the reason that drivers are required to renew their driver's licenses.
(D) There is a greater chance of causing injury when a driver speeds than when a person drives with an expired license.

> **Correct answer (C).** The expired-license statute doesn't apply because it wasn't designed to prevent this kind of accident.

Rule. A statutory standard replaces the common-law duty only where the statute was designed to prevent the type of harm suffered. A licensing statute aimed at driver competence/administration is not designed to prevent collisions caused by another's speeding, so its violation is irrelevant.

Application. The woman drove carefully and was hit by a speeding driver; her expired license had nothing to do with causing that harm. The renewal statute's purpose doesn't cover this accident, so her violation doesn't affect her claim.

Why the other choices fail. (A) is wrong because the timing of the other driver's negligence isn't the reason the license is irrelevant. (B) is wrong because the driver's awareness of unlicensed drivers is beside the point. (D) doesn't state a legally recognized reason; the correct reason is the statute's protective purpose.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 2 (negligence per se — statute inapplicable unless it targets this harm).

Playbook: Torts playbook, NEGLIGENCE (Negligence per se).

How it lands: §3 step 2: a statute sets the standard only if it was designed to prevent the harm suffered. The license-renewal statute isn't aimed at preventing collisions, so the expired license is irrelevant → (C).

Question 36

Civil Procedure — Discovery of Non-Testifying Experts

After a single vehicle accident, the passenger filed a negligence action in federal district court against the driver to recover for a whiplash injury allegedly suffered in the accident. On the advice of his attorney, the passenger consulted and retained five physicians in search of one who would serve as an expert witness on his behalf at trial. Four of the physicians determined that the passenger had suffered no injury. Obviously, the passenger does not intend to use those four physicians as witnesses at trial. May the driver obtain in discovery the opinions of the four physicians whom the passenger does not intend to have testify at trial?

(A) Yes, the passenger must disclose in his required disclosures the identity of the four physicians and provide a written report concerning their qualifications and opinions.
(B) Yes, the driver may obtain information concerning their opinions through interrogatories, but the driver may not depose the four physicians.
(C) No, the driver will not be permitted to discover the facts known and opinions held by these four physicians unless the driver can demonstrate exceptional circumstances under which it is impracticable

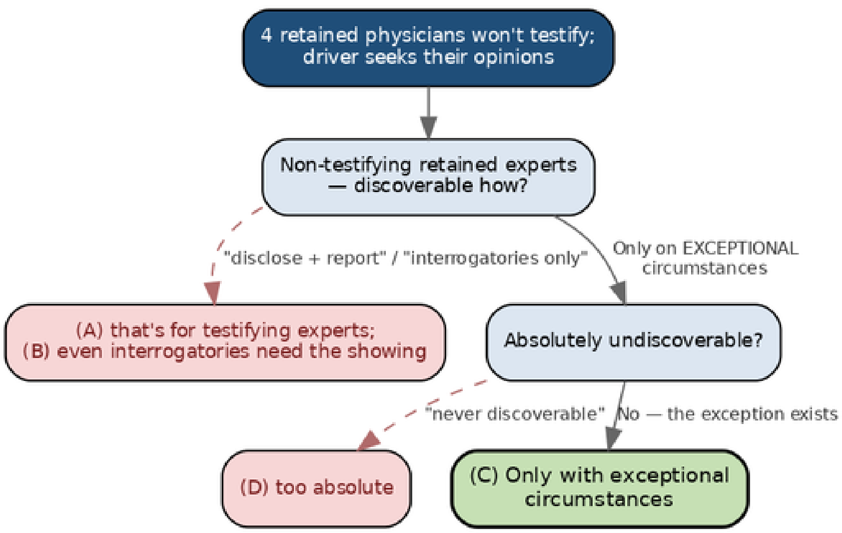
to obtain facts or opinions on the same subject by other means.
(D) No, the parties may not under any circumstances obtain discovery of opinions held by experts retained by another party when the other party does not intend to have the expert testify at trial.

> **Correct answer (C).** The opinions of retained, non-testifying experts are discoverable only on a showing of exceptional circumstances.

Rule. Under Rule 26(b)(4)(D), facts known and opinions held by an expert retained in anticipation of litigation but not expected to testify are discoverable only upon a showing of exceptional circumstances making it impracticable to obtain the information by other means.

Application. The four physicians were retained but won't testify, so the driver may discover their opinions only by demonstrating exceptional circumstances. Absent that, the opinions are protected.

Why the other choices fail. (A) describes the disclosure/report requirements for testifying experts, which don't apply. (B) is wrong because even interrogatories can't reach a non-testifying expert's opinions absent exceptional circumstances. (D) is too absolute; discovery is possible under the exceptional-circumstances standard, so it isn't barred 'under any circumstances.'



Decision path

Attack Sequence: Civil Procedure attack sequence, §6 Pleadings & Pre-Trial Motions (discovery) — non-testifying expert protection isn't a listed step; flag it.

Playbook: Civil Procedure playbook, DISCOVERY & SUMMARY JUDGMENT (expert discovery).

How it lands: Flag: the ordering guide's discovery coverage is thin on experts. The rule (Rule 26(b)(4)(D)): a non-testifying retained expert's opinions are discoverable only on a showing of exceptional circumstances → (C).

Question 37

Contracts — Ambiguity / Knowing Party

A man offered to sell a piano to a female acquaintance for $400. The woman had been to the man's house and knew that he owned a Steinberg piano, so she accepted. Unbeknownst to the woman, the man also owned a Hairwin piano, and that was the piano that he intended to sell, although he was aware that the woman had only seen the Steinberg. If the woman sues the man to obtain the Steinberg, who will prevail?

(A) The woman, because the man knew of the ambiguity.

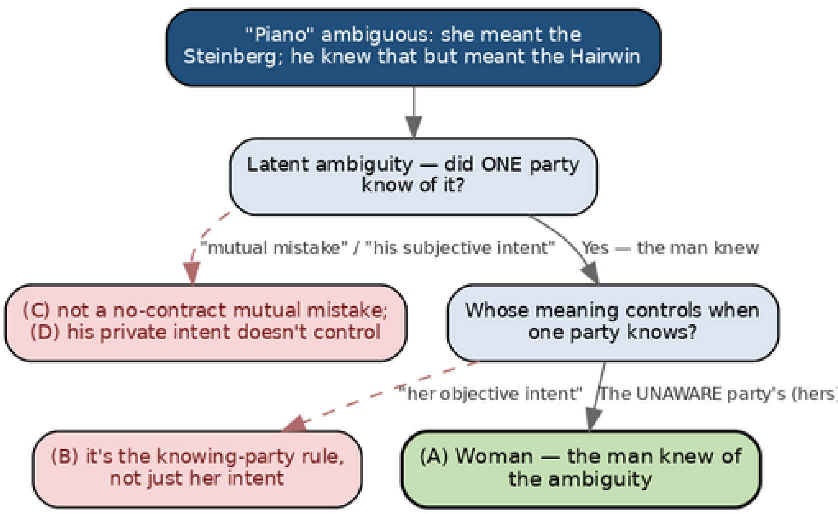
(B) The woman, because that was her objective intent.
(C) The man, because there was a mutual mistake.
(D) The man, because he subjectively intended to sell the Hairwin instead of the Steinberg.

> **Correct answer (A).** Because the man knew of the ambiguity and the woman didn't, the contract is enforced in her favor (the Steinberg).

Rule. Where contract language has more than one reasonable meaning (a latent ambiguity) and the parties attach different meanings, there is no contract if neither knew or both knew of the ambiguity. But if one party knew of the ambiguity and the other did not, the contract is enforced according to the meaning of the unaware party.

Application. 'Piano' was ambiguous. The woman reasonably understood the Steinberg (the only one she'd seen), and the man knew of that ambiguity but intended the Hairwin. Because only the man knew of the ambiguity, the contract is enforced on the woman's understanding: she gets the Steinberg.

Why the other choices fail. (B) is wrong because it's the knowing-party rule, not simply her objective intent, that controls. (C) is wrong because although a latent ambiguity can look like mutual mistake, where one party knows, the unaware party's meaning governs, so there is a contract. (D) misstates the law; the man's private (subjective) intent doesn't control when he knew of the ambiguity.



Decision path

Attack Sequence: Contracts attack sequence, §4 Terms, Parol Evidence & Gap Fillers, step 3 (ambiguity) — the knowing-party rule.

Playbook: Contracts playbook, TERMS / interpretation (ambiguity).

How it lands: §4: with a latent ambiguity, if one party knows of it and the other doesn't, the contract is enforced on the unaware party's meaning. The man knew 'piano' was ambiguous, so the woman gets the Steinberg → (A).

Question 38

Evidence — Offer to Pay Medical Expenses / Admission

During the trial of her personal injury action against a chemical company, the plaintiff testifies in response to a question by her own counsel that, shortly after she and her family were forced to leave their home because of fumes from its plant, the president of the chemical company telephoned her motel room and said, "If you or any member of your family requires medical treatment, our company will pay all medical expenses in full. We will not have it said that our company's negligence resulted in the illness of a local family." The company's counsel makes a motion to strike all of the plaintiff's testimony, and the court does so. Was the court's action correct?

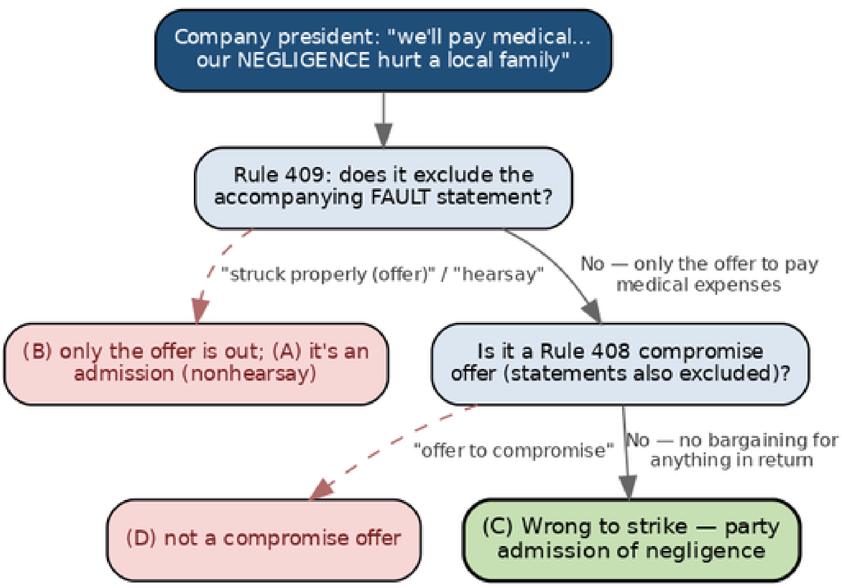
(A) Yes, because the testimony relates to inadmissible hearsay.
(B) Yes, because the statement was made in connection with an offer to pay medical expenses.
(C) No, because the statement includes an admission by a party-opponent that it was negligent.
(D) No, because the statement is a factual admission made in connection with an offer to compromise.

> **Correct answer (C).** Striking the testimony was error: the negligence admission accompanying an offer to pay medical expenses is admissible.

Rule. Under FRE 409, offers to pay medical expenses are inadmissible, but accompanying statements of fault are NOT excluded (unlike Rule 408 compromise offers, where accompanying statements are also excluded). A party-opponent's statement of fault is a nonhearsay admission.

Application. The president's statement about not wanting it said that 'our company's negligence' caused the illness is an admission of fault. Although paired with an offer to pay medical expenses, Rule 409 excludes only the offer, not the fault admission, so it is admissible and the court erred in striking it.

Why the other choices fail. (A) is wrong because the statement is a party-opponent admission (nonhearsay). (B) is wrong because Rule 409 bars the offer to pay, not the accompanying fault statement. (D) is wrong because this was not an offer to compromise a disputed claim (no bargaining for anything in return), so the Rule 408 rule excluding accompanying statements doesn't apply.



Decision path

Attack Sequence: Evidence attack sequence, §1 Relevance & special exclusions (offers to pay medical expenses vs. compromise offers).

Playbook: Evidence playbook, RELEVANCE (special exclusions: settlement/medical payments).

How it lands: §1: Rule 409 excludes the offer to pay medical expenses but NOT an accompanying fault statement (unlike Rule 408). The president's negligence admission is admissible as a party statement, so striking it was error → (C).

Question 39

Torts — Indemnity

A bookstore owner entered into an agreement with a building contractor to have a facade attached to the front of his bookstore. The contractor constructed the facade and attached it to the storefront, using plans prepared by himself and his own employees. After completing the work, the contractor was paid the contract price by the bookstore owner. A week later, a woman was walking past the front of the bookstore when the facade and a portion of the original building collapsed, striking and injuring her. The woman sued both the contractor and the bookstore owner for damages arising from her injuries. The parties stipulated that the attachment of the facade to the storefront caused the building to collapse and that the bookstore owner was not negligent in selecting or supervising the contractor. If the woman recovers against the bookstore owner, does the latter have any right of action against the contractor?

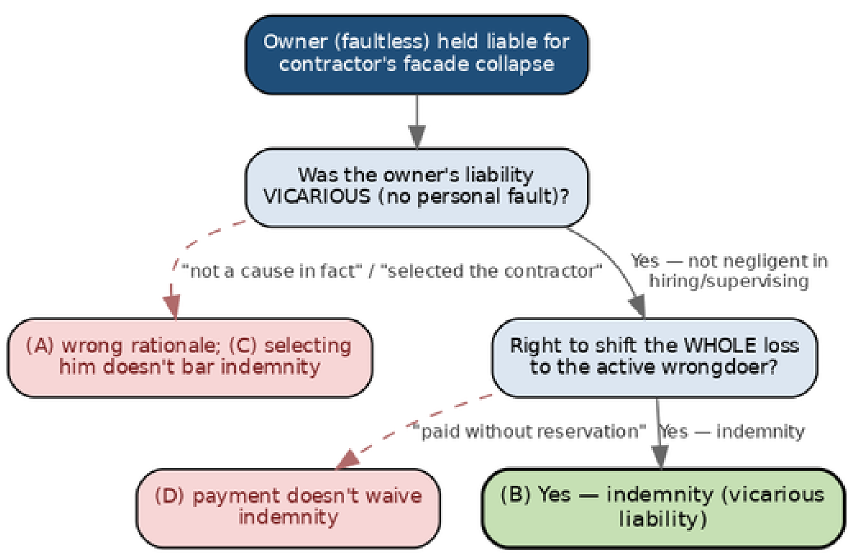
(A) Yes, because the bookstore owner's conduct was not a cause in fact of the injuries to the woman.
(B) Yes, because the woman recovered from the bookstore owner on the basis of vicarious liability.
(C) No, because the bookstore owner selected the contractor to perform the work.
(D) No, because payment for the work without reservation was acceptance by the bookstore owner.

> **Correct answer (B).** The bookstore owner may recover indemnity from the contractor because its liability was purely vicarious.

Rule. A party held only vicariously liable (or otherwise without fault) for another's tort has a right of indemnity to shift the entire loss to the actively negligent party.

Application. The owner wasn't negligent in selecting or supervising the contractor; its liability rests on vicarious liability for the contractor's negligence. Because it was faultless and only vicariously liable, it may obtain full indemnity from the contractor.

Why the other choices fail. (A) is wrong because whether the owner's conduct was a cause in fact doesn't establish the vicarious basis for indemnity (and cause-in-fact reasoning is not why indemnity lies). (C) is wrong because selecting the contractor doesn't defeat indemnity when the owner was not negligent. (D) is wrong because paying the contract price doesn't waive an indemnity claim for the later tort.



Decision path

Attack Sequence: Torts attack sequence, §7 Vicarious Liability — indemnity shifts the whole loss to the actively negligent party.

Playbook: Torts playbook, vicarious liability / indemnity.

How it lands: §7: a faultless party held only vicariously liable may recover full indemnity from the active wrongdoer. The owner wasn't negligent, so its liability was vicarious → it may indemnify against the contractor → (B).

Question 40

Criminal Procedure — Miranda / Volunteered Statement

After being arrested on suspicion of murder, a suspect was taken to the police station and informed of his constitutional rights as required by the Miranda decision. He immediately requested that a lawyer be provided because he had no money to hire one. The arresting officer said that he would get the suspect's lawyer after he was booked, and the officer proceeded to book him. During the booking search, the suspect said to the arresting officer, "I only killed the bastard because he made a pass at me." If the suspect attempts to prevent introduction of the statement made by him to the officer during booking, he will most likely:

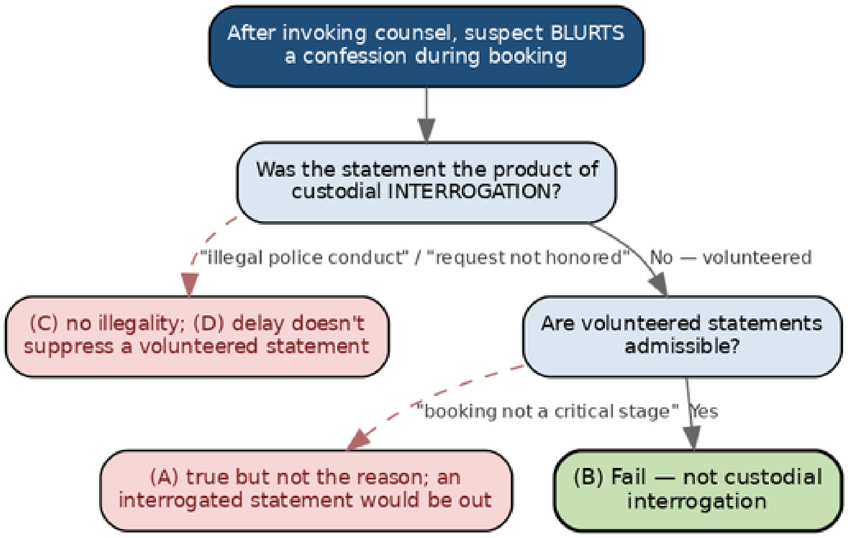
(A) Fail, because booking is not a critical stage of criminal proceedings requiring the assistance of counsel.
(B) Fail, because the statement was not the result of a custodial interrogation.
(C) Succeed, because the statement was the product of illegal police conduct.
(D) Succeed, because the request for an attorney should have been honored immediately.

> **Correct answer (B).** The statement is admissible because it was volunteered, not the product of custodial interrogation.

Rule. After a suspect invokes the right to counsel, police must stop interrogation until counsel is present. But Miranda bars only statements obtained through custodial interrogation (words or conduct police should know are likely to elicit an incriminating response). A suspect may volunteer statements at any time, and those are admissible.

Application. The suspect blurted out his confession during a routine booking search, not in response to any interrogation. Because the statement was volunteered rather than elicited, it is admissible, and his suppression attempt fails.

Why the other choices fail. (A) is a true statement (booking isn't a critical stage) but not the reason the statement comes in; a statement resulting from interrogation during booking would still be excluded. (C) is wrong because there was no illegal police conduct. (D) misstates the law: the failure to instantly provide counsel doesn't require suppressing a volunteered statement.



Decision path

Attack Sequence: Crim attack sequence, §6 Fifth & Sixth Amendments, step 2 (Miranda — custody + interrogation; volunteered statements are admissible).

Playbook: Crim playbook, 5TH/6TH (Miranda: custody = deprivation of freedom; interrogation = likely to elicit).

How it lands: §6 step 2: Miranda bars only statements from custodial interrogation. The suspect volunteered his confession during booking, not in response to questioning, so it's admissible → (B).

Question 41

Constitutional Law — Time, Place, and Manner

To help reduce a rising crime rate among teenage boys in a city, a priest decided to organize an overnight jamboree to get teens interested in scouting. The priest met with the city's parks commissioner and requested a permit to camp at a large city park located on the oceanfront. The parks commissioner told the priest that a city ordinance prohibited large organized use of the park during the evening and all overnight camping. The commissioner explained that the city wished to keep the park open for general use during the evening, when most people were off work, and the park was cleaned overnight. The priest brought an action in federal district court, seeking to compel the city to allow overnight camping for this one special occasion. If the court determines that the ordinance is valid, what will be the basis for its decision?

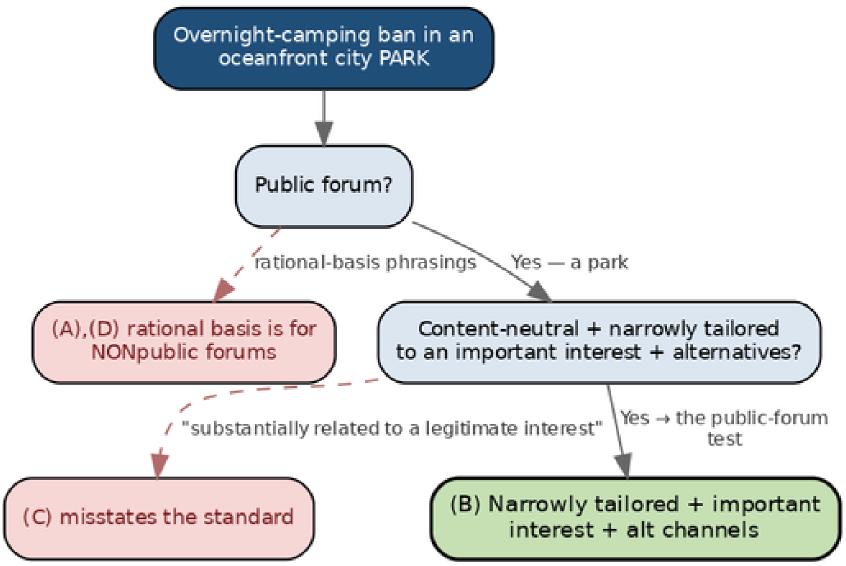
(A) The ordinance is rationally related to a legitimate government interest and burdens the First Amendment rights involved no more than is reasonable under the circumstances.
(B) The ordinance is narrowly tailored to serve an important government interest and does not unreasonably limit alternative channels of communication.
(C) The ordinance is substantially related to a legitimate government interest and burdens the First Amendment rights involved no more than is reasonable under the circumstances.
(D) The ordinance is rationally related to a legitimate government interest and does not unreasonably limit alternative channels of communication.

> **Correct answer (B).** A valid public-forum regulation must be content-neutral, narrowly tailored to an important interest, and leave open alternative channels.

Rule. Speech-related conduct in a public forum may be regulated by content-neutral time, place, and manner rules that are narrowly tailored to serve an important (significant) government interest and leave open ample alternative channels of communication.

Application. The park is a public forum, and the overnight-camping ban is content-neutral (park cleaning and general evening use). If upheld, it will be because it is narrowly tailored to an important interest and leaves open alternative channels, the public-forum test.

Why the other choices fail. (A) and (D) apply the rational-basis/reasonableness test used for nonpublic forums, but a park is a public forum, so the higher standard applies. (C) misstates the standard by pairing 'substantially related' with 'legitimate' interest and the wrong tailoring language; the correct public-forum formulation is in (B).



Decision path

Attack Sequence: Con Law attack sequence, §6 First Amendment: Speech, step 4 (public-forum time/place/manner test).

Playbook: Con Law playbook, FIRST AMENDMENT – SPEECH (Public/designated forum: content-neutral, narrowly tailored, alternatives).

How it lands: §6 step 4: a park is a public forum, so a valid regulation must be content-neutral, narrowly tailored to an important interest, and leave open alternative channels. The overnight-camping ban fits that test → (B). (Rational basis is for nonpublic forums.)

Question 42

Real Property — Merger of Contract into Deed

A landowner with a 40-acre tract of land had inherited 30 acres and had acquired the other 10 acres by adverse possession from a rancher. The landowner entered into a land sale contract promising to convey the 40 acres to a developer. The contract provided that the landowner would convey marketable title. The developer paid the landowner the purchase price and accepted a deed from him. The developer promptly recorded the deed. The rancher, having learned of the sale, brought a successful action against the developer to quiet title. The developer realized for the first time that there were no covenants for title in his deed. The developer brings an action against the landowner. What is the most likely outcome of the suit?

(A) The developer will win, because the landowner breached the terms of the contract.
(B) The developer will win, because the landowner misrepresented the size of the tract.

(C) The landowner will win, because the terms of the deed control his liability.

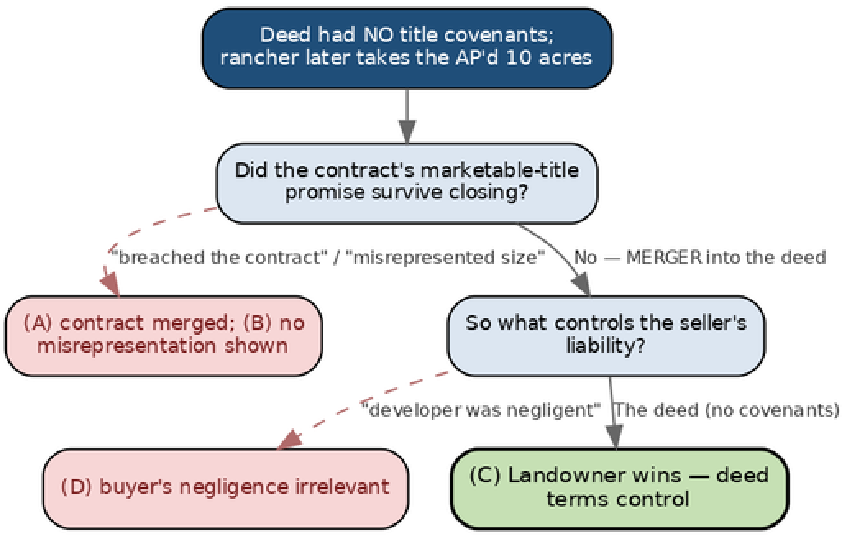
(D) The landowner will win, because the developer was negligent in not checking the covenants of title at the time of closing.

> **Correct answer (C).** The deed's terms control: under merger, the contract's marketable-title promise is extinguished, and the deed had no title covenants.

Rule. Under the doctrine of merger, once the buyer accepts the deed, the land-sale contract merges into the deed and the contract's title obligations (including any marketable-title promise) are extinguished. The buyer's post-closing remedies depend on the covenants of title in the deed itself.

Application. The developer accepted a deed containing no title covenants, so the contract's marketable-title promise merged and cannot be sued upon. When the rancher won the 10 adversely possessed acres, the developer had no deed covenants to invoke, so the landowner wins.

Why the other choices fail. (A) is wrong because the contract merged into the deed; the marketable-title term no longer controls. (B) is wrong because the facts show no misrepresentation of tract size. (D) is wrong because the developer's failure to check the covenants (negligence) is irrelevant; merger is what defeats him.



Decision path

Attack Sequence: Real Property attack sequence, §6 Conveyancing, Deeds & Recording, step 2 (merger — contract merges into the deed at closing).

Playbook: Real Property playbook, REAL ESTATE CONTRACTS (Merger).

How it lands: §6 step 2: on acceptance of the deed, the contract's marketable-title promise merges into the deed and is extinguished. The deed had no title covenants, so the developer has no claim → landowner wins → (C).

Question 43

Evidence — Improper Lay Opinion

A boy and his parents sued a driver for $75,000 for injuries they claim were caused when the driver's car hit the boy one night when the boy was out delivering papers. The boy was knocked unconscious in the accident, and the driver claims that it was not his car that hit the boy. Except for damages, the main issue in the suit is whether it was the driver's car that hit the boy. The driver's own attorney asks him, "Could the boy have mistaken your car for another?" This question is:

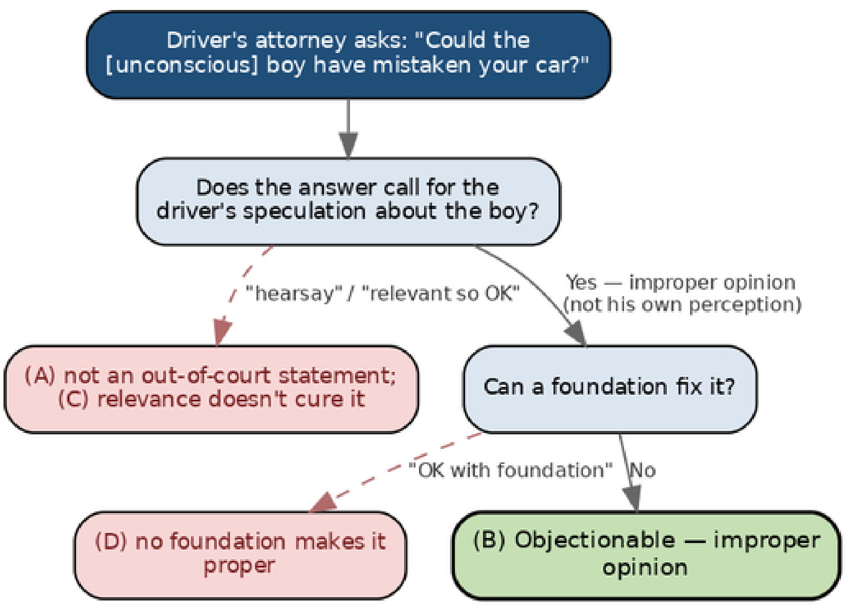
(A) Objectionable, because the answer would be hearsay.
(B) Objectionable, because the answer would be an opinion.
(C) Unobjectionable, because the answer would be relevant to the issue of whose car hit the boy.
(D) Unobjectionable, if a proper foundation has been laid.

> **Correct answer (B).** The question is objectionable because the answer would be improper opinion (speculation about the boy's perception).

Rule. Lay opinion is admissible only if rationally based on the witness's own perception, helpful to the factfinder, and not based on specialized knowledge. A witness may not speculate about what someone else perceived or thought.

Application. Asking the driver whether the boy 'could have mistaken' his car for another calls for the driver's opinion about the unconscious boy's perception, which the driver cannot rationally perceive. It's improper opinion and objectionable.

Why the other choices fail. (A) is wrong because the answer wouldn't be an out-of-court statement, so it isn't hearsay. (C) is wrong because relevance doesn't cure the improper-opinion defect. (D) is wrong because no foundation can make this speculative opinion proper.



Decision path

Attack Sequence: Evidence attack sequence — no dedicated lay-opinion sub-topic; use the rule sheet.

Playbook: Evidence playbook, OPINION (Lay: rational perception, helpful, not speculative).

How it lands: Lay opinion must rest on the witness's own perception. Asking whether the unconscious boy could have mistaken the car calls for speculation about someone else's perception → improper opinion → objectionable → (B).

Question 44

Contracts — Statute of Frauds (Signature)

A landowner and a purchaser orally agreed that the landowner would convey 20 acres of his 160-acre farm to the purchaser. At the time of their agreement, the landowner wrote on the back of an envelope, "I hereby promise to convey the northern 20 acres of my farm to [the purchaser] for $10,000." One month later, the purchaser tendered $10,000 to the landowner, but the landowner refused to convey the 20 acres. If the purchaser sues the landowner to convey the land and the landowner prevails, it will most likely be because the writing:

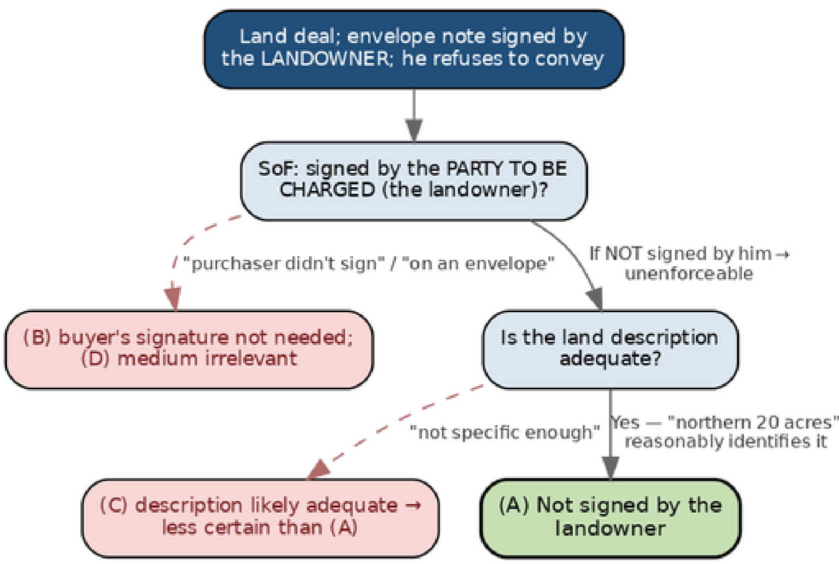
(A) Was not signed by the landowner.
(B) Was not signed by the purchaser.
(C) Did not describe the property with specificity.
(D) Was on the back of an envelope.

> **Correct answer (A).** If the landowner prevails, it is because the writing was not signed by him, the party to be charged.

Rule. A land-sale contract must be evidenced by a writing signed by the party to be charged (the one against whom enforcement is sought) to satisfy the Statute of Frauds. The description need only reasonably identify the land; the medium (even an envelope) is irrelevant.

Application. The purchaser is suing to enforce against the landowner, so the landowner is the party to be charged and his signature is required. If the writing lacks his signature, the Statute of Frauds bars enforcement and he prevails.

Why the other choices fail. (B) is wrong because the purchaser's signature isn't needed to bind the landowner. (C) is a weaker reason: 'the northern 20 acres of my farm' is likely an adequate description, so the signature issue is the more certain basis. (D) is wrong because the writing's medium (an envelope) doesn't matter.



Decision path

Attack Sequence: Contracts attack sequence, §3 Defenses to Formation, step 3 (Statute of Frauds — signed by the party to be charged; land).

Playbook: Contracts playbook, DEFENSES TO FORMATION (Statute of Frauds).

How it lands: §3 step 3: a land contract must be signed by the party to be charged. The purchaser is enforcing against the landowner, so his signature is required; if the writing lacks it, the SoF bars enforcement → (A). (The description is likely adequate, so that's a weaker reason.)

Question 45

Criminal Law — Conspiracy / Intent to Commit the Target Crime

A man believed that a woman who was a former roommate had taken a book of his, so he persuaded a mutual friend to help him get it back surreptitiously. He had the friend take the woman out to dinner, leaving her apartment empty so that the man could pick the lock on the woman's front door and take the book back. On seeing the man trying to pick the lock, a neighbor called the police, who found the man still trying to pick the lock when they arrived. The man and the friend were charged with burglary and conspiracy to commit burglary. If the man and the friend are acquitted of the conspiracy charge, the most likely reason would be that:

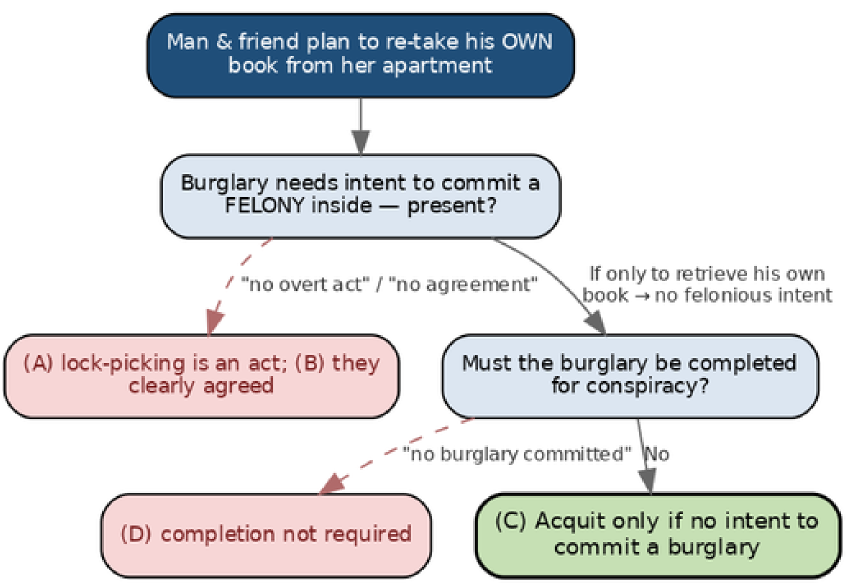
(A) There was no overt act.
(B) There was no agreement.
(C) There was no intent to commit burglary.
(D) The man did not actually commit a burglary.

> **Correct answer (C).** They'd be acquitted only if they lacked the intent to commit a burglary (i.e., no intent to commit a felony inside).

Rule. Conspiracy requires an agreement, intent to agree, and intent to achieve the criminal objective (plus, in most modern jurisdictions, an overt act, though mere preparation suffices). Burglary requires intent to commit a felony inside; if the plan was only to retrieve one's own property, there's no intent to commit a felony and thus no conspiracy to burgle.

Application. If the man and friend intended only to take back the man's own book (not to commit a felony inside), they lacked the intent to commit a burglary, so no conspiracy to commit burglary. That missing intent is the only viable basis for acquittal.

Why the other choices fail. (A) is wrong because there was an overt act (picking the lock). (B) is factually wrong because they clearly agreed. (D) is wrong because conspiracy doesn't require the target crime to be completed; the flaw, if any, is the lack of felonious intent.



Decision path

Attack Sequence: Crim attack sequence, §3 Inchoate Crimes, step 3 (Conspiracy — intent to achieve the criminal objective; burglary needs felonious intent).

Playbook: Crim playbook, INCHOATE & ACCOMPLICE (conspiracy) + CRIMES (Burglary: intent to commit a felony inside).

How it lands: §3 step 3: conspiracy needs intent to achieve the crime's objective. Burglary requires intent to commit a felony inside; if they meant only to retrieve his own book, there's no felonious intent → the only acquittal ground → (C).

Question 46

Torts — Defense of Others

A man drove into the parking lot of a bank and was about to pull into an empty spot when a woman cut in front of him with her automobile and took his parking place. The man and woman got out of their cars, and the man started to yell at the woman. After a heated argument, a fight broke out between them. A customer came out of the bank at that moment and saw that the man was getting the better of the woman in the fight. The customer ran to his car, took a gun from the glove compartment, pointed it at the man and said, "Stop this minute or I'll shoot." If the man asserts a claim against the customer based on assault, who will prevail?

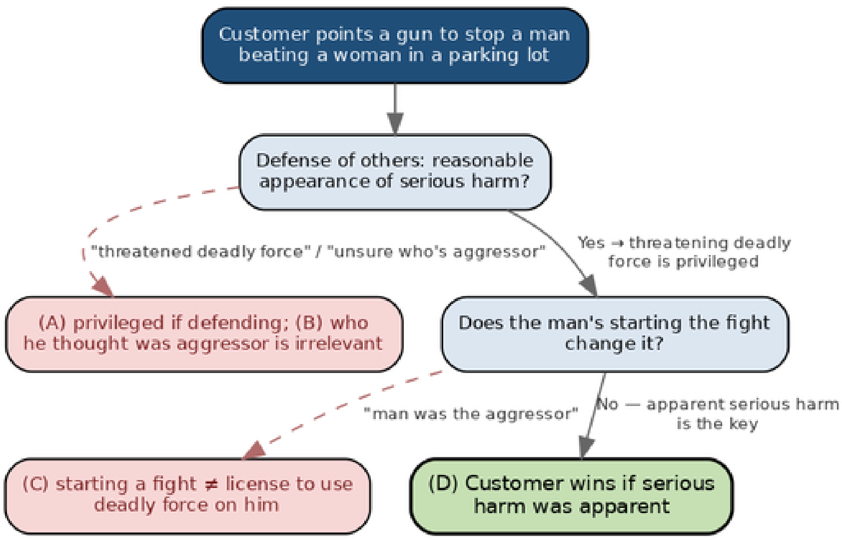
(A) The man, because the customer threatened him with deadly force.
(B) The man, because the customer was unaware of who the aggressor was.
(C) The customer, if the man was the original aggressor by starting the fight with the woman.
(D) The customer, if it was apparent that the man was about to inflict serious bodily harm to the woman.

> **Correct answer (D).** The customer wins if it reasonably appeared the man was about to inflict serious bodily harm on the woman.

Rule. A person may use force, including deadly force, to defend another who reasonably appears to be threatened with serious bodily harm. The defender may act on reasonable appearances, and it's not necessary that the person defended be free of fault.

Application. The customer threatened deadly force (the gun) to stop the man. That is privileged defense of others if it reasonably appeared the man was about to seriously harm the woman. So the customer prevails on that condition.

Why the other choices fail. (A) is wrong because threatening deadly force is privileged when reasonably necessary to protect another from serious harm. (B) is wrong because who the customer thought was the aggressor is irrelevant; reasonable appearances govern. (C) is wrong because the man's having started the fight does not, by itself, justify the customer's deadly force; the key is the apparent threat of serious harm to the woman.



Decision path

Attack Sequence: Torts attack sequence, §2 Defenses to Intentional Torts, step 2 (defense of others; reasonable appearance of serious harm).

Playbook: Torts playbook, INTENTIONAL TORTS/defenses (Self-defense and defense of others).

How it lands: §2 step 2: one may use force to defend another who reasonably appears threatened with serious harm, acting on reasonable appearances. If it appeared the man was about to seriously harm the woman, the customer's threat was privileged → (D).

Question 47

Contracts — Assignment of Right to Payment

A homeowner and a carpenter formed a valid oral contract in which the carpenter agreed to construct an extension to the homeowner's home, using materials supplied by the homeowner, in exchange for $2,000. After the work had been completed but before the homeowner had made any payment, the carpenter called the homeowner and instructed him to pay the $2,000 due on the extension work to a creditor of the carpenter. If the creditor thereafter brings an action against the homeowner for $2,000, will the creditor prevail?

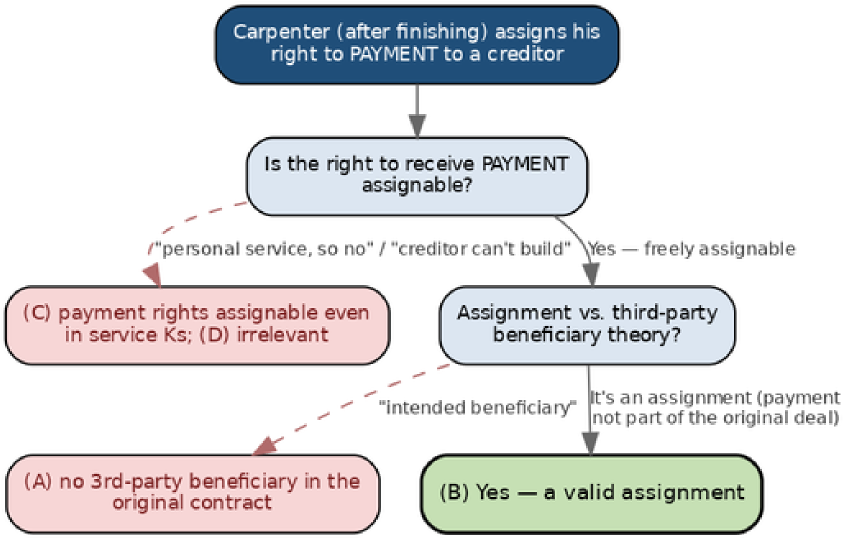
(A) Yes, because the creditor was the intended beneficiary of the original contract between the homeowner and the carpenter.
(B) Yes, because there has been a proper assignment.
(C) No, because personal service contracts are not assignable.
(D) No, because the creditor could not perform the construction work done by the carpenter.

> **Correct answer (B).** The creditor prevails because the carpenter made a valid assignment of his right to payment.

Rule. Contractual rights are generally assignable, and the right to receive payment is freely assignable. Once assigned, the assignee (here the creditor) may enforce the right directly against the obligor.

Application. The carpenter, after fully performing, assigned his right to the $2,000 payment to the creditor. That is a valid assignment of a payment right, so the creditor may enforce it against the homeowner and prevails.

Why the other choices fail. (A) is wrong on the facts: nothing shows the creditor was an intended beneficiary of the original contract; the theory is assignment. (C) misstates the law because the right to receive payment is assignable even under a personal-service contract. (D) is irrelevant because only the payment right, not the performance duty, was assigned.



Decision path

Attack Sequence: Contracts attack sequence, §7 Third Parties: Assignment (the right to receive payment is freely assignable).

Playbook: Contracts playbook, ASSIGNMENT (rights generally assignable).

How it lands: §7: contractual rights, including the right to receive payment, are freely assignable, even under a services contract. The carpenter assigned his payment right to the creditor → valid assignment → creditor prevails → (B).

Question 48

Evidence — Best Evidence Rule

During the probate of the estate of a decedent who died intestate, the decedent's private nurse made a claim for his art collection. She testified at trial that when she first became employed by him, she and the decedent had entered into a written agreement that stated that if she accepted a lower monthly salary and worked for him for the rest of his life, he would leave the art collection to her in his will. The decedent's heir objects to this evidence. The best reason for a judge to rule the evidence inadmissible is that:

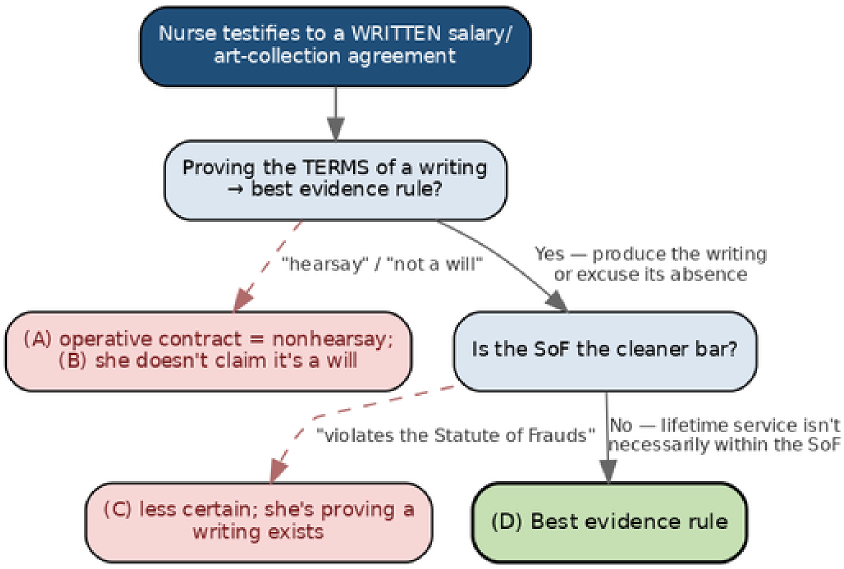
(A) It is hearsay.
(B) The contract is not a proper will.
(C) The agreement violates the Statute of Frauds.
(D) The evidence violates the best evidence rule.

> **Correct answer (D).** The best reason to exclude the nurse's testimony is the best evidence rule, since she's proving the terms of a written agreement.

Rule. The best evidence (original document) rule requires production of the original writing (or an account of its absence) to prove the material terms of that writing. Where a party testifies to the contents of a written agreement, the writing must be produced or its absence explained.

Application. The nurse testified that a written agreement promised her the art collection for a reduced salary and lifetime service. Because she's proving the terms of that writing, the best evidence rule requires the writing itself (or an excuse for its absence); her oral testimony to its contents is the best reason for exclusion.

Why the other choices fail. (A) is wrong because the agreement is offered as a legally operative fact (the contract itself), which is nonhearsay. (B) is wrong because she isn't claiming the contract is a will. (C) is wrong because a lifetime-service contract isn't necessarily barred by the Statute of Frauds and, in any event, she's testifying that a writing exists, so the best-evidence problem is the cleaner ground.



Decision path

Attack Sequence: Evidence attack sequence, §8 Privileges, Authentication & Best Evidence, step 4 (best evidence — proving the terms of a writing).

Playbook: Evidence playbook, OPINION/PRIVILEGE (Authentication / best evidence).

How it lands: §8 step 4: the nurse is proving the terms of a written salary/art-collection agreement, so the best evidence rule requires the writing (or an excuse for its absence). That's the cleanest exclusion ground → (D).

Question 49

Evidence — Lay Opinion on Handwriting

In a real property dispute over a decedent's vacation home, the plaintiff offers a deed to show that the home had been transferred to her two months before the decedent died. The defendant, the decedent's heir, disputes the plaintiff's claim and alleges that the decedent's signature on the deed was forged. The defendant testifies that he is familiar with the decedent's signature and the signature on the deed is not his. The judge should rule this testimony:

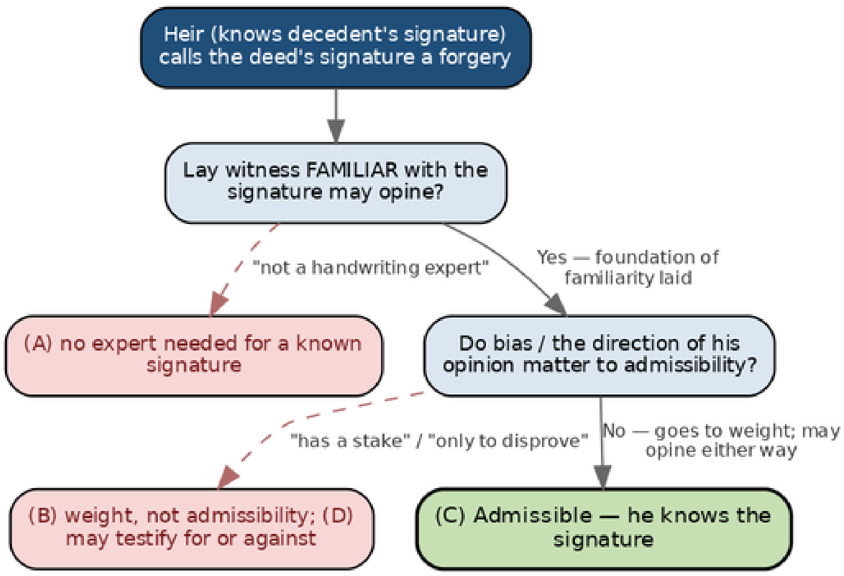
(A) Inadmissible, because the defendant is not a handwriting expert.
(B) Inadmissible, because the defendant has a stake in the outcome and his opinion is unreliable.
(C) Admissible, because the defendant knows the decedent's signature.
(D) Admissible, because he is disputing the genuineness of the document, not seeking to establish it.

> **Correct answer (C).** The heir's testimony is admissible because a lay witness familiar with a signature may opine on its genuineness.

Rule. A lay witness who is familiar with a person's handwriting (familiarity not acquired for litigation) may give opinion testimony about the genuineness of a signature. A foundation showing familiarity must first be laid.

Application. The heir testified he is familiar with the decedent's signature and that the deed's signature is not genuine. That foundation supports his lay opinion on handwriting, so the testimony is admissible.

Why the other choices fail. (A) is wrong because a lay witness need not be a handwriting expert to opine on a signature he knows. (B) is wrong because his interest in the outcome goes to weight, not admissibility. (D) is wrong reasoning: a lay witness may testify either for or against genuineness; his opposing the deed isn't the reason it's admissible.



Decision path

Attack Sequence: Evidence attack sequence, §8 Privileges, Authentication & Best Evidence, step 3 (authentication — lay opinion on handwriting by a familiar witness).

Playbook: Evidence playbook, OPINION (Lay) + Authentication.

How it lands: §8 step 3: a lay witness familiar with a signature (familiarity not gained for litigation) may opine on its genuineness once a foundation is laid. The heir knows the decedent's signature, so his testimony is admissible → (C). (Bias goes to weight.)

Question 50

Constitutional Law — Procedural Due Process

A state statute provided for the suspension or revocation of a retail business license where there have been "repeated violations" of specified regulatory statutes by any one individual or business. A store owner had already been fined three times under the statute. Several days later, the store owner received a notice from the regulatory agency that was created by the statute stating that his business license will be suspended for 21 days for violation of the statute. If the store owner files suit to set aside the suspension, the owner will most likely:

(A) Prevail, because the statute fails to set forth the exact number of violations that a business would have to commit before its business license is revoked.
(B) Prevail, because the store owner has not been given a hearing before the agency.
(C) Lose, because the agency could by its rules construe the term "repeated violations" in such a manner as to comport with due process requirements.

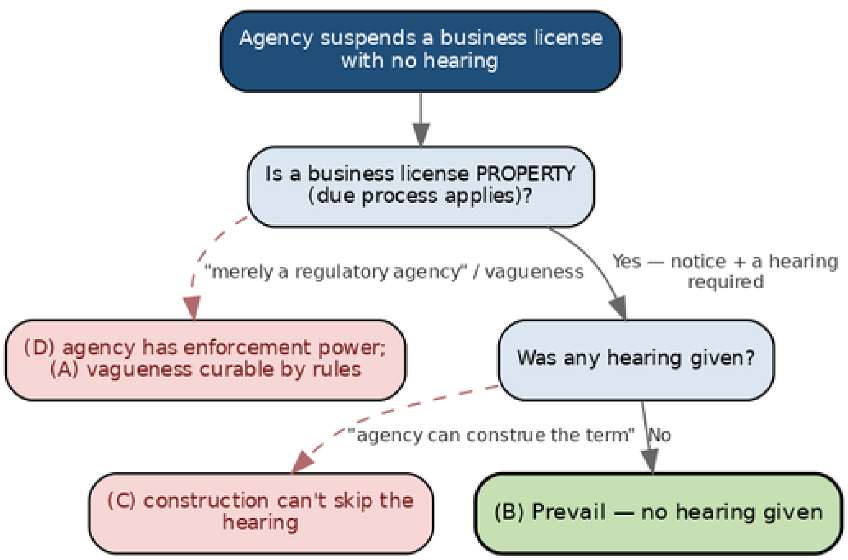
(D) Lose, because the agency is merely a regulatory agency, and therefore the store owner has no right to a hearing.

> **Correct answer (B).** The owner prevails because a business license is property that can't be suspended without notice and a hearing.

Rule. A business license is a property interest protected by procedural due process, which requires notice and an opportunity to be heard before (or, in some cases, promptly after) the government deprives a person of property. Vagueness in the statute can be cured by agency construction, but the hearing requirement cannot be skipped.

Application. The agency suspended the store owner's license without any hearing. Because the license is property, due process entitles him to notice and a hearing, so he will most likely prevail on that ground.

Why the other choices fail. (A) is a plausible vagueness complaint, but the agency can construe 'repeated violations' to satisfy due process, so it's weaker than the missing-hearing point. (C) is wrong because no matter how the agency construes the term, it still must provide a hearing before depriving him of the property interest. (D) is wrong because a regulatory agency with enforcement power must still afford due process.



Decision path

Attack Sequence: Con Law attack sequence, §4 State Action & Due Process, step 2 (procedural due process — a license is property; notice and a hearing).

Playbook: Con Law playbook, DUE PROCESS (procedural).

How it lands: §4 step 2: a business license is property, so due process requires notice and a hearing before suspension. None was given, so the owner prevails → (B). (Vagueness is curable by agency construction, so it's the weaker ground.)