MBE PRACTICE EXAM — SESSION 1

Questions 1–100 · annotated, with exam tactics and an answer flowchart for every question · dietcokeesq.com

Question 1 — Civil Procedure

A shareholder of a car manufacturing company wants to sue the company in federal court for breach of fiduciary duty.

What information about the company, besides its place of incorporation, does the shareholder's attorney need in order to determine whether the parties are diverse?

(A) Where the company distributes its cars.

(B) Where the company has sufficient minimum contacts.

(C) Where the company's headquarters is located.

(D) Where the company's major place of manufacturing is located.

Correct answer: C

Explanation

Answer C is correct. Determining diversity for purposes of diversity jurisdiction is done with reference to the citizenship of the adverse parties. Here, because the party in question is a corporate entity, its citizenship is determined by where it is incorporated and the location of its principal place of business, which the US Supreme Court has defined as a company's headquarters.

Answer A is incorrect. Where a company distributes its cars does not bear on citizenship for purposes of diversity jurisdiction. Rather, the place of distribution would potentially be relevant to where the company could be subjected to personal jurisdiction in this action.

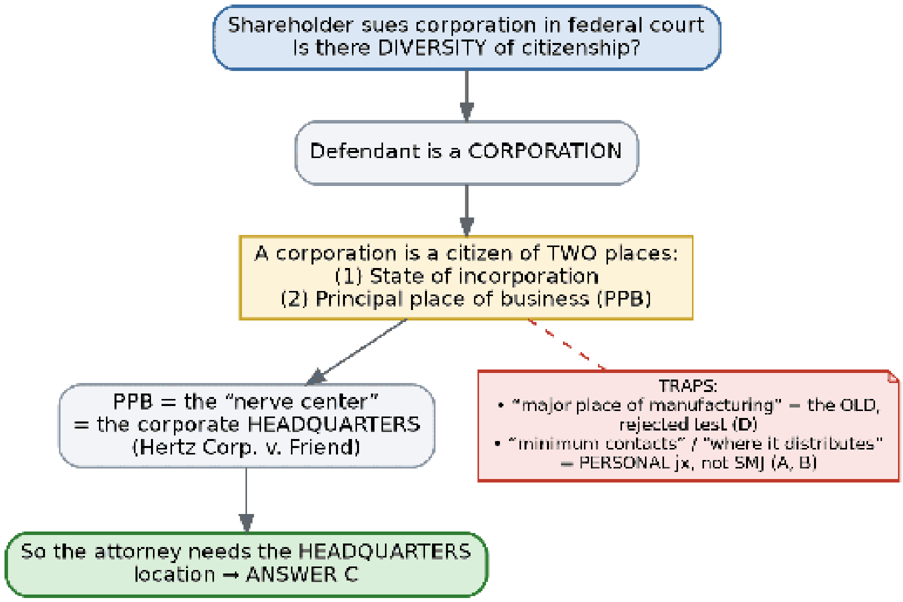
Answer B is incorrect. The concept of minimum contacts is relevant to determinations of personal jurisdiction, not subject-matter jurisdiction, which is what the question asks about here.

Answer D is incorrect. Before the US Supreme Court's decision in Hertz Corp. v. Friend, 559 U.S. 77 (2010), the circuits took varying approaches to determining the location of a corporation's principal place of business, with some treating a company's major place of manufacturing as determinative. However, the Supreme Court ruled in Hertz that a company's principal place of business for purposes of diversity is the location of its headquarters.

Exam Tactics & Triggers

- Trigger: a corporation + "diversity" + "what else do you need besides incorporation" → they are testing the dual-citizenship rule. The second citizenship is the principal place of business.
- Nail the vocabulary chain: principal place of business = "nerve center" = headquarters. If an answer says "headquarters," that is almost always your pick.
- SMJ-vs-PJ swap: "minimum contacts" and "where it sells/distributes" are personal-jurisdiction words. The question asked about diversity (subject-matter jurisdiction), so those choices are decoys.
- Know the citizenship menu cold: individuals = domicile; corporations = incorporation + PPB; partnerships/LLCs = citizenship of every member. The MBE mixes these up on purpose.

Answer Flowchart



Question 2 — Constitutional Law

Pursuant to an arrest warrant issued by a federal judge, FBI agents arrested a state governor for an alleged violation of federal law. The governor was then placed in a federal lockup facility. A state judge has issued a writ of habeas corpus against the director of the lockup facility on the ground that the federal law in question violates the Tenth Amendment.

Is the writ valid?

(A) No, because only federal courts can issue habeas writs for individuals in federal custody.

(B) No, because the arrest was made pursuant to a warrant.

(C) Yes, because state sovereignty shields the governor from federal coercion.

(D) Yes, because the Constitution guarantees the availability of habeas corpus.

Correct answer: A

Explanation

Answer A is correct. Tarble's Case, 80 U.S. 397 (1871), holds that the Supremacy Clause prohibits states from interfering with federal detention by issuing habeas writs.

Answer B is incorrect. The fact that an arrest was made pursuant to a warrant does not automatically make the arrest constitutional.

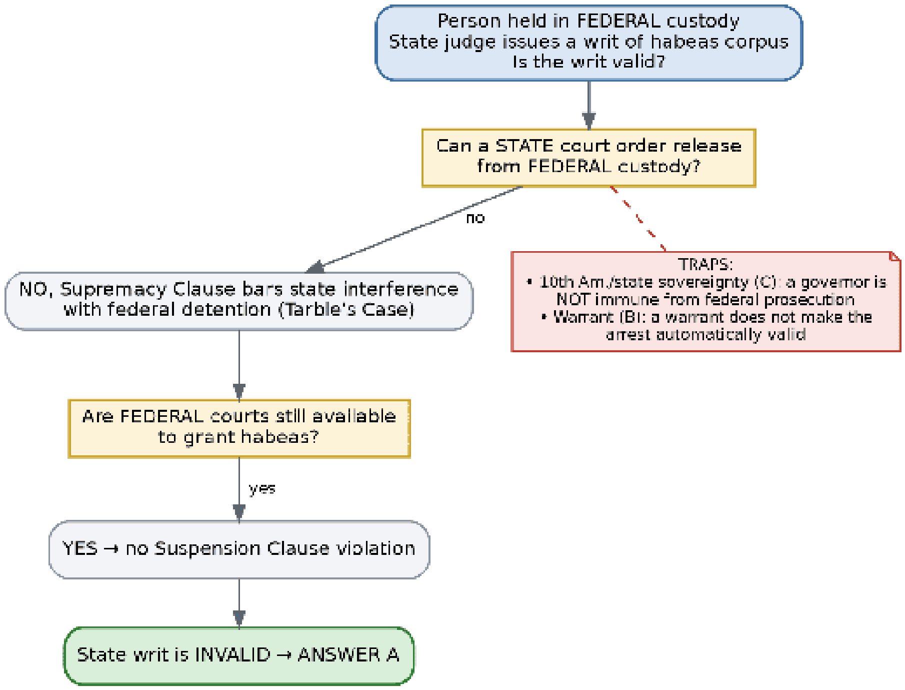
Answer C is incorrect. The governor does not enjoy federal immunity from prosecution for violating federal laws while in office.

Answer D is incorrect. The inability of state courts to issue habeas writs against federal detentions does not violate the Suspension Clause because federal courts are still able to issue such writs.

Exam Tactics & Triggers

- Trigger: a STATE court/judge issues a writ or order aimed at releasing someone in FEDERAL custody → invalid every time (Tarble's Case; Supremacy Clause).
- Flag the forum mismatch first: state power stops at the door of federal detention. Do not get pulled into the merits (Tenth Amendment, the warrant) before you spot that.
- Suspension Clause bait: it only bites if NO court can hear habeas. Federal courts are still open, so there is no suspension problem, that kills answer D.
- Official is not immune: a sitting state governor gets no immunity from federal prosecution for breaking federal law. Reject "state sovereignty shields him" answers.

Answer Flowchart



Question 3 — Contracts

A retailer sent a purchase order to a computer manufacturer requesting the shipment of a specified quantity of laptops. The purchase order stated: "In the event of a breach, the retailer may pursue all remedies available to it under the UCC." The manufacturer received the purchase order and promptly shipped the laptops to the retailer. The manufacturer sent an acknowledgment form to the retailer four days later.

Two days after accepting delivery of the laptops, the retailer received the manufacturer's acknowledgment form, which excluded consequential damages. The same day, the retailer discovered that the laptops were defective.

If the retailer sues the manufacturer for breach of contract, will the retailer be entitled to pursue a claim for consequential damages?

(A) No, because the retailer and the manufacturer did not enter into a contract.

(B) No, because a contract was created that included the manufacturer's term excluding consequential damages.

(C) Yes, because the manufacturer's shipment of the laptops constituted an acceptance of the retailer's offer.

(D) Yes, because terms supplied by the UCC will govern the contract formed by the conduct of the parties.

Correct answer: C

Explanation

Answer C is correct. The retailer's order constituted an offer. Under UCC § 2-206, an offer made by an order of goods may be accepted by the shipment of goods or by a prompt promise to ship. Here, the shipment of the laptops constituted the manufacturer's acceptance of the retailer's offer and the terms set forth in the offer.

Answer A is incorrect. The manufacturer's shipment of the laptops was a reasonable mode of acceptance and gave rise to a contract.

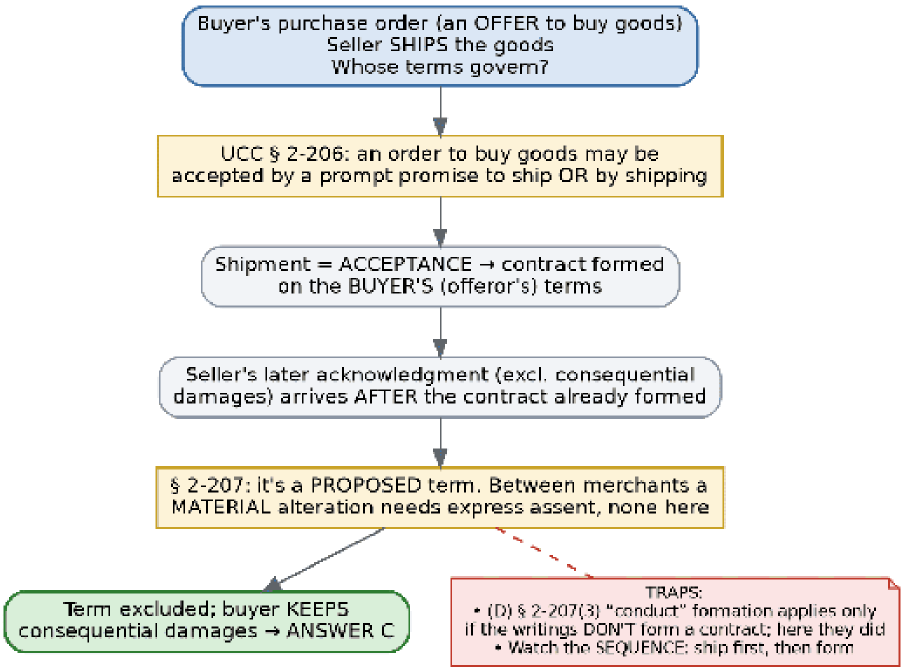
Answer B is incorrect. The retailer's order constituted an offer, and a contract was formed when the manufacturer shipped the laptops. Therefore, the exclusion of consequential damages in the manufacturer's acknowledgment constituted a request to modify that contract. The exclusion would become a term of the parties' agreement if the retailer assented to it, which did not occur here.

Answer D is incorrect. This response assumes that the parties formed a contract under UCC § 2- 207(3) by their conduct. Here a contract was formed when the manufacturer shipped the laptops and thereby accepted the retailer's offer.

Exam Tactics & Triggers

- Trigger: a purchase order (offer) + the seller SHIPS before sending its own paperwork → UCC § 2-206 acceptance by performance, contract on the buyer's terms.
- Timeline is everything: mark WHEN the contract formed. Here the goods shipped and were accepted before the acknowledgment arrived, so the damages exclusion is a late add-on, not a counteroffer.
- 2-207 material-alteration reflex: between merchants, a term that limits remedies/consequential damages materially alters the deal and needs express assent to come in. No assent = out.
- Distractor § 2-207(3): the “contract by conduct” route only applies when the writings do NOT form a contract. Once shipment forms one, that answer is wrong, a favorite trap.

Answer Flowchart



Question 4 — Torts

A company set up a website for the advertisement of goods and services offered by individuals, as well as other public notices.

One of the notices on the site announced that the furnishings in a home at a specified address were free for the taking. Within a few hours of the posting, all the furnishings had been taken.

The notice had been placed by the homeowner’s cousin without the homeowner’s knowledge. The cousin bore a grudge against the homeowner and had placed the notice while the homeowner was away and had left the door to the home unlocked.

In a negligence action brought by the homeowner against the company, what will be the company’s strongest defense?

(A) The company had no duty to the homeowner.

(B) The cousin’s actions were a proximate cause of the homeowner’s loss.

(C) The First Amendment prohibits all tort actions based upon mere speech.

(D) There is no evidence of careless conduct by the company.

Correct answer: A

Explanation

Answer A is correct. The company’s best argument against liability is that it has no duty to protect people from being injured by third parties who intentionally misuse its site, which merely provides a platform for transactions between individuals.

Answer B is incorrect. The question asks for the company’s strongest defense. If the company had owed a duty to the homeowner, it could argue that the cousin’s actions were a proximate cause of the homeowner’s loss. But a stronger defense is that the company owed no duty to the homeowner.

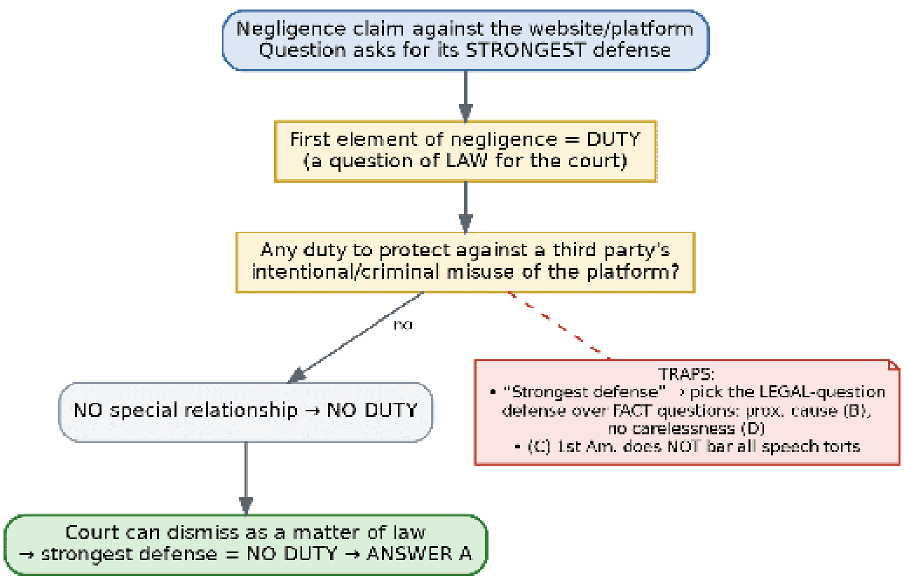
Answer C is incorrect. The First Amendment limits tort liability in some contexts but does not prohibit all tort actions just because there is a speech component to the defendant's actions.

Answer D is incorrect. Again, the question asks for the company's strongest defense. The question of whether a defendant has acted with reasonable care is usually a fact-intensive question that a jury resolves, but if a defendant can show that it had no duty, the court need not advance the case to a jury trial to determine whether there was carelessness.

Exam Tactics & Triggers

- Trigger phrase "strongest defense" / "best argument" → choose the defense that wins as a matter of LAW (no duty), not one a jury must weigh (proximate cause, reasonable care).
- Duty is the court's call; breach and causation are the jury's. A no-duty ruling ends the case at the courthouse steps, which is why it beats fact-bound defenses.
- Third-party-misuse rule: absent a special relationship, there is no duty to protect people from the intentional or criminal acts of third parties. That is the platform's escape hatch.
- Absolutes are usually wrong: "the First Amendment bars ALL tort actions based on speech" overreaches. Distrust MBE answers containing all / always / never.

Answer Flowchart



Question 5 — Evidence

A defendant was charged with conspiracy to possess cocaine with intent to distribute. While on bail with travel restricted to his home state, he purchased an airplane ticket to another country by using an alias. At trial, the prosecution seeks to introduce evidence of the defendant's ticket purchase.

Should the court admit this evidence?

(A) No, because the evidence does not make any fact of consequence to the trial more or less probable than it would have been without the evidence.

(B) Yes, because the evidence is relevant both to show the defendant's consciousness of guilt and to show his motive to commit the crime.

(C) Yes, because the evidence is relevant to show the defendant's consciousness of guilt.

(D) Yes, because the evidence is relevant to show the defendant's motive to commit the crime.

Correct answer: C

Explanation

Answer C is correct. Evidence of the defendant’s intent to flee satisfies FRE 401’s definition of relevance: it shows his consciousness of guilt and makes his guilt more probable than it would be without the evidence.

Answer A is incorrect. FRE 401 defines relevance as evidence having “any tendency to make a fact [of consequence] more probable than it would be without the evidence.” Evidence that the defendant tried to flee from prosecution—that he purchased an airplane ticket to another country using an alias—satisfies the definition of relevance, because it shows his consciousness of guilt.

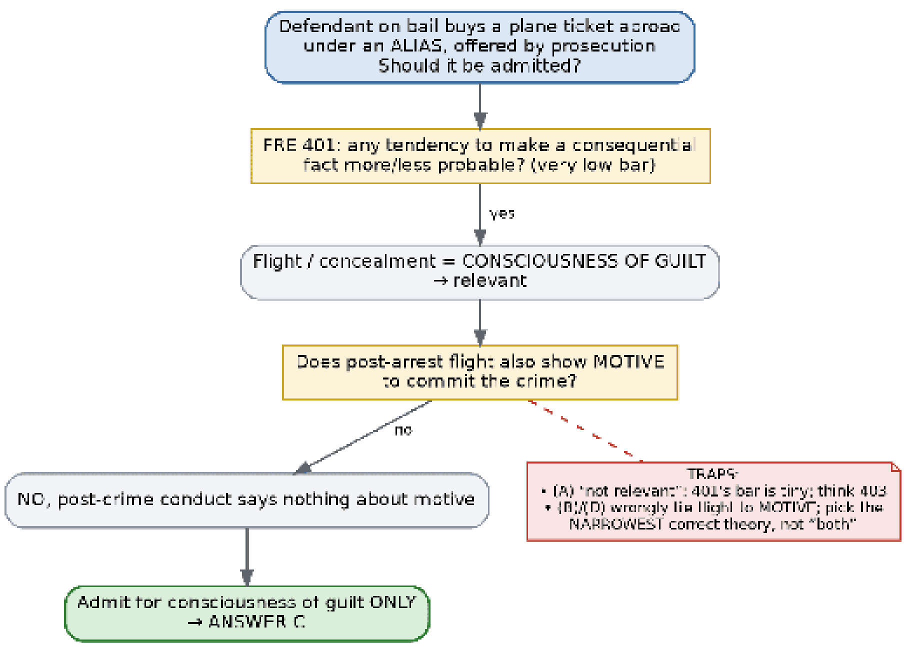
Answer B is incorrect. Evidence of an intent to flee is relevant to show the defendant’s consciousness of guilt but not to show his motive to commit the crime. The defendant’s attempt to flee the jurisdiction after his arrest sheds no light on his motive to commit the crime.

Answer D is incorrect. Proof of motive is generally relevant and admissible, but evidence of the defendant’s intent to flee after his arrest sheds no light on his motive to commit the crime. Because the evidence is irrelevant to motive, it is inadmissible if offered to prove motive.

Exam Tactics & Triggers

- Trigger: defendant flees, uses an alias, hides, or gives a false name → “consciousness of guilt,” relevant under FRE 401. Post-arrest conduct is the classic flight fact pattern.
- Motive vs consciousness of guilt: motive is the pre-crime reason to act; flight afterward says nothing about it. Answers tying flight to “motive” (B, D) are wrong.
- 401 has a featherweight bar (“any tendency”). If your instinct is “not relevant,” you are almost always wrong, the exclusion fight belongs to Rule 403, not 401.
- Pick the narrowest correct theory: the over-inclusive “both consciousness of guilt AND motive” answer fails because one half is unsupported. One good theory beats two if the second is bogus.

Answer Flowchart



Question 6 — Real Property

A grantor conveyed a commercial property to a friend “so long as alcoholic beverages are not sold on the property, and if alcoholic beverages are sold on the property, the estate is to end at once.” The friend took possession of the property.

Four years later, the friend opened a tavern that sold alcoholic beverages on the property. Six months after the opening, while the friend continued to operate the tavern, the municipality in which the property is located validly condemned the property.

There are no applicable statutes.

To whom should the condemnation proceeds be paid?

(A) To the friend and the grantor in equal shares, because they both had an interest in the property.

(B) To the friend, because he was in possession on the date of the condemnation.

(C) To the friend, because the limitation is an invalid restraint on the sale of alcohol.

(D) To the grantor, because the friend's estate had ended.

Correct answer: D

Explanation

Answer D is correct because the grantor conveyed a fee simple determinable to the friend, reserving a possibility of reverter. When the defeasible event occurred (selling alcoholic beverages), the fee simple determinable immediately terminated and title vested in the grantor.

Answer A is incorrect. While it is true that both the friend and the grantor had an interest in the property, when the defeasible event occurred (selling alcoholic beverages), the friend's fee simple determinable immediately terminated and title vested in the grantor, who had a possibility of reverter.

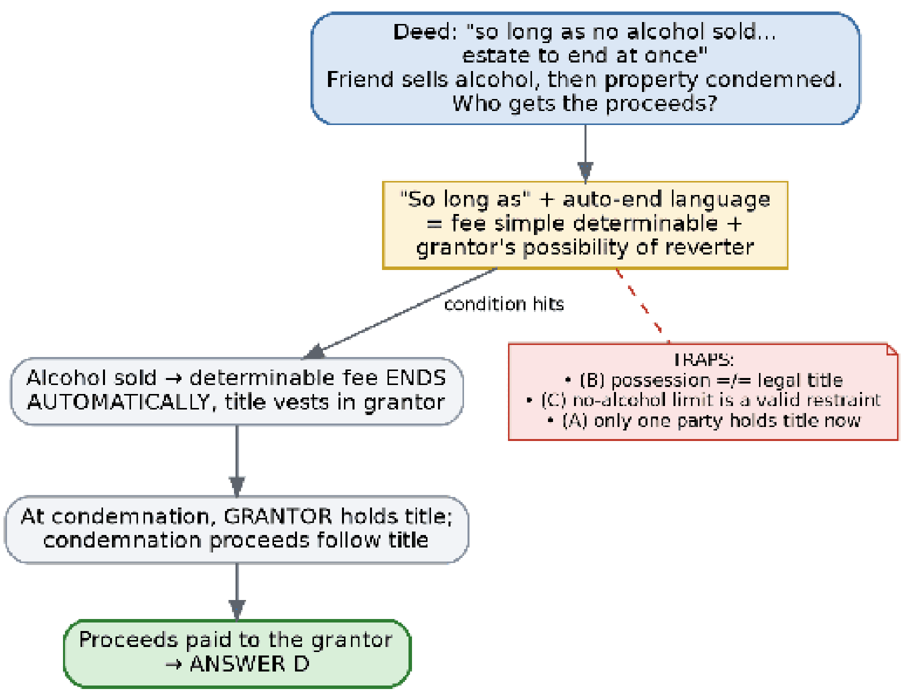
Answer B is incorrect. Even though the friend was in physical possession of the property on the date of the condemnation, legal title to the property was in the grantor.

Answer C is incorrect. The limitation contained in the deed, prohibiting the sale of alcohol, is not an invalid restraint nor against public policy.

Exam Tactics & Triggers

- Trigger: deed words "so long as" / "until" + "the estate is to end at once" (automatic language) → fee simple determinable with a possibility of reverter in the grantor.
- Rule chain: when the stated condition happens, a fee simple determinable ENDS AUTOMATICALLY and title snaps back to the grantor; no re-entry needed (unlike a fee simple subject to condition subsequent).
- Condemnation follows TITLE, not possession: proceeds go to whoever holds legal title when the property is taken, so mark who owns the estate at the condemnation date, here the grantor.
- Distractor traps: (B) baits with "in possession" but possession is not title; (C) dresses up a false "invalid restraint" theory, a no-alcohol use restriction is valid; (A) splits shares but only one party has title after the estate ended.

Answer Flowchart



Question 7 — Civil Procedure

A depositor sued her bank in federal court, seeking $30,000 in damages. The complaint set out the bank's method of calculating interest and alleged that the method violated both federal banking law and state contract law. The bank filed a motion to dismiss, asserting that its method of calculating interest, as described in the complaint, was proper under federal law and that the federal law preempted the depositor's state-law claim.

The court granted the motion to dismiss the depositor's federal claim and reserved ruling on the motion to dismiss the state-law claim. After completing discovery, the bank has moved to dismiss the state-law claim for lack of subject-matter jurisdiction.

How should the court proceed?

(A) The court may hear the state-law claim, because it is so related to the federal claim that they form part of the same case or controversy.

(B) The court must hear the state-law claim, because it is so related to the federal claim that they form part of the same case or controversy.

(C) The court must hear the state-law claim, because the bank raised a federal defense to that claim.

(D) The court must not hear the state-law claim, because it arises under state law and the depositor seeks less than the minimum amount in controversy.

Correct answer: A

Explanation

Answer A is correct. As long as a plaintiff presents a colorable claim under federal law, it will be sufficient to support supplemental jurisdiction over state-law claims that form part of the same case or controversy. The dismissal of the federal claim did not divest the court of supplemental jurisdiction over the state-law claim, though the court, in its discretion, might rely on the dismissal as a reason to discontinue hearing the state-law claim.

Answer B is incorrect. Supplemental jurisdiction is a discretionary doctrine, meaning that a court is never obligated to exercise it, even when the state-law claim forms part of the same case or controversy as the federal claim.

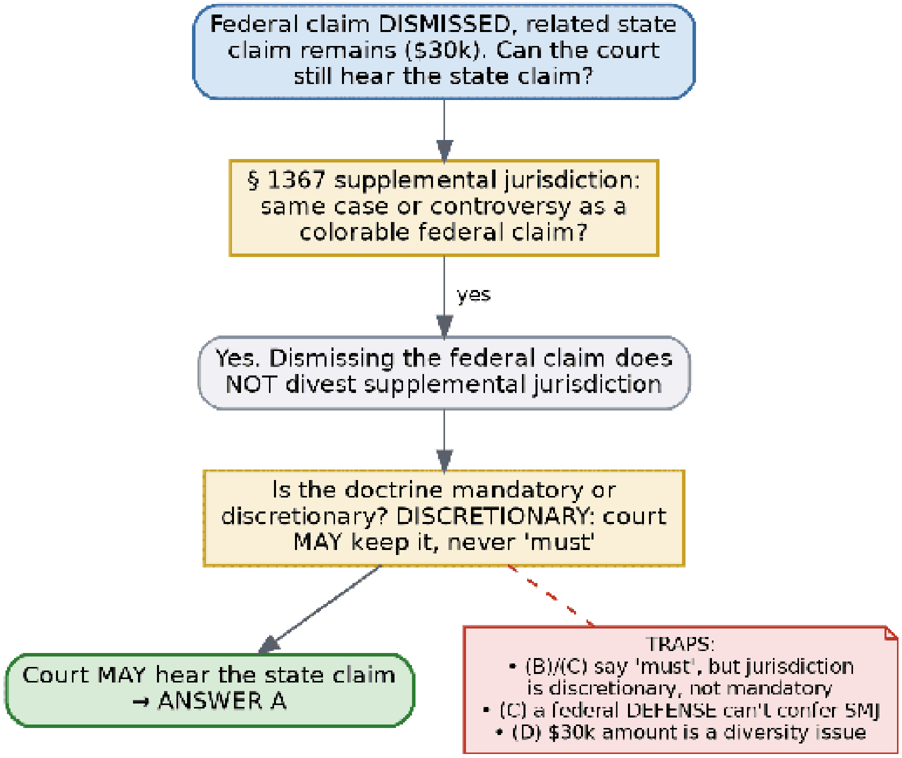
Answer C is incorrect. Federal subject-matter jurisdiction cannot be conferred over a claim based on the nature of the defense raised in response to it. Rather, under the well-pleaded complaint rule, the basis for federal subject-matter jurisdiction must appear on the face of the plaintiff's complaint.

Answer D is incorrect. Although the court lacks diversity jurisdiction over the state-law claim, the court could exercise supplemental jurisdiction over it because it forms part of the same case or controversy as the federal-law claim. As discussed above, the dismissal of the federal-law claim did not divest the court of supplemental jurisdiction.

Exam Tactics & Triggers

- Trigger: a federal claim gets dismissed but a related state claim survives → supplemental jurisdiction under § 1367 does NOT vanish, the court MAY keep hearing it.
- Lock in the modal verb: supplemental jurisdiction is DISCRETIONARY, so any answer saying the court 'must' hear (B) or 'must not' hear (D) is wrong on its face.
- Well-pleaded complaint rule kills (C): a federal DEFENSE (here preemption) never creates SMJ, jurisdiction must appear on the plaintiff's own complaint.
- Distractor (D) baits you with the $30k amount, but amount-in-controversy is a diversity concept, irrelevant once same-case-or-controversy supplemental jurisdiction applies.

Answer Flowchart



Question 8 — Contracts

A homeowner visited the websites of numerous local plumbers for service and hourly rate information. The homeowner called one of the plumbers, told him she had found him through his website, and asked him to unclog a floor drain in her basement. The plumber responded, “Okay, I’ll be there tomorrow at three.”

The plumber unclogged the drain and gave the homeowner an invoice that reflected the hourly rate for his services as posted on his website. The homeowner refused to pay the full invoice amount, asserting that his hourly rate was higher than that charged by other local plumbers. The homeowner offered to pay him the average of those rates. The plumber demanded payment of the invoiced amount.

Which of the following describes the compensation the plumber is entitled to receive from the homeowner?

(A) Compensation based on the reasonable value of the plumber’s services, because in the absence of an agreement on price, a reasonable price will be supplied.

(B) Compensation at the invoiced price, because the hourly rate posted on the plumber’s website supplied the price term for the parties’ agreement.

(C) Compensation necessary to protect the plumber’s reliance interest, because he rendered services based on the homeowner’s implied promise to pay.

(D) Compensation necessary to protect the plumber’s restitutionary interest, because there was no meeting of the minds between the parties on price.

Correct answer: B

Explanation

Answer B is correct. The homeowner will be deemed to have agreed to the hourly rate set by the plumber on the website that the homeowner visited.

Answer A is incorrect. This is not a case where there is no agreement as to price, since the plumber’s hourly rate was available to the homeowner on his website.

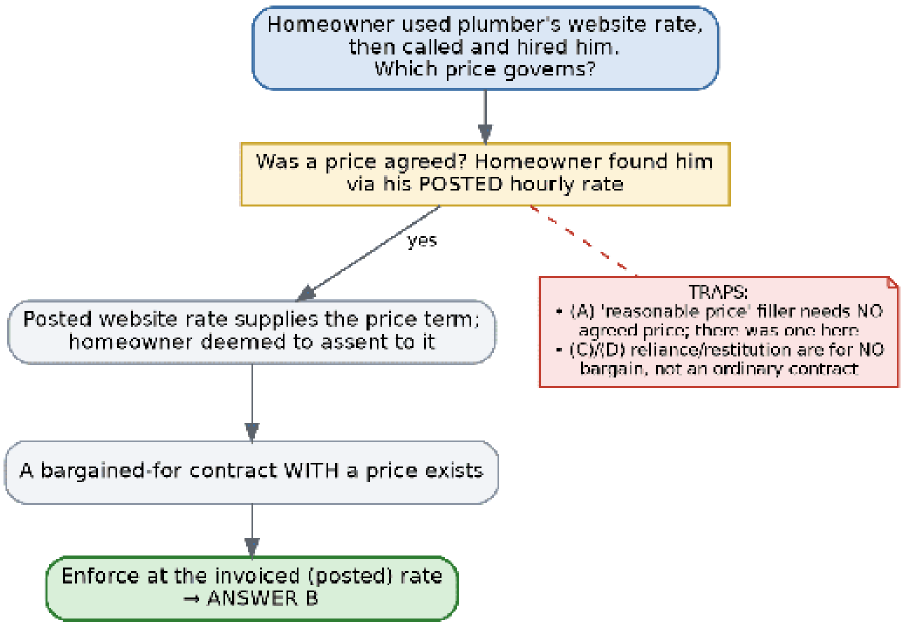
Answer C is incorrect. The parties had a bargained-for contract that included the hourly rate set by the plumber, so a reliance-based measure of damages does not apply.

Answer D is incorrect. The parties had a bargained-for contract that included the hourly rate set by the plumber, so a restitution-based measure of damages does not apply.

Exam Tactics & Triggers

- Trigger: a party sought out and used a POSTED price/rate before hiring → that posted term supplies the price; this is not an open-price gap-filling case.
- Kill (A)'s 'reasonable price will be supplied': the reasonable-price gap-filler only fires when there is NO agreed price, but the website rate was the agreed price.
- Reliance (C) and restitution (D) are remedies for when there is no enforceable bargain; an ordinary express contract with a price term uses the contract price.
- Distractor tell: exotic 'interest' remedies (reliance/restitution) are bait when the facts show a garden-variety bargained-for deal.

Answer Flowchart



Question 9 — Constitutional Law

A reporter writing an article about a politician offered the politician's estranged daughter $10,000 for information about the politician. The daughter agreed and provided the reporter with the information he sought. Subsequently, the daughter's information appeared in a newspaper article by the reporter, but the reporter refused to pay the daughter.

The daughter sued the reporter in state court for breach of contract on the basis of generally applicable state contract law. The reporter has moved to dismiss the action solely on the ground that the daughter's lawsuit violates the freedom of the press clause of the First Amendment.

Is the court likely to grant the reporter's motion to dismiss?

(A) No, because the daughter is not a state actor.

(B) No, because the First Amendment does not shield reporters from generally applicable state-law claims.

(C) Yes, because state contract law as applied to the reporter inhibits freedom of the press without a compelling government interest.

(D) Yes, because the politician is a public figure and any information about him is in the public domain.

Correct answer: B

Explanation

Answer B is correct. The Supreme Court has consistently rejected claims that the freedom of the press protected by the First Amendment exempts press activities from laws of general application such as contract law.

Answer A is incorrect. It is irrelevant that the daughter is not a state actor. The requisite state action here is state contract law, from which the reporter seeks an exemption. The Supreme Court has consistently rejected such claims for exemption.

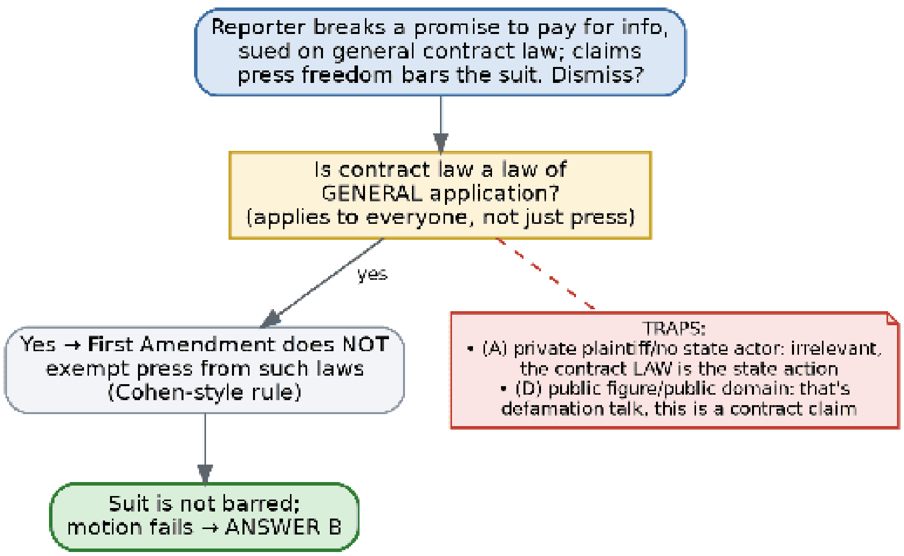
Answer C is incorrect. The Supreme Court has consistently rejected claims that the freedom of the press protected by the First Amendment exempts press activities from laws of general application.

Answer D is incorrect. It is irrelevant that the politician is a public figure. It also is irrelevant whether or not the information was in the public domain. The action here is for breach of contract, and the Supreme Court has consistently rejected claims that the freedom of the press protected by the First Amendment exempts press activities from laws of general application.

Exam Tactics & Triggers

- Trigger: a reporter invokes “freedom of the press” to escape an ordinary law (contract, tort, tax) → reflex is NO exemption; press must obey laws of general application.
- Lock in the rule chain: generally applicable law + press defendant = no First Amendment shield, so the suit survives the motion.
- Distractor trap (A): the “no state actor” angle is a red herring; the state action IS the contract law the reporter wants to dodge, so a private plaintiff does not defeat the claim.
- Distractor trap (D): “public figure” and “public domain” bait you toward defamation doctrine, but the claim is breach of CONTRACT, so those labels are irrelevant.

Answer Flowchart



Question 10 — Criminal Law & Procedure

A drug-dealing operation consisted of three men: a supplier, a dealer, and a lookout. The supplier became convinced that the lookout was a police informant. He persuaded the dealer that they should kill the lookout to avoid problems. They purchased a gun and ammunition to commit the murder and planned to dispose of the lookout’s body by pushing it off a cliff.

The supplier arranged a meeting in a remote area of a state park. After the three men arrived, the supplier fired two shots at the lookout, who fell to the ground. Both the supplier and the dealer believed that the lookout was dead. The dealer subsequently pushed the lookout’s body off a nearby cliff. Unbeknownst to the supplier and the dealer, the lookout had been wounded by the bullets but was not dead; he died as a result of the fall from the cliff.

Can the supplier be convicted of murder?

(A) No, because the shooting and the disposal of the body were separate events that cannot be viewed as a single scheme or plan.

(B) No, because the supplier did not intend that the fall from the cliff would kill the lookout.

(C) Yes, because both the shooting and the disposal of the body were part of the original plan to kill the lookout.

(D) Yes, because the supplier believed that his shots had killed the lookout.

Correct answer: C

Explanation

Answer C is correct. Although he did not directly cause the lookout’s death, the supplier can be convicted as an accomplice. Acting with requisite intent, the supplier encouraged the dealer to commit murder and facilitated the lookout’s death. Although the supplier and the dealer both believed that death resulted from the shooting, the fact that death resulted from the fall is neither unforeseeable nor sufficiently disconnected from the scheme to cut the causal chain.

Answer A is incorrect. The facts show that the shooting and the disposal of the body were part of the same scheme or plan devised by the supplier and the dealer, which was to purposefully aid each other in killing the lookout. Consequently, the supplier remains responsible for all the acts committed by his accomplice.

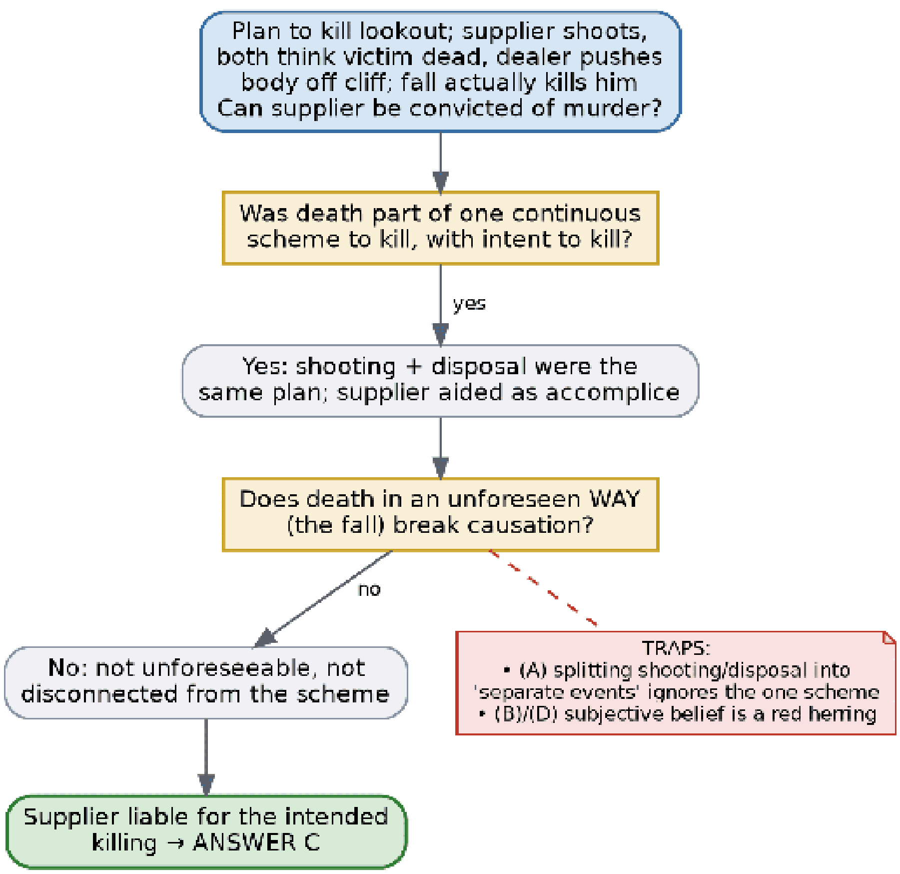
Answer B is incorrect because the lookout’s death was clearly intended by both the supplier and the dealer. If the death was caused by acts committed in furtherance of their scheme, it does not matter that the death occurred in an unanticipated way.

Answer D is incorrect. The supplier is responsible because he purposefully aided in the killing of the lookout, not because he subjectively believed that he had killed the lookout.

Exam Tactics & Triggers

- Trigger: two believe the victim is dead after act #1, then act #2 (disposal) actually causes death → the 'one continuous transaction' rule keeps intent and causation intact.
- Causation vocab: an intended death that occurs in an unanticipated WAY does not break the causal chain if it was foreseeable and part of the scheme.
- Accomplice angle: the supplier need not fire the fatal act himself; he encouraged and aided with intent, so he owns everything his accomplice did in furtherance of the plan.
- Distractor trap: (A) tries to slice the shooting and disposal into 'separate events' and (B)/(D) fixate on subjective belief; the tell is that the plan was ONE murder scheme, so the mechanism of death is irrelevant.

Answer Flowchart



Question 11 — Torts

An 11-year-old boy was driving a full-size motorcycle on a private road, where the boy was a trespasser. The motorcycle hit a tire that had fallen off a truck driven by a delivery company employee who was making a delivery to an address on the private road. The boy was injured when his motorcycle went out of control after striking the tire.

In a negligence action brought on behalf of the boy against the delivery company, the company contends that the boy was contributorily negligent and that his damages, if any, should be reduced in conformance with the jurisdiction’s comparative negligence statute. The boy argues that his conduct should be judged according to the standard of a reasonable child of like age, intelligence, and experience under the circumstances.

Is the boy entitled to be judged according to the standard of care that he has argued for?

(A) No, because the boy was driving a motorcycle.

(B) No, because the boy was trespassing on the private road.

(C) Yes, because comparative negligence applies.

(D) Yes, because the boy was 11 years old at the time.

Correct answer: A

Explanation

Answer A is correct. Because he was driving a motorcycle—an adult activity—the boy will be held to the adult standard of care.

Answer B is incorrect. The boy’s status on the land is not relevant to his negligence.

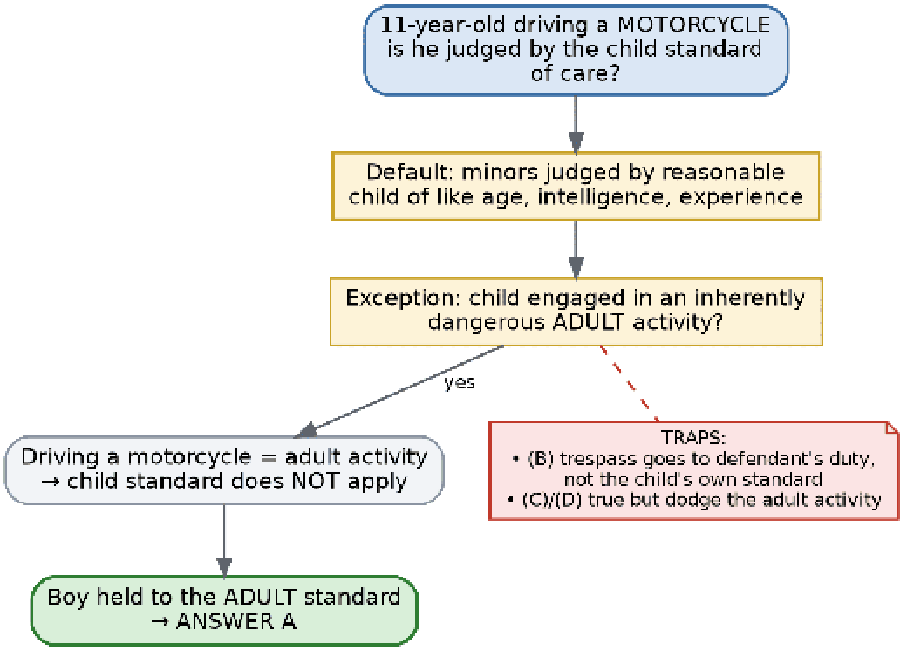
Answer C is incorrect. Whether comparative negligence applies does not impact the standard of care by which the boy’s conduct will be measured.

Answer D is incorrect. Because the boy was engaged in an adult activity and was not of “tender years,” he will be held to the adult standard of care.

Exam Tactics & Triggers

- Trigger: a child operating a motorized/dangerous machine (motorcycle, car, boat, snowmobile) → the 'adult activity' exception yanks them up to the ADULT standard of care.
- Rule chain to lock in: minors normally get the 'reasonable child of like age, intelligence, experience' standard, BUT engaging in an inherently dangerous adult activity defeats it.
- Distractor trap (B): the child's status as a trespasser goes to the DEFENDANT's duty, not to which standard measures the child's OWN negligence, an issue swap.
- Distractor trap (C and D): comparative negligence and simply 'being 11' are true statements that do not answer WHICH standard applies; the tell is that they dodge the adult-activity fact.

Answer Flowchart



Question 12 — Evidence

A woman brought a products liability action against a drug manufacturer in federal court under state law, claiming that the manufacturer had failed to warn that an arthritis drug caused severe hair loss in female patients. In discovery, the manufacturer inadvertently turned over to the woman two documents reflecting communications between the manufacturer's president and its counsel regarding the drug's possible side effects. There were 23 other, similar documents reflecting such communications that were not turned over in discovery.

Although the manufacturer learned of the disclosure during the discovery period, it did not seek the return of the two documents until the day before trial. In response, the woman claimed that the manufacturer had waived the attorney-client privilege as to all 25 documents, including the 23 that had not been turned over.

How should the court rule on the woman's claim of waiver of privilege?

(A) There was no waiver of the attorney-client privilege, because the disclosure to the woman was inadvertent.

(B) There was a waiver of the attorney-client privilege regarding only the two disclosed documents.

(C) There was a waiver of the attorney-client privilege regarding the disclosed documents as well as the other 23 documents, because they all relate to the same subject matter.

(D) There was a waiver of the attorney-client privilege for all 25 documents if the state law that supplies the rule of decision would support such a result.

Correct answer: B

Explanation

Answer B is correct. Under FRE 502(a), because the disclosure was inadvertent, the waiver does not extend to undisclosed communications.

Answer A is incorrect. Under FRE 502(b), an inadvertent disclosure will not operate as a waiver of the attorney-client privilege if the holder of the privilege "promptly [takes] reasonable steps to rectify the error." Here, the manufacturer learned of the disclosure during discovery but waited until the day before trial to rectify the error. Its response was not "prompt," and therefore the disclosure operates as a waiver as to the two documents that were disclosed.

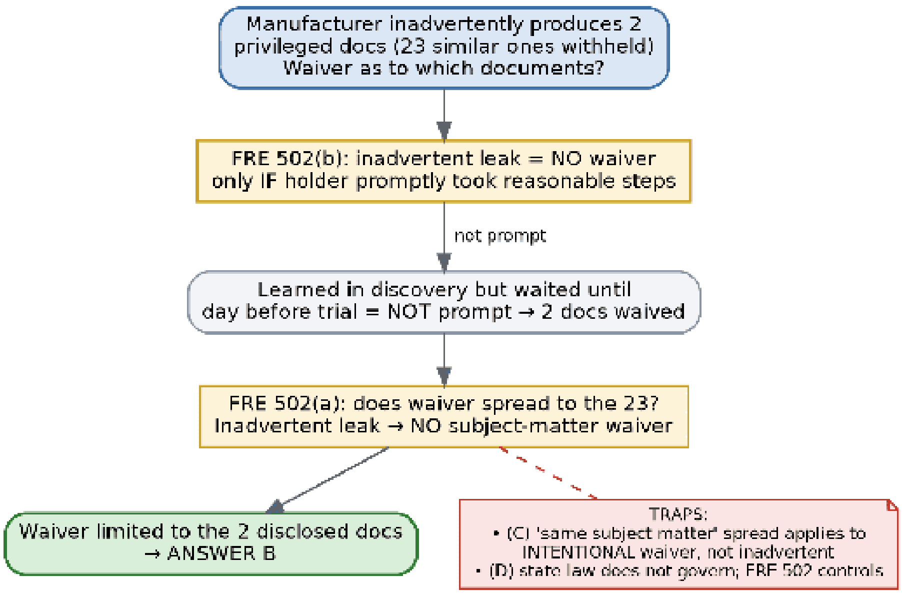
Answer C is incorrect. Under FRE 502(a), because the disclosure was inadvertent, the waiver does not extend to undisclosed communications—to the other 23 documents—even if they concern the same subject matter.

Answer D is incorrect. FRE 502 applies to "disclosure[s] . . . made in a federal proceeding." Thus, state law does not apply, even when federal jurisdiction is based on diversity of citizenship.

Exam Tactics & Triggers

- Trigger: INADVERTENT disclosure of privileged docs in a federal case → FRE 502(a) blocks subject-matter waiver; only the disclosed docs are ever at risk.
- Split the two questions: (1) does the leak waive as to the leaked docs? FRE 502(b) says no waiver IF the holder promptly took reasonable steps, and (2) does it spread to related docs? FRE 502(a) says never for inadvertent leaks.
- Watch the timeline tell: 'learned during discovery but waited until the day before trial' = NOT prompt → 502(b) protection lost, so the two docs are waived.
- Distractor traps: (C) 'same subject matter' is the intentional-waiver rule, not inadvertent; (D) 'apply state law' is bait, FRE 502 governs any disclosure in a federal proceeding even in diversity.

Answer Flowchart



Question 13 — Real Property

A mother subdivided vacant land that she owned into three lots. She kept one lot for herself, conveyed another to her daughter, and conveyed the remaining lot to her son. Each conveyance was by a deed of gift containing a covenant specifying that only one single-story home could be constructed on the conveyed lot in order to preserve views of a nearby lake from the mother's lot. The deeds were promptly recorded. The mother then constructed a large three-story house on her lot.

Several years later, the son conveyed his vacant lot to a purchaser using a warranty deed that made no mention of the covenant in the previous deed from the mother. The purchaser promptly recorded her deed.

When the purchaser later began constructing a three-story house similar to the mother's, the mother sued to enjoin the construction.

Should the court grant the injunction?

(A) No, because the mother is estopped from enforcing the covenant, since she herself constructed a three-story house.

(B) No, because there was no consideration given for the covenants in the deeds of gift.

(C) Yes, because the burden of the covenant runs with the land even if the purchaser had no actual notice of the covenant.

(D) Yes, because the mother is in privity of contract with the purchaser.

Correct answer: C

Explanation

Answer C is correct. The mother created an equitable servitude when she conveyed the third lot to her son. The burden was on the son's lot (to build only a one-story house), and the benefit was on her retained lot (to preserve her view of the lake). The equitable servitude was in writing and was recorded, providing constructive notice of it; actual notice was not required.

Answer A is incorrect. Even though the burden was on the son's lot (to build only a one-story house) and the benefit was on the mother's retained lot, the benefit does not limit the mother to building only a one-story house. The mother was permitted to build a three-story house on her lot without being estopped from enforcing the covenant against the purchaser of the son's lot.

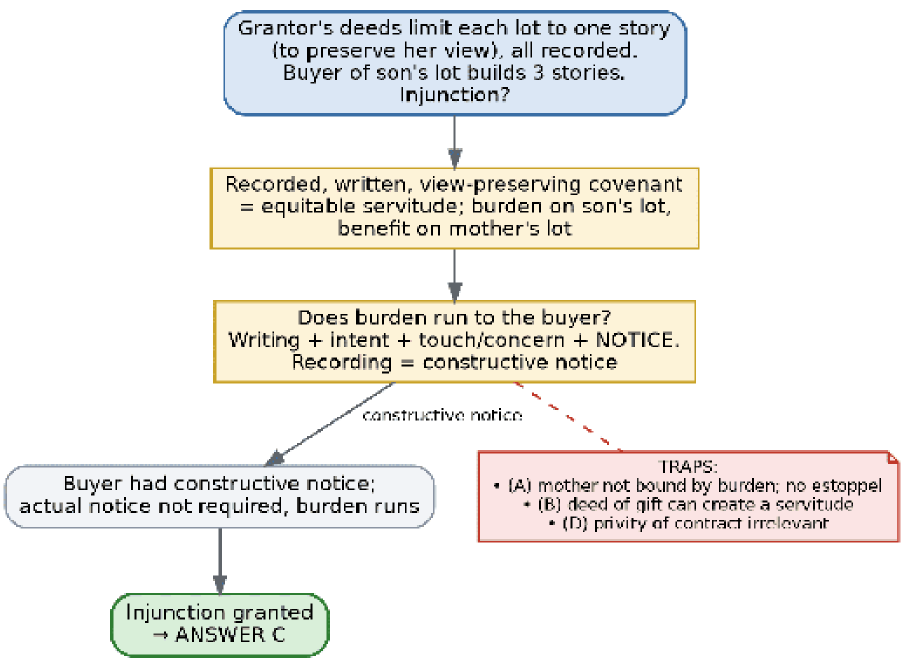
Answer B is incorrect. The son did receive his lot by a deed of gift, and no consideration was given. The mother created an equitable servitude, which may be by deed of gift, when she conveyed the third lot to her son, and that deed was recorded, giving constructive notice of the servitude.

Answer D is incorrect. It is irrelevant whether the mother is in privity of contract with the purchaser. The son had privity of contract with his mother, who created an equitable servitude when she conveyed the third lot to her son.

Exam Tactics & Triggers

- Trigger: a common grantor imposes matching building restrictions on subdivided lots + deeds are RECORDED → equitable servitude enforceable by injunction.
- Rule chain for the BURDEN to run: writing, intent to bind successors, touch and concern, and NOTICE, and recording supplies constructive notice, so actual notice is NOT required.
- Kill the estoppel trap: the benefit lot owner (mother) is not bound by the burden, so building her own three-story house does not estop her from enforcing the one-story limit against the son's lot.
- Distractor traps: (B) "no consideration" fails, a deed of gift can create a servitude; (D) privity of contract with the buyer is irrelevant, servitudes bind successors without it.

Answer Flowchart



Question 14 — Civil Procedure

A plaintiff, a citizen of State A, sued a defendant, a citizen of State B, in a state court in State B. The complaint asserted a $120,000 claim under state law.

Fifty days after service of the complaint, the plaintiff amended the complaint, adding a second defendant, a citizen of State C. The amended complaint asserted the $120,000 state-law claim and a related federal-law claim against both defendants. Twenty-five days after service of the amended complaint, the second defendant removed the action to a federal court in State B with the first defendant's consent.

Was removal proper?

(A) No, because the first defendant was a citizen of the forum state.

(B) No, because the notice of removal was untimely.

(C) Yes, because the amended complaint asserted a claim under federal law.

(D) Yes, because the parties met the requirements for diversity jurisdiction.

Correct answer: C

Explanation

Answer C is correct. An action is removable if it could have been originally filed in federal court. Here, the amended complaint contained a claim that qualified for federal-question jurisdiction. Although there also was diversity jurisdiction, removal was not barred by the forum- defendant rule because that rule bars removal only when diversity is the only basis for federal jurisdiction.

Answer A is incorrect. The forum-defendant rule only operates to bar removal when diversity is the claimed basis for federal jurisdiction. Because in this case a claim under federal law had been asserted, the presence of a defendant from the forum state was not a bar to removal.

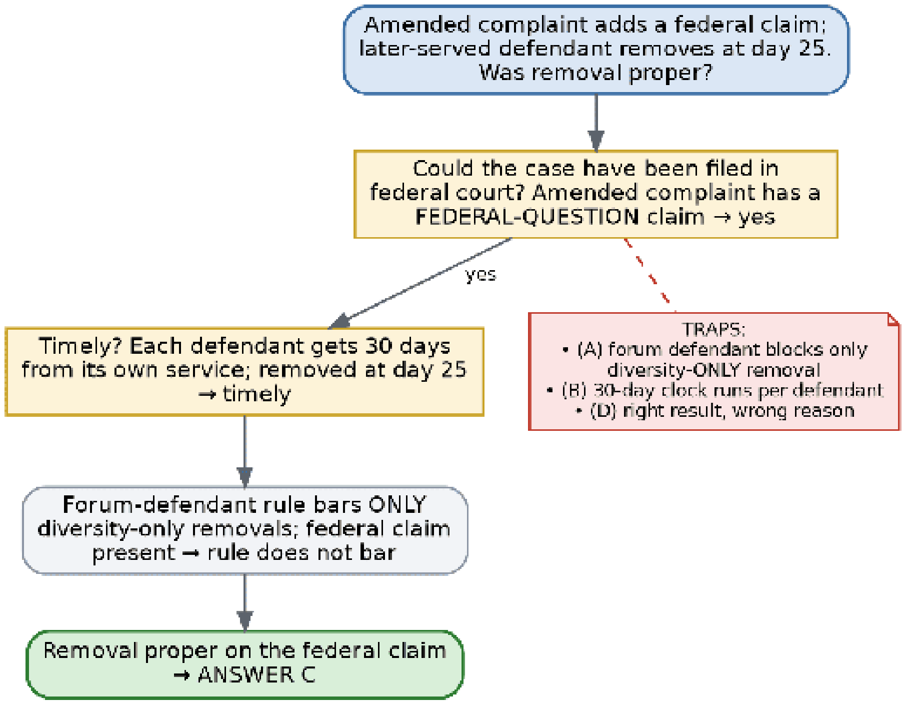
Answer B is incorrect. When defendants are served at different times, each defendant gets 30 days to remove from the time of service. The defendant who removed the case did so within 25 days after being served with the amended complaint. The removal statutes permit an earlier-served defendant to consent to removal by a later-served defendant even when the earlier-served defendant had failed to timely remove based on when it was served.

Answer D is incorrect. Although there also was diversity jurisdiction in this case, the presence of a defendant from the forum state prevented removal based on diversity.

Exam Tactics & Triggers

- Trigger: an amended complaint adds a FEDERAL claim → the case 'could have been filed' in federal court, so it is removable regardless of diversity quirks.
- Forum-defendant rule tell: it bars removal ONLY when diversity is the SOLE basis, so a forum defendant (A) is a red herring once a federal question exists.
- Timing rule to memorize: each defendant gets its own 30 days from ITS service; the later-served defendant removed at day 25, so (B) 'untimely' fails.
- Distractor (D) picks the right result for the wrong reason, diversity removal would be blocked by the forum defendant, so the federal claim is the clean rationale.

Answer Flowchart



Question 15 — Criminal Law & Procedure

A woman agreed to purchase 1,000 tablets of a prescription drug from undercover narcotics agents. The agents told the woman that they would steal the drugs from a pharmacy. The next day, the agents met the woman and told her that they had the tablets in a bag. The bag did in fact contain tablets of the drug, but the agents had not stolen the tablets.

The woman paid the agents. She told them that she did not want to take possession of the bag and that instead they should deliver it to her friend waiting in a car across the street. The agents, after delivering the bag to the woman's friend, arrested both the woman and her friend.

Can the woman properly be convicted of attempting to receive stolen property?

(A) No, because the agents entrapped the woman.

(B) No, because the drugs were not stolen property.

(C) No, because the woman never attempted to possess the drugs.

(D) Yes.

Correct answer: D

Explanation

Answer D is correct. On the facts presented, a jury could rationally find that the woman intended to possess stolen drugs and that she took substantial steps to complete that offense.

Answer A is incorrect because the facts do not suggest that the agents induced the woman to commit an offense that she otherwise would have been unlikely or unwilling to commit.

Answer B is incorrect because a person can be guilty of attempt even though the circumstances are not what the person believes them to be.

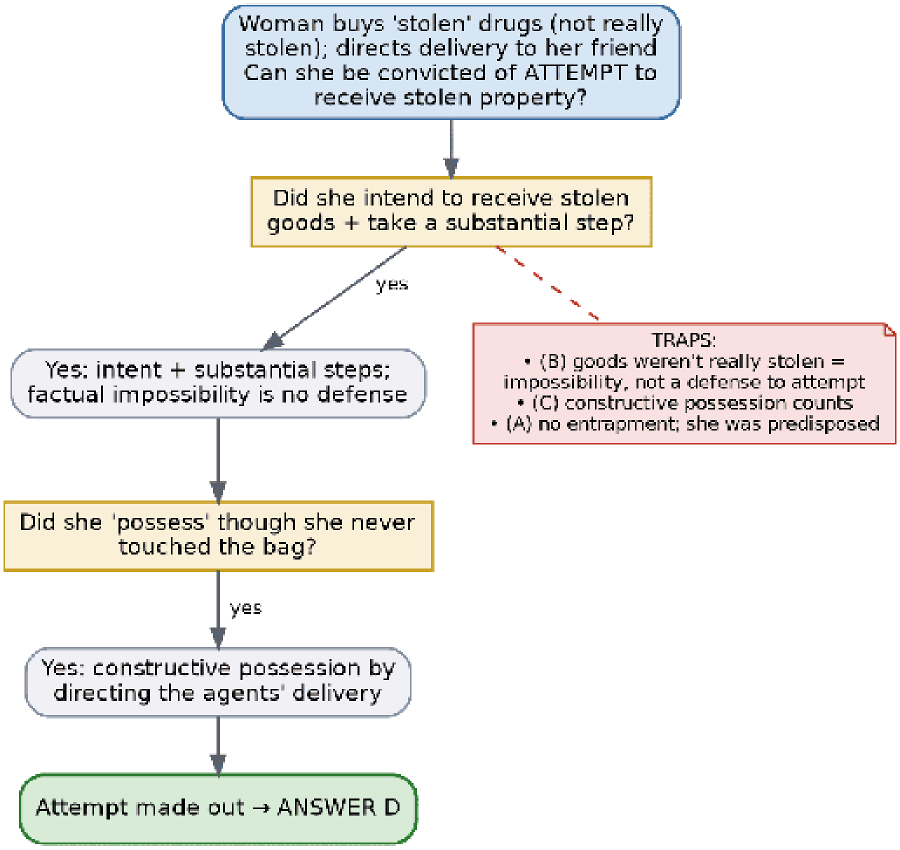
Answer C is incorrect because the woman constructively possessed the drugs by directing or controlling the agents' disposition of them.

Exam Tactics & Triggers

- Trigger: buyer thinks property is stolen but it ISN'T (agents didn't steal it) → factual impossibility is NO defense to ATTEMPT; judge by the facts as the defendant believed them.
- Rule chain: attempt = intent to commit the crime + a substantial step; pair it with constructive possession when the defendant directs where the goods go.

- Constructive possession tell: she never physically touched the bag but ordered delivery to her friend, so she controlled the goods = possession.
- Distractor traps: (B) 'not actually stolen' is the classic impossibility bait, (C) 'never possessed' ignores constructive possession, and (A) entrapment fails because she was already predisposed.

Answer Flowchart



Question 16 — Contracts

A husband and wife and their four children lived on a farm that the wife had inherited from her father. On numerous occasions, the wife's brother had offered to buy the farm from her, but she had always refused.

The husband died suddenly in an accident. The day after the husband's funeral, the brother and his attorney visited the wife at the farm. The brother again told the wife that he wanted to buy the farm and told her that she would need the proceeds of the sale to support her children. The brother also said that his attorney had drafted an offer to purchase the farm and that the wife needed to sign it right away. The attorney confirmed the need to accept quickly. The wife reluctantly signed the offer and sold the farm to the brother for its fair market value.

A few days after the sale, the wife learned that her husband had a life insurance policy that would provide her with a substantial payout and that she had not needed to sell the farm to support her children.

What would be the wife's strongest argument for rescinding the contract?

(A) Duress.

(B) Mistake.

(C) Unconscionability.

(D) Undue influence.

Correct answer: D

Explanation

Answer D is correct. Undue influence, or "over-persuasion," often includes the factors that are found in these facts, such as an unusual time and place for the persuasion, multiple persuaders, and time pressure.

Answer A is incorrect. Duress requires force or an improper threat, and there was neither one in these facts.

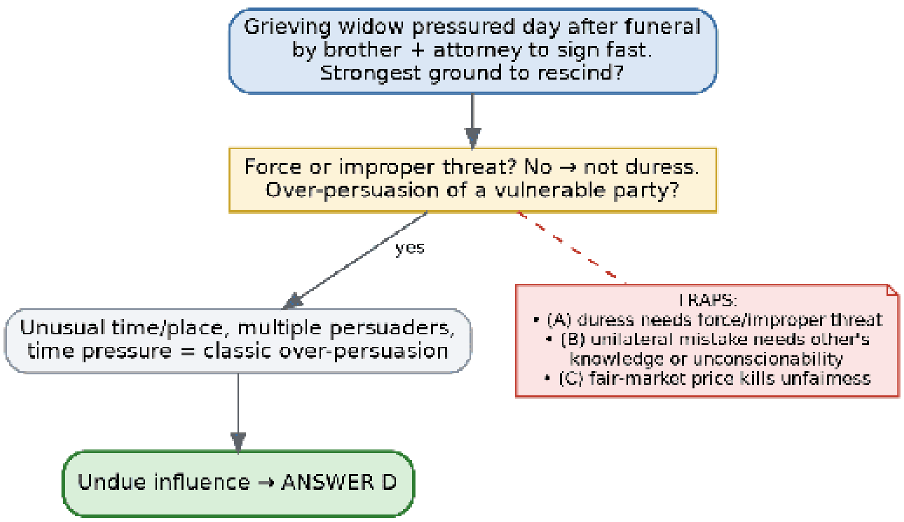
Answer B is incorrect. Any mistake was unilateral, and avoidance of a contract for unilateral mistake requires either that the other party be aware of the mistake or that enforcement would be unconscionable; neither element is present here.

Answer C is incorrect. Unconscionability requires a lack of bargaining power and an unfair term; neither element is present here.

Exam Tactics & Triggers

- Trigger: a vulnerable/grieving party + unusual time and place + multiple persuaders + 'sign right away' pressure → undue influence (over-persuasion).
- Duress tell: duress needs force or an improper THREAT; persuasion and haste alone are not threats, so (A) fails.
- Mistake (B) is unilateral here (the insurance) and needs the other party's knowledge or unconscionability, both absent.
- Unconscionability (C) needs an unfair term plus lack of bargaining power; a fair-market-value price kills it.

Answer Flowchart



Question 17 — Constitutional Law

A federal agency solicited bids to build a bridge on an interstate highway. In evaluating the bids, the agency took into account the cost of the bridge and other specified factors.

A construction company submitted a bid that was lowest in cost, but the agency chose another bidder that offered more advantages on the other factors. The company that submitted the lowest bid sued the federal agency in federal district court. The only relief that the company sought was to enjoin the issuance of a contract to the prevailing bidder. The company was unable to obtain a temporary restraining order or preliminary injunction. The agency awarded the contract to the bidder it had originally selected. Just as the new bridge was completed and opened, the suit came to trial.

How should the court handle this case?

(A) Award the company the amount of its lost profits.

(B) Dismiss the suit, because it is now moot.

(C) Dismiss the suit, because it turns on discretionary decisions of federal officials.

(D) Hear and determine the case on the merits.

Correct answer: B

Explanation

Answer B is correct. The only relief sought by the company was an injunction against awarding the contract to another firm. That relief is no longer available, so the case is moot. See Alvarez v. Smith, 558 U.S. 87 (2009); De Funis v. Odegaard, 416 U.S. 312 (1974).

Answer A is incorrect. The company did not seek damages.

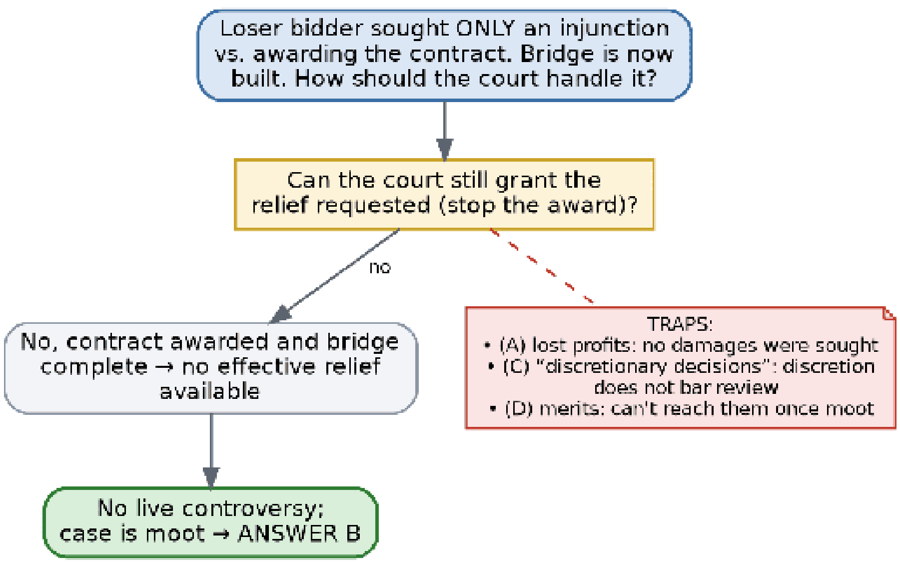
Answer C is incorrect. Discretionary decisions of federal officials are not necessarily immune from review by the courts.

Answer D is incorrect. Because the case is moot, the court cannot consider the merits of the dispute.

Exam Tactics & Triggers

- Trigger: the ONLY relief sought was an injunction, and the event it would stop has already happened (bridge built) → mootness, dismiss.
- Read what relief the plaintiff asked for: no damages claim means you cannot pivot to lost profits, kill answer (A) on that fact alone.
- Vocabulary: a case is moot when the court can no longer grant effective relief; live controversy must exist at every stage.
- Distractor trap (C): “discretionary decisions of federal officials” tempts a political-question/immunity dodge, but discretion does not automatically bar review; the case dies on mootness, not merits.

Answer Flowchart



Question 18 — Evidence

A plaintiff who lives near a factory has sued the company that owns it, alleging that a toxin released from the factory caused the plaintiff to suffer a respiratory disease. The company contends that only a small amount of the toxin was released for a brief period, and that in any event the toxin is not known to cause any respiratory disease. The plaintiff has not disputed the minimal amount and brief length of the exposure.

At trial, the plaintiff seeks to call an expert who will testify that in her opinion the toxin released from the factory caused the plaintiff’s respiratory disease. The company has objected to the admission of the expert’s testimony.

At a pretrial hearing to determine the admissibility of the expert’s testimony, the expert testified that she based her opinion on several studies provided by the plaintiff’s attorney about another substance that is similar to the toxin at issue. These studies show that prolonged exposure to high doses of the similar substance can cause the respiratory disease that the plaintiff suffers from. On cross- examination, the company’s attorney elicits from the expert an admission that she did not consider, in forming her opinion, two recent clinical studies, both of which concluded that there was no connection between the toxin at issue and any respiratory disease.

Should the court allow the plaintiff’s expert to testify at trial?

(A) No, because the expert is relying on studies that she read for purposes of preparing her testimony in this litigation.

(B) No, because the plaintiff has failed to show by a preponderance of the evidence that the expert based her opinion on sufficient facts and data and that she employed a reliable methodology.

(C) Yes, because the company has not met its burden of showing that the expert's opinion is unreliable.

(D) Yes, because the sufficiency of an expert's basis for an opinion and the reliability of an expert's methodology are questions of weight for the jury.

Correct answer: B

Explanation

Answer B is correct. Under FRE 702, an expert's opinion must be based on sufficient facts and data and the expert must employ a reliable methodology. Here, the expert failed to satisfy those standards. She relied on studies showing the effects of prolonged exposure to high doses of a similar toxin, when the plaintiff was exposed briefly to small doses of this particular toxin. The expert also failed to consider recent studies about the toxin in question.

Answer A is incorrect. There is no prohibition on an expert's relying on studies that were read for purposes of testifying in the litigation.

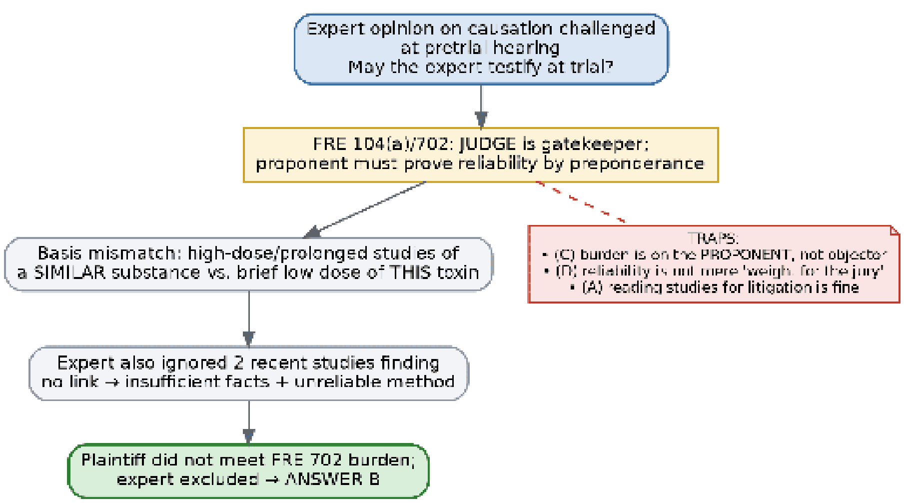
Answer C is incorrect. The burden is on the party offering expert testimony to prove the reliability of that testimony by a preponderance of the evidence.

Answer D is incorrect. Under FRE 104(a), the preliminary questions here—the sufficiency of the expert's basis for her opinion and the reliability of the expert's methodology—are for the court to determine by a preponderance of the evidence.

Exam Tactics & Triggers

- Trigger: expert opinion challenged at a pretrial/Daubert hearing → FRE 702 gatekeeping, the JUDGE decides reliability, not the jury.
- Burden tell: the PROPONENT of the expert must prove sufficient facts/data + reliable methodology by a preponderance; 'the objector failed to show unreliability' flips the burden and is wrong.
- Reliability fails here: expert used high-dose/prolonged-exposure studies of a SIMILAR substance while the plaintiff had brief low-dose exposure to THIS toxin, and ignored contrary studies.
- Distractor traps: (A) reading studies for litigation is not itself disqualifying; (D) 'weight for the jury' is the classic FRE 104(a) trap, admissibility is a court question.

Answer Flowchart



Question 19 — Torts

A homeowner hired a building contractor to rebuild her front porch. The contractor told her that he planned to first rip out the old floorboards and pile them in the front yard. Because she thought that would look unsightly, the homeowner insisted that the contractor loosen each board individually and leave them all in place until he was ready to start replacing them with new boards.

The contractor loosened the boards and left them in place while he went out for lunch. While the contractor was away, a friend of the homeowner's stepped onto the porch to return a borrowed rake. As the friend crossed the porch, the loosened boards shifted and the friend fell, breaking her leg.

If the friend sues to recover for her injury, who is likely to be found liable to her?

(A) Both the contractor and the homeowner, because neither posted a warning that the porch boards had been loosened.

(B) Neither the homeowner nor the contractor, because the friend was a licensee.

(C) The contractor only, because he was an independent contractor and he loosened the boards in a dangerously deceptive fashion without posting a warning.

(D) The homeowner only, because she insisted on having the old boards removed in a dangerously deceptive fashion and posted no warning.

Correct answer: A

Explanation

Answer A is correct. A person who hires an independent contractor ordinarily is not liable for injury to a third party caused by the contractor's negligence. However, there is an exception to this rule when the person directly influences the manner in which the contractor performs the work so as to contribute to the creation of the danger that causes the third party's injury. That exception applies in this case and provides a basis for imposing liability on the homeowner. The contractor, meanwhile, is likely to be held liable under ordinary negligence principles for causing injury to the friend by failing to warn of the hidden danger posed by the seemingly safe porch floor.

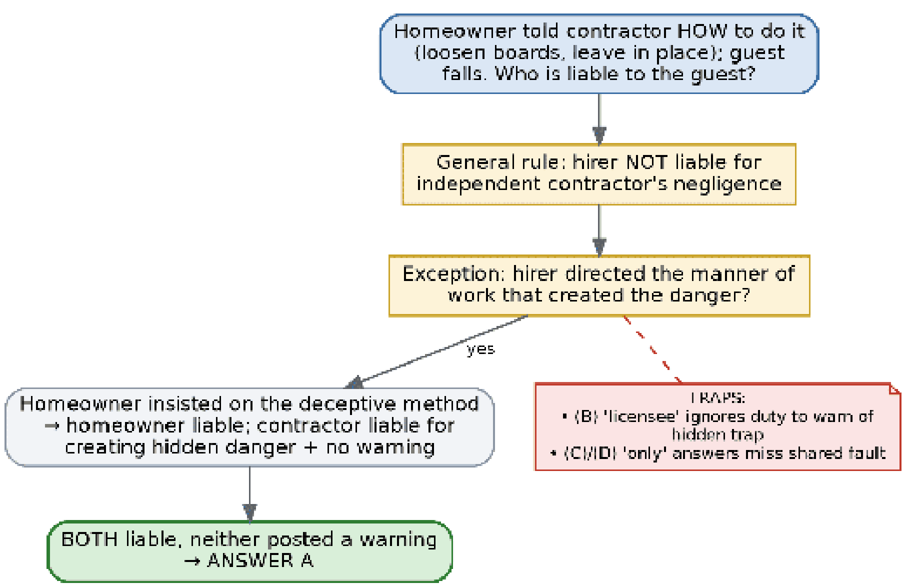
Answers B and C are incorrect for the reasons explained above.

Answer D is incorrect. The explanation for answer A sets out the basis for imposing liability on the homeowner for the friend's injury. It further explains that the contractor, who created the danger and negligently failed to warn of it, may also be found liable. Thus, both the homeowner and the contractor are likely to be held liable to the friend.

Exam Tactics & Triggers

- Trigger: hirer of an independent contractor who DIRECTS the manner of the work (here she insisted on the deceptive loose-boards method) → the non-liability rule flips and the hirer can be liable too.
- Rule chain: employer of an independent contractor is normally NOT liable for the contractor's negligence, EXCEPT where the employer directs/controls the work that creates the danger.
- Distractor trap (B) 'licensee': social guest returning a rake is a licensee, but a hidden, actively-created trap still triggers a duty to warn; the status label is a red herring here.
- Distractor trap: any 'only' answer (C or D) is bait because BOTH parties contributed, contractor created + failed to warn, homeowner directed the manner; the tell is the shared fault.

Answer Flowchart



Question 20 — Real Property

A woman listed her house for sale with a real estate broker. The woman and the broker signed a listing agreement, under which the woman agreed that the broker was to be the woman’s sole agent during the six-month period of the listing agreement. The listing agreement was not recorded.

The list price for the house was $250,000. The broker produced a prospective buyer who offered to purchase the house for $249,000 and who was prequalified to purchase at that price. The woman rejected the offer, giving no reason for her rejection, and the listing agreement expired the next day.

Three months later, the woman sold the house to a corporation for $249,000. The broker never had any contact with the corporation.

Is the broker owed a commission?

(A) No, because the listing agreement was not recorded.

(B) No, because the woman sold to a buyer found without the broker’s help and after the expiration of the listing agreement.

(C) Yes, because the broker produced a ready, willing, and able buyer during the term of the listing agreement, and the buyer’s offer matched the ultimate sale price.

(D) Yes, because the woman gave no reason for rejecting the prospective buyer’s offer during the listing period.

Correct answer: B

Explanation

Answer B is correct. The broker found a prospective buyer who made an offer to purchase the house, but the woman had a right to reject the offer. The fact that the woman later sold the house to a corporation for the same price offered by the prospective buyer is irrelevant because it was after the listing agreement had expired and the broker did not help find the corporation.

Answer A is incorrect. It is not required that a listing agreement be recorded, and listing agreements often are not recorded.

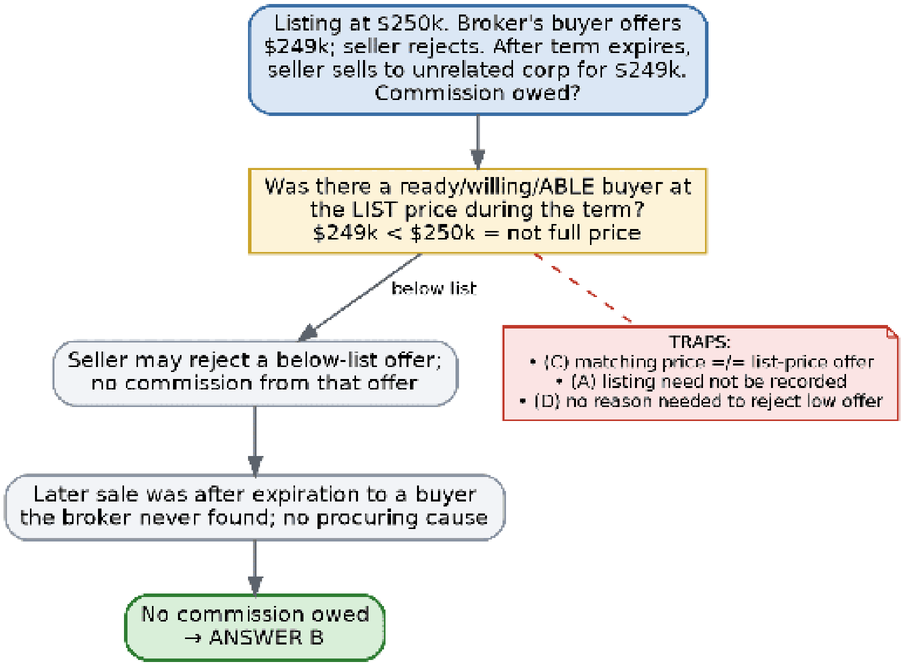
Answer C is incorrect. The broker did not produce a ready, willing, and able buyer during the term of the listing agreement because the offer was for an amount less than the listing price in the listing agreement. The broker was not involved in the sale of the house after the listing agreement had expired.

Answer D is incorrect. The woman was not required to give a reason for rejecting an offer for an amount less than the listing price made during the listing period.

Exam Tactics & Triggers

- Trigger: broker commission question → ask two things, was there a ready/willing/ABLE buyer AT THE LIST PRICE during the term, and did the broker cause the eventual sale?
- Rule chain: an offer BELOW the list price is not a full-price offer, so the seller may reject it and owes no commission; the broker earns a commission only on list-price terms or by procuring the actual buyer.
- Watch the timeline: the later sale was AFTER the listing expired to a buyer the broker never contacted, so no procuring-cause link, no commission.
- Distractor traps: (A) recording is irrelevant to listing agreements; (C) baits with matching prices but ignores that $249k was under the $250k list; (D) seller need not justify rejecting a below-list offer.

Answer Flowchart



Question 21 — Civil Procedure

A plaintiff domiciled in State A brought a federal diversity negligence action in State A against a defendant domiciled in State B. The action was based on an accident that had occurred in State C. The defendant was personally served with process at her office in State B, which is located 50 miles from the State A federal courthouse. The defendant travels to State A once each year for a weeklong vacation but has no other State A contacts.

The defendant answered, denying all allegations. One week later, the defendant filed an amended answer, denying all allegations and including the defense of lack of personal jurisdiction. State A has a long-arm statute that permits personal jurisdiction to the constitutional limit.

The defendant has moved for an order dismissing the action based on the personal-jurisdiction challenge asserted in the amended answer.

Should the court issue the order?

(A) No, because the defendant waived the challenge to personal jurisdiction by failing to include it in her original answer.

(B) No, because the defendant was personally served with process within 100 miles of the federal courthouse where the action is pending.

(C) Yes, because the defendant lacks minimum contacts with State A.

(D) Yes, because service was not delivered to the defendant at her home.

Correct answer: C

Explanation

Answer C is correct. The defendant does not have any contacts with State A that are related to this lawsuit. The defendant is not domiciled in State A and only visits there periodically for reasons unrelated to the plaintiff's claim.

Answer A is incorrect. Federal Rule of Civil Procedure 12(h) permits litigants to raise personal- jurisdiction challenges for the first time in an answer that is amended as a matter of course under Rule 15(a)(1). Thus, the defendant timely asserted the defense of lack of personal jurisdiction by asserting it in her amended answer that was filed one week after the original answer.

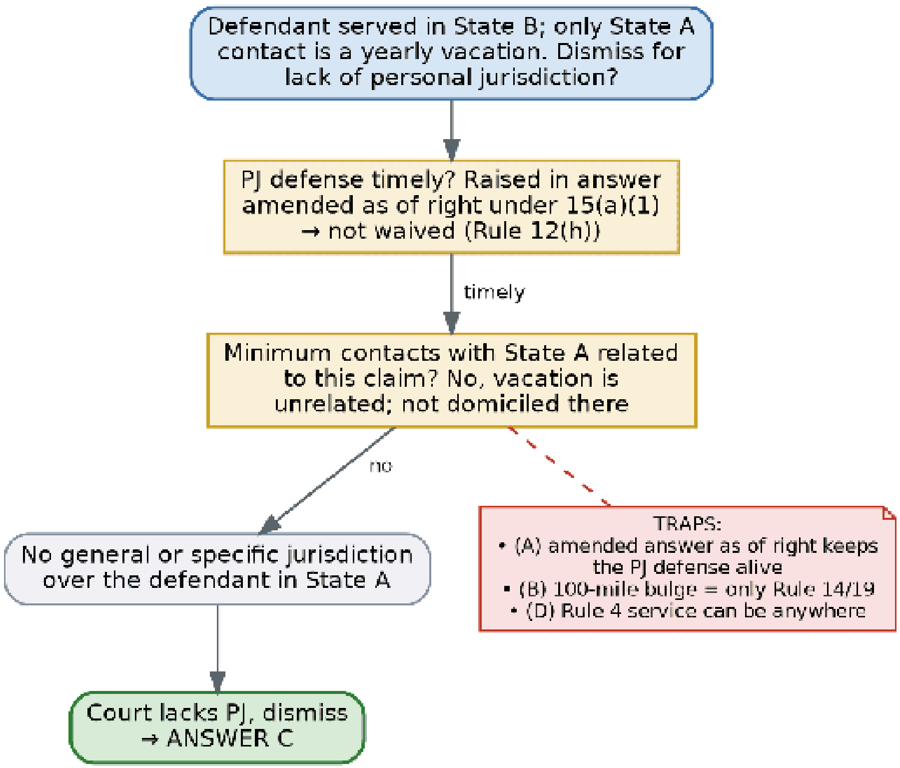
Answer B is incorrect. Service within 100 miles of the courthouse where an action is pending is effective to establish personal jurisdiction only over defendants joined under Rule 14 or Rule 19, not original defendants.

Answer D is incorrect. Personal service under Rule 4 can occur at any location, not just the person's home. State A nonetheless lacks personal jurisdiction because the defendant was not served in State A and lacks minimum contacts with State A, as explained above.

Exam Tactics & Triggers

- Trigger: defendant served OUTSIDE the forum state with only an unrelated annual vacation as contact → no minimum contacts, no personal jurisdiction.
- Rule 12(h)/15(a)(1) tell: raising PJ for the first time in an answer amended as of right is TIMELY, so 'waiver' (A) is a trap.
- Kill the 100-mile bulge (B): it reaches only Rule 14/19 parties (impleader/joinder), never an original defendant, and requires service, here made in State B anyway.
- Ignore where service happened (D): Rule 4 personal service works anywhere; the fatal defect is lack of contacts with the forum, a constitutional (not location) problem.

Answer Flowchart



Question 22 — Contracts

A consulting firm orally agreed to employ an executive as its president for the executive's lifetime. The parties negotiated and have agreed to all aspects of the employment except for the executive's salary, on which they remain several thousand dollars apart. The executive has sent a signed letter to the firm confirming the terms to which the parties have orally agreed while acknowledging that the salary has yet to be set. The firm has not responded to the confirmation letter.

Do the parties now have an enforceable contract?

(A) No, because an agreement for lifetime employment is subject to the statute of frauds, and the confirmation letter fails to satisfy the statute.

(B) No, because the agreement is too indefinite to be enforced.

(C) Yes, because the agreement is not subject to the statute of frauds, and the parties must negotiate the executive's salary in good faith.

(D) Yes, because the confirmation letter satisfies the statute of frauds and evidences the parties' intent to be bound.

Correct answer: B

Explanation

Answer B is correct. The absence of agreement on a material term—the executive's salary—makes the agreement too indefinite to be enforceable.

Answer A is incorrect. A "lifetime" employment agreement is not subject to the statute of frauds, because it could be performed within a year if the employee dies within that time period.

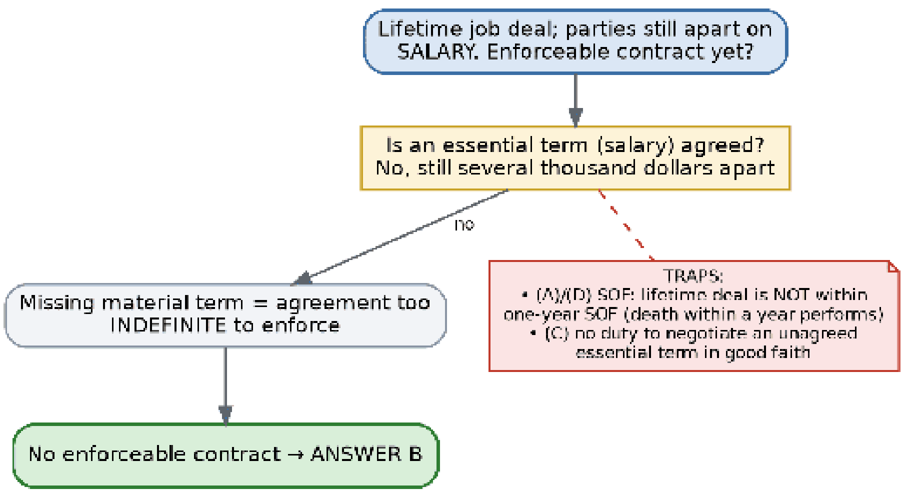
Answer C is incorrect. While it is true that a "lifetime" employment agreement is not subject to the statute of frauds, when the parties fail to expressly agree to an essential term in a contract, there is no requirement that they negotiate for agreement on that term in good faith.

Answer D is incorrect. A "lifetime" employment agreement does not fall within the statute of frauds, so the confirmation letter is not necessary to enforce any contract formed. But the parties do not have a binding contract, because they have not agreed on an essential term—the executive's salary.

Exam Tactics & Triggers

- Trigger: parties 'remain apart' on a material term (salary) → agreement too indefinite to enforce, so no contract yet.
- Lifetime-employment SOF trap: a lifetime deal is NOT within the one-year SOF because it ends if the employee dies within a year, so (A)/(D)'s SOF reasoning is a red herring.
- No duty to negotiate (C): courts do not force parties to bargain in good faith to agree on an essential term they never settled.
- The signed confirmation letter is a decoy; it cannot cure a missing essential term.

Answer Flowchart



Question 23 — Evidence

A woman has sued a man for defamation, alleging that he sent a letter to her employer making false and injurious statements about her. At trial, she proposes to testify about the statements in the letter but does not produce the letter itself or show that it is unavailable.

Should the court allow the woman's testimony about the statements in the letter?

(A) No, because the statements were made out of court and are hearsay not within any exception.

(B) No, because the best evidence rule requires an original or duplicate of the letter to prove the letter's contents.

(C) Yes, because the statements are not being offered for their truth and thus are not hearsay.

(D) Yes, because the statements are those of a party-opponent and therefore are admissible under a hearsay exception.

Correct answer: B

Explanation

Answer B is correct. Under the best evidence rule, the woman cannot testify to the contents of the letter unless the original is lost and did not become so by her in bad faith. See FRE 1004(a). Because a showing of the letter's unavailability has not been made, the woman's testimony is inadmissible.

Answer A is incorrect. The statements in the letter are not being offered for their truth and so are not hearsay. They are rather being offered as false and defamatory statements.

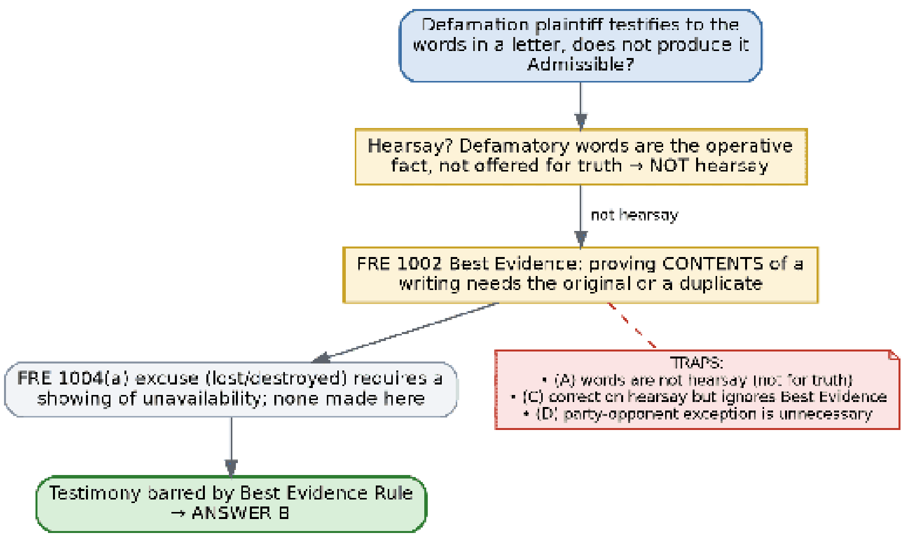
Answer C is incorrect. While it is correct that the statements are not hearsay because they are not being offered for their truth, the woman's testimony is inadmissible under the best evidence rule.

Answer D is incorrect. While the statements in the letter are those of a party-opponent, the woman's testimony is inadmissible under the best evidence rule. Moreover, because the statements are not offered for their truth, they are not hearsay, and one does not need to invoke FRE 801(d)(2)(A).

Exam Tactics & Triggers

- Trigger: a witness testifies to the CONTENTS of a writing (the letter's words) without producing it → Best Evidence Rule, FRE 1002.
- Two-step reflex: first clear hearsay (defamatory words offered as the operative statement, not for truth, so NOT hearsay), then still fail the case on Best Evidence.
- Rule chain: to prove a writing's contents you need the original/duplicate unless it is lost/destroyed not in bad faith (FRE 1004(a)); no showing of unavailability = testimony inadmissible.
- Distractor traps: (A) mislabels the words as hearsay; (C) is right on hearsay but stops too soon; (D) invokes a party-opponent exception that is unneeded and misses the real bar.

Answer Flowchart



Question 24 — Torts

An established cemetery sells "pre-need" funeral plans, which include funeral services, a casket, and a burial plot, in exchange for advance payment. By state statute, any purchaser of a funeral plan of this sort can cancel the purchase at any time, subject to a penalty imposed by the seller of up to 15% of the purchase price.

A former high-level employee of the cemetery, who knew of the limitations specified in the state statute, recently built a new cemetery near the established cemetery. To promote the new cemetery, the former employee sent postcards to local residents asserting that anyone who had already purchased a pre-need funeral plan had "an unlimited right to cancel that plan at any time, for any reason, without penalty." The postcard also offered a $100 rebate on a pre-need funeral plan with the new cemetery to anyone who canceled an existing plan elsewhere.

Shortly after the promotion began, several purchasers of funeral plans with the established cemetery canceled their plans and purchased plans from the new cemetery. When the established cemetery withheld penalties from the refund amounts, the purchasers objected and threatened to notify the state consumer protection bureau.

The established cemetery has sued the former employee for tortious interference with contract. The former employee has moved for summary judgment, based on the foregoing facts.

Should the court grant the motion?

(A) No, because a reasonable jury could conclude that the former employee bribed purchasers in order to take business from the established cemetery.

(B) No, because the former employee could be found by a jury to have intentionally and improperly interfered with the established cemetery's contracts.

(C) Yes, because the established cemetery's contracts with purchasers were terminable at the option of the purchasers.

(D) Yes, because the former employee was simply competing with the established cemetery.

Correct answer: B

Explanation

Answer B is correct. A jury could find that the former employee intentionally and improperly interfered with the established cemetery's contracts by intentionally misrepresenting to the established cemetery's customers that they could cancel their existing contracts without penalty.

Answer A is incorrect. Providing a monetary incentive to induce a person to breach a contract is not by itself sufficient to establish tortious interference with contract.

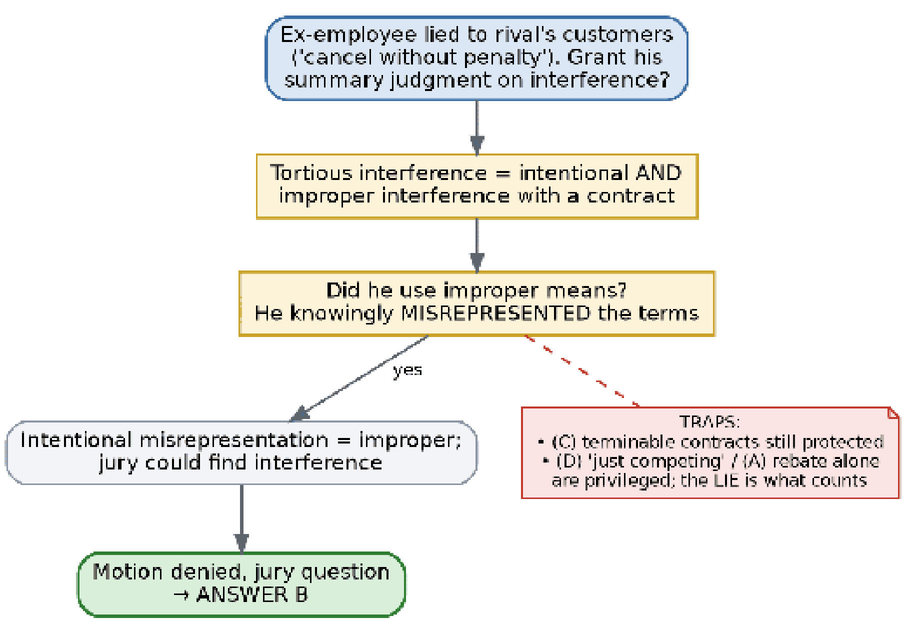
Answer C is incorrect. The customers' ability to terminate their contracts does not mean that the former employee could improperly interfere with those contracts.

Answer D is incorrect. The former employee's actions in sending the established cemetery's customers misinformation about their contracts was not permissible competition but rather improper interference with their contractual relationships with the established cemetery.

Exam Tactics & Triggers

- Trigger: a competitor spreads a KNOWING MISREPRESENTATION to lure away another's customers → 'improper' interference, so tortious interference survives summary judgment.
- Rule chain: tortious interference needs intentional AND improper interference; a fraudulent lie about the contract terms is the classic 'improper' means.
- Distractor trap (C): 'terminable at will/at option' does NOT license improper interference; cancelable contracts are still protected against fraud.
- Distractor trap (D) 'just competing' and (A) 'bribed': lawful competition and a mere monetary incentive alone are privileged; the deciding fact is the intentional LIE, not the rebate.

Answer Flowchart



Question 25 — Constitutional Law

A federal statute bans trade with any foreign country if the United States does not recognize the government of that country. For many years, the United States refused to recognize a particular country's government because it deemed the government repressive. The President recently extended diplomatic recognition to the country, but Congress passed a second statute withdrawing that recognition.

A US company has sued the appropriate federal agency, seeking to enjoin enforcement of the second statute. The government has moved to dismiss the action on the ground that it involves a nonjusticiable political question.

Should the court grant the motion?

(A) No, because the action concerns the validity of a federal statute.

(B) No, because the political question doctrine applies only to litigation between government entities.

(C) Yes, because the action involves sensitive issues of foreign affairs.

(D) Yes, because there is no judicially manageable standard governing diplomatic recognition.

Correct answer: A

Explanation

Answer A is correct. Zivotofsky v. Clinton, 566 U.S. 189 (2012), held that interbranch disputes involving foreign affairs are not subject to the political question doctrine when they concern the validity of a federal statute.

Answer B is incorrect. Application of the political question doctrine is based on the issue involved in the litigation, not the identities of the parties.

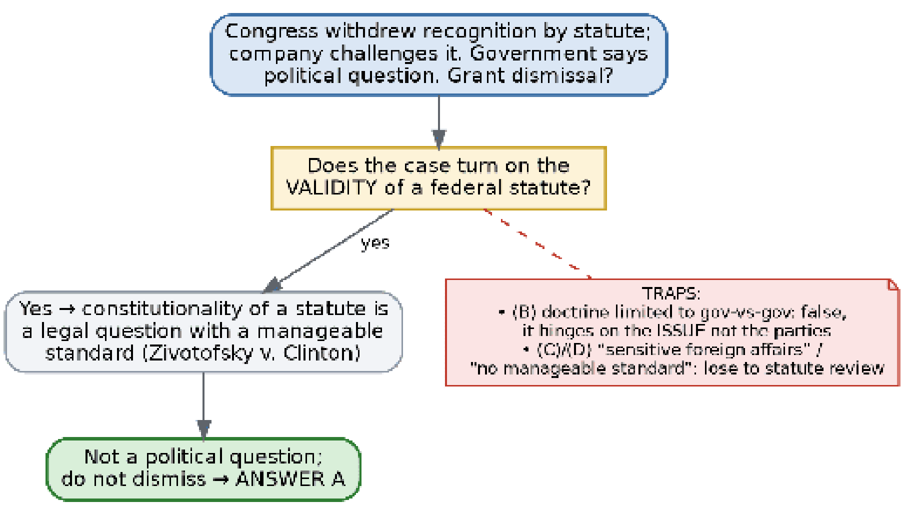
Answer C is incorrect. Zivotofsky made it clear that the Court may decide cases involving sensitive issues of foreign affairs when the issue is the constitutionality of a statute.

Answer D is incorrect. There is a judicially manageable standard in this case because the issue is the constitutionality of the second statute passed by Congress, a purely legal question.

Exam Tactics & Triggers

- Trigger: government cries "political question" but the case asks whether a STATUTE is valid → Zivotofsky says that is a justiciable legal question, not a political question.
- Rule chain: challenge to constitutionality of a federal statute = judicially manageable standard = court decides, even in foreign affairs.
- Distractor trap (B): "only between government entities" is a made-up limit; the doctrine turns on the ISSUE, not the parties.
- Distractor traps (C)/(D): "sensitive foreign affairs" and "no manageable standard" are the classic political-question buzzwords, but they lose once the real issue is a statute's validity.

Answer Flowchart



Question 26 — Criminal Law & Procedure

A woman was the trustee of a trust fund. The corpus of the fund was invested in certificates of deposit and high-grade bonds. When one of the certificates of deposit, in the amount of $100,000, matured, the woman cashed the certificate and invested the proceeds under her own name in a speculative stock. In three months, the value of the stock had soared, and the woman sold the stock for $200,000. With the proceeds of the sale, the woman purchased a $120,000 certificate of deposit in the name of the trust. She gave the remaining $80,000 to charity.

The woman is charged with embezzlement. Under the applicable statute, the degree of the crime (and, hence, the severity of the authorized punishment) depends upon the value of the property embezzled.

Of what crime, if any, could the woman properly be convicted?

(A) Embezzlement of $200,000.

(B) Embezzlement of $100,000.

(C) Embezzlement of $80,000.

(D) No embezzlement crime.

Correct answer: B

Explanation

Answer B is correct. This problem poses two related questions: (1) Did the woman commit an embezzlement; and (2) if so, what amount did she unlawfully take? The answer to the first question is yes. As a trustee, the woman had lawful possession of property that belonged to the trust fund. Instead of honoring her fiduciary obligation to the fund, the woman converted the property to her own use. It does not matter that her motives were arguably charitable. The answer to the second question, how much the woman took, turns on the value of the property at the time of the commission of the offense. Answer B is correct because the certificate of deposit was worth $100,000 when the woman converted it to her own use.

Answer A is incorrect because the defendant's culpability is measured by the value of the property when the crime was committed, not by its subsequent value. This remains true regardless of whether the embezzled funds are depleted or increased.

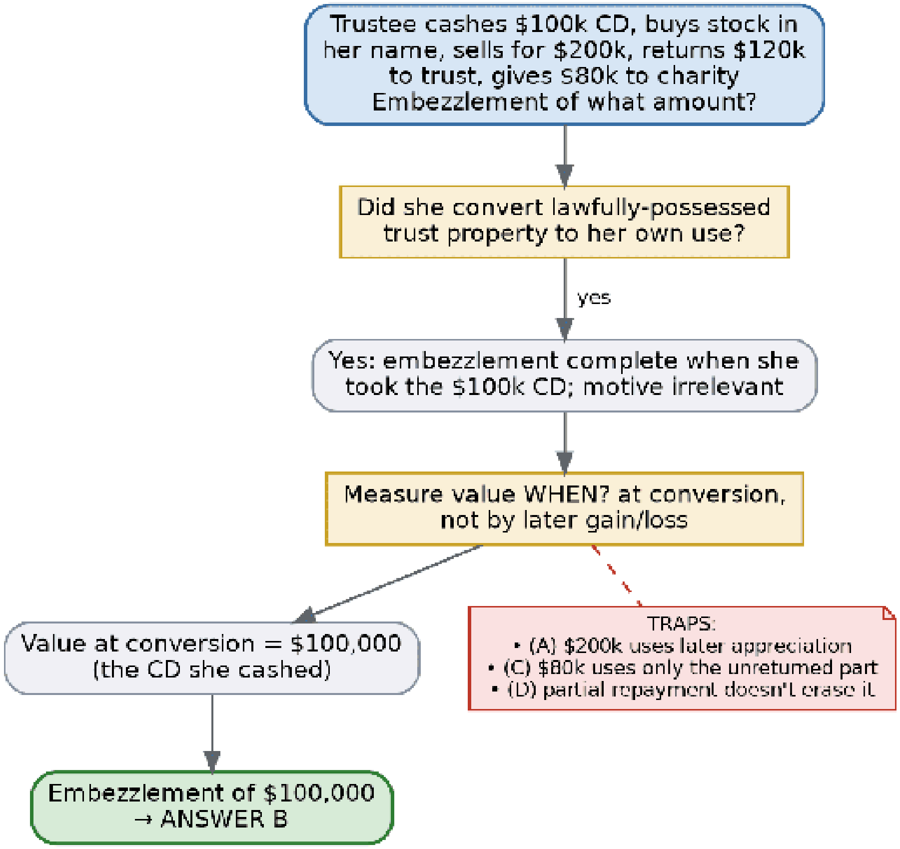
Answer C is incorrect. Even though the trust fund ultimately received all but $80,000 of the ultimate stock sale, that is not the amount that the woman embezzled.

Answer D is incorrect because the woman did embezzle $100,000; see the explanation for answer B.

Exam Tactics & Triggers

- Trigger: a trustee (lawful possession) converts trust property to personal use → embezzlement; the value question is fixed at the MOMENT of conversion.
- Rule chain: embezzlement = fraudulent conversion of property lawfully possessed; measure the amount at the time of the taking, not later gains or losses.
- Charitable-motive trap: giving the profit away or paying most of it back does not undo the conversion; good motives are irrelevant to the crime.
- Distractor traps: (A) $200,000 uses later appreciation, (C) $80,000 uses what was never repaid, (D) 'no crime' ignores the completed conversion; the tell is 'value at time of offense' = the $100,000 CD.

Answer Flowchart



Question 27 — Contracts

A plaintiff sued a defendant for breach of an implied-in-fact contract. The case went to trial, and after all the evidence was presented, the court issued the following instruction to the jury: “Conduct will create an implied-in-fact contract if the conduct of both parties is intentional, and if each knows, or has reason to know, that the other party will interpret the conduct as an agreement to enter into a contract.”

Was the instruction correct?

(A) No, because an implied-in-fact contract requires some type of writing signed by the party to be charged.

(B) No, because an implied-in-fact contract requires that the party to be charged have actual, not merely constructive, knowledge of an agreement between the parties.

(C) Yes, because an implied-in-fact contract can be established by conduct alone.

(D) Yes, because an implied-in-fact contract does not require proof of an agreement between the parties.

Correct answer: C

Explanation

Answer C is correct. According to the Restatement (Second) of Contracts § 4, an implied-in-fact contract is a contract where the mutual promises are inferred from conduct.

Answer A is incorrect. A promise in an implied-in-fact contract does not have to be evidenced by a signed writing.

Answer B is incorrect. Whether parties have entered into an agreement is determined by an objective standard and not by the subjective intent of the parties.

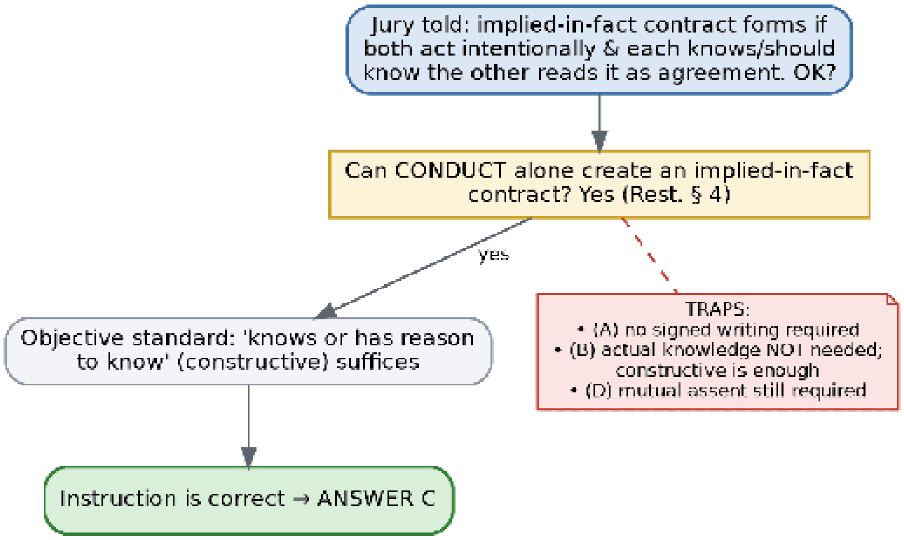
Answer D is incorrect. As with any contract, an implied-in-fact contract requires mutual assent.

Exam Tactics & Triggers

- Trigger: implied-in-fact contract = mutual promises inferred from CONDUCT (Restatement § 4); conduct alone can establish it.
- Objective-standard tell: 'knows or has reason to know' means constructive knowledge suffices, so (B)'s 'actual

knowledge' requirement is wrong.
- No writing required (A): implied-in-fact is not a statute-of-frauds or signed-writing rule.
- (D) trap: it reaches 'yes' but for a false reason, an implied-in-fact contract still requires mutual assent/agreement.

Answer Flowchart



Question 28 — Civil Procedure

A plaintiff filed a federal diversity action against a corporate defendant and the same day mailed to the defendant's managing agent a notice of the complaint and two copies of a request to waive service. Sixty-one days later, after the defendant had failed to return the signed waiver request, answer, or otherwise plead, the plaintiff moved for entry of default and a default judgment. The plaintiff did not file proof of service.

Assume that any relevant state service law is the same as federal law.

Is the court likely to grant the motion?

(A) No, because the plaintiff failed to effect proper service of process.

(B) No, because the plaintiff failed to file proof of service.

(C) Yes, because the defendant should have returned the waiver request within 60 days of service.

(D) Yes, because the plaintiff mailed notice of the complaint as permitted by the Federal Rules of Civil Procedure.

Correct answer: A

Explanation

Answer A is correct. Although a request for waiver of service was sent, the defendant was not obligated to and did not respond to the request. Without a waiver of formal service, the plaintiff must formally serve the defendant before the defendant would have an obligation to respond. In the absence of formal service, an entry of default would be inappropriate.

Answer B is incorrect. Per Rule 4(l), the failure to file proof of service does not affect the validity of service. The problem here is that there has been no service of process and the defendant has not waived formal service.

Answer C is incorrect. Rule 4(d) encourages but does not require defendants to waive formal service by returning a signed waiver request. Thus, a failure to return the waiver simply obliges the plaintiff to proceed with formal service; it does not subject the defendant to the possibility of default.

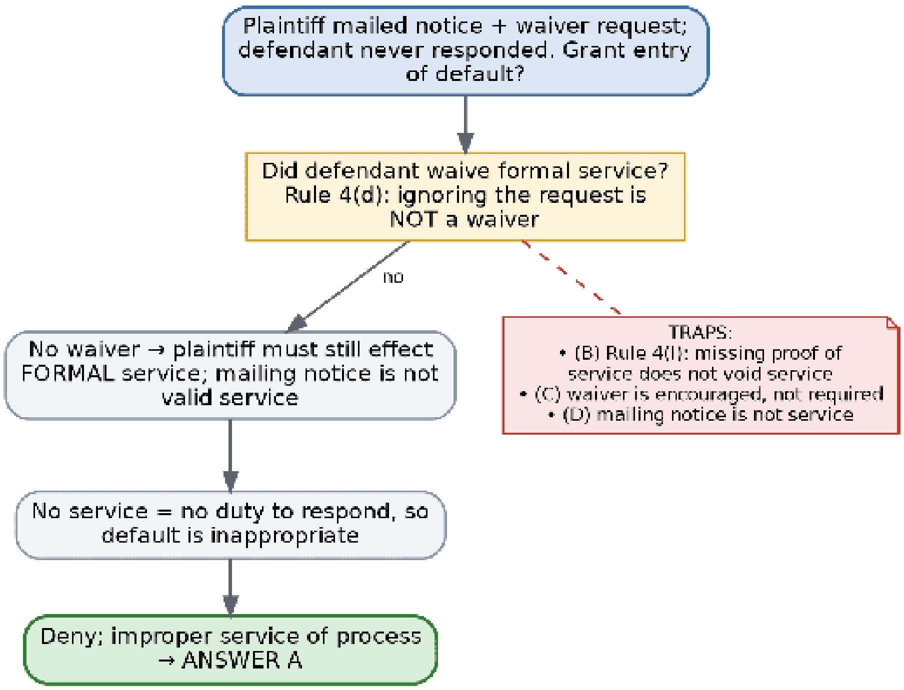
Answer D is incorrect. Mailing notice of the complaint does not qualify as a permissible form of service under the Federal Rules of Civil Procedure. Thus, no formal service of process has been effected in this case.

Exam Tactics & Triggers

- Trigger: plaintiff MAILS notice plus a waiver-of-service request, defendant ignores it → no formal service yet, so no default.

- Rule 4(d) chain: a waiver request is only an invitation; failing to return it does NOT waive service, it just forces the plaintiff to serve formally.
- Kill (B) with Rule 4(l): failure to file proof of service does not affect validity, the real defect is that service never happened at all.
- Distractor (D) baits you into thinking mailing notice = service; it is not a permissible method under the Rules absent a returned waiver.

Answer Flowchart



Question 29 — Constitutional Law

A weed often found growing in vacant lots contains a stimulant that can be extracted by boiling the weed in water. Someone drinking the resulting “tea” can remain awake for long periods of time. However, drinking the tea can also cause paralysis and even death. Because the weed is so readily available, there is no commercial market for it. Congress has enacted a statute that makes possession of the tea a misdemeanor. The statute has no other provisions and is not part of a broader federal statutory scheme.

Is the statute constitutional?

(A) No, because Congress can regulate only commercial transactions involving drugs.

(B) No, because possession of the tea is a noncommercial activity with no link to interstate commerce.

(C) Yes, because boiling water generally involves the use of stoves and fuels that have moved in interstate commerce.

(D) Yes, because, in the aggregate, the deaths and cases of paralysis caused by the stimulant have a significant economic impact.

Correct answer: B

Explanation

Answer B is correct. United States v. Lopez, 514 U.S. 549 (1995), holds that Congress does not have the power under the Commerce Clause to regulate a noncommercial activity with no link to interstate commerce. Unlike in Gonzales v. Raich, 545 U.S. 1 (2005), the facts here do not involve a comprehensive regulation of commerce that incidentally covers some intrastate activities.

Answer A is incorrect. Congress can use its commerce power to regulate economic activity, such as manufacturing and production of articles for interstate commerce, that is not itself a commercial transaction. In addition, Gonzales v. Raich holds that Congress can incidentally regulate noncommercial activities in order to effectuate regulations of related commercial activities.

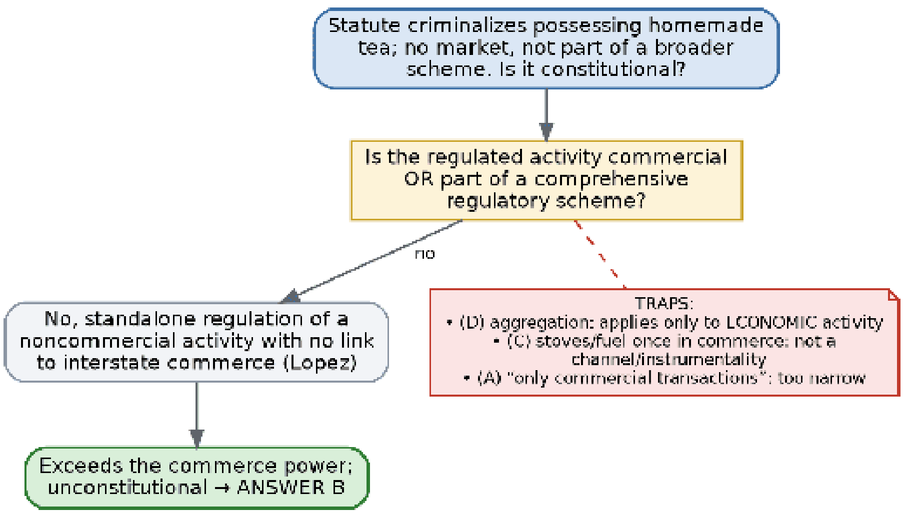
Answer C is incorrect. While stoves and fuels may have previously moved in interstate commerce, they are not themselves channels or instrumentalities of commerce.

Answer D is incorrect. United States v. Lopez holds that the aggregate effects test applies only to regulations of economic activity.

Exam Tactics & Triggers

- Trigger: possession of a NONcommercial item + “no commercial market” + statute is standalone (not part of a broader scheme) → Lopez, outside the Commerce Clause.
- Distinguish Lopez from Raich: Raich saved intrastate activity only because it was swept into a COMPREHENSIVE regulatory scheme; a lone possession crime has no such hook.
- Distractor trap (D): aggregation/“substantial effects” only works for ECONOMIC activity, so applying it to noncommercial possession is the bait.
- Distractor trap (A): “only commercial transactions” is too narrow; Congress can reach production/manufacturing, so that overbroad statement kills the answer even though the result (No) is right.

Answer Flowchart



Question 30 — Criminal Law & Procedure

A woman became extremely intoxicated after a night of heavy drinking at a party. After the party was over, she got into her car and sped off. While driving 70 mph in a 30-mph zone, she struck and killed a pedestrian. Blood tests revealed that her blood alcohol content had been more than twice the legal limit at the time of the accident.

The woman was tried for murder. At the close of the evidence, the court refused to dismiss the murder charge but offered to give a lesser-offense instruction.

What lesser-offense instruction should the defense attorney request?

(A) Depraved-heart homicide.

(B) Involuntary manslaughter.

(C) Voluntary intoxication.

(D) Voluntary manslaughter.

Correct answer: B

Explanation

Answer B is correct. Defense counsel should request an instruction on the lesser included offense of involuntary manslaughter. On the facts described, a jury could potentially conclude that the woman did not act with the sort of aggravated recklessness necessary to constitute depraved-heart homicide or extreme-indifference murder, even though she was intoxicated and driving in an unlawful manner.

Answer A is incorrect because depraved-heart homicide is a form of murder. Accordingly, this instruction would not constitute a lesser-offense instruction.

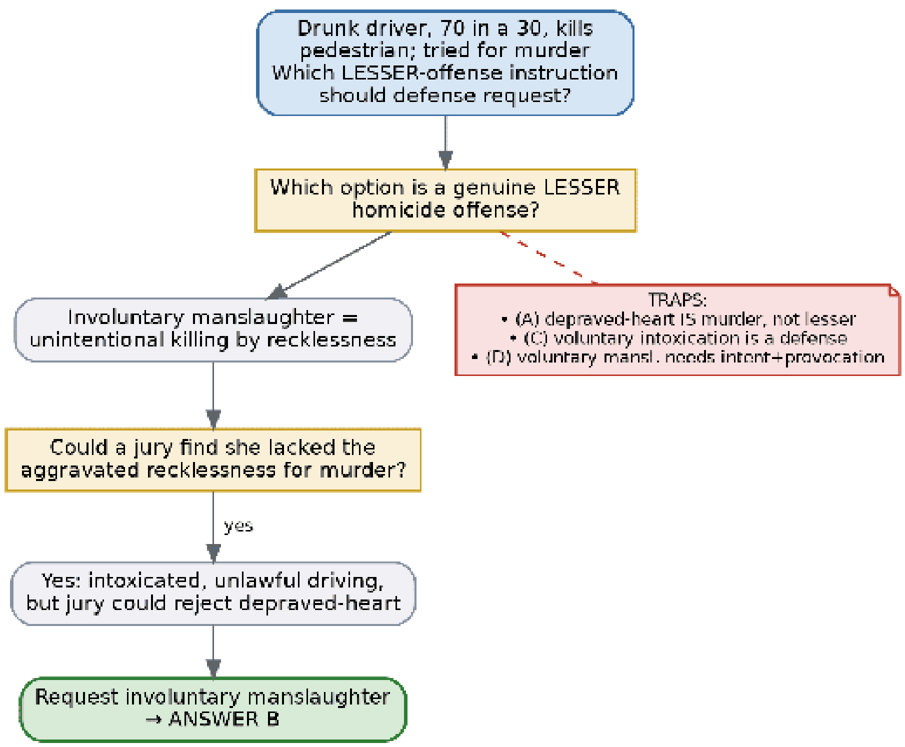
Answer C is incorrect. Voluntary intoxication is generally a theory of defense and not a crime in and of itself. Even if understood as the offense of “public intoxication,” this offense would be a poor choice because public intoxication is not a lesser included offense of murder.

Answer D is incorrect. The facts do not suggest that the woman intended to kill the pedestrian. Neither do they suggest any sort of provocation.

Exam Tactics & Triggers

- Trigger: 'what LESSER-offense instruction' in a drunk-driving death → the answer must be an actual lesser HOMICIDE crime, so screen each option for that first.
- Rule chain: depraved-heart = a form of MURDER, not lesser; involuntary manslaughter = unintentional killing by recklessness/criminal negligence, the true lesser included.
- Screening tell: eliminate options that aren't lesser crimes; (A) is murder-grade and (C) 'voluntary intoxication' is a defense/non-homicide, so both fail the 'lesser homicide' filter.
- Distractor trap: (D) voluntary manslaughter needs intent-to-kill plus provocation, neither present, so it's the wrong tier.

Answer Flowchart



Question 31 — Evidence

A plaintiff has sued a defendant for negligently causing her injury. The plaintiff alleges that the defendant, who was standing on a scaffold while painting a building, dropped a paint can that struck the plaintiff on the head while she was walking under the scaffold.

At trial, to prove her injury, the plaintiff offers a photograph for admission into evidence. A witness will testify that he took the photograph with his cell phone and that the photograph accurately portrays what he saw. The photograph shows the plaintiff lying on the sidewalk, bleeding from a gash on her head, with a spilled paint can nearby.

Is the photograph admissible?

(A) No, because the unfair prejudicial effect of the photograph outweighs its probative value.

(B) No, because there is no testimony establishing that cell-phone technology produces accurate photographs.

(C) Yes, because the photograph will be authenticated by the witness's testimony.

(D) Yes, because the photograph is self-authenticating.

Correct answer: C

Explanation

Answer C is correct. The witness's testimony is sufficient to authenticate the photograph under FRE 901. It is testimony of a witness with knowledge that the photograph is what it is claimed to be.

Answer A is incorrect. The answer misstates the standard under FRE 403. For the photograph to be inadmissible under that rule, the unfair prejudice from the photograph must substantially outweigh its probative value. In any event, here the probative value of the photograph is considerable (it shows the plaintiff's injury and supports the claim that the paint can dropped by the defendant caused it), and the prejudicial effect (the potential to inflame or distract the jury) is low.

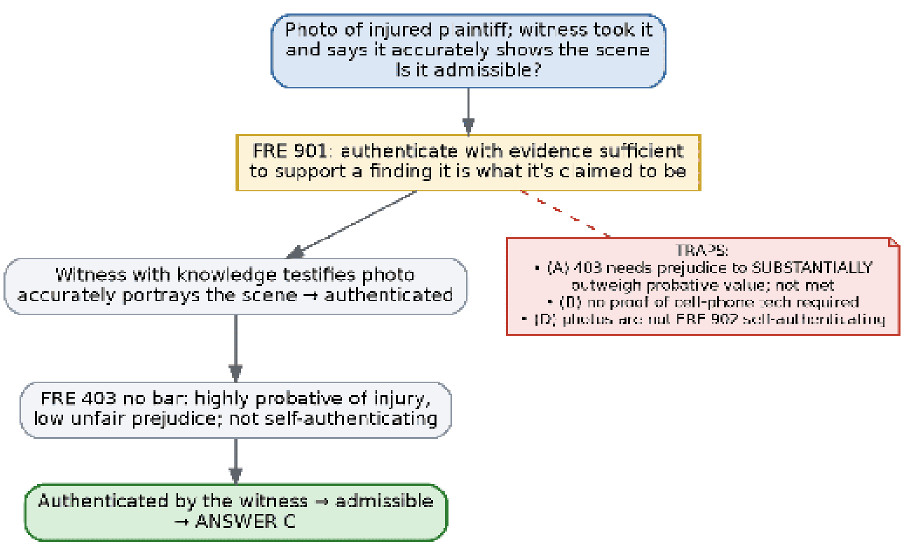
Answer B is incorrect. FRE 901 requires proof that the photograph "is what the proponent claims it is." The witness's proffered testimony satisfies that requirement: he will testify that the photograph accurately portrays the scene as he saw it. Proof that cell-phone technology produces accurate photographs is unnecessary, given the witness's testimony.

Answer D is incorrect. The photograph is not self-authenticating; it falls under none of the categories of self-authenticating documents listed in FRE 902. A witness is required to authenticate it, in this case the witness who took the photograph.

Exam Tactics & Triggers

- Trigger: a photograph offered with a witness who says 'I took it and it accurately shows what I saw' → FRE 901 authentication is satisfied, easy yes.
- Rule chain: authentication = evidence sufficient to support a finding the item is what it's claimed to be; a witness with knowledge does it, no expert on the camera needed.
- Kill the FRE 403 distractor: the standard is unfair prejudice SUBSTANTIALLY outweighing probative value; a photo of the actual injury is highly probative and not unfairly inflammatory.
- Distractor traps: (B) demands needless proof that cell-phone tech works; (D) 'self-authenticating' misuses FRE 902, a photo fits none of those categories.

Answer Flowchart



Question 32 — Torts

A landowner hired a tree specialist to cut down four trees, which he pointed out to the specialist before the specialist began work. Although the landowner reasonably believed that all the trees were on his property, three of the trees that were cut down were in fact on a neighbor's property.

Who, if anyone, is liable to the landowner's neighbor for conversion?

(A) Both the tree specialist and the landowner.

(B) Neither the tree specialist nor the landowner.

(C) The landowner only.

(D) The tree specialist only.

Correct answer: A

Explanation

Answer A is correct. Conversion occurs when an actor intentionally interacts with an item that is the personal property of another so as to permanently deprive the other of possession. This is true regardless of whether the actor knows that the item is in another's possession. Thus, the landowner's reasonable belief that the trees were his does not defeat liability for either the landowner or the tree specialist.

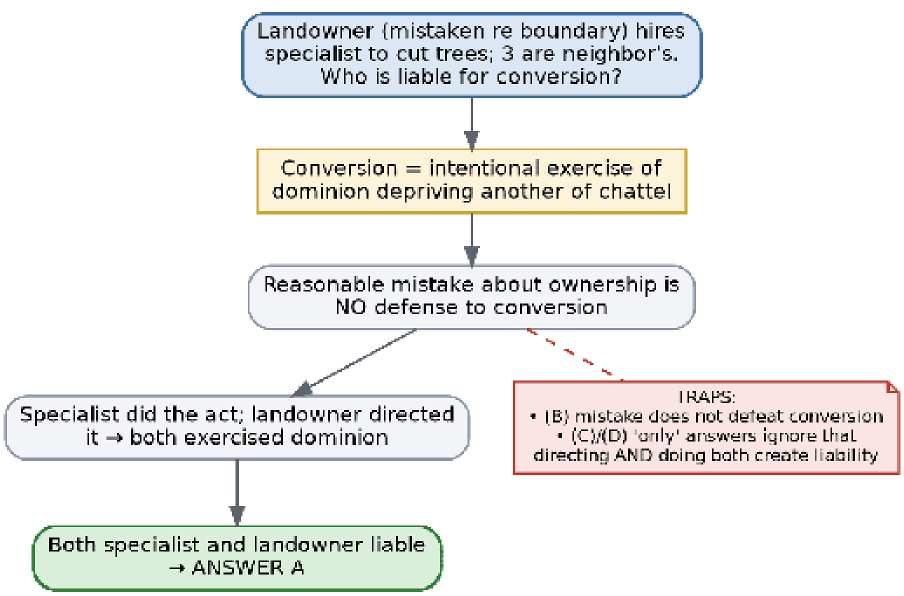
Answers B and C are both incorrect. The tree specialist's action meets the definition of conversion regardless of the fact that he was directed to take that action by the landowner.

Answer D is incorrect. Because the tree specialist was hired by the landowner and cut down the trees at the direction of the landowner, the landowner (along with the tree specialist) is subject to liability for conversion.

Exam Tactics & Triggers

- Trigger: someone intentionally destroys/carries off another's chattel (cutting the neighbor's trees) → conversion, and a REASONABLE MISTAKE about ownership is no defense.
- Rule chain to lock in: conversion is intentional exercise of dominion depriving another of the property; intent to affect the item is enough, no need to know it belongs to another.
- Distractor trap (D 'specialist only' / C 'landowner only'): the hirer who directs the act AND the actor who does it are BOTH liable; 'I was just following directions' does not excuse the specialist.
- Distractor trap (B 'neither'): baits students who think good-faith mistake defeats conversion; the tell is that conversion is a strict-intent tort, mistake is irrelevant.

Answer Flowchart



Question 33 — Real Property

A woman executed and delivered to her unmarried nephew a warranty deed conveying her home to him "on the date of his marriage." The nephew promptly recorded the deed.

Several years later, when the nephew was still unmarried, the woman died testate, leaving her entire estate to her sister.

The executor of the woman's estate has asserted that the nephew has no interest in the home.

Is the executor correct?

(A) No, because the nephew recorded the deed before the woman's death.

(B) No, because the woman's death did not affect the nephew's future interest in the home.

(C) Yes, because a deed that does not transfer immediate possession to a grantee is rendered void by the grantor's death.

(D) Yes, because the nephew did not marry before the woman's death.

Correct answer: B

Explanation

Answer B is correct because the woman conveyed a springing executory interest to the nephew while retaining a fee simple subject to executory limitation. The woman's death did not affect the nephew's springing executory interest, and her estate now holds the fee simple subject to executory limitation. When and if the nephew marries, his executory interest will vest in fee simple. If the nephew dies unmarried, the sister's interest will swell into a fee simple.

Answer A is incorrect. The fact that the nephew recorded the deed provided constructive notice to the world of his interest but did not affect his interest. The nephew received a springing executory interest and the woman held a fee simple subject to executory limitation.

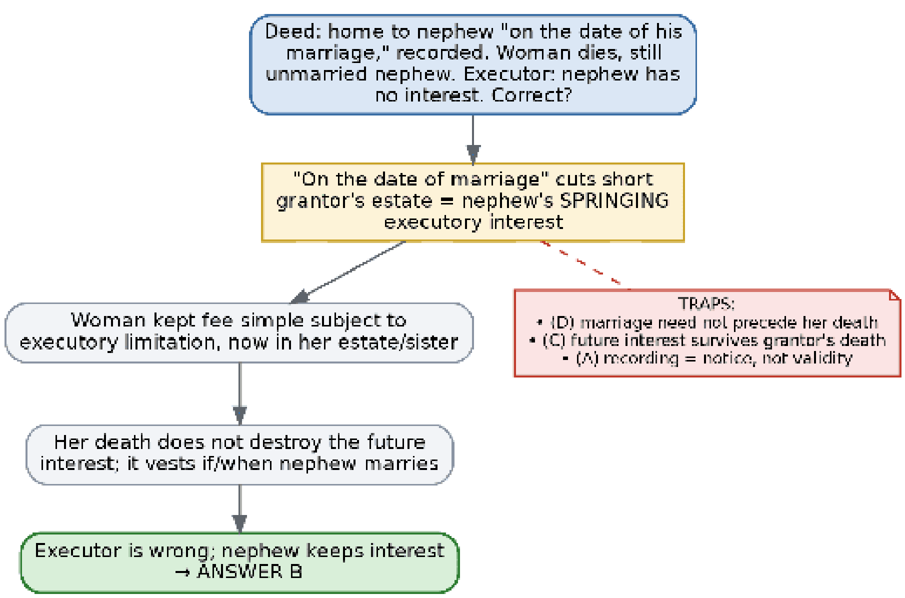
Answer C is incorrect. The nephew received a future interest that will vest when he marries. The woman's death did not invalidate the nephew's springing executory interest.

Answer D is incorrect. The nephew received a springing executory interest. The warranty deed did not require the nephew to marry before the death of the woman.

Exam Tactics & Triggers

- Trigger: deed conveying "on the date of [a future event]" that cuts short the grantor's own estate → grantee gets a SPRINGING executory interest; grantor keeps a fee simple subject to executory limitation.
- Rule chain: a validly delivered and recorded deed creates a present FUTURE interest now, the grantor's later death just passes her retained estate to her devisee, it does not destroy the grantee's interest.
- Distractor traps: (C) and (D) both assume the interest must be present-possessory or vest before death, but future interests survive the grantor's death and vest when the condition (marriage) occurs.
- Tell: recording (A) proves notice, not validity, so a "because recorded" answer is a common misdirection here.

Answer Flowchart



Question 34 — Evidence

A defendant was charged with murdering a business rival. Two days before he was killed, the rival visited the police station to communicate his concerns about the defendant, saying to the police, "I think [the defendant] is going to kill me.”

At the defendant’s murder trial, the defendant moved to exclude the rival’s statement to the police on both hearsay and confrontation grounds. The prosecutor responded that the defendant had forfeited both his hearsay and his confrontation objections by killing the rival.

For purposes of the motion, the parties have agreed that the prosecutor can establish to the court, by a preponderance of the evidence, that the defendant killed the business rival because the rival had stolen a large amount of money from the defendant.

What is the correct ruling on the prosecutor’s contention that the defendant has forfeited his objections?

(A) The defendant has forfeited his confrontation objection but not his hearsay objection.

(B) The defendant has forfeited his hearsay objection but not his confrontation objection.

(C) The defendant has forfeited neither objection, because the prosecutor has not shown that the defendant killed the business rival with the intent to keep him from testifying.

(D) The defendant has forfeited neither objection, because the prosecutor must prove forfeiture by more than a preponderance of the evidence.

Correct answer: C

Explanation

Answer C is correct. The requirements for forfeiting a hearsay objection and a confrontation objection are the same, and the prosecutor has not demonstrated forfeiture of either objection. In order to forfeit either a hearsay objection under FRE 804(b)(6) or a confrontation clause objection, a defendant must have engaged in wrongful conduct for the purpose of preventing the declarant from testifying. Here, the defendant’s purpose for his wrongful conduct (killing the declarant) was revenge for a theft and not a desire to prevent trial testimony. Therefore, the prosecutor cannot make the showing of intent required for forfeiture of either objection.

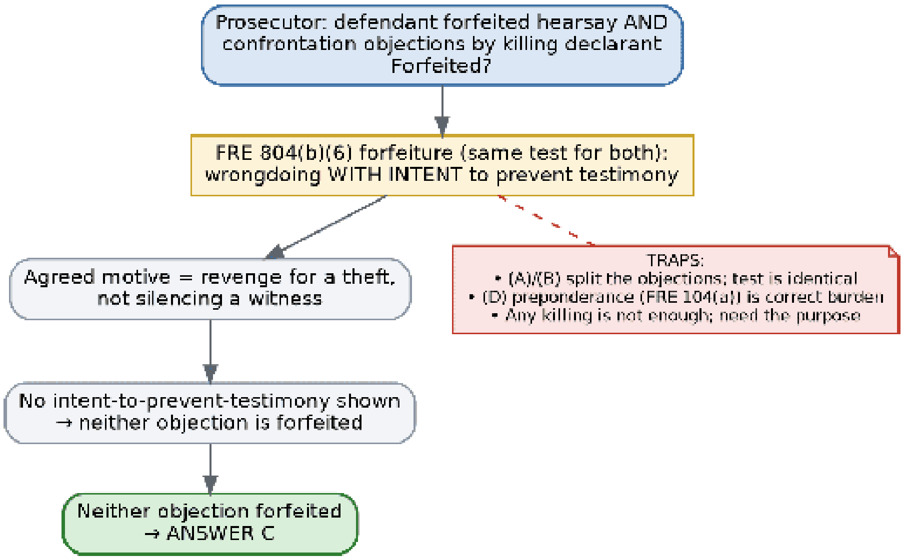
Answers A and B are incorrect for the reasons set out above.

Answer D is incorrect. The federal courts have held that a trial judge may find the threshold requirements for forfeiture by a preponderance of the evidence. Further, the preponderance standard applies to the trial judge’s determinations on preliminary questions of admissibility under FRE 104(a).

Exam Tactics & Triggers

- Trigger: prosecution argues 'defendant forfeited hearsay AND confrontation objections by killing the declarant' → forfeiture by wrongdoing, FRE 804(b)(6).
- Lock the element: forfeiture (for BOTH hearsay and Confrontation Clause) requires wrongful conduct done with the PURPOSE of preventing the declarant from testifying, not just any killing.
- Facts kill it: the agreed motive was revenge for a theft, not silencing a witness → no intent-to-prevent-testimony → neither objection forfeited.
- Distractor traps: (A)/(B) wrongly split the two objections though the standard is identical; (D) is wrong on burden, preponderance (FRE 104(a)) is the correct standard.

Answer Flowchart



Question 35 — Civil Procedure

A passenger domiciled in State A has brought a federal diversity action in State A against a railroad, seeking damages for injuries suffered when the railroad's train, which the passenger boarded in State A, derailed in State B. The railroad is incorporated and has its principal place of business in State B and operates in States A and B. Several other passengers were also injured and have brought individual actions in State B federal court.

The railroad has moved the State A federal court to transfer the action to the State B federal district court. State B has only one federal district.

What is the railroad's best argument in support of the motion?

(A) The accident occurred in State B and many witnesses are located there.

(B) The action involves common questions of fact with similar actions pending in State B.

(C) The railroad is incorporated and has its principal place of business in State B.

(D) Venue is not proper in State A.

Correct answer: A

Explanation

Answer A is correct. Transfers to a different federal court are granted in the interest of justice and for the convenience of the parties and witnesses. Here, because the accident occurred in State B, because the railroad is located in State B, and because other passengers have brought actions in State B federal court, State B appears to be the most convenient venue for the action.

Answer B is incorrect. Whether an action shares common questions of fact with similar actions pending in another state is not a driving component of a change-of-venue analysis. Rather, what matters most is the convenience of the parties and witnesses and the "interests of justice."

Answer C is incorrect. Although the railroad's being located in State B is an aspect of what would make State B a convenient forum for this action, it is not determinative and would not on its own be a basis for rejecting the forum selected by the passenger.

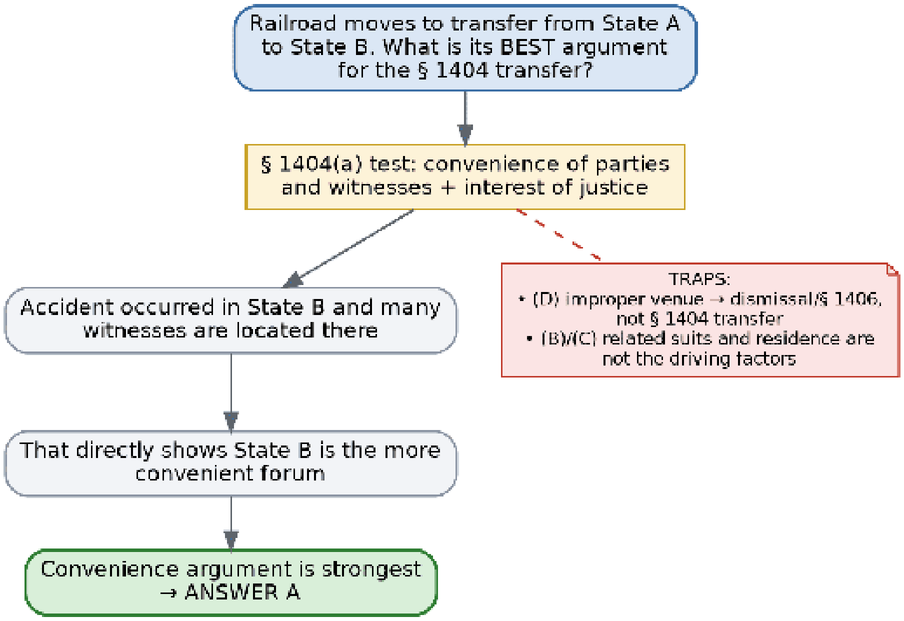
Answer D is incorrect. Venue is proper in a district where a substantial part of the events or omissions giving rise to the claim occurred. Thus, venue could be proper in the State A federal court, depending on facts not set out in the question, such as where the railroad maintained or housed the train. But even if venue were not proper in State A, the appropriate remedy for the railroad in that case would be dismissal. To support a transfer to a State B federal court, the railroad will still need to argue that a State B federal court would be convenient for the parties and the witnesses.

Exam Tactics & Triggers

- Trigger: '§ 1404 transfer' + 'best argument' → pick the answer about CONVENIENCE of parties and witnesses, not formal venue technicalities.

- Locate the operative facts: accident and witnesses in State B is the classic convenience showing that drives a transfer motion.
- Kill (D): improper venue leads to DISMISSAL/§ 1406, not a § 1404 transfer, and venue may well be proper in State A anyway, so it is not the 'best' argument.
- Distractor traps (B) and (C): related pending suits and the railroad's residence are makeweights, transfer turns on convenience and the interest of justice, not either factor alone.

Answer Flowchart



Question 36 — Criminal Law & Procedure

A defendant was charged in federal court under the Assimilative Crimes Act, which provides that the criminal law of the state in question applies to crimes committed on federal enclaves within the state. Federal prosecutors charged the defendant with aggravated theft for stealing computer equipment from a store on a federal military base. Under the controlling state's criminal law, the crime of aggravated theft, punishable by up to 10 years in prison, requires that the stolen property be worth $1,000 or more. If the stolen property is worth less than $1,000, the crime is simple theft with a maximum punishment of five years in prison.

The value of the equipment was disputed. The prosecutor offered evidence that the computer equipment was worth more than $1,000, but an expert witness called by the defense testified that the equipment was worth much less.

The defense attorney has requested that the trial court instruct the jury on the lesser included offense of simple theft. The prosecution objects, arguing that the court should only instruct on the charged offense of aggravated theft.

Upon the defense attorney's request, should the trial court instruct the jury on the lesser included offense of simple theft?

(A) No, because a court cannot instruct on an offense not charged by the prosecution.

(B) No, because the value of the stolen computer equipment is only a sentencing factor and not an offense element.

(C) Yes, because a court must instruct on all lesser included offenses.

(D) Yes, because the jury could rationally find the defendant not guilty of the greater offense but guilty of the lesser included offense.

Correct answer: D

Explanation

Answer D is correct. Upon request, a court should give a lesser included offense instruction if, on the evidence presented, the jury could rationally acquit the defendant of the charged offense but convict of the lesser offense. Here, the element of value is in reasonable dispute.

Answer A is incorrect. A court can instruct the jury on lesser included offenses, and it should do so, whenever the evidence creates a rational basis for acquitting of the greater offense and convicting of the lesser offense.

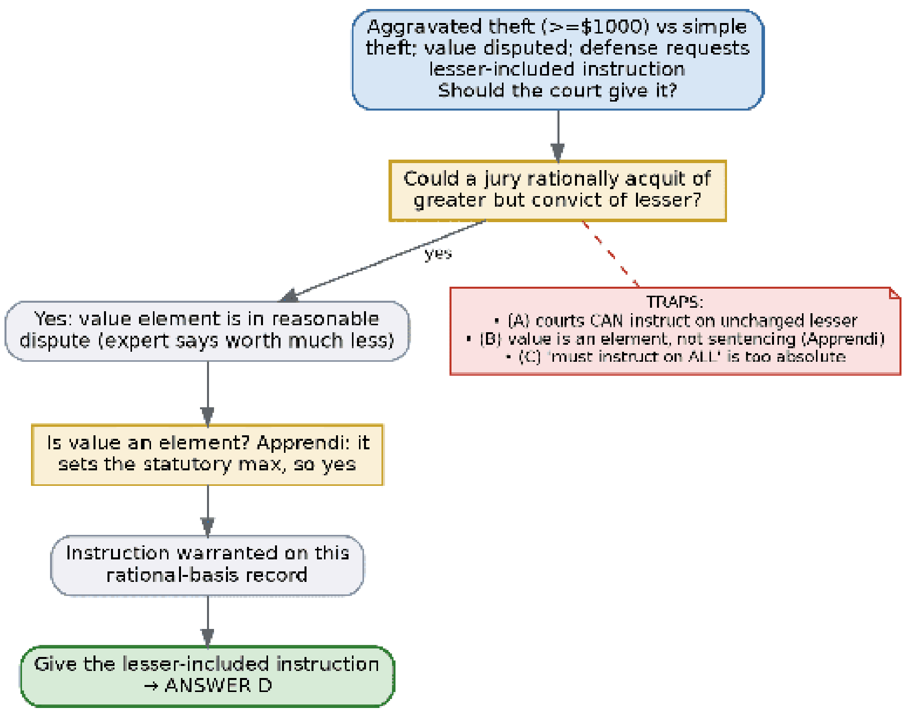
Answer B is incorrect for two reasons. First, the value of the property taken is clearly an element in the statute described here; it is the crucial element that distinguishes aggravated theft from simple theft. Second, under the Apprendi rule, an element that changes the authorized statutory maximum for an offense must be determined by the fact-finder at trial.

Answer C is incorrect. It is not true that the court must always instruct the jury on all lesser included offenses. The court should refrain from instructing on a lesser included offense if the evidence does not create a rational basis for acquitting of the greater offense and convicting of the lesser offense.

Exam Tactics & Triggers

- Trigger: defense REQUESTS a lesser-included instruction and the distinguishing element (value) is in genuine dispute → give it if a jury could rationally acquit of the greater but convict of the lesser.
- Rule chain: lesser-included instruction standard = 'rational basis on the evidence to acquit of greater, convict of lesser'; it's neither always nor never given.
- Apprendi hook: value here changes the statutory maximum, so it is an ELEMENT the jury must find, not a mere sentencing factor.
- Distractor traps: (A) 'can't instruct on uncharged offense' is false, (B) 'just sentencing factor' collides with Apprendi, (C) 'must instruct on ALL' is an over-broad absolute.

Answer Flowchart



Question 37 — Constitutional Law

In response to a nationwide increase in drug-related crime, Congress passed a statute creating a new agency responsible for enforcing federal drug laws. The statute authorizes the President to appoint the agency’s director with the advice and consent of the Senate and prohibits the President from removing the director without the Senate’s consent. The President appointed a director, and the Senate confirmed the appointment.

Recently, the President has become dissatisfied with the director’s strict approach to drug-law enforcement and wishes to remove the director. Because a majority of senators favor strict drug-law enforcement, the Senate has refused to consent to the director’s removal.

May the President constitutionally remove the director without the Senate's consent?

(A) No, because Congress created the director position and may properly impose conditions for the director's appointment and removal.

(B) No, because the President's removal of principal officers of the United States is subject to the advice and consent of the Senate.

(C) Yes, because congressional participation in the decision to remove a presidential appointee violates the separation of powers.

(D) Yes, because Congress cannot limit the ability of the President to remove any employee of the executive branch.

Correct answer: C

Explanation

Answer C is correct. Congress cannot play any role in the removal of executive officers, as the Supreme Court made clear in Myers v. United States, 272 U.S. 52 (1926), and Bowsher v. Synar, 478 U.S. 714 (1986).

Answer A is incorrect. A series of Supreme Court cases beginning with Myers sharply limits Congress's ability to impose conditions on the removal of federal officials.

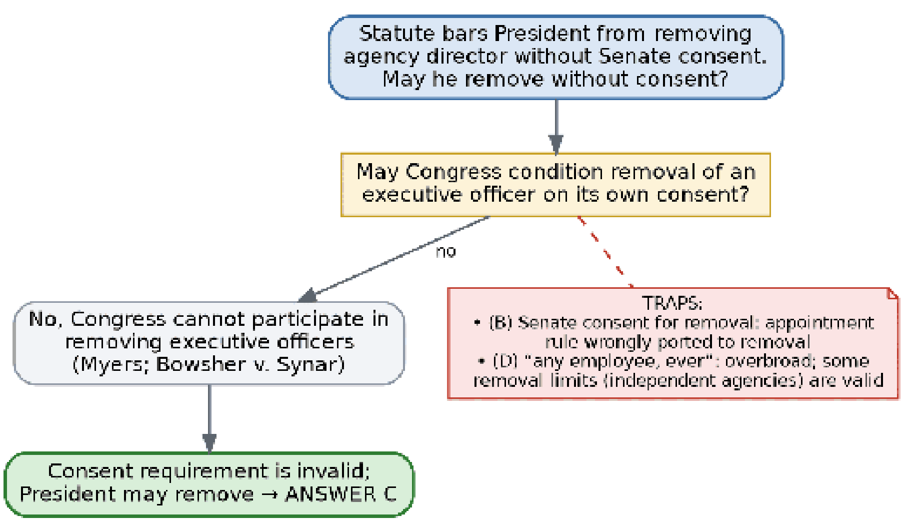
Answer B is incorrect. Myers and subsequent cases make it clear that the Senate has no role in the removal of federal officers other than via impeachment.

Answer D is incorrect because it is an overbroad statement of the law. The Supreme Court has upheld the power of Congress to remove certain types of federal officials, such as those serving as members of the governing bodies of regulatory agencies and inferior officers in agencies where the head of the agency is removable by the President at will.

Exam Tactics & Triggers

- Trigger: a statute makes REMOVAL of an executive officer depend on Senate consent → separation-of-powers violation; Congress plays no role in removal (Myers, Bowsher).
- Rule chain: appointment needs advice and consent, but REMOVAL of executive officers is a presidential power Congress cannot share.
- Distractor trap (B): swaps the appointment rule onto removal; Senate consent for firing is exactly what Myers forbids.
- Distractor trap (D): the "any employee, always" absolute is overbroad; Congress CAN limit removal of some officials (independent agency heads, certain inferior officers), so the sweeping answer loses.

Answer Flowchart



Question 38 — Contracts

A contractor agreed to build a wood-frame house for a landowner for $300,000. The parties agreed that the price would increase by the amount that the cost of lumber for the job exceeded the then- current cost of $30 per 100 board feet.

The landowner reduced the agreement to writing but inadvertently failed to include in the written contract the price-escalation clause relating to the cost of lumber. Both parties signed the contract without noticing the omission.

When the contractor purchased lumber for the job, the price of the lumber had risen to $60 per 100 board feet. When the contractor submitted a final bill that included the increased price of lumber, the landowner refused to pay the increased price for the lumber on the grounds that the price-escalation clause was missing from the written contract.

If the contractor sues the landowner to recover the additional cost, will the contractor be likely to prevail?

(A) No, because the contractor's remedy for mistake is avoidance of the contract.

(B) No, because the parol evidence rule will bar introduction of evidence of the price-escalation clause.

(C) Yes, because since the parties were both mistaken as to the content of the writing, the court will reform the writing to express their agreement.

(D) Yes, because the contract will be construed against the landowner, who drafted it.

Correct answer: C

Explanation

Answer C is correct. When the written contract fails to express the actual agreement because of a mistake of both parties, the court may reform the writing to accurately express the agreement.

Answer A is incorrect. When a written contract fails to express the actual agreement of the parties, the remedy is reformation of the contract, not avoidance.

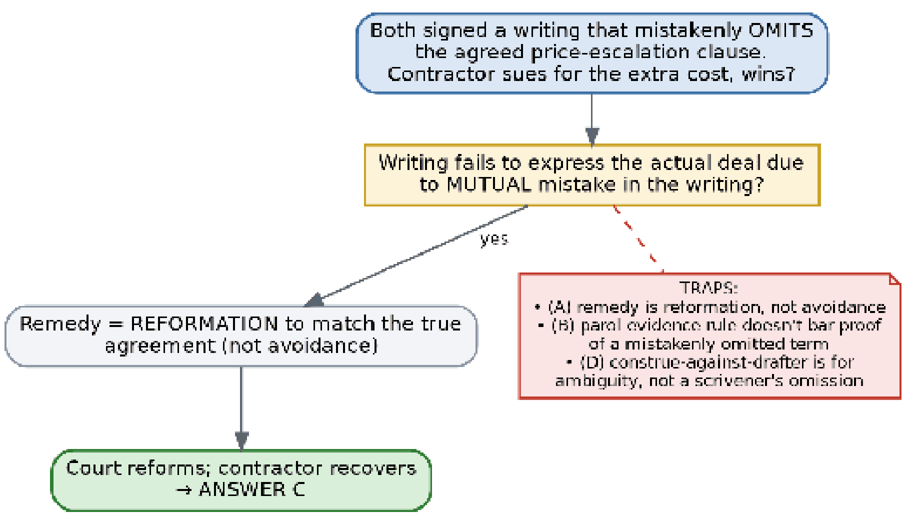
Answer B is incorrect. The parol evidence rule does not bar the introduction of evidence to prove that an agreed-upon term was mistakenly omitted from the writing.

Answer D is incorrect. This is not a case of interpreting a written contract but rather one of reforming a writing to express the parties' true intentions.

Exam Tactics & Triggers

- Trigger: both parties sign a writing that mistakenly OMITS an agreed term → reformation to make the writing match the real deal.
- Parol evidence tell: the PER does NOT bar evidence that an agreed term was mistakenly left out, so (B) is wrong.
- Mistake-remedy tell: mutual mistake as to the CONTENT of the writing = reformation, not avoidance, so (A) is wrong.
- Construe-against-drafter (D) is for genuine ambiguity, not a scrivener's omission.

Answer Flowchart



Question 39 — Real Property

A woman wanted to purchase a tract of land but could not immediately obtain a loan. Her friend agreed to loan her the entire purchase price if, immediately following the purchase, the woman would deed the land to him. They also agreed that the woman would have 10 years in which to repay the loan and that the friend would deed the land back to the woman when the loan was fully repaid. Lastly, they agreed that during the 10-year period the woman could live on the land. The deed to the friend did not refer to their agreement.

At the end of the 10th year and after the loan had been repaid, the woman demanded that the friend deed the land back to her. The friend refused, claiming that he owned the land and that the payments the woman had made over the preceding 10 years were rent, not loan repayments.

The woman sued to compel the friend to convey the land to her.

Is she likely to prevail?

(A) No, because a rebuttable presumption arises under these facts that the transaction was a lease, and the presumption has not been rebutted.

(B) No, because the contract between the woman and her friend merged into the deed.

(C) Yes, because the parties agreed that the woman could live on the land.

(D) Yes, because the woman's agreement with the friend constituted an equitable mortgage.

Correct answer: D

Explanation

Answer D is correct. Where a deed is delivered to secure a loan to buy land, the deed is treated as a mortgage if doing so accomplishes the parties' intent. Here the facts clearly establish the parties' intent that the friend merely have a security interest in the land, not an absolute title.

Answer A is incorrect. As a matter of law there is no such presumption.

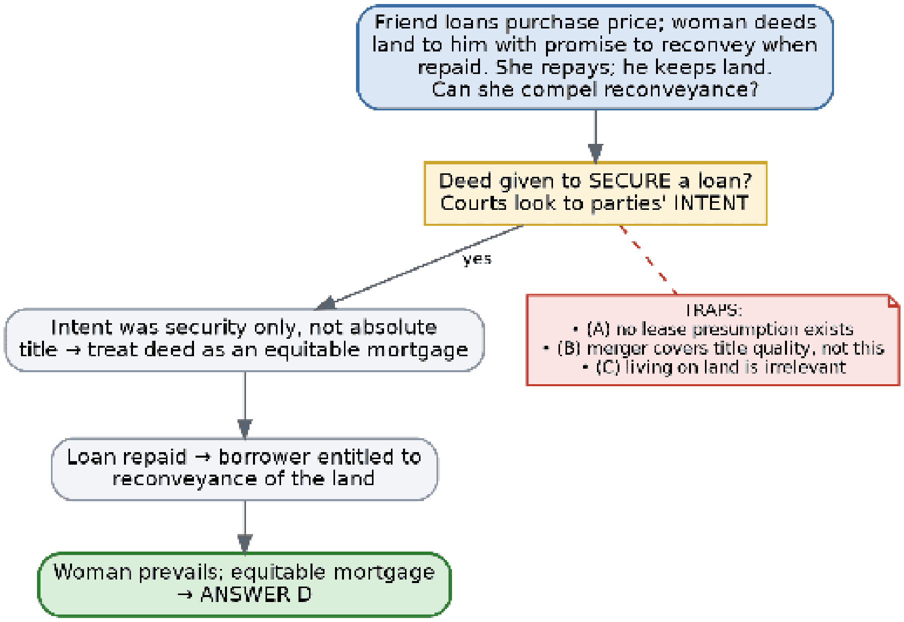
Answer B is incorrect. The merger doctrine relates to contractual promises relating to the quality of transferred title. Here the promises relate to whether the terms of the conveyance were intended to transfer any title or merely create a lien on the land.

Answer C is incorrect. Whether or not the woman lived on the land is irrelevant to the characterization of the transaction as an equitable mortgage.

Exam Tactics & Triggers

- Trigger: an ABSOLUTE deed given to secure a LOAN, with an agreement to reconvey once repaid → equitable mortgage, the deed is really security, not a transfer of title.
- Rule chain: courts look to the parties' INTENT, if the deed was meant only to secure repayment, it is treated as a mortgage and the borrower can compel reconveyance after paying.
- Distractor traps: (A) invents a "presumption of lease" that does not exist; (B) misapplies merger, which covers title-quality promises, not whether title passed at all.
- Tell: (C) "could live on the land" is a red-herring fact, occupancy does not decide mortgage-vs-lease; anchor on the security purpose instead.

Answer Flowchart



Question 40 — Evidence

A defendant was charged with murder. At trial, the prosecutor called a witness who testified that a friend had told him that there was "bad blood" between the defendant and the victim. After the witness was excused, the defense attorney moved to strike the portion of the testimony that included the friend's statement, arguing that the statement was inadmissible.

Has the issue of admissibility been preserved for appeal?

(A) No, because an objection must be made before the evidence is presented to the jury.

(B) No, because the defense failed to make a timely objection stating the specific ground for objection.

(C) Yes, because admission of the statement affected the defendant's right to confront witnesses.

(D) Yes, because the defense objected to the statement during the trial.

Correct answer: B

Explanation

Answer B is correct. The defense attorney should have immediately objected when the witness related inadmissible hearsay. An objection raised only after the witness has left the stand is not timely under FRE 103. In addition, the delayed objection failed to preserve the right to appeal, because the defense attorney did not state a specific basis for the objection under FRE 103.

Answer A is incorrect. Sometimes a witness relates inadmissible information before opposing counsel has had an opportunity to identify the inadmissible nature of the information and object. An objection accompanied by a motion to strike at the first opportunity—even after the inadmissible information has been presented to the jury—may be timely pursuant to FRE 103.

Answer C is incorrect. A hearsay statement to the witness by a friend is not "testimonial" for purposes of the Sixth Amendment. In addition, counsel must timely raise a confrontation objection at trial in order to preserve the objection for appeal, which the defense attorney did not do in this case.

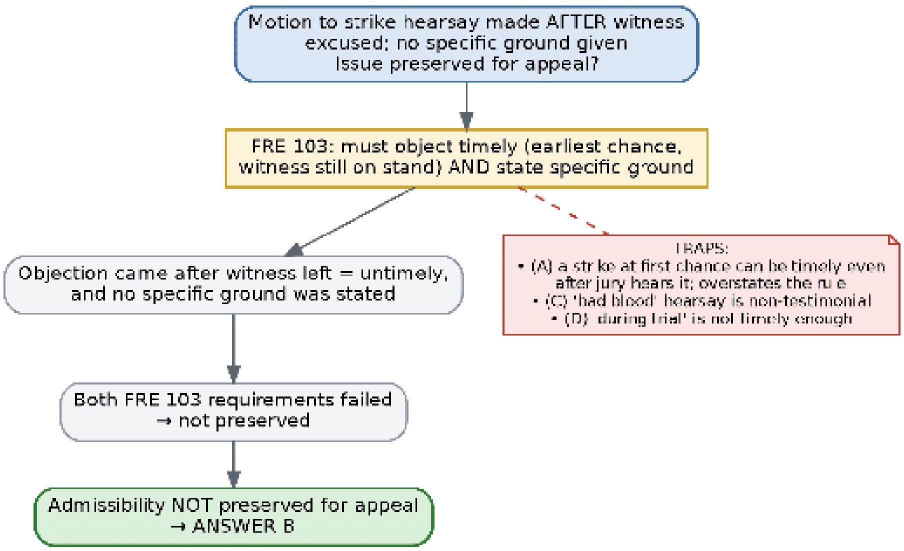
Answer D is incorrect. An objection must be made at the earliest opportunity under FRE 103, and an objection that is made "during trial" but not while the witness is still on the stand is not sufficient to preserve the issue for appeal.

Exam Tactics & Triggers

- Trigger: objection/motion to strike made AFTER the witness is excused → preservation issue under FRE 103, timeliness plus specific ground.
- Rule chain: to preserve for appeal you must object timely (at the earliest opportunity, while the witness is still on the stand) AND state the specific ground.

- Two independent failures here: the motion came after the witness left (untimely) and no specific ground was stated → not preserved.
- Distractor traps: (A) overstates by saying you must always object before the jury hears it; (C) confrontation fails because casual 'bad blood' hearsay is non-testimonial and was not timely raised; (D) 'objected during trial' is not enough.

Answer Flowchart



Question 41 — Torts

A man who was visiting a shooting range misunderstood a signal that indicated shooting in progress and walked in front of another customer who was shooting toward a target. The man was hit by a bullet and seriously injured.

The man sued the customer, the owner of the range, and the manufacturer of the signaling apparatus. The jurisdiction prohibits a plaintiff from recovering against a defendant whose fault is less than or equal to that of the plaintiff.

If the jury determines that the man was 25% responsible and that each defendant was also 25% responsible, will the man be able to recover damages, and if so, how much from each defendant?

(A) The man will be able to recover 25% of his damages from each defendant.

(B) The man will be able to recover 25% of his damages from the customer but nothing from the owner or the manufacturer.

(C) The man will be able to recover 75% of his damages from any defendant.

(D) The man will not be able to recover damages.

Correct answer: D

Explanation

Answer D is correct. Given the rule provided in the question, because the man was 25% responsible, he cannot recover from any defendant, as each was also 25% responsible (a percentage equal to the man's responsibility).

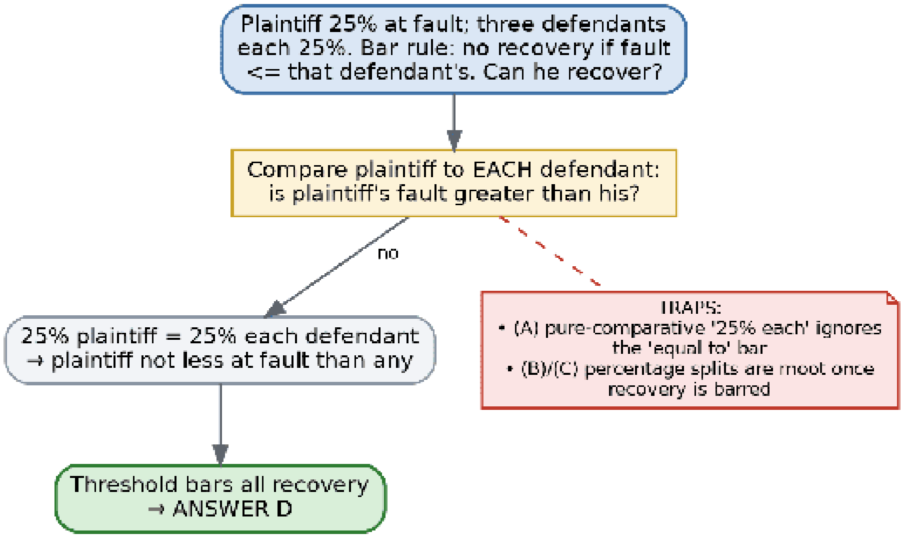
Answers A, B, and C are incorrect for the same reason.

Exam Tactics & Triggers

- Trigger: modified comparative fault where recovery is barred if plaintiff's fault is 'less than OR EQUAL TO' a defendant's, plus equal 25% shares → do the arithmetic against the threshold.
- Rule chain: compare the plaintiff's percentage to EACH defendant's individually; 25% plaintiff vs 25% defendant means plaintiff is NOT less at fault, so the bar applies.
- Distractor trap (A): 'recover 25% from each' is the pure-comparative answer; the tell is the 'equal to' language that flips this into a total bar.
- Distractor traps (B and C): mixing up joint liability shares; once the threshold bars recovery, the split of

percentages never matters.

Answer Flowchart



Question 42 — Civil Procedure

Members of a political organization protested against US foreign policy by blocking the entrance to a military base. After several members were arrested, the organization's leader called for "even bigger demonstrations next week to halt operations at the base."

The US Attorney in the jurisdiction brought a federal civil action against the organization and its leader, seeking an injunction against protests that interfered with the base's operations. With the complaint, the US Attorney moved for a temporary restraining order (TRO) to "enjoin any blockade of the base's entrance or other disruption of base activity until the court can hear motions for a preliminary and a permanent injunction." The US Attorney attached an affidavit certifying the unsuccessful efforts she had made to locate the organization and its leader and to notify them of the motion. The court immediately held a hearing and issued the TRO in a one-sentence order that did not describe the acts to be restrained but instead incorporated by reference the allegations of the complaint and the TRO motion.

Did the court properly grant the TRO?

(A) No, because the order did not describe in reasonable detail the acts to be restrained.

(B) No, because the organization and its leader did not receive notice of the hearing.

(C) Yes, because damages would be inadequate to address the harm alleged in the complaint.

(D) Yes, because the planned demonstrations threatened imminent irreparable harm.

Correct answer: A

Explanation

Answer A is correct. Federal Rule of Civil Procedure 65(d) requires that every order granting a TRO must state the reasons why it was issued and must detail the acts restrained, which this order failed to do.

Answer B is incorrect. A TRO may be issued without notifying the party to be enjoined if the moving party submits an affidavit certifying the reasonable efforts made to give notice. Because the US Attorney submitted that certification along with the motion, no notice was required.

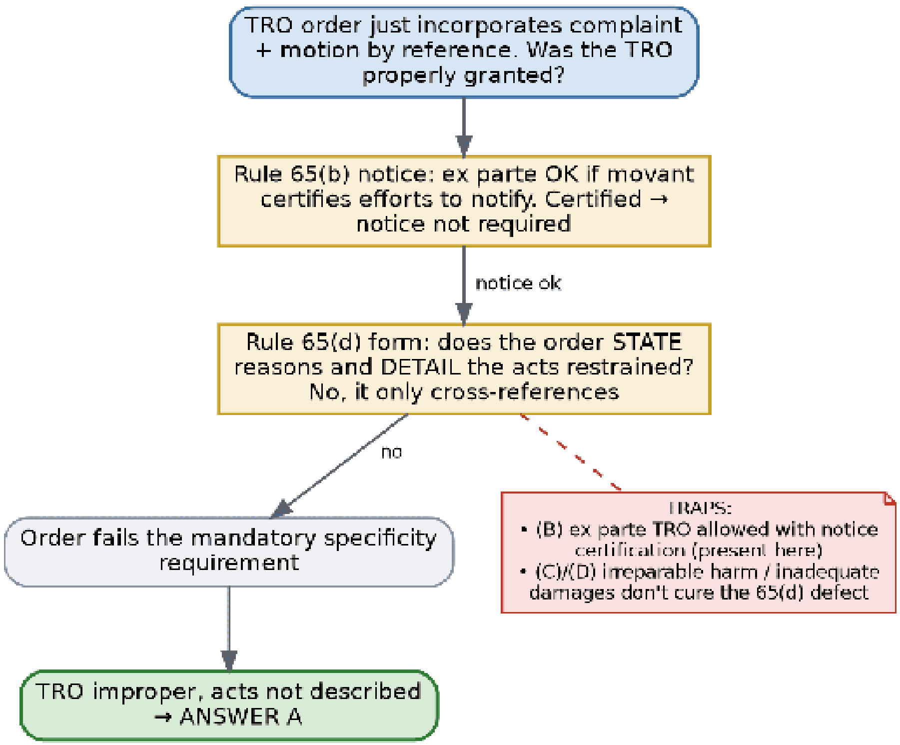
Answer C is incorrect. The fact that damages would be inadequate to address the indicated harm would be a reason to grant the TRO. However, in this instance the TRO is improper because the court failed to state the reasons why it was issued and failed to detail the acts restrained.

Answer D is incorrect. The fact that imminent irreparable harm is threatened would be a reason to grant the TRO. However, in this instance the TRO is improper because the court failed to state the reasons why it was issued and failed to detail the acts restrained.

Exam Tactics & Triggers

- Trigger: a TRO order that 'incorporates by reference' the complaint/motion instead of spelling out the conduct → violates Rule 65(d), automatically improper.
- Rule 65(d) checklist: every injunction/TRO must state its REASONS and describe in reasonable DETAIL the acts restrained, no cross-references allowed.
- Notice red herring (B): a TRO CAN issue ex parte if the movant certifies efforts to give notice, which the US Attorney did, so lack of notice is fine here.
- Distractor tell (C)/(D): inadequate-damages and irreparable-harm are reasons TO grant a TRO, they cannot cure the separate formal defect in the order's wording.

Answer Flowchart



Question 43 — Constitutional Law

A federal statute provides that the President must expend all funds appropriated by Congress, and that appropriated funds must be used only for the purposes named in the relevant appropriations act.

An appropriations statute directs that $300 million be spent on planting wildflowers along public highways. Considering the statute to be a waste of money, the President has announced two decisions. First, he will spend half of the money to train troops. Second, he will retain the remaining funds in the federal treasury and not spend them at all.

Are the President's decisions constitutional?

(A) Both decisions are constitutional.

(B) Only the decision to spend the funds to train troops is constitutional.

(C) Only the decision to retain the remaining funds is constitutional.

(D) Neither decision is constitutional.

Correct answer: D

Explanation

Answer D is correct. The Take Care Clause requires the President to take care that the laws be faithfully executed, and one of those laws is the requirement that all the funds in question be spent on planting flowers. Keeping the funds in the federal treasury violates the legal mandate that all the funds be spent. The President cannot use the money to train troops, because the Appropriations Clause of Article I provides that federal spending must be authorized by Congress.

Answer A is incorrect for the reasons stated in the explanation for answer D.

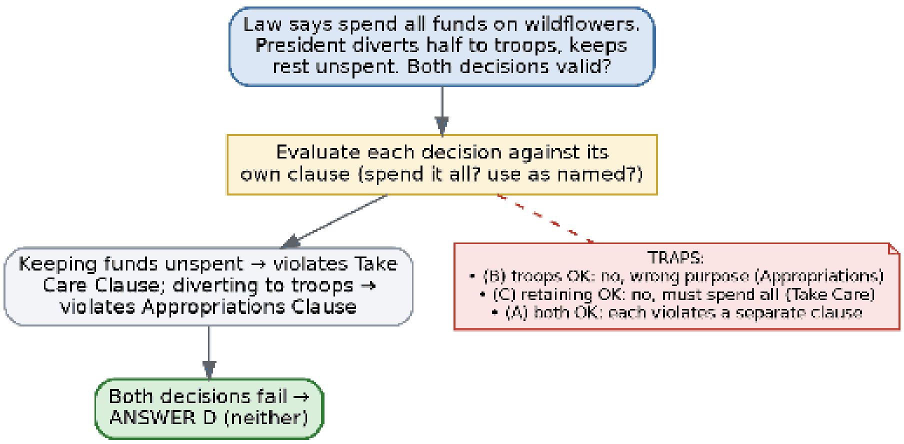
Answer B is incorrect because spending the money to train federal troops violates the Appropriations Clause.

Answer C is incorrect because retaining the funds in the treasury violates the federal mandate to spend all appropriated funds.

Exam Tactics & Triggers

- Trigger: a “both/only/neither” answer grid → test each Presidential decision SEPARATELY, then pick the combo.
- Impoundment: refusing to spend appropriated funds violates the Take Care Clause (must faithfully execute the spend-it-all mandate).
- Reallocation: diverting the money to troops violates the Appropriations Clause, spending must be for the purpose Congress named.
- Distractor traps (A)/(B)/(C): each rescues one decision; since BOTH fail on different clauses, only “neither is constitutional” survives.

Answer Flowchart



Question 44 — Evidence

A stockholder sued a corporation for losses he allegedly suffered when the price of the corporation’s publicly traded stock dropped. The price drop occurred shortly after it was publicly revealed that the corporation had released false earnings reports. At trial, the stockholder seeks to testify that, in his opinion, the drop in the corporation’s stock price was directly attributable to the public revelation about the false earnings reports. The stockholder has conceded that he has no formal education or training in economics or the stock market.

Should the stockholder be permitted to testify to his opinion?

(A) No, because he is not qualified to offer opinion testimony based on scientific, technical, or other specialized knowledge relating to stock price changes.

(B) No, because his personal interest in the outcome of the action renders his opinion insufficiently probative.

(C) Yes, because his opinion is rationally based on his perception as a stockholder and will be helpful to the trier of fact.

(D) Yes, because property owners such as the stockholder are entitled to express an opinion on changes in the value of their property.

Correct answer: A

Explanation

Answer A is correct. The stockholder is a lay witness seeking to give testimony on causation that requires the specialized knowledge of an expert witness. Under FRE 701, the stockholder’s testimony is inadmissible.

Answer B is incorrect. If otherwise qualified, an expert witness can have a personal interest in the outcome of the action and still testify. The expert’s personal interest can be explored on cross- examination. In this case, however, the stockholder is not qualified as an expert.

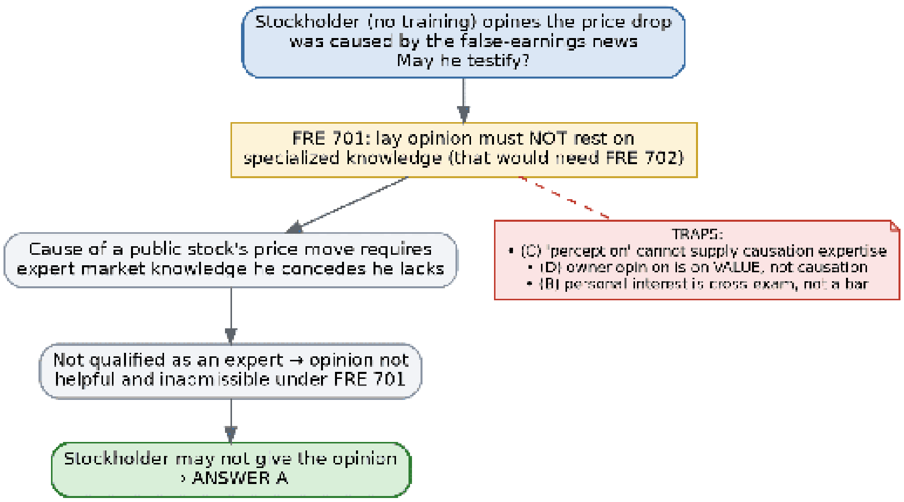
Answer C is incorrect. An admissible opinion about the cause of the price drop cannot be based on the stockholder’s perception; it requires an expertise that he does not possess. His opinion testimony will not be helpful to the jury because the stockholder is not qualified to speak to the causation issue.

Answer D is incorrect. Under FRE 701, property owners are entitled to express opinions on the value of their property, but here the stockholder is expressing an opinion on the cause of the publicly traded stock’s price drop. Such testimony requires a witness with specialized knowledge about the stock market.

Exam Tactics & Triggers

- Trigger: lay witness offering a CAUSATION opinion (stock price drop caused by the earnings news), with an admission of no training → FRE 701 vs 702 line.
- Rule chain: lay opinion under FRE 701 must be rationally based on perception AND not require specialized knowledge; causation of market moves needs expert (FRE 702) qualification.
- The concession is the tell: 'no formal education or training in economics or the stock market' signals the answer is an FRE 701 disqualification.
- Distractor traps: (C) 'rationally based on perception' fails because the opinion needs expertise; (D) the property-owner rule covers VALUE of one's own property, not causation of a public stock's price drop; (B) personal interest is a cross-exam issue, not a bar.

Answer Flowchart



Question 45 — Criminal Law & Procedure

A man offered to sell illegal drugs to an undercover police officer, who immediately arrested the man. The officer searched the man but found no drugs in his possession.

The jurisdiction follows the common law of conspiracy and solicitation, and uses the dangerous- proximity test for attempt.

What crime, if any, has the man committed?

(A) Conspiracy to distribute controlled substances.

(B) Attempted distribution of controlled substances.

(C) Solicitation.

(D) No crime.

Correct answer: C

Explanation

Answer C is correct. The man committed criminal solicitation by attempting to cause the officer to commit the crime of possessing a controlled substance.

Answer A is incorrect. The man is not guilty of conspiracy because the facts do not show an agreement between the participants.

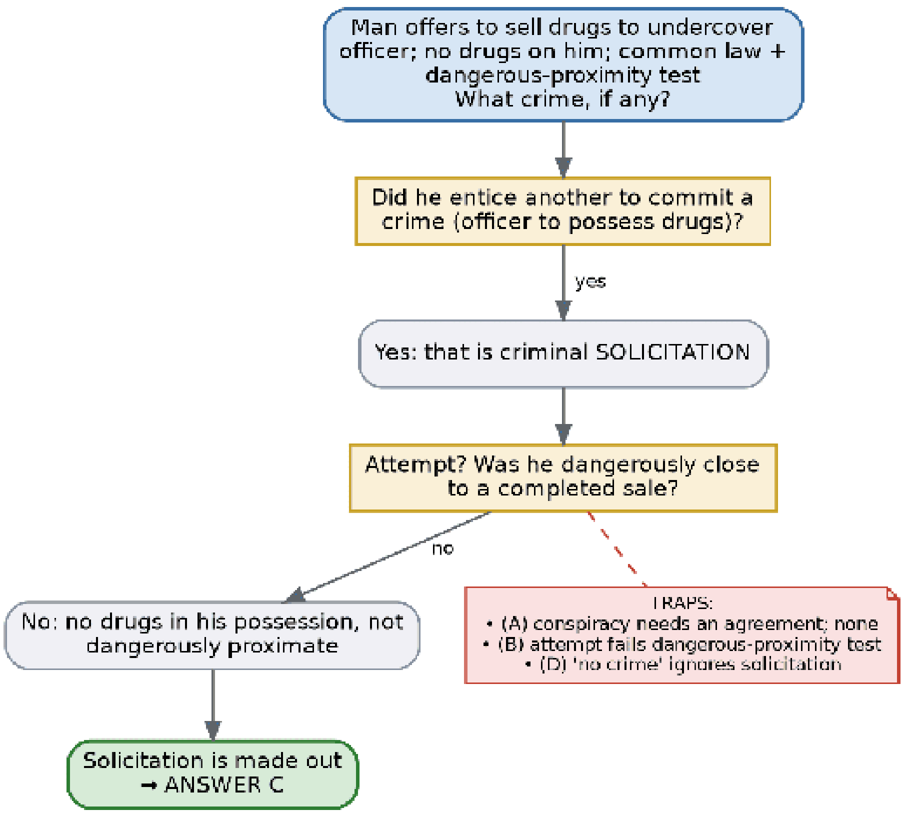
Answer B is incorrect. The man is not guilty of attempt because the facts do not show that he was in dangerously close proximity to a completed offense. Most pertinently, the man did not have drugs in his possession.

Answer D is incorrect because the facts show that the man committed a criminal solicitation.

Exam Tactics & Triggers

- Trigger: 'offered to sell drugs' + common-law regime + dangerous-proximity test → an offer that asks another to commit a crime = SOLICITATION.
- Rule chain: solicitation = enticing/asking another to commit a crime; here he tried to cause the officer to possess a controlled substance.
- Attempt filter: under dangerous-proximity, no drugs on him means he was not dangerously close to a completed sale, so attempt fails.
- Distractor traps: (A) conspiracy needs an agreement (the officer never agreed), (B) attempt fails the proximity test, (D) 'no crime' ignores the completed solicitation.

Answer Flowchart



Question 46 — Contracts

A client emailed an attorney from whom he regularly sought advice, asking, “Please give me an opinion on the attached documents.” Without responding to the email, the attorney immediately began reviewing the documents and working on the requested opinion. Two days later, the client sent the attorney a second email stating, “Please ignore my previous email. I have taken care of the problem.” Minutes later, the attorney emailed a reply stating, “I have already completed the work.”

The attorney has billed the client for the time she spent working on the requested opinion.

Is the attorney entitled to recover?

(A) No, because the attorney failed to timely notify the client that she had begun the work.

(B) No, because the client revoked his offer before the attorney’s acceptance.

(C) Yes, because a contract was formed when the attorney began working on the requested opinion.

(D) Yes, because the attorney’s email accepted the client’s offer, which was irrevocable for a reasonable time.

Correct answer: C

Explanation

Answer C is correct. When an offer can be accepted either by promise or by performance, the beginning of performance acts as an acceptance that completes the process of mutual assent and binds both parties since consideration also is present.

Answer A is incorrect. When an offer can be accepted by performance, notice of beginning performance is not required unless that requirement is included in the offer by the offeror.

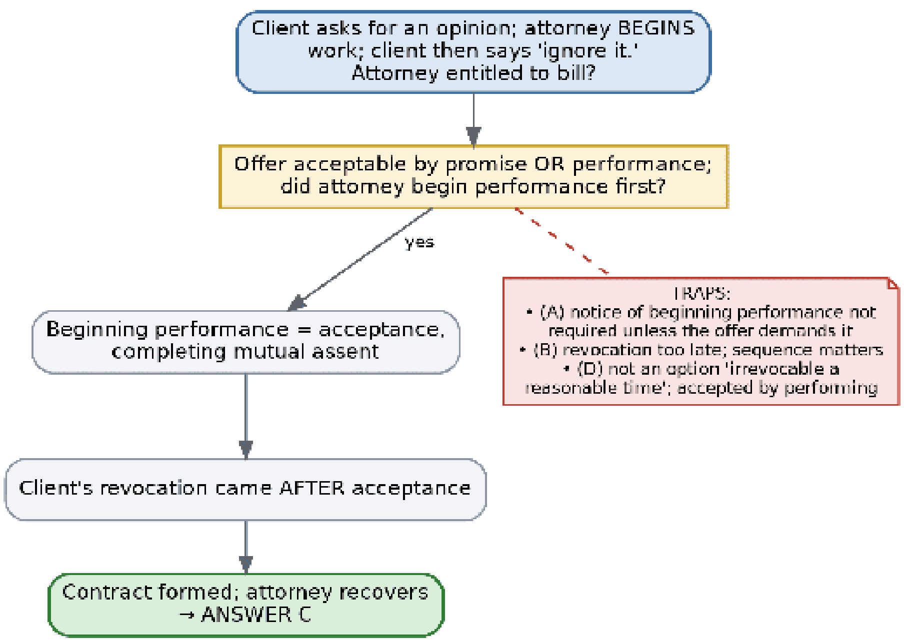
Answer B is incorrect. An offer generally can be revoked prior to acceptance. But here the attorney accepted the offer by beginning performance before the client's attempted revocation.

Answer D is incorrect. The offer was revocable only before acceptance, and the attorney accepted it when she began performance.

Exam Tactics & Triggers

- Trigger: an offer acceptable by promise OR performance + the offeree BEGINS performance → acceptance that completes mutual assent and binds both.
- Revocation-too-late tell: the client tried to revoke AFTER the attorney began work, so (B) fails; sequence is everything.
- Notice trap (A): notice of beginning performance is not required unless the offer expressly demands it.
- (D) trap: this was not an option irrevocable 'for a reasonable time'; it was accepted by starting performance.

Answer Flowchart



Question 47 — Torts

A doctor ordered chest X-rays for a patient who smoked cigarettes. After the consulting radiologist told the doctor that the X-rays looked normal, the doctor told the patient that he was in good health. In fact, the radiologist had missed signs of cancer on the X-rays that a trained radiologist, acting competently, would have detected.

After another X-ray of the patient's chest, performed one year later, showed advanced lung cancer, the doctor discovered that the radiologist had misinterpreted the patient's earlier X-rays. The patient died within four months of the later X-ray, because by then his cancer had become untreatable.

In a wrongful death suit against the radiologist based on only the facts set out above, a jury found the radiologist negligent and awarded $3 million in compensatory damages and $21 million in punitive damages.

Is the radiologist likely to have the punitive damages award vacated on appeal?

(A) No, because a 7 to 1 ratio of punitive to compensatory damages is constitutionally permissible.

(B) No, because an award of punitive damages is appropriate for medical malpractice that results in death or serious injury.

(C) Yes, because punitive damages awards are not authorized unless there is proof of willful or wanton misconduct on the defendant's part.

(D) Yes, because the patient smoked cigarettes and therefore was contributorily negligent.

Correct answer: C

Explanation

Answer C is correct. This answer accurately states the relevant legal rule.

Answer A is incorrect. The problem is not the amount of damages but rather the lack of evidence demonstrating that the radiologist injured the patient in a willful or wanton manner, which is required for the award of any punitive damages.

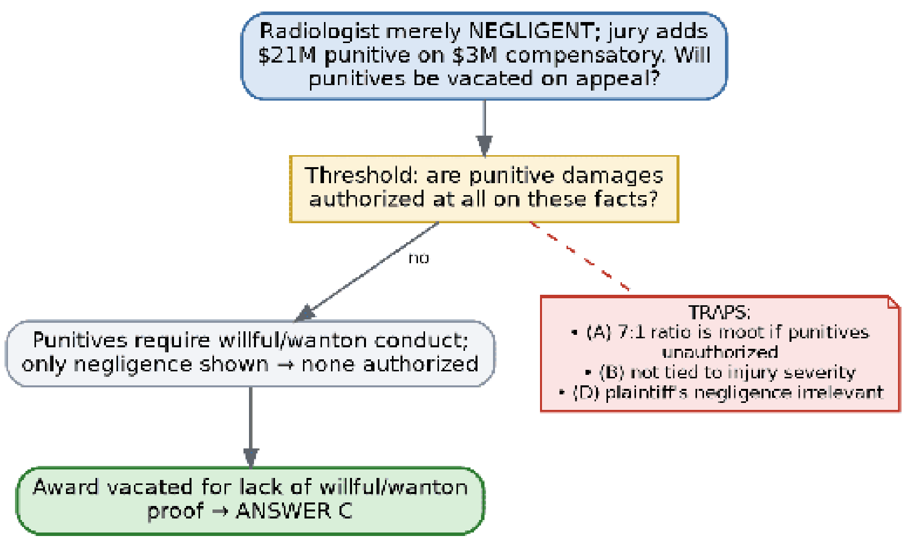
Answer B is incorrect. Punitive damages are allowed to be awarded when there is a showing that the defendant willfully or wantonly injured the plaintiff, and such damages are not based on the extent of the plaintiff's injuries.

Answer D is incorrect. The patient's own negligence is irrelevant to the question of whether punitive damages are appropriate.

Exam Tactics & Triggers

- Trigger: a huge punitive-to-compensatory ratio dangled in the facts, but the defendant was merely NEGLIGENT → the real issue is authorization, not amount.
- Rule chain: punitive damages require willful or wanton (or malicious/reckless) misconduct; ordinary negligence, even fatal malpractice, cannot support ANY punitive award.
- Distractor trap (A): the 7:1 ratio invites a due-process/BMW-v-Gore analysis, but you never reach ratio when punitives were unauthorized at all.
- Distractor trap (B and D): (B) wrongly ties punitives to injury severity; (D) drags in contributory negligence, which is irrelevant to whether punitives are allowed.

Answer Flowchart



Question 48 — Real Property

A woman purchased a house, financing the purchase with a 30-year mortgage granted to a local bank, which the bank promptly recorded.

Five years later, the woman lost her job, had difficulty making her mortgage payments, and defaulted on several payments. The bank notified the woman that it would accelerate the mortgage debt as permitted by the mortgage. The woman tried to sell the house but could not find a buyer. The woman wants to avoid the publicity of a foreclosure sale and protect her credit rating. The house is not encumbered by any other liens.

The woman has asked the bank if it would accept a deed to the house and relieve her from any further liability on the loan. The bank is receptive to the woman's proposal.

Is the woman's proposal a viable foreclosure substitute under these facts?

(A) No, because such a transaction would be a clog on the woman's equitable right of redemption.

(B) No, because this is residential property for which a foreclosure sale is required.

(C) Yes, because the proposal is voluntary and the bank would receive unencumbered title from the woman.

(D) Yes, because the transaction would constitute a valid short sale by the woman.

Correct answer: C

Explanation

Answer C is correct. Because there are no other liens against the property, the bank's acceptance of the deed in lieu of foreclosure gives the bank a free and clear title to the property.

Answer A is incorrect. The point of offering the deed to the bank is to get the woman out from under a liability to the bank. The woman does not wish to redeem the property.

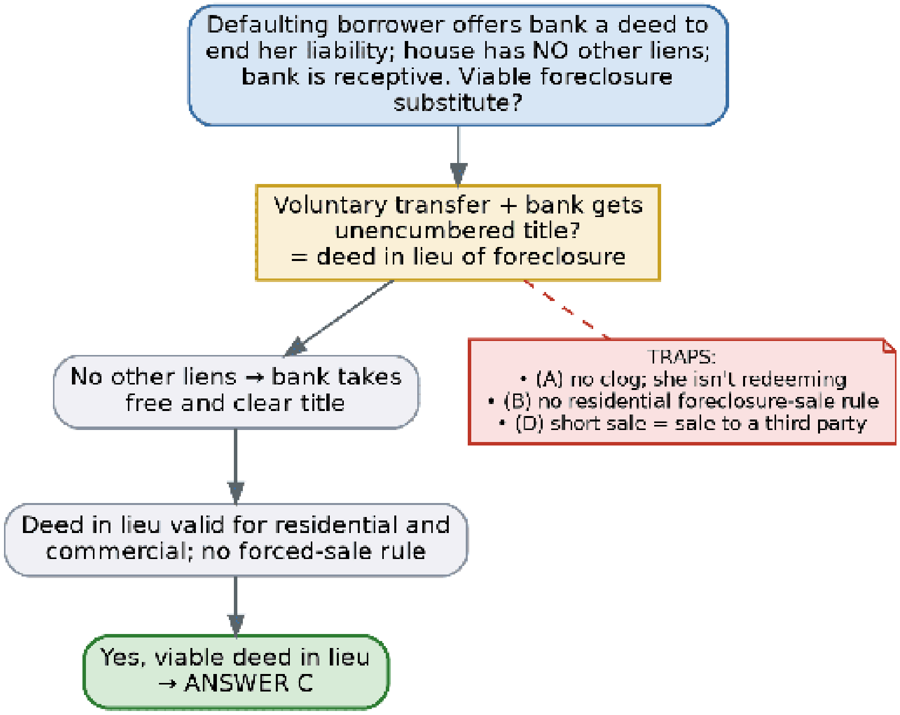
Answer B is incorrect. Deeds in lieu of foreclosure can be used for both commercial and residential properties.

Answer D is incorrect. A short sale occurs when the lender (the bank) agrees to release its lien in exchange for the sale proceeds. Here, the woman wants to deed the house back to the bank and not sell it to another party.

Exam Tactics & Triggers

- Trigger: borrower in default offers to hand the lender the deed to escape further liability → deed in lieu of foreclosure, valid when voluntary and the lender gets clean title.
- Rule chain: a deed in lieu works because there are NO OTHER LIENS, so the bank takes free-and-clear title; note the clue "not encumbered by any other liens."
- Distractor traps: (A) "clog on redemption" fails because she does not want to redeem, she wants OUT; (B) invents a residential foreclosure-sale requirement that does not exist.
- Tell: (D) mislabels it a "short sale," but a short sale means selling to a THIRD party for less than owed, here she deeds it back to the bank, so the vocabulary swap is the trap.

Answer Flowchart



Question 49 — Civil Procedure

A day before the applicable statutory limitations period expired, a worker filed a federal diversity action for defamation against her former employer, alleging that the employer had falsely and publicly accused her of stealing trade secrets. In describing the events that led to the false accusations, the complaint quoted a statement of a competitor made to the employer about the worker's alleged theft.

During discovery, the worker deposed the competitor. One week after discovery closed, the worker moved to amend the complaint to add the competitor as a defendant. The competitor opposed the motion on the ground that the statutory limitations period had expired.

Is the court likely to grant the motion?

(A) No, because discovery has closed, and the competitor will be prejudiced.

(B) No, because the amendment would not relate back and thus would be futile.

(C) Yes, because leave to amend should be freely granted when the underlying action was timely.

(D) Yes, because the allegations against the competitor arise out of the same factual circumstances and relate back to the allegations in the original complaint.

Correct answer: B

Explanation

Answer B is correct. Courts may deny leave to amend when the claim to be added is futile. Here, the claim is futile on limitations grounds unless relation back applies. Relation back does not apply here because the worker's failure to name the competitor in the original complaint was not due to a mistake of identity, which is the standard that Federal Rule of Civil Procedure 15 imposes to permit relation back of amendments adding a party.

Answer A is incorrect. The closing of discovery does not foreclose amending a complaint to add a new party. And whether the competitor will be prejudiced by being made a party at this stage of the case is relevant to whether to allow the amendment, but it is not dispositive.

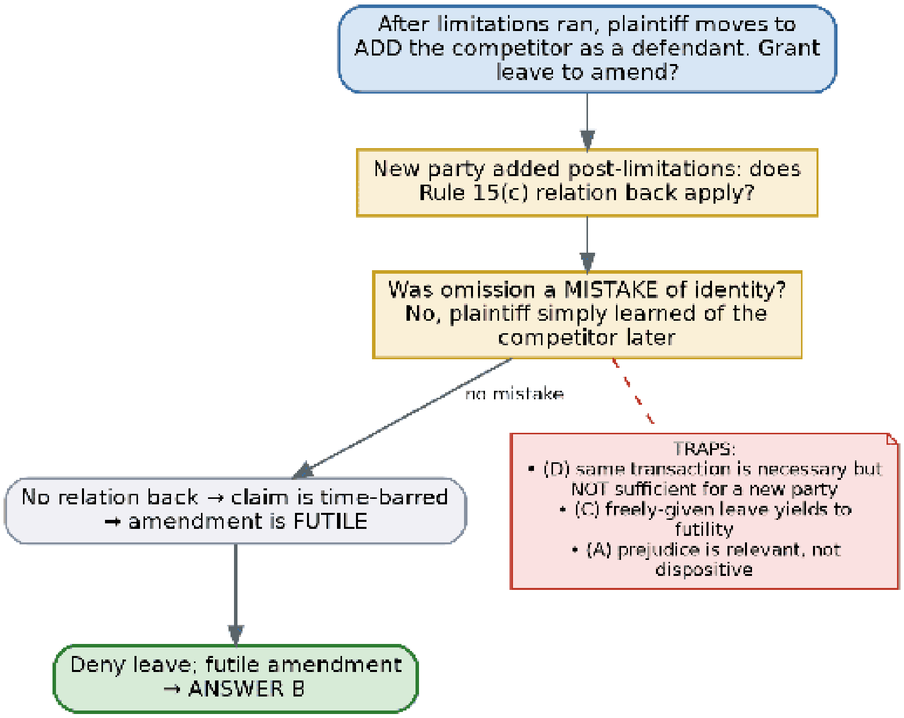
Answer C is incorrect. Although leave to amend should be freely granted, the claim here is futile because it is brought after the applicable limitations period has expired and does not relate back.

Answer D is incorrect. The fact that the allegations against the competitor arise out of the same factual circumstances outlined in the original complaint is a necessary but not a sufficient condition for the new claim to relate back when it is asserted against a new party. Additionally, for Rule 15 to permit relation back, the failure to name a party in the original complaint must have been due to a mistake of identity, which was not the case here.

Exam Tactics & Triggers

- Trigger: plaintiff sues, learns of another wrongdoer during discovery, then tries to ADD that party after the statute of limitations ran → relation-back question under Rule 15(c).
- Lock the standard: adding a NEW party relates back only if the omission was a 'MISTAKE concerning identity', not a mere later discovery of who else to sue.
- Futility hook: a time-barred amendment that cannot relate back is FUTILE, and courts deny leave to amend futile claims, that is why (B) beats (A).
- Distractor (D) tell: 'same transaction/occurrence' is NECESSARY but not SUFFICIENT for a new party, you still need the mistaken-identity element, which is missing here.

Answer Flowchart



Question 50 — Criminal Law & Procedure

State authorities received information that a man had been making threats against his ex-wife. To determine whether the man was serious, an undercover officer introduced himself to the man at a bar. The officer said that he had previously taken care of problems for angry spouses. After some discussion in which the man expressed his extreme anger at his ex-wife, the man offered the officer $5,000 to kill her. The officer agreed and made arrangements to meet the man at the bar the next day to collect the $5,000 payment. When the man showed up the next day at the bar, authorities immediately arrested him.

The jurisdiction defines attempt, solicitation, and misprision of a felony as at common law, and also punishes bilateral conspiracies. The crimes below are listed in descending order of seriousness.

What is the most serious crime of which the man can properly be convicted?

(A) Attempted murder.

(B) Conspiracy to commit murder.

(C) Solicitation of murder.

(D) Misprision of a felony.

Correct answer: C

Explanation

Answer C is correct. The man committed solicitation of murder by attempting to induce the undercover officer to murder the man's ex-wife.

Answer A is incorrect because the facts do not show that the man took sufficient steps toward completing a murder. The man did nothing but offer to pay, and this conduct is not "dangerously proximate" to the commission of the offense as required by the common law.

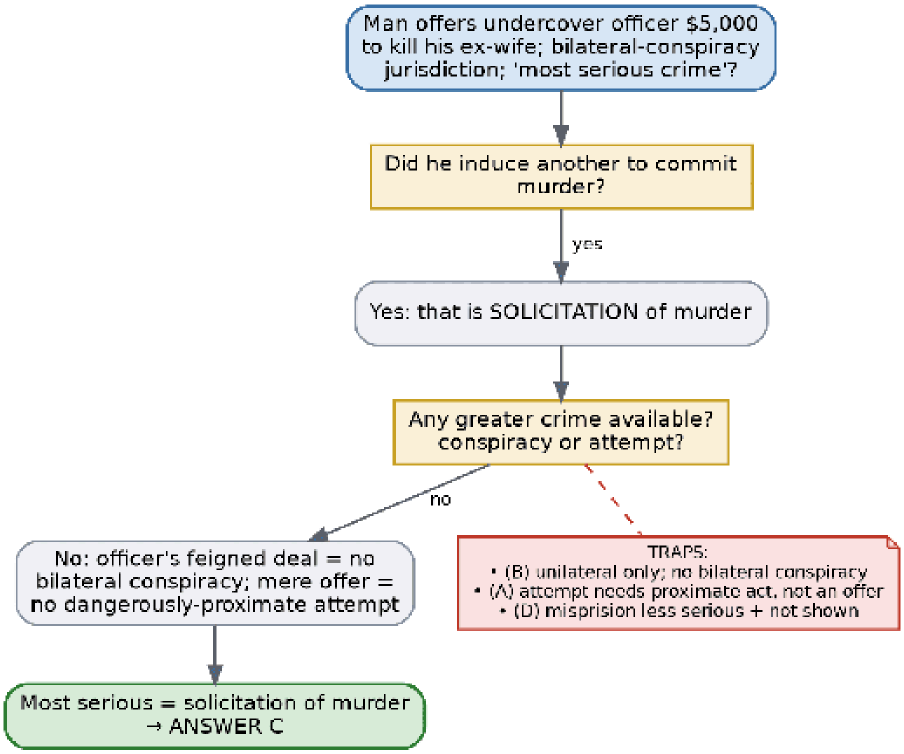
Answer B is incorrect because the facts do not show the existence of a bilateral conspiracy. The man's offer, given the undercover officer's insincere agreement, established only a unilateral conspiracy.

Answer D is incorrect. The question calls for the most serious crime of which the man can be convicted, and solicitation of murder is more serious than misprision of a felony. Additionally, the facts do not establish a misprision. That offense occurs when a person fails to inform the authorities about a felony that the person knows about.

Exam Tactics & Triggers

- Trigger: 'most serious crime' + defendant only OFFERS to pay an undercover officer to kill → the insincere agent kills conspiracy and attempt, leaving solicitation.
- Rule chain: solicitation = inducing another to commit a crime; it stands even when the person solicited (the officer) never truly intends to comply.
- Bilateral-conspiracy tell: in a bilateral jurisdiction the officer's feigned agreement is no real meeting of minds, so conspiracy fails.
- Distractor traps: (A) attempt needs a dangerously-proximate act, not just an offer, and (D) misprision is both less serious and not established here.

Answer Flowchart



Question 51 — Contracts

An heir hired an appraiser to appraise various items of personal property that she had inherited, including an original oil painting. The appraiser told the heir that he had no expertise in appraising art and recommended that she hire an art appraiser to value the painting. The heir, doubting that the painting was valuable, declined to follow the appraiser's advice and decided to sell the painting at a yard sale. She set the price at $100, assuming that this price reflected the painting's approximate value. A neighbor, who knew nothing about art, purchased the painting from the heir at the asking price. The neighbor and the heir later discovered that the painting was worth over $900,000.

Would the heir be likely to prevail in an action to rescind the contract?

(A) No, because the heir bore the risk of any mistake as to the true value of the painting.

(B) No, because the neighbor possessed no specialized knowledge of the true value of the painting.

(C) Yes, because enforcement of the contract would be unconscionable, given its disadvantageous impact on the heir.

(D) Yes, because the parties were mutually mistaken as to the true value of the painting at the time of the sale.

Correct answer: A

Explanation

Answer A is correct. A person cannot avoid a contract for mistake where that person bears the risk of mistake. Here, the heir bore the risk because she was aware that she had only limited knowledge with respect to the facts but treated her limited knowledge as sufficient.

Answer B is incorrect. The neighbor may have also been mistaken as to the value of the painting, but it was the heir who bore the risk of mistake, as she treated her limited knowledge as sufficient.

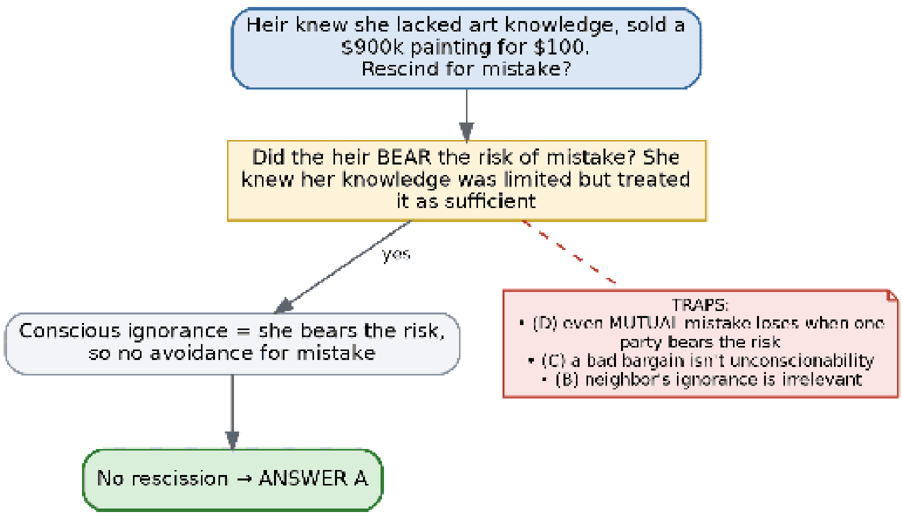
Answer C is incorrect. Where a mistake is mutual, the loss falls on the party who bore the risk of mistake.

Answer D is incorrect. Although it is true that the parties were mutually mistaken, it was the heir who bore the risk of mistake.

Exam Tactics & Triggers

- Trigger: a party AWARE her knowledge is limited but who treats it as sufficient bears the risk of mistake (conscious ignorance) → no rescission.
- Risk-allocation trumps: even a MUTUAL mistake loses when one party bears the risk, so (C)/(D) fail.
- Unconscionability decoy (C): a bad bargain flowing from an assumed risk is not unconscionability.
- The neighbor's own ignorance (B) is irrelevant; the risk-bearer is the heir.

Answer Flowchart



Question 52 — Torts

After a car buyer failed to make timely payments on her auto loan and failed to respond to notices of default properly sent to her home address, the loan company hired a collection agency to repossess the car.

An employee of the agency went to the buyer's home and knocked on the front door. When the buyer answered, the employee explained that he was there to repossess the car and asked for the car keys. The buyer handed the employee the keys but then asked the employee to allow her to retrieve her laptop computer from the car. The employee declined the request, explaining to the buyer that any possessions in the car could be reclaimed from the company after the car was repossessed. After pleading unsuccessfully with the employee, the buyer shoved the employee away from the door with such force that the employee fell and suffered a broken wrist. The buyer then ran to the car, which was unlocked, and retrieved the laptop.

The employee has sued the buyer for battery. The buyer has moved for summary judgment, arguing that she was privileged to act as she did.

Should the trial court grant the buyer's motion?

(A) No, because a fact-finder could reasonably conclude that the buyer used excessive force in attempting to defend her property.

(B) No, because after the buyer handed the keys to the employee, the car was no longer her property.

(C) Yes, because a possessor can use nonlethal force to protect his or her property.

(D) Yes, because the buyer complied with the law by returning the car keys and acted reasonably in asking to retrieve the laptop.

Correct answer: A

Explanation

Answer A is correct. The buyer intentionally shoved the employee, which satisfies the prima facie case for battery. As an affirmative defense, the buyer could claim that she was privileged to use force against the employee in order to maintain possession of her laptop. However, this defense will be established only if the jury reasonably concludes that the buyer's use of force was reasonable under the circumstances (rather than excessive). Thus, the trial court should deny the buyer's motion for summary judgment.

Answer B is incorrect. The buyer's claim of privilege for the use of force would be based on her possessory right in the laptop, not the car.

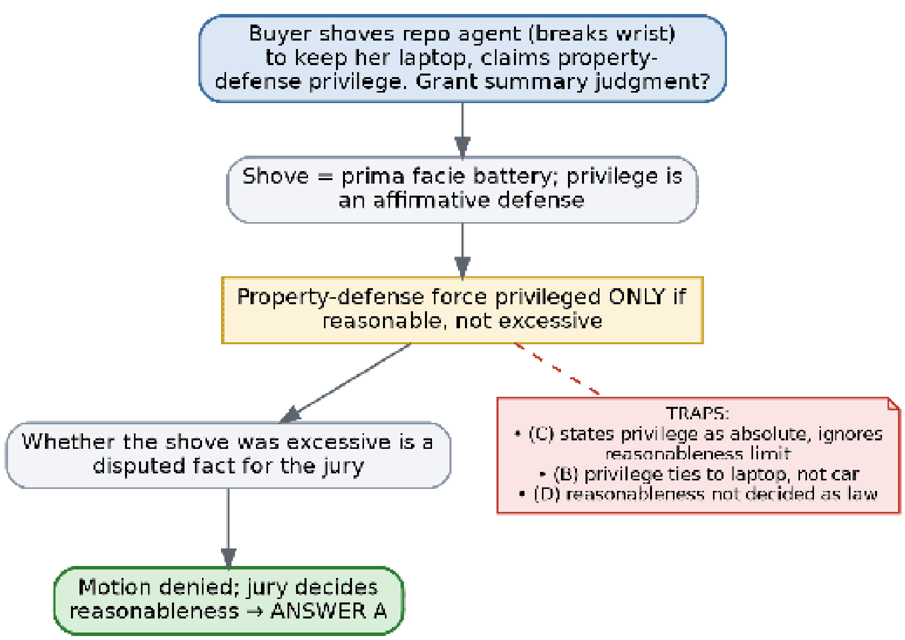
Answer C is incorrect. This answer suggests that there is a general rule permitting possessors to use nonlethal force to protect their possessory rights in all situations. This is not the case: possessors can sometimes use nonlethal force to protect their possessions, but only if the force used is reasonable under the circumstances.

Answer D is incorrect. The buyer's compliance with the employee's request for the keys, and the reasonableness of the buyer's request to retrieve the laptop, do not establish as a matter of law that the buyer's use of force was reasonable under the circumstances.

Exam Tactics & Triggers

- Trigger: defense-of-property privilege raised on summary judgment, with a factual dispute over whether the force was excessive → reasonableness is a JURY question, so no summary judgment.
- Rule chain: force to protect property is privileged ONLY if reasonable under the circumstances; shoving hard enough to break a wrist may exceed that, a fact issue.
- Distractor trap (C): states the privilege as an absolute ('can use nonlethal force to protect property'); the 'can always' framing ignores the reasonableness limit and is the classic overbroad tell.
- Distractor traps (B and D): (B) misroutes the privilege to the car when it's really about the laptop; (D) claims reasonableness 'as a matter of law,' which is exactly what a jury must decide.

Answer Flowchart



Question 53 — Evidence

A defendant has been charged with selling cocaine. On the night of the alleged sale, a police officer arrested a woman and found a large package of cocaine in her car. The woman was brought to the police station for questioning. During her interrogation, she admitted to a police officer that she had sold cocaine and said that she had obtained the cocaine from the defendant, who was a local supplier.

By the time of the defendant's trial, the woman has left the country. The prosecutor calls the police officer to testify that the woman told him that the defendant was her cocaine supplier. The defendant's attorney objects.

Is the woman's statement to the police officer admissible to prove that the defendant sold cocaine?

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

(B) No, because the prosecutor has not shown that the woman's attendance at trial could not have been procured through process or other reasonable means.

(C) Yes, as the statement of the defendant's coconspirator.

(D) Yes, as the woman's declaration against penal interest.

Correct answer: A

Explanation

Answer A is correct. The woman's statement is hearsay if offered to prove its truth— that the defendant sold cocaine. There is no hearsay exception that would apply to admit her statement against the defendant.

Answer B is incorrect. The prosecutor's failure to establish the woman's unavailability is not the reason that her statement is inadmissible. Because there is no hearsay exception that would make the woman's statement admissible to prove its truth, it would be inadmissible even if the prosecutor were to properly establish her unavailability.

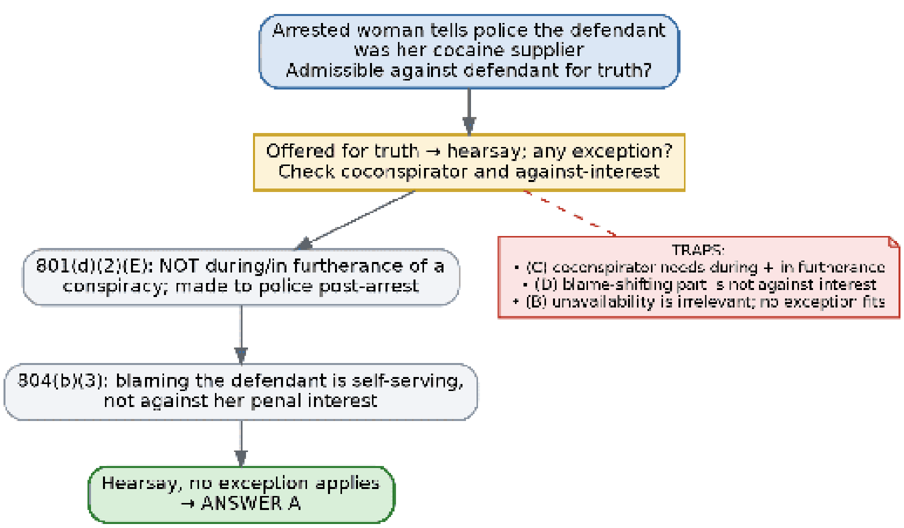
Answer C is incorrect. The woman's statement was made to a police officer following her arrest and not during a drug conspiracy with the defendant. The statement also certainly did nothing to further a drug conspiracy, even if one did exist.

Answer D is incorrect. The portion of the woman's statement attributing fault to the defendant and suggesting that he was her drug supplier was not against the woman's penal interest. Indeed, once she was apprehended, her statement shifted blame to the defendant and away from herself and was in fact self-serving.

Exam Tactics & Triggers

- Trigger: an arrested declarant tells police 'X was my supplier' → classic non-qualifying statement; the blame-shifting part is NOT against penal interest.
- Rule chain: statement against interest (FRE 804(b)(3)) covers only the self-inculpatory parts; a portion pointing the finger at someone else after arrest is self-serving, not disserving.
- Coconspirator tell: FRE 801(d)(2)(E) needs a statement made DURING and IN FURTHERANCE of the conspiracy; a post-arrest statement to police is neither.
- Distractor traps: (B) unavailability is irrelevant because no exception applies at all; (C)/(D) name real exceptions but neither fits the accusatory, custodial statement.

Answer Flowchart



Question 54 — Real Property

A seller signed a valid contract with a buyer for the sale of a restaurant building. The contract provided that the closing would occur at the office of the seller’s attorney 30 days after the date of the contract.

Twenty days later, the buyer asked the seller if the closing could be postponed for 15 days beyond the scheduled closing date. The seller authorized her attorney to email the buyer saying that the closing date would be extended for 15 days but that “time is now of the essence.” The buyer emailed back that the change was reasonable and thanked them.

On the rescheduled closing date, the buyer was in a car accident on the way to the closing and was hospitalized for a month. When the buyer was released from the hospital, he told the seller and her attorney that he was now ready to close. They responded that the buyer had breached the contract and that there would be no closing.

Can the buyer still enforce the contract?

(A) No, because it was the buyer who had requested the change in the closing date.

(B) No, because time was made “of the essence” as to the rescheduled closing date.

(C) Yes, because the buyer’s failure to appear at the rescheduled closing was justified.

(D) Yes, because the original contract was silent concerning time being “of the essence.”

Correct answer: B

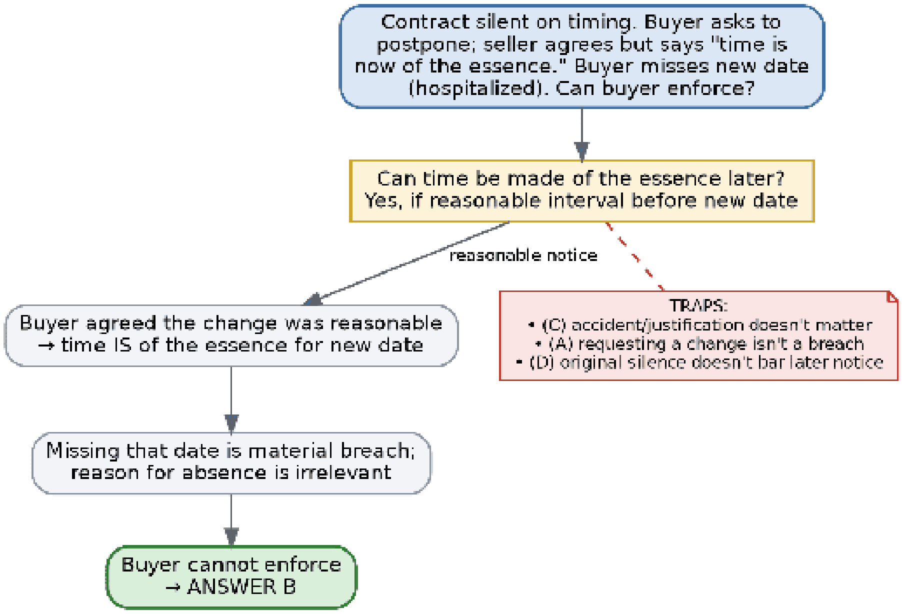
Explanation

Answer B is correct. The initial contract did not require time to be “of the essence” for the closing. When the buyer requested a postponement of 15 days, the seller agreed but noted that time was now “of the essence,” which the buyer agreed was reasonable. Time may be made of the essence later if there is a reasonable time between the notice and the new date. Answer A is incorrect. A buyer can request a change in the closing date. If the seller had not agreed, the buyer could close within a reasonable time of the initial closing date because time had not yet been made of the essence. Answer C is incorrect. Time had been made “of the essence” when the closing date was changed. It is irrelevant why the buyer did not appear at the rescheduled closing. Answer D is incorrect. Though the original contract did not mention time being “of the essence,” time can be made “of the essence” in a later document provided that there is a reasonable time between the date of the notice that time is now “of the essence” and the rescheduled closing date.

Exam Tactics & Triggers

- Trigger: original land-sale contract silent on timing, then one party sends notice that "time is now of the essence" for a rescheduled date → time can be made of the essence AFTER the fact.
- Rule chain: a later notice makes time of the essence IF it gives a reasonable interval before the new closing date; once it does, missing that date is a material breach.
- Kill the sympathy trap: (C) the buyer's car accident is irrelevant, once time is of the essence, WHY he missed the closing does not matter.
- Distractor traps: (A) a buyer may request a date change, that is not a breach; (D) the original contract's silence does not stop a later of-the-essence notice.

Answer Flowchart



Question 55 — Constitutional Law

A new federal statute establishes a five-member commission on cultural heritage sites. The statute directs the commission to develop regulations to protect such sites on federal public lands and to implement the regulations through specified fact-finding and adjudicatory functions. The commission is not under the supervision or control of any federal agency.

Which, if any, of the following methods of appointing the commission members would be constitutional?

(A) Members are appointed by a specially designated panel of federal judges.

(B) Members are appointed by the Speaker of the House of Representatives, with the advice and consent of both houses of Congress.

(C) Members are appointed by the President, with the advice and consent of the Senate.

(D) None of these appointment methods would be constitutional.

Correct answer: C

Explanation

Answer C is correct. The commission exercises significant legal authority. For that reason, the commissioners are officers of the United States. Because they are not under any other federal agency, they are not considered inferior officers and must therefore be appointed by the President with the advice and consent of the Senate. U.S. Const., Art. II, Sec. 2; Edmond v. United States, 520 U.S. 651 (1997); Freytag v. Commissioner of Internal Revenue, 501 U.S. 868 (1991).

Answer A is incorrect. Judges can appoint some inferior officers, but not principal officers such as these commissioners.

Answer B is incorrect. Executive officers cannot be appointed by Congress.

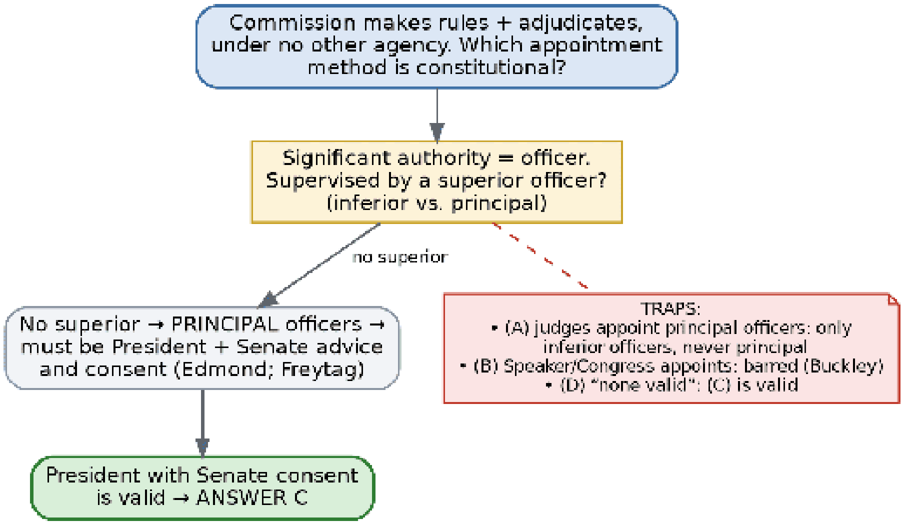
Answer D is incorrect because answer C states the correct method of appointment.

Exam Tactics & Triggers

- Trigger: a commission wields “significant legal authority” (rulemaking + adjudication) and answers to NO other agency → its members are PRINCIPAL officers.
- Rule chain: significant authority = officer of the U.S.; not supervised by a superior = principal, not inferior; principal officers = President + Senate advice and consent.
- Distractor trap (A): courts may appoint some INFERIOR officers, but never principal officers, so a judicial panel cannot appoint these commissioners.
- Distractor trap (B): Congress (or the Speaker) may NOT appoint executive/officer positions (Buckley), that violates

the Appointments Clause.

Answer Flowchart



Question 56 — Civil Procedure

At the close of a two-week federal jury trial, the court asked the parties to submit proposed jury instructions. The court selected some of the proposed instructions, reformulated others, and charged the jury accordingly. The parties made no objections. The jury returned a verdict for the plaintiff, and the court entered judgment on the verdict.

The defendant appealed, arguing that several of the court's instructions were plain error.

What is the plaintiff's best argument in response?

(A) Any errors in the instructions did not affect the defendant's substantial rights.

(B) The defendant waived the appeal by failing to first move for a new trial.

(C) The court has discretion as to what instructions to give and can be reversed on appeal only for abuse of that discretion.

(D) The defendant waived the errors in the instructions by not objecting to them at trial.

Correct answer: A

Explanation

Answer A is correct. Because the defendant did not object to any of the instructions, Federal Rule of Civil Procedure 51(d)(2) provides that the defendant's appeal can only be successful if the instruction affected the defendant's substantial rights, which is the standard for plain error.

Answer B is incorrect. There is no obligation to seek a new trial before challenging jury instructions on appeal, so long as the applicable plain error standard can be satisfied. Plain error is the standard because the defendant failed to object at trial.

Answer C is incorrect. Plain error, not abuse of discretion, is the standard for reviewing instructions that the parties did not object to, as was the case here.

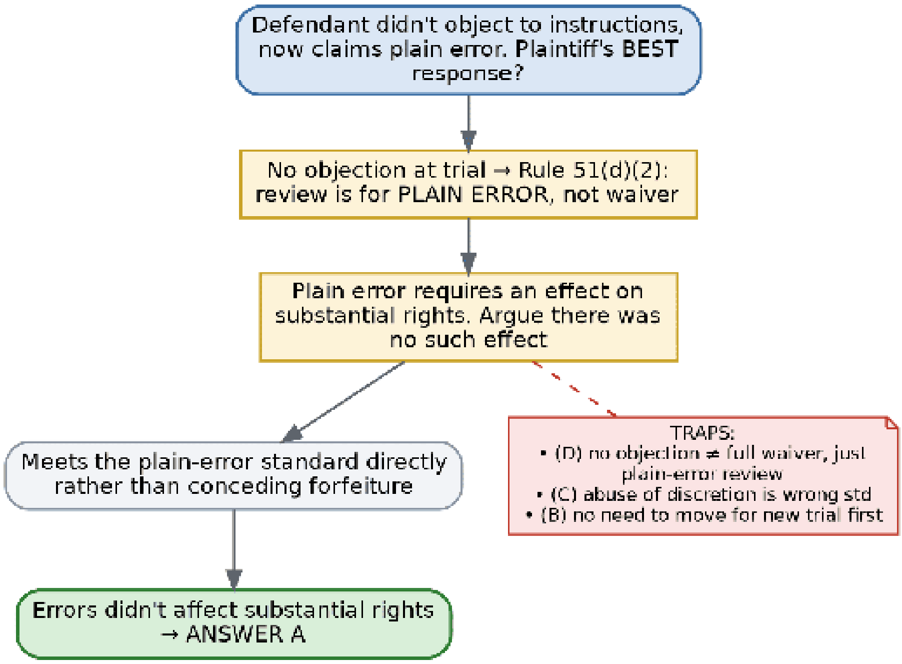
Answer D is incorrect. The errors were not waived by the failure to object. Rather, the failure to object waived full review, with the result that the standard for assigning error was raised to plain error.

Exam Tactics & Triggers

- Trigger: party 'made no objections' to jury instructions and now claims 'plain error' on appeal → the review standard, not waiver, is the issue.
- Rule 51(d)(2) chain: no objection at trial does NOT waive the appeal, it raises the bar to PLAIN ERROR, which requires an effect on substantial rights.
- So the plaintiff's best rebuttal is that the errors did NOT affect substantial rights (A), meeting plain error head-on

rather than arguing forfeiture.
- Distractor tells: (D) 'waived' overstates the effect of no objection, (C) abuse-of-discretion is the wrong standard, and (B) invents a new-trial prerequisite.

Answer Flowchart



Question 57 — Criminal Law & Procedure

Two women decided to rob a bank. They asked a friend to drive them to the bank without telling him that they intended to rob it. The friend waited in his car outside the bank while the women went in. Suddenly, the two women rushed from the bank holding bags of money as alarms sounded. The friend drove the women back to their apartment.

What crime, if any, has the friend committed?

(A) Accessory after the fact to bank robbery.

(B) Accomplice to bank robbery.

(C) Conspiracy to commit bank robbery.

(D) No crime.

Correct answer: A

Explanation

Answer A is correct. Although the friend was not informed of the women’s plan, he would reasonably have become aware of the robbery when they emerged running from the bank, bags in hand, with alarms sounding. The friend’s subsequent act—driving the women away from the bank to their apartment—would support a guilty verdict on the crime of accessory after the fact.

Answer B is incorrect because the friend did not know about the planned robbery and thus did not act with the intent to facilitate that offense, as required for accomplice liability.

Answer C is incorrect because the friend did not know about the planned robbery and thus did not agree with intent to commit the offense, as required for conspiracy.

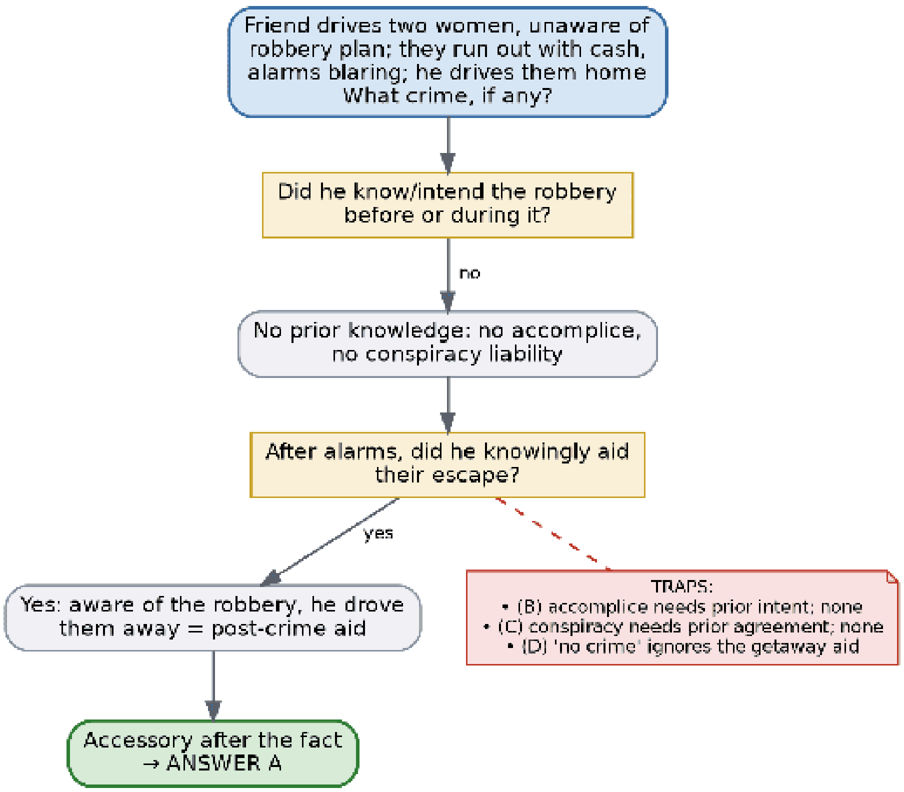
Answer D is incorrect. Although the friend was innocent until the women emerged from the bank, his subsequent culpable act to aid his friends after the robbery makes him criminally liable as an accessory after the fact.

Exam Tactics & Triggers

- Trigger: driver NOT told of the robbery plan but drives the fleeing robbers away after alarms sound → no pre-crime intent, so look downstream to accessory after the fact.

- Rule chain: accomplice/conspiracy both need knowledge + intent BEFORE/DURING the crime; accessory after the fact = knowingly aiding a felon to escape AFTER the felony is complete.
- Timing tell: he became aware only when they ran out with money bags and alarms blaring, then chose to help them flee, that post-crime aid is the crime.
- Distractor traps: (B) accomplice and (C) conspiracy both fail for lack of prior knowledge, and (D) 'no crime' ignores his culpable getaway assistance.

Answer Flowchart



Question 58 — Contracts

An engineer and a real estate developer entered into a written professional-services contract. The contract stated that in return for $10,000, the engineer was to “complete a feasibility study and a master plan, and use best efforts to obtain county approval of the [developer’s planned] project.”

The engineer submitted a completed feasibility study and master plan to the developer. Despite the engineer’s best efforts, however, the county did not approve the project. Because of this outcome, the developer refused to pay the engineer for any of the engineer’s services.

In a breach of contract action by the engineer against the developer, which party will likely prevail?

(A) The developer, because an express condition to the developer’s performance obligation failed to occur.

(B) The developer, because the engineer breached the contract by failing to obtain the county’s approval of the project.

(C) The engineer, because the developer breached the contract by not paying once the developer’s obligation to pay the engineer became due.

(D) The engineer, because the failure of an express condition to the developer’s obligation to pay the engineer was excused by governmental action.

Correct answer: C

Explanation

Answer C is correct. The engineer’s obligation was to “use best efforts to obtain county approval,” not to obtain county approval, and the engineer performed all obligations as promised. Therefore, the developer breached by refusing to perform the developer's obligations under the contract. Restatement (Second) of Contracts §§ 225, 235.

Answer A is incorrect. There is no express condition. Under the rule of constructive conditions of exchange, the performance by one party is an implied condition to performance by the other party. Since the engineer performed all obligations, the developer breached by refusing to perform the developer's contractual obligation to pay the engineer.

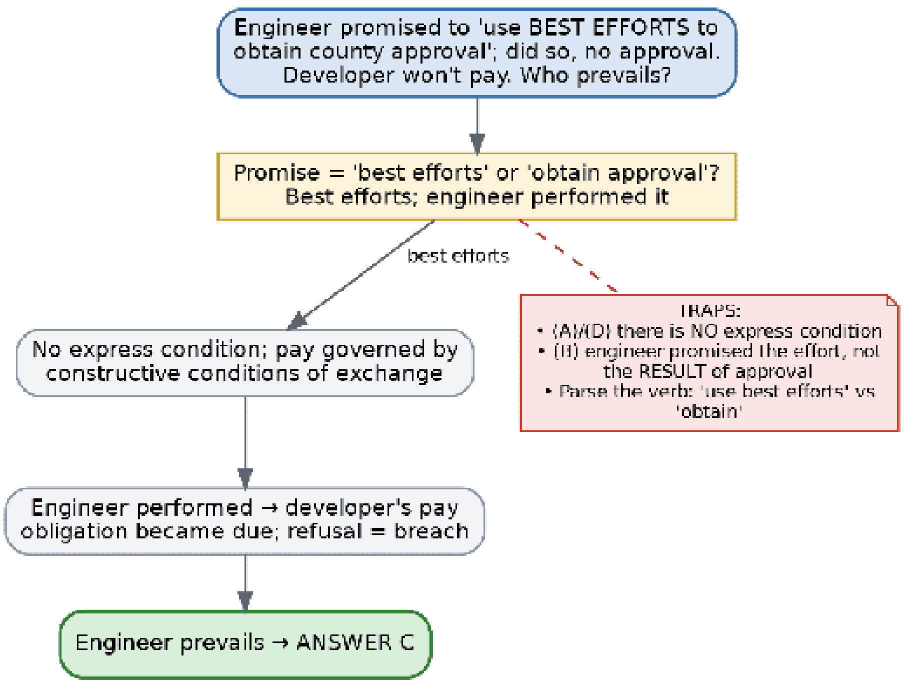
Answer B is incorrect. The engineer did not breach the contract, because the engineer had an obligation to "use best efforts to obtain county approval," not to obtain county approval.

Answer D is incorrect. There is no express condition. The engineer had an obligation to "use best efforts to obtain county approval" and performed that obligation.

Exam Tactics & Triggers

- Trigger: the promise is to 'use BEST EFFORTS to obtain X,' not to 'obtain X' → doing best efforts is full performance even if X never happens.
- No express condition tell: county approval is not an express condition; payment runs on constructive conditions of exchange, so (A)/(D) are wrong.
- Engineer did not breach (B): the RESULT (approval) was never promised, only the effort.
- Parse the verb: 'use best efforts' vs 'obtain' decides the whole question.

Answer Flowchart



Question 59 — Evidence

A defendant has been charged with being a felon in possession of a firearm. He has maintained that he was only an overnight guest in the apartment in which the firearm was recovered. At trial, the prosecution seeks to offer various items of evidence found at the apartment, including mail addressed to the defendant at that apartment, various receipts bearing the defendant's credit card information, and clothing of a size that would fit the defendant. The prosecution wishes to use the testimony of the law enforcement officer who found the items in the apartment during a search to authenticate them.

After hearing the officer's testimony, what standard should the court use in determining whether the items have been properly authenticated?

(A) Whether the prosecution has made a clear and convincing showing that the items are what the prosecution claims them to be.

(B) Whether there is sufficient evidence to establish a chain of custody of the items.

(C) Whether there is sufficient evidence to support a finding that the items are what the prosecution claims them to be.

(D) Whether, by a preponderance of the evidence, the items in question are what the prosecution claims them to be.

Correct answer: C

Explanation

Answer C is correct. The production of evidence “sufficient to support a finding” that the evidence is what the proponent (here the prosecution) claims it to be is the proper standard for authentication under FRE 901.

Answer A is incorrect. To authenticate the items under FRE 901, the prosecution must produce evidence “sufficient to support a finding” that the items were found in the apartment. A finding by the court that the prosecution has made a clear and convincing showing that the items are what the prosecution claims them to be is not required. That is too high a standard and would result in keeping relevant evidence from the jury.

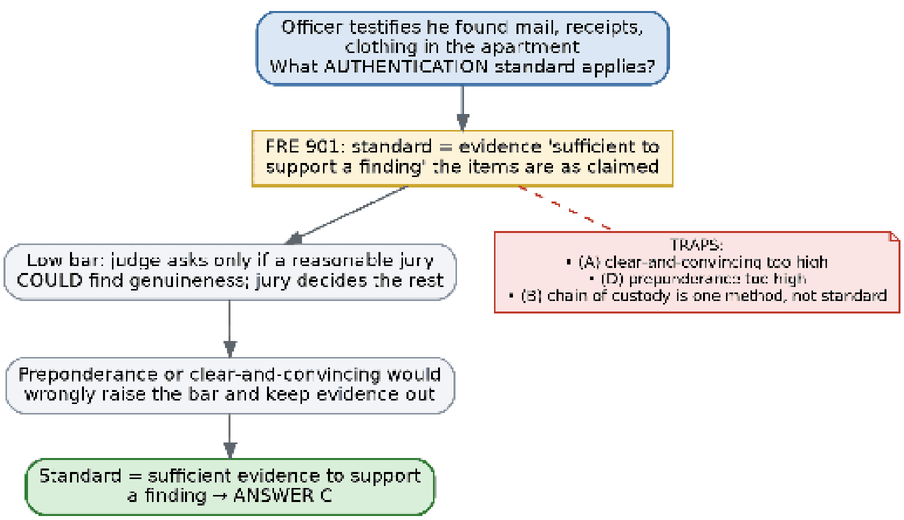
Answer B is incorrect. Proof of chain of custody—what happened to the evidence after it was initially seized from the apartment—is one way of authenticating evidence, but it is not necessary here, since the prosecution has called a witness who will testify that he saw each of the items in the apartment.

Answer D is incorrect. FRE 901 requires proof sufficient to support a finding that the items are what the prosecution claims them to be. Requiring a court to find by a preponderance of the evidence that the items are what the prosecution claims them to be would result in keeping relevant evidence from the jury; it is too high a standard.

Exam Tactics & Triggers

- Trigger: question asks the STANDARD for authentication → FRE 901, 'evidence sufficient to support a finding' the item is what it's claimed to be.
- Lock the phrase: authentication is a low bar (prima facie/conditional relevance), NOT proof by a preponderance and NOT clear-and-convincing.
- The judge only screens whether a reasonable jury COULD find genuineness; the jury decides actual authenticity.
- Distractor traps: (A) clear-and-convincing and (D) preponderance are both too high; (B) chain of custody is just one method, not the governing standard, and unneeded when a witness saw the items.

Answer Flowchart



Question 60 — Constitutional Law

The federal government hired a private contractor to repair and maintain the roads in a national park located wholly within a state. In a written agreement, the government agreed to pay the contractor an annual fixed fee and to reimburse the contractor for all expenses associated with the work. The agreement provided that the contractor must pay for all materials and expenses from a special bank account into which the government would deposit required payments and reimbursements.

The state collected a generally applicable sales tax from the contractor on materials purchased for the work with money from the special bank account.

Was the state's imposition of the sales tax constitutional in this situation?

(A) No, because the federal government is immune from any taxes levied by a state.

(B) No, because the tax was paid from an account directly funded with federal money and the entire economic cost of the tax was borne by the federal government.

(C) Yes, because payment of the tax did not unduly interfere with the contractor's performance of the work and was not an undue burden on a federal function.

(D) Yes, because the tax did not discriminate against the federal government or its contractors, and the materials were purchased by the contractor rather than by the federal government.

Correct answer: D

Explanation

Answer D is correct. A state tax is valid if it is nondiscriminatory and does not apply directly to the federal government. United States v. California, 507 U.S. 746 (1993).

Answer A is incorrect. A state may not impose a tax directly on the federal government, but the tax in this situation was imposed on the contractor.

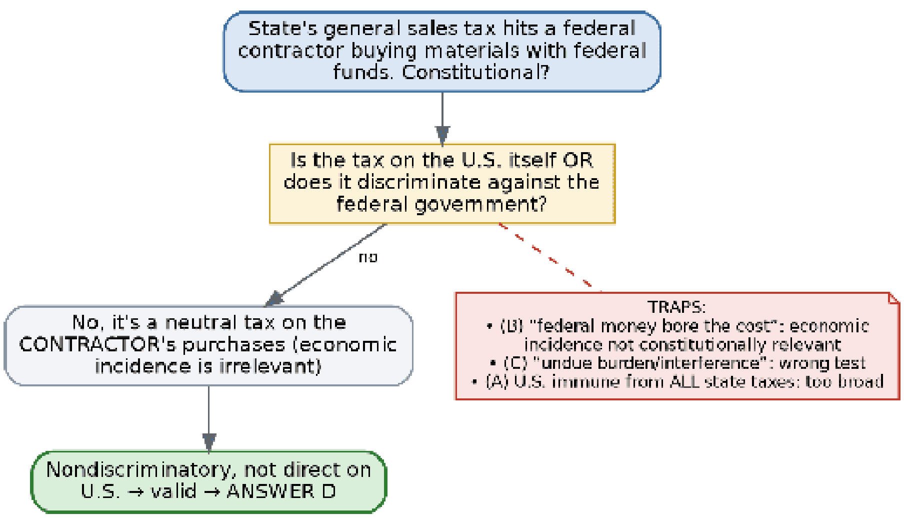
Answer B is incorrect. The economic incidence of the tax is not constitutionally relevant.

Answer C is incorrect. It misstates the constitutional test given in answer D.

Exam Tactics & Triggers

- Trigger: a state taxes a federal CONTRACTOR (not the U.S. itself) on purchases → valid if nondiscriminatory and not levied directly on the federal government.
- Rule chain: intergovernmental immunity blocks taxes ON the U.S. or that discriminate against it; a neutral tax on a contractor's own purchases is fine (United States v. California).
- Distractor trap (B): "fed money / fed bore the cost" invokes economic incidence, which is NOT constitutionally relevant, only the legal incidence matters.
- Distractor trap (C): the "undue burden / undue interference" phrasing misstates the test; the correct test is discrimination + who is directly taxed, so (C) is a wrong-standard decoy.

Answer Flowchart



Question 61 — Real Property

Twenty years ago, a woman conveyed land to a city so long as the city used the land "for park purposes." The deed was promptly recorded.

Seventeen years ago, the city discontinued using the land as a park. Because the city needed additional parking for nearby city buildings, it paved the land and has used it as a parking lot ever since.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

Last year, the woman died intestate, leaving a son as her only heir. The son sued the city, claiming ownership of the land, but the court found against him.

What is the most likely explanation for the court's decision?

(A) The city acquired the land by adverse possession.

(B) The son's interest ended as a result of the changing needs of the city.

(C) The son's interest lapsed on the death of the woman.

(D) The woman retained no interest in the land after she conveyed it to the city.

Correct answer: A

Explanation

Answer A is correct. The 10-year statute of limitations began to run 17 years ago when the city began using the land for non-park purposes, a use it continued for more than the statutory 10-year period. The woman failed to sue the city in a timely manner after the city stopped using the land for a park. Thus, when the woman died, she no longer owned the land and no interest passed to her son.

Answer B is incorrect. The changing needs of the city did not make the city's actions permissible; the woman could have filed a timely claim that the city had violated the terms of the deed.

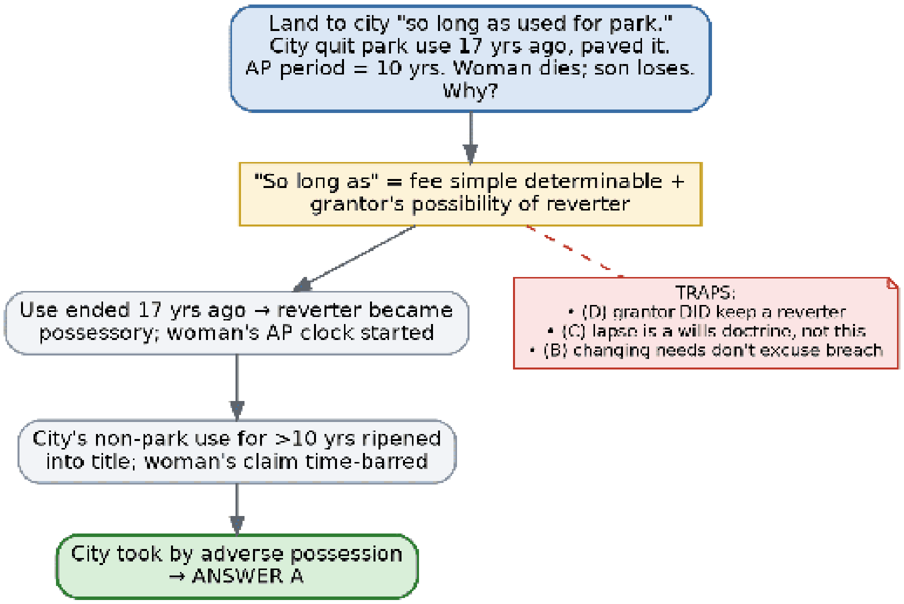
Answer C is incorrect. Lapse occurs when a recipient under a will dies before the testator. That is not what occurred here.

Answer D is incorrect. When the woman conveyed the land to the city, she retained a possibility of reverter, which became possessory when the city ceased to use the land for a park. At that time, the woman had a cause of action against the city, which she failed to bring in a timely manner.

Exam Tactics & Triggers

- Trigger: "so long as ... for park purposes" → fee simple determinable, grantor holds a possibility of reverter that becomes POSSESSORY the moment the use stops.
- Rule chain: when the city quit park use, the reverter vested in the grantor and her adverse-possession clock started; the city's continued non-park use for over the 10-year period ripened into title.
- Key timing math: use ended 17 years ago, statute is 10 years, so the claim was time-barred long before the son inherited, and he takes nothing.
- Distractor traps: (D) wrongly says grantor kept no interest (she had a reverter); (C) misuses "lapse," which is a wills doctrine; (B) "changing needs" does not legitimize the breach.

Answer Flowchart



Question 62 — Torts

A recently installed elevator suddenly started free-falling down the elevator shaft while carrying passengers. Frightened, a passenger pried the inside doors open and impulsively stuck his arm through them to try to stop the fall. As a result, his arm was broken. The elevator eventually stopped without causing further injuries.

In a negligence action brought by the injured passenger against the company that installed and maintained the elevator, the injured passenger has asked the trial judge to instruct the jury that it may find the company negligent on a theory of res ipsa loquitur. In response, the company has argued that the passenger's conduct caused his injuries.

How should the judge rule?

(A) The judge should deny the passenger's request, because it is possible that the company was not negligent.

(B) The judge should deny the passenger's request, because the jury could find that the conduct of the passenger contributed to his injuries.

(C) The judge should grant the passenger's request but should also instruct the jurors to consider any carelessness of the passenger in awarding damages if they find the company liable.

(D) The judge should grant the passenger's request, because the passenger acted reasonably considering the stress of the situation.

Correct answer: C

Explanation

Answer C is correct. The question of the passenger's negligence is relevant to the jury's assessment of damages but is not a bar to a res ipsa instruction.

Answer A is incorrect. The company was exclusively in control of the elevator and the injury would not have happened if the elevator had not malfunctioned, so the passenger's request for a res ipsa instruction should be granted.

Answer B is incorrect. The passenger's negligence is relevant to the damages awarded, if any, but it is not a bar to a res ipsa instruction.

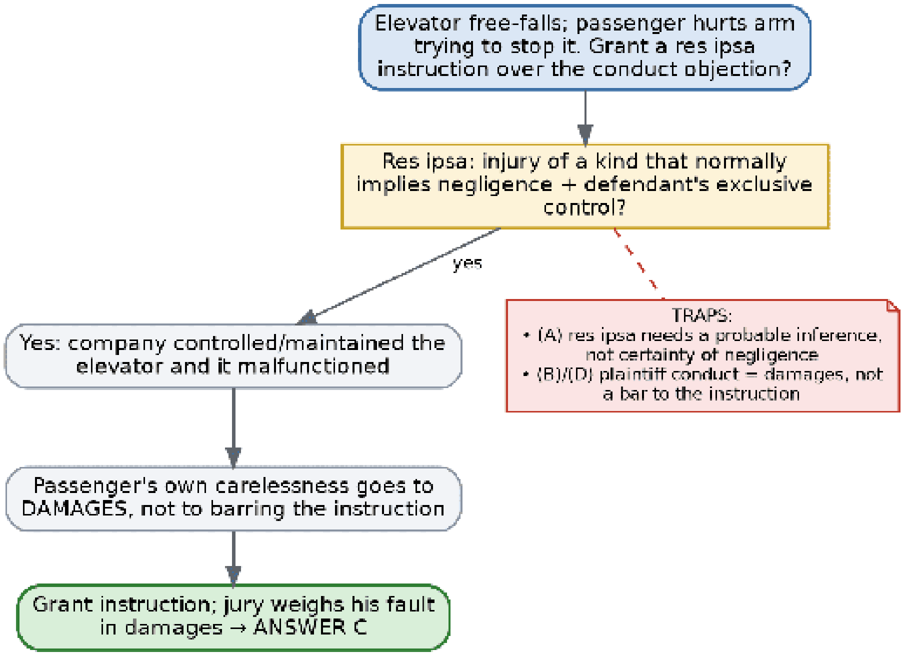
Answer D is incorrect. The question of the passenger's negligence is not relevant to whether a res ipsa instruction is appropriate but rather to the amount of damages to assess if the company is found liable.

Exam Tactics & Triggers

- Trigger: an instrument under the defendant's exclusive control malfunctions in a way that ordinarily bespeaks negligence (elevator free-falls) → res ipsa loquitur instruction is warranted.
- Rule chain: plaintiff's own carelessness goes to COMPARATIVE fault/damages, it is NOT a bar to giving a res ipsa instruction.

- Distractor trap (A): 'possible the company was not negligent' misstates res ipsa, which only asks whether negligence is the more probable inference, not a certainty.
- Distractor trap (B): baits students into treating plaintiff's conduct as a defense to the instruction; the tell is that comparative-fault jurisdictions fold that into damages, not liability threshold.

Answer Flowchart



Question 63 — Civil Procedure

A consumer brought a federal diversity action against a manufacturer, seeking damages for products liability claims. In its answer, the manufacturer included the affirmative defense of contributory negligence. Applicable state law had recently abolished contributory negligence as a defense in such actions.

Before trial, the judge allowed the parties to submit proposed jury instructions. The manufacturer’s attorney proposed an instruction that the jury should not return a verdict for the consumer if it found that the consumer had been contributorily negligent. After the close of the evidence, the judge told the parties that he would give the contributory negligence instruction. The consumer’s attorney did not object.

The judge instructed the jury. After the jury began their deliberations, the consumer’s attorney objected to the contributory negligence instruction.

Should the judge consider the objection?

(A) No, because the consumer’s attorney did not object before the judge gave the instruction.

(B) No, because the consumer’s attorney did not object when the judge gave the instruction.

(C) Yes, because the fact that the judge gave the inapplicable instruction constituted plain error that affected the consumer’s substantial rights.

(D) Yes, because the consumer’s attorney objected within 28 days after the judge gave the instruction.

Correct answer: C

Explanation

Answer C is correct. Because the governing law does not recognize contributory negligence as a defense to this kind of claim, instructing the jury on contributory negligence and allowing that instruction to stand will affect the consumer’s substantive rights by permitting the consumer to lose the case based on an erroneous statement of the law. The inclusion of the instruction thus constitutes plain error.

Answer A is incorrect. The attorney’s failure to object before the judge gave the contributory negligence instruction is not an obstacle to the judge’s considering the objection, if the error referenced in the objection is plain error. Here, the error is plain, since the governing law does not recognize contributory negligence as a defense to this kind of claim.

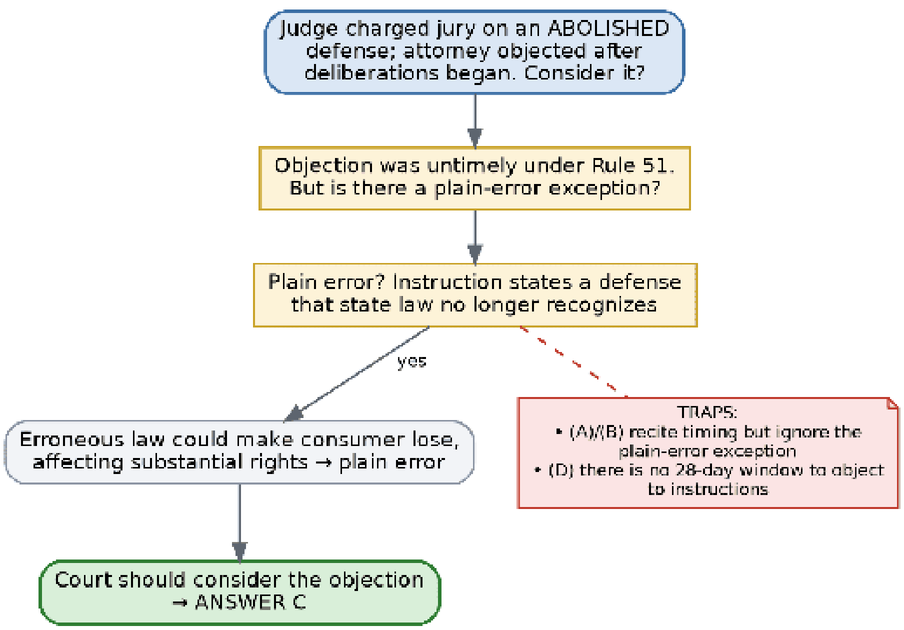
Answer B is incorrect. The attorney's failure to object at the time the judge gave the contributory negligence instruction is not an obstacle to the judge's considering the objection, if the error referenced in the objection is plain error. Here, the error is plain, since the governing law does not recognize contributory negligence as a defense to this kind of claim.

Answer D is incorrect. For most objections to jury instructions, the objection must be made before the instruction is given to the jury. There is no 28-day window after the jury is instructed to object to any instructions. The exception to the general rule of making all objections before the jury is instructed is for objections of plain error, which is the case here.

Exam Tactics & Triggers

- Trigger: judge gives an instruction on a defense state law has ABOLISHED and the objection comes late → plain-error exception lets the court still consider it.
- Rule 51 default vs. exception: objections normally must precede the charge, BUT plain error affecting substantial rights is reviewable despite an untimely objection.
- Substantial-rights hook: instructing on a legally nonexistent defense (abolished contributory negligence) could cost the consumer the case on a wrong statement of law = plain error.
- Distractor tells: (A)/(B) recite the timing rule but ignore the plain-error exception, and (D) invents a fictional 28-day window to object to instructions.

Answer Flowchart



Question 64 — Criminal Law & Procedure

Police officers responding to phone calls of complaining neighbors noticed several broken windows in a home, glass on the ground, and a blood-stained shirt on the front porch. Through a window, the officers saw a man, whose hands were bleeding, shouting and throwing things, but no one else appeared to be present in the home.

When the officers knocked on the door, the man refused to respond. The officers then asked if he needed medical assistance. The man told them to leave and not come back unless they had a warrant. The officers then entered the home, and the man pointed a shotgun at them. The officers withdrew but later arrested the man for felony assault on a police officer.

Alleging that the warrantless entry violated the Fourth Amendment, the man has moved to suppress the officers' testimony at trial.

Should the court grant the motion to suppress?

(A) No, because the man lacks standing to complain of an entry under the emergency aid exception to the Fourth

Amendment.

(B) No, because the warrantless entry was reasonable under the emergency aid exception to the Fourth Amendment.

(C) Yes, because officers cannot use the emergency aid exception to justify a warrantless entry when only the suspect himself needs aid.

(D) Yes, because the emergency aid exception does not apply when a homeowner clearly and unambiguously invokes his right to a warrant.

Correct answer: B

Explanation

Answer B is correct. On these facts, the officers could reasonably believe that a warrantless entry was necessary to keep the man from harming himself or others. When the officers entered, they did not know whether another person was in the home, nor did they know whose blood was on the shirt. Consequently, under Michigan v. Fisher, 558 U.S. 45 (2009), the warrantless entry was reasonable.

Answer A is incorrect. Although the emergency aid exception may justify a warrantless entry, the exception does not alter a person’s standing to assert a Fourth Amendment claim. In other words, the exception does not abridge a person’s reasonable expectation of privacy.

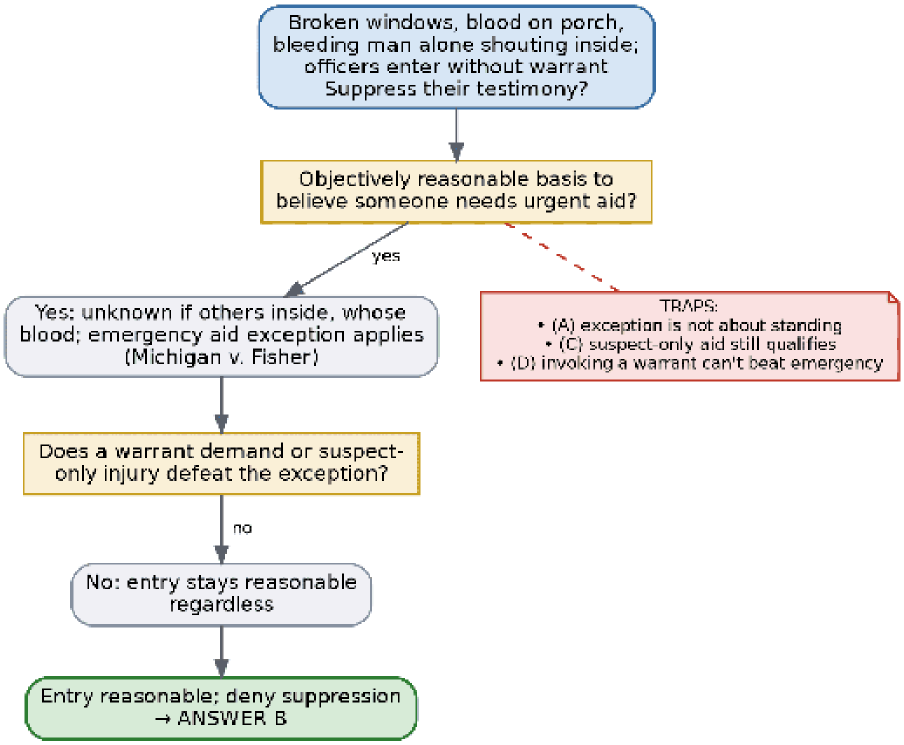
Answer C is incorrect for two reasons. First, the emergency aid exception can justify a warrantless entry when the suspect is the only person who needs aid. Second, as noted, on these facts the officers could reasonably believe that the suspect may not have been the only person who needed aid.

Answer D is incorrect because the emergency aid exception can justify a warrantless entry regardless of whether the homeowner requests a warrant.

Exam Tactics & Triggers

- Trigger: broken windows, blood, a bleeding man alone shouting inside → warrantless entry is reasonable under the EMERGENCY AID exception (Michigan v. Fisher).
- Rule chain: emergency aid exception asks only whether officers had an OBJECTIVELY reasonable basis to believe someone needs immediate aid, not whose blood it is.
- Key facts: officers didn't know if another person was inside or whose blood was on the shirt, so aid to the suspect alone still qualifies.
- Distractor traps: (A) confuses the exception with standing (it doesn't erase the privacy interest), (C) wrongly says the suspect-only can't trigger it, and (D) 'demanded a warrant' cannot defeat a true emergency.

Answer Flowchart



Question 65 — Constitutional Law

A state law requires every motor carrier hauling goods on the state's highways to register with and obtain a permit from the state's transportation commission. The purpose of this requirement is to facilitate application of the state's valid police, welfare, and safety regulations to carriers using the state's highways. The fee for registration is nominal, and the commission has no discretion to deny a permit to a carrier that properly registers and pays the registration fee.

Are the state's requirements constitutional when applied to a wholly interstate carrier?

(A) No, because neither a carrier's registration nor its payment of a nominal fee is necessary to facilitate the application of state laws to motor carriers.

(B) No, because the requirements impose an undue burden on interstate commerce.

(C) Yes, because the requirements apply equally to interstate and intrastate carriers and are the only prerequisites to the issuance of the permit.

(D) Yes, because the requirements are the least restrictive means of serving the state's compelling interest in highway safety.

Correct answer: C

Explanation

Answer C is correct. Even a nondiscriminatory state law may be unconstitutional if the burden on interstate commerce clearly outweighs the state's interest in regulation. However, in this case the state law does not discriminate against interstate commerce and the burden is minimal compared with the state's interest in applying its police, welfare, and safety regulations. Lloyd A. Fry Roofing Co. v. Wood, 344 U.S. 157 (1952).

Answer A is incorrect because a nondiscriminatory state law is not subject to the requirement of being necessary to achieve the state's interest. The only requirement is that such a law not be a clearly excessive burden on interstate commerce.

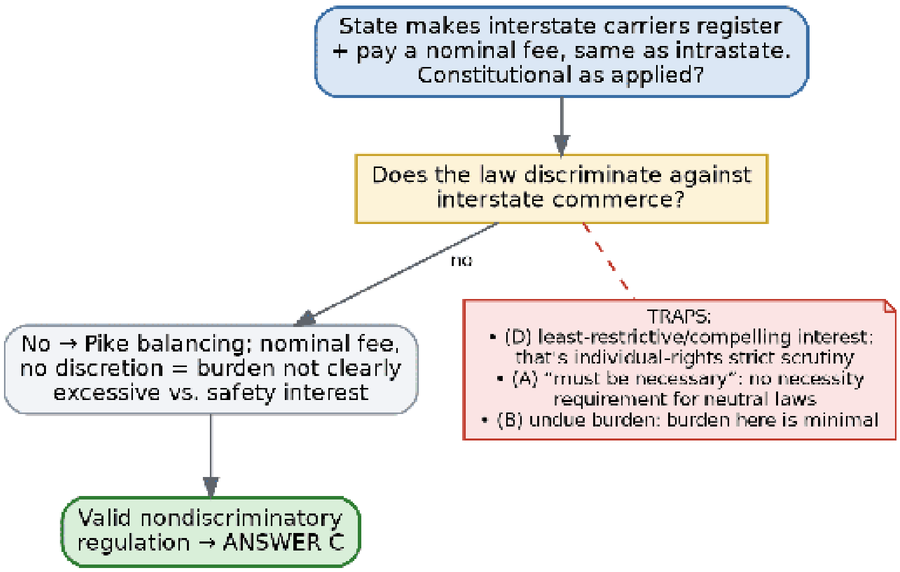
Answer B is incorrect because there is minimal burden on carriers and no discrimination against interstate commerce.

Answer D is incorrect because it states the "compelling interest" test that applies only to claims that state laws violate individual rights such as freedom of speech.

Exam Tactics & Triggers

- Trigger: a state law hits interstate carriers but applies EQUALLY to intrastate ones, with only a nominal fee and no discretion to deny → nondiscriminatory, minimal burden, upheld.
- Dormant Commerce Clause chain: no discrimination → apply Pike balancing; law falls only if the burden CLEARLY exceeds the local benefit, not the case here.
- Distractor trap (D): "least restrictive means / compelling interest" is the strict-scrutiny/individual-rights test, wrong framework for a Commerce Clause challenge.
- Distractor trap (A): "must be necessary to facilitate state law" imports a necessity requirement that nondiscriminatory laws do NOT face.

Answer Flowchart



Question 66 — Contracts

An engineering firm submitted a bid to a municipality for the construction of a new wastewater treatment plant. The firm's bid included a subcontractor's bid to complete the electrical work on the plant for $100,000.

The municipality awarded the construction contract to the firm. Later that day, before the firm told the subcontractor of the award, the subcontractor told the firm that it was withdrawing its bid because it had recently undertaken a new project that would absorb all its capacity for the next 18 months. The firm nevertheless accepted the subcontractor's bid and demanded that it perform the electrical work on the plant, but the subcontractor refused. The firm had to hire another subcontractor to perform the electrical work, at a cost of $115,000. The firm completed the construction of the plant at a profit.

Which of the following statements correctly describes the firm's legal rights, if any, against the first subcontractor?

(A) The firm is entitled to recover nominal damages only, because it completed the construction at a profit.

(B) The firm is entitled to recover reliance damages, because it detrimentally relied on the first subcontractor's bid when it submitted its own bid to the municipality.

(C) The firm is entitled to recover expectation damages, because the first subcontractor's bid was irrevocable for a reasonable time and the firm timely accepted it.

(D) The firm has no rights against the first subcontractor, because the first subcontractor was free to revoke its bid at any time before the firm accepted that bid.

Correct answer: C

Explanation

Answer C is correct. Here the offeror (the subcontractor) knew that the offeree (the firm) would substantially rely on the offer in creating a bid for the municipality's project and knew that the firm could not accept the subcontractor's offer until the municipality accepted the firm's overall bid on the project. This reasonable reliance had the effect of creating an option contract under which the subcontractor could not revoke its bid for a reasonable time. Since the subcontractor could not revoke its bid, its attempt at revocation was ineffective, and the bid was still open at the time the firm accepted it. Therefore, a contract was formed by offer and acceptance, and the remedy for breach of this contract is expectation damages. Restatement (Second) of Contracts §§ 87(2) & cmt. e; Drennan v. Star Paving, 333 P.2d 757 (1958).

Answer A is incorrect. A contract was formed when the firm timely accepted the subcontractor's offer. Therefore, the firm is entitled to recover expectation damages measured by the difference between the amount paid to the second subcontractor and the amount of the first subcontractor's bid.

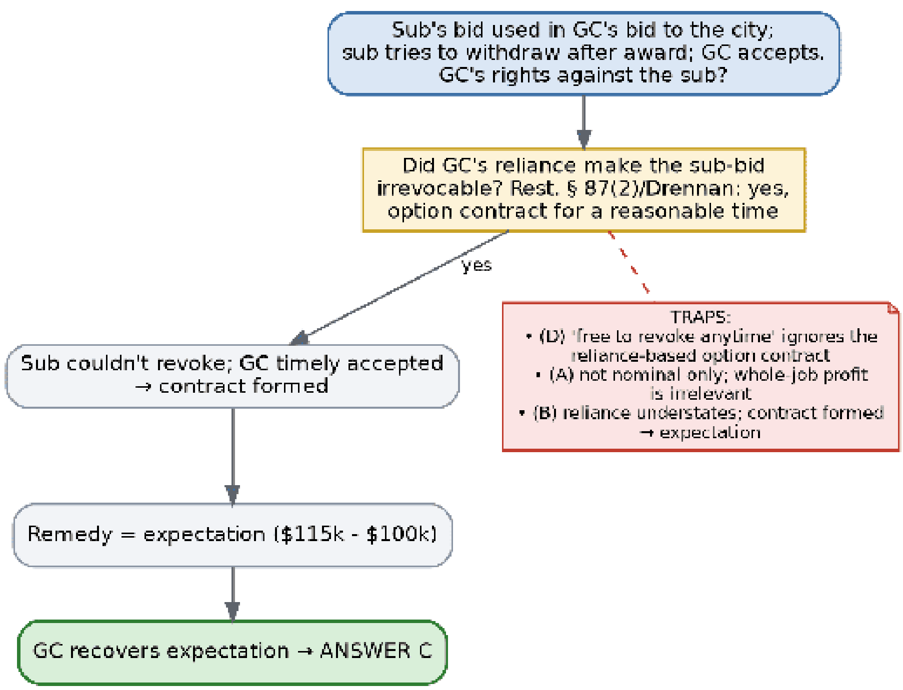
Answer B is incorrect. As discussed above, the firm's reliance kept the subcontractor's bid open as an option contract. Once the offer was accepted, a contract was formed, and expectation damages would be the most appropriate measure of recovery for breach.

Answer D is incorrect. While an offeror generally has the power to revoke an offer up until the moment of acceptance, detrimental reliance by the offeree can make an offer irrevocable by transforming it into an option contract, which is what happened here with the subcontractor's bid.

Exam Tactics & Triggers

- Trigger: a general contractor uses a sub's bid in its own bid → foreseeable reliance makes the sub-bid irrevocable (option contract) for a reasonable time under Rest. § 87(2)/Drennan.
- Revocation-ineffective tell: the sub could not revoke, the firm timely accepted → a real contract → expectation damages ($115k - $100k = $15k).
- (D) trap: 'free to revoke anytime before acceptance' ignores the reliance-based option contract.
- Nominal (A)/reliance (B) decoys: once a contract forms, expectation is the measure, and profit on the whole job is irrelevant.

Answer Flowchart



Question 67 — Real Property

A man borrowed money from a bank to finance the purchase of a commercial building. The man signed a promissory note, which was secured by a mortgage on the building. Because the man had few other unencumbered assets, the bank required additional security. The man's mother granted the bank a mortgage on a motel that she owned, but she did not sign a promissory note. Both mortgages were promptly recorded.

Five years later, after real estate values had dropped considerably, the man defaulted on the loan from the bank. After acceleration, the bank initiated foreclosure proceedings against both the commercial building and the motel owned by the mother.

The mother timely objected to the foreclosure proceedings against the motel. The bank responded that it had the right to include both the commercial building and the motel in the foreclosure proceedings.

Who is correct?

(A) The bank, because the motel was voluntarily mortgaged to secure the man's debt.

(B) The bank, because the mother is personally liable on any loan secured by the mortgage on the motel.

(C) The mother, because she did not sign a promissory note.

(D) The mother, because the bank does not hold an enforceable mortgage on the motel.

Correct answer: A

Explanation

Answer A is correct. A person may validly mortgage their land to secure the debt of another person. The mortgagor need not be the debtor.

Answer B is incorrect. The mother is not personally liable on the debt because she neither signed the note secured by the mortgage nor at any time agreed to assume payment of the mortgage.

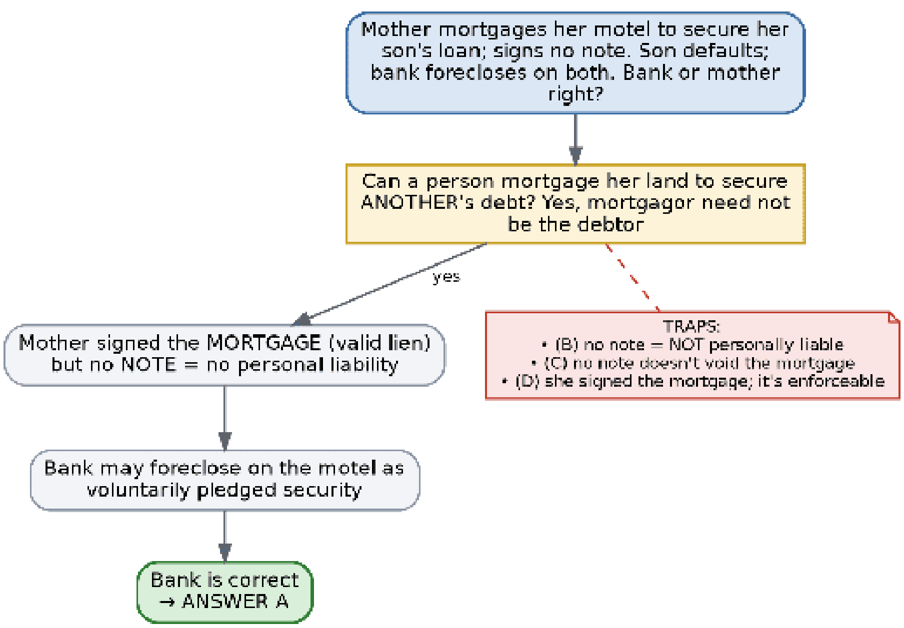
Answer C is incorrect. A person can mortgage their property even though the person did not become liable on a debt by signing the promissory note.

Answer D is incorrect. The bank's mortgage is enforceable because the mother signed the mortgage.

Exam Tactics & Triggers

- Trigger: a THIRD party mortgages HER own land to secure SOMEONE ELSE'S debt but signs no note → valid mortgage; the mortgagor need not be the debtor.
- Rule chain: separate the NOTE (personal liability) from the MORTGAGE (lien on land), signing only the mortgage means the land is on the hook but the person is NOT personally liable.
- Distractor traps: (B) wrongly makes her personally liable, but no note = no personal liability; (C) "didn't sign the note" does not void the mortgage she DID sign.
- Tell: (D) claims the mortgage is unenforceable, but she signed the mortgage, so the bank can foreclose on the motel even though she owes no personal debt.

Answer Flowchart



Question 68 — Evidence

A plaintiff sued a defendant for injuries she allegedly received when she slipped and fell while shopping in the defendant's grocery store. At trial, the plaintiff calls as a witness another shopper who testifies that she saw the plaintiff slip and fall on an oily substance on the floor of the store.

On cross-examination, the defendant's attorney asks: "Isn't it true that you told an investigator one week after the accident that you did not see [the plaintiff] fall?" The witness denies making the statement.

Later in the trial, the defendant's attorney calls the investigator, who offers to testify that the witness told him, "I never saw [the plaintiff] fall." The plaintiff objects to admission of the investigator's testimony about the witness's out-of-court statement.

Should the court admit the investigator's testimony about the witness's out-of-court statement?

(A) No, because the statement is inadmissible hearsay not within any hearsay exception.

(B) No, because the witness denied making the statement.

(C) Yes, to prove that the plaintiff did not fall and to impeach the witness.

(D) Yes, but only for the limited purpose of impeaching the witness's trial testimony.

Correct answer: D

Explanation

Answer D is correct. The defense may offer extrinsic evidence of a witness's prior inconsistent statement for the limited non-hearsay purpose of impeaching the witness after the witness has been given an opportunity to explain or deny the statement.

Answer A is incorrect. The witness's statement to the investigator may be admitted for the non- hearsay purpose of impeaching the witness with a prior inconsistent statement.

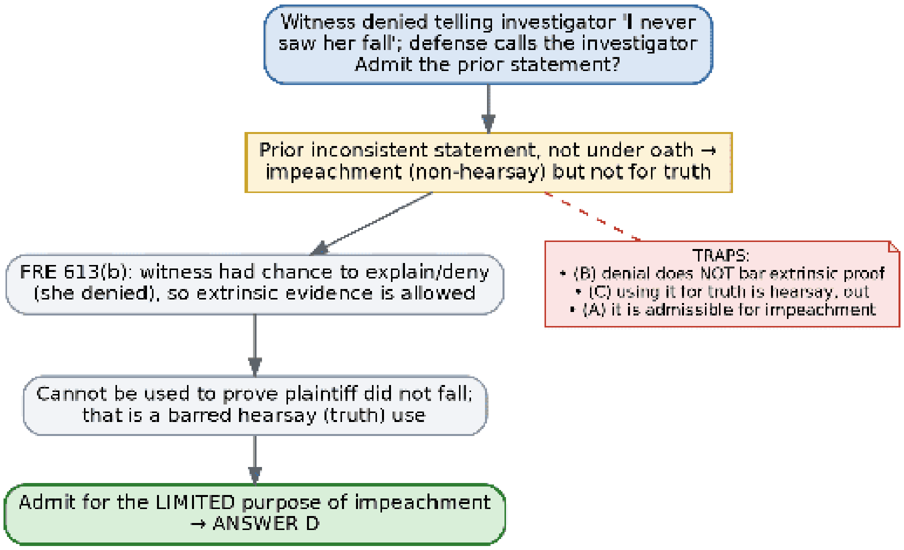
Answer B is incorrect. An opposing party must give a witness an opportunity to explain or deny a prior inconsistent statement under FRE 613(b). But, if the witness has had that opportunity, the opposing party may offer extrinsic evidence of the statement. It is precisely in situations where the witness denies having made the inconsistent statement that extrinsic evidence that it was made would be most useful.

Answer C is incorrect. The statement would have to be admitted for its truth in order to prove that the plaintiff did not fall, but because the statement was made out of court to an investigator, it is hearsay for that purpose. And since there is no applicable hearsay exception for the witness's statement to the investigator, it cannot be admitted to prove that the plaintiff did not fall.

Exam Tactics & Triggers

- Trigger: extrinsic evidence of a witness's PRIOR INCONSISTENT STATEMENT (to an investigator, not under oath) → impeachment only, not substantive.
- Rule chain: a prior inconsistent statement NOT made under oath at a proceeding is non-hearsay for impeachment but hearsay if offered for its truth; hence limited-purpose only.
- Foundation is met: FRE 613(b) requires the witness get a chance to explain or deny; she denied it, which is exactly when extrinsic proof is most useful.
- Distractor traps: (A)/(B) wrongly exclude it, denial does not bar extrinsic proof; (C) overreaches by admitting it 'to prove plaintiff did not fall' (that is the barred truth use).

Answer Flowchart



Question 69 — Torts

A delivery driver backed her truck up to the loading dock of a large home improvement store. Although it was not her job to unload the truck, the driver would sometimes open the truck's rear doors after parking it in position.

On this occasion, when the driver was about to open the rear doors, she observed through the doors' windows that some large boxes appeared to be pressed against the doors. At that point, she sought assistance. Two people who were on the loading dock responded to her request: the store's shipping manager and the manager's adult friend who was a former employee of the store and was visiting to catch up with the manager.

The driver and the friend stood back as the manager opened the doors; no boxes fell out. With the doors open, all three observed a nylon rope that ran tightly across some of the boxes near the doors. As the manager began to cut through the rope, the driver, who with the friend remained at a distance, said, "Are you sure you want to do that?"

A moment later, the friend noticed that the padlock from the truck's rear doors had fallen to the dock floor between him and the truck. Without saying anything to the manager or the driver, the friend took several steps forward to retrieve the lock. At that instant, the manager succeeded in cutting the rope, and the boxes that had been held in place by the rope fell and hit the friend's head, injuring him.

The friend has sued the store for negligence. The jurisdiction has a system of modified comparative fault but also recognizes assumption of risk as a distinct and complete defense.

Assuming that the store has raised an assumption-of-risk defense and that both sides have filed summary judgment motions based on the facts set out above, how should the trial court rule?

(A) The court should enter judgment as a matter of law for the friend.

(B) The court should deny both motions.

(C) The court should rule that the friend's action fails as a matter of law because he implicitly assumed the risk of the manager's carelessness.

(D) The court should rule that the friend's action fails as a matter of law because no reasonable jury would find him less at fault than the manager.

Correct answer: B

Explanation

Answer B is correct. Whether the friend's conduct amounts to an implied assumption of risk, thus defeating liability entirely, or comparative fault, thus potentially allowing for partial recovery, is a jury question.

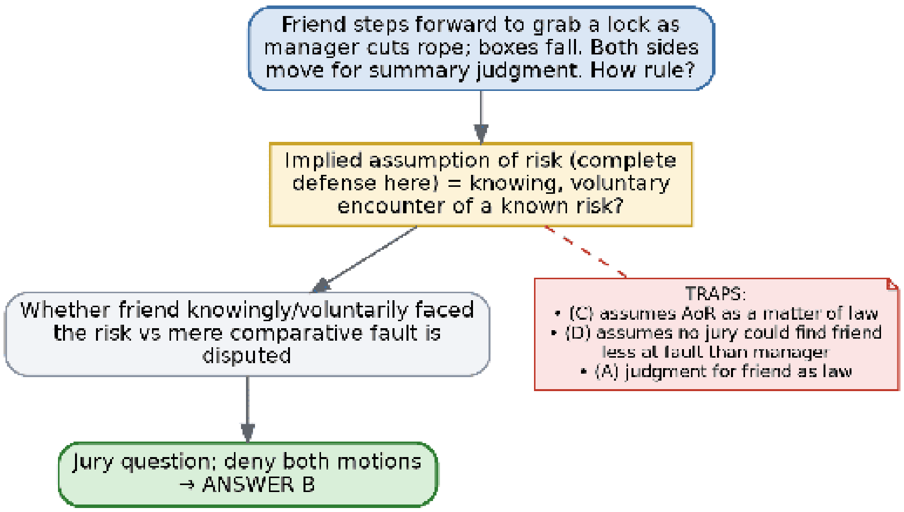
Answers A and C are incorrect for the same reason.

Answer D is incorrect. A jury could reasonably find the friend less at fault than the manager.

Exam Tactics & Triggers

- Trigger: cross-motions for summary judgment where implied assumption of risk vs comparative fault turns on disputed facts → deny BOTH, it's a jury question.
- Rule chain: implied assumption of risk (complete defense here) requires knowing and voluntary encounter of a KNOWN risk; whether the friend's stepping forward meets that is for the jury.
- Distractor traps (C and D): both decide the case 'as a matter of law' (friend assumed risk / no reasonable jury), but reasonable minds could differ, so neither side wins on summary judgment.
- Strategic tell: when a defense's applicability hinges on the plaintiff's state of mind or reasonableness, the safe MBE answer is usually 'jury question / deny both motions.'

Answer Flowchart



Question 70 — Civil Procedure

A woman brought a federal diversity action against a doctor and a hospital for medical malpractice. After both defendants answered, the doctor filed a motion for summary judgment, attaching numerous exhibits that contradicted the facts alleged in the complaint.

The woman has decided that she is not ready to proceed with the action. She would like to dismiss the action, with the intent to refile at a later date.

Which option best achieves the woman's goal?

(A) File a motion for voluntary dismissal without prejudice.

(B) File a notice of dismissal without prejudice.

(C) Obtain a stipulation of dismissal without prejudice from the doctor.

(D) Submit an affidavit that she cannot yet present facts essential to her claim.

Correct answer: A

Explanation

Answer A is correct. Federal Rule of Civil Procedure 41(a)(2) permits a plaintiff to obtain a voluntary dismissal by filing a motion with the court, and a dismissal order under Rule 41(a)(2) is presumptively without prejudice, consistent with the woman's goal of refiling the action at a later date.

Answer B is incorrect. Rule 41(a)(1) permits a plaintiff to voluntarily dismiss an action by filing a notice of dismissal, without having to seek permission from the court. However, that pathway is only available until the defendant answers (or moves for summary judgment). Because the defendants have both answered, it is too late to dismiss the action simply by giving notice.

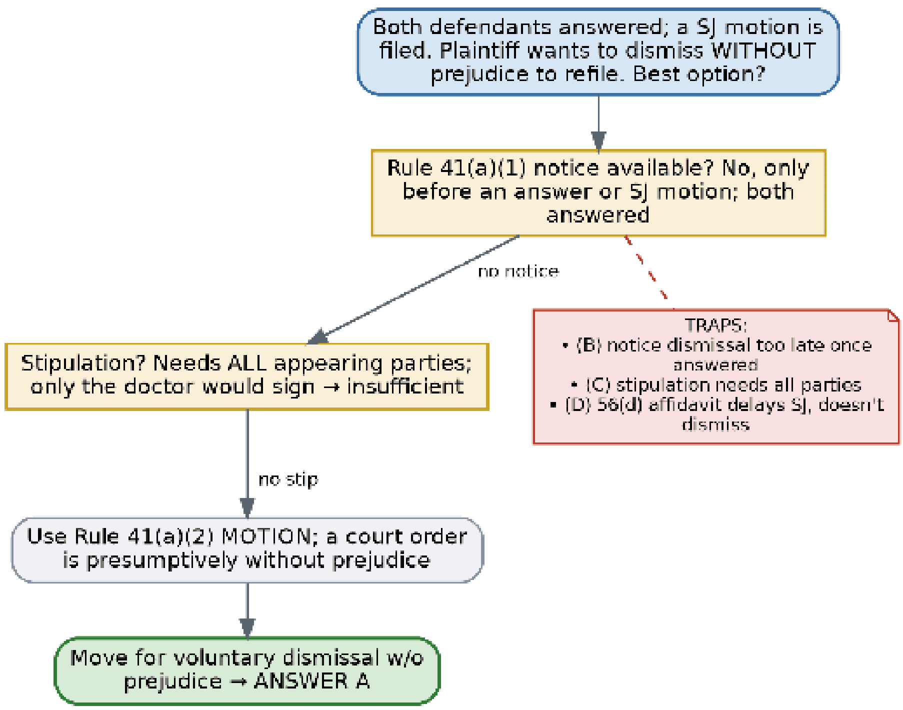
Answer C is incorrect. To dismiss an action voluntarily on stipulation requires the assent of all parties who have appeared in the action. Thus, a stipulation signed only by the doctor would be insufficient to effect dismissal, since the doctor and the hospital have both answered the complaint.

Answer D is incorrect. Submitting such an affidavit would be a proper response to achieve a delay of the court's consideration of the summary judgment motion in order to allow the woman further discovery. However, the woman's goal is to dismiss and refile the action. Submitting the described affidavit would not achieve that goal.

Exam Tactics & Triggers

- Trigger: plaintiff wants to dismiss and REFILE later, but defendants have already ANSWERED (or moved for summary judgment) → notice dismissal is off the table.
- Rule 41 fork: 41(a)(1) notice works only BEFORE an answer/SJ motion; after that, use a 41(a)(2) MOTION, which is presumptively WITHOUT prejudice.
- Kill the stipulation (C): a 41(a)(1) stipulation needs ALL appearing parties, so the doctor's signature alone can't dismiss when the hospital also answered.
- Distractor (D) tell: a Rule 56(d) affidavit only DELAYS summary judgment for more discovery, it does not dismiss the action, so it misses the stated goal.

Answer Flowchart



Question 71 — Constitutional Law

For many years, a city owned and operated a reservoir that supplied the city's residents with water. Based on a finding that private entities were more efficient operators of such facilities than public entities, the city sold the reservoir to a privately owned company. The city council granted the company a non-exclusive franchise to supply water to residents of the city.

After it had operated the water system for a year, the company determined that a city resident had fallen three months behind in the payment of his water bill. The company terminated the resident's water service on the basis of a company policy that provides for the summary termination of service to customers who fall more than two months behind in the payment of their bills. The policy does not provide customers an opportunity for a hearing before the termination of service.

The resident sued the company in an appropriate court, asking for injunctive relief and damages. The resident claimed only that he had been deprived of property without due process of law in violation of the Fourteenth Amendment.

How should the court rule?

(A) Dismiss the action, because the company is not a state actor for purposes of the Fourteenth Amendment.

(B) Dismiss the action, because the resident has not proffered payment of any of his arrearage to the company and therefore has no right to continued water service.

(C) Order the company to give the resident an opportunity for a hearing, because the Fourteenth Amendment applies to private entities performing public functions.

(D) Order the company to give the resident an opportunity for a hearing, because the Fourteenth Amendment applies to private franchises granted by public entities.

Correct answer: A

Explanation

Answer A is correct. The fact that the company supplies a very important good to the public is not sufficient to make it a state actor, nor is the non-exclusive franchise from the city. Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

Answer B is incorrect. The facts do not indicate that the resident was actually in arrears. The purpose of the due process hearing would be to determine whether the resident was in arrears.

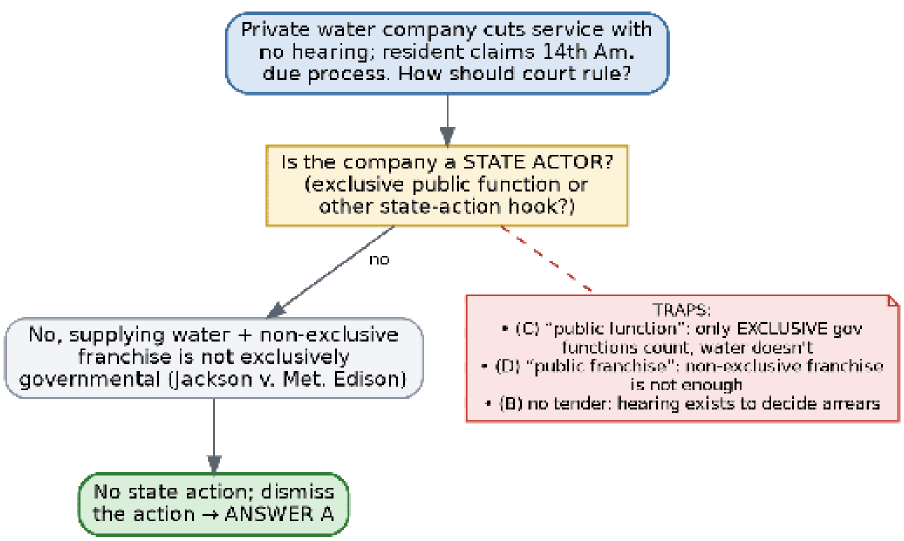
Answer C is incorrect. Private entities performing a public function are state actors only if the function is an exclusively governmental service or one that involves inherently governmental powers such as incarceration. Supplying water does not satisfy either of these requirements.

Answer D is incorrect. Receipt of a public franchise is not enough to make a company a state actor.

Exam Tactics & Triggers

- Trigger: a Fourteenth Amendment due process claim against a PRIVATE company → first gate is state action; supplying an important service is not enough (Jackson v. Metropolitan Edison).
- Public-function chain: a private entity is a state actor only if it performs an EXCLUSIVELY/traditionally governmental function (elections, company town, incarceration); water service does not qualify.
- Distractor traps (C)/(D): “public function” and “public franchise granted by the city” are the exact hooks Jackson rejected; a non-exclusive franchise plus an essential good still is not state action.
- Distractor trap (B): the “didn't tender payment” angle assumes he was actually in arrears, but the whole point of a hearing is to DECIDE that, so it begs the question.

Answer Flowchart



Question 72 — Contracts

A man needed a loan to purchase a business. The man submitted to a lender a loan application that included a then-accurate statement of his financial condition. The lender reviewed the application and concluded that the man was creditworthy without verifying any of his information. A week after the man submitted his application, however, his financial condition changed significantly for the worse. The man did not report this change to the lender. Two days later, the lender approved the loan, and the man and the lender signed a loan agreement. Before disbursing the loan funds, the lender learned of the change in the man’s financial condition.

Is the lender entitled to cancel disbursement of the funds and rescind the loan agreement?

(A) No, because the lender failed to independently assess the man's financial condition before signing the loan agreement.

(B) No, because the man did not affirmatively misrepresent his financial condition at any time.

(C) Yes, because the man concealed the change in his financial condition.

(D) Yes, because after his financial situation changed, the man was obligated to disclose facts necessary to prevent his previous statement of his financial condition from being a misrepresentation.

Correct answer: D

Explanation

Answer D is correct. Nondisclosure of a fact is the equivalent of a misrepresentation when a person knows that disclosure of the fact is necessary to prevent some previous assertion from being a misrepresentation.

Answer A is incorrect. The lender had no duty to make an independent assessment when reliance on the representation was reasonable.

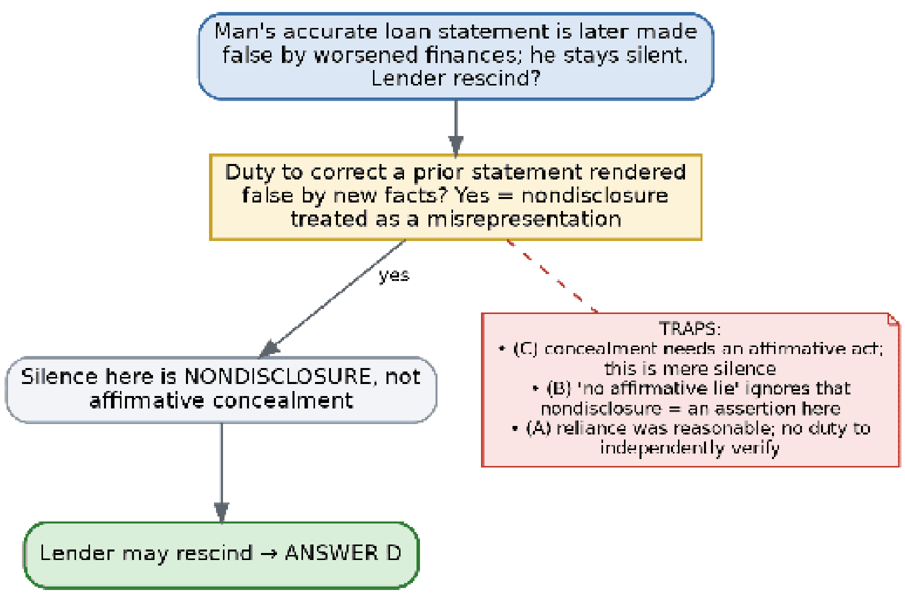
Answer B is incorrect. While it is true that the man did not make an affirmative misrepresentation, failure to disclose is the equivalent of an assertion under these facts.

Answer C is incorrect. Concealment requires an affirmative act; here the man failed to disclose the change in circumstances rather than affirmatively acting to conceal it.

Exam Tactics & Triggers

- Trigger: an accurate statement later rendered FALSE by changed facts → duty to disclose to prevent the earlier assertion from becoming a misrepresentation.
- Concealment vs nondisclosure tell: concealment (C) needs an affirmative act to hide; mere silence here makes (D)'s nondisclosure theory the precise one.
- No-duty-to-verify tell (A): the lender's reliance was reasonable, so no duty to independently reassess.
- (B) half-truth: 'no affirmative lie' ignores that nondisclosure is treated as an assertion on these facts.

Answer Flowchart



Question 73 — Evidence

A lawyer was called to testify before a grand jury that was investigating a hit-and-run accident. A security guard at the lawyer's office had testified earlier that on the date of the accident he had seen a person leave the lawyer's office at around 7 p.m., get into a car, and strike a pedestrian while driving out of the parking lot without stopping afterward. The lawyer was asked to disclose the identity of the person who left his office around 7 p.m. on the date of the accident. The lawyer stated that the person was a client but refused to disclose the client's identity, citing the attorney-client privilege.

Can the lawyer be compelled to disclose the client's identity to the grand jury?

(A) No, because the identity of a lawyer's client is protected by the attorney-client privilege.

(B) No, because the lawyer's testimony would undermine the client's privilege against self- incrimination.

(C) Yes, because the identity of a lawyer's client is not privileged when disclosure would not reveal a confidential attorney-client communication.

(D) Yes, because the rules of evidence do not apply at a grand jury proceeding.

Correct answer: C

Explanation

Answer C is correct. Disclosure to the grand jury of the client's identity would not reveal anything about the communications between the client and the lawyer; the attorney-client privilege therefore does not apply, and the lawyer can be compelled to make the disclosure.

Answer A is incorrect because the identity of a lawyer's client is generally not protected by the attorney-client privilege; disclosure of the client's identity alone would not reveal any confidential attorney-client communications.

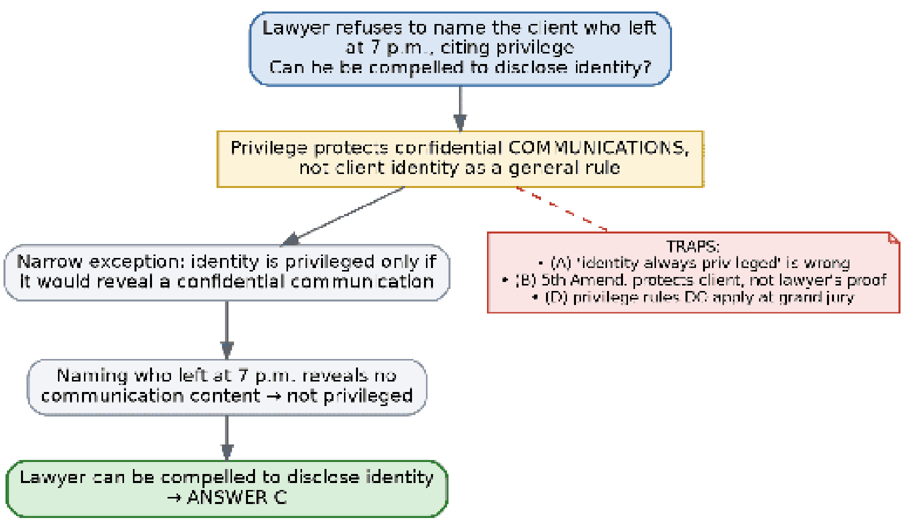
Answer B is incorrect. The privilege against self-incrimination prevents the client from being compelled to give testimony harmful to themself. It does not prevent the lawyer from disclosing the client's identity.

Answer D is incorrect. Under FRE 1101(c), rules on privilege apply to all stages of a case, including grand jury proceedings.

Exam Tactics & Triggers

- Trigger: lawyer refuses to reveal a CLIENT'S IDENTITY citing privilege → general rule, client identity is NOT privileged.
- Rule chain: attorney-client privilege protects confidential COMMUNICATIONS; identity is privileged only in the narrow case where revealing it would expose the substance of a confidential communication.
- Here disclosing who left at 7 p.m. reveals no communication content, so the lawyer can be compelled.
- Distractor traps: (A) states an absolute that is wrong (identity generally not privileged); (B) the 5th Amendment protects the client from self-incrimination, not the lawyer's testimony; (D) privilege rules DO apply at grand jury (FRE 1101(c)).

Answer Flowchart



Question 74 — Criminal Law & Procedure

A man and his friend decided to commit a robbery. They agreed that the friend would hide in the bushes along a dark street and jump in front of the intended victim, and the man would block the victim from behind. Unbeknownst to the man, his friend had a gun.

A short time later, a woman walked down the street and the friend jumped in front of her. Before the man could approach the woman, the friend lifted his shirt and showed a gun in his waistband. The woman ran away.

What conspiracy offense, if any, can the man properly be convicted of having committed?

(A) Conspiracy to commit armed robbery.

(B) Conspiracy to commit robbery.

(C) Either conspiracy offense.

(D) Neither conspiracy offense.

Correct answer: B

Explanation

Answer B is correct. The man can be convicted of conspiracy to commit robbery because he and his friend agreed to commit that offense.

Answer A is incorrect because the man did not agree to commit an armed robbery. The facts show that the man was unaware of the friend's gun.

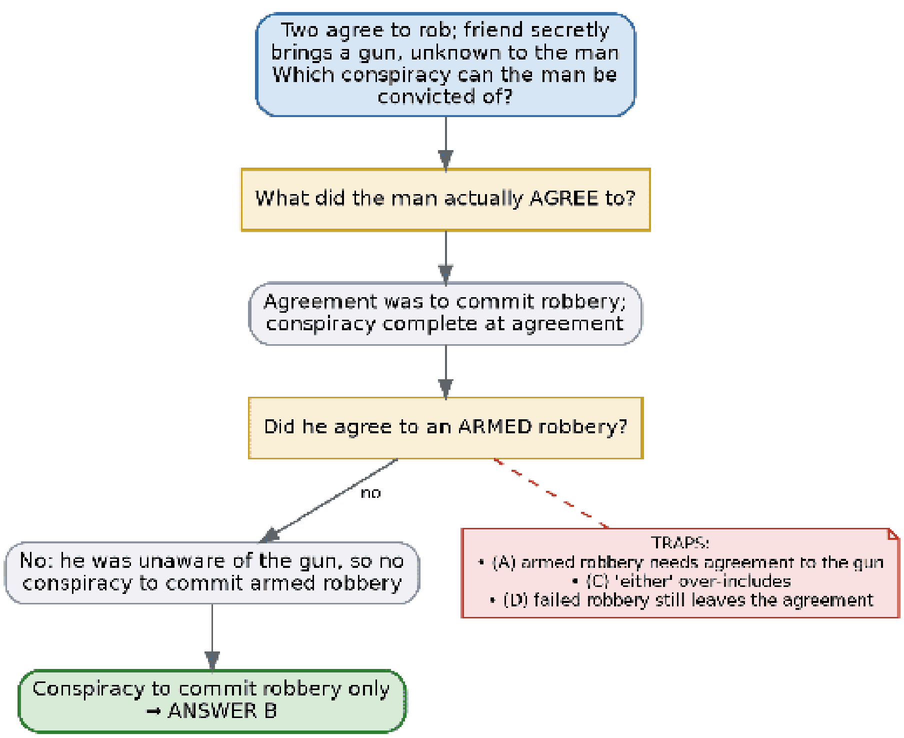
Answer C is incorrect for the reasons given in the explanations for answers A and B. The man can be convicted of conspiracy to commit robbery but not conspiracy to commit armed robbery.

Answer D is incorrect because, as noted, the man did conspire to commit a robbery. It does not matter that the robbery was unsuccessful; a conspiracy is complete when the agreement has been reached.

Exam Tactics & Triggers

- Trigger: co-conspirators agree to plain robbery but one secretly brings a gun → conspiracy is limited to what was AGREED, so the unarmed man conspired only to robbery.
- Rule chain: conspiracy = an agreement + intent; the scope of liability tracks the scope of the agreement, not a co-conspirator's undisclosed weapon.
- Knowledge tell: 'unbeknownst to the man' about the gun defeats any conspiracy to commit ARMED robbery.
- Distractor traps: (A) armed robbery needs agreement to the gun, (C) 'either' over-includes, (D) 'neither' ignores that a completed agreement to rob is enough even though the robbery failed.

Answer Flowchart



Question 75 — Real Property

A man owned an oceanfront cottage. A woman owned land across the street that did not have direct ocean access. For $10,000, the man executed a deed titled “Grant of Pedestrian Right-of-Way” to the woman and “her heirs and assigns” over a designated strip of his land between the street and the ocean. The deed was never recorded.

Several years later, the woman sold her land. The woman made no mention of the easement, and the buyer had no actual notice of it. After the buyer took possession of the land, neighbors informed her about the pedestrian easement over the man’s land, but when the buyer attempted to use the easement, the man informed her that it was no longer available and constructed a chain-link fence to block the way. The buyer promptly sued the man to establish her right to use the easement.

Who will likely prevail?

(A) The buyer, because the easement was appurtenant to her land.

(B) The buyer, because the man received $10,000.

(C) The man, because the buyer purchased the land without notice.

(D) The man, because the easement was an easement in gross personal to the woman who previously owned the land.

Correct answer: A

Explanation

Answer A is correct. The man granted an express easement appurtenant to the woman “and her heirs and assigns.” The man’s land was the servient estate, the woman’s land was the dominant estate, and the easement benefits the woman’s land. An easement appurtenant passes with the title, and now the buyer has the benefit of the easement. It is irrelevant that the buyer had no actual notice of the easement when she bought the land.

Answer B is incorrect. The fact that the man received $10,000 is irrelevant. The man granted the woman an easement appurtenant, which runs with the dominant estate. An easement appurtenant may be granted by purchase or by gift.

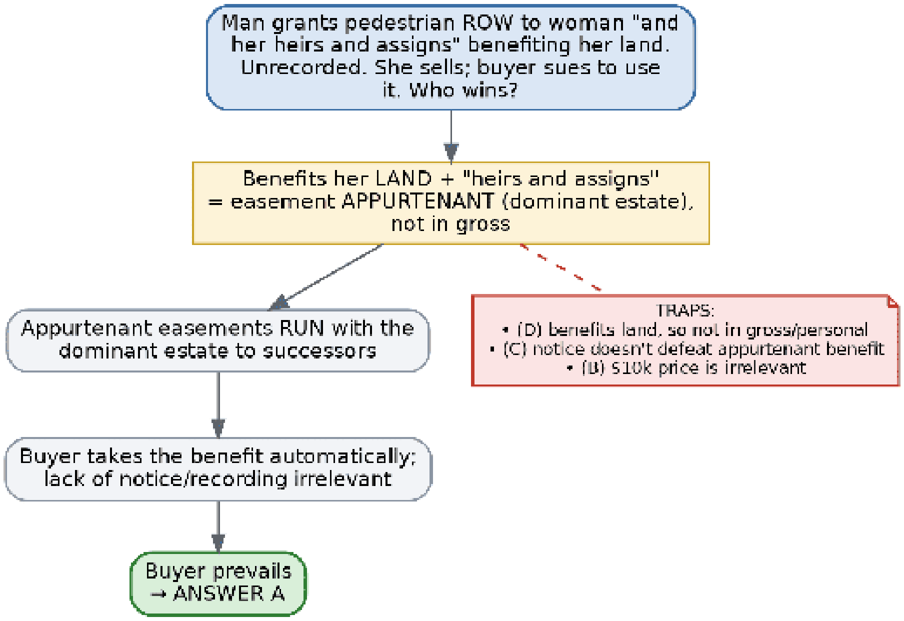
Answer C is incorrect. The buyer did purchase the land without any type of notice, but this is not a reason for the man to prevail. The easement is for the benefit of whoever owns the land. The buyer can still assert her right to the easement appurtenant because the easement has not terminated.

Answer D is incorrect. The easement was granted to the woman as the owner of the land across the street, which is the dominant estate. The easement was not granted to the woman in her personal capacity. It was an easement appurtenant and not in gross.

Exam Tactics & Triggers

- Trigger: easement granted to a landowner "and her heirs and assigns" that benefits her nearby land → easement APPURTENANT, it runs with the dominant estate to later owners.
- Rule chain: appurtenant needs a dominant estate (benefited land) and servient estate (burdened land); "heirs and assigns" + benefit to the land = appurtenant, NOT in gross/personal.
- Kill the notice trap: (C) an appurtenant easement passes with title automatically, so the buyer's lack of notice does NOT defeat it, non-recording is irrelevant here.
- Distractor traps: (D) mislabels it in gross (personal), but it benefits the land, not the person; (B) the $10,000 price is irrelevant, appurtenant easements can be by gift or purchase.

Answer Flowchart



Question 76 — Torts

An intoxicated man who was standing on a fifth-floor apartment balcony threatened to jump off the building. A bystander pulled the man back into the building, pushed him into a bedroom, and locked the bedroom door from the outside. When the man became sober, the bystander released him from the bedroom.

Does the man have a claim against the bystander?

(A) Yes, for battery, because the bystander pushed the man into the bedroom.

(B) Yes, for false imprisonment, because the bystander locked the man in the bedroom.

(C) Yes, for both battery and false imprisonment.

(D) No, because the bystander was privileged to act as he did.

Correct answer: D

Explanation

Answer D is correct. A person is privileged to use reasonable force to protect another against imminent harm, including self-inflicted harm. Given that the intoxicated man appears to have been on the verge of harming or killing himself, it was reasonable for the bystander to push the man and lock him in the bedroom until the danger had passed.

Answer A is incorrect. Even though the intentional pushing of another person without that person's consent meets the definition of a battery, the privilege to use force (referenced above) would defeat any battery claim brought by the man.

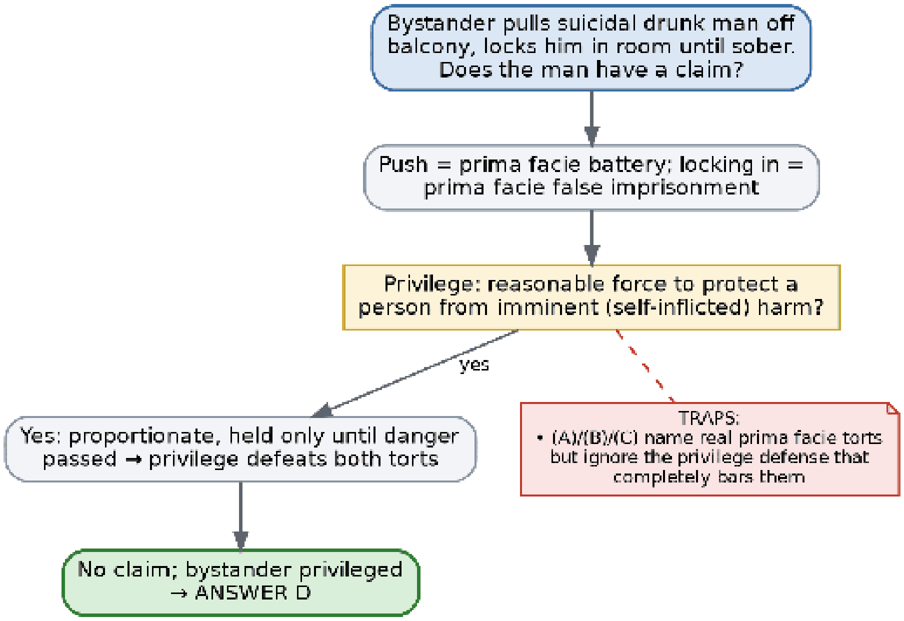
Answer B is incorrect. Even though the intentional confinement of another person without that person's consent meets the definition of false imprisonment, the privilege to use force (referenced above) would defeat this claim.

Answer C is incorrect for the reasons stated in the explanations for answers A and B.

Exam Tactics & Triggers

- Trigger: force/confinement used to STOP someone from harming themselves or others (pulling a suicidal man off a balcony) → privilege to use reasonable force defeats the intentional-tort claims.
- Rule chain: one may use reasonable force to protect a person from imminent harm, including self-inflicted harm; the privilege negates both battery AND false imprisonment.
- Distractor traps (A, B, C): each correctly names a prima facie tort (battery from the push, false imprisonment from the locked door) but ignores the complete privilege defense.
- Strategic tell: when the actor's intervention is clearly protective and proportionate, look past the 'yes, technically a tort' answers to the privilege that wipes them out.

Answer Flowchart



Question 77 — Civil Procedure

A homeowner brought a federal diversity action against a manufacturer of gas grills, asserting products liability claims and seeking damages for injuries she had suffered when her grill exploded as she was lighting it. The manufacturer timely demanded a jury trial, and the court informed the parties that it would seat a seven-person jury. The parties agreed to a non-unanimous jury verdict.

The jury returned a verdict for the homeowner. The manufacturer asked the court to poll the jury, and the poll revealed a 4 to 3 vote in favor of the homeowner. The manufacturer objected to the verdict and has moved for a new trial.

How should the court proceed?

(A) Deny a new trial, because the manufacturer agreed to a non-unanimous verdict.

(B) Direct the jury to deliberate further until it can return a verdict supported by at least six jurors.

(C) Grant a new trial, because fewer than six jurors voted in favor of the homeowner.

(D) Grant a new trial, because the verdict was not unanimous.

Correct answer: A

Explanation

Answer A is correct. Federal Rule of Civil Procedure 48 permits a non-unanimous verdict if the parties so stipulate, which happened here.

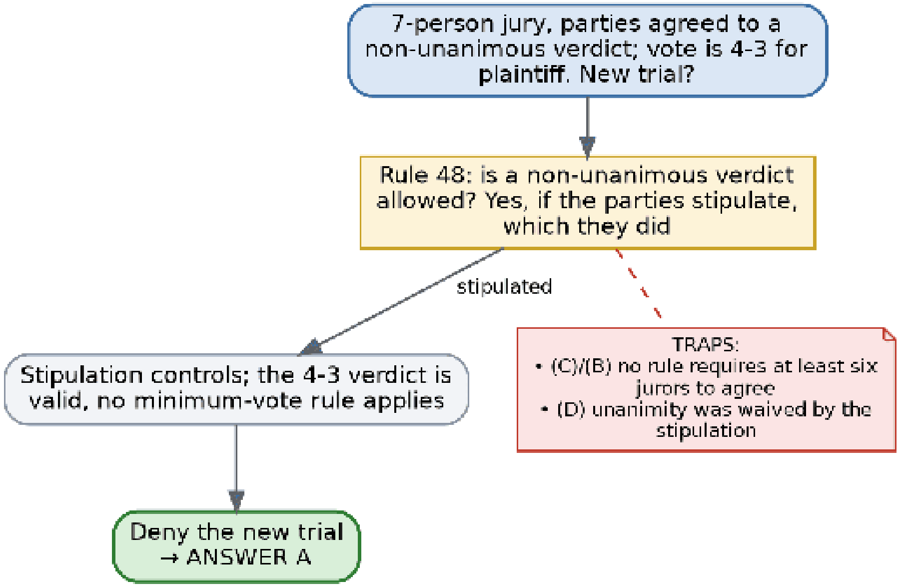
Answers B and C are incorrect. There is no requirement that a jury verdict be agreed to by at least six jurors.

Answer D is incorrect for the reason set out in the explanation for answer A.

Exam Tactics & Triggers

- Trigger: parties STIPULATED to a non-unanimous verdict, then a party challenges the split vote → Rule 48 enforces the stipulation, motion denied.
- Rule 48 chain: federal civil juries are 6 to 12 and verdicts must be unanimous UNLESS the parties stipulate otherwise, which controls here.
- Kill the six-juror myth (C)/(B): there is no rule that a verdict needs at least six votes; the stipulation set the required agreement.
- Distractor tell: (D) invokes 'unanimous' as if mandatory, but the whole point of the stipulation was to waive unanimity, so a 4 to 3 verdict stands.

Answer Flowchart



Question 78 — Evidence

A defendant is charged with murder after allegedly shooting a victim during an argument in a crowded nightclub. At trial, the defendant claims self-defense, testifying that he shot the victim only after the victim lunged at him with a knife. In rebuttal, the prosecutor calls an eyewitness to testify that she observed the argument from a short distance away and that she heard a gunshot before the victim lunged at the defendant.

Thereafter, the defendant seeks to call the bartender from the nightclub to testify that the eyewitness had consumed a large amount of alcohol before the shooting and that the music in the nightclub at the time of the shooting was extremely loud. The prosecutor objects that the bartender's testimony would be improper impeachment.

How should the judge rule on the prosecutor's objection?

(A) Allow the bartender's testimony about both the eyewitness's alcohol consumption and the music.

(B) Allow the bartender's testimony about the music but not about the eyewitness's alcohol consumption, because alcohol consumption is an improper basis for impeachment.

(C) Exclude the bartender's testimony about the music, because it does not impeach the eyewitness, but allow the testimony about the eyewitness's alcohol consumption.

(D) Exclude the bartender's testimony in its entirety, because extrinsic evidence is not admissible to impeach.

Correct answer: A

Explanation

Answer A is correct. Extrinsic evidence may be admitted to impeach a witness's ability to perceive the events that transpired. Both the loud music and the witness's alcohol consumption at the time of the incident would undermine the eyewitness's ability to perceive.

Answer B is incorrect. The eyewitness's consumption of large amounts of alcohol just before she observed the incident in question would undermine her ability to perceive, and therefore evidence about that consumption would constitute proper impeachment. Courts are cautious about allowing a witness's general alcohol use or alcoholism to be used to impeach when it is not connected directly to the time of the witness's observation.

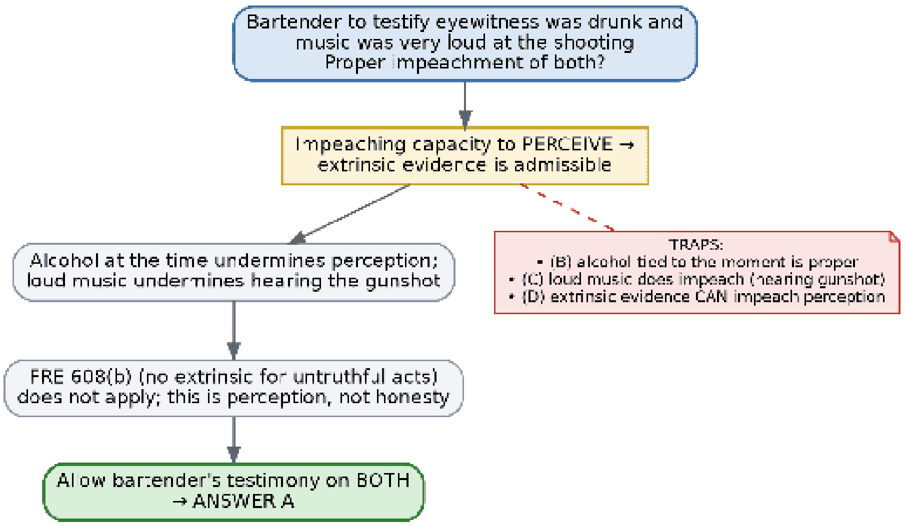
Answer C is incorrect. The eyewitness reported that she heard a gunshot, and very loud music in a crowded nightclub could affect a person's ability to perceive such a sound. Therefore, the testimony about the music would be proper impeachment evidence.

Answer D is incorrect. Extrinsic evidence may be admitted to impeach a witness's ability to perceive, though under FRE 608(b) such evidence is not admissible to prove a witness's prior acts of dishonesty. Because this evidence relates to the eyewitness's ability to perceive accurately and not to any prior acts of dishonesty, both items of extrinsic evidence should be admitted.

Exam Tactics & Triggers

- Trigger: impeaching a witness's ABILITY TO PERCEIVE (drunk, loud music) → extrinsic evidence IS allowed; this is not a collateral/character bar.
- Rule chain: sensory/perception capacity impeachment is not limited to cross; extrinsic proof of drinking and loud noise at the time of observation comes in.
- Distinguish FRE 608(b): that rule bars extrinsic evidence of specific untruthful ACTS (character for truthfulness), which is NOT what perception impeachment is.
- Distractor traps: (B) 'alcohol is improper' is wrong when tied to the moment of perception; (C) loud music does impeach hearing a gunshot; (D) wrongly claims extrinsic evidence never impeaches.

Answer Flowchart



Question 79 — Constitutional Law

In order to ensure the high quality of tutors in state public schools, a state law requires public schools to hire only tutors licensed by the state. To obtain a license, a tutor is required to achieve a passing score on a state-administered exam in the tutor's area of specialty. On several occasions, an organization representing tutors licensed in the state has successfully lobbied against proposed legislation that would have eased the licensing requirement.

An out-of-state tutoring company would like to conduct business in the state, but very few of its tutors are licensed by the state. The company has sued to challenge the law.

Is the company likely to prevail?

(A) No, because the law is rationally related to a legitimate state interest.

(B) No, because the law is substantially related to an important state interest.

(C) Yes, because the law serves the special interests of licensed tutors rather than a legitimate government interest.

(D) Yes, because the law violates the privileges and immunities clause of Article IV.

Correct answer: A

Explanation

Answer A is correct. The state licensing requirement should receive rational basis scrutiny because it neither burdens a fundamental individual right nor creates a constitutionally suspect classification. The licensing requirement for tutors is a rational means of protecting the state's legitimate interest in ensuring the competency of tutors, and so the state law easily satisfies the rational basis test.

Answer B is incorrect. Although answer B states correctly that the challenge to the licensing requirement will fail, it provides the wrong standard of judicial review. The standard of review described in answer B is associated with the more demanding intermediate judicial scrutiny, which does not apply here because the licensing requirement neither burdens a specially protected individual right nor creates a constitutionally sensitive classification.

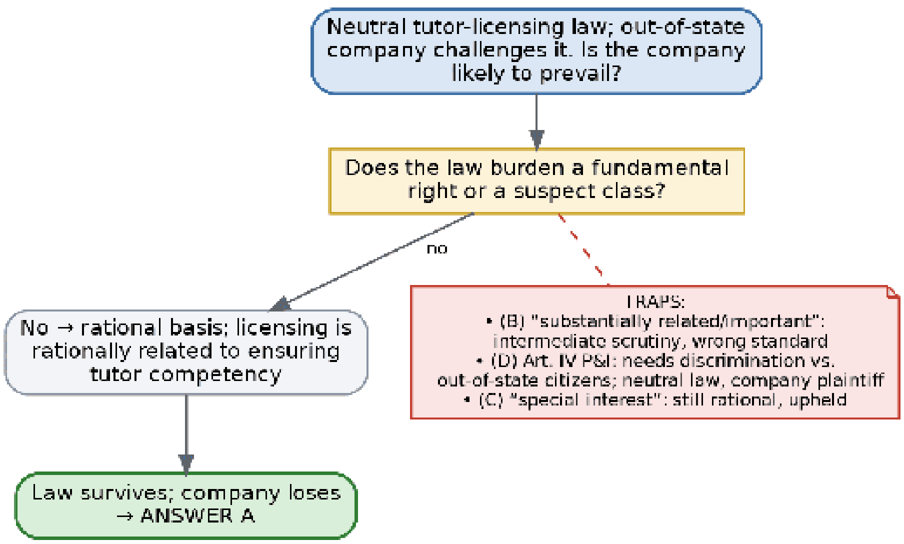
Answer C is incorrect. Although the licensing requirement serves the special interests of licensed tutors, it is at least rational to believe that it also serves the state's legitimate interest in ensuring the competency of tutors, which is all that is required to sustain the statute.

Answer D is incorrect. The privileges and immunities clause of Article IV, which prohibits certain forms of discrimination by states against the citizens of other states, is not implicated on these facts. Although the challenge is by an out-of-state company, the state licensing requirement applies equally to the state's citizens and to the citizens of other states.

Exam Tactics & Triggers

- Trigger: an economic/occupational licensing law that burdens NO fundamental right and NO suspect class → rational basis, and it almost always survives.
- Rule chain: no suspect classification + no fundamental right = rational basis = valid if rationally related to a legitimate interest (tutor competency here).
- Distractor trap (B): "substantially related to an important interest" is INTERMEDIATE scrutiny; right result (company loses) but wrong standard, so it's a decoy.
- Distractor trap (D): Art. IV Privileges and Immunities needs discrimination against out-of-STATE CITIZENS; a neutral licensing law applied to all, and challenged by a company, does not trigger it.

Answer Flowchart



Question 80 — Criminal Law & Procedure

One evening, a woman was driving above the speed limit on a country road. As she rounded a sharp curve, she lost control of the car and crossed over to the shoulder on the other side of the road. Her car hit a truck that was parked on the shoulder with its hood up while its driver waited for a tow truck. The force of the collision threw the driver out of the truck and down an embankment. The driver died from his injuries.

Driving above the speed limit and causing an accident can be charged as reckless driving, a misdemeanor in the jurisdiction.

What is the most serious homicide offense, if any, of which the woman can properly be convicted?

(A) Murder, based on malice aforethought.

(B) Voluntary manslaughter, based on reckless operation of a vehicle.

(C) Involuntary manslaughter, based on the misdemeanor of reckless driving.

(D) No homicide offense.

Correct answer: C

Explanation

Answer C is correct. On these facts, a jury could rationally find both that the woman was guilty of reckless driving and that her illegal conduct caused the truck driver's death. The woman's conduct constitutes involuntary manslaughter under a theory of "misdemeanor- manslaughter."

Answer A is incorrect. The woman could be guilty of murder on a theory of malice aforethought only if she intended to kill the driver. But the facts do not remotely suggest that the woman had that intent. The facts also do not support any theory of imputed malice, such as felony murder or depraved indifference.

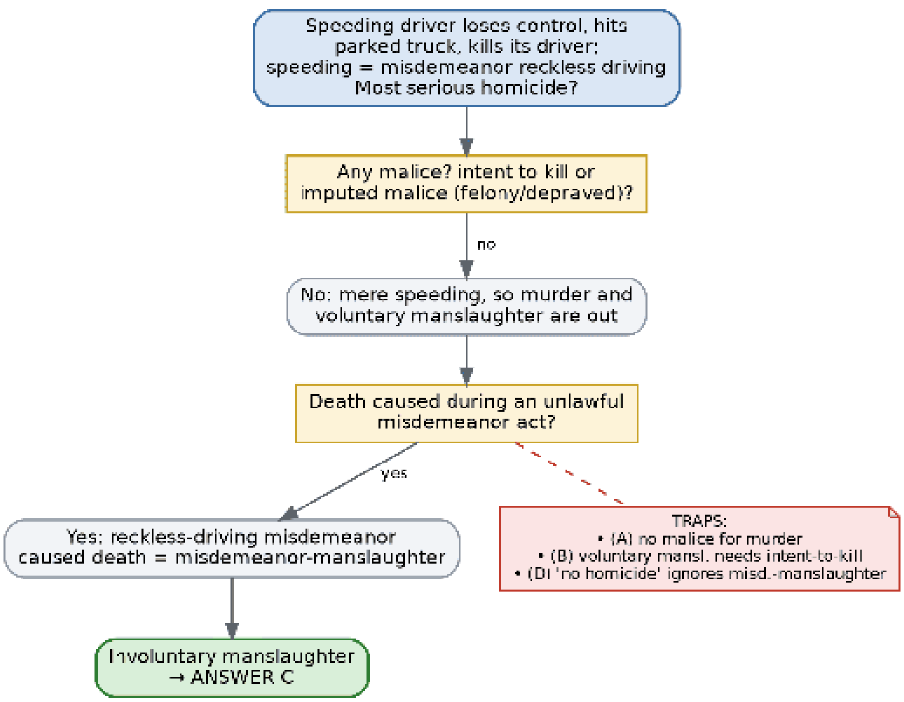
Answer B is incorrect because the woman did not intend to kill the driver and thus cannot be guilty of voluntary manslaughter.

Answer D is incorrect because a jury could rationally convict the woman of involuntary manslaughter.

Exam Tactics & Triggers

- Trigger: 'most serious homicide' from speeding that causes a fatal crash, where speeding is a MISDEMEANOR (reckless driving) → misdemeanor-manslaughter = involuntary manslaughter.
- Rule chain: involuntary manslaughter includes death caused during an unlawful (misdemeanor) act; here reckless driving is the predicate misdemeanor.
- Malice filter: murder needs intent to kill or imputed malice (felony murder / depraved indifference); simple speeding supplies none, so knock murder out first.
- Distractor traps: (A) no malice, (B) voluntary manslaughter needs intent-to-kill (plus provocation), (D) 'no homicide' ignores the misdemeanor-manslaughter theory.

Answer Flowchart



Question 81 — Contracts

On March 1, an owner entered into a written contract to sell her car to a buyer for $15,000, with delivery and payment to occur on March 6. The buyer had previously declined to enter into an option contract to hold the owner's offer open until March 6. On March 3, the buyer emailed the owner to say that he might not have the $15,000 by March 6. The owner did not respond. On March 4, the owner sold the car to her neighbor for $13,000 and told the buyer that she planned to sue him for breach of contract to recover the difference in the purchase price.

Is the owner likely to succeed in a breach of contract action?

(A) No, because the owner acted in bad faith by failing to respond to the buyer's email.

(B) No, because the owner anticipatorily repudiated her contract with the buyer.

(C) Yes, because the buyer anticipatorily repudiated his contract with the owner.

(D) Yes, because the buyer failed to protect himself when he did not accept the owner's offer to enter into an option contract.

Correct answer: B

Explanation

Answer B is correct. Anticipatory repudiation requires (1) an overt communication of an intention not to perform a contractual obligation or (2) an action that renders performance impossible or shows a party's determination not to perform. UCC § 2-610, cmt. 1. Here the buyer did not anticipatorily repudiate because on March 3, he merely said that he "might not" have the money to complete the transaction on March 6. Therefore, the owner anticipatorily repudiated by selling the car to the neighbor and will not succeed in a claim against the buyer for breach of contract.

Answer A is incorrect. The duty of good faith did not require the seller to respond to the buyer in this situation.

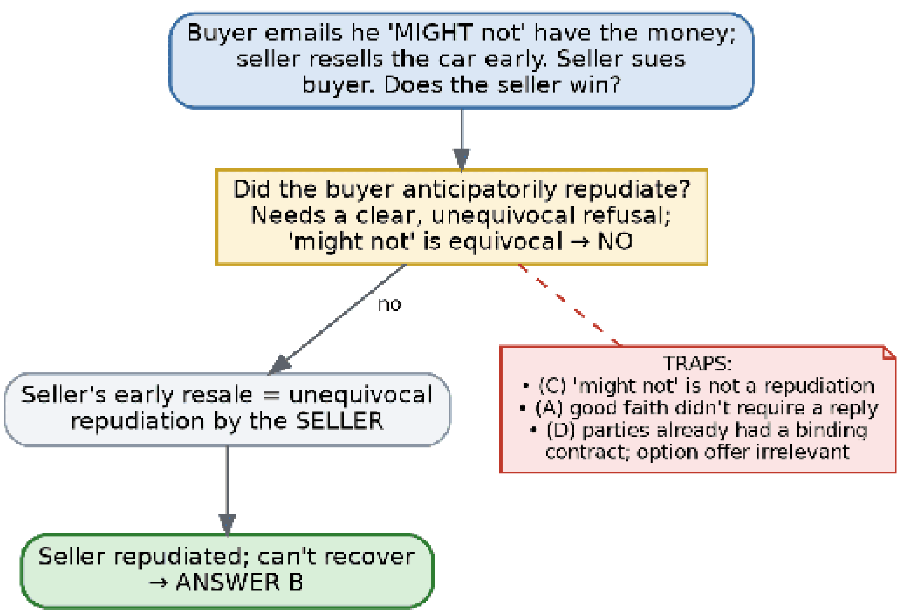
Answer C is incorrect. As explained above, the buyer did not anticipatorily repudiate the contract.

Answer D is incorrect. An option contract would have made the seller's offer irrevocable, but here the parties had already formed an enforceable contract, and thus the revocability of an option offer became irrelevant.

Exam Tactics & Triggers

- Trigger: a party says he 'MIGHT not' perform → NOT anticipatory repudiation; repudiation needs a clear, unequivocal refusal or a performance-blocking act (UCC § 2-610).
- Flip tell: the seller who resold the car BEFORE the due date unequivocally repudiated, so the seller breached, not the buyer.
- Good faith did not require the seller to reply to the buyer's email (A wrong).
- Option-contract decoy (D): the parties already had a binding contract, so the declined option is irrelevant.

Answer Flowchart



Question 82 — Torts

A man rented a beach house for a weeklong vacation. On the day he arrived, just after sunset, he took his bag upstairs to a second-floor bedroom and unpacked. As he was about to head back downstairs, he realized that the stairwell had become too dark to navigate without a light. The man spent about 30 seconds feeling the walls at the top of the stairwell but could not find a light switch. In fact, the switch was located in an awkward position not reachable without descending to the second step.

Although he recognized the danger of descending an unfamiliar staircase in darkness, the man started down the stairs. He lost his footing halfway down, fell, and was seriously injured.

The man has sued the owner of the beach house for negligence. The jurisdiction recognizes the traditional common law defense of assumption of risk.

If the action proceeds to trial, which of the following would be an appropriate (paraphrased) instruction for the court to give to the jury?

(A) “If you conclude that the owner failed to provide reasonably safe premises, but that the man knowingly and voluntarily chose to encounter the risk of falling on the darkened stairs, then you must assign a percentage of responsibility to the man.”

(B) “If you conclude that the owner failed to provide reasonably safe premises, but that the man knowingly and voluntarily chose to encounter the risk of falling on the darkened stairs, then you must find for the owner.”

(C) “If you conclude that the owner failed to provide reasonably safe premises, but that the man was a mere licensee, then you must find for the owner.”

(D) “If you conclude that the owner failed to provide reasonably safe premises, then you may in your discretion award the man both compensatory and punitive damages.”

Correct answer: B

Explanation

Answer B is correct. The traditional assumption-of-risk defense is a complete defense, so if the jury finds that the man knowingly and voluntarily chose to encounter the risk of falling down the darkened stairs, the owner will not be liable.

Answer A is incorrect. The question states that the jurisdiction recognizes the traditional rule for assumption of risk, which is a complete defense.

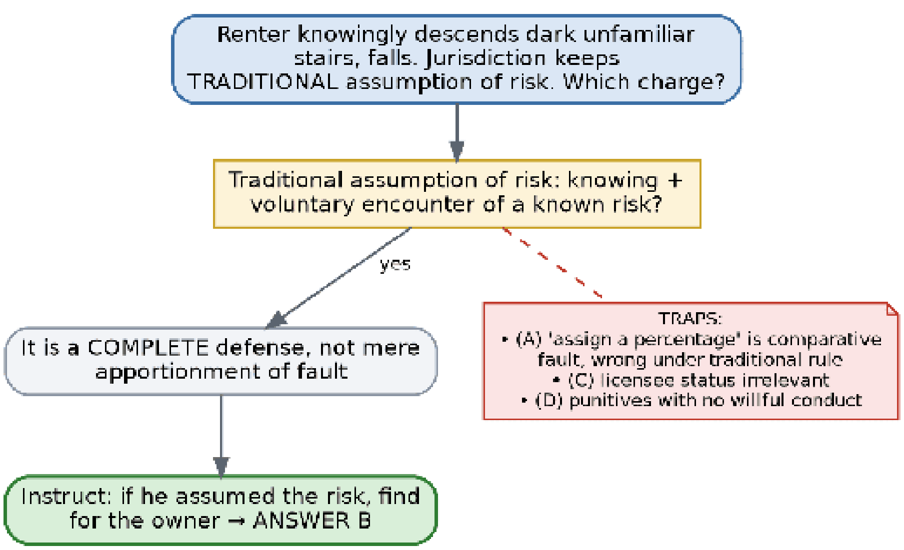
Answer C is incorrect. The man’s status as a licensee is not relevant to whether he assumed the risk of falling down the stairs.

Answer D is incorrect. The question is not about what damages the man might recover but whether he assumed the risk of falling down the stairs such that the owner would not be liable for his injuries.

Exam Tactics & Triggers

- Trigger: the question states the jurisdiction keeps the TRADITIONAL/common-law assumption of risk → that is a COMPLETE bar, so the right instruction is 'find for the owner,' not apportion fault.
- Rule chain: traditional assumption of risk = knowing and voluntary encounter of a known risk = total defense; contrast with comparative jurisdictions that merely reduce damages.
- Distractor trap (A): 'assign a percentage of responsibility' is the comparative-fault instruction; the tell is that the facts flag the TRADITIONAL rule, killing apportionment.
- Distractor traps (C and D): (C) drags in licensee status, irrelevant to assumption of risk; (D) offers punitive damages with no willful/wanton conduct in the facts.

Answer Flowchart



Question 83 — Real Property

A nephew and a niece inherited vacant land. The nephew soon discovered that the land was subject to a mortgage held by a local bank, which required monthly payments for the next 10 years. Without telling the niece or seeking her permission, the nephew paid the monthly mortgage payments for one year. The nephew then demanded immediate payment from the niece for half of the mortgage payments he had made. The niece refused.

If the nephew sues the niece for contribution, who will likely prevail?

(A) The nephew, because of the doctrine of exoneration.

(B) The nephew, because without his payments, the bank could have foreclosed the mortgage and they could have lost the land.

(C) The niece, because any such payment is not due until a partition proceeding is held.

(D) The niece, because the nephew did not seek or obtain her consent before he made the payments.

Correct answer: B

Explanation

Answer B is correct. The nephew and the niece inherited the vacant land as tenants in common. While neither is personally liable on the mortgage, their failure to pay could result in a foreclosure. To avoid foreclosure, payment must be made to the bank, and as co-tenants, each is responsible for his or her share of the mortgage payment. The nephew paid more than his pro rata share and thus may recover the amount owed by the niece in a contribution action.

Answer A is incorrect. The doctrine of exoneration applies when land that is subject to a mortgage is acquired at the time of death and an attempt is made by the specific legatee to claim that the mortgage must be paid from general estate assets, a scenario that does not exist here.

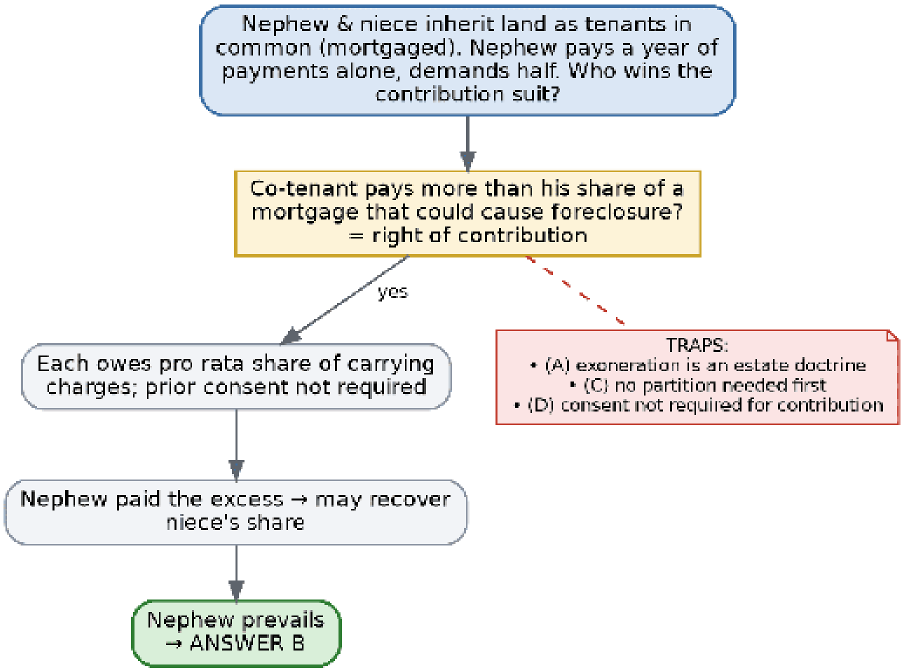
Answer C is incorrect. A partition action is not required before bringing an action for contribution for making mortgage payments that, if not made, might have resulted in the foreclosure on the property by the bank.

Answer D is incorrect. Each tenant in common is required to make his or her pro rata share of payments such as mortgage payments, which if not paid could result in foreclosure on the property. Consent is not required before making the payments.

Exam Tactics & Triggers

- Trigger: co-tenants (tenants in common) + one pays MORE than his share of a mortgage to avoid foreclosure → right of CONTRIBUTION from the other co-tenant.
- Rule chain: each co-tenant owes a pro rata share of carrying charges (mortgage, taxes) whose non-payment could cause loss; the payer may recover the excess, and prior consent is NOT required.
- Distractor traps: (A) "exoneration" is a wills/estate doctrine (specific devisee vs. general estate assets), not co-tenant contribution; (C) no partition action is needed first.
- Tell: (D) baits with "didn't get consent," but consent is not a prerequisite for contribution on foreclosure-preventing payments.

Answer Flowchart



Question 84 — Civil Procedure

A real estate brokerage firm, which is incorporated and headquartered in State A, has brought a federal diversity action in State A against one of its former employees for theft of trade secrets. The former employee had worked at the firm's headquarters throughout her employment but is now a citizen of State B. The firm seeks compensatory and punitive damages.

The court has asked the parties to submit proposed jury instructions on punitive damages and the relevant authority to support those instructions. State A's choice-of-law rules select State A law, which limits punitive damages to five times the amount of compensatory damages. Assume that the US Supreme Court has held that the Constitution limits punitive damages to 10 times the amount of compensatory damages.

Which of the following submissions on the instructions is correct?

(A) Punitive damages are limited to five times the amount of compensatory damages, because State A's choice-of-law rules select State A law.

(B) Punitive damages are limited to five times the amount of compensatory damages, because in a diversity case, the court applies the damages law of the state in which it sits.

(C) Punitive damages are limited to 10 times the amount of compensatory damages, because the action is in federal court.

(D) Punitive damages are limited to 10 times the amount of compensatory damages, because the constitutional limit preempts state-law limits.

Correct answer: A

Explanation

Answer A is correct. In Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 498 (1941), the US Supreme Court ruled that in cases governed by Erie R. Co. v. Tompkins, 304 U.S. 64 (1938), the court is to apply whatever law would be applied by the courts of the state in which the district court is sitting.

Answer B is incorrect. In Klaxon, the US Supreme Court ruled that in cases governed by Erie, the court is to apply whatever law would be applied by the courts of the state in which the district court is sitting, not simply forum law.

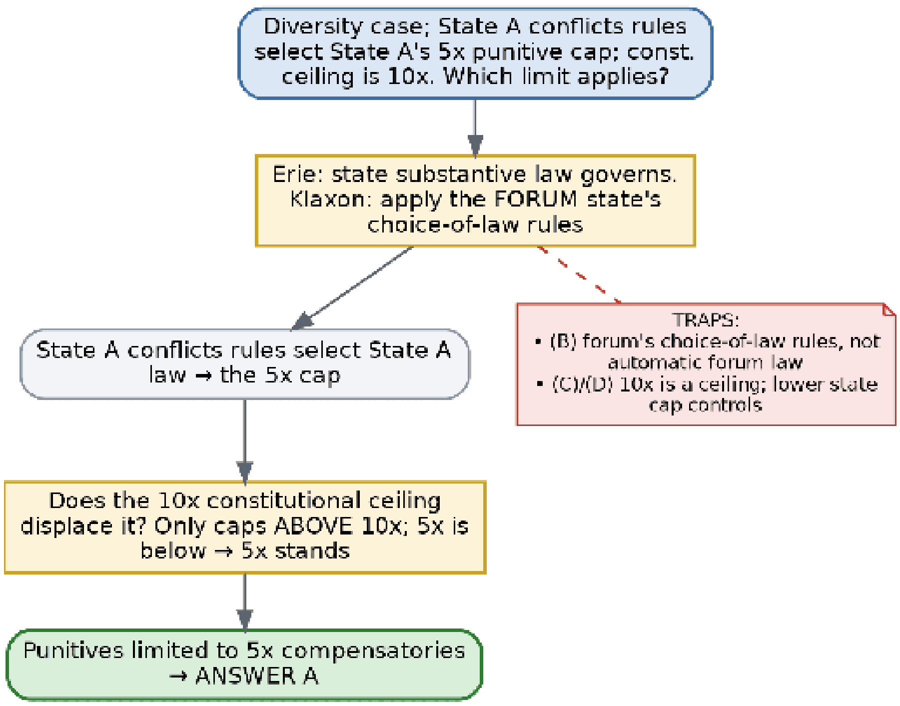
Answer C is incorrect. Under Erie, the fact that the action is in federal court does not create a right to apply federal law, and state substantive law governs.

Answer D is incorrect. While the constitutional limit preempts any state law that would extend that limit, the state-law limit here is less than the constitutional limit and thus controls.

Exam Tactics & Triggers

- Trigger: federal DIVERSITY case + a choice-of-law question → apply the FORUM STATE'S choice-of-law rules (Klaxon), then follow wherever they point.
- Rule chain to lock: Erie → state substantive law governs; Klaxon → use the forum state's conflicts rules, here State A's rules select State A's 5x cap.
- Kill (B): the court does not automatically apply forum substantive law, it applies the law the forum's CHOICE-OF-LAW rules select, a subtle but tested distinction.
- Distractor (C)/(D) tell: the 10x constitutional CEILING only preempts state limits that exceed it; a lower state cap (5x) is constitutional and controls.

Answer Flowchart



Question 85 — Criminal Law & Procedure

A defendant was arrested and charged with burglary. Under state law, police are required to obtain DNA samples from all persons arrested for felonies and to store those samples in a state registry.

The police informed the defendant of the state law and said that they would be using a cheek swab to obtain a DNA sample from him. The defendant did not object.

The defendant was later acquitted of burglary. A year later, however, authorities matched the defendant's DNA to an unsolved sexual assault crime. The defendant, now charged with sexual assault, has moved to suppress the DNA sample as having been obtained in violation of the Fourth Amendment.

Should the court suppress the DNA sample?

(A) No, because the defendant failed to lodge a timely objection to the sample collection.

(B) No, because the statute requiring collection of DNA samples from felony arrestees does not violate the Fourth Amendment.

(C) No, because the statute violates the Fourth Amendment, but the police acted in good-faith reliance upon it.

(D) Yes, because the statute requiring collection of DNA samples from felony arrestees violates the Fourth Amendment.

Correct answer: B

Explanation

Answer B is correct. In Maryland v. King, 569 U.S. 435 (2013), the Supreme Court upheld the constitutionality of a state law that authorized police to take DNA samples from persons arrested for serious offenses. King also affirmed the right of law enforcement to test and store the DNA profiles in a government database and then compare them to unsolved crime scene samples. Here, the defendant was arrested and charged with a felony, and the DNA sample was obtained, stored, and used as authorized by statute. Thus there was no constitutional violation, and suppression is not justified.

Answer A is incorrect because there is no requirement that a person object at the time of a search or seizure in order to retain the right to later lodge a Fourth Amendment challenge.

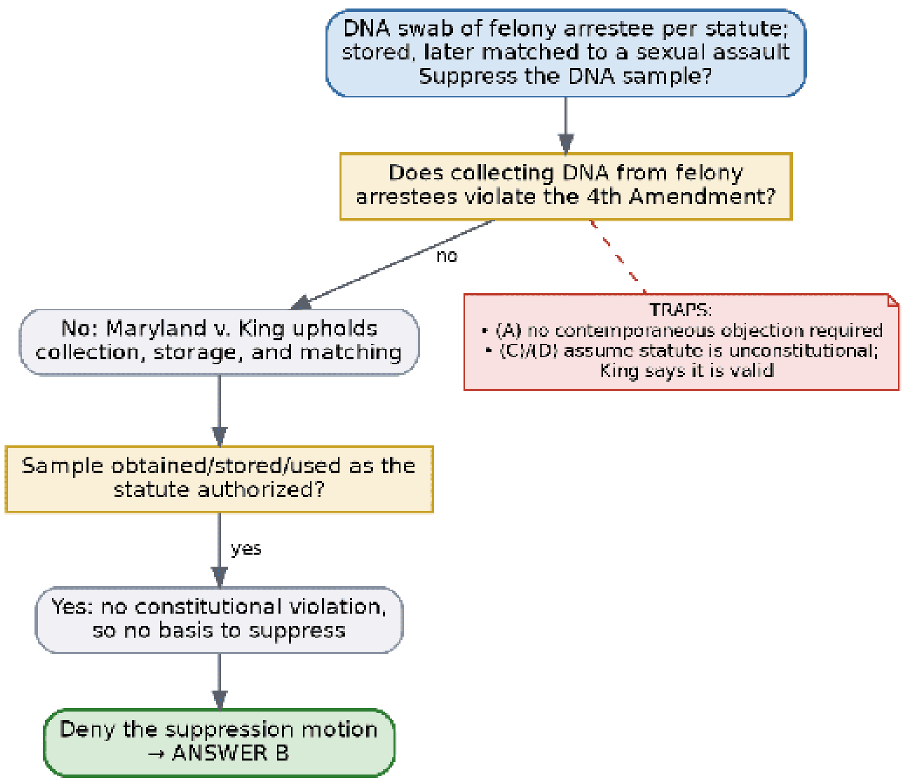
Answer C is incorrect because the statute does not violate the Fourth Amendment as explained above for answer B.

Answer D is incorrect because King specifically affirms the right to collect DNA from felony arrestees, as explained above for answer B.

Exam Tactics & Triggers

- Trigger: DNA cheek swab from a FELONY ARRESTEE under a state statute → constitutional under Maryland v. King; later database match to another crime is fair game.
- Rule chain: King upholds collecting, storing, and comparing arrestee DNA to unsolved crime-scene samples; no Fourth Amendment violation, so no suppression.
- Acquittal is a distractor: later acquittal on the burglary doesn't retroactively invalidate a lawful collection.
- Distractor traps: (A) 'failed to object' is wrong (no contemporaneous objection required), and (C)/(D) both assume the statute is unconstitutional, which King forecloses.

Answer Flowchart



Question 86 — Evidence

A defendant is on trial as one of the armed robbers of a liquor store. The defendant testifies that he robbed the store involuntarily because his fellow gang members threatened to kill him right then if he backed out, as he wanted to do. Thereafter, the defense seeks to call a witness who would testify that six months after the defendant was arrested in connection with the robbery, the defendant told him that he had been threatened when he wanted to pull out of the robbery. The prosecution objects to the witness's testimony.

Is the witness's testimony admissible?

(A) No, because it includes the defendant’s own hearsay statement that is not within any exception.

(B) No, because it includes a self-serving statement offered by a criminal accused.

(C) Yes, because the defendant’s hearsay statement fits the state of mind exception.

(D) Yes, because it includes the prior consistent statement of the defendant, who testified as a witness.

Correct answer: A

Explanation

Answer A is correct. The witness would testify about the defendant’s out-of-court statement, and the defense is offering that statement for the truth of the matter asserted: that the defendant wanted to pull out of the robbery. There is no hearsay exception that applies to admit the statement.

Answer B is incorrect. There is no federal rule of evidence that automatically prohibits the admission of a criminal defendant’s self-serving statement. If such a statement fit a hearsay exception (such as the excited utterance exception or the state of mind exception), it could be admissible notwithstanding its self-serving nature.

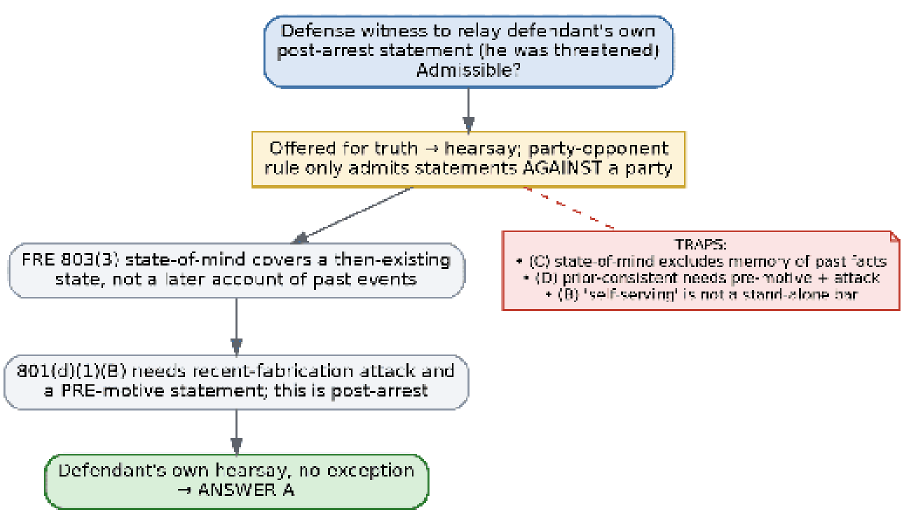
Answer C is incorrect. The defendant’s statement does not satisfy the state of mind exception, which admits only statements of a declarant’s own then-existing physical or mental state. It does not admit statements about past facts that the declarant remembers or believes. Because the defendant’s statement describes past events (the robbery) and describes a past state of mind (not one existing at the time he was speaking), the statement fails to satisfy the state of mind exception.

Answer D is incorrect. Although the statement at issue is a “prior consistent” statement of the defendant, Federal Rule of Evidence 801(d)(1)(B) does not admit all prior consistent statements for their truth. It admits only those that rehabilitate the declarant-witness after an impeaching attack on the witness. Here there is no information about an impeaching attack by the prosecution on the defendant that would justify admission of the earlier statement. Further, Rule 801(d)(1)(B) admits only “pre-motive” statements when a witness has been impeached for recent fabrication. The defendant’s statement, made after his arrest, would be post-motive and would not satisfy the requirements of Rule 801(d)(1)(B), even if there had been an impeaching attack on the defendant’s credibility.

Exam Tactics & Triggers

- Trigger: a witness relays the DEFENDANT'S OWN prior out-of-court statement offered by the defense → it is hearsay (party-opponent rule only helps the OTHER side).
- Rule chain: FRE 801(d)(2) admits a party's statement when offered AGAINST that party; a defendant cannot introduce his own self-serving statement for its truth.
- State-of-mind trap (FRE 803(3)): it covers a THEN-EXISTING mental state, not a later recounting of past events or past feelings, so a post-arrest description of the robbery fails.
- Distractor traps: (D) prior consistent statement (801(d)(1)(B)) needs a charge of recent fabrication and must be PRE-motive; this post-arrest statement is post-motive; (B) 'self-serving' is not itself a rule.

Answer Flowchart



Question 87 — Constitutional Law

A state law requires that anyone convicted for the second time of a sex offense serve a specified minimum prison sentence and be sterilized. Statistics show that 50% of those convicted of sex offenses in the state over the past five years are members of racial minority groups, whereas the members of those groups account for only 15% of the state's general population. A significant majority of convicted sex offenders are male.

Which of the following would be the strongest argument in challenging the constitutionality of the law under the equal protection clause of the Fourteenth Amendment?

(A) The requirement of sterilization deprives a select group of persons of a fundamental right, and it is not necessary to serve a compelling governmental interest.

(B) The requirement of sterilization has a disproportionate impact on men, and it is not substantially related to an important governmental interest.

(C) The requirement of sterilization has a disproportionate impact on racial minorities, and it is not necessary to serve a compelling governmental interest.

(D) The requirement of sterilization is not rationally related to a legitimate governmental interest.

Correct answer: A

Explanation

Answer A is correct. The state requirement of sterilization denies affected individuals the right to procreate, which the US Supreme Court has held to be a fundamental right. A state law that burdens a fundamental right must satisfy strict judicial scrutiny, the elements of which are correctly stated in Answer A.

Answer B is incorrect. Answer B states the elements of intermediate judicial scrutiny, which is not the proper standard. Although laws that discriminate on the basis of sex receive intermediate scrutiny, a sex-neutral law like the sterilization requirement would constitute sex discrimination only if the legislature had intended that the requirement benefit or harm individuals because of their sex. There is no indication of such an intention on these facts. The disparate impact of the sterilization requirement on men by itself is insufficient to demonstrate sex discrimination.

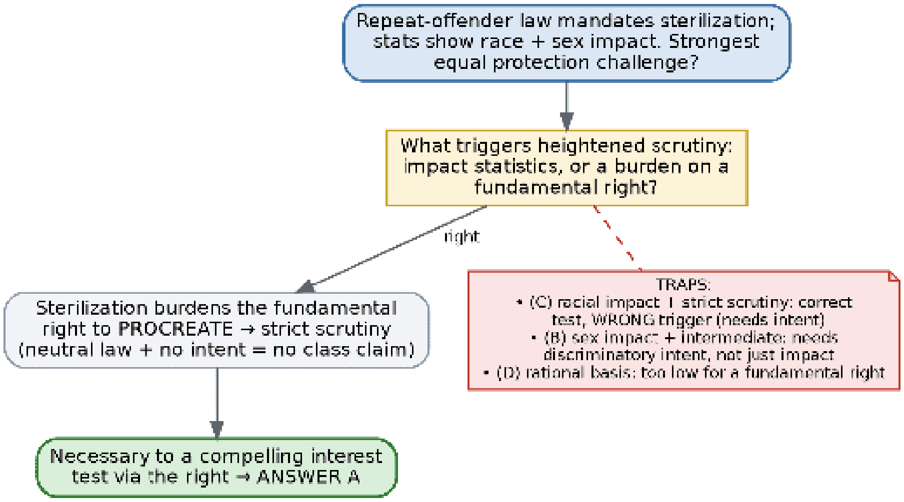
Answer C is incorrect. Answer C states the elements of strict judicial scrutiny, which is the proper standard. But the state law receives that scrutiny because it burdens the fundamental right of procreation, not because it is racially discriminatory. A race-neutral law like the sterilization requirement would trigger strict scrutiny only if the legislature had intended that the requirement benefit or harm individuals because of their race. There is no indication of such an intention on these facts. The disparate impact of the sterilization requirement on members of a racial minority group by itself is insufficient to demonstrate race discrimination.

Answer D is incorrect. It states the elements of rational basis scrutiny, which is not applicable in this case. The state sterilization requirement would receive strict judicial scrutiny because it burdens the fundamental right of procreation.

Exam Tactics & Triggers

- Trigger: "strongest EQUAL PROTECTION argument" + mandatory STERILIZATION → burdens the fundamental right to procreate, so strict scrutiny via the right, not via a class.
- Rule chain: burden on a fundamental right → strict scrutiny = necessary to a compelling interest; that is exactly what (A) states.
- Disparate-impact trap (B)/(C): sex-neutral or race-neutral laws need discriminatory INTENT to trigger heightened scrutiny; raw statistics of impact alone are insufficient.
- Strategic tell: two answers recite strict scrutiny (A and C), pick the one anchored to the CORRECT trigger (fundamental right in A, not racial impact in C).

Answer Flowchart



Question 88 — Contracts

A company agreed to provide regular facilities-maintenance services for a landlord's apartment buildings for $150 per hour. The parties also orally agreed that if the services required in any given month exceeded 100 hours, the landlord would pay the company a discounted hourly rate of $125 per hour for those extra services. When the parties put their agreement in writing, however, neither party noticed that the contract did not include the discounted-rate provision.

In a recent month, because of several snowstorms, the services needed by the landlord exceeded 100 hours. The landlord has reminded the company that services in excess of 100 hours are to be paid at the discounted rate, but the company insists that it be paid at the contract rate of $150 per hour.

Which of the following best describes the legal relationship between the parties at this point?

(A) The parties' contract is void ab initio because of the indefiniteness of the price term.

(B) The parties have a valid, enforceable contract that will be reformed to reflect the discounted rate of $125 per hour for services in excess of 100 hours.

(C) The parties have a valid, enforceable contract for all services at a rate of $150 per hour.

(D) The parties have no contract, because they were mutually mistaken regarding the hourly rate to be paid for the company's extra services.

Correct answer: B

Explanation

Answer B is correct. If a written agreement fails to include a term of the agreement due to both parties' mistake, the writing may be reformed to express the actual agreement. Restatement (Second) of Contracts § 155. Here the landlord is entitled to reformation to include the mistakenly omitted term.

Answer A is incorrect. A contract may not be formed if the terms are too indefinite, but here there was a mistakenly omitted term, not an indefinite term.

Answer C is incorrect. As discussed above, the landlord is entitled to reformation reflecting the agreed-upon discount for the extra hours.

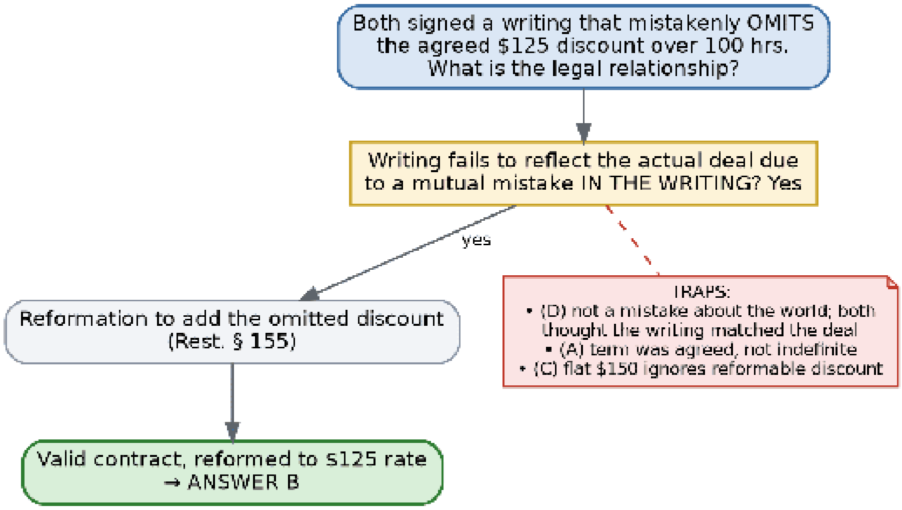
Answer D is incorrect. The parties did not share a mutual mistake—a belief that is not in accord with the facts. Rather, both parties mistakenly believed that the writing reflected their actual agreement. In this situation, the writing may be reformed to express the actual agreement.

Exam Tactics & Triggers

- Trigger: both parties sign a writing that mistakenly OMITS an orally agreed term (the discount) → reformation to add it (Restatement § 155).
- Mislabel tell (D): this is NOT a mistake about the world; both thought the writing matched their deal, so the cure is reformation, not 'no contract.'
- Indefiniteness decoy (A): the discount term was agreed, just left out, so the contract is not void for indefiniteness.

- (C) enforcing a flat $150 ignores the reformable omitted discount.

Answer Flowchart



Question 89 — Real Property

A buyer entered into a valid written contract with a seller to purchase vacant land. Unbeknownst to the seller, the buyer planned to construct a gas station on the land. The contract provided that the buyer could rescind the contract if the seller failed to deliver marketable title.

After a title search, the buyer discovered that a restrictive covenant prohibited using the land for commercial purposes. The buyer had not had actual knowledge of the restrictive covenant before executing the contract. The buyer refused to close on the contract, and the seller has sued for specific performance.

Should the seller prevail?

(A) No, because the restrictive covenant rendered the title unmarketable.

(B) No, because the seller was required to deliver perfect title to the buyer.

(C) Yes, because the restrictive covenant did not render the title unmarketable.

(D) Yes, because the seller was unaware of the buyer’s plans to construct a gas station.

Correct answer: A

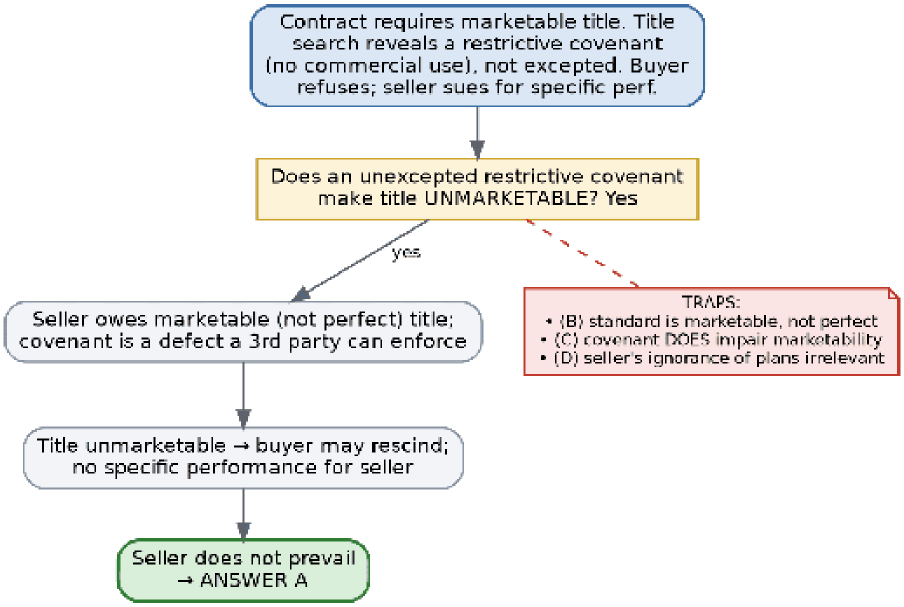
Explanation

Answer A is correct. A seller is required to convey a marketable title to a buyer in the absence of a contrary provision in the contract. A restrictive covenant makes title unmarketable unless the covenant is excepted in the contract. Here there is no exception in the contract. Answer B is incorrect. The law will require the title to be marketable but will not require a perfect title. Answer C is incorrect. A restrictive covenant does render title unmarketable. A third party can prevent the buyer from using the land as desired. Answer D is incorrect. It is irrelevant that the seller did not know of the buyer’s plans to construct a gas station.

Exam Tactics & Triggers

- Trigger: land-sale contract requires MARKETABLE title + a title search reveals a RESTRICTIVE COVENANT not excepted in the contract → title is unmarketable, buyer may rescind.
- Rule chain: a seller must convey marketable (not perfect) title; an undisclosed restrictive covenant renders title unmarketable because a third party could block the buyer's use.
- Distractor traps: (B) overstates the duty as "perfect title," the standard is only marketable; (C) flatly denies the covenant impairs marketability, contradicting the rule.
- Tell: (D) the seller's ignorance of the buyer's gas-station plan is irrelevant, marketability turns on the title defect, not the buyer's intended use or the seller's knowledge.

Answer Flowchart



Question 90 — Torts

A wealthy elderly woman was repeatedly harassed by a debt collector over a period of two months. The debt collector was trying to collect a large debt owed to his client by the woman's impoverished adult son.

Although the debt collector knew that the woman was not legally responsible for the son's debt, he called the woman multiple times each day and threatened to destroy her credit. He also told her that he knew where she lived and that he was going to withdraw the money from her bank account. As a result, the woman suffered great mental anguish, was unable to sleep, and ultimately suffered serious health consequences.

Which of the following conclusions would best support a claim by the woman against the debt collector for intentional infliction of emotional distress?

(A) The debt collector could reasonably have foreseen that the calls and threats might cause harm to the woman's health.

(B) The debt collector's conduct caused the woman to fear that he was someday going to physically attack her.

(C) The debt collector's conduct failed to comply with industry custom.

(D) The debt collector's conduct was extreme and outrageous.

Correct answer: D

Explanation

Answer D is correct. A conclusion that the debt collector's conduct was extreme and outrageous, combined with the fact that the woman experienced severe emotional distress and the fact that the debt collector was probably at least reckless with respect to the risk of causing her distress, will provide the woman with a plausible claim for intentional infliction of emotional distress (IIED). None of the conclusions stated in the other answers will provide as much assistance to the woman in proving her IIED claim.

Answer A is incorrect. Even if the woman's distress was reasonably foreseeable to the debt collector, that would not suffice to establish the recklessness or intentionality necessary for IIED liability.

Answer B is incorrect. The woman's subjective belief that the debt collector might someday attack her would not establish that she suffered severe distress or that the debt collector's conduct was extreme and outrageous.

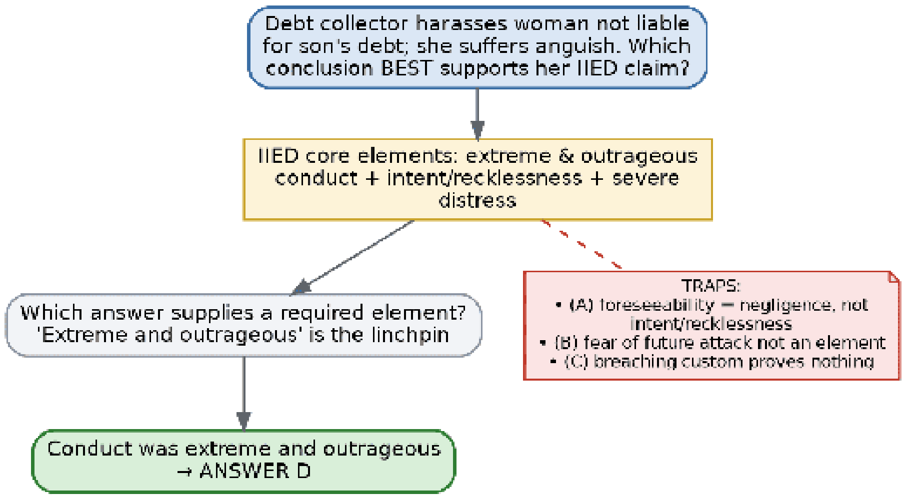
Answer C is incorrect. A mere failure to comply with industry custom does not establish any of the elements of IIED.

Exam Tactics & Triggers

- Trigger: question asks which conclusion 'BEST supports' an IIED claim → pick the one matching the core element, extreme and outrageous conduct.
- Rule chain to lock in: IIED = extreme and outrageous conduct + intent or recklessness + severe emotional distress;

'extreme and outrageous' is the element that does the heavy lifting.
- Distractor trap (A): mere foreseeability of harm is a NEGLIGENCE standard and falls short of the intent/recklessness IIED demands.
- Distractor traps (B and C): fear of future attack is neither an IIED element nor proof of severe distress; violating industry custom proves none of the elements, both are off-point.

Answer Flowchart



Question 91 — Civil Procedure

After a fire burned down a house that a tenant was renting, the tenant brought a federal diversity action against the landlord. The complaint alleged that the fire had been caused by the landlord's negligent failure to maintain the house's electrical system in accordance with the applicable housing code. The landlord's own investigation indicated that the fire had been caused by the tenant's leaving a soup pot unattended on a hot stove.

The landlord has moved to dismiss the action on the ground that the tenant failed to comply with a state law that requires plaintiffs suing for negligence to plead that they were not contributorily negligent. In opposition to that motion, the tenant argues that under federal law, contributory negligence is an affirmative defense that a defendant who wishes to assert the defense must plead in an answer or other responsive pleading.

Which law governs how the court should rule on the motion to dismiss?

(A) Federal law, because the burden of pleading on a motion to dismiss in federal court is substantive, not procedural.

(B) Federal law, because the Federal Rules of Civil Procedure control pleading in federal court.

(C) State law, because the application of federal law would be outcome-determinative.

(D) State law, because the assignment of the burden of pleading is bound up with the definition of the tenant's substantive rights.

Correct answer: B

Explanation

Answer B is correct. When a Federal Rule of Civil Procedure is valid and on point, it controls over a conflicting state rule. Rule 8(c)(1) is on point because it specifically provides that contributory negligence is an affirmative defense that a defending party must assert in its answer to the complaint. The rule is a valid exercise of the US Supreme Court's rulemaking power, because the manner of pleading defenses is an issue that can rationally be classified as procedure and the rule itself regulates the manner and means by which the parties' rights are enforced.

Answer A is incorrect. The question of who has the burden of pleading, in contrast to the burden of proof, in federal actions is a procedural matter within the US Supreme Court's rulemaking power.

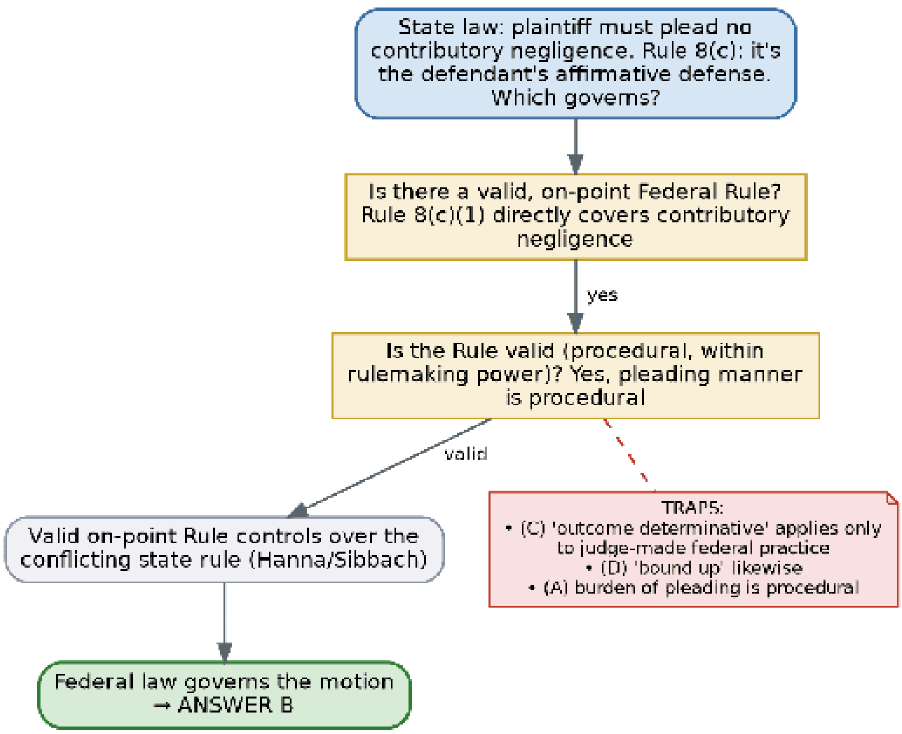
Answer C is incorrect. The "outcome determinative" test applies only when asking whether a state rule that conflicts with a judge-made federal practice should be followed. It does not apply when federal law comes from a valid and on-point federal rule.

Answer D is incorrect. The “bound up” concept also applies only when asking whether a state rule that conflicts with a judge-made federal practice should be followed.

Exam Tactics & Triggers

- Trigger: a state law dictates who must PLEAD an issue and it clashes with a Federal Rule → Hanna/Sibbach path, a valid on-point Federal Rule controls.
- Rule chain: Rule 8(c)(1) makes contributory negligence an affirmative DEFENSE the defendant must plead, and it is a valid procedural rule, so it wins.
- Kill the Erie reflexes (C)/(D): 'outcome-determinative' and 'bound up' tests apply ONLY to judge-made federal practice, not to an on-point Federal Rule of Civil Procedure.
- Distractor (A) tell: it reaches the right result but mislabels burden of PLEADING as substantive; pleading burdens are procedural and within the rulemaking power.

Answer Flowchart



Question 92 — Criminal Law & Procedure

Assigned counsel for a capital defendant had heard that his client had an unsavory background and a highly dysfunctional childhood. He was reluctant to delve into the details for fear that they might reflect poorly on his client, and he decided not to investigate. After his client was convicted, counsel presented a penalty phase defense that repeated the denials of the liability phase. The jury returned a death sentence. After exhausting state remedies, the defendant filed a post-conviction petition, arguing that his trial counsel rendered ineffective assistance of counsel by failing to investigate and present mitigating evidence of his sordid upbringing.

If the court finds a reasonable probability that the mitigating evidence, if presented, would have affected the jury’s sentence, should the court grant the petition?

(A) No, because the decision not to probe into the defendant’s background was part of the defense counsel’s trial strategy.

(B) No, because defense counsel is required to adhere only to an objective standard of reasonableness in representing a criminal defendant in the penalty phase of a capital murder case.

(C) Yes, because defense counsel’s failure to investigate a defendant’s life history for mitigating evidence in the penalty phase of a capital murder trial constitutes ineffective assistance of counsel.

(D) Yes, because defense counsel is required to present any known mitigating factors in the penalty phase of a capital murder case.

Correct answer: C

Explanation

Answer C is correct. To establish a claim of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984), a defendant must show two things: (1) that defense counsel's performance was deficient and (2) that the deficiency was prejudicial. In Wiggins v. Smith, 539 U.S. 510 (2003), the Court held that defense counsel has a duty to conduct a reasonable investigation to determine whether there are mitigating facts for the penalty phase of a capital case. The Court held that defense counsel's inadequate investigation was prejudicial because a reasonable investigation would have revealed details that gave rise to a reasonable probability of a different outcome in sentencing; thus, the defendant had been deprived of the effective assistance of counsel. Answer C is correct because, as in Wiggins, defense counsel unreasonably chose not to investigate facts that could have been presented in mitigation, and that failure was prejudicial.

Answer A is incorrect. Defense counsel's decisions can be defended as strategic only when based on a reasonably complete investigation. Although counsel does not have to pursue every conceivable line of inquiry, the investigation must be reasonable under the circumstances. Here, counsel's decision not to investigate was clearly unreasonable.

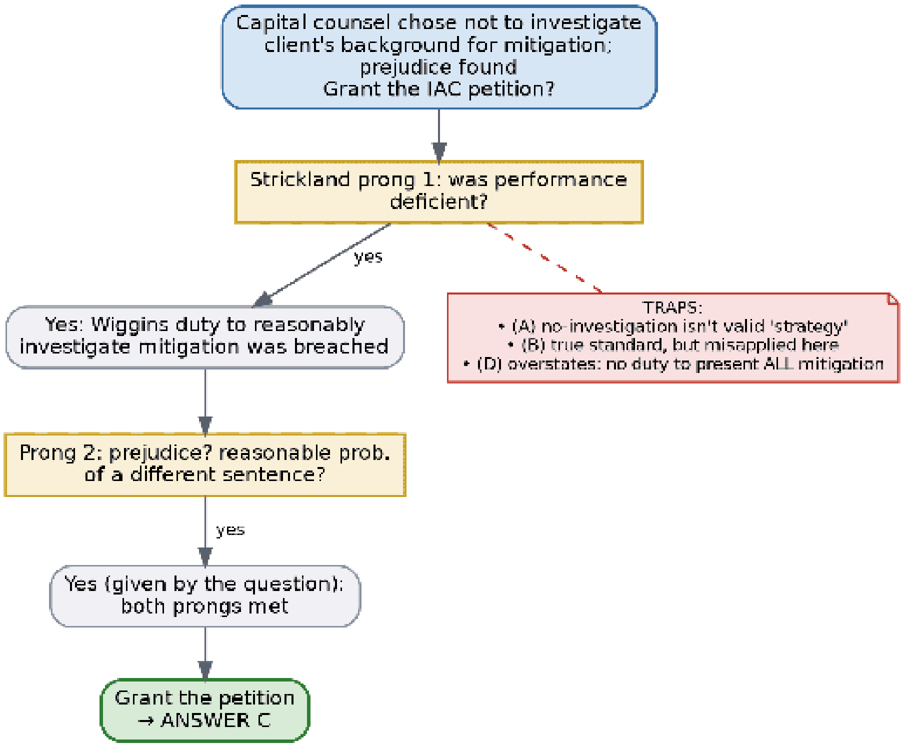
Answer B states a correct principle of law: Defense counsel must adhere to an objective standard of reasonableness. Here, however, counsel's failure to investigate was objectively unreasonable.

Answer D is incorrect because the Strickland standard does not require the presentation of all mitigating evidence, or of any particular mitigating evidence. It rather requires counsel to engage in a reasonable investigation into mitigating evidence, so that counsel can then employ a reasonable strategy in presenting such evidence.

Exam Tactics & Triggers

- Trigger: capital counsel deliberately does NOT investigate the defendant's background for mitigation → Wiggins v. Smith deficient performance; add prejudice and it's ineffective assistance.
- Rule chain: Strickland two prongs = deficient performance + prejudice; Wiggins requires a reasonable investigation for penalty-phase mitigation.
- Strategy tell: a 'strategic' decision only shields counsel when it follows a REASONABLE investigation, so failing to look at all isn't strategy.
- Distractor traps: (A) mislabels non-investigation as strategy, (B) states a true standard but misapplies it, (D) overstates by requiring counsel to present ALL mitigating evidence (Strickland requires reasonable investigation, not exhaustive presentation).

Answer Flowchart



Question 93 — Constitutional Law

A state law imposes a tax on all leases of real estate. The tax is calculated on gross rent and is imposed on the lessee at the beginning of each lease term.

May the state collect this tax on the lease of office space in the state by the United States Social Security Administration?

(A) No, because such a tax on lessees is not rationally related to a legitimate government interest.

(B) No, because the state may not directly tax any agency of the federal government.

(C) Yes, because the Social Security Administration is an independent agency of the federal government.

(D) Yes, because the tax is imposed on all leases of real estate and does not discriminate against the federal government.

Correct answer: B

Explanation

Answer B is correct because the state cannot impose a tax directly on the federal government or any of its agencies. United States v. New Mexico, 455 U.S. 720 (1982).

Answer A is incorrect. The tax on the lessee is rationally related to the collection of revenue and to imposing tax burdens on the possessor of property.

Answer C is incorrect because the Social Security Administration is an agency of the federal government, regardless of whether it has independence from the President.

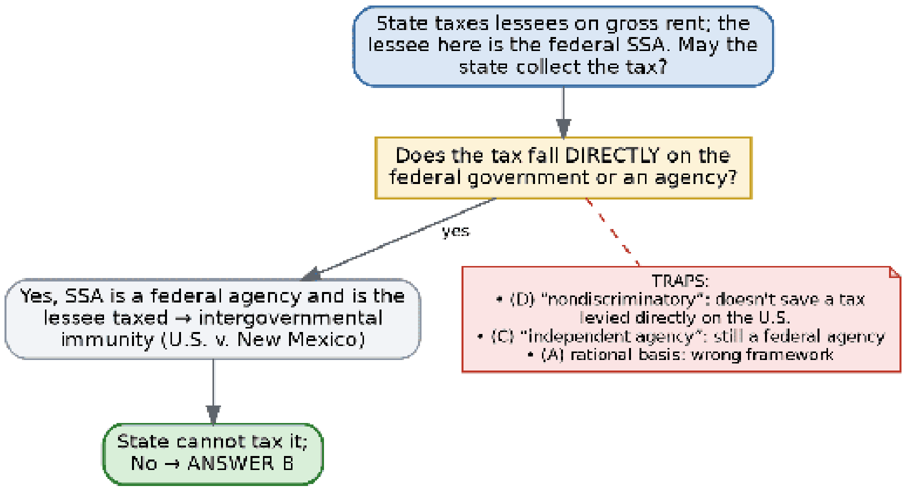
Answer D is incorrect because even nondiscriminatory taxes imposed directly on the federal government are invalid.

Exam Tactics & Triggers

- Trigger: state tax imposed DIRECTLY on a federal agency (SSA is the lessee paying the tax) → intergovernmental immunity bars it, even if nondiscriminatory.
- Rule chain: a state may not tax the U.S. or its agencies directly; nondiscrimination saves a tax only when the legal incidence falls on a private party, not the government.
- Distractor trap (D): “applies to all leases, no discrimination” is the classic bait, but nondiscrimination does not rescue a tax laid directly on a federal agency.

- Distractor trap (C): “SSA is an independent agency” is irrelevant; independence from the President does not strip its status as a federal agency shielded from direct state tax.

Answer Flowchart



Question 94 — Contracts

A father whose only living relatives were a daughter and a nephew owned land worth $500,000. In return for his daughter’s promise to pay $300,000 to his nephew at the time of the father’s death, the father executed and delivered to his daughter a quitclaim deed to the land. The daughter took possession of the land.

Two years later, in a signed writing, the father directed his daughter to pay to a neighbor, at the father’s death, $50,000 of the $300,000 that was to go to the nephew. The daughter, who had long disliked the neighbor, told her father that she did not plan to honor his request. The father died, and his daughter has since refused to pay anything to either the nephew or the neighbor. The neighbor has sued the daughter for the $50,000.

Is the neighbor likely to prevail?

(A) No, because the daughter did not consent to any modification of the contract she had made with her father.

(B) No, because the nephew was a third-party beneficiary of the contract between the father and his daughter, and the nephew’s interest could not be modified without his express written consent.

(C) Yes, because the father retained a transferable interest in the future proceeds of his daughter’s promise.

(D) Yes, because the father’s signed modification is enforceable without consideration.

Correct answer: A

Explanation

Answer A is correct. Modification of a contract governed by common law requires mutual assent and consideration. Here, the daughter did not agree to the modification and the father provided no consideration.

Answer B is incorrect. Even though the nephew was a third-party beneficiary of the contract between the father and his daughter, the nephew’s consent was not required for modification unless the contract provided otherwise. Here, however, there was no modification of the contract, because the daughter did not agree to it.

Answer C is incorrect. The father retained no interest in the future proceeds of his daughter’s promise, and thus he could not alter her obligation without her consent.

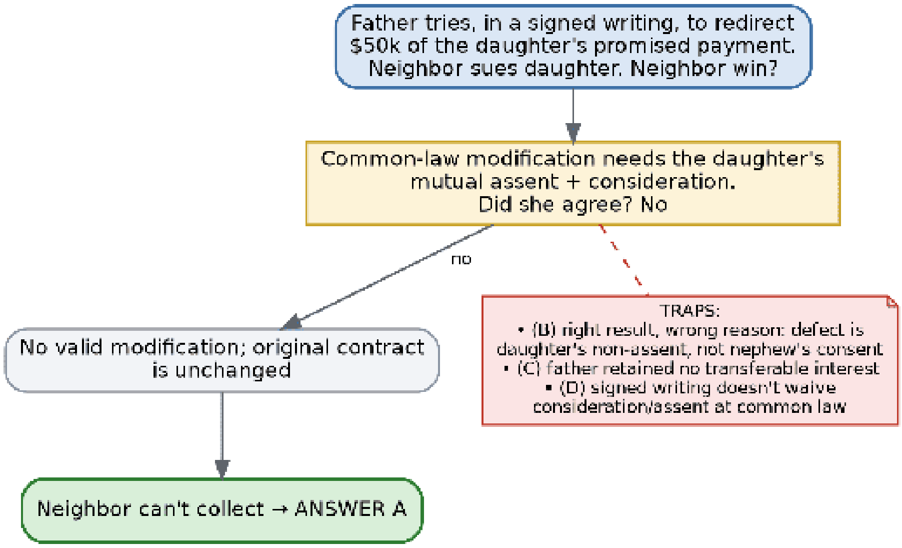
Answer D is incorrect. There was no effective modification, because the daughter did not agree to it. Furthermore, the general common law rule is that a modification requires consideration, and here there was no consideration from the father.

Exam Tactics & Triggers

- Trigger: a promisor (father) tries to UNILATERALLY change a contract → common-law modification needs the other party's (daughter's) mutual assent AND consideration.

- Daughter never agreed → no valid modification, so the neighbor cannot collect (A).
- (B) trap: it reaches the right 'no' for the WRONG reason, the defect is the daughter's non-assent, not any need for the nephew-beneficiary's consent.
- (C)/(D) traps: the father retained no transferable interest, and a signed writing does not dispense with consideration or the daughter's assent at common law.

Answer Flowchart



Question 95 — Torts

While attending an amusement park's fireworks display, a spectator was struck and injured by a rocket set off as part of the display. The rocket unexpectedly failed to shoot upward but instead followed a trajectory parallel to the ground and struck the spectator. The spectator has sued the amusement park for damages.

On which of the following theories is the spectator most likely to be able to obtain a summary judgment as to liability?

(A) Abnormally dangerous activity.

(B) Battery.

(C) Nuisance.

(D) Strict products liability.

Correct answer: A

Explanation

Answer A is correct. Even though the spectator might not obtain summary judgment on a claim of liability for an abnormally dangerous activity, that claim—which imposes strict liability for injuries caused by an activity that is not commonplace and that remains dangerous to bystanders even when the actor uses reasonable care to avoid causing injuries—provides the spectator with the best chance of doing so.

Answer B is incorrect. The spectator was injured in an accident: the amusement park did not intend to touch the spectator in a harmful or offensive manner, as is required for battery liability.

Answer C is incorrect. The spectator suffered personal injuries. The tort of nuisance imposes liability for unreasonable interference with another person's use or enjoyment of their property.

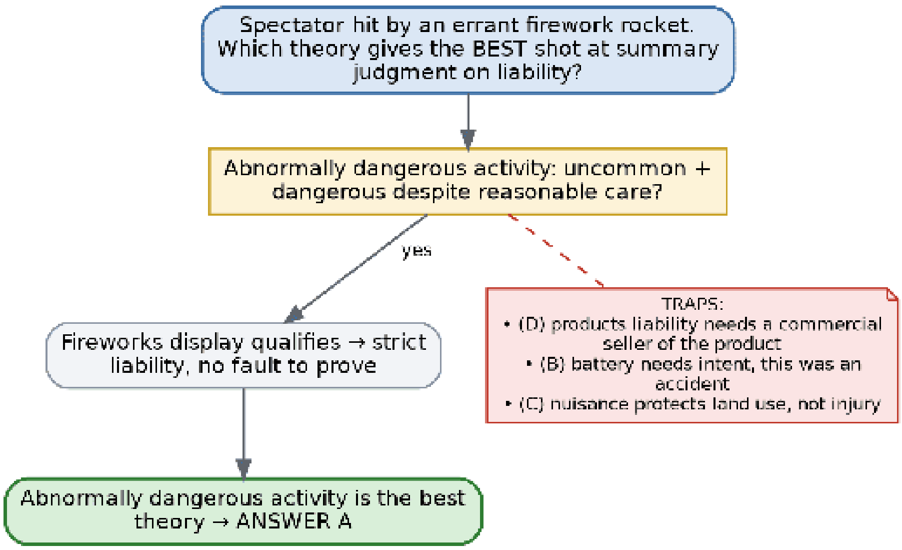
Answer D is incorrect. The doctrine of strict products liability applies only to commercial sellers of defective products that cause injury, and there is nothing in the question to suggest that the amusement park—the only defendant in the action—was in the business of selling fireworks.

Exam Tactics & Triggers

- Trigger: fireworks/blasting/explosives injuring a bystander and the question asks the BEST theory for SUMMARY JUDGMENT → abnormally dangerous activity (strict liability), no need to prove fault.

- Rule chain: abnormally dangerous = not commonplace + remains dangerous to bystanders despite reasonable care → strict liability, the easiest path to judgment on liability.
- Distractor trap (D) products liability: applies only to COMMERCIAL SELLERS of products; the amusement park uses fireworks, it does not sell them, so this fails.
- Distractor traps (B and C): battery needs intent to contact (this was an accident); nuisance protects use and enjoyment of land, not a spectator's personal injury.

Answer Flowchart



Question 96 — Evidence

A plaintiff has sued a defendant in federal court, alleging that the defendant knowingly pursued the plaintiff for payment of debts in violation of an automatic bankruptcy stay. The defendant has moved for summary judgment, arguing that he had no notice of the plaintiff's bankruptcy. In opposing the defendant's motion for summary judgment, the plaintiff offers a copy of the local newspaper that contains a front-page story about the plaintiff's petition for bankruptcy, along with evidence that the defendant is a daily subscriber to the newspaper. The defendant objects to admission of the newspaper story.

Is the newspaper story admissible?

(A) No, because the plaintiff has not offered proper authentication of the story.

(B) No, because the story constitutes hearsay not within any exception.

(C) Yes, because the story satisfies the past recollection recorded exception to the hearsay rule.

(D) Yes, because the newspaper is self-authenticating and the story is not offered for its truth.

Correct answer: D

Explanation

Answer D is correct. The newspaper is self-authenticating under FRE 902(6), and the newspaper story is not hearsay, because it is not offered for its truth but rather to show that the defendant was on notice of the plaintiff's bankruptcy.

Answer A is incorrect. A newspaper is a self-authenticating document under FRE 902(6) and thus does not require separate authentication to be admitted into evidence.

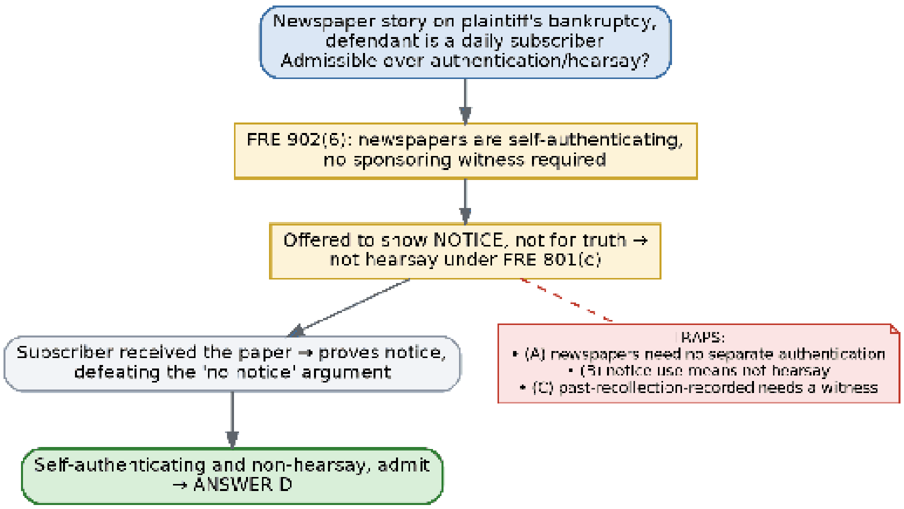
Answer B is incorrect. The newspaper story is not hearsay because it is not being offered for its truth but rather to prove that the defendant had notice of the plaintiff's bankruptcy before he pursued the plaintiff for payment of the debts. See FRE 801(c)(2).

Answer C is incorrect. Because the newspaper story is not offered for its truth, but rather to demonstrate notice of the plaintiff's bankruptcy, it is not hearsay, and no hearsay exception is required for its admission. Further, the past recollection recorded exception to the hearsay rule applies to testimony from a witness who made or adopted the recorded recollection, which is not the case here.

Exam Tactics & Triggers

- Trigger: a newspaper offered to show a party had NOTICE (not that the story is true) → non-hearsay use plus self-authentication.
- Rule chain: FRE 902(6), newspapers/periodicals are self-authenticating, no sponsoring witness needed; and 'offered to show notice' = not for truth = not hearsay (FRE 801(c)).
- Purpose tell: subscriber received the paper, so the story proves the defendant was on notice of the bankruptcy, defeating his 'no notice' summary-judgment argument.
- Distractor traps: (A) authentication fails because newspapers are self-authenticating; (B) hearsay fails because it is offered for notice; (C) past-recollection-recorded needs a witness who made/adopted the record, irrelevant here.

Answer Flowchart



Question 97 — Real Property

A buyer purchased a commercial building and financed the purchase by executing both a negotiable promissory note and a mortgage to the bank to secure repayment of the loan. The mortgage was promptly recorded.

Six months later, the bank assigned only the promissory note to an investor. The assignment made no express reference to the mortgage and was not recorded in the public land records. The bank immediately sent the buyer a notice of the assignment, which provided the address of the investor and explained that the bank was no longer servicing the loan.

The buyer made timely payments to the investor for two years but then defaulted on the loan. After the buyer failed to cure the default, the investor accelerated the debt and commenced a foreclosure action.

The buyer's defense in the foreclosure action is that the investor is not the mortgagee and therefore has no right to foreclose.

Does the investor have the right to foreclose?

(A) No, because the mortgage did not automatically accompany the assignment of the note to the investor.

(B) No, because the mortgage was extinguished when the bank assigned and transferred only the note to the investor.

(C) Yes, because the investor became the owner of both the note and the mortgage by virtue of the assignment of the note to him.

(D) Yes, because the public land records continue to show the investor's predecessor in title as the mortgagee.

Correct answer: C

Explanation

Answer C is correct. The assignment of a note automatically transfers the mortgage to the assignee of the note; a separate document assigning the mortgage to the assignee is unnecessary.

Answer A is incorrect. It is the opposite of answer C (the correct answer) and is contrary to the law.

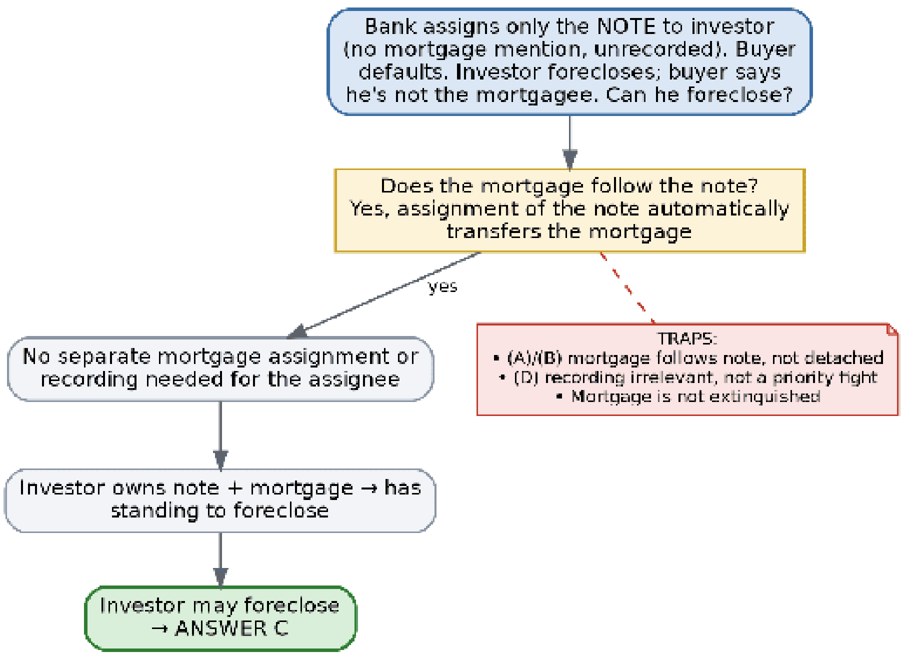
Answer B is incorrect. A mortgage is not extinguished by a transfer of the note.

Answer D is incorrect. This question does not raise any issue of priorities concerning the land records. Transfers of a mortgage are not required to be recorded to be valid in a dispute between the mortgagor and the holder of the note. The investor is permitted to foreclose by virtue of being the assignee of the note.

Exam Tactics & Triggers

- Trigger: bank assigns ONLY the NOTE (mortgage not mentioned, assignment unrecorded) → "the mortgage FOLLOWS the note," the assignee automatically gets the mortgage too.
- Rule chain: transfer of the note automatically carries the mortgage; no separate mortgage-assignment document and no recording are needed for the assignee to foreclose.
- Distractor traps: (A) and (B) both wrongly detach the mortgage from the note, either it fails to follow or is extinguished, contrary to the follow-the-note rule.
- Tell: (D) raises land-record priority, but recording is irrelevant in a dispute between the mortgagor and the note-holder, this is not a priorities question.

Answer Flowchart



Question 98 — Civil Procedure

An investor has sued a broker in federal court for violation of federal securities law, claiming that the broker misrepresented the investments he made on the investor’s behalf. The investor and the broker are citizens of State A. The broker would like to assert a breach of contract claim as a counterclaim to the investor’s action, alleging that the investor failed to pay the broker for the investments he made on her behalf.

Can the broker join the contract claim?

(A) No, because the contract claim is governed by state law.

(B) No, because the parties are not diverse.

(C) Yes, because the contract claim is a compulsory counterclaim.

(D) Yes, because the contract claim is a permissive counterclaim.

Correct answer: C

Explanation

Answer C is correct. The contract claim is a compulsory counterclaim under Federal Rule of Civil Procedure 13(a), because it arises out of the same transaction or occurrence that is the subject matter of the investor's claim, and thus not only may the broker assert the contract claim, but that claim must be included in the broker's answer or it will be forfeited.

Answer A is incorrect. Nothing in the application of Rule 13 turns on whether the counterclaim is based on federal or state law.

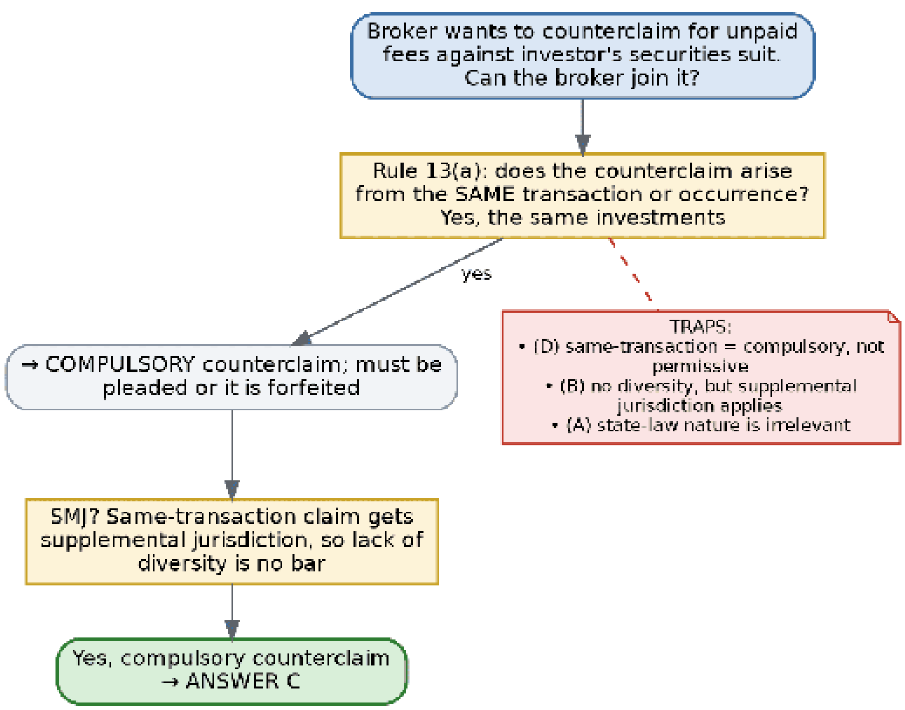
Answer B is incorrect. The lack of diversity is relevant to whether the court would have subject- matter jurisdiction, but it is not relevant to whether Rule 13 permits the counterclaim to be asserted. In this case, despite the lack of diversity, the court can hear the counterclaim, and in fact the broker must include it in the answer or forfeit it, because it is a compulsory counterclaim. The court would have supplemental jurisdiction over the counterclaim because it is related to the investor's securities law claim.

Answer D is incorrect. While Rule 13(b) permits parties to assert unrelated counterclaims as permissive counterclaims, this is a compulsory counterclaim, as explained above, and thus it must be included in the broker's answer or it will be forfeited.

Exam Tactics & Triggers

- Trigger: proposed counterclaim arises from the SAME transaction as the plaintiff's claim → Rule 13(a) COMPULSORY counterclaim, it must be pleaded or forfeited.
- Same-transaction test: broker's non-payment claim stems from the very investments the investor sued over, so it is compulsory, not permissive.
- Jurisdiction is a separate step: lack of diversity (B) doesn't block the counterclaim because supplemental jurisdiction covers a claim from the same transaction.
- Distractor tells: (A) state-law nature is irrelevant to Rule 13, and (D) 'permissive' is wrong because a same-transaction counterclaim is compulsory.

Answer Flowchart



Question 99 — Torts

The owner of a home in a rural area had for many years enjoyed unspoiled views of the surrounding countryside from her back deck. Several months ago, a neighboring farmer placed unsightly items, including an old, rusted tractor and some machine parts, entirely on his own property, but in a location visible from the homeowner's deck.

The homeowner asked the farmer to move the items to a different area of the farm, out of the homeowner's line of sight. The farmer acknowledged that it was not common for farmers in the area to keep old equipment on their land in locations visible to neighbors, but nonetheless refused to move the items. Concerned that the farmer's placement of the items might adversely affect the resale value of the property, the homeowner paid for an appraisal of her own property. The appraisal determined that the market value of the property had not been diminished by the farmer's actions.

If the homeowner were to sue the farmer for private nuisance, which of the following would be the farmer's best argument against liability?

(A) The unsightly items have not caused a decrease in the market value of the homeowner's property.

(B) The unsightly items do not physically encroach on the homeowner's property.

(C) It is not common for farmers in the area to keep old equipment on their land in places that are visible to neighbors.

(D) Unsightly conditions ordinarily do not of themselves amount to an unreasonable interference with the use and enjoyment of a neighboring property.

Correct answer: D

Explanation

Answer D is correct. The question asks for the BEST argument against liability. Courts typically have held that a defendant's causing a property owner to view unsightly things from her property by itself does not suffice to establish the sort of unreasonable interference with the use and enjoyment of property that is necessary for nuisance liability. While there is no guarantee that the farmer would prevail on the basis of this argument, it would be the farmer's best argument.

Answer A is incorrect. The harm the homeowner must prove in order to prevail on the nuisance claim is unreasonable interference with her use and enjoyment of her property, not diminution in the market value of her property.

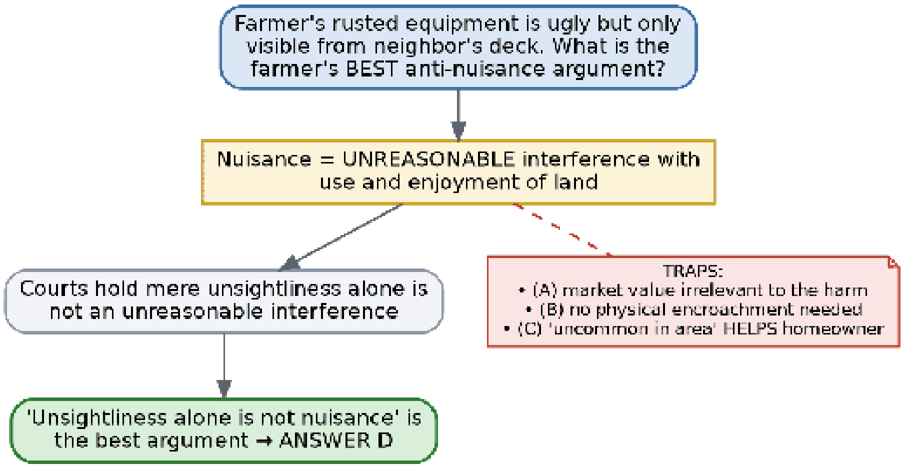
Answer B is incorrect. Items on one person's land, if they cause an unreasonable interference with a neighboring property owner's use and enjoyment of their property, can constitute a nuisance. For example, if a person maintains a trash heap in her backyard that sends nauseating odors to her neighbor's yard, that person may be subject to liability for nuisance even though the trash heap does not physically encroach on the neighbor's property.

Answer C is incorrect. Determinations of nuisance often rest on judgments about the character of, and common practices in, the relevant location. In this case, the fact that farmers in this area do not tend to keep old equipment on their land in places visible to neighbors strengthens rather than weakens the homeowner's claim that the farmer's placement of the unsightly items constitutes a nuisance.

Exam Tactics & Triggers

- Trigger: private nuisance based purely on an UNSIGHTLY view (rusted equipment visible next door) → the defense's best argument is that mere aesthetics do not amount to an unreasonable interference.
- Rule chain: nuisance requires UNREASONABLE interference with use and enjoyment; courts generally hold unsightliness alone is not enough, that is the strongest defense.
- Distractor trap (A): no drop in market value is irrelevant, the injury is interference with use and enjoyment, not diminished value, so it is a weak argument.
- Distractor traps (B and C): lack of physical encroachment is not required for nuisance, and the 'uncommon in the area' fact actually HELPS the homeowner, so it is a bad defense argument.

Answer Flowchart



Question 100 — Real Property

A woman who owned an apartment building decided to give the building to a man whose wife she did not care for. The woman signed and promptly recorded a deed properly describing the property and identifying the man by name. The deed specified that under no circumstances was the property "to ever pass to [the man's wife]."

Unbeknownst to the woman, the man had died before she executed and recorded the deed. Under the man's duly probated will, he had devised all of his property to his wife. When the woman learned of the man's death, she said in the presence of several witnesses, "I must take back that deed, because I don't want [the man's wife] to own the apartment building."

Before the woman could do anything about the deed, however, she died. By her duly probated will, she left all of her estate to her niece.

There are no applicable statutes.

In an appropriate action to determine the ownership of the apartment building, who will likely prevail?

(A) The man's wife, because the deed to the man was recorded.

(B) The man's wife, because the man's will was probated.

(C) The niece, because of the woman's clearly stated intent to take back the gift.

(D) The niece, because the deed to the man is void.

Correct answer: D

Explanation

Answer D is correct. A deed to a deceased grantee is void.

Answer A is incorrect. Because the deed to the man is void, it is irrelevant that the deed was recorded. Recording does not validate a void deed.

Answer B is incorrect. The man had no interest in the land and thus could not devise any interest in the land to his wife.

Answer C is incorrect. Because the deed is void, the woman's stated intent to take back the gift is irrelevant, as there was no gift to the man.

Exam Tactics & Triggers

- Trigger: grantor delivers/records a deed to a grantee who was ALREADY DEAD → the deed is VOID; a deceased grantee cannot take title.
- Rule chain: a void deed passes nothing, so recording it and the dead grantee's own will devising the property are both irrelevant, the title stays in the grantor and passes under her will.
- Distractor traps: (A) recording cannot validate a void deed; (B) the man had no interest to devise, so his will gives his wife nothing.
- Tell: (C) baits with the grantor's stated intent to "take back the gift," but since the deed was void there was never a gift, so her intent is a non-issue, the deed's voidness (D) is the real ground.

Answer Flowchart