Mixed Subject Set 5

Expanded Answer Explanations · Diet Coke Esq.

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

Question 1

Torts — Rescuers / Danger Invites Rescue

A driver was driving his car negligently along a mountain road. He lost control of his car and careened over the side of a cliff. A jogger saw the driver's car go off the cliff and stopped to see if he could help. The jogger started to climb down the cliff to render aid to the driver. In doing so, the jogger slipped and broke his leg. The jogger sued the driver to recover damages for his broken leg. Regarding any defenses the driver might raise, which of the following statements is correct?

(A) A rescuer acts at his own peril.

(B) The excitement of the accident and the speedy response of the rescuer would be considered in a case such as this.

(C) Assumption of the risk cannot be invoked against rescuers.

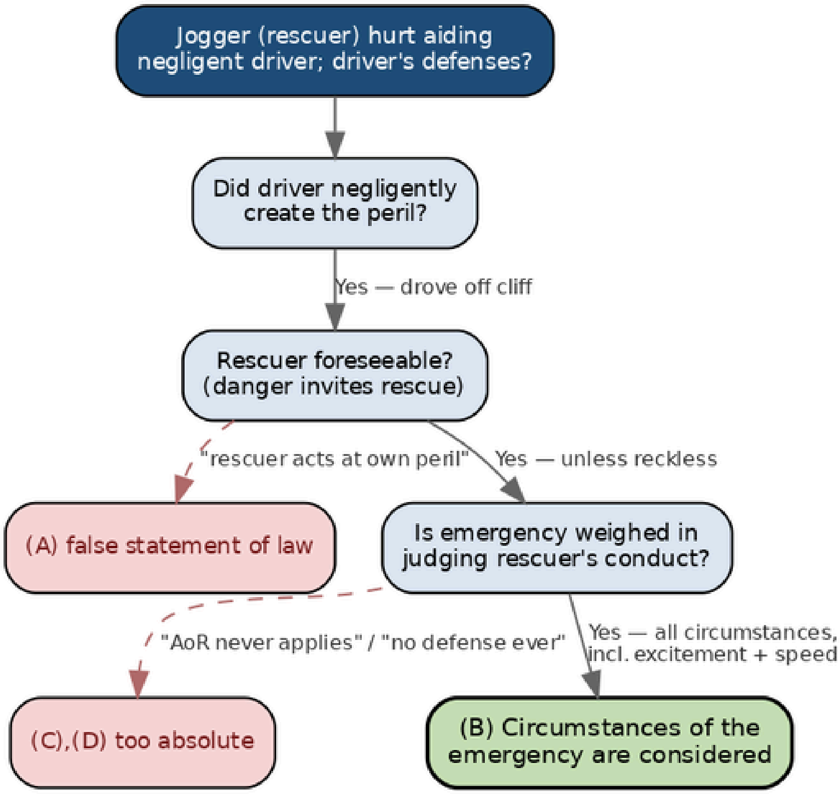
(D) The driver would not have a valid defense.

> **Correct answer (B).** All the circumstances, including the excitement of the accident and the rescuer's speedy response, are weighed in evaluating the rescuer's conduct.

Rule. 'Danger invites rescue.' A person who negligently puts himself (or a third party) in peril is liable to a rescuer who is injured attempting a reasonable rescue, because a rescuer is a foreseeable plaintiff. The emergency itself is a factor in judging whether the rescuer acted reasonably; a rescuer may take extraordinary risks without being deemed contributorily negligent, unless the rescue is reckless or wanton.

Application. The driver negligently drove off the cliff, creating the peril. The jogger's attempt to climb down and render aid is a foreseeable rescue, and the emergency circumstances are considered in evaluating whether he was contributorily negligent. That makes (B) the correct statement of law.

Why the other choices fail. (A) is a false statement — a rescuer does not automatically act 'at his own peril.' (C) overstates the law: assumption of risk can apply if the rescue is reckless, so it is not categorically unavailable. (D) is too absolute; whether a defense succeeds depends on the facts, but the emergency-factor rule in (B) is the correct statement.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 5 (proximate cause / foreseeable plaintiffs — rescuers).

Playbook: Torts playbook, NEGLIGENCE (Foreseeable plaintiff; "danger invites rescue").

How it lands: §3 step 5: a rescuer is a foreseeable plaintiff, so the negligent driver is liable, and the emergency is weighed in judging the rescuer's own care. The attack lands on (B).

Question 2

Torts — Nondelegable Duty of Landowner

An inventor operated a shortwave radio in his home. The inventor maintained a large radio antenna on the rear part of his lot. One day the inventor noticed that the guy-wires holding the antenna in place were frayed. He hired a contractor to replace the guy-wires with new, stronger wire. The contractor replaced all of the guy-wires as per his agreement with the inventor. Four days after the contractor finished his work and the inventor had paid him, the antenna fell over onto the inventor's neighbor's house, causing severe damage. If the neighbor brings suit against the inventor for damages to his home, the neighbor is most likely to prevail against the inventor because:

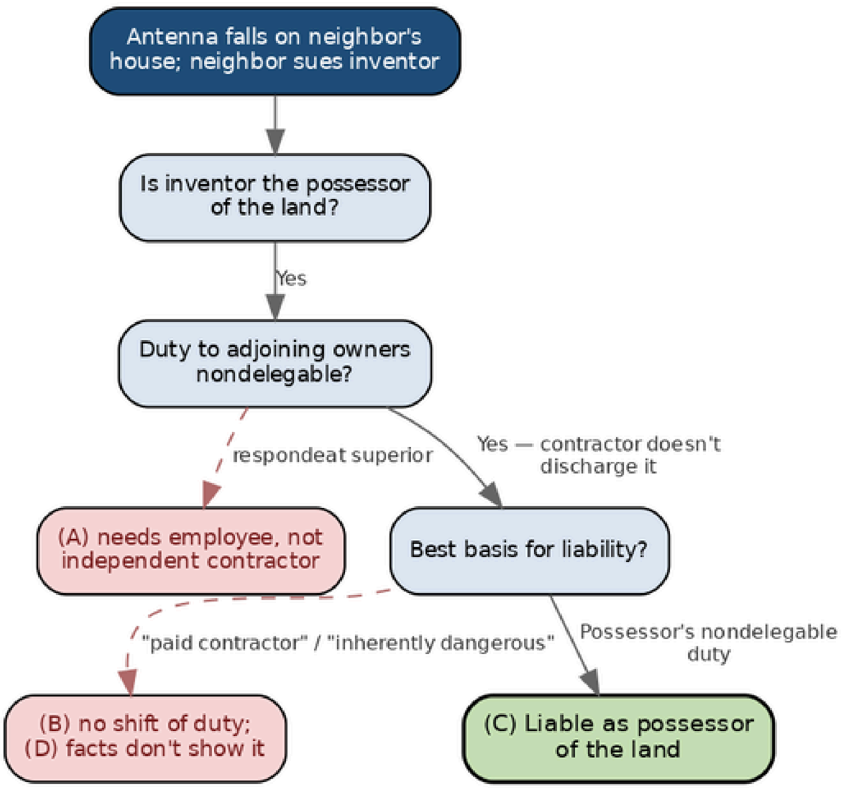
(A) Of respondeat superior.
(B) He assumed responsibility when he paid the contractor for the repair.
(C) He was in possession of the property from which the antenna fell.
(D) The contractor was engaged in an inherently dangerous activity.

> **Correct answer (C).** As possessor of the land from which the antenna fell, the inventor is liable to the adjoining neighbor even though an independent contractor did the work.

Rule. A landowner owes a nondelegable duty to adjoining landowners and passersby to keep artificial conditions on the land from causing harm off the premises. Hiring an independent contractor does not discharge that duty; the possessor remains liable for the contractor's negligence in creating or failing to remedy the danger.

Application. The inventor possessed the lot with the antenna. His duty to keep the antenna from falling onto the neighbor's house is nondelegable, so the contractor's negligent repair does not relieve him. He is liable as possessor — (C).

Why the other choices fail. (A) respondeat superior needs an employer-employee relationship; the contractor was independent, so it does not apply. (B) paying the contractor does not shift responsibility for the nondelegable duty. (D) the facts don't establish the work was 'inherently dangerous,' so that separate exception isn't the best fit — the possessor-duty rationale is.



Decision path

Attack Sequence: Torts attack sequence, §6 Vicarious Liability & Nondelegable Duties, step 3 (landowner's nondelegable duty to those off the premises).

Playbook: Torts playbook, VICARIOUS LIABILITY (Independent contractor — nondelegable duties).

How it lands: §6 step 3: a possessor's duty to adjoining owners is nondelegable, so hiring a contractor doesn't shift it. That routes you to (C).

Question 3

Torts — Negligence / Foreseeability of Harm

A homeowner called a tree trimmer to his house to trim some branches on a large pine tree in the homeowner's backyard. The tree trimmer trimmed off several large branches and pruned several others. The homeowner paid the tree trimmer, who left and did not return. A week after the tree trimmer trimmed the tree, one of the pruned branches split from the trunk of the tree and landed on a neighbor's car. If the neighbor brings suit against the tree trimmer for damage to his car, the best defense for the tree trimmer is that:

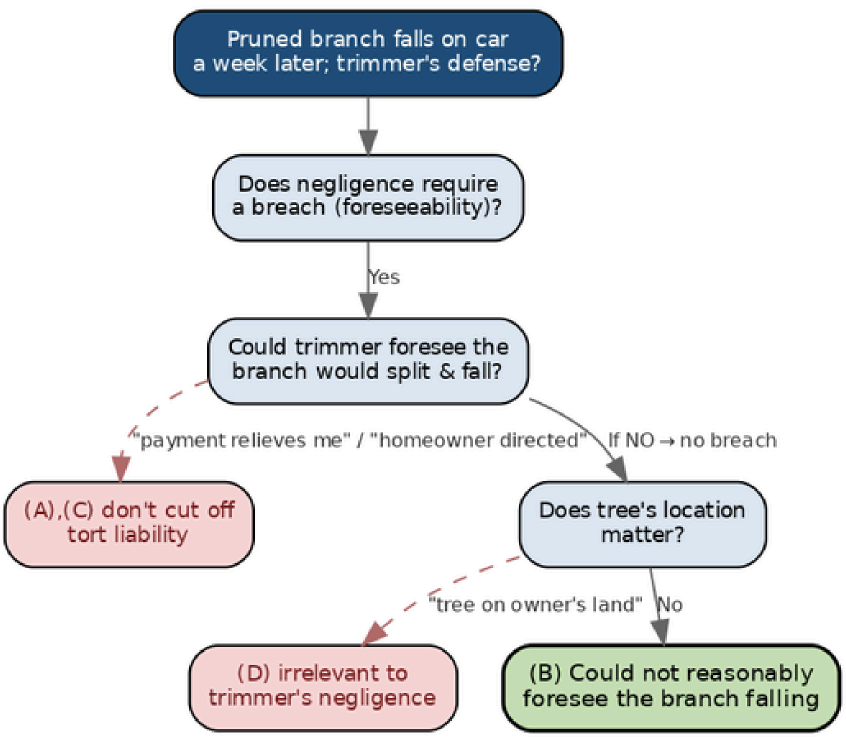
(A) He was relieved of liability when the homeowner paid for the tree trimming.
(B) He could not reasonably foresee that the branch would split off and fall.
(C) He did all the work under the direction of the homeowner.
(D) The pine tree was on the property of the homeowner.

> **Correct answer (B).** The tree trimmer's best defense is that he could not reasonably foresee that the pruned branch would split off and fall.

Rule. Negligence requires a breach of the duty of reasonable care, and breach turns on foreseeability of harm. If a reasonable trimmer could not have foreseen that a pruned branch would later split and fall, there is no breach and thus no liability.

Application. The branch split a week later. If that outcome was not reasonably foreseeable, the trimmer did not breach any duty of care — his strongest defense. So (B).

Why the other choices fail. (A) payment by the homeowner does not relieve an independent contractor of tort liability to third parties. (C) working under the homeowner's direction would make the trimmer jointly liable, not immune. (D) the tree's location on the homeowner's land does not affect the trimmer's liability for negligent work.



Decision path

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

Playbook: Torts playbook, NEGLIGENCE (Breach; foreseeability of harm).

How it lands: §3 step 3: no breach without foreseeable harm. If the trimmer couldn't foresee the branch splitting, he wasn't negligent → (B).

Question 4

Evidence — Competency of Witnesses

A homeowner was helping his neighbor clean out her garage. As the homeowner and the neighbor were moving some boards out of the garage, the neighbor ran into the overhead door's hinge, causing it to fall and hit the homeowner on his head, killing him. The homeowner's wife sued the neighbor for the wrongful death of her husband, seeking damages of $100,000. The wife, who was present when the accident occurred, is called to testify that at the time of the accident, the homeowner was carrying the boards on his shoulder, and he therefore was unable to see that the neighbor had hit the door hinges. As a witness, the wife is:

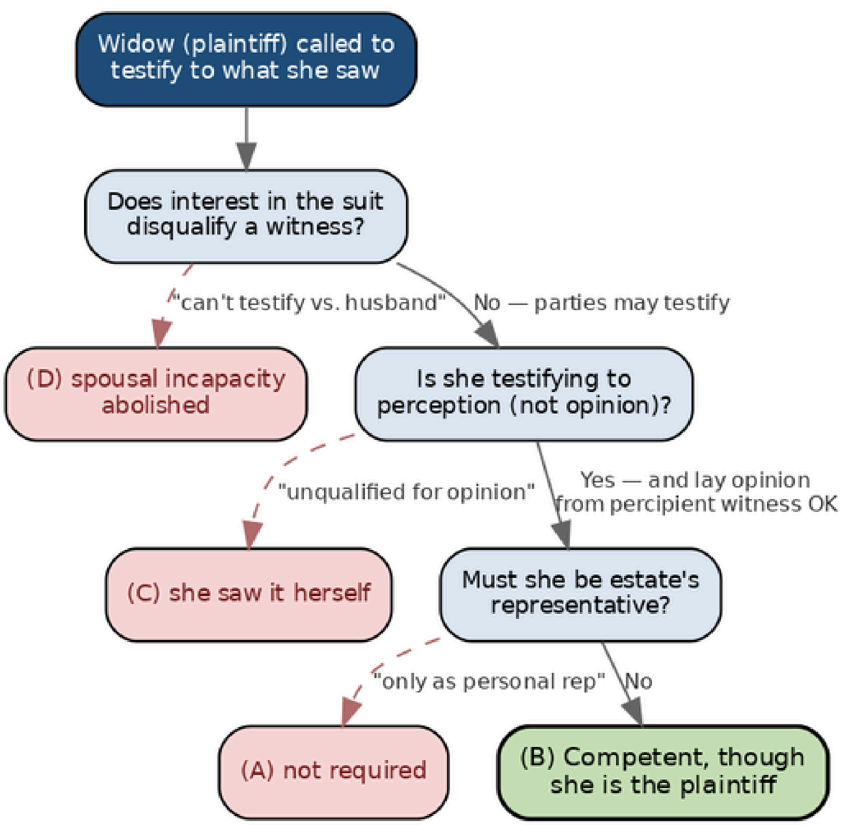
(A) Competent, if she is testifying as the personal representative of her husband's estate.
(B) Competent, in spite of the fact she is the plaintiff.
(C) Incompetent, because she is unqualified to give opinion evidence.
(D) Incompetent, because she cannot testify for her husband in a civil case.

> **Correct answer (B).** The wife is competent to testify, even though she is the plaintiff.

Rule. Under the Federal Rules, interest in the lawsuit does not disqualify a witness; a party may testify. Common-law spousal incapacity (barring one spouse from testifying) has been abolished. A lay witness may also give opinion testimony rationally based on personal perception.

Application. The wife personally saw the accident. Being the plaintiff and being the decedent's spouse do not make her incompetent, so she may testify — (B).

Why the other choices fail. (A) she need not be the estate's personal representative to testify. (C) she is testifying to what she perceived, not improper opinion; and lay opinion from a percipient witness is allowed anyway. (D) common-law spousal incapacity is abolished, so she may testify in this civil case.



Decision path

Attack Sequence: Evidence attack sequence, §7 Witness Competency & Impeachment, step 1 (competency — interest/spouse do not disqualify).

Playbook: Evidence playbook, COMPETENCY (Interested witness; spousal incapacity abolished; lay opinion).

How it lands: §7 step 1: a party is competent, and spousal incapacity is abolished; a percipient witness may give lay opinion. Lands on (B).

Question 5

Constitutional Law — Congressional Power over Federal Property

Congress enacted legislation that was intended to open up federal lands to private industry to explore for, and extract, oil and coal deposits. The act established the Federal Lands Exploitation Commission to supervise the exploration and extraction of fossil fuels from federal lands, and empowered the Commission to enter into contracts on behalf of the federal government with the private companies that wish to mine for coal and drill for oil. The Commission members were also required to investigate safe and sound methods of exploiting the oil and coal deposits without doing unnecessary harm to the environment and to make recommendations to Congress for new laws that would govern the exploitation of federal lands. Further, the commissioners were given the power to make the rules and regulations concerning the contracts with the companies and to appoint administrative law judges to conduct hearings regarding violation of the Commission's rules and disputes concerning the contracts. The authority for the establishment of the Federal Lands Exploitation Commission is most likely:

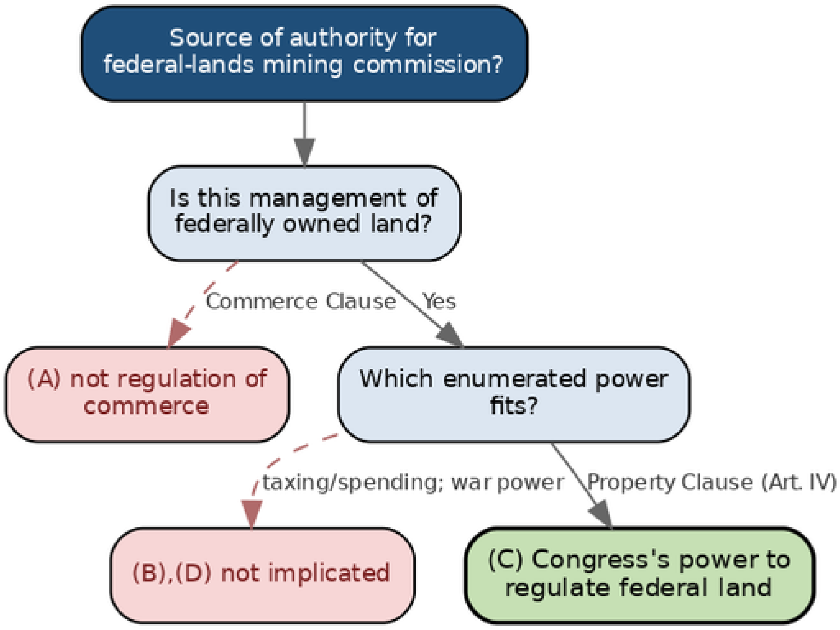
(A) The Commerce Clause.
(B) The taxing and spending power.
(C) Congress's authority to regulate federal land.
(D) The war and defense power.

> **Correct answer (C).** The Commission rests on Congress's power to regulate federal lands under the Property Clause (Article IV).

Rule. Under the Property Clause (Art. IV, §3), Congress has plenary power to regulate and dispose of federal lands and property. Regulating exploration and extraction on federal lands falls squarely within this power.

Application. The Commission supervises mining and drilling on federal lands. The only source of authority that fits is Congress's power over federal property — (C).

Why the other choices fail. (A) the Commerce Clause is broad but this is management of federally owned land, not regulation of commerce. (B) taxing and spending isn't the operative power here. (D) the war and defense power has nothing to do with these lands.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism, step 1 (find the enumerated power — Property Clause for federal lands).

Playbook: Con Law playbook, CONGRESSIONAL POWER (Property Clause).

How it lands: §2 step 1: managing federally owned land is the Property Clause, not commerce. Lands on (C).

Question 6

Constitutional Law — Appointments Clause

Congress enacted legislation intended to protect children from unsafe car seats. The act established a commission to supervise the manufacturing and sale of car seats, and empowered the commission to promulgate car seat safety regulations. The commission members were also required to investigate safe and sound methods of installing child car seats. The commission's chairperson was designated as an Undersecretary of Health and Safety; the President appointed two commissioners from child safety groups; and the three major car seat manufacturers chose one commissioner each, who were then appointed by Congress to the commission. For its violation of the commission's rules with regard to car seat manufacturing, a car seat manufacturer was fined $5,000, to be paid immediately without a trial on the merits. The manufacturer files suit in the federal court to enjoin the commission's enforcement of this rule. The manufacturer's best argument in support of its contention that the rule was illegal is:

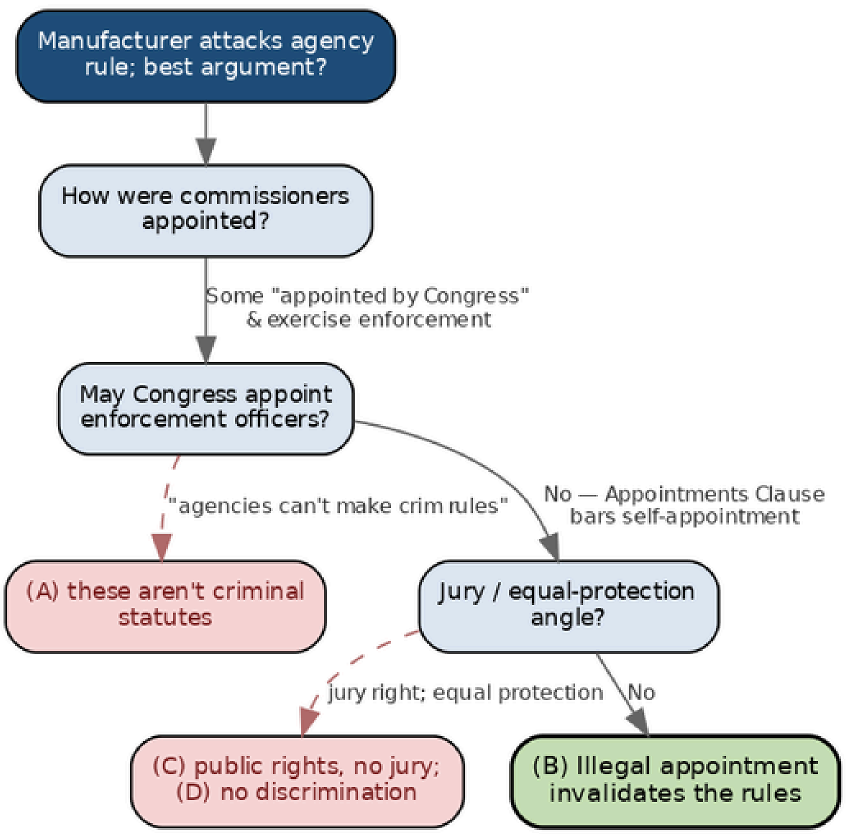
(A) Regulations concerning criminal conduct cannot be made by agency rules, but must be made by federal statute.
(B) The appointment of the commissioners was illegal; therefore, the rules promulgated by the commission are invalid.
(C) Because the fine was potentially $5,000 for violation of the rule, the manufacturer had a right to a trial by jury.
(D) The presumptive fine violated the manufacturer's rights of equal protection as guaranteed by the Fourteenth Amendment.

> **Correct answer (B).** The manufacturer's best argument is that the commissioners were unlawfully appointed, so their rules are invalid.

Rule. Under the Appointments Clause, Congress may vest the appointment of inferior officers only in the President, the courts, or the heads of departments — not in itself. Enforcement is an executive function; Congress cannot appoint officers who exercise enforcement power. Duly appointed agencies may, however, make rules and adjudicate new public rights without juries.

Application. Here commissioners chosen by the manufacturers were 'appointed by Congress' and exercise enforcement power — an unconstitutional appointment. That taints the rules, making (B) the best argument.

Why the other choices fail. (A) agencies can make regulations; these aren't 'criminal statutes.' (C) Congress may create public rights adjudicated by agencies without a jury, so no jury-trial right attaches. (D) there's no equal-protection discrimination on these facts.



Decision path

Attack Sequence: Con Law attack sequence, §3 Separation of Powers, step 2 (Appointments Clause — Congress can't appoint enforcement officers).

Playbook: Con Law playbook, SEPARATION OF POWERS (Appointments Clause).

How it lands: §3 step 2: enforcement officers can't be appointed by Congress; the illegal appointment voids the rules → (B).

Question 7

Civil Procedure — Scope of Discovery / Treating Physicians

A man and a woman were in a two-car traffic accident. Immediately after the accident, the man was treated by a physician at a nearby hospital's emergency room. The man later filed a negligence action against the woman in federal district court, seeking compensatory damages. The woman now seeks discovery regarding the emergency room physician's observations, opinions, and treatment of the man. Is the woman entitled to discovery regarding that information?

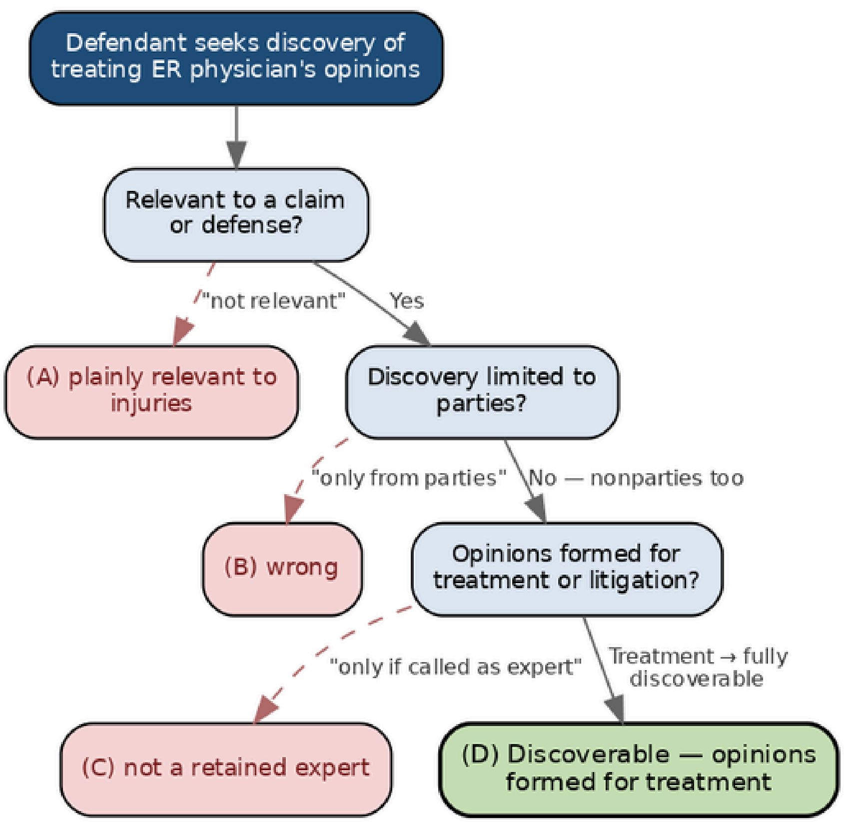
(A) No, because such discovery is not relevant to the claim or defense of a party.
(B) No, because the woman is not entitled to obtain discovery from persons who are not parties to the action.
(C) Yes as to the physician's observation and treatment, but the physician's opinions are discoverable only if the man intends to call the physician as an expert witness at trial.
(D) Yes, because the physician observed and treated the man and developed opinions about the man's injuries for purposes other than litigation or trial.

> **Correct answer (D).** The woman may discover the ER physician's observations, opinions, and treatment, because the physician's opinions were formed for treatment, not for litigation.

Rule. Parties may discover any nonprivileged matter relevant to a claim or defense, from parties and nonparties alike. A treating physician who formed opinions in the course of treatment (not retained in anticipation of litigation) is an ordinary fact witness, and those opinions are freely discoverable — unlike a non-testifying retained expert.

Application. The ER doctor treated the man right after the accident, forming opinions for treatment purposes. Those observations and opinions are relevant and were not developed for litigation, so they are discoverable — (D).

Why the other choices fail. (A) the physician's findings are plainly relevant to the injury claim and defense. (B) discovery is not limited to parties; nonparties with knowledge are fair game. (C) the treating-physician's opinions are discoverable regardless of whether he'll be called as an expert, because they were formed in treatment, not for trial.



Decision path

Attack Sequence: Civil Procedure attack sequence, §6 Pleadings & Pre-Trial (Discovery scope) — treating-physician opinions aren't broken out; flag it.

Playbook: Civil Procedure playbook, DISCOVERY & SUMMARY JUDGMENT (scope; experts).

How it lands: Flag: the playbook's discovery coverage is thin on the treating-physician distinction. Rule: a treating physician's opinions (formed for treatment, not litigation) are freely discoverable → (D).

Question 8

Civil Procedure — Rule 22 Interpleader / Diversity

A recently deceased grandmother left a $100,000 life insurance policy that named her beneficiary as "my favorite grandchild." Her three grandchildren all claimed to be the favorite and the rightful beneficiary of the insurance proceeds. The insurance company filed an interpleader action under Rule 22 of the Federal Rules of Civil Procedure and interpleaded the three grandchildren. The insurance company is incorporated in State A and has its principal place of business in State B. The three grandchildren live in different states: State B, State C, and State D. The State B grandchild moves to dismiss the case for lack of subject matter jurisdiction. Should the court grant the State B grandchild's motion?

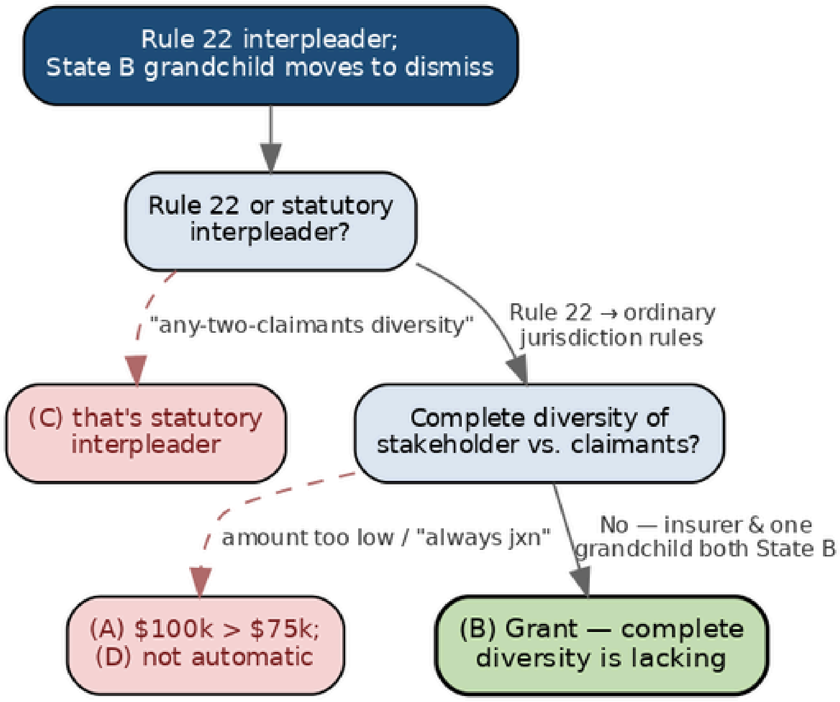
(A) Yes, because the amount in controversy requirement is not met.
(B) Yes, because diversity jurisdiction requires complete diversity between the plaintiff stakeholder and the claimants.
(C) No, because in interpleader actions diversity between any two competing claimants is sufficient for diversity jurisdiction.
(D) No, because federal courts always have subject matter jurisdiction over interpleader actions.

> **Correct answer (B).** The court should grant the motion; Rule 22 interpleader requires complete diversity between the stakeholder and the claimants, which is missing.

Rule. Rule 22 (rule) interpleader uses the ordinary jurisdictional rules: complete diversity between the plaintiff-stakeholder and the claimants, plus over $75,000. Statutory interpleader (the Federal Interpleader Act) relaxes this to minimal diversity between claimants and $500 — but that's a different vehicle.

Application. The insurer (State A / principal place of business State B) and one grandchild are both citizens of State B, so complete diversity fails under Rule 22. The court must dismiss — (B).

Why the other choices fail. (A) the $100,000 policy exceeds $75,000, so amount in controversy is met. (C) minimal diversity between claimants is the statutory-interpleader standard, not Rule 22. (D) interpleader jurisdiction is not automatic; the normal requirements must be satisfied.



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder, Impleader & Class Actions (Interpleader — Rule 22 vs. statutory).

Playbook: Civil Procedure playbook, JOINDER (Interpleader — Rule 22 needs complete diversity + $75k).

How it lands: §5: Rule 22 interpleader uses ordinary jurisdiction rules; insurer and one grandchild share State B, so complete diversity fails → (B).

Question 9

Evidence — Vicarious Admission / Agent Statement

The plaintiff was injured when her car was hit head-on by a pickup truck belonging to a landscaping company. The plaintiff brought an action against the truck driver and the landscaping company, alleging negligence by the truck driver in driving too fast. Counsel for the plaintiff seeks to introduce the statement of a former employee of the landscaping company, who said to the truck driver just before the accident, "You had better slow down. You've been warned by the boss many times not to go this fast." The judge should rule the statement admissible only if:

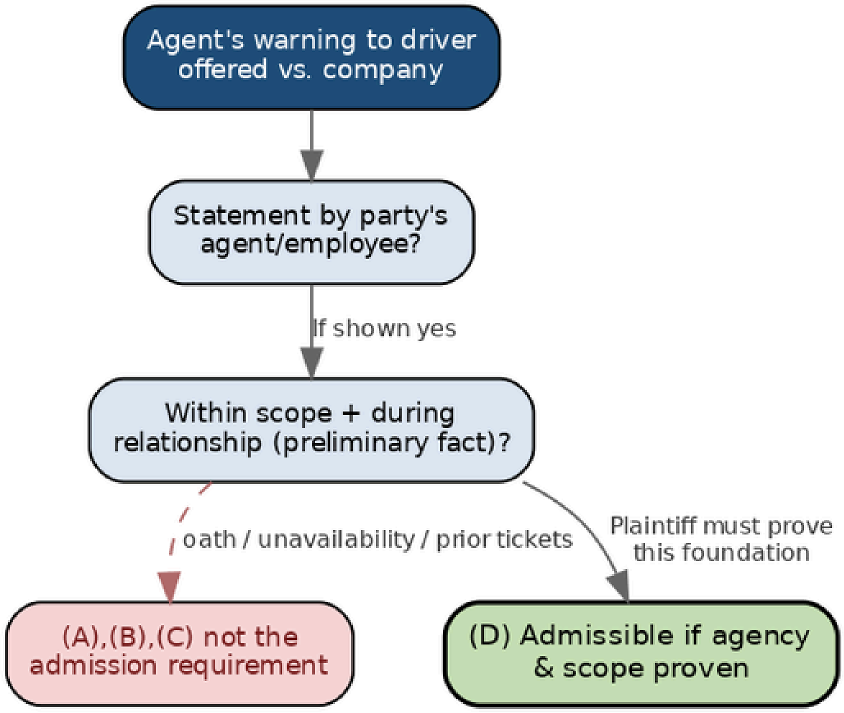
(A) The statement was made immediately after the accident, and was made under oath.
(B) The former employee is unavailable to testify to the matters in the statement.
(C) Plaintiff's attorney produces a record of three citations that the truck driver received in the last year for speeding, driving the same truck.
(D) Plaintiff's attorney first proves as a preliminary question of fact that during the trip the former employee was an agent of the landscaping company and that the statement concerned the scope of his employment.

> **Correct answer (D).** The statement is admissible only if the plaintiff first shows the declarant was an agent of the company speaking within the scope of the agency during the relationship.

Rule. Under FRE 801(d)(2)(D), a statement by a party's agent or employee concerning a matter within the scope of the relationship, made while it existed, is a vicarious admission — nonhearsay, offered against the principal. The court decides the preliminary agency facts.

Application. The former employee's warning to the driver comes in against the company only if the plaintiff establishes that, at the time, he was an agent and the statement concerned his employment — the (D) foundation.

Why the other choices fail. (A) neither an oath nor contemporaneity is required for a party-opponent admission. (B) availability is irrelevant to admissions. (C) the driver's prior speeding citations are separate character/impeachment matters and are not the condition for admitting this statement.



Decision path

Attack Sequence: Evidence attack sequence, §3 Statements Defined as Non-Hearsay, step 6 (vicarious admission — agent within scope).

Playbook: Evidence playbook, EXEMPTIONS (Vicarious admission — agent, scope, during relationship).

How it lands: §3 step 6: an agent's statement within scope is a vicarious admission, but only once the agency/ scope foundation is proven → (D).

Question 10

Criminal Law — Homicide / Proximate Cause

An architect, who had been a lawyer's roommate and lover for several years, decided to leave the lawyer and move in with a doctor. On the day that the architect was to move into the doctor's condominium, the lawyer shot the architect in the neck, intending to kill him. The architect was not severely wounded, but he was hospitalized for several days. During his stay at the hospital, it was discovered that the architect had developed a form of cancer that was invariably fatal. Three weeks after being shot, the architect died of pneumonia caused by an infection resulting from the bullet wound in his neck. The doctor had been killed when his condo burned down as he slept. The fire occurred two days after the lawyer shot the architect. Is the lawyer guilty of a criminal homicide?

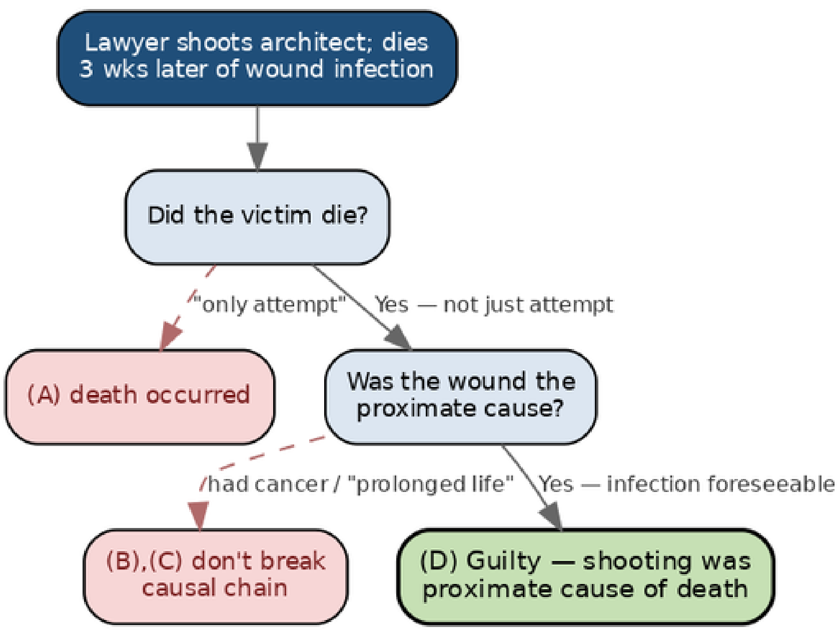
(A) No, because his actions merely constituted attempt.
(B) No, because the architect was already suffering from an incurable disease.
(C) No, because the lawyer actually prolonged the architect's life because he prevented his probable death in the fire that destroyed the doctor's condo.
(D) Yes, because the lawyer's act was the proximate cause of the architect's death.

> **Correct answer (D).** The lawyer is guilty of criminal homicide because his shooting was the proximate cause of the architect's death.

Rule. A defendant is criminally responsible for a death that is the natural and foreseeable result of his act. Infection and negligent or complicating medical outcomes are treated as foreseeable in homicide law; a pre-existing fatal condition does not break the causal chain if the wound is an actual and proximate cause of death.

Application. The lawyer shot to kill; the architect died of pneumonia from an infection caused by the bullet wound. The wound was the proximate cause, so it is homicide — (D).

Why the other choices fail. (A) the victim died, so this is not mere attempt. (B) the pre-existing cancer does not negate causation. (C) that the shooting may have coincidentally spared him a different death is irrelevant to proximate cause.



Decision path

Attack Sequence: Crim attack sequence, §1 Homicide, step 4 (causation — proximate cause; foreseeable intervening medical results).

Playbook: Crim playbook, HOMICIDE (Causation — foreseeable medical complications).

How it lands: §1 step 4: infection from the wound is a foreseeable result, so the shooting is the proximate cause of death → (D).

Question 11

Contracts (UCC) — Risk of Loss / Merchant Seller

A young woman went to her local shoe shop and selected a pair of shoes. She gave the salesperson cash for the shoes. As the salesperson was putting the shoes into a bag, a robber brandishing a gun entered the store, forced the salesperson to put all of the money in the register into the bag with the shoes, and fled with the bag, the money, and the shoes. After the police had come, the young woman asked the salesperson to get her another pair of shoes. He told the young woman that she would have to pay for them again. The young woman refused. If the young woman sues the shoe shop for another pair of shoes, who will prevail?

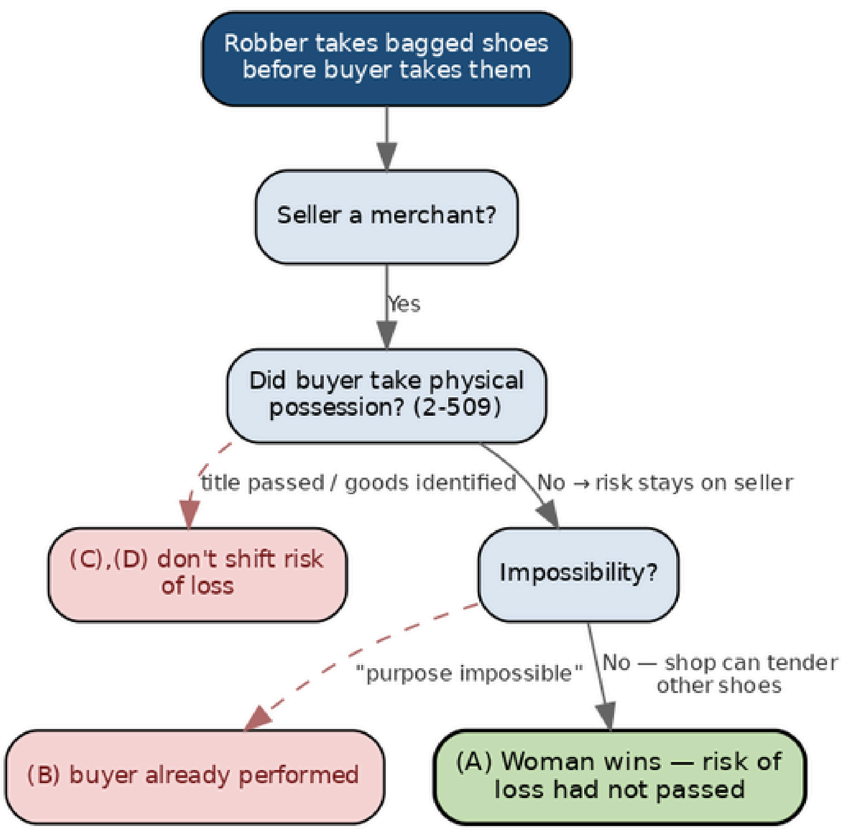
(A) The young woman, because she did not yet have possession of the shoes.
(B) The young woman, because the purpose of the contract had been made impossible by an unforeseen event.
(C) The shoe shop, because title to the shoes had already passed to the young woman.
(D) The shoe shop, because the contract goods had already been identified.

> **Correct answer (A).** The young woman prevails because risk of loss had not passed to her.

Rule. Under UCC 2-509, absent breach or agreement, when the seller is a merchant risk of loss passes to the buyer only on the buyer's physical receipt of the goods. Passage of title and identification of the goods do not, by themselves, shift risk of loss.

Application. The merchant shoe shop still had the shoes in a bag when the robber took them; the buyer never took possession. Risk of loss stayed on the shop, so it must provide another pair or refund — (A).

Why the other choices fail. (B) impossibility fails — the buyer already performed and the shop can tender other shoes. (C) title passing does not shift risk of loss for a merchant seller. (D) identification of the goods gives the buyer some rights but does not shift risk of loss.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance & Risk (UCC risk of loss — merchant seller; no breach).

Playbook: Contracts playbook, RISK OF LOSS (UCC 2-509: merchant → on buyer's receipt).

How it lands: §5: with a merchant seller and no breach, risk of loss passes only on the buyer's physical receipt; she never received the shoes → (A).

Question 12

Contracts (UCC) — Implied Warranties / Buyer's Own Selection

A woman went to her local department store and told the salesperson that she wanted a coat that was extremely warm. The salesperson went into his stockroom and brought out four different styles of very warm coats. The woman tried on each of the four but did not like the way any of them looked. While walking around the store, however, the young woman saw a coat she did like and told the salesperson to bring one in her size. The salesperson brought her the coat and he said that it was made of the finest cashmere and would probably last for years. The young woman tried on the coat and told the salesperson that she would take it and paid him. After wearing the coat twice, however, she decided it was not warm enough for her climate. She took the coat back to the department store and demanded her money back. The store refused. If the woman sues to get her money back, under which theory would she most likely prevail?

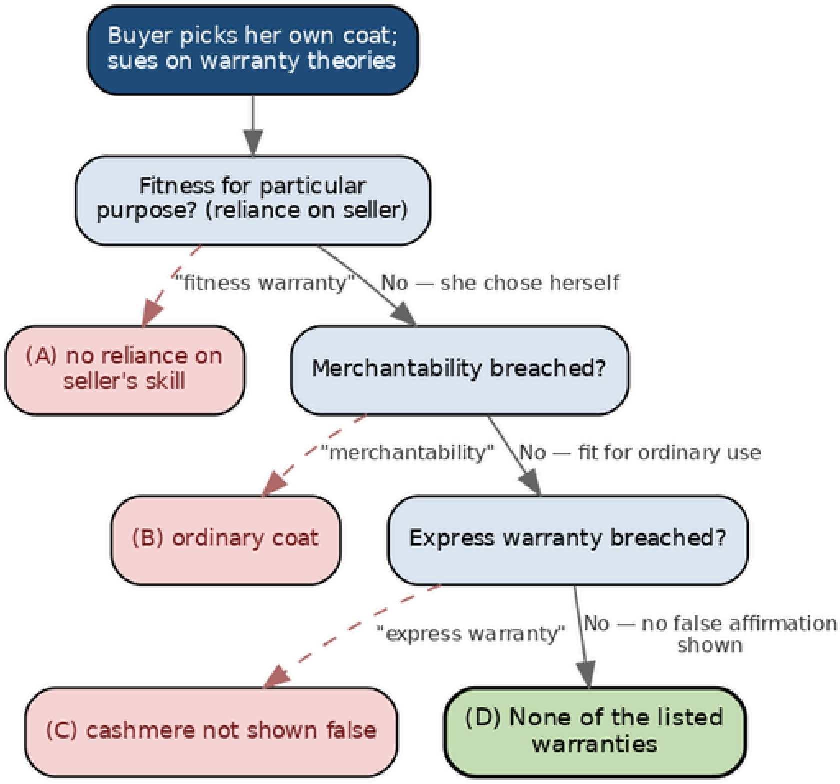
(A) Breach of the implied warranty of fitness for particular purpose.
(B) Breach of the implied warranty of merchantability.
(C) Breach of express warranty.
(D) None of the listed warranties.

> **Correct answer (D).** None of the listed warranty theories succeeds.

Rule. An implied warranty of fitness for a particular purpose arises only when the buyer relies on the seller to select suitable goods and the seller has reason to know of that reliance. The implied warranty of merchantability (goods fit for ordinary purposes) arises in every merchant sale. An express warranty arises from an affirmation of fact or promise about the goods.

Application. The woman declined the seller's suggestions and picked the coat herself, so no fitness-for-particular-purpose warranty arose. The coat was fit for ordinary use, so merchantability wasn't breached, and nothing shows the cashmere/express statements were false. No theory works — (D).

Why the other choices fail. (A) fails because she did not rely on the seller's selection. (B) fails because the coat was merchantable (an ordinary coat). (C) fails because no express affirmation is shown to be untrue. Hence (D).



Decision path

Attack Sequence: Contracts attack sequence, §6 Warranties, steps 2–3 (implied warranty of fitness needs reliance on seller; merchantability).

Playbook: Contracts playbook, WARRANTIES (Fitness for particular purpose; merchantability; express).

How it lands: §6: fitness needs reliance on the seller's selection — she chose her own coat; merchantability wasn't broken; no false express affirmation → (D).

Question 13

Contracts (UCC) — Express Warranty & Merchantability

A man went to his local sporting goods store and told the salesperson that he wanted a tennis racket that was very high-end. The salesperson showed him a racket that he said was made of the finest titanium and would probably last for years. The man bought the racket and left the store. After playing with the racket for three days, it suddenly snapped in two when he hit a hard shot. He showed it to the tennis pro at his club, who informed him that the racket was painted plastic. If the man sues the sporting goods store for a refund, under which theory would he most likely prevail?

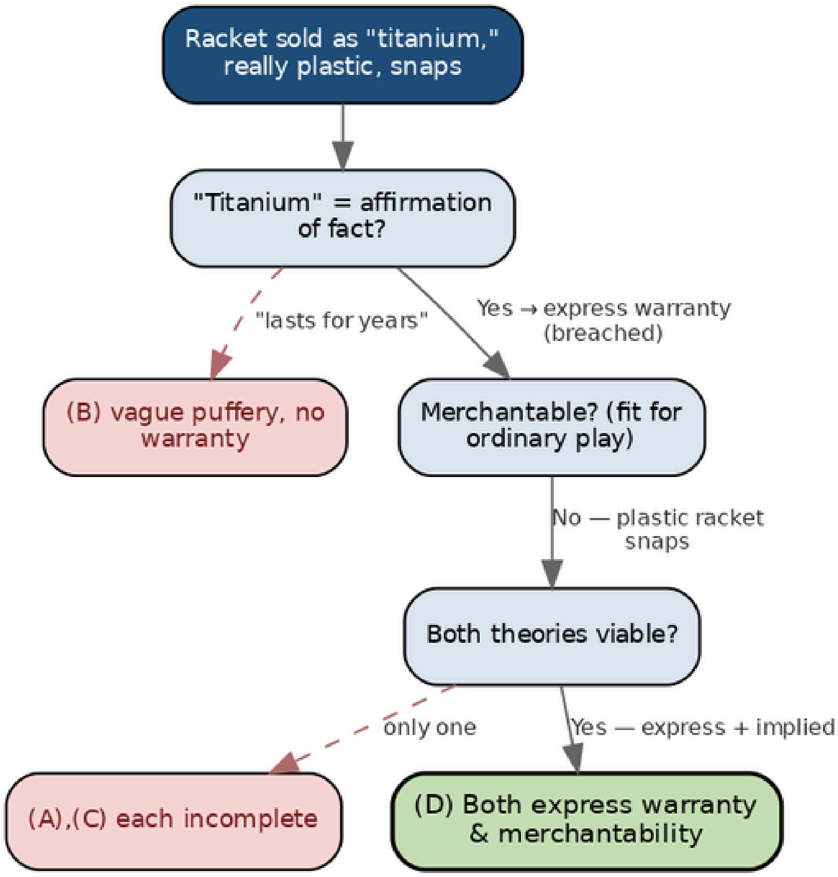
(A) Breach of an express warranty that the racket was titanium.
(B) Breach of an express warranty that the racket would last for years.
(C) Breach of the implied warranty of merchantability.
(D) Breach of both an express warranty that the racket was titanium and the implied warranty of merchantability.

> **Correct answer (D).** The man may prevail on both an express warranty (that the racket was titanium) and the implied warranty of merchantability.

Rule. An express warranty arises from an affirmation of fact about the goods (e.g., 'made of titanium'), but not from mere puffery or vague predictions (e.g., 'will last for years'). The implied warranty of merchantability requires goods fit for ordinary purposes; a racket that snaps because it is really painted plastic is not merchantable.

Application. 'Titanium' is a factual affirmation — an express warranty, breached because it was plastic. The racket also wasn't fit for ordinary play. Both theories are viable, so (D).

Why the other choices fail. (A) is correct but incomplete. (B) 'last for years' is vague puffery, not an express warranty. (C) is correct but incomplete. Because both (A) and (C) work, (D) captures it.



Decision path

Attack Sequence: Contracts attack sequence, §6 Warranties, steps 1–2 (express warranty from affirmation of fact vs. puffery; merchantability).

Playbook: Contracts playbook, WARRANTIES (Express — affirmation of fact, not puffery; merchantability).

How it lands: §6: "titanium" is a factual affirmation (express warranty, breached); "last for years" is puffery; a plastic racket isn't merchantable → both, (D).

Question 14

Contracts (UCC) — Acceptance & Right to Reject

A customer selected a new wallet at a local department store that the salesperson said was made of the finest calfskin and was stitched by hand. The customer bought the wallet and left the store. A few moments later, he took out the wallet to transfer his cash and credit cards into it. On close inspection, he noticed a small nick in the leather. He immediately went back to the department store and demanded a refund. The salesperson refused. If the customer sues for a refund, who will prevail?

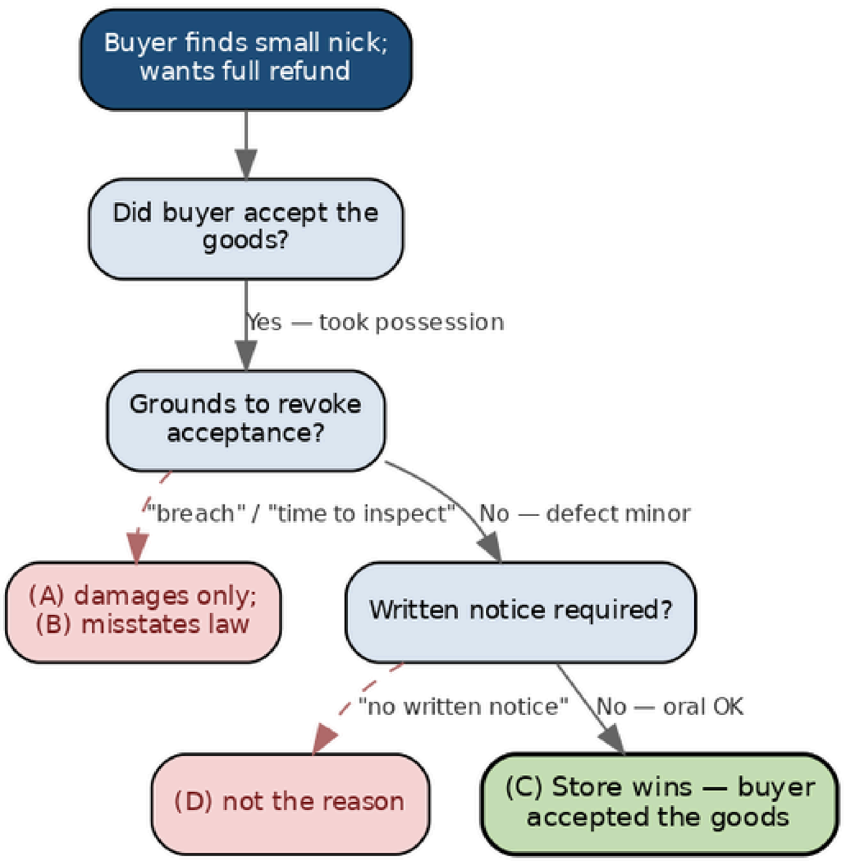
(A) The customer, because there was a breach of contract.
(B) The customer, because he had a reasonable time after purchase in which to inspect.
(C) The department store, because the customer accepted the goods.
(D) The department store, because the customer did not give written notice of the breach.

> **Correct answer (C).** The department store prevails because the customer accepted the goods.

Rule. Under the UCC, once a buyer accepts goods (usually by taking possession after a chance to inspect), the right to reject for nonconformity generally lapses; the remedy is damages, not a refund. Revocation of acceptance requires a substantial impairment and a legitimate reason for the initial acceptance.

Application. The customer took the wallet, then found a minor nick. Having accepted, and with only a trivial defect, he cannot revoke for a full refund — the store prevails, (C).

Why the other choices fail. (A) a breach at most entitles him to damages, not a refund. (B) misstates the law on these facts — acceptance already occurred. (D) written notice is not required; oral notice suffices, so that's not the reason the store wins.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance & Remedies (acceptance; revocation of acceptance).

Playbook: Contracts playbook, PERFORMANCE (Acceptance cuts off rejection; revocation needs substantial impairment).

How it lands: §5: once accepted, rejection lapses and a minor nick doesn't justify revocation; remedy is damages, not refund → store wins, (C).

Question 15

Civil Procedure — Joinder of Claims (Rule 18)

A landowner rode with a contractor to the office of the contractor's attorney. On the way, they were in an accident. At the scene of the accident, the landowner did not think he was seriously injured. The landowner and contractor thus proceeded to the office of the contractor's attorney. At the attorney's office, the landowner and contractor signed a contract under which the contractor agreed to build a house for the landowner for a specified sum of money. The landowner later developed back problems that apparently were caused by the automobile accident. In addition, the contractor never completed the landowner's house. The landowner intends to file two claims against the contractor in federal district court. First, he intends to file a negligence action to recover damages for the injuries allegedly caused by the contractor's negligently causing the automobile accident. Second, he intends to file a contract action for the contractor's failure to complete his house. Assuming that the federal court has jurisdiction over both claims, which of the following statements is correct regarding joining these two claims in one action?

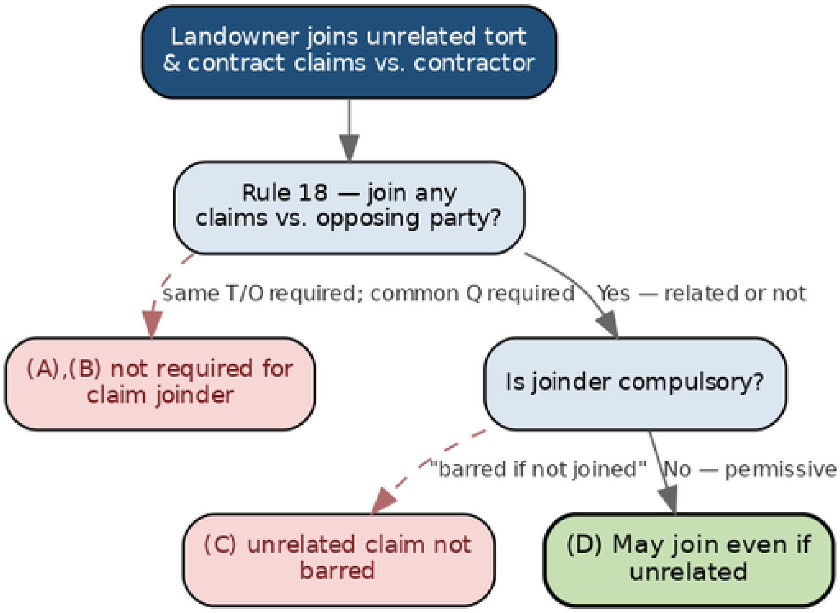
(A) The landowner may join these two claims only if the court finds that they arose from the same transaction or occurrence.
(B) The landowner may not join these two claims because they have no common question of law or fact.
(C) If the landowner asserts one of these claims without joining the other, he will be barred from later asserting the other claim in a separate action.
(D) The landowner may join the claims even if they did not arise from the same transaction or occurrence.

> **Correct answer (D).** The landowner may join both claims even though they arise from unrelated transactions.

Rule. FRCP 18(a) lets a party asserting a claim join as many claims as it has against an opposing party, whether or not related. Joinder of claims is permissive, not compulsory; unrelated claims are fine as long as jurisdiction exists over each.

Application. The tort (car accident) and contract (unbuilt house) claims are unrelated, but Rule 18 still permits joining them against the same defendant — (D).

Why the other choices fail. (A) same-transaction is not required for claim joinder. (B) a common question is not required either. (C) claim joinder is permissive; failing to join an unrelated claim does not bar it (res judicata would only bar a same-transaction claim).



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder, step 1 (claim joinder — Rule 18, any claims vs. an opposing party).

Playbook: Civil Procedure playbook, JOINDER (Rule 18 — permissive joinder of claims).

How it lands: §5 step 1: Rule 18 lets a plaintiff join any claims, related or not, against one defendant, and joinder is permissive → (D).

Question 16

Real Property — Sufficiency of Deed Description

A man gave a friend a deed purporting to give to the friend "My property known as Twelve Oaks, with its five acres of land and the stable and dressage course located thereon." The man told the friend that he was giving the property to her, but because he did not have a better description, he wanted to keep the deed until his attorney could review it. The friend agreed and gave it back to him. Unfortunately, the man suffered a heart attack the next day and died without seeing his attorney. However, when the friend spoke with the administrator of the man's estate, she learned that the man had, as part of another deed 12 years before, sold that part of Twelve Oaks on which was located the stable and dressage course. The man's heirs bring an action for declaratory relief against the friend, asserting that the deed to Twelve Oaks is void because it contained an inaccurate and ambiguous description. A trial court would enter judgment:

(A) Against the friend, because the deed failed to give an accurate description of the property owned by the man at the time of his death.
(B) Against the friend, because the man informed the friend that he did not know the description of his property and he wanted his attorney to prepare the deed.
(C) Against the friend, because the deed purports to transfer more property than the man owned and thus is void as a matter of law.
(D) For the friend, because the error in description was not sufficient to put in doubt what the man intended to convey to her.

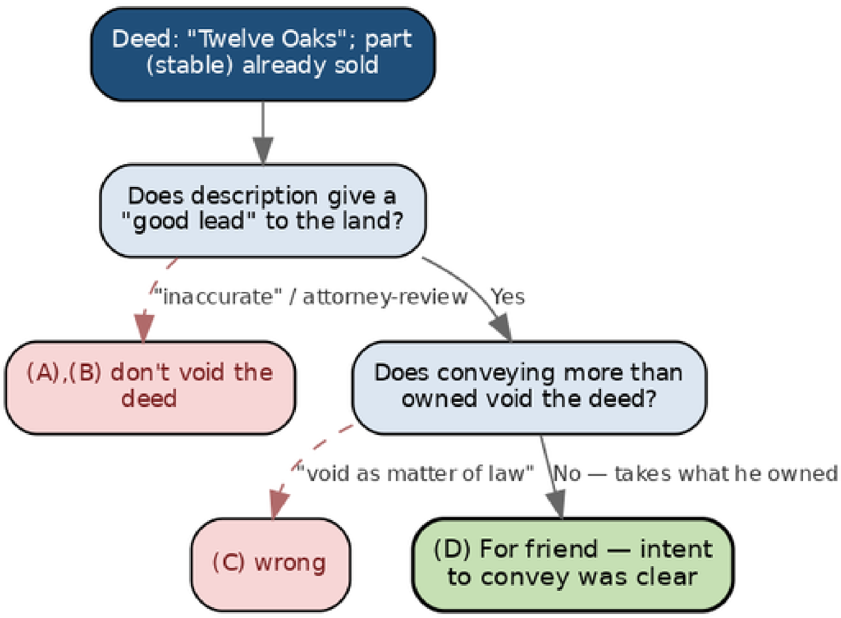
> **Correct answer (D).** Judgment for the friend, because the description error did not put in doubt

> what the man intended to convey.

Rule. A deed's description is sufficient if it furnishes a 'good lead' to the identity of the property. Minor inaccuracies, or a description purporting to convey more than the grantor owns, do not void the deed; the grantee simply takes what the grantor actually owned.

Application. 'Twelve Oaks, five acres, with the stable and dressage course' clearly identifies the property, even though the stable parcel had been sold. The deed is valid as to what the man still owned, so the friend wins — (D).

Why the other choices fail. (A) a good lead suffices; perfect accuracy isn't required. (B) the man's wish to have his attorney review it doesn't invalidate the delivered deed's description. (C) describing more land than owned does not void the deed.



Decision path

Attack Sequence: Real Property attack sequence, §6 Conveyancing, Deeds & Recording, step 1 (deed formalities — sufficiency of description).

Playbook: Real Property playbook, DEEDS & RECORDING (Description — "good lead" suffices).

How it lands: §6 step 1: a description that furnishes a good lead is sufficient, and conveying more than owned doesn't void the deed → (D).

Question 17

Real Property — Void Deed for Vague Description

The owner of a parcel of land gave his sister a deed to the land that said, "I convey to you six acres of my developed land located at 123 Maple Street, Riverton, Delaware County." The land at 123 Maple Street consisted of 22 acres. The original owner then died. His will devised all of his real property to his children. If, in a suit for declaratory relief, the original owner's children attempt to void the deed to the Maple Street property, the sister will:

(A) Prevail, because the original owner intended for his sister to choose the appropriate acreage, and she can therefore select the six acres that satisfy her needs.
(B) Prevail, because the deed clearly states what property the original owner intended to grant to his

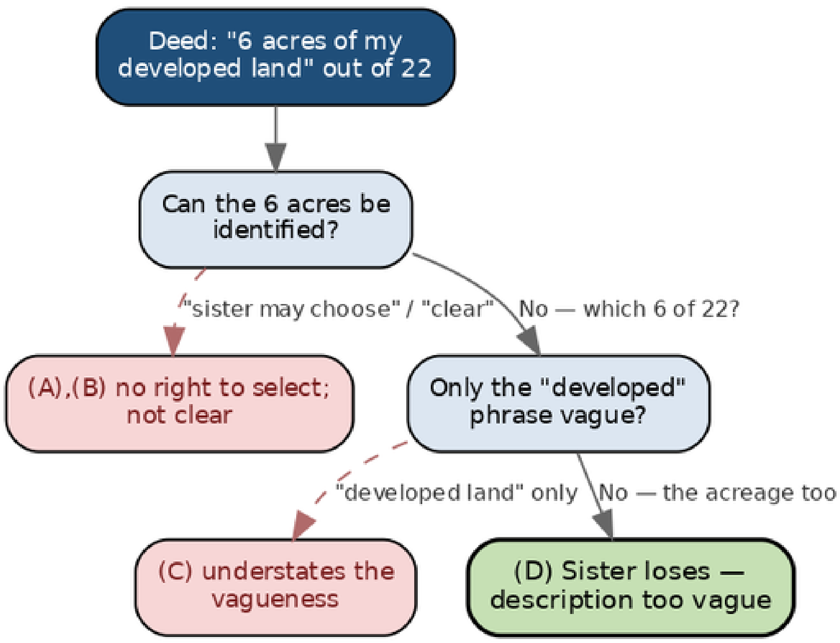
sister.
(C) Not prevail, because the phrase "developed land" is too uncertain.
(D) Not prevail, because the description is too vague.

> **Correct answer (D).** The sister will not prevail because the description is too vague.

Rule. A deed is void if its description is so uncertain that the land cannot be identified. 'Six acres of my developed land' out of a 22-acre parcel gives no way to locate which six acres, and no term lets the grantee choose. Vagueness that prevents identification defeats the conveyance.

Application. There is no way to tell which six acres of the 22 were meant, and nothing authorizes the sister to select. The description fails, so she loses — (D).

Why the other choices fail. (A) nothing in the deed gives the sister a right to choose the acreage. (B) the deed does not clearly identify the property. (C) 'developed land' is vague, but the deeper problem is which six acres — (D) captures the overall vagueness.



Decision path

Attack Sequence: Real Property attack sequence, §6 Conveyancing, Deeds & Recording, step 1 (description too vague → void).

Playbook: Real Property playbook, DEEDS & RECORDING (Description; void for uncertainty).

How it lands: §6 step 1: "six acres of my developed land" out of 22 can't be located and gives no right to select, so the description fails → (D).

Question 18

Civil Procedure — Removal / Timeliness of Remand

A State A citizen and a State B citizen were in a car accident in State A. The State A citizen filed a negligence action in a State A state court seeking $200,000 in damages. The State B citizen filed an answer and four months later filed a notice of removal, removing the action to federal court. Two months after the State B citizen filed and served the notice of removal, the State A citizen filed in the federal court a motion to remand the case back to state court. Should the federal court remand the action to state court?

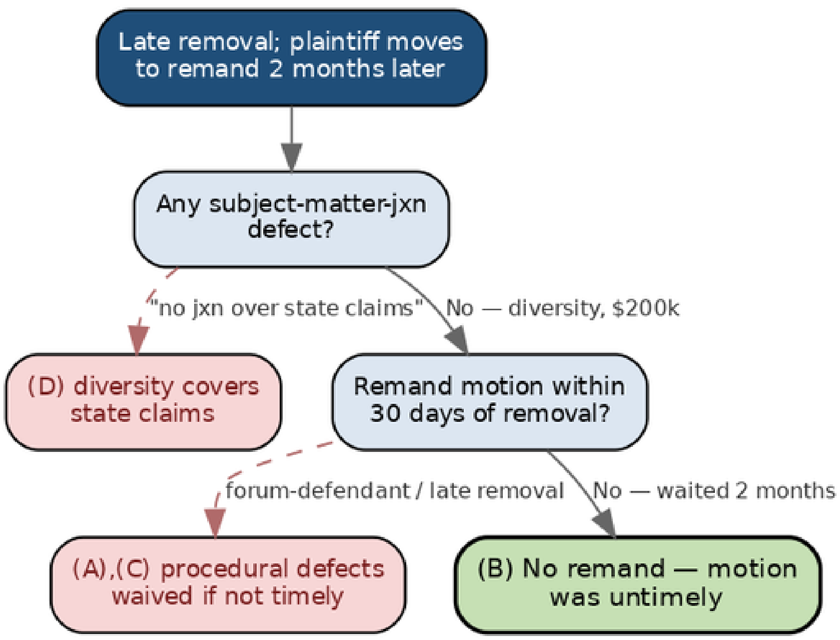
(A) No, because the State B citizen was not a citizen of the forum state.
(B) No, because the motion to remand the action to state court was untimely.
(C) Yes, because the notice of removal was untimely.
(D) Yes, because federal courts do not have subject matter jurisdiction over state law negligence actions.

> **Correct answer (B).** The court should not remand; the plaintiff's motion to remand was itself untimely.

Rule. A defendant must file a notice of removal within 30 days of service of the initial pleading, and (in diversity cases) may not remove if he is a citizen of the forum state. A motion to remand based on a procedural defect (like untimely removal) must be filed within 30 days of removal; only a lack of subject-matter jurisdiction can be raised any time. Failure to timely object to a procedural defect waives it.

Application. Diversity jurisdiction exists (State A vs. State B, $200,000), so there's no SMJ defect. The removal was late, but the plaintiff waited two months to move to remand — past the 30-day window. The procedural defect is waived, so no remand — (B).

Why the other choices fail. (A) the forum-defendant issue is a procedural defect that also had to be raised within 30 days. (C) the untimely removal is a waivable procedural defect, and it wasn't timely challenged. (D) diversity gives federal courts jurisdiction over state-law claims.



Decision path

Attack Sequence: Civil Procedure attack sequence, §2 Supplemental Jurisdiction & Removal, step 4 (removal + timely remand for procedural defects).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Removal; 30-day remand for defects).

How it lands: §2 step 4: a procedural removal defect must be challenged within 30 days; the plaintiff waited two months, so no remand → (B).

Question 19

Real Property — Covenant Against Encumbrances

An owner of land gave his friend a deed for a specified parcel of property. After the owner's death, the friend discovered that the owner had sold part of the property. The purchaser had been given an easement to cross over the owner's property to get to the property she had purchased, although there is no evidence that the purchaser had ever used the "right of way." If the purchaser does have the right of way over the property the owner gave to his friend, the owner's estate would be liable for breach of the covenant:

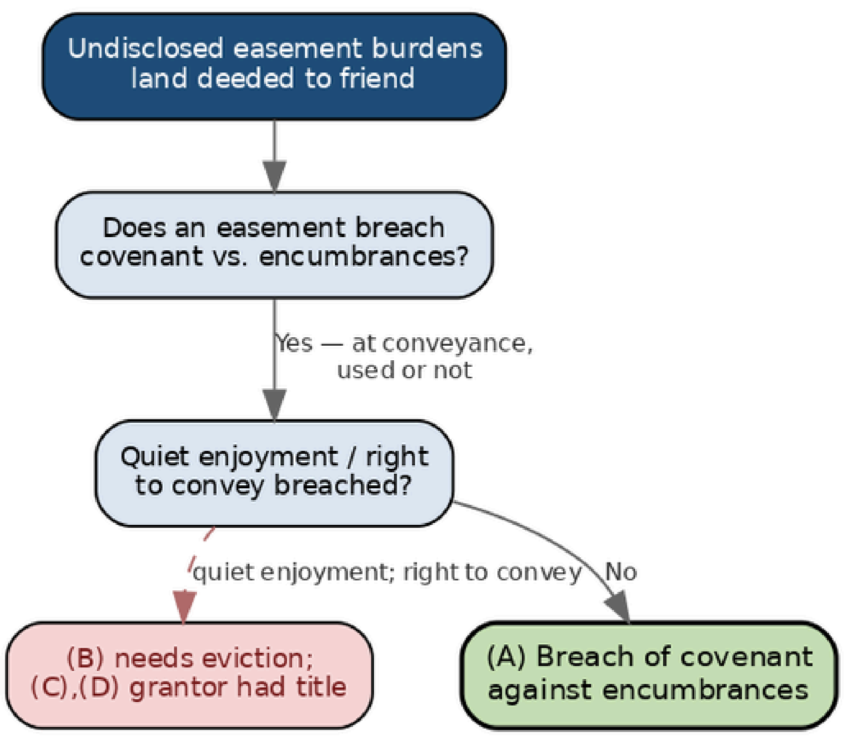
(A) Against encumbrances.
(B) Of quiet enjoyment, if such a right of way exists whether or not the purchaser is using it.
(C) Of right to convey, because the owner, by not mentioning the right of way in the friend's deed, implied that there were no easements.
(D) Of right to convey, because the existence of the right of way by the purchaser is inconsistent with the owner's alleged title.

> **Correct answer (A).** The owner's estate is liable for breach of the covenant against encumbrances.

Rule. In a general warranty deed, the covenant against encumbrances is breached at conveyance if an easement (or other encumbrance) burdens the land, whether or not it is being used. Quiet enjoyment is breached only by eviction under paramount title; right to convey is breached only if the grantor lacked title.

Application. The pre-existing right-of-way is an encumbrance on the land the owner deeded to his friend. Its mere existence breaches the covenant against encumbrances, so the estate is liable — (A).

Why the other choices fail. (B) quiet enjoyment requires an actual eviction by paramount title, not just an easement. (C) and (D) right to convey concerns the grantor's ownership; an easement burden doesn't mean he lacked title to convey.



Decision path

Attack Sequence: Real Property attack sequence, §6 Conveyancing, Deeds & Recording, step 3 (deed covenants — against encumbrances).

Playbook: Real Property playbook, DEEDS & RECORDING (Covenant against encumbrances).

How it lands: §6 step 3: an easement is an encumbrance, breaching the covenant against encumbrances at conveyance whether used or not → (A).

Question 20

Real Property — Right of First Refusal / Promissory Restraint

An owner of land gave his valet a deed which conveyed a specified piece of property. He then died. The owner's son introduces evidence that the owner had promised him in writing that, if he was ever going to get rid of that piece of property, the son would have the right to purchase it first. The trial court will:

(A) Void the deed to the valet.

(B) Require the valet to convey to the son if he tenders market price for the property.

(C) Do nothing to the valet's deed, but the son may have a cause of action against the owner's estate.

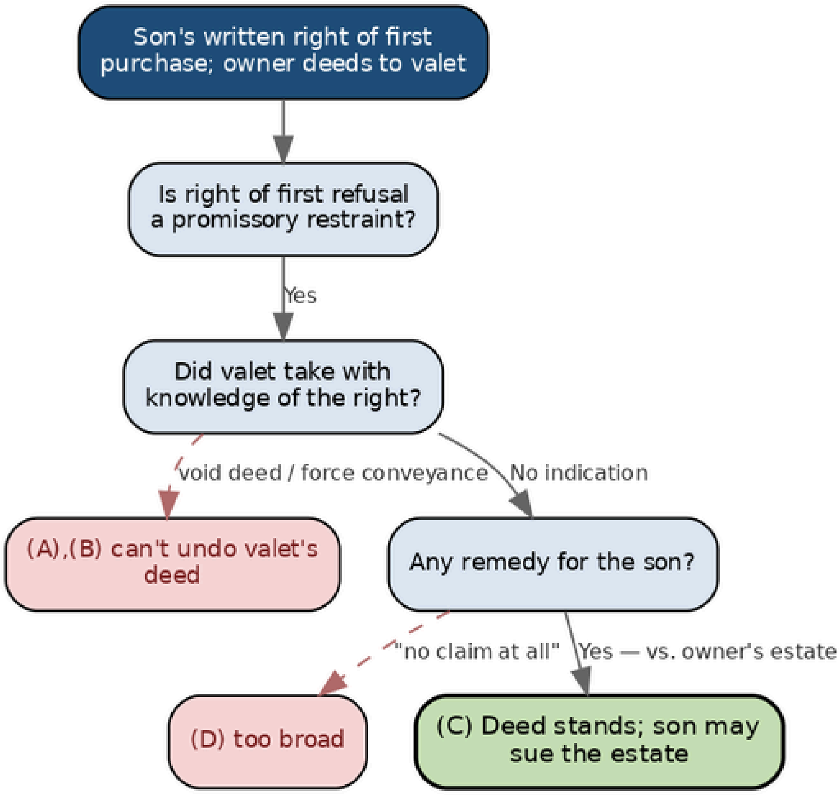
(D) Do nothing to the valet's deed, because the son has no claim against either the valet or the owner's estate.

> **Correct answer (C).** The court leaves the valet's deed alone, but the son may sue the owner's estate.

Rule. A right of first refusal ('right of first purchase') is a promissory restraint. If valid, its breach gives the promisee a personal cause of action against the promisor (or his estate) for damages, but it does not defeat a conveyance to a third party who took without knowledge of the right.

Application. The valet took the deed with no indication he knew of the son's right. So the son cannot undo the valet's deed but may pursue the owner's estate for breaching the promise — (C).

Why the other choices fail. (A) the deed is not void. (B) the son cannot force the valet to convey absent the valet's knowledge of the right. (D) the son does have a claim — against the estate — so this is too broad.



Decision path

Attack Sequence: Real Property attack sequence, §1 Estates & Restraints (right of first refusal as a promissory restraint).

Playbook: Real Property playbook, ESTATES / restraints on alienation (right of first refusal).

How it lands: §1: a right of first refusal is a promissory restraint — its breach gives a claim against the estate but doesn't void a deed to a taker without knowledge → (C).

Question 21

Evidence — State-of-Mind Exception (Future Intent)

A mechanic was tried for the aggravated assault of a nurse. The mechanic called a witness to the witness stand. The witness was to testify that the night before the alleged crime, the mechanic stated to the witness that he was going to visit his mother in a distant city some 1,000 miles away. The testimony is:

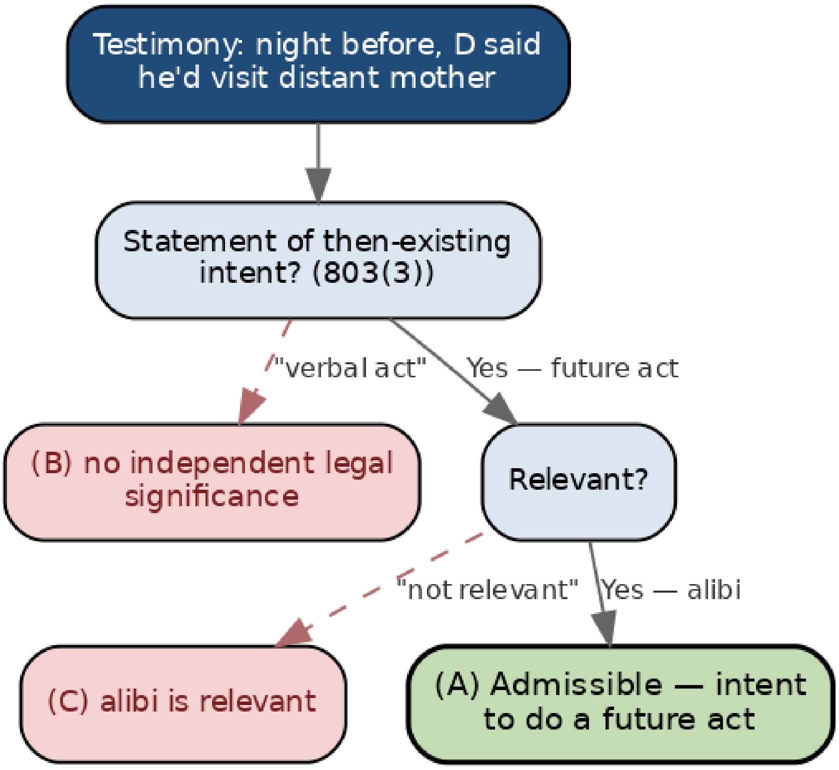
(A) Admissible, because it is a declaration of intent to do a future act.
(B) Admissible, because of the verbal acts exception.
(C) Inadmissible, because it is not relevant.
(D) Inadmissible, because it is hearsay not within any exception.

> **Correct answer (A).** The statement is admissible as a declaration of intent to do a future act.

Rule. Under FRE 803(3), a statement of the declarant's then-existing intent (a present state of mind) is admissible, including to show he later acted in accordance with that intent. Such statements are relevant when the future conduct is at issue (e.g., an alibi).

Application. The mechanic's statement that he was going to visit his distant mother shows his intent to make the trip, supporting an alibi. It fits the 803(3) exception, so it's admissible — (A).

Why the other choices fail. (B) a 'verbal act' is a statement with independent legal significance (like words of contract), which this is not. (C) the trip is relevant as an alibi. (D) it is hearsay but falls within the 803(3) exception, so not excluded.



Decision path

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

Playbook: Evidence playbook, EXCEPTIONS – AVAILABILITY IMMATERIAL (Then-existing intent, 803(3)).

How it lands: §4 step 2: a statement of present intent to do a future act (the trip) is admissible under 803(3), and it's relevant as an alibi → (A).

Question 22

Constitutional Law — Alienage / Government-Function Exception

A man was a permanent resident alien of the United States who was awaiting an opportunity to become a citizen. He filed an application to become an instructor in the local public high school but was denied the position solely on the ground that he was not a citizen. The man now brings suit, alleging that his status as a resident alien was not a proper ground for denying him a position as an instructor. May the state deny a permanent resident alien employment as an instructor in the public high school?

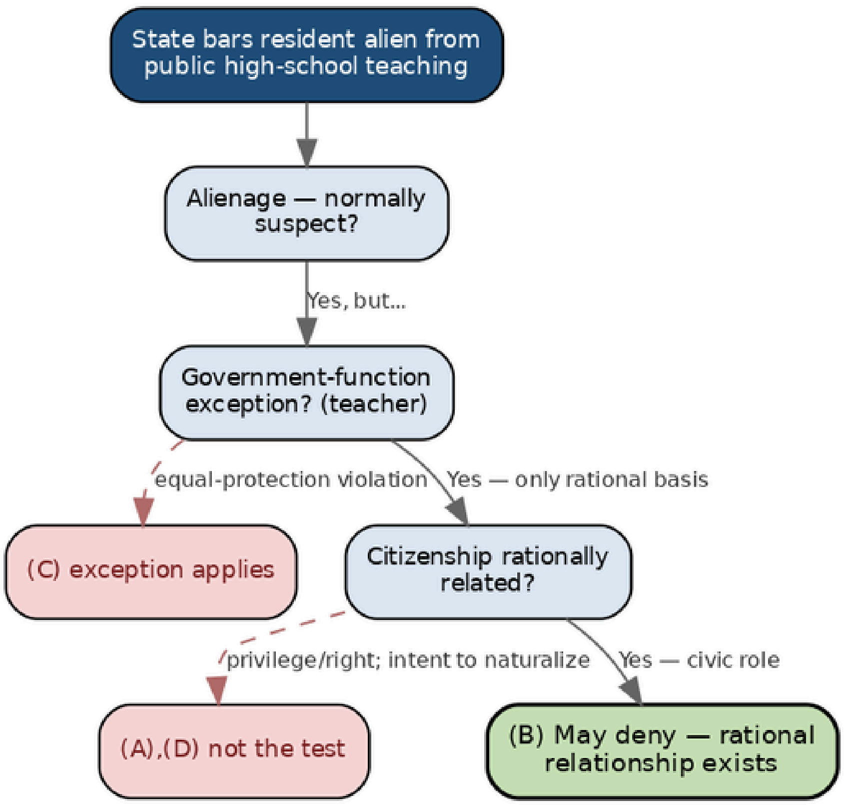
(A) Yes, because employment by the state is a privilege, not a right.
(B) Yes, because citizenship bears some rational relationship to the interest that is being protected.
(C) No, to do so would be a denial of equal protection.
(D) No, because the evidence presented was uncontroverted that he was awaiting the opportunity to become a citizen.

> **Correct answer (B).** The state may deny the position because citizenship is rationally related to the interest protected.

Rule. State discrimination against aliens is usually suspect (strict scrutiny), but a narrow exception applies to positions central to self-government and democratic values (police, jurors, teachers, probation officers). For those, only rational-basis review applies, and citizenship may be required. Public school teachers fall within this government-function exception (Ambach v. Norwick).

Application. A public high school teacher performs an important governmental function influencing students' civic attitudes, so requiring citizenship need only be rational — and it is. The state may deny the position — (B).

Why the other choices fail. (A) the privilege/right distinction is not the operative test. (C) equal protection is not violated because the government-function exception applies. (D) his intent to naturalize is irrelevant while he remains an alien.



Decision path

Attack Sequence: Con Law attack sequence, §5 Equal Protection, step 2 (alienage — suspect, but government-function exception → rational basis).

Playbook: Con Law playbook, EQUAL PROTECTION (Alienage; government-function exception).

How it lands: §5 step 2: public-school teaching triggers the government-function exception, so only rational basis applies and citizenship may be required → (B).

Question 23

Evidence — Relevance / Circumstantial Evidence

A bank was robbed by a man about 5'2" who was wearing a purple jumpsuit with a red hood and green gloves. The next day, the police received a tip from a neighbor of a man of that height who treated the entire apartment complex to breakfast and flashed a huge roll of bills. When questioned by police, the man explained that a friend had paid off an old debt that the man had long ago written off. Later that day, sanitation workers found a purple jumpsuit and green gloves in the apartment complex's dumpster and called the police. The police arrested the man and executed a search warrant for his apartment, which turned up nothing. At the man's trial for bank robbery, the prosecution seeks to introduce into evidence the clothing recovered from the dumpster. The clothing is:

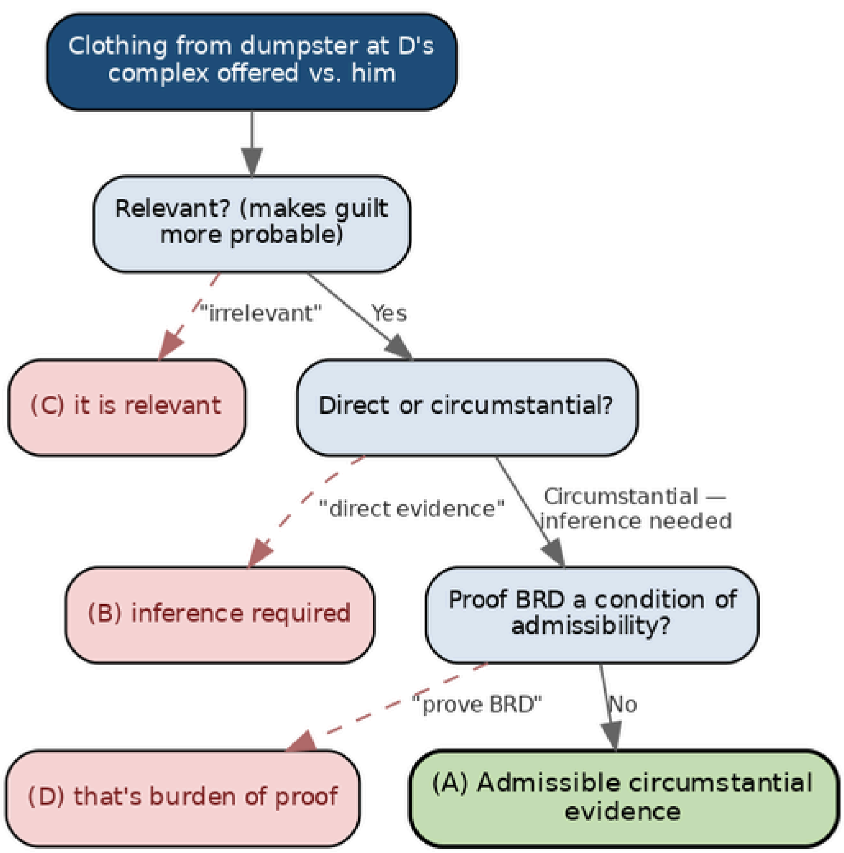
(A) Admissible, as circumstantial evidence that the man committed the robbery.
(B) Admissible, as direct evidence that the man committed the robbery.
(C) Inadmissible, because it is irrelevant.
(D) Inadmissible, unless the prosecution proves beyond a reasonable doubt that it is the same clothing the robber wore.

> **Correct answer (A).** The clothing is admissible as circumstantial evidence that the man committed the robbery.

Rule. Evidence is relevant if it has any tendency to make a fact of consequence more or less probable. Circumstantial evidence requires the factfinder to draw an inference; it is admissible on the same relevance standard as direct evidence. The strength of the inference goes to weight, not admissibility.

Application. Clothing matching the robber's, found in the dumpster at the man's complex, supports an inference that it was his and that he robbed the bank. That's relevant circumstantial evidence — (A).

Why the other choices fail. (B) it's circumstantial, not direct, because an inference is needed. (C) it is relevant — it makes his guilt more probable. (D) 'beyond a reasonable doubt' is the burden of proof at trial, not a condition of admissibility.



Decision path

Attack Sequence: Evidence attack sequence, §1 Relevance & special exclusions, step 1 (logical relevance; direct vs. circumstantial).

Playbook: Evidence playbook, RELEVANCE (Any tendency to prove; circumstantial evidence).

How it lands: §1 step 1: the matching clothing makes guilt more probable via an inference — relevant circumstantial evidence; BRD is the trial burden, not an admissibility test → (A).

Question 24

Criminal Law — Conspiracy / Intent (Mistake of Fact)

In a property settlement after a divorce, the wife was awarded all personal property that had been accumulated during the marriage, including the husband's classic 19-inch black-and-white TV set. In order to get his prized TV set back, the husband lied to his friend, telling him that the wife took the TV set in violation of the property settlement. The friend remembered that the wife gave the friend's wife a key to her new home, and he volunteered to go with the husband to get the TV back while the wife was at work. The husband and the friend went to the wife's house, but, unbeknownst to them, the wife had taken the day off work. After the friend noisily opened the back door with his wife's key, the wife called the police, who quickly arrived and arrested the husband and the friend. As to a charge of common law conspiracy to commit larceny, the friend should be found:

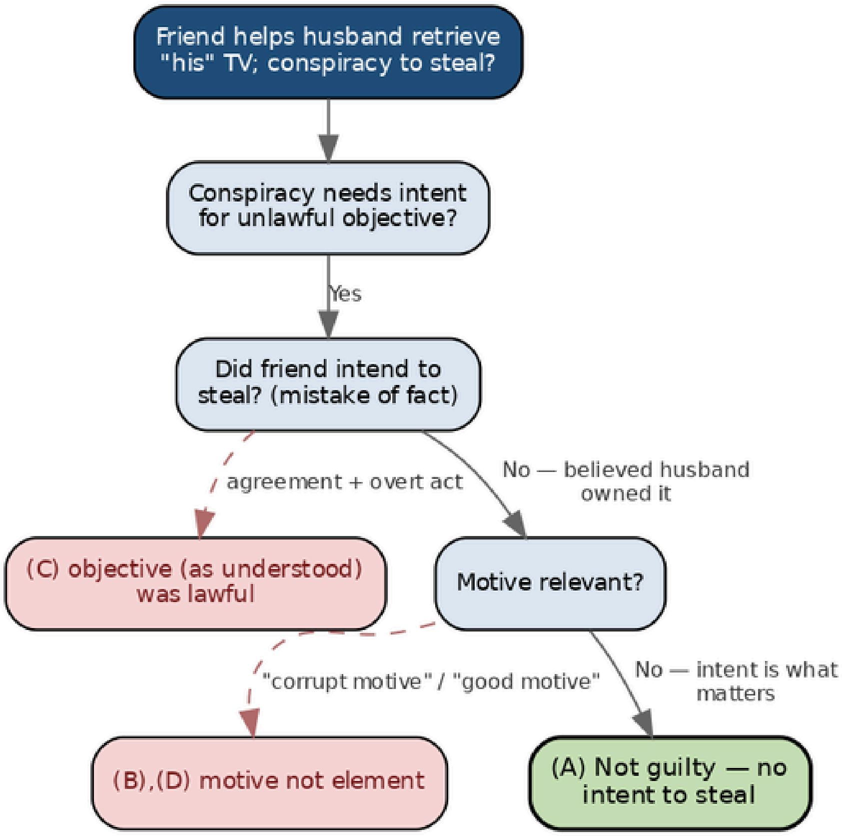
(A) Not guilty, because he did not intend to steal.
(B) Not guilty, because he did not have a corrupt motive.
(C) Guilty, because there was an agreement, and the opening of the locked door was sufficient for the overt act.
(D) Guilty, because good motives are not a defense to criminal liability.

> **Correct answer (A).** The friend is not guilty because he did not intend to steal.

Rule. Conspiracy requires an agreement plus the specific intent to achieve an unlawful objective. Larceny requires intent to permanently deprive another of property. A genuine mistake of fact about ownership negates the intent to steal, and thus the intent for a conspiracy to commit larceny.

Application. The friend believed the husband owned the TV, so he did not intend to steal or to agree to an unlawful objective. He lacks the intent for conspiracy to commit larceny — (A).

Why the other choices fail. (B) 'corrupt motive' is not an element of the crime. (C) an agreement to reach an unlawful objective is required, and here the objective (as the friend understood it) was lawful. (D) good motive is generally irrelevant, but the point here is the absent intent, so (A) is the reason.



Decision path

Attack Sequence: Crim attack sequence, §3 Inchoate Crimes, step 3 (Conspiracy — intent for the unlawful objective; mistake of fact).

Playbook: Crim playbook, INCHOATE & ACCOMPLICE (Conspiracy — specific intent) + DEFENSES (mistake of fact).

How it lands: §3 step 3: a mistake of fact about ownership negates the intent to steal, so there's no intent for conspiracy to commit larceny → (A).

Question 25

Constitutional Law — Establishment Clause / Aid to Schools

A state passed a statute that provided for direct reimbursement from public funds to nonpublic schools, including religious schools, of the cost of performing various testing services required of all schools by state law. The three state-prepared tests involved consisted of a student evaluation test, a comprehensive achievement test, and scholarship and college qualification tests. The law also provided for payment to the nonpublic schools for the grading of the tests, which are graded objectively. On review by the Supreme Court, the statute should be held:

(A) Constitutional, because objective grading standards are used and reimbursement covers only secular services.

(B) Constitutional, if the state interest is great enough to justify the burden on religion, and no alternative means are available.

(C) Unconstitutional, because direct payment to nonpublic schools is a violation of the Establishment Clause of the First Amendment.

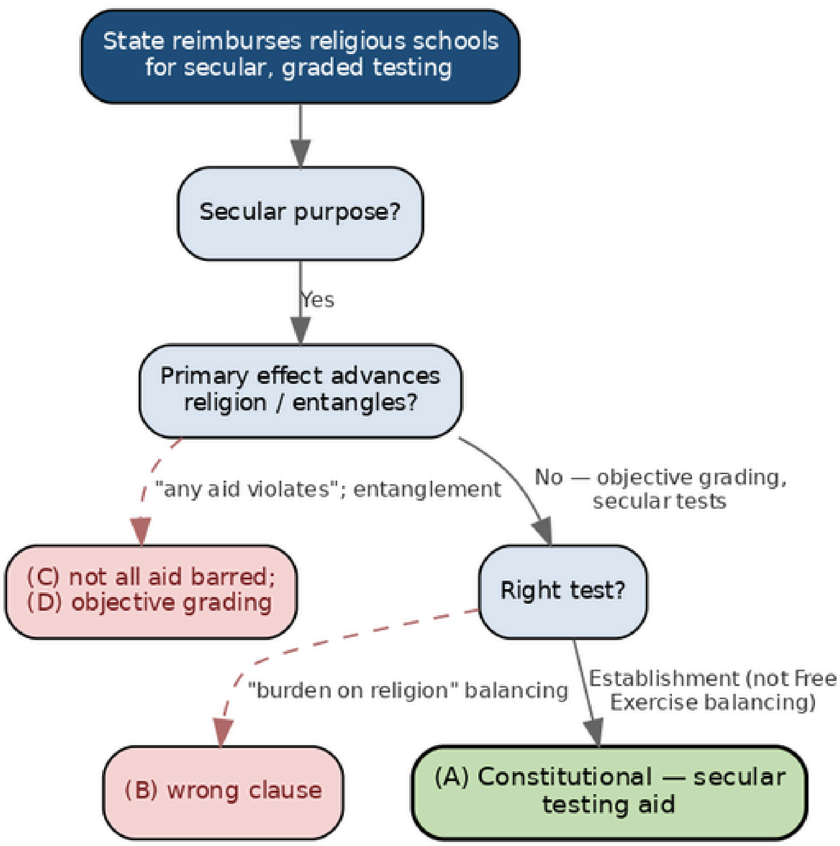
(D) Unconstitutional, because the statewide administration of the test for nonpublic as well as public schools entangles the state with religious schools.

> **Correct answer (A).** The statute is constitutional; reimbursement is for secular, objectively graded testing services.

Rule. Aid to religious schools survives Establishment Clause scrutiny when it has a secular purpose, does not have the primary effect of advancing religion, and does not foster excessive entanglement. Reimbursing the cost of state-required, objectively graded tests is secular and carries little risk of advancing religion.

Application. The state pays only for administering and objectively grading state-prepared secular tests. That aid is secular and safe, so the statute is constitutional — (A).

Why the other choices fail. (B) that balancing test is the Free Exercise formulation; this is an Establishment case. (C) not all aid to religious schools violates the clause. (D) objective grading avoids the entanglement problem, so (D)'s premise fails.



Decision path

Attack Sequence: Con Law attack sequence, §7 First Amendment: Religion, step 2 (Establishment — secular aid to religious schools).

Playbook: Con Law playbook, FIRST AMENDMENT – RELIGION (Establishment; aid to schools).

How it lands: §7 step 2: reimbursing secular, objectively graded testing has a secular purpose and no primary religious effect, so it's constitutional → (A).

Question 26

Criminal Law — Willful Possession / Ignorance of Law

A fashionista purchased a wardrobe closet at an antique auction. Three days later, while cleaning the inside of the closet, she discovered a small quantity of a white powder inside a box. She showed the box to her boyfriend, a paralegal. He identified the powder as driscamine, a controlled substance. He told her that it was illegal to buy driscamine, but because she did not know that it was in the closet when she purchased it, it was okay to keep it, which she did. A state statute prohibits "willful and unlawful possession of a controlled substance." If the fashionista is charged with violating this statute, she should be found:

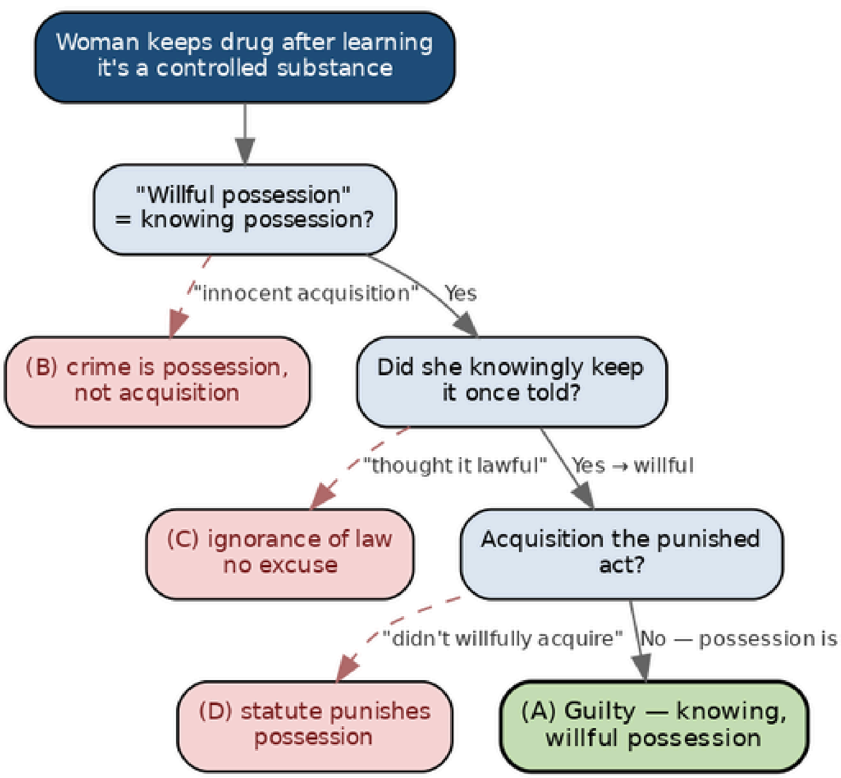
(A) Guilty, because she knowingly possessed the driscamine.
(B) Guilty, because she acquired the driscamine when she intentionally purchased the wardrobe closet and, in doing so, committed the requisite unlawful act.
(C) Not guilty, because she thought she was acting lawfully.
(D) Not guilty, because she did not willfully acquire the driscamine and, hence, committed no unlawful act.

> **Correct answer (A).** She is guilty, because once told, she knowingly and willfully possessed the controlled substance.

Rule. 'Willful possession' requires knowing possession. Ignorance of the law is generally no excuse and does not negate the mental state for a possession offense. Once a defendant knows she possesses the item and chooses to keep it, the willful-possession element is satisfied.

Application. After her boyfriend identified the driscamine, she knowingly kept it. That is willful possession, so she is guilty — (A).

Why the other choices fail. (B) the crime is willful possession, not the earlier innocent acquisition. (C) her belief that keeping it was lawful is ignorance of the law, which is no excuse. (D) the statute punishes willful possession, which she satisfied by keeping it knowingly.



Decision path

Attack Sequence: Crim attack sequence, §2 General Principles (mens rea — "willful" = knowing; ignorance of law no excuse).

Playbook: Crim playbook, MENS REA (Willful/knowing; ignorance of law).

How it lands: §2: once told, she knowingly kept the drug — willful possession; ignorance of the law doesn't excuse → (A).

Question 27

Evidence — Impeachment by Bias

A truck driver is suing a car driver for injuries he suffered when their vehicles collided at an intersection controlled by stoplights. The truck driver called a witness to the accident to testify that he saw the driver of the car drive through a red light. On cross-examination, the car driver's attorney asks the witness, "Isn't it true that the car driver's ex-wife is paying $500 for your testimony today?" The truck driver's attorney objects. The objection should be:

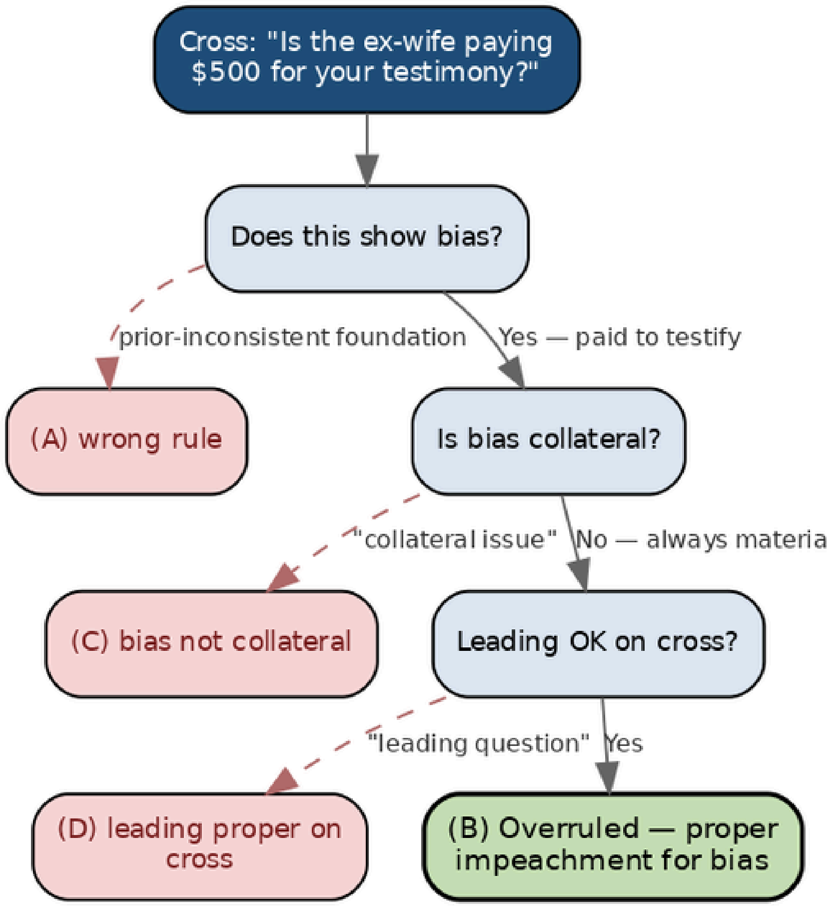
(A) Overruled, because the question gives the witness an opportunity to explain or deny the allegation.
(B) Overruled, because the question is a proper form of impeachment.
(C) Sustained, because the question addresses a collateral issue.
(D) Sustained, because it is a leading question.

> **Correct answer (B).** The objection should be overruled; showing the witness is paid to testify is proper impeachment for bias.

Rule. A witness may be impeached by showing bias or interest, including that someone is paying for the testimony. Bias is never a collateral matter, and it may be shown on cross-examination, including by leading questions.

Application. Asking whether the driver's ex-wife is paying $500 for the testimony exposes possible bias — a proper impeachment. So the objection is overruled — (B).

Why the other choices fail. (A) that's the foundation rule for prior inconsistent statements, not this. (C) bias is not collateral, so it is not excludable on that ground. (D) leading questions are proper on cross-examination.



Decision path

Attack Sequence: Evidence attack sequence, §7 Witness Competency & Impeachment, step 4 (impeachment by bias — not collateral).

Playbook: Evidence playbook, IMPEACHMENT (Bias — paying a witness; leading OK on cross).

How it lands: §7 step 4: showing the witness is paid to testify is proper bias impeachment, never collateral → (B).

Question 28

Real Property — Severance of Joint Tenancy

A property owner owned a tract of commercial property that he conveyed in joint tenancy to his twin sons as a birthday present. Unfortunately, a few years after the conveyance, the property owner and his sons had a serious falling out over how to run the family business. The property owner no longer wished the sons to control valuable commercial property, and so he demanded that they return the deed with which he conveyed the property to them. The sons returned the deed, and the property owner destroyed it. A few months later, one of the twins learned that he was seriously ill and not likely to live much longer. He executed a quitclaim deed conveying "any interest I have in the commercial property conveyed to me and my brother from my father" to his daughter. The twin who conveyed the property subsequently died. Who owns the property?

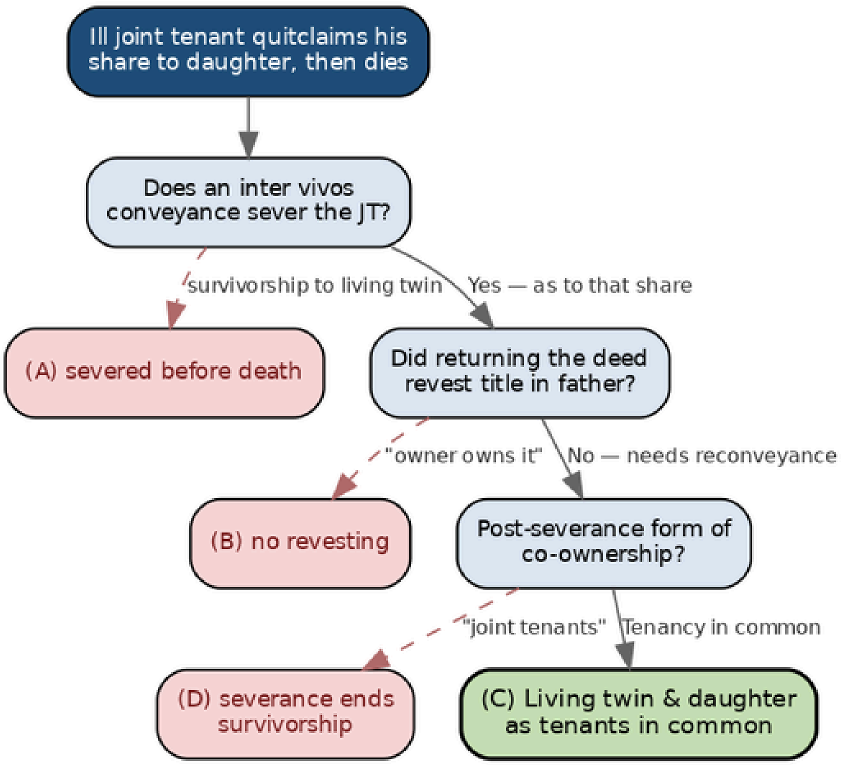
(A) The living twin.
(B) The property owner.
(C) The living twin and the deceased twin's daughter as tenants in common.
(D) The living twin and the deceased twin's daughter as joint tenants.

> **Correct answer (C).** The living twin and the deceased twin's daughter hold as tenants in common.

Rule. A joint tenant's inter vivos conveyance of his interest severs the joint tenancy as to that share, which is then held as a tenancy in common (no survivorship). Returning a deed to the grantor does not revest title; a reconveyance would be required.

Application. The ill twin's quitclaim to his daughter severed the joint tenancy before his death, so his share passes to the daughter and she holds it as a tenant in common with the surviving twin — (C).

Why the other choices fail. (A) survivorship doesn't apply because the joint tenancy was severed before death. (B) returning and destroying the deed did not revest title in the father. (D) severance destroys survivorship, so they are tenants in common, not joint tenants.



Decision path

Attack Sequence: Real Property attack sequence, §4 Co-Ownership, step 3 (severance of joint tenancy by conveyance).

Playbook: Real Property playbook, CONCURRENT ESTATES (Joint tenancy; severance by conveyance).

How it lands: §4 step 3: an inter vivos conveyance severs the JT, so the daughter takes as a tenant in common; returning the deed didn't revest title → (C).

Question 29

Real Property — Assignment / Privity & Running Covenants

A property owner owned a tract of land that he leased to a baker for 27 years. The baker built a large bakery on the property. The baker then sold the bakery building to a buyer, assigning the lease with the property owner's approval. The buyer has failed to make a rent payment for several months and has also failed to build the cafe that the baker had agreed to build in the original lease. The landlord of the property has a cause of action against:

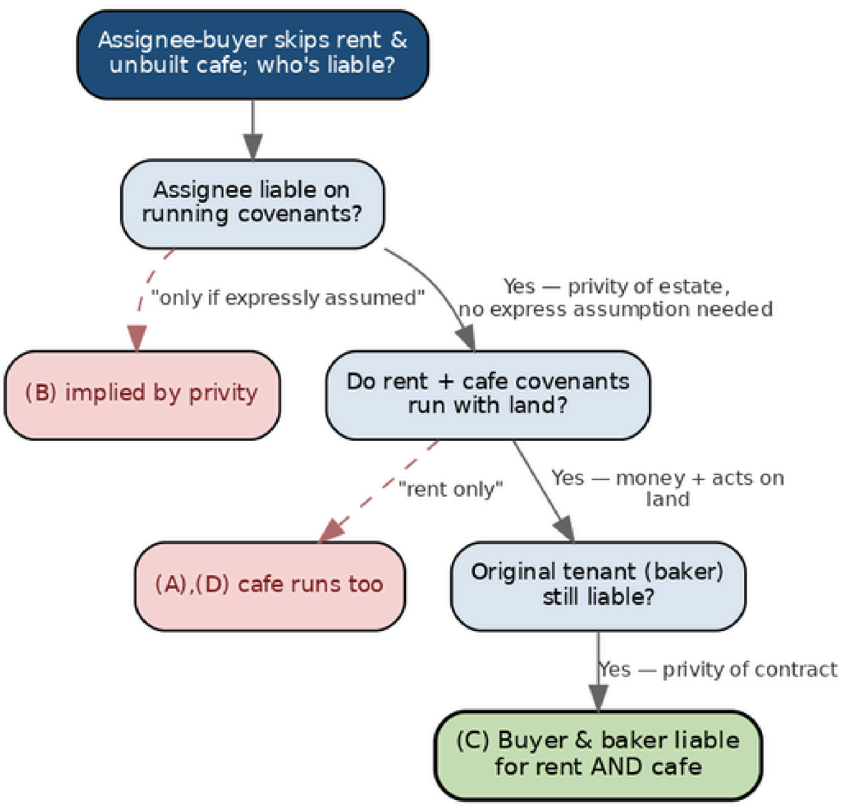
(A) The buyer for the rent only, because the rent covenant runs with the land.
(B) The buyer for the rent and the cafe, but only if the buyer expressly assumed performance of all covenants.
(C) The buyer and the baker for both the rent and the cafe.
(D) The buyer for the rent only, and the baker for the cafe only.

> **Correct answer (C).** The landlord may sue both the buyer and the baker for the rent and the cafe.

Rule. An assignee is in privity of estate with the landlord and is liable on covenants that run with the land (rent and covenants to perform acts on the land, like building), even without an express assumption. The original tenant remains in privity of contract and stays liable on all lease covenants after assigning.

Application. The buyer (assignee) is liable on the running rent and cafe covenants; the baker (original tenant) remains contractually liable on all of them. So the landlord may pursue both for both — (C).

Why the other choices fail. (A) the buyer is liable for the cafe covenant too, and the baker remains liable. (B) an assignee's liability on running covenants is implied by privity of estate; no express assumption is needed. (D) both parties are liable for both covenants, not split as stated.



Decision path

Attack Sequence: Real Property attack sequence, §7 Landlord-Tenant, step 3 (assignment — privity of estate; covenants running with the land).

Playbook: Real Property playbook, LANDLORD-TENANT (Assignment; original tenant stays liable).

How it lands: §7 step 3: the assignee is liable on running covenants (rent + build) by privity of estate, and the original tenant stays liable by privity of contract → both, (C).

Question 30

Real Property — Race-Notice Recording Act

A property owner conveyed commercial property in joint tenancy to his two daughters as a birthday present. The deed from the property owner to his daughters was never recorded. After a few years, the property owner no longer wished the daughters to control valuable commercial property, and so he demanded that they return the deed with which he conveyed the property to them. The daughters returned the deed, and the property owner destroyed it. The property owner then sold and conveyed the property to a third party. The jurisdiction's recording act states the following: "No conveyance or mortgage of an interest in land is valid against any subsequent purchaser for value without notice thereof whose conveyance is first recorded." If the third party brings a quiet title action and is successful, which of the following best explains this result?

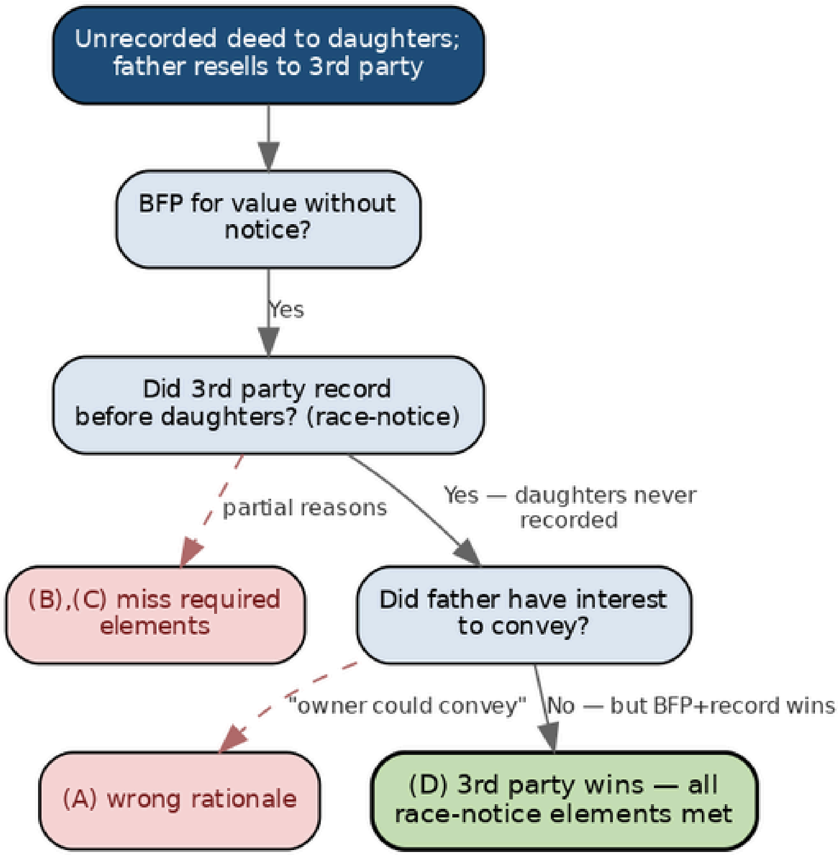
(A) As owner of the property, the property owner was entitled to convey it to the third party.
(B) The daughters failed to record the deed they took from their father.
(C) The daughters failed to record their deed, and the third party was unaware of their interest when she paid the property owner market value for the property.
(D) The daughters failed to record their deed, the third party was unaware of their interest when she purchased the property, and the third party recorded her deed.

> **Correct answer (D).** The third party wins because the daughters didn't record, she took without notice, and she recorded first.

Rule. Under a race-notice statute, a subsequent purchaser prevails over a prior grantee only if she (1) is a bona fide purchaser for value, (2) without notice of the prior interest, and (3) records before the prior grantee does. All three elements are required.

Application. The daughters never recorded; the third party paid value without notice and then recorded. She satisfies all three race-notice elements, so she takes free of the daughters' interest — (D).

Why the other choices fail. (A) the father actually had no interest to convey (he'd already deeded it to the daughters), so this reasoning is wrong. (B) and (C) each state only part of what the race-notice statute requires; (D) alone lists every element.



Decision path

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

Playbook: Real Property playbook, DEEDS & RECORDING (Race-notice: BFP + no notice + records first).

How it lands: §6 step 4: the third party is a BFP without notice who recorded first while the daughters never recorded — all race-notice elements met → (D).

Question 31

Civil Procedure — Personal Jurisdiction / Consent

A snowmobiler, who lives in State A, hit a skier with a snowmobile while on vacation in the skier's home state of State B, causing damages in excess of $80,000. Although the skier has never been to State A, he sued the snowmobiler in State A federal court. Which of the following statements is true regarding the skier's State A lawsuit?

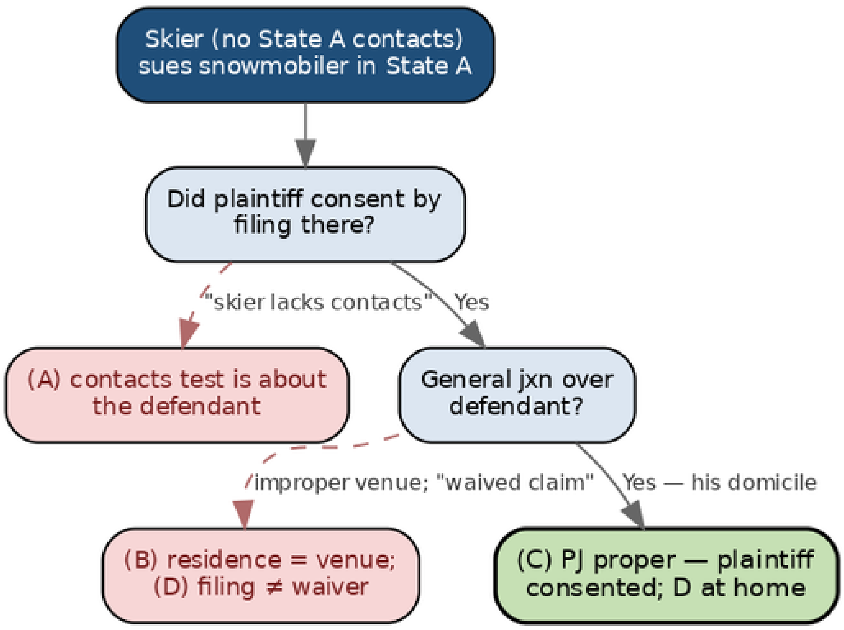
(A) The State A federal court lacks personal jurisdiction over the parties because the skier has insufficient contacts with State A.
(B) The State A federal court is an improper venue because the claim did not arise there.
(C) The State A federal court may exercise personal jurisdiction over the parties because the skier consented to such personal jurisdiction.
(D) The skier waived his claim against the snowmobiler by filing it in the wrong forum.

> **Correct answer (C).** The court may exercise personal jurisdiction because the plaintiff consented by filing there, and the court has general jurisdiction over the defendant.

Rule. A plaintiff consents to personal jurisdiction in the forum by filing suit there. Constitutional minimum-contacts analysis focuses on the defendant, not the plaintiff. A court has general jurisdiction over a defendant in his state of domicile for any claim.

Application. The skier consented by suing in State A; and State A is the snowmobiler's domicile, giving general jurisdiction over him. So the court has personal jurisdiction over both — (C).

Why the other choices fail. (A) the plaintiff's contacts are irrelevant; he consented by filing. (B) venue is proper where a defendant resides, so State A is a proper venue. (D) filing in your own chosen forum does not waive the claim.



Decision path

Attack Sequence: Civil Procedure attack sequence, §3 Personal Jurisdiction, steps 1 & 4 (consent by filing; general jurisdiction at domicile).

Playbook: Civil Procedure playbook, PERSONAL JURISDICTION (Consent; general jxn — domicile).

How it lands: §3: the plaintiff consents by suing there, and the defendant's domicile gives general jurisdiction — contacts analysis targets the defendant → (C).

Question 32

Torts — Parental Liability for Child's Torts

A 12-year-old girl's parents went out of town for the day, leaving her home until 5 p.m. At 2 p.m., the girl went out rollerblading and saw that a neighbor was growing prize roses in her yard. The girl entered the yard and cut all of the prize roses off the rose bushes and rollerbladed over a rose bush, causing the rose bush to die. The jurisdiction has no statute regarding parental liability. In a suit by the neighbor against the girl's parents for the damage caused to her rose bush, the neighbor should:

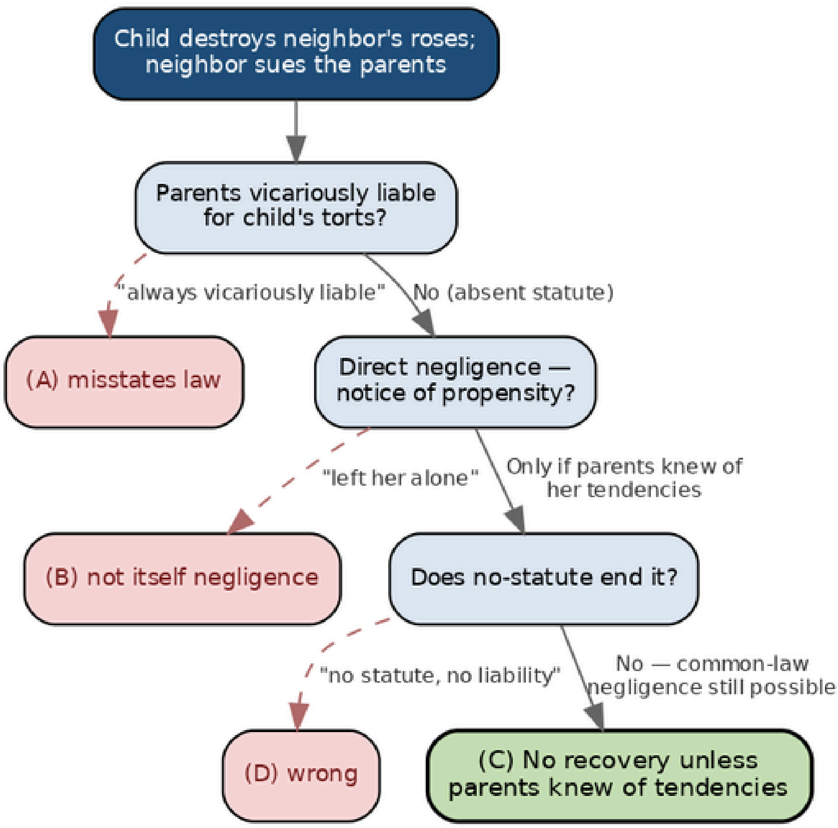
(A) Prevail, because a minor's parents are vicariously liable any time the minor commits a tortious act.
(B) Prevail, because the girl's parents left the girl alone during the day.
(C) Not prevail, unless she can show that the girl's parents were aware that the girl has done this sort of act before.
(D) Not prevail, because the jurisdiction has no statute regarding parental liability.

> **Correct answer (C).** The neighbor cannot prevail unless she shows the parents knew of the girl's destructive tendencies.

Rule. At common law, parents are not vicariously liable for their minor child's torts. A parent may be directly liable in negligence only if the parent had notice of the child's dangerous or destructive propensities and failed to exercise control.

Application. Absent a statute, the neighbor can recover only by showing the parents knew the girl had done this kind of thing before and failed to control her. That's the (C) condition.

Why the other choices fail. (A) misstates the law — no automatic vicarious liability. (B) merely leaving the child home alone is not, by itself, negligence toward the neighbor. (D) the absence of a statute doesn't foreclose common-law negligence liability, so (C) is the accurate answer.



Decision path

Attack Sequence: Torts attack sequence, §6 Vicarious Liability, step 4 (parental liability — no vicarious liability; direct negligence needs notice).

Playbook: Torts playbook, VICARIOUS LIABILITY (Parent-child — notice of propensity).

How it lands: §6 step 4: parents aren't vicariously liable for a child's torts; liability needs notice of the child's dangerous tendencies → (C).

Question 33

Civil Procedure — Interrogatories (Rule 33)

A homeowner entered into a contract with a termite control company under which the company agreed to treat the homeowner's house to prevent termite infestation and to repair any damage if termites infested the house. The homeowner later discovered termite infestation and damage in the house.

When the termite company refused to pay for the damage, the homeowner filed a breach of contract action against the company to recover compensatory damages. During discovery, the company properly served written interrogatories on the homeowner. One of the interrogatories asked the homeowner to state the date on which the homeowner purchased the house and the price that the homeowner paid for the house. The homeowner does not recall the exact date nor the precise purchase price. The homeowner knows, however, that he has a copy of the house purchase contract and closing document in files in his attic. Must the homeowner provide the requested information in his response to the interrogatory even though he does not independently remember the requested facts?

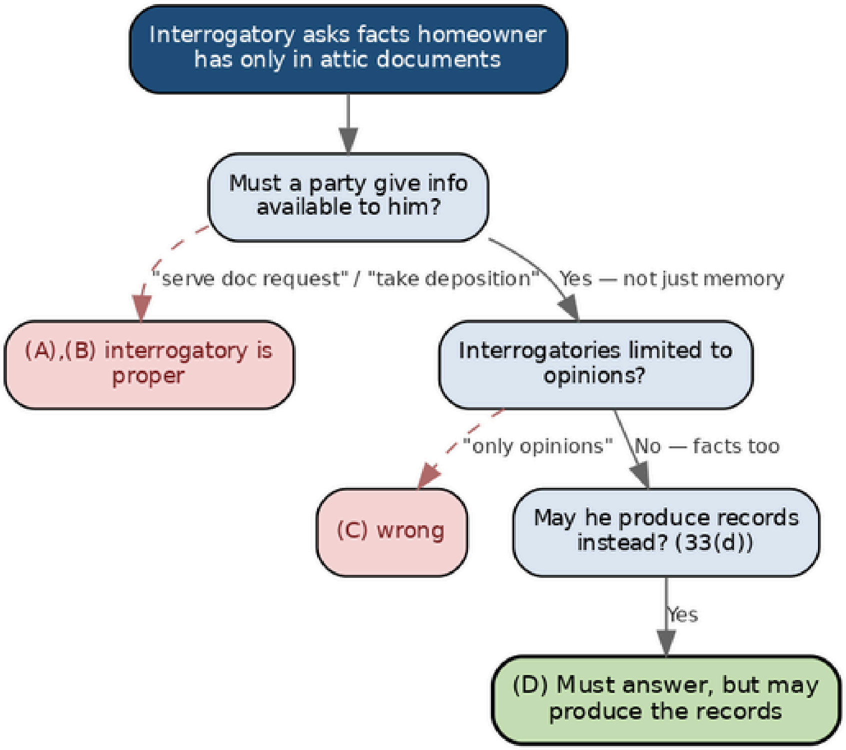
(A) No, because the requested information exists only in documents in the homeowner's possession, so the company must serve a request for production of documents on the homeowner to obtain the information.
(B) No, because, if the company wishes to obtain information directly from the homeowner prior to trial, it must take the homeowner's deposition.
(C) No, because written interrogatories may be used only to obtain opposing parties' opinions or the opinions of expert witnesses that opposing parties intend to call to testify at trial.
(D) Yes, but the homeowner may provide the documents that contain the information in lieu of answering the interrogatory.

> **Correct answer (D).** The homeowner must answer, but may produce the business records that contain the information in lieu of a narrative answer.

Rule. A party must answer interrogatories with information known or reasonably available to him, not just facts in his memory. Under Rule 33(d), if the answer can be derived from the party's business records and the burden is substantially the same for either side, the responding party may produce and specify those records instead of writing out the answer.

Application. The purchase date and price are in documents in the homeowner's attic — available to him. He must provide the information but may satisfy the interrogatory by producing those records — (D).

Why the other choices fail. (A) an interrogatory may seek facts available in a party's documents; a separate document request isn't required. (B) interrogatories are a proper pretrial device; a deposition isn't the only route. (C) interrogatories may ask about facts, not just opinions.



Decision path

Attack Sequence: Civil Procedure attack sequence, §6 Pleadings & Pre-Trial (Discovery — interrogatories, Rule 33(d)).

Playbook: Civil Procedure playbook, DISCOVERY (Interrogatories; option to produce records).

How it lands: §6: a party must answer with information available to him, and under 33(d) may produce business records in lieu of a narrative → (D).

Question 34

Contracts (UCC) — Good-Faith Modification (2-209)

A shoe manufacturer entered into a contract to purchase all cowhide refined by a tannery for the next five years at a price set at 95% of the domestic market price at the time of delivery. The shoe manufacturer agreed to purchase no less than 500 pounds of cowhide a week. At the time this contract was signed, the shoe manufacturer gave written notice to the tannery that it intended to buy all cowhide produced by the tannery until further notice. For the first year, the shoe manufacturer continued to purchase all cowhide produced by the tannery. However, by the end of that year, the tannery doubled its production of cowhide. At a meeting between the tannery and the shoe manufacturer, the tannery's president noted that the shoe manufacturer was getting as much cowhide as it needed, and that the tannery intended to sell the extra cowhide it was producing on foreign markets at a higher price than the shoe manufacturer was paying. The shoe manufacturer agreed to maintain its purchases at the first year's level and signed an addendum to the original agreement reflecting this change. The modification of this contract made by the addendum was:

(A) Enforceable to the extent that the shoe manufacturer purchased the cowhide.
(B) Enforceable in all respects.
(C) Unenforceable, because there was no consideration for the shoe manufacturer's agreement to take only one-half of the cowhide produced.

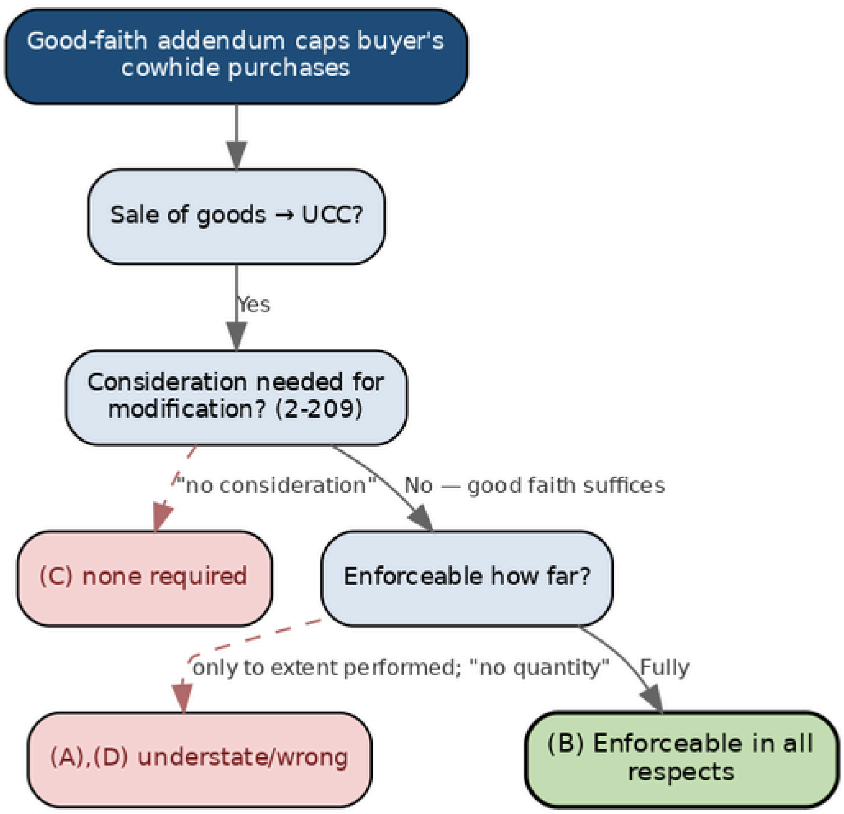
(D) Unenforceable, because the contract did not state the amount of cowhide that the tannery would produce.

> **Correct answer (B).** The addendum is enforceable in all respects.

Rule. Under UCC 2-209(1), a good-faith modification of a contract for the sale of goods needs no consideration to be binding. Good-faith adjustments to output/requirements arrangements are enforceable even though one side gives up nothing new.

Application. The addendum capping purchases at the first year's level is a good-faith modification of a goods contract, so it binds without consideration — (B).

Why the other choices fail. (A) understates it — the modification is fully enforceable, not just to the extent performed. (C) consideration is not required under 2-209. (D) the agreement does state the manufacturer's purchase commitment; that's not a defect.



Decision path

Attack Sequence: Contracts attack sequence, §5 Modification (UCC 2-209 — good-faith modification needs no consideration).

Playbook: Contracts playbook, MODIFICATION (UCC 2-209: no consideration required).

How it lands: §5: this is a sale of goods, so a good-faith modification is enforceable without consideration → fully enforceable, (B).

Question 35

Contracts — Impracticability / Unprofitability

In anticipation of pending domestic agriculture regulations that would make growing corn less profitable, a candy company entered into a contract with a corn farmer who grew a particularly good variety of corn, whereby the candy company was given the right to purchase all high fructose corn syrup refined by the corn farmer for the next five years at a price set at 95% of the domestic market price at the time of delivery. The candy company agreed to purchase no less than 1,000 liters of corn syrup a week and to use its own trucks to transport the corn syrup to its storage facilities. At the time this contract was signed, the candy company gave written notice to the corn farmer that it intended to buy all high fructose corn syrup produced by the corn farmer until further notice. Thereafter, the candy company continued to purchase one-half of the corn farmer's total corn syrup capacity until the following year. At that time, the corn farmer, by letter, notified the candy company that it could no longer deliver corn syrup to it in accordance with their agreement because the new domestic agriculture regulations had rendered growing corn unprofitable. The corn farmer's refusal to deliver corn syrup to the candy company is:

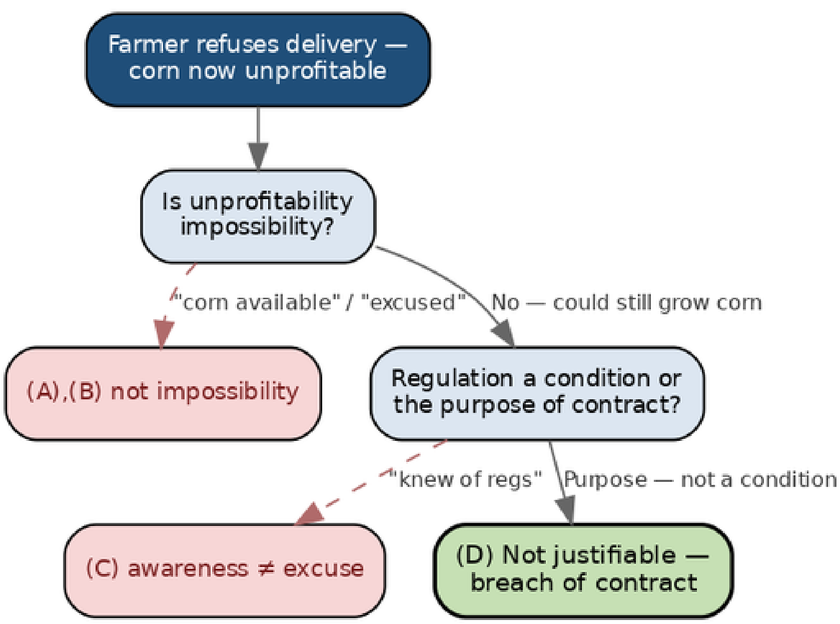
(A) Justifiable, because corn is widely available.
(B) Justifiable, because its performance was excused because of the lack of profitability.
(C) Justifiable, because the candy company was aware of the possibility of new government regulations when it entered into the agreement.
(D) Not justifiable and a breach of contract.

> **Correct answer (D).** The corn farmer's refusal is not justifiable and breaches the contract.

Rule. Increased cost or lost profitability does not excuse performance; commercial impracticability requires an unforeseen event making performance objectively impossible or radically different, not merely unprofitable. Awareness of a risk when contracting further undercuts an excuse.

Application. The farmer could still grow corn; regulation only made it less profitable. Unprofitability is not impossibility, so his refusal breaches — (D).

Why the other choices fail. (A) the availability of corn elsewhere doesn't excuse his own promise. (B) lack of profitability is not objective impossibility. (C) the company's awareness of possible regulation was the reason for contracting, not a condition excusing the farmer.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance & Excuse, step 3 (impracticability — unprofitability is not impossibility).

Playbook: Contracts playbook, EXCUSE OF PERFORMANCE (Impracticability; mere unprofitability insufficient).

How it lands: §5 step 3: lost profitability isn't objective impossibility (he could still grow corn), so refusing to deliver is a breach → (D).

Question 36

Contracts — Delegation of Duties / Delegator Remains Liable

A publisher entered into a contract with a paper manufacturer who used very fine materials, whereby the publisher was given the right to purchase all paper refined by the paper manufacturer for the next five years at a price set at 95% of the domestic market price at the time of delivery. The publisher agreed to purchase no less than 1,000 pounds of paper a week. At the time this contract was signed, the publisher gave written notice to the paper manufacturer that it intended to buy all paper produced by the paper manufacturer until further notice. The paper manufacturer then sold its business to a lumber-processing company. What is the effect of this sale on the paper manufacturer's obligation to the publisher?

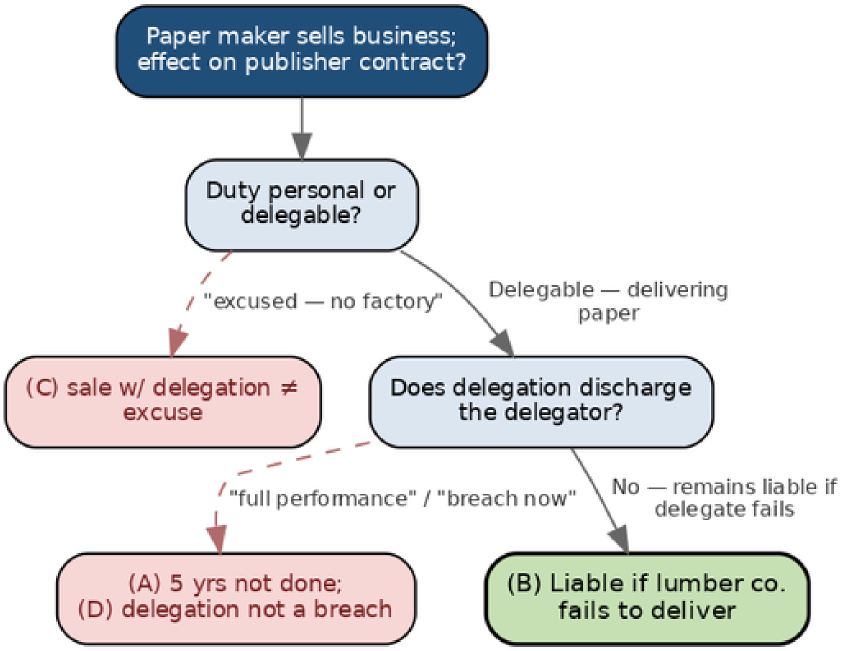
(A) The sale discharges its obligation to the publisher because there has been a full performance.
(B) The paper manufacturer is liable for damages if the lumber processing plant fails to deliver paper to the publisher.
(C) The paper manufacturer is excused from further performance because it no longer has a factory to produce paper.
(D) The paper manufacturer breached its contract with the publisher.

> **Correct answer (B).** The paper manufacturer remains liable for damages if the buyer of its business fails to deliver.

Rule. Non-personal duties (like delivering paper) may be delegated. But delegation does not discharge the delegator: if the delegate fails to perform, the original obligor remains liable. Quantity in a requirements/output deal is measured by the original party's normal output.

Application. Selling the business delegated the delivery duty, but the manufacturer stays liable if the lumber company fails to deliver. So (B).

Why the other choices fail. (A) the five-year contract isn't fully performed. (C) selling the business with a delegation doesn't excuse performance. (D) a proper delegation is not itself a breach, so (D) is wrong.



Decision path

Attack Sequence: Contracts attack sequence, §7 Third Parties: Assignment & Delegation (delegation doesn't discharge the delegator).

Playbook: Contracts playbook, DELEGATION (Delegator remains liable if delegate fails).

How it lands: §7: delivering paper is delegable, but selling the business doesn't discharge the maker — it stays liable if the buyer fails → (B).

Question 37

Criminal Law — Conspiracy & Withdrawal / Felony Murder

Two robbers planned to commit armed robberies targeting older victims. However, when the time came to actually commit the robbery, one of the robbers, thinking that the potential victim looked too much like his grandmother, backed out and told his cohort that he was going home. The second robber went ahead with the plan and robbed the elderly victim, who died of a heart attack due to the stress of the robbery. The second robber was arrested and implicated the first robber. The first robber is guilty of:

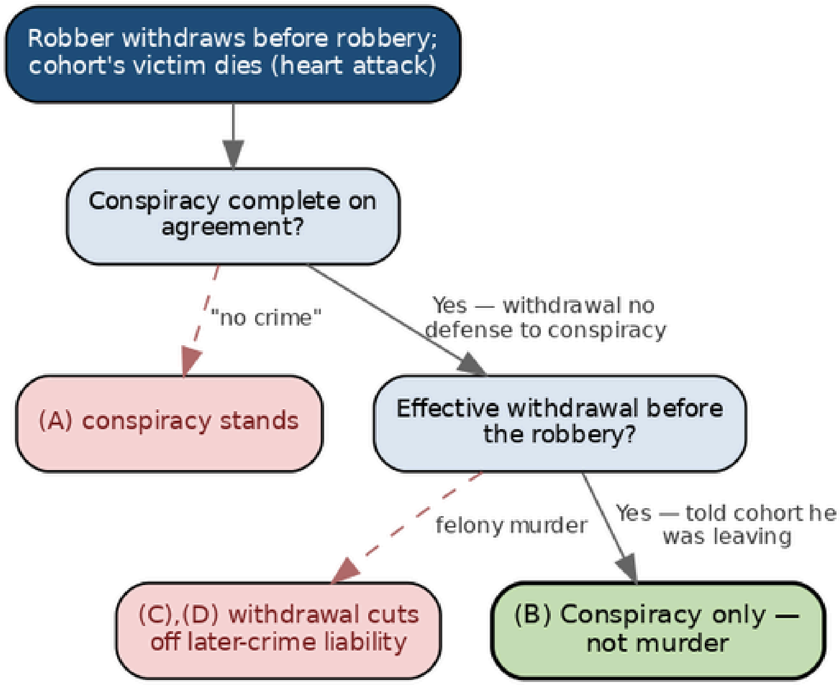
(A) No crime.
(B) Conspiracy.
(C) Murder.
(D) Murder and conspiracy.

> **Correct answer (B).** The first robber is guilty of conspiracy but not murder.

Rule. Conspiracy is complete upon the agreement (plus an overt act where required); withdrawal is no defense to the conspiracy itself. But a conspirator can limit liability for co-conspirators' later crimes by an affirmative act notifying the others of his withdrawal before those crimes occur — cutting off Pinkerton/felony-murder liability for subsequent acts.

Application. The agreement to rob completed the conspiracy, so the first robber is guilty of that. But he told his cohort he was leaving before the robbery, withdrawing in time to escape liability for the felony murder. So conspiracy only — (B).

Why the other choices fail. (A) the completed agreement makes him guilty of conspiracy. (C) and (D) his effective withdrawal before the robbery cuts off felony-murder liability, so no murder.



Decision path

Attack Sequence: Crim attack sequence, §3 Inchoate Crimes, steps 3–4 (Conspiracy complete on agreement; withdrawal limits later-crime liability).

Playbook: Crim playbook, INCHOATE & ACCOMPLICE (Conspiracy; withdrawal) + HOMICIDE (felony murder).

How it lands: §3: the agreement completed the conspiracy (withdrawal is no defense to that), but an effective withdrawal before the robbery cut off felony-murder liability → (B).

Question 38

Criminal Law — Recklessness / Voluntary Intoxication

A former construction worker became intoxicated one night and decided to move some heavy construction equipment that was parked at a construction site. Ignoring "no trespassing" signs, the worker jumped the fence and climbed into a large dump truck and started it up. However, even though he knew how to operate the truck, he quickly lost control of it due to his intoxication. It rumbled a short distance and crashed into a trailer housing the main office of the construction site. The worker is prosecuted for recklessly damaging property. A separate statute in the jurisdiction prohibited the unauthorized operation of construction equipment. Should the worker be found guilty?

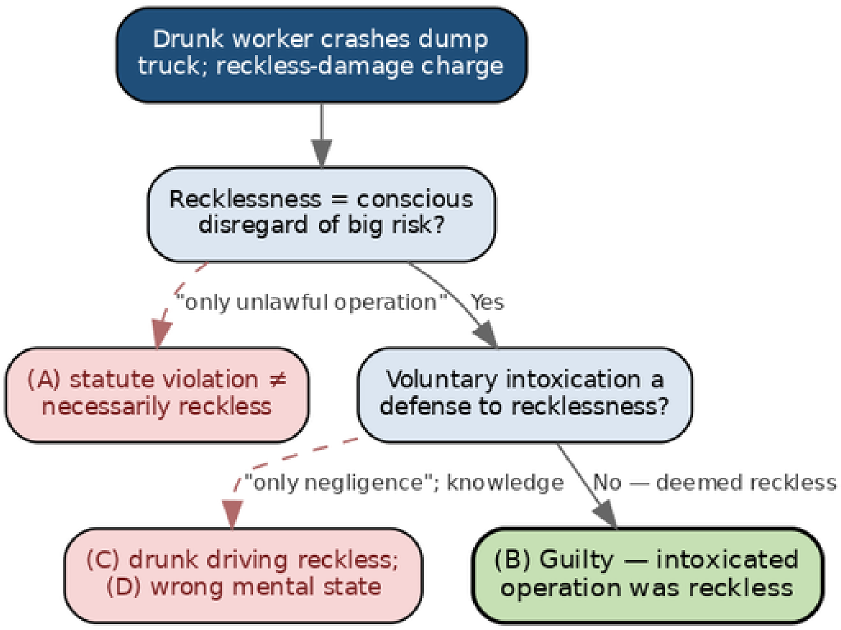
(A) Yes, because his actions constituted an unlawful operation of the construction equipment.
(B) Yes, because he was intoxicated while attempting to move the construction equipment.
(C) No, because at most he could be found guilty of criminal negligence.
(D) No, because he must have been aware that his conduct would cause the damage to the trailer in order to be found guilty of reckless damage.

> **Correct answer (B).** The worker is guilty because operating heavy equipment while intoxicated was reckless.

Rule. Recklessness is the conscious disregard of a substantial and unjustifiable risk, a gross deviation from reasonable care. Voluntary intoxication is a defense to specific-intent (purpose/knowledge) crimes but not to recklessness; one who is unaware of a risk only because he was voluntarily intoxicated is deemed to have acted recklessly.

Application. Driving a large dump truck while drunk created a huge risk of destruction. Voluntary intoxication is no defense to reckless damage, so he's guilty — (B).

Why the other choices fail. (A) merely violating the unauthorized-operation statute isn't necessarily reckless (he was trained). (C) driving drunk is reckless, more than mere negligence. (D) awareness of certain harm is the knowing standard; recklessness is a lesser fault, so (D) states the wrong mental state.



Decision path

Attack Sequence: Crim attack sequence, §2 General Principles, step 2 (mens rea — recklessness; voluntary intoxication no defense).

Playbook: Crim playbook, MENS REA (Recklessness; voluntary intoxication defense limits).

How it lands: §2 step 2: driving heavy equipment drunk is reckless, and voluntary intoxication is no defense to recklessness → (B).

Question 39

Constitutional Law — Separation of Powers / Prosecutorial Discretion

A Congressional committee was formed to conduct an investigation. The committee subpoenaed a man to appear before it to answer certain questions. The man appeared before the committee but refused to answer any questions. The committee notified the Speaker of the House of the man's refusal to cooperate. The Speaker called a special session of the House. At the special session, a majority of the members of the House voted to order the Attorney General of the United States to prosecute the man pursuant to a federal statute that establishes the penalties for contempt of Congress. Is the Attorney General constitutionally obligated to prosecute the man pursuant to the congressional order?

(A) No, if the man is an appointive official of the executive branch, because he would then be immune

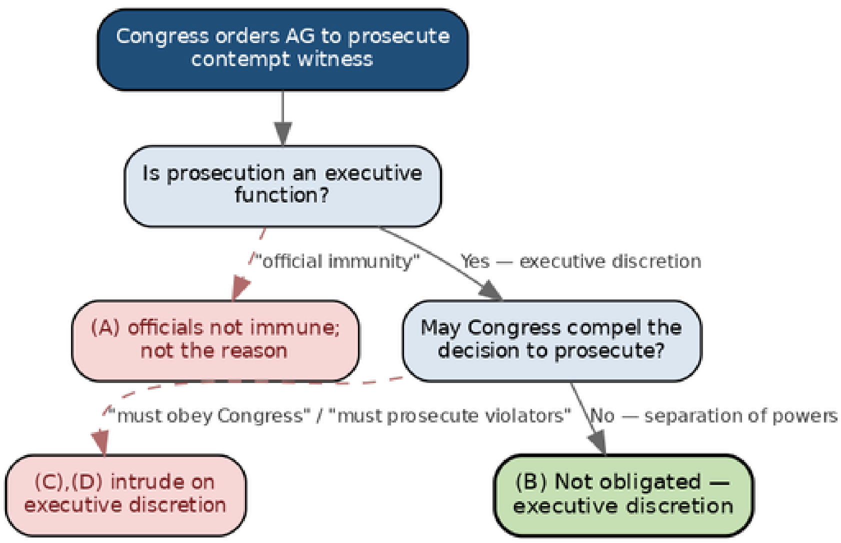
from prosecution for acts performed in the course of his duties.
(B) No, because the decision to prosecute is exclusively within the discretion of the executive branch.
(C) Yes, because the Attorney General may not lawfully disobey a directive from Congress to punish a contempt.
(D) Yes, because the Attorney General may not refuse to prosecute one who has violated federal law.

> **Correct answer (B).** The Attorney General is not obligated to prosecute; the decision is within executive discretion.

Rule. Separation of powers bars Congress from directing the executive branch on whether to prosecute. The decision to prosecute is a core executive function committed to executive discretion; Congress cannot compel it.

Application. Congress ordering the AG to prosecute intrudes on executive discretion. The AG is not constitutionally obligated to comply — (B).

Why the other choices fail. (A) executive officials are not immune from prosecution for their duties, and immunity isn't the reason. (C) the AG may disobey a congressional directive to prosecute — that's the whole point. (D) the AG has discretion not to prosecute even a federal-law violation.



Decision path

Attack Sequence: Con Law attack sequence, §3 Separation of Powers, step 1 (executive discretion — Congress can't compel prosecution).

Playbook: Con Law playbook, SEPARATION OF POWERS (Executive discretion to prosecute).

How it lands: §3 step 1: the decision to prosecute is executive; separation of powers bars Congress from compelling it → (B).

Question 40

Constitutional Law — Equal Protection / Aid to Segregated School

The legislature of a state enacted a statute that provides for loaning certain textbooks on secular subjects to students in all public and private schools. In accordance with the statute, the state board of education distributed textbooks to a private school that offers religious instruction and admits only Caucasian students. Which of the following is the strongest argument against the constitutionality of free distribution of textbooks to the students at the private school?

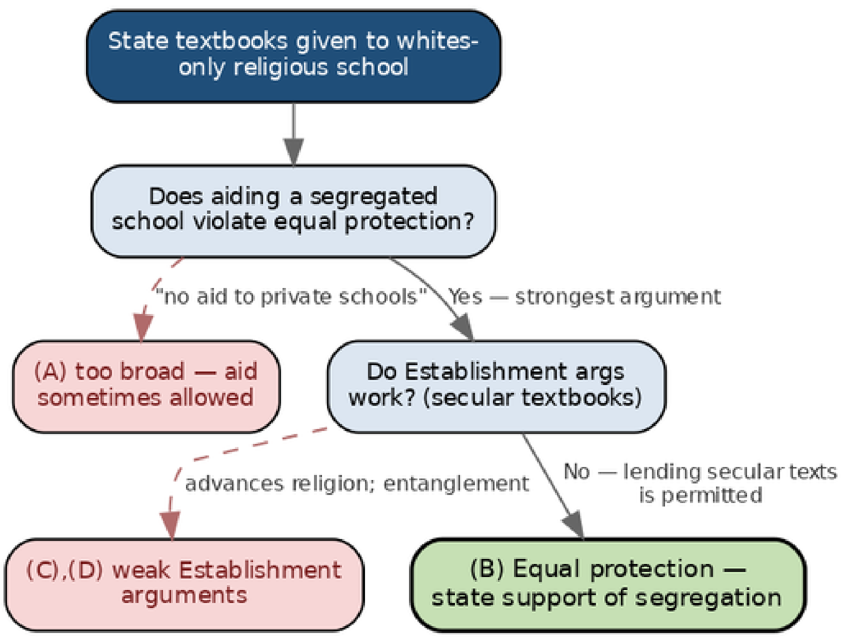
(A) A state may not constitutionally aid private schools through distribution of textbooks.
(B) Segregation is furthered by the distribution of textbooks to these students.
(C) The distribution of textbooks advances religion because it is impossible to separate their secular and religious uses.
(D) The distribution of textbooks fosters excessive government entanglement with religion.

> **Correct answer (B).** The strongest argument is that furnishing textbooks to a whites-only school gives state support to segregation, violating equal protection.

Rule. State aid that supports a racially segregated institution violates the Equal Protection Clause. By contrast, lending secular textbooks to students at religious schools does not violate the Establishment Clause, so entanglement/advancement arguments are weak here.

Application. The private school admits only Caucasian students; giving it state textbooks supports segregation — the strongest constitutional objection is equal protection, (B).

Why the other choices fail. (A) a state may sometimes aid private/parochial schools, so this is too broad. (C) and (D) are Establishment Clause arguments that fail, because lending secular textbooks to religious-school students is permitted.



Decision path

Attack Sequence: Con Law attack sequence, §5 Equal Protection, step 4 (state support of racial segregation) + §7 Religion (secular textbooks OK).

Playbook: Con Law playbook, EQUAL PROTECTION (State support of segregation) + RELIGION.

How it lands: §5: giving textbooks to a whites-only school is state support of segregation — the strongest argument; the Establishment arguments fail because secular textbook loans are allowed → (B).

Question 41

Evidence — Withdrawn Guilty Plea (Rule 410)

A truck driver collided with a motorcyclist in a busy intersection. A police officer present at the scene cited the trucker for running a red light. At the preliminary hearing, the trucker initially pleaded guilty, but he withdrew his plea when the judge told him what she had in mind for a sentence. The judge let the trucker change his plea to not guilty. The trucker, however, had no success at his trial and was convicted. The motorcyclist is now suing the trucker in a civil action for the injuries he sustained in the accident. If the motorcyclist tries to introduce evidence of the trucker's original guilty plea, on proper motion, this evidence will be:

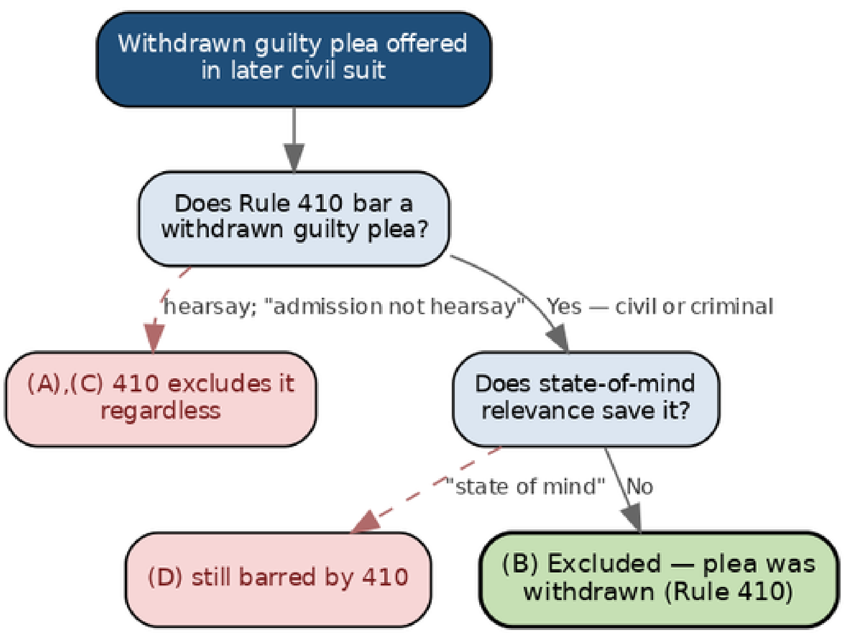
(A) Excluded, because it is hearsay not within any exception.
(B) Excluded, because the plea was withdrawn.
(C) Admitted, because an admission is not hearsay.
(D) Admitted, because it described the trucker's state of mind.

> **Correct answer (B).** The withdrawn guilty plea is excluded.

Rule. FRE 410 bars using a withdrawn guilty plea against the person who made it, in any civil or criminal proceeding, with narrow exceptions not applicable here. This exclusion applies even though the plea would otherwise be a party admission.

Application. The trucker withdrew his guilty plea, so the motorcyclist can't introduce it in the civil suit — (B).

Why the other choices fail. (A) as a party admission it is nonhearsay, so hearsay isn't the reason; Rule 410 is. (C) although an admission isn't hearsay, Rule 410 still excludes it. (D) relevance to state of mind doesn't overcome Rule 410.



Decision path

Attack Sequence: Evidence attack sequence, §1 Relevance & special exclusions, step 3 (withdrawn guilty plea — Rule 410).

Playbook: Evidence playbook, RELEVANCE (Rule 410 — pleas, plea discussions).

How it lands: §1 step 3: Rule 410 bars a withdrawn guilty plea in any later proceeding, even though it's a party admission → (B).

Question 42

Evidence — Present Sense Impression

A pedestrian was lawfully crossing the street when he was struck and seriously injured by a car that had run a red light. At the time, the driver was on his way home from a local tavern. The pedestrian brings suit against the tavern for his injuries, claiming that the driver was permitted to drink too much liquor at the tavern before leaving. The pedestrian calls a witness to the stand. The witness testifies that she and a friend had visited the tavern on the night in question. The witness seeks to testify that she remarked to her friend, "Look at that guy. He's so drunk he can't even stand up." The witness's testimony concerning her remark to her friend is:

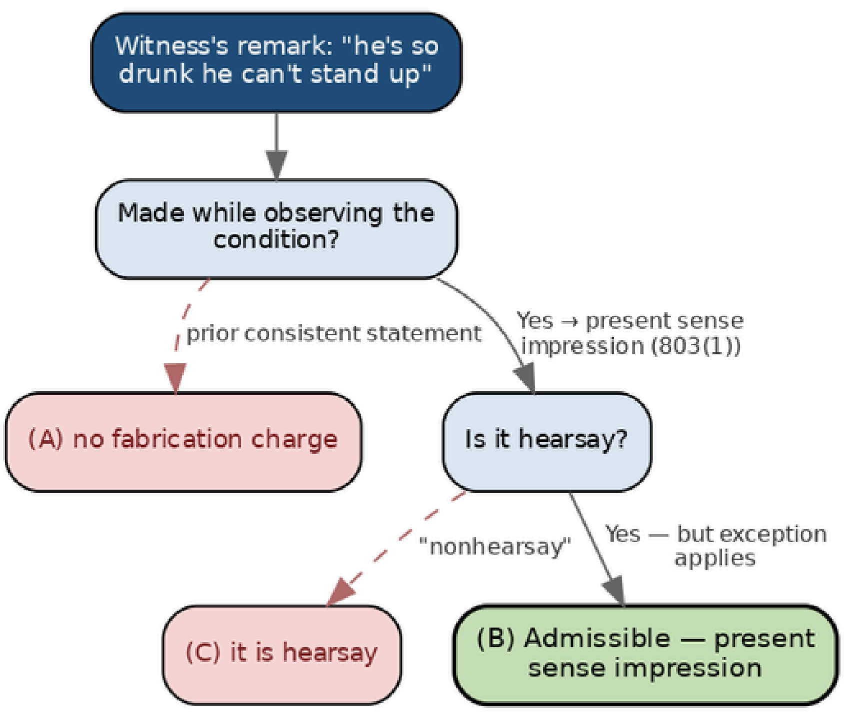
(A) Admissible as a prior consistent statement.
(B) Admissible as a statement by the witness regarding the condition she observed, made while she was observing it.
(C) Admissible as relevant nonhearsay testimony.
(D) Inadmissible as hearsay not within any exception.

> **Correct answer (B).** The witness's remark is admissible as a present sense impression.

Rule. FRE 803(1): a statement describing an event or condition, made while or immediately after the declarant perceived it, is admissible as a present sense impression. It is an exception even though the declarant is available.

Application. The witness described the man's drunken condition while observing him ('he's so drunk he can't even stand up'). That's a present sense impression — (B).

Why the other choices fail. (A) no prior-consistent-statement issue is raised (no charge of recent fabrication). (C) it is hearsay (an out-of-court statement offered for its truth), so 'nonhearsay' is wrong. (D) it is hearsay but fits the 803(1) exception, so not excluded.



Decision path

Attack Sequence: Evidence attack sequence, §4 Hearsay Exceptions, step 2 (availability immaterial → present sense impression, 803(1)).

Playbook: Evidence playbook, EXCEPTIONS – AVAILABILITY IMMATERIAL (Present sense impression).

How it lands: §4 step 2: the remark describing the drunk man while observing him is a present sense impression → (B).

Question 43

Real Property — Rule Against Perpetuities / Unborn Widow

A rancher deeded his ranch "to my son so long as he lives, and on his death to my son's widow for the remainder of her life, and on her death to each of her lineal descendants who are living on her death, to share and share alike." The deed was validly executed, delivered, and recorded. At the time of the conveyance, the son was married but had no children. Three years later, the rancher died. His will left all of his estate to his sister. Two years after the rancher's death, the son was killed in an automobile accident, leaving his widow with twin girls. Upon the widow's death many years later, she was survived by both girls, her only lineal descendants. Who now owns the ranch?

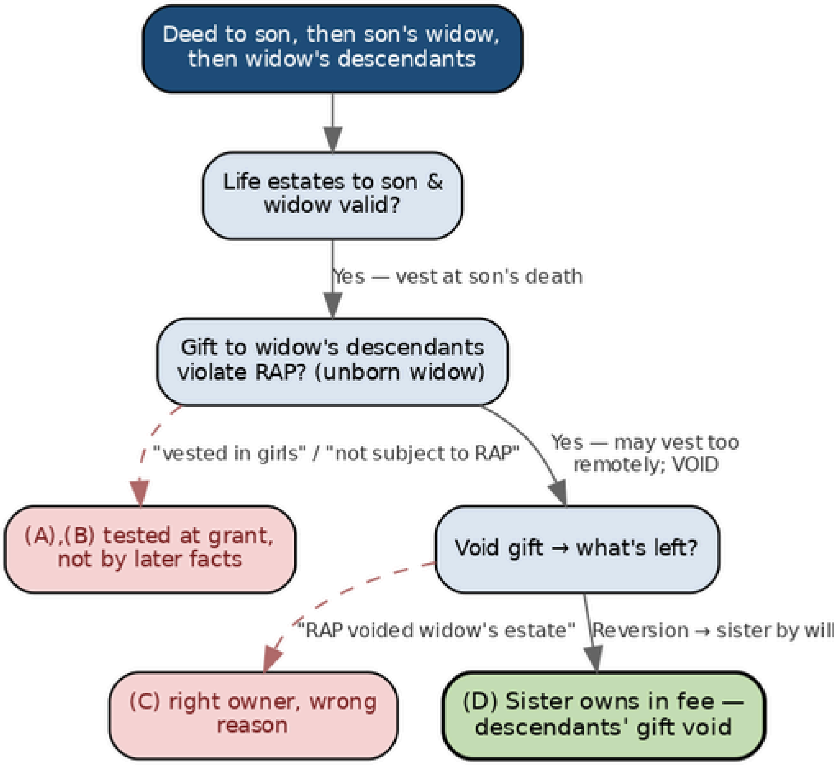
(A) The girls are tenants in common, with each owning an undivided one-half; their interest vested on the son's widow's death, well within the period of lives in being plus 21 years.
(B) The girls are tenants in common, with each owning an undivided one-half; they received a vested remainder, which is not subject to the Rule Against Perpetuities.
(C) The sister owns the ranch in fee simple, because the Rule Against Perpetuities voided the gift over to the son's widow and the following gift to her lineal descendants.
(D) The sister owns the ranch in fee simple, which she received upon the death of the son's widow.

> **Correct answer (D).** The sister owns the ranch in fee simple; the gift to the widow's descendants is void under RAP.

Rule. The Rule Against Perpetuities voids an interest unless it must vest, if at all, within a life in being plus 21 years, measured at the time of the grant. The 'unborn widow' trap: the son's widow may be someone not yet alive at the grant, so a gift to her descendants (identified only at her death) could vest too remotely. Striking the void gift leaves a reversion, which passed by the rancher's will.

Application. The life estates to the son and his widow are valid, but the remainder to the widow's descendants could vest more than 21 years after all lives in being at the grant (the widow might be unborn). That gift is void; the resulting reversion went to the sister under the will — (D).

Why the other choices fail. (A) and (B) RAP is tested at the grant, not by what actually happened; the descendants' interest was not validly vested then. (C) reaches the right owner but for the wrong reason — the widow's own life estate is valid; it's the gift to her descendants that violates RAP.



Decision path

Attack Sequence: Real Property attack sequence, §3 Future Interests & RAP, step 4 (Rule Against Perpetuities — unborn widow).

Playbook: Real Property playbook, FUTURE INTERESTS (RAP; unborn widow trap).

How it lands: §3 step 4: the widow may be unborn at the grant, so the gift to her descendants can vest too remotely and is void; the reversion passes to the sister → (D).

Question 44

Civil Procedure — Supplemental Jurisdiction / Impleader

A pedestrian was injured in a car accident involving two cars. The pedestrian filed a negligence action in federal district court against the first driver, seeking $100,000 in damages. The pedestrian is a citizen of State A and the first driver is a citizen of State B. The first driver then filed a third-party claim against the second driver, claiming that the second driver is responsible for half of the harm caused to the pedestrian and seeking to recover half of any liability the first driver is found to have to the pedestrian. The second driver is a citizen of State A. Does the federal court have subject matter jurisdiction over the third-party claim asserted by the first driver against the second driver?

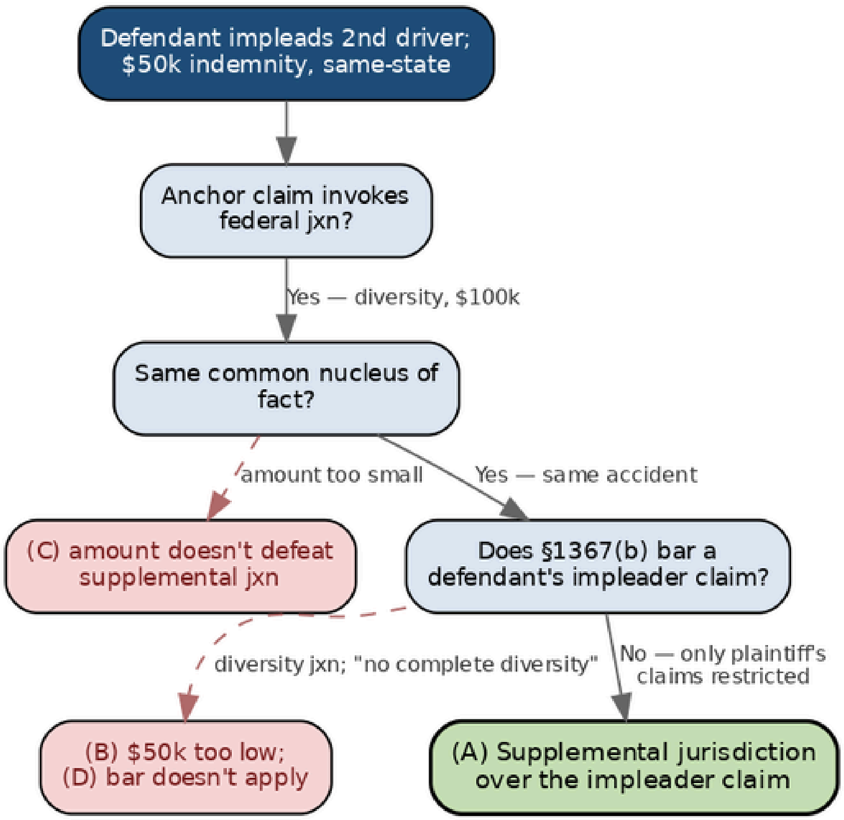
(A) Yes, because the court has supplemental jurisdiction over the third-party claim.
(B) Yes, because the court has diversity of citizenship jurisdiction over the third-party claim.
(C) No, because the amount in controversy in the third-party claim is too small.
(D) No, because complete diversity of citizenship is lacking.

> **Correct answer (A).** The court has supplemental jurisdiction over the first driver's third-party indemnity claim.

Rule. When a claim invokes federal SMJ, the court may exercise supplemental jurisdiction over related claims arising from the same common nucleus of operative fact. The §1367(b) diversity restrictions apply to claims by plaintiffs against impleaded parties, not to a defendant/third-party plaintiff's claim against a third-party defendant — so the defendant's impleader claim gets supplemental jurisdiction even without independent diversity.

Application. The pedestrian's claim (State A vs. State B, $100,000) anchors jurisdiction. The first driver's indemnity claim against the second driver arises from the same accident and, being a defendant's impleader claim, isn't barred by §1367(b). Supplemental jurisdiction applies — (A).

Why the other choices fail. (B) the $50,000 indemnity claim can't independently invoke diversity (under $75,000). (C) amount doesn't defeat supplemental jurisdiction. (D) the §1367(b) diversity bar doesn't apply to a defendant's impleader claim, so lack of complete diversity there isn't fatal.



Decision path

Attack Sequence: Civil Procedure attack sequence, §2 Supplemental Jurisdiction, step 3 (supplemental jxn; §1367(b) restricts only plaintiffs' claims).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Supplemental jxn; impleader).

How it lands: §2 step 3: the impleader claim shares the accident's common nucleus, and §1367(b)'s diversity bar applies only to plaintiffs' claims, not a defendant's impleader → (A).

Question 45

Contracts — Forbearance as Consideration

Two neighbors owned summer homes adjacent to each other on the lake. After a week-long stay by the son of one of the property owners, the neighbor called the owner and said that his boat dock had been badly damaged and was told by another resident that the owner's son and some friends had gotten drunk and accidentally crashed their boat into his dock. The owner was surprised at the accusation because he was sure that if his son had caused the damages, he would have told him. However, he did not want to get into a dispute with his neighbor, so he told his neighbor that he would have the dock repaired and pay for the repairs if the neighbor agreed not to bring a claim against his son for the damage to the dock. The neighbor agreed, and the owner hired a local carpenter to do the work. Later, however, the owner discovered that his son did not damage the dock because the damages occurred after his son had returned to college. Is the owner obligated to pay for the repairs?

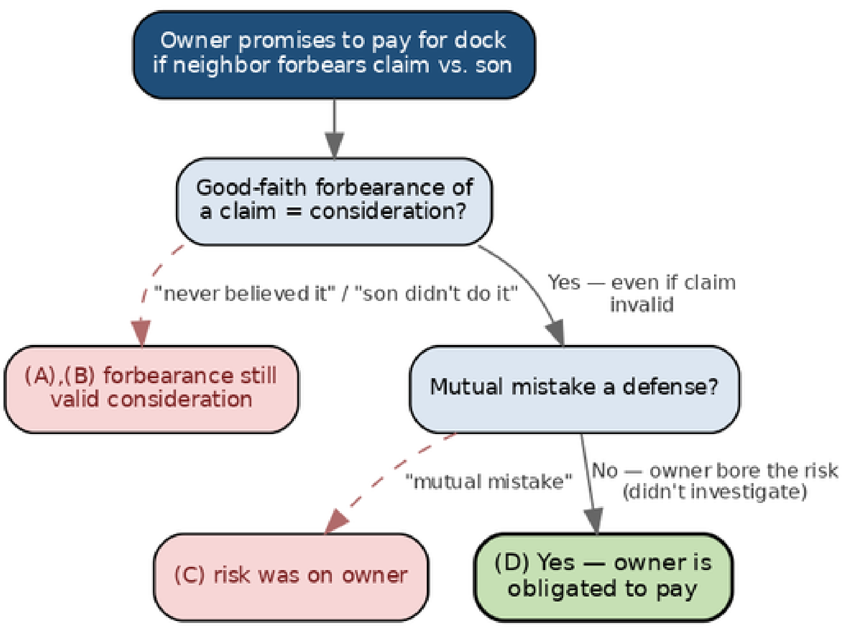
(A) No, because the owner never really believed that his son caused the damage.
(B) No, because his son in fact did not cause the damage.
(C) No, because the neighbor was wrong when he accused his son of causing the damage and it would be unfair to enforce an agreement when there was a mutual mistake of fact.
(D) Yes.

> **Correct answer (D).** Yes — the owner is obligated to pay for the repairs.

Rule. A promise to forbear from suing on a claim the promisor honestly and reasonably believes valid is good consideration, even if the claim later proves invalid. Mutual mistake is not a defense where the adversely affected party bore the risk of the mistaken assumption (e.g., chose not to investigate).

Application. The neighbor's good-faith forbearance of a claim against the son is valid consideration for the owner's promise to pay. The owner assumed the risk by not investigating first, so mutual mistake is no defense — he must pay, (D).

Why the other choices fail. (A) and (B) forbearance on a good-faith claim is consideration even if the claim turns out invalid. (C) mutual mistake doesn't apply because the owner bore the risk by not investigating — so (D).



Decision path

Attack Sequence: Contracts attack sequence, §2 Consideration, step 2 (forbearance on a good-faith claim; mutual mistake / risk allocation).

Playbook: Contracts playbook, CONSIDERATION (Forbearance) + DEFENSES (mutual mistake).

How it lands: §2 step 2: good-faith forbearance is consideration even if the claim is invalid, and the owner bore the risk by not investigating → (D).

Question 46

Criminal Law / Con Law — Fifth Amendment & Sentencing

A defendant was convicted after a jury trial of violation of federal statutes prohibiting the sale of automatic weapons to foreign nationals. It was established at trial that the defendant had purchased a number of stolen United States Army heavy machine guns and attempted to ship them abroad. The trial court expressly based its imposition of the maximum possible sentence for the conviction on the defendant's refusal to reveal the names of the persons from whom he purchased the stolen weapons. His counsel argues that this consideration is reversible error. In the defendant's appeal of the sentence imposed, the appeals court should:

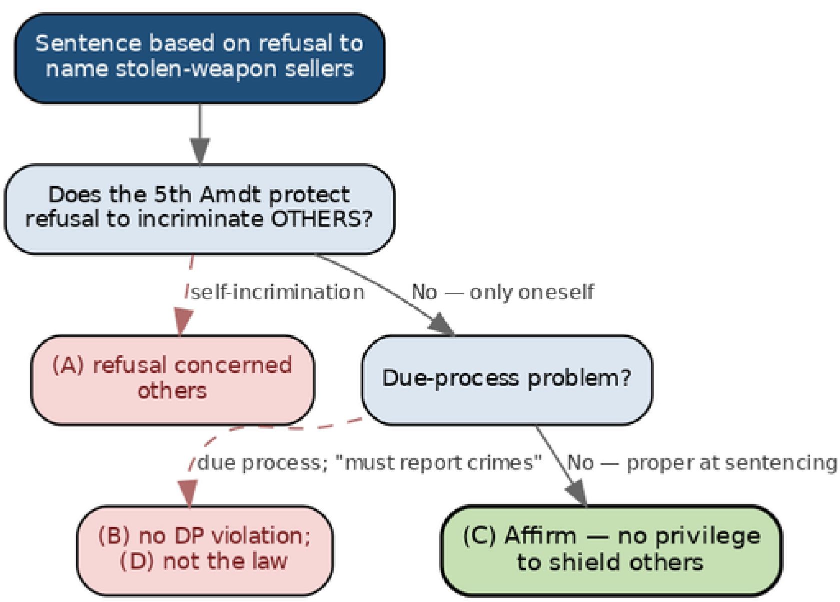
(A) Reverse the trial court, because the consideration of the defendant's silence violates his Fifth Amendment privilege against self-incrimination.
(B) Reverse the trial court, because the consideration of collateral circumstances in sentencing violates his due process rights.
(C) Affirm the trial court, because the right to silence of the Fifth Amendment does not include the right to protect others from incrimination.
(D) Affirm the trial court, because citizens must report violations of the criminal statutes.

> **Correct answer (C).** Affirm; the Fifth Amendment right to silence does not include a right to refuse to incriminate others.

Rule. The privilege against self-incrimination protects a person from being compelled to incriminate himself, not others. A sentencing court may consider a defendant's refusal to cooperate by naming co-participants (Roberts v. United States); doing so does not violate the Fifth Amendment or due process.

Application. The court considered the defendant's refusal to name the weapon sellers — refusing to incriminate others, which the Fifth Amendment doesn't protect. So affirm — (C).

Why the other choices fail. (A) the silence here concerns others, outside the privilege. (B) considering the refusal at sentencing does not violate due process. (D) is not an accurate statement of the law (no general duty to report), so it's the wrong rationale.



Decision path

Attack Sequence: Crim attack sequence, §6 Fifth & Sixth Amendments, step 1 (privilege against self-incrimination — protects self, not others).

Playbook: Crim playbook, 5TH/6TH (Self-incrimination — scope).

How it lands: §6 step 1: the Fifth Amendment protects only against self-incrimination, so a sentence may weigh the refusal to name others → (C).

Question 47

Criminal Law — Accomplice Liability / Accessory Before the Fact

A student activist suggested to her boyfriend that they put a drug in the sugar bowls at their college cafeteria so that students would become sick and the activist's antinuclear group could claim that toxic emissions from a nearby nuclear power plant were the cause. The boyfriend told the student that people could become very ill, or even die, if they consumed too large a quantity of the drug. The student promised that they would only put a small amount of the drug in each bowl and asked the boyfriend to get the drug from his chemistry lab during his chemistry class, which he did. After class, the boyfriend gave the bottle to the student. Before the boyfriend awoke the next day, the student went to the cafeteria and put small quantities of the drug in several sugar bowls. She accidentally put a much larger amount in the sugar bowl at one table. Four persons who sat at that table became extremely ill, and one of the four eventually died. In a jurisdiction applying the common law, the boyfriend may be liable for the death of the student as:

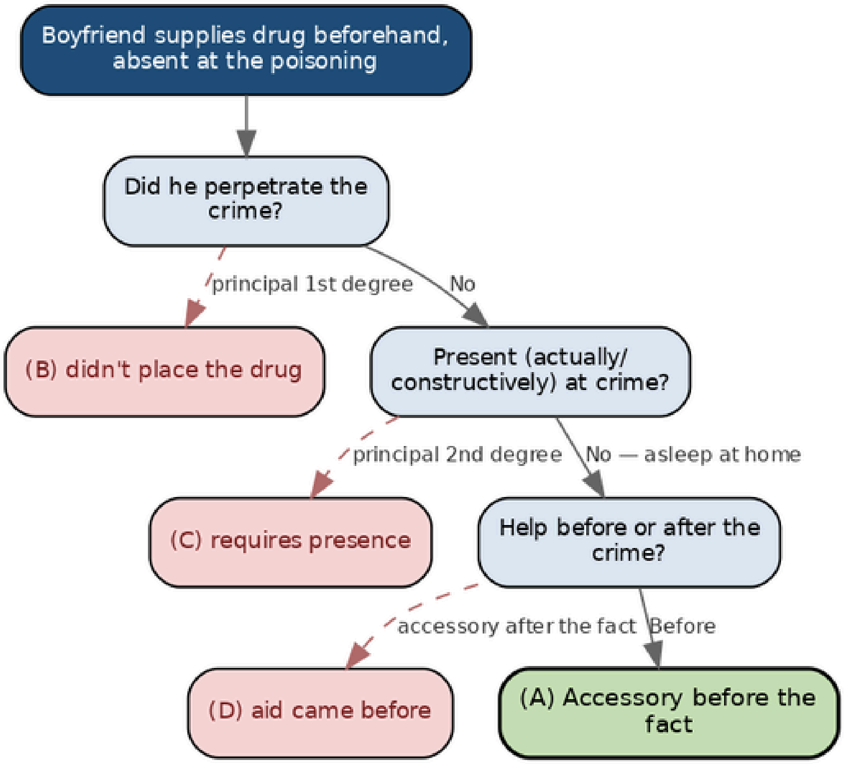
(A) An accessory before the fact.
(B) A principal in the first degree.
(C) A principal in the second degree.
(D) An accessory after the fact.

> **Correct answer (A).** At common law, the boyfriend is an accessory before the fact.

Rule. Common-law parties: a principal in the first degree perpetrates the crime; a principal in the second degree aids and is actually or constructively present; an accessory before the fact aids or encourages beforehand but is not present at the crime; an accessory after the fact helps the offender escape after the crime. An accessory before the fact is punishable like the principal.

Application. The boyfriend supplied the drug beforehand but was not present when the student poisoned the sugar bowls. That makes him an accessory before the fact — (A).

Why the other choices fail. (B) he didn't perpetrate the poisoning, so not a first-degree principal. (C) he wasn't present, so not a second-degree principal. (D) his help came before, not after, the crime, so not an accessory after the fact.



Decision path

Attack Sequence: Crim attack sequence, §3 Inchoate Crimes & Accomplice Liability, step 5 (parties — accessory before the fact vs. principals).

Playbook: Crim playbook, INCHOATE & ACCOMPLICE (Parties: accessory before the fact).

How it lands: §3 step 5: he aided beforehand but wasn't present, making him an accessory before the fact → (A).

Question 48

Torts — Duty to Anticipated Trespassers

A homeowner lived in a house on a large corner lot located a few hundred feet from a convenience store that was frequented by many people in the neighborhood. Everyone took a shortcut across the homeowner's front yard rather than staying on the sidewalk that bordered her lawn. The heavy foot traffic wore a path through her lawn, and people left soft drink cans and candy wrappers strewn all over her front yard. Fed up, the homeowner hired a local contractor to build a fence around her front lawn. The next afternoon, the contractor started the job by surveying the property and digging post holes, but left to do another small job in that area. He left behind a wheelbarrow with a shovel leaning against it. After noticing the items, the homeowner called the contractor's office and spoke to his wife. The contractor's wife said that he was on another job in the area and would pick up the wheelbarrow and shovel on his way back, but he never did. A neighbor who was walking to the convenience store to pick up a six-pack of beer after work took his usual shortcut when he came to the neighbor's corner. As he was walking by the wheelbarrow, a police car with siren wailing went by on the main street, distracting him. As he followed the police car with his eyes, he tripped over the shovel leaning against the wheelbarrow and fell, breaking his arm. Is the homeowner liable to the neighbor for his broken arm and related damages?

(A) No, because she did not create the condition that harmed him.

(B) No, because the danger to which he was exposed was open and obvious.

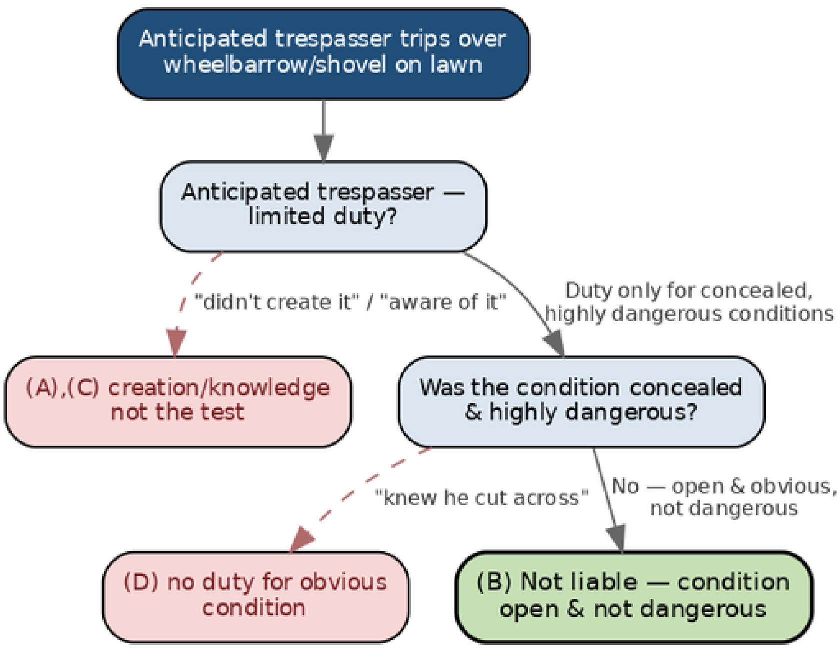
(C) Yes, because she was aware of the condition that harmed him.
(D) Yes, because she knew that he frequently cut across her lawn on the way to the convenience store.

> **Correct answer (B).** The homeowner is not liable because the wheelbarrow and shovel were not a concealed, highly dangerous condition.

Rule. A landowner generally owes no duty to warn/protect ordinary trespassers. For anticipated (habitual) trespassers, the duty extends only to warning of or making safe highly dangerous, concealed, artificial conditions known to the owner. There is no duty as to conditions that are obvious or not highly dangerous.

Application. Even though the neighbor was an anticipated trespasser, the wheelbarrow and shovel were open and obvious and not highly dangerous. No duty was owed, so the homeowner isn't liable — (B).

Why the other choices fail. (A) creating the condition isn't required for liability; allowing it to remain could suffice if the condition qualified. (C) mere knowledge of a condition doesn't impose a duty to warn of an obvious, non-dangerous item. (D) knowing he cut across doesn't create a duty as to an obvious condition.



Decision path

Attack Sequence: Torts attack sequence, §5 Owners & Occupiers of Land, step 2 (anticipated trespasser — concealed, highly dangerous conditions).

Playbook: Torts playbook, PREMISES LIABILITY (Anticipated trespasser duty).

How it lands: §5 step 2: even for an anticipated trespasser, the duty covers only concealed, highly dangerous conditions; the wheelbarrow/shovel were open and not dangerous → (B).

Question 49

Torts — Intentional Infliction of Emotional Distress

A pet owner left his dog in his yard while he went to work. The dog's constant barking greatly annoyed his neighbor. When the pet owner came home that evening he found the dead body of his beloved dog in the yard, with blood around its nose and mouth. He was very upset because the dog had been his pet for many years. A subsequent investigation revealed that his neighbor had given the dog a treat with rat poison in it during the day because she could not stand the barking. If the pet owner brings an action against the neighbor to recover for his emotional distress, he likely will:

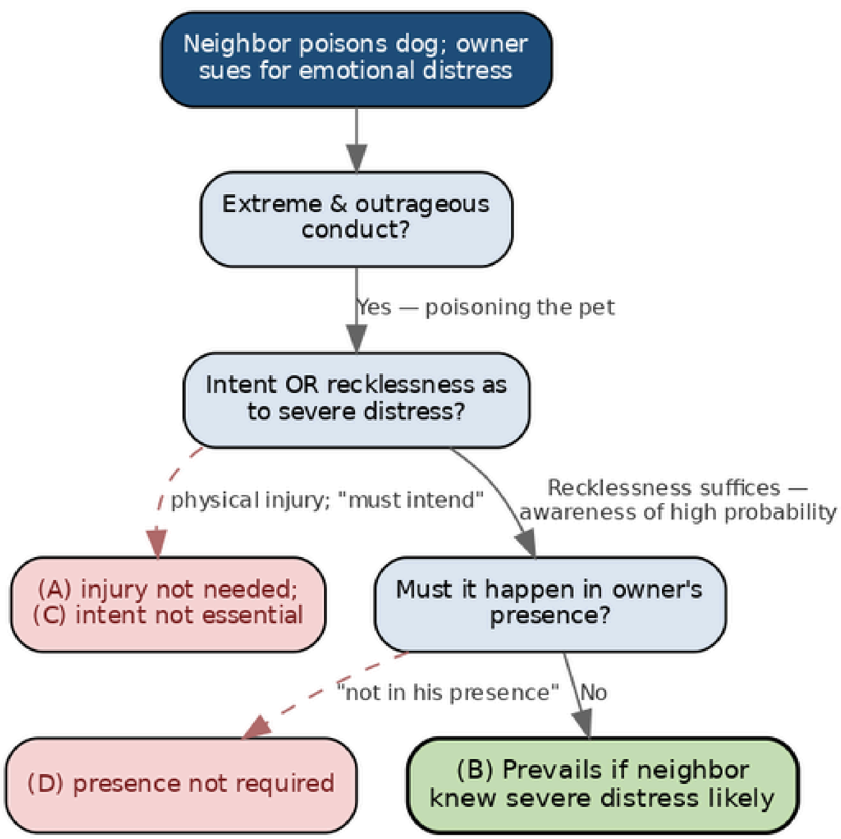
(A) Prevail, if he suffered physical injury from his distress.
(B) Prevail, if the neighbor was aware that it was very likely that the pet owner would suffer severe emotional distress.
(C) Not prevail, unless the neighbor intended to cause the pet owner severe emotional distress.
(D) Not prevail, because the neighbor did not kill the dog in the presence of its owner.

> **Correct answer (B).** The pet owner prevails if the neighbor was aware it was very likely he would suffer severe emotional distress.

Rule. IIED requires (1) extreme and outrageous conduct, (2) intent OR recklessness as to causing severe emotional distress, (3) causation, and (4) severe emotional distress. Recklessness — awareness of a high probability that severe distress will result — satisfies the mental-state element; physical injury is not required.

Application. Poisoning the pet is extreme and outrageous, and the owner suffered severe distress. If the neighbor was aware severe distress was very likely, that's the recklessness that completes IIED — (B).

Why the other choices fail. (A) physical injury isn't required for IIED (unlike negligent infliction). (C) too narrow — recklessness suffices; intent isn't essential. (D) presence isn't required; discovering the poisoned pet's body supports the claim.



Decision path

Attack Sequence: Torts attack sequence, §4 Other Intentional Torts, step 3 (Intentional Infliction of Emotional Distress — recklessness suffices).

Playbook: Torts playbook, INTENTIONAL TORTS (IIED — extreme/outrageous; recklessness; severe distress).

How it lands: §4 step 3: poisoning the pet is extreme and outrageous, and recklessness (awareness severe distress is likely) satisfies the mental state; no physical injury needed → (B).

Question 50

Constitutional Law — Treaties vs. Acts of Congress (Last-in-Time)

After months of bilateral talks, the President entered into a treaty with a foreign nation previously designated by the President as a terrorist state. Under the treaty, the foreign nation agreed to curtail its nuclear testing program and the United States agreed to lift trading sanctions against the foreign country. The treaty was approved by a vote of more than two-thirds of the Senate. Subsequently, it was revealed that the government of the foreign nation had been sponsoring the copying and black market trade of products patented in the United States and protected by international law. Outraged, Congress approved a bill purporting to repeal the treaty. When the bill was presented to the President, he vetoed it, citing national security interests. Both houses of Congress then repassed the bill by a more than two-thirds vote. As a result of the foregoing, which of the following statements is correct?

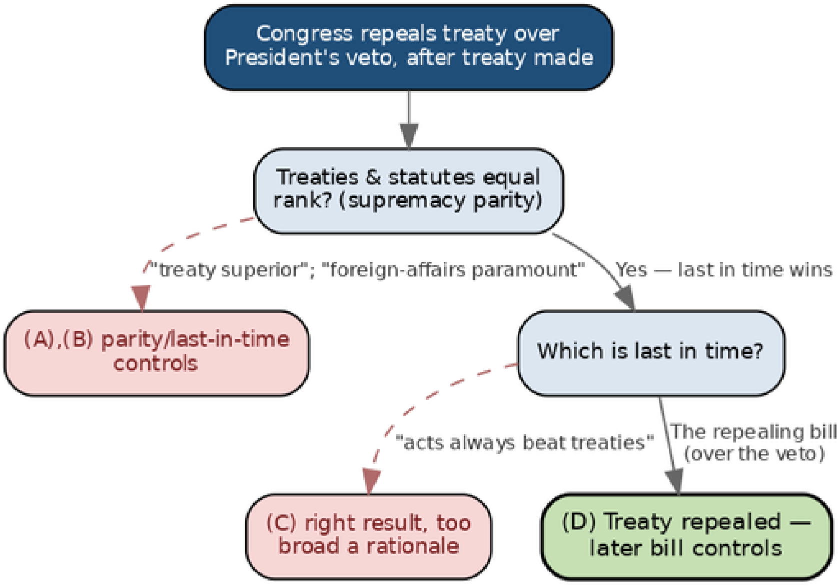
(A) The treaty is still valid, because it was both negotiated by the President and passed by Congress.
(B) The treaty is still valid, because the President still supports the treaty and the President's power over foreign affairs is paramount.
(C) The treaty was effectively repealed, because acts of Congress are the supreme law of the land, and any United States treaty in conflict with a congressional act is invalid.
(D) The treaty was effectively repealed, because the repeal was approved over the President's veto after the treaty was made.

> **Correct answer (D).** The treaty was effectively repealed because Congress passed the repealing bill over the President's veto after the treaty was made.

Rule. Treaties and federal statutes are of equal rank ('supremacy parity') as supreme law of the land. When they conflict, the last in time controls. A bill passed over a presidential veto is validly enacted law.

Application. The repealing bill was enacted (over the veto) after the treaty, so as the last-in-time act it prevails and repeals the conflicting treaty — (D).

Why the other choices fail. (A) approval by President and Senate doesn't make a treaty superior to later legislation. (B) the President's foreign-affairs power doesn't override the parity/last-in-time rule. (C) reaches the right result but its rationale is too broad — acts of Congress don't automatically invalidate all treaties, only conflicting earlier ones.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Supremacy, step 5 (treaties vs. acts of Congress — last in time).

Playbook: Con Law playbook, SUPREMACY / TREATIES (Parity; last-in-time rule).

How it lands: §2 step 5: treaties and statutes are of equal rank, so the later-enacted repealing bill (passed over the veto) controls → (D).