Mixed Subject Set 6

Expanded Answer Explanations · Diet Coke Esq.

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

Question 1

Constitutional Law — Right to Travel / P&I of 14th Amendment

A state requires that persons holding a state license to practice a particular profession reside in the state for at least one year before engaging in that practice. A practitioner who held the state license moved into the state and shortly thereafter contracted with a local business to provide professional services. As soon as he began practicing his profession, the state licensing board sought to sanction him for violating the one-year waiting period. Which of the following provides the strongest basis for the practitioner to challenge the waiting period?

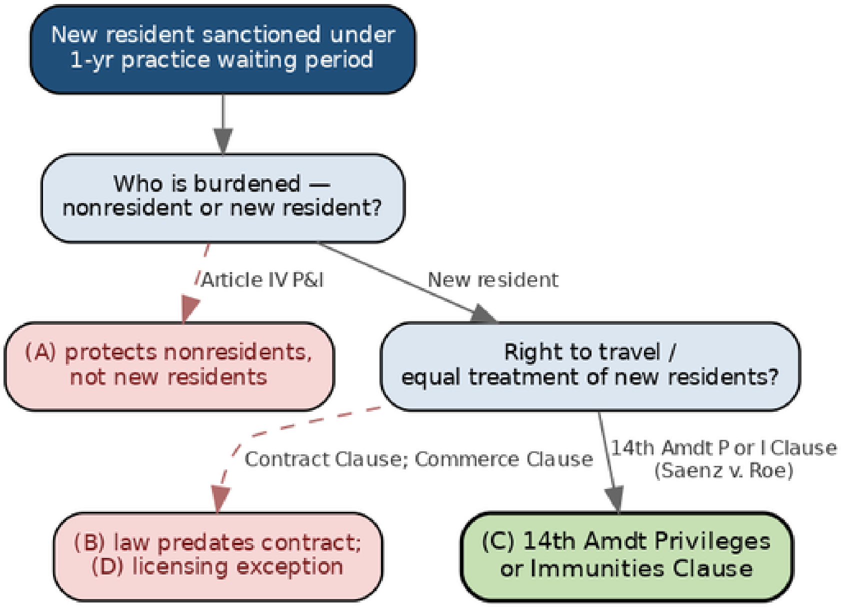
(A) The Privileges and Immunities Clause of Article IV.
(B) The Contract Clause.
(C) The Privileges or Immunities Clause of the Fourteenth Amendment.
(D) The Commerce Clause.

> **Correct answer (C).** The strongest challenge is the Fourteenth Amendment Privileges or Immunities Clause, which protects a new resident's right to travel and to be treated equally.

Rule. The Fourteenth Amendment Privileges or Immunities Clause protects the privileges of national citizenship, including the right of interstate travel — and specifically the right of newly arrived citizens to enjoy the same privileges as longtime residents. Durational-residency requirements that penalize new residents are analyzed under this clause (Saenz v. Roe).

Application. The one-year waiting period penalizes a newly arrived resident for exercising the right to travel, treating him worse than established residents. The Fourteenth Amendment P or I Clause is the strongest ground — (C).

Why the other choices fail. (A) Article IV P&I bars discrimination against nonresidents; here the practitioner is a new resident, not a nonresident. (B) the Contract Clause bars retroactive impairment of existing contracts; the law predated his contract. (D) professional licensing generally falls within a Commerce Clause exception for health/safety, so it's a weak basis.



Decision path

Attack Sequence: Con Law attack sequence, §4 State Action & Individual Rights (Right to travel / P or I of the 14th Amendment).

Playbook: Con Law playbook, PRIVILEGES OR IMMUNITIES (14th Amdt — right to travel; Saenz v. Roe).

How it lands: §4: a durational-residency penalty on a new resident implicates the right to travel under the 14th Amendment P or I Clause — the strongest ground → (C).

Question 2

Torts — Private Nuisance / 'Coming to the Nuisance'

An artist purchased a warehouse in an industrial district that she converted into a studio many years ago. A few months ago, a record company purchased a warehouse next door to the artist's studio and converted it into a recording studio and rehearsal rooms. The recording studio frequently stays open long past midnight, particularly on the weekends. Although the five recording studios are thoroughly soundproofed, the various rehearsal rooms are not. When bands are using them, the sound can easily be heard by the artist when she is working in her studio. The artist had always done her work at night, but since the recording studio next door opened, she has found it very difficult to concentrate on her work. She is distracted by all the noise and activity from the recording studio. In a private nuisance suit against the record company, the fact that the artist owns her studio and has used it for 15 years is:

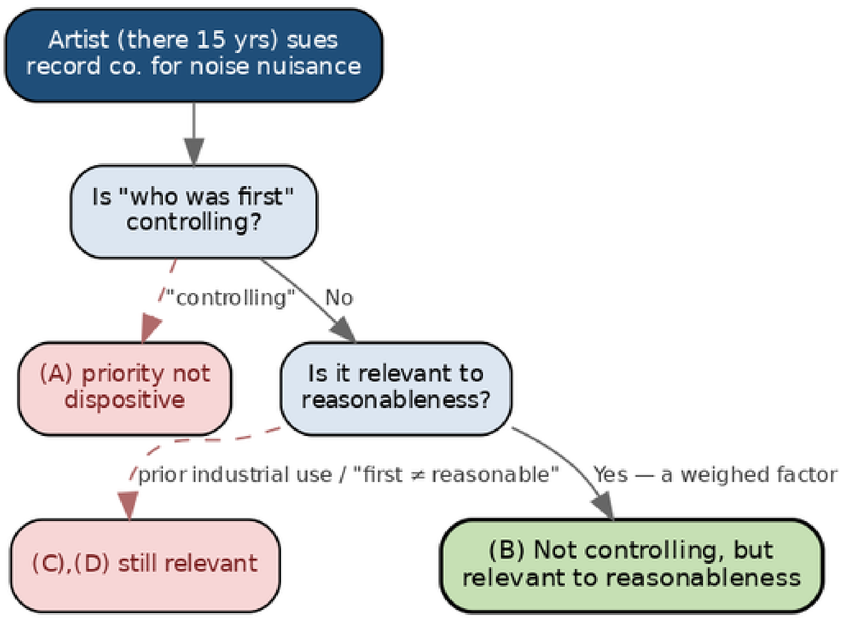
(A) Controlling on the issue of whether the record company's use of its property is reasonable.
(B) Not controlling, but relevant to the issue of whether the record company's use of its property is reasonable.
(C) Not controlling, and irrelevant because the surrounding area was used exclusively for industry and manufacturing when the artist bought her property.
(D) Not controlling, and irrelevant because a landowner cannot establish the reasonableness of the use of property simply by being the first in the neighborhood.

> **Correct answer (B).** That the artist was there first is relevant, but not controlling, on the reasonableness of the record company's use.

Rule. Private nuisance turns on whether the defendant's use is an unreasonable, substantial interference with the plaintiff's use and enjoyment. 'Coming to the nuisance' (who was there first, and the character of the area) is a factor the court weighs, but it is not dispositive; a changed neighborhood or priority of use is evidence, not a rule.

Application. The artist's 15 years of prior use bears on whether the record company's noisy rehearsal rooms are a reasonable use, but it doesn't decide the issue by itself. That's the (B) formulation.

Why the other choices fail. (A) priority of use is not controlling. (C) the area's prior industrial use doesn't make her priority irrelevant — the neighborhood can change. (D) being first is still relevant to reasonableness, so it is not 'irrelevant.'



Decision path

Attack Sequence: Torts attack sequence, §7 Defamation, Privacy & Nuisance, step 4 (private nuisance — reasonableness; "coming to the nuisance").

Playbook: Torts playbook, NUISANCE (Unreasonable interference; priority of use a factor).

How it lands: §7 step 4: who came first is a factor, not a controlling rule, in the reasonableness balance → (B).

Question 3

Civil Procedure — Removal / Forum-Defendant Rule

Three drivers were in an automobile accident in a city in State A. The drivers were citizens of State A, State B, and State C. The State B driver filed a tort action against the other two in a State A state court, seeking $300,000 for her severe injuries. The State C driver wants to remove the action to a federal district court. Is the action removable?

(A) No, because one of the defendants is a citizen of State A and therefore diversity of citizenship is lacking.
(B) No, because an action may be removed from state court only if it "arises under" federal law.
(C) Yes, because there is complete diversity of citizenship and the amount in controversy exceeds $75,000.
(D) Yes, because one of the defendants is a citizen of a state other than State A.

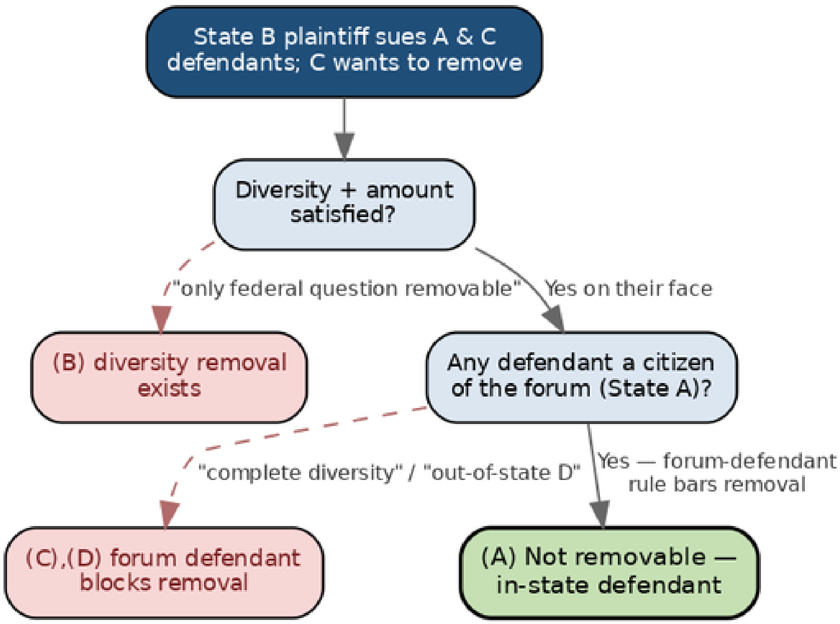
> **Correct answer (A).** The action is not removable because one defendant is a citizen of the forum

state (State A).

Rule. A defendant may remove a case that could originally have been filed in federal court. But under the forum-defendant rule, a case removable only on diversity may not be removed if any defendant is a citizen of the state where the action was filed. All defendants must also generally join in removal.

Application. The suit was filed in State A and one defendant is a State A citizen, so even the State C defendant cannot remove — the forum-defendant rule bars it. So (A).

Why the other choices fail. (B) removal isn't limited to federal-question cases; diversity removal exists. (C) although diversity and amount are satisfied, the forum-defendant rule still blocks removal. (D) the presence of an out-of-state defendant doesn't overcome the in-state defendant bar.



Decision path

Attack Sequence: Civil Procedure attack sequence, §2 Supplemental Jurisdiction & Removal, step 4 (removal — forum-defendant rule).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Removal; forum-defendant bar).

How it lands: §2 step 4: a diversity case can't be removed if any defendant is a citizen of the forum state — a State A defendant blocks it → (A).

Question 4

Contracts (UCC) — Seller's Right to Reclaim from Insolvent Buyer

On January 1, a golf pro shop mailed an order for $1,000 worth of golf balls to a golf supply distributor, specifying that it would pay for the balls within 30 days of delivery. The golf balls were delivered on February 15. Two days later, the distributor learned that the pro shop had been insolvent for at least a month and immediately made a demand on the pro shop to reclaim the golf balls, despite the pro shop's assurances that it would still make the payment before March 15. May the distributor reclaim the golf balls?

(A) No, because the latest date specified for payment of the account has not yet passed.
(B) No, because the pro shop assured the distributor that it will make payment before March 15.
(C) Yes, because the pro shop was insolvent when the golf balls were delivered.

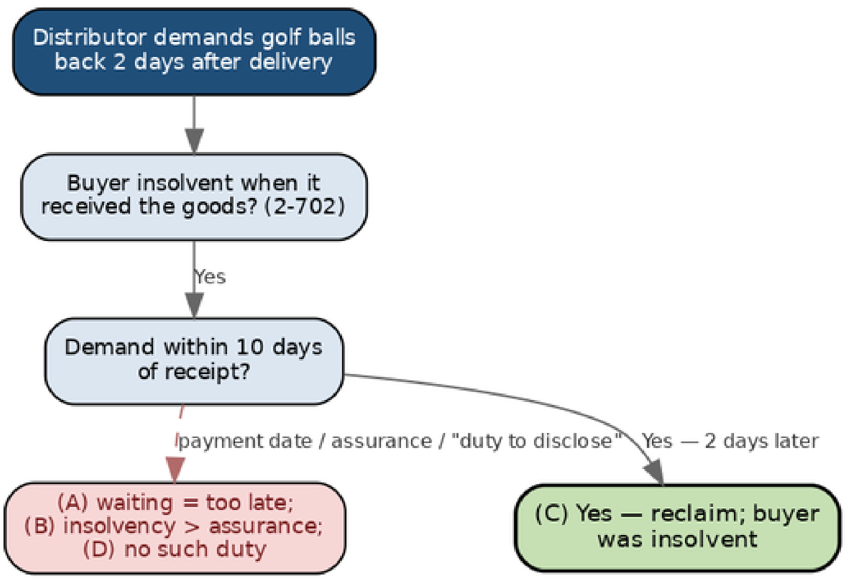
(D) Yes, because the pro shop had an affirmative duty to tell the distributor of its insolvency when it placed its order.

> **Correct answer (C).** The distributor may reclaim the golf balls because the buyer was insolvent when it received them.

Rule. Under UCC 2-702, a seller who discovers that a buyer received goods on credit while insolvent may reclaim the goods by demand made within 10 days after the buyer received them (the 10-day limit is relaxed if the buyer misrepresented solvency in writing within three months before delivery).

Application. The pro shop was insolvent when it received the balls on February 15, and the distributor demanded reclamation on February 17 — within 10 days. So it may reclaim — (C).

Why the other choices fail. (A) the payment due date is irrelevant; waiting for it would blow the 10-day reclamation window. (B) the buyer's assurance doesn't defeat reclamation when the buyer is actually insolvent. (D) there is no general affirmative duty to disclose insolvency, so that's a wrong statement of law.



Decision path

Attack Sequence: Contracts attack sequence — UCC seller's remedies (reclamation from insolvent buyer) isn't a listed step; flag it.

Playbook: Contracts playbook, UCC REMEDIES (Seller's right to reclaim; 2-702).

How it lands: Flag: the ordering guide's remedies coverage is thin on reclamation. Rule (2-702): a seller may reclaim goods on demand within 10 days if the buyer got them on credit while insolvent → (C).

Question 5

Contracts — Parol Evidence / Third-Party Beneficiary

A new college graduate entered into an oral agreement with a freshman to lease the freshman her mini-refrigerator for a term of four years. The freshman was to pay the graduate $20 a month, of which $10 of the monthly charge was to be paid directly to the graduate's parents, in satisfaction of a debt the graduate owed her parents. While the graduate was putting the agreement into writing she accidentally did not include the agreement to pay her parents directly. The freshman also failed to notice that the direct payment provision was missing before she signed the contract, which the graduate signed. If the parents bring an action against the freshman, which of the following will have the greatest effect on the outcome?

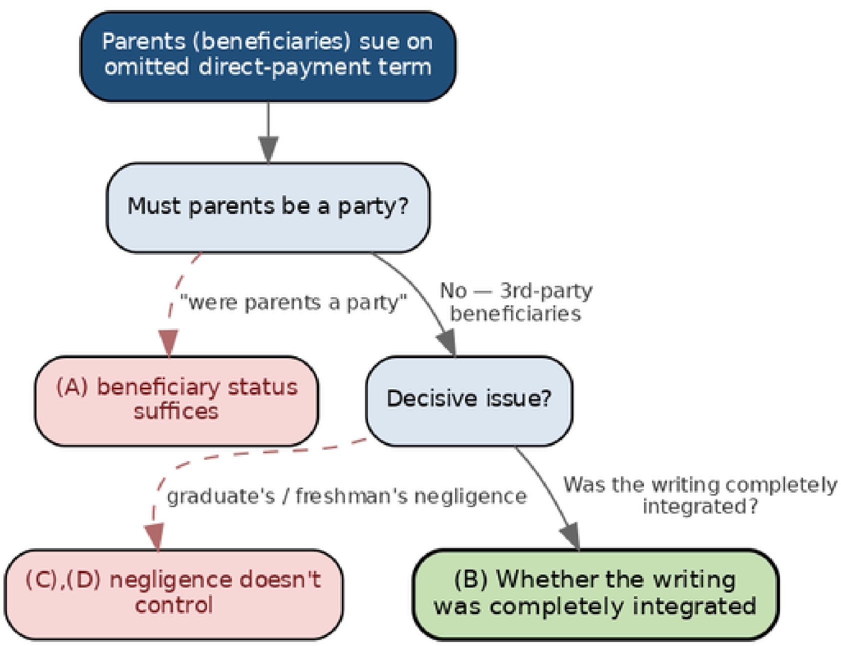
(A) Whether the parents were a party to the agreement between the graduate and the student.
(B) Whether the agreement between the graduate and the freshman was completely integrated.
(C) Whether the graduate was negligent in not discovering that the agreement omitted mention of the payment of money directly to her parents.
(D) Whether the freshman was negligent in not discovering that the agreement omitted mention of the payment of money directly to the parents.

> **Correct answer (B).** The key question is whether the writing was completely integrated.

Rule. The parol evidence rule bars evidence of prior or contemporaneous agreements that contradict a completely integrated writing (one intended as the full and final expression). If the writing is only partially integrated, consistent additional terms may be shown. An intended (here, creditor) third-party beneficiary can enforce a promise even without being a party.

Application. The parents' ability to enforce the omitted direct-payment term depends on whether the signed writing was completely integrated (barring the omitted term) or not. That's the decisive issue — (B).

Why the other choices fail. (A) the parents need not be parties; they are third-party beneficiaries. (C) and (D) either party's negligence in failing to catch the omission doesn't determine whether the term can be proved — integration does.



Decision path

Attack Sequence: Contracts attack sequence, §4 Terms, Parol Evidence & Gap Fillers, step 1 (integration — complete vs. partial) + §7 beneficiaries.

Playbook: Contracts playbook, PAROL EVIDENCE (Complete integration bars prior/collateral terms).

How it lands: §4 step 1: whether the writing was completely integrated decides if the omitted direct-payment term can be shown; the parents sue as beneficiaries → (B).

Question 6

Contracts — Mistake in Integration / Reformation

A farmer orally agreed to lease a tractor from a company for $500. However, when the company's secretary put the agreement into writing she accidentally typed in a charge of $300. Both the company and the farmer signed the contract without noticing the mistake in the price. When it came time for payment, the farmer refused to pay more than $300 for the rental of the tractor. If the company brings an action for the difference between the payment as orally agreed and as memorialized in the contract, which of the following, if proven, would most benefit the company?

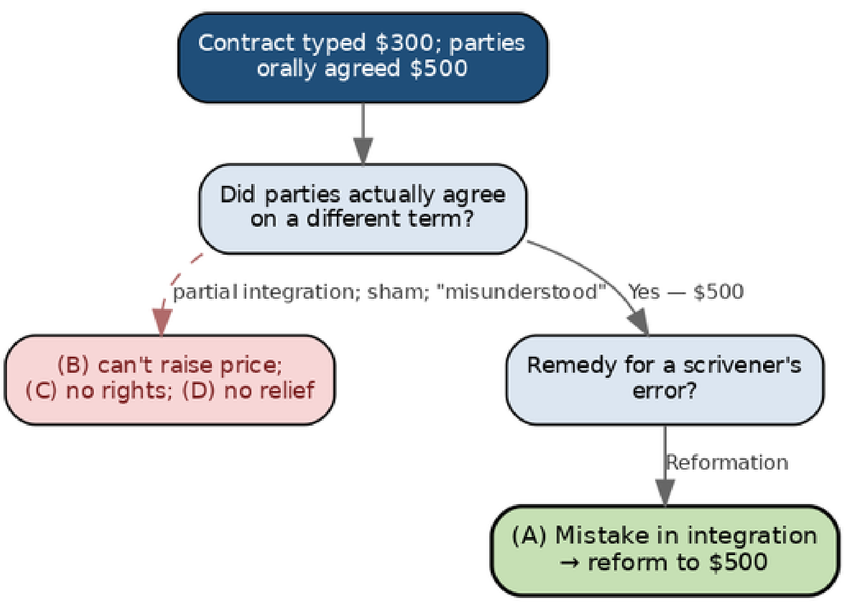
(A) The parties made a mistake in integration.
(B) The writing was only a partial integration.
(C) The writing was intended as a sham.
(D) The company or the farmer misunderstood the amount the rental payment was to be.

> **Correct answer (A).** The company benefits most from proving a mistake in integration (a scrivener's error), which courts will reform.

Rule. When the parties actually agreed on a term but a mistake in reducing the agreement to writing (a scrivener's error) misstates it, a court will reform the writing to reflect the true agreement. This is an exception to the parol evidence rule.

Application. The parties orally agreed on $500 but the typist wrote $300. Proving that integration mistake lets the company reform the writing to $500 — (A).

Why the other choices fail. (B) a partial integration can't be contradicted, only supplemented — it wouldn't let the company raise the price. (C) a sham writing would create no enforceable rights at all. (D) a mere misunderstanding of the amount wouldn't entitle the company to relief.



Decision path

Attack Sequence: Contracts attack sequence, §4 Terms, Parol Evidence & Gap Fillers, step 4 (reformation for mistake in integration).

Playbook: Contracts playbook, MISTAKE / REFORMATION (Scrivener's error corrected).

How it lands: §4 step 4: a mistake in reducing the deal to writing is reformed to the true term ($500) → (A).

Question 7

Real Property — Easement by Reference to Plat / Public Street

The owner of 10 acres of undeveloped grassland decided to open a public park. The entrance to the park was to be by a street that he planned to construct on the edge of his property. The owner's plan was approved and recorded, but construction of the street has been delayed awaiting permits. After the plans for the park were announced to the public, a family purchased an adjacent plot from another party, planning to build a home. The family applied for a building permit that would allow them to gain access to their plot from the planned yet still undeveloped street, which was referenced in their deed. The owner of the grassland objects to the granting of the building permit on the ground that he never granted any rights to anyone to use the street. There are no applicable statutes dealing with this situation. The family brings an appropriate action to determine their rights to build an access connecting the adjacent plot and the street. The best argument for the grassland owner in this action is that:

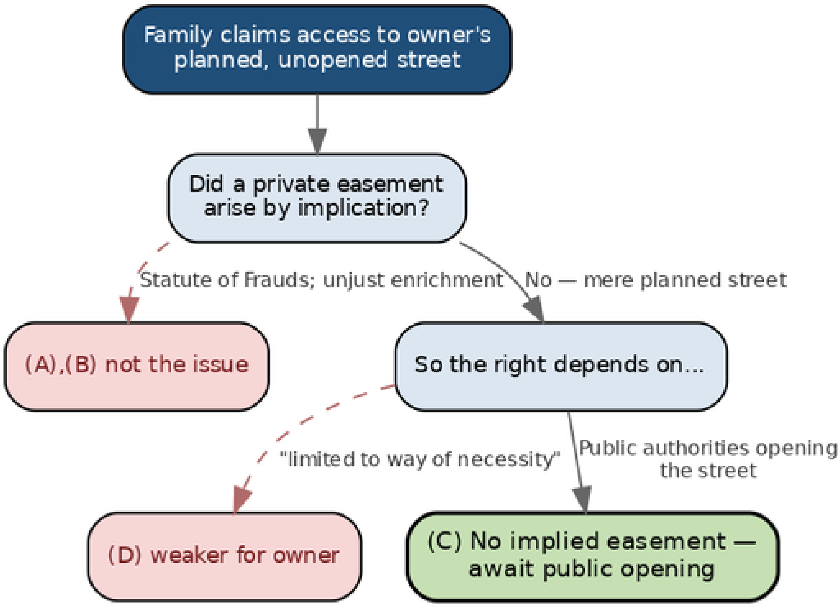
(A) The Statute of Frauds prevents the introduction of evidence that might prove the necessity for the family to use the street.
(B) The family would be unjustly enriched if they were permitted to use the street.
(C) The family's right must await the action of appropriate public authorities to open the street as a public street, because no private easement arose by implication.
(D) The family's right to use the street is restricted to the assertion of a way by necessity, and the facts preclude the success of such a claim.

> **Correct answer (C).** The owner's best argument is that no private easement arose by implication, so the family must await public opening of the street.

Rule. Merely referencing a recorded plan/plat that shows a proposed street does not automatically grant a private easement to a stranger to the dedication; the right to use a street the owner planned depends on the street actually being opened as a public street (or a valid private easement being created).

Application. The family bought from a third party and references a not-yet-opened planned street. The owner's strongest position is that no private easement arose by implication, so the family's rights depend on public authorities opening the street — (C).

Why the other choices fail. (A) no Statute of Frauds issue arises; no one is proving an oral conveyance. (B) there's no legal bar to 'unjust enrichment' from using a public street. (D) the family isn't limited to a way of necessity — the argument about the public street is stronger for the owner.



Decision path

Attack Sequence: Real Property attack sequence, §2 Easements, steps 2–4 (implied easements; dedication; way of necessity).

Playbook: Real Property playbook, EASEMENTS (Implication; dedication; necessity).

How it lands: §2: no private easement arises by implication from a planned, unopened street, so the family must await public opening — the owner's best argument → (C).

Question 8

Real Property — Dedication of Plat to Public Use

Two farmers owned adjacent tracts of farmland. Both relied on an old gravel road to get their vehicles onto the nearest highway. After many years, one of the farmers decided to develop his property, including a paved access ramp directly from his land to the highway. His development plan, which outlined the proposed public access ramp, was fully approved by all necessary governmental agencies and duly recorded. Meanwhile, the adjacent farmer sold his farm to a corporation. The description used in the deed from the adjacent farmer to the corporation fully referenced the first farmer's development plan and recording data. The corporation now seeks a building permit that would allow it to construct access from the adjacent land to the planned highway access ramp. The farmer objects to the granting of the building permit on the ground that he never granted any rights to the adjacent farmer or the corporation to use the access ramp. The corporation brings an appropriate action to determine its rights to build an access connecting the adjacent land and the access ramp. There are no applicable statutes. The best argument for the corporation in this action is that:

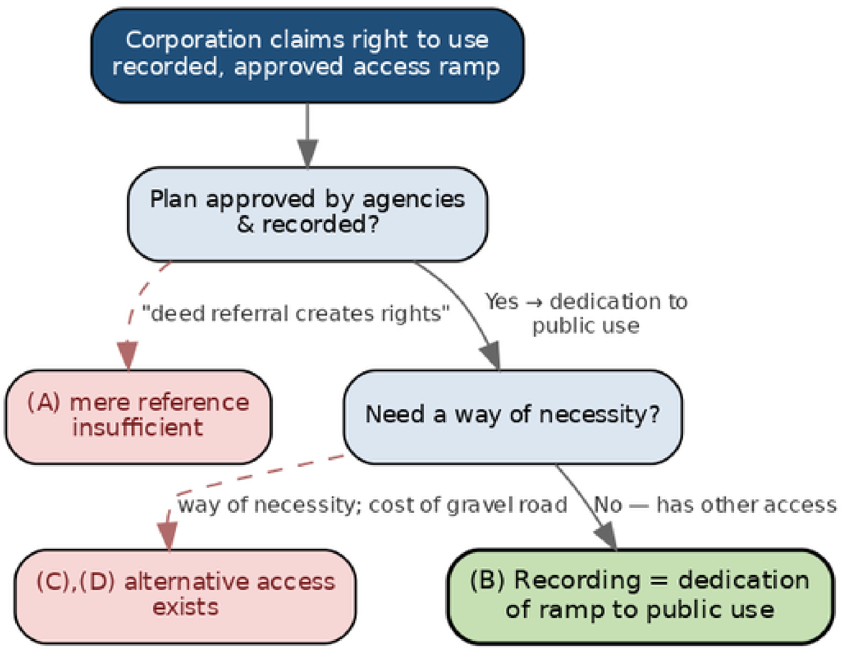
(A) The deed from the adjacent owner to the corporation referred to the recorded plan and therefore created rights to use the access ramp delineated in the plan.
(B) The recording of the plan is a dedication of the access ramp shown on the plan to public use.
(C) There is a way by necessity over the land to gain access to the highway.
(D) The fact that the corporation could only gain access to the adjacent land by expending a large amount of money to repair and improve the gravel road creates a sufficient need for an easement across the land to gain access to the access ramp to the highway.

> **Correct answer (B).** The corporation's best argument is that recording (and governmental approval of) the plan dedicated the access ramp to public use.

Rule. When an owner records a plat/plan showing streets or access and the government approves it, that can constitute a dedication of those ways to public use, which the government accepts by approval. Members of the public (including adjacent owners) may then use the dedicated way.

Application. The first farmer's ramp plan was approved by all agencies and recorded — a dedication to public use the corporation can invoke. That's its strongest argument — (B).

Why the other choices fail. (A) a mere reference to a recorded plan doesn't by itself create private rights. (C) no way of necessity is available because the corporation has other access (the gravel road). (D) the cost of improving the alternative access doesn't create an easement by necessity.



Decision path

Attack Sequence: Real Property attack sequence, §2 Easements, step 4 (dedication of a recorded, approved plat to public use).

Playbook: Real Property playbook, EASEMENTS (Dedication; way of necessity requires no other access).

How it lands: §2 step 4: recording and agency approval of the plan dedicated the ramp to public use — the corporation's best argument; necessity fails because it has other access → (B).

Question 9

Criminal Law — Degrees of Murder / Premeditation

The defendant, angered because a rival gang member had twice beaten him up after school, obtained a heavy lead pipe and waited in a deserted alleyway which he knew the rival took as a route home every day after school. When his enemy came walking down the alley, the defendant leapt out behind him and smashed the pipe into the victim's head, knocking him to the ground. The defendant then rolled the victim over and pounded his face with 15 to 20 heavy blows with the lead pipe, killing him. The jurisdiction defines first degree murder as murder committed with premeditation and deliberation. All other murders are defined as second degree murders. If the defendant is convicted of first degree murder (as opposed to second degree murder), it will be because:

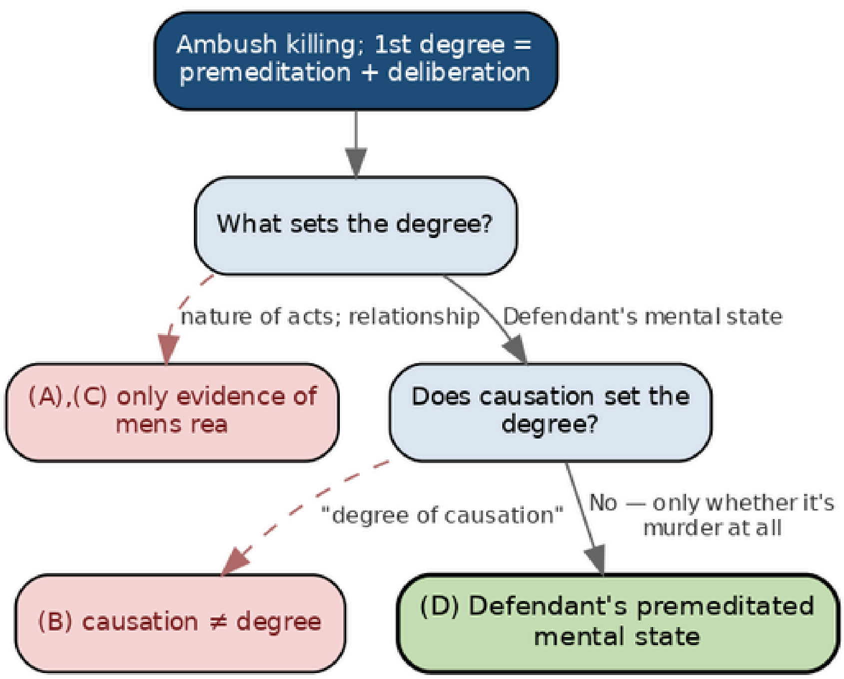
(A) The nature of the acts causing death distinguishes the defendant's action as first degree murder.
(B) The degree of causative relationship between the defendant's acts and the death of the victim renders it murder in the first degree.
(C) The relationship between the defendant and the victim requires that a finding of first degree murder be made.
(D) The defendant's mental state up to and including the moment of the attack determines that the act is first degree murder.

> **Correct answer (D).** First degree turns on the defendant's mental state — premeditation and deliberation — up to and including the attack.

Rule. Where a statute grades murder by premeditation and deliberation, the degree is determined by the defendant's mental state (whether he formed the intent to kill after reflection), not by the brutality of the act or the relationship of the parties (though those can be evidence of the mental state).

Application. He lay in wait with a pipe and killed deliberately, so first degree, if found, rests on his premeditated mental state up to and including the attack — (D).

Why the other choices fail. (A) the nature of the acts is only evidence of mens rea, not itself the distinguishing factor. (B) the causal relationship determines whether it's murder at all, not the degree. (C) the parties' relationship doesn't itself elevate the degree.



Decision path
Attack Sequence: Crim attack sequence, §1 Homicide, step 2 (degrees of murder — premeditation/deliberation).
Playbook: Crim playbook, HOMICIDE (1st degree = premeditation + deliberation).
How it lands: §1 step 2: the degree turns on the defendant's mental state, not the brutality or relationship → (D).

Question 10

Real Property — Doctrine of Merger (Deed vs. Contract)

A seller, who was married, entered into a written contract with a buyer to sell the buyer a vacation house, which had been purchased by the seller during his marriage but was held in his name alone. The contract expressly required the seller to provide "good, clear, and marketable title" to the vacation home. The buyer paid the purchase price and was given a deed to the property from the seller. According to the jurisdiction's marital property laws, both husband and wife own an interest in any real property purchased during their marriage. However, another statute provides that when real property is held in the name of one spouse alone, that spouse may convey that real property to another, and any interest in the property owned by the spouse whose name does not appear on the recorded title is terminated, unless that spouse brings an action within one year to set aside the conveyance. Six months later, the seller's wife successfully set aside the conveyance on the ground that the seller had conveyed her marital interest in the vacation home without her consent. What would be the result of an action for damages by the buyer against the seller for breach of the land sale contract?

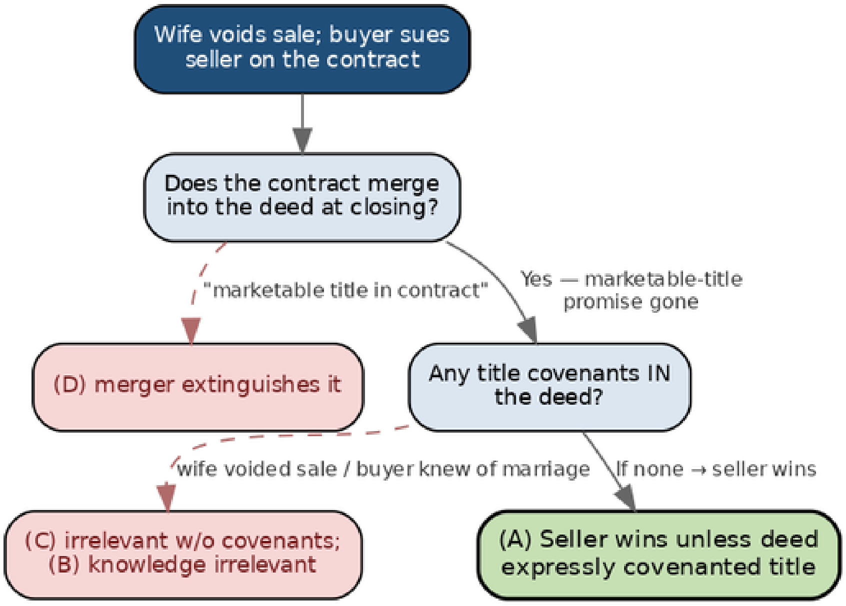
(A) The seller would prevail, unless the deed expressly covenanted title.
(B) The seller would prevail, if the buyer had knowledge that the seller was married.
(C) The buyer would prevail, because the seller's wife was able to set aside the conveyance.
(D) The buyer would prevail, because the terms of the contract are incorporated in the deed when the contract requires marketable title.

> **Correct answer (A).** The seller prevails unless the deed itself expressly contained covenants of title.

Rule. Under the doctrine of merger, contract obligations regarding title merge into the deed at closing; the buyer's remedy for title problems then depends on the covenants (if any) in the deed, not the contract's marketable-title promise. If the deed contains no title covenants (e.g., a quitclaim), the buyer has no claim.

Application. The contract's 'marketable title' promise merged into the deed. Unless the deed expressly covenanted title (seisin, right to convey, quiet enjoyment), the buyer can't sue on the contract — the seller prevails, (A).

Why the other choices fail. (C) the wife's setting aside the conveyance doesn't matter if the deed had no covenants. (D) the marketable-title contract term does not survive into the deed — that's the merger doctrine. (B) the buyer's knowledge of the marriage is irrelevant to merger.



Decision path

Attack Sequence: Real Property attack sequence, §6 Conveyancing, Deeds & Recording, step 2 (doctrine of merger).

Playbook: Real Property playbook, REAL ESTATE CONTRACTS (Merger — contract title terms merge into deed).

How it lands: §6 step 2: the contract's marketable-title promise merges into the deed, so the buyer wins only if the deed itself has title covenants → seller prevails, (A).

Question 11

Constitutional Law — Supremacy / Federal Contractor Immunity

The federal accounting office issued a call for competitive bids for a contract to supply 3,000 four-wheel drive utility vehicles without antipollution devices and with engines with a displacement of 4,000 cubic centimeters. A supplier in a state won the contract as low bidder and began manufacture of the vehicles. However, the state's statutes require that automobiles manufactured in that state be equipped with antipollution devices and have a maximum displacement of 2,500 cubic centimeters. The supplier files suit in state court, seeking a judicial declaration that the state statute may not be enforced as to it. The court should rule:

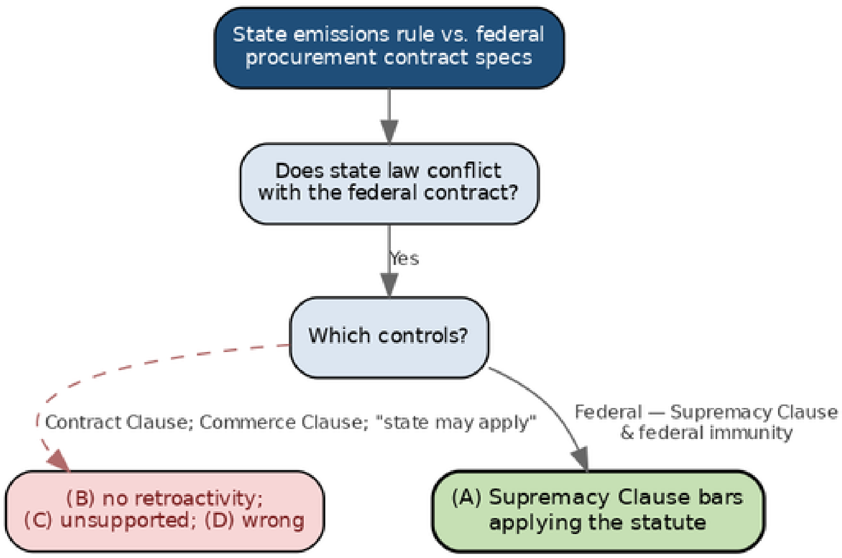
(A) The statute may not constitutionally be applied to the supplier because to do so would violate the Supremacy Clause.
(B) The statute may not constitutionally be applied to the supplier because to do so would violate the Contracts Clause.
(C) The statute may not constitutionally be applied to the supplier because to do so would violate the Commerce Clause.
(D) The statute may constitutionally be applied to the supplier.

> **Correct answer (A).** The state statute cannot be applied to the federal supplier because doing so violates the Supremacy Clause.

Rule. Under the Supremacy Clause and intergovernmental immunity, a state may not regulate the federal government or its instrumentalities in a way that conflicts with federal law or a valid federal contract. A state emissions/displacement rule cannot override the specifications of a federal procurement contract.

Application. The federal contract calls for vehicles without antipollution devices and with 4,000cc engines; the conflicting state rule can't be enforced against the supplier fulfilling that federal contract — (A).

Why the other choices fail. (B) no facts show the statute post-dated the contract, so the Contract Clause doesn't fit. (C) a Commerce Clause theory is possible but unsupported and inconclusive on these facts. (D) the statute cannot be applied here, so (D) is wrong.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism (Supremacy / intergovernmental immunity).

Playbook: Con Law playbook, SUPREMACY (Federal immunity from conflicting state regulation).

How it lands: §2: a state rule conflicting with a federal procurement contract can't be applied to the federal supplier — Supremacy Clause → (A).

Question 12

Constitutional Law — Ballot Access / Strict Scrutiny

To keep election costs manageable, a state law required a candidate in a general election to collect on a petition supporting her candidacy the signatures of at least 4% of the voters eligible to vote for the office for which the candidate was running. Studies revealed that, prior to adoption of the law, a candidate who did not have at least 4% of the voters supporting her initially had never won an election. An independent candidate for governor who had limited campaign resources was supported in the polls by 30% of the voters, but had been able to obtain only 3.5% of the eligible voters' signatures by the filing deadline. The board of elections refused to put her name on the ballot. If the candidate sues to have her name placed on the ballot, claiming that the state's petition requirements are unconstitutional, which of the following statements is most accurate?

(A) She will have to show that the petition requirement is not rationally related to a legitimate state purpose.
(B) She will have to show that the petition requirement is not necessary to achieve a compelling state

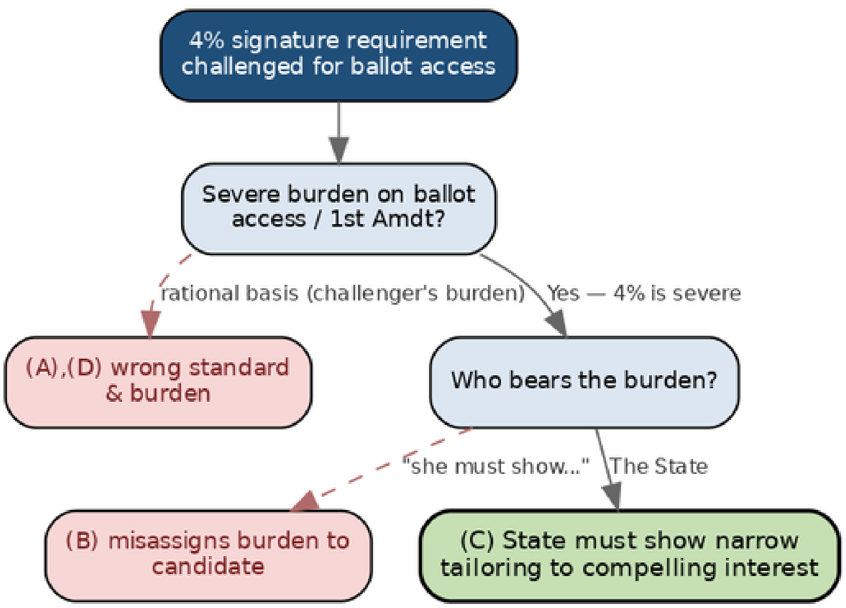
interest.
(C) The state will have to show that the petition requirement is narrowly tailored to achieve a compelling state interest.
(D) The state will have to show that the petition requirement is rationally related to a legitimate state interest.

> **Correct answer (C).** The state will have to show the petition requirement is narrowly tailored to a compelling interest.

Rule. Restrictions on ballot access implicate First and Fourteenth Amendment rights. Where the burden on those rights is severe, the regulation is upheld only if narrowly tailored to a compelling state interest, and the government bears that burden. (A 1% signature requirement has been approved; higher, severe burdens draw strict scrutiny.)

Application. A 4% signature requirement is a severe burden on ballot access, so strict scrutiny applies and the state — not the candidate — must show narrow tailoring to a compelling interest — (C).

Why the other choices fail. (A) and (D) apply rational basis and put the burden on the challenger; heightened scrutiny applies here. (B) misassigns the burden by phrasing it as something 'she' must show — under strict scrutiny the state bears the burden.



Decision path

Attack Sequence: Con Law attack sequence, §6 First Amendment: Speech / voting (ballot access — severe burden → strict scrutiny).

Playbook: Con Law playbook, FUNDAMENTAL RIGHTS (Ballot access; strict scrutiny; burden on state).

How it lands: §6: a 4% signature requirement is a severe burden, so strict scrutiny applies and the State bears the burden of narrow tailoring → (C).

Question 13

Constitutional Law — Equal Protection / Rational Basis; 11th Amendment

As part of a new environmental policy, a state legislature enacted a statute creating a farmland development agency. The agency was organized along the lines of a private corporation. The agency's purpose was to restore and cultivate polluted land in the state, making the land suitable for farmers. Once the agency cultivated the land, it would sell the land to new farmers at a reduced price. The agency began cultivating and selling farmland in one county where the pollution levels were high, but did not operate in a neighboring county with slightly lower pollution levels. A group of residents in the second county bring an action in federal court against the agency director, seeking to compel the agency to begin operations in their county. What will be the probable outcome of this litigation?

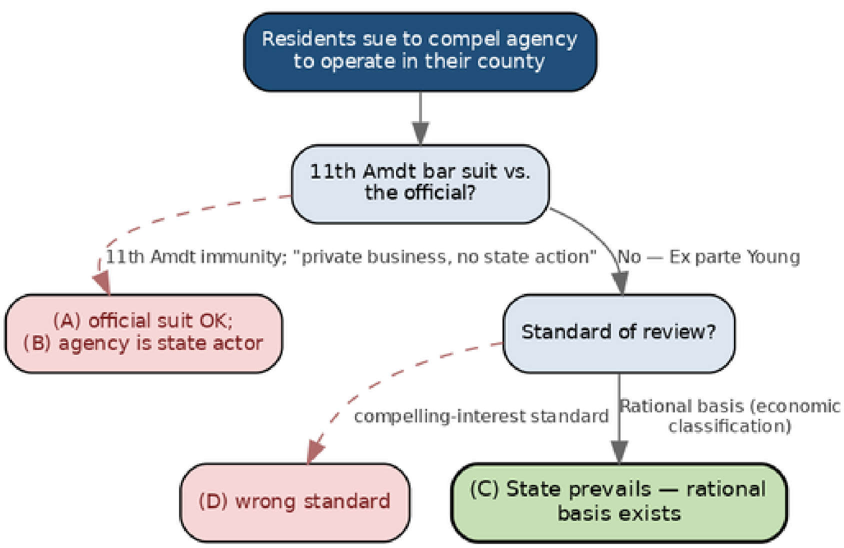
(A) The action will be dismissed, because the state is immune from litigation under the Eleventh Amendment.
(B) The action will be dismissed, because the agency is organized as a private business and thus does not engage in any state action.
(C) The state will prevail, because it has a rational basis for not operating in the neighboring county.
(D) The citizens will prevail, because the state cannot show a compelling state interest in not operating in their county.

> **Correct answer (C).** The state prevails because its decision has a rational basis, and the Eleventh Amendment doesn't shield a suit against the official.

Rule. Economic/social legislation not involving fundamental rights or suspect classes is upheld under rational-basis review. The Eleventh Amendment bars many suits against a state in federal court, but a suit against a state official to compel constitutional compliance (Ex parte Young) is permitted; the agency is still a state actor.

Application. Choosing to operate first in a higher-pollution county is rationally related to the cleanup purpose, so the residents lose on the merits — (C). The suit against the director proceeds, but fails on rational basis.

Why the other choices fail. (A) the Eleventh Amendment doesn't bar a suit against the official for constitutional compliance. (B) a state agency is a state actor, even if organized like a corporation. (D) no compelling-interest standard applies to this economic classification.



Decision path

Attack Sequence: Con Law attack sequence, §5 Equal Protection, step 1 (rational basis for economic classifications) + §1 (11th Amdt / Ex parte Young).

Playbook: Con Law playbook, EQUAL PROTECTION (Rational basis) + JUSTICIABILITY (11th Amdt; official suits).

How it lands: §5 step 1: operating first in a higher-pollution county is rational; the 11th Amendment doesn't bar the suit against the official, but the state wins on the merits → (C).

Question 14

Constitutional Law — Federal Regulation of State Agencies

To encourage economic development in areas of a state currently underdeveloped, state legislation created an agency to build retail buildings in those parts of the state and then to sell the stores to buyers at the cost of materials and labor. The federal government has enacted legislation in effect for the relevant period that regulates the manner in which building contractors conduct business. Is the state agency subject to these federal regulations?

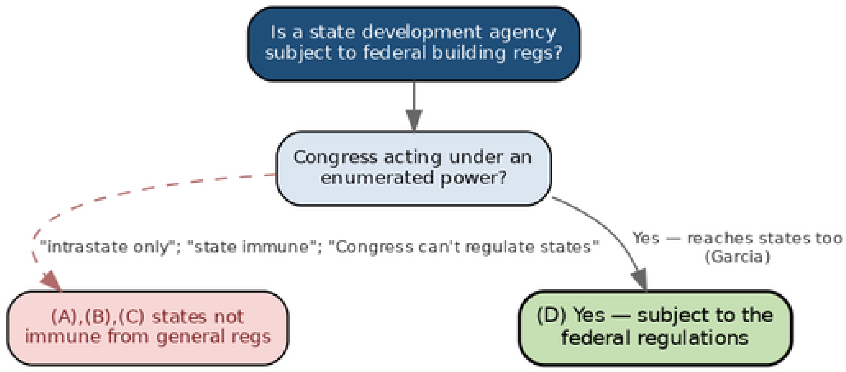
(A) No, because its activities take place entirely within the state.
(B) No, because as an agency of state government, it is immune from federal regulation.
(C) No, because the federal government is not empowered to enact legislation regulating state governments or their agencies.
(D) Yes.

> **Correct answer (D).** Yes — the state agency is subject to the federal regulations.

Rule. Congress may regulate states and their agencies when acting under its enumerated powers; a general regulation that applies to states as well as private actors is valid (Garcia v. San Antonio MTA). Intrastate activity is reachable under the Commerce Clause if it substantially affects interstate commerce.

Application. Federal rules on how building contractors do business apply to the state agency the same as to private builders, controlling via the Supremacy Clause — (D).

Why the other choices fail. (A) purely intrastate activity is still reachable if it affects interstate commerce. (B) and (C) states are not immune from generally applicable federal regulation under the enumerated powers.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism, step 3 (federal power to regulate states — Garcia).

Playbook: Con Law playbook, FEDERALISM (10th Amdt limits; Garcia — general laws bind states).

How it lands: §2 step 3: a general federal regulation applies to state agencies as to private actors, controlling via the Supremacy Clause → (D).

Question 15

Torts — Negligence Requires Breach (Not Mere Causation)

A city ordinance required that all dogs be leashed when taken outside of an enclosed area. One dog owner often allowed his dog to run loose in front of his house. One clear and sunny day when the dog was running loose, a pizza delivery driver was driving carefully on that street at a speed somewhat below the posted limit. The dog dashed out into the street from between two parked cars. The delivery driver alertly applied her brakes but could not avoid striking the dog. A man driving directly behind the delivery driver promptly applied his brakes as soon as he saw the delivery driver brake. However, the man's vehicle struck the rear of the delivery driver's car. Both of the vehicles suffered damage and both drivers suffered minor personal injuries. If the man sues the delivery driver for his vehicle damage and personal injuries, the man will:

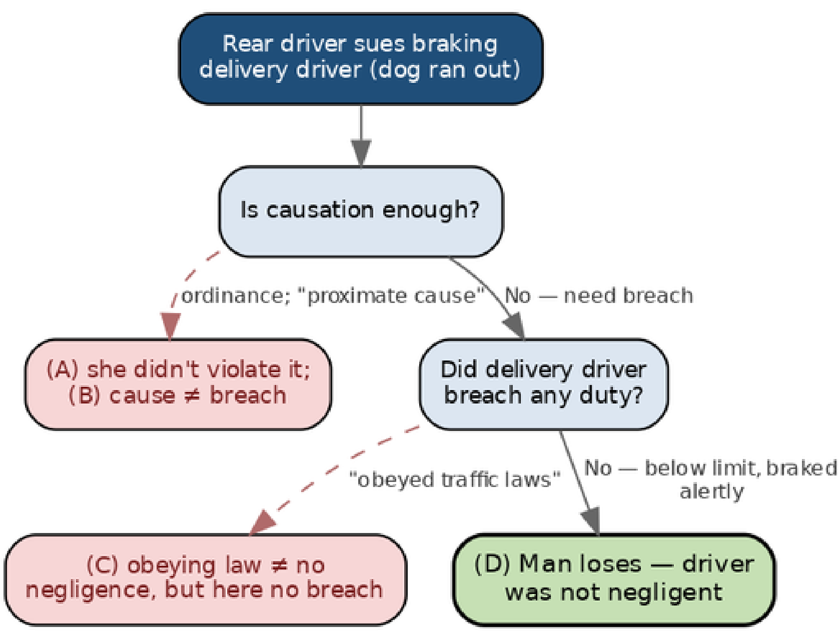
(A) Prevail, because the ordinance was designed to prevent dogs from being hit by cars.
(B) Prevail, because the delivery driver was a proximate cause of the accident.
(C) Not prevail, because the delivery driver obeyed the traffic laws.
(D) Not prevail, because the delivery driver was not negligent.

> **Correct answer (D).** The man loses because the delivery driver was not negligent.

Rule. Being a cause of an accident is not enough; liability in negligence requires a breach of the duty of reasonable care. A driver who acts reasonably is not liable even if her actions were part of the causal chain.

Application. The delivery driver was going below the limit and braked alertly for the dog. She didn't breach any duty, so the rear-ending man can't recover from her — (D).

Why the other choices fail. (A) she didn't violate the leash ordinance — that was the dog owner. (B) being a proximate cause isn't enough without breach. (C) obeying traffic laws doesn't itself preclude negligence, so the precise reason is the absence of breach, (D).



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 3 (breach — causation alone is not enough).

Playbook: Torts playbook, NEGLIGENCE (Breach required; obeying law ≠ no negligence).

How it lands: §3 step 3: the delivery driver was a cause but committed no breach, so the rear driver can't recover → (D).

Question 16

Real Property — Covenant to Pay Taxes Runs with the Land

A renter rented a house from a landlord. The renter and the landlord entered into a written lease providing that the renter was to pay a fixed monthly rent plus all taxes. A month later, the renter was offered a job in another state, and the renter assigned her lease to a friend by written agreement. The renter forgot to tell the friend that he was liable to pay the taxes on the residence during the period of the lease. As a result, the friend failed to pay the taxes on the house. The landlord was informed that there was a tax lien on the residence. She paid the lien and brought suit against the friend for the amount. Judgment for:

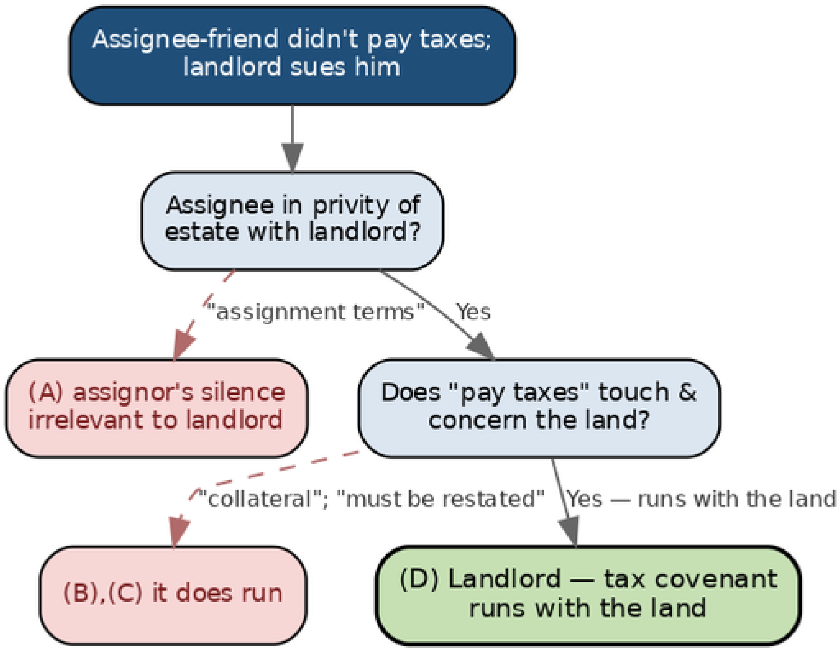
(A) The friend, because under the terms of his assignment with the renter he is not liable for the taxes.
(B) The friend, because the agreement to pay taxes was collateral, and thus is not a covenant running with the land.
(C) The friend, because in order for the agreement to be a covenant running with the land it must be expressly stated in the original agreement.
(D) The landlord, because payment of property taxes touches and concerns the land.

> **Correct answer (D).** Judgment for the landlord, because a covenant to pay taxes touches and concerns the land and runs with it.

Rule. An assignee of a lease is in privity of estate with the landlord and is liable on covenants that run with the land — those that touch and concern the land. A covenant to pay property taxes touches and concerns the land and runs, binding the assignee regardless of what the assignor told him.

Application. The friend (assignee) is liable to the landlord for the taxes because that covenant runs with the land; the renter's failure to warn him doesn't change his obligation to the landlord — (D).

Why the other choices fail. (A) the assignor's silence doesn't relieve the assignee vis-à-vis the landlord. (B) paying taxes does touch and concern the land. (C) it need not be restated in the assignment; running is determined by touch-and-concern, not re-expression.



Decision path

Attack Sequence: Real Property attack sequence, §7 Landlord-Tenant, step 3 (assignment — covenants touching & concerning run; tax covenant).

Playbook: Real Property playbook, LANDLORD-TENANT (Assignee liable on running covenants; taxes touch & concern).

How it lands: §7 step 3: a covenant to pay taxes touches and concerns the land and runs, so the assignee is liable to the landlord → (D).

Question 17

Real Property — Joint Tenancy / Estoppel

By mutual agreement, a brother and sister purchased a 10-acre parcel of land and took title "as joint tenants with right of survivorship." Three years after the purchase, the brother asked if he could build an apartment house on his half of the property; the sister agreed. He then built an apartment house on the eastern five acres of the property. Two years later, the brother died, leaving his entire estate to his son. In an action for partition, if the brother's estate is judged the owner of the eastern five acres, it will be because:

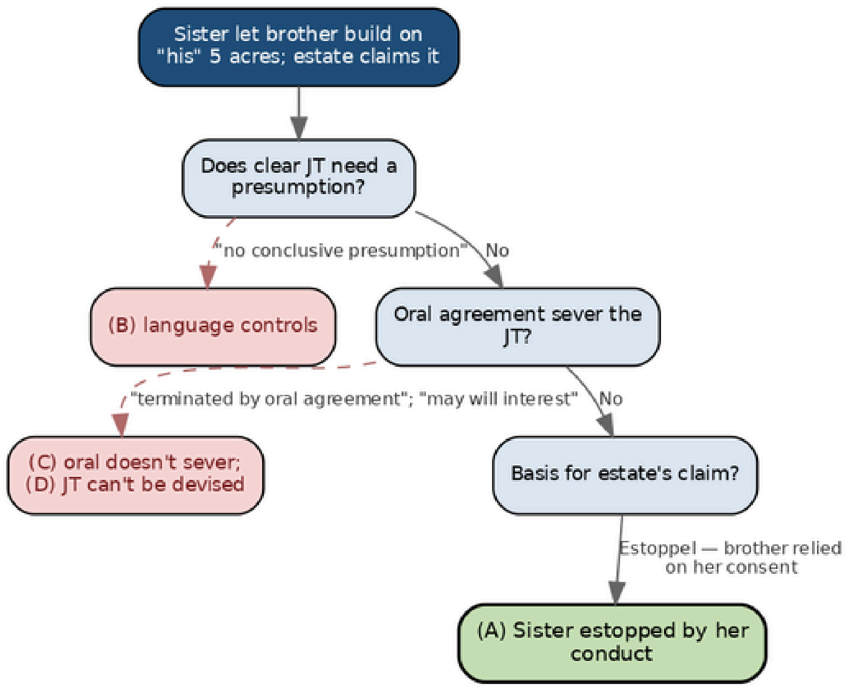
(A) The sister's conduct during the brother's lifetime estopped her from asserting title to the eastern half of the property.
(B) The taking of title as joint tenants does not conclusively presume that the property is held as joint tenants.
(C) The joint tenancy was terminated at the time the oral agreement was made.
(D) A joint tenant may will away his interest in property to a lineal descendant.

> **Correct answer (A).** The brother's estate takes the eastern five acres because the sister is estopped by her conduct.

Rule. A clearly created joint tenancy isn't converted by informal oral action, and a joint tenant normally can't devise his interest (survivorship). But where one joint tenant induces the other to rely to his detriment (agreeing he could build on 'his half'), estoppel may bind her, supporting the estate's claim to that portion.

Application. The sister agreed the brother could build an apartment house on the eastern five acres, and he relied by building. If the estate wins that parcel, it's because her conduct estops her from denying his ownership of it — (A).

Why the other choices fail. (B) a clear joint tenancy needs no presumption; the language controls. (C) an oral agreement doesn't sever a joint tenancy. (D) a joint tenant can't will his interest (survivorship), so that's a wrong statement.



Decision path

Attack Sequence: Real Property attack sequence, §4 Co-Ownership, steps 1 & 3 (clear joint tenancy; estoppel; oral acts don't sever).

Playbook: Real Property playbook, CONCURRENT ESTATES (JT survivorship; severance) + estoppel.

How it lands: §4: an oral agreement doesn't sever a clear JT and a joint tenant can't devise, so the estate's only path to the eastern acres is estoppel from the sister's consent → (A).

Question 18

Real Property — Covenant to Convey / Option Runs with Land

An entrepreneur entered into a written lease-option to purchase an office building. The option to purchase the building could be exercised at any time during the five-year term of the lease by giving the building's owner a written 30-day notice of the intent to exercise the option. A few months later, the entrepreneur assigned his lease-option to a dentist looking for office space by written agreement. If the dentist fully performs under the lease, can the dentist exercise the option to purchase that was given to the entrepreneur?

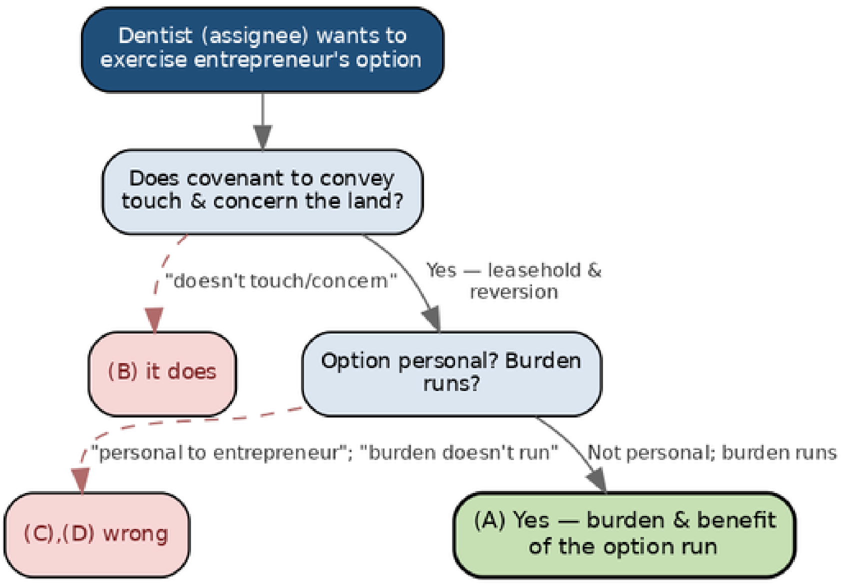
(A) Yes, because both the burden and benefit of the covenant to convey run with the land.
(B) No, because the covenant to convey does not touch or concern the land.
(C) No, because the option to purchase was personal to the entrepreneur.
(D) No, because the burden of the covenant to convey given in a lease does not run with the land.

> **Correct answer (A).** The dentist can exercise the option because both the burden and benefit of a covenant to convey run with the land.

Rule. A covenant to convey (an option in a lease) touches and concerns both the leasehold and the reversion, so it runs with those interests. An assignee of the lease takes the benefit of the option and may exercise it, absent something making it personal.

Application. The entrepreneur assigned the lease-option to the dentist; because the covenant to convey runs with the land, the dentist may exercise the purchase option — (A).

Why the other choices fail. (B) a covenant to convey does touch and concern the land. (C) nothing indicates the option was personal to the entrepreneur. (D) the burden of the covenant to convey does run with the land.



Decision path

Attack Sequence: Real Property attack sequence, §7 Landlord-Tenant (covenant to convey / option runs with leasehold & reversion).

Playbook: Real Property playbook, LANDLORD-TENANT (Covenants running; assignment of lease-option).

How it lands: §7: a covenant to convey touches and concerns both estates and runs, so the assignee-dentist may exercise the option → (A).

Question 19

Civil Procedure — Joinder vs. Subject-Matter Jurisdiction

A borrower went to a bank and obtained a loan, signing all the documents the bank required. Several months later, the borrower returned to the bank to make a deposit in the borrower's savings account. During that latter visit, the borrower slipped and fell on the overly polished floor of the bank's lobby. The borrower filed an action against the bank in federal district court. The action joined both (i) a claim that the bank was liable for violating federal truth in lending statutes in relation to the loan transaction and (ii) a tort claim that the bank was liable for injuries the borrower sustained when he fell in the bank lobby. The borrower and the bank are citizens of the same state. Can the borrower properly maintain both claims in the same action in federal court?

(A) No, because plaintiffs cannot join unrelated claims in the same action.

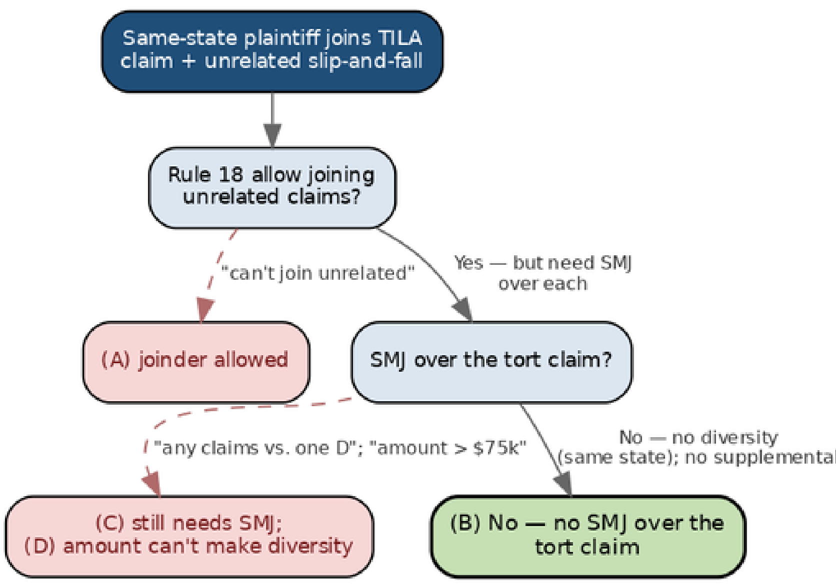
(B) No, because the court does not have subject matter jurisdiction over the tort claim.
(C) Yes, because a plaintiff may join all the claims it has against a single defendant.
(D) Yes, provided the two claims' amount in controversy exceeds $75,000.

> **Correct answer (B).** The borrower cannot maintain both claims because the court lacks subject-matter jurisdiction over the tort claim.

Rule. Rule 18 lets a plaintiff join any claims against a defendant, but each claim still needs an independent basis of subject-matter jurisdiction or supplemental jurisdiction. Supplemental jurisdiction requires a common nucleus of operative fact; unrelated claims don't qualify, and same-state parties defeat diversity.

Application. The federal truth-in-lending claim supports federal-question jurisdiction, but the unrelated slip-and-fall tort claim shares no common facts and (same-state parties) has no diversity, so no supplemental jurisdiction — (B).

Why the other choices fail. (A) Rule 18 does allow joining unrelated claims — the problem is jurisdiction, not joinder. (C) joinder still requires SMJ over each claim. (D) amount in controversy can't create diversity when the parties are co-citizens.



Decision path

Attack Sequence: Civil Procedure attack sequence, §1 Subject Matter Jurisdiction + §5 Joinder, step 1 (Rule 18 joinder needs SMJ per claim).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION + JOINDER (Rule 18; supplemental jxn).

How it lands: §5 step 1 + §1: Rule 18 allows joining unrelated claims, but the slip-and-fall (same-state, unrelated) has no diversity and no supplemental jurisdiction → (B).

Question 20

Criminal Law — Larceny/Burglary Require Intent; Mistake of Fact

A consultant operated a consulting firm from an office in his home. An employee asked if she could stay late one night to use one of the firm's computers. The consultant replied that she could consider the computer hers. The employee mistakenly believed that the consultant was giving her the computer.

Late the next night, when the employee could borrow her roommate's car, she drove to the consultant's house to pick up the computer. She went to the door leading directly to the office, which was unlocked. She let herself in and took the computer. The next day, the consultant reported the computer as stolen, and the police arrested the employee. The employee can be convicted of:

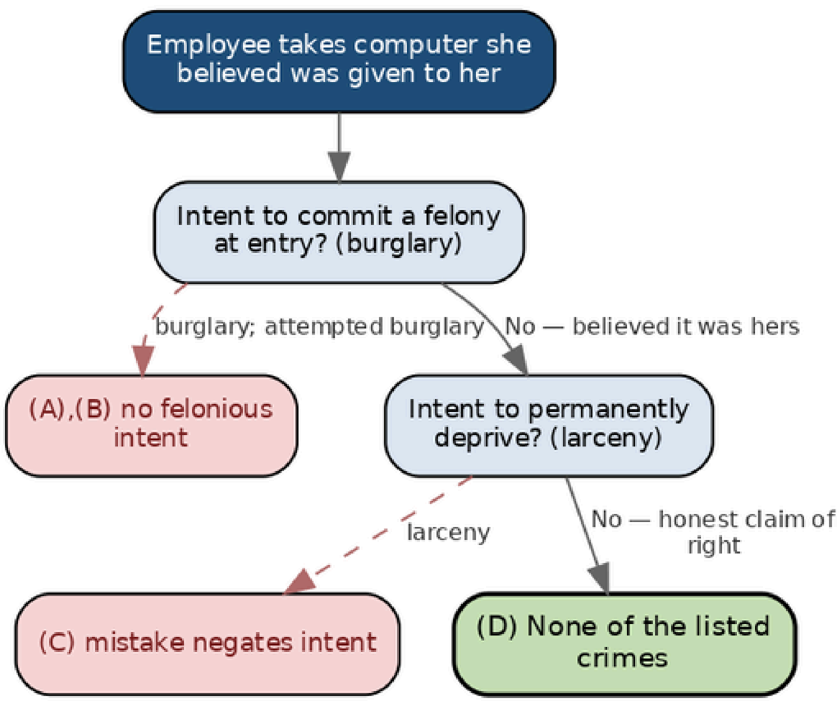
(A) Burglary.
(B) Attempted burglary.
(C) Larceny.
(D) None of the listed crimes.

> **Correct answer (D).** The employee is guilty of none of the listed crimes.

Rule. Burglary (and attempted burglary) requires intent to commit a felony in the structure at entry; larceny requires intent to permanently deprive another of property. A genuine (even unreasonable) mistake that the property is one's own negates the intent to steal.

Application. The employee believed the consultant had given her the computer, so she lacked intent to steal — no larceny, and no felonious intent for burglary or attempt. She's guilty of nothing listed — (D).

Why the other choices fail. (A) and (B) burglary/attempt need intent to commit a felony inside, which she lacked. (C) larceny needs intent to permanently deprive, negated by her honest belief of ownership.



Decision path

Attack Sequence: Crim attack sequence, §2 Property Crimes (larceny/burglary — specific intent) + Defenses (mistake of fact).

Playbook: Crim playbook, CRIMES (Burglary — intent to commit felony inside; larceny — intent to permanently deprive).

How it lands: §2: her honest belief the computer was a gift negates the intent for larceny and the felonious intent for burglary → none of the crimes, (D).

Question 21

Civil Procedure — Work Product / Substantial Need

A large sign fell from the ceiling of a department store and hit one of the store's customers, causing severe injuries. The store manager knew the accident would almost certainly result in litigation. Accordingly, after the injured customer was cared for and taken to the hospital by ambulance, the store manager conducted a brief investigation by observing the area and interviewing people who were in the area of the accident. The manager then created a digital document on his computer in which the manager summarized the information he obtained from the interviews in case litigation ensued. He never printed the document. A few months later, the customer filed an action against the store. During a deposition of the store manager, the customer's lawyer learned about the digital document on the manager's computer that summarized the manager's investigation. The customer's lawyer requested a copy of the digital document, but the store objected to the request on the grounds that the document is protected from discovery under the work product doctrine. Is the customer entitled to obtain a copy of the digital document?

(A) Yes, because the work product doctrine protects only physical documents and tangible things.

(B) Yes, because the document was not created by or at the direction of the store's attorney.

(C) Yes, if the customer demonstrates substantial need for the document and an inability to obtain the substantially equivalent information by other means without undue hardship.

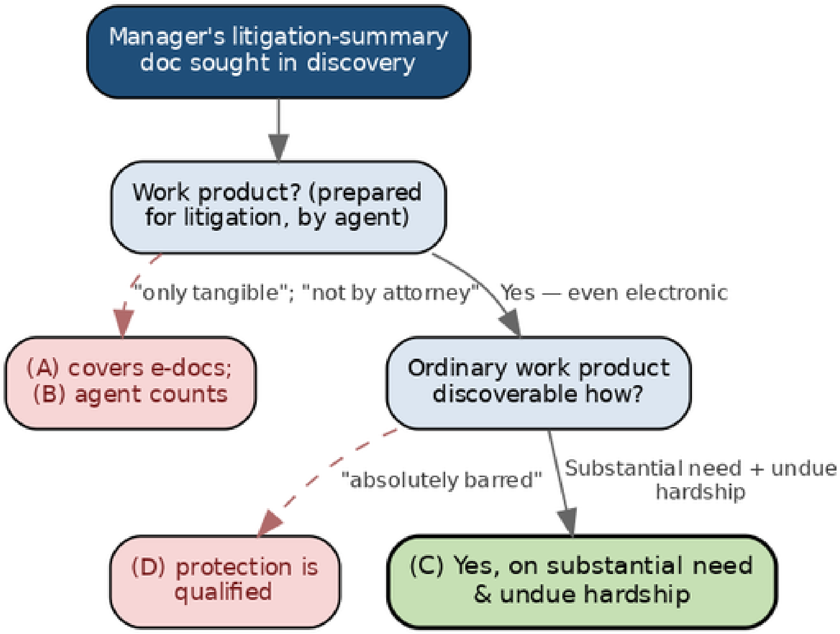
(D) No, because the work product doctrine precludes any discovery of the document.

> **Correct answer (C).** The customer may obtain the document if she shows substantial need and inability to get the equivalent without undue hardship.

Rule. Work product (materials prepared in anticipation of litigation by a party or its representative, including an agent) is protected in physical or electronic form. Ordinary (non-opinion) work product is nonetheless discoverable on a showing of substantial need and undue hardship in obtaining the substantial equivalent otherwise.

Application. The manager's summary is work product, but the customer can still get it by showing substantial need and that she can't obtain equivalent information (e.g., the witnesses' accounts) without undue hardship — (C).

Why the other choices fail. (A) work product covers electronic documents too. (B) it protects materials prepared by a party's agent, not just an attorney. (D) the protection is qualified, not absolute, for ordinary work product.



Decision path

Attack Sequence: Civil Procedure attack sequence, §6 Pleadings & Pre-Trial Motions (Discovery — work product / substantial need).

Playbook: Civil Procedure playbook, DISCOVERY (Work product qualified; substantial need + undue hardship).

How it lands: §6: the manager's litigation summary is ordinary work product (by an agent, electronic), discoverable on substantial need and undue hardship → (C).

Question 22

Criminal Law — Specific Knowledge Element of Offense

A state's penal statutes contain the following: "Any person who commits a battery on a state official knowing that the victim is a state official shall be punished by imprisonment in the county jail for not more than one year or fined not more than $5,000, or both." While picking up her unemployment check at the state office building, a woman got into an argument with a man wearing a brown suit and angrily shoved him against the wall, causing him no injuries. The man she shoved was the director of the state department of unemployment, and the woman is prosecuted under the penal statute quoted. The woman admits that she shoved the victim intentionally but denies that she knew the man was a state official. The jury should return a verdict of:

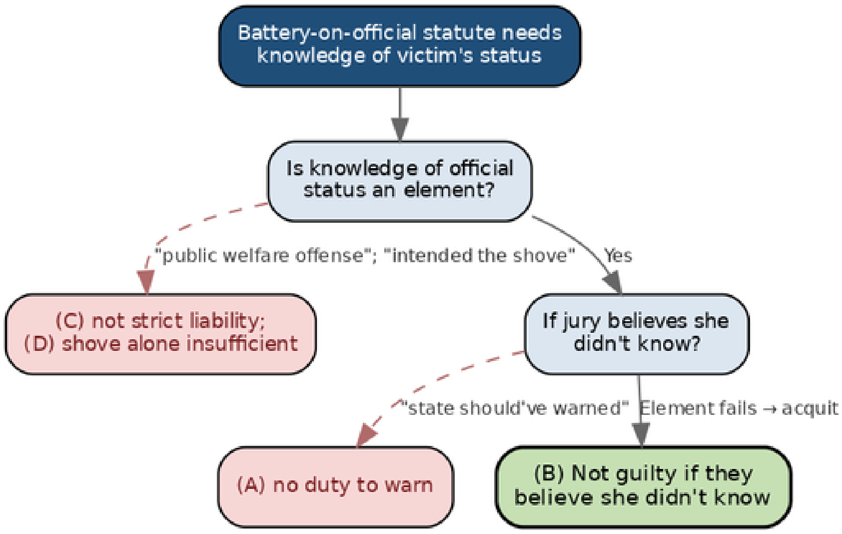
(A) Not guilty, if they find that the state should have warned the woman that the victim was an official, even though they do not believe her testimony.
(B) Not guilty, if they believe the woman's testimony.
(C) Guilty, even if they believe the woman, because this is a public welfare offense.
(D) Guilty, regardless of whether they believe the woman, because she admitted that she intentionally shoved the victim.

> **Correct answer (B).** Not guilty if the jury believes she did not know the man was a state official.

Rule. When a statute requires that the defendant act 'knowing' a particular fact (here, that the victim is a state official), that knowledge is an element the prosecution must prove. A defendant who lacks that knowledge cannot be convicted of the enhanced offense.

Application. The statute punishes battery on a state official 'knowing' the victim's status. If the jury believes she didn't know, the knowledge element fails and she must be acquitted of this charge — (B).

Why the other choices fail. (A) the state has no duty to warn; that's not the issue. (C) this is a specific-knowledge crime, not a strict-liability public-welfare offense. (D) intending the shove isn't enough; the statute requires knowledge of the victim's official status.



Decision path

Attack Sequence: Crim attack sequence, §2 General Principles, step 1 (mens rea — statutory "knowing" element).

Playbook: Crim playbook, MENS REA (Knowledge element must be proven).

How it lands: §2 step 1: the statute requires knowledge the victim is an official, so disbelief of that knowledge means acquittal → (B).

Question 23

Evidence — Opposing-Party Admission (Confession)

In a college student's civil suit for personal injuries against her stepfather, arising from acts of sexual abuse allegedly committed by him against her when she was a minor, the student calls as a witness a police officer who will testify that, 11 years ago, the stepfather confessed to the witness that he had committed the acts complained of by the student. Should the trial court admit the police officer's testimony over the stepfather's objection?

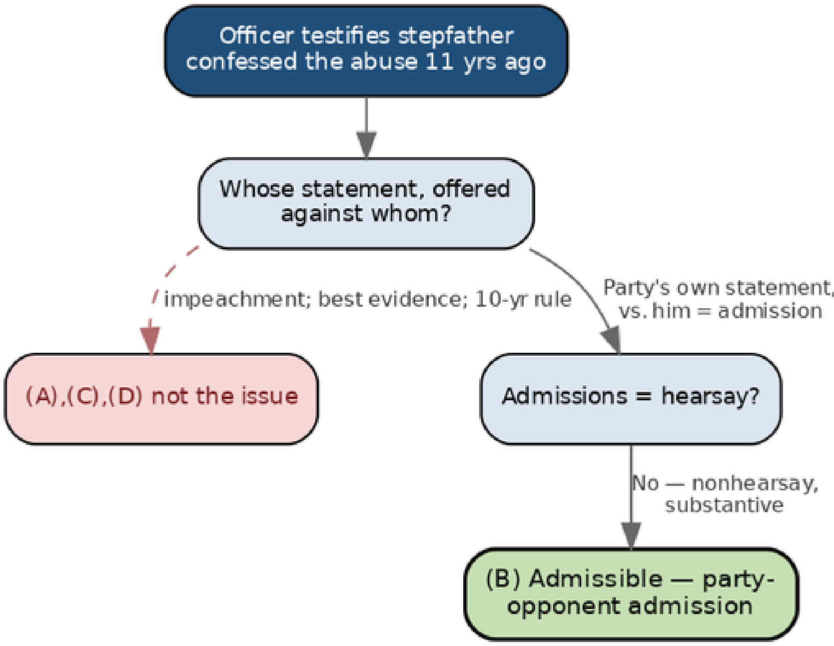
(A) Yes, because past instances of misconduct may be used to impeach a witness.
(B) Yes, because the stepfather's confession is an admission of a party-opponent.
(C) No, because the best evidence of a conviction is the judgment of the court that convicted him.
(D) No, because the sexual assault that is the subject of the evidence is more than 10 years old.

> **Correct answer (B).** The officer's testimony is admissible as an admission by a party-opponent.

Rule. A statement offered against a party that was made by that party is an opposing-party statement — treated as nonhearsay under the Federal Rules. It comes in as substantive evidence; the best-evidence rule and the 10-year impeachment limit for convictions are inapplicable because no writing or conviction is being proved.

Application. The stepfather's confession to the officer is his own statement offered against him — a party admission, admissible as substantive evidence — (B).

Why the other choices fail. (A) this isn't impeachment; the stepfather may not even testify. (C) best evidence doesn't apply — the point is that he confessed, not a court judgment. (D) the 10-year rule applies to convictions used to impeach, not to a party's confession.



Decision path

Attack Sequence: Evidence attack sequence, §3 Statements Defined as Non-Hearsay, step 5 (opposing-party statement / admission).

Playbook: Evidence playbook, EXEMPTIONS (Opposing-party statement — nonhearsay, substantive).

How it lands: §3 step 5: the stepfather's confession is his own statement offered against him — a party admission and substantive evidence → (B).

Question 24

Civil Procedure — Diversity / U.S. Citizen Domiciled Abroad

A citizen of State A filed a breach of contract action for $100,000 in a federal district court against an American citizen living permanently in a foreign country. Does the federal court have subject matter jurisdiction over the action?

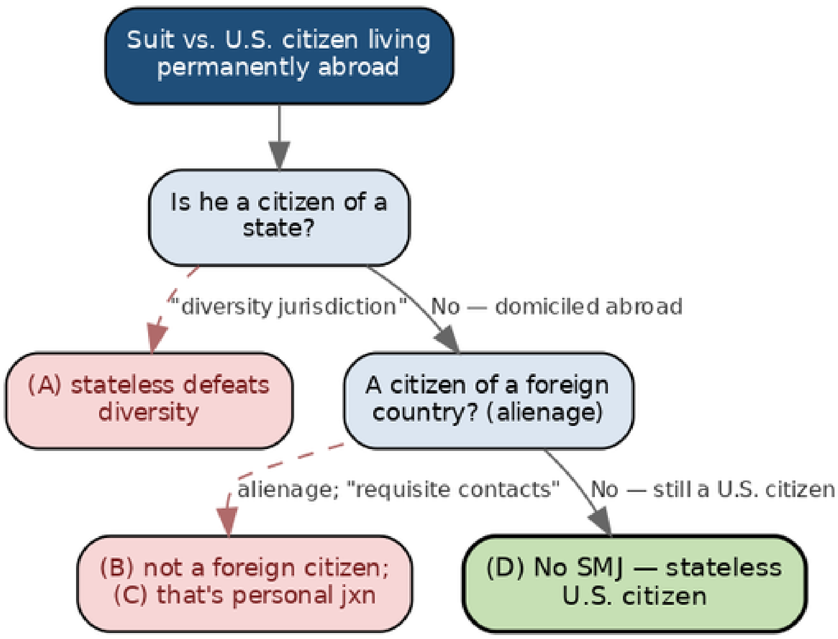
(A) Yes, because the federal court has diversity of citizenship jurisdiction.
(B) Yes, because the federal court has alienage jurisdiction.
(C) Yes, as long as the American living abroad has the requisite contacts with State A.
(D) No, the federal court lacks subject matter jurisdiction.

> **Correct answer (D).** The federal court lacks subject-matter jurisdiction.

Rule. Diversity jurisdiction covers suits between citizens of different states and between a state citizen and a foreign citizen. A U.S. citizen domiciled abroad is neither a citizen of a U.S. state nor a citizen of a foreign country, so such a person destroys diversity/alienage jurisdiction (the 'stateless citizen' problem).

Application. The defendant is an American citizen permanently living abroad — stateless for diversity purposes — so there's no diversity or alienage jurisdiction, and no federal question. Dismiss — (D).

Why the other choices fail. (A) a stateless U.S. citizen defeats diversity. (B) alienage requires a foreign citizen, which he is not. (C) personal jurisdiction (contacts) is a separate question from subject-matter jurisdiction, which is lacking.



Decision path

Attack Sequence: Civil Procedure attack sequence, §1 Subject Matter Jurisdiction, steps 2–3 (diversity/alienage — stateless U.S. citizen abroad).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Diversity; U.S. citizen domiciled abroad = stateless).

How it lands: §1: a U.S. citizen permanently abroad is neither a state citizen nor a foreign citizen, defeating diversity and alienage → (D).

Question 25

Contracts — Material Breach / Divisible Performance

A producer hired a violinist to play in an orchestra that was to leave on a 10-week tour. The violinist turned down another job opportunity in order to accept the producer's job offer. One week after the start of the tour, the violinist was hospitalized with a bad back and was unable to perform. The producer hired another musician to take her part in the orchestra. Four days later, the violinist recovered but the producer refused to allow her to rejoin the orchestra or to complete the tour. She then sued the producer for breach of contract. Which of the following is the violinist's best legal theory?

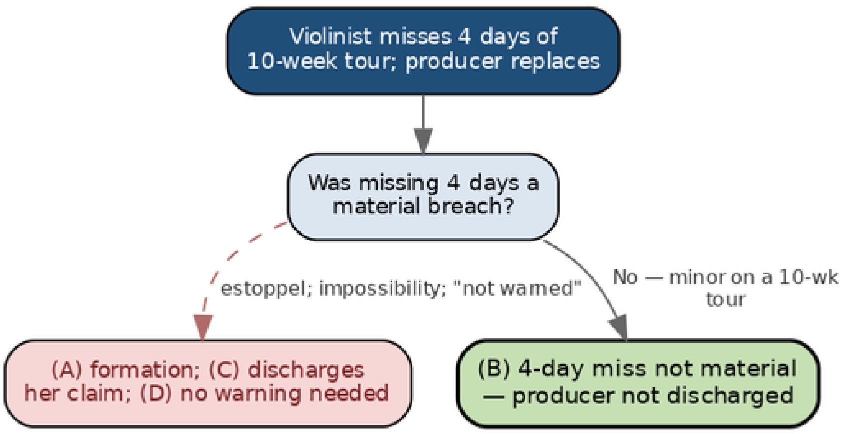
(A) Her reliance on the job offered by the producer by declining another job opportunity created an estoppel against the producer.
(B) Her failure to perform with the orchestra for four days was not a material failure so as to discharge the producer's duty to perform.
(C) Her performance with the orchestra for the four-day period was physically impossible.
(D) She was never told that an injury might jeopardize her continued employment with the orchestra.

> **Correct answer (B).** Her best theory is that missing four days was not a material failure that discharged the producer.

Rule. Only a material breach discharges the other party's duty to perform; a minor, curable failure does not. Whether a breach is material depends on the extent of nonperformance relative to the whole contract.

Application. On a 10-week tour, a four-day absence for injury is not a material failure, so it didn't discharge the producer, who breached by refusing to let her return — (B).

Why the other choices fail. (A) estoppel/reliance goes to formation; the contract was already formed. (C) claiming impossibility could discharge the whole contract, leaving her no claim — bad for her. (D) she need not have been warned of the consequences of a breach.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance & Breach, step 2 (material vs. minor breach).

Playbook: Contracts playbook, PERFORMANCE (Material breach discharges; minor breach does not).

How it lands: §5 step 2: missing four days of a ten-week tour is a minor, not material, failure, so the producer wasn't discharged → (B).

Question 26

Contracts — Mitigation / Substitute Performance

An actor was hired by a director to perform in a three-month run of a play that the director had written. Two weeks after the play's opening night, the actor fainted and could no longer perform because of a resulting concussion. After a week of treatment, the actor returned to the theatre to resume his role but the director refused him admission, having hired someone else to replace the actor. In his action against the director for breach of contract, which of the following, if true, would adversely affect the actor's rights?

(A) Most of the theatre members felt that the replacement was a better performer than the actor.
(B) The director had offered the actor a job in the ticket office at a higher salary but the actor had declined.
(C) The director could not find any substitute except for the replacement actor, who demanded a contract for a minimum of two and a half months if he was to perform at all.
(D) The actor did not wish to continue to be employed by the director.

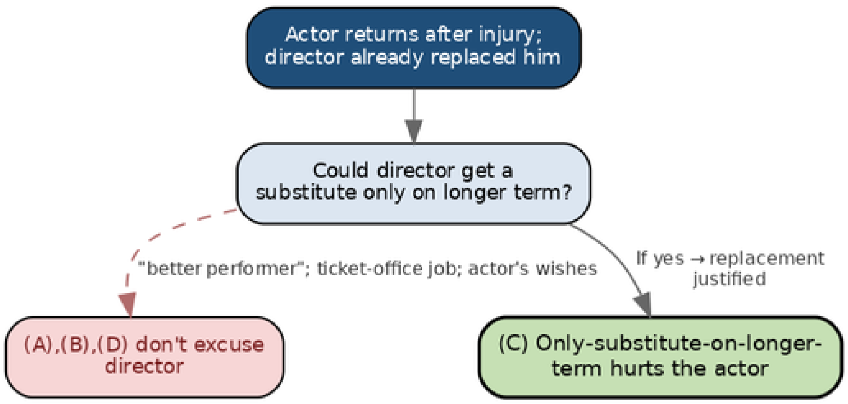
> **Correct answer (C).** It hurts the actor if the only available substitute demanded a 2.5-month

> minimum contract.

Rule. A party faced with the other's temporary inability may take reasonable steps to obtain a substitute; if the only way to secure a needed substitute is to commit to a longer term, hiring that substitute (and refusing the returning performer) can be justified, cutting off the returning performer's claim.

Application. If the director could only get a replacement by promising a 2.5-month minimum, replacing the actor was reasonable, which undercuts the actor's breach claim — (C).

Why the other choices fail. (A) that the replacement is better doesn't excuse the director. (B) the actor need not accept a different (ticket-office) job; only a similar role to mitigate. (D) the actor's unwillingness to continue wouldn't excuse the director's breach.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance & Remedies (mitigation / obtaining a substitute).

Playbook: Contracts playbook, REMEDIES (Mitigation; substitute performance).

How it lands: §5: if the only available substitute required a longer minimum term, replacing the actor was reasonable, undercutting his claim → (C).

Question 27

Torts — Trespass to Land / Conversion of Chattels

A developer owned a 10-acre tract of land that was covered by a number of small trees. The first step in his development was the removal of the trees. The developer's neighbor knew that the developer intended to remove the trees from his property. The day before development was to start, the neighbor went onto the developer's land, cut down a number of trees for firewood and moved them onto his property. The developer brought an appropriate action against the neighbor for damages. The developer most likely will:

(A) Recover only nominal damages, because the value of the land was not diminished.

(B) Recover nominal damages and the value of the trees removed.

(C) Not recover, because removal of the trees saved him money in the development of the land.

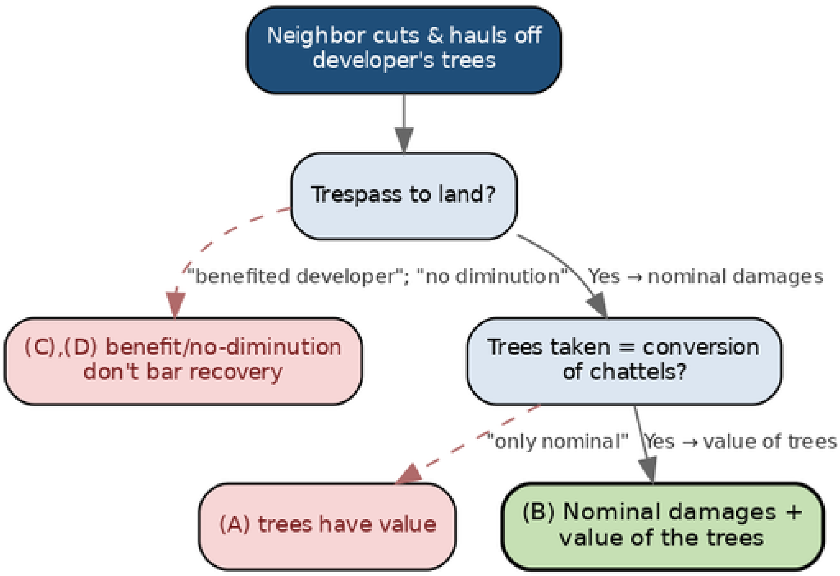
(D) Not recover, because the value of the land was not diminished by the removal of the trees.

> **Correct answer (B).** The developer recovers nominal damages for the trespass plus the value of the trees taken.

Rule. Trespass to land is actionable without proof of harm (nominal damages). Severing and carrying off timber is a taking of the landowner's property, for which the owner recovers the value of what was taken. That the trespass incidentally benefited the owner does not reduce recovery.

Application. The neighbor trespassed (nominal damages) and hauled off the developer's trees (their value). The developer recovers both — (B).

Why the other choices fail. (A) recovery isn't limited to nominal damages; the trees have value. (C) an incidental benefit to the owner doesn't bar recovery. (D) the lack of diminution in land value doesn't defeat recovery for the trees themselves.



Decision path

Attack Sequence: Torts attack sequence, §1 Intentional Torts, steps 1 & 4 (trespass to land — nominal damages; conversion/trespass to chattels).

Playbook: Torts playbook, INTENTIONAL TORTS (Trespass to land; conversion — value of chattel).

How it lands: §1: trespass gives nominal damages and taking the trees is a conversion giving their value; an incidental benefit doesn't reduce recovery → (B).

Question 28

Evidence — Experiments / Substantial Similarity

A plaintiff has brought an action for personal injuries against a store, in connection with an incident in which he slipped and fell after the store's linoleum floors had been mopped. A major issue at trial is the degree of moisture that remained on the floor, because it had been mopped 45 minutes before the plaintiff walked on it. The store offers the testimony of an expert, who will testify about an experiment he conducted measuring the amount of time necessary for a linoleum floor to dry completely after having been mopped. Under what condition should the court admit this testimony?

(A) A representative of the plaintiff was present when the experiment was conducted.
(B) It is shown that the conditions of the expert's experiment were substantially similar to the conditions of the store's floor when the plaintiff slipped.
(C) The plaintiff was given an opportunity to conduct his own experiment with the same type of linoleum used by the expert.
(D) It is shown that the expert is not an employee or otherwise related in interest to the store.

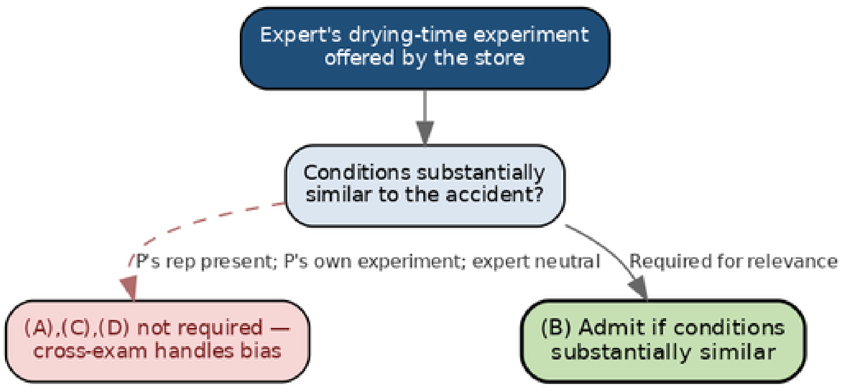
> **Correct answer (B).** The experiment testimony is admissible only if the conditions were

> substantially similar to those at the accident.

Rule. Evidence of out-of-court experiments is admissible if relevant and not barred by Rule 403. Relevance depends on the experiment being conducted under conditions substantially similar to the actual event; dissimilar conditions gut probative value and risk unfair prejudice or confusion.

Application. The drying-time experiment matters only if the linoleum, moisture, and environment were substantially similar to the store's floor when the plaintiff slipped — (B).

Why the other choices fail. (A) no representative of the adverse party need be present; cross-examination handles it. (C) the plaintiff need not have run his own experiment. (D) the expert need not be a neutral outsider; bias goes to weight, not admissibility.



Decision path

Attack Sequence: Evidence attack sequence, §1 Relevance & special exclusions, step 2 (experiments — substantial similarity of conditions).

Playbook: Evidence playbook, RELEVANCE (Experiments; substantial-similarity requirement).

How it lands: §1 step 2: the experiment is relevant only if conducted under conditions substantially similar to the accident → (B).

Question 29

Criminal Law — Larceny Requires Intent to Steal (Mistake)

A teenager ordered a custom-made prom dress from a tailor for $175, although she knew she could not afford to pay that amount. On the day the dress was ready, the teenager phoned her best friend and promised her friend that if she would collect the dress, that night she could dance with the teenager's boyfriend at the prom. The teenager knew that the tailor would be gone by the afternoon and that the always-intoxicated clerk at the tailor's shop would willingly hand the dress over. The teenager forged a claim ticket and gave it to her friend to show to the clerk. The friend did as the teenager asked. She picked up the dress and gave it to the teenager. The friend will be found not guilty of taking the dress from the tailor's shop because:

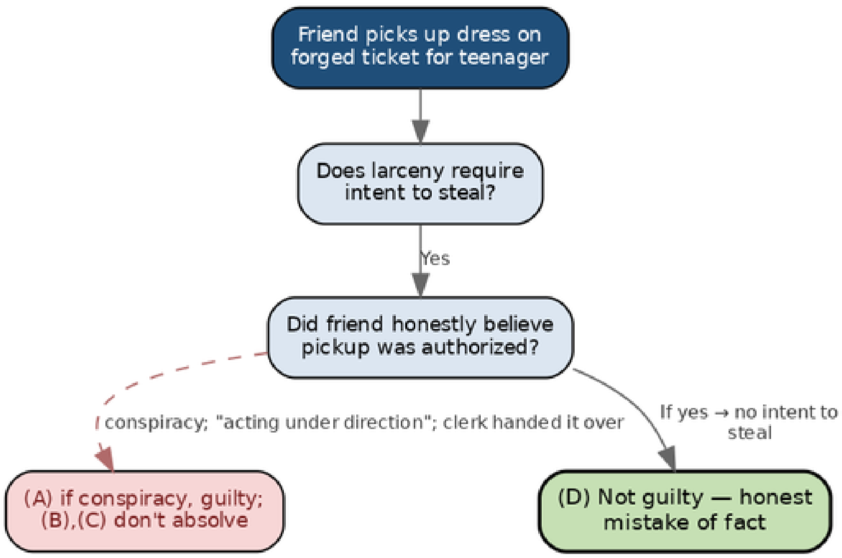
(A) The teenager was the principal in the conspiracy to obtain the dress without payment.
(B) She was acting under the teenager's direction.
(C) The clerk, whom the friend knew was intoxicated, willingly handed over the dress.
(D) She believed that the tailor was expecting the dress to be picked up without money changing hands.

> **Correct answer (D).** The friend is not guilty because she honestly believed the dress was to be picked up without payment.

Rule. Larceny requires the intent to steal — to take property known to belong to another without a claim of right. A genuine mistake of fact (believing the pickup was authorized without payment) negates the intent to steal.

Application. If the friend sincerely believed the tailor expected the dress to be handed over without payment, she lacked intent to steal — not guilty, (D).

Why the other choices fail. (A) there was no conspiracy on these facts; and if there were, she'd be guilty — so this isn't the reason. (B) acting under another's direction is no defense. (C) that the clerk willingly handed it over doesn't itself absolve her — the honest mistake does.



Decision path

Attack Sequence: Crim attack sequence, §2 Property Crimes (larceny — intent to steal) + Defenses (mistake of fact).

Playbook: Crim playbook, CRIMES (Larceny — intent to permanently deprive) + DEFENSES (mistake).

How it lands: §2: if the friend honestly believed the pickup was authorized without payment, she lacked the intent to steal → (D).

Question 30

Torts — Battery Requires a Volitional Act

A homeowner heard a strange noise one night. She took a handgun from her nightstand and began to inspect her home. The homeowner's neighbor had also heard the strange noise. He walked out of his house and onto the homeowner's front lawn, thinking that the sound came from the homeowner's home. He stood silently on her lawn, listening. When the homeowner was near the front door, her cat playfully charged into her, causing her to drop the gun. The gun hit the floor and discharged. The bullet went through the homeowner's front window and struck the neighbor in the shoulder. If the neighbor sues the homeowner on a battery theory, he will:

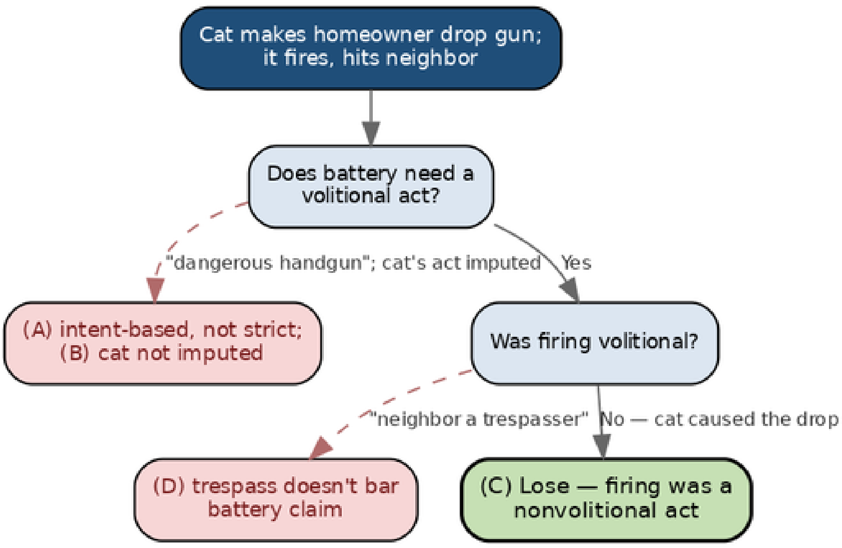
(A) Prevail, because handguns are highly dangerous instrumentalities.
(B) Prevail, because the cat's actions are imputed to the homeowner.
(C) Lose, because the firing of the gun was a nonvolitional act.
(D) Lose, because the neighbor was a trespasser.

> **Correct answer (C).** The neighbor loses because the firing of the gun was not a volitional act.

Rule. Battery requires a volitional act by the defendant done with intent to cause a harmful or offensive contact (or imminent apprehension). An involuntary or reflexive movement — here, dropping a gun that discharges when a cat charges her — is not the volitional act intent requires.

Application. The homeowner didn't volitionally fire; the cat caused her to drop the gun, which discharged. No volitional act, so no battery — (C).

Why the other choices fail. (A) a gun being 'dangerous' doesn't matter; battery is intent-based, not strict liability. (B) a cat's act isn't imputed to its owner. (D) the neighbor's trespasser status wouldn't bar a battery claim; and she had no right to use deadly force to protect property.



Decision path

Attack Sequence: Torts attack sequence, §1 Intentional Torts, step 1 (battery — volitional act + intent).

Playbook: Torts playbook, INTENTIONAL TORTS (Battery — volitional act; intent, not strict liability).

How it lands: §1 step 1: dropping the gun when the cat charged wasn't a volitional act, so there's no battery → (C).

Question 31

Criminal Law — Criminal Battery / Mental State

The defendant was walking down a street when he realized that a long-lost friend was walking in the opposite direction. The defendant started waving his arms in a desperate attempt to get his friend's attention. The defendant did not notice an old woman, who was walking past him, and negligently struck her with his elbow with sufficient force to cause her to stumble to the pavement. The fall did not, however, cause her any major injury. If the defendant is prosecuted for criminal battery, he will probably be found:

(A) Not guilty, because his act did not cause serious bodily injury.
(B) Not guilty, because he did not have the mental state required for criminal battery.
(C) Guilty, because he failed to exercise due care in flailing his arms about near a public sidewalk.
(D) Guilty, because he caused an offensive touching.

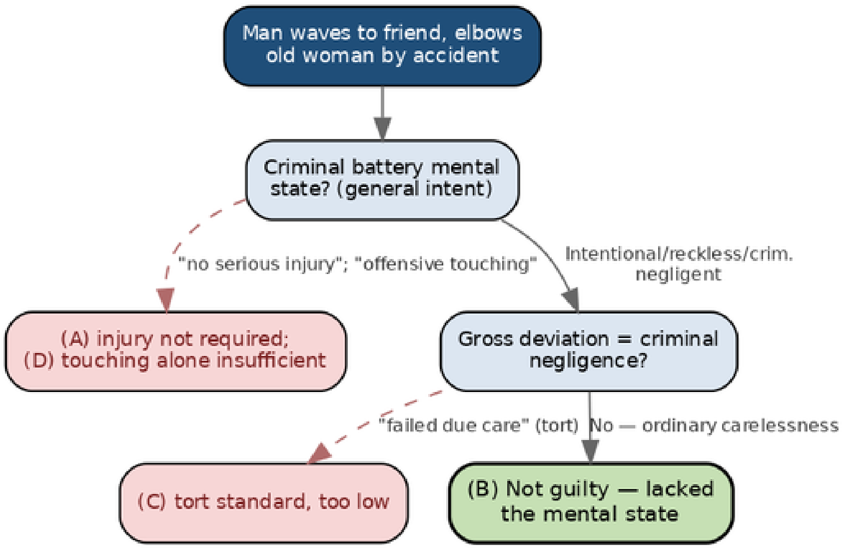
> **Correct answer (B).** He is probably not guilty because he lacked the mental state for criminal

> battery.

Rule. Criminal battery is a general-intent crime, satisfied by intentional, reckless, or criminally negligent conduct. Criminal negligence requires a gross deviation from ordinary care — more than the ordinary (tort) failure to exercise due care.

Application. He was merely waving to a friend and accidentally elbowed the woman. That's ordinary carelessness at most, not the gross deviation criminal negligence requires, so he lacks the mental state — (B).

Why the other choices fail. (A) serious injury isn't required for battery. (C) 'failure to exercise due care' is the tort standard; criminal negligence needs a greater deviation. (D) causing a touching isn't enough without the requisite mental state — (B) is more accurate.



Decision path

Attack Sequence: Crim attack sequence, §2 Crimes Against the Person (criminal battery — general intent; criminal negligence).

Playbook: Crim playbook, CRIMES (Battery — general intent; criminal negligence = gross deviation).

How it lands: §2: accidentally elbowing while waving is ordinary carelessness, not the gross deviation criminal negligence requires → (B).

Question 32

Evidence — Expert Opinion / Bases (FRE 703, 704)

A contractor for a large multistory building used an excavation subcontractor to dig the excavation for the foundation, and a structural subcontractor to begin structural work on the foundation. Just after the foundation was completed, an employee of the structural subcontractor was killed when the walls of the excavation collapsed. The employee's survivors brought an appropriate action against all of the involved parties. At trial, the structural subcontractor calls a civil engineer licensed by the state to testify that he examined the geologist's reports of the soil conditions surrounding the construction site, as well as a report by the investigator who examined the site of the collapse, and that it is his (the engineer's) opinion that the collapse was caused by the excavation subcontractor's failure to take into consideration the composition of the soil being excavated. Is the engineer's testimony admissible?

(A) Yes, if civil engineers in his field rely on such materials as reports by geologists and others in reaching conclusions such as his.

(B) Yes, if he was not professionally negligent in his analysis.

(C) No, because his opinion relates to an ultimate issue that must be determined in the case.

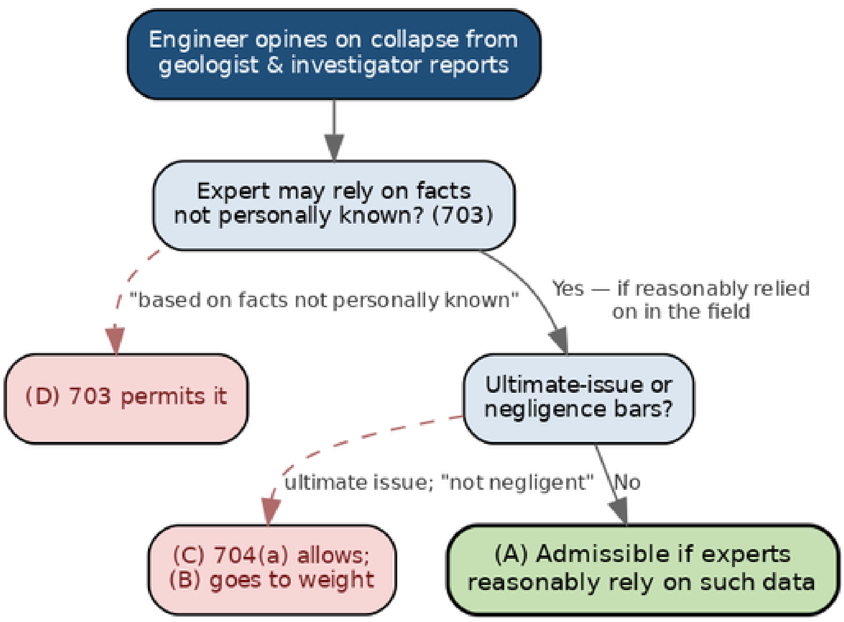
(D) No, because his opinion was based on facts not personally within his knowledge.

> **Correct answer (A).** The engineer's opinion is admissible if experts in his field reasonably rely on such reports.

Rule. An expert may testify to an opinion if specialized knowledge will help the trier of fact (FRE 702). Under FRE 703, the opinion may rest on facts not personally known — including others' reports — if of a kind experts in the field reasonably rely upon. FRE 704(a) permits opinions embracing an ultimate issue.

Application. The licensed engineer may base his causation opinion on the geologist's and investigator's reports if engineers reasonably rely on such materials — (A).

Why the other choices fail. (B) whether his analysis was negligent goes to weight, not admissibility. (C) opinions on ultimate issues are allowed (704(a)). (D) experts may rely on facts not personally known if reasonably relied on in the field.



Decision path

Attack Sequence: Evidence attack sequence, §5 Opinion Testimony & Experts, steps 2–3 (expert bases, FRE 703; ultimate issue, 704).

Playbook: Evidence playbook, OPINION (Expert — may rely on inadmissible facts if reasonably relied on; ultimate issue OK).

How it lands: §5: under FRE 703 the engineer may rely on others' reports if experts reasonably do, and 704(a) allows ultimate-issue opinions → (A).

Question 33

Constitutional Law — Article III Judges / Life Tenure

Congress created a tribunal by statute, which was empowered to review claims made by clients of a federal agency and make recommendations to the agency regarding their merits. A lawyer was properly appointed to the tribunal. Six years later, the tribunal was abolished by repeal of the authorizing legislation, and the lawyer was offered an administrative position in the transportation department at a lower salary. The lawyer brought an action against the federal government on the grounds that Congress may not remove a federal judge from office during good behavior, nor decrease his salary during continuance in office. Counsel for the government made a motion to dismiss. The trial court should rule:

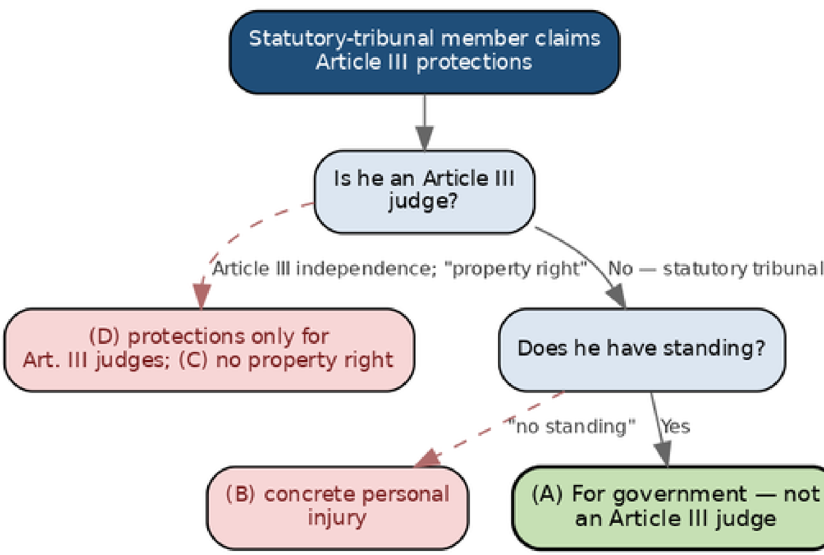
(A) For the government, because the lawyer was not an Article III judge and is not entitled to life tenure.
(B) For the government, because the lawyer lacked standing to raise the question.
(C) For the lawyer, because he has established a property right to his position on the tribunal.
(D) For the lawyer, because of the independence of the federal judiciary constitutionally guaranteed by Article III.

> **Correct answer (A).** For the government — the lawyer was not an Article III judge and isn't entitled to life tenure.

Rule. Only Article III judges enjoy the constitutional protections of life tenure and undiminished salary. Members of administrative tribunals with adjudicatory functions are not Article III judges; Congress may abolish such statutory bodies and reassign or reduce those members.

Application. The lawyer served on a statutory advisory tribunal, not an Article III court, so he has no life-tenure or salary protection and the tribunal could be abolished — (A).

Why the other choices fail. (B) he has standing (a concrete personal injury). (C) there is no constitutional property right in continued government employment. (D) Article III independence protects only Article III judges, which he isn't.



Decision path

Attack Sequence: Con Law attack sequence, §3 Separation of Powers / Article III (life tenure only for Article III judges).

Playbook: Con Law playbook, JUDICIAL POWER (Article III protections; standing).

How it lands: §3: a statutory-tribunal member isn't an Article III judge, so no life-tenure or salary protection — the tribunal can be abolished → (A).

Question 34

Contracts — Unilateral Reward Offer / Acceptance

Shortly after a series of rapes took place within a city, the city council approved the offering of a $25,000 reward for the arrest and conviction of the perpetrator of the rapes. Information concerning the reward was published in the local newspaper. In which of the following ways could the city's reward offer be effectively accepted?

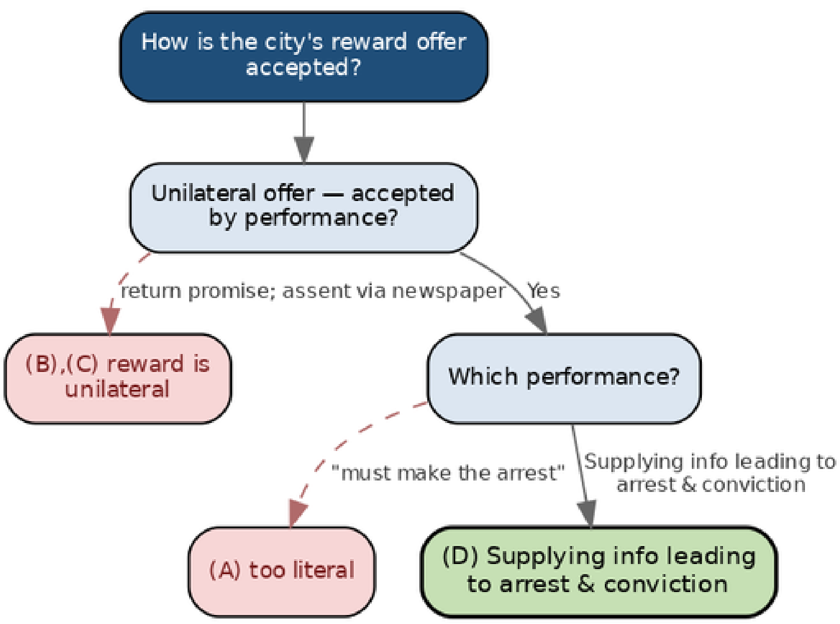
(A) Only by an offeree's making the arrest and assisting in the successful conviction of a rapist within the scope of the offer.
(B) Only by an offeree's return promise to make a reasonable effort to bring about the arrest and conviction of a rapist within the scope of the offer.
(C) By an offeree's communication of assent through the same medium (local newspaper) used by the city in making its offer.
(D) By an offeree's supplying information leading to arrest and conviction of a rapist within the scope of the offer.

> **Correct answer (D).** The reward offer is accepted by supplying information leading to arrest and conviction.

Rule. A public reward is a unilateral offer accepted only by performance of the requested act, read in light of what the offeror sought and the normal way such offers are accepted. It is not accepted by a return promise or by communicating assent.

Application. Read sensibly, the city's reward is accepted by supplying information leading to the arrest and conviction — not by personally arresting anyone. So (D).

Why the other choices fail. (A) requiring the offeree to make the arrest reads the language too literally. (B) and (C) envision a bilateral contract by promise/assent; a reward is unilateral, accepted only by performance.



Decision path

Attack Sequence: Contracts attack sequence, §1 Offer & Acceptance, step 3 (unilateral offer — accepted by performance; rewards).

Playbook: Contracts playbook, OFFER & ACCEPTANCE (Unilateral offer; reward accepted by performance).

How it lands: §1 step 3: a reward is unilateral, accepted by supplying information leading to arrest and conviction, not by promise → (D).

Question 35

Evidence / Civ Pro — Use of Deposition to Impeach

An intoxicated patron punched a bouncer in a barroom fight in a city in State A, causing severe injuries. The bouncer filed a civil action against the patron in federal district court in State A, alleging battery. The patron contends that he acted in self-defense. After proper notice to the bouncer's attorney, the patron's attorney took the deposition of the bouncer's girlfriend, who was in the barroom at the time of the fight. The girlfriend is a citizen and resident of the city in State A where the fight occurred and is available to testify live at the trial. If the girlfriend testifies on behalf of the bouncer, the patron's attorney intends to impeach the girlfriend's testimony by reading excerpts of her deposition to the jury. May he do so?

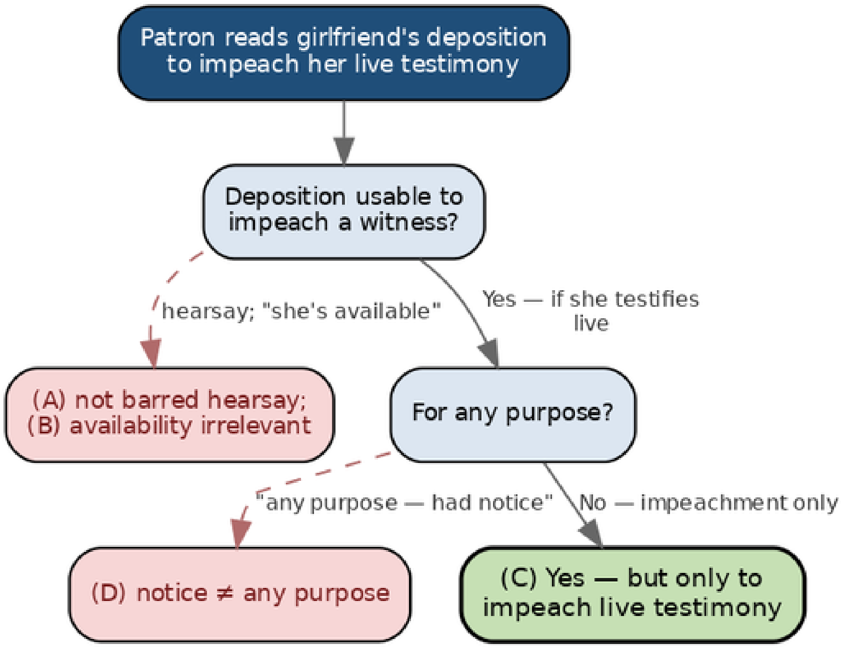
(A) No, because it constitutes hearsay.
(B) No, because the girlfriend is available to testify live.
(C) Yes, but only to impeach the girlfriend's live testimony.
(D) Yes, for any purpose because the opposing party received proper notice of the deposition.

> **Correct answer (C).** Yes, but the deposition may be used only to impeach the girlfriend's live testimony.

Rule. A deposition may be used at trial against a party who had notice to impeach the deponent's testimony as a witness. Impeachment use requires that the deponent actually testify live; the deposition is not admissible for any purpose merely because notice was given.

Application. The girlfriend will testify live, so the patron's attorney may read deposition excerpts to impeach that testimony — but only for impeachment — (C).

Why the other choices fail. (A) the deposition isn't inadmissible hearsay for this use. (B) her availability doesn't bar impeachment use. (D) proper notice doesn't make it admissible 'for any purpose.'



Decision path

Attack Sequence: Civil Procedure attack sequence, §6 Pleadings & Pre-Trial (use of depositions at trial — impeachment).

Playbook: Civil Procedure playbook, DISCOVERY (Deposition use — impeach a live witness).

How it lands: §6: a deposition may be read to impeach the deponent's live testimony, but only for impeachment → (C).

Question 36

Contracts — Reward / Knowledge of Offer; Bounty Theory

During a shooting at the scene of a robbery, a police officer was shot and killed. The city's police department announced a reward of $10,000 for information leading to the arrest of the individual who caused the death of the police officer. The next year, the police department made a public announcement repealing its reward offer. One month later, a man confessed to a local bartender of having committed the shooting. The bartender reported the information to the police and the man was arrested and ultimately convicted of the robbery and shooting. A friend suggested to the bartender that he claim the police department's $10,000 reward, of which he had been previously unaware. The bartender immediately made the claim but the police department refuses to pay him. If the bartender sues the city to recover the $10,000 reward, which of the following would be most helpful to him?

(A) The city was benefited by the bartender's services.
(B) The attempted revocation of the reward was against public policy.
(C) The city's offer was in the nature of a bounty so that the elements of contract are not essential to the city's liability.
(D) The city is estopped from denying the reward to the bartender because he acted in the public interest.

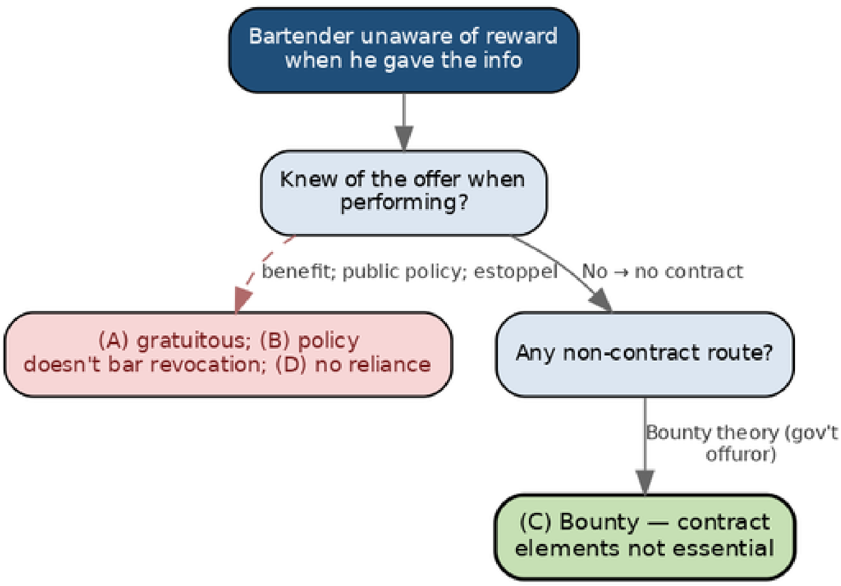
> **Correct answer (C).** His best argument is that the city's reward was a bounty, so ordinary contract elements aren't essential.

Rule. To accept a reward on a contract theory, the offeree must know of the offer when he performs;

without knowledge there is no contract. But where the offeror is a government agency, courts have sometimes treated the reward as a 'bounty,' allowing recovery without the usual contract requirement of knowledge.

Application. The bartender didn't know of the reward when he gave the information, so no contract formed. His only path is the bounty theory, which doesn't require the contract elements — (C).

Why the other choices fail. (A) benefit conferred gratuitously (without knowledge) doesn't create liability. (B) public policy doesn't limit the right to revoke an offer. (D) estoppel needs reliance on the offer, impossible when he didn't know of it.



Decision path

Attack Sequence: Contracts attack sequence, §1 Offer & Acceptance, step 3 (reward — offeree must know of the offer; gov't bounty).

Playbook: Contracts playbook, OFFER & ACCEPTANCE (Knowledge of offer required; bounty exception).

How it lands: §1 step 3: the bartender didn't know of the reward, so no contract; his only route is the government bounty theory → (C).

Question 37

Contracts — Unilateral Offer / Notice of Acceptance Not Required

A woman lost her dog. She posted signs on many trees and poles throughout her neighborhood for a $500 reward to whomever would find and return her pet. Months later, believing she would never find the dog, the woman adopted a new dog and published an ad in the local newspaper stating that she repealed her previous reward offer. The ad was printed once daily for a week. After the ad had run, a dogcatcher had found the woman's dog, and, because it had no tags, he sent it to the local pound. A volunteer at the pound recognized the woman's dog from one of her reward postings and suggested that the dogcatcher claim the woman's $500 reward. If the dogcatcher sues the woman to recover the $500 reward, which of the following would not be helpful to the woman's defense?

(A) The consideration furnished by the dogcatcher, if any, for the woman's reward promise was legally insufficient under the preexisting duty rule.
(B) The dogcatcher was already compensated by the pound for his capturing services.

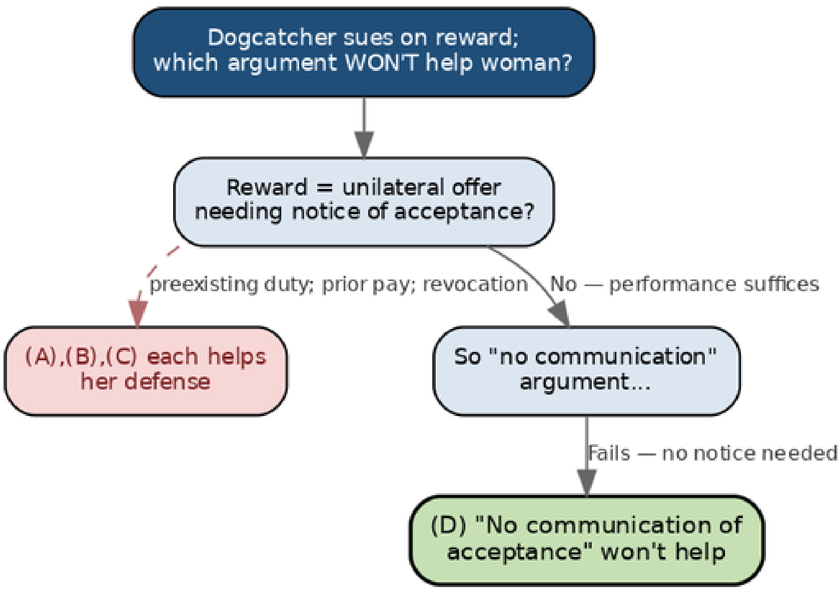
(C) The woman's offer had effectively been revoked prior to the dogcatcher's attempted acceptance.
(D) The dogcatcher failed to communicate his acceptance of the offer to the woman.

> **Correct answer (D).** 'Failure to communicate acceptance' would NOT help the woman — a reward is unilateral and needs no notice of acceptance.

Rule. A reward is a unilateral offer accepted by performance; the offeree ordinarily need not separately notify the offeror of acceptance. So lack of communication is not a defense. Effective defenses instead go to revocation, preexisting duty, or quasi-contract.

Application. The question asks which argument would NOT help. Because performance (finding the dog) accepts the reward without notice, arguing 'no communication of acceptance' fails — (D).

Why the other choices fail. (A) helps — a preexisting duty could defeat consideration. (B) helps — prior compensation bears on quasi-contract. (C) helps — the newspaper revocation may have terminated the offer. Only (D) doesn't help.



Decision path

Attack Sequence: Contracts attack sequence, §1 Offer & Acceptance, step 3 (unilateral offer — no notice of acceptance needed).

Playbook: Contracts playbook, OFFER & ACCEPTANCE (Unilateral — performance accepts; revocation; preexisting duty).

How it lands: §1 step 3: because a reward needs no notice of acceptance, the "no communication" argument is the one that won't help the woman → (D).

Question 38

Torts — Strict Products Liability / Retailer

A gardener purchased a new riding lawnmower from a gardening store. The gardener used the lawnmower that afternoon to mow her lawn. Although the instructions recommended against it, she ran the mower at full throttle around her yard because she was in a hurry to finish. As she was nearing the edge of her property, she attempted to turn the mower. However, the steering wheel locked and she was unable to turn, hitting a low wall on the border of her property. The collision caused the mower to overturn and the gardener was injured. The gardener asserts a claim against the gardening store based on strict liability in tort in a jurisdiction that follows traditional contributory negligence rules. At trial, the gardener presents evidence that the steering locked because of a defect present when the mower left the manufacturer's factory. The gardening store presented evidence that it carefully inspected the mower before selling it. Will the gardener likely prevail?

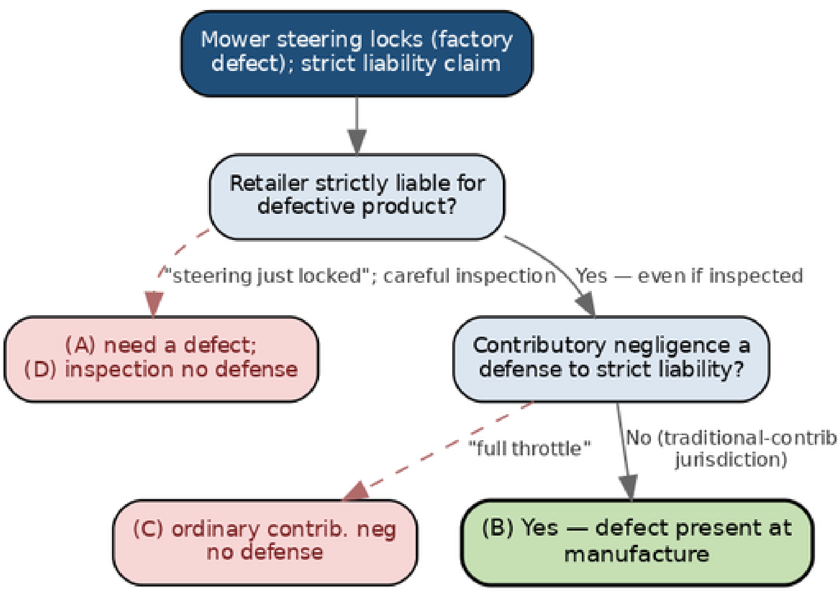
(A) Yes, because the steering locked while the gardener was riding the mower.
(B) Yes, because the steering locked as a result of a defect present when the mower left the manufacturer's factory.
(C) No, because the gardener contributed to her own injury by running the mower at full throttle.
(D) No, because the gardening store carefully inspected the mower before selling it.

> **Correct answer (B).** The gardener prevails because the steering locked due to a defect present when the mower left the manufacturer.

Rule. A commercial retailer is strictly liable for injuries caused by a product that was defective (unreasonably dangerous) when sold, even if the retailer carefully inspected it. In jurisdictions retaining traditional contributory negligence, ordinary contributory negligence is not a defense to strict products liability.

Application. The manufacturing defect existed at the factory (and thus at sale), causing the steering to lock and injure her. The store's careful inspection is no defense, and running at full throttle is ordinary contributory negligence, which doesn't bar strict liability — (B).

Why the other choices fail. (A) the mere fact the steering locked isn't enough without a defect. (C) ordinary contributory negligence isn't a defense to strict liability here. (D) careful inspection doesn't shield a retailer from strict liability.



Decision path

Attack Sequence: Torts attack sequence, §8 Products Liability, steps 2–4 (strict liability — retailer; defect at manufacture; contrib. neg no defense).

Playbook: Torts playbook, PRODUCTS LIABILITY (Retailer strictly liable; ordinary contrib. neg not a defense).

How it lands: §8: a retailer is strictly liable for a factory defect despite careful inspection, and ordinary contributory negligence is no defense → (B).

Question 39

Torts — Strict Products Liability / Causation & Misuse

A man purchased a new power boat with an inboard engine from a boating supply store. The boating supply store properly inspected the boat before delivery, but did not detect a virtually invisible manufacturing defect in the boat's steering mechanism. Later that summer, the man was entertaining some friends on his boat on a lake near a dam. There were some warning pylons near the dam, warning boaters to stay clear. The man decided to show off for his friends by weaving his boat in and out of the warning pylons. As he rounded the last of them, the steering mechanism of his boat jammed, and the boat crashed into the dam. The man was severely injured. The man brings an action for damages against the boating supply store on a theory of strict liability in tort in a jurisdiction that does not apply its comparative fault rules to strict liability actions. Who will prevail?

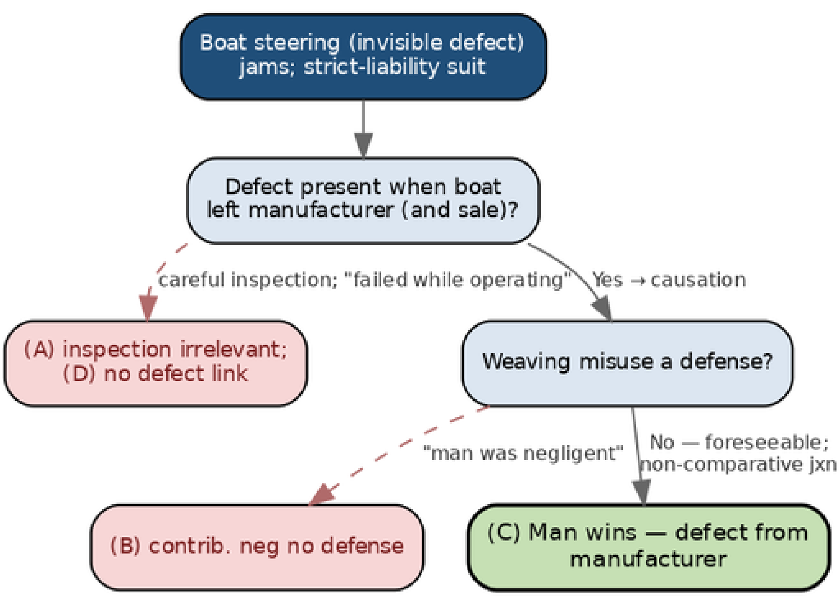
(A) The boating supply store, because it properly inspected the boat before selling it to the man.
(B) The boating supply store, because the man was negligent in weaving in and out of the pylons.
(C) The man, because the steering failed due to a defect present when the boat left the manufacturer.
(D) The man, because the steering mechanism failed while he was operating the boat.

> **Correct answer (C).** The man prevails because the steering failed due to a defect present when the boat left the manufacturer.

Rule. A strict-products case requires a commercial supplier, a defect making the product unreasonably dangerous, actual and proximate causation, and damages. A defect present when the product left the manufacturer was also present when the retailer sold it. Foreseeable misuse doesn't bar recovery, and in a non-comparative jurisdiction ordinary negligence isn't a defense.

Application. The invisible steering defect existed at manufacture (and sale) and caused the crash; weaving among pylons is foreseeable misuse, not a bar. The retailer is strictly liable — (C).

Why the other choices fail. (A) careful inspection is irrelevant to strict liability. (B) the man's negligence isn't a defense in a non-comparative strict-liability jurisdiction (absent assumption of risk). (D) mere failure while operating doesn't establish causation by a defect — (C) states the causation link.



Decision path

Attack Sequence: Torts attack sequence, §8 Products Liability, steps 3–4 (causation — defect at manufacture; foreseeable misuse; no comparative fault).

Playbook: Torts playbook, PRODUCTS LIABILITY (Causation; foreseeable misuse; contrib. neg no defense).

How it lands: §8: the invisible defect existed at manufacture (and sale) and caused the crash; weaving is foreseeable misuse, not a bar → (C).

Question 40

Evidence — Party Admission vs. Offer to Pay Medical Expenses

A driver drove into an intersection and struck a pedestrian. The driver immediately left his car and ran to the pedestrian. Before the ambulance arrived, the driver said to the pedestrian, "It was all my fault; I'm sorry I ran a red light." The driver then said, "I'll pay for all your medical expenses." The pedestrian sued the driver for his injuries and, at the resulting trial, the pedestrian wished to testify to the two statements made by the driver. The defense objected. The court should rule that:

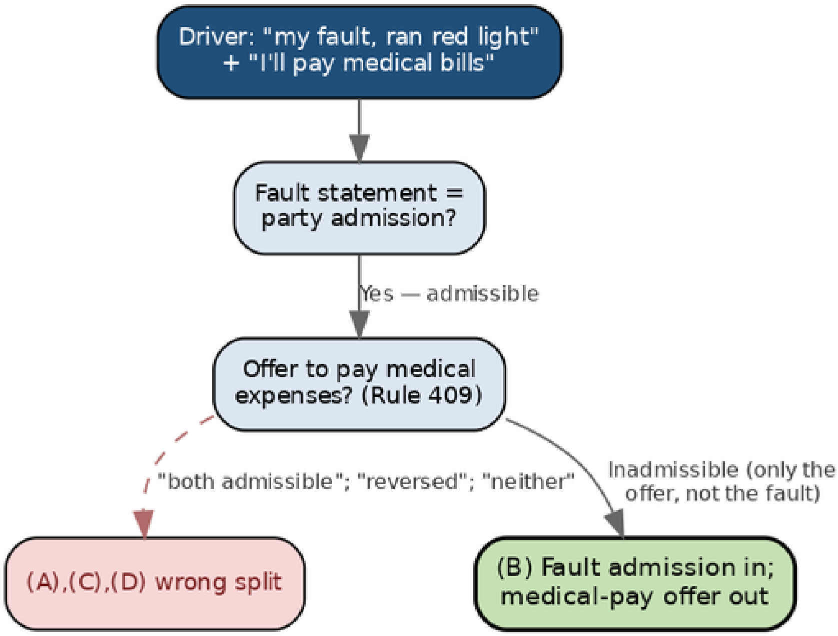
(A) Both of the driver's statements are admissible.
(B) The driver's statement acknowledging that he ran a red light is admissible, but his promise to pay the pedestrian's medical expenses is inadmissible.
(C) The driver's statement acknowledging that he ran a red light is inadmissible, but his promise to pay the pedestrian's medical expenses is admissible.
(D) Neither of the driver's statements is admissible.

> **Correct answer (B).** The fault statement is admissible; the promise to pay medical expenses is not.

Rule. A party's statement offered against him (an admission of fault) is nonhearsay and admissible. But an offer to pay an injured party's medical expenses is excluded to prove liability (Rule 409). Unlike Rule 408, Rule 409 excludes only the payment offer, not an accompanying admission of fact.

Application. 'It was all my fault; I ran a red light' is an admissible party admission. 'I'll pay your medical expenses' is an inadmissible offer to pay medical bills. So (B).

Why the other choices fail. (A) the medical-expense offer is inadmissible. (C) it reverses the correct result. (D) the fault admission is admissible, so 'neither' is wrong.



Decision path

Attack Sequence: Evidence attack sequence, §1 Relevance & special exclusions, step 3 (offers to pay medical expenses vs. party admissions).

Playbook: Evidence playbook, RELEVANCE (Rule 409 — medical-payment offers; admissions of fact still admissible).

How it lands: §1 step 3: Rule 409 excludes the offer to pay medical bills but not the accompanying fault admission → (B).

Question 41

Real Property — Tenancy in Common / Presumption

Shortly before their wedding, a man and a woman bought a tract of land, taking title in both names. They had intended to build a summer cottage there, but many years after their marriage the land was still a vacant lot. The man decided that their introverted son would have more confidence if he were a landowner; thus, the man drew up a deed conveying a one-quarter interest in the land to him. Not wanting to show favoritism, two weeks later the man drew up a deed conveying a one-quarter interest in the same land to their daughter. Who owns the land?

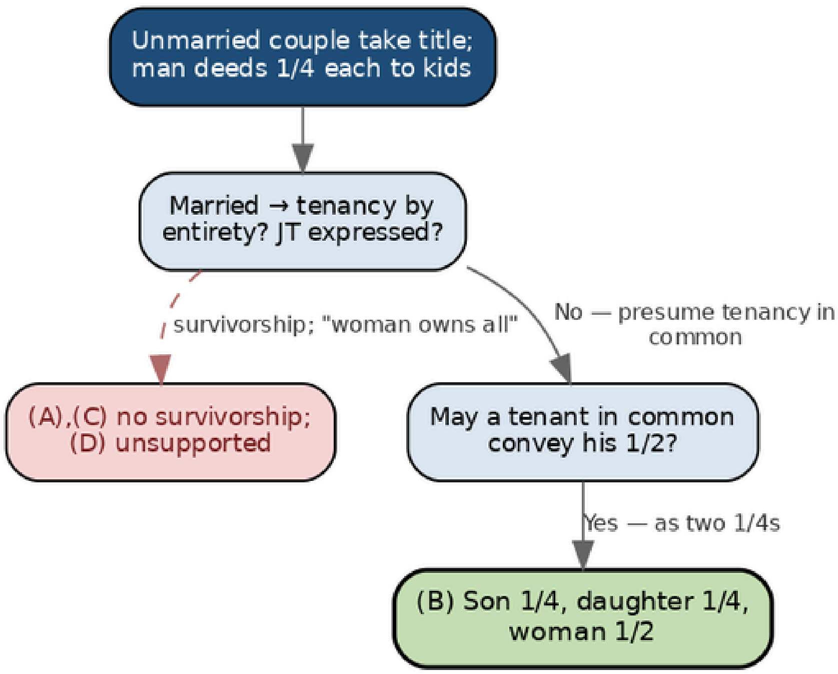
(A) The man and woman share ownership of the land with rights of survivorship, and the son and daughter have no interests.
(B) The son has a one-quarter interest, the daughter has a one-quarter interest, and the woman has a one-half interest.
(C) The son has a one-quarter interest, the daughter has a one-quarter interest, and the woman has a one-half interest, with rights of survivorship.
(D) The woman owns the land.

> **Correct answer (B).** The son and daughter each have a one-quarter interest, and the woman has a one-half interest.

Rule. Absent an express joint tenancy (or a tenancy by the entirety between spouses), co-owners are presumed tenants in common. An unmarried couple taking title together are tenants in common, each with an undivided half. A tenant in common may convey his undivided interest inter vivos.

Application. The man and woman were unmarried when they took title, so they were tenants in common (½ each). The man conveyed his half in two quarter-interests to the son and daughter, leaving the woman with her ½ — (B).

Why the other choices fail. (A) he did convey his interest, so this is wrong. (C) tenants in common have no survivorship. (D) the woman doesn't own it all; she keeps only her half.



Decision path

Attack Sequence: Real Property attack sequence, §4 Co-Ownership, step 1 (presumption of tenancy in common; inter vivos conveyance of a share).

Playbook: Real Property playbook, CONCURRENT ESTATES (Presumption of tenancy in common; no survivorship).

How it lands: §4 step 1: unmarried co-owners are tenants in common (½ each); the man conveyed his half as two quarters → (B).

Question 42

Criminal Procedure / Evidence — Pretrial Photo Identification

As a woman was walking home on a dark cloudy night, a man came upon her from behind and stole her purse. A suspect was arrested nearby shortly thereafter. After the suspect had been booked, the police took his photograph. They then showed his photograph, along with the photographs of four people who had the same general features as the arrested man, to the woman. The woman identified the suspect as the culprit. At trial, after the woman had identified the suspect as the person who stole her purse, the suspect's attorney objects to the prosecution's introduction into evidence of the photographic identification. The objection will most likely be:

(A) Overruled.

(B) Sustained, because the suspect's right to counsel was violated at the showing of the photograph to the woman.

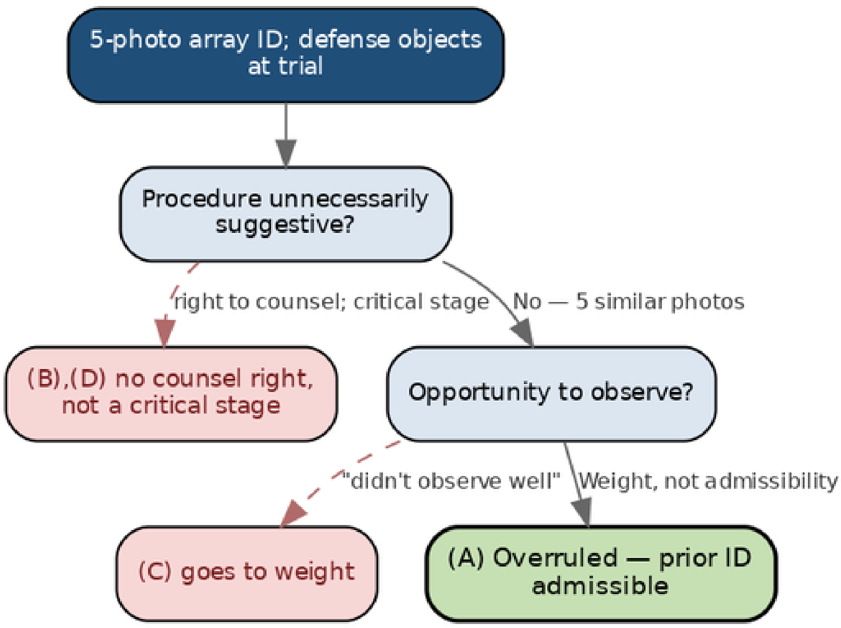
(C) Sustained, because the woman did not have a good opportunity to observe the culprit.
(D) Sustained, because a photographic identification must be considered a critical stage of the proceeding.

> **Correct answer (A).** The objection will be overruled; the photographic identification is admissible.

Rule. After a witness testifies, a prior identification is admissible to prove its truth unless the identification procedure was unnecessarily suggestive and likely to cause irreparable misidentification. There is no right to counsel at a photo array, and it is not a critical stage.

Application. A five-photo array of similar-looking people is not unnecessarily suggestive, so the prior ID comes in — overruled, (A).

Why the other choices fail. (B) no right to counsel attaches at a photo display. (C) the witness's opportunity to observe goes to weight, not admissibility. (D) a photo ID is not a critical stage of the proceeding.



Decision path

Attack Sequence: Crim attack sequence, §5 Fourth/Fifth/Sixth Amendments (pretrial identifications — photo array; no right to counsel).

Playbook: Crim playbook, IDENTIFICATIONS (Photo array — not a critical stage; suggestiveness test).

How it lands: §5: a non-suggestive five-photo array is admissible; there's no right to counsel and it's not a critical stage → (A).

Question 43

Constitutional Law — Dormant Commerce Clause

A state requires all businesses engaged in any form of retail sales to be licensed. The state legislature amended the statutes governing licensing so that any business seeking a retail sales license must establish that at least 40% of the items sold will be manufactured or produced within the state. Which of the following constitutional provisions will provide the best basis on which to attack the validity of the state licensing provision requiring a minimum percentage of local goods?

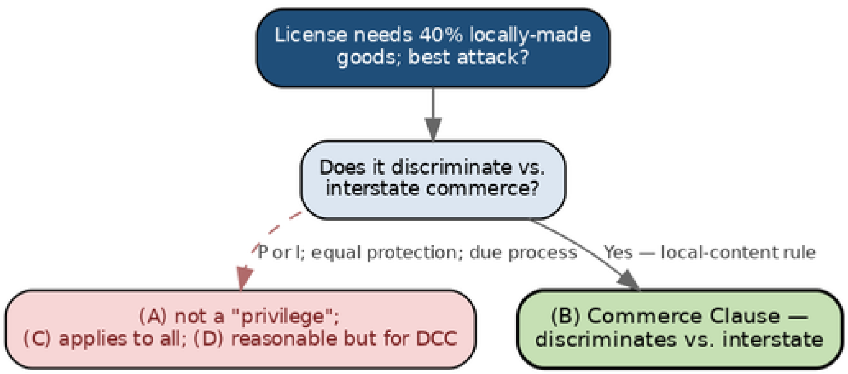
(A) The Privileges or Immunities Clause of the Fourteenth Amendment.
(B) The Commerce Clause.
(C) The Equal Protection Clause.
(D) The Due Process Clause of the Fourteenth Amendment.

> **Correct answer (B).** The Commerce Clause is the best basis to attack the local-content licensing requirement.

Rule. The dormant Commerce Clause forbids state laws that discriminate against interstate commerce, such as requirements favoring local products. A local-content requirement diverts purchases from interstate to intrastate commerce and is virtually per se invalid.

Application. Requiring 40% locally made goods for a license discriminates against out-of-state products — the strongest attack is the Commerce Clause — (B).

Why the other choices fail. (A) the sale of products isn't among the narrow Fourteenth Amendment 'privileges.' (C) the rule applies to all businesses, so no suspect classification triggers equal protection. (D) the licensing is within the police power and reasonable but for the Commerce Clause problem.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism (Dormant Commerce Clause — local-content discrimination).

Playbook: Con Law playbook, DORMANT COMMERCE CLAUSE (Discrimination against interstate commerce).

How it lands: §2: a 40%-local-content licensing rule discriminates against interstate commerce — the best attack is the Commerce Clause → (B).

Question 44

Criminal Procedure — Search Incident to Arrest / Vehicle

While on routine patrol late one night, a police officer noticed that a car was weaving recklessly across several lanes of traffic. He stopped the driver, believing that he was driving while intoxicated. By state law, the officer was empowered to arrest the driver and take him to the nearest police station for booking. As he approached the vehicle, the officer saw the driver put what appeared to be a bottle in the glove compartment. The officer arrested the driver and then searched his vehicle. In the glove compartment, the officer discovered a vial containing a small amount of cocaine. The driver was charged with possession of cocaine. At a preliminary hearing, the driver's attorney moves to prevent introduction of the cocaine into evidence on the grounds that the search violated his client's federal constitutional rights. This motion will most likely be:

(A) Denied, because the officer was acting under a fear for his personal safety.

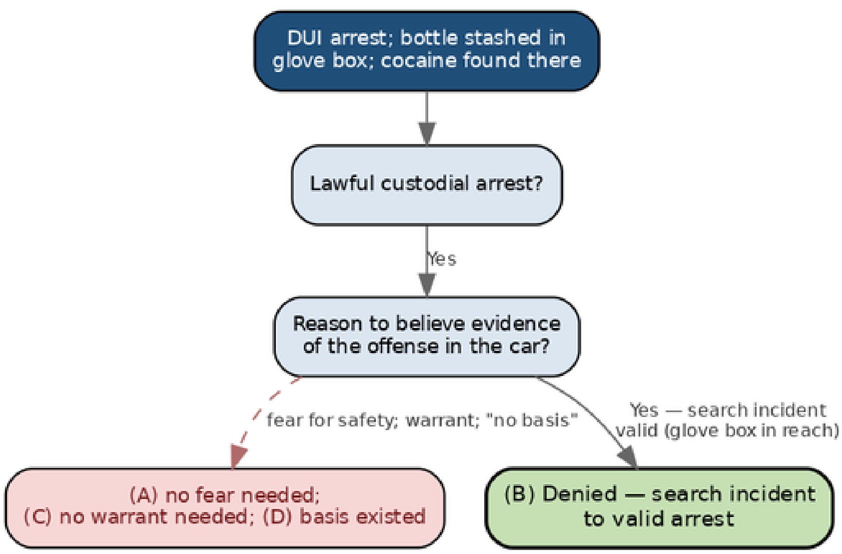
(B) Denied, because the search was incident to a constitutionally valid custodial arrest.
(C) Granted, because the officer needed a warrant to search the glove compartment.
(D) Granted, because there was no reasonable or proper basis on which to justify conducting the search.

> **Correct answer (B).** The motion is denied because the search was incident to a valid custodial arrest.

Rule. After lawfully arresting a vehicle's occupant, police may search the passenger compartment if it is reasonable to believe evidence of the offense of arrest may be found there (Gant). The wingspan/ search-incident rationale also reaches the glove compartment.

Application. Having lawfully arrested the driver for DUI and seen him stash a bottle in the glove box, the officer reasonably believed evidence of intoxication was there. The search was valid — denied, (B).

Why the other choices fail. (A) no fear for safety is required to justify this search. (C) no warrant is needed for a search incident to a valid arrest. (D) there was a proper basis — the arrest plus the observed bottle.



Decision path

Attack Sequence: Crim attack sequence, §5 Fourth Amendment, step 3 (search incident to arrest — vehicle passenger compartment).

Playbook: Crim playbook, 4TH AM (Search incident to arrest; automobile; wingspan).

How it lands: §5 step 3: after a lawful DUI arrest, with a bottle seen going into the glove box, the search incident to arrest is valid → (B).

Question 45

Evidence — Prior Inconsistent Statement / Impeaching Own Witness

A woman was injured when the car she was driving was struck by a moving truck. The woman brings an action for personal injuries against the moving company. The complaint alleges that the driver was drunk at the time of the accident and that the moving company was negligent in hiring him and permitting him to drive knowing that he had a drinking problem and convictions for drunk driving. The driver is called as a witness by the moving company and is expected to testify that he was not drunk at the time of the accident. Instead, the driver states on direct examination that he had had several beers as he drove his truck that evening and was under the influence of drugs when his truck struck the woman's car. The counsel for the moving company wants to confront the driver with his deposition testimony that he was completely sober at the time of the accident. Will this evidence be permitted?

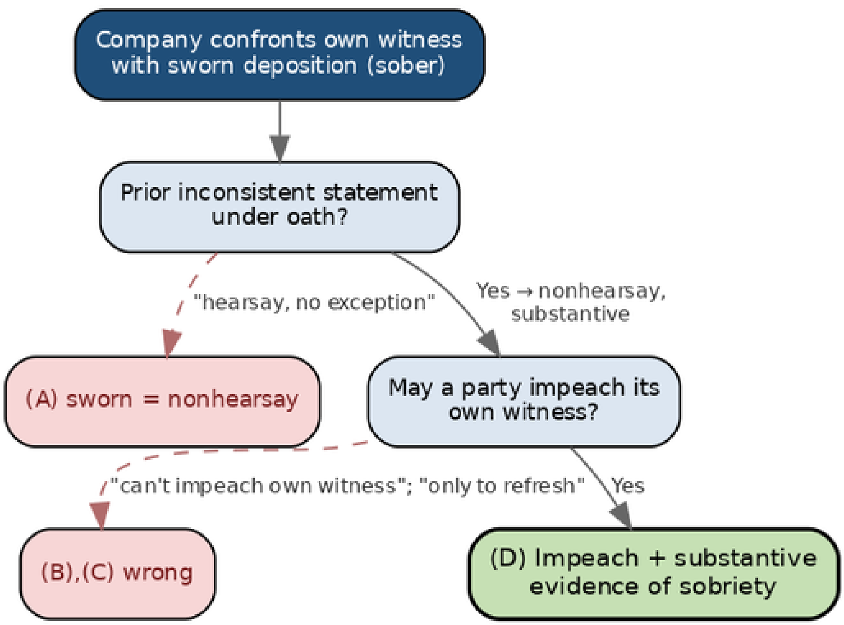
(A) No, the statement is hearsay not within any recognized exception.
(B) No, the moving company cannot impeach its own witness.
(C) Yes, but it may be used only to refresh the driver's recollection.
(D) Yes, it can be used to impeach and as substantive evidence that the driver was sober.

> **Correct answer (D).** The deposition may be used both to impeach and as substantive evidence.

Rule. A prior inconsistent statement made under oath at a deposition or hearing is nonhearsay under the Federal Rules and admissible both to impeach and as substantive evidence. A party may impeach its own witness, and no 'surprise' is required.

Application. The driver's sworn deposition testimony that he was sober contradicts his trial testimony; the company may use it to impeach and as substantive proof of sobriety — (D).

Why the other choices fail. (A) a sworn deposition inconsistency is nonhearsay, so it's not barred. (B) a party may impeach its own witness. (C) it's not limited to refreshing recollection; it is admissible evidence.



Decision path

Attack Sequence: Evidence attack sequence, §7 Witness Competency & Impeachment, step 3 (prior inconsistent statement under oath; impeaching own witness).

Playbook: Evidence playbook, IMPEACHMENT (Prior inconsistent statement under oath = substantive; may impeach own witness).

How it lands: §7 step 3: the sworn deposition inconsistency is nonhearsay — usable to impeach and as substantive evidence — and a party may impeach its own witness → (D).

Question 46

Civil Procedure — Compulsory Counterclaim / Matured Claim

A rancher purchased cattle from a breeder. As payment for the cattle, the rancher gave the breeder a promissory note that obligated the rancher to pay the breeder a lump sum of $80,000 18 months after the purchase. During the course of the year that he had the cattle, however, the rancher discovered that the cattle were diseased, so a year after the purchase the rancher filed an action against the breeder in federal district court for breach of warranty, alleging that the cattle were diseased at the time of sale the previous year. The breeder will file his answer within three weeks. May the breeder assert in his answer a counterclaim against the rancher seeking payment of the promissory note?

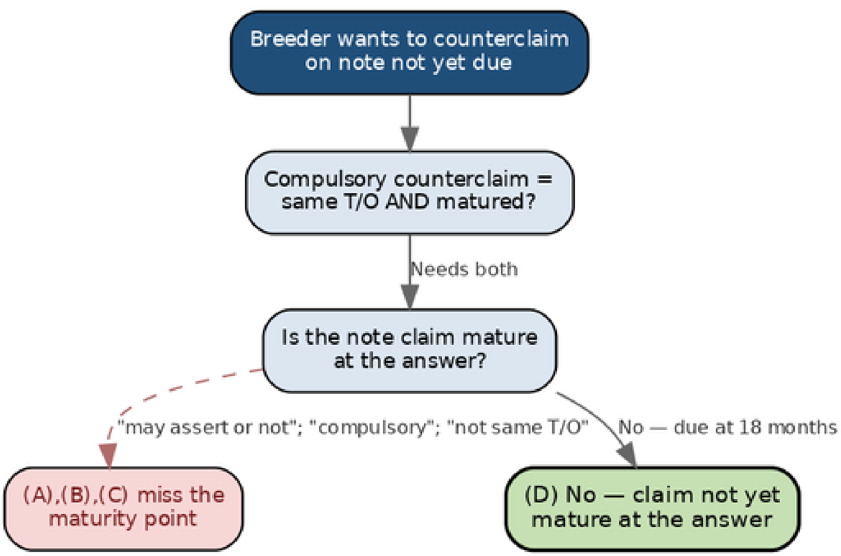
(A) Yes, the breeder may assert the claim on the promissory note as a counterclaim or he may assert it in a separate action.
(B) Yes, the claim on the promissory note is a compulsory counterclaim because it arises from the same transaction or occurrence as the rancher's initial claim.
(C) No, because it does not arise from the same transaction or occurrence as the rancher's initial claim.
(D) No, because the claim will not yet be mature when the breeder files his answer.

> **Correct answer (D).** No — the note claim isn't yet mature when the breeder files his answer.

Rule. A counterclaim is compulsory only if it arises from the same transaction or occurrence AND the pleader has the claim at the time of serving the pleading. A claim that has not yet matured (not yet due) is not a claim the pleader 'has,' so it isn't a compulsory counterclaim and can be brought later.

Application. The $80,000 note isn't due until 18 months after purchase; at the answer (about a year in) the breeder has no matured claim, so it isn't compulsory and can be asserted later — (D).

Why the other choices fail. (A), (B), (C) all miss that the note claim hasn't matured; even though it arises from the same transaction, an unmatured claim isn't a compulsory counterclaim the breeder must (or yet can) assert.



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder, step 2 (counterclaims — compulsory requires same T/O AND a matured claim).

Playbook: Civil Procedure playbook, JOINDER (Compulsory counterclaim; claim must exist at pleading).

How it lands: §5 step 2: the note isn't due until 18 months, so it isn't a matured claim the breeder "has" — not compulsory → (D).

Question 47

Civil Procedure — Statutory Interpleader / Venue

An insurance company held a $500,000 fire insurance policy on a warehouse located in State A that recently burned down. Three different parties claimed all or part of the policy proceeds. The insurance company filed an action under the Federal Interpleader Statute, naming the three different parties as defendant claimants. The insurance company is incorporated in State B and has its principal place of business in State A. The three claimant parties are citizens of different states: State A, State C, and State D. The insurance company filed the action in State D, and the State A claimant moves to dismiss the case for improper venue. Should the court grant the State A claimant's motion?

(A) Yes, because State A is the only proper venue.

(B) Yes, because venue is proper where a substantial part of the property that is the subject of the action is situated.

(C) No, because venue is proper anywhere in the United States.

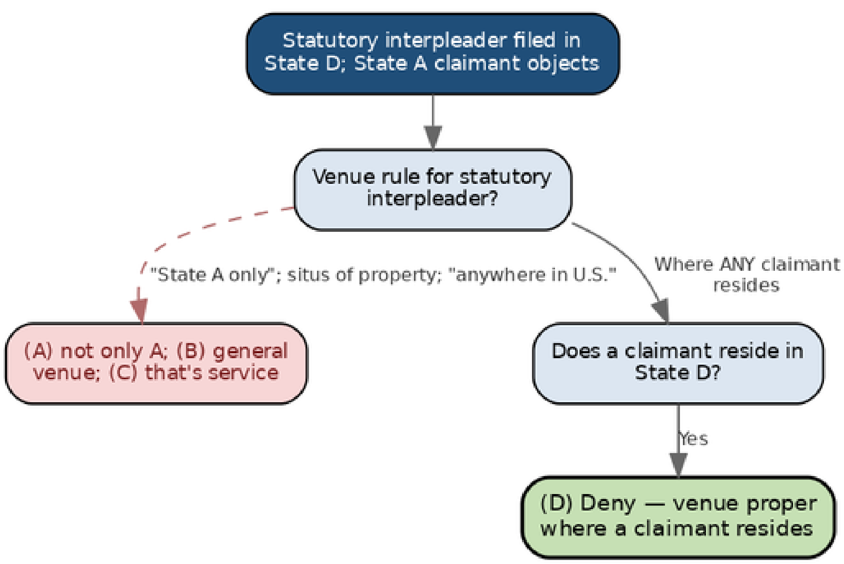
(D) No, because venue is proper where any claimant resides.

> **Correct answer (D).** Deny the motion — under the Federal Interpleader Statute, venue is proper where any claimant resides.

Rule. For statutory interpleader (the Federal Interpleader Act), venue is proper in any district where any claimant resides, and process may be served nationwide. The ordinary general-venue rules (defendant's residence, situs of property) do not govern.

Application. One claimant resides in State D, so filing there is proper venue for statutory interpleader — the motion is denied, (D).

Why the other choices fail. (A) State A is not the only proper venue; States A, C, and D all qualify. (B) that's a general-venue rule, inapplicable here. (C) nationwide reach is for service of process, not venue — venue is where a claimant resides.



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder (Interpleader — statutory venue where any claimant resides).

Playbook: Civil Procedure playbook, JOINDER (Statutory interpleader — venue where a claimant resides;

nationwide service).

How it lands: §5: for statutory interpleader, venue is proper where any claimant resides; a claimant lives in State D, so venue is proper → (D).

Question 48

Evidence — Subsequent Remedial Measures

A woman is suing a fast-food restaurant for injuries she suffered when she fell after slipping on a wet spot on the floor of the restaurant. At trial, the woman introduced evidence that someone had spilled a drink on the floor and that an employee had just finished mopping up the spill before she walked over the wet spot and fell, injuring her back. The woman then calls the restaurant's manager, as a hostile witness, and attempts to elicit testimony that, after her fall, the restaurant instituted a policy requiring that bright yellow signs with red warnings be placed after mopping the floor. Will this evidence be permitted?

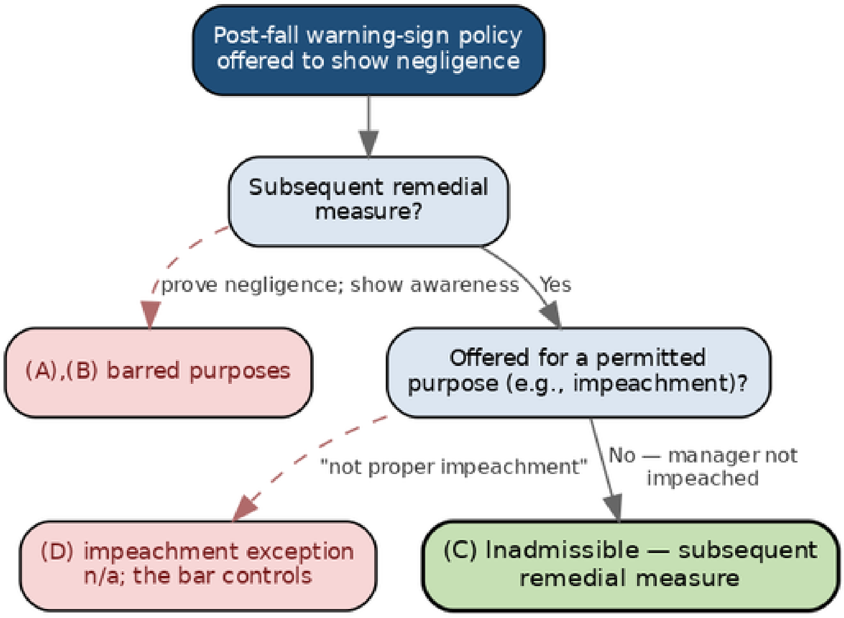
(A) Yes, to establish that the restaurant was negligent in not warning customers that the floor was wet.
(B) Yes, to show that the restaurant was aware that a wet floor creates a hazardous condition.
(C) No, because its admission would discourage other tortfeasors from taking remedial measures.
(D) No, because it is not a proper form of impeachment.

> **Correct answer (C).** The evidence is not admitted; subsequent remedial measures are inadmissible to show negligence.

Rule. Evidence of measures taken after an injury that would have made it less likely (e.g., new warning-sign policy) is inadmissible to prove negligence or culpable conduct, on the public policy of encouraging safety improvements. It may come in for other purposes (ownership, feasibility if disputed, impeachment), none of which apply here.

Application. The restaurant's post-fall policy of warning signs is a subsequent remedial measure offered to show negligence/awareness of danger — barred — (C).

Why the other choices fail. (A) and (B) offer it precisely for the prohibited purpose (negligence / awareness of the hazard). (D) the manager isn't being impeached, so the impeachment exception doesn't apply — the bar controls.



Decision path

Attack Sequence: Evidence attack sequence, §1 Relevance & special exclusions, step 3 (subsequent remedial measures).

Playbook: Evidence playbook, RELEVANCE (Subsequent remedial measures inadmissible to show negligence).

How it lands: §1 step 3: the post-fall warning-sign policy is a subsequent remedial measure barred to prove negligence, and no permitted purpose (like impeachment) applies → (C).

Question 49

Real Property — Restraint on Alienation of Vested Remainder

A farmer willed his farm to his daughter. The will stated that the property would go to the daughter for her life with a remainder to each of her children living at the time of the farmer's death. The will further provided that "The interest of any child who attempts to mortgage or sell his or her interest shall immediately terminate and shall pass to and become the property of the remaining children of my daughter who are alive at the time of my death, in equal shares." Several weeks later the farmer died. One of the daughter's three children wants to sell his interest in the farm. The daughter and the two other children object to the sale. In an action for declaratory relief by the grandson that the stated restriction on the sale is void, what would be the probable result?

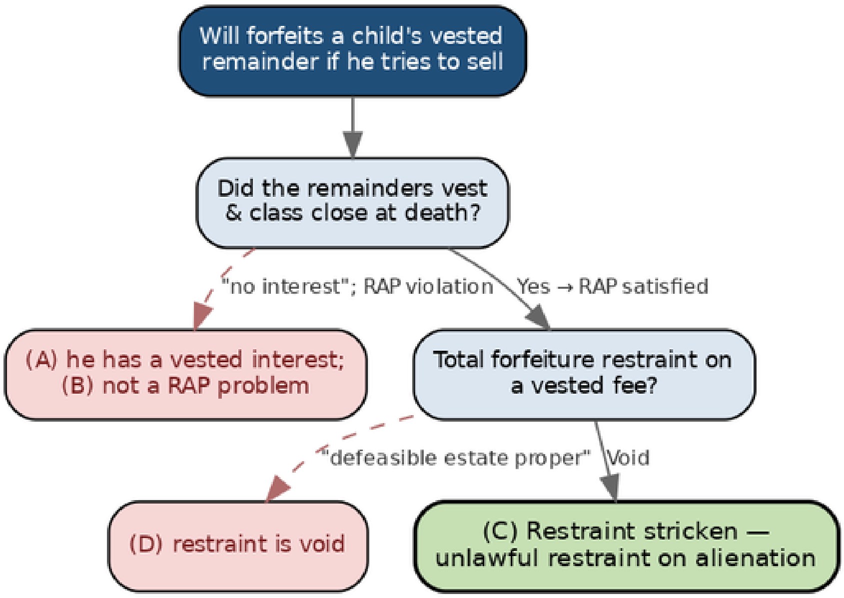
(A) The suit would be dismissed, because the grandson has no interest in the property.
(B) The gift to the daughter's children is void in its entirety, because it violates the Rule Against Perpetuities.
(C) The restriction would be stricken, because it unlawfully restricts the alienation of real property.
(D) The restriction is proper, because all the grandson has is a defeasible estate.

> **Correct answer (C).** The restriction is stricken as an unlawful restraint on alienation.

Rule. A total forfeiture restraint on the alienation of a vested fee (or vested remainder in fee simple) is void. The grandchildren's remainders vested and their class closed at the testator's death, so the Rule Against Perpetuities is satisfied — but the forfeiture-on-sale clause is an invalid restraint and is struck.

Application. The grandchildren hold vested remainders; the clause forfeiting a child's interest if he tries to sell is a total forfeiture restraint on a vested interest — void, so it's stricken and the grandson may sell — (C).

Why the other choices fail. (A) the grandson does have a vested interest. (B) the interests vested and the class closed at the farmer's death, so RAP isn't violated. (D) the estate isn't validly defeasible because the restraint is void.



Decision path

Attack Sequence: Real Property attack sequence, §1 Estates & Restraints (restraints on alienation of a vested interest) + §3 (RAP — class closes at death).

Playbook: Real Property playbook, ESTATES (Total forfeiture restraint on vested fee void) + FUTURE INTERESTS (RAP).

How it lands: §1 + §3: the grandchildren's remainders vested and their class closed at death (no RAP problem), but the forfeiture-on-sale clause is a void restraint on alienation → stricken, (C).

Question 50

Torts — Contributory Negligence / Excused Statutory Violation

In response to a number of accidents involving pedestrians in the local business district, a city enacted a statute making it illegal for a pedestrian to walk through the central business district anywhere other than on the sidewalk. The city also enacted a statute making it illegal for any business to obstruct the sidewalk in front of its establishment. As a man was walking along the sidewalk in the central business district, he discovered that a shopkeeper had stacked a pile of boxes in front of his establishment in such a way that it totally obstructed the sidewalk. The man stepped into the street to walk around the obstruction of boxes and was struck by a cab driver driving negligently. The jurisdiction follows traditional contributory negligence rules. If the man asserts a claim against the cab driver, the man's act of leaving the sidewalk and walking into the street will have which of the following effects?

(A) It will bar the man's recovery as a matter of law.

(B) It will bar the man's recovery unless the cab driver saw the man in time to avoid the impact.

(C) It may be considered by the trier of fact on the issue of the cab driver's liability.

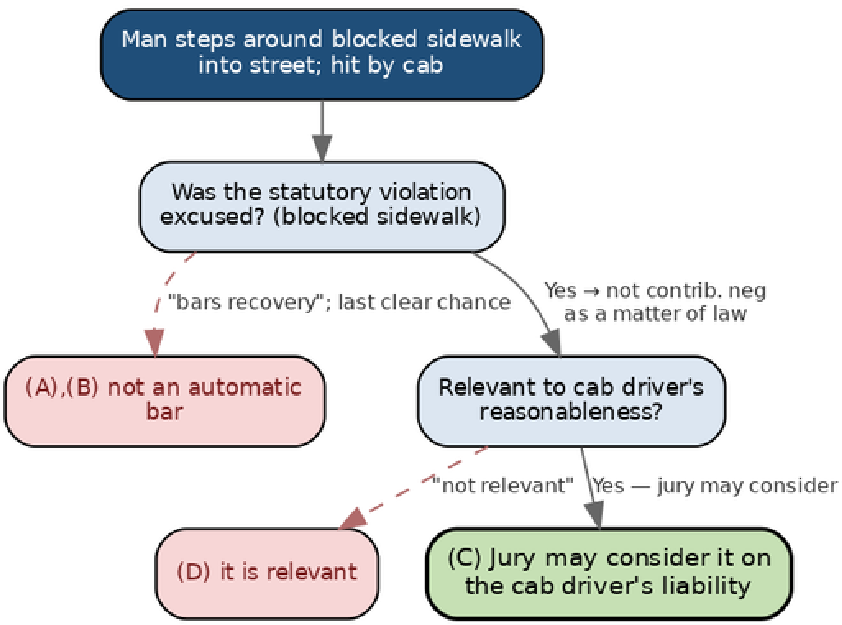
(D) It is not relevant in determining the man's rights.

> **Correct answer (C).** The man's stepping into the street may be considered by the trier of fact on the cab driver's liability.

Rule. A plaintiff's conduct that is not where the defendant would expect is relevant to the reasonableness of the defendant's conduct. A statutory violation may be excused when compliance is impossible or more dangerous (here, the sidewalk was obstructed), so it doesn't automatically establish contributory negligence; the factfinder weighs it.

Application. The obstructed sidewalk excused the man's stepping into the street, so it isn't contributory negligence as a matter of law; but where he was is relevant to judging the cab driver's conduct — the jury may consider it — (C).

Why the other choices fail. (A) and (B) his violation was likely excused, so it doesn't bar recovery as a matter of law or trigger last-clear-chance analysis. (D) it is relevant to the reasonableness of the cab driver's conduct, so not irrelevant.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence, step 4 (negligence per se — excused violation) + defenses (contributory negligence).

Playbook: Torts playbook, NEGLIGENCE (Negligence per se — excused when compliance is unsafe; contributory negligence).

How it lands: §3 step 4: the blocked sidewalk excused the statutory violation, so it isn't contributory negligence as a matter of law, but the jury may weigh it on the cab driver's reasonableness → (C).