MBE PRACTICE EXAM — SESSION 2

Questions 101–200 · annotated, with exam tactics and an answer flowchart for every question · dietcokeesq.com

Question 101 — Constitutional Law

Under a state law, oil and gas rights can pass by will or through intestate succession. Some oil and gas rights in the state have been divided into very small interests after several generations of passing by intestate succession. It therefore is difficult to enter into extraction contracts in the state because of the need to include large numbers of heirs for any given tract of land. To remedy this problem, the state has enacted a law that provides that, at the death of an owner of less than 1% of the oil and gas interests in a tract of land, that owner's oil and gas rights are extinguished and his or her interests are transferred pro rata to the remaining owners.

Is this law constitutional?

(A) No, because the law effects a taking of property without just compensation.

(B) No, because the law unduly burdens interstate commerce in oil and gas production.

(C) Yes, because property inheritance is a privilege created by state law.

(D) Yes, because the law rationally promotes the legitimate state interest in fostering resource development.

Correct answer: A

Explanation

Answer A is correct. The law effects a taking of property because it extinguishes an owner's interest in real property. It does not matter that the owner's interest in the property is very small. The law violates the takings clause because it does not provide just compensation to owners who lose their interests in the affected properties.

Answer B is incorrect. The law does not violate the negative implications of the commerce clause because it does not discriminate in favor of in-state interests at the expense of out-of-state interests, and because on these facts any burden on interstate commerce would not clearly outweigh the state's legitimate interest in facilitating the production of oil and gas.

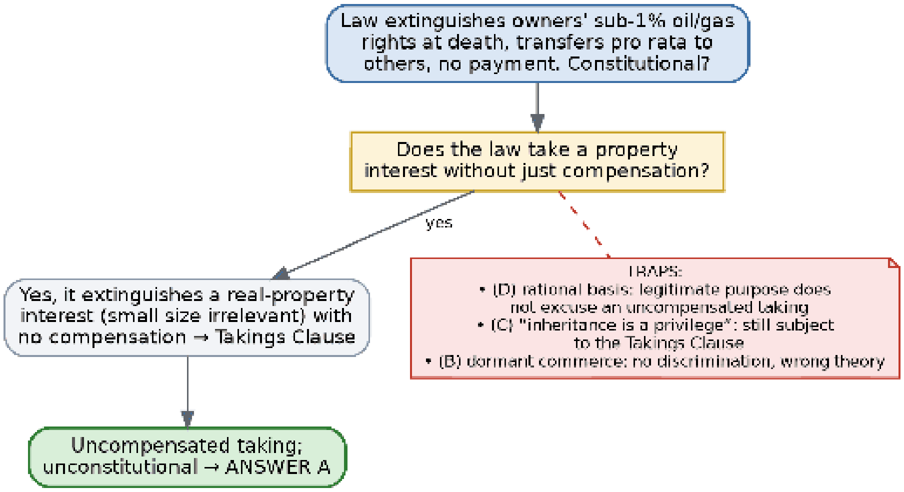
Answer C is incorrect. It is true that property inheritance is a privilege created by state law, but that does not permit a state to use inheritance law to effect takings of an individual's property. All state laws are subject to the takings clause of the federal Constitution.

Answer D is incorrect. Answer D states the elements of the rational basis test, which does not apply here. The state law is subject to the takings clause, which requires the state to pay just compensation when it takes an individual's property, even if the state had a legitimate interest for the taking.

Exam Tactics & Triggers

- Trigger: a law that EXTINGUISHES an owner's property interest and transfers it to others with no payment → Takings Clause, invalid without just compensation.
- Rule chain: extinguishing even a tiny real-property interest is a taking; size of the interest does not matter, the defect is the missing just compensation.
- Distractor trap (D): "rationally promotes a legitimate interest" is the rational-basis test, but a legitimate purpose does NOT excuse a taking without compensation.
- Distractor trap (C): "inheritance is a state-created privilege" tempts you to think the state can define it away, but all state laws remain subject to the federal Takings Clause.

Answer Flowchart



Question 102 — Criminal Law & Procedure

A woman was charged with stealing from her employer. Her lawyer advised her to plead guilty, citing overwhelming evidence that included a video recording of her confession and multiple witnesses. The woman repeatedly asked whether a guilty plea might lead to her deportation because she had come to the United States as a child and had lawful permanent resident status but not citizenship. The lawyer assured the woman that the charge would not result in deportation and emphasized the unusually favorable terms of the plea bargain. The woman accepted the plea offer.

At the end of the woman's short prison term, immigration authorities informed her that the conviction required her deportation. The woman filed a motion to vacate the plea, citing ineffective assistance of counsel.

How is the court likely to rule?

(A) Counsel was ineffective, and under the circumstances, the woman suffered prejudice even though there was only a remote chance of success at trial.

(B) Counsel was ineffective, but the woman suffered no prejudice because she admitted guilt when tendering the plea.

(C) Counsel was not ineffective, because a criminal attorney is not required to provide advice about the collateral consequences of conviction.

(D) Counsel was not ineffective, because there was overwhelming evidence of guilt.

Correct answer: A

Explanation

Answer A 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 Padilla v. Kentucky, 559 U.S. 356 (2010), the Court held that defense counsel must inform a defendant of the possibility that a guilty plea will affect immigration status. Here, defense counsel failed to properly inform the client that her guilty plea could lead to deportation. Indeed, counsel affirmatively misled the client by assuring her that there would be no such consequence. In so doing, counsel rendered deficient performance that was prejudicial because it led the client to accept a plea when she otherwise would have chosen to go to trial.

Answer B is incorrect because the woman's formal admission of guilt, while tendering her guilty plea, was the result of counsel's ineffective assistance.

Answer C is incorrect. This answer contains a valid statement of law: In general, defense counsel is not required to advise a defendant about all collateral consequences of conviction. But in Padilla v. Kentucky, the Court specifically held that counsel is required to advise about the possibility of immigration consequences. Moreover, counsel's performance here was worse than merely failing to advise; counsel affirmatively misadvised the client about the potential immigration consequences.

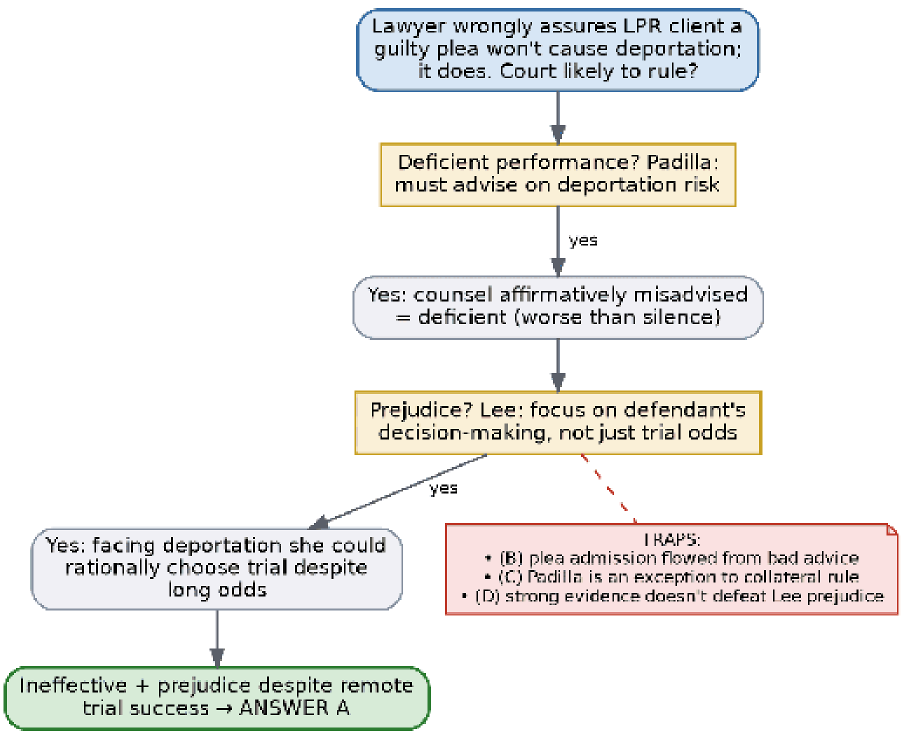
Answer D is incorrect. In Lee v. United States, 137 S. Ct. 1958 (2017), the Court explained that the prejudice "inquiry focuses on a defendant's decision-making," an inquiry that does not turn solely on the likelihood of conviction at trial.

Although it may be difficult to show prejudice when the plea led to a more favorable result than the probable outcome at trial, such a showing is not impossible. When faced with an outcome as dire as deportation, a defendant may reasonably choose to go to trial, even when that avenue presents only the smallest chance of success.

Exam Tactics & Triggers

- Trigger: lawyer affirmatively MISADVISES a noncitizen client that a plea won't cause deportation → Padilla v. Kentucky deficient performance, deportation is not a mere collateral consequence.
- Rule chain: Strickland deficiency + Padilla duty to advise on immigration consequences; prejudice under Lee v. United States focuses on the defendant's DECISION-MAKING, not just trial odds.
- Prejudice tell: facing an outcome 'as dire as deportation,' a defendant may rationally choose trial even with only a tiny chance of acquittal.
- Distractor traps: (B) 'admitted guilt' ignores that the plea itself flowed from bad advice, (C) the collateral-consequences rule has a Padilla exception, (D) overwhelming evidence doesn't defeat Lee prejudice.

Answer Flowchart



Question 103 — Contracts

A recreational outfitter placed an online order with a seller for 20 new kayaks. The outfitter agreed to delivery by carrier under a destination contract, paid for the order, and received an email confirmation from the seller. The seller placed shipping labels on 20 individual kayaks in the seller's warehouse. The shipping labels listed the outfitter's name and address, the order number, and the proposed delivery date. The seller informed the carrier that the kayaks were ready to be picked up from the seller's warehouse for delivery to the outfitter. The carrier picked up the kayaks and delivered them to the outfitter.

At what point were the kayaks identified to the contract?

(A) When the outfitter and the seller entered into the contract.

(B) When the seller placed the shipping labels on the kayaks.

(C) When the carrier picked up the kayaks.

(D) When the carrier delivered the kayaks to the outfitter.

Correct answer: B

Explanation

Answer B is correct. Goods are identified to the contract when the seller ships, marks, or otherwise designates them as goods to which the contract refers. UCC § 2-501. Here the seller marked them before they were shipped, so identification occurred when the seller put the labels on the kayaks.

Answer A is incorrect. The seller didn't designate the particular kayaks that were eventually shipped as the ones to which the contract referred until after the contract between the parties was formed.

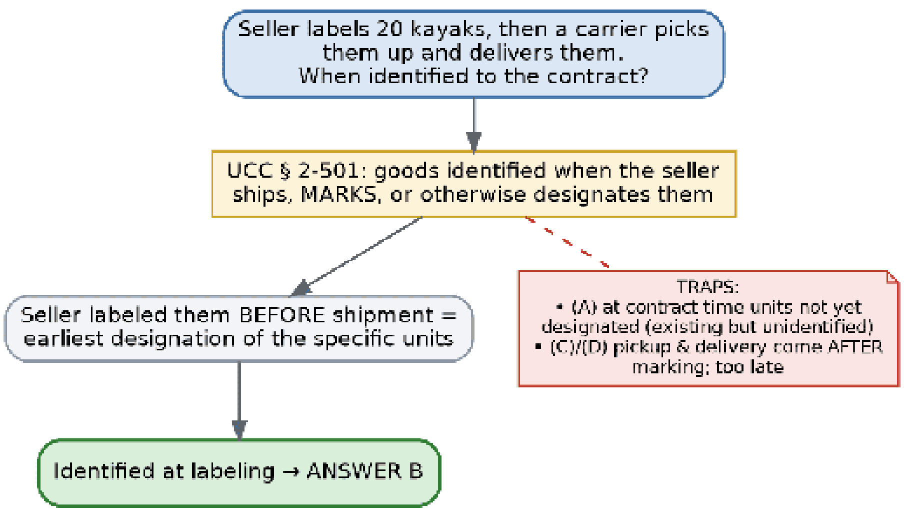
Answer C is incorrect. Before the carrier picked up the goods, the seller designated the kayaks that were shipped as the ones to which the contract referred.

Answer D is incorrect. Before delivery to the outfitter, the seller designated the kayaks that were shipped as the ones to which the contract referred.

Exam Tactics & Triggers

- Trigger: 'when were the goods identified to the contract?' → UCC § 2-501: when the seller ships, MARKS, or otherwise designates them.
- Timing tell: identification happens at the EARLIEST designation, so marking/labeling beats pickup and delivery, killing (C) and (D).
- Contract-formation (A) is too early: at contract time the specific units were existing but not yet designated to this buyer.
- Lock the chain: existing goods are identified when the seller designates the specific units, here by labeling.

Answer Flowchart



Question 104 — Evidence

In a diversity action in federal court, the plaintiff seeks to have a drug abuse counselor from an employee assistance program testify about her communications with the defendant. The communications are privileged against disclosure under the relevant law of the state where the plaintiff's cause of action arose.

What should govern the court's determination of the admissibility of the counselor's testimony?

(A) Federal common law as interpreted in the light of reason and experience.

(B) Federal statutory law.

(C) The court's sound discretion in the interest of justice.

(D) The state's privilege law.

Correct answer: D

Explanation

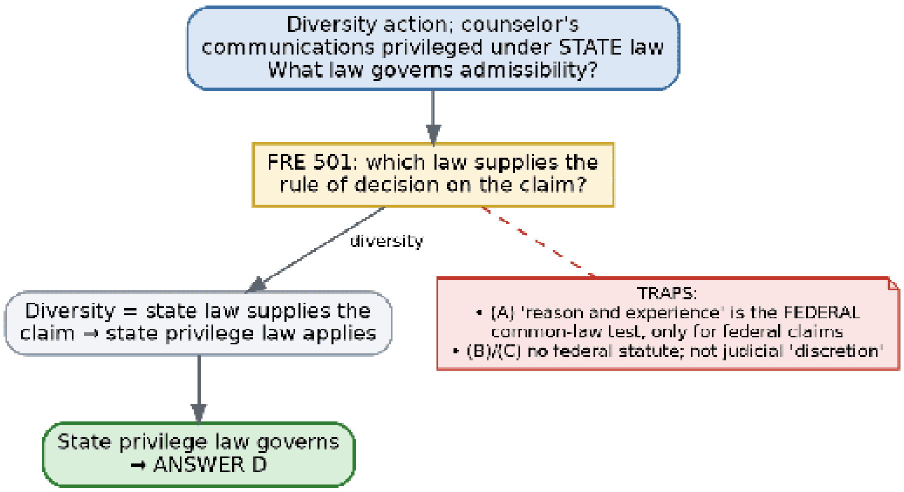
Answer D is correct. Under FRE 501, state law governs privilege in a diversity action.

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

Exam Tactics & Triggers

- Trigger: 'diversity action' + 'privilege' → FRE 501 hands the privilege question to STATE law (the state supplying the rule of decision).
- Lock the rule chain: federal-question case = federal common law of privilege; diversity/state-claim case = state privilege law. Match the source of the substantive claim.
- Distractor trap (A): 'reason and experience' is the federal common-law standard, correct ONLY when federal law supplies the claim, so it is the perfect bait here.
- Kill (B) and (C): there is no federal privilege STATUTE governing this, and judicial 'discretion in the interest of justice' is not the FRE 501 test.

Answer Flowchart



Question 105 — Civil Procedure

A company hired an attorney to sue a former company manager for violating a covenant not to compete. The company's president told the attorney that the manager had begun working for a competitor and gave the attorney a copy of the signed covenant.

The attorney brought a federal diversity action against the manager and attached to the complaint a copy of the signed covenant. The attorney also moved for a preliminary injunction, referring to the attached covenant and submitting a supporting affidavit from the company's president.

At the hearing on the preliminary injunction motion, the manager denied ever having signed such a covenant and conclusively demonstrated that the copy of a signed covenant attached to the company's motion was forged. The court, on its own initiative, ordered the attorney to show cause why the attorney should not be sanctioned under Rule 11.

Would sanctions against the attorney be proper?

(A) No, because the court did not give the attorney notice and 21 days to withdraw the preliminary injunction motion.

(B) No, because the motion was supported by evidence that was likely sufficient to satisfy an objectively reasonable attorney.

(C) Yes, because the attorney filed papers with the court that contained untrue assertions of fact.

(D) Yes, because the attorney should have verified the manager's signature before attaching the covenant to the complaint.

Correct answer: B

Explanation

Answer B is correct. Federal Rule of Civil Procedure 11(b) requires that factual contentions presented by an attorney to the court have evidentiary support. Attorneys may rely on affidavits and documents provided by their clients unless the circumstances suggest that it would be unreasonable to do so or that further inquiry is needed.

Answer A is incorrect. The "safe harbor" requirement in Rule 11 applies only when a party moves for sanctions, not when the court acts on its own initiative.

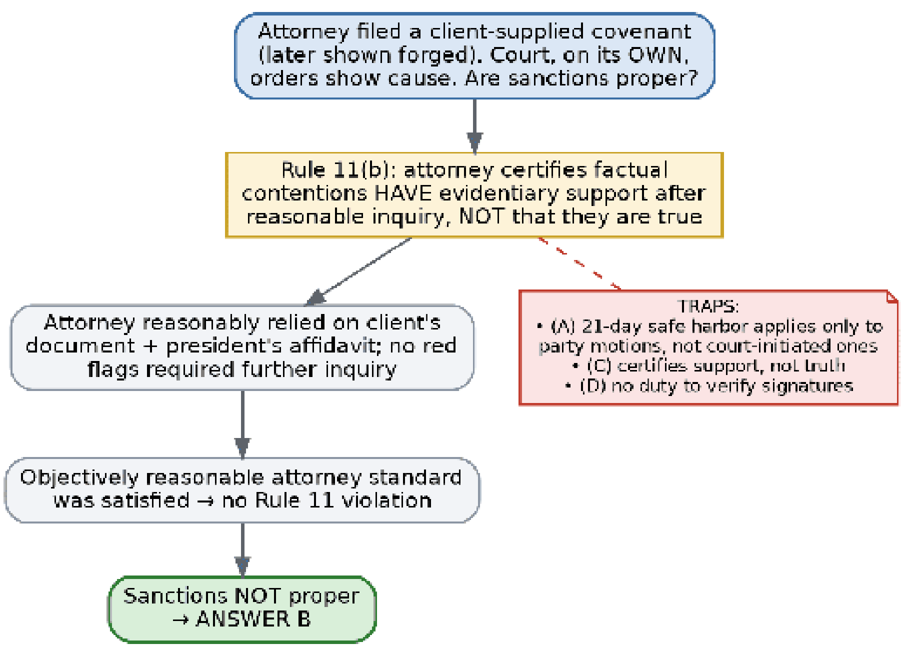
Answer C is incorrect. Under Rule 11(b), attorneys certify that factual contentions they present to the court have evidentiary support, not that they are true. As indicated above, there is nothing in the facts suggesting that the attorney should have questioned either the signed covenant or the president's affidavit as containing false information.

Answer D is incorrect. There is no general rule requiring attorneys to verify signatures on documents before presenting them to a court. Rather, the inquiry under Rule 11(b) is whether the attorney acted to the best of the attorney's knowledge, information, and belief, formed after a reasonable inquiry under the circumstances. Here, there are no facts given that suggest that it would have been unreasonable for the attorney to assume that the signature on the covenant was valid.

Exam Tactics & Triggers

- Trigger: court raises Rule 11 sanctions ON ITS OWN INITIATIVE → the 21-day safe harbor does NOT apply, so any answer resting on notice/withdrawal time (A) is a trap.
- Lock in the Rule 11(b) certification chain: attorney certifies factual contentions HAVE evidentiary support after reasonable inquiry, NOT that they are true, so the forgery alone does not sanction the lawyer.
- Distractor tell (C): it swaps 'evidentiary support' for 'true'; Rule 11 never guarantees truth, and an attorney may rely on client-supplied documents/affidavits absent red flags.
- Distractor tell (D): 'should have verified the signature' invents a duty that does not exist; there is no general signature-verification rule, only reasonable inquiry under the circumstances.

Answer Flowchart



Question 106 — Constitutional Law

The owner of a local road-paving company has for several years provided road repair and maintenance services for a small town under an annual contract. The owner's price is usually lower than the prices of other bidders because the owner's equipment and personnel are located in the town.

In a recent town mayoral election, the owner supported the candidate challenging the incumbent mayor. The owner's paving trucks carried bumper stickers promoting the challenger. When the incumbent mayor saw the owner in a local restaurant, the mayor said, "You'd better get those bumper stickers off your trucks or you'll never pave another road in this town again." The owner refused to comply. The incumbent mayor won the election.

When the road construction projects for the next year were put out to bid, the owner of the local paving company was again the lowest bidder. The mayor, however, vetoed the selection and chose a contractor from farther away, at a much higher price. State law does not require selection of the lowest bidder.

Is the mayor’s selection of the other contractor constitutional?

(A) No, because the mayor’s action in choosing a higher-cost bidder over a lower-cost bidder has no rational basis.

(B) No, because the mayor’s action is a violation of the owner’s right to freedom of expression and association.

(C) Yes, because state law does not require selection of the lowest bidder.

(D) Yes, because the mayor can require those who work for the town to support its current administration to ensure that the work is consistent with the administration’s policies.

Correct answer: B

Explanation

Answer B is correct. The Supreme Court has held that the First Amendment rights of free expression and free association apply to government contractors in the same manner these rights apply to government employees. These rights generally prohibit government officials from penalizing employees and contractors because of their political beliefs or associations unless political beliefs or affiliations are relevant to job performance. It is important here that the government contract is for road construction, which does not involve political policy making.

Answer A is incorrect. Under some circumstances, it may be a rational decision for the government to award a contract to a higher-cost bidder. For example, this would occur when the government decides that a lower-cost bidder is not competent to perform a job, or when a higher-cost bidder will complete a job in substantially less time.

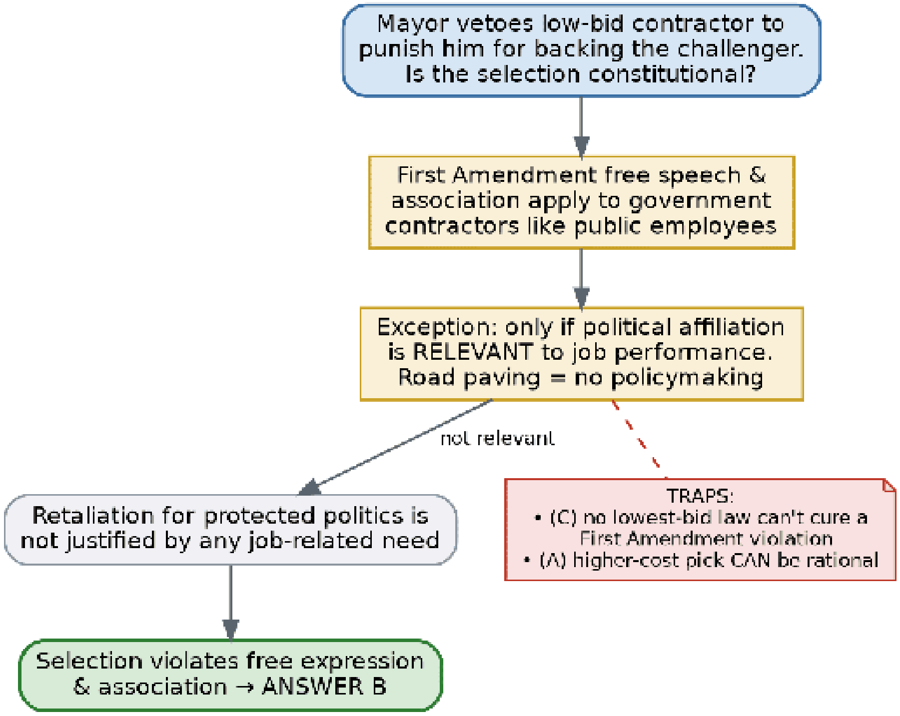
Answer C is incorrect. The fact that state law does not require awarding contracts to the lowest-cost bidder is irrelevant to the determination whether the mayor’s selection of the other contractor violated the First Amendment. The rights of free expression and free association generally prohibit government officials from penalizing employees and contractors because of their political beliefs or associations unless political beliefs or affiliations are relevant to job performance; such beliefs or affiliations are not relevant to road construction.

Answer D is incorrect. The mayor can require those who work for the town to support its current administration to ensure that the work is consistent with the administration's policies. But the mayor has other means available to ensure that the contractor’s work conforms to the job requirements set out by the city. For example, the city can monitor the contractor’s job performance and require compliance with contract requirements. The contractor’s political conduct is irrelevant to the type of work in question.

Exam Tactics & Triggers

- Trigger: government punishes a CONTRACTOR (or employee) for political speech/association → First Amendment applies just like to public employees, unless politics is relevant to the job.
- Rule chain: penalizing a contractor for their politics is unconstitutional unless political affiliation is job-relevant; road paving is not policymaking, so it is not relevant.
- Distractor trap (C): 'state law does not require lowest bidder' is a red herring, a valid statute cannot save an action that violates the First Amendment.
- Distractor trap (A): rational-basis absolutes fail, picking a higher-cost bidder CAN be rational, so the constitutional flaw is the retaliation, not irrationality.

Answer Flowchart



Question 107 — Contracts

A woman purchased a car from a seller who had reset the car's odometer to read 25,000 miles. The seller was aware that the car's actual mileage was approximately 90,000. Unaware of the car's actual mileage, the woman resold the car to a friend seven months later. At the time of the resale, the friend looked at the odometer, which read 30,000 miles, and said, "Great!" By then, the actual mileage was 95,000. Immediately after buying the car, the friend took it to his mechanic, who completed minor repairs and told the friend that he estimated the car's actual mileage to be approximately 100,000.

Assuming no applicable statutes, is the friend likely to prevail in an action to rescind his purchase of the car from the woman?

(A) No, because the friend's reliance on the odometer reading was unreasonable, given that he did not have his mechanic check the mileage before he bought the car.

(B) No, because the woman was unaware of the car's actual mileage when she sold the car to the friend.

(C) Yes, because the car's actual mileage is a material fact that was not revealed to the friend before he bought the car.

(D) Yes, because the car's odometer reading constituted an express warranty.

Correct answer: C

Explanation

Answer C is correct. A party may avoid a contract if their assent was induced by either a fraudulent or a material misrepresentation. Here, the misrepresentation about the car's mileage was not fraudulent, since the woman made it innocently, but it was material.

Answer A is incorrect. The friend had no duty to have a mechanic check the mileage when his reliance on the odometer reading was reasonable.

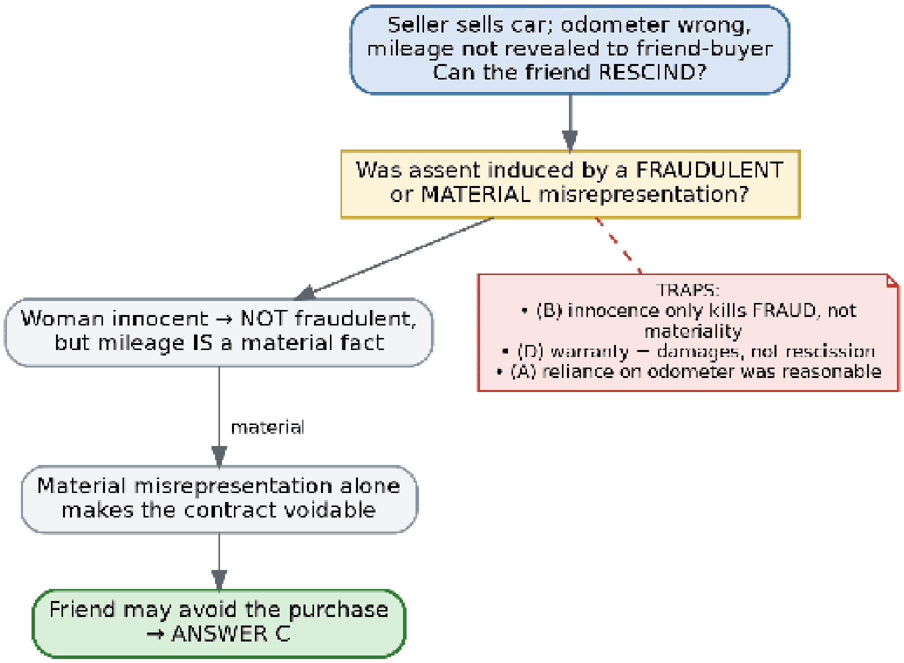
Answer B is incorrect. Because the woman was unaware of the actual mileage, the misrepresentation was not fraudulent, but an innocent misrepresentation is grounds for avoidance of a contract when the misrepresentation is material.

Answer D is incorrect. Even if the odometer reading constituted an express warranty, the remedy for breach of warranty would be money damages, not avoidance of the contract.

Exam Tactics & Triggers

- Trigger: a false-but-innocent statement of a MATERIAL fact (odometer/mileage) that induces the deal → avoidance is available even without fraud.
- Lock the rule chain: assent induced by a FRAUDULENT OR MATERIAL misrepresentation = voidable; materiality alone is enough, no intent to deceive required.
- Distractor trap (B): 'she didn't know' only defeats the FRAUD theory, not the material-misrepresentation theory; don't let 'innocent' seal the answer.
- Distractor trap (D): warranty gets you MONEY DAMAGES, not rescission, so a warranty rationale can't justify a 'yes, rescind' result; match remedy to relief sought.

Answer Flowchart



Question 108 — Criminal Law & Procedure

A police department received reliable information that a woman was selling drugs from her apartment. Upon arriving at the apartment, officers noticed the smell of burning marijuana (which is an illegal substance in the jurisdiction) coming from inside the closed front door. They knocked on the door and announced, “Police!” Immediately, they began to hear sounds of items being moved inside. Concerned that evidence was being destroyed, the officers opened the unlocked door and entered the apartment, where they saw drugs and cash on the dining room table. They arrested the woman for drug offenses.

The woman has moved to suppress the evidence obtained from her apartment, arguing that the police violated the Fourth Amendment when they entered the apartment without a warrant.

Should the court grant the woman’s motion to suppress?

(A) No, because the police had probable cause and exigent circumstances.

(B) No, because the police had reasonable suspicion and exigent circumstances.

(C) Yes, because the police could have obtained a warrant.

(D) Yes, because the police created any exigent circumstances.

Correct answer: A

Explanation

Answer A is correct. In Kentucky v. King, 563 U.S. 452 (2011), the Supreme Court held that the exigent circumstances doctrine, which permits warrantless entry, applies even when (lawful) police action precipitates the exigency. Here, the police lawfully knocked and announced their presence at the door. That lawful conduct gave rise to an exigency—the concern that evidence was being destroyed—that justified the warrantless entry.

Answer B is incorrect. Although the exigent circumstances doctrine allows police to dispense with a warrant, it does not allow them to dispense with the requirement of probable cause. Consequently, reasonable suspicion would not suffice to justify the warrantless entry.

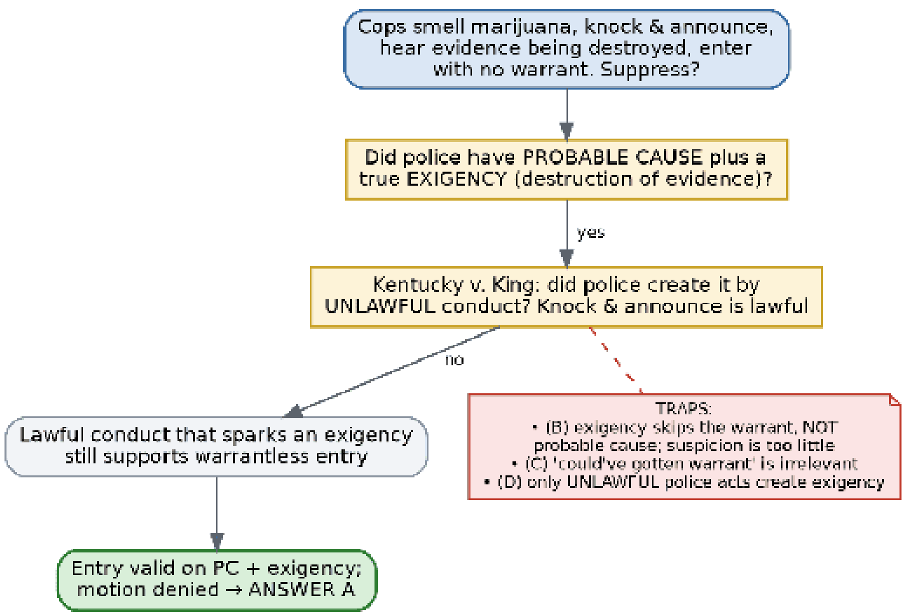
Answer C is incorrect because the exigent circumstances doctrine does not require an inquiry into whether police might have obtained a warrant. The basis of the doctrine is that officers may proceed without a warrant because of the exigency.

Answer D is incorrect. In Kentucky v. King, the Supreme Court expressly rejected the broad “police- created exigency” doctrine that some lower courts had developed. The proper test, according to the Supreme Court, is whether the police created the exigency by engaging in, or threatening to engage in, conduct that violates the Fourth Amendment. Here, the police conduct—knocking and announcing their presence—was not itself unreasonable under the Fourth Amendment.

Exam Tactics & Triggers

- Trigger: cops smell/see evidence + hear it being destroyed after a lawful knock-and-announce → exigent circumstances, warrantless entry OK (Kentucky v. King).
- Lock the two-part chain: exigency excuses the WARRANT but never the PROBABLE CAUSE, so 'reasonable suspicion' answers are always a trap here.
- Distractor (C) 'could have gotten a warrant': the doctrine never asks that, exigency means they may skip the warrant entirely, so this reasoning is legally irrelevant.
- Distractor (D) 'police-created exigency': the modern test is whether police THREATENED or DID something unreasonable; lawful knocking does not count, so (D) misstates the rule.

Answer Flowchart



Question 109 — Real Property

A woman owned land subject to a mortgage held by a bank. She fell behind in her mortgage loan payments, and the bank properly initiated foreclosure proceedings. The land was sold at a foreclosure sale that resulted in surplus proceeds to which the woman was entitled. Before payment of the surplus proceeds to her, she died testate.

In her duly probated will, which she had executed before granting the mortgage to the bank, the woman specifically devised the land to a charity. The remainder of the woman’s estate was given by the will to her brother, her sole heir.

A dispute has arisen in the administration of the woman’s estate about the foreclosure sale surplus proceeds. The woman’s brother contends that he is now entitled to those proceeds.

Is the brother correct?

(A) No, because the foreclosure sale was an involuntary act.

(B) No, because the woman's will clearly indicated her intent for the charity to have the land.

(C) Yes, because the foreclosure sale was completed before the woman's death.

(D) Yes, because the woman's will was written before the mortgage was granted.

Correct answer: C

Explanation

Answer C is correct. A will speaks at the time of the testator's death. At that time, the woman did not own the land because she had lost it in the foreclosure action. At the time of the woman's death, she only had an interest in the surplus proceeds, which was personal property that passed to the brother, who is the woman's residuary legatee.

Answer A is incorrect. Whether the brother or the charity prevails depends on whether the woman owned the land when she died. How the woman lost ownership of the land is irrelevant.

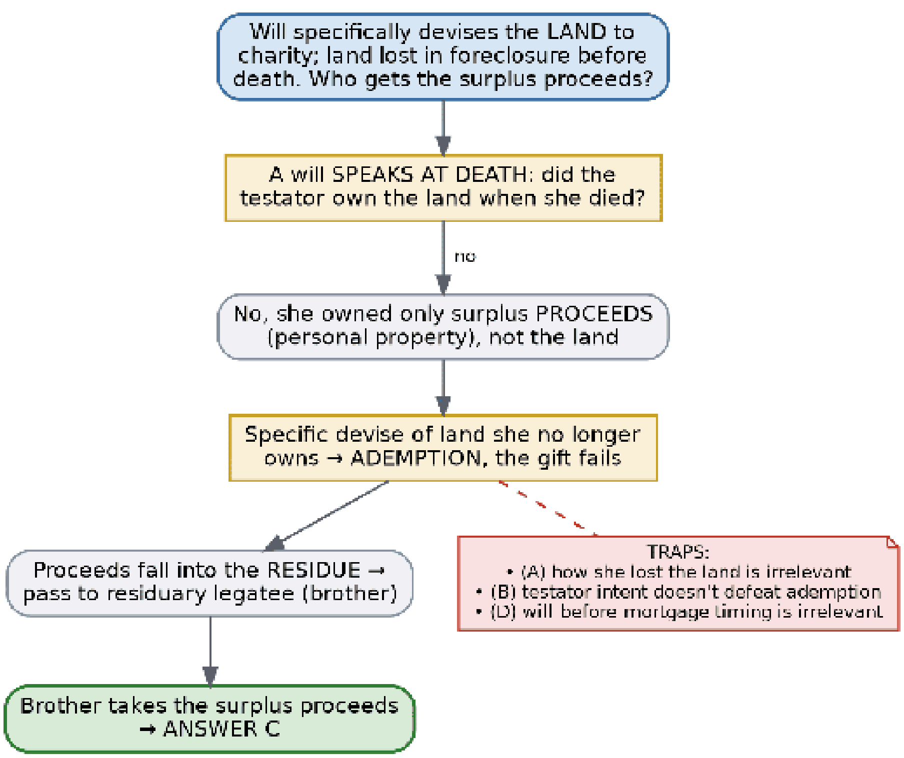
Answer B is incorrect. The woman's intent is irrelevant. When a will specifically disposes of land not owned by the testator at death, the bequest to the specific legatee adeems (fails).

Answer D is incorrect. The fact that the will was written before the mortgage was granted is irrelevant to the question of ademption.

Exam Tactics & Triggers

- Trigger: testator devises a SPECIFIC asset but no longer owns it at death → ademption by extinction, the specific gift fails and drops out.
- Rule chain: a will 'speaks at death' → check what the testator actually OWNED at death, not what she owned when she wrote the will.
- Foreclosure converted the land into surplus PROCEEDS (personal property), which fall into the residue → residuary legatee (brother) takes.
- Distractor traps: (A)/(B)/(D) all dangle irrelevant facts (involuntary sale, testator intent, will-before-mortgage timing); ademption is mechanical and ignores intent.

Answer Flowchart



Question 110 — Evidence

A defendant is on trial for conspiracy to distribute drugs. The prosecutor wishes to introduce into evidence a ledger found at the defendant's home during the execution of a search warrant. The ledger includes detailed information regarding the defendant's purchases and sales of drugs over a two-year period. The prosecutor is considering two alternative ways to lay the foundation for admission of the ledger as a business record. The first alternative is to call the police officer who executed the search warrant to testify that she found the ledger in the defendant's home. The second alternative is to call a codefendant, who has pled guilty, to testify that he was the defendant's drug supplier for over two years and that he was present when the defendant used the ledger to record their transactions as well as transactions with other buyers and sellers as they occurred.

Which of the following is correct regarding the ledger's admissibility under the business records exception to the hearsay rule?

(A) The ledger may be admitted through either the officer or the codefendant.

(B) The ledger may be admitted through the codefendant but not through the officer.

(C) The ledger may not be admitted through either the officer or the codefendant, because business records may be introduced only through testimony by a records custodian.

(D) The ledger may not be admitted through either the officer or the codefendant, because the business records exception to the hearsay rule does not apply to illegal activity.

Correct answer: B

Explanation

Answer B is correct. The officer cannot lay the foundation for admission of the ledger through the business records exception, as explained below, but the codefendant can. The codefendant's testimony would show that the drug activity was regularly conducted, that the source of information in the records was an insider to the drug activity with personal knowledge of the transactions, that the entries were made near in time to the transactions, and that the transactions were routinely recorded.

Answer A is incorrect. The officer does not have the requisite knowledge to testify to the foundational requirements of the business records exception, i.e., that the drug activity was regularly conducted, that the source of information in the records was an insider to the drug activity with personal knowledge of the transactions, that the entries were made near in time to the transactions, and that the transactions were routinely recorded. Therefore, the officer cannot lay the foundation to admit the ledger through the business records exception.

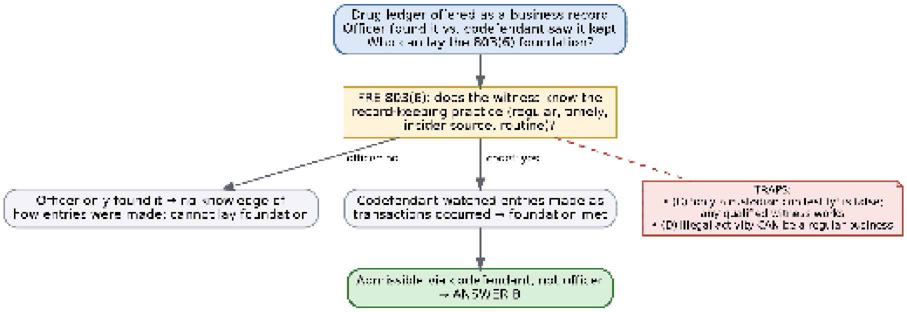
Answer C is incorrect. The foundation for the business records exception can be satisfied by testimony of any person with the requisite knowledge of record-keeping and the foundational elements for Federal Rule of Evidence 803(6). An official "records custodian" is not required to testify.

Answer D is incorrect. The federal courts have uniformly held that illegal activity can be considered a regularly conducted activity for purposes of the business records exception and that the regularly maintained records of a criminal enterprise may be admitted through the business records exception when all foundational requirements are demonstrated.

Exam Tactics & Triggers

- Trigger: 'lay the foundation for a business record' → ask WHO has personal knowledge of the record-keeping practice, not who found the document.
- Rule chain FRE 803(6): need a witness who can show regular activity, insider source with personal knowledge, entries made near the time, and routine recording; the codefendant-supplier fits, the searching officer does not.
- Distractor (C): 'only a records custodian can testify' is a classic false absolute, any 'qualified witness' works.
- Distractor (D): 'exception does not apply to illegal activity' is wrong, a criminal enterprise's regular records qualify like any business.

Answer Flowchart



Question 111 — Torts

A trucker driving down an isolated country road late one night struck cattle that had escaped from a farmer’s pen and wandered into the road. The trucker was unable to stop before hitting the cattle but was not driving carelessly. While he was not injured in the collision, the trucker sustained damage to his truck and lost income during the time it took to repair the truck.

The trucker sued the farmer for his damages and invoked the doctrine of res ipsa loquitur. At trial, the farmer introduced evidence that his cattle pen was of a sufficient height to prevent cattle from stepping over it and was constructed of thick steel pipe sitting in concrete with a substantial top rail. A sturdy pen such as this one would be more difficult for cattle to break through than one constructed of barbed wire or electric wire.

Should the trial court allow the case to go to the jury with a res ipsa loquitur instruction?

(A) No, because it is possible that a third party wrongfully let the cattle out of the pen.

(B) No, because the trucker must submit direct evidence of negligence in order to invoke the res ipsa loquitur doctrine.

(C) Yes, because the farmer is strictly liable for harm caused by his escaping cattle.

(D) Yes, because the jury could conclude that cattle would not ordinarily escape a strong, secure cattle pen in the absence of negligence.

Correct answer: D

Explanation

Answer D is correct. The farmer was in exclusive control of his farm, and the trucker did not contribute to the accident, so the jury is permitted to conclude that the cattle escaped due to the farmer’s negligence.

Answer A is incorrect. The farmer was in exclusive control of his farm, and since the trucker did not contribute to the accident, the jury can infer that the cattle escaped due to the farmer’s negligence. While it is of course possible that a third party let the cattle out of the pen, res ipsa would allow an inference of the farmer’s negligence in this case.

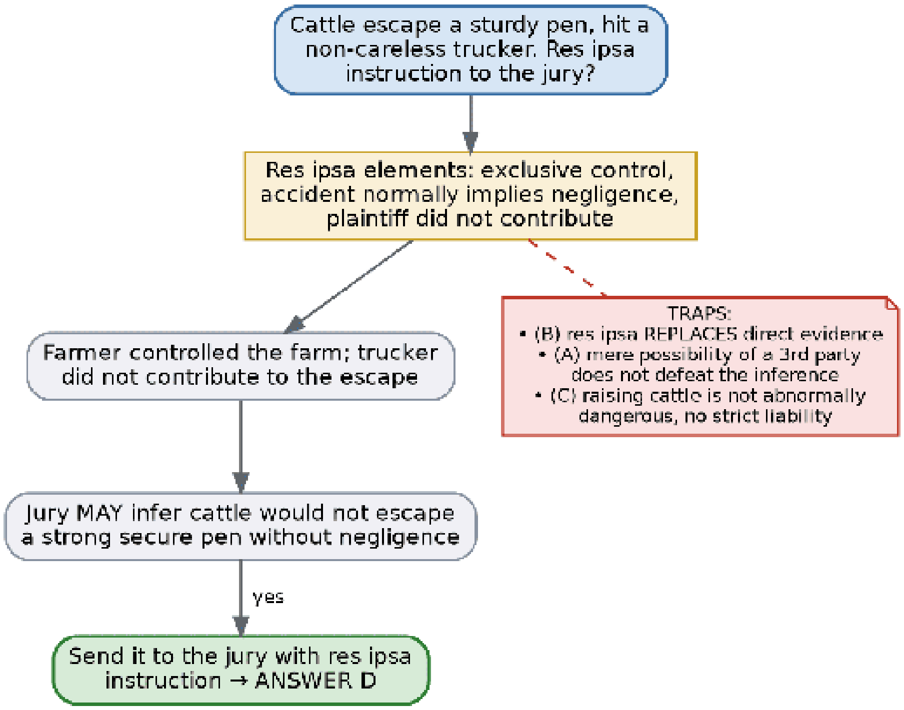
Answer B is incorrect. The trucker needs to establish that the farmer was in exclusive control of the pen, that the accident would not have occurred but for negligence, and that the accident was not due to the trucker’s own actions.

Answer C is incorrect. Strict liability does not attach to raising cattle, which is not an abnormally dangerous activity.

Exam Tactics & Triggers

- Trigger: an accident + plaintiff invokes 'res ipsa loquitur' → check the three elements (instrumentality in defendant's exclusive control, accident normally doesn't happen without negligence, plaintiff didn't contribute).
- Res ipsa is a substitute for direct evidence, not a supplement, so (B) 'must submit direct evidence' inverts the whole doctrine and self-destructs.
- Distractor trap (A): 'it's POSSIBLE a third party did it' does not defeat res ipsa; the inference need only be more probable than not, not the sole explanation.
- Distractor trap (C): raising cattle is NOT an abnormally dangerous activity, so strict liability is the wrong theory; keep negligence and strict liability in separate lanes.

Answer Flowchart



Question 112 — Civil Procedure

A corporation that was having a factory built filed a federal diversity action against the general contractor and an electrical subcontractor for the project. The complaint alleged breach of contract claims arising from construction delays and deficient electrical work that had caused the corporation significant financial losses.

The general contractor filed a crossclaim against the subcontractor, asserting only the defense that the general contractor was not liable to the corporation because the subcontractor's deficient work was the sole cause of the construction delays and the corporation's losses. After discovery, the corporation settled with the general contractor and dismissed the claims against it.

The subcontractor has moved to dismiss the general contractor's crossclaim.

Which of the following arguments best supports the motion?

(A) The crossclaim is improper, because it asserts a defense, not a claim for relief.

(B) The crossclaim is improper, because the general contractor and the subcontractor are opposing parties, not co-parties.

(C) The crossclaim is invalid, because the general contractor is no longer a party to the underlying action.

(D) The crossclaim is premature, because it is contingent on a finding that the defendants breached the construction contract.

Correct answer: A

Explanation

Answer A is correct. Federal Rule of Civil Procedure 13(g) allows parties to bring claims against co-parties. There is no authority under Rule 13(g) to allow an attempt to assert a defense against the plaintiff so as to shift direct liability for damages owed to the plaintiff to a codefendant.

Answer B is incorrect. The general contractor and the subcontractor were both joined by the corporation as defendants. That makes them codefendants under Rule 13(g).

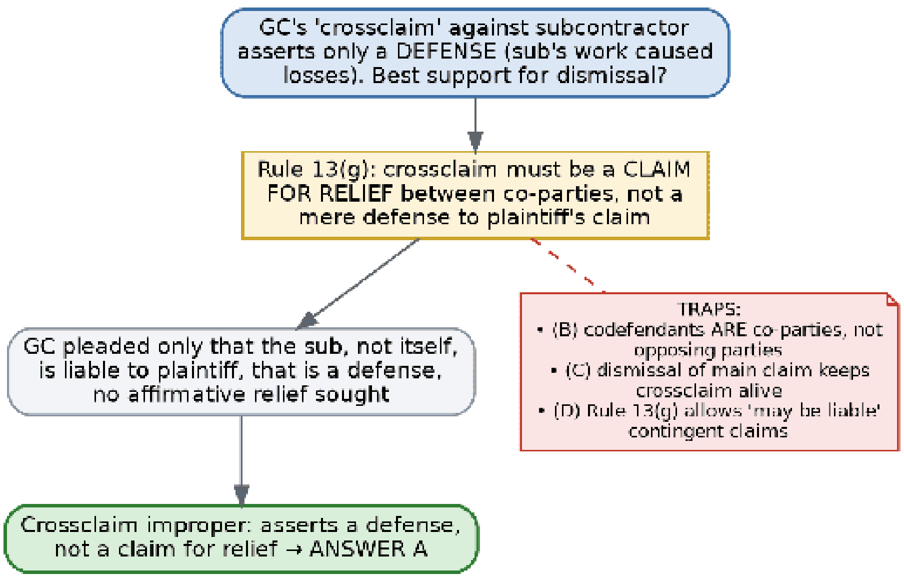
Answer C is incorrect. Even if the corporation's claim against the general contractor has been dismissed, as long as the crossclaim remains undetermined, the general contractor and the subcontractor remain in the suit for purposes of that claim.

Answer D is incorrect. Rule 13(g) specifically provides that a crossclaim may include a claim that the co-party is or "may be" liable for all or part of the claim asserted in the main action. The Federal Rules of Civil Procedure often allow for the assertion of contingent claims to avoid multiple lawsuits and encourage resolution of the entire controversy among the parties with a minimum of procedural steps.

Exam Tactics & Triggers

- Trigger: one codefendant files a 'crossclaim' that only asserts a DEFENSE (the other guy did it) rather than seeking relief → Rule 13(g) requires a claim FOR RELIEF, so it is improper.
- Lock in Rule 13(g) vocabulary: crossclaims run between CO-PARTIES (codefendants) and must state a claim for relief, including a contingent 'is or may be liable' indemnity/contribution claim.
- Distractor tell (B): calling codefendants 'opposing parties' is flatly wrong; both were joined as defendants by the plaintiff, so they are co-parties, eligible for a crossclaim.
- Distractor tells (C) and (D): the settlement/dismissal does not kill an undetermined crossclaim, and Rule 13(g) expressly permits contingent 'may be liable' claims, so 'premature' fails.

Answer Flowchart



Question 113 — Constitutional Law

Congress amended the federal bankruptcy statute to allow states to exempt a debtor's home from judgment creditors, so long as the debtor had established permanent residency in the state at least two years before entry of the judgment. The two-year residency requirement was intended to prevent debtors from defrauding creditors by moving to a state solely to take advantage of a favorable home- exemption law.

A state's law prohibited the execution of a judgment against a debtor's home. After the federal amendment, the state amended its law "to conform with the federal bankruptcy amendments," making the debtor's home exemption unavailable to any person who had established permanent residency in the state less than two years before entry of the judgment.

Following these amendments, a man moved to the state and purchased a home. Six months later, a creditor obtained a judgment against the man for negligently causing a car accident. The creditor now seeks to execute the judgment against the man's home, but the man has responded that he is entitled to the generally applicable debtor's home exemption under state law.

Which of the following is the man's best argument?

(A) Automobile negligence is not a commercial activity and is therefore beyond the regulatory power of Congress pursuant to the commerce clause.

(B) Congress cannot commandeer a state legislature to enact a law implementing federal policy.

(C) Congress lacks the power to authorize the states to enact such restrictions based on the length of a person's residence within a state.

(D) The two-year time period is too long to be rationally related to the prevention of fraud against creditors.

Correct answer: C

Explanation

Answer C is correct. The Supreme Court has held that durational residency requirements such as the state law here generally violate the right to travel protected through the privileges and immunities clause of the Fourteenth Amendment. Congress does not have the power to contravene the Court’s holding.

Answer A is incorrect. The federal law does not regulate automobile negligence. It regulates bankruptcy proceedings, which is within Congress’s power to legislate in Article I.

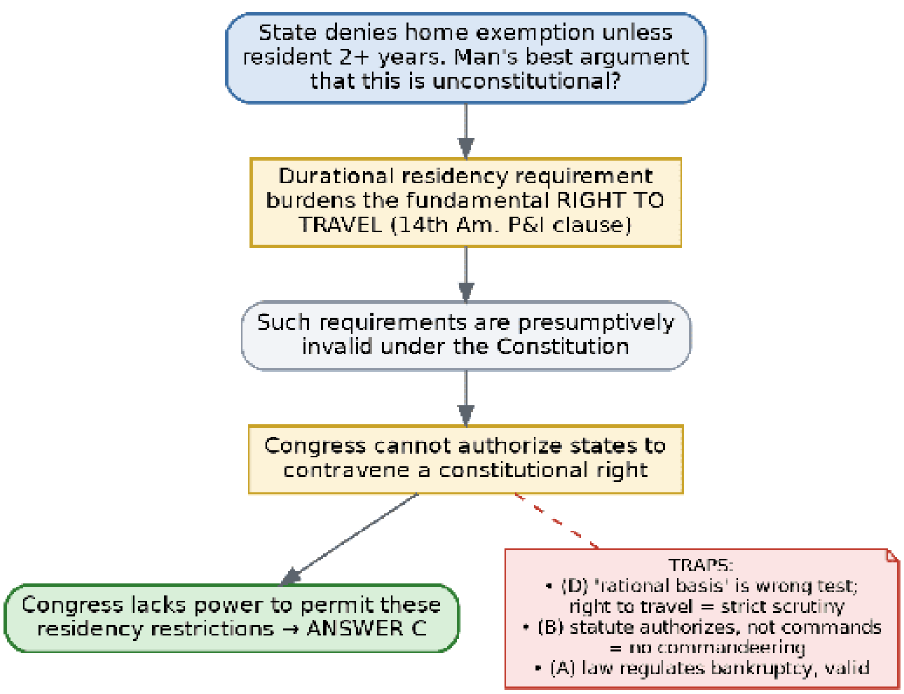
Answer B is incorrect. The federal statute does not violate the no-commandeering principle because it authorizes rather than requires states to create durational residency requirements.

Answer D is incorrect. Answer D states the elements of rational basis scrutiny, which is not the proper standard. The Supreme Court has held that durational residency requirements burden the fundamental right to travel, and thus they receive strict judicial scrutiny, which requires the state to demonstrate that the requirement is necessary to serve a compelling government interest.

Exam Tactics & Triggers

- Trigger: a DURATIONAL RESIDENCY requirement (must live in state X months/years to get a benefit) → right to travel, strict scrutiny, presumptively invalid.
- Rule chain: durational residency burdens the fundamental right to travel via the P&I clause of the 14th Amendment; Congress cannot authorize states to violate a constitutional right.
- Distractor trap (D): stating 'rational basis' (rationally related) is the WRONG standard, right-to-travel triggers strict scrutiny, so D concedes too little.
- Distractor trap (B): no-commandeering fails because the statute AUTHORIZES (permits), it does not COMPEL states to act; commandeering needs a mandate.

Answer Flowchart



Question 114 — Contracts

A franchise agreement between a franchisor and a franchisee was drafted by the franchisor. The franchisor, which had the greater bargaining power, drafted the majority of the agreement’s terms in its own favor.

Two years into the franchise agreement, a dispute has arisen regarding an aspect of the franchisee’s operations that the agreement does not address.

If the parties take their dispute to court and both ask the court to supply the missing term, how will the court likely proceed?

(A) It will rescind the agreement, because the terms of an agreement are for the parties to draft, not the court, and the parties apparently failed to execute a complete agreement.

(B) It will supply a term that is favorable to the franchisee, because any omitted terms should be construed against the franchisor as the original drafter.

(C) It will supply a term that is favorable to the franchisor, because had the parties initially considered the matter, the franchisor would have drafted the term in its own favor.

(D) It will supply a term that is reasonable for both parties under the circumstances.

Correct answer: D

Explanation

Answer D is correct. When the parties have left gaps in an agreement that is otherwise enforceable, a court may supply a term that is reasonable in the circumstances.

Answer A is incorrect. The remedy of rescission is not appropriate if the parties intended to have a contract and the court can supply an omitted term.

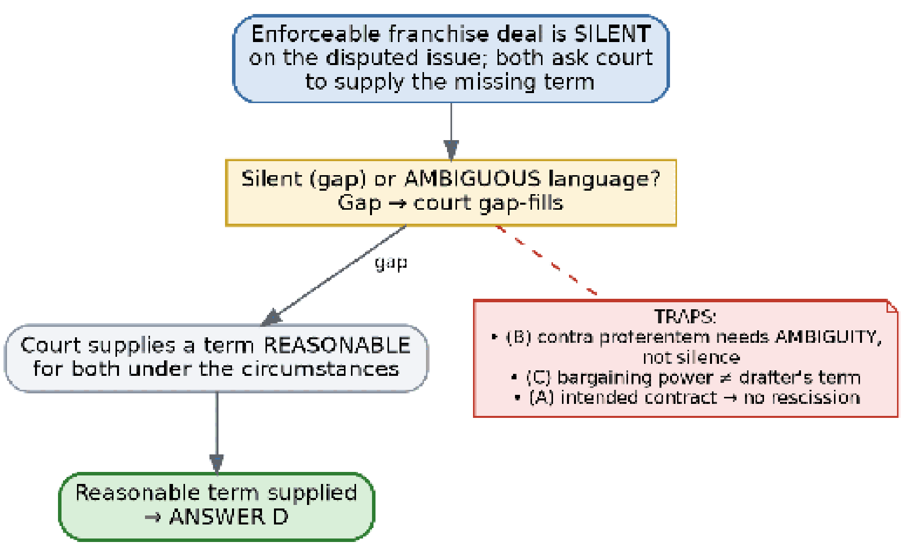
Answer B is incorrect. The canon of construction known as contra proferentem—that a writing will be construed against the drafter—applies only as a last resort to address ambiguous language. Here the franchise agreement is silent rather than ambiguous on the particular issue.

Answer C is incorrect. To fill a gap in a contract, a court will supply a term that is reasonable, not the term that the parties might have agreed to.

Exam Tactics & Triggers

- Trigger: an enforceable contract with a GAP (silent on the disputed issue) and both sides ask the court to fill it → court supplies a REASONABLE term.
- Rule chain: gap-filling = reasonable term in the circumstances; it is NOT rescission and NOT a term favoring either side.
- Distractor trap (B): contra proferentem (construe against drafter) applies only to AMBIGUOUS language, not to SILENCE; silence vs ambiguity is the tell.
- Distractor traps (A)/(C): rescission is wrong when parties intended a contract, and bargaining power does not let the court hand the drafter its preferred term.

Answer Flowchart



Question 115 — Criminal Law & Procedure

A man decided to kill his neighbor, with whom he had been feuding for years. The man took a handgun and followed his neighbor to the county fairgrounds. When he had a clear shot, he aimed the gun and fired, but at the last second the neighbor moved. The shot missed the neighbor but struck and killed a police officer at the fairgrounds.

The jurisdiction defines murder as at common law but creates three degrees of murder: (a) Capital murder, punishable by death, is the intentional murder of a police officer. (b) First-degree murder, punishable by life in prison, is premeditated and deliberate murder. (c) Second-degree murder, punishable by up to 40 years in prison, is all other murders.

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

(A) Capital murder of the police officer.

(B) First-degree murder of the police officer.

(C) Second-degree murder of the police officer.

(D) Attempted murder of the neighbor.

Correct answer: B

Explanation

Answer B is correct. The man is guilty of first-degree murder because, while acting with the intent to kill the neighbor, he inadvertently killed the police officer. In this situation, the doctrine of transferred intent applies to hold him liable for the intentional killing of the officer.

Answer A is incorrect. To be guilty of capital murder, the man would need to have acted with the intent to kill a police officer.

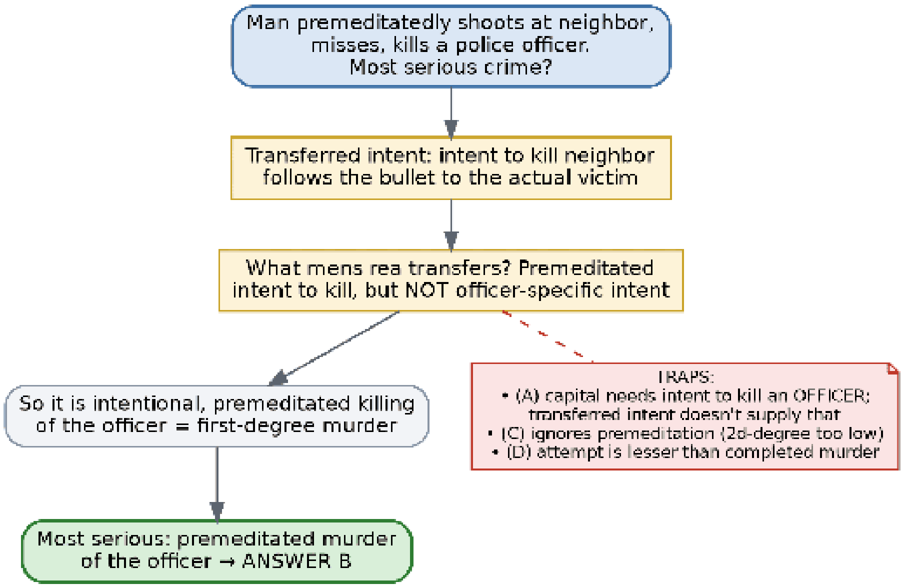
Answer C is incorrect because the man acted with premeditation and malice. Under the doctrine of transferred intent, the man is therefore guilty of the more serious offense of first-degree murder.

Answer D is incorrect because the question asks for the most serious crime. Although the man is guilty of the attempted murder of the neighbor, first-degree murder is the more serious offense.

Exam Tactics & Triggers

- Trigger: defendant aims at intended victim, misses, kills a bystander → transferred intent carries the SAME mens rea to the actual victim.
- Grade the crime by the mens rea he HAD (premeditated intent to kill neighbor), not by facts about the accidental victim, so it is first-degree murder.
- Distractor (A) capital murder: needs intent to kill a POLICE OFFICER specifically; transferred intent moves the intent, not the victim-status enhancer, so (A) overreaches.
- Distractor (D) attempted murder of neighbor: real, but the question wants the MOST serious crime, and completed first-degree murder outranks the attempt.

Answer Flowchart



Question 116 — Evidence

A plaintiff sued a defendant for assault after a late-night barroom brawl. At trial, the plaintiff planned to call several bar patrons who had been present on the night in question to testify to the circumstances of the alleged assault. The trial judge ordered all witnesses excluded from the courtroom during the trial except for the parties. The trial judge then ordered the plaintiff to testify first during his case-in-chief and to relate his version of events before hearing the testimony of other eyewitnesses. The plaintiff has objected to the order requiring him to testify first.

Did the trial judge exceed her authority in ordering the plaintiff to testify first?

(A) No, because the trial judge has broad discretion to exercise control over the order of examining witnesses.

(B) No, because the trial judge must determine the order in which evidence is presented at trial.

(C) Yes, because a party is always permitted to control the presentation of proof during its case-in- chief.

(D) Yes, because the defendant did not demonstrate likely prejudice from permitting the plaintiff to present evidence in any order he wished.

Correct answer: A

Explanation

Answer A is correct. Under FRE 611(a), a trial judge possesses broad discretion to control the mode and order of examining witnesses and presenting evidence so as to make trial procedures effective for determining truth. A trial judge who is concerned about a party's hearing all eyewitness testimony and thereafter tailoring his testimony to that of other witnesses would not abuse her discretion in ordering that party to testify before the other witnesses.

Answer B is incorrect. The parties typically determine the order in which their evidence will be presented at trial. And while the trial judge has the discretion to control the order of presentation, determining the order of evidence within a party's case is not an obligation that the trial judge must routinely undertake.

Answer C is incorrect. Although parties typically are afforded broad latitude in controlling their presentation of proof, they are not always permitted to do so; under FRE 611(a), the trial judge has discretion to control the order of presentation.

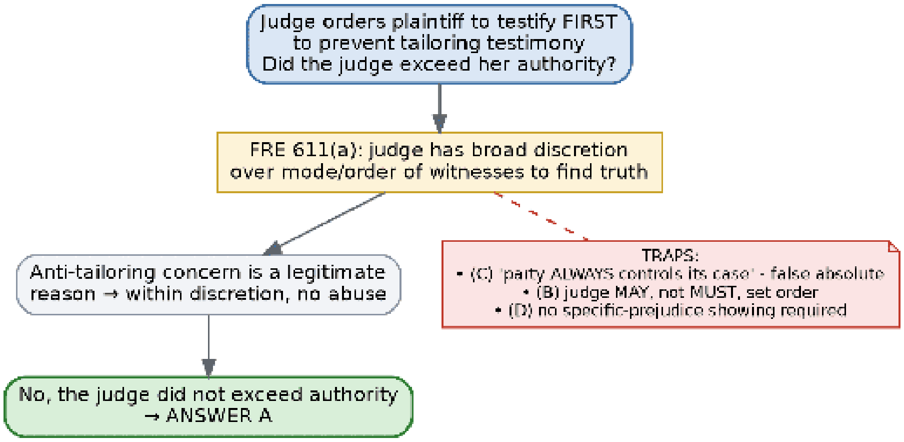
Answer D is incorrect. The trial judge has the discretion to alter the order of proof without a showing of specific prejudice by an opposing party.

Exam Tactics & Triggers

- Trigger: judge controls the 'order of witnesses/evidence' → FRE 611(a) broad discretion to make trial effective for finding truth.
- Fact tell: judge fears a party will hear others and 'tailor' his testimony, that is a textbook legitimate 611(a) reason, so no abuse of discretion.

- Distractor absolutes (C): 'a party is ALWAYS permitted to control its case-in-chief' dies on the word always, the judge retains 611(a) control.
- Distractor (B) overreach: the judge MAY control order but is not OBLIGATED to; and (D) is wrong because no showing of specific prejudice is required.

Answer Flowchart



Question 117 — Real Property

A man owned two adjacent vacant tracts of land; he sold the westerly tract to a woman. The deed to the woman expressly stated that the use of the land was restricted to residential use and made the restriction binding on the woman and her heirs and assigns. In the deed, the man also expressly promised, for himself and his heirs, that he would insert a similar residential-use restriction in any deed to the easterly tract of land given in the future. The woman promptly recorded her deed.

Several years later, the man conveyed the easterly tract of land to an entrepreneur, who planned to open a convenience store on the land. The deed to the entrepreneur contained no restrictions on use. The entrepreneur had no actual notice of the man’s promise to the woman to include a restriction in the deed.

When the woman heard of the entrepreneur’s plans, she asked her attorney whether the entrepreneur is bound by the promised residential-use restriction.

Which of the following factors will be dispositive?

(A) The type of index system used in the jurisdiction.

(B) The type of recording act in the jurisdiction.

(C) Whether the entrepreneur had a duty to search the title for the westerly tract.

(D) Whether the woman has planned or built any improvements on her land.

Correct answer: C

Explanation

Answer C is correct. A buyer is on constructive notice of all information that a search of the land records would reveal. At issue is whether the entrepreneur had record (constructive) notice of the restriction. If so, the entrepreneur would not be a good-faith purchaser for value. Courts are divided about whether a buyer is required to search deeds outside of the chain of title to the land the buyer is purchasing. Here, the deed from the man to the woman is outside of the entrepreneur’s chain of title even though they share a common grantor. Thus, knowing whether the jurisdiction’s law puts a buyer on notice of all land transfers of the buyer’s grantor, even those outside of the chain of title, is essential. If it does, the entrepreneur had a duty to search the title for the westerly tract.

Answer A is incorrect. The type of index does not determine what instruments are in the chain of title.

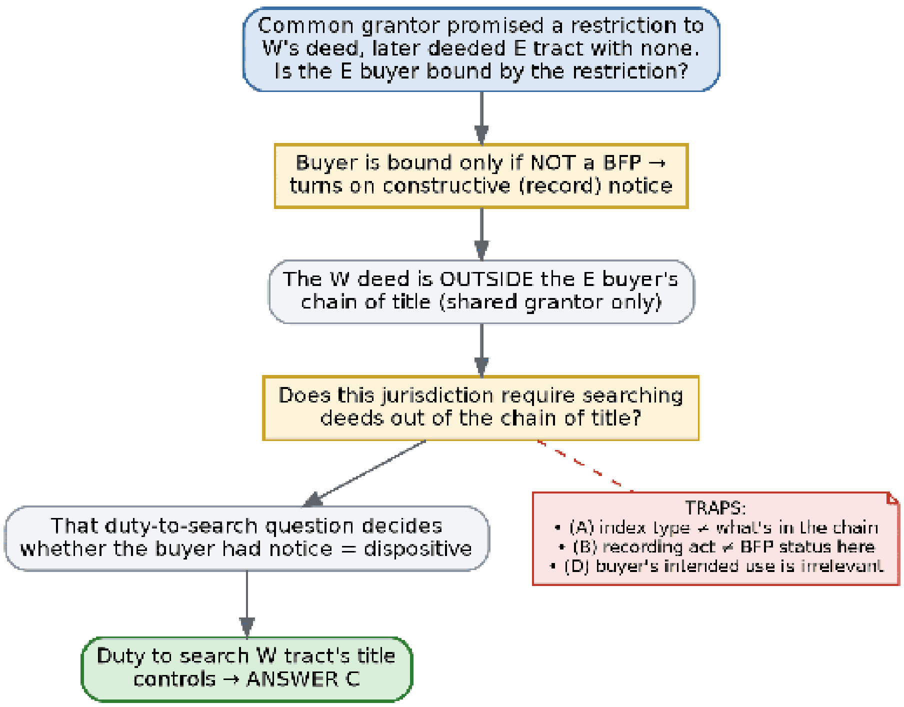
Answer B is incorrect. The recording system does not affect whether the entrepreneur is a good-faith purchaser for value.

Answer D is incorrect. The intended use of the land does not affect the determination of whether the entrepreneur was aware of the recorded restriction.

Exam Tactics & Triggers

- Trigger: a common grantor makes a promise/restriction in ONE deed, then conveys the neighboring tract without it → 'deed out of the chain of title' notice problem.
- Rule chain: buyer is on constructive notice of what a title search WOULD reveal; the fight is whether the search must reach the grantor's OTHER deeds (outside the chain).
- Dispositive fact = whether this jurisdiction imposes a duty to search deeds out of the chain of title (courts are split), which decides BFP status.
- Distractor traps: (A) index type and (B) recording-act type don't define the chain of title; (D) the buyer's planned use is irrelevant to notice.

Answer Flowchart



Question 118 — Torts

A driver was injured when one of the tires on her car ruptured, causing the car to veer off the road. The rupture resulted from a defect in the tire that existed at the time it was sold by the manufacturer to a retailer, who sold it to the driver and installed it on her car.

The driver sued the manufacturer on a strict products liability theory. During discovery, the driver’s attorney obtained a memorandum that had circulated among engineers employed by the manufacturer. The memorandum acknowledged that undetectable defects would cause ruptures in approximately one out of every 10,000 tires sold. The manufacturer sells approximately 10 million tires per year.

After discovering this memorandum, the driver’s attorney filed a timely amended complaint, adding a claim for battery. The manufacturer has moved for partial summary judgment, seeking dismissal of the battery claim, based on the undisputed facts set out above.

If no additional facts are provided to the court concerning the risk of tire rupture, should the court grant the motion?

(A) No, because the evidence would permit a reasonable jury to conclude that a responsible manufacturer would have taken greater care to prevent ruptures.

(B) No, because the evidence would permit a reasonable jury to conclude that the manufacturer knew to a substantial certainty that consumers would be injured by tire ruptures.

(C) Yes, because a battery claim is inconsistent with a claim for strict products liability.

(D) Yes, because the driver cannot establish that the manufacturer intended or knew to a substantial certainty that its placement of the tire into the stream of commerce would cause her to suffer a harmful or offensive contact.

Correct answer: D

Explanation

Answer D is correct. The driver might have a valid strict products liability claim against the manufacturer. However, the manufacturer's knowledge of a small statistical likelihood of tire failure is not by itself sufficient to support a finding—required for battery liability—that the manufacturer acted with the intent to cause harmful contact, or with the knowledge that a harmful contact would occur. Thus, the court should grant the manufacturer's partial summary judgment motion.

Answer A is incorrect. Even if a reasonable jury could conclude that a responsible manufacturer would have taken greater care, that finding would not establish the intent necessary for battery liability.

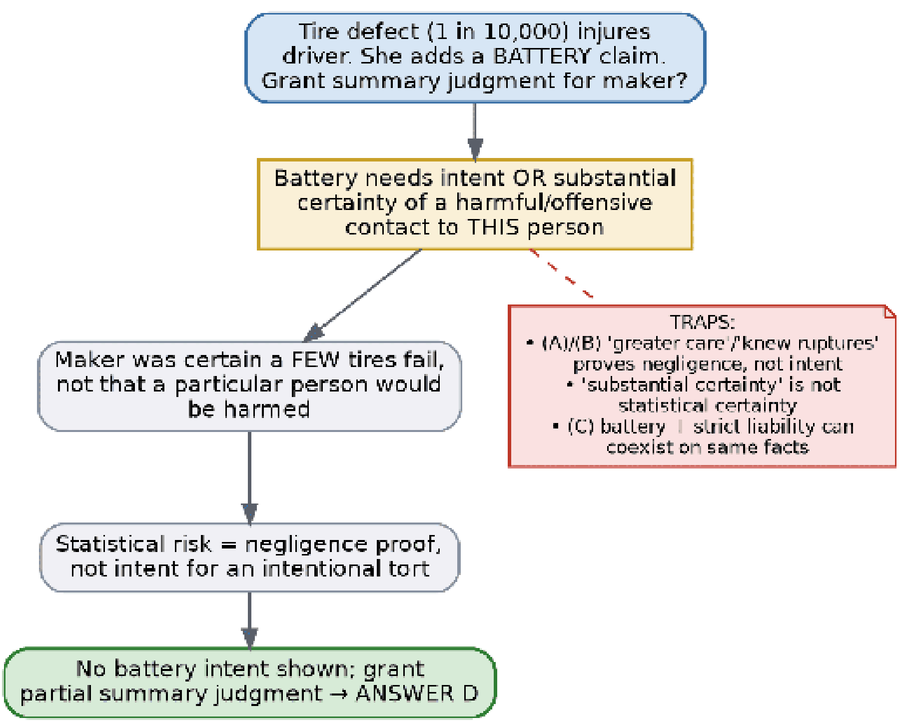
Answer B is incorrect. The evidence of a relatively small statistical likelihood of tire failure does not satisfy the "substantial certainty" element required for battery liability. The manufacturer knew to a substantial certainty that a few of its tires would rupture. It did not know to a substantial certainty that particular persons would be injured as a result of those ruptures.

Answer C is incorrect. There is no rule of tort law stating that a plaintiff is prohibited from pursuing claims for battery and products liability on the basis of the same set of facts.

Exam Tactics & Triggers

- Trigger: plaintiff swaps in a BATTERY claim against a mass manufacturer → test the intent element, battery needs intent to cause (or substantial certainty of) a harmful/offensive contact.
- Vocabulary lock: 'substantial certainty' means certain that a PARTICULAR contact will occur, not statistical certainty that SOME anonymous failures will happen among millions.
- Distractor trap (A)/(B): 'a responsible manufacturer would have taken greater care' and 'knew ruptures would occur' prove negligence, not battery intent; carelessness never satisfies an intentional tort.
- Distractor trap (C): battery and strict products liability can coexist on one fact set; a false 'inconsistent claims' rule is a bait answer.

Answer Flowchart



Question 119 — Civil Procedure

After conferring with the parties' attorneys in a federal civil action, the court entered a scheduling order with deadlines for completing discovery and filing dispositive motions. The order set a jury- selection and trial date for two months after the motions deadline.

After the motions deadline expired, and a month before jury selection and trial, the plaintiff's attorney moved for a six-month extension of the discovery, motions, and jury-trial deadlines. The attorney explained that she had been so busy that she had been unable to depose key witnesses or discuss settlement options with her client. The defendant objected to the extension on the ground that there had been ample time to prepare and that the delay would result in increased costs.

Is the court likely to grant the motion?

(A) No, because the attorney has not shown good cause for the delay.

(B) No, because the court has set the date for jury selection.

(C) Yes, because the additional time could facilitate a settlement.

(D) Yes, because the defendant has not shown sufficient prejudice that will result if the requested extension is granted.

Correct answer: A

Explanation

Answer A is correct. Federal Rule of Civil Procedure 16(b)(4) states that in order to have a scheduling order modified, the moving party must show "good cause." This requires a showing that the party acted diligently to try to meet the original deadline.

Answer B is incorrect. If the moving party shows good cause, the court can amend any of the dates or deadlines in the scheduling order, including the trial date or the date for jury selection.

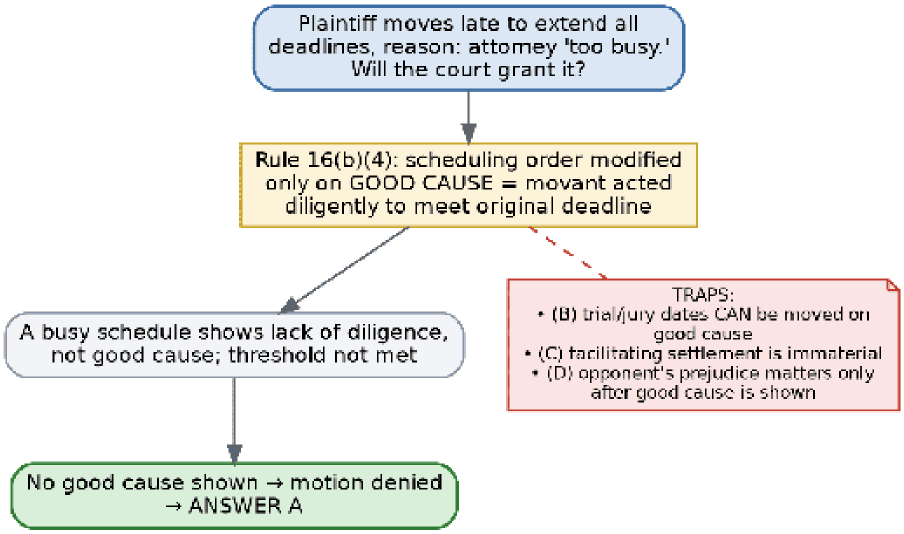
Answer C is incorrect. Whether additional time could facilitate a settlement is immaterial, because it does not speak to whether the moving party can show the required diligence needed to establish good cause.

Answer D is incorrect. The busy schedule of the plaintiff's attorney did not establish the good cause needed to amend the scheduling order, which is why the motion should be denied. A party opposing a requested extension would need to show prejudice that would likely result from the extension only if the moving party had first met its burden to show good cause.

Exam Tactics & Triggers

- Trigger: motion to MODIFY a scheduling order after the deadline → Rule 16(b)(4) 'good cause' = DILIGENCE, and 'I was too busy' is the classic non-diligence fact.
- Lock in the burden order: movant must FIRST show good cause (diligence); only then does the opponent's prejudice matter, so prejudice arguments are premature here.
- Distractor tell (C): 'could facilitate settlement' is a feel-good but immaterial reason; it says nothing about diligence, so it cannot supply good cause.
- Distractor tell (D): flips the burden onto the defendant to show prejudice, but the plaintiff never cleared the good-cause threshold, so no prejudice showing is required.

Answer Flowchart



Question 120 — Constitutional Law

A city owned and operated an electric utility that supplied electricity to the city's businesses and residences. Citing the need for efficiency, the city implemented a plan to replace old electric meters with wireless meters in businesses and residences. The city's plan did not include advance notice to property owners or a method to obtain consent from property owners.

A homeowner who opposed the installation of the wireless meters was denied his request for a hearing on the city's plan. The homeowner then blocked the city's access to his house, obstructing the city's effort to replace the old meter. The city responded by threatening to arrest and prosecute the homeowner for disorderly conduct.

The homeowner then sued the city in federal district court, challenging the meter-replacement plan on due process grounds and seeking to enjoin its enforcement. The city moved to dismiss. While the city's motion was pending, the city council passed an emergency ordinance requiring both prior notice and property owner consent before the removal or replacement of any electric meter.

Should the court grant the city's motion?

(A) No, because the city's action is capable of repetition yet evading review.

(B) No, because the city's voluntary cessation of the challenged conduct does not moot the case.

(C) Yes, because the case is moot.

(D) Yes, because the case is not ripe.

Correct answer: C

Explanation

Answer C is correct. The case is moot because the only relief sought by the homeowner is no longer available. Allready LLC v. Nike, Inc., 568 U.S. 85 (2013).

Answer A is incorrect. "Capable of repetition yet evading review" applies only in situations where litigation is unlikely to be completed because of the short-term nature of an issue, such as review of an explicitly short-term legal mandate.

Answer B is incorrect. The voluntary cessation exception does not apply when it is unreasonable to expect that the allegedly unlawful conduct will recur. The emergency ordinance's explicit requirements of prior notice and owner consent make it unreasonable to expect that the city will attempt to change the homeowner's meter without prior notice and the homeowner's consent. In addition, the only relief sought by the homeowner was an injunction against the previous ordinance, which is no longer in effect.

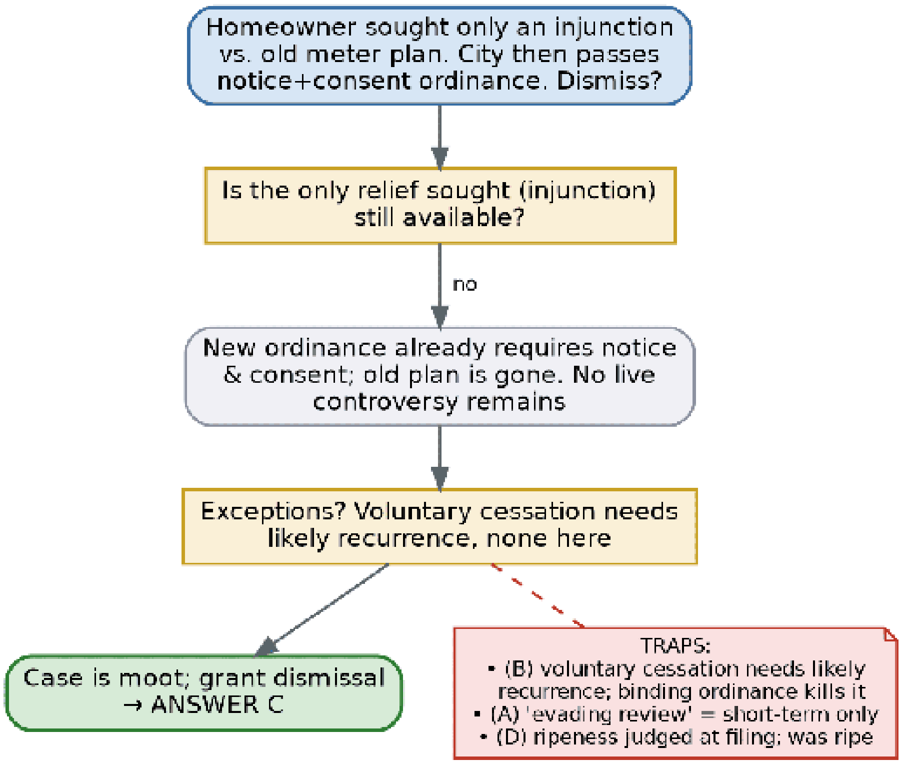
Answer D is incorrect. Ripeness is determined when a suit is filed. The case was ripe given the city's attempts to install the meter and its threats of prosecution.

Exam Tactics & Triggers

- Trigger: the ONLY relief sought (an injunction) is no longer available because the challenged law/ordinance was

repealed or replaced → case is MOOT.
- Rule chain: injunction against a repealed ordinance + new ordinance requires exactly what plaintiff wanted = no live controversy = moot (Already, LLC v. Nike).
- Distractor trap (B): voluntary-cessation only saves a case if the conduct is likely to RECUR; a binding new ordinance requiring notice and consent makes recurrence unreasonable.
- Distractor trap (A) & (D): 'capable of repetition yet evading review' needs inherently short-lived issues; ripeness is judged when suit was FILED, and it was ripe here.

Answer Flowchart



Question 121 — Criminal Law & Procedure

After reading a description of a person who had committed a rape, a parole officer noted that the description resembled one of his parolees. The officer called the parolee and asked him to drop by his office. The parolee came to the office and, after about 30 minutes of questioning, admitted having committed the rape. At no time did the officer give the parolee Miranda warnings.

The parolee was charged with rape and has moved to suppress his statement to the parole officer.

Should the court grant the motion to suppress?

(A) No, because a parolee has no privilege against self-incrimination.

(B) No, because the parolee was not in custody.

(C) Yes, because Miranda warnings are required before interrogation by law enforcement officers.

(D) Yes, because the parolee's statements were compelled, as he could reasonably believe that he was required to answer questions asked by his parole officer.

Correct answer: B

Explanation

Answer B is correct. A Miranda warning is required whenever a suspect is (1) in custody and (2) being subjected to custodial interrogation. Here, the parolee was not in custody. As the Court explained in Minnesota v. Murphy, 465 U.S. 420 (1984), the "in custody" requirement is not met simply because a probationer or parolee is under a general obligation to appear and answer questions truthfully. Instead, a person is "in custody" only when under "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.”

Answer A is incorrect because parolees do retain their Fifth Amendment rights. However, parolees are entitled to receive Miranda warnings only when being subjected to custodial interrogation. In all other contexts, parolees must affirmatively assert the privilege against compelled self-incrimination.

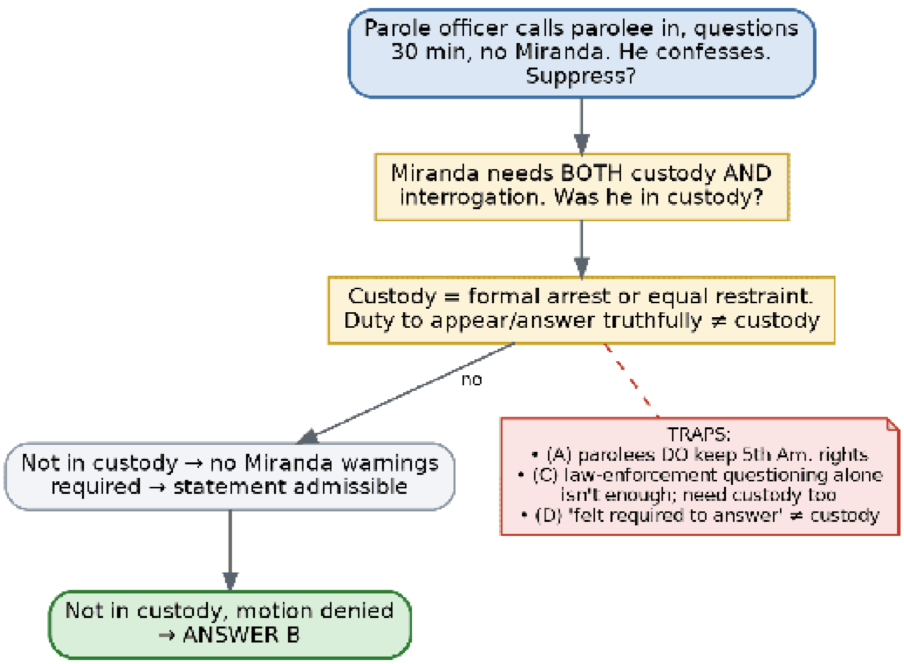
Answer C is incorrect for the reasons given in the explanations for answers B and A. Law enforcement interrogation is not enough. The suspect also must be in custody.

Answer D is incorrect because a probation or parole officer may in fact compel both attendance and truthful answers. However, as the Court held in Minnesota v. Murphy, neither of those entitlements transforms the exchange into a custodial interrogation.

Exam Tactics & Triggers

- Trigger: parole/probation officer questions a parolee who came in voluntarily → NO custody, so NO Miranda warnings required (Minnesota v. Murphy).
- Lock the Miranda test: warnings only when (1) in custody AND (2) interrogation; a general duty to appear and answer truthfully is not 'custody'.
- Distractor (A): parolees DO keep Fifth Amendment rights, so 'no privilege' is flatly wrong even though the outcome (no suppression) is right.
- Distractor (C)/(D): 'law enforcement interrogation' or feeling 'required to answer' is not enough; custody = formal arrest or its equivalent restraint, absent here.

Answer Flowchart



Question 122 — Torts

An experienced construction company purchased sand in bulk from a distributor. The construction company mixed the sand with water and cement to make concrete. The distributor knew that an improper ratio of sand, water, and cement would result in defective concrete, but the distributor played no role in determining the ratio used by the construction company in mixing the concrete.

The construction company used the concrete to form supporting columns for a building. A year later, the building collapsed during a minor earthquake, causing injury to the occupants.

Although the sand was not defective, the concrete forming the columns was defective because the mixture ratio of the sand, water, and cement was not proper. The defective concrete was a cause in fact of the collapse.

Do the injured building occupants have viable strict liability claims against the sand distributor?

(A) No, because component suppliers are not strictly liable in tort.

(B) No, because the distributor neither advised nor participated with the construction company in determining the mixture of sand, water, and cement.

(C) Yes, because the concrete columns were defective.

(D) Yes, because the distributor knew that an improper mixture of sand, water, and cement would result in defective concrete.

Correct answer: B

Explanation

Answer B is correct. A commercial seller of a nondefective component part that is incorporated into a finished product by the product's manufacturer is not strictly liable for injuries caused by the product unless the seller substantially participated in the integration of the part into the design of the finished product, and the integration of the component is what rendered the finished product defective. Restatement (Third) of Torts: Products Liability § 5 (1998). In this case, the distributor did not participate, much less substantially participate, in the integration of the sand into the defective concrete used in the columns and thus is not subject to liability under the doctrine of strict products liability.

Answer A is incorrect. The rule it states is too broad: a commercial seller of a component part can sometimes be strictly liable for an injury caused by a defective product into which the part is integrated (namely, when the conditions specified in the explanation for answer B are met).

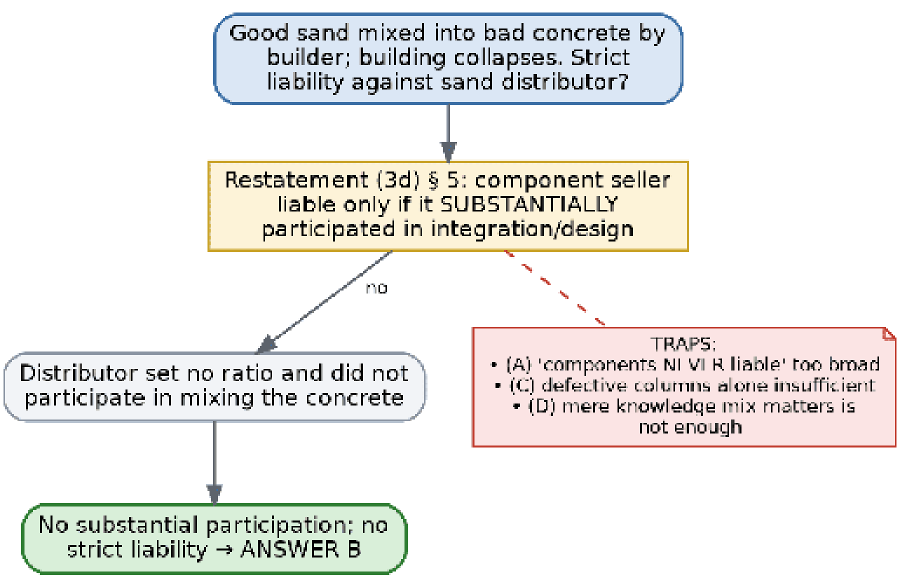
Answer C is incorrect. The fact that the columns were defective does not render the distributor liable under the doctrine of strict products liability.

Answer D is incorrect. The mere knowledge that the sand needed to be properly mixed with water and cement to make sound concrete is not sufficient to render the distributor liable for an injury caused by the defective concrete.

Exam Tactics & Triggers

- Trigger: a NON-defective component (good sand) gets integrated into a defective finished product (bad concrete) → apply Restatement (Third) § 5 component-part rule.
- Rule chain: a component seller is strictly liable only if it (a) substantially participated in integrating the part into the design AND (b) that integration is what made the product defective.
- Distractor trap (A): 'component suppliers are NEVER strictly liable' is too broad, an absolute that ignores the § 5 exception; kill it on over-breadth.
- Distractor traps (C)/(D): defective columns and mere knowledge that mixing matters are not enough; without substantial participation the distributor is out.

Answer Flowchart



Question 123 — Evidence

During a criminal investigation of possible securities fraud committed by the senior management of a public corporation, the prosecutor has called a witness to testify before a grand jury. The witness will testify that he was an accountant for the corporation, that he dealt with its senior management on a daily basis concerning the corporation's financial disclosures to the public, and that, in his opinion, all members of the senior management knew that the disclosures were fraudulent.

Can the witness's testimony be considered by the grand jury?

(A) No, because the witness has not been qualified as an expert regarding fraudulent financial disclosures.

(B) No, because the witness's opinion about senior management's knowledge is not rationally based on his perception and would not be helpful to the grand jury.

(C) Yes, because the rules of evidence do not apply to grand jury proceedings.

(D) Yes, because the witness's opinion is rationally based on his perception and would be helpful to the grand jury.

Correct answer: C

Explanation

Answer C is correct. The Federal Rules of Evidence do not apply to grand jury proceedings under FRE 1101(d)(2).

Answer A is incorrect. Because the Federal Rules of Evidence do not apply to grand jury proceedings under FRE 1101(d)(2), Rule 702 is not applicable.

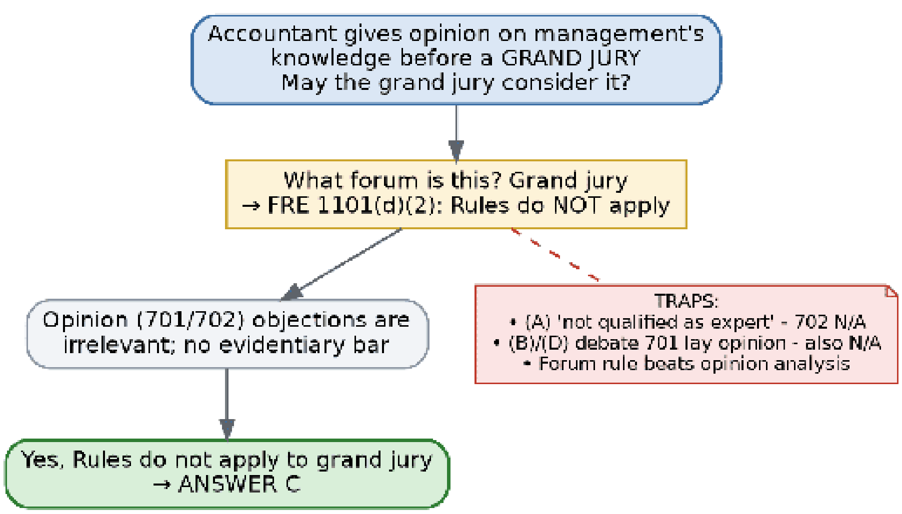
Answer B is incorrect. Because the Federal Rules of Evidence do not apply to grand jury proceedings under FRE 1101(d)(2), Rule 701 regarding lay opinion testimony is not applicable.

Answer D is incorrect. Because the Federal Rules of Evidence do not apply to grand jury proceedings under FRE 1101(d)(2), Rule 701 regarding lay opinion testimony is not applicable.

Exam Tactics & Triggers

- Trigger: 'grand jury' proceeding → FRE 1101(d)(2) says the Rules of Evidence do NOT apply, so admissibility objections evaporate.
- Reflex: when the forum is grand jury (or preliminary/ sentencing/probation), skip the 701/702/hearsay analysis entirely, the rules simply are not in play.
- Distractor traps (A),(B),(D): each argues the merits of lay vs. expert opinion under 701/702, exactly the analysis 1101(d)(2) makes irrelevant.
- Tell: two answers reaching the same 'Yes' or 'No' on OPINION grounds are both bait, the correct answer names the FORUM rule.

Answer Flowchart



Question 124 — Contracts

A man contracted with a personal flight instructor to take 15 flying lessons from her. The lessons were to begin two months from the signing of the contract. One month after the contract was signed, the man died when his car was struck by a drunk driver.

The instructor demanded that the man's estate pay for the 15 lessons. When the estate refused to pay, the instructor sued the estate.

It is undisputed that the instructor was willing and ready to perform her obligations under the contract.

Is the instructor likely to prevail in the action against the estate?

(A) No, because an offer lapses on the death of an offeror or an offeree.

(B) No, because the man's death excused both his and the instructor's performance obligations.

(C) Yes, because the instructor is not at fault for the man's inability to perform.

(D) Yes, because the man's death does not discharge his contractual obligations.

Correct answer: B

Explanation

Answer B is correct. The man's death frustrated the purpose of the contract because his being alive for the lessons was a basic assumption of the contract. Restatement (Second) of Contracts § 265.

Answer A is incorrect. While this statement is true, it is not relevant. Once a contract is formed, the lapse of a related offer is not meaningful.

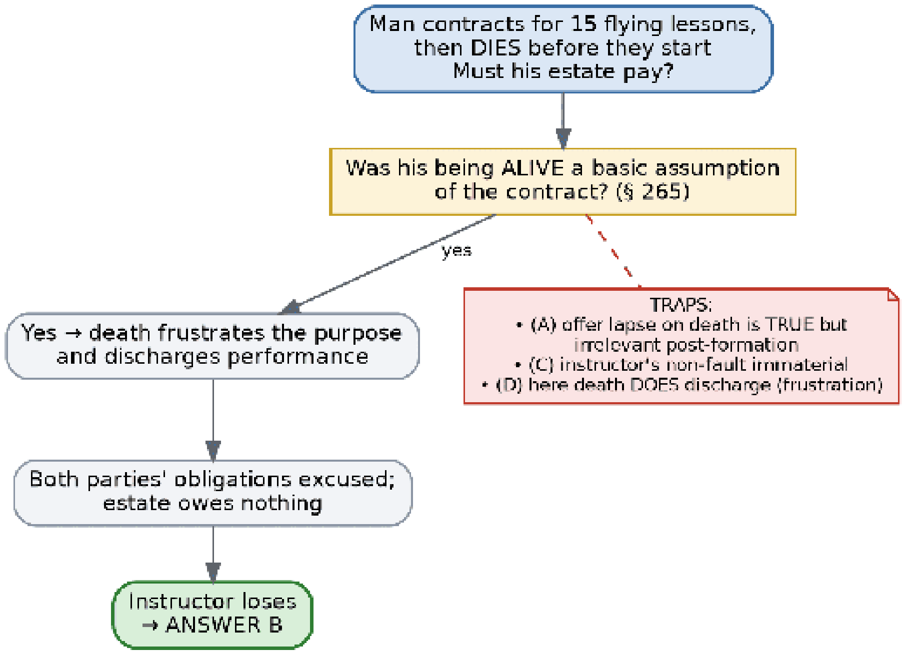
Answer C is incorrect. The instructor's fault is immaterial to any frustration-of-purpose defense the estate might assert. Only the fault of the party that seeks to be discharged from its obligation prevents application of that defense.

Answer D is incorrect. The man's death discharges his contractual obligations under the doctrine of frustration of purpose when his being alive to take the flying lessons was a basic assumption of the contract.

Exam Tactics & Triggers

- Trigger: a personal-service contract where a party DIES and staying alive was a basic assumption → performance discharged (frustration of purpose / impracticability).
- Rule chain: death of a person essential to the contract's purpose discharges BOTH sides' obligations; § 265 basic-assumption language.
- Distractor trap (A): offer 'lapses on death' is a TRUE statement but irrelevant, the contract already formed; watch for true-but-off-point baits.
- Distractor traps (C)/(D): the instructor's lack of fault and the general rule that death doesn't discharge debts both lose to the frustration defense here.

Answer Flowchart



Question 125 — Real Property

The owner of a residence advertised it for sale in various media. A buyer who lived in another state decided to purchase it. The buyer neither visited the residence prior to the purchase nor personally spoke with the seller. All of their communication was by mail. The buyer never asked the seller about the condition of the residence, nor did the seller say anything about it except to ask if the buyer wanted to inspect the property because he intended to sell it "as is." The buyer did not inspect the residence because, as she told the seller, she was an experienced land buyer, and also because privately she felt that the seller, being relatively inexperienced in real estate matters, was selling the residence below its fair market value.

Both parties signed a contract that was silent concerning the condition of the residence except to note that the sale was "as is." Two weeks later, the buyer sent the seller a check and the seller sent the buyer a warranty deed.

After receiving the deed, the buyer visited the residence for the first time and discovered termite infestation that had caused substantial damage. The seller had not known of the termites.

There is no applicable statute.

The buyer sued the seller for damages and/or rescission of the contract.

For whom will the court find?

(A) For the buyer, because an "as is" clause is per se unconscionable in a residential sales transaction.

(B) For the buyer, because she received a warranty deed.

(C) For the seller, because he breached no duty.

(D) For the seller, because of the doctrine of merger.

Correct answer: C

Explanation

Answer C is correct. This house is not new construction where a seller may have a duty of disclosure. There are no applicable statutes that may require disclosure. The seller asked the buyer whether she wanted to inspect the property, but the buyer declined. An "as is" clause will be enforced when there is no positive misrepresentation or fraudulent concealment.

Answer A is incorrect. A court will enforce an "as is" clause in residential sales as long as there is no positive misrepresentation or fraudulent concealment, neither of which is present in these facts.

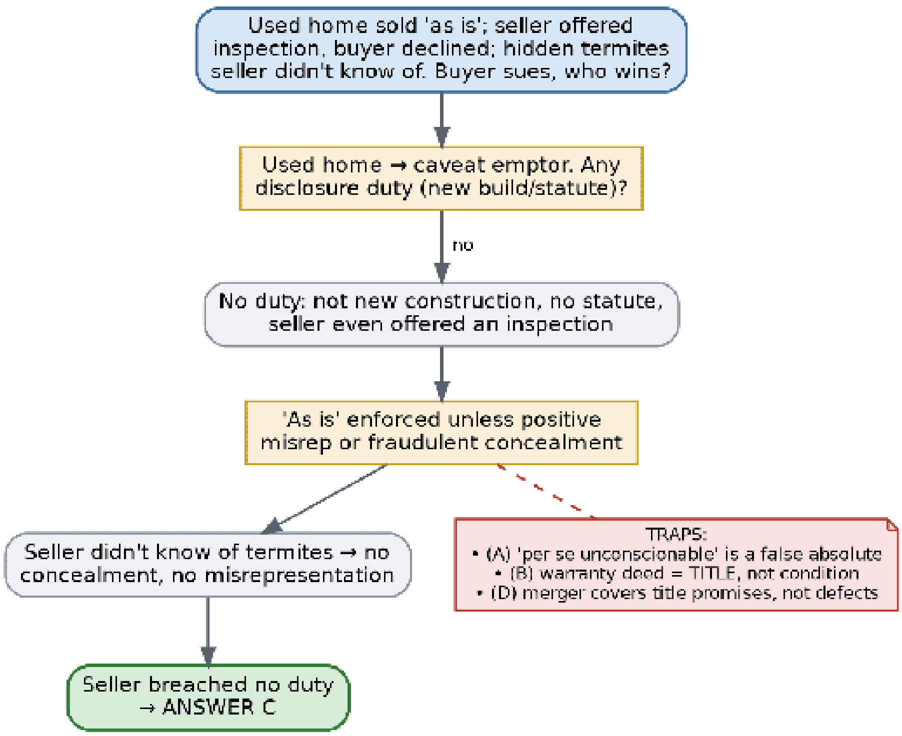
Answer B is incorrect. A warranty deed provides protection for title issues, not issues of physical condition.

Answer D is incorrect. The merger doctrine is irrelevant. Under that doctrine, acceptance of the warranty deed extinguishes all contractual promises of the seller relating to the quality of title. Here, the suit is about the condition of the residence, not its title. The “as is” clause extinguishes claims based upon termites, as that clause eliminates any contractual duty of the seller to deliver a residence free of termites.

Exam Tactics & Triggers

- Trigger: used-home sale, 'as is' clause, seller offers an inspection the buyer DECLINES, and no lie by seller → no duty breached, seller wins.
- Rule chain: caveat emptor still governs USED homes (disclosure duty is for NEW construction/statute); 'as is' is enforceable absent positive misrepresentation or fraudulent concealment.
- Key tell: seller 'had not known of the termites' → no fraudulent concealment, so the 'as is' clause holds.
- Distractor traps: (A) 'per se unconscionable' is an absolute and false; (B) warranty deed covers TITLE not condition; (D) merger applies to title promises, not physical defects.

Answer Flowchart



Question 126 — Civil Procedure

A plaintiff domiciled in State A sued a defendant domiciled in State B, alleging that the defendant had failed to deliver products to the plaintiff under an ongoing contract. The plaintiff attached to the complaint an invoice for the products marked “paid” and a receipt for a wire transfer to the defendant in the amount of $80,000. The defendant answered the complaint, denying that the plaintiff had suffered any losses and asserting a counterclaim for nonpayment of $90,000 for an earlier delivery of products.

In response to the counterclaim, the plaintiff has moved for judgment on the pleadings.

How is the court likely to rule?

(A) Deny the motion as premature, because the plaintiff has not yet answered the counterclaim.

(B) Deny the motion, because a plaintiff that attaches items to the complaint cannot move for judgment on the pleadings.

(C) Grant the motion, because the defendant failed to cross-move.

(D) Grant the motion, because the defendant has not denied that it failed to deliver products after payment by the plaintiff.

Correct answer: A

Explanation

Answer A is correct. Under Federal Rule of Civil Procedure 12(c), a judgment on the pleadings may be made after the pleadings are closed. However, because the defendant in this case has asserted a counterclaim in its answer, the plaintiff must file an answer to the counterclaim under Rule 7(a)(3) before making any motions.

Answer B is incorrect. Under Rule 10(c), a party may attach a written instrument to the complaint, and it becomes part of the pleadings to which the defendant must respond. Nothing in Rule 12(c) precludes a party from moving for judgment based on admissions made regarding an incorporated document.

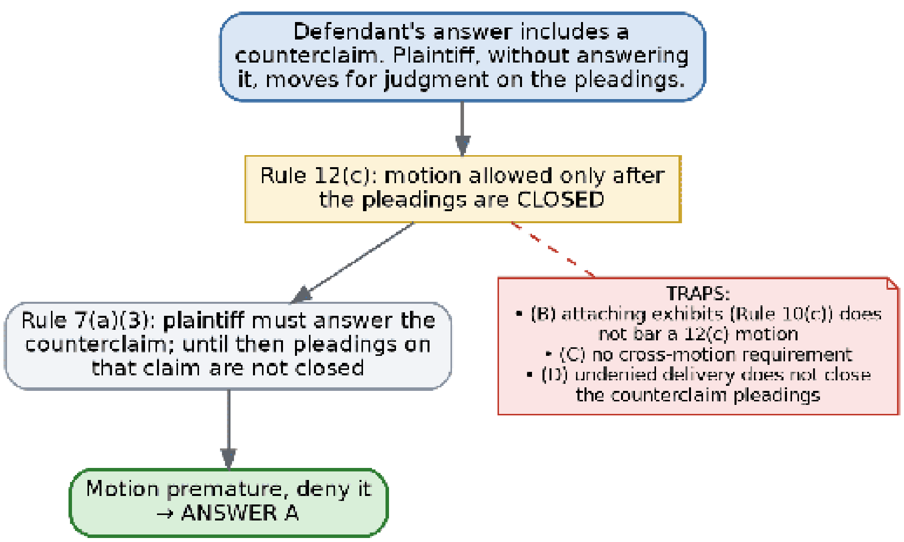
Answer C is incorrect. There is no requirement under the Federal Rules of Civil Procedure that when a plaintiff moves for judgment on the pleadings, the defendant must file a cross-motion for judgment on the pleadings. The defendant, in its discretion, may choose to file its own motion for judgment on the pleadings, or it may simply defend against the plaintiff's motion.

Answer D is incorrect. The fact that the defendant has not denied the alleged failure to deliver goods does not in itself support the grant of the motion. The plaintiff's motion for judgment on the pleadings seeks judgment not only on its primary claim for damages but also on the defendant's counterclaim for nonpayment. Because the plaintiff has not yet answered the counterclaim, the pleadings are not closed on that issue, and a judgment on the pleadings would be premature.

Exam Tactics & Triggers

- Trigger: plaintiff moves for judgment on the pleadings while a COUNTERCLAIM sits unanswered → Rule 12(c) requires the pleadings be CLOSED, and an unanswered counterclaim keeps them open.
- Lock in the pleadings-closed chain: Rule 7(a)(3) requires a reply/answer to a counterclaim, so until the plaintiff answers it, no Rule 12(c) motion is ripe = premature.
- Distractor tell (B): attaching an exhibit under Rule 10(c) does NOT bar a later Rule 12(c) motion; that is an invented disqualification.
- Distractor tells (C) and (D): no cross-motion is required, and an undenied delivery allegation cannot grant judgment when the pleadings on the counterclaim are still open.

Answer Flowchart



Question 127 — Constitutional Law

To encourage urban farming, a city ordinance requires vegetables sold at farmers' markets in the city to have been grown within the city limits. A farmer who grows vegetables on land in a nearby state wants to sell those vegetables at a farmers' market in the city. The farmer has challenged the ordinance on constitutional grounds.

What is the farmer's best argument that the ordinance is unconstitutional?

(A) The ordinance discriminates on its face against interstate commerce, and there are nondiscriminatory ways to promote the city's interest in encouraging urban farming.

(B) The ordinance is not substantially related to an important government interest.

(C) The ordinance places an undue burden on interstate commerce that is clearly disproportionate to the city's interest in encouraging urban farming.

(D) The ordinance unconstitutionally burdens the farmer's right to travel across state lines to sell his vegetables at the farmers' market.

Correct answer: A

Explanation

Answer A is correct because on its face the ordinance discriminates against commerce from outside the city. By doing so, it necessarily excludes commerce from outside the state. Even though the ordinance also excludes some commerce from within the state, it is still considered facially discriminatory. Such facially discriminatory laws are allowed only in the absence of any nondiscriminatory way to promote the government's interest. C&A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1994).

Answer B is incorrect. Answer B states the elements of heightened scrutiny for an individual rights claim, but none of the factors that support heightened scrutiny for such a claim are present here. In the absence of a burden on interstate commerce or impingement on some fundamental right or suspect class, a law needs only a rational basis connecting it with a legitimate government interest.

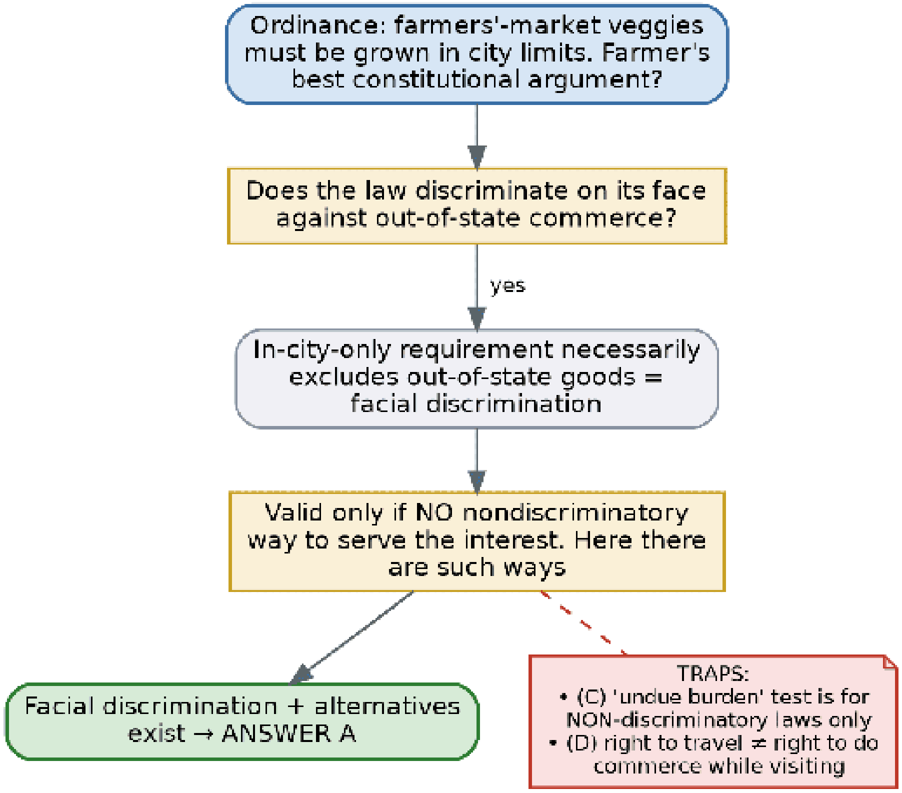
Answer C is incorrect. Because the law is facially discriminatory, it is not subject to the "undue burden" test. In addition, we do not have sufficient facts to know whether the ordinance would pass this test.

Answer D is incorrect. The right to travel does not protect the right to engage in commercial enterprises while temporarily present in a state.

Exam Tactics & Triggers

- Trigger: a law that ON ITS FACE favors local/in-state goods over out-of-state goods → facially discriminatory against interstate commerce, near-per-se invalid.
- Rule chain: facial discrimination against interstate commerce is invalid UNLESS no nondiscriminatory alternative serves the interest (C&A Carbone).
- Distractor trap (C): the 'undue burden'/Pike balancing test (choice C) applies only to nondiscriminatory laws, once a law is facially discriminatory, you never reach it.
- Distractor trap (D): right to travel does NOT protect the right to do commerce while temporarily present; B states the wrong (individual-rights) standard entirely.

Answer Flowchart



Question 128 — Contracts

A property owner hired an arborist to cut down all the trees on her property and to transport the trees to a lumber company. The owner agreed to pay the arborist $10,000 when the work was complete. The arborist said that the work would take him three days.

On the first day, the arborist cut down all the trees. That evening, a fire caused by vandals completely destroyed the trees, making them unfit for use by the lumber company.

What, if anything, must the owner pay the arborist?

(A) The arborist's expectation interest, $10,000 less any costs the arborist avoided by not completing his performance.

(B) The arborist's restitutionary interest, which would be the reasonable value of the services he rendered.

(C) Nothing, because the contract was discharged by frustration of purpose.

(D) Nothing, because the arborist did not complete the work.

Correct answer: B

Explanation

Answer B is correct. The arborist's performance was discharged by impracticability because the non-occurrence of the vandalism and fire was a basic assumption of the contract. Restatement (Second) of Contracts § 261. But the arborist is entitled to restitution for the value of the part of the contract that the arborist performed before that discharge. Restatement (Second) of Contracts §§ 272 & 377.

Answer A is incorrect. Expectation damages are a remedy for breach of contract, and here the owner is not in breach.

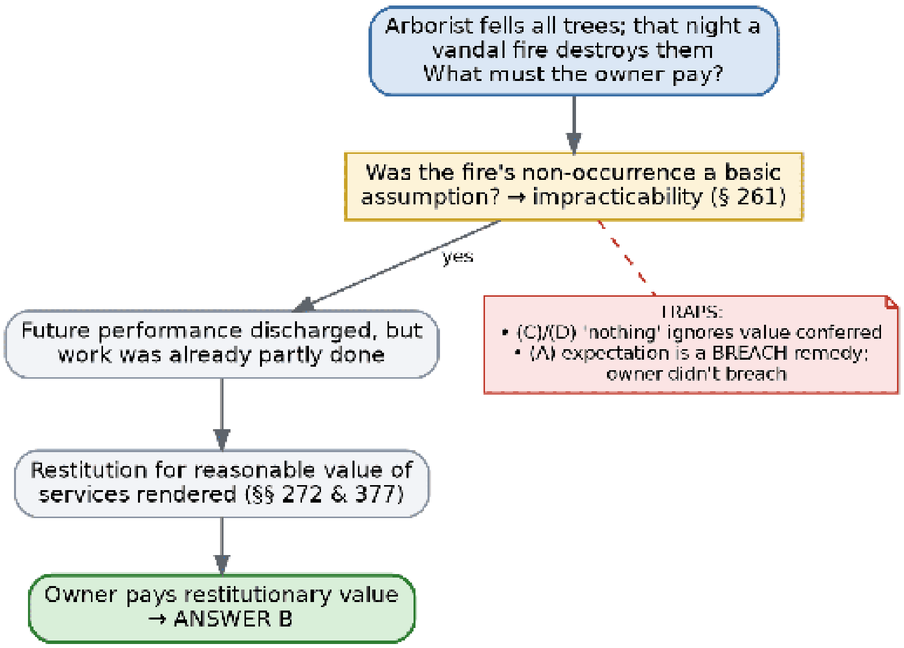
Answer C is incorrect. The arborist would be entitled to restitutionary relief whether the parties' performance was excused by impracticability or frustration of purpose.

Answer D is incorrect. As explained above, the arborist's failure to complete the work was excused by impracticability, and the arborist is entitled to recover in restitution for the benefit conferred.

Exam Tactics & Triggers

- Trigger: partial performance, then a supervening event (vandal fire) destroys the work before completion → impracticability discharges duty but RESTITUTION survives.
- Rule chain: non-occurrence of the fire was a basic assumption (§ 261) → performance excused; §§ 272 & 377 give restitution for value of work already done.
- Distractor trap (C)/(D): 'nothing' answers are wrong, discharge does not erase the benefit already conferred; excuse from future performance is not a free pass on past value.
- Distractor trap (A): expectation ($10,000) is a BREACH remedy, but the owner never breached, so don't reach for expectation when performance was excused.

Answer Flowchart



Question 129 — Criminal Law & Procedure

Over the course of a year, police in a small town received complaints about vandalism in public parks. They connected the incidents because the vandal left specific graffiti at each site, and investigation provided the police with a reasonable suspicion that the perpetrator was a specific local resident. Using an online directory that the resident had joined, the police obtained the resident's cell-phone number. The police then subpoenaed the cell-phone provider to provide one year of historical cell-phone site-location data. The data showed that for each incident, the resident's cell phone had been in the vicinity of the vandalized property.

The resident was charged with multiple counts of destruction of property. Defense counsel has moved to exclude the cell-phone site-location data, arguing that its collection violated the Fourth Amendment.

Did the collection of the data violate the Fourth Amendment?

(A) No, because a person has no reasonable expectation of privacy in information shared with a third party.

(B) No, because the subpoena was based on a cell-phone number that the resident had voluntarily placed in the public domain.

(C) Yes, because a subpoena must be based on probable cause.

(D) Yes, because a warrant is required to collect such extensive historical cell-phone site-location data.

Correct answer: D

Explanation

Answer D is correct. In Carpenter v. United States, 138 S. Ct. 2206 (2018), the Supreme Court held that a warrant is required to collect extensive historical site-location data from a cell-phone provider. Here, the data sought was one year's worth of site-location information, which clearly falls within the rule of Carpenter. In addition, Carpenter rejected the use of a subpoena to circumvent this warrant requirement.

Answer A is incorrect. Though answer A states a Fourth Amendment principle that is generally true—namely, that there is no reasonable expectation of privacy in information shared with a third party, known as the “third party doctrine”—the Court in Carpenter specifically rejected this doctrine for historical cell-phone site-location data.

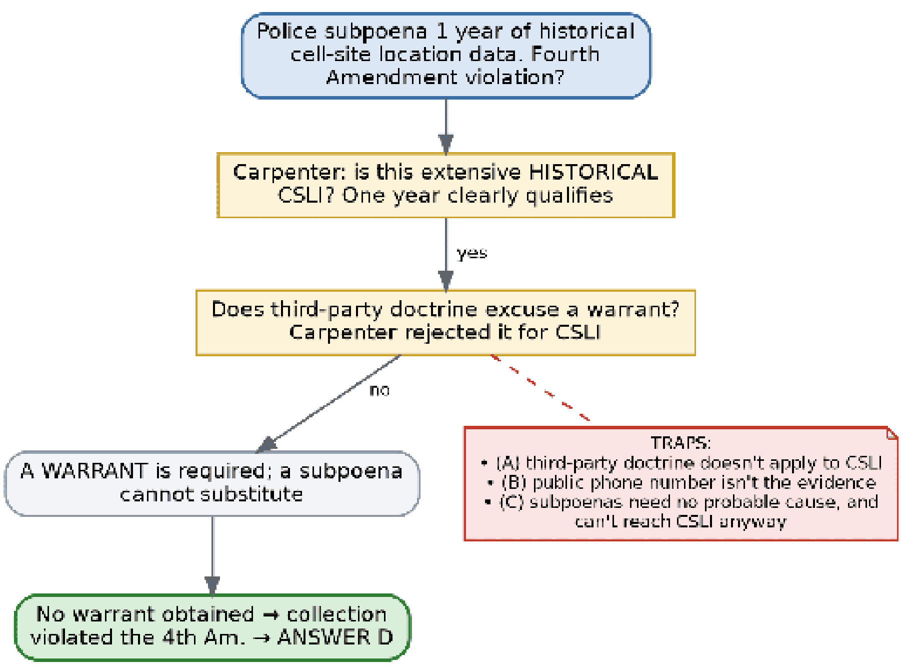
Answer B is incorrect because the cell-phone number is not the targeted evidence. Although the phone number may be widely accessible, that fact does not create a right of access to historical cell- phone site-location data (which is created by the cell-phone provider) or to the contents of the phone itself.

Answer C is incorrect for two reasons. First, a subpoena need not be based on “probable cause.” Second, Carpenter held that the government could not rely on a subpoena to obtain historical cell- phone site-location data. As a rule, when the government wants to obtain that sort of data, it must first get a warrant.

Exam Tactics & Triggers

- Trigger: government grabs extensive HISTORICAL cell-site location data (here a year's worth) → a WARRANT is required (Carpenter v. United States).
- Carpenter carved CSLI out of the third-party doctrine, so 'shared with a third party = no privacy' is a trap even though it's the general rule.
- Distractor (B): the publicly-listed phone NUMBER is not the targeted evidence; access to the number never opens access to provider-created location data.
- Distractor (C): a subpoena need not rest on probable cause, and Carpenter bars using a subpoena to get CSLI at all, so the reasoning is doubly wrong.

Answer Flowchart



Question 130 — Real Property

A landlord owns a 10-unit apartment building and lives in one of the apartments. A uniformly enforced provision in every apartment lease prohibits all pets. A tenant with a serious hearing impairment asked permission from the landlord to keep a hearing-assistance service dog in her apartment to alert and assist her in the event of fire or other emergency. The landlord refused.

Is the landlord’s refusal likely a violation of the federal Fair Housing Act?

(A) No, because the landlord lives in an apartment in the building.

(B) No, because the tenant agreed to the “no pets” provision in her lease.

(C) Yes, because the landlord’s refusal is arbitrary.

(D) Yes, because the tenant is entitled to a reasonable accommodation for her disability.

Correct answer: D

Explanation

Answer D is correct. The tenant has a serious hearing impairment, which is a handicap under the Fair Housing Act. The Act requires the landlord to make a reasonable accommodation for such a handicap, and the tenant's need for a trained service dog outweighs any concerns underlying the landlord's prohibition of pets.

Answer A is incorrect. The Act does not apply if the owner occupies a unit in a building with four or fewer units. This building has 10 units, and thus the exception does not apply.

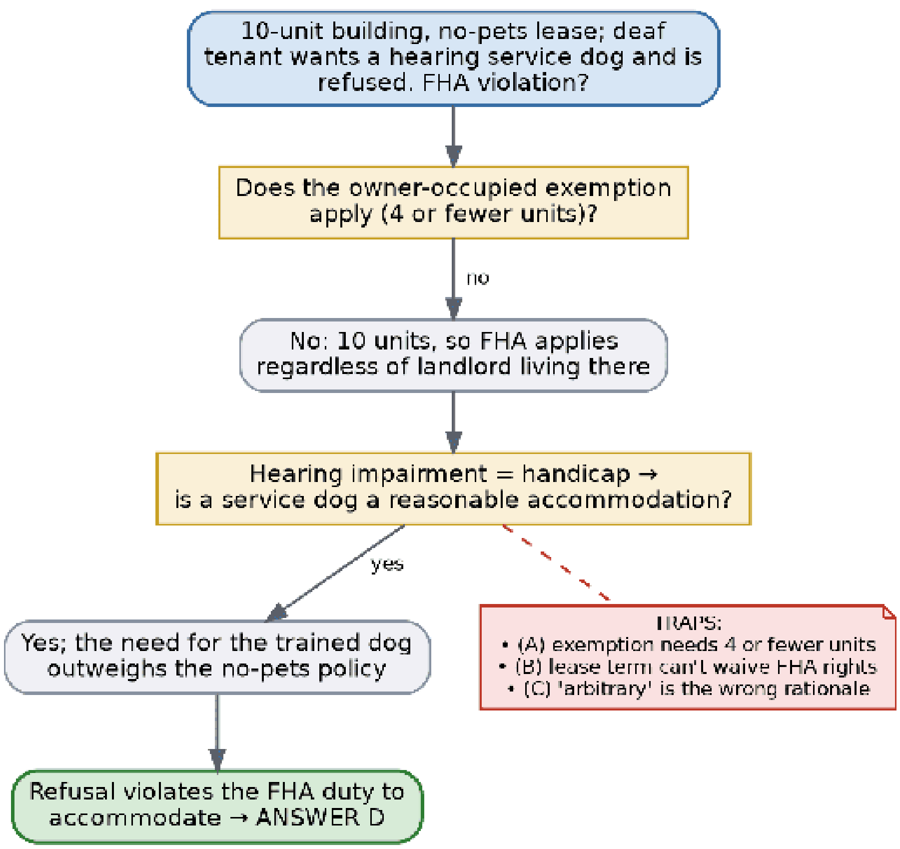
Answer B is incorrect. The fact that the tenant agreed to the "no pets" provision in the lease does not relieve the landlord from making a reasonable accommodation for the tenant's handicap.

Answer C is incorrect. The landlord's refusal to permit the tenant to have a service dog may be arbitrary, but that is irrelevant because the Act requires the landlord to make a reasonable accommodation for the tenant's hearing impairment.

Exam Tactics & Triggers

- Trigger: disabled tenant + no-pets lease + request for a service/assistance animal → Fair Housing Act reasonable-accommodation issue, tenant wins.
- Rule chain: hearing impairment = handicap under the FHA → landlord must grant a reasonable accommodation, and a service animal is the classic example.
- Owner-occupied exemption tell: it only applies to buildings of FOUR OR FEWER units; this is a 10-unit building, so no exemption.
- Distractor traps: (A) misapplies the small-building exemption; (B) a lease term can't waive FHA accommodation; (C) 'arbitrary' is the wrong reason, the FHA duty is the reason.

Answer Flowchart



Question 131 — Evidence

A woman brought a wrongful death action against a car driver who hit and killed her husband while her husband was crossing a street. In settlement negotiations, the driver told the woman that he was sorry for what had happened and that he had been too drunk to drive when he ran into her husband with his car. The woman and the driver settled the wrongful death action for $1 million.

Subsequently, the driver was charged with reckless homicide of the husband. At the driver's criminal trial, the prosecutor offered, as evidence of the driver's guilt, the driver's statement to the woman during settlement negotiations.

Is the driver's statement to the woman admissible in the subsequent criminal prosecution?

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

(B) No, because a statement made in civil settlement negotiations between private parties is not admissible to prove the validity of a claim in a subsequent criminal prosecution.

(C) Yes, because a statement made in civil settlement negotiations is admissible in a subsequent criminal prosecution.

(D) Yes, because the statement's probative value outweighs the risk of prejudice and jury confusion.

Correct answer: B

Explanation

Answer B is correct. Under FRE 408(a)(2), statements made during settlement negotiations in a private civil action—negotiations not involving a public office—are inadmissible in a subsequent criminal case arising out of the same incident.

Answer A is incorrect. When offered by the prosecution, the driver's statement to the woman is a statement of an opposing party, and therefore it would come within the exception to the hearsay rule set out in FRE 801(d)(2)(A).

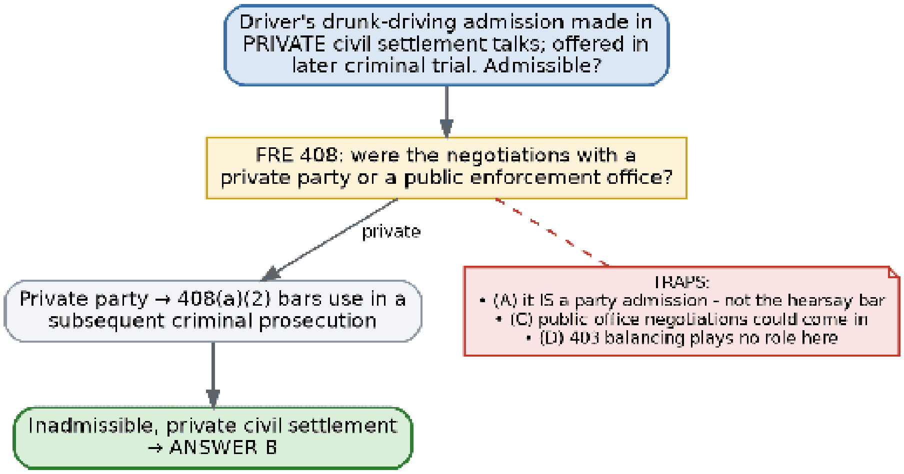
Answer C is incorrect. FRE 408(a)(2) distinguishes between settlement negotiations involving private parties and those involving a public office. Statements made in negotiations related to a claim by a public office in the exercise of its enforcement authority may be admissible in a subsequent criminal case. But statements made in negotiations with a private party are not admissible in a subsequent criminal prosecution.

Answer D is incorrect. The statement is inadmissible under FRE 408(b)(2). FRE 403's balancing test has no role in the analysis. Moreover, the balancing test is improperly stated in the answer.

Exam Tactics & Triggers

- Trigger: statement made in 'civil settlement negotiations' later offered in a CRIMINAL case → FRE 408(a)(2) bars it when the negotiations were with a private party.
- Rule chain: 408 private-party settlement talk stays out of a later criminal prosecution; the exception (admissible) exists ONLY when a public office was negotiating its enforcement claim.
- Distractor (A) hearsay: the statement IS an opposing-party admission under 801(d)(2)(A), so hearsay is not the reason to exclude, 408 is.
- Distractor (D): FRE 403 balancing has no role here, 408 is a flat exclusion, and the option even misstates the 403 standard.

Answer Flowchart



Question 132 — Torts

A shopper slipped and fell in a grocery store, injuring her wrist. In a medical malpractice action against the doctor who treated her, the shopper alleges that the doctor worsened the injury by his treatment. Normally, competent medical treatment would have resulted in a complete cure of the wrist injury.

The doctor is seeking to implead the grocery store. The grocery store contends that its alleged negligence was not a proximate cause of any of the injuries allegedly caused by the doctor.

Should the court allow the doctor to implead the grocery store?

(A) No, because medical malpractice and the negligence of a possessor of property involve different standards of care.

(B) No, because the alleged negligent acts of the grocery store and the doctor occurred sequentially and not concurrently.

(C) No, because the fact-finder could find that the shopper sustained a single indivisible injury proximately caused by the negligence of both the grocery store and the doctor.

(D) Yes, because the fact-finder could assign some of the responsibility for the shopper's injuries to the grocery store.

Correct answer: D

Explanation

Answer D is correct. The doctor can implead the grocery store, because the fact-finder could find that the negligence of both the grocery store and the doctor contributed to the total injury suffered by the shopper, including the worsening of her injury resulting most immediately from the doctor's malpractice.

Answer A is incorrect. The question is not about the standard of care applicable to the doctor and the store, but rather whether the store, if found negligent, can be held responsible along with the doctor not only for the shopper's initial injury but also for the worsening of the injury as a result of the doctor's malpractice.

Answer B is incorrect. The mere fact that the doctor's malpractice happened after any possible negligence on the part of the store does not defeat the imposition of liability on the store for the worsening of the shopper's injury caused by the doctor's malpractice.

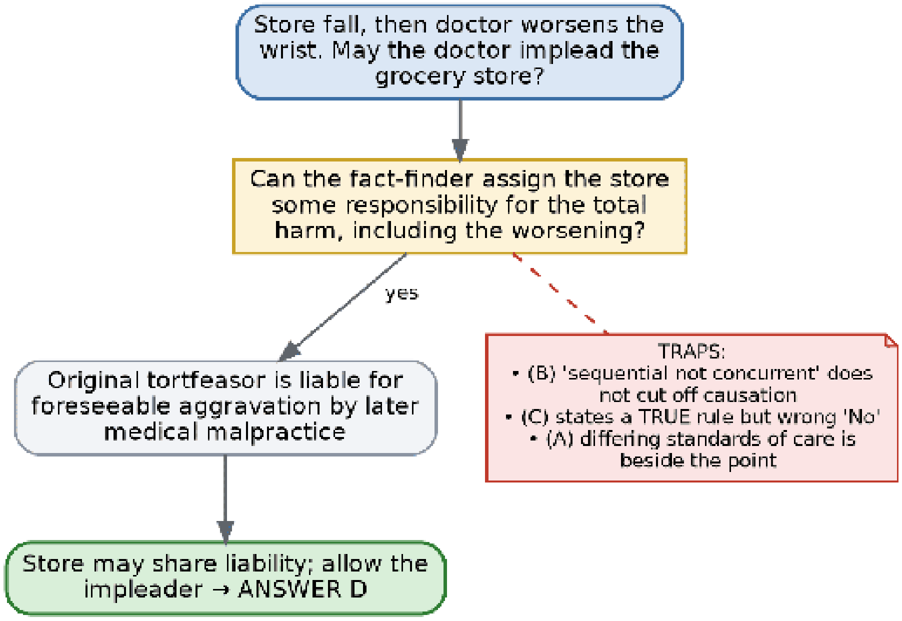
Answer C is incorrect. The fact that the doctor's negligence and the store's negligence (if any) both contributed to the plaintiff's injury provides a basis for why the doctor can implead the grocery store.

Exam Tactics & Triggers

- Trigger: original tortfeasor + a later negligent doctor who worsens the injury → the original defendant CAN implead the doctor and vice versa; successive negligence to one indivisible harm shares liability.
- Rule chain: an original tortfeasor is liable for foreseeable aggravation by later medical malpractice, so both contribute to a single injury and both can be on the hook.
- Distractor trap (B): 'sequential not concurrent' is a fake distinction; timing does not sever proximate cause for aggravation of an injury.

- Watch the swap in (C): it states a TRUE principle (single indivisible injury) but pairs it with the wrong result ('No'); a correct reason attached to the wrong answer is still wrong.

Answer Flowchart



Question 133 — Civil Procedure

A decedent's executor has brought a federal diversity action against a man, alleging that while the decedent and the man were riding dirt bikes on a track, the man's bike ran into the decedent's bike, causing the decedent to fall to her death. The man denies fault for the decedent's death.

At trial, the executor's only witness testifies that shortly before the accident he was riding 50 feet behind the man and saw the man rapidly approaching the decedent until they were only a few feet apart. This witness briefly looked away, heard an unusual noise, and immediately afterward saw the decedent and the decedent's bike on the ground.

The man calls three witnesses, none of whom had met the decedent or the man before. Two riders testify that they were riding parallel to the man and never saw his bike touch the decedent's bike. A track attendant, who was stationed close to the area where the decedent fell, testifies that he was watching the track and never saw any contact between the decedent and the man.

The man has moved for judgment as a matter of law.

Should the court grant the motion?

(A) No, because the executor's evidence is sufficient for the jury to find for the executor.

(B) No, because there is a credibility dispute for the jury to resolve.

(C) Yes, because a verdict for the executor would be against the great weight of the evidence.

(D) Yes, because the executor has presented insufficient evidence to support a verdict.

Correct answer: D

Explanation

Answer D is correct. In determining whether to grant judgment as a matter of law, the court must determine, after considering all the evidence introduced by both parties, whether there is legally sufficient evidence to support a judgment for the estate. The executor, who bears the burden of proof, has presented only the testimony of another bike rider who was not a true eyewitness to the decedent's accident, but who provided circumstantial evidence about what he saw before and after it. In contrast, the man has provided three disinterested witnesses who testified that they never saw any contact between the man and the decedent. Because the testimony of the witnesses is not in actual conflict, and because the executor has not presented legally sufficient evidence to support a verdict in the estate's favor, the motion should be granted.

Answer A is incorrect. The executor’s evidence consists of one witness who did not actually see the accident but testified to circumstances that might or might not suggest that the man was at fault. In light of the direct evidence provided by the man’s testimony and that of his three witnesses, the executor’s evidence would not be legally sufficient for the jury to find for the executor, who is the party with the burden of proof at trial.

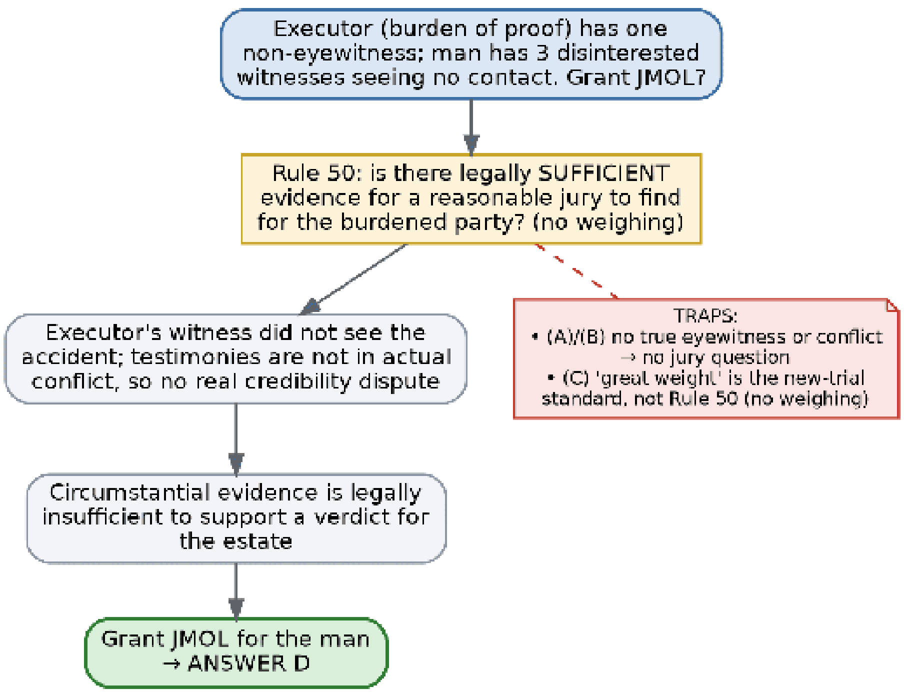
Answer B is incorrect. The witnesses’ testimony is not in direct conflict, since the executor’s witness did not actually see the accident or any contact between the man’s bike and the decedent’s bike, and the man’s witnesses testified that they never saw any contact between the two. Thus, there is no real credibility dispute.

Answer C is incorrect. In determining whether to grant judgment as a matter of law, the court is not to weigh the evidence but rather is to determine whether there is legally sufficient evidence to support a verdict for the party who bears the burden of proof at trial, in this case the nonmoving party.

Exam Tactics & Triggers

- Trigger: party with the BURDEN OF PROOF rests on a non-eyewitness's circumstantial testimony while the opponent has multiple disinterested witnesses who saw NO contact → JMOL for the movant.
- Lock in the Rule 50 standard: court asks whether there is legally SUFFICIENT evidence for a reasonable jury, it does NOT weigh evidence, but insufficient evidence for the burdened party = JMOL.
- Distractor tell (B): 'credibility dispute for the jury' baits you, but there is NO actual conflict because the plaintiff's witness never saw the accident, so nothing to weigh.
- Distractor tell (C): 'against the great weight of the evidence' is the new-trial standard, not the JMOL standard; picking a weighing rationale is the classic Rule 50 trap.

Answer Flowchart



Question 134 — Contracts

A general contractor and a subcontractor signed a contract under which the subcontractor agreed to pour a cement foundation for a building project for $12,000. Before the subcontractor performed, it discovered that it had made an error in computing the size of the foundation and should have quoted the general contractor $18,000 for the work. The subcontractor informed the general contractor of the mistake and asked whether the general contractor would agree to pay $15,000 for the foundation, which would cover the subcontractor’s costs. After determining that other subcontractors would charge at least $18,000 for the work, the general contractor agreed in writing. When the work was completed, the general contractor tendered the subcontractor $12,000. The subcontractor refused to accept the payment.

If the subcontractor prevails in a suit against the general contractor, how much will the subcontractor be likely to recover?

(A) $12,000, because the contract modification was not supported by consideration.

(B) $12,000, because the subcontractor's mistake was unilateral.

(C) $15,000, because the contract modification was fair and equitable under the circumstances.

(D) $18,000, because that is the value of the benefit the subcontractor conferred on the general contractor.

Correct answer: C

Explanation

Answer C is correct. Although there was no consideration for the modification, under the modern rule of Restatement (Second) of Contracts § 89, a modification is binding "if the modification is fair and equitable in view of circumstances not anticipated by the parties when the contract was made."

Answer A is incorrect. This is the answer under the pre-existing duty rule, but that rule does not apply when a modification is fair and equitable in light of changed circumstances.

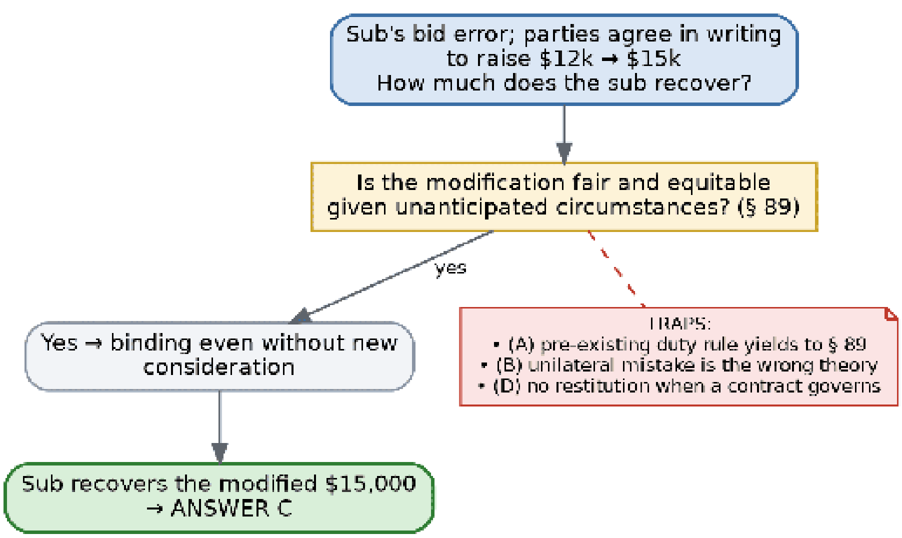
Answer B is incorrect. This answer would be correct if the subcontractor were asking for relief on the basis of its mistake, but it is not relevant when the subcontractor is seeking to enforce a modification.

Answer D is incorrect. Relief based on restitution is not applicable when there is an enforceable contract.

Exam Tactics & Triggers

- Trigger: a good-faith modification to fix an honest pricing error, with UNANTICIPATED circumstances → binding without consideration under § 89.
- Rule chain: § 89 modification is enforceable if 'fair and equitable in view of circumstances not anticipated' at formation; this beats the pre-existing duty rule.
- Distractor trap (A): the no-consideration/pre-existing-duty answer is the classic bait, but § 89 is the modern exception the facts set up.
- Distractor traps (B)/(D): unilateral mistake and restitution are the wrong frames, the sub is ENFORCING a modification ($15,000), not seeking mistake relief or quasi-contract.

Answer Flowchart



Question 135 — Constitutional Law

A state law to promote tourism creates an easement across a portion of a private farm for hikers who wish to use a historic trail that crosses the farm. The law allows the farm's owner to charge hikers a fee to cover the costs of this use, but it does not otherwise compensate the owner.

Is the law constitutional?

(A) No, because the fee provision violates the privileges and immunities clause.

(B) No, because the law takes the owner's property without just compensation.

(C) Yes, because the fee provides the owner with just compensation.

(D) Yes, because the law has the public purpose of promoting tourism.

Correct answer: B

Explanation

Answer B is correct. The state-created easement provides for the physical occupation of a portion of the owner's farm and thus constitutes a government taking of that portion of land. The takings clause requires that the government provide just compensation to owners for the land it takes. Just compensation is determined by the fair market value of the taken land. Although the state law allows the owner to charge a fee to recover costs from hikers who use the trail on the farm, the fee is not equivalent to the fair market value of an easement across the land.

Answer A is incorrect. The Supreme Court has held that the privileges and immunities clause of the Fourteenth Amendment is limited to rights of a special national nature, such as the right to travel. The clause does not apply here.

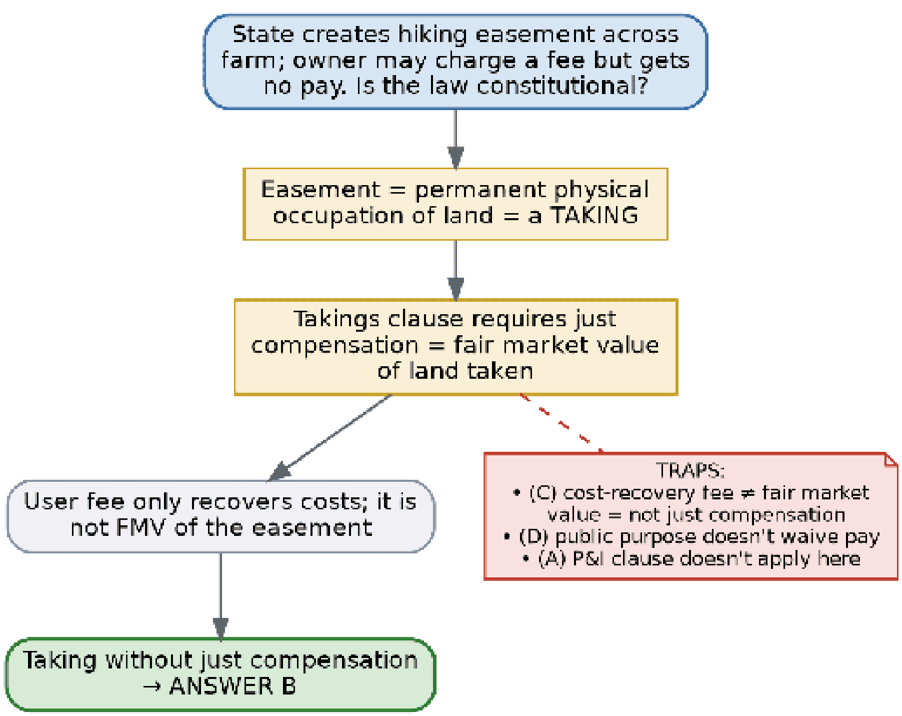
Answer C is incorrect. Just compensation is determined by the fair market value of the property taken by the state. Although the state law allows the owner to charge a fee to hikers who use the trail on the farm, the fee is not equivalent to the fair market value of an easement across the land at issue.

Answer D is incorrect. The state law is subject to the takings clause, which requires the state to pay just compensation when it takes an individual's property, even if the taking serves a public purpose.

Exam Tactics & Triggers

- Trigger: government authorizes a PERMANENT PHYSICAL OCCUPATION/easement across private land → per-se taking, just compensation required no matter how small.
- Rule chain: physical occupation = taking → just compensation = FAIR MARKET VALUE of what is taken; a fee to recover costs is not FMV.
- Distractor trap (C): letting the owner charge users a cost-recovery fee is NOT just compensation, it does not equal the easement's fair market value.
- Distractor trap (D): a legitimate public purpose (tourism) does not excuse the duty to pay, public use is required BUT compensation still owed.

Answer Flowchart



Question 136 — Real Property

A son managed an apartment building that his elderly father owned. Ten months ago, the son asked the father to sign some tax documents related to the apartment building and slipped in among the documents a deed that conveyed the building to the son. The father did not read the documents before signing them because he trusted his son. After the father signed the deed, the son promptly recorded it.

Five months ago, the son sold the building to an investor, who promptly recorded her deed. The investor was unaware of the circumstances surrounding the conveyance of the building from the father to the son.

Two months ago, the father died survived by his wife and his son. The father’s duly probated will, executed five years earlier, devised the apartment building to his wife.

Is the wife entitled to ownership of the apartment building?

(A) No, because the father’s actual signature is on the deed to the son.

(B) No, because the investor was a bona fide purchaser without knowledge of the son’s dishonesty in obtaining the deed from his father.

(C) Yes, because the father executed the will before he signed the deed to the son.

(D) Yes, because the son tricked his father into signing the deed to him and that deed is therefore void.

Correct answer: D

Explanation

Answer D is correct. Fraud in the execution of a deed is the equivalent of a forged deed; as a result, the deed is void.

Answer A is incorrect. A forged signature is only one example of a condition that makes a deed void; fraud in the execution of a deed is the equivalent of a forged deed.

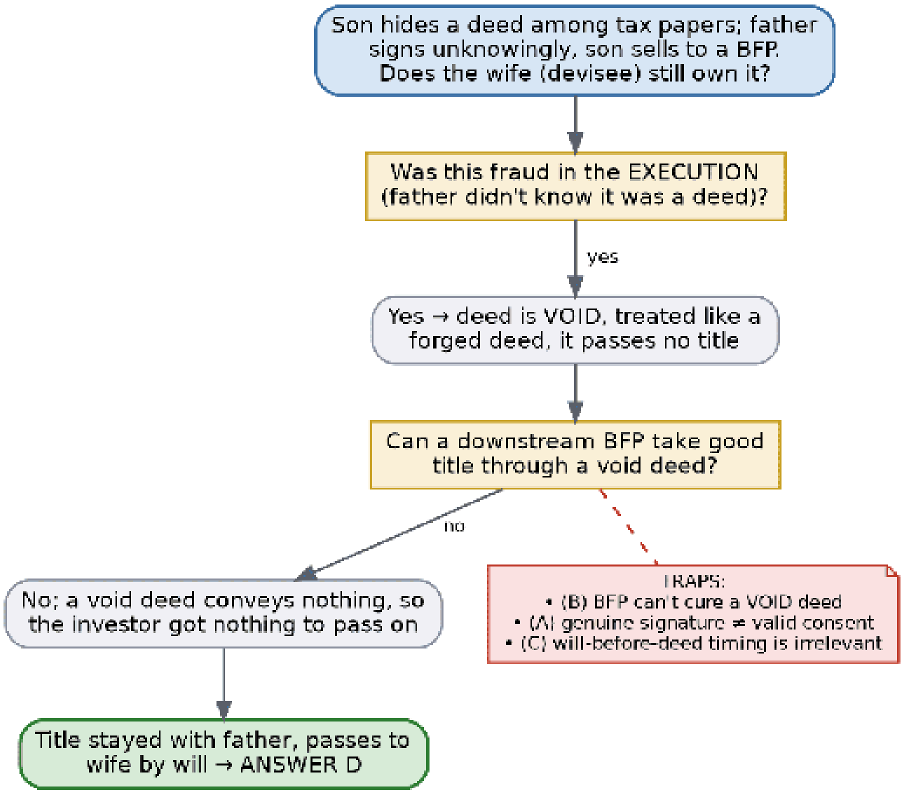
Answer B is incorrect. Fraud in the execution of a deed is treated like a forged deed, and a bona fide purchaser is not protected. Both the grantor (the father) and the bona fide purchaser (the investor) are innocent; however, the father is favored as he is entirely blameless.

Answer C is incorrect. The father’s executed will gave no rights, at the time of the will’s execution, to any beneficiaries named in the will. Whether the wife owns the apartment building depends on whether the father owned the building when he died.

Exam Tactics & Triggers

- Trigger: grantor tricked into signing a deed he didn't know was a deed → fraud in the EXECUTION (factum) → deed is VOID, not merely voidable.
- Rule chain: void deed = treated like a FORGED deed → passes NO title, so even a BFP downstream takes nothing.
- Key distinction to lock in: fraud in the execution (void, beats BFP) vs. fraud in the inducement (voidable, BFP protected).
- Distractor traps: (B) baits you with 'bona fide purchaser', but BFP status can't cure a void deed; (A) a real signature is irrelevant when consent was fraudulently obtained; (C) will timing is irrelevant.

Answer Flowchart



Question 137 — Criminal Law & Procedure

During jury selection in federal court, a prospective juror stated that her father and brother were federal agents and that she had met the agent who had arrested the defendant on a number of prior occasions because he played on her brother's softball team. When asked by the court whether she could judge the facts without being biased by knowing the arresting agent, the prospective juror expressed some doubt. The court nonetheless denied the defendant's request to dismiss the prospective juror. The defendant later exercised one of his peremptory challenges to remove the prospective juror from the jury.

The defendant was convicted. On appeal, he argues that the conviction should be reversed because the court erroneously failed to remove the prospective juror for cause.

How should the federal court of appeals decide the issue?

(A) Reverse the conviction, because the failure to remove the prospective juror violated the defendant's right to an unbiased jury.

(B) Reverse the conviction, because the failure to remove the prospective juror violated the defendant's right to exercise his peremptory challenges.

(C) Uphold the conviction, because the trial court did not abuse its discretion in denying the challenge for cause.

(D) Uphold the conviction, because the prospective juror did not serve on the jury.

Correct answer: D

Explanation

Answer D is correct. In United States v. Martinez-Salazar, 528 U.S. 304 (2000), the Court held that the erroneous denial of a challenge for cause does not warrant reversal if the prospective juror ultimately does not serve on the jury. Here, because the prospective juror was ultimately excused through a peremptory challenge, the appellate court would reject the defendant's argument and uphold the conviction.

Answer A is incorrect because the right to an impartial jury is not violated if the prospective juror does not serve.

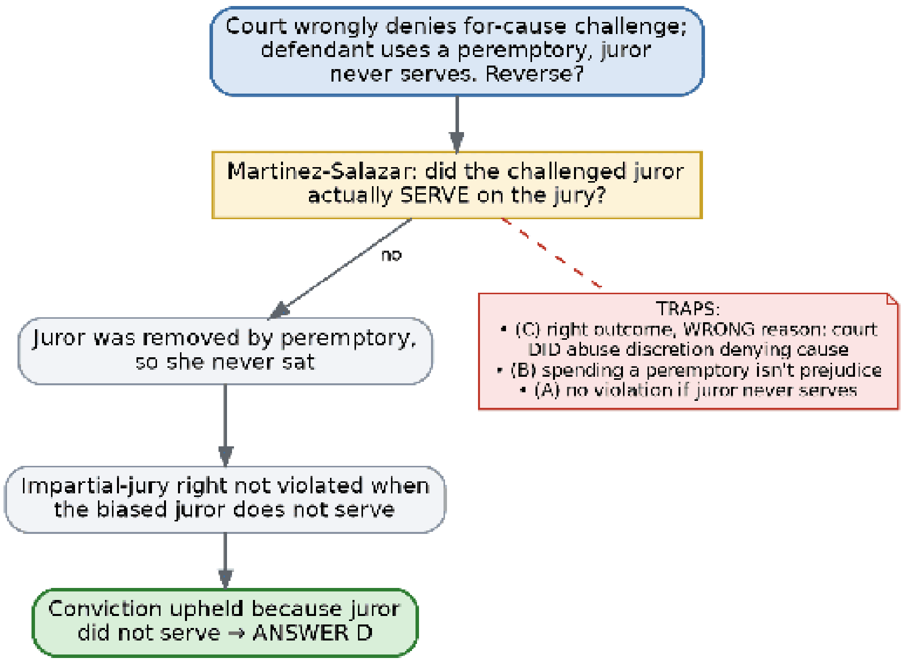
Answer B is incorrect. In Martinez-Salazar, the Court specifically rejected the suggestion that a defendant is prejudiced by having to use a peremptory challenge to cure an erroneous denial of a challenge for cause.

Answer C is incorrect because the reason for upholding the conviction is incorrect: the trial court should have removed the prospective juror for cause and, in refusing to do so, abused its discretion.

Exam Tactics & Triggers

- Trigger: trial court wrongly denies a for-cause challenge, but defendant burns a PEREMPTORY to strike that juror and the juror never sits → no reversal (Martinez-Salazar).
- Key rule: the impartial-jury right is violated only if a biased juror actually SERVES; a cured error is not reversible.
- Distractor (C): tempting 'no abuse of discretion' but it's the WRONG reason, the court DID err in denying cause; pick the right outcome for the right reason (D).
- Distractor (B): using up a peremptory to fix the error is not itself prejudice the Constitution recognizes, so 'lost peremptory' does not reverse.

Answer Flowchart



Question 138 — Evidence

A farmer has sued a neighbor for starting a fire that burned down the farmer's barn. At trial, the farmer offers, under the public records exception, a properly authenticated copy of the fire marshal's official report, which found that the neighbor started the fire. The report states that this conclusion is based on the fire marshal's extensive training in fire investigation, on the fire marshal's examination of the scene, and on interviews with numerous witnesses. The report quotes one witness as saying, "I saw [the neighbor] light the match that started the fire." The neighbor objects to the admission of the report.

How should the court rule on the report's admissibility?

(A) Admit the report containing the fire marshal's conclusion as a public record but exclude the witness's statement.

(B) Admit the report in its entirety as a public record.

(C) Exclude the report, because admitting it would deny the neighbor his right to confront witnesses against him.

(D) Exclude the report, because the fire marshal's conclusion is based on multiple hearsay.

Correct answer: A

Explanation

Answer A is correct. Because the fire marshal is a public official and his conclusion about the cause of the fire is a factual finding based upon an official investigation, the report is admissible under the public records exception to the hearsay rule. The witness's statement quoted in the report is not admissible under the public records exception, however, because the witness is not a public official reporting matters observed under a legal duty, and so that statement must be excised from the report.

Answer B is incorrect. While the report is generally admissible, the witness's statement quoted in the report is not admissible under the public records exception because the witness is not a public official reporting matters observed under a legal duty. Therefore, the portion of the report quoting that statement must be excised before the report is admitted.

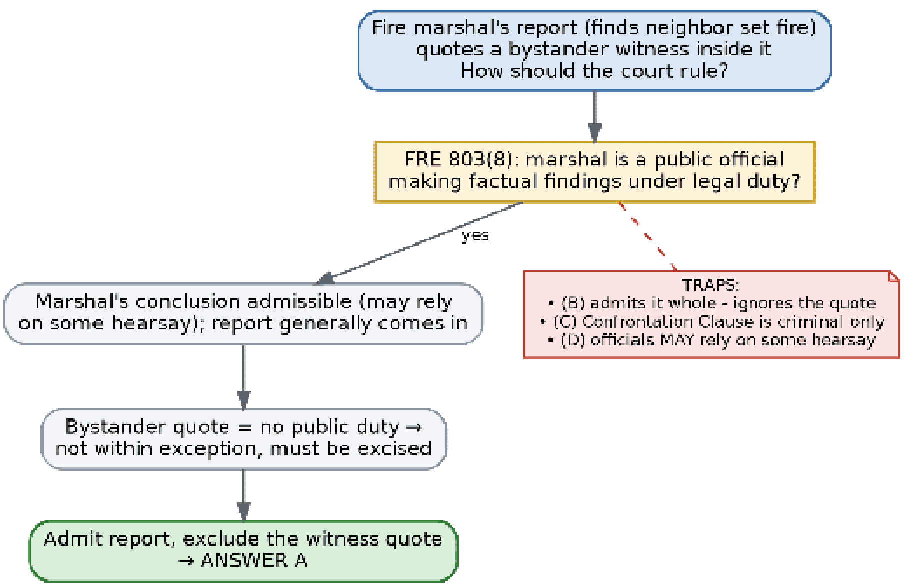
Answer C is incorrect. The neighbor is being sued in a civil action. The Sixth Amendment right to confrontation protects defendants only in criminal cases and so does not protect the neighbor in this civil action.

Answer D is incorrect. Public officials may rely on bystander statements and hearsay in making factual findings. To the extent that a public official's factual findings rest on only such hearsay, those findings could be excluded for a lack of trustworthiness under FRE 803(8)(B). Here, the fire marshal's factual findings rest on his significant experience, as well as his examination of the scene, and would not be excludable solely due to reliance on some hearsay.

Exam Tactics & Triggers

- Trigger: an official REPORT that quotes a bystander witness → split the document, the official's findings come in under 803(8), the outside witness's quote does not.
- Rule chain: public records exception covers factual findings by a public official under a legal duty; a bystander has no such duty, so that layer of hearsay must be excised.
- Distractor (D) 'multiple hearsay': officials MAY rely on hearsay in reaching findings, so the marshal's conclusion survives; only the verbatim witness quote is stripped.
- Distractor (C) Confrontation Clause: it is a CIVIL case, the 6th Amendment confrontation right protects criminal defendants only.

Answer Flowchart



Question 139 — Torts

After a woman left a company to start her own business, her former supervisor became convinced that she was breaching a noncompetition agreement that she had signed when she had begun employment with the company. At the supervisor's suggestion, the company assigned its security officer to investigate and provided the officer with information about the woman, including her telephone number. Unbeknownst to the company, the officer emailed the woman's phone service provider, pretending to be the woman, and obtained copies of her phone records, which showed that she had contacted several customers of the company after she left, in breach of the agreement. The records also revealed a number of phone calls by the woman to others, including medical providers.

The woman, after learning of the security officer's investigation, sued the company, asserting several tort claims.

Should the trial court allow the case to go to the jury?

(A) No, because the company did not expressly authorize the security officer’s acts.

(B) No, because the woman was in breach of her noncompetition agreement with the company.

(C) Yes, on a claim of intentional infliction of emotional distress.

(D) Yes, on a claim of invasion of privacy.

Correct answer: D

Explanation

Answer D is correct. The company, through its employee, engaged in conduct that a jury could determine to be intrusion upon seclusion. Intrusion upon seclusion is one of the four privacy torts recognized by the Second Restatement of Torts and most states. See Restatement (Second) of Torts § 652A–E (1977).

Answer A is incorrect. The fact that the company did not expressly authorize the security officer’s specific actions does not necessarily allow it to avoid liability. The security officer was an employee of the company, and the company both directed the officer to investigate the woman and provided the officer with her phone number. On this basis, a jury could reasonably hold the company liable based on the officer’s actions.

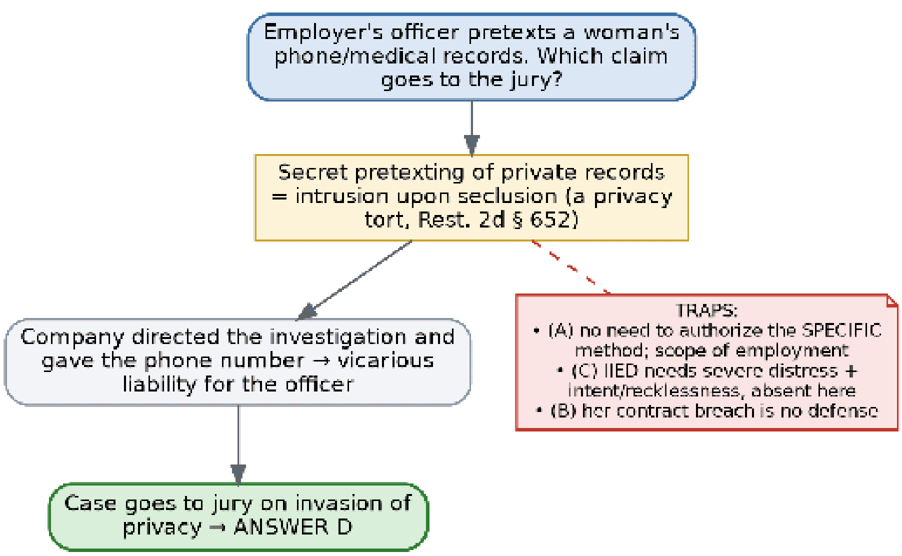
Answer B is incorrect. The woman’s breach of the noncompetition agreement, if any, would not prevent a reasonable jury from concluding that the company is liable to the woman for intrusion upon seclusion. Whether the company has a cause of action against the woman for breach of the agreement is a separate question.

Answer C is incorrect. There is no evidence that the company or the security officer acted with an intent to cause the woman severe emotional distress, or recklessly with respect to that risk, or even that the woman suffered severe emotional distress.

Exam Tactics & Triggers

- Trigger: employer directs an investigation and an employee secretly pretexts phone/medical records → think intrusion upon seclusion, one of the four privacy torts.
- Rule chain: employer is vicariously liable for the employee-officer's acts within the scope of the assigned investigation, so 'we didn't authorize the SPECIFIC method' (A) fails.
- Distractor trap (C) IIED: needs intent/recklessness AS TO severe distress AND actual severe distress; nothing here shows that, so IIED is weaker than the privacy claim.
- Distractor trap (B): the woman's own contract breach is a separate cause of action and is no defense to her privacy tort, do not let a 'she's a wrongdoer too' fact distract you.

Answer Flowchart



Question 140 — Civil Procedure

After a lengthy federal trial, the defendant moved for judgment as a matter of law (JMOL). The court denied the motion and sent the case to the jury, which returned a verdict for the plaintiff and awarded damages.

Five weeks after the court entered judgment on the verdict, the defendant filed a renewed motion for JMOL. One week after that motion was filed, the parties filed a stipulation agreeing to extend the time to file and respond to posttrial motions. In the stipulation, the defendant acknowledged that it had filed its renewed JMOL motion late, citing computer difficulties relating to an office move. The plaintiff has acknowledged that it suffered no prejudice as a result of the late renewal motion but opposes it.

Is the court likely to consider the renewed JMOL motion on the merits?

(A) No, because the deadline for filing a renewed JMOL motion cannot be extended.

(B) No, because the defendant failed to show good cause for its delay in filing the motion.

(C) Yes, because although the motion was late, the defendant explained the reason, and the plaintiff suffered no prejudice.

(D) Yes, because although the motion was late, the parties agreed to extend the time for posttrial motions.

Correct answer: A

Explanation

Answer A is correct. Federal Rule of Civil Procedure 6(b)(2) provides that a court “must not extend the time to act” under Rule 50(b), governing renewed motions for judgment as a matter of law.

Answer B is incorrect. Whether “good cause” was or was not shown is immaterial, as Rule 6(b)(2) prohibits any extensions of time for filing renewed motions for judgment as a matter of law.

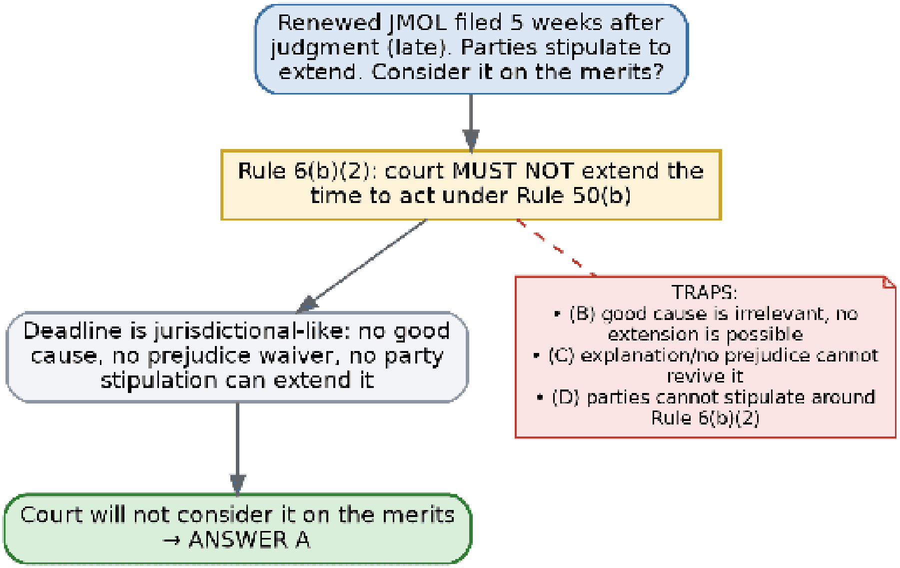
Answer C is incorrect. Although the factors mentioned might be relevant to finding good cause to extend time limits generally, they are irrelevant here because Rule 6(b)(2) prohibits any extensions of time for filing renewed motions for judgment as a matter of law.

Answer D is incorrect. Rule 6(b)(2) prohibits any extensions for renewed motions for judgment as a matter of law, and it provides no exception for the parties to agree to alter that prohibition.

Exam Tactics & Triggers

- Trigger: renewed JMOL filed LATE (past 28 days) → Rule 6(b)(2) says the court MUST NOT extend time under Rule 50(b); this is a hard, no-exceptions deadline.
- Lock in the Rule 6(b)(2) forbidden list: no extensions for Rule 50(b), 52(b), 59(b),(d),(e), and 60(b) deadlines, period.
- Distractor tell (B): 'no good cause' baits you, but good cause is IRRELEVANT because no extension is permitted at all, not merely unjustified.
- Distractor tells (C) and (D): no-prejudice, a good explanation, and even a PARTY STIPULATION cannot revive the deadline; the court has no power to extend it.

Answer Flowchart



Question 141 — Constitutional Law

A woman was charged with a felony. After charges were filed but before the woman's trial, the state passed a law requiring any convicted felon to make a payment to the victim of the crime. Under the law, the payment "shall be such amount as the court may find appropriate at the time of sentencing, taking into account the gravity of the offense, but shall not exceed $25,000." The law applies to all defendants whose trials or guilty pleas take place after the law's passage.

Is the law valid as applied to the woman?

(A) No, because the law cannot be applied retroactively to crimes committed before its passage.

(B) No, because the law fails to provide any standard for the court to use in passing sentence and thus violates procedural due process.

(C) Yes, because the law is rationally related to the state's legitimate interest in punishing crime.

(D) Yes, because the law is remedial rather than punitive.

Correct answer: A

Explanation

Answer A is correct. A law that increases the punishment for a crime after the crime was committed violates the ex post facto clause. The law here was passed after the woman committed the crime, so the law may not be applied to her.

Answer B is incorrect. Procedural due process requires that the government provide notice and an opportunity to be heard before depriving someone of a liberty interest or of an interest in property. The woman received that notice prior to trial, and the law provides an opportunity for a hearing. However, the law is an unconstitutional ex post facto law as applied to the woman.

Answer C is incorrect. Whether or not the law is rationally related to a legitimate government interest is not the proper standard. The ex post facto clause is violated by laws that increase the punishment for a crime after the crime was committed, even if the law furthers a legitimate interest.

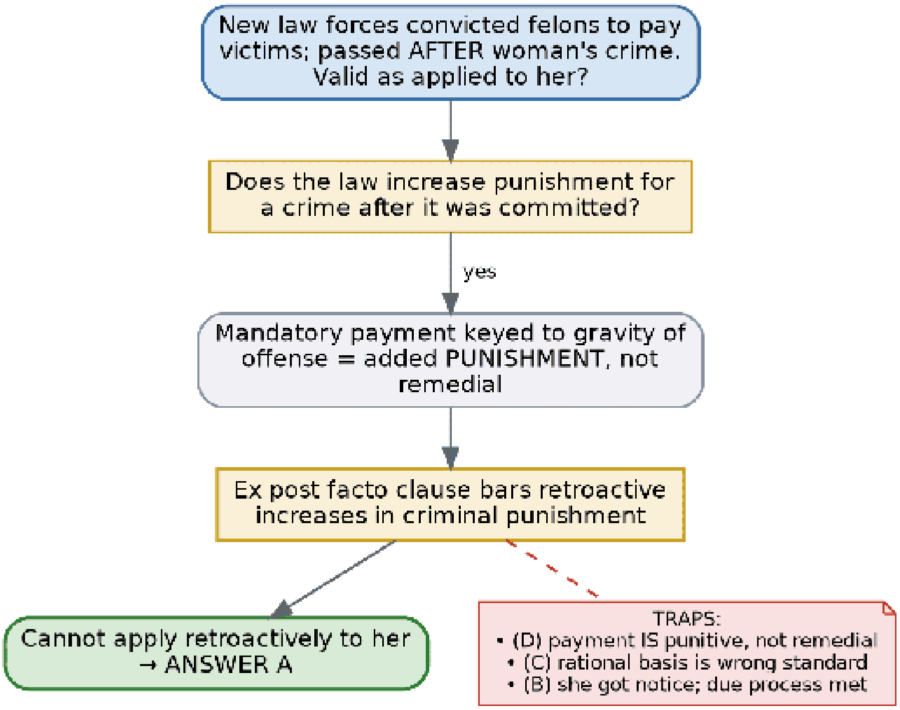
Answer D is incorrect. The law constitutes punishment because it increases the consequences for having been found guilty of committing a crime, and the law increases the punishment for the crime after the woman committed the crime, violating the ex post facto clause.

Exam Tactics & Triggers

- Trigger: a law passed AFTER the crime was committed that INCREASES the punishment → ex post facto clause, invalid as applied to that defendant.
- Rule chain: ex post facto bars retroactively increasing criminal punishment; the victim-payment is punishment, so it cannot reach a crime already committed.

- Watch the timeline: the law applied to trials/pleas after passage, but the CRIME predates the law, that is the ex post facto trigger, not the trial date.
- Distractor trap (D): 'remedial not punitive' fails because a mandatory payment tied to conviction and offense gravity is punishment; (C) rational basis is the wrong test.

Answer Flowchart



Question 142 — Contracts

On December 2, an employer called a job applicant who had interviewed and offered her a position paying $65,000 per year. The employer told the applicant that she could accept the offer by showing up for work on January 2 and that the term of employment would be one year from when she started.

The applicant showed up for and began work on January 2. Two weeks later, the employer discharged her without cause. The applicant has sued for breach of contract.

Would the statute of frauds be an effective defense for the employer in that action?

(A) No, because the applicant’s commencement of performance removed the statute of frauds as a defense.

(B) No, because the agreement could have been fully performed within a year from the time that it was made.

(C) Yes, because the agreement could not have been fully performed within a year from the time that the offer was communicated to the applicant.

(D) Yes, because the agreement was for $65,000.

Correct answer: B

Explanation

Answer B is correct. An oral agreement is within the statute of frauds and is unenforceable if by its terms it cannot be performed within a year from the making. Here, however, the agreement was made on January 2 and would be fully performed a year later.

Answer A is incorrect. Full performance of one party’s obligations under an oral agreement removes the statute of frauds as a defense, but here there was only partial performance by the applicant.

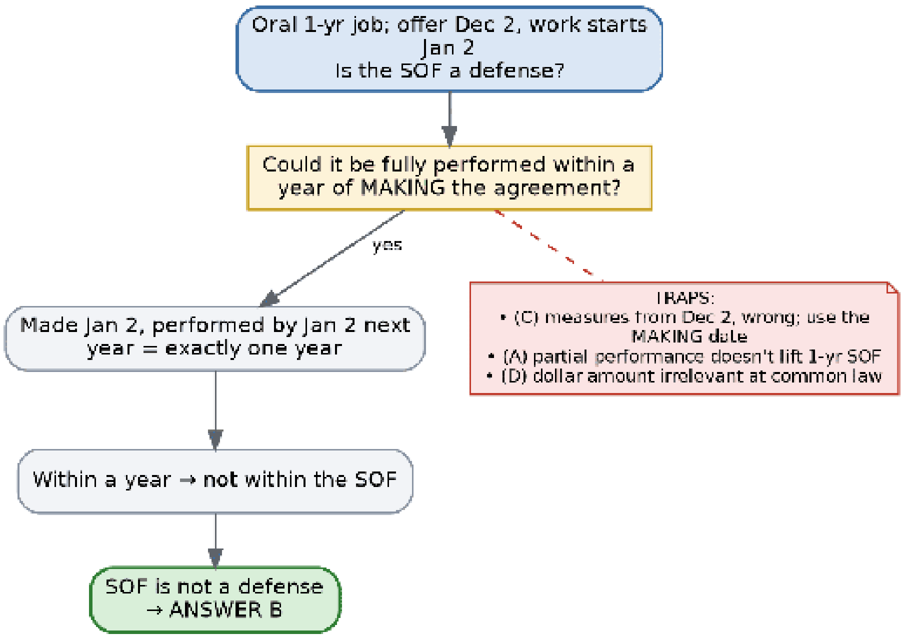
Answer C is incorrect. The agreement could have been performed within a year from its making on January 2.

Answer D is incorrect. The amount of money involved is irrelevant to the application of the common law statute of frauds.

Exam Tactics & Triggers

- Trigger: oral one-year employment where the clock runs from the START date, not the offer date → measure the year from MAKING of the agreement.
- Rule chain: SOF one-year provision bars only agreements that CANNOT be performed within a year of MAKING; made Jan 2, done Jan 2 next year = exactly a year, so it's outside the statute.
- Distractor trap (C): it dates the year from Dec 2 (offer communicated), but the agreement was MADE when performance began Jan 2; pin the making date.
- Distractor traps (A)/(D): partial performance does NOT remove the one-year SOF (only full performance does), and dollar amount is irrelevant at common law.

Answer Flowchart



Question 143 — Evidence

A woman bought a homeowner's insurance policy from an insurance company through one of its agents. One year later, a fire completely destroyed the woman's house and its contents, and she learned that the policy covered the cost of rebuilding the house but not the cost of replacing the contents.

The woman sued the insurance company for breach of contract, claiming that when the agent sold her the policy, he did not notify her, as was legally required, that she would have to purchase a supplemental policy to cover the house's contents. At trial, the woman testified that the agent had not provided the required notice.

The agent's supervisor plans to testify that the company issues thousands of policies through its agents each year and that it is the routine practice of those agents to discuss supplemental policy options with each customer. The woman's attorney has objected to this proffered testimony.

Should the court allow the supervisor's testimony?

(A) No, because evidence of routine practice is not admissible when an eyewitness denies that the practice was followed.

(B) No, because issuing insurance policies to individuals is not sufficiently automatic to constitute a routine practice.

(C) Yes, as character evidence that the agent acted in a thorough manner when dealing with customers.

(D) Yes, as evidence of the company's routine practice.

Correct answer: D

Explanation

Answer D is correct. The routine practice of the company's agents in discussing supplemental policy options with customers is admissible under FRE 406.

Answer A is incorrect. Under FRE 406, evidence of an organization's routine practice is admissible to prove that on a particular occasion the organization acted in accordance with that practice. The fact that the woman, an eyewitness, claims that the practice was not followed in her case does not affect the admissibility of this evidence but rather creates a factual issue for the jury.

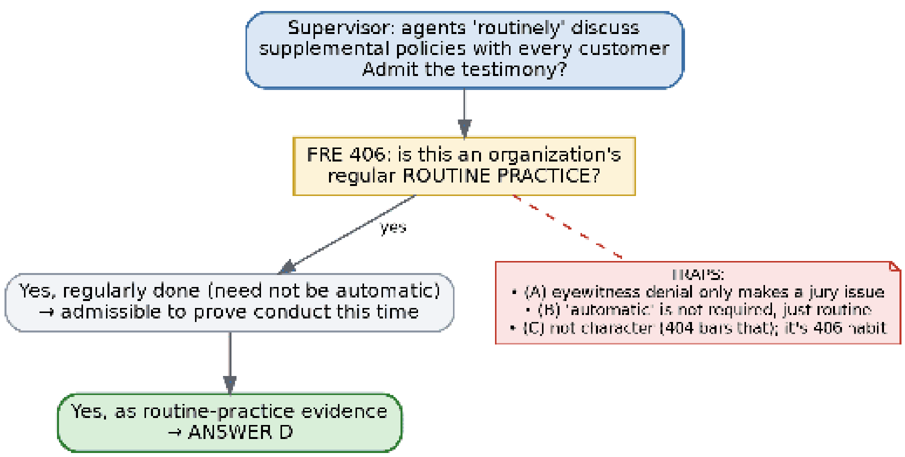
Answer B is incorrect. To constitute habit evidence, an organization's practice need not be "automatic" but only routine—something that is regularly done. The supervisor's testimony here is that the agents' regular practice is to discuss supplemental policy options with customers.

Answer C is incorrect. Character evidence is not admissible in civil cases to prove conduct. See FRE 404(a) and (b). This evidence is admissible only if it is habit evidence—evidence of an organization's routine practice—under FRE 406.

Exam Tactics & Triggers

- Trigger: 'thousands of times' + 'routine practice' of an organization → FRE 406 habit/routine-practice evidence, admissible to show conduct on this occasion.
- Rule chain: organizational routine practice need not be 'automatic', just regularly done, and it comes in even to prove the org acted that way with THIS customer.
- Distractor (A): an eyewitness denial does not bar 406 evidence, it just creates a jury question, watch for the false 'not admissible when contradicted' hook.
- Distractor (C) character: FRE 404(a) bars character-for-conduct in civil cases; this is habit/routine practice under 406, not character.

Answer Flowchart



Question 144 — Criminal Law & Procedure

A driver was stopped in traffic when he noticed a bicyclist riding quickly between the lanes of cars. To deter the bicyclist from continuing such dangerous behavior, the driver opened his car door as the bicyclist neared. The bicyclist, unable to stop, hit the door and fell, sustaining serious injuries.

In a jurisdiction that follows the common law definition of crimes, which is the most serious crime of which the driver can properly be convicted?

(A) Attempted murder.

(B) Attempted manslaughter.

(C) Battery.

(D) Assault.

Correct answer: C

Explanation

Answer C is correct. Although his method was unusual, the driver committed a battery. Acting with the intent to cause offensive or harmful contact, the driver caused an offensive or harmful contact.

Answer A is incorrect. The driver is not guilty of attempted murder because the facts do not suggest that he intended to kill the bicyclist.

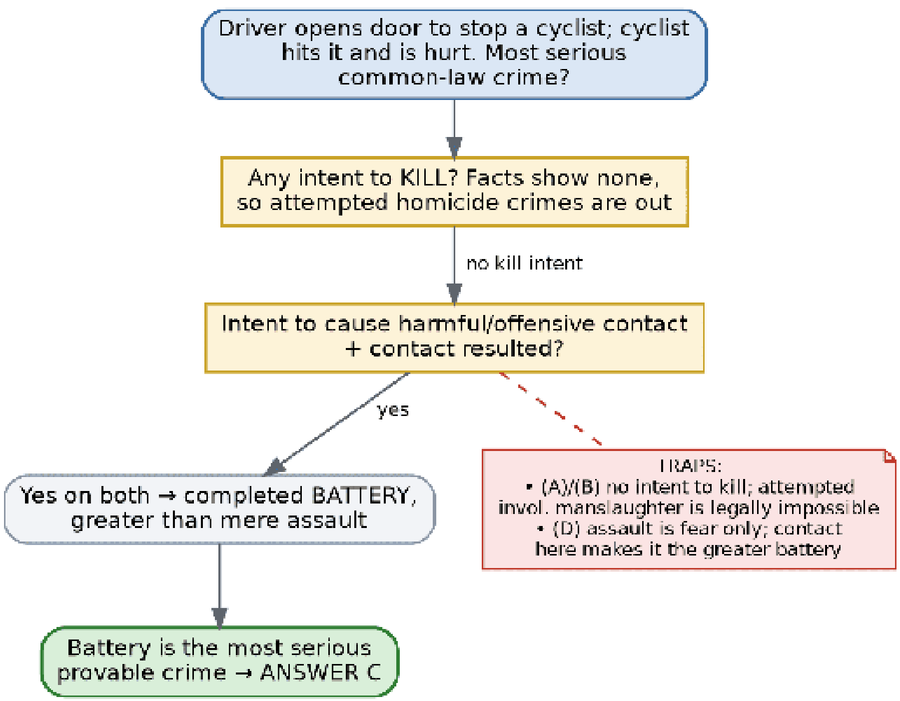
Answer B is incorrect. The driver is not guilty of attempted voluntary manslaughter because the facts do not suggest that he intended to kill the bicyclist. The driver cannot be guilty of attempted involuntary manslaughter because, at common law, that crime did not exist. (Attempted negligence is a legal impossibility.)

Answer D is incorrect because the question calls for the most serious crime of which the driver can be convicted. At common law, assault required only placing another person in fear of imminent harm. Here, the driver committed the greater offense of engaging in physical contact.

Exam Tactics & Triggers

- Trigger: intent to cause harmful/offensive CONTACT + contact actually happens → common law battery, no death intent needed.
- Most-serious-crime strategy: no evidence of intent to kill kills the 'attempted murder/manslaughter' options, so climb down to the completed harm crime.
- Distractor (B) attempted involuntary manslaughter: a legal impossibility, you cannot 'attempt' an unintended (negligence/recklessness) killing at common law.
- Distractor (D) assault: here contact was completed, so battery (the greater completed offense) beats mere assault (fear of imminent harm).

Answer Flowchart



Question 145 — Torts

A graduate student who was moving needed cardboard boxes, so she went to her usual grocery store to look for some. The store regularly gave repeat customers empty boxes to promote goodwill. Seeing no boxes outside, the student entered the store and asked a store employee for help. The employee pointed toward the rear of the store and said that all the empty boxes were in the storeroom.

The student went into the storeroom through a door with a sign that said: "Keep Out. Employees Only." While in the storeroom, she tripped on a fold in a floor mat and fell into a stack of wooden crates. The topmost crate fell on the student, causing a head injury.

The student has sued the store to recover for her injury.

Which statement below is the most appropriate characterization of the student and her conduct under traditional common law rules?

(A) The student assumed the risk, because she knew that the storeroom was not normally accessible to the public.

(B) The student was a licensee in the store, because she had no intention of making a purchase at the store during the box-hunting visit.

(C) The student was a trespasser in the storeroom, because she ignored the sign on the door barring entrance to the storeroom.

(D) The student was an invitee in the storeroom, because she had permission to enter the storeroom consistent with the store's policy of making its empty boxes available to repeat customers.

Correct answer: D

Explanation

Answer D is correct. The store's policy, combined with the employee's grant of permission, conferred on the student the status of invitee while she was in the storeroom seeking empty boxes.

Answer A is incorrect. The student was an invitee in the storeroom, because the store had a policy of giving empty boxes to customers and because the employee permitted her to enter the storeroom, and therefore the store owed her a duty of care.

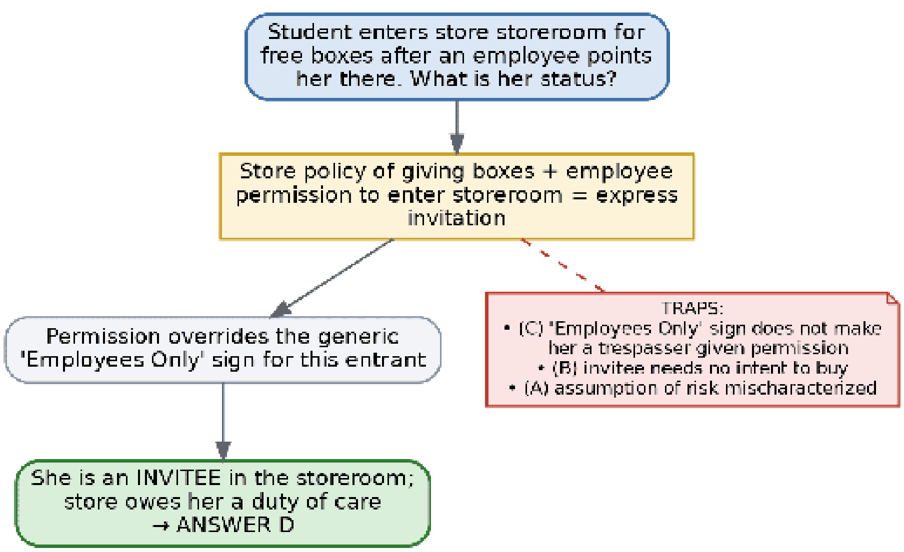
Answer B is incorrect. Store visitors are not required to intend to purchase anything to be categorized as invitees.

Answer C is incorrect. The student was an invitee in the storeroom, because the store had a policy of giving empty boxes to customers and because the employee permitted her to enter the storeroom.

Exam Tactics & Triggers

- Trigger: 'traditional common law' premises liability → classify the entrant as invitee, licensee, or trespasser, THAT status sets the duty.
- Rule chain: a store policy of giving customers boxes + an employee's directions into the storeroom = express permission, so she enters as an INVITEE, not a trespasser.
- Distractor trap (C): the 'Employees Only' sign tempts a trespasser answer, but permission from the employee overrides the generic sign for this entrant.
- Distractor trap (B): invitee status does not require intent to buy; a customer picking up free boxes is still a business invitee.

Answer Flowchart



Question 146 — Real Property

An owner acquired an apartment building and financed part of the purchase with a mortgage loan. The promissory note contained a clause that permitted the lender to accelerate the outstanding loan balance if the owner defaulted on the terms of the loan unless the owner cured the default within 10 days of a notice of default. The mortgage required the owner to make loan payments, maintain casualty insurance, and pay property taxes.

The owner made the loan payments when due but neglected to pay an insurance premium. When the lender learned that the owner was not maintaining the insurance, the lender notified the owner that the loan was in default and that it planned to accelerate the loan unless the lender received notification within 10 days that the premium had been paid. The owner failed to pay the premium within that time period, and the insurer notified both the owner and the lender that it was canceling the coverage.

In order to protect itself from a potential loss, the lender had the insurance policy reinstated by paying the delinquent premium. The owner then promptly tendered the amount of the delinquent insurance premium payment to the lender, but the lender refused to accept it.

The lender accelerated the loan, and after the owner failed to pay the accelerated amount, the lender initiated a foreclosure action. At the time of the acceleration, the owner was current on all loan payments.

There is no applicable statute.

Did the lender have the right to accelerate?

(A) No, because the owner promptly tendered the delinquent payment amount to the lender.

(B) No, because the owner's casualty insurance policy had been reinstated.

(C) Yes, because acceleration is required before a foreclosure action can be initiated.

(D) Yes, because the lapse in insurance coverage constituted a material default of the terms of the mortgage.

Correct answer: D

Explanation

Answer D is correct. Acceleration clauses are valid. While typically triggered by nonpayment of the mortgage debt, they can also be triggered by the mortgagor's failure to satisfy other conditions in the mortgage, such as timely payment of insurance premiums.

Answer A is incorrect. Once acceleration has properly occurred, the consequences cannot be avoided because the owner attempts to pay the delinquent insurance premium. Foreclosure can only be avoided by paying the mortgagee the entire accelerated amount.

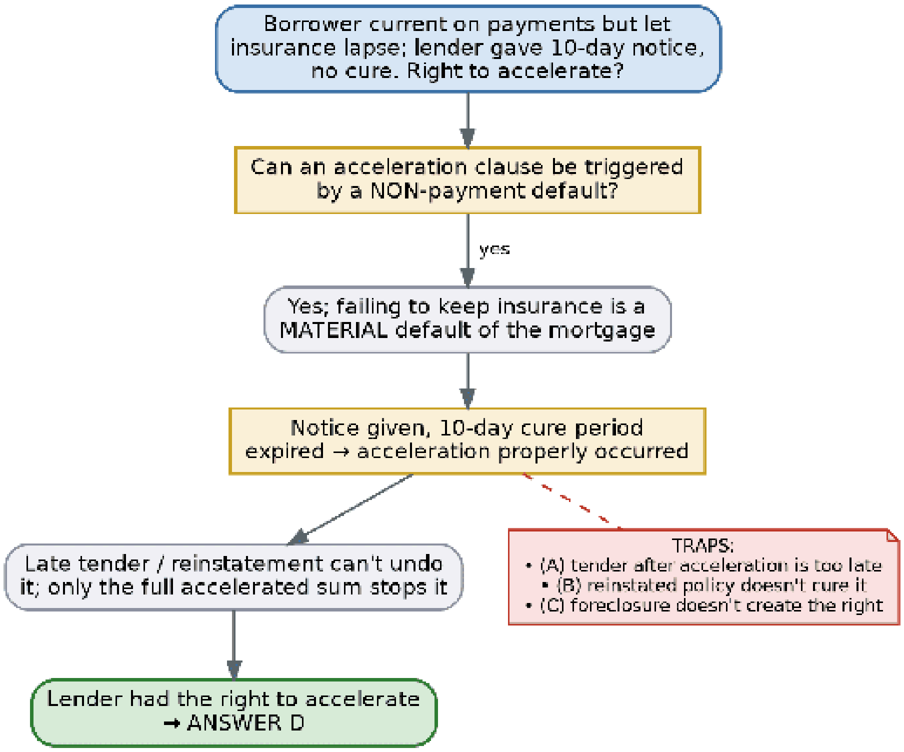
Answer B is incorrect for the same reasons given in the explanation for answer A.

Answer C is incorrect. The desire to bring a foreclosure action does not create a right to accelerate a mortgage. Rather, the right to accelerate depends upon whether a term of a mortgage has been breached. Such a term may include, as here, the failure to pay an insurance premium.

Exam Tactics & Triggers

- Trigger: mortgage lists NON-payment duties (insurance, taxes, no waste) and borrower breaches one → acceleration can fire even though loan payments are current.
- Rule chain: acceleration clauses are valid and are triggered by ANY material default, not just missed payments; a lapsed insurance premium is a material default.
- Timing tell: once acceleration has PROPERLY occurred, curing the small default is too late; only paying the full accelerated balance stops foreclosure.
- Distractor traps: (A)/(B) late tender or reinstated policy come after valid acceleration, too late; (C) reverses cause and effect, foreclosure doesn't create the right to accelerate.

Answer Flowchart



Question 147 — Civil Procedure

A company incorporated and headquartered in State A brought a federal diversity action in State A against an attorney domiciled in State B. The complaint asserted that the attorney had sent defamatory emails to the company's customers in many different states, including State A. The attorney had few contacts with State A, and none of the contacts in that state were related to the alleged defamatory emails.

After being served in State B with the summons and complaint, the attorney determined that he was not subject to personal jurisdiction in State A and ignored the action. On the company's motion, the clerk entered a default in the action. After a hearing on damages, the court entered a default judgment for the company.

The attorney has moved for relief from the default judgment.

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

(A) The attorney has a meritorious defense to the action, which he should be allowed to assert.

(B) The attorney's failure to respond to the service of process was reasonable under the circumstances.

(C) The default judgment is void, because the court did not have personal jurisdiction over the attorney.

(D) The default judgment was entered as a result of the attorney's mistaken belief that he need not respond.

Correct answer: C

Explanation

Answer C is correct. Federal Rule of Civil Procedure 60(b)(4) specifically authorizes relief if the "judgment is void." Because the court had no personal jurisdiction over the attorney in the action, the judgment is void.

Answer A is incorrect. Relief from a default judgment is available only for the reasons listed under Rule 60(b), and the attorney first must show that he falls within one of those provisions. If he does not, then it is immaterial that he has a meritorious defense.

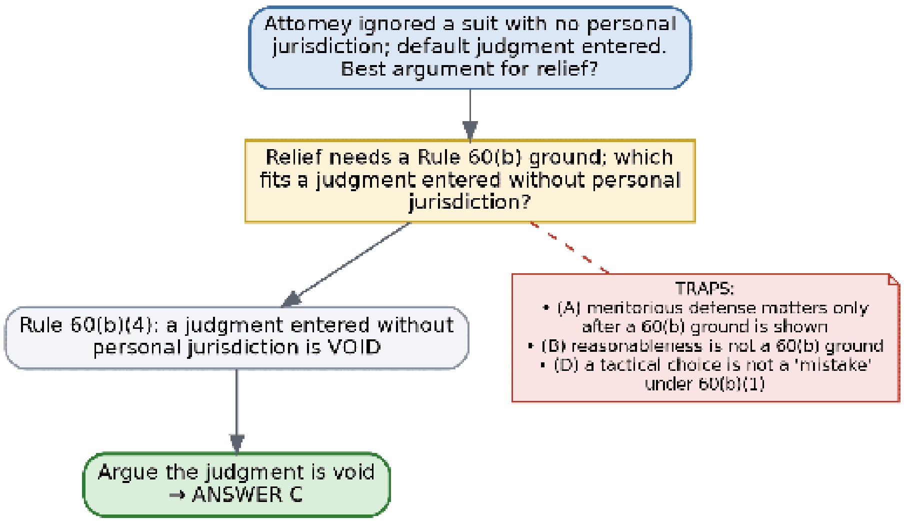
Answer B is incorrect. Rule 60(b) lists six possible grounds for relief from a judgment, and none of them looks to whether the movant's conduct was reasonable in the underlying action.

Answer D is incorrect. Rule 60(b)(1) allows for relief from a judgment if it was entered as a result of a "mistake." However, it does not provide relief in situations where a party makes a choice that turns out to be a tactical error. Because the attorney correctly determined that the court lacked jurisdiction, the judgment is void. But if he were wrong, he would have to accept the consequences of his choice.

Exam Tactics & Triggers

- Trigger: default judgment entered where the court LACKED personal jurisdiction → Rule 60(b)(4) 'judgment is void' is the strongest ground, and a void judgment must be set aside.
- Lock in the Rule 60(b) gatekeeping order: the movant must FIRST fit within a listed ground; only then do meritorious-defense and reasonableness factors matter.
- Distractor tell (A): a 'meritorious defense' is immaterial unless the movant first shows a Rule 60(b) ground, so it is never the BEST standalone argument.
- Distractor tell (D): calling a deliberate no-response a 'mistake' under 60(b)(1) fails; a tactical choice is not a mistake, and here the void-judgment ground is stronger anyway.

Answer Flowchart



Question 148 — Contracts

The owner of a house leased it to a tenant for a one-year term. A provision in the lease stated that the owner had the right to place “For Rent” signs on the premises during the last 90 days of the lease term if the lease was not renewed. The lease also required the tenant to permit prospective lessees to enter and examine the premises during the 90-day period but did not address the owner’s right to enter the premises for purposes of showing the house to prospective lessees.

The tenant decided not to renew the lease, and at the beginning of the 90-day period, the owner told the tenant that she was going to show the house to a prospective lessee. The tenant refused to allow the owner to enter the house but said that the prospective lessee could enter.

Which of the following best supports the owner’s right to enter the house?

(A) The principle of reasonable expectations.

(B) The duty of good faith.

(C) The duty to use best efforts.

(D) The objective theory of contracts.

Correct answer: B

Explanation

Answer B is correct. The lease does not explicitly say that the owner may enter the house to show it to prospective lessees, but such a right may be fairly implied in order to carry out the intention of the parties.

Answer A is incorrect. The principle of reasonable expectations posits that parties should not be bound by terms that they would not expect to find in a contract unless those terms were called to their attention. That doctrine is not relevant here.

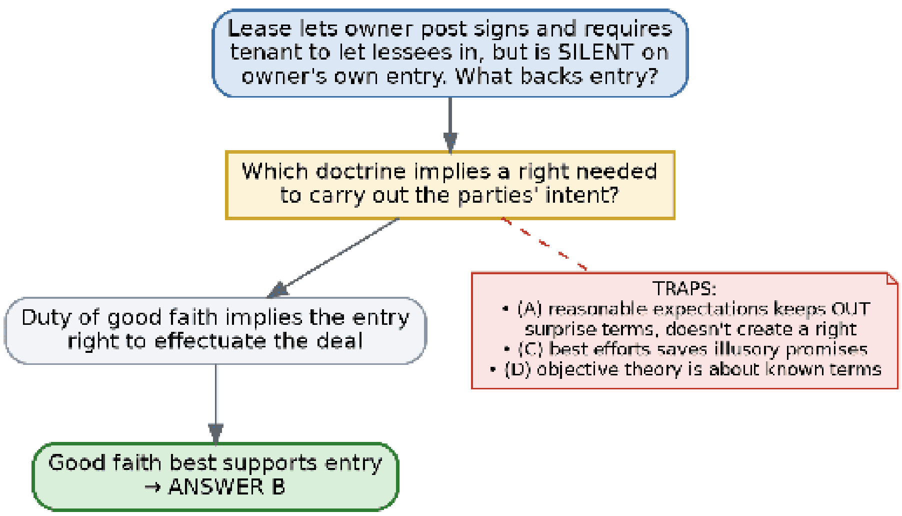
Answer C is incorrect. Best efforts is a duty read into a contract to prevent it from being illusory when the scope of a party's performance is omitted or unclear. The duty of best efforts, which requires all parties to use their best efforts to carry out the intent of the contract, is not relevant here.

Answer D is incorrect. The objective theory means that a party to a contract is bound by a contract term even if that party is not subjectively aware of the term; it is not relevant here.

Exam Tactics & Triggers

- Trigger: a contract is SILENT on a right (owner entering to show) but granting it is needed to carry out the parties' evident intent → implied duty of GOOD FAITH.
- Rule chain: good faith fills implied rights necessary to effectuate intent; the tenant's must-allow-lessees clause implies the owner may enter to make it work.
- Distractor trap (A) reasonable expectations: that doctrine keeps out surprise terms, it does not manufacture an entry right; know what each doctrine DOES.
- Distractor traps (C)/(D): best efforts saves illusory promises and objective theory binds you to known-or-not terms, neither supports an implied entry right here.

Answer Flowchart



Question 149 — Constitutional Law

The number of large billboards along a city's major roadways has increased considerably in recent years. Many political groups have contributed to that increase with their growing use of billboards to display messages that further a variety of political candidates and public causes. The city council has received many complaints from residents claiming that the billboards are ugly and detract from picturesque sights along the roadways.

In response to these complaints, the city council has enacted an ordinance that substantially limits the number and the size of billboards that may be erected along designated scenic roadways.

A company that owns many of the billboards affected by this ordinance has filed suit, claiming that the ordinance violates the company's freedom of speech.

Should the court uphold the ordinance?

(A) No, because the ordinance burdens political speech and is not necessary to further a compelling government interest.

(B) No, because the ordinance restricts speech in a traditional public forum.

(C) Yes, because the ordinance is narrowly tailored to further the substantial government interest in the city's appearance.

(D) Yes, because the ordinance reasonably regulates the use of public roadways.

Correct answer: C

Explanation

Answer C is correct. The ordinance is a content-neutral restriction on speech because it regulates without regard to the content of the message expressed on the billboards. Content-neutral speech restrictions receive intermediate judicial scrutiny, the elements of which are summarized in Answer C. The Supreme Court has held that the aesthetic interests of a community are sufficiently substantial to justify content-neutral restrictions on public displays of signs. The ordinance here is narrowly tailored because it applies only to scenic roadways and it does not completely ban signs there.

Answer A is incorrect. Even though the ordinance burdens political speech, it is a content-neutral restriction because it regulates without regard to the message on the billboards. Content-neutral speech restrictions receive intermediate judicial scrutiny, which requires that the restriction be narrowly tailored to serve a substantial government interest.

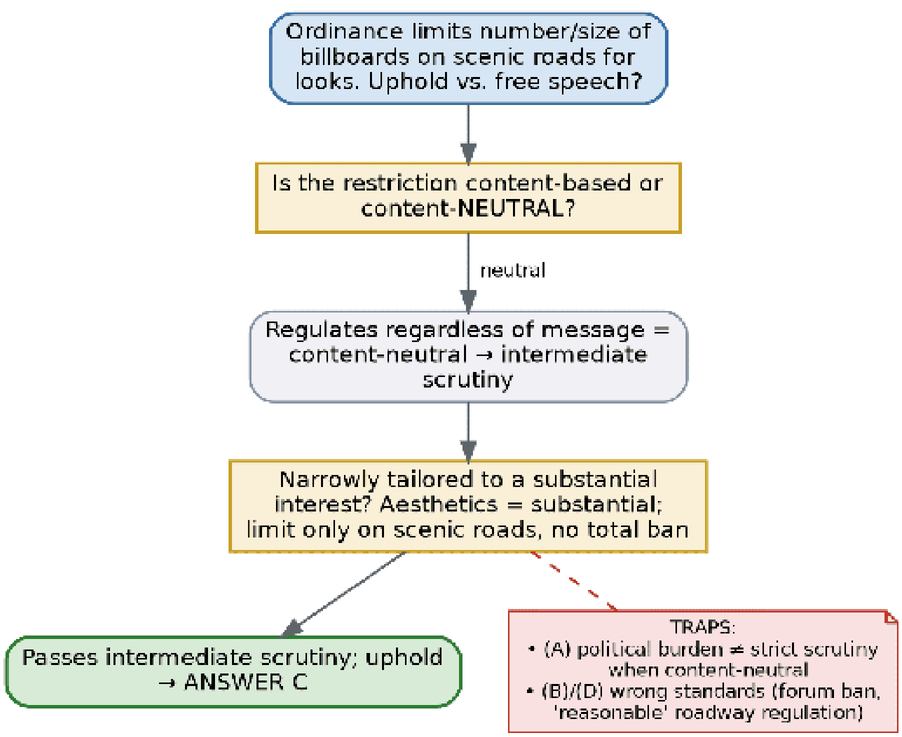
Answer B is incorrect. Although the ordinance restricts speech in a traditional public forum, it is not a total ban of speech and it is content-neutral. The ordinance therefore does not violate the First Amendment if it satisfies intermediate scrutiny. The ordinance satisfies intermediate scrutiny because it is narrowly tailored to serve a substantial government interest.

Answer D is incorrect. Answer D states an incorrect standard of judicial review for the ordinance. The ordinance is a content-neutral restriction on expression, and therefore it must satisfy intermediate judicial scrutiny. Intermediate scrutiny requires that the restriction be narrowly tailored to serve a substantial government interest.

Exam Tactics & Triggers

- Trigger: a sign/billboard limit imposed for AESTHETICS that ignores the message's content → content-neutral time/place/manner, intermediate scrutiny.
- Rule chain: content-neutral restriction → intermediate scrutiny = narrowly tailored to a SUBSTANTIAL government interest; aesthetics of the community counts as substantial.
- Distractor trap (A): the fact that political speech is burdened does NOT trigger strict scrutiny, content-neutrality controls, so 'compelling interest' is too high a bar.
- Distractor trap (B)/(D): a partial limit (not a total ban) that leaves signs available survives; wrong-standard answers (rational-basis or public-roadway) are traps.

Answer Flowchart



Question 150 — Criminal Law & Procedure

A defendant was charged with two counts of murder. One trial witness was a child who had seen one of the killings.

Before calling the child to testify, the prosecution moved to remove the defendant from the courtroom, arguing that the child would be intimidated by seeing the defendant. The court denied the motion.

When the child entered the courtroom to testify, the defendant became unruly, moving as though he was about to lunge from his chair toward the child. The judge warned the defendant to stop the behavior. After a second warning, the judge told the defendant that he would be removed from the courtroom if he continued to behave inappropriately. The defendant then shouted a threat at the child. At that point, the court ordered the defendant removed from the courtroom.

When the child finished testifying, subject to full cross-examination by defense counsel, the defendant was allowed back into the courtroom. The trial concluded, and the jury convicted the defendant. The defendant appealed the conviction, challenging only his exclusion from the courtroom.

Should the court of appeals reverse the conviction?

(A) No, because a defendant may be excluded from the courtroom to protect a minor witness from further trauma.

(B) No, because the right to be present can be forfeited by disruptive behavior.

(C) Yes, because the error requires automatic reversal.

(D) Yes, unless the error in excluding the defendant was harmless.

Correct answer: B

Explanation

Answer B is correct. The Sixth Amendment right to confront witnesses, although presumptive and powerful, is not absolute. The Supreme Court in Illinois v. Allen, 397 U.S. 337 (1970), held that a defendant can forfeit that right by behaving in an unruly and disruptive manner, and by refusing to heed a warning to abide by the court rules. In such a case, held the Court, defense counsel can adequately safeguard the defendant's rights. Here, the defendant's disruptive and threatening behavior compromised both the order in the courtroom and the witness's ability to testify, and the defendant's refusal to heed the court's warning justified the extreme step of temporarily removing him from the courtroom.

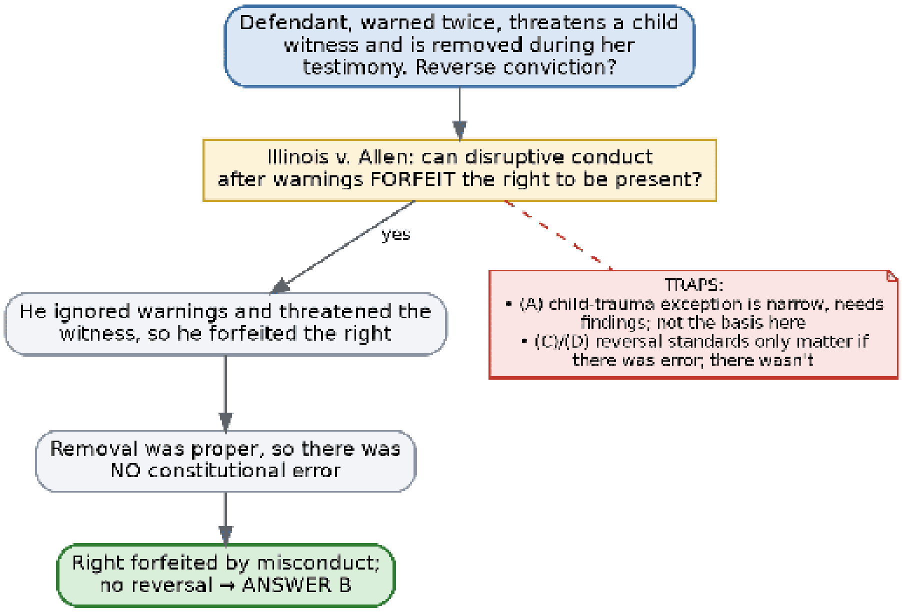
Answer A is incorrect. As a rule, the possibility that testifying may be traumatic or uncomfortable for a witness does not overcome the defendant's constitutional rights both to a public trial and to confront witnesses. Although the Court has recognized limited exceptions in cases involving children—see Coy v. Iowa, 487 U.S. 1012 (1988) and Maryland v. Craig, 497 U.S. 836 (1990)— those exceptions are narrow, and they require both the presentation of evidence and specific findings by the trial court, which did not occur here.

Answers C and D are incorrect because, as shown in the explanation for answer B, there was no error.

Exam Tactics & Triggers

- Trigger: defendant is disruptive/threatening in court and ignores warnings, then is removed → he FORFEITED his confrontation/presence right (Illinois v. Allen).
- Read the facts for the removal's real basis: it was his own misconduct after warnings, not the child-witness-protection theory the prosecutor first pushed.
- Distractor (A) protect-the-child: child-trauma exceptions (Coy/Craig) are narrow and need specific findings, absent here, so (A) is the wrong rationale.
- Distractors (C)/(D) reversal standards: automatic-reversal vs harmless-error only matter if there WAS error; since removal was proper, no error to weigh.

Answer Flowchart



Question 151 — Evidence

In a probation revocation proceeding, the government has called the defendant's probation officer to testify. The probation officer will testify that a confidential informant told her that the defendant had violated his probation by associating with known criminals. The defendant objects to the proposed testimony.

Is the probation officer's testimony admissible in the probation revocation proceeding?

(A) No, because the testimony relates hearsay not within any exception.

(B) No, because the confidential informant's statement to the probation officer constitutes an improper lay opinion.

(C) Yes, because the Federal Rules of Evidence do not apply to probation revocation proceedings.

(D) Yes, because the confidential informant's statement is not offered for its truth.

Correct answer: C

Explanation

Answer C is correct. Because the Federal Rules of Evidence do not apply to probation revocation proceedings under FRE 1101(d), the government may present evidence that would be inadmissible under the rules.

Answer A is incorrect. Because the Federal Rules of Evidence do not apply to probation revocation proceedings under FRE 1101(d), whether evidence would be hearsay under the rules is not relevant to the admissibility of that evidence.

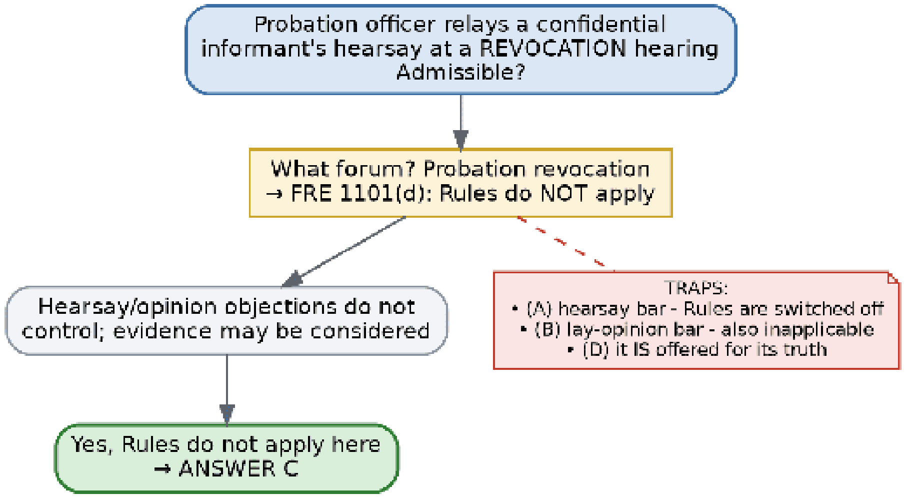
Answer B is incorrect. Because the Federal Rules of Evidence do not apply to probation revocation proceedings under FRE 1101(d), the rule governing lay opinion testimony is not applicable.

Answer D is incorrect. The Federal Rules of Evidence do not apply to probation revocation proceedings under FRE 1101(d), and even if they did, the confidential informant's statement is in fact being offered for its truth—to show the basis for revoking probation.

Exam Tactics & Triggers

- Trigger: 'probation revocation proceeding' → FRE 1101(d) says the Rules of Evidence do NOT apply, so hearsay may come in.
- Reflex: like grand jury and sentencing, a probation-revocation forum turns off the FRE, so skip hearsay/opinion analysis and name the forum rule.
- Distractor (A): 'hearsay not within any exception' is the trap for students who forget the rules are switched off in this forum.
- Distractor (D): the informant's statement IS offered for its truth (that the defendant associated with criminals), so the 'not for truth' dodge is factually false.

Answer Flowchart



Question 152 — Torts

A school bus driver reported to a middle school principal that a student had harassed other children on the bus. The principal informed the student's parents of the bus driver's report and told them that, because of the student's behavior, the student could not ride the bus for the next week and would have to be driven to school by a parent.

The following Monday morning, after the bus driver had let the children off the bus in front of the school, but before she could close the door and drive away, the student's father pulled his car directly in front of her bus, blocking the driver's path. Because there was another bus right behind hers, the driver was unable to move her bus.

The father got out of his car and strode toward the open door of the bus, screaming at the driver: "You messed with the wrong family! I am going to get you!" Feeling threatened, the bus driver quickly closed the door. The father pounded on the door with enough force to dent it, screaming obscenities at the driver, until a school security guard intervened.

If the driver were to sue the father, which cause of action would give her the best chance of recovery?

(A) Assault.

(B) Battery.

(C) Intentional infliction of emotional distress.

(D) Trespass to chattels.

Correct answer: A

Explanation

Answer A is correct. A reasonable jury could conclude that the father intentionally caused the driver to apprehend imminent harmful physical contact, as is required for assault liability.

Answer B is incorrect. There was no battery because the father never touched the driver. Even under the "extended personality" doctrine—which, for example, allows a battery plaintiff to establish the necessary contact element if the defendant touches an article of clothing the plaintiff is wearing— making contact with the bus is almost certain not to count as contacting the driver's person.

Answer C is incorrect. Establishing the elements of an intentional infliction of emotional distress claim requires showing both that the defendant intended to cause severe distress and that the defendant's conduct was extreme and outrageous. These elements will be harder for the driver to establish than will the elements of an assault claim.

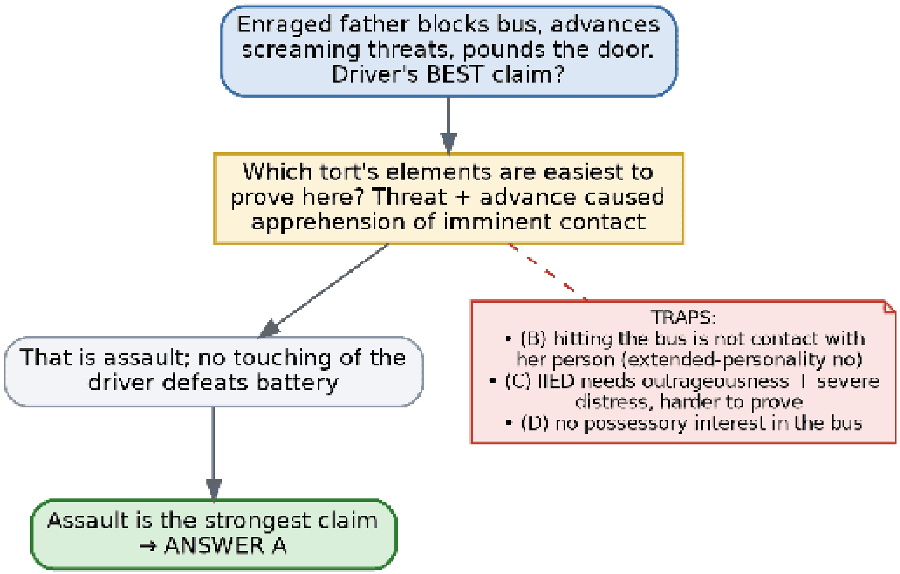
Answer D is incorrect. The driver is not likely to be considered to have a possessory interest in the damaged bus, and therefore trespass to chattels would not be a viable claim.

Exam Tactics & Triggers

- Strategic tell: 'which cause of action gives the BEST chance of recovery' → pick the tort whose elements are easiest to prove on these facts, not the most dramatic one.

- Trigger: threat + apparent present ability + victim's apprehension of imminent contact ('I am going to get you' while advancing) → ASSAULT is the cleanest fit.
- Distractor trap (B) battery: no contact with the driver; pounding the bus is not contact with her person even under the extended-personality doctrine.
- Distractor trap (C) IIED: harder to prove (extreme/outrageous conduct + severe distress) than assault, so it loses the 'best chance' comparison.

Answer Flowchart



Question 153 — Real Property

Fifteen years ago, a man who owned vacant land granted an easement over that land, by deed of gift, to his neighbor for use as a shortcut to her cabin. The deed was silent concerning the easement's location; however, the neighbor used a 15-foot strip along the west side of the man's land.

Last year, the neighbor's cabin was destroyed by fire. The neighbor rebuilt the cabin in a new location, as required by the local building code, and now wants to access the cabin from the east side of the man's land. The neighbor has told the man that she plans to relocate the easement on the east side of his land at her expense. The man has told the neighbor that the easement cannot be relocated. The man's land remains vacant.

Does the man have the right to stop the neighbor from relocating the easement?

(A) No, because the location of the easement was not fixed in the original grant.

(B) No, because the neighbor would not have asked to relocate the easement if her cabin had not been destroyed by fire.

(C) Yes, because the grant of the easement was by deed of gift and without consideration.

(D) Yes, because the neighbor's use of the easement on the west fixed the location of the easement.

Correct answer: D

Explanation

Answer D is correct. The man conveyed an express easement over his land to his neighbor by a deed of gift, which satisfied the statute of frauds. Although the location of the easement was not in writing, the location was set by the neighbor's 14-year use of a 15-foot strip on the west side of the man's land.

Answer A is incorrect. The deed granting the easement satisfied the statute of frauds. Although the location of the easement was not fixed in the deed, the location was established by the neighbor's 14-year use of the 15-foot strip along the west side of the man's land.

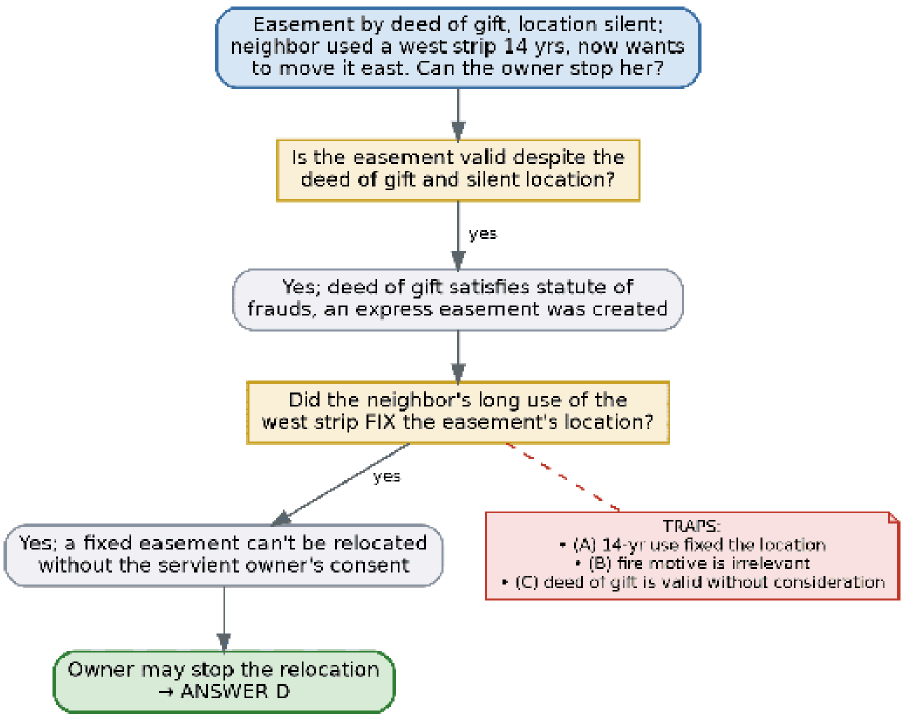
Answer B is incorrect. It is irrelevant that the neighbor only asked to relocate the easement because her cabin was destroyed by fire. The location of the easement was set by the neighbor's 14-year use of the easement on the west side of the man’s land.

Answer C is incorrect. An express easement may be made by a deed of gift.

Exam Tactics & Triggers

- Trigger: express easement whose LOCATION is not stated in the deed, then long use of one specific strip → the location becomes FIXED by that use.
- Rule chain: deed of gift satisfies the statute of frauds for an easement; silence on location is cured, and once fixed by use it can't be unilaterally moved.
- Key tell: the dominant owner cannot RELOCATE a fixed easement without the servient owner's consent, even at her own expense and even after a fire.
- Distractor traps: (A) argues the reverse, unfixed location, but 14 years of use fixed it; (B) motive (fire) is irrelevant; (C) 'no consideration' is irrelevant since a deed of gift is valid.

Answer Flowchart



Question 154 — Civil Procedure

Three employees sued their employer in federal court for failing to pay overtime wages, in violation of both federal and state law. The employer moved for summary judgment on the federal-law claims but not on the state-law claims, which closely paralleled the federal-law claims. The court granted the employer’s motion.

The employees have moved in the district court for an order certifying an immediate appeal of the grant of summary judgment on the federal-law claims because there is no just reason for delay.

Is the court likely to grant the motion?

(A) No, because the employees should have filed their certification motion in the court of appeals.

(B) No, because the federal-law claims are not separate and distinct from the state-law claims.

(C) Yes, because denying an immediate appeal may prejudice the employees by delaying their recovery.

(D) Yes, because the employees are entitled to immediate review of the grant of summary judgment on the federal-law claims.

Correct answer: B

Explanation

Answer B is correct. If an action includes claims based on federal law and state law, and if those claims involve overlapping facts and evidence, rather than being separate and distinct, typically the court will not enter a final judgment under Federal Rule of Civil Procedure 54(b) on the claim that has been resolved. This practice is to avoid duplication of effort in the appellate and trial courts.

Answer A is incorrect. Under Rule 54(b), it is the district court, not the court of appeals, that is authorized to direct entry of final judgment as to fewer than all claims.

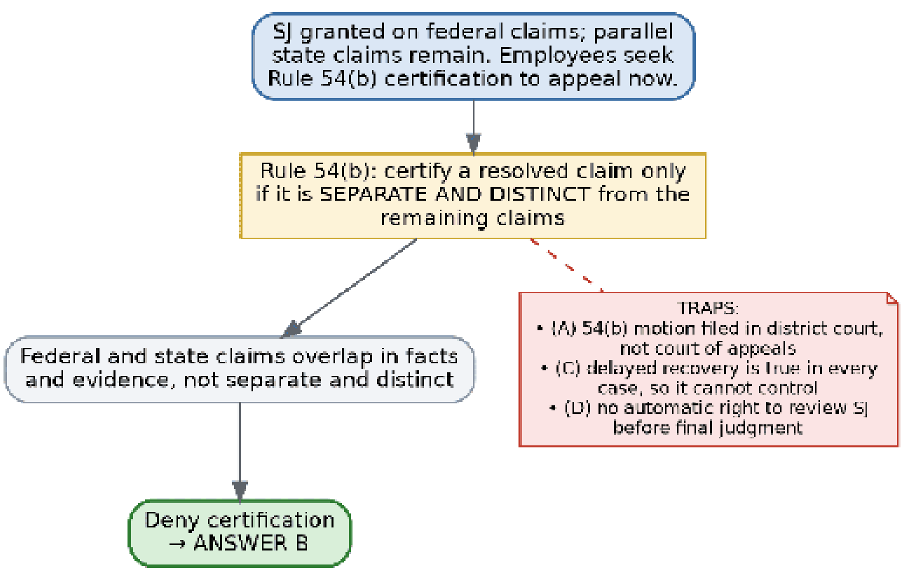
Answer C is incorrect. Waiting until a final judgment on the entire action is entered will always delay plaintiffs' recovery. If that factor controlled, every claim determined in a multiple-claim action before a final judgment was reached in the entire action would be immediately appealable. That would be inconsistent with the final judgment rule and the limited role envisioned for Rule 54(b).

Answer D is incorrect. There is no final judgment in the case, and as discussed in the explanation for answer B, a court will not enter a Rule 54(b) final judgment when there is overlap between resolved and unresolved claims, including when the resolution of some claims was by summary judgment.

Exam Tactics & Triggers

- Trigger: request to certify an immediate appeal of ONE resolved claim while OVERLAPPING claims remain → Rule 54(b) certification is denied when claims are not separate and distinct.
- Lock in the Rule 54(b) test: final judgment on fewer than all claims requires the resolved claim be SEPARATE AND DISTINCT plus 'no just reason for delay'; overlapping fed/state claims fail the first prong.
- Distractor tell (A): the Rule 54(b) motion goes to the DISTRICT court, not the court of appeals, a classic which-court swap.
- Distractor tells (C) and (D): delayed recovery is true in every case so it cannot control, and there is no automatic entitlement to review a summary-judgment ruling before final judgment.

Answer Flowchart



Question 155 — Criminal Law & Procedure

Late one evening, a woman sitting in her living room with the lights off saw a man using a flashlight to look into her car, which was parked on the street in front of her home. The woman had left an expensive laptop computer on the front seat of the car and knew that there had been a series of car thefts in the area. After seeing the man break her car window, the woman retrieved a shotgun, fired it, and hit the man. She then called the police. When the police officers arrived, they arrested both the man and the woman.

The woman is charged with aggravated assault. At trial, her attorney has asked the court to instruct the jury that she was permitted to use force in defending her property. The jurisdiction follows common law principles for defenses.

Should the court give the jury the requested instruction?

(A) No, because the woman had a duty to retreat before using deadly force.

(B) No, because the woman was not entitled to use deadly force in defense of property.

(C) Yes, because the woman did not use deadly force but simply injured the man.

(D) Yes, because the woman was entitled to use deadly force to defend her home.

Correct answer: B

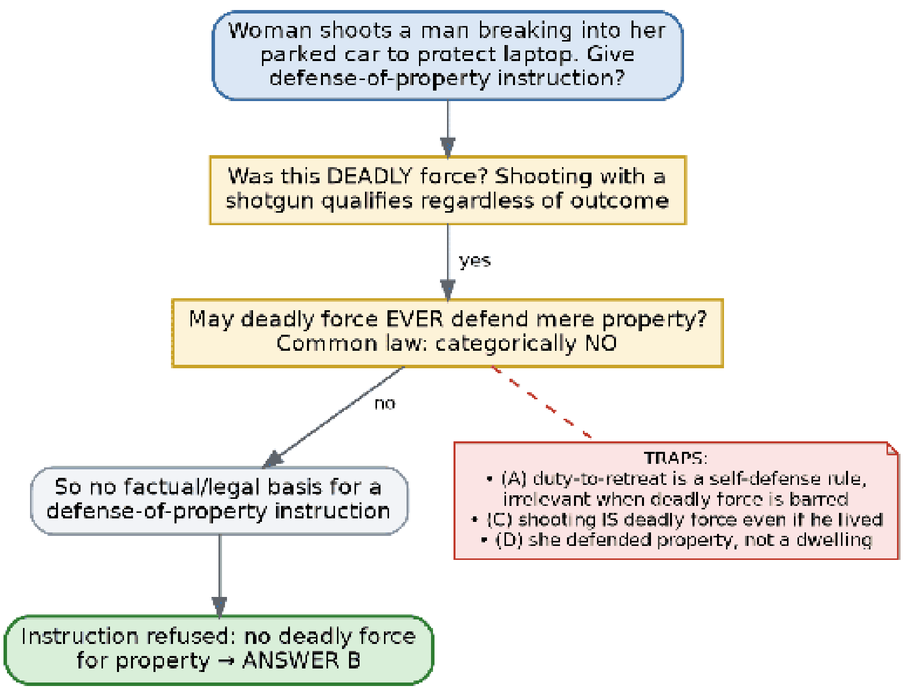
Explanation

Answer B is correct because the common law rule that deadly force cannot be used in defense of property remains the rule in virtually every state today. Answer A is incorrect. The “duty to retreat” rule, which has been removed in most states, limits one’s ability to use deadly force in self-defense. The rule does not apply in defense-of-property cases because in that context deadly force is categorically disallowed. Answer C is incorrect because the act described—intentionally shooting a man with a shotgun— clearly qualifies as “deadly force.” Although states define the term in various ways, “deadly force” is generally regarded as the kind of force that is likely to cause serious bodily injury or death whether or not the serious bodily injury or death actually occurs. Answer D is incorrect because the woman used deadly force, not in defense of her dwelling or real property, but in defense of her personal property—namely, her car and her laptop.

Exam Tactics & Triggers

- Trigger: someone uses DEADLY force (shotgun) purely to protect PROPERTY (car/laptop) → categorically NOT allowed, so no defense-of-property instruction.
- Lock the rule: deadly force is off the table in defense of mere personal property, full stop in virtually every state.
- Distractor (A) duty to retreat: a self-defense concept; it never applies where deadly force is already categorically barred, so it's a mismatched rule.
- Distractor (C): shooting someone is deadly force whether or not death results; 'only injured him' does not downgrade it. (D) baits with 'home' but she defended property, not her dwelling.

Answer Flowchart



Question 156 — Constitutional Law

Congress recently enacted a statute that provides the US Supreme Court with original jurisdiction over any cause of action against a military officer for official misconduct. The stated intent of the statute is to ensure the prompt disposition of such actions by eliminating the need for appeals.

Is the statute constitutional?

(A) No, because Article II authorizes the President as commander in chief of the armed forces to sanction military misconduct.

(B) No, because Article III fixes the Supreme Court's original jurisdiction.

(C) Yes, because Article I vests in Congress the power to establish military tribunals.

(D) Yes, because Congress has the authority under Article III to define the Supreme Court's original jurisdiction.

Correct answer: B

Explanation

Answer B is correct. Marbury v. Madison, 5 U.S. 137 (1803), held that Congress lacks the constitutional power to add to the Supreme Court's original jurisdiction.

Answer A is incorrect. Article I of the Constitution, not Article II, gives Congress, not the President, the power to "make Rules for the Government and Regulation of the land and naval Forces."

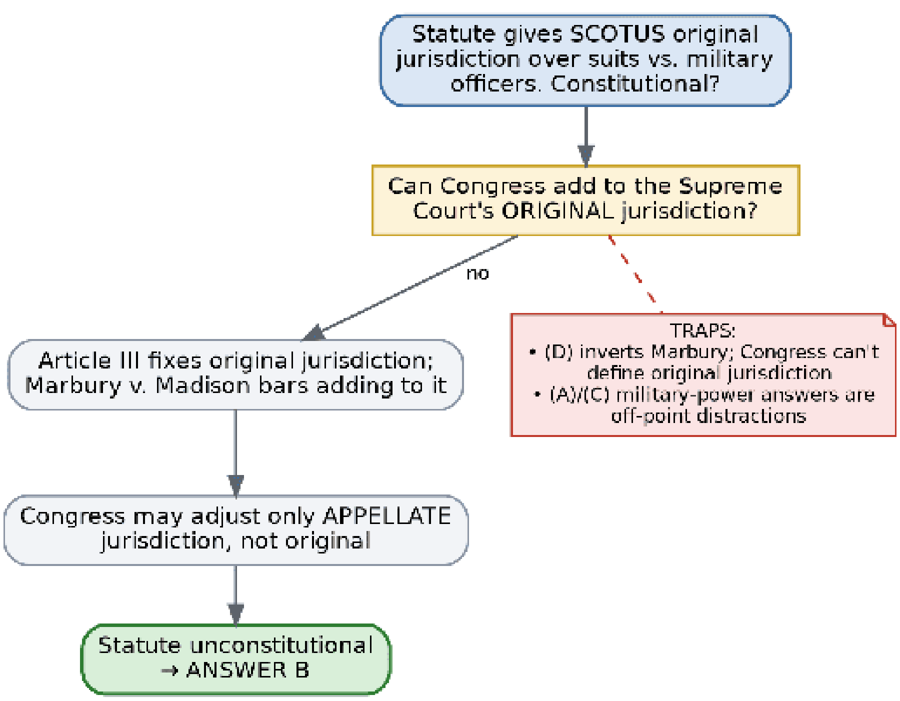
Answer C is incorrect. Congress's Article I power to create military tribunals does not expand its power over the Supreme Court's original jurisdiction, which is set by Article III.

Answer D is incorrect for the same reason given in the explanation for answer B.

Exam Tactics & Triggers

- Trigger: Congress tries to ADD to the Supreme Court's ORIGINAL jurisdiction → unconstitutional; Article III fixes it (Marbury v. Madison).
- Rule chain: original jurisdiction is set by Article III and cannot be enlarged by statute; Congress may only regulate APPELLATE jurisdiction.
- Distractor trap (D): it inverts Marbury, Congress cannot 'define' original jurisdiction, so D is the classic bait for students who confuse original with appellate.
- Distractor traps (A)/(C): military-power answers (commander in chief, military tribunals) are off-point distractions, the defect is the jurisdiction grant, not military authority.

Answer Flowchart



Question 157 — Torts

A blasting company was conducting blasting operations in connection with a highway-widening project. Prior to setting off a charge, the blasting company supervisor posted a large warning sign and stationed a flagman to stop automobiles along the highway. Although a motorist saw and understood both the sign and the flagman's instruction to stop, the motorist nonetheless continued past the flagman and the sign and was traveling along the highway at the moment of the blast. A flying rock from the blast hit and severely damaged the motorist's car.

The jurisdiction follows the traditional common law rules governing contributory negligence and assumption of risk.

If the motorist pursues a claim against the blasting company to recover for the damage to the car, and all the foregoing facts are established, how much should the motorist recover?

(A) The full value of the car.

(B) The full cost of restoring the car to its condition just before the accident.

(C) The full cost of restoring the car to its condition just before the accident, reduced by the percentage by which the motorist's conduct contributed to the accident.

(D) Nothing.

Correct answer: D

Explanation

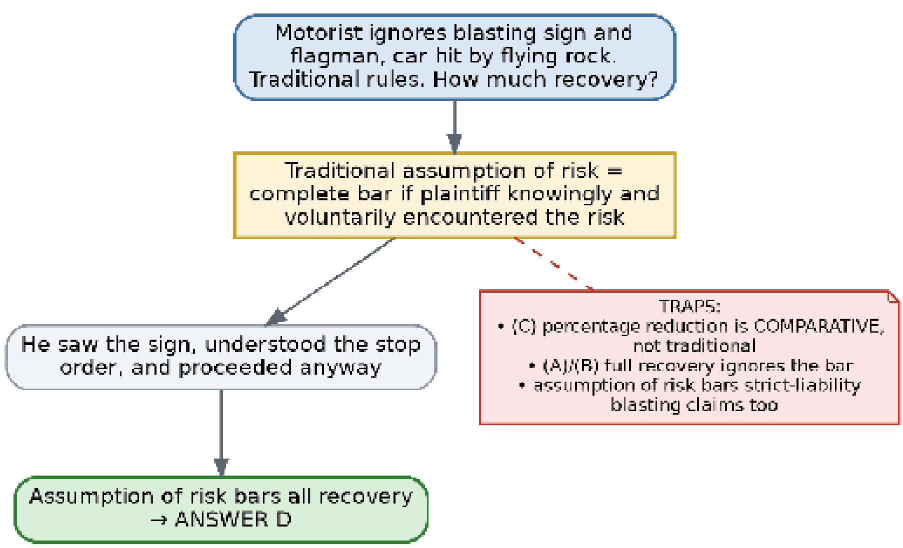
Answer D is correct. This question specifies that the traditional common law rule of assumption of risk applies. Under that rule, even if an actor causes injury to a victim, the victim is barred from recovering damages if the injury results from the victim's having knowingly and voluntarily chosen to encounter the risk of injury posed by the actor's conduct. The motorist was fully aware that there was risk posed by the blasting company's activity and was instructed to stop, yet chose to proceed, thus assuming the risk of damage to the car as a result of the blasting.

Answers A, B, and C are all incorrect, because the assumption-of-risk defense bars the motorist from recovering for the damage to the car.

Exam Tactics & Triggers

- Trigger: 'jurisdiction follows TRADITIONAL contributory negligence and assumption of risk' → these are COMPLETE bars, damages will be all-or-nothing, not apportioned.
- Rule chain: plaintiff saw the sign, understood the flagman, and chose to proceed = knowing and voluntary assumption of risk → recovers NOTHING.
- Distractor trap (C): 'reduced by the percentage of fault' is comparative-negligence language; it is a trap here because the facts expressly invoke the TRADITIONAL rule.
- Watch for the blasting red herring: abnormally dangerous activity means strict liability, but assumption of risk still bars recovery even in strict liability.

Answer Flowchart



Question 158 — Contracts

A buyer contracted to purchase grain from a broker. The parties’ written agreement provided for delivery and payment on March 19 at the broker’s warehouse and stated that time was of the essence due to the volatility in market prices for grain.

On March 19, neither party appeared at the warehouse. On March 21, the buyer called the broker and asked if he would come to the warehouse so that the buyer could take delivery of the grain and make payment. The broker refused the buyer’s request.

Does the buyer have a viable breach of contract claim against the broker?

(A) No, because both parties’ performance obligations under the contract were discharged.

(B) No, because the buyer breached the contract by not tendering payment on March 19.

(C) Yes, because the broker breached the contract by not tendering the grain on March 19.

(D) Yes, because the buyer manifested an intent to perform before the broker refused to perform.

Correct answer: A

Explanation

Answer A is correct. In contracts for the sale of goods, unless otherwise agreed, the seller’s tender of delivery is a condition to the buyer’s duty to accept and pay for goods, and the buyer’s tender of payment is a condition to the seller’s duty to tender delivery. UCC §§ 2-507 & 2- 511. Here both parties’ obligations were discharged, because neither condition for performance was satisfied.

Answer B is incorrect. The buyer did not breach, because the buyer’s obligations were discharged as discussed above.

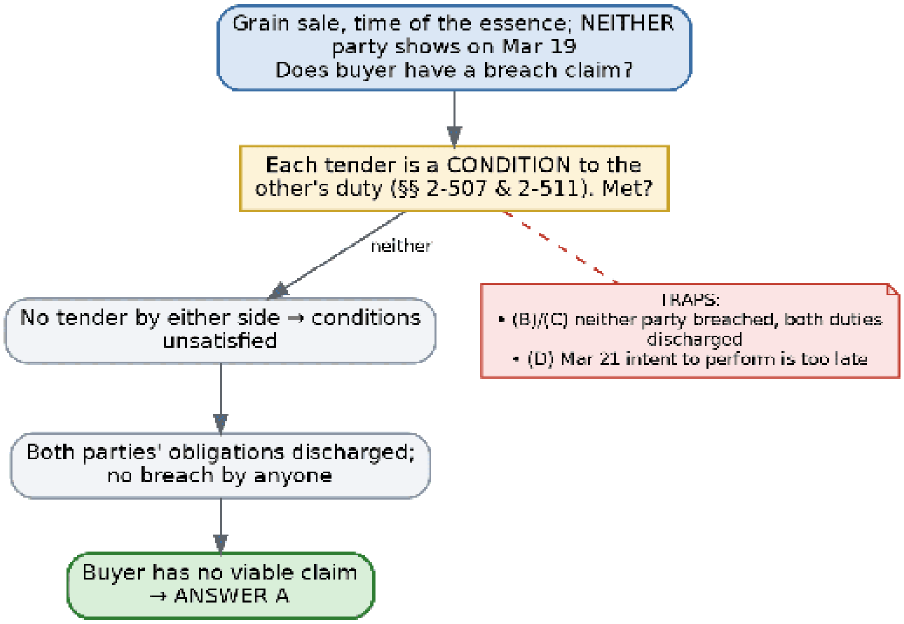
Answer C is incorrect. The broker did not breach, because the broker’s obligations were discharged, as discussed above.

Answer D is incorrect. The buyer’s manifestation of an intent to perform is irrelevant, since both the buyer’s and the broker’s obligations were discharged, as discussed above.

Exam Tactics & Triggers

- Trigger: sale of goods, 'time is of the essence,' and NEITHER party tenders on the set date → each side's tender was a CONDITION, both duties discharged.
- Rule chain: UCC §§ 2-507 & 2-511, tender of delivery conditions the buyer's duty to pay and tender of payment conditions the seller's duty to deliver; no tender either way = no breach.
- Distractor traps (B)/(C): don't pin breach on one party, when both fail to tender under a time-is-of-the-essence term, neither breached.
- Distractor trap (D): buyer's belated intent to perform on March 21 is irrelevant once the obligations were already discharged; a late offer can't revive a dead duty.

Answer Flowchart



Question 159 — Real Property

A buyer and a seller signed a written contract for the sale of a house. The contract was silent regarding which items would stay with the house.

Before the closing, the buyer learned that the seller planned to remove several items that the buyer thought should stay with the house: a garbage disposal, a dining room ceiling fan, and a power lawn mower.

Which of these three items, if any, may the seller remove?

(A) He may not remove any of the items.

(B) He may remove all three items.

(C) He may remove the power lawn mower and the ceiling fan.

(D) He may remove the power lawn mower.

Correct answer: D

Explanation

Answer D is correct. When a real estate contract does not mention which items will stay with the house, the law of fixtures applies. A fixture is an item that has been attached to the land, is appropriate to be so attached, and is intended to be part of the land. The garbage disposal and the ceiling fan qualify as fixtures. The power lawn mower is not a fixture but is considered personal property, which may be removed.

Answer A is incorrect. The power lawn mower is an article of personal property, which may be removed. The garbage disposal and ceiling fan are fixtures, which must remain with the house.

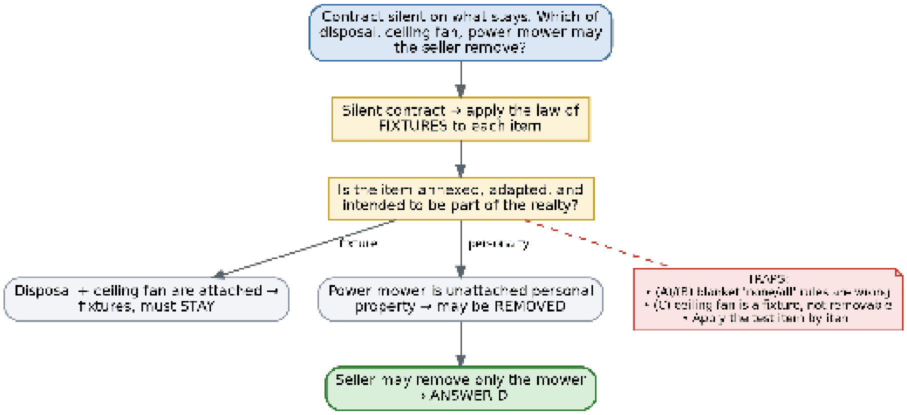
Answer B is incorrect. The garbage disposal and the ceiling fan are fixtures, which must remain with the house.

Answer C is incorrect. The ceiling fan is a fixture, which must remain with the house. The power lawn mower is personal property, which may be removed.

Exam Tactics & Triggers

- Trigger: sale contract SILENT on what stays → apply the law of FIXTURES to each item separately.
- Rule chain: fixture = (1) annexation to the land, (2) adaptation/appropriate to the use, (3) intent to make it part of the realty; fixtures stay, personalty goes.
- Apply item-by-item: garbage disposal and ceiling fan are attached/adapted = fixtures (stay); a power lawn mower is unattached = personal property (may go).
- Distractor traps: the 'all/none/both' options bait you into a blanket rule; the fixture test is applied to EACH item, so only the mower leaves.

Answer Flowchart



Question 160 — Evidence

A defendant has been charged with conspiracy to commit arson and insurance fraud after his restaurant burned to the ground late one night. At trial, the prosecutor presents evidence that, two days before the fire, the defendant paid $10,000 to a man who was later seen entering the restaurant shortly before the fire started. The man has invoked his Fifth Amendment privilege and refuses to testify at the defendant's trial. The prosecutor calls the man's fiancée, who testifies that on the day of the fire, she noticed that the man seemed nervous and asked him what was wrong. She says that he told her, "I'm getting paid $10,000 to burn down a restaurant tonight, and I'm a little nervous about it." The defendant objects to the admission of the man's statement to the fiancée, relying on the hearsay rule and the confrontation clause.

Is the man's statement to the fiancée admissible?

(A) No, because the man's statement is hearsay not within any exception.

(B) No, because the man's statement is testimonial, so admitting it would violate the defendant's right to confrontation.

(C) Yes, because the man's statement is a nontestimonial declaration against penal interest.

(D) Yes, because the man's statement is a nontestimonial statement by a coconspirator.

Correct answer: C

Explanation

Answer C is correct. The man is unavailable to testify due to his assertion of his Fifth Amendment privilege. His statement to his fiancée was so contrary to his penal interest that one would not expect him to make it unless it were true. Further, there is corroboration of his statement: the defendant paid him $10,000 and the man was seen entering the restaurant shortly before the fire. Therefore, the hearsay exception for declarations against penal interest would make the man's statement admissible. Further, because the man's statement to his fiancée is nontestimonial, the Sixth Amendment would not block its admission.

Answer A is incorrect. The man's statement satisfies the hearsay exception for declarations against interest.

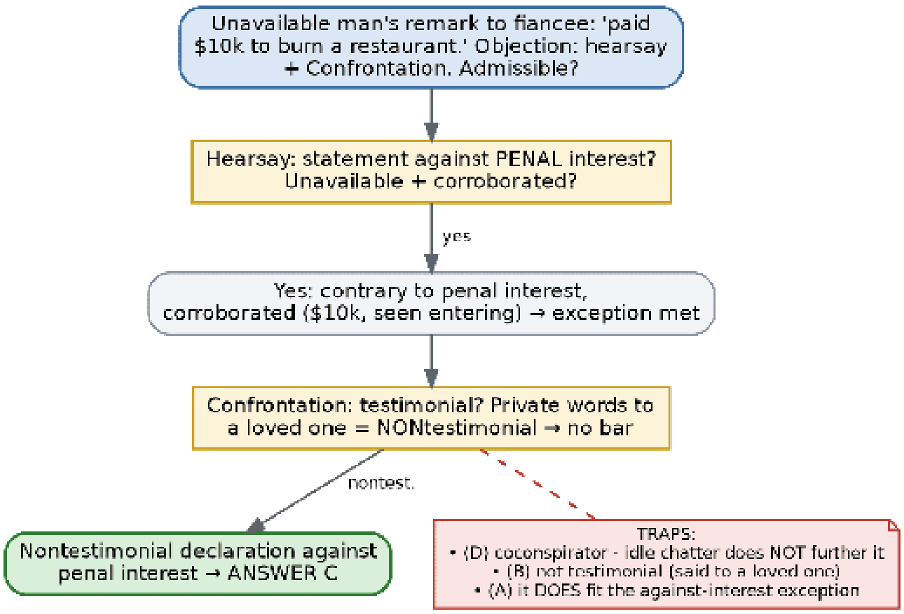
Answer B is incorrect. The man's statement to his fiancée would not be considered testimonial. It was not made for the primary purpose of assisting with a criminal investigation, and the man would have had no expectation that a statement to a loved one would be so used. Because the Sixth Amendment does not control the admission of nontestimonial hearsay statements, it would not block admission of the man's statement.

Answer D is incorrect. The man's statement could not be admitted through the coconspirator exception to the hearsay rule. While there may be sufficient evidence that the defendant and the man were "coconspirators" and that the man's statement to his fiancée was made "during" that conspiracy (as required by FRE 801(d)(2)(E)), the man's statement to his fiancée in no way "furthered" the conspiracy as required by the coconspirator exception. The federal courts have held that idle chatter by coconspirators does not further the conspiracy and therefore cannot fit within the exception. The man's comments to his fiancée about his feelings about the conspiracy did not advance the aims of his venture with the defendant.

Exam Tactics & Triggers

- Trigger: unavailable declarant + a statement admitting 'I'm getting paid to burn down a restaurant' → declaration against penal interest, and told to a loved one = nontestimonial.
- Two-layer analysis: clear both the hearsay exception (statement against penal interest + unavailability + corroboration) AND the Confrontation Clause (nontestimonial escapes Crawford).
- Distractor (D) coconspirator: casual 'idle chatter' to a fiancee does not FURTHER the conspiracy, so 801(d)(2)(E) fails even if a conspiracy existed.
- Distractor (B) testimonial: a private remark to a loved one is not made to aid a criminal investigation, so it is nontestimonial and the 6th Amendment does not bar it.

Answer Flowchart



Question 161 — Civil Procedure

A scientist domiciled in State A brought a federal civil action against his former employer, a company incorporated and headquartered in State A, alleging retaliatory discharge under federal and state law and seeking damages under federal and state law.

The company moved to dismiss the federal claim, and the court granted the motion. The court's written order read in its entirety: "[The company's] motion to dismiss the federal claim is granted." The scientist immediately appealed this decision to the court of appeals.

Is the appeal proper?

(A) No, because there is no final judgment.

(B) No, because there is no subject-matter jurisdiction over the state-law claim.

(C) Yes, as a discretionary interlocutory appeal.

(D) Yes, because the decision on the federal claim is final.

Correct answer: A

Explanation

Answer A is correct. As the state-law claim remains to be decided in the action, there is not yet a final judgment on the merits of the entire action, and thus an appeal is not allowed under the final judgment rule.

Answer B is incorrect. There is supplemental jurisdiction over the state-law claim. Further, whether an appeal is proper for the federal claim is not tied to jurisdiction over the state-law claim.

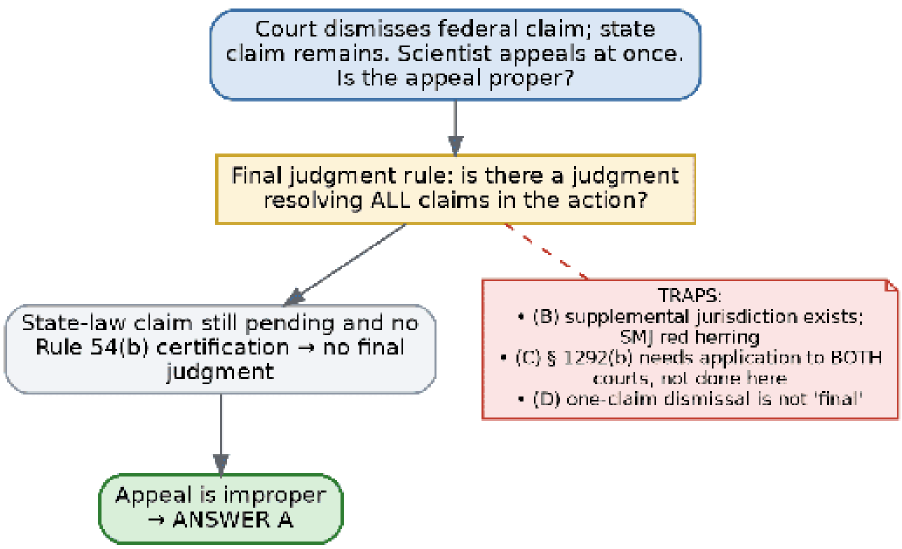
Answer C is incorrect. To obtain a discretionary interlocutory appeal, the party seeking to appeal must apply to both the district and appellate courts to meet the statutory standards. See 28 U.S.C. § 1292(b). Because the scientist has appealed without attempting to satisfy that requirement, the appeal cannot be treated as a discretionary interlocutory appeal.

Answer D is incorrect. Under the final judgment rule, a judgment is not final until all the claims in the action have been resolved. While a party can ask the court, under Federal Rule of Civil Procedure 54(b), to certify a final judgment as to a resolved claim when it is separate and distinct from the unresolved claims and then appeal that decision, in this particular case, the court would reject such a request because the federal and state claims overlap.

Exam Tactics & Triggers

- Trigger: appeal taken after ONE claim is dismissed but a state-law claim still pends, with NO Rule 54(b) certification → no final judgment, appeal is improper.
- Lock in the final judgment rule: a judgment is not final until ALL claims are resolved; a bare order dismissing one claim is not appealable on its own.
- Distractor tell (B): the SMJ red herring, there IS supplemental jurisdiction over the state claim, and appealability of the federal claim does not hinge on it.
- Distractor tell (C): a discretionary interlocutory appeal under 28 U.S.C. § 1292(b) requires applying to BOTH the district and appellate courts, which the scientist never did.

Answer Flowchart



Question 162 — Constitutional Law

A speaker at a rally in a public park argued that paper money was unconstitutional because Article I gave Congress the power only to “coin” money. The speaker ended his speech by setting fire to a pile of one-dollar bills. Although the fire was promptly extinguished and there had been no risk that it would spread, the speaker was convicted of violating a local ordinance against starting an open fire in a public place without a permit from the fire department. The speaker has challenged the conviction on constitutional grounds.

How should the court rule?

(A) The ordinance is constitutional, because it is narrowly tailored to further a significant government interest that is unrelated to the suppression of free expression, and individuals have other ways of communicating their messages.

(B) The ordinance is constitutional, because it regulates conduct rather than speech.

(C) The ordinance is unconstitutional as applied, because the absence of a fire risk demonstrates that the prosecution was a pretext for government censorship.

(D) The ordinance is unconstitutional, because it is overbroad.

Correct answer: A

Explanation

Answer A is correct. The burning of the one-dollar bills was expressive conduct protected by the First Amendment, because the speaker intended the burning to communicate a message, and in context, the audience was likely to receive the message. The ordinance, however, does not violate the First Amendment because it is content-neutral and it satisfies the elements of intermediate judicial scrutiny, which are stated correctly in Answer A.

Answer B is incorrect. It is true that the ordinance prohibits conduct, but on these facts, the burning of the one-dollar bills was expressive conduct protected by the First Amendment, because the speaker intended the burning to communicate a message, and in context, the audience was likely to receive the message. In this situation, the ordinance satisfies the First Amendment not simply because it regulates conduct, but because it is content-neutral and it satisfies the elements of intermediate judicial scrutiny.

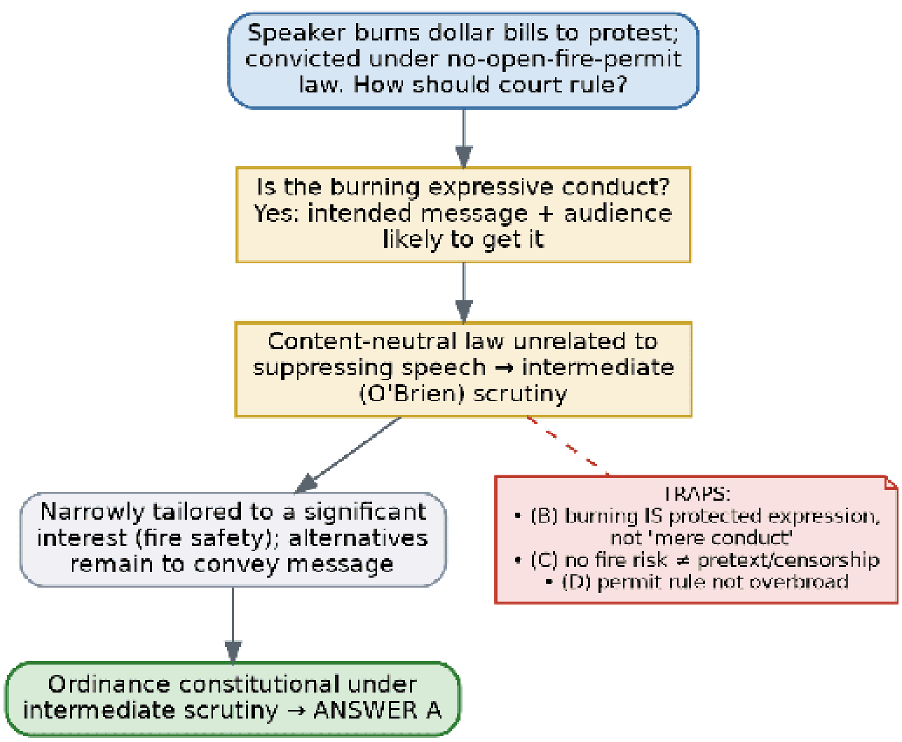
Answer C is incorrect. Notwithstanding the absence of a fire risk here, there is no indication on these facts that the prosecution was a pretext for the government's disapproval of the speaker's message. The city has a legitimate interest in enforcing the permit requirement generally because of the risks associated with open fires in public places.

Answer D is incorrect. The ordinance is not overbroad because a permit requirement for open fires in public places does not restrict substantially more speech than the First Amendment allows to be restricted.

Exam Tactics & Triggers

- Trigger: a neutral law (no open-fire permit) applied to someone using fire as EXPRESSION → symbolic conduct, O'Brien intermediate scrutiny.
- Rule chain: expressive conduct + content-neutral law unrelated to suppressing speech → narrowly tailored to a significant interest, ample alternatives remain (the O'Brien elements = answer A).
- Distractor trap (B): 'it just regulates conduct' is too glib, the burning IS protected expression, the law survives because it is content-neutral, not because conduct is unprotected.
- Distractor trap (C): absence of actual fire risk does NOT prove pretext/censorship; a general permit rule serves a legitimate interest regardless.

Answer Flowchart



Question 163 — Torts

A trucking company employed nine salaried dispatchers to ensure that its truck fleet operated according to schedule. Two years ago, as a cost-saving measure, the company reduced the number of dispatchers to six, and each of the remaining dispatchers had to work substantially longer hours.

One of the remaining dispatchers complained to his supervisor that the stress and fatigue associated with the new working conditions were too much for him to handle. The supervisor told the dispatcher that he should quit if he couldn't handle the increased hours.

Over the next three months, the dispatcher continued to complain about the working conditions, to no effect. The dispatcher suffered severe emotional distress from the working conditions, but no physical injury. He eventually was hospitalized and had to miss several months of work as a result of the emotional distress.

The dispatcher sued the trucking company for negligence. The company has moved for summary judgment, based on the undisputed facts set out above. Assume that there is no applicable workers' compensation statute.

How should the court rule on the motion?

(A) Deny the motion, because the jury must determine the extent of the emotional distress suffered by the dispatcher.

(B) Deny the motion, because there is evidence from which a jury could reasonably conclude that the supervisor failed to act with ordinary care.

(C) Grant the motion, because the dispatcher suffered no physical injury.

(D) Grant the motion, because there is no evidence from which a jury could reasonably conclude that the supervisor acted carelessly with respect to the dispatcher's emotional well-being.

Correct answer: C

Explanation

Answer C is correct. Negligently caused emotional distress is ordinarily not actionable unless connected to a physical injury.

Answer A is incorrect. Negligence causing "pure" emotional distress is only actionable in limited circumstances, such as when a defendant causes a plaintiff distress at the prospect of imminent physical injury (the "zone of danger") or when a certain kind of special relationship exists between the parties (e.g., therapist-patient). Courts have not deemed the employment relationship to be "special" in the relevant sense, and therefore the dispatcher's claim will fail because it does not fit within any of the recognized exceptions to the general rule of no liability for negligence causing only emotional distress, without physical injury.

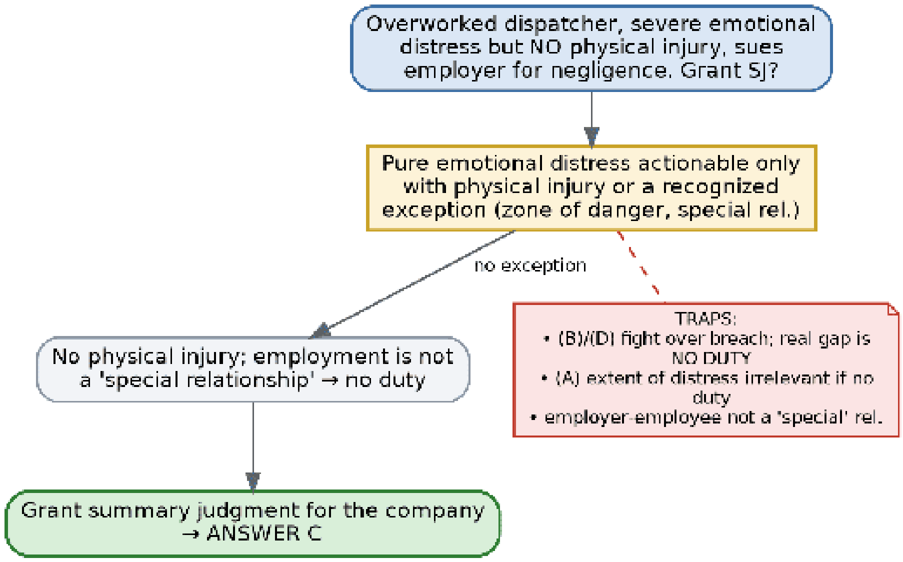
Answer B is incorrect. The insufficiency in the dispatcher's case is not as to breach of a duty but rather as to the existence of a duty. As noted earlier, courts generally do not recognize a duty to take care against causing emotional distress unconnected to a physical injury.

Answer D is incorrect. The insufficiency in the dispatcher's case is not as to breach of a duty but rather as to the existence of a duty.

Exam Tactics & Triggers

- Trigger: 'negligence' claim for PURE emotional distress with NO physical injury → default rule is no liability, so a summary judgment for defendant is usually right.
- Rule chain: negligent infliction of emotional distress needs physical injury OR a recognized exception (zone of danger, special relationship like therapist-patient).
- Distractor trap: employer-employee is NOT a 'special relationship' for NIED, so stressful working conditions alone create no duty.
- Kill (B)/(D) by spotting the issue level: the defect is absence of a DUTY, not a breach question, so 'jury could find carelessness' misses the point.

Answer Flowchart



Question 164 — Criminal Law & Procedure

A woman shot at her husband, intending to kill him. The bullet passed through the husband's shoulder, wounding him, and struck the couple's son in the head, killing the son instantly.

The woman has been charged with attempted murder of her husband and murder of her son.

Which of the following, if authorized by state law, would be constitutionally permissible?

(A) The woman may be tried in separate trials for both murder and attempted murder and, if convicted, can be punished for both.

(B) The woman may be tried, convicted, and punished for both murder and attempted murder, but only if the two charges are tried together.

(C) The woman may be tried for and convicted of both crimes, but the sentences must run concurrently.

(D) The woman may be tried for both murder and attempted murder but can be convicted of only one of them.

Correct answer: A

Explanation

Answer A is correct. Typically for a single offense, an attempt merges into the completed offense because the intended target is the one who suffers the harm. However, there are two separate offenses here. The first is the woman's failed attempt to kill the husband, which resulted only in his injury; this is an attempted murder. The second is causing the death of her son, which is a completed murder. Although the woman did not intend to harm her son, her intent toward her husband can be transferred under the doctrine of transferred intent to hold her liable for the actual harm caused to her son. The doctrines of mens rea and causation support liability for both the action the woman attempted and the harm she caused to each victim. Consequently, a fact-finder could find her guilty of the son's murder. The charges need not be tried together; each is a separate and independent offense.

Answer B is incorrect because there is no constitutional requirement that the two offenses be charged together. The attempt is not a lesser included offense of the murder; it is a separate charge with a separate victim and independent theory of liability.

Answer C is incorrect because the two offenses each address a separate, and separately punishable, harm. The offenses do not merge, nor do they constitutionally require concurrent sentencing.

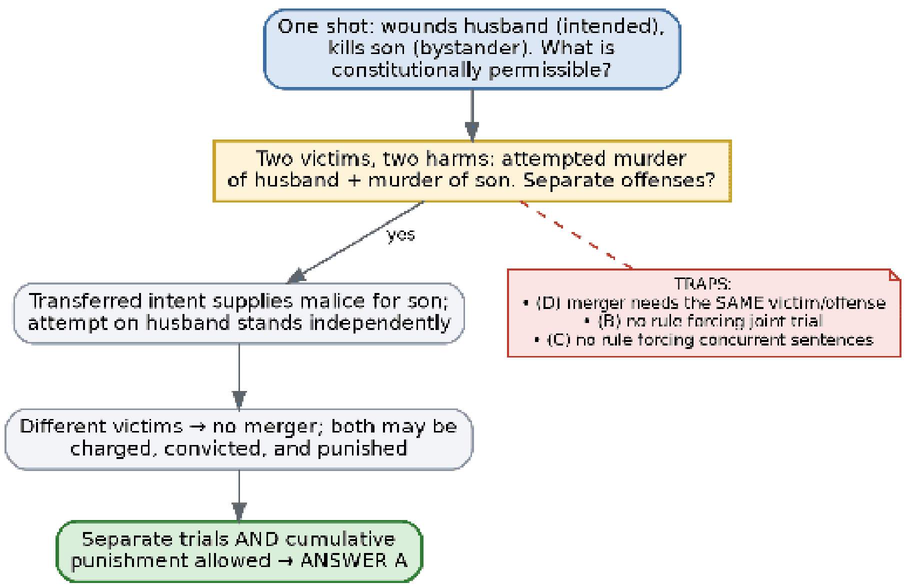
Answer D is incorrect for the same reason as answer C: attempted murder does not merge as a lesser offense to murder because the attempted murder and murder were separate acts that caused independent harm to independent victims.

Exam Tactics & Triggers

- Trigger: ONE act, TWO victims (bullet wounds intended target, kills a bystander) → two separate offenses, both fully punishable, no double jeopardy bar.

- Rule chain: transferred intent supplies malice for the son's murder; the failed killing of the husband stays as attempted murder; separate victims = separate harms.
- Distractor (D) merger: attempt only merges into the completed crime when it's the SAME victim/offense; different victims means no merger.
- Distractors (B)/(C): the Constitution does not require joint trial or concurrent sentences; each independent offense can be tried and punished separately.

Answer Flowchart



Question 165 — Contracts

In a writing signed on February 1, a buyer agreed to purchase a specified quantity of lumber from a seller for $12,500, delivery to be made on July 1. Thereafter, the market price of lumber increased significantly. Due to this price increase, on June 14 the seller told the buyer that it would not deliver the lumber unless the buyer agreed to a purchase price of $14,500 and agreed to waive any claim for damages against the seller. The buyer refused and told the seller that she would purchase lumber elsewhere. On June 18, after a reasonable search for alternative sources, the buyer purchased lumber from another supplier for $15,500.

If the buyer sues the seller for breach, will the buyer be likely to prevail?

(A) Yes, and the buyer will recover damages of $3,000, because that is the difference between the cost of cover and the contract price.

(B) Yes, but the buyer's damages will be limited to $2,000, because she could have obtained the lumber from the seller for $14,500.

(C) No, because the seller's request for a price increase was made in good faith and as a result of market forces.

(D) No, because the buyer breached her duty to mitigate her damages when she purchased replacement lumber at a price higher than that offered by the seller.

Correct answer: A

Explanation

Answer A is correct. The seller's demand for a modification was a repudiation, because the seller said that it would not perform if the buyer did not agree to the price increase. UCC § 2- 611, cmt. 2. The remedy of a buyer of goods for a seller's breach includes cover by getting substitute goods. In that situation the buyer's damages are the difference between the cost of cover and the contract price together with incidental or consequential damages, less expenses saved due to the breach. UCC § 2-712. Here the difference between the cost of cover and the contract price is $3,000.

Answer B is incorrect. If the buyer had agreed to the modification and obtained the lumber from the seller, the buyer would also have had to give up its claim for damages, so that transaction would not have been a reasonable substitute purchase.

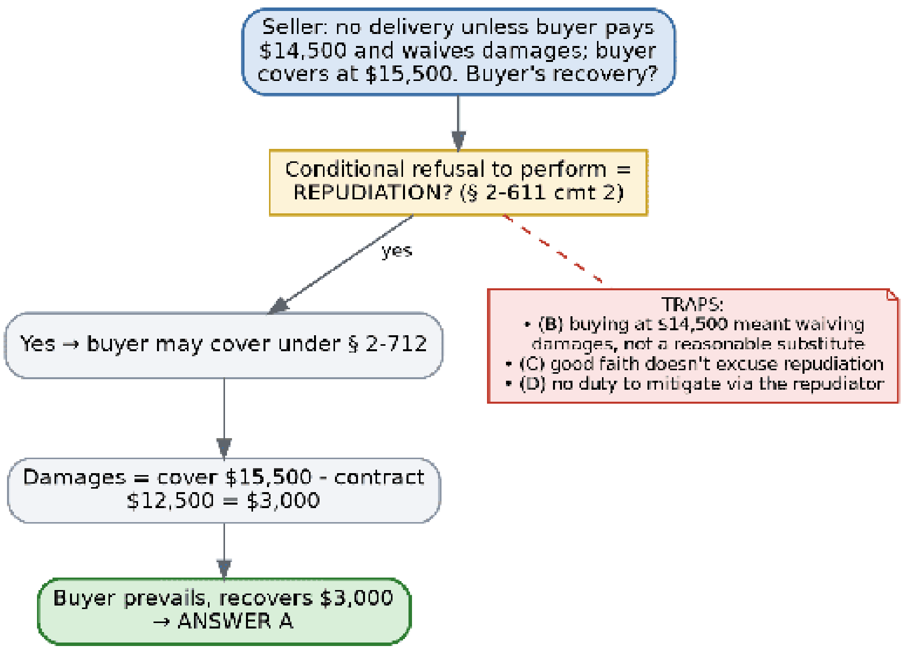
Answer C is incorrect. Even if the seller's request for a modification was made in good faith, the buyer did not agree to the modification and was free to reject the seller's request for a modification.

Answer D is incorrect. The buyer did not have to mitigate by purchasing from the seller, since the seller's offer was conditioned on the buyer's giving up any claim for damages against the seller.

Exam Tactics & Triggers

- Trigger: seller says 'no delivery unless you pay more AND waive damages' → that's a REPUDIATION, not a mere request; buyer may cover.
- Rule chain: UCC § 2-712 cover damages = cost of cover ($15,500) minus contract price ($12,500) = $3,000; measure from CONTRACT price, not the demanded price.
- Distractor trap (B): buying from the seller at $14,500 was NOT a reasonable substitute because it required surrendering the damages claim, so it doesn't cap recovery.
- Distractor traps (C)/(D): good-faith motive doesn't legitimize a conditional refusal to perform, and the buyer had no duty to mitigate by dealing with the repudiating seller.

Answer Flowchart



Question 166 — Real Property

A man died domiciled in State B. Under his will, he devised his cabin located in State A to a nephew. The man devised the balance of his estate to his son.

The man's son, who also lived in State B, survived the man.

The man's nephew predeceased the man. The nephew had lived in State C. The nephew's daughter, who lived in State D, survived the nephew and the man.

Which state's law will determine whether the bequest to the nephew lapsed?

(A) The law of State A, because State A is where the cabin is located.

(B) The law of State B, because State B is where the man was domiciled at the time of his death.

(C) The law of State C, because State C is where the nephew lived at his death.

(D) The law of State D, because State D has the most significant contacts.

Correct answer: A

Explanation

Answer A is correct because the location of the real estate determines which law to use in determining whether the gift has lapsed. The cabin is real estate located in State A, and therefore State A's law of lapse will be used.

Answer B is incorrect. The location of the testator's domicile at the time of his death (State B) will be used in determining the validity and construction of the will regarding all property located in that state, but it will not be used regarding real estate located in another state (State A).

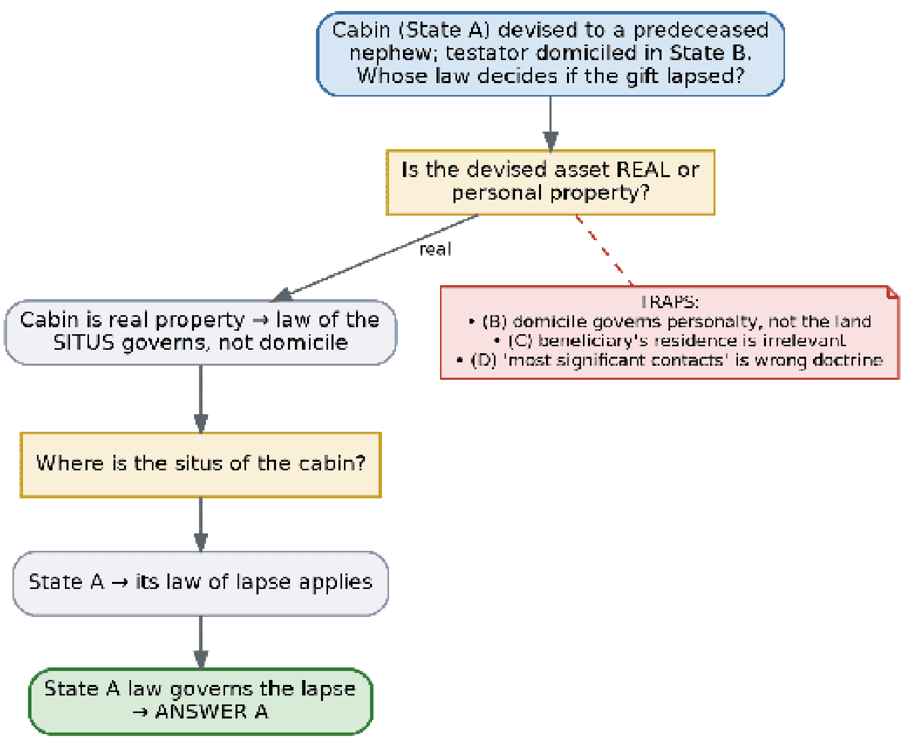
Answer C is incorrect. The nephew is the beneficiary under the man's will, but the beneficiary's place of domicile is irrelevant to determining whether the bequest lapsed.

Answer D is incorrect. Which state has the most significant contacts is irrelevant. The location of the cabin (State A) determines which law to use.

Exam Tactics & Triggers

- Trigger: multistate will problem asking which state's law governs a devise of REAL property → the situs (location of the land) controls.
- Rule chain: real property = law of the SITUS; personal property/will construction generally = law of testator's DOMICILE, so sort the asset type first.
- The lapse question concerns the cabin (real estate in State A), so State A's law of lapse applies regardless of who is domiciled where.
- Distractor traps: (B) domicile governs personalty and general validity, not out-of-state land; (C) beneficiary's home is irrelevant; (D) 'most significant contacts' is a wrong-doctrine bait.

Answer Flowchart



Question 167 — Torts

A manufacturer entered into a five-year contract with a distributor to supply the distributor with products to be distributed in State A. The manufacturer reserved the right to enter into additional such contracts with other State A distributors. The manufacturer knew that the distributor would, on the basis of the agreement, invest in an expansion of its distribution centers in State A in order to handle the distribution of the manufacturer's products to retail sellers in that state.

At the time the manufacturer entered into the contract, it had already firmly decided to withdraw from the State A market in two years. Because the distributor had heard rumors of such a plan, its chief executive officer, before signing the contract, asked a representative of the manufacturer whether such a plan was in place. The representative denied the existence of any such plan.

Two years into the contract, the manufacturer announced that it no longer intended to sell products in State A and canceled its contract with the distributor. The manufacturer did not thereafter supply products for distribution or sale in State A.

Does the distributor have a viable fraud claim against the manufacturer?

(A) No, because the distributor's exclusive remedy is for breach of contract.

(B) No, because the manufacturer did not misstate any material facts when entering into the contract.

(C) Yes, because the manufacturer denied that it had a withdrawal plan when the distributor asked about it at the time the contract was formed.

(D) Yes, because the manufacturer reserved the right to do business with other State A distributors.

Correct answer: C

Explanation

Answer C is correct. The manufacturer, at the time of entering into the contract with the distributor, falsely stated to the distributor that it did not have a plan in place to cease providing products for sale in State A. This was an intentional and material misrepresentation, made for the purpose of deceiving the distributor, on which misrepresentation the distributor actually and reasonably relied to its detriment. As such, it supports a fraud claim by the distributor.

Answer A is incorrect. The distributor may sue for fraud regardless of whether the distributor also has a valid claim for breach of contract.

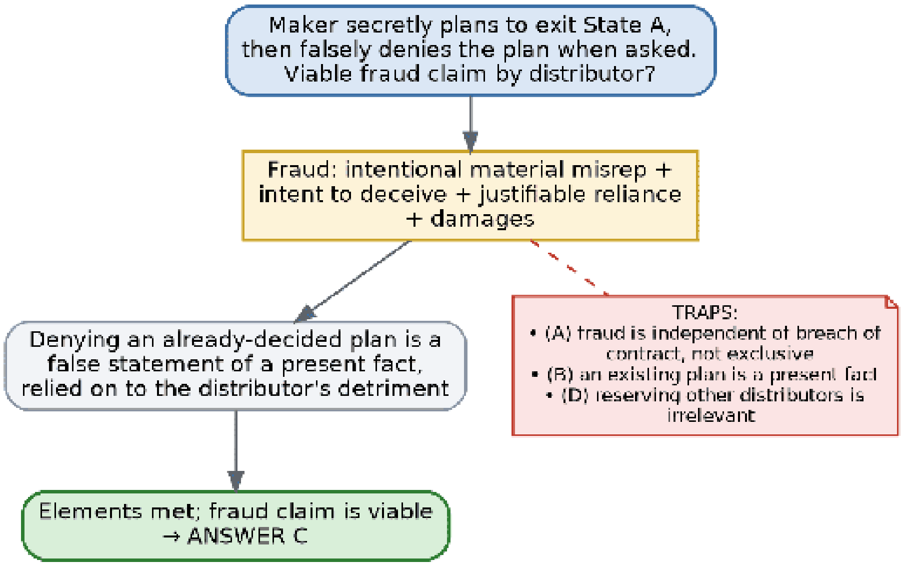
Answer B is incorrect. The manufacturer affirmatively misrepresented a material fact when it falsely stated that it had no plan in place to cease doing business in State A.

Answer D is incorrect. This answer points to a fact—the manufacturer's reservation of a right to do business with other distributors—that is irrelevant to the question of whether the manufacturer is subject to liability for fraud.

Exam Tactics & Triggers

- Trigger: a party asks a direct question and gets a flat DENIAL of a plan that in fact already exists → present-intent/present-fact misrepresentation supports FRAUD.
- Rule chain: fraud = intentional material misrepresentation + intent to deceive + justifiable reliance + damages; the false denial of the existing withdrawal plan hits every element.
- Distractor trap (A): fraud and breach of contract are independent; the 'exclusive remedy is contract' answer is a classic wrong-lane bait.
- Distractor trap (B): saying 'no material fact was misstated' ignores that the CURRENT existence of a plan is itself a present fact, not a mere future prediction.

Answer Flowchart



Question 168 — Civil Procedure

A consumer brought a federal diversity action in State A against a manufacturer, asserting products liability claims under State A law. The consumer sought to bring the action on behalf of a nationwide class. State A law prohibits such class actions.

Which law applies to determine whether the action may proceed as a class action?

(A) Federal law, because the issue of whether the action may proceed as a class action is governed by the Federal Rules of Civil Procedure.

(B) Federal law, because there is a substantial federal interest in resolving matters that involve consumers from across the United States.

(C) State A law, because not applying State A law will be outcome-determinative.

(D) State A law, because the action arises under State A law.

Correct answer: A

Explanation

Answer A is correct. When a federal rule is valid and on point in a federal court action, it controls over a conflicting state rule. The US Supreme Court has held that FRCP 23 is valid and that it, and not state law, controls whether an action may proceed as a class action in federal court.

Answer B is incorrect. The court will apply a valid and on-point federal rule. No showing of a "substantial federal interest" is needed.

Answer C is incorrect. The outcome-determinative test applies only when state law conflicts with a judge-made federal practice. A valid and on-point federal rule will apply over a state rule in a federal action even if the differences in the two rules would satisfy the outcome-determinative test.

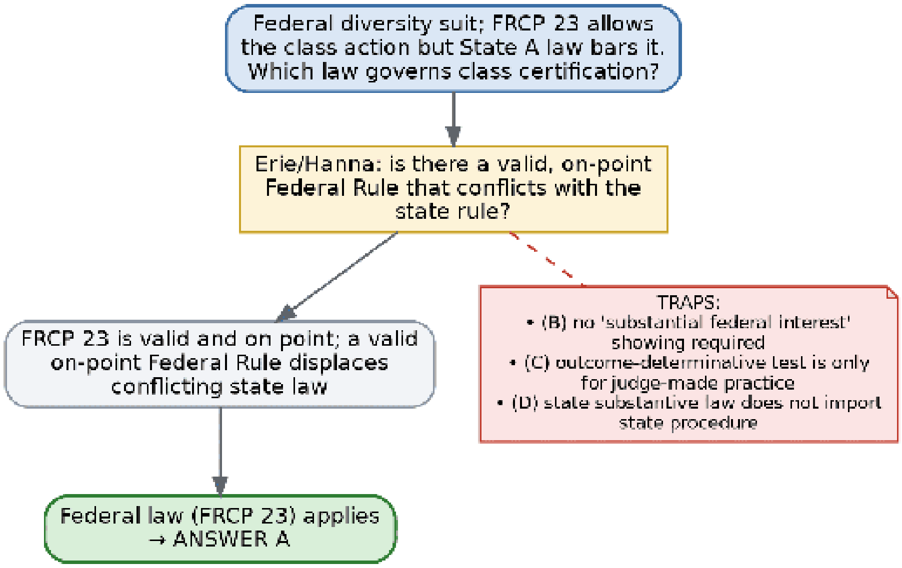
Answer D is incorrect. The general premise of the Erie/Hanna Doctrine is that the Federal Rules of Civil Procedure will apply in diversity cases, displacing the procedural rules of the state whose substantive law is being applied.

Exam Tactics & Triggers

- Trigger: a valid, on-point FEDERAL RULE (FRCP 23) conflicts with state law barring class actions → the federal rule controls under the Erie/Hanna doctrine.
- Lock in the Hanna analysis: when a Federal Rule is valid and on point, it applies and displaces conflicting state law; the outcome-determinative test never gets reached.
- Distractor tell (C): the 'outcome-determinative' test applies only to JUDGE-MADE federal practice, not to an on-point Federal Rule, a favorite Erie misdirection.
- Distractor tells (B) and (D): no 'substantial federal interest' showing is needed, and the claim arising under state

law does not pull STATE procedure into a federal diversity case.

Answer Flowchart



Question 169 — Real Property

A developer financed the purchase of a tract of vacant land with a mortgage loan from the seller. Two years later, at a time when the land remained vacant, the developer took out a second mortgage loan from an investor to construct self-storage units on the land. Both mortgages were promptly recorded in the order in which they were executed.

The developer made all payments on both mortgage loans for several years but eventually defaulted on the loan from the seller, who threatened to initiate foreclosure proceedings. To avoid the foreclosure, the developer executed a deed in lieu of foreclosure conveying the land back to the seller. But before the developer delivered the deed to the seller, it notified the investor of the proposed conveyance and gave her the option to cure the developer's default on the seller's loan. The investor declined to do so, and the developer delivered the deed to the seller.

If nothing else has happened since the conveyance to the seller, is the investor's mortgage still valid?

(A) No, because the investor declined to cure the developer's default on the seller's loan.

(B) No, because the seller's mortgage was a purchase money mortgage.

(C) Yes, because a deed in lieu of foreclosure does not eliminate junior mortgages.

(D) Yes, because the investor's mortgage secures improvements made to vacant land.

Correct answer: C

Explanation

Answer C is correct. The deed in lieu of foreclosure does not extinguish the subsequent mortgage on the property. A mortgagor's later-executed mortgage generally can be extinguished only by foreclosure. Thus, the holder of the senior lien (the seller) should have searched the title to determine if a junior lien existed and, if so, brought a foreclosure action to extinguish it rather than accepting a deed in lieu of foreclosure.

Answer A is incorrect. The status of the investor, the junior lienholder, is not affected by that lienholder's failure to cure the mortgagor's default.

Answer B is incorrect. The general rule that a deed in lieu of foreclosure does not extinguish subsequent mortgages is unaffected by whether the senior lien was a purchase money mortgage or not.

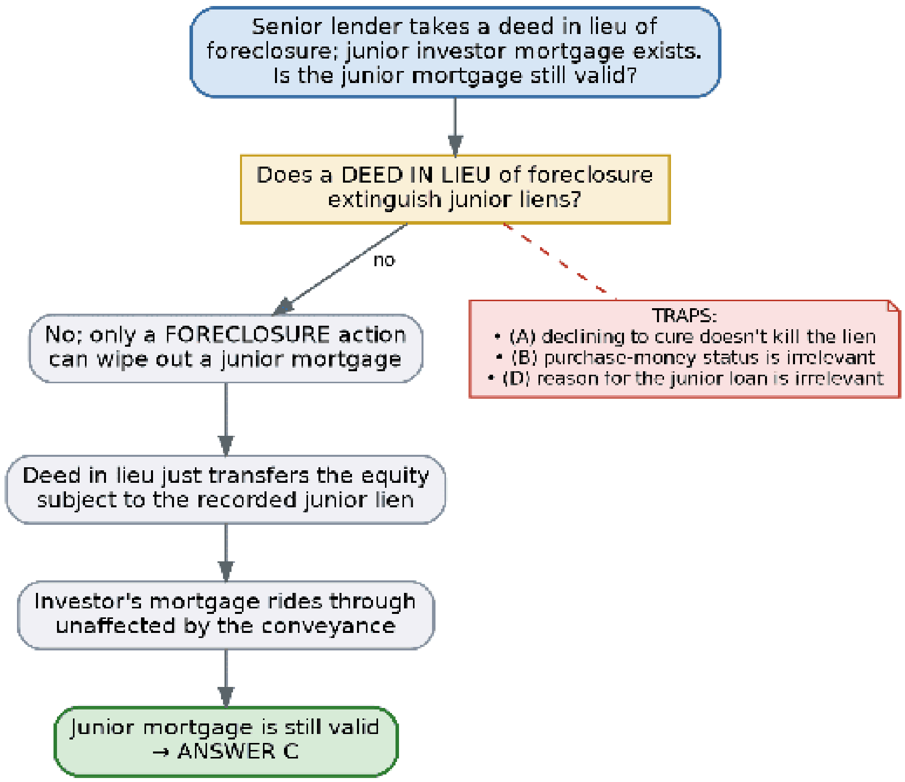
Answer D is incorrect. The reason for obtaining the junior mortgage is irrelevant. It is not extinguished by the deed in lieu of foreclosure.

Exam Tactics & Triggers

- Trigger: senior lienholder takes a DEED IN LIEU of foreclosure while a junior mortgage exists → the junior

mortgage SURVIVES.
- Rule chain: only FORECLOSURE (not a deed in lieu) wipes out junior liens; a deed in lieu just transfers the mortgagor's equity, subject to the junior lien.
- Priority tell: both mortgages were recorded in order; the senior lender should have foreclosed to cut off the recorded junior lien, not accepted a deed.
- Distractor traps: (A) offering a chance to cure doesn't extinguish the junior lien; (B) purchase-money status is irrelevant; (D) the reason for the junior loan is irrelevant.

Answer Flowchart



Question 170 — Constitutional Law

Swimmers were unable to use a city-owned beach for several days because demonstrators protesting city policies had taken over the beach. Immediately after the demonstration ended, the city enacted an ordinance that banned “all First Amendment activities” on the beach.

What is the best argument AGAINST the constitutionality of the ordinance?

(A) The ordinance amounts to a prior restraint on speech.

(B) The ordinance is overly broad.

(C) The beach is a public forum.

(D) The city enacted the ordinance to prevent further protests of its policies.

Correct answer: B

Explanation

Answer B is correct. The ordinance is overbroad because prohibiting all First Amendment activities on the beach restricts substantially more speech than the First Amendment allows to be restricted.

Answer A is incorrect. The ordinance does not create a prior restraint on speech. Prior restraints are injunctions or administrative systems that prevent speech from occurring. The ordinance here is a mere prohibition of speech, penalizing speech after it occurs.

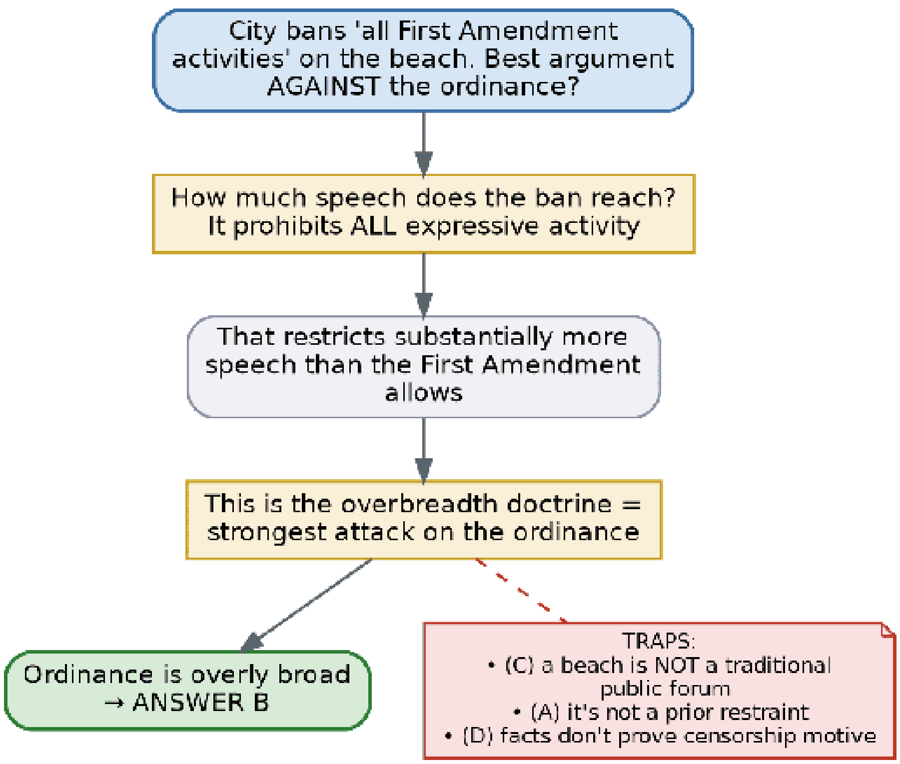
Answer C is incorrect. A public beach is not a traditional public forum. The Supreme Court has limited such forums to streets, sidewalks, and parks. Nor is there an indication on these facts that the city had dedicated the beach as a speech forum.

Answer D is incorrect. These facts are not sufficient to prove that the city enacted the ordinance because officials disapproved of the message of the protesters. The facts indicate that swimmers were unable to use the beach for several days because of the demonstrations. The concern for swimmers is a content-neutral interest that would permit the city to regulate demonstrations at the beach more narrowly.

Exam Tactics & Triggers

- Trigger: a law banning 'ALL First Amendment activities' (absolute, sweeping) → overbreadth, it restricts far more speech than the Constitution allows.
- Rule chain: overbreadth = a law reaches substantially more protected speech than permissible; a total ban on all expressive activity is the paradigm case.
- Distractor trap (C): a public BEACH is NOT a traditional public forum (limited to streets, sidewalks, parks), so C rests on a false premise, a classic trap.
- Distractor trap (A)/(D): it is not a prior restraint (it penalizes speech after the fact), and the facts do not prove a censorship motive; overbreadth is the cleanest attack.

Answer Flowchart



Question 171 — Criminal Law & Procedure

Two men agreed to rob a bank. In the course of the robbery, the first man shot and killed a teller. The police arrived and arrested both men as they were leaving the bank.

The men were charged with felony murder and tried separately. The first man (the actual shooter) was tried and convicted, but the jury refused to sentence him to death, so he was sentenced to life imprisonment.

The second man was also tried and convicted. The prosecution agreed, based on medical records, that he was intellectually disabled with an IQ of only 60. The jury nonetheless sentenced the second man to death.

Is the second man's death sentence constitutional?

(A) No, because it is constitutionally disproportionate in light of the lesser sentence imposed on the actual shooter.

(B) No, because of the second man's intellectual disability.

(C) No, because the second man was not the actual shooter.

(D) Yes.

Correct answer: B

Explanation

Answer B is correct because the cruel and unusual punishment clause, as held in Atkins v. Virginia, 536 U.S. 304 (2002), prohibits imposition of the death penalty on a person with a severe intellectual disability. Atkins suggested that an IQ of 70 is an appropriate threshold, although Hall v. Florida, 572 U.S. 701 (2014), later clarified that borderline cases require individualized determination. Here, the IQ of 60 clearly indicates a qualifying intellectual disability that precludes execution.

Answer A is incorrect because, although the disparity may seem unjust, the cruel and unusual punishment clause does not contain a proportionality principle limiting the relative sentences that accomplices may receive.

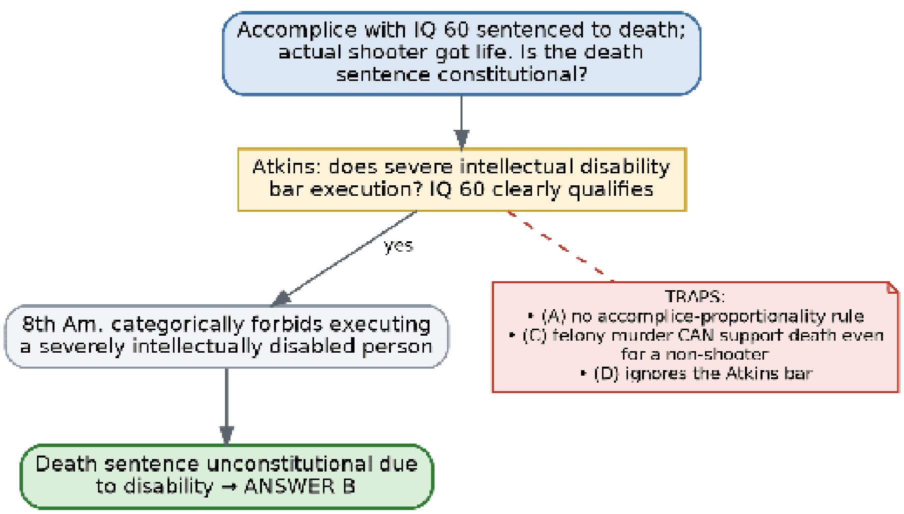
Answer C is incorrect because the cruel and unusual punishment clause does not categorically preclude the death penalty for persons found guilty of felony murder, even when the defendant was not the person who directly took life.

Answer D is incorrect because the state may not execute a severely intellectually disabled person.

Exam Tactics & Triggers

- Trigger: death sentence for a defendant with a severe intellectual disability (IQ 60) → categorically barred by the Eighth Amendment (Atkins v. Virginia).
- Lock the threshold: Atkins flags IQ ~70; an IQ of 60 clearly qualifies (Hall v. Florida only makes borderline cases individualized).
- Distractor (A) proportionality vs shooter: the Eighth Amendment has no accomplice-proportionality rule, so a lighter sentence for the triggerman does not save him.
- Distractor (C) non-shooter: felony murder can support the death penalty even for a non-killer, so 'not the shooter' is not the winning reason; (D) 'Yes' ignores Atkins.

Answer Flowchart



Question 172 — Contracts

A homeowner entered into a contract with a builder under which the builder was to install two new bathrooms in the homeowner’s house. The stated price for the first bathroom was $30,000, and the price for the second bathroom was $35,000. The builder, without justification, left the job after completing the $30,000 bathroom. The homeowner found another contractor to complete the second bathroom for $35,000 and has suffered no losses as a result of the builder’s breach.

The builder has sued the homeowner for the $30,000 contract price of the first bathroom, which remains unpaid.

What is the most likely result of the builder’s suit?

(A) The builder will recover nothing, because he materially breached the contract.

(B) The builder will recover the reasonable value of his work.

(C) The builder will recover in restitution the amount by which the bathroom increased the value of the homeowner's house, not to exceed $30,000.

(D) The builder will recover $30,000, because the contract is divisible into two parts.

Correct answer: D

Explanation

Answer D is correct. According to the rule of divisible contract, when performance under a contract can be divided into multiple tasks, each with a corresponding price that the other party must pay when the task is completed, one party's performance of a task triggers the other party's duty to pay for it, even when the performing party breaches another part of the contract. Restatement (Second) of Contracts § 240.

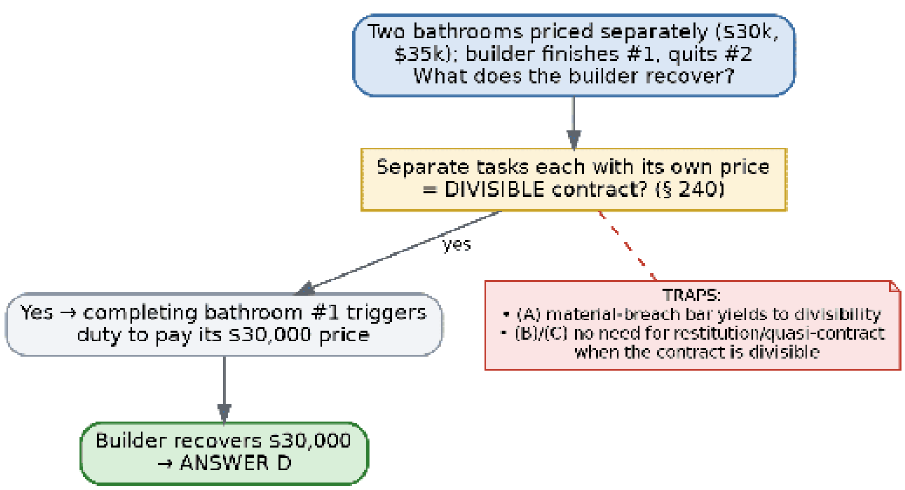
Answer A is incorrect. When it is applicable, as here, the rule of divisible contract provides a way to fairly compensate a party who has materially breached a contract.

Answers B and C are incorrect. As discussed above, when a breaching party can recover under the rule of divisible contract, it is not necessary to look to restitution to provide a remedy.

Exam Tactics & Triggers

- Trigger: separate tasks each with its OWN stated price ($30k / $35k) → DIVISIBLE contract; completing one part triggers pay for that part despite breaching the other.
- Rule chain: § 240 divisible-contract rule, matched pairs of performance and price mean a completed unit earns its price even for a breaching party.
- Distractor trap (A): 'material breach = recover nothing' is the general rule, but divisibility is the exception the paired prices signal.
- Distractor traps (B)/(C): restitution/quasi-contract are unnecessary once the contract is divisible, the builder gets the full contract price of the completed part, $30,000.

Answer Flowchart



Question 173 — Evidence

A pedestrian sued a defendant for injuries he suffered after the defendant allegedly drove his car through a red light and struck the pedestrian in a crosswalk. At trial, a woman who had seen the accident testified that she clearly saw the defendant run the red light and hit the pedestrian. The defendant did not cross-examine the woman, and she was excused as a witness and immediately left the jurisdiction. The defendant then called the woman's neighbor to testify that the woman had told him a week after the accident that the defendant had not run the red light. The pedestrian objects to the neighbor's testimony about the woman's statement.

Is the neighbor's testimony about the woman's statement admissible?

(A) Yes, both to prove that the defendant did not run the red light and to impeach the woman.

(B) Yes, only to prove that the defendant did not run the red light.

(C) Yes, only to impeach the woman with her prior inconsistent statement.

(D) No, because the statement is hearsay if offered to prove that the defendant did not run the red light and cannot be offered to impeach because the woman was not given an opportunity to explain or deny the statement.

Correct answer: D

Explanation

Answer D is correct. The woman’s out-of-court statement would be hearsay if offered to prove that the defendant, in fact, did not run the red light, and there is no applicable hearsay exception. Further, extrinsic evidence of the woman’s prior inconsistent statement may not be offered to impeach her, because she had no opportunity at trial to explain or deny the earlier statement.

Answer A is incorrect. The woman’s out-of-court statement would be hearsay if offered to prove that the defendant, in fact, did not run the red light, and there is no applicable hearsay exception. This answer is also incorrect because extrinsic evidence of the woman’s prior inconsistent statement may not be offered to impeach her, because she had no opportunity at trial to explain or deny the earlier statement.

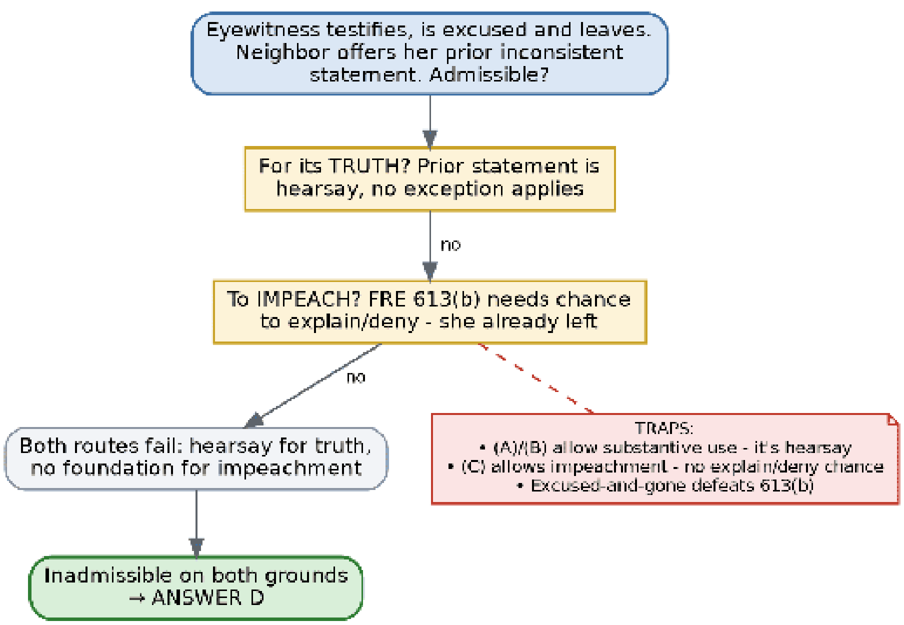
Answer B is incorrect. The woman’s out-of-court statement would be hearsay if offered to prove that the defendant, in fact, did not run the red light, and there is no applicable hearsay exception.

Answer C is incorrect. Extrinsic evidence of the woman’s prior inconsistent statement may not be offered to impeach her, because she had no opportunity at trial to explain or deny the earlier statement.

Exam Tactics & Triggers

- Trigger: witness testifies, is 'excused and leaves', THEN a prior inconsistent statement is offered → the extrinsic-evidence foundation (chance to explain/deny) was never met.
- Rule chain FRE 613(b): extrinsic proof of a prior inconsistent statement requires the witness get an opportunity to explain or deny; excused-and-gone kills that route.
- Double-fail: as substantive proof the neighbor's account is hearsay with no exception (this witness's prior statement is not 801(d)(1)(A) since not under oath at a proceeding).
- Distractor tells (A),(B),(C): each lets the statement in for one purpose, but BOTH the truth-use (hearsay) and the impeachment-use (no foundation) fail, so only the 'No' answer survives.

Answer Flowchart



Question 174 — Torts

A mother purchased over-the-counter pain medication for her daughter, who suffered from headaches. The packaging indicated that the pills were “coated” but did not list the ingredients in the coating. A few days after she bought the medication, because the daughter was in extreme pain, the mother gave the daughter three times the recommended dose of the medication. Thirty minutes later, because the daughter had a very rare allergy to an ingredient in the coating, she had a severe allergic reaction, for which she was hospitalized. The mother was aware of the daughter’s allergy, but she did not know that the medication contained the ingredient to which the daughter was allergic.

In a failure-to-warn action brought against the manufacturer of the medication, which of the arguments below would be the LEAST promising as a defense?

(A) The daughter’s allergy to the ingredient in the coating was very rare.

(B) The manufacturer’s duty was to warn learned intermediaries, not consumers of the medication.

(C) The mother should not have given her daughter a triple dose of the medication.

(D) The mother, knowing of her daughter’s very rare allergy, should not have purchased the medication without knowing what ingredients were in the coating.

Correct answer: B

Explanation

Answer B is correct. This question asks which argument would be LEAST effective for the manufacturer’s defense against liability. The learned intermediary doctrine—which insulates manufacturers of prescription drugs from liability if they provide adequate warnings to prescribing physicians—has no application in this case, which involves the sale and use of an over-the-counter medication. Accordingly, the doctrine would offer no help to the manufacturer in its defense of the action.

Answer A is incorrect. The incidence of injury being very rare would be a helpful argument for the manufacturer, as it would help to establish that the medication was not defective as a result of the manufacturer’s failure to list the coating’s ingredients or to otherwise warn of the risk of allergic reaction. (If the risk of a certain type of injury is low enough, there is no duty to warn.)

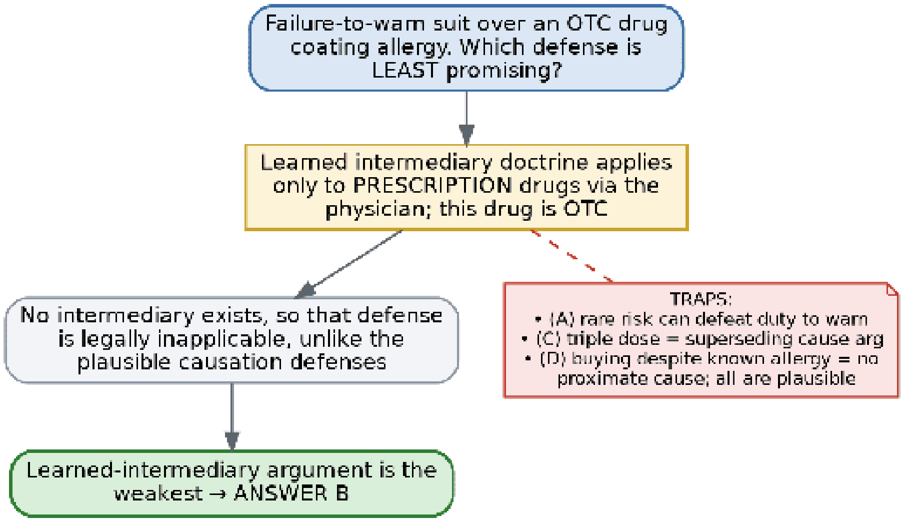
Answer C is incorrect. The manufacturer can argue that its failure to warn was not a proximate cause of the daughter’s injury because the mother’s administration of a triple dose to the daughter was an unforeseeable intervening (superseding) cause. The argument may not win, but it is plausible and thus would be a better ground for avoiding liability than the learned intermediary rule, which would be ineffective as a defense.

Answer D is incorrect for the same reasons that answer C is incorrect. Given the mother’s knowledge of the daughter’s allergy, the mother’s failure to determine whether the medication contained the substance to which the daughter was allergic might provide the basis for a no- proximate-cause argument.

Exam Tactics & Triggers

- Strategic tell: 'LEAST promising defense' → pick the argument that is legally INAPPLICABLE, not merely weak; eliminate the ones that could plausibly work.
- Trigger: OVER-THE-COUNTER medication → the learned intermediary doctrine (warn the prescribing physician) does NOT apply, there is no intermediary, so (B) is a dead defense.
- Distractor traps (A)/(C)/(D) are all PLAUSIBLE defenses: rare risk (no duty to warn), triple dose and buying despite a known allergy (superseding/no-proximate-cause), so they survive as real arguments.
- Vocabulary lock: learned intermediary = prescription drugs, physician warning; flip to OTC and the doctrine evaporates.

Answer Flowchart



Question 175 — Civil Procedure

A car owner brought a federal diversity action against the car's manufacturer, alleging that the manufacturer had fraudulently misrepresented the car's compliance with federal emissions standards. The manufacturer answered, denying the allegations.

After discovery closed, the court entered a final pretrial order setting out the issues for trial. One week later, the owner moved to amend the order to include the issue of whether the manufacturer had also fraudulently misrepresented the car's fuel economy.

What standard will the court use to determine whether to grant the owner's motion?

(A) The motion may be granted if justice so requires.

(B) The motion may be granted if the owner's omission of the fuel economy issue was due to oversight, inadvertence, or excusable neglect.

(C) The motion may be granted only for good cause.

(D) The motion may be granted only to prevent manifest injustice.

Correct answer: D

Explanation

Answer D is correct. Under Federal Rule of Civil Procedure 16(e), a final pretrial order may be amended only to prevent manifest injustice.

Answer A is incorrect. Under Rule 16(e), a final pretrial order may be amended only to prevent manifest injustice. The "if justice so requires" standard, generally associated with pretrial amendments under Rule 15(a), does not apply in this setting.

Answer B is incorrect. Under Rule 16(e), a final pretrial order may be amended only to prevent manifest injustice. The language cited in this answer comes from Rule 60(b), which governs motions seeking relief from a judgment.

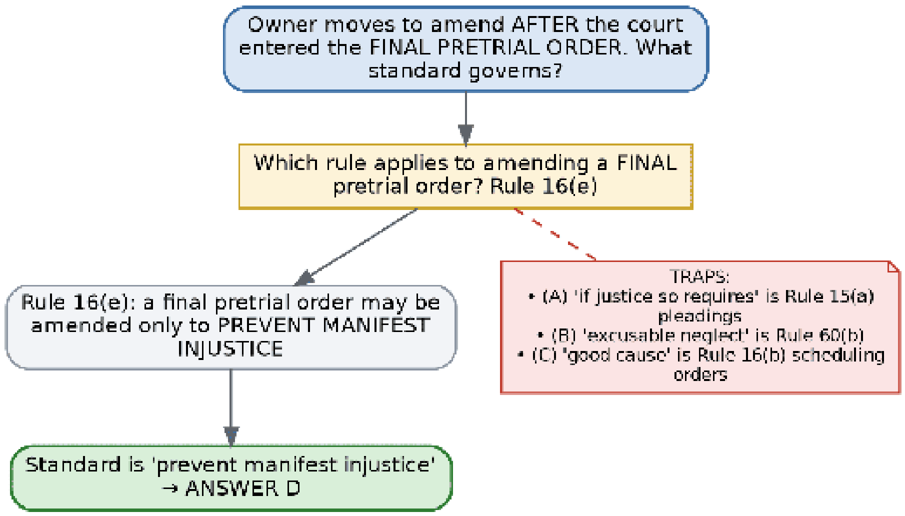
Answer C is incorrect. Under Rule 16(e), a final pretrial order may be amended only to prevent manifest injustice. While "good cause" is the standard for amending a pretrial order under Rule 16(b), the higher "manifest injustice" standard applies once the court enters the final pretrial order under Rule 16(e).

Exam Tactics & Triggers

- Trigger: motion to amend AFTER the court enters the FINAL PRETRIAL ORDER → Rule 16(e) raises the bar to 'to prevent manifest injustice.'
- Lock in the escalating-standard ladder: Rule 15(a) 'when justice so requires' for pleadings, Rule 16(b) 'good cause' for scheduling orders, Rule 16(e) 'manifest injustice' for the final pretrial order.
- Distractor tell (A): 'if justice so requires' is the Rule 15(a) pleading standard, not the tougher post-final-pretrial-order test.

- Distractor tells (B) and (C): 'oversight/inadvertence/excusable neglect' is Rule 60(b) language, and 'good cause' is Rule 16(b), both too lenient once the final pretrial order is entered.

Answer Flowchart



Question 176 — Criminal Law & Procedure

A defendant was tried on a charge of first-degree premeditated murder. At the end of trial, the court granted the defendant's request to have the jury also instructed on the lesser included offense of second-degree murder. After being instructed on the elements of both first- and second-degree murder, the jury found the defendant guilty of second-degree murder.

The defendant appealed. The appellate court reversed the conviction based on an erroneous evidentiary ruling.

May the defendant properly be retried on the original charge of first-degree murder?

(A) No, because the jury effectively acquitted the defendant of first-degree murder.

(B) No, because the vindictive-prosecution doctrine precludes punishing the defendant for taking the appeal.

(C) Yes, because the defendant was the one who sought a lesser included offense instruction.

(D) Yes, because the jury never returned a verdict on the first-degree murder charge.

Correct answer: A

Explanation

Answer A is correct because a jury's conviction on a lesser charge constitutes an implied acquittal of a greater charge, thus barring retrial on that greater charge.

Answer B is incorrect. Although vindictive-prosecution doctrines do preclude a prosecutor from retaliating for a successful defense appeal, here the prosecutor would be simply retrying the original charge. The problem is not that the prosecutor would be enhancing the charges; it is that the jury has already acquitted the defendant of the primary count.

Answer C is incorrect because the defendant's request for the instruction on the lesser included offense does not operate to nullify the jury's implied not-guilty verdict on the greater offense.

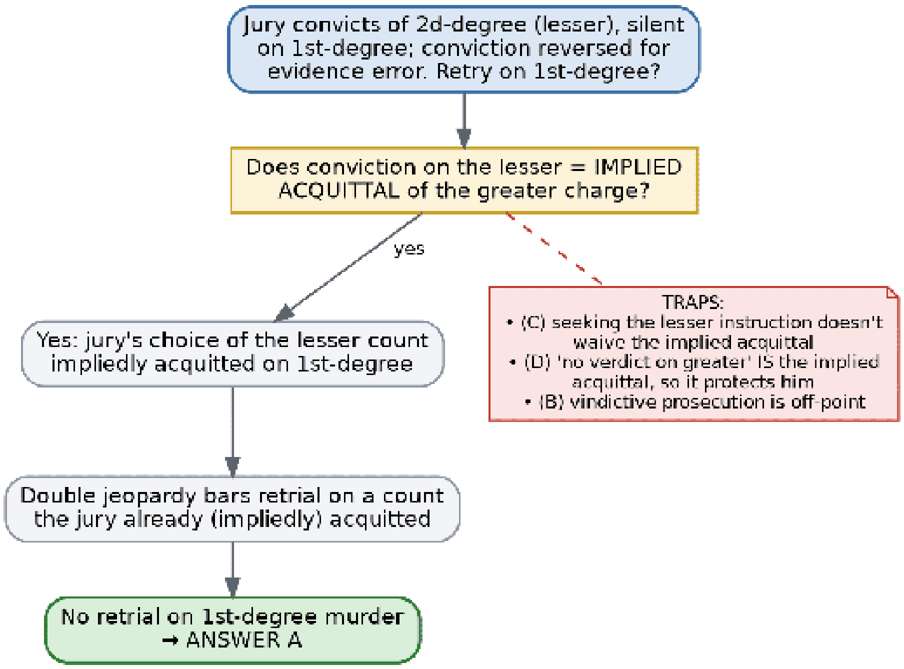
Answer D is incorrect because, by convicting the defendant only on the lesser count, the jury impliedly acquitted on the greater count.

Exam Tactics & Triggers

- Trigger: jury convicts on the LESSER offense and stays silent on the greater → that is an IMPLIED ACQUITTAL of the greater, barring retrial on it after reversal.
- Double jeopardy chain: reversal for trial error normally allows retrial, but NOT on a count the jury impliedly acquitted (Green v. United States logic).

- Distractor (C): the defendant's own request for the lesser-included instruction does not waive or nullify the implied acquittal, a common bait.
- Distractor (D): 'no verdict on the greater' is exactly what an implied acquittal covers, so silence on the top count protects, not exposes, the defendant.

Answer Flowchart



Question 177 — Contracts

In a contract drafted by the owner of a commercial fishing company, the company agreed to provide a specified quantity of fresh tuna to a seafood cannery each week during the “summer season” at an agreed-upon rate. The owner of the fishing company honestly understood “summer season” to mean June 15 to September 15. The cannery’s president honestly understood the term to mean May 15 to September 15, as it is understood according to trade usage in the parties’ industry.

The parties have now discovered that they attach different meanings to the term “summer season.”

How would a court likely resolve the different meanings attached to the term by the parties?

(A) Because both parties were acting in good faith, they will be excused from performing under the contract.

(B) Because the fishing company drafted the contract, the meaning of the term “summer season” will be construed against it, and the cannery’s meaning will be used.

(C) Because the fishing company works in the industry, it will be bound by the meaning supplied by trade usage.

(D) Because the parties have attached different meanings to a key term of the contract, there is no contract.

Correct answer: C

Explanation

Answer C is correct. The meaning of a term supplied by usage of trade will be observed with respect to a transaction between members of the trade, even if one of the parties is not aware of the usage.

Answer A is incorrect. The contract will be performed according to the meaning supplied by the usage of trade.

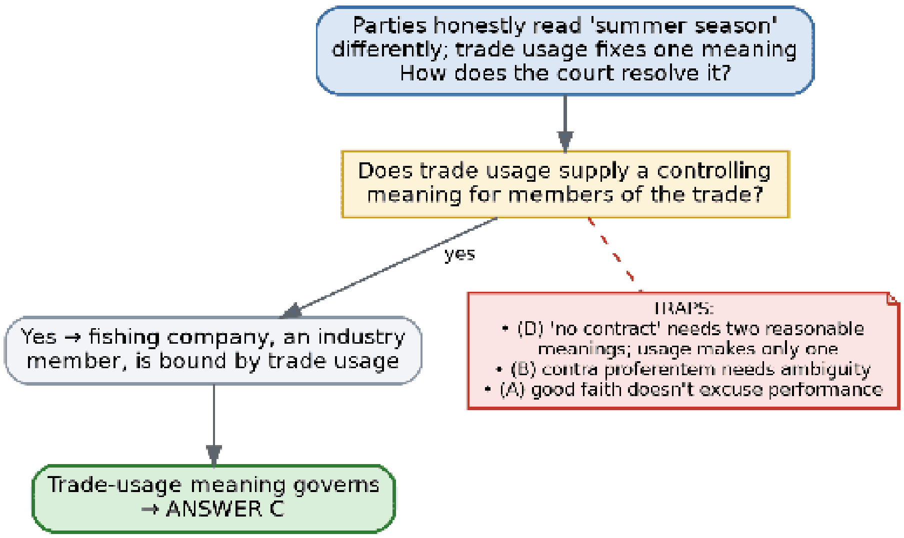
Answer B is incorrect. The interpretive rule contra proferentem (construe a term’s meaning against the party who drafted the writing in which the term is used) may be applied where there is an ambiguity, but there is no ambiguity when the meaning is supplied by trade usage.

Answer D is incorrect. The rule of misunderstanding applies when each party attaches a different reasonable meaning to a term, but here the reasonable meaning is supplied by trade usage.

Exam Tactics & Triggers

- Trigger: parties attach different honest meanings to a term, but TRADE USAGE supplies one meaning → industry member is bound by trade usage even if unaware.
- Rule chain: trade usage governs transactions between members of the trade regardless of a party's personal understanding; the fishing company works in the industry, so it's bound.
- Distractor trap (D) misunderstanding/no contract: the Peerless 'no contract' rule needs TWO equally reasonable meanings, but trade usage makes only ONE reasonable, so a contract exists.
- Distractor trap (B): contra proferentem needs ambiguity, and there is none once trade usage fixes the meaning; usage resolves before the drafter penalty applies.

Answer Flowchart



Question 178 — Constitutional Law

An organization that opposes capital punishment applied to a city for a permit to demonstrate in a public park near the statehouse. In its permit application, the organization stated that it would show videos of executions, and that the executions depicted in the videos are violent. Although the city regularly allows the park to be used for expressive activity, it denied the organization a permit. The city was concerned that the videos would be disturbing to visitors at the statehouse, especially children.

What standard of review should a court use in determining whether the city’s denial of the permit violated the First Amendment?

(A) Whether the city’s denial of the permit was narrowly tailored to serve an important government interest.

(B) Whether the city’s denial of the permit was necessary to serve a compelling government interest.

(C) Whether the organization has an ample, alternative opportunity for communicating its message.

(D) Whether the violence in the videos is patently offensive according to the standards of the community.

Correct answer: B

Explanation

Answer B is correct. The denial of the permit was a content-based restriction on expression because it was based on the content of the videos, which city officials found to be disturbing. Content-based restrictions on expression in a traditional public forum receive strict judicial scrutiny, the elements of which Answer B correctly states.

Answer A is incorrect. It states the incorrect standard of review for the city’s denial of the permit. More than an “important government interest” is required. The denial of the permit was a content- based restriction on expression in a traditional public forum because it was based on the content of the videos, which city officials found to be disturbing. Content-based restrictions on expression in a traditional public forum receive strict judicial scrutiny, which requires the city to prove that its denial of the permit was necessary to serve a compelling government interest.

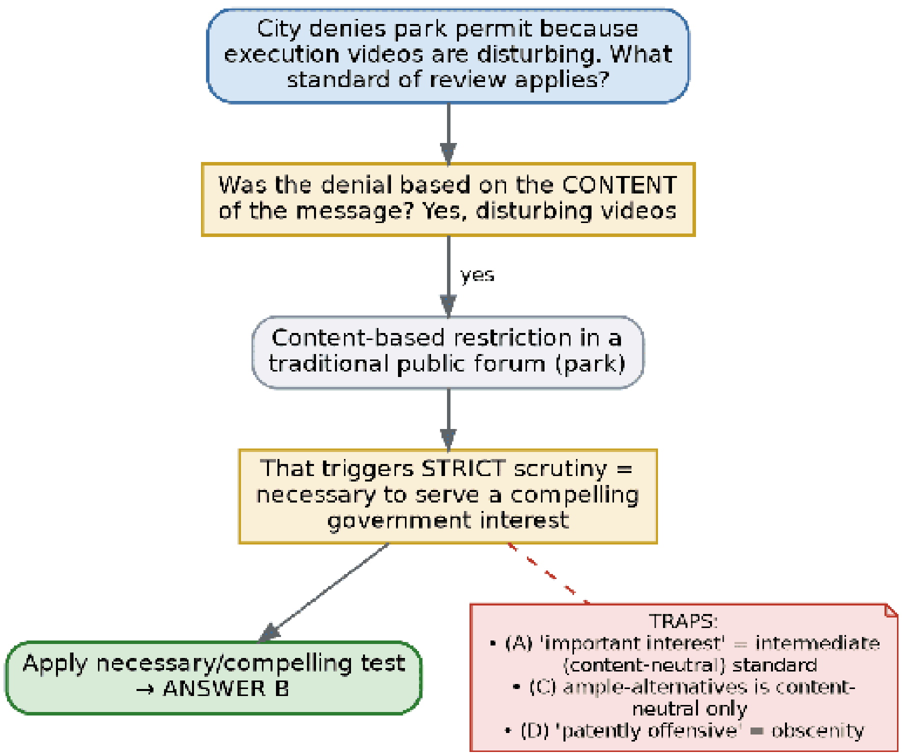
Answer C is incorrect. It states the incorrect standard of review for the city's denial of the permit. The existence of alternative opportunities would only be relevant in a case involving a content- neutral restriction on speech. But the denial of the permit was a content-based restriction on expression in a traditional public forum because it was based on the content of the videos, which city officials found to be disturbing. Content-based restrictions on expression in a traditional public forum receive strict judicial scrutiny, which requires the city to prove that its denial of the permit was necessary to serve a compelling government interest.

Answer D is incorrect. It states the incorrect standard of review for the city's denial of the permit. Whether speech is patently offensive is relevant only in obscenity cases, which involve expression relating to sex.

Exam Tactics & Triggers

- Trigger: permit denied BECAUSE of the content of the message (disturbing videos) in a public park → content-based restriction in a traditional public forum, strict scrutiny.
- Rule chain: content-based + traditional public forum → strict scrutiny = necessary to serve a COMPELLING government interest (answer B).
- Distractor trap (A): 'narrowly tailored to an IMPORTANT interest' is intermediate scrutiny, the standard for content-NEUTRAL laws, so it is too weak here.
- Distractor trap (C)/(D): ample-alternative-channels applies only to content-neutral rules, and 'patently offensive' is an obscenity (sex) test, irrelevant to violent videos.

Answer Flowchart



Question 179 — Torts

A dairy farmer bought a milking system for his cows from an independent distributor. The farmer did not communicate with the manufacturer of the milking system or any of its agents before purchasing the system. The distributor knew that the farmer had several lucrative contracts with milk wholesalers, but the manufacturer was unaware of these contracts. The system never operated properly because of a manufacturing defect, and as a result the dairy farmer lost much of the wholesale contract revenue.

Does the farmer have a viable strict products liability claim against the manufacturer for recovery of his lost revenue?

(A) No, because of the economic loss doctrine.

(B) No, because the manufacturer was not aware of the farmer's wholesale contracts.

(C) Yes, because the consequential damages rule of contract law does not apply in a products liability action in which the product was in fact defective.

(D) Yes, because the milking system's defect proximately caused the farmer's loss of revenue.

Correct answer: A

Explanation

Answer A is correct. In this case, the only harm suffered by the farmer was lost revenue, and strict products liability does not apply when a defective product causes only economic loss, as opposed to personal injury or property damage.

Answer B is incorrect. The problem is not the manufacturer's lack of knowledge about the farmer's contracts but the rule that prevents an injured party from recovering for purely economic loss caused by a defective product.

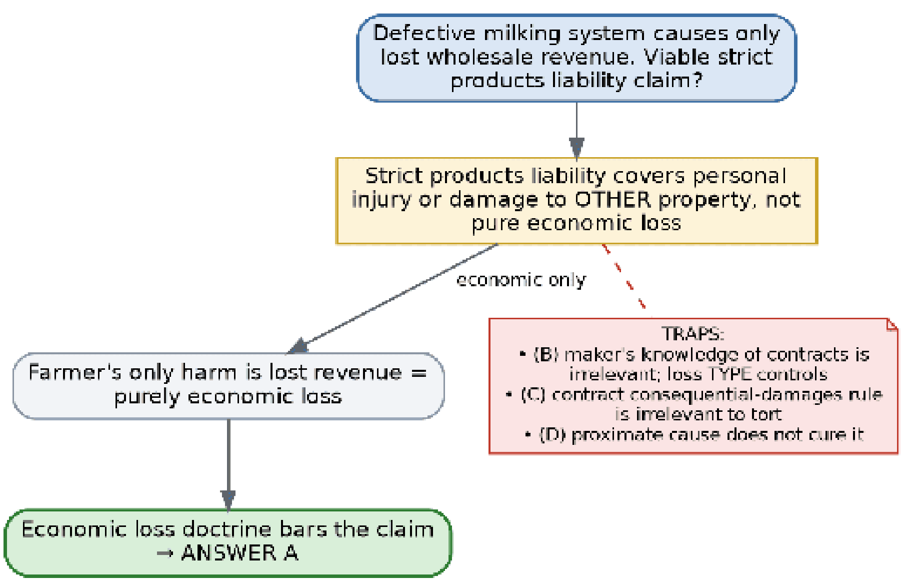
Answer C is incorrect. The statement is true, but it does not entitle the farmer to damages. The contract law rule of consequential damages is irrelevant to the resolution of a tort claim.

Answer D is incorrect. Because the farmer has suffered only economic loss, he cannot recover on a strict products liability theory.

Exam Tactics & Triggers

- Trigger: a defective product causes ONLY lost profits/revenue, no personal injury or damage to other property → economic loss doctrine bars the strict products liability claim.
- Rule chain: strict products liability covers personal injury and damage to OTHER property; pure economic loss is relegated to contract/warranty remedies.
- Distractor trap (B): the manufacturer's knowledge (or lack) of the wholesale contracts is a red herring; the bar is the type of loss, not foreseeability.
- Distractor trap (C): true statements about contract's consequential-damages rule are irrelevant to a tort claim; a correct sentence can still be the wrong answer.

Answer Flowchart



Question 180 — Evidence

A defendant was charged with manufacturing methamphetamine with intent to distribute. At the defendant's trial, the prosecutor calls the defendant's college roommate. The roommate will testify that when he and the defendant were in college, eight years before the trial, he saw the defendant use cocaine on several occasions while studying for finals. The defendant objects to the roommate's testimony.

Is the roommate's testimony admissible?

(A) No, because it is improper character evidence.

(B) No, because the defendant was never convicted of the previous acts.

(C) Yes, because it is probative of intent, and intent is an element of the charged crime.

(D) Yes, because it is probative of the defendant's knowledge about drugs.

Correct answer: A

Explanation

Answer A is correct. This evidence is inadmissible under FRE 404(b). It is evidence of an uncharged crime (possession of cocaine) offered to show that the defendant is a bad person and is therefore more likely to have manufactured methamphetamine. The evidence may not be admitted for that purpose.

Answer B is incorrect. Under FRE 404(b), a conviction is not a prerequisite to the admissibility of other crimes evidence. The testimony, however, is nonetheless inadmissible as improper character evidence.

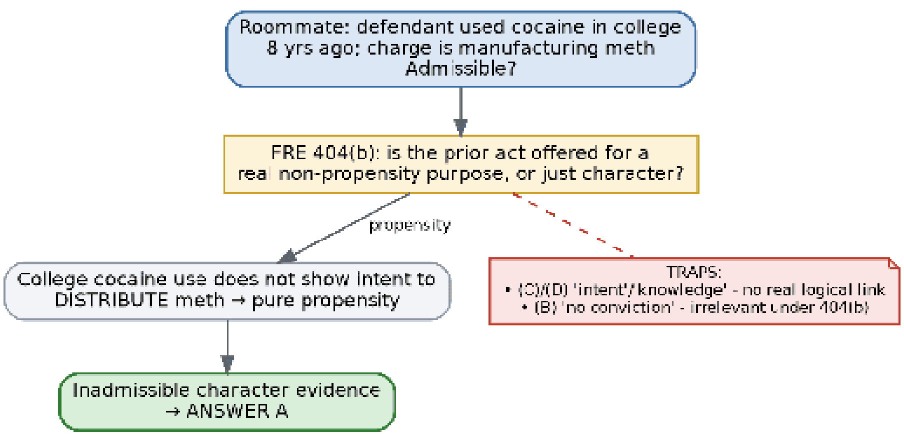
Answer C is incorrect. Under FRE 404(b), evidence of some uncharged crimes may be admitted to show intent, but the defendant's personal use of cocaine in college sheds no light on his intent to distribute methamphetamine years later.

Answer D is incorrect. Under FRE 404(b), evidence of some uncharged crimes may be admitted to show knowledge, but the defendant's personal use of cocaine in college sheds no light on his knowledge that the substance he was allegedly manufacturing was methamphetamine or that such conduct was illegal.

Exam Tactics & Triggers

- Trigger: an unrelated prior bad act (college cocaine use) offered against a meth-manufacturing defendant → FRE 404(b), and here it is pure propensity, so it stays out.
- Test the fit: 404(b) 'intent/knowledge' exceptions require the prior act to ACTUALLY illuminate the charged intent; personal cocaine use 8 years ago says nothing about intent to distribute meth.
- Distractor (C)/(D): reciting a valid 404(b) purpose ('intent', 'knowledge') is bait unless there is a real logical link, which is missing here.
- Distractor (B): 'never convicted' is a red herring, 404(b) needs no conviction; the act is excluded because it is propensity, not because it is unproven.

Answer Flowchart



Question 181 — Real Property

A buyer purchased a house for $300,000. The buyer financed the purchase, in part, with a $250,000 loan from a bank, secured by a mortgage on the house. Before the closing, the buyer's attorney advised him to purchase a standard-form, $300,000 title insurance policy naming the buyer as the insured. Because the buyer had forgotten to bring his checkbook to the closing, his son, who had accompanied him to the closing, paid the premium for him.

One year later, the buyer died. Under his will, the house passed to his son.

Two years later, the son was successfully sued by a previous record owner with a superior title to the house. The previous owner's claim had not been excepted in the buyer's title insurance policy through the carelessness of a title company employee. At the time of the lawsuit, the house was still subject to the bank's mortgage. The son immediately sought indemnification for the loss from the title insurance company.

Is the son entitled to indemnification from the title insurance company?

(A) No, because the son was not named as an insured on the title policy.

(B) No, because when a mortgage remains outstanding, a title policy protects only the mortgagee from any loss.

(C) Yes, because the house passed to the son under the buyer’s will.

(D) Yes, because the son paid the policy premium.

Correct answer: C

Explanation

Answer C is correct. A title insurance policy is a contract of indemnity and insures the named insured in the policy and his heirs and devisees so long as the named insured or his heirs or devisees own the insured property. Here, the house passed to the buyer’s son under the buyer’s will, and the son owned the house/property when the holder of the superior title brought the suit.

Answer A is incorrect. The son is insured because he was the devisee of the house under the buyer’s will. It is irrelevant that the son is not a named insured.

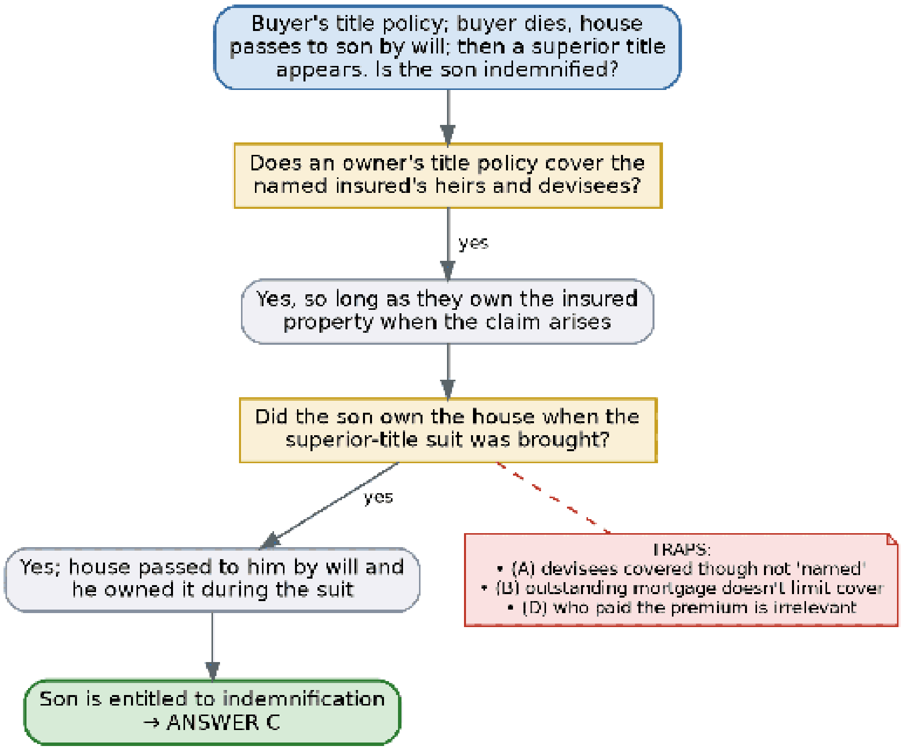
Answer B is incorrect. A title policy protects whoever is the named insured (and heirs or devisees), whether that person is the buyer or the mortgagee. Here the buyer was the named insured.

Answer D is incorrect. The only person who is protected by the policy is the named insured (and heirs or devisees). It is irrelevant who paid the policy premium.

Exam Tactics & Triggers

- Trigger: owner's title policy, insured dies and property passes by will, then a title defect surfaces → the devisee is covered.
- Rule chain: a title policy is a contract of INDEMNITY covering the named insured AND his heirs/devisees so long as they own the insured property.
- Ownership tell: the son owned the house (via the will) when the superior-title suit hit, so coverage runs to him.
- Distractor traps: (A) 'not a named insured' ignores the heirs/devisees extension; (B) an outstanding mortgage doesn't limit coverage to the lender; (D) who paid the premium is irrelevant.

Answer Flowchart



Question 182 — Civil Procedure

A train conductor brought an action against her railroad employer under a federal statute providing liability for work-related injuries occurring on railroads. The employer denied liability, claiming that the conductor's injuries pre-dated her employment and were outside the scope of the statute.

At the close of the evidence at trial, the employer moved for judgment as a matter of law (JMOL), which the court denied. The jury returned a verdict for the conductor.

The employer has renewed its JMOL motion.

What standard should the court apply in ruling on the motion?

(A) Whether a preponderance of the evidence supports the verdict.

(B) Whether the verdict is against the weight of the evidence.

(C) Whether there is a scintilla of evidence to support the verdict.

(D) Whether there is legally sufficient evidence to support the verdict.

Correct answer: D

Explanation

Answer D is correct. Under Federal Rule of Civil Procedure 50, a court may grant judgment as a matter of law against a party only if the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for that party.

Answer A is incorrect. A preponderance standard involves weighing the evidence, and courts cannot weigh the evidence when ruling on a Rule 50 motion.

Answer B is incorrect. Courts cannot weigh the evidence when ruling on a Rule 50 motion.

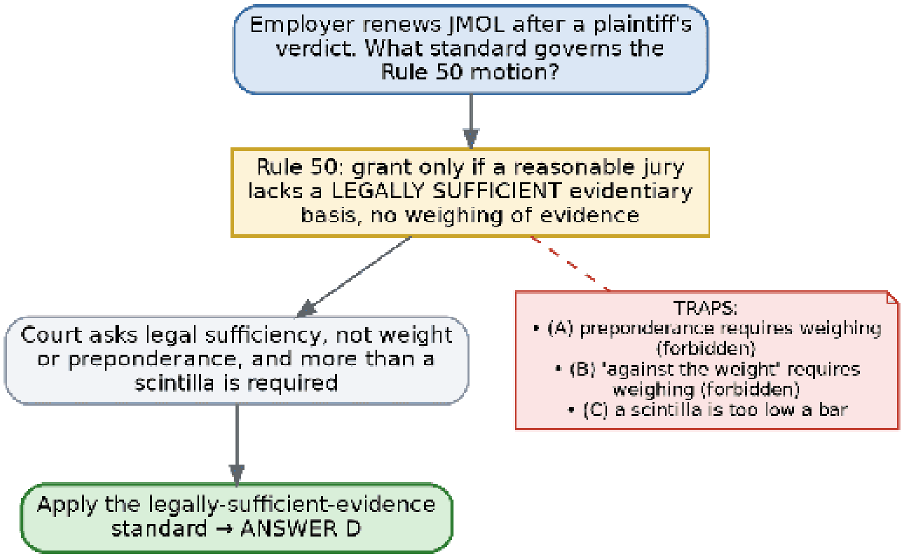
Answer C is incorrect. Under Rule 50, a court may grant judgment as a matter of law against a party only if the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for that party. A mere scintilla of evidence would be insufficient under this standard.

Exam Tactics & Triggers

- Trigger: standard for a renewed JMOL under Rule 50 → 'legally sufficient evidence' for a reasonable jury; the court does NOT weigh evidence.

- Lock in the Rule 50 phrase: grant only if a reasonable jury would NOT have a legally sufficient evidentiary basis to find for the nonmovant.
- Distractor tells (A) and (B): 'preponderance' and 'against the weight of the evidence' both require WEIGHING, which Rule 50 forbids, the recurring JMOL bait.
- Distractor tell (C): a 'scintilla' is too LOW a bar; a mere scintilla is insufficient under the legally-sufficient standard.

Answer Flowchart



Question 183 — Criminal Law & Procedure

A defendant was on trial for murder, which the jurisdiction defines as a homicide with malice aforethought. Three witnesses testified for the state that the defendant approached the victim in a bar, engaged in a brief conversation with him, and then, without warning, drew a gun and shot the victim in the stomach. One witness for the state testified that just before the defendant drew his gun and shot the victim, the victim twice kicked the defendant in the groin. The state’s evidence clearly established that the victim died as a result of the gunshot wound.

The defendant did not testify or offer any evidence. The defendant requested that the jury be instructed on voluntary manslaughter based upon heat of passion from adequate provocation. The state argued that murder should be the only form of homicide submitted.

Should the court instruct on voluntary manslaughter?

(A) No, because the defendant did not meet his burden of producing evidence of heat of passion from adequate provocation.

(B) No, because the weight of the evidence indicated that the victim did nothing amounting to adequate provocation.

(C) Yes, because a defendant is entitled, upon request, to an instruction on his theory of the case.

(D) Yes, because there was evidence that reasonably could support a jury finding of adequate provocation.

Correct answer: D

Explanation

Answer D is correct because a reasonable jury could find that the defendant was twice kicked in the groin by the victim prior to the homicide, and on that basis could conclude that the defendant had adequate provocation. Even though it is a single witness who recounts this event, a jury can credit a single witness’s testimony.

Answer A is incorrect because the state offered evidence of a serious battery on the defendant, which can constitute an adequate provocation, no matter which party presented the evidence.

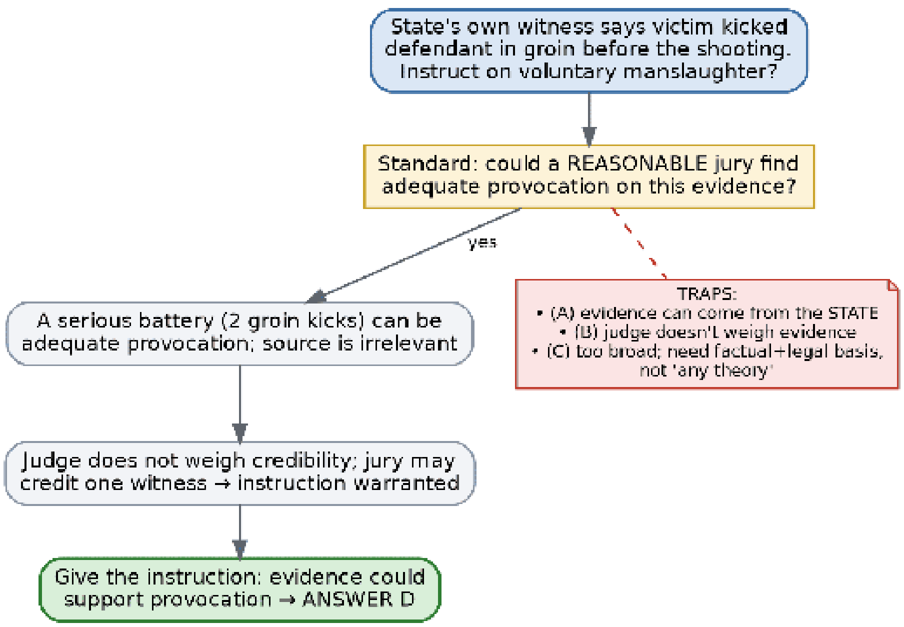
Answer B is incorrect because the judge’s job is not to weigh the evidence but is only to determine whether a reasonable jury could find adequate provocation. The jury may permissibly credit one single witness’s account, even when that account contradicts ample other evidence.

Answer C is incorrect because there is no general rule that the defense is entitled to an instruction on any theory of the case; the defense is only entitled to instructions for which there is a factual and legal basis. For instance, if there were no evidence of provocation, but the defense sought a manslaughter instruction, such an instruction should be denied.

Exam Tactics & Triggers

- Trigger: ANY evidence (even from ONE witness, even the state's own) could let a reasonable jury find heat-of-passion provocation → the instruction must be given.
- Judge's role is a gatekeeper, not a weigher: ask only whether a reasonable jury COULD find provocation, not whether the evidence preponderates.
- Source doesn't matter: a serious battery (two groin kicks) shown by the prosecution still supports the instruction, so 'defendant produced no evidence' (A) is wrong.
- Distractor (C): overbroad 'entitled to any theory' answer; correct rule requires a factual AND legal basis, so pick (D)'s evidence-specific phrasing over (C)'s absolute.

Answer Flowchart



Question 184 — Contracts

A carpenter owed a bank $22,000 on an outstanding personal loan. The carpenter and a homeowner entered into a contract under which the carpenter agreed to perform work for the homeowner and the homeowner agreed to pay $22,000 to the bank within 30 days of completion of the work.

The carpenter completed the work, but the homeowner incurred costs of $2,000 to correct minor deficiencies in the work.

What amount, if any, is the homeowner obligated to pay the bank?

(A) $20,000, because the bank, as an intended beneficiary of the homeowner’s contract with the carpenter, stands in the position of the carpenter.

(B) $22,000, and the homeowner can seek damages from the carpenter for the deficiencies in the work.

(C) Nothing, because the bank is an incidental beneficiary of the homeowner’s contract with the carpenter.

(D) Nothing, because the carpenter’s breach discharged the homeowner’s obligation to pay the bank.

Correct answer: A

Explanation

Answer A is correct. The bank is an intended beneficiary of the contract between the carpenter and the homeowner. An intended beneficiary can enforce a contract to which it is not a party, because the parties intended the contract to benefit that beneficiary. Restatement (Second) of Contracts § 302. However, one party to the contract can assert, against the beneficiary, claims for breach by the other party to the contract. Here, the homeowner, as promisee of the carpenter’s promise to perform the work, can assert the $2,000 claim for breach of that promise against the bank. Restatement (Second) of Contracts § 309(2).

Answer B is incorrect. As discussed above, the homeowner, as promisee of the carpenter’s promise to do the work, can assert the $2,000 claim for damages against the bank, as an intended beneficiary.

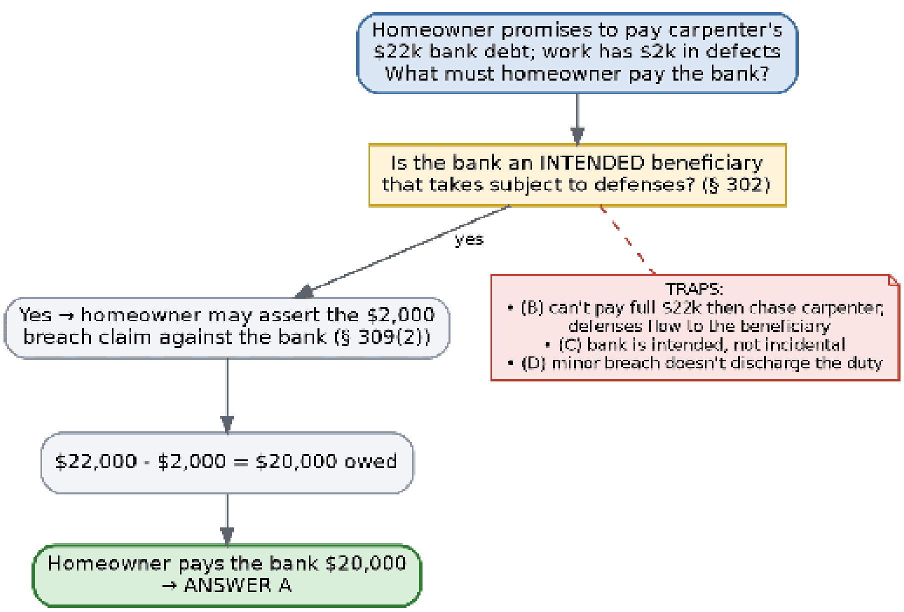
Answer C is incorrect. The bank is not an incidental beneficiary. Instead the bank is an intended beneficiary that can enforce a contract to which it is not a party because the parties intended the contract to benefit that beneficiary. Restatement (Second) of Contracts § 302.

Answer D is incorrect. As an intended beneficiary, the bank can assert the carpenter’s rights under the contract. Here, the carpenter’s breach was not material, so the homeowner’s obligation was not discharged. And even if the carpenter’s breach was material, the bank could recover the value of the work done for the homeowner as restitution. Restatement (Second) of Contracts § 374.

Exam Tactics & Triggers

- Trigger: contract to pay a THIRD-PARTY creditor (the bank) → intended beneficiary who can sue, but takes SUBJECT TO the promisor's defenses.
- Rule chain: § 302 intended beneficiary can enforce; § 309(2) the promisor may assert against the beneficiary claims for the promisee's breach, so the $2,000 defect offsets ($22,000 - $2,000 = $20,000).
- Distractor trap (B): paying full $22,000 and chasing the carpenter separately ignores that the beneficiary 'stands in the shoes' of the promisee, defenses flow through.
- Distractor trap (C): the bank is INTENDED, not incidental, because the parties named it to receive payment; a named creditor is the paradigm intended beneficiary.

Answer Flowchart



Question 185 — Evidence

A defendant has been sued for theft by his former employer. At trial, the employer seeks to call the defendant’s estranged daughter to testify. The daughter would testify that her brother told her, “I helped [the defendant] steal money from his employer.” The brother is available to testify but would be a hostile witness. The defendant’s attorney objects to the daughter’s testimony on hearsay grounds. The employer argues that the statement is admissible under the hearsay exception for statements against interest.

Should the court permit the daughter to testify about her brother’s statement over the defendant’s objection?

(A) No, because the brother is available to testify.

(B) No, because the hearsay exception for statements against penal interest applies only in criminal cases.

(C) Yes, because the statement exposes the brother to criminal liability.

(D) Yes, but only if corroborating circumstances clearly indicate the statement's trustworthiness.

Correct answer: A

Explanation

Answer A is correct. The exception to the hearsay rule for statements against interest may be used to admit evidence only after a showing that the declarant is unavailable to testify. Because the brother is available, that particular hearsay exception may not be used.

Answer B is incorrect. The hearsay exception for statements against interest may be used in civil or criminal cases.

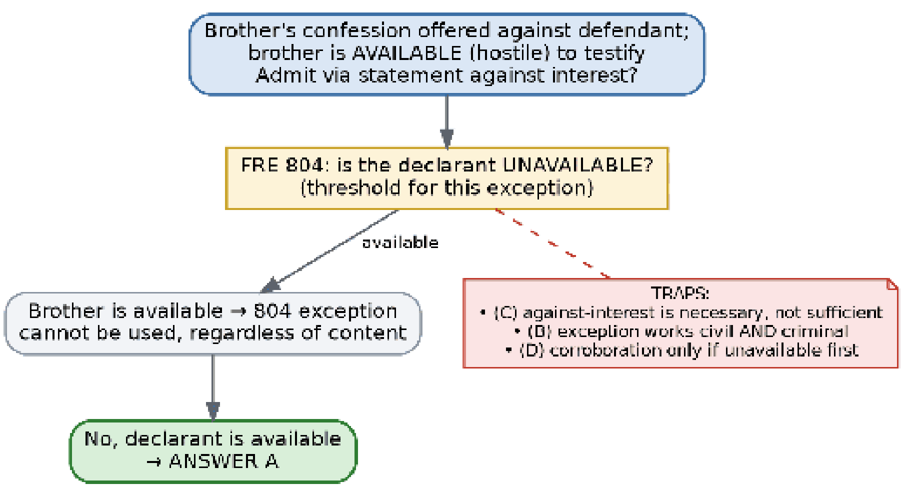
Answer C is incorrect. The statement is inadmissible due to the brother's availability to testify. Although the statement is clearly against the brother's criminal interest, that is not a sufficient condition for admissibility. Unavailability of the brother, as the declarant, also needs to be established.

Answer D is incorrect. The statement is inadmissible due to the brother's availability to testify. Even if the employer could show corroboration, the statement would not be admissible through the hearsay exception for statements against interest.

Exam Tactics & Triggers

- Trigger: statement-against-interest offered while the declarant is 'available to testify' → the exception dies at the threshold, unavailability is mandatory under FRE 804.
- Rule chain: statements against interest live in FRE 804 (unavailability-required exceptions); no unavailability = no exception, full stop.
- Distractor (C): 'exposes brother to criminal liability' is true but insufficient, being against interest is necessary, not sufficient; you still need unavailability.
- Distractor (B)/(D): the exception works in civil AND criminal cases, and corroboration matters only for penal-interest statements offered when the declarant IS unavailable.

Answer Flowchart



Question 186 — Constitutional Law

A multi-building apartment complex in a city residential neighborhood has a swimming pool, the use of which is restricted to tenants of the complex. The owner of the complex has applied to the city for a permit to construct an additional apartment building on the site. The city has told the owner that it will approve the permit only if the owner makes the swimming pool available to all residents of the neighborhood. The purpose of the condition is to compensate neighborhood residents for the increased street traffic that will result from the tenants of the new building.

Is the permit condition constitutional?

(A) No, because requiring the owner to open the pool to all neighborhood residents violates the freedom of association of the current tenants of the complex.

(B) No, because there is no logical nexus between the permit condition and the city's concern with increased street traffic.

(C) Yes, because it does not undermine the owner's reasonable investment-backed expectations.

(D) Yes, because it substantially advances the city's legitimate interest in reducing street traffic in the residential neighborhood.

Correct answer: B

Explanation

Answer B is correct. The Supreme Court has held that government-imposed conditions on the development of a property constitute a taking unless the conditions are rationally related to preventing harms caused by the new development. Because the condition of making the swimming pool available to neighborhood residents is not rationally related to alleviating the harm of increased street traffic, the condition constitutes a government taking. The city does not propose to provide just compensation for the taking, and therefore the condition is unconstitutional.

Answer A is incorrect. Requiring the pool to be open to all neighborhood residents does not violate the current tenants' freedom of expressive association, because their association with one another is not for the advancement of free expression. Nor does the requirement violate freedom of intimate association, because their association is not small and intimate.

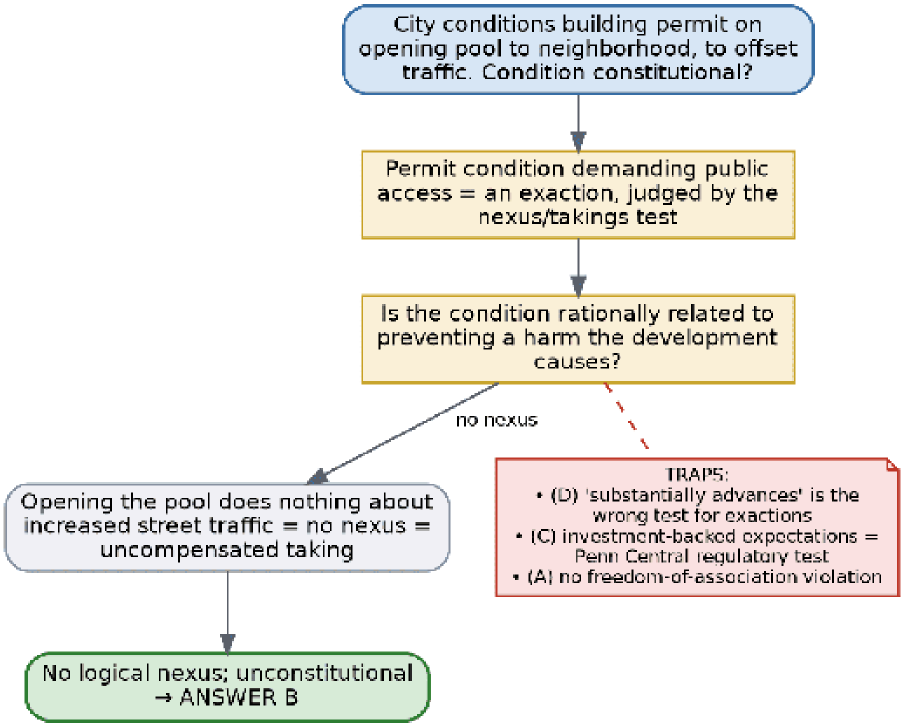
Answer C is incorrect. Whether or not the condition undermines the owner's reasonable investment- backed expectations is not the proper standard. Because the government is demanding public access to the property in exchange for a permit to build, the test for determining whether the condition constitutes a taking is whether it is rationally related to preventing harms caused by the new development.

Answer D is incorrect. Whether or not the condition substantially advances a legitimate interest of the city is not the proper standard. The proper test for determining whether the condition constitutes a taking is whether it is rationally related to preventing harms caused by the new development.

Exam Tactics & Triggers

- Trigger: a government PERMIT CONDITION demanding public access/property in exchange for approval → unconstitutional-conditions/exactions test (Nollan-Dolan nexus).
- Rule chain: an exaction is a taking unless it is rationally related (has a nexus) to preventing a harm the new development causes; open the pool vs. street traffic = no nexus.
- Distractor trap (D): 'substantially advances a legitimate interest' is NOT the exactions test, the question is nexus to development-caused harm, so D uses the wrong standard.
- Distractor trap (C): 'reasonable investment-backed expectations' is the regulatory-takings (Penn Central) factor, wrong test for an exaction/permit condition.

Answer Flowchart



Question 187 — Contracts

A contractor agreed in writing to build a house for a man for $200,000. The contract stated that the man would pay the contractor $60,000 when the foundation was laid, $60,000 when the house was framed, $60,000 when the walls were completed, and $20,000 when the house was finished. After the contractor laid the foundation and expended $50,000, but before the man paid the contractor anything, the contractor quit the project to take a higher-paying job.

Subject to the man's claim for damages for breach, how much is the contractor likely to recover for the work he performed?

(A) $50,000, on a theory of reliance.

(B) $60,000, on a theory of divisible contract.

(C) The value of the benefit conferred, on a theory of restitution.

(D) Nothing, because the contractor's breach was willful.

Correct answer: C

Explanation

Answer C is correct. A party that materially breaches a contract is nevertheless entitled to recover under a theory of restitution the amount of the value of the benefit that the breaching party's part performance conferred on the victim of the breach. Restatement (Second) of Contracts § 374.

Answer A is incorrect. A breaching party cannot recover on a theory of reliance.

Answer B is incorrect. This is not a divisible contract in which performance can be divided into multiple tasks, each with a corresponding price that the other party must pay when the task is completed. Instead it is a typical construction contract with progress payments as elements of the job are completed. Thus, the contractor does not have a right to $60,000 for having laid the foundation. Restatement (Second) of Contracts § 240.

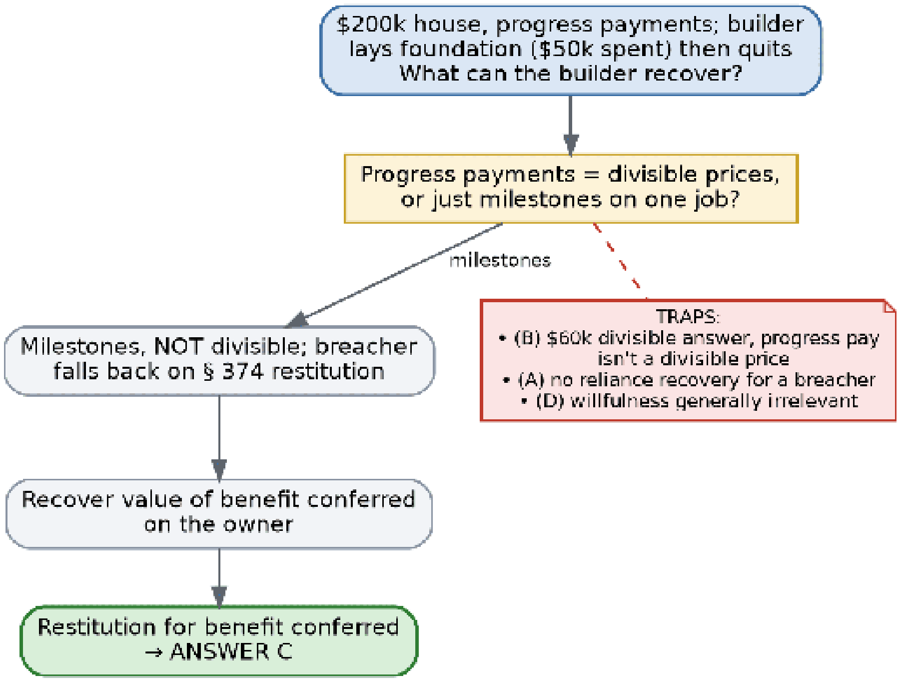
Answer D is incorrect. Contract law generally does not distinguish between willful breaches and other breaches. Restatement (Second) of Contracts § 374; Farnsworth, Contracts § 12.3. This situation would not require a court to consider the reason for breach.

Exam Tactics & Triggers

- Trigger: construction contract with PROGRESS PAYMENTS (not priced sub-tasks) and a breaching builder → recovery is RESTITUTION for benefit conferred, not the progress-payment figure.

- Rule chain: § 374 a material breacher still recovers the value of the benefit conferred on the victim; progress payments are payment milestones, NOT divisible-contract prices.
- Distractor trap (B): $60,000 divisible-contract answer is the bait, but progress payments for stages of ONE job are not separately-priced divisible units.
- Distractor traps (A)/(D): a breaching party can't recover on RELIANCE, and contract law generally ignores whether the breach was willful, so 'nothing because willful' is wrong.

Answer Flowchart



Question 188 — Real Property

A developer conveyed a three-acre tract of land to a man by a warranty deed containing a covenant specifying that the land could be used for residential purposes only. The applicable zoning law required that any home in the community be surrounded by at least two acres of vacant land. The man built a home on the land that fully complied with the zoning law and moved into it.

Subsequently, the man was diagnosed with a chronic debilitating disease. He told his daughter that he might have to sell his home, go to a nursing home, and after exhausting his assets paying for nursing home care, go on Medicaid for the rest of his life. His daughter offered to take care of him for the rest of his life if he would build her a small home on the westerly portion of his land. The man agreed, but because there was no way to site a home on the westerly portion of the land so that it was surrounded by two acres of vacant land, he applied to the local zoning board for a variance.

Should the variance be granted?

(A) No, because hardship variances are not granted where the land is used for residential purposes.

(B) No, because the man is not entitled to a hardship variance.

(C) Yes, because hardship variances are normally granted when the proposed use is consistent with a covenant in a warranty deed.

(D) Yes, because otherwise the man would have to go on Medicaid.

Correct answer: B

Explanation

Answer B is correct. An area variance may be granted when the owner suffers a hardship as the land is currently zoned and the variance will protect the public interest. The man purchased a three-acre tract of land knowing that the applicable zoning law required any home to be surrounded by least two acres of vacant land. The man created the hardship by building the home on his land in a location that left an insufficient amount of land to satisfy the zoning law if he built a second home. The man cannot take advantage of the hardship he created.

Answer A is incorrect. The fact that the land is used for residential purposes is irrelevant. An area variance may be granted in the residential setting but not when the hardship is self-created.

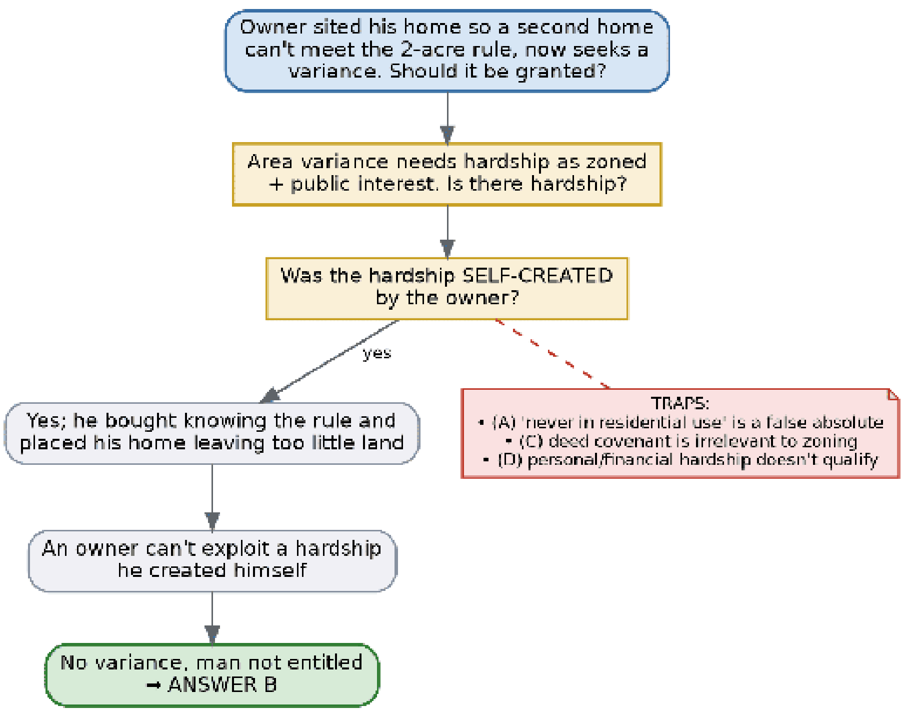
Answer C is incorrect. The fact that the deed contained a covenant noting that the land can be used only for residential purposes is irrelevant. The applicable zoning law allows residential use but limits it by the amount of vacant land surrounding any home.

Answer D is incorrect. The owner's personal hardship is irrelevant. An area variance can be granted if the owner suffers a hardship, but he cannot take advantage of the hardship he created.

Exam Tactics & Triggers

- Trigger: owner asks for a variance for a hardship he created himself → SELF-CREATED hardship defeats the variance.
- Rule chain: an area variance needs (1) unnecessary hardship as the land is zoned and (2) protection of the public interest; a self-imposed hardship fails prong one.
- Key tell: he bought knowing the 2-acre rule and sited his first home so no second home could comply, so he manufactured the hardship.
- Distractor traps: (A) 'never in residential use' is a false absolute; (C) the deed covenant is irrelevant to zoning; (D) personal/financial hardship doesn't justify a variance.

Answer Flowchart



Question 189 — Criminal Law & Procedure

A defendant was convicted of burglary following a jury trial in state court. After trial, defense counsel learned that the prosecution had failed to disclose that the key witness against the defendant had previously been convicted of perjury in another case. The defense filed a motion for a new trial.

The trial court rejected the defense argument and upheld the conviction because state discovery rules did not require the disclosure. The defendant then filed an appeal, arguing that the prosecution's failure to disclose this prior perjury conviction had violated his federal constitutional rights.

Can the state appellate court overturn the conviction based on the prosecution's failure to disclose the witness's prior perjury conviction?

(A) No, because discovery is regulated by state rather than federal procedure.

(B) No, because the prior conviction was mere impeachment rather than evidence of actual innocence.

(C) Yes, if there was a reasonable probability of a different outcome.

(D) Yes, regardless of the likelihood of a different outcome.

Correct answer: C

Explanation

Answer C is correct because the prosecution has a constitutional obligation to turn over material exculpatory evidence, which includes evidence that would impeach a critical government witness. Here, the government's key witness had a conviction for an offense—perjury—that directly related to the witness's credibility. If the failure to disclose that information created a reasonable probability of a different outcome, then the appellate court should reverse the conviction.

Answer A is incorrect because, although generally discovery is governed by state rules, the due process clause contains some core rights, such as the right to disclosure of critical exculpatory evidence.

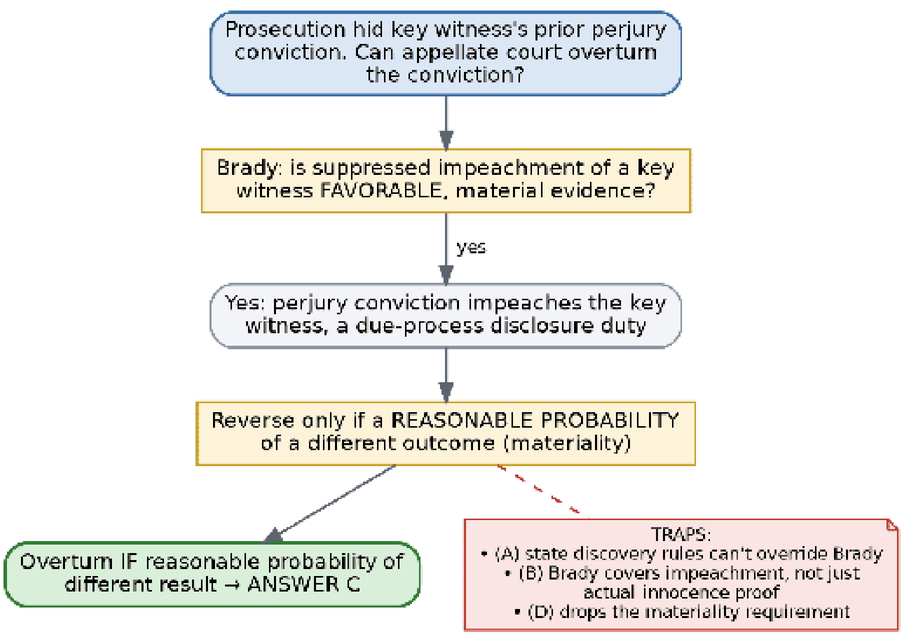
Answer B is incorrect because the scope of due process is not limited to proof of actual innocence. The government must disclose any evidence favorable to the defendant that could affect the outcome of the case.

Answer D is incorrect because the due process clause requires disclosure only if the evidence is significant enough to affect the outcome. If the appellate court concludes that the outcome would not have been affected by disclosure of the witness's prior conviction, then there is no basis for reversal.

Exam Tactics & Triggers

- Trigger: prosecution suppresses evidence that would IMPEACH a key witness (a perjury conviction) → Brady/due-process violation, and impeachment counts as favorable evidence.
- Materiality is the lever: reverse only if there was a REASONABLE PROBABILITY of a different outcome, so the winning answer is conditional, not absolute.
- Distractor (A): state discovery rules cannot trump the federal due-process Brady duty, so 'state law governs discovery' misses the constitutional floor.
- Distractor (D) 'regardless of likelihood': strips out the materiality requirement, a classic overbroad trap; (B) wrongly limits Brady to actual-innocence proof.

Answer Flowchart



Question 190 — Evidence

At a defendant's trial for bank robbery, the prosecutor has presented evidence showing that the robbery was committed at 9:10 a.m. During the defense case, the defendant's girlfriend testifies on direct examination that the defendant was at home with her until approximately noon on the day of the robbery. The prosecutor's first question during her cross-examination is, "On the day of the robbery, you were questioned by an investigator and told him that [the defendant] had left the house by 8 a.m., didn't you?" The girlfriend denies having made the statement and says that the investigator must have misunderstood her. In rebuttal, the prosecutor proposes to call the investigator, who would testify that the girlfriend told him in their interview that the defendant had left the house by 8 a.m. on the day of the robbery. The defendant objects to the investigator's proposed testimony about the girlfriend's prior statement.

Should the court allow the investigator's testimony about the girlfriend's prior statement?

(A) No, because extrinsic evidence may not be used to prove a prior inconsistent statement.

(B) No, because the girlfriend's earlier statement is hearsay not within any exception.

(C) Yes, but only to impeach the girlfriend's direct testimony.

(D) Yes, to impeach the girlfriend's direct testimony and to prove the time the defendant left home on the day of the robbery.

Correct answer: C

Explanation

Answer C is correct. Extrinsic evidence of the girlfriend's earlier statement may be admitted for the purpose of impeaching her direct testimony that the defendant was at home with her during the entire morning, since she was given an opportunity to explain or deny the statement. The statement is admissible for impeachment purposes only, though, because it would be hearsay not within any exception if offered to prove the truth of the statement concerning the time the defendant left home.

Answer A is incorrect. FRE 613(b) permits proof of a witness's prior inconsistent statement through extrinsic evidence so long as the witness has an opportunity to explain or deny the statement. Here, the girlfriend had that opportunity and denied the statement, making proof of the statement by extrinsic evidence permissible.

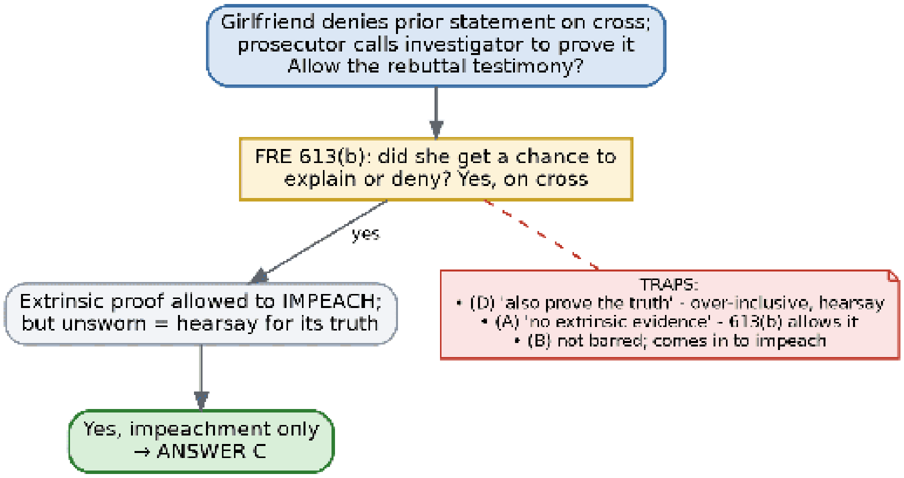
Answer B is incorrect. While the girlfriend's prior inconsistent statement is inadmissible hearsay if offered for its truth, it may be admitted for the non-hearsay purpose of impeaching the girlfriend.

Answer D is incorrect. The girlfriend's prior inconsistent statement is admissible only for impeachment purposes. If offered to prove the truth of the statement concerning the time the defendant left home, it would be inadmissible hearsay not within any exception.

Exam Tactics & Triggers

- Trigger: witness on the stand is confronted with a prior inconsistent statement, denies it, then extrinsic proof is offered → FRE 613(b) allows it once she had the chance to explain/deny.
- Contrast with Q173: here the girlfriend WAS asked and denied it on cross, so the foundation is met and extrinsic evidence is proper, for IMPEACHMENT only.
- Limiting-purpose reflex: an unsworn prior inconsistent statement is hearsay for its truth, so it impeaches credibility but cannot prove when the defendant left home.
- Distractor (D): the 'both impeach and prove the truth' answer is the over-inclusive trap; the statement was not made under oath at a proceeding, so no substantive use.

Answer Flowchart



Question 191 — Real Property

The seller of a vacant building listed it for sale with a licensed real estate broker at a price of $500,000. When the six-month listing period was about to expire, the broker presented an offer to purchase for the full listing price.

The broker did not disclose to the seller that the offer came from the broker’s daughter, who planned to resell the building for $600,000 to a company with which she had been negotiating. The seller accepted the daughter’s offer, conveyed the building to the daughter, and paid the broker a commission.

After discovering that the purchaser was the broker’s daughter, the seller commenced an action against the broker for return of the commission.

Who is likely to prevail in this action?

(A) The broker, because the daughter, not the broker, purchased the building in an arm’s-length transaction.

(B) The broker, because the seller was obligated to sell to anyone at the full listing price.

(C) The seller, because the broker’s failure to make full disclosure breached a fiduciary duty to the seller.

(D) The seller, because the daughter, not the seller, was primarily liable for payment of the commission.

Correct answer: C

Explanation

Answer C is correct. A real estate broker has a duty to make full disclosure of any interest the broker or a family member of the broker may have in the purchase of the property. The broker had a duty to disclose that the purchaser was a family member. Failure to make this disclosure breaches a fiduciary duty and results in the broker’s losing the commission.

Answer A is incorrect. The broker failed to disclose that the purchaser was a family member and that she was going to make a profit from the resale of the building.

Answer B is incorrect. It is irrelevant that the daughter agreed to purchase the building at the full listing price. A broker has a fiduciary duty to disclose any interest the broker or a family member of the broker may have in the purchase of the property.

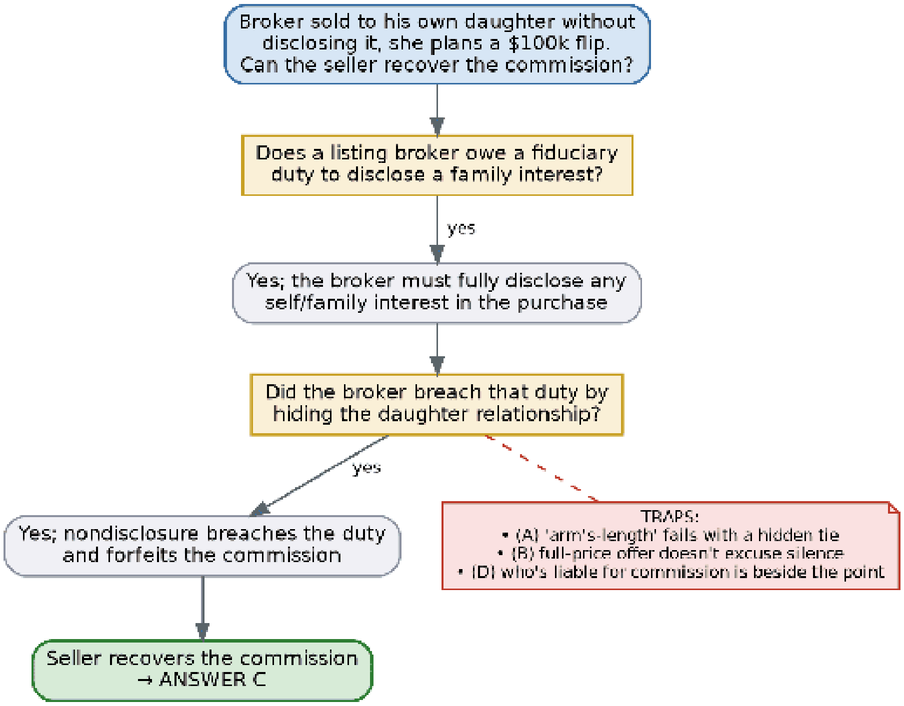
Answer D is incorrect. The commission is paid by the seller who signed the listing agreement with the broker. The daughter did not sign the listing agreement and was not liable for the commission.

Exam Tactics & Triggers

- Trigger: broker sells to a family member (or self) and hides the relationship, then pockets a resale profit → breach of fiduciary duty, forfeit the commission.
- Rule chain: a listing broker is the seller's fiduciary and must FULLY DISCLOSE any personal or family interest in the buyer; nondisclosure forfeits the commission.
- Key tell: the daughter's secret plan to flip for $100k more shows exactly the self-dealing the disclosure duty targets.
- Distractor traps: (A) 'arm's-length' is defeated by the undisclosed family tie; (B) full-price offer doesn't excuse

nondisclosure; (D) commission liability is beside the point.

Answer Flowchart



Question 192 — Torts

A married couple bought a new recreational vehicle (RV) to travel in. After the couple brought the RV home, but before they had moved any personal property into it, the RV spontaneously caught fire and was completely destroyed.

Does the couple have a viable strict products liability claim against the manufacturer of the RV?

(A) No, because the damage was only to the RV itself.

(B) No, because there is no indication that the manufacturer was negligent.

(C) Yes, because a new RV will not spontaneously catch fire in the absence of negligence by its manufacturer.

(D) Yes, because the RV was obviously defective and the manufacturer should be held strictly liable for the damage caused by the defect.

Correct answer: A

Explanation

Answer A is correct. A rule of products liability law states that there is no recovery if a defect in a product causes damage only to the product itself (as opposed to personal injury, or injury to other property). This rule is sometimes referred to as the “economic loss rule.” In such cases, the owner of the damaged product is limited to contract remedies.

Answer B is incorrect. The absence of negligence on the part of the manufacturer does not provide a basis for denying recovery to the couple on a strict products liability claim.

Answer C is incorrect. Recovery on a strict products liability claim does not depend on whether the evidence supports an inference of manufacturer negligence.

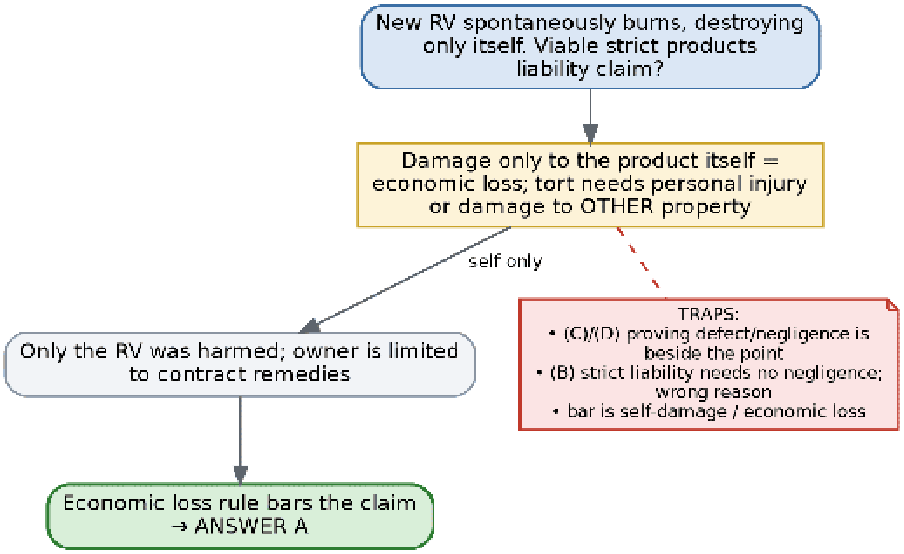
Answer D is incorrect for the reasons stated in the explanation for answer A.

Exam Tactics & Triggers

- Trigger: a defective product destroys ITSELF and nothing else (RV burns up, no other property, no injury) → economic loss rule bars strict products liability.
- Rule chain: 'damage only to the product itself' = economic loss, owner is limited to CONTRACT remedies; injury to

person or OTHER property is required for tort recovery.
- Distractor traps (C)/(D): res-ipsa-style 'won't catch fire without negligence' and 'obviously defective' are irrelevant; strict liability does not turn on proving negligence, but the loss type still bars it.
- Distractor trap (B): 'no indication of negligence' misstates the theory, strict liability needs no negligence, but the RIGHT reason to deny is the self-damage/economic loss rule.

Answer Flowchart



Question 193 — Civil Procedure

An employee was fired after working for a state agency for 29 years. The employee sued the agency in federal court for employment discrimination. The employee agreed with the agency to settle the action in return for 12 monthly settlement payments. The agreement, however, was based on the employee's mistaken assumption that the settlement payments would constitute "earnable salary" under state law, entitling the employee to retire with 30 years of service at a higher pension rate.

Fifteen months after the court entered a judgment dismissing the employee's claim with prejudice, the employee learned that the payments did not constitute earnable salary under state law. The employee promptly moved to reopen the judgment on the ground of mistake.

Should the court grant the motion?

(A) No, because mistake is not a ground on which a court may reopen a judgment.

(B) No, because the employee did not file the motion within one year of the court's entry of judgment.

(C) Yes, because the agency would be unjustly enriched if it did not have to pay the employee a higher pension rate for 30 years of service.

(D) Yes, because the employee filed the motion promptly after learning of the mistake.

Correct answer: B

Explanation

Answer B is correct. A motion under Federal Rule of Civil Procedure 60(b)(1) must be made within one year from the entry of judgment. The employee's motion was untimely because it was made 15 months after entry of judgment.

Answer A is incorrect. In appropriate circumstances, a court may grant relief under Rule 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect."

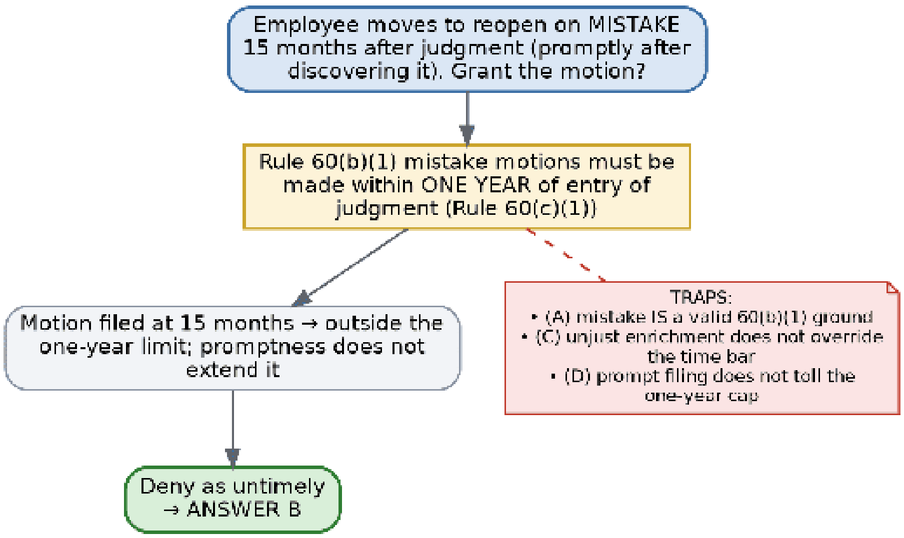
Answer C is incorrect. The court should deny the motion because it was filed more than one year after entry of judgment.

Answer D is incorrect. The court should deny the motion because it was filed more than one year after entry of judgment. The one-year limit applies even if the party moves promptly after learning of the mistake for which relief would be sought.

Exam Tactics & Triggers

- Trigger: motion to reopen on MISTAKE filed more than a year after judgment → Rule 60(b)(1) has a HARD one-year outer limit, so 15 months is untimely.
- Lock in the Rule 60(c)(1) timing: grounds (1),(2),(3) must be brought within ONE YEAR of judgment, no exceptions, even if the movant moved promptly on discovery.
- Distractor tell (A): mistake IS a valid 60(b)(1) ground, so the answer failing on timeliness, not availability, is the correct one.
- Distractor tell (D): 'filed promptly after learning' is a sympathy trap; promptness does not toll or extend the fixed one-year cap for 60(b)(1).

Answer Flowchart



Question 194 — Real Property

A man purchased two warehouses on the same parcel of land and financed the purchase with a mortgage loan from a bank. Among other terms, the mortgage required the man to make all monthly payments of principal and interest on time, to pay all property taxes and assessments when due, to keep the property insured, and to not damage or impair the property or commit waste on the property. The man used the warehouses to store inventory for his business.

A few years later, the man changed the nature of his business. His business plan indicated that he would need only one of the two warehouses and that the warehouse to be used would need renovation. The man renovated one of the warehouses and tore the other one down and did not replace it.

When the bank learned of the man's actions, it accelerated the note and sent the man a letter containing a notice of default and intention to commence foreclosure proceedings. At the time the letter was sent, the man was current on his monthly mortgage payments and property insurance premiums.

After the man failed to pay the accelerated amount, the bank filed a foreclosure action. In that action, the man defended by offering into evidence an appraisal showing that the then-current value of the property was more than the balance due on the mortgage and more than the value of the property before the man renovated the one warehouse and tore down the other.

Which party is likely to prevail?

(A) The bank, because a default will be implied by the court under these facts.

(B) The bank, because the man violated the terms of the mortgage.

(C) The man, because he is current on his mortgage payments and property insurance premiums.

(D) The man, because the bank's collateral has not been impaired and in fact has been enhanced.

Correct answer: B

Explanation

Answer B is correct. Acceleration clauses are valid and can be triggered solely by nonpayment of the mortgage debt but also by other conditions in the mortgage. Here, the breached condition was waste, which occurred when the man tore down the one warehouse without the bank's permission.

Answer A is incorrect. Courts generally do not imply conditions that could constitute a default. Here the court is merely recognizing the contract between the man and the bank.

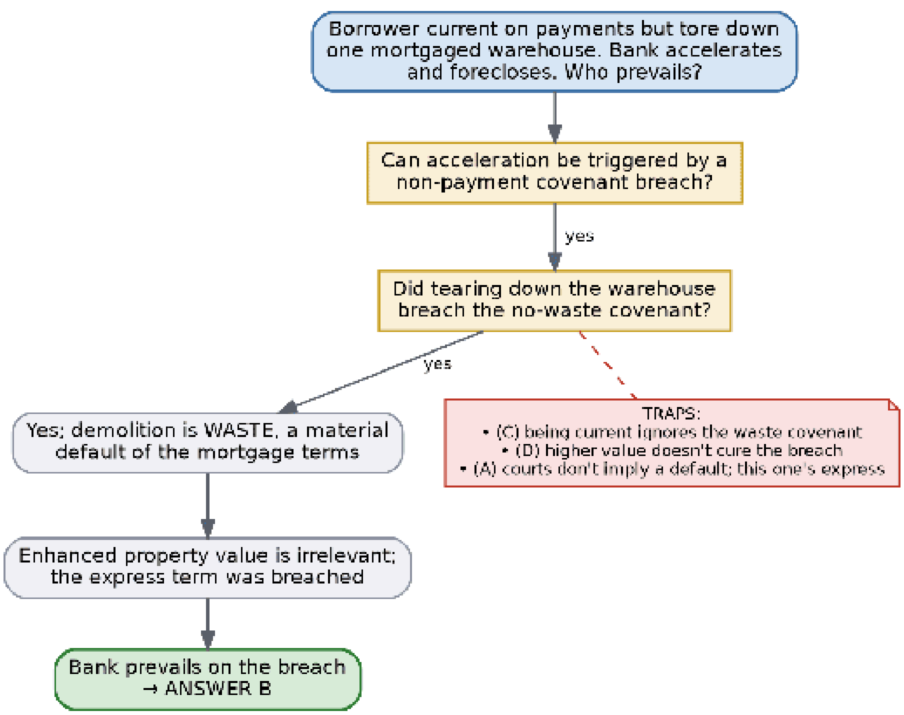
Answer C is incorrect. Acceleration clauses can be triggered by conditions not directly related to the mortgage debt, such as by waste.

Answer D is incorrect. It is irrelevant that the man's actions improved the value of the property. The bank's security interest attached to the land and two warehouses as they existed when the mortgage was signed.

Exam Tactics & Triggers

- Trigger: borrower current on payments but TEARS DOWN part of the mortgaged collateral → waste is a material default that triggers acceleration.
- Rule chain: mortgage covenants include 'no waste'; acceleration clauses fire on ANY breached condition, not just missed payments, and demolition = waste.
- Value tell: it does NOT matter that the property is now worth MORE; breach of the express no-waste term controls, not net collateral value.
- Distractor traps: (C) 'current on payments' ignores the non-payment covenant; (D) enhanced value is irrelevant; (A) courts don't imply defaults, this one is express.

Answer Flowchart



Question 195 — Torts

A racetrack held a motorcycle race, which was sponsored by a local motorcycle dealership. Under the sponsorship agreement, the dealership was required to arrange for licensed and trained emergency medical technicians (EMTs) to be present during the race. The dealership contracted with a licensed and reputable emergency medical services (EMS) firm that supplied EMTs for events such as these.

A motorcyclist participating in the race was injured when he lost control of his motorcycle. The motorcyclist was treated at the scene by the EMTs. In removing the motorcyclist's helmet, one of the EMTs twisted the motorcyclist's neck, causing him to become permanently paralyzed.

The motorcyclist has sued both the EMS firm and the dealership, alleging that the EMT's careless conduct caused his paralysis.

Assuming the validity of the motorcyclist's negligence claim against the EMS firm, which of the following best characterizes the dealership's potential liability?

(A) The dealership is directly liable for hiring the EMS firm.

(B) The dealership is vicariously liable, because it owed a nondelegable duty to provide emergency care for the race.

(C) The dealership is vicariously liable, because the EMT was careless in the course of her employment.

(D) The dealership is neither directly liable nor vicariously liable.

Correct answer: D

Explanation

Answer D is correct. Because the dealership's duty of care was delegable, because the dealership was not negligent in hiring the EMS firm, and because the EMT was not an employee of the dealership, there is no basis for holding the dealership liable, whether directly or vicariously.

Answer A is incorrect. The EMS firm was an independent contractor, not an employee of the dealership, so there can be no vicarious liability, and we know that the dealership exercised due care in selecting the EMS firm, so therefore there is also no basis for direct liability.

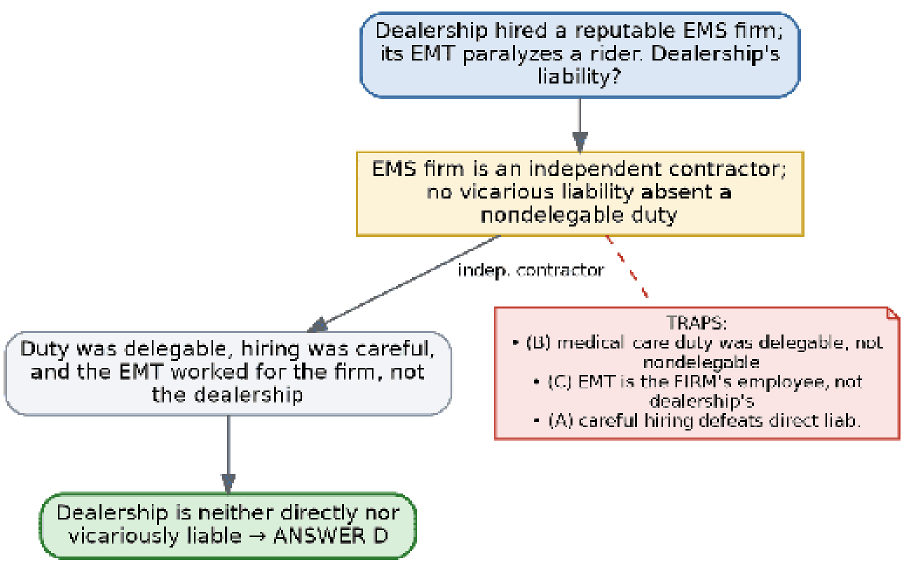
Answer B is incorrect. The duty to provide competent medical care was properly delegated to the EMS firm.

Answer C is incorrect. Because the EMT was an employee only of the EMS firm, not the dealership, any carelessness by the EMT could be imputed only to the EMS firm.

Exam Tactics & Triggers

- Trigger: a party hires an INDEPENDENT CONTRACTOR that acts negligently → default rule is NO vicarious liability; check only for direct (negligent hiring) or a nondelegable duty exception.
- Rule chain: EMT was employed by the EMS firm, not the dealership → no respondeat superior against the dealership; and the dealership carefully hired a reputable firm → no negligent selection.
- Distractor trap (B): 'nondelegable duty' baits students, but the duty to provide competent medical care here was properly delegable, so the exception fails.
- Distractor trap (C): imputing the EMT's carelessness to the dealership skips the employment question, the EMT was the FIRM's employee, so liability flows only to the firm.

Answer Flowchart



Question 196 — Criminal Law & Procedure

A defendant was tried in federal court for bank fraud. The defendant had retained private defense counsel.

As part of the prosecution's case, a federal agent testified regarding incriminating statements that the defendant's confederate, who by the time of trial was a fugitive, had made during a prior interview. Though this testimony violated the Confrontation Clause, the defense attorney raised no objection. The jury ultimately convicted the defendant.

The defendant has now hired new counsel for his appeal and argues that the admission of the federal agent's testimony was erroneous.

If the appeals court finds that the trial court should not have admitted the testimony, does it have the authority to reverse a conviction when the trial attorney raised no objection to the challenged testimony?

(A) No, because failure to object waives a defendant's rights.

(B) No, because the sole remedy is a claim for ineffective assistance of counsel.

(C) Yes, because a defendant cannot be penalized for an attorney's failure to object.

(D) Yes, because an appeals court may correct plain error affecting substantial rights.

Correct answer: D

Explanation

Answer D is correct because, under the "plain error" rule, an appellate court may remedy an error that was plain or obvious if that error affected substantial rights. Here, the error was obvious, of constitutional dimension, and likely prejudicial. Consequently, the court of appeals has authority to reverse the conviction.

Answer A is incorrect because, although a defendant's failure to object can change the standard of appellate review, it does not foreclose review.

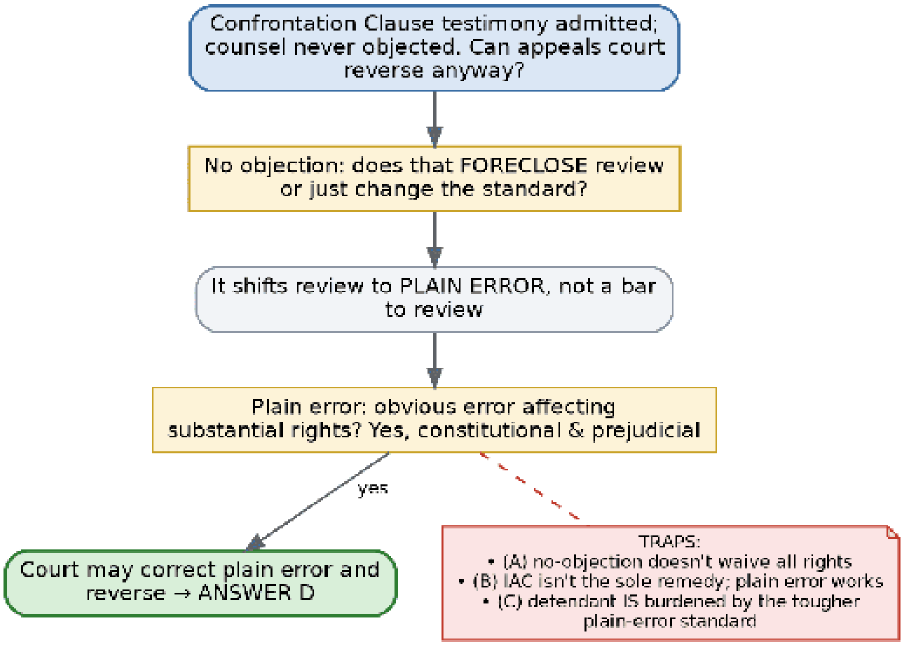
Answer B is incorrect because the plain-error rule allows an appellate court to remedy serious and obvious errors on direct appeal. For such errors, the defendant is not required to claim or prove ineffective assistance of counsel.

Answer C is incorrect because a defendant is, in a sense, "penalized" by an attorney's failure to object. Because the attorney did not object, the defendant must now meet the stringent requirements of the plain-error standard. Had the error been preserved by a contemporaneous objection, the standard of review would be more favorable to the defendant.

Exam Tactics & Triggers

- Trigger: obvious constitutional error (Confrontation Clause) but defense counsel made NO objection → appellate court may still reverse under PLAIN-ERROR review.
- Rule chain: failure to object doesn't waive review, it just RAISES the bar to plain error affecting substantial rights.
- Distractor (B) 'sole remedy is ineffective assistance': wrong, plain-error lets the court fix serious obvious errors on direct appeal without an IAC claim.
- Distractor (A) 'waives rights' overstates; (C) 'cannot be penalized' understates, the defendant IS burdened by the tougher plain-error standard, but review survives.

Answer Flowchart



Question 197 — Contracts

A seller agreed in writing to specially manufacture a machine for a buyer for $100,000, with payment due on delivery. The seller expected to make a profit of $10,000 on the sale. After the seller had spent $30,000 on production of the machine and before the machine was complete, the buyer repudiated the contract. After the repudiation, the seller reasonably believed that if it completed the manufacture of the machine, it would be able to sell the machine to a third party. The seller completed the machine and sold it to a third party for $92,000.

If the seller sues the buyer for breach of contract, how much, if anything, should the seller recover as damages?

(A) $8,000, the amount of the seller's lost profit after selling the completed machine to the third party.

(B) $10,000, the seller's anticipated profit had the buyer not repudiated.

(C) $40,000, the amount the seller spent on production of the machine before the buyer's repudiation plus the seller's anticipated profit.

(D) Nothing, because the seller had a duty not to complete the manufacture of the machine after the buyer repudiated.

Correct answer: A

Explanation

Answer A is correct. If a buyer repudiates a contract for unfinished goods, the seller may in the exercise of reasonable commercial judgment proceed in any reasonable manner, including finishing the goods for resale. UCC § 2-704(2). The seller's damages in that situation are the difference between the contract price and the resale price. UCC § 2-706(1). Here that amount is $8,000.

Answer B is incorrect. As discussed above, after repudiation by a buyer, the seller has the alternative of finishing the goods for resale.

Answer C is incorrect. As discussed above, after repudiation by a buyer, the seller has the alternative of finishing the goods for resale rather than seeking costs and lost profit. Note that this has the effect of reducing the seller's damages.

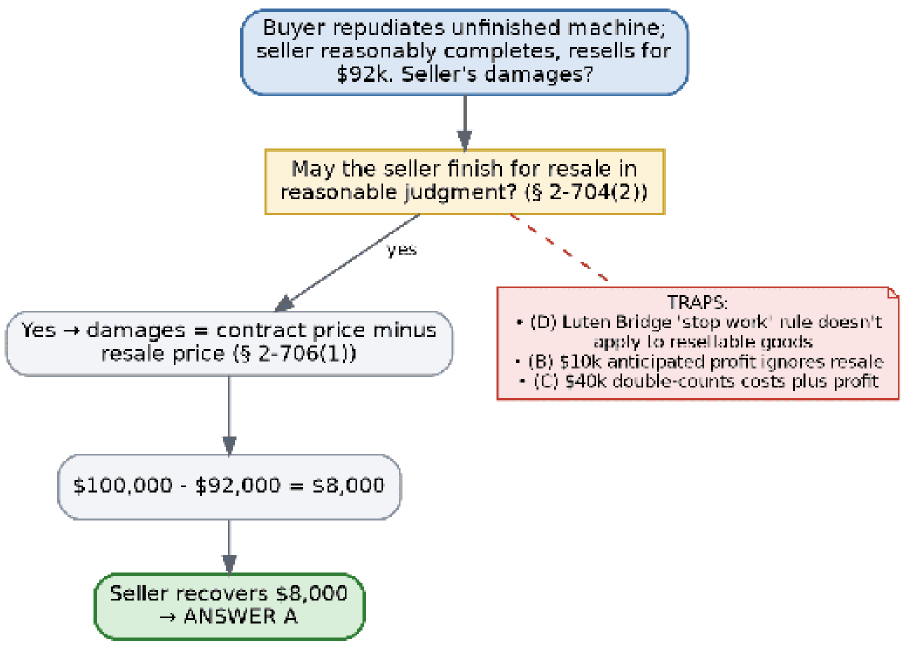
Answer D is incorrect. In the common law case of Rockingham County v. Luten Bridge Co., 35 F.2d 301 (4th Cir. 1929), the court held that the seller had a duty not to complete a bridge after the buyer repudiated. But UCC Article Two has a different rule, because unlike a completed bridge, completed goods can be resold to avoid or reduce loss.

Exam Tactics & Triggers

- Trigger: buyer repudiates unfinished specially-made goods and seller REASONABLY completes and resells → UCC lets the seller finish; damages are contract price minus resale.

- Rule chain: § 2-704(2) seller may complete in reasonable commercial judgment; § 2-706(1) damages = contract $100,000 - resale $92,000 = $8,000.
- Distractor trap (D) Luten Bridge: the common-law 'stop work on repudiation' duty does NOT apply to resellable goods under Article 2; know the UCC carve-out.
- Distractor traps (B)/(C): $10,000 anticipated profit and $40,000 (costs + profit) ignore the actual resale, completing for resale REDUCES the recoverable loss to $8,000.

Answer Flowchart



Question 198 — Evidence

A defendant has been indicted for shooting a gun at a local official. She has raised an insanity defense. At trial, the defendant's attorney seeks to call a qualified psychiatrist as an expert witness. The psychiatrist would testify (1) that at the time of the shooting the defendant suffered from schizophrenia and heard voices commanding her to shoot the official, and (2) that because of these auditory hallucinations, the defendant was legally insane at the time of the shooting. The prosecutor objects to the proposed testimony.

What is the proper ruling for the court to make?

(A) The psychiatrist's testimony is admissible in its entirety, because it will be helpful to the jury.

(B) The psychiatrist's testimony is admissible in its entirety, because the bar on expert testimony about a criminal defendant's mental state applies to the prosecution's expert witnesses only.

(C) The psychiatrist's testimony regarding the defendant's schizophrenia and auditory hallucinations is admissible, but the testimony about whether the defendant was legally insane at the time of the shooting is inadmissible.

(D) The psychiatrist's testimony is inadmissible in its entirety, because an expert witness may not testify about a criminal defendant's mental state.

Correct answer: C

Explanation

Answer C is correct. The first part of the psychiatrist's proposed testimony is admissible, but the second part—that the defendant was legally insane—is inadmissible. Under FRE 704(b), an expert in a criminal case may not state an opinion about whether a defendant was legally insane at the time of the alleged crime. Such testimony is inadmissible because it is an opinion about whether the defendant had a mental state that constitutes a defense.

Answer A is incorrect. As explained above, under FRE 704(b), an expert in a criminal case may not state an opinion about whether a defendant was legally insane at the time of the alleged crime. Thus, the first part of the psychiatrist's proposed testimony is admissible, as it will be helpful to the jury, but the second part is not.

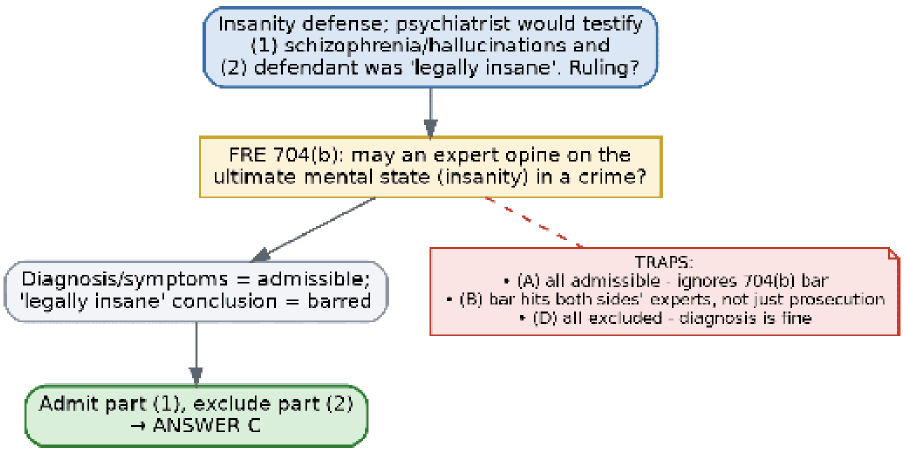
Answer B is incorrect. FRE 704(b)'s prohibition on expert testimony about a defendant's mental state applies to both parties' experts in a criminal case.

Answer D is incorrect. An expert may testify that a defendant suffered from schizophrenia but may not testify that the defendant was legally insane at the time of the alleged crime. The latter testimony is barred by FRE 704(b).

Exam Tactics & Triggers

- Trigger: criminal case + expert asked to opine the defendant 'was legally insane' → FRE 704(b) forbids the ultimate-mental-state opinion; split the testimony.
- Rule chain: the expert MAY describe the diagnosis and symptoms (schizophrenia, hallucinations) but may NOT state that the defendant did/did not have the mental state that is an element or defense.
- Distractor (D): 704(b) bars experts on EITHER side in a criminal case, so 'prosecution experts only' is a false limitation.
- Distractor (A)/(D) extremes: neither 'all in' nor 'all out' is right; the answer is the surgical split, admit the diagnosis, exclude the legal-insanity conclusion.

Answer Flowchart



Question 199 — Constitutional Law

To express their disagreement with a city ordinance prohibiting public nudity, a group of demonstrators performed a dance in the nude in a city park. The demonstrators were convicted of violating the ordinance.

Do the convictions violate the First Amendment?

(A) No, because the demonstrators' conduct is not protected by the First Amendment.

(B) No, because the demonstrators' protected expression may be validly subject to content-neutral regulation such as the public nudity ordinance.

(C) Yes, because the city park is a public forum.

(D) Yes, because the demonstrators' conduct constitutes protected speech and the ordinance is not narrowly tailored to further a substantial government interest.

Correct answer: B

Explanation

Answer B is correct. Although the Supreme Court has held that nude dancing is expressive conduct protected by the First Amendment, the Court nevertheless has upheld bans on nude dancing in particular and public nudity more generally. The ordinance here is a content-neutral prohibition because it does not target any message conveyed by public nudity.

Answer A is incorrect. Demonstrating in the city park, which is a traditional public forum, is expressive conduct protected by the First Amendment. In addition, the Supreme Court has held that nude dancing is expressive conduct protected by the First Amendment. However, the ordinance here is a content-neutral prohibition because it does not target any message conveyed by public nudity.

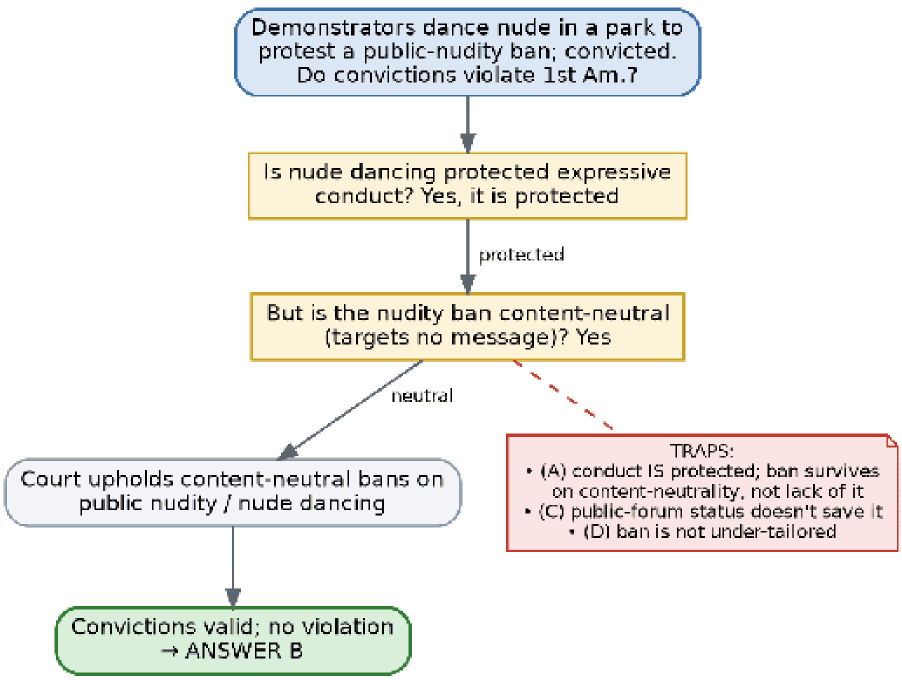
Answer C is incorrect. While it is true that the city park is a public forum, the ordinance prohibiting public nudity is a valid restriction on the use of the park by demonstrators. The ordinance here is a content-neutral prohibition.

Answer D is incorrect. Although the Supreme Court has held that nude dancing is expressive conduct protected by the First Amendment, the Court nevertheless has held that cities may ban nude dancing in particular and public nudity more generally. The ordinance here is a content-neutral prohibition because it does not target any message conveyed by public nudity.

Exam Tactics & Triggers

- Trigger: nude dancing/public nudity as protest → expressive conduct that IS protected, but content-neutral nudity bans are still upheld.
- Rule chain: nude dancing = protected expression, yet a public-nudity ban that targets no message is content-neutral and valid (does not violate the First Amendment).
- Distractor trap (A): saying the conduct is 'not protected' is wrong, the Court treats nude dancing as protected; the ban survives on content-neutrality, not lack of protection.
- Distractor trap (D): the ban does NOT fail tailoring, and (C) 'public forum' is beside the point since a content-neutral nudity ban is valid even in a park.

Answer Flowchart



Question 200 — Real Property

At his death, a father devised a life estate in land to his daughter and the remainder to his son. The daughter later purported to convey a fee simple absolute interest in the land by warranty deed to a purchaser in exchange for valuable consideration. The purchaser properly recorded the deed. The son then transferred his remainder interest in the land to the daughter by quitclaim deed.

The daughter died, leaving her husband as her sole beneficiary and executor. The husband has consulted an attorney to determine the ownership of the land.

What advice should the attorney give the husband?

(A) The husband owns the land, because the warranty deed conveyed the land as a life estate pur autre vie to the purchaser.

(B) The purchaser owns a fee simple absolute interest in the land, because the son transferred his remainder interest to the daughter.

(C) The purchaser owns a life estate in the land, and the husband owns the remainder.

(D) The son owns the land, because the remainder was not alienable.

Correct answer: B

Explanation

Answer B is correct. While the daughter did not own the fee when she purported to convey the fee to the purchaser, the purchaser subsequently acquired the fee when, after the daughter conveyed to the purchaser, the son conveyed his remainder interest to the daughter. This is due to the doctrine of “estoppel by deed” or “after-acquired property.” Under this doctrine, the portion of the title the daughter did not own when she purported to convey a fee simple to the purchaser (the son’s remainder interest) automatically passed through to the purchaser when the daughter acquired it from the son.

Answer A is incorrect. The daughter did not intend or purport to convey a life estate pur autre vie to the purchaser; rather she purported to convey a fee. And, even if a life estate were conveyed, the husband would have no claim because the daughter’s life estate (and the purchaser’s life estate pur autre vie) would have terminated at the daughter’s death.

Answer C is incorrect. Here again, the daughter did not purport to convey a life estate to the purchaser and even if she had, it would have terminated at her death.

Answer D is incorrect. Remainder interests are alienable.

Exam Tactics & Triggers

- Trigger: a grantor conveys MORE than she owns (purports to pass a fee she doesn't have) and LATER acquires the missing title → estoppel by deed / after-acquired title, the title passes automatically to the earlier grantee.
- Lock the sequence: daughter (life tenant) deeds a fee to purchaser, THEN son deeds his remainder to daughter; the after-acquired remainder feeds straight through to the purchaser, giving him fee simple absolute.
- Distractor trap: answers that recharacterize the deed as a life estate or life estate pur autre vie (A and C) ignore that she PURPORTED to convey a fee, and even a life estate would end at her death, so the husband takes nothing.
- Kill answer D on a flat rule: remainders ARE alienable, so 'the remainder was not alienable' is a wrong statement of law, not a close call.

Answer Flowchart