Mixed Subject Set 7

Expanded Answer Explanations · Diet Coke Esq.

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

Question 1

Constitutional Law — Dormant Commerce Clause

A state contains major deposits of natural gas. In an effort to support this industry, and at the same time save its citizens substantial sums for the cost of heating their homes and businesses, the legislature enacted a substantial tax on out-of-state suppliers of natural gas. In addition, the state required state-licensed public utilities to buy no less than 75% of their natural gas needs from sources within the state as long as their needs could be met. An out-of-state supplier ("the supplier") brought suit against the state challenging this statute. The best constitutional argument the supplier could make is that the statute violates:

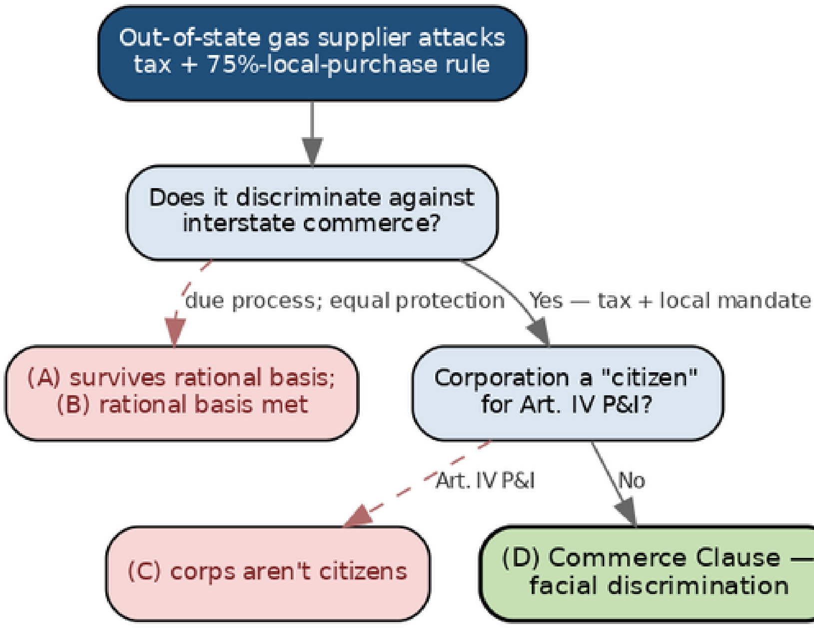
(A) The Due Process Clause of the Fourteenth Amendment.
(B) The Equal Protection Clause of the Fourteenth Amendment.
(C) The Privileges and Immunities Clause of Article IV.
(D) The Commerce Clause.

> **Correct answer (D).** The best argument is that the tax and the 75%-local-purchase mandate violate the Commerce Clause.

Rule. The dormant Commerce Clause forbids state laws that discriminate against interstate commerce. A tax targeting out-of-state suppliers and a requirement that utilities buy locally are facially discriminatory and draw strict scrutiny, which they almost always fail absent a compelling non-economic justification and no less-discriminatory alternative.

Application. The state taxes out-of-state gas suppliers and forces utilities to buy 75% in-state — classic discrimination against interstate commerce that fails strict scrutiny. So (D).

Why the other choices fail. (A) economic regulation survives rational-basis due process. (B) there's a rational basis and no suspect class, so equal protection fails. (C) corporations are not 'citizens' for the Article IV Privileges and Immunities Clause.



Decision path

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

Playbook: Con Law playbook, DORMANT COMMERCE CLAUSE (Facial discrimination → strict scrutiny).

How it lands: §2: a tax on out-of-state suppliers plus a 75%-local-purchase mandate facially discriminates against interstate commerce and fails strict scrutiny → (D).

Question 2

Evidence — Opposing-Party Admission (No Personal Knowledge Needed)

The defendant was at work when her husband called her and said, "The neighbor just tripped over those roots I told you to take out. He's badly hurt and I'll bet he sues us for all we're worth." The defendant then told her secretary, "The neighbor just got hurt because I forgot to do my yard work." On returning home, however, the defendant discovered that the neighbor had actually tripped over roots from his own tree in his own yard. The neighbor disagreed and sued the defendant and her husband. At trial, the neighbor called the defendant's secretary to testify as to the defendant's statement to him. The secretary's testimony will be:

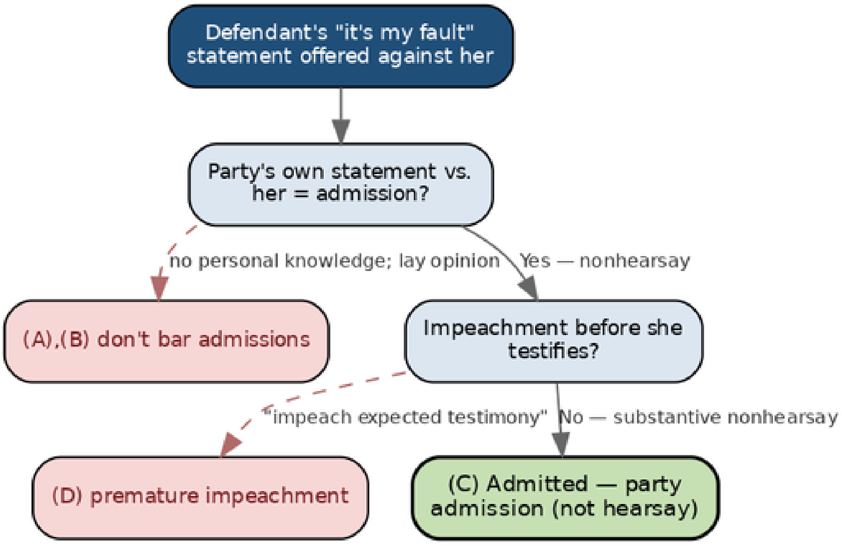
(A) Excluded, because the defendant had no firsthand information when she made her statement to the secretary.
(B) Excluded, because it is inadmissible lay opinion.
(C) Admitted, because it is not hearsay.
(D) Admitted to impeach the defendant's expected testimony as to the result of her own investigation.

> **Correct answer (C).** The secretary's testimony is admitted because the defendant's statement is a party admission (nonhearsay).

Rule. An opposing party's own statement, offered against her, is nonhearsay under FRE 801(d)(2). The personal-knowledge requirement does not apply to admissions, and an admission may be in opinion form. (The answer is imperfect only because nonhearsay must still be relevant — which it is.)

Application. The defendant told her secretary she caused the injury by forgetting yard work. Offered against her, it's a party admission — admissible though she lacked personal knowledge — (C).

Why the other choices fail. (A) personal knowledge isn't required for admissions. (B) admissions may be in opinion form (e.g., 'it was my fault'). (D) impeachment isn't available before the witness testifies, and this is substantive nonhearsay.



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 — no personal knowledge needed; opinion OK).

How it lands: §3 step 5: the defendant's own fault statement is a party admission, admissible against her even without personal knowledge → (C).

Question 3

Criminal Law — Larceny / Intent to Steal

A woman whose car was in the shop wanted to meet her friend at a restaurant a mile away from the woman's home. She noticed that her neighbor had forgotten to lock his bicycle upon returning home. The woman took her neighbor's bicycle and began riding it to the restaurant, intending to bring it back in the trunk of her friend's car after her dinner. She had ridden the bicycle a distance of two blocks when she was hit by a car that had gone through a red light. The bicycle was destroyed in the collision. If charged with larceny of the bicycle, the woman will most likely be found:

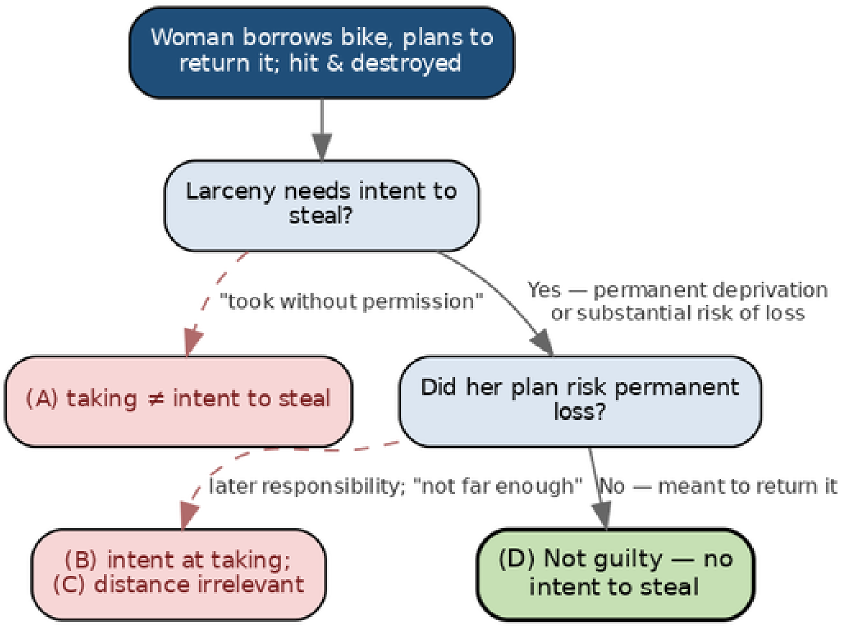
(A) Guilty, because she intended to take the bicycle without permission.
(B) Guilty, because she was responsible for the permanent loss of the bicycle.
(C) Not guilty, because she did not ride the bicycle far enough away from where she took it.
(D) Not guilty, because what she planned to do with the bicycle did not create a substantial risk of permanent loss.

> **Correct answer (D).** Not guilty, because her plan did not create a substantial risk of permanent loss.

Rule. Larceny requires intent to permanently deprive (or to create a substantial risk of permanent loss). An intent to borrow and return the property, without creating such a risk, negates the specific intent to steal.

Application. The woman meant to ride the bike a mile and return it in her friend's trunk after dinner — a borrowing, not a taking that risked permanent loss. No intent to steal, so not guilty — (D).

Why the other choices fail. (A) taking without permission isn't enough; intent to steal is required. (B) her later responsibility for the loss doesn't supply the intent that must exist at the taking. (C) asportation needs only slight movement; distance is irrelevant, and it ignores the intent point.



Decision path

Attack Sequence: Crim attack sequence, §2 Property Crimes (larceny — intent to permanently deprive) + Defenses (intent to return).

Playbook: Crim playbook, CRIMES (Larceny — intent to steal / substantial risk of loss).

How it lands: §2: intending to borrow and return the bike, without creating a substantial risk of permanent loss, negates the intent to steal → (D).

Question 4

Torts — Cause in Fact / Concurrent Causes

A plaintiff purchased a new car manufactured by a corporation from a local dealership. While the plaintiff was driving home from the dealership, she stopped at a stop sign. She was struck from behind by a jeep driven by a driver who had negligently failed to stop. On impact, the plaintiff was injured when she hit her head on the front windshield. The plaintiff was wearing a seat belt at the time of the impact which should have prevented this, but the seat belt buckle was defective and failed to hold the plaintiff. Assume that a state law requires all automobiles to be equipped with seat belts that will prevent drivers from hitting their heads on windshields on impact. If the plaintiff asserts a claim against the driver, the plaintiff will:

(A) Prevail, unless the corporation was negligent in the manufacture of the car that the plaintiff was driving.
(B) Prevail, because the driver's negligent driving was a cause in fact of the collision.
(C) Not prevail, because the seat belt in the plaintiff's car violated a state law.

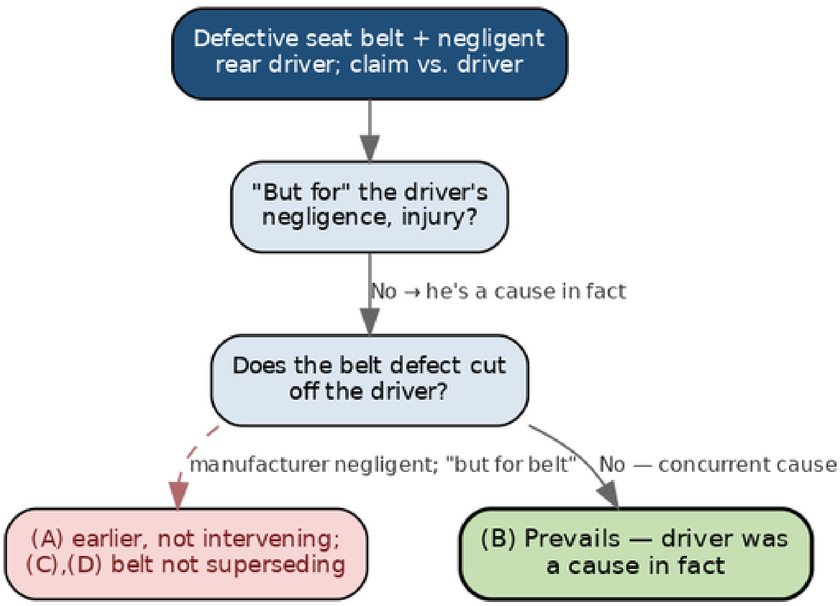
(D) Not prevail, because the plaintiff would not have been injured but for the failure of the seat belt buckle.

> **Correct answer (B).** The plaintiff prevails because the driver's negligence was a cause in fact of the collision.

Rule. Under the 'but for' test, a defendant is a cause in fact when the harm would not have occurred but for his conduct. Where multiple negligent acts combine, each is a concurrent cause; a later or additional cause (like a defective part) does not relieve an earlier tortfeasor.

Application. But for the driver's negligent rear-end collision, the plaintiff wouldn't have been hurt, so he's a cause in fact. The seat-belt defect is a concurrent cause, not a superseding one — (B).

Why the other choices fail. (A) the manufacturer's earlier negligence isn't an intervening act cutting off the driver. (C) the seat-belt failure isn't a superseding force. (D) 'but for' establishes, not limits, liability in concurrent-cause cases.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 4 (actual cause — "but for"; concurrent causes).

Playbook: Torts playbook, CAUSATION (But-for cause; concurrent causes each liable).

How it lands: §3 step 4: but for the driver's negligence the plaintiff wouldn't have been hurt, so he's a cause in fact; the belt defect is a concurrent, not superseding, cause → (B).

Question 5

Torts — Strict Products Liability / Retailer-Manufacturer

A plaintiff driving his new sports car was stopped at a red light when he was struck from behind by a truck driven by a driver who had negligently failed to stop. On impact, the door on the driver's side of the car flew open because of a latent defect in the latch that could not have been detected during the ordinary manufacturing process. The plaintiff, who was not wearing a seat belt, fell out of the open door and was injured. The jurisdiction retains traditional contributory negligence rules; however, evidence of nonuse of a seat belt is not admissible in a civil action. If the plaintiff asserts a claim against the corporation that manufactured the car, will the plaintiff prevail?

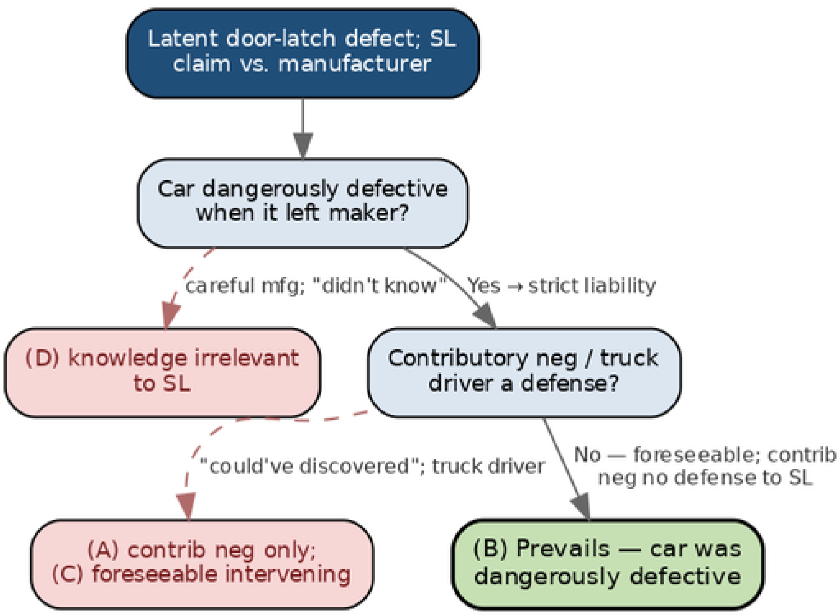
(A) Yes, because the plaintiff could not reasonably have discovered the defect.
(B) Yes, because the car he was driving was dangerously defective.
(C) No, because the truck driver's negligent driving was the cause of the plaintiff's injuries.
(D) No, because the corporation did not know or have reason to know of the defect.

> **Correct answer (B).** The plaintiff prevails because the car was dangerously defective.

Rule. A commercial supplier is strictly liable for injuries caused by a product that was in a defective, unreasonably dangerous condition when it left the supplier's control. Fault (knowledge of the defect) need not be shown, and ordinary contributory negligence is not a defense in a traditional-contributory-negligence jurisdiction.

Application. The latent latch defect made the car dangerously defective; the manufacturer is strictly liable regardless of the undiscoverable nature of the defect — (B).

Why the other choices fail. (A) the plaintiff's failure to discover a latent defect is (at most) contributory negligence, not a defense to strict liability. (C) the truck driver's negligence is a foreseeable intervening force. (D) strict liability applies even without knowledge of the defect.



Decision path

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

Playbook: Torts playbook, PRODUCTS LIABILITY (Commercial supplier strictly liable; knowledge irrelevant).

How it lands: §8: a dangerously defective latch makes the manufacturer strictly liable regardless of knowledge, and ordinary contributory negligence is no defense → (B).

Question 6

Constitutional Law — Standing

A state's legislature passed a statute that required every used car sold in the state to be tested prior to sale to determine whether it was in compliance with a set of strict exhaust emission standards that were also included in the legislation. Used cars would have to be brought up to standard and pass the emissions test prior to sale. Certain persons in the state object to the legislation because one of its results will be to raise the average price of used cars in the state. Only cars to be sold for junk are exempt from the statute. Among the following, who would be most likely to have standing to raise a constitutional challenge to the legislation?

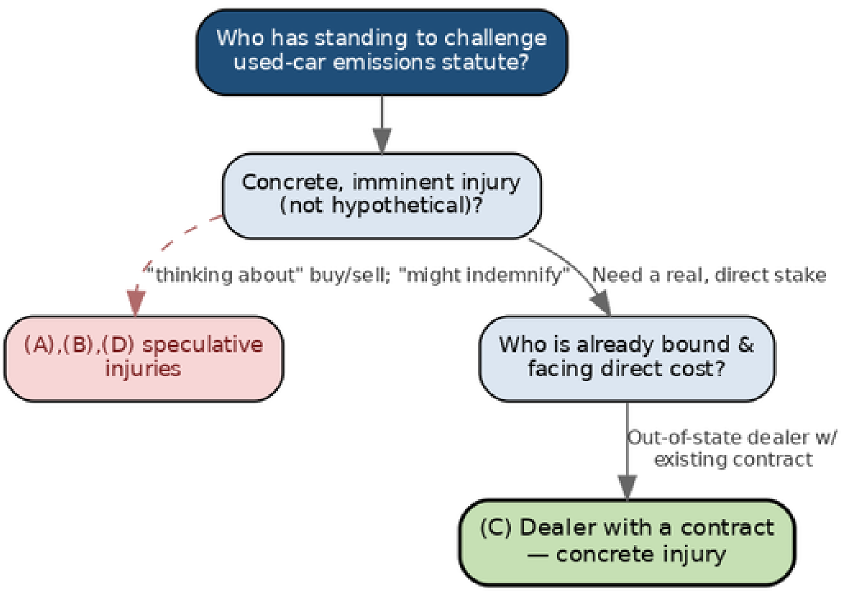
(A) A state resident who was thinking about selling used cars in the state.
(B) A state resident who was thinking about buying a used car in the state.
(C) An out-of-state dealer of used cars who had a contract to sell cars to a large dealer in the state.
(D) An out-of-state manufacturer who might be required to indemnify its dealers in the state for costs arising from the statute.

> **Correct answer (C).** The out-of-state dealer with a contract to sell cars into the state has standing.

Rule. Standing requires a concrete, particularized injury that is actual or imminent, not conjectural — a direct stake in the controversy. A party already bound by a contract that the statute will make costlier has an immediate, real injury.

Application. The dealer already has a contract to sell used cars to an in-state dealer, so the testing/upgrade costs threaten immediate economic injury — concrete standing — (C).

Why the other choices fail. (A) and (B) merely 'thinking about' buying or selling is hypothetical, not imminent. (D) a manufacturer who 'might' have to indemnify asserts only a speculative future injury.



Decision path

Attack Sequence: Con Law attack sequence, §1 Justiciability, step 2 (standing — concrete, imminent injury).
Playbook: Con Law playbook, JUSTICIABILITY (Standing — injury in fact; not hypothetical).
How it lands: §1 step 2: the out-of-state dealer already under contract faces a real, imminent economic injury, unlike the merely-contemplating parties → (C).

Question 7

Torts — Private Nuisance / Utility Balancing

Growers of potatoes in the state recently began spraying a pesticide onto their crops to prevent the spread of a pest that can destroy young potato plants. The pesticide is manufactured exclusively by one company at its plant. When the plant is producing the pesticide it emits a fine, sticky, harmless mist as a byproduct. The mist drifts over a plaintiff's property, which is adjacent to the company's plant. Although the company uses the best technology available, it is unable to prevent the release of the mist. The plaintiff brings suit against the company on the theory of private nuisance to enjoin the production of the pesticide at the company's plant. Which of the following facts, if established, will be most helpful to the company's defense?

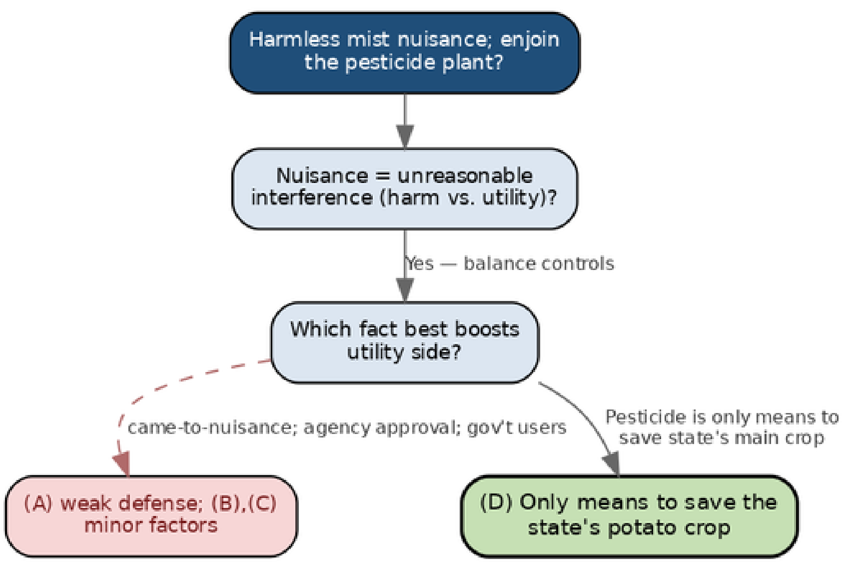
(A) The company commenced the manufacture of the pesticide at its plant three years before the plaintiff acquired the land adjacent to the plant.
(B) Federal, state, and local agencies approved the design of the plant and equipment used to produce the pesticide.
(C) The principal users of the pesticide are state and federal departments of agriculture.
(D) The pesticide is the only type of pesticide that can safely and effectively kill the pest, which, if not controlled, would destroy the state's potato crop, its principal product.

> **Correct answer (D).** The company's best fact is that its pesticide is the only means of saving the state's principal crop.

Rule. A private nuisance is an unreasonable, substantial interference with another's use and enjoyment of land. Reasonableness is judged by balancing the gravity of the harm against the utility of the defendant's conduct. High social utility can defeat an injunction.

Application. That the pesticide is the only product that can save the state's principal potato crop maximizes the utility side of the balance, best supporting the company against an injunction — (D).

Why the other choices fail. (A) 'coming to the nuisance' is generally not a good defense. (B) and (C) agency approval and government use are factors, but they speak far less to the harm-vs-utility balance than (D).



Decision path

Attack Sequence: Torts attack sequence, §7 Defamation, Privacy & Nuisance, step 4 (private nuisance — harm vs. utility balance).

Playbook: Torts playbook, NUISANCE (Unreasonableness — gravity of harm vs. utility of conduct).

How it lands: §7 step 4: the pesticide being the only way to save the state's principal crop maximizes utility in the balance — the company's best fact → (D).

Question 8

Evidence — Impeachment by Conviction (Dishonesty)

While cross-examining a defendant on trial for robbery and assault with a deadly weapon, the prosecutor asks him whether he was convicted of fraud within the previous year. This question is:

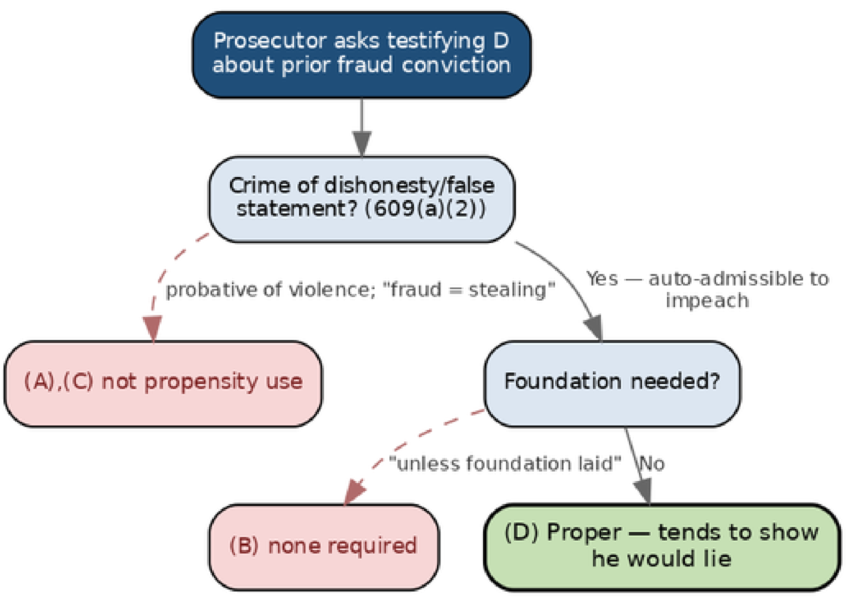
(A) Improper, because fraud is not probative of a tendency to commit violence.
(B) Improper, unless the proper foundation was laid.
(C) Proper, because fraud is a form of stealing, and so it will tend to show that the defendant could commit robbery.
(D) Proper, because it tends to show that the defendant would lie.

> **Correct answer (D).** The question is proper because a fraud conviction shows the defendant would lie.

Rule. Under FRE 609(a)(2), a conviction for a crime requiring proof of a dishonest act or false statement is automatically admissible to impeach any witness's character for truthfulness, without balancing. A testifying criminal defendant may be impeached this way, and no foundation is required.

Application. The defendant testified, so his recent fraud conviction — a crime of dishonesty — is admissible to attack his credibility — (D).

Why the other choices fail. (A) and (C) the conviction isn't offered to show a propensity for violence or theft; that would be improper propensity use. (B) no foundation is needed to prove a conviction for impeachment.



Decision path

Attack Sequence: Evidence attack sequence, §7 Witness Competency & Impeachment, step 3 (impeachment by conviction — dishonesty).

Playbook: Evidence playbook, IMPEACHMENT (609(a)(2) — crimes of dishonesty auto-admissible).

How it lands: §7 step 3: a fraud conviction is a crime of dishonesty, automatically admissible to impeach the testifying defendant → (D).

Question 9

Evidence — Habit Evidence

A pedestrian sued the driver of a car that hit him, alleging that the driver ran a stop sign. The driver denies this, maintaining that the pedestrian carelessly darted into the street. At trial, the pedestrian calls her husband to testify for her. The husband offers testimony that the pedestrian invariably looks both ways before crossing a street. The driver objects to the admission of this evidence. The driver's objection should be:

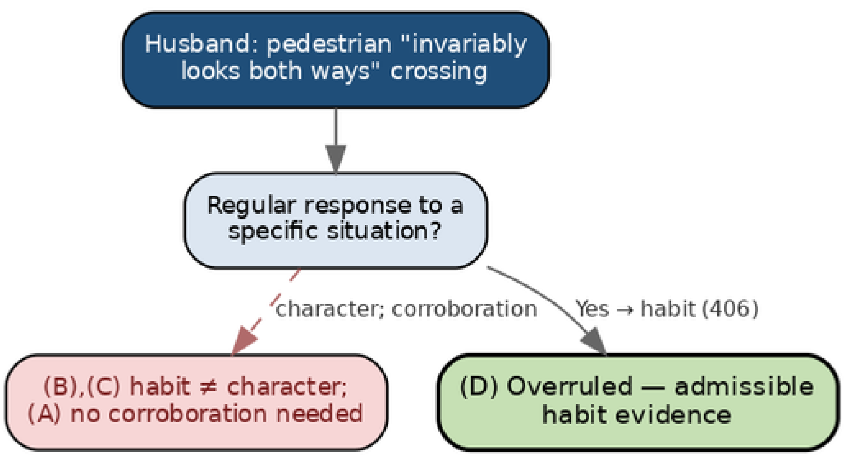
(A) Sustained, because there is no evidence to corroborate the husband's testimony.
(B) Sustained, because it seeks to prove conduct in conformity with the character evidence.
(C) Overruled, because the pedestrian's character is in issue.
(D) Overruled, because it tends to establish the pedestrian's habit.

> **Correct answer (D).** Overruled — the testimony is admissible as habit evidence.

Rule. Evidence of a person's habit — a regular, specific response to a particular type of situation — is admissible to prove conduct in conformity on the occasion in question (FRE 406). Habit need not be corroborated and does not require character to be in issue.

Application. Always looking both ways before crossing is a specific, regular response to a repeated situation — habit, relevant to whether she was careful when hit — (D).

Why the other choices fail. (A) habit evidence needs no corroboration. (B) and (C) this is habit, not character; and character is not directly in issue in this negligence case.



Decision path

Attack Sequence: Evidence attack sequence, §6 Character & Propensity, step 4 (habit evidence, FRE 406).

Playbook: Evidence playbook, CHARACTER (Habit — regular response to specific situation).

How it lands: §6 step 4: "always looks both ways" is habit, admissible to show conforming conduct, and needs no corroboration → (D).

Question 10

Civil Procedure — Supplemental Jurisdiction / Discretion to Decline

A corporation manufactured a patented automatic potato peeler. Subsequently, that corporation's biggest rival manufactured a similar potato peeler. Both are corporations of the same state. The state has a unique statute authorizing quadruple damages for unfair business competition relating to potatoes; however, there is considerable debate whether the law is constitutional under the state constitution. The corporation holding the patent sued its rival in federal court, alleging that the rival corporation violated its patent and the unfair business law. Shortly after the pretrial meeting of the parties required under the Federal Rules, the two companies reached a settlement of the patent infringement claim. May the court dismiss the remaining claim?

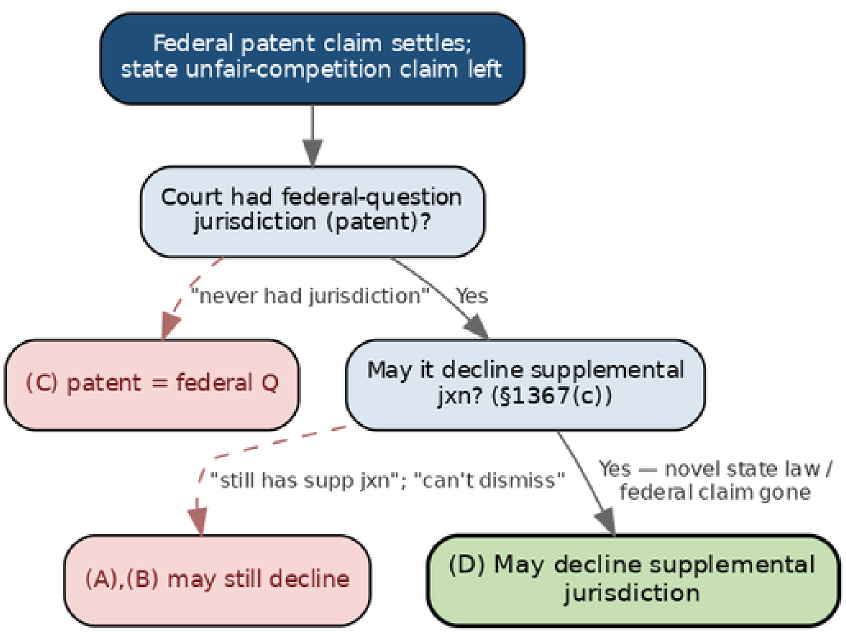
(A) No, because the federal court still has supplemental jurisdiction over the case.
(B) No, because the federal court already exercised jurisdiction over the case and thus cannot now dismiss it.
(C) Yes, because the federal court never had jurisdiction over the claim.
(D) Yes, because the federal court may decline to exercise its supplemental jurisdiction.

> **Correct answer (D).** The court may dismiss the remaining claim because it may decline to exercise supplemental jurisdiction.

Rule. A court may decline supplemental jurisdiction when the state claim raises a novel or complex issue of state law, the state claim predominates, all original-jurisdiction claims are dismissed, or other compelling reasons exist (28 U.S.C. §1367(c)).

Application. After the federal patent claim settled, only the novel/disputed state unfair-competition claim remains, and it now predominates — so the court may decline supplemental jurisdiction and dismiss it — (D).

Why the other choices fail. (A) even with supplemental jurisdiction, the court may decline it. (B) exercising jurisdiction doesn't bar later dismissal. (C) the court did have jurisdiction via the federal patent question.



Decision path

Attack Sequence: Civil Procedure attack sequence, §2 Supplemental Jurisdiction & Removal, step 3 (discretion to decline supplemental jxn).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Supplemental jxn; §1367(c) decline).

How it lands: §2 step 3: once the federal patent claim settled, the court may decline supplemental jurisdiction over the novel state claim → (D).

Question 11

Contracts — Risk of Loss in Construction (Pre-Completion Destruction)

A homeowner and a contractor duly executed a contract providing that the contractor was to construct a residence on a specified lot. No date was included in the contract for completion of the home. After the contractor completed 5% of the residence, a tornado demolished the construction but left the lot undamaged. Must the contractor still perform the contract?

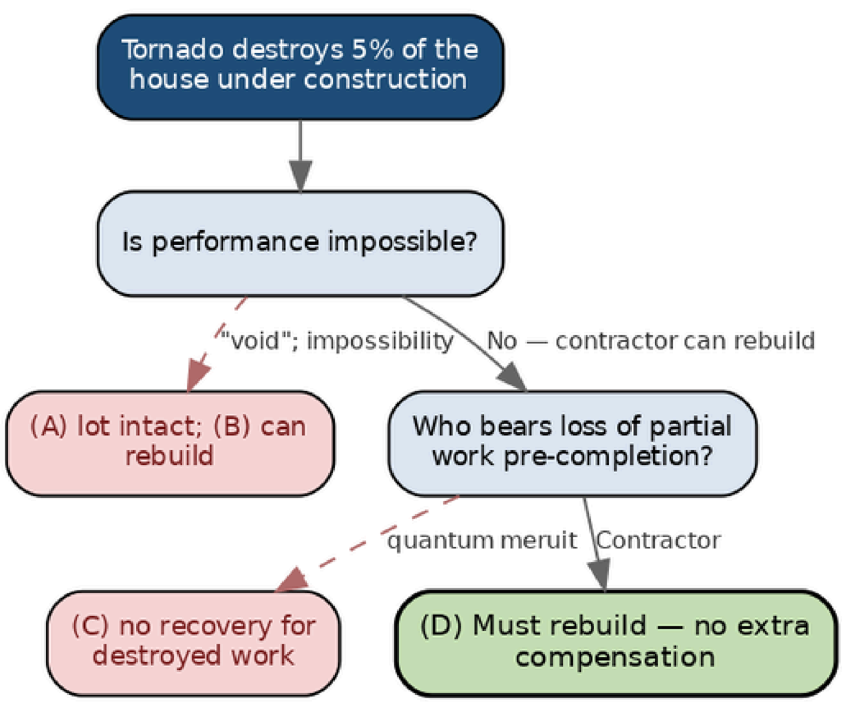
(A) No, the contract is void because the subject of the contract was destroyed through no fault of the parties.
(B) No, the contractor is discharged of his obligation because of impossibility of performance.
(C) Yes, but he is entitled to a quantum meruit recovery for the work done prior to the destruction of the construction.
(D) Yes, the contractor must perform the original contract without any compensation for the destruction of the construction.

> **Correct answer (D).** Yes — the contractor must rebuild and perform the original contract without extra compensation.

Rule. When a contractor agrees to build a structure, destruction of the work in progress (before completion) does not discharge the contractor; performance is not impossible because he can rebuild. Risk of loss of the partial work is on the contractor until completion.

Application. The tornado destroyed 5% of the work but left the lot intact; the contractor can still build, so he must complete the original contract without extra pay for the lost work — (D).

Why the other choices fail. (A) the subject (the buildable lot) wasn't destroyed, and destruction wouldn't void the contract anyway. (B) performance isn't impossible — he can rebuild. (C) he isn't entitled to quantum meruit for the destroyed work; the loss falls on him.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance & Excuse (construction contracts — risk of loss before completion).

Playbook: Contracts playbook, EXCUSE (Destruction of work in progress — contractor bears the risk).

How it lands: §5: destruction of the partly built house before completion doesn't excuse the contractor — he must rebuild without extra pay → (D).

Question 12

Contracts — Impracticability (Destruction of the Means of Performance)

An owner and a builder executed a contract providing that the builder was to construct a residence on a specified lot according to plans and specifications. The total contract price was $800,000. No date was included in the contract for completion of the home. After the builder completed 60% of the residence, a flash flood from a nearby river partially eroded the lot but left the construction undamaged. The builder determined that it would cost an additional $1.2 million to repair the lot so that the residence can be constructed according to the plans. Without the additional lot repair work, the residence cannot be constructed at all. Must the builder perform the contract?

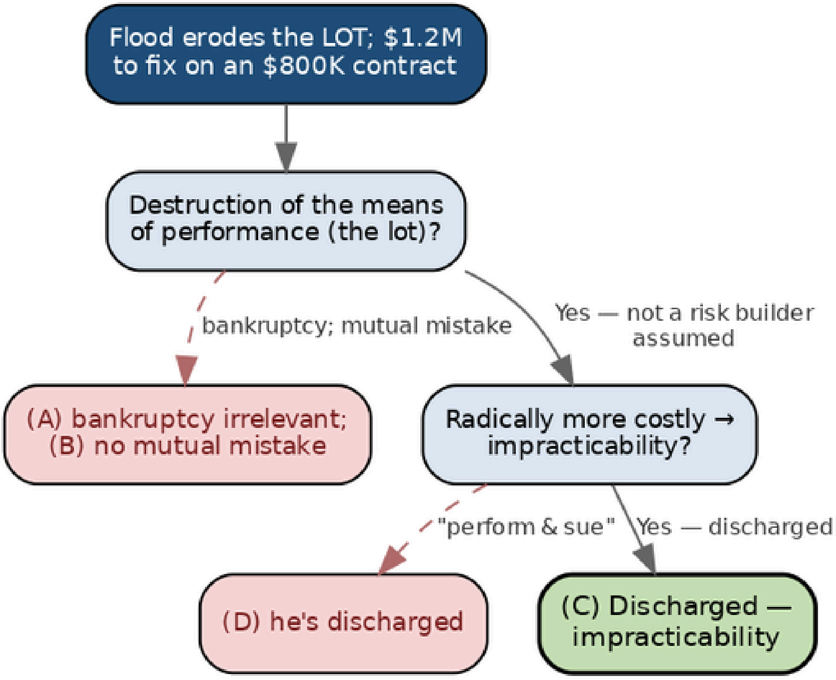
(A) No, if the increased costs of construction would bankrupt him.
(B) No, the contract is void because of mutual mistake.
(C) No, the builder is discharged of his obligation because of impracticability of performance.
(D) Yes, but he may bring an action against the owner for the increased costs of construction.

> **Correct answer (C).** No — the builder is discharged by impracticability.

Rule. Performance is discharged for impracticability when an unforeseen event makes performance excessively and unreasonably difficult or expensive, and the party didn't assume that risk. Unlike destruction of the partially built structure, destruction of the lot itself (the means of performance) is generally not a risk the builder assumed.

Application. The flood eroded the lot, and repairing it would cost $1.2M on an $800K contract — performance is now radically more burdensome through no assumed risk, so the builder is discharged — (C).

Why the other choices fail. (A) his personal bankruptcy is irrelevant to impracticability. (B) there's no mutual mistake — an unforeseen later event, not a shared erroneous assumption. (D) he's discharged, not required to perform and sue for extra costs.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance & Excuse, step 3 (impracticability — destruction of the means of performance).

Playbook: Contracts playbook, EXCUSE (Impracticability — excessive/unreasonable cost; risk not assumed).

How it lands: §5 step 3: destruction of the lot (the means of performance) at a cost far exceeding the price is impracticability, discharging the builder → (C).

Question 13

Contracts — Supervening Illegality

An owner and a contractor executed a contract providing that the contractor was to construct a three-story, castle-like structure on a specified location according to plans and specifications drawn up by an architect. The total contract price was $900,000. No date was included in the contract for completion of the home, but the builder was to begin construction one week after the contract was signed. The day after the contract was signed by the parties, the state development commission declared the land encompassing the owner's lot part of a natural wilderness area, requiring that all residences constructed therein be single story and have plans approved by the development commission. The original plans for the three-story structure are totally incompatible with the commission's guidelines for residences in a wilderness area. Must the builder perform the contract?

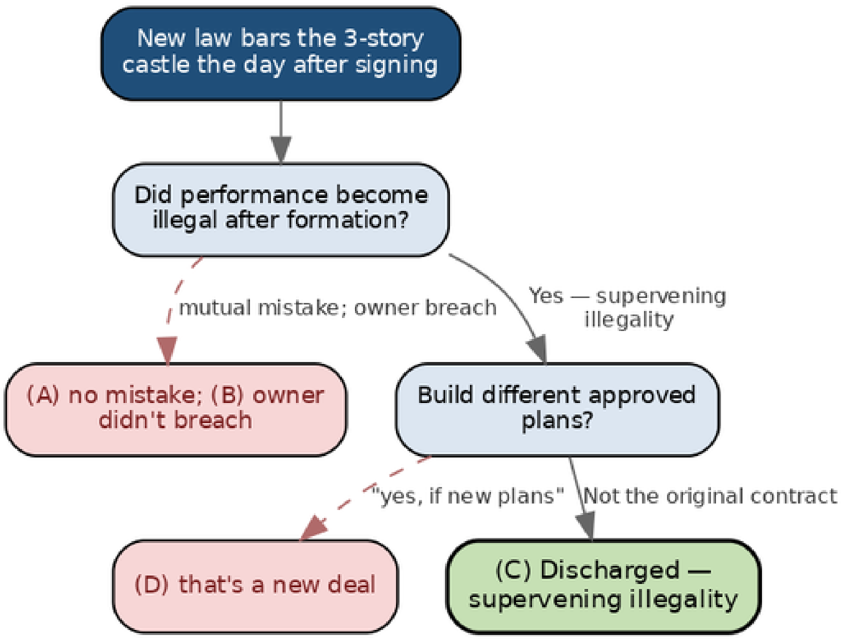
(A) No, the contract is void because of mutual mistake.
(B) No, and he may recover his lost profits in an action against the owner.
(C) No, the contractor is discharged of his obligation because of supervening illegality.
(D) Yes, if the owner and the architect supply new plans approved by the development commission.

> **Correct answer (C).** No — the builder is discharged because of supervening illegality.

Rule. When performance becomes illegal after the contract is formed due to a change in law or governmental regulation, the duty to perform is discharged, even if some performance remains physically possible.

Application. The day after signing, the commission barred any residence but a single-story, approved structure; building the contracted three-story castle is now illegal, discharging the builder — (C).

Why the other choices fail. (A) no mutual mistake — the illegality arose after formation. (B) the owner didn't breach, so no lost-profits claim. (D) building new approved plans isn't the original contract; the builder is discharged, not obligated to build a different structure.



Decision path

Attack Sequence: Contracts attack sequence, §5 Performance & Excuse (supervening illegality).

Playbook: Contracts playbook, EXCUSE (Supervening illegality discharges performance).

How it lands: §5: a post-formation regulation making the contracted structure illegal discharges the builder → (C).

Question 14

Real Property — Fee Simple Determinable / Possibility of Reverter & Adverse Possession

Fifty-one years ago, an owner conveyed land to a taker for "so long as the land is used solely for residential purposes; otherwise, the interest in land shall revert to the owner and his heirs." The taker used the land as her personal residence for 20 years, but 31 years ago, she began operating a children's day camp on the land. The owner knew of this operation, but he took no action. Two years ago, the aged taker decided to get out of the camp business. She closed her business and once again began to use the land solely as her personal residence. Also two years ago, the owner died, survived by his son and only heir. Now the son is laying claim to the conveyed land. The jurisdiction in which the land is located has a seven-year adverse possession statute and another statute that bars enforcement of possibilities of reverter 55 years after their creation. May the son validly claim title to the land?

(A) Yes, because less than 55 years have elapsed since the creation of the possibility of reverter.
(B) Yes, because the adverse possession period began to run when the taker returned the property to residential status, and the taker has not held for the requisite seven years.
(C) No, because the adverse possession period began 31 years ago, and the taker has held the property for more than the requisite seven years.
(D) No, because the owner did not assert his possibility of reverter; thus, no cause of action arose in the

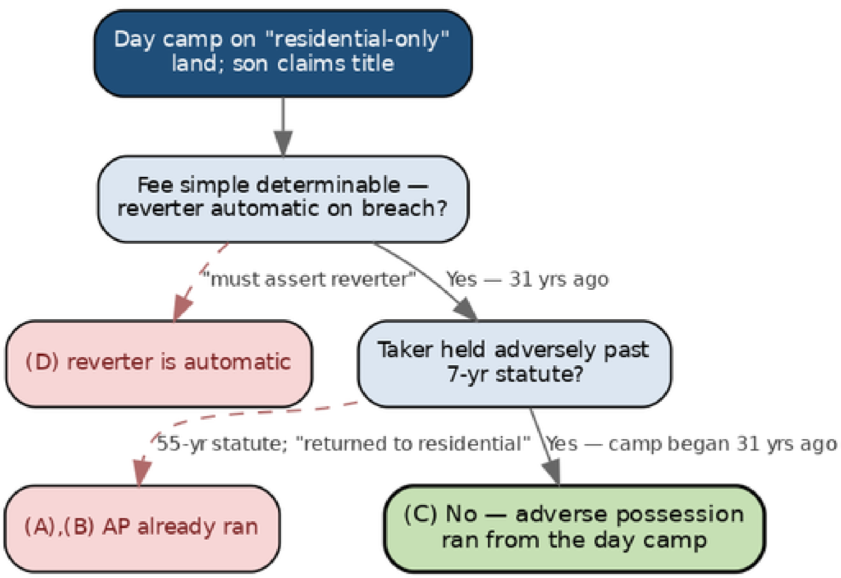
owner or his heirs.

> **Correct answer (C).** No — the son can't claim title; adverse possession ran when the day camp began 31 years ago.

Rule. A fee simple determinable ends automatically on the stated event, and the grantor's possibility of reverter becomes possessory immediately — no entry required. If the holder stays in open, notorious, continuous, adverse possession past the statutory period, the reverter is barred by adverse possession.

Application. Operating the day camp violated the residential-only limitation, automatically triggering the reverter 31 years ago; the taker then held adversely well beyond the 7-year period, barring the owner's (and son's) claim — (C).

Why the other choices fail. (A) the 55-year reverter statute doesn't help because adverse possession already extinguished the claim. (B) adverse possession began at the violation, not on return to residential use. (D) a possibility of reverter is automatic — no assertion needed — so the clock ran without any action.



Decision path

Attack Sequence: Real Property attack sequence, §1 Estates + §5 Adverse Possession (fee simple determinable; automatic reverter barred by AP).

Playbook: Real Property playbook, ESTATES (Fee simple determinable; possibility of reverter) + adverse possession.

How it lands: §1/§5: the reverter arose automatically when the day camp began, and the taker's adverse possession past the 7-year statute bars the son → (C).

Question 15

Criminal Law — Murder / Malice via Depraved Heart

One night when a man was very drunk, he took one of his rifles, loaded it, and fired a bullet through his front door. Unbeknownst to him, at the time he fired the rifle, someone was driving by the house. The bullet went through the front door, through the window of the car, and killed the driver. The shooter was convicted of murder and appeals. He contends that there was insufficient evidence to support a finding of murder. The court of appeals should rule that the evidence is:

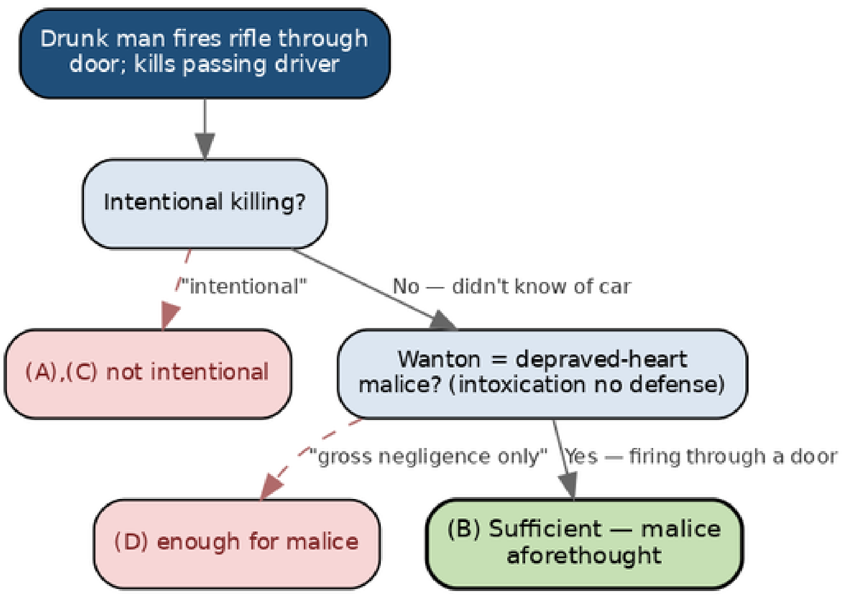
(A) Sufficient to prove that the killing was intentional.
(B) Sufficient to prove that the killing was done with malice aforethought.
(C) Insufficient, because the shooter did not know that the driver was driving by his house and therefore he could not have acted intentionally.
(D) Insufficient, because at most the shooter's conduct constituted gross negligence and involuntary manslaughter.

> **Correct answer (B).** Sufficient to prove the killing was done with malice aforethought.

Rule. Malice aforethought includes a 'depraved heart' (wanton, reckless indifference to an unjustifiably high risk to human life). Voluntary intoxication does not negate the wanton state of mind; one unaware of the risk only because voluntarily drunk still acts with malice.

Application. Firing a rifle through a front door is wanton disregard for human life — depraved-heart malice — and voluntary intoxication doesn't negate it, so the murder evidence is sufficient — (B).

Why the other choices fail. (A) he didn't know of the car, so the killing wasn't intentional. (C) his intentional act was firing the rifle; ignorance of the specific victim doesn't defeat malice. (D) there's enough for malice/murder, not merely gross negligence.



Decision path

Attack Sequence: Crim attack sequence, §1 Homicide, step 3 (malice — depraved heart; voluntary intoxication no defense).

Playbook: Crim playbook, HOMICIDE (Depraved-heart malice; intoxication defense limits).

How it lands: §1 step 3: firing a rifle through a door is wanton/depraved-heart malice, and voluntary intoxication doesn't negate it → (B).

Question 16

Constitutional Law — Equal Protection / Durational Residency

Logging has long been one of the major industries of a state. To protect the logging industry, which was being harmed by the too rapid depletion of the wood in the forests of the state, and to promote the general welfare of the state's citizens, the state legislature enacted statutes for the first time requiring licenses for commercial logging. To receive a license, the applicant must pay a $500 fee and establish by acceptable evidence that he has been engaged in commercial logging in the forests of the state for the past 15 years. A limited number of special licenses are available for those who do not meet the requirements of the regular licenses, and these special licenses are expressly reserved for citizens who have resided in the state for at least three years prior to the date of the application. A legally admitted alien who has been residing in the state for 10 years brings suit in federal court to enjoin enforcement of the licensing statute as to himself and all other similarly situated noncitizen legal residents of the state. Which of the following doctrines will probably be determinative of his claims?

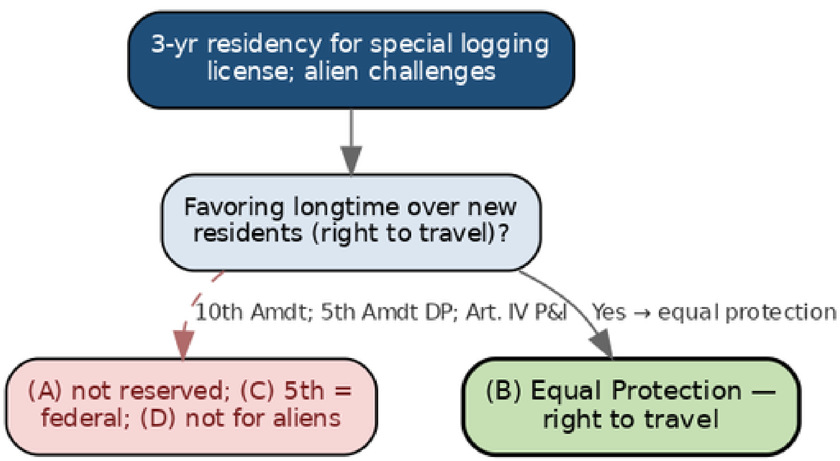
(A) The powers reserved to the states by the Tenth Amendment to the federal Constitution.
(B) The Equal Protection Clause of the Fourteenth Amendment.
(C) The Due Process Clause of the Fifth Amendment to the federal Constitution.
(D) The Privileges and Immunities Clause of Article IV.

> **Correct answer (B).** The Equal Protection Clause (right to travel) will be determinative.

Rule. A state law favoring longtime residents over new residents in the ability to earn a livelihood burdens the fundamental right to interstate travel and is analyzed under equal protection with heightened (strict) scrutiny.

Application. The special-license three-year residency requirement discriminates against new residents in pursuing a livelihood, implicating the right to travel under equal protection — (B).

Why the other choices fail. (A) this isn't a purely reserved state area, and the Constitution overrides state law anyway. (C) the Fifth Amendment Due Process Clause applies to the federal government, not a state. (D) Article IV Privileges and Immunities doesn't protect aliens.



Decision path

Attack Sequence: Con Law attack sequence, §5 Equal Protection, step 3 (durational residency / right to travel → heightened scrutiny).

Playbook: Con Law playbook, EQUAL PROTECTION (Right to travel; durational residency).

How it lands: §5 step 3: a residency preference burdening a livelihood implicates the right to travel under equal protection → (B).

Question 17

Constitutional Law — Article IV Privileges and Immunities

Commercial fishing has long been one of the major industries of a coastal state. To protect the fishing industry and to promote the general welfare of the state's citizens, the legislature of the state enacted statutes requiring licenses for commercial fishing. An applicant for the license must pay a $300 fee and establish that he has been engaged in commercial fishing in the waters of the state for 10 years. A commercial fisherman residing in a neighboring state frequently takes his fishing boat up the coast. His favorite spot is approximately two miles off the coast of the legislating state. If the commercial fisherman challenges the constitutionality of the legislating state's statutes, the court should find the statutes:

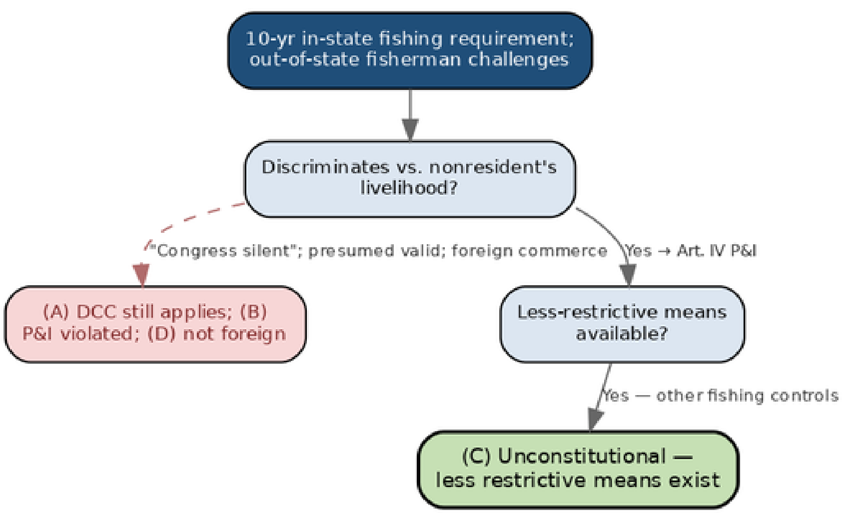
(A) Constitutional, because Congress has not enacted legislation regarding the subject matter of the statutes.
(B) Constitutional, because economic and social regulations are presumed valid.
(C) Unconstitutional, because less restrictive means are available.
(D) Unconstitutional, because Congress has exclusive power to regulate foreign commerce, which includes commercial ocean fishing.

> **Correct answer (C).** Unconstitutional — less restrictive means are available (Article IV Privileges and Immunities).

Rule. The Article IV Privileges and Immunities Clause bars discrimination against out-of-state residents as to fundamental activities like earning a livelihood, unless the discrimination is closely related to a substantial state purpose and no less-restrictive means exist.

Application. The 10-year in-state fishing requirement discriminates against the out-of-state fisherman's livelihood, and less-restrictive controls on fishing are available, so it fails — (C).

Why the other choices fail. (A) congressional silence doesn't save it; the dormant Commerce Clause also applies. (B) rational-basis presumption doesn't defeat a P&I violation. (D) this involves interstate commerce between a state and another state's citizen, not foreign commerce.



Decision path

Attack Sequence: Con Law attack sequence, §4 State Action & Individual Rights (Article IV Privileges and Immunities).

Playbook: Con Law playbook, PRIVILEGES & IMMUNITIES – ART. IV (Discrimination vs. nonresidents; livelihood).

How it lands: §4: the in-state fishing requirement discriminates against a nonresident's livelihood with less-restrictive means available → (C).

Question 18

Real Property — Rule Against Perpetuities (Life in Being)

The owner of a ranch in fee simple died and left the property to his daughter, "my daughter, her heirs and assigns; but if my son is living 25 years from the date of my death, then to my son, his heirs and assigns." At the time of the owner's death, his son was one year old. The common law Rule Against Perpetuities is unmodified in the jurisdiction. The grant in the will to the owner's son is:

(A) Valid, because the interest vests, if at all, within a life in being.

(B) Valid, because it grants the son a reversionary interest.

(C) Invalid, because the will grants the daughter the complete interest in the property, so there is nothing to be left to the son.

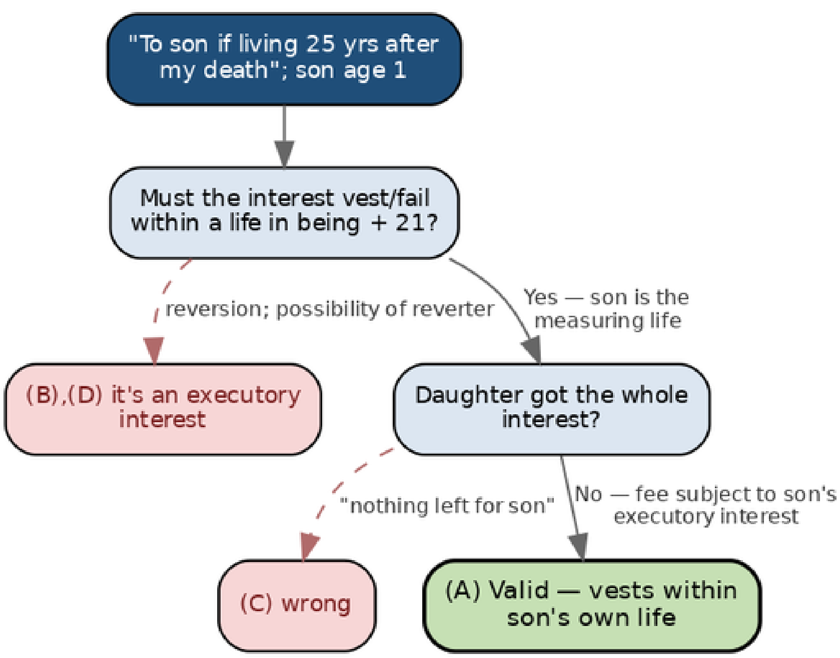
(D) Invalid, if this jurisdiction does not recognize a testator's ability to convey a possibility of reverter by will.

> **Correct answer (A).** The grant to the son is valid because his interest vests, if at all, within his own life.

Rule. An executory interest is valid under RAP if it must vest or fail within a life in being plus 21 years. When the condition is measured by whether a named person is living at a set time, that person is the validating life.

Application. The son's interest is conditioned on his being alive 25 years after the testator's death; the son himself is the measuring life, so it necessarily vests or fails within his lifetime — valid, (A).

Why the other choices fail. (B) it's an executory interest, not a reversion (which stays in the grantor). (C) the daughter took a fee simple subject to the son's executory interest, not the complete interest. (D) this isn't a possibility of reverter, so the (D) premise doesn't apply.



Decision path

Attack Sequence: Real Property attack sequence, §3 Future Interests & RAP, step 3 (validating life — executory interest).

Playbook: Real Property playbook, FUTURE INTERESTS (RAP — measuring/validating life).

How it lands: §3 step 3: the son's survival at year 25 makes him the measuring life, so the executory interest necessarily vests or fails within his life → valid, (A).

Question 19

Civil Procedure — Relation Back / Changing Parties

A car owner took her car to a garage, which was reputed to be an incorporated entity, to have her squeaking brakes fixed. Unfortunately, rather than fix the brakes, the so-called repairs made them worse. As a result, the car owner had a bad accident when the brakes failed. She sued the garage as a corporate entity in federal court, asserting diversity jurisdiction. She filed suit one day before the statute of limitations expired. She served the garage manager as a corporate representative with process one day after the statute of limitations expired. Eight months later, she learned that the garage manager was the true owner and that he never formally incorporated his business. Rather, he had filed a "doing business as" (sole proprietorship) certificate with the state. The car owner now wishes to amend her complaint to sue the owner-manager in an individual capacity rather than the garage as a corporate entity. May she do so?

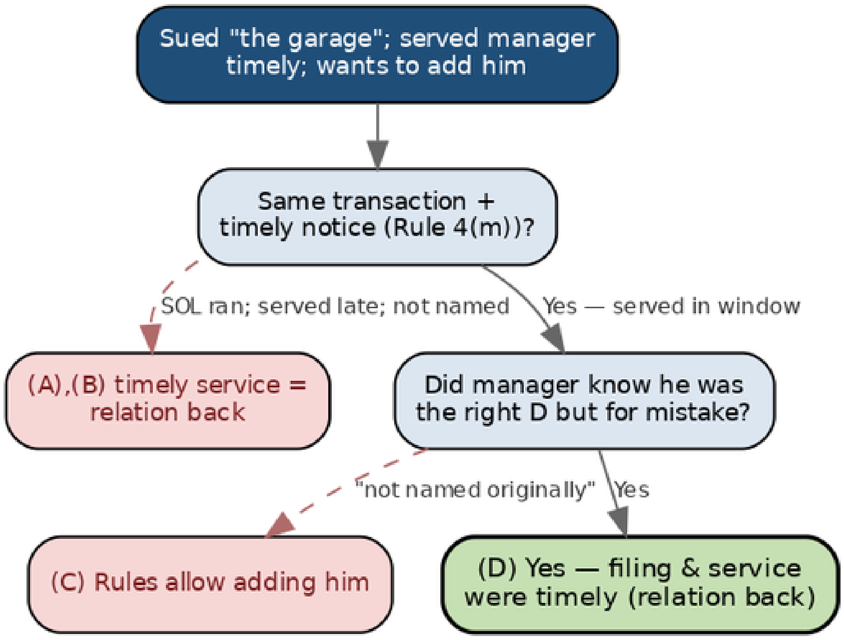
(A) No, because the statute of limitations had run.
(B) No, because the manager was not served until after the statute of limitations had run.
(C) No, because the manager was not named in the original complaint.
(D) Yes, because the filing of the suit and service of process against the manager were timely.

> **Correct answer (D).** Yes — the amendment relates back because the filing and service on the manager were timely.

Rule. Under Rule 15(c), an amendment changing the party relates back if it arises from the same transaction, and within the Rule 4(m) service window the new party received notice and knew (or should have known) that, but for a mistake about identity, it would have been named.

Application. Suit was filed before the limitations period ran and the manager was served within the Rule 4(m) window; he knew he was the true owner sued by mistake as a 'corporation,' so the amendment relates back — (D).

Why the other choices fail. (A) and (B) timely service within the Rule 4(m) window supports relation back despite the limitations date. (C) the Rules expressly allow changing a party's name after filing.



Decision path

Attack Sequence: Civil Procedure attack sequence, §6 Pleadings & Pre-Trial Motions, step 2 (amendment; relation back — changing parties).

Playbook: Civil Procedure playbook, PLEADINGS (Relation back — Rule 15(c); notice within service window).

How it lands: §6 step 2: timely filing plus service on the manager within the Rule 4(m) window, and his knowledge of the mistaken identity, let the amendment relate back → (D).

Question 20

Evidence — Prior Identification / Hearsay (Declarant Unavailable)

A defendant is charged with the burglary of a warehouse. At the request of the police investigating the burglary, the night watchman at the warehouse who had seen the thief leaving the premises wrote out a description of the thief, who bore a strong likeness to the defendant. However, the night watchman died of a heart attack before the defendant was arrested and brought to trial. The prosecution attempts to offer the description written out by the night watchman into evidence. The description is:

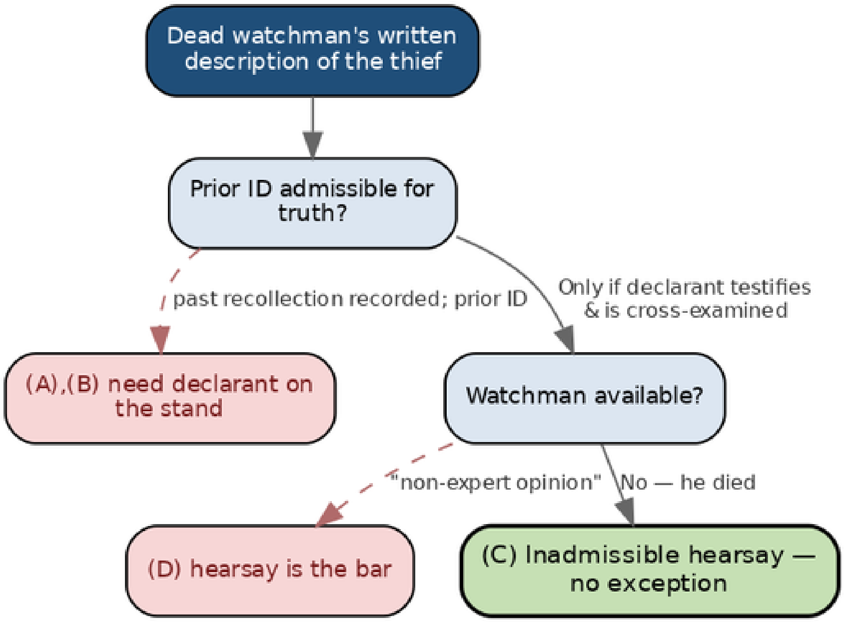
(A) Admissible as a past recollection recorded.
(B) Admissible as an identification of a person the night watchman knew committed the crime in question.
(C) Inadmissible as hearsay not within an exception.
(D) Inadmissible as an opinion of a non-expert.

> **Correct answer (C).** Inadmissible as hearsay not within an exception.

Rule. A prior identification is admissible for its truth only if the declarant testifies at trial and is subject to cross-examination (FRE 801(d)(1)(C)). Past recollection recorded likewise requires the person who made the record to testify.

Application. The night watchman died, so he can't testify or be cross-examined; his written description is hearsay with no applicable exception — inadmissible, (C).

Why the other choices fail. (A) past recollection recorded requires the maker on the stand. (B) prior identification requires the declarant to testify. (D) opinion form isn't the problem — the hearsay bar is.



Decision path

Attack Sequence: Evidence attack sequence, §4 Hearsay Exceptions (declarant-unavailable limits; prior ID requires live testimony).

Playbook: Evidence playbook, EXCEPTIONS (Prior identification / past recollection — declarant must testify).

How it lands: §4: prior identification and past-recollection-recorded both require the declarant to testify; the dead watchman can't, so it's inadmissible hearsay → (C).

Question 21

Evidence — Impeachment by Crime of Dishonesty

A defendant is charged with theft of a car. On cross-examination of the defendant, the prosecution asked her whether she had been convicted of fraudulent business practices six months earlier. This question is:

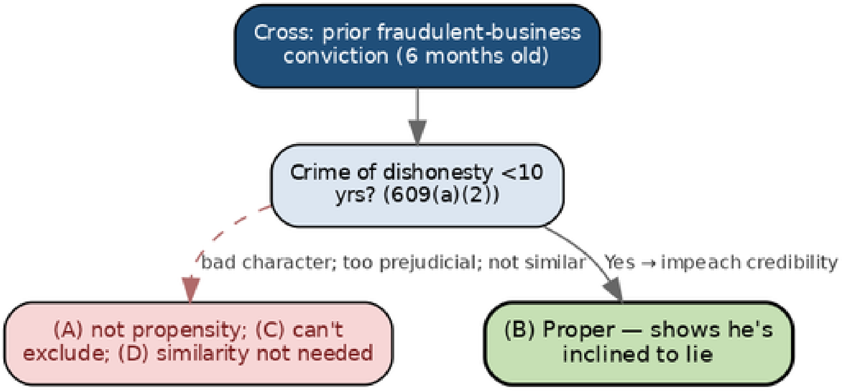
(A) Proper to show that the defendant has a bad character.
(B) Proper to show that the defendant is inclined to lie.
(C) Improper because the probative value of the evidence is outweighed by the danger of unfair prejudice.
(D) Improper because the conviction has insufficient similarity to the crime charged.

> **Correct answer (B).** Proper to show the defendant is inclined to lie.

Rule. A conviction for a crime of dishonesty or false statement less than 10 years old is automatically admissible to impeach the witness's credibility (FRE 609(a)(2)); it cannot be excluded as unfairly prejudicial and needs no similarity to the charged crime.

Application. The six-month-old fraudulent-business-practices conviction is a recent crime of dishonesty, admissible to impeach the testifying defendant's credibility — (B).

Why the other choices fail. (A) it's not admissible to show general bad character/propensity. (C) crimes of dishonesty can't be excluded as too prejudicial under 609(a)(2). (D) similarity to the charged crime isn't required.



Decision path

Attack Sequence: Evidence attack sequence, §7 Witness Competency & Impeachment, step 3 (impeachment by conviction — dishonesty, <10 yrs).

Playbook: Evidence playbook, IMPEACHMENT (609(a)(2) — dishonesty crimes; no 403 balancing; no similarity).

How it lands: §7 step 3: the recent fraud conviction is a crime of dishonesty admissible to impeach credibility → (B).

Question 22

Criminal Procedure / Con Law — Burden of Proof (Due Process)

A defendant is charged with larceny. His principal defense was that he had no intent to permanently deprive the victim of her property. The judge instructs the jury that the State had to prove beyond a reasonable doubt that the defendant was guilty of larceny and that the evidence tended to show that the defendant had taken some jewels belonging to the victim; but if they believed that the defendant had proven by a fair preponderance of the evidence that he did not intend to keep the jewels, but to return them, they should find him not guilty. The defendant was convicted of larceny. He appeals the conviction, contending that the judge erred in his instructions to the jury. The defendant's conviction will probably be:

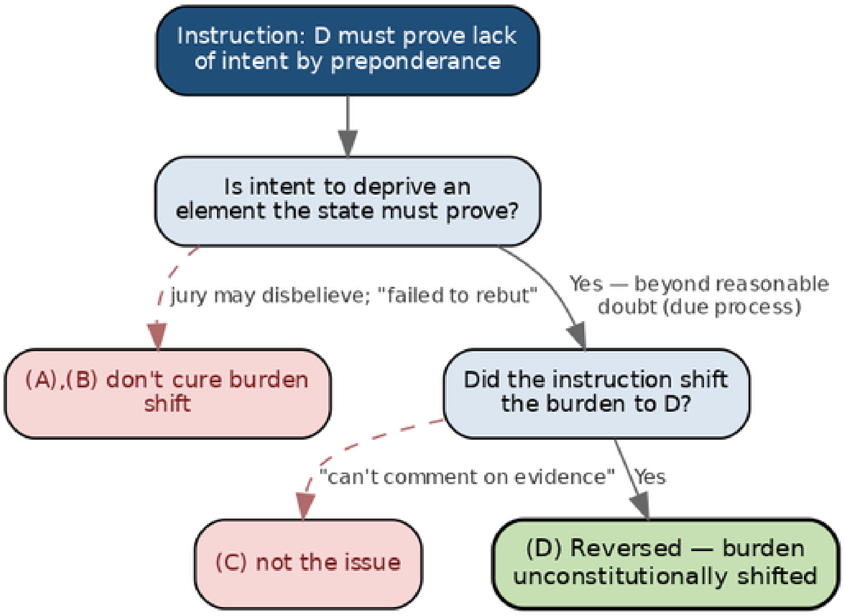
(A) Affirmed, because the jury has the power to ignore the defendant's testimony if they do not believe him.
(B) Affirmed, because the defendant had failed to rebut the State's evidence tending to show that he intended to keep the jewels.
(C) Reversed, because the judge cannot comment at all on the evidence.
(D) Reversed, because the instructions put some of the burden of proof on the defendant.

> **Correct answer (D).** Reversed — the instruction unconstitutionally shifted part of the burden of proof to the defendant.

Rule. Due process requires the prosecution to prove every element of the crime beyond a reasonable doubt. Intent to permanently deprive is an element of larceny; an instruction requiring the defendant to prove lack of that intent by a preponderance unconstitutionally shifts the burden.

Application. The instruction told the jury to acquit only if the defendant proved lack of intent by a preponderance — relieving the state of proving intent beyond a reasonable doubt. That's reversible error — (D).

Why the other choices fail. (A) the jury's power to disbelieve doesn't cure the unconstitutional instruction. (B) the defendant need not rebut anything; the state bears the burden. (C) a proper burden-of-proof instruction isn't improper 'commenting on the evidence.'



Decision path

Attack Sequence: Crim attack sequence, §6 Constitutional Protections (due process — burden of proof beyond a reasonable doubt).

Playbook: Crim playbook, CONSTITUTIONAL (Prosecution proves every element BRD).

How it lands: §6: shifting the burden to the defendant to disprove intent violates due process, so the conviction is reversed → (D).

Question 23

Evidence — Vicarious Admission (Employee Statement)

A large delivery truck collided with a car. At the time of the accident, the driver of the truck said to the car driver, "The accident was my fault; I wasn't paying any attention. Don't worry, my company will make it right." The delivery company had not authorized the truck driver to make that statement. The subsequent investigation of the accident by the delivery company revealed that the truck driver had been drinking on the day of the accident. He was fired. The car driver brings an appropriate action against the delivery company for damages resulting from the accident. The truck driver has disappeared. The car driver now seeks to testify as to what the truck driver said at the time of the accident. The evidence is:

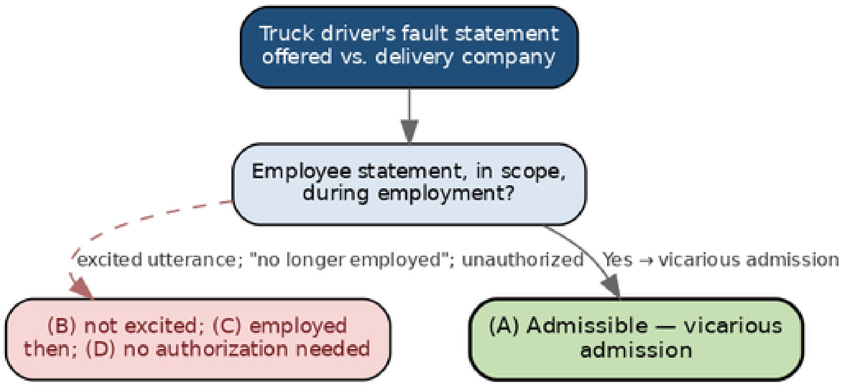
(A) Admissible, as a statement attributable to the defendant.
(B) Admissible, as an excited utterance.
(C) Inadmissible, because the truck driver is no longer employed by the delivery company.
(D) Inadmissible, because the delivery company had not authorized the truck driver to speak on its behalf.

> **Correct answer (A).** Admissible as a statement attributable to the defendant (vicarious admission).

Rule. Under FRE 801(d)(2)(D), a statement by a party's employee concerning a matter within the scope of employment, made during the employment, is a vicarious admission and nonhearsay. Authorization to speak is not required, and later termination is irrelevant.

Application. The truck driver's fault statement was made during his employment about an accident in a company truck within his duties — a vicarious admission against the company — (A).

Why the other choices fail. (B) nothing shows he was excited/agitated, so the excited-utterance exception doesn't fit. (C) his later firing doesn't matter; he was employed when he spoke. (D) authorization to speak isn't required for a vicarious admission.



Decision path

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

Playbook: Evidence playbook, EXEMPTIONS (Vicarious admission — during employment, within scope; no authorization needed).

How it lands: §3 step 6: the driver's fault statement, made during employment about a work accident, is a vicarious admission → (A).

Question 24

Real Property — Adverse Possession / Mistaken Boundary

Two landowners owned adjacent lots A and B. Both lots were located in State Red, which has a 20-year adverse possession statute. Thirty years ago, the lot A owner married and left State Red to reside in State Blue. The lot A owner did not return to view the property during her period of residence in State Blue. One year after the lot A owner left, the lot B owner built a driveway on his land. The driveway extended three feet over onto lot A. The lot B owner mistakenly believed that this three-foot strip of land was his property. The lot B owner regularly used the driveway and was continuing to use it when the lot A owner, having been widowed, recently returned to State Red. The lot A owner discovered the encroachment on her return. What are the lot A owner's rights against the lot B owner?

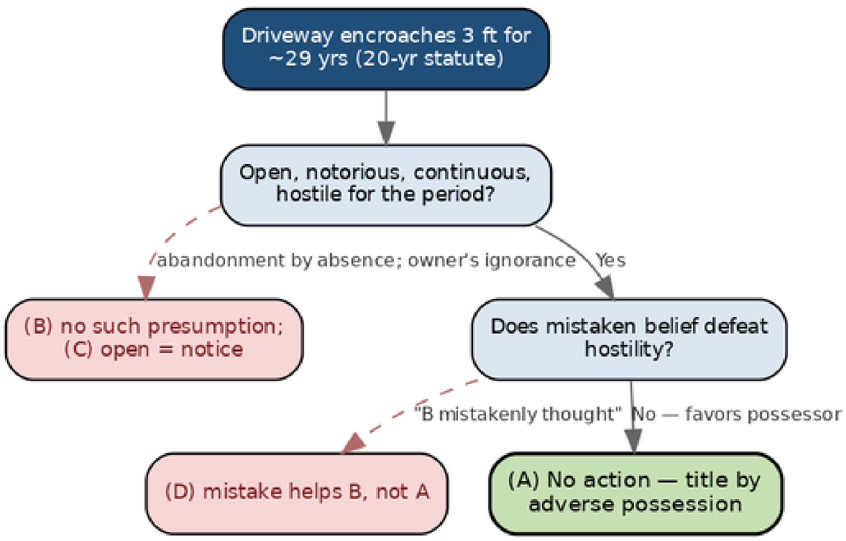
(A) The lot A owner has no action against the lot B owner, because the lot B owner's title to the three-foot strip has been established by adverse possession.
(B) The lot A owner has no action against the lot B owner, because her prolonged absence from State Red establishes a presumption of abandonment of her rights in the property.
(C) The lot A owner has an action against the lot B owner, because the lot A owner had no knowledge of the lot B owner's encroachment.
(D) The lot A owner has an action against the lot B owner, because the lot B owner mistakenly thought he owned the three-foot strip.

> **Correct answer (A).** The lot A owner has no action — the lot B owner acquired the strip by adverse possession.

Rule. Adverse possession requires open, notorious, continuous, exclusive, and hostile possession for the statutory period. A good-faith mistaken belief of ownership still counts as hostile in most jurisdictions; the possessor's state of mind doesn't defeat the claim.

Application. The lot B owner used the encroaching driveway openly and continuously for about 29 years (past the 20-year statute); his mistaken belief doesn't matter, so he acquired title — (A).

Why the other choices fail. (B) there's no 'abandonment by absence' presumption for a record owner. (C) the possession was open and notorious, giving constructive notice, so the owner's ignorance doesn't help. (D) the mistake doesn't defeat hostility — it favors the possessor, not the owner.



Decision path

Attack Sequence: Real Property attack sequence, §5 Adverse Possession, steps 1–4 (elements; mistaken-boundary hostility).

Playbook: Real Property playbook, adverse possession (Open/notorious/continuous/hostile; mistake counts).

How it lands: §5: the encroaching driveway was open and continuous for ~29 years, and the mistaken belief doesn't defeat hostility, so lot B acquired the strip → (A).

Question 25

Civil Procedure — Permissive Counterclaim / No Supplemental Jurisdiction

Pursuant to a contract, a landscaper performed $30,000 of landscape work for a homeowner. By coincidence, the homeowner and the landscaper were involved in an automobile accident that was totally unrelated to the landscape work. The homeowner was injured in the accident and sued the landscaper in federal district court for negligence, seeking $100,000 in damages. The landscaper asserted a counterclaim for breach of contract, seeking the $30,000 due under the landscape contract. The homeowner is a citizen of State A and the landscaper is a citizen of State B. Does the federal court have subject matter jurisdiction over the two claims?

(A) No, the court does not have subject matter jurisdiction over either claim.
(B) No, the court has diversity of citizenship jurisdiction over the homeowner's negligence claim, but it does not have subject matter jurisdiction over the landscaper's contract claim.

(C) Yes, the court has diversity of citizenship jurisdiction over both claims.

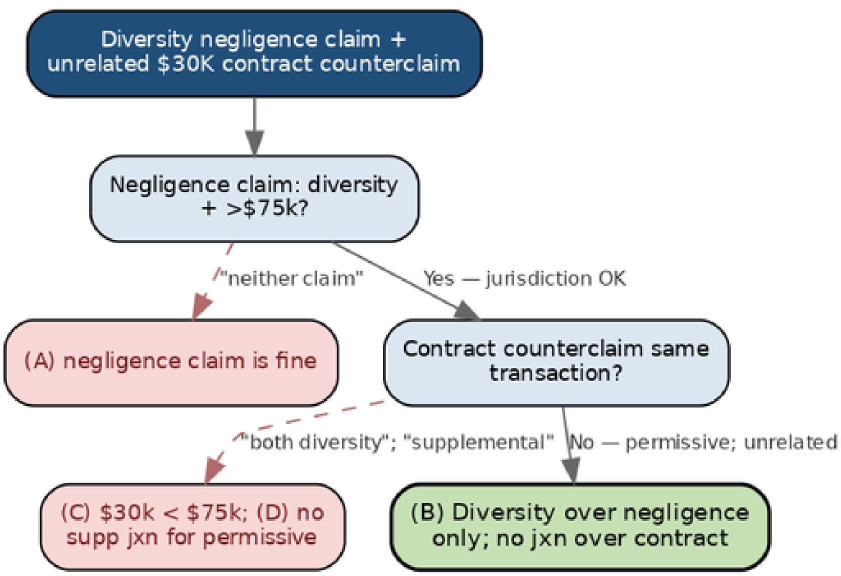
(D) Yes, the court has diversity of citizenship jurisdiction over the homeowner's negligence claim and supplemental jurisdiction over the landscaper's contract claim.

> **Correct answer (B).** Diversity covers the negligence claim, but there's no jurisdiction over the unrelated contract counterclaim.

Rule. A counterclaim arising from the same transaction is compulsory and falls within supplemental jurisdiction. A permissive counterclaim (unrelated to the plaintiff's claim) needs its own jurisdictional basis; supplemental jurisdiction doesn't reach it.

Application. The homeowner's $100K negligence claim satisfies diversity. The landscaper's $30K contract counterclaim is unrelated (permissive), lacks diversity amount, and shares no common facts — no supplemental jurisdiction — (B).

Why the other choices fail. (A) the negligence claim does have diversity jurisdiction. (C) the $30K contract claim can't invoke diversity on its own. (D) supplemental jurisdiction doesn't cover an unrelated permissive counterclaim.



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder, step 2 (counterclaims — permissive needs its own jurisdictional basis).

Playbook: Civil Procedure playbook, JOINDER (Compulsory vs. permissive; supp jxn only for same-transaction claims).

How it lands: §5 step 2: the negligence claim has diversity, but the unrelated $30K contract counterclaim is permissive with no independent basis and no supplemental jurisdiction → (B).

Question 26

Torts — Defamation of the Dead

A local physician who was prominent in the community and beloved by his patients died suddenly of a heart attack. A reporter with the local newspaper was assigned to write an obituary before the next day's edition went to press. The reporter talked briefly with the physician's widow, and then called the state medical school, from which the physician had always said he had graduated. As it was late in the afternoon, the reporter did not speak with any professors but with a secretary in the office of the dean. When asked about the physician, the secretary replied that she did not think the physician ever graduated. The local newspaper printed this information in the next day's edition. On reading the obituary, the physician's widow became very angry, as the physician had, in fact, graduated with high honors. She demanded a retraction from the newspaper. The next day, on the front page, the newspaper admitted its error and stated that the physician graduated with high honors from the state's medical school. They also fired the reporter. Nonetheless, both the executor of the physician's estate and his widow sued the local newspaper for defamation. What is the local newspaper's best defense?

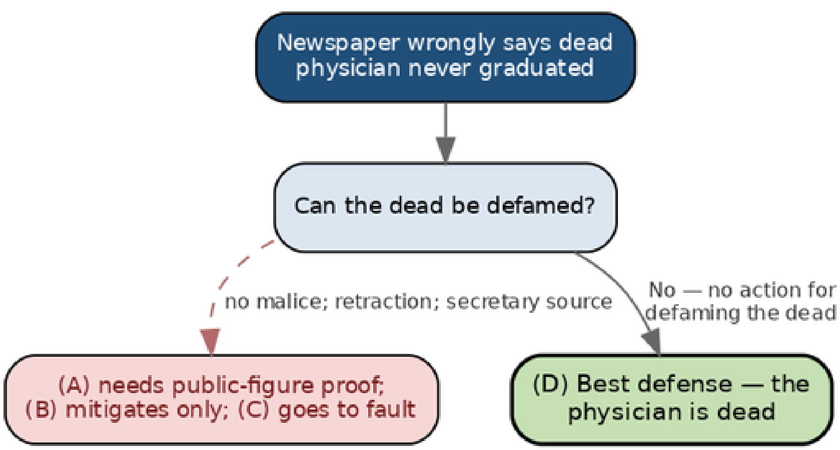
(A) There was no malice on the part of the defendant.
(B) The newspaper's retraction negated any harm.
(C) The reporter got his information from a secretary at the medical school.
(D) The physician is dead.

> **Correct answer (D).** The newspaper's best defense is that the physician is dead.

Rule. Defamation protects only living persons; there is no cause of action for defaming the dead. This defense disposes of the claim without needing to prove fault or other defenses.

Application. The physician had already died, so no defamation action lies for the false statement about him — the cleanest, best defense — (D).

Why the other choices fail. (A) 'no malice' requires first proving he was a public figure — harder and uncertain here. (B) a retraction mitigates damages but doesn't eliminate all harm. (C) the secretary as source doesn't preclude liability; it only bears on fault.



Decision path

Attack Sequence: Torts attack sequence, §7 Defamation, Privacy & Nuisance, step 1 (defamation — only living persons).

Playbook: Torts playbook, DEFAMATION (No cause of action for defaming the dead).

How it lands: §7 step 1: you can't defame the dead, so the physician's death is the cleanest defense → (D).

Question 27

Contracts — Consideration (Gratuitous Promise)

A student and her boyfriend were going away to college and had quite a few personal belongings to transport. The student drove in her car while her father and her boyfriend rode in the father's van. About halfway to the college, while the van and the car were driving down the freeway, the van suddenly swerved out of control and ran off the highway, ending up on its side in the center divider. When the student ran to the van, she discovered to her horror that her father was dead, and her boyfriend appeared to be injured, but not severely. Because her father previously had heart trouble, the student assumed that he had had a heart attack while driving. Filled with remorse, the student told her boyfriend, "I'm so sorry about this. I'll make good any losses you suffer because of this accident." The boyfriend learned that he had suffered an injury to his spinal column that would prevent him from ever playing basketball again. He had been a scholarship athlete in basketball at the college and was considered to be a certain high draft selection for a professional basketball league when he graduated. The boyfriend brought an action against the student for several million dollars in damages. A subsequent investigation revealed that the accident was caused solely by a defect in the steering mechanism of the van. Which of the following is the best defense the student could assert against her boyfriend's claim?

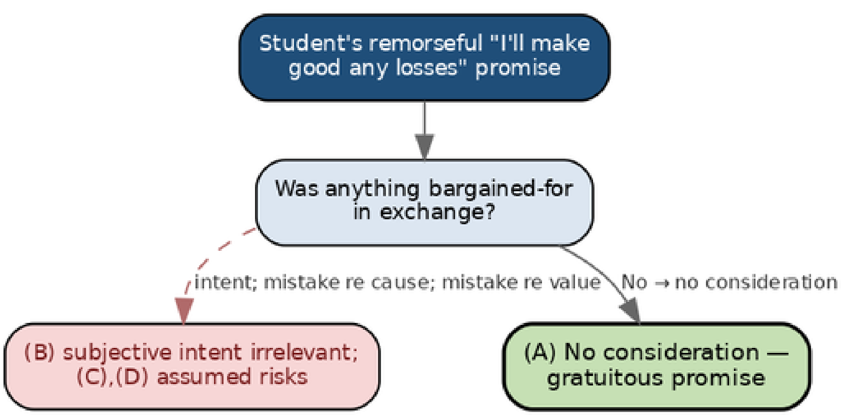
(A) There was no consideration supporting the student's promise to her boyfriend to "make good any losses."
(B) The student did not intend to offer to pay the boyfriend for the loss of his professional career when she said she would "make good any losses."
(C) The student was in error when she assumed that her father's heart attack was the cause of the accident.
(D) The student did not know that her boyfriend would not be able to play basketball when she offered to "make good any losses."

> **Correct answer (A).** The best defense is that no consideration supported the student's promise.

Rule. A promise is unenforceable without consideration — a bargained-for exchange. A promise to 'make good any losses' made out of remorse, with nothing bargained for in return, is a gratuitous (unenforceable) promise.

Application. The boyfriend gave nothing in exchange for the student's promise; it was pure remorse, so no consideration supports it — the strongest defense — (A).

Why the other choices fail. (B) courts don't probe the promisor's subjective intent. (C) her mistake about the accident's cause is a risk she assumed by promising. (D) mistake about the promise's value is also an assumed risk — none defeats the promise the way lack of consideration does.



Decision path

Attack Sequence: Contracts attack sequence, §2 Consideration, step 1 (bargained-for exchange; gratuitous promises unenforceable).

Playbook: Contracts playbook, CONSIDERATION (Bargained-for exchange required).

How it lands: §2 step 1: the remorseful promise wasn't bargained for, so it lacks consideration — the strongest defense → (A).

Question 28

Contracts — Bargained-For Exchange / Suretyship Statute of Frauds

A homeowner was postponing shoveling the snow off her driveway one Saturday morning because it was so cold outside. When she heard a scream and ran outside, she found the neighborhood newspaper delivery boy injured, lying by his bicycle in her driveway. Feeling terribly guilty, she took the boy to a local doctor and wrote a note to the doctor that she would cover all the subsequent costs. The boy later admitted that he was attempting to ride the bicycle with his eyes closed, and that his fall had nothing to do with the snow in the homeowner's driveway. After treating the boy for his injuries until he recovered, the doctor sent the homeowner a bill for his services. When the homeowner refused to pay, the doctor brought an action to recover the amount of his bill. Who will prevail?

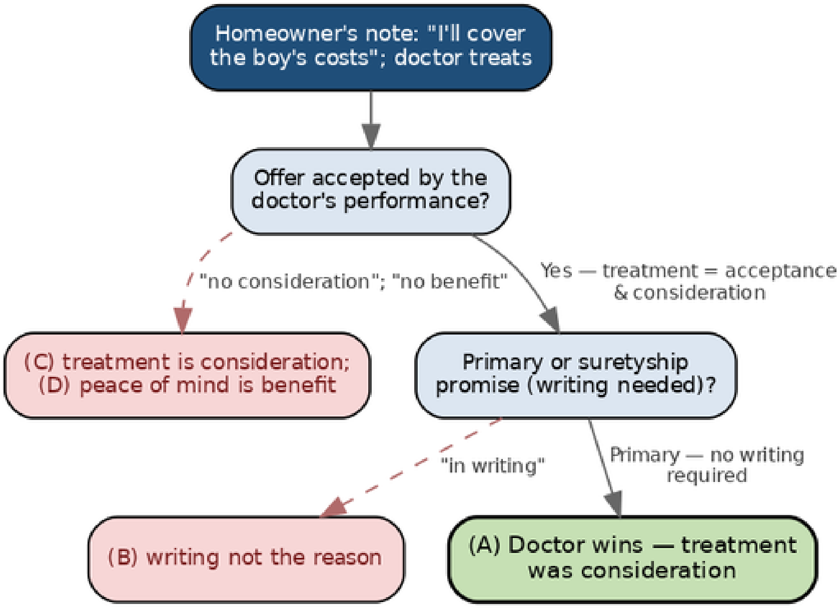
(A) The doctor, because he gave medical treatment to the boy after receiving the homeowner's note.
(B) The doctor, because the homeowner's promise to pay the boy's medical expenses was in writing.
(C) The homeowner, because there was no consideration for her promise to the doctor.
(D) The homeowner, because she derived no benefit from the medical services rendered to the boy.

> **Correct answer (A).** The doctor prevails — his treatment was the bargained-for consideration for the homeowner's promise.

Rule. An offer to pay if the offeree performs is accepted by performance, which is also consideration. A promise to be primarily (originally) liable for another's expenses is not a suretyship promise and need not be in writing.

Application. The homeowner promised to pay if the doctor treated the boy; the doctor treated him — that performance is both acceptance and consideration, and her primary promise isn't within the suretyship Statute of Frauds — (A).

Why the other choices fail. (B) the writing isn't required (it's a primary, not collateral, promise) — so that's not the reason. (C) there is consideration — the treatment. (D) the benefit (peace of mind) need not be economic; she got the bargained-for treatment.



Decision path

Attack Sequence: Contracts attack sequence, §2 Consideration + §3 Statute of Frauds (unilateral acceptance by performance; suretyship writing).

Playbook: Contracts playbook, CONSIDERATION (Performance = acceptance) + STATUTE OF FRAUDS (suretyship exception).

How it lands: §2/§3: the doctor's treatment both accepted and gave consideration, and the homeowner's primary promise isn't within the suretyship Statute of Frauds → (A).

Question 29

Civil Procedure — Compulsory Counterclaim / Supplemental Jurisdiction

A State A citizen and a State B citizen were in an automobile accident. The State A citizen filed a negligence action against the State B citizen in federal district court, seeking $200,000. May the State B citizen assert and maintain in the federal court a counterclaim against the State A citizen, alleging that the State A citizen's negligence caused the accident and seeking $20,000 for damage to the State B citizen's car?

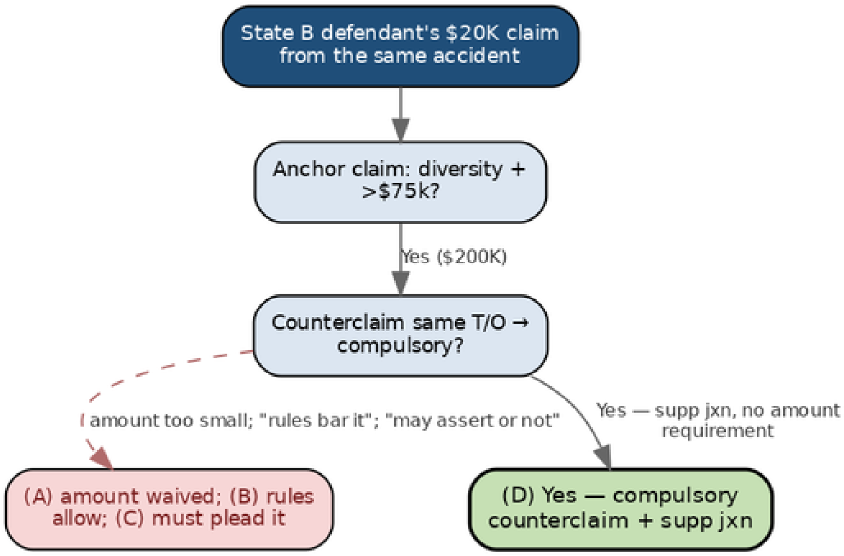
(A) No, because, while the federal court has diversity jurisdiction over the State A citizen's claim, it lacks jurisdiction over the State B citizen's claim because the amount is too small.
(B) No, because the Federal Rules of Civil Procedure do not allow counterclaims under these facts.
(C) Yes, because the State B citizen may elect to assert his claim either as a counterclaim or in an independent action, and the federal court will have supplemental jurisdiction over the claim if the State B citizen asserts it as a counterclaim in the federal action.
(D) Yes, because the claim is a compulsory counterclaim, and the federal court will have supplemental jurisdiction over it.

> **Correct answer (D).** Yes — the claim is a compulsory counterclaim within supplemental jurisdiction.

Rule. A counterclaim arising from the same transaction or occurrence is compulsory and must be pleaded or is barred. A compulsory counterclaim falls within supplemental jurisdiction and need not independently satisfy the amount-in-controversy requirement.

Application. The State B citizen's $20K claim arises from the same accident, so it's a compulsory counterclaim; supplemental jurisdiction covers it despite the small amount — (D).

Why the other choices fail. (A) the small amount doesn't defeat a compulsory counterclaim. (B) the Rules do allow this counterclaim — indeed require it. (C) it can't be asserted independently later; being compulsory, it must be raised now.



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder, step 2 (compulsory counterclaim; supplemental jxn, no amount requirement).

Playbook: Civil Procedure playbook, JOINDER (Compulsory counterclaim — same T/O; supp jxn).

How it lands: §5 step 2: the $20K claim arises from the same accident, so it's a compulsory counterclaim within supplemental jurisdiction despite the small amount → (D).

Question 30

Real Property — Race-Notice Recording Act / Notice

A landowner conveyed her parcel of land to a buyer. The buyer placed the deed in her safe deposit box but did not record the instrument before leaving town. Six months later, the landowner conveyed the same parcel of land to a farmer, who promptly recorded his deed. The farmer had heard that the landowner previously sold the land to a different buyer, but he was sure that the landowner would not sell him property she had already sold to someone else. Six months later, the buyer returned to the land and found the farmer there. A statute of the jurisdiction in which the land is located provides: "No conveyance or mortgage of an interest in land is valid against any subsequent purchaser for value without notice thereof whose conveyance is first recorded." The buyer now sues the farmer in ejectment. Who owns the land?

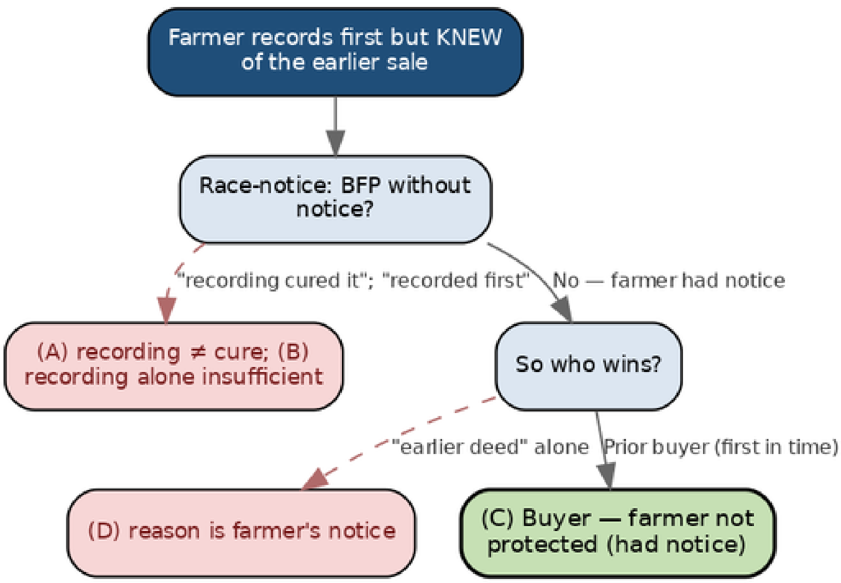
(A) The farmer, because his recording cured any possible defect of his knowing of the earlier sale.
(B) The farmer, because he recorded first.
(C) The buyer, because the farmer is not protected by the recording act.
(D) The buyer, because her deed from the landowner came earlier than the farmer's.

> **Correct answer (C).** The buyer owns the land because the farmer, who took with notice, isn't protected by the recording act.

Rule. Under a race-notice statute, a subsequent purchaser prevails only if he took without notice of the prior conveyance AND recorded first. A purchaser with actual notice of the earlier sale cannot qualify, and the common-law first-in-time rule then controls.

Application. The farmer recorded first but had actual notice of the prior sale, so he isn't a protected BFP; the earlier buyer wins under first-in-time — (C).

Why the other choices fail. (A) recording doesn't cure taking with notice. (B) recording first isn't enough without lack of notice. (D) the buyer's earlier deed only wins because the act doesn't protect the farmer — the notice point (C) is the reason.



Decision path

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

Playbook: Real Property playbook, DEEDS & RECORDING (Race-notice — BFP without notice who records first).

How it lands: §6 step 4: the farmer recorded first but took with notice, so the recording act doesn't protect him and first-in-time gives the buyer title → (C).

Question 31

Constitutional Law — Dormant Commerce Clause / Balancing (Kassel)

The state legislature of state A enacted legislation prohibiting the use of tractor-trailer rigs weighing more than 100,000 pounds gross, on the basis that superheavy trucks rapidly degrade the state's roadways and pose a greater safety danger than smaller trucks. A trucking firm that frequently uses state A's highways for trips between state B and state C purchased several tractor-trailer rigs weighing over 100,000 pounds when loaded. The trucking firm brings an action for declaratory relief in federal court in state B, seeking to have the state A legislation declared unconstitutional. It presents expert testimony that the heavier trucks are no less safe than smaller models. State A produces no evidence, but asserts that the legislation is justified as an exercise of its police power. The trial court should rule:

(A) That the legislation is an unconstitutional violation of the trucking firm's Fourteenth Amendment rights to due process of law.
(B) That the legislation is unconstitutional because it violates the Commerce Clause.

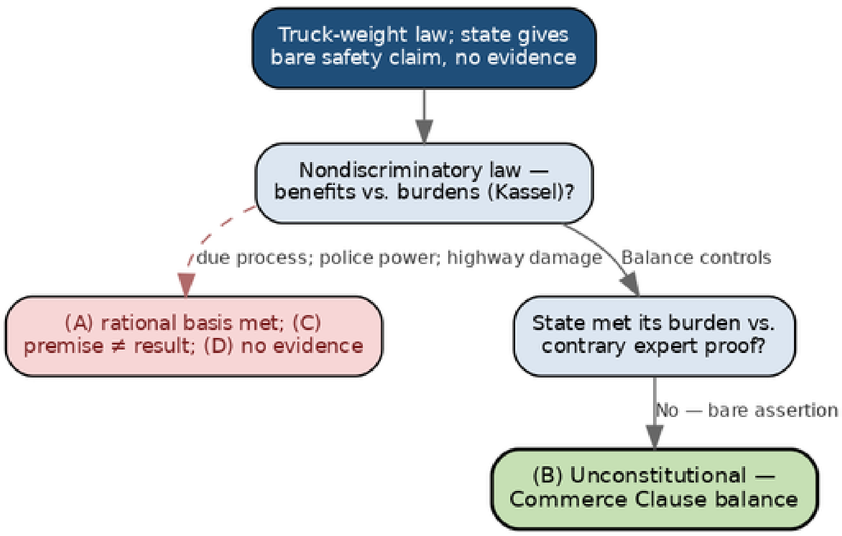
(C) That the legislation is a valid exercise of the state's police power to regulate highway safety.
(D) That the evidence of the damage done to the state's highways by the superheavy trucks is sufficient to uphold the legislation independently of the safety argument.

> **Correct answer (B).** Unconstitutional — the truck-weight law violates the Commerce Clause.

Rule. A nondiscriminatory state law affecting interstate commerce is valid only if its local benefits outweigh the burden on interstate commerce (Pike/Kassel balancing). Where the state offers only a bare safety assertion and the challenger presents contrary evidence, the law is generally struck down.

Application. State A offered no evidence for its safety rationale while the trucking firm presented expert proof the heavy trucks are no less safe; the burden on interstate commerce isn't outweighed — invalid, (B).

Why the other choices fail. (A) due-process rational basis would uphold the law. (C) the safety-police-power premise doesn't override the failed balancing. (D) the state made no evidentiary showing on highway damage, so it can't independently uphold the law.



Decision path

Attack Sequence: Con Law attack sequence, §2 Congressional Power & Federalism (Dormant Commerce Clause — Pike/Kassel balancing).

Playbook: Con Law playbook, DORMANT COMMERCE CLAUSE (Nondiscriminatory law — benefits vs. burdens).

How it lands: §2: with only a bare safety assertion against contrary expert proof, the truck-weight law fails the balancing test → (B).

Question 32

Civil Procedure — Judgment as a Matter of Law

The plaintiff sued the defendant in federal court for breach of contract. The plaintiff presented a detailed case in which she showed the existence of the contract, its breach, and damages. The defendant then presented his defense, which consisted solely of evidence that he regretted dealing with the plaintiff. At this point in the trial, the plaintiff feels she should prevail. What should she move for at this point in the litigation?

(A) For a judgment on the pleadings.

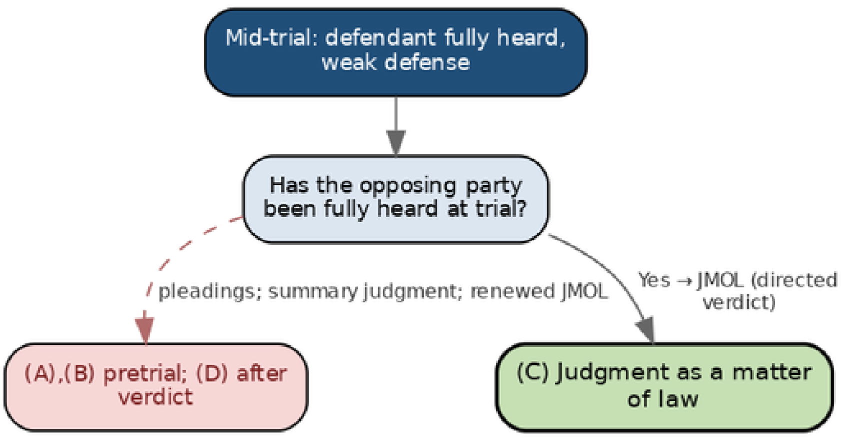
(B) For a summary judgment.
(C) For a judgment as a matter of law.
(D) For a renewed judgment as a matter of law.

> **Correct answer (C).** She should move for a judgment as a matter of law.

Rule. After the opposing party has been fully heard on an issue at trial, a party may move for judgment as a matter of law (formerly directed verdict); it's granted if no reasonable jury could find for the non-movant. Judgment on the pleadings and summary judgment are pretrial; a renewed JMOL comes after the verdict.

Application. Trial is underway and the defendant has fully presented his (weak) defense, so the correct motion is judgment as a matter of law — (C).

Why the other choices fail. (A) judgment on the pleadings is a pretrial motion on the pleadings alone. (B) summary judgment is a pretrial motion on affidavits/discovery. (D) a renewed JMOL is made only after the jury returns a verdict.



Decision path

Attack Sequence: Civil Procedure attack sequence, §6 Pleadings & Pre-Trial / Trial Motions (judgment as a matter of law).

Playbook: Civil Procedure playbook, TRIAL (JMOL after opposing party fully heard; renewed JMOL post-verdict).

How it lands: §6: mid-trial, after the defendant is fully heard, the proper motion is judgment as a matter of law → (C).

Question 33

Criminal Law — Burglary / Intent to Break and Enter

In order to get some quick cash to pay off a gambling debt, an acquaintance of the defendant asked him to pretend to break into the acquaintance's home, take some silverware, and return the silverware to the acquaintance. The acquaintance believed that he could both collect the insurance proceeds for the "theft" of the silverware, and sell the silverware on the black market. The acquaintance provided the defendant with his address: "46 Maple Avenue." However, due to a strong windstorm, the house number "9" for "49 Maple Avenue" became detached and slid out of position, making it look like "46 Maple Avenue." Thinking that "49 Maple Avenue" was the acquaintance's home due to the mispositioned house number, the defendant slid open a window that was slightly ajar, entered, and took some silverware he found in the kitchen. The silent burglar alarm alerted the police, who arrived and arrested the defendant a short time later. If the defendant is charged with burglary, the court would find him not guilty because:

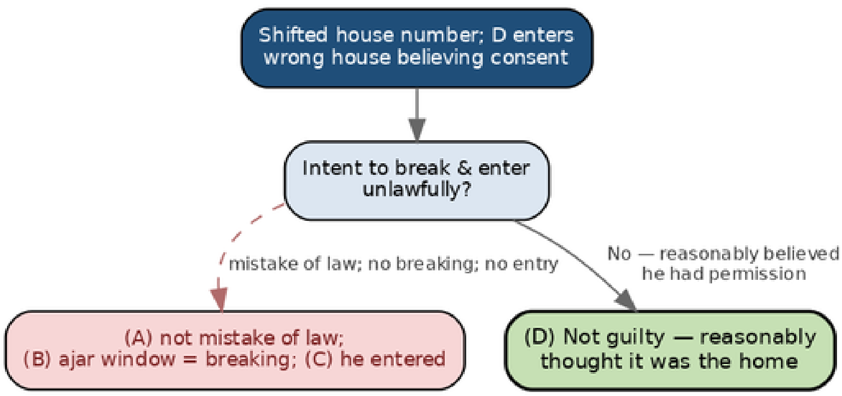
(A) He acted under a mistake of law.
(B) There was no breaking.
(C) There was no entry.
(D) He reasonably thought that he was in the acquaintance's home.

> **Correct answer (D).** Not guilty because he reasonably thought he was entering the acquaintance's home (with permission).

Rule. Common-law burglary requires breaking and entering the dwelling of another at night with intent to commit a felony inside — and the defendant must intend to break and enter without authority. A reasonable mistake that he had permission negates the intent to break and enter.

Application. The shifted house number led the defendant reasonably to believe he was entering the acquaintance's home with consent, so he lacked the intent to break and enter unlawfully — (D).

Why the other choices fail. (A) this isn't mistake of law, and mistake of law generally isn't a defense. (B) opening an ajar window is a 'breaking' under the better view. (C) walking in was clearly an 'entry.'



Decision path

Attack Sequence: Crim attack sequence, §2 Property Crimes (burglary — intent to break and enter) + Defenses (mistake of fact).

Playbook: Crim playbook, CRIMES (Burglary elements) + DEFENSES (mistake of fact).

How it lands: §2: a reasonable belief that he had permission to enter negates the intent to break and enter unlawfully → (D).

Question 34

Torts — Landowner's Duty to Control Guests

A landowner invited some friends, including his neighbor, to a party in his backyard. All the friends showed up, except for the neighbor. That evening, a guest produced and lit a large skyrocket. The skyrocket failed to climb properly and crashed into the neighbor's garage, burning the garage to the ground. A local ordinance made it a misdemeanor to sell fireworks within the city limits. If the neighbor sues the landowner for the damage to his garage in a jurisdiction that applies the traditional liability rules for landowners and possessors of land, the theory on which he is most likely to prevail is:

(A) The landowner failed to exercise due care to control the acts of his guests.
(B) The landowner is strictly liable for harm resulting from abnormally dangerous activities performed on

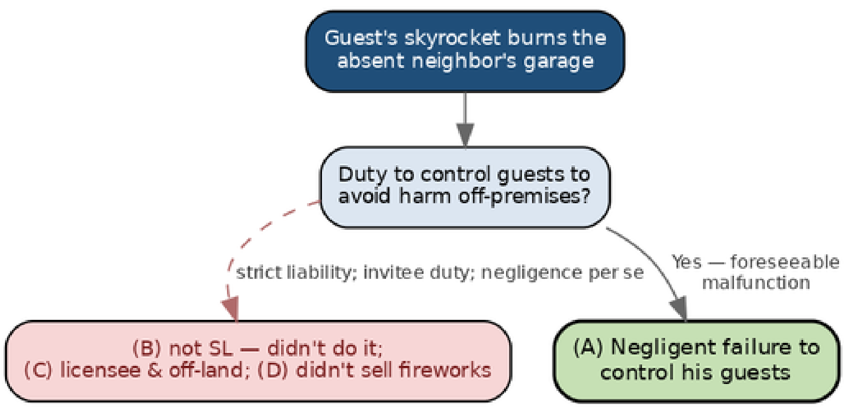
his land.
(C) Because he had been invited to the landowner's party, the neighbor, as an invitee, was owed by the landowner a duty to discover and guard against activities on his land involving an unreasonable risk of harm.
(D) The landowner is liable on a negligence per se theory because of the local ordinance banning the sale of fireworks within the city.

> **Correct answer (A).** The best theory is that the landowner negligently failed to control his guests' conduct.

Rule. A landowner must exercise reasonable care in his own activities and to control the conduct of persons on his land to avoid unreasonable risks of harm to those outside the property. Failing to prevent a guest from a foreseeably dangerous act (lighting a large skyrocket) breaches that duty.

Application. It was foreseeable a large skyrocket could malfunction and hit an adjoining garage; the landowner breached his duty to control his guest, causing the damage — (A).

Why the other choices fail. (B) merely failing to stop a guest doesn't impose strict liability; the landowner wasn't himself conducting an abnormally dangerous activity. (C) a social guest is a licensee, not an invitee, and the neighbor was off-premises anyway. (D) the ordinance barred selling fireworks, which the landowner didn't do — no negligence per se.



Decision path

Attack Sequence: Torts attack sequence, §5 Owners & Occupiers of Land (duty to control conduct on the land toward those off-premises).

Playbook: Torts playbook, PREMISES (Duty to control activities/persons to protect those outside the land).

How it lands: §5: the landowner's failure to control a guest's foreseeably dangerous skyrocket breached his duty to the adjoining neighbor → (A).

Question 35

Torts — Negligence / No Breach

The class president invited his class to his home to celebrate homecoming. When the sun began to set, a student built a bonfire in the backyard. The student continued to feed the flames until the bonfire was quite large. Suddenly, a gust of wind blew the flames to a neighboring property, igniting the neighbor's shed. If the neighbor sues the student for the damage to his shed on a theory of negligence, under which of the following arguments, if sustained by the facts, would the student avoid liability?

(A) The lighting of bonfires on homecoming is an accepted custom in the community.

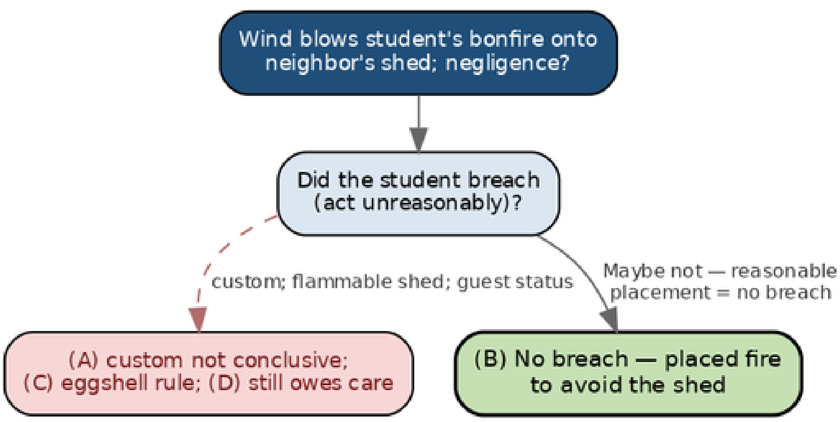
(B) The bonfire was positioned by the student in the center of the backyard to avoid damaging the neighbor's shed.
(C) The fire that started would have burned itself out but for the fact that the neighbor's shed was built out of substandard, highly flammable material.
(D) The student was a guest on the class president's property and entitled to the same restricted scope of liability as the property owner.

> **Correct answer (B).** The student avoids liability if he positioned the bonfire to avoid harming the shed (no breach).

Rule. Negligence requires a breach — unreasonable conduct. Whether the defendant acted reasonably is for the trier of fact; taking reasonable precautions (e.g., placing the fire centrally to avoid a neighbor's structure) can show no breach.

Application. If the student centered the bonfire specifically to protect the neighbor's shed, a jury could find he acted reasonably and didn't breach his duty — (B).

Why the other choices fail. (A) custom doesn't conclusively set the standard of care. (C) the eggshell/foreseeability rules make him liable for the full damage if some harm was foreseeable, despite the flammable shed. (D) a guest still owes reasonable care to avoid harming those off the property — no restricted-liability shield.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 3 (breach — reasonableness is a jury question).

Playbook: Torts playbook, NEGLIGENCE (Breach; custom not conclusive; eggshell plaintiff).

How it lands: §3 step 3: positioning the bonfire to protect the shed can show no breach; custom and the flammable shed don't help the plaintiff → (B).

Question 36

Evidence — Other Crimes / Identity ('Signature')

The complainant was robbed by a man wielding an unusual knife with a pearl-studded handle. The defendant was arrested and charged with armed robbery of the complainant. At trial the prosecution calls a witness to testify that, three days after the robbery of the complainant, she was robbed by the defendant with a knife that had a pearl-studded handle. The court should hold that the witness's testimony is:

(A) Admissible, as showing habit.

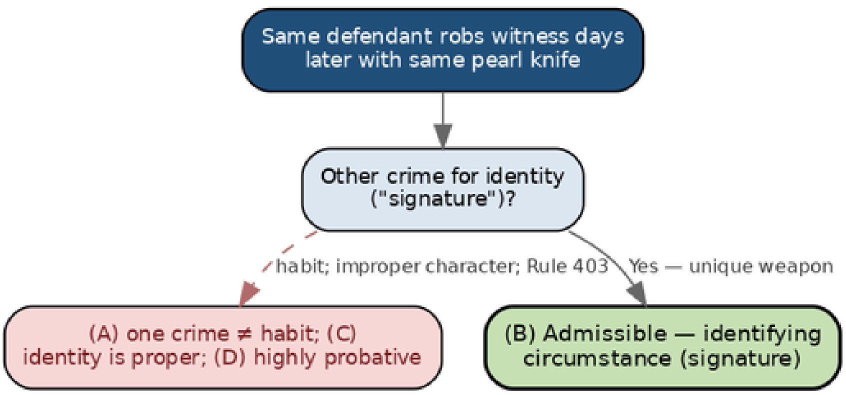
(B) Admissible, as establishing an identifying circumstance.
(C) Inadmissible, because it is improper character evidence.
(D) Inadmissible, because its probative value is substantially outweighed by the danger of unfair prejudice.

> **Correct answer (B).** Admissible as establishing an identifying circumstance (modus operandi / signature).

Rule. Other-crimes evidence is inadmissible to show propensity but admissible for a non-propensity purpose such as identity, when the other crime is so distinctive it operates as the perpetrator's 'signature.' Such highly probative signature evidence is rarely excluded under Rule 403.

Application. Being robbed days later by the same defendant using the same unusual pearl-studded knife is a signature circumstance identifying him as the robber — (B).

Why the other choices fail. (A) a single other crime can't establish habit. (C) it's admissible for the non-propensity purpose of identity, so it's not improper character evidence. (D) the distinctive weapon makes it highly probative, not substantially outweighed by prejudice.



Decision path

Attack Sequence: Evidence attack sequence, §6 Character & Propensity, step 3 (other crimes — MIMIC; identity / signature).

Playbook: Evidence playbook, CHARACTER (Other crimes for identity — signature/modus operandi).

How it lands: §6 step 3: the same unusual pearl-studded knife is a signature identifying the defendant, admissible for identity → (B).

Question 37

Criminal Law — Mistake of Fact / Material Element

A state penal statute makes it a misdemeanor to willfully shut off the gas, electricity, or any other form of power to an inhabited dwelling, unless strictly outlined procedures for notice and hearing are met. A landowner rented a furnished house to a young married couple for several months when she failed to receive the monthly rent check. The couple did not answer any of the owner's calls, and the neighbors confirmed that they had not seen the couple for weeks. The owner therefore concluded that the couple had abandoned the rental. She called the power company and had the electricity and gas shut off until she could find another tenant. A week later, the couple returned from an overseas tour. They reported to the authorities that their power had been turned off, and the owner was prosecuted under the misdemeanor statute. At trial it was established that, while they were abroad, the couple had inadvertently failed to place the proper postage on the rent check, which was returned to their tour guide. The owner will probably be:

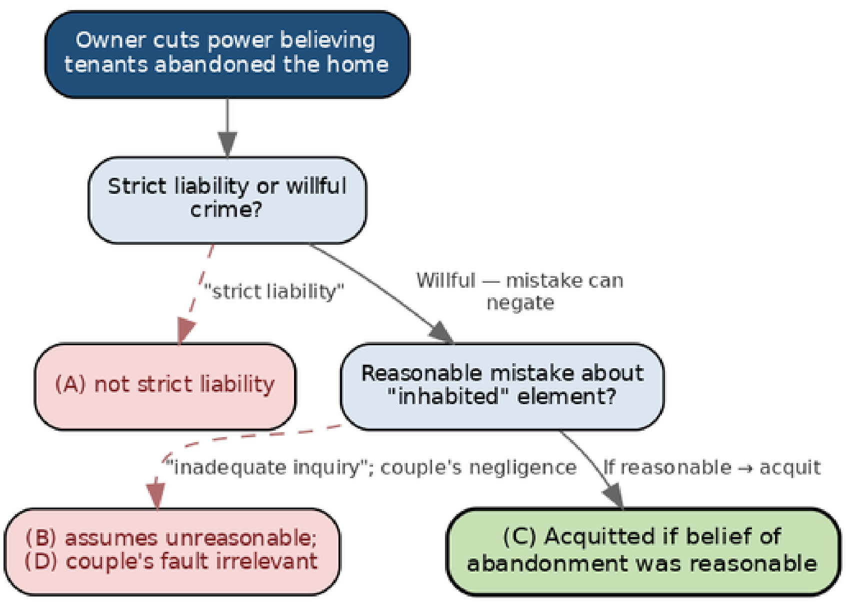
(A) Convicted, because the charged crime is a violation of a public safety statute, and she is strictly liable for her action in turning off the power.
(B) Convicted, because she did not undertake a more thorough inquiry or wait a more reasonable length of time before concluding that the house had been abandoned.
(C) Acquitted, if the trier of fact concludes that the owner was reasonable in believing that the house had been abandoned.
(D) Acquitted, if the trier of fact concludes that the young couple was negligent in not placing proper postage on the rent check mailed from abroad.

> **Correct answer (C).** Acquitted if the jury finds she reasonably believed the house was abandoned.

Rule. For a crime requiring willfulness (not strict liability), a reasonable mistake of fact negating a material element defeats liability. That the dwelling be 'inhabited' is a material element; a reasonable belief it was abandoned negates the required mental state.

Application. The statute punishes willfully cutting power to an 'inhabited' dwelling. If the owner reasonably believed the couple abandoned it, she made a reasonable mistake about a material element and must be acquitted — (C).

Why the other choices fail. (A) it's not strict liability — willfulness is required. (B) whether her inquiry was adequate is exactly the reasonableness question for the jury; (B) assumes the wrong outcome. (D) the couple's negligence doesn't determine her criminal liability.



Decision path

Attack Sequence: Crim attack sequence, §2 General Principles / Defenses (mistake of fact negating a material element of a willful crime).

Playbook: Crim playbook, DEFENSES (Reasonable mistake of fact; not for strict liability).

How it lands: §2: the willfulness requirement means a reasonable belief the dwelling was abandoned negates the "inhabited" element → acquit, (C).

Question 38

Contracts — Statute of Frauds / Promissory Estoppel

A high school graduate was asked by his elderly aunt to live with her in her large brownstone and attend to the household activities for the rest of her life, in exchange for the house. The graduate agreed, and moved from his parents' home to the brownstone. For eight years, he attended to his aunt's personal needs, and maintained the household. No further discussion was ever had between the graduate and his aunt regarding conveyance of the brownstone. Shortly after his aunt died, the graduate was contacted by the aunt's estranged daughter, who stated that in the aunt's last will and testament, she had devised the house to her. When the graduate refused to vacate the brownstone, the daughter brought action for possession of the house. If the graduate prevails in the action, it will be because:

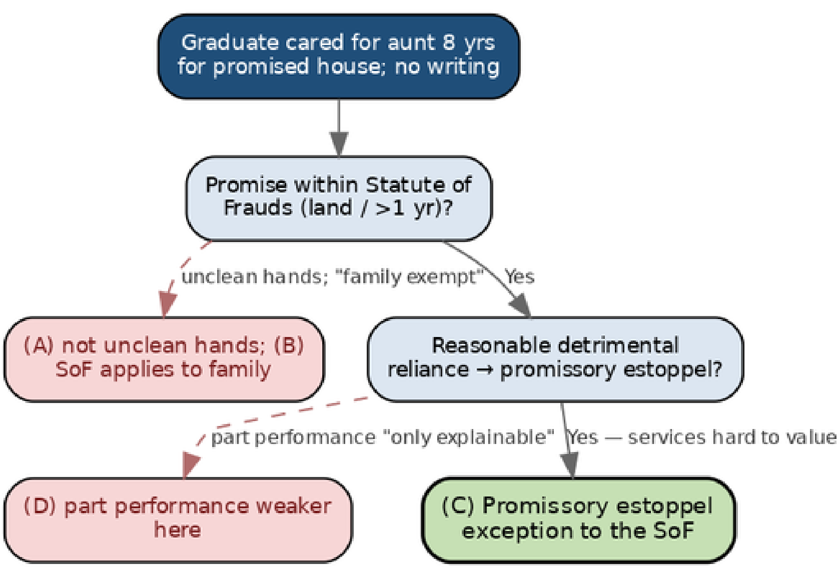
(A) He can successfully assert the doctrine of "unclean hands" to prevent the daughter from pressing her claim under the will.
(B) The Statute of Frauds need not be satisfied as between family members.
(C) The Statute of Frauds will not bar enforcement of the aunt's promise because her promise induced the graduate to perform, and injustice can be avoided only by enforcement.
(D) The Statute of Frauds will not be applied where there has been part performance and where that performance is such as can be explained by the existence of the asserted contract and in no other way.

> **Correct answer (C).** The graduate prevails via the promissory-estoppel exception to the Statute of Frauds.

Rule. A promise within the Statute of Frauds (here, a promise to convey land / not performable within a year) may still be enforced if the promisee reasonably and detrimentally relied on it and injustice can be avoided only by enforcement (promissory estoppel).

Application. The graduate moved in and cared for his aunt for eight years in reliance on her promise of the house; because his services are hard to value, enforcement is needed to avoid injustice — (C).

Why the other choices fail. (A) 'unclean hands' doesn't fit — the daughter merely asserts her will rights. (B) the Statute of Frauds does apply among family members. (D) his caretaking isn't 'explainable only' by a land-sale contract, so the part-performance exception is weaker than promissory estoppel.



Decision path

Attack Sequence: Contracts attack sequence, §3 Statute of Frauds, step 4 (promissory estoppel exception).

Playbook: Contracts playbook, STATUTE OF FRAUDS (Promissory estoppel; part performance).

How it lands: §3 step 4: the graduate's detrimental reliance (eight years of care) invokes the promissory-estoppel exception to the Statute of Frauds → (C).

Question 39

Civil Procedure — Cross-Claim / Supplemental Jurisdiction

A State A consumer was in a traffic accident with a State B driver. The State A consumer's car burst into flames, causing horrific injuries to the consumer. The State A consumer believes that his injuries were caused by both the State B driver's negligence and design defects in his own car. The State A consumer thus filed a tort action for damages against both the State B driver and the manufacturer of the car. The manufacturer is also a citizen of State B. The State B driver was also burned in the accident and believes that manufacturing and design defects in the State A consumer's car also caused his burns. Can the State B driver assert his tort claim against the State B manufacturer in the pending action asserted by the State A consumer?

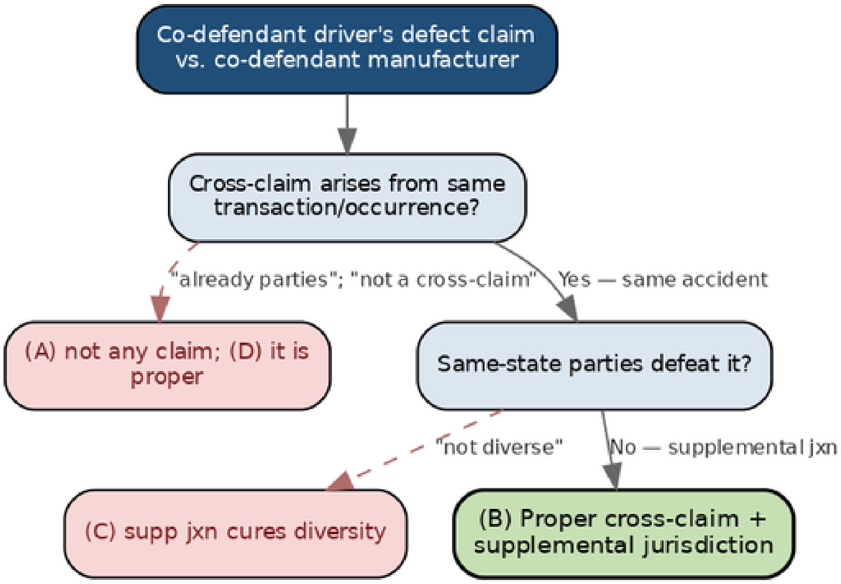
(A) Yes, because the State B driver and State B manufacturer are already parties to the State A consumer's action.
(B) Yes, because the State B driver's claim is a proper cross-claim and is within the court's supplemental jurisdiction.
(C) No, because the State B driver's tort claim against the State B manufacturer is not between citizens of different states.
(D) No, because the State B driver's claim is not a proper cross-claim.

> **Correct answer (B).** Yes — the driver's claim is a proper cross-claim within supplemental jurisdiction.

Rule. A cross-claim against a co-party is proper if it arises from the same transaction or occurrence as the original action. Even without independent diversity, such a cross-claim falls within supplemental jurisdiction because it shares a common nucleus of operative fact.

Application. The State B driver and State B manufacturer are co-defendants; the driver's defect claim arises from the same accident, so it's a proper cross-claim within supplemental jurisdiction despite the shared citizenship — (B).

Why the other choices fail. (A) co-parties can't cross-claim on just any claim; it must arise from the same transaction. (C) supplemental jurisdiction cures the lack of diversity for this cross-claim. (D) it is a proper cross-claim (same accident).



Decision path

Attack Sequence: Civil Procedure attack sequence, §5 Joinder, step 3 (cross-claims — same transaction; supplemental jxn).

Playbook: Civil Procedure playbook, JOINDER (Cross-claim — same T/O; supp jxn covers it).

How it lands: §5 step 3: the co-defendant's defect claim arises from the same accident, a proper cross-claim within supplemental jurisdiction → (B).

Question 40

Torts — Invasion of Privacy (None of the Four Forms)

A boy was arrested for shoplifting. His mother was consoling him at the police station when a reporter for a daily newspaper took her picture. The photograph appeared on the front page of the next day's edition of the paper, above the story of the boy's arrest. A caption to the photograph identified her as the boy's mother. Later that week, the mother lost her job as a result of the story in the paper. If the mother asserts a claim against the newspaper for invasion of privacy, she will:

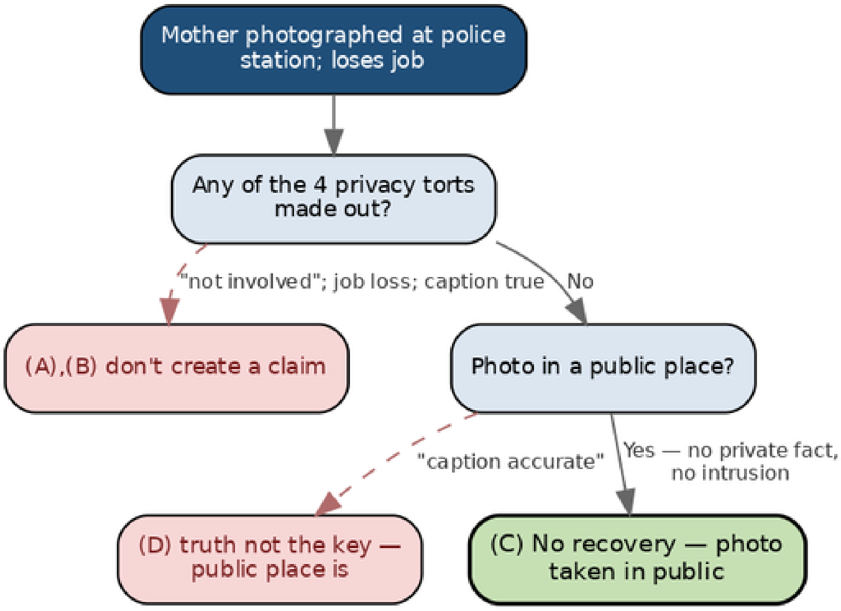
(A) Recover, if she was not involved in the events that led to the boy's arrest.
(B) Recover, because the photograph and news story caused her to be discharged from her employment.
(C) Not recover, because her photograph was taken in a public place.
(D) Not recover, because the caption was accurate.

> **Correct answer (C).** No recovery — the photograph was taken in a public place.

Rule. Invasion of privacy has four forms: appropriation, intrusion, false light, and public disclosure of private facts. A photograph taken in a public place is not an intrusion, and matters visible in public are not 'private facts'; a newsworthy, accurate photo also isn't appropriation or false light.

Application. The mother was photographed at a public police station consoling her son — no intrusion and no private fact, and the news use isn't commercial appropriation or false light. No claim — (C).

Why the other choices fail. (A) her non-involvement in the arrest doesn't create a private-facts or false-light claim. (B) losing her job is damages, not an element that makes a non-tort actionable. (D) truth isn't a complete defense to all privacy torts, so (C) — the public-place point — is the better rationale.



Decision path

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

Playbook: Torts playbook, PRIVACY (Intrusion; private facts — nothing private in public).

How it lands: §7 step 3: a photo taken in a public place is neither intrusion nor a private fact, and the newsworthy use isn't appropriation or false light → (C).

Question 41

Criminal Law — Murder / Depraved-Heart vs. Negligence

A motorist drove home from work late one night, and fell asleep behind the wheel of his car. His car drifted across the middle of the road and struck another car. The other driver was killed instantly in the collision. Angered by the noise of the collision, a homeowner fired a gun out the window of his house at the car. The bullet struck and killed a bystander. Both the motorist and the homeowner were arrested and charged with common law murder. Which of the defendants likely would be found guilty?

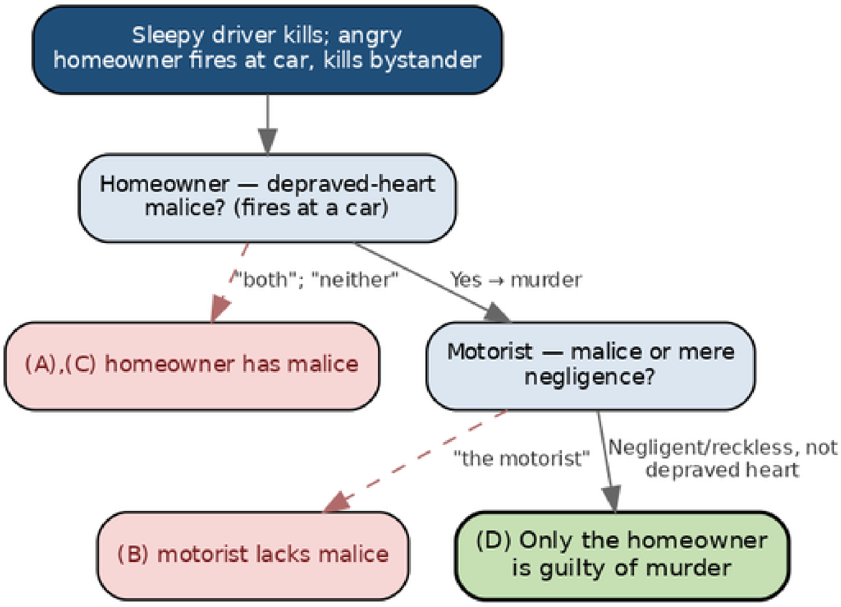
(A) Both the motorist and the homeowner.
(B) The motorist.
(C) Neither the motorist nor the homeowner.
(D) The homeowner.

> **Correct answer (D).** Only the homeowner is likely guilty of murder.

Rule. Common-law murder requires malice aforethought: intent to kill, intent to inflict serious bodily harm, depraved-heart (reckless indifference to a high risk to life), or felony murder. Ordinary negligence or recklessness short of depraved indifference is not malice.

Application. Firing a gun out a window at a car shows depraved-heart indifference to human life — murder. The motorist who fell asleep was at most negligent/reckless, not depraved-heart — so only the homeowner is guilty — (D).

Why the other choices fail. (A) the motorist lacks malice. (B) the motorist, not the homeowner, is the one without malice — so 'the motorist' is wrong. (C) the homeowner clearly has depraved-heart malice, so 'neither' is wrong.



Decision path

Attack Sequence: Crim attack sequence, §1 Homicide, step 3 (malice — depraved heart vs. ordinary negligence).

Playbook: Crim playbook, HOMICIDE (Malice categories; depraved heart).

How it lands: §1 step 3: firing at a car is depraved-heart malice (murder), while the sleepy motorist is at most negligent — so only the homeowner is guilty → (D).

Question 42

Constitutional Law — Equal Protection / Discriminatory Intent

In certain parts of a state, single-family residences had become so expensive that the vast majority of families could no longer afford to buy a home. To alleviate this problem, the legislature enacted statutes creating a housing agency. The agency, organized along the lines of a private corporation, was authorized to act as general contractor and build homes in counties where the average cost of a new home exceeded by 50% the national average cost of a new home, then to sell the homes at the cost of materials and labor to first-time homebuyers. In one medium-sized city in the state, the average cost of a new home exceeded the national average by 15%, while in a nearby large city, the average cost of a new home exceeded the average by 50%. The agency began building and selling homes in the large city, but did not operate in the medium city. About 35% of the population of the medium city is of Armenian ethnicity. A citizen of Armenian heritage brings a class action against the state, seeking to have the agency's failure to operate in the medium city declared a violation of the right to equal protection of the Armenian citizens of that city. What fact would be most helpful for the citizen in challenging the statute?

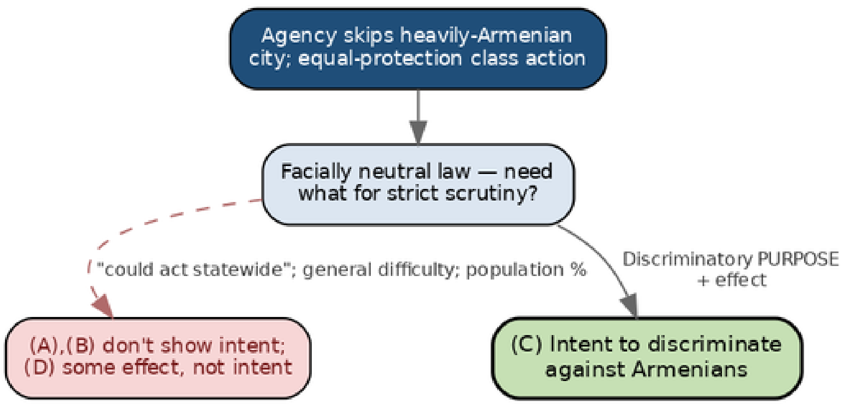
(A) The state could have permitted the agency to build and sell homes in all areas of the state.
(B) Armenian citizens experience difficulty in affording single-family residences.
(C) The legislation setting up the agency was intended to discriminate against Armenian citizens.
(D) The percentage of Armenian citizens is much higher in the medium city than in the large city.

> **Correct answer (C).** The most helpful fact is that the legislation was intended to discriminate against Armenian citizens.

Rule. A facially neutral law violates equal protection under strict scrutiny only if it was enacted with a discriminatory purpose and has a discriminatory effect. Proof of intent to discriminate on the basis of race or national origin triggers strict scrutiny.

Application. Showing the cost thresholds were chosen intending to exclude the heavily-Armenian city is direct evidence of discriminatory purpose — the key to the equal-protection claim — (C).

Why the other choices fail. (A) that the state could have acted statewide doesn't show intent. (B) general difficulty affording homes doesn't tie the law to discriminatory purpose. (D) the population disparity is some evidence of effect but doesn't establish intent as directly as (C).



Decision path

Attack Sequence: Con Law attack sequence, §5 Equal Protection, step 1 (facially neutral law — discriminatory purpose + effect).

Playbook: Con Law playbook, EQUAL PROTECTION (Facially neutral — need intent to discriminate).

How it lands: §5 step 1: proving the cost thresholds were chosen to exclude the Armenian city supplies the discriminatory purpose that triggers strict scrutiny → (C).

Question 43

Torts — Directed Verdict / Jury Question on Breach

A driver was operating his vehicle along a residential street at the posted speed limit when he saw a ball roll across the street. The driver did not slow down because the ball cleared his path before he reached it. A few seconds later, a child darted out into the street after the ball without looking for cars. The driver's car struck the child, and the child was injured. The child's parents brought an action on the child's behalf against the driver in a jurisdiction that follows traditional contributory negligence rules. At trial, the above facts were established. At the close of the evidence, the driver moved for a directed verdict. The court should:

(A) Deny the driver's motion, because it will be up to the jury to determine whether he should have slowed down to below the speed limit.
(B) Deny the driver's motion, because it will be up to the jury to determine whether the child's parents were negligent in supervising the child.
(C) Grant the driver's motion, because the child was negligent in darting into the street without looking out for traffic.

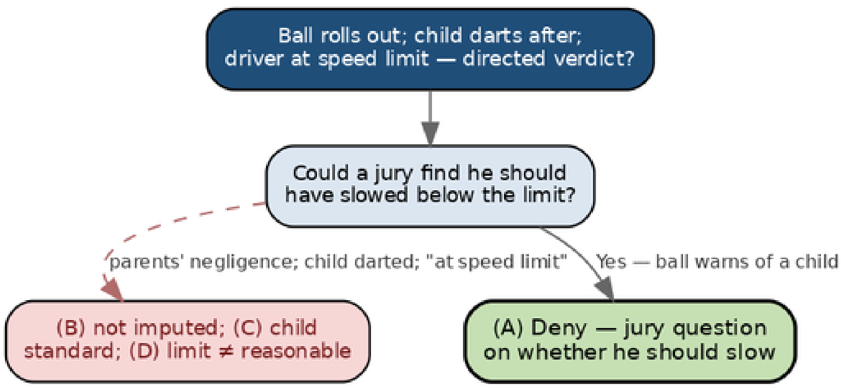
(D) Grant the driver's motion, because he was going no faster than the posted speed limit.

> **Correct answer (A).** Deny the motion — a jury could find the driver should have slowed below the limit.

Rule. Directed verdict is improper if reasonable jurors could find for the non-movant. Seeing a ball roll across a residential street can put a reasonable driver on notice that a child may follow, so whether he breached by not slowing further is a jury question. Driving at the speed limit isn't conclusively reasonable.

Application. A jury could find that a reasonable driver, seeing the ball, would have slowed below the limit to guard against a child darting out. So the motion should be denied — (A).

Why the other choices fail. (B) parental negligence isn't imputed to the child and wouldn't cut off the child's claim. (C) a child is held to a child's standard, and we lack facts on age/maturity — a jury question. (D) obeying the speed limit doesn't establish reasonable care as a matter of law.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence: The Core Attack, step 3 (breach — jury question) + directed-verdict standard.

Playbook: Torts playbook, NEGLIGENCE (Breach is a jury question; child's standard of care).

How it lands: §3 step 3: a jury could find a reasonable driver would slow below the limit after seeing the ball, so directed verdict is improper → (A).

Question 44

Torts — Rescuer / Last Clear Chance

A banker was driving along a two-way road when a girl ran into his lane. A pedestrian saw the banker's vehicle bearing down on the girl. Concerned that she would be hurt, the pedestrian rushed into the street to try to save her. Just as he reached her, the pedestrian tripped and fell down in the street. The banker's vehicle collided with both the pedestrian and the girl. The jurisdiction follows traditional contributory negligence rules. If the pedestrian sues the driver for personal injuries, who will prevail?

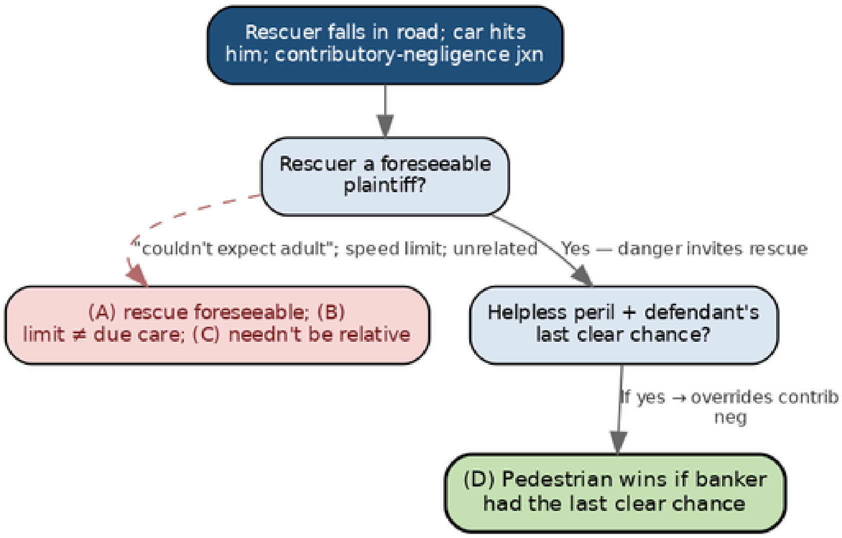
(A) The banker, because he could not have expected an adult to run into the street.
(B) The banker, if he was traveling no faster than the posted speed limit.
(C) The banker, because the pedestrian was unrelated to the girl.
(D) The pedestrian, if the banker had the last clear chance to avoid the accident.

> **Correct answer (D).** The pedestrian prevails if the banker had the last clear chance to avoid the accident.

Rule. 'Danger invites rescue,' so a rescuer is a foreseeable plaintiff and not barred merely for intervening. Even if a rescuer is contributorily negligent, the last-clear-chance doctrine lets him recover if the defendant had the final opportunity to avoid harm to a helplessly imperiled plaintiff.

Application. The pedestrian, fallen in the road, was in helpless peril; if the banker had the last clear chance to avoid hitting him, that overrides any contributory negligence — (D).

Why the other choices fail. (A) rescue by an adult is foreseeable (danger invites rescue). (B) obeying the speed limit doesn't preclude negligence. (C) rescuers needn't be relatives to be foreseeable.



Decision path

Attack Sequence: Torts attack sequence, §3 Negligence + defenses (rescuer doctrine; last clear chance).

Playbook: Torts playbook, DEFENSES (Contributory negligence; last clear chance) + rescuer as foreseeable plaintiff.

How it lands: §3: the rescuer is a foreseeable plaintiff, and the last-clear-chance doctrine lets him recover despite any contributory negligence → (D).

Question 45

Real Property — Joint Tenancy / Forged Deed & Severance

A couple was engaged and looking for a lot on which to build their first house. They purchased a piece of land, taking title as joint tenants with right of survivorship. Before construction of the house could begin, the man discovered that the woman was having an affair, and the engagement was called off. Wanting to obtain the money to run off with her lover, the woman wanted to sell the land, but the man refused to sell. The woman put the land up for sale anyway, and when a buyer agreed to purchase it, the woman forged the man's signature on the deed conveying the land to the buyer. Who owns the land?

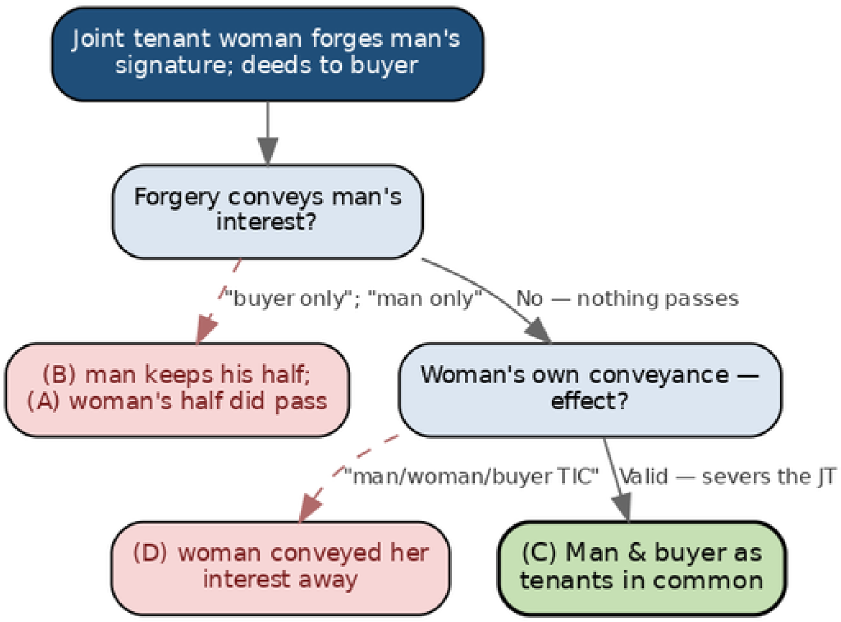
(A) The man only.
(B) The buyer only.
(C) The man and the buyer as tenants in common.
(D) The man, the woman, and the buyer as tenants in common.

> **Correct answer (C).** The man and the buyer hold as tenants in common.

Rule. A joint tenant can convey only his own interest. A forged signature conveys nothing, so the non-signing joint tenant keeps his interest. But the forging joint tenant's own interest is validly conveyed, which severs the joint tenancy; the grantee and the remaining owner hold as tenants in common.

Application. The forgery didn't transfer the man's half, but the woman validly conveyed her own half, severing the joint tenancy. The man and the buyer now hold as tenants in common — (C).

Why the other choices fail. (A) the woman's half did pass to the buyer, so the man isn't sole owner. (B) the forgery didn't convey the man's interest, so the buyer isn't sole owner. (D) the woman conveyed away her interest, so she holds nothing.



Decision path

Attack Sequence: Real Property attack sequence, §4 Co-Ownership, step 3 (joint tenancy — forgery conveys nothing; conveyance severs).

Playbook: Real Property playbook, CONCURRENT ESTATES (Forged deed void; conveyance of a share severs the JT).

How it lands: §4 step 3: the forgery didn't pass the man's interest, but the woman's own conveyance severed the joint tenancy, leaving man and buyer as tenants in common → (C).

Question 46

Constitutional Law — Equal Protection / Rational Basis

A state law grants each county great autonomy in setting the health standards governing the preparation, packaging, transportation, and sale of food items. A county council recently enacted an ordinance, valid under the constitution and statutes of the state, prohibiting the packaging and sale of any food item in any non-biodegradable material; the ordinance defines non-biodegradable and specifically lists as prohibited all forms of plastics, cellophane, or similar materials. The ordinance specifically exempts from its terms sales of food to public institutions such as hospitals, jails, and schools. A retail food seller in the county files an appropriate court action attacking the county ordinance on the grounds that it violates the Equal Protection Clause of the Fourteenth Amendment. The court should rule:

(A) For the food seller, because the state's interests could be effectuated by alternative methods less intrusive upon the food seller's constitutional rights.

(B) For the food seller, because no compelling state interest is served by the challenged ordinance.

(C) For the county, because the state may regulate in this area as Congress has not entered the field.

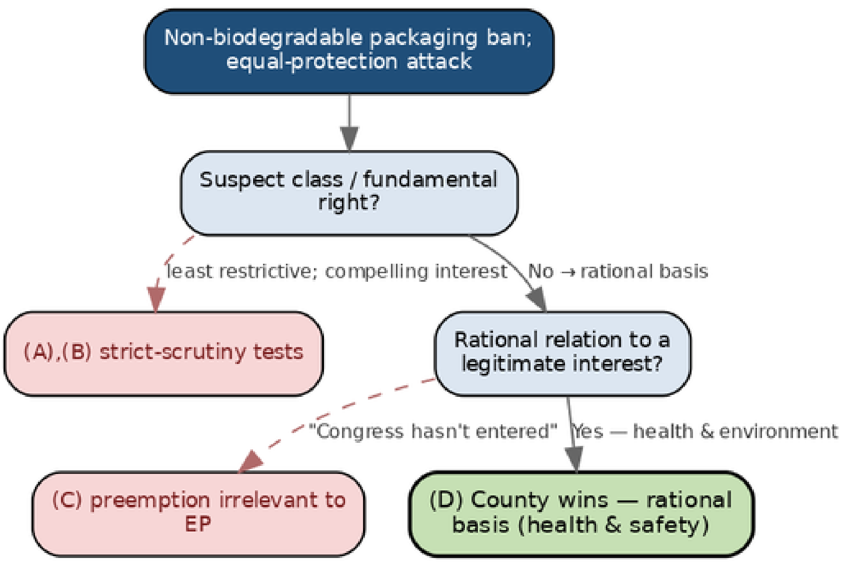
(D) For the county, because the ordinance is rationally related to a legitimate state interest—the health and safety of its citizens.

> **Correct answer (D).** For the county — the ordinance is rationally related to a legitimate interest (health and safety).

Rule. When a law involves no suspect/quasi-suspect class or fundamental right, equal protection applies rational-basis review: it's valid if rationally related to any legitimate government interest. The challenger bears the burden.

Application. Banning non-biodegradable food packaging (with an institutional exemption) is rationally related to protecting the environment and public health, so it survives rational basis — (D).

Why the other choices fail. (A) least-restrictive-alternative is a strict-scrutiny requirement, inapplicable here. (B) a compelling interest isn't required under rational basis. (C) federal preemption is irrelevant to the equal-protection question asked.



Decision path

Attack Sequence: Con Law attack sequence, §5 Equal Protection, step 1 (rational basis for economic/social regulation).

Playbook: Con Law playbook, EQUAL PROTECTION (Rational basis — legitimate interest; challenger's burden).

How it lands: §5 step 1: the packaging ban is rationally related to health and environmental protection, so it survives rational basis → (D).

Question 47

Real Property — Contingent Remainders / Conditions Unsatisfied

A grantor executed and delivered a deed to his daughter conveying his ranch as follows: "To my daughter for life, but if my daughter dies survived by her husband and children, then to my daughter's husband for life, with the remainder in fee simple to my daughter's children; but if my daughter dies survived by her husband and no children, then to my son in fee simple." A few months later, the daughter married; as a wedding gift, the grantor quitclaimed his interest in the ranch to the daughter's husband. Assume that the jurisdiction does not follow the doctrine of destructibility of contingent remainders. A year later, the daughter died without children and without a will. The applicable law of intestate succession provides that the husband is the daughter's only heir. The son claims that the husband has no interest in the land. Title to the ranch is held by whom?

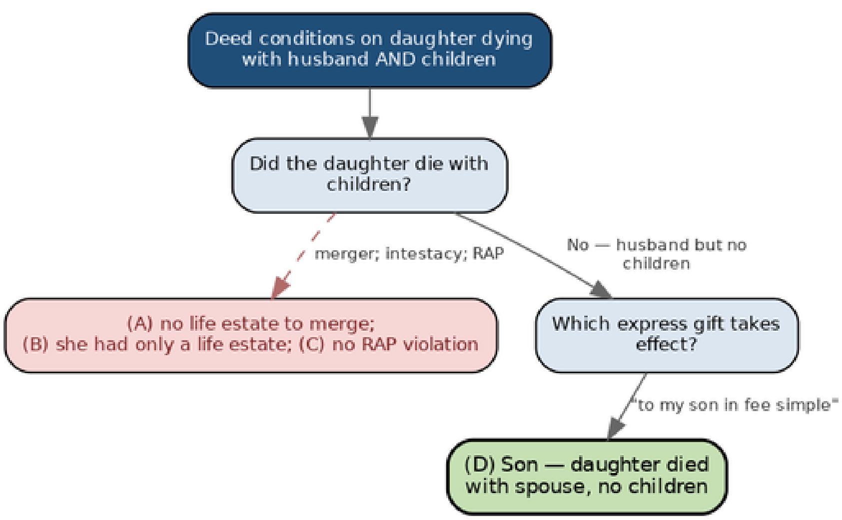
(A) The husband, because of the doctrine of merger.
(B) The husband, because the daughter died intestate and her fee simple passed to him as her intestate heir.
(C) The son, because the interest granted to the daughter's spouse is void under the Rule Against Perpetuities.
(D) The son, because the daughter, although survived by her spouse, died without children.

> **Correct answer (D).** The son takes the ranch because the daughter died survived by her spouse but without children.

Rule. Read the deed's express conditions. The gifts to the husband (life estate) and the daughter's children (remainder) were contingent on the daughter dying survived by her husband AND children. If she dies with a spouse but no children, the alternative gift to the son takes effect.

Application. The daughter died with a husband but no children, so the husband's/children's contingencies failed and the express gift 'to my son in fee simple' vests — (D).

Why the other choices fail. (A) merger needs a life estate plus a vested remainder/reversion in one person; the husband got no life estate. (B) the daughter had only a life estate — nothing to pass by intestacy. (C) RAP isn't violated; the interests would vest at the daughter's death (a life in being).



Decision path

Attack Sequence: Real Property attack sequence, §3 Future Interests, step 2 (contingent remainders / express conditions).

Playbook: Real Property playbook, FUTURE INTERESTS (Alternative contingent remainders; conditions).

How it lands: §3 step 2: the daughter died with a spouse but no children, so the express alternative gift "to my son in fee simple" takes effect → (D).

Question 48

Real Property — Vested Remainder Subject to Open / Class Closing

A grantor executed and delivered a deed to his son conveying his land as follows: "To my son for life, but if my son dies survived by his spouse and children, then to my son's spouse for life, with the remainder in fee simple to my son's children." A year later, the son died survived by his spouse and two offspring, a girl and a boy. The boy died intestate two days after the son, leaving one child as his only heir. The common law Rule Against Perpetuities is unmodified in the jurisdiction. What are the respective interests of the spouse, the girl, and the child in the land?

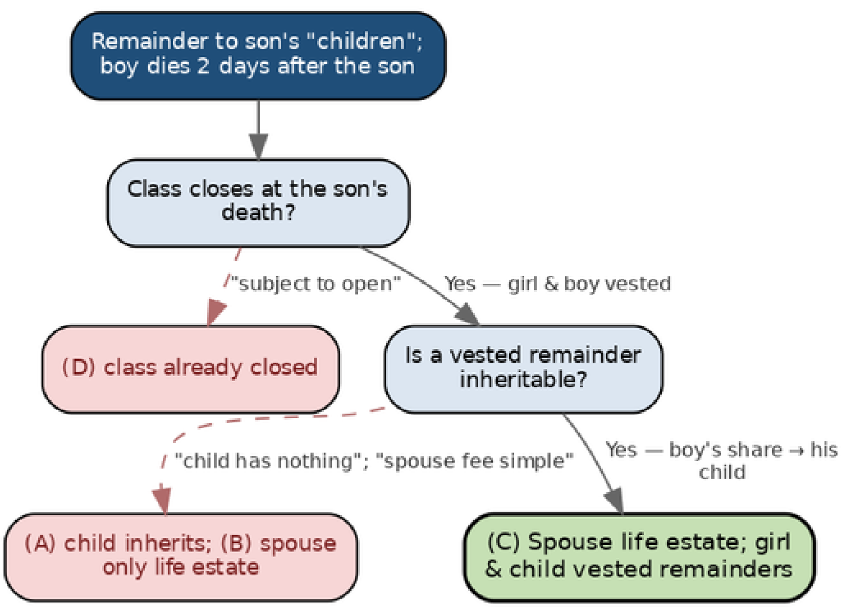
(A) The spouse has a life estate, the girl has an absolutely vested remainder, and the child has nothing.
(B) The spouse has fee simple ownership of the land, and the girl and the child have nothing.
(C) The spouse has a life estate, and the girl and the child have absolutely vested remainders.
(D) The spouse has a life estate, and the girl has a vested remainder subject to open.

> **Correct answer (C).** The spouse has a life estate; the girl and the child (by inheritance) hold absolutely vested remainders.

Rule. A remainder to a class (the son's 'children') vests subject to open when the first child is born, and closes on the life tenant's death — no more children can be added. A vested remainder is inheritable, so a class member who dies passes his share to his heirs.

Application. On the son's death the class closed with the girl and boy; each had an indefeasibly vested remainder. The boy's vested share passed by intestacy to his child, so the girl and the child hold the remainders — (C).

Why the other choices fail. (A) the boy's vested remainder is inheritable, so the child takes it — the child isn't left with nothing. (B) the spouse holds only a life estate, not fee simple. (D) the class closed at the son's death, so the remainder isn't still 'subject to open.'



Decision path

Attack Sequence: Real Property attack sequence, §3 Future Interests, step 3 (vested remainder subject to open; class closing; inheritability).

Playbook: Real Property playbook, FUTURE INTERESTS (Class gifts — close at life tenant's death; vested remainders inheritable).

How it lands: §3 step 3: the class closed at the son's death (girl + boy vested), and the boy's vested share passed by intestacy to his child → (C).

Question 49

Civil Procedure — Removal / Federal Question

A State A citizen was arrested by a police officer in State A. The State A citizen filed a civil action against the police officer in a State A state court. The complaint alleges that the police officer wrongly beat the citizen in the course of the arrest and seeks money damages under both state tort law and under 42 U.S.C. section 1983 for violation of the citizen's civil rights. The police officer, who is also a citizen of State A, promptly filed a notice of removal to federal court. Is the case properly removable?

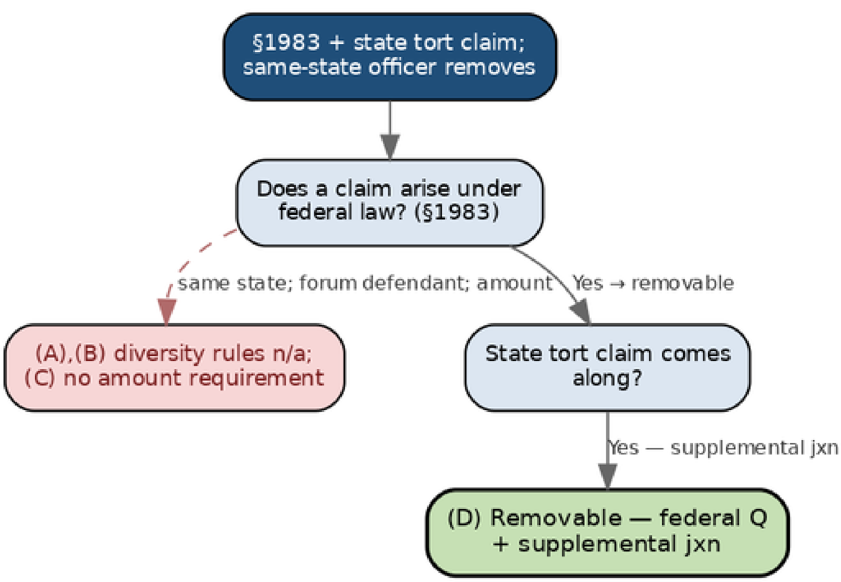
(A) No, because the citizen and police officer are citizens of the same state.
(B) No, because the police officer is a citizen of State A, the state in whose court the case is pending.
(C) Yes, as long as the amount in controversy exceeds $75,000.
(D) Yes, because one of the claims arises under federal law and the federal court has supplemental jurisdiction over the other claim.

> **Correct answer (D).** Removable — the §1983 claim arises under federal law, and supplemental jurisdiction covers the state claim.

Rule. A case is removable if it could originally have been filed in federal court. A §1983 claim presents a federal question. Once one claim invokes federal-question jurisdiction, supplemental jurisdiction covers related state claims from the same facts. The forum-defendant rule and amount-in-controversy apply only to diversity-based removal.

Application. The citizen's §1983 civil-rights claim is a federal question, making the case removable; the related state tort claim rides along on supplemental jurisdiction — (D).

Why the other choices fail. (A) same-state citizenship doesn't matter for federal-question removal. (B) the forum-defendant bar applies only to diversity removal. (C) there's no amount-in-controversy requirement for federal-question jurisdiction.



Decision path

Attack Sequence: Civil Procedure attack sequence, §2 Supplemental Jurisdiction & Removal, step 4 (federal-question removal; supplemental jxn).

Playbook: Civil Procedure playbook, SUBJECT MATTER JURISDICTION (Federal-question removal; forum-defendant rule diversity-only).

How it lands: §2 step 4: the §1983 claim is a federal question making the case removable, with the state claim on supplemental jurisdiction; the forum-defendant/amount rules apply only to diversity → (D).

Question 50

Real Property — Scope of an Express Easement

An owner of a 60-acre parcel of land bordered by a lake on its east side sold the western 50 acres to a fisherman. The recorded deed recited that the fisherman, his heirs and assigns had the right to use the single lane gravel road to the lake that ran along the southern border of the owner's property. Subsequently, the fisherman died and his son inherited the 50-acre parcel. The son wishes to build a resort on the property but would need to pave and widen the lake road so it could bear the increased traffic. The owner files an action for declaratory judgment seeking to enjoin improvement of the road. If the owner prevails, it will be because:

(A) The proposed improvement exceeds the scope of an easement by necessity.

(B) The proposed improvement constitutes a burden that exceeds the scope of an express easement.

(C) The servient owner has the obligation for maintenance of an easement for right-of-way, and hence can control the nature of its improvement.

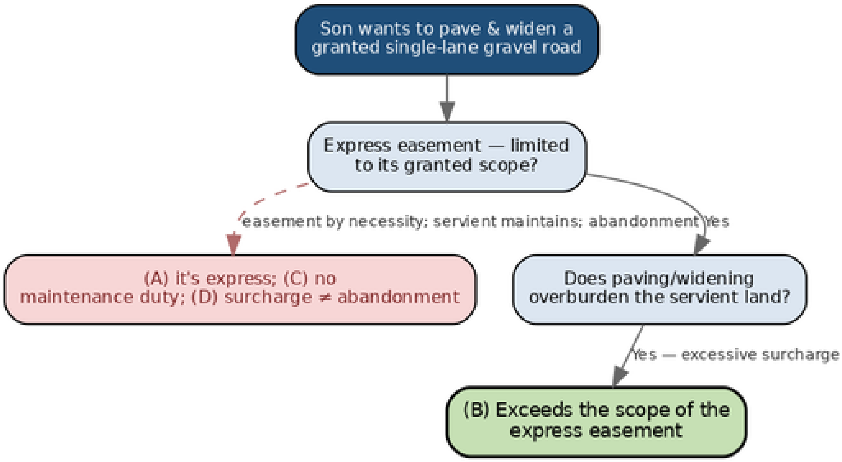
(D) The proposed resort so changes the nature of the use of the dominant tenement that any easement has been abandoned.

> **Correct answer (B).** The owner prevails because paving and widening exceeds the scope of the express easement — an excessive burden.

Rule. An express easement's use is limited to its granted scope. The dominant owner may make reasonable improvements, but a change that substantially increases the burden on the servient estate beyond what was granted (e.g., turning a single-lane gravel road into a wide paved resort road) is an impermissible surcharge the servient owner can enjoin.

Application. The deed granted use of a single-lane gravel road; paving and widening it for resort traffic exceeds that express scope and overburdens the servient land, so the owner can enjoin it — (B).

Why the other choices fail. (A) this is an express easement, not one by necessity. (C) a servient owner has no duty to maintain and can't unilaterally control improvements. (D) surcharging an easement doesn't terminate it by abandonment; it just lets the servient owner stop the excess use.



Decision path

Attack Sequence: Real Property attack sequence, §2 Easements, step 5 (scope of an express easement; surcharge).

Playbook: Real Property playbook, EASEMENTS (Scope; surcharge lets servient owner enjoin excess use).

How it lands: §2 step 5: paving and widening a granted single-lane gravel road exceeds the express easement's scope — an excessive burden the owner can enjoin → (B).