

Question 1:

'One afternoon, a pilot was flying a small airplane when it suddenly ran out of gas. As he was coming in for an emergency landing, the plane crossed into a neighboring state at a very low altitude. At this time, a 9-year-old boy was walking to school when he was struck and injured by an object, which may have fallen from the plane. In federal court, a negligence suit was brought against the pilot by the father of the boy for his son. Accompanied by his father, the boy had visited an attorney for preliminary discussions regarding the case. However, the father did not retain the attorney to represent his son in the lawsuit. Instead, the father hired another lawyer to handle the case. At trial, the pilot's attorney calls the consulting attorney to testify what the boy had said to him regarding his physical condition during the consultation that the attorney had had with the boy and his father. The attorney's testimony is', A. 'admissible, because the attorney-client privilege was waived by the filing of the lawsuit.', B. 'admissible, because there is no privilege of confidentiality when a person other than the client is present at the attorney-client consultation.', C. 'inadmissible, because the attorney-client privilege prevents such a breach of confidential communications.', D. 'inadmissible, because it was a statement of physical condition not made for the purpose of obtaining medical treatment.'

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Answer Option 1:

The attorney-client privilege applies to confidential communications made for the purpose of seeking legal advice, regardless of whether or not the attorney is subsequently retained. In this case, the visit to the attorney was for a legal consultation regarding the case, and therefore, the attorney-client privilege applies. Final Answer: C

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Answer Option 2:

The attorney-client privilege protects from disclosure confidential communications made for the purpose of obtaining legal advice. Here, the father and son consulted with the attorney for the purpose of discussing the case. Just because the father did not ultimately hire this attorney does not mean the privilege is waived. The privilege exists from the moment of consultation and continues even after the attorney-client relationship has terminated. Therefore, the boy's statements to the attorney during their consultation are protected by the attorney-client privilege. Final Answer: C

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Answer Option 3:

The attorney-client privilege protects confidential communications made by a client to his attorney for the purpose of obtaining legal advice. In this case, the boy and his father visited the attorney for preliminary discussions regarding the case. Even though the attorney was not eventually hired to represent the boy, the discussions during the consultation are still privileged. Therefore, the attorney's testimony is inadmissible because of the attorney-client privilege. Final Answer: C

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Answer Option 4:

The attorney-client privilege prevents such a breach of confidential communications. The privilege applies to confidential communications between a client and an attorney acting in a professional capacity for the purpose of securing legal advice or assistance. Here, the boy and his father consulted the attorney for preliminary discussions regarding the case, so the communications during that consultation are privileged, even though the father didn't end up retaining this attorney. The privilege was not waived by the filing of the lawsuit nor because the father was present during the consultation. Thus, the attorney's testimony about these communications is inadmissible. Final Answer: C.

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Answer Option 5:

The attorney-client privilege prevents the disclosure of confidential communications made in the course of seeking legal advice. Even though the boy's father did not retain the consulting attorney, the consultation itself was presumably for the purpose of seeking legal advice and thus would be protected under the attorney-client privilege. Therefore, the attorney's testimony about what the boy said during the consultation would be inadmissible. Final Answer: C

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Answer Option 6:

The attorney-client privilege protects all communication between a client and his or her attorney, provided that the communication was made in confidence and for the purpose of obtaining legal advice. The boy and his father sought legal advice from the attorney, and the communication between them was intended to be confidential, even though the father did not ultimately hire the attorney. Therefore, the privilege applies and the attorney's testimony about that communication is inadmissible. Final Answer: C

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Answer Option 7:

The attorney-client privilege extends to protect from disclosure confidential communications between attorneys and their clients. The privilege applies even if the attorney was only consulted and did not formally represent the client in a lawsuit. Here, the boy and his father consulted with the attorney about the case. The fact that the father was present does not break the privilege as he is the natural guardian of the minor boy and could legally act on his behalf. Therefore, any communication made during this consultation is protected by the attorney-client privilege, making the attorney's testimony inadmissible.

Final Answer: C

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Answer Option 8:

The attorney-client privilege applies to any communication between a lawyer and potential client, even if no professional relationship ultimately arises. The presence of the boy's father, who is a closely related family member, during the consultation, does not destroy the privilege. Therefore, the attorney's testimony about the boy's statements is inadmissible due to attorney-client privilege. Final Answer: C.

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Answer Option 9:

The attorney-client privilege is designed to protect confidential communications between a client and his or her attorney. The fact that the father did not retain the attorney to represent his son in the lawsuit does not waive the privilege. The consultation was for legal advice regarding the case. Therefore, the attorney cannot testify about what was said in the meeting between him, the boy, and his father. Final

Answer: C

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Question 2:

'A state statute provides: "Whenever a person knows or should know that he (or she) is being arrested by a police officer, it is the duty of such person to refrain from using force or any weapon in resisting arrest. " Violation of the statute is made punishable by fine and/or imprisonment. One morning, there was a bank robbery in the state. That afternoon, a police officer arrested a suspect who he believed was involved in the crime. However, the police officer and the suspect have given different accounts concerning what happened next. According to the police officer, after the suspect was apprehended, he resisted arrest and hit the police officer in the mouth with his fist. The police officer, who was momentarily stunned, pulled out his nightstick and struck the suspect over the head with it. On the other hand, the suspect claimed that after he was arrested, he cursed at the policeman, whereupon the police officer began hitting the suspect with his nightstick. To avoid being hit again, the suspect hit the police officer with his fist, knocking him down. The suspect was charged with assault. The suspect should be found', A. 'not guilty, if the arrest was unlawful without probable cause and the jury believes the suspect's account.', B. 'not guilty, if the arrest was lawful, provided that the jury believes the suspect's account.', C. 'guilty, if the arrest was lawful, regardless which account the jury believes.', D. 'guilty, if the arrest was unlawful, regardless which account the jury believes.'

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Answer Option 1:

If the arrest was lawful and the jury believes the suspect's account, he should be found not guilty. In the suspect's account, the use of force was in self-defense against the police officer's unwarranted use of the nightstick, not as a means to resist arrest. Thus, he didn't violate the statute that only prohibits use of force in resisting arrest. Final Answer: B.

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Answer Option 2:

The suspect should be found not guilty, if the arrest was lawful, provided that the jury believes the suspect's account. In the suspect's account, he did not use force to resist arrest but to protect himself from an assaultive police officer. The state statute only mandates refraining from using force "in resisting arrest". The suspect's use of force, as per his account, was not in resistance to arrest but in self-defense, provided that the jury believes his account. Final Answer: B.

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Answer Option 3:

In this case, the suspect should be found not guilty if the arrest was lawful and the jury believes the suspect's account. According to the suspect, he used force to defend himself after the police officer began hitting him with his nightstick. Even though the statute provides that a person should refrain from using force when being arrested, self-defense can be considered a justifiable reason for resisting an arrest, especially when excessive force is used by the police officer. So, if the jury believes the suspect's account, they may find him not guilty even if the arrest was lawful. Final Answer: B.

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Answer Option 4:

The suspect should be found not guilty if the arrest was lawful, provided that the jury believes the suspect's account. The law states that a person may not use force or any weapon "in resisting arrest." Here, if the jury believes the suspect's account, he did not use force to resist arrest, but rather to protect himself from an attack by the police officer. Therefore, under these circumstances, the suspect would not be guilty of violating the law. Final Answer: B

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Answer Option 5:

The suspect should be found not guilty if the arrest was lawful, provided that the jury believes the suspect's account. In this account, the suspect didn't begin to use force until after the police officer had already attacked him, so he was not using force to resist arrest but to defend himself. Final Answer: B.

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Answer Option 6:

If the arrest was lawful, and the jury believes the suspect's account, then the suspect hit the police officer to avoid being hit again. This amounts to resisting arrest, which is in violation of the state statute. While the force used by the police officer may be excessive, the statute does not allow for any use of force or any weapon in resisting arrest. Therefore, the suspect should be found guilty if the arrest was lawful, regardless of which account the jury believes. Final Answer: C

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Answer Option 7:

The suspect should be found not guilty if the arrest was lawful, provided that the jury believes the suspect's account. If the jury believes the suspect's account, the suspect did not use force until after the police officer unjustifiably hit him with the nightstick. Thus, the suspect did not violate the statute because he did not use force in resisting arrest but in self-defense. Final Answer: B.

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Answer Option 8:

The suspect should be found not guilty if the arrest was lawful, provided that the jury believes the suspect's account. According to the suspect, he only used force (i.e., hitting the officer with his fist) after the officer began hitting him with his nightstick. If the jury believes this account, then the suspect did not use force in resisting arrest, but rather in self-defense after being unlawfully assaulted by the officer. Therefore, he did not violate the statute. Final Answer: B.

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Answer Option 9:

The suspect should be found not guilty if the arrest was lawful, provided that the jury believes the suspect's account. According to the suspect's account, he used force only after the police officer started hitting him with a nightstick. If this is true, his action could be seen as self-defense rather than resistance to arrest. If the jury believes the suspect's account, then the suspect did not violate the statute as he did not use force or any weapon in resisting arrest, but to protect himself. Therefore, the correct answer is B.

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Question 3:

'A taxpayer was notified by the government that her individual income tax was underpaid by \$1,012.69. The taxpayer retained an attorney to represent her in contesting the assessment. During the preparation of his client's case, the attorney suggested that it might be a good idea if the taxpayer hired an accountant to organize her records and prepare a financial statement for the year in question. Following the attorney's advice, the taxpayer consulted an accountant, an old family friend, who prepared a financial statement, which the attorney referred to at trial. During the trial, the attorney representing the government called the accountant to testify about statements that the taxpayer made to him. The accountant's proposed testimony is', A. 'inadmissible, because it would violate the attorney-client privilege.', B. 'inadmissible, because it would violate the taxpayer's privilege against self-incrimination.', C. 'inadmissible as violative of the work-product rule.', D. 'admissible as an admission.'

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Answer Option 1:

The accountant's proposed testimony is admissible as an admission. The attorney-client privilege extends only to confidential communications between an attorney and his or her client. It does not extend to communications between a client and a third party, such as an accountant, even if that third party was hired at the suggestion of the attorney. Therefore, any statements that the taxpayer made to the accountant are not protected by the attorney-client privilege and could potentially be used against the taxpayer as admissions. Final Answer: D

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Answer Option 2:

The accountant's proposed testimony is admissible as an admission. The taxpayer voluntarily shared information with the accountant, and those statements can be used against her. There is no attorney-client privilege because the accountant does not fall within that protected relationship. The taxpayer's privilege against self-incrimination applies to compelled testimonies, not voluntarily given statements. The work-product rule protects materials prepared in anticipation of litigation from discovery by the opposing party, but it does not prevent a party from testifying about statements made by the opposing party. Final Answer: D.

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Answer Option 3:

The accountant's proposed testimony is admissible as an admission. The attorney-client privilege does not apply here because the accountant is not a lawyer and was not acting in a legal advisory capacity. Similarly, the work-product rule applies to materials prepared by attorneys or their agents in anticipation of litigation, not to statements made by a client to an accountant. The taxpayer's privilege against self-incrimination applies to criminal cases, not civil tax disputes. However, the statements made by the taxpayer to the accountant could be considered admissions, which are generally admissible. Final Answer: D.

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Answer Option 4:

The accountant's proposed testimony is admissible as an admission. The attorney-client privilege only applies to communications between the attorney and the client, not to communications between the client and a third-party consultant like the accountant. Furthermore, the taxpayer voluntarily provided the information to the accountant, so it does not violate her privilege against self-incrimination. Finally, the work-product rule applies to materials prepared by an attorney in anticipation of litigation and does not cover materials prepared by a third-party accountant. The taxpayer's statements to the accountant can be considered admissions and are admissible as such. Final Answer: D.

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Answer Option 5:

The accountant's proposed testimony is admissible as an admission. The attorney-client privilege, which is intended to protect confidential communications between an attorney and his client, does not extend to the accountant. The privilege against self-incrimination applies in criminal proceedings, not in civil tax proceedings. The work-product rule protects materials prepared in anticipation of litigation by or for a party or its representative, but it does not cover statements made by the taxpayer to the accountant. Therefore, the statements made by the taxpayer to the accountant are not protected and can be considered admissions. Final Answer: D

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Answer Option 6:

The accountant's proposed testimony is admissible as an admission. The attorney-client privilege extends only to communications between the client and the attorney, not to those between the client and a third party such as an accountant. The privilege against self-incrimination applies only in criminal cases, not in civil proceedings such as a tax dispute. The work-product doctrine protects materials prepared in anticipation of litigation from discovery, but does not preclude testimony about statements made by the party. Therefore, the taxpayer's statements to the accountant can be considered admissions and are admissible. Final Answer: D

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Answer Option 7:

The accountant's proposed testimony is admissible as an admission. The attorney-client privilege protects the confidentiality of communications between a client and his or her attorney. However, it does not extend to communications with third parties, such as accountants, even if they are hired to assist in legal matters. The taxpayer's privilege against self-incrimination protects her from being compelled to testify against herself in a criminal case, but it does not apply here. The work-product rule shields materials prepared by an attorney in anticipation of litigation from discovery, but it does not prevent third parties from testifying about their own observations or conversations. The taxpayer's statements to the accountant would be considered admissions and could be used against her. Final Answer: D

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Answer Option 8:

The accountant's proposed testimony is admissible as an admission. The statements made by a party can be used against her as an admission by a party-opponent, which is an exception to the hearsay rule. The attorney-client privilege does not apply here because the accountant is not an attorney and the statements were not made in the context of legal advice or representation. The privilege against self-incrimination applies in criminal cases, not civil tax matters. The work-product rule protects materials prepared in anticipation of litigation by or for a party or its representative, but it does not extend to the statements of a party herself. Final Answer: D

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Answer Option 9:

The accountant's proposed testimony is admissible as an admission. The attorney-client privilege does not extend to accountants, even if the accountant was hired on the advice of the attorney. The self-incrimination privilege is not implicated because this is a civil, not criminal, matter, and the work-product privilege applies to documents and tangible things prepared in anticipation of litigation, not verbal communications made during the course of preparing for trial. Because the taxpayer voluntarily made the statements to the accountant, they can be regarded as admissions and are therefore admissible.

Final Answer: D

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Question 4:

'A resident announced his candidacy for state representative. A law in the state requires new political entrants (regardless of party affiliation) to obtain three times the number of signatures as other candidates who have run for office previously. The resident, however, failed to obtain the necessary number of authenticating signatures to have his name placed on the ballot. The resident filed a complaint in federal district court alleging the unconstitutionality of the authenticating requirement. Which of the following, if established, is the state's strongest argument for sustaining the validity of the authenticating requirement?', A. 'The resident's petition contained a large number of false signatures.', B. 'A similar authenticating statute was held to be constitutional in another state the previous year.', C. 'The authenticating requirement was necessary to further a compelling state interest.', D. 'Two other candidates had successfully petitioned to have their names included on the ballot.'

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Answer Option 1:

The state's strongest argument for sustaining the validity of the authenticating requirement would be that the requirement is necessary to further a compelling state interest. The state could argue that the law is necessary to ensure that only serious candidates run for office, or that the law helps to prevent voter confusion that might result from having too many candidates on the ballot. Final Answer: C

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Answer Option 2:

The state's strongest argument would be that the authenticating requirement serves a compelling state interest. If the state can demonstrate that the law is narrowly tailored to achieve a compelling governmental interest, it may pass constitutional muster, even if it places a burden on the resident's political rights. An example of a compelling interest might be the prevention of ballot clutter and the promotion of an informed electorate. Final Answer: C

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Answer Option 3:

The state's strongest argument for sustaining the validity of the authenticating requirement would be C. 'The authenticating requirement was necessary to further a compelling state interest.' Restrictions on the electoral process must be closely scrutinized and upheld only if they advance a compelling state interest. The other options do not speak to the constitutionality of the law itself. Final Answer: C

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Answer Option 4:

The state's strongest argument would be that the authenticating requirement is necessary to further a compelling state interest. A law that treats new political entrants differently from other candidates implicates equal protection concerns. To withstand an equal protection challenge, the state must show that the law is narrowly tailored to serve a compelling governmental interest. The interest might be in preventing election fraud or in ensuring that only serious candidates are on the ballot. Final Answer: C

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Answer Option 5:

The state's strongest argument would be that the authenticating requirement is necessary to further a compelling state interest. If the state can demonstrate that the requirement serves a compelling state interest, and that it is narrowly tailored to achieve that interest, the law might survive strict scrutiny, which is the level of judicial review that would likely be applied to a law infringing upon the right to run for office. Final Answer: C

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Answer Option 6:

The state's strongest argument for sustaining the validity of the authenticating requirement would be that it is necessary to further a compelling state interest. In order to uphold a law that may infringe upon a constitutional right (in this case, possibly the right to equal protection under the law), the state must demonstrate that the law serves a compelling state interest. If the state can successfully argue that the higher signature requirement for new candidates is necessary to ensure a manageable ballot, maintain the integrity of the election process, or some other compelling reason, the law may be upheld. Final

Answer: C

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Answer Option 7:

The state's strongest argument would be that the authenticating requirement was necessary to further a compelling state interest. This is because it suggests that the requirement serves a significant and legitimate public purpose. The state might argue that the requirement is intended to ensure the seriousness and viability of new political candidates, thereby maintaining the integrity of the electoral process.

Final Answer: C

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Answer Option 8:

The state's strongest argument would be to demonstrate that the authenticating requirement is necessary to further a compelling state interest. If the state can show that the requirement is narrowly tailored to achieve this compelling interest, it could potentially uphold the constitutionality of the law. It would need to demonstrate that the law is the least restrictive means of furthering that interest. The compelling state interest could be ensuring the seriousness of new political entrants or maintaining the integrity of the electoral process. Final Answer: C

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Answer Option 9:

The state's strongest argument would be that the authenticating requirement is necessary to further a compelling state interest. If the state can demonstrate that the law is narrowly tailored to achieve a compelling government interest, it might survive constitutional scrutiny even though it may place a burden on candidates. Final Answer: C

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Question 5:

'A defendant was angry at his friend for marrying the defendant's former girlfriend. As the friend was painting his house one afternoon, the defendant fired a shot from his gun at him. Although the shot missed the friend, the bullet struck and killed the friend's daughter. The defendant is subsequently charged with the first-degree murder of the daughter. The relevant statutes in effect in this jurisdiction are as follows: Section 169: Murder in the first degree is the unlawful and intentional killing of a human being with malice aforethought. Section 170: Malice is expressed when there is manifested a deliberate intention to take away the life of another. Which of the following, if established, would provide the defendant with his best defense?'. A. 'He intended to kill the friend and not the daughter.'. B. 'He intended only to wound the friend.'. C. 'He was unaware of the elements of malice.'. D. 'The killing was the result of negligence in missing the friend.'

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Answer Option 1:

The best defense for the defendant would be to argue that he intended to kill his friend, not the daughter. According to the statutes mentioned, murder in the first degree requires an "unlawful and intentional killing" with "manifested a deliberate intention" to take away the life of another. Since the defendant did not intend to kill the daughter, he could argue that he should not be charged with first-degree murder for her death. Final Answer: A

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Answer Option 2:

The best defense for the defendant would be to show that he intended to kill the friend and not the daughter. This is because the first-degree murder statute requires the unlawful and intentional killing of a human being with malice aforethought. If the defendant did not have the direct intent to kill the daughter (the victim), he cannot be convicted of first-degree murder. However, this does not mean he would not face other charges related to his actions. Final Answer: A

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Answer Option 3:

The best defense for the defendant would be A. 'He intended to kill the friend and not the daughter.' Under the doctrine of transferred intent, the defendant's intent to harm or kill the friend may transfer to the actual victim, the daughter. However, the defendant could argue that he did not have the 'deliberate intention' required by Section 170 to take away the life of the daughter, which could create a potential defense to the first-degree murder charge.

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Answer Option 4:

The defendant's best defense would be that he intended to kill the friend and not the daughter. Section 169 requires an "intentional killing of a human being with malice aforethought," and Section 170 states that "malice is expressed when there is manifested a deliberate intention to take away the life of another." The defendant did not have a deliberate intention to take away the life of the daughter, his bullet for the friend accidentally killed her. Therefore, he did not have the specific intent required for first-degree murder with respect to the daughter. Final Answer: A

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Answer Option 5:

The best defense for the defendant would be A. 'He intended to kill the friend and not the daughter.' In order to be guilty of first-degree murder, the defendant must have had malice aforethought specifically towards the victim. The fact that the defendant intended to kill his friend and not the daughter could potentially absolve him from a first-degree murder charge for the daughter's death. However, this does not mean he would be free of all charges. He might still be guilty of attempted murder or assault for his actions towards the friend, and of manslaughter for the daughter's death. But for the specific charge of first-degree murder of the daughter, this would be his best defense.

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Answer Option 6:

The best defense for the defendant would be to establish that he intended to kill his friend and not the daughter. This is because the relevant statute requires an "unlawful and intentional killing of a human being with malice aforethought". The defendant's intent was directed towards his friend, not the daughter. Therefore, he might argue that he did not have the specific intent to kill the daughter as required by the first-degree murder statute. Final Answer: A

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Answer Option 7:

The defendant's best defense would be that he intended to kill the friend and not the daughter. Under the transferred intent doctrine, a defendant's intent to harm one individual can transfer when the defendant accidentally harms a different individual. However, this only applies if the defendant intended to commit the same crime against the original target. Here, the defendant's intent to kill his friend (murder) would transfer to the actual victim (the daughter). But, if the defendant can establish that he did not intend to kill the daughter, this could work as a defense since the statute requires the "deliberate intention to take away the life of another" for first-degree murder. Final Answer: A

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Answer Option 8:

The defendant's best defense would be "He intended to kill the friend and not the daughter." According to the wording of the statutes, for a first degree murder charge, the prosecution has to prove that the defendant acted with malice aforethought - a deliberate intention to take away the life of 'another' - in this case, the 'another' being the daughter, who was the victim. Since the defendant intended to kill his friend and not the daughter, his act did not display a deliberate intention to take away the life of the victim, which is a crucial element for first-degree murder. Final Answer: A

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Answer Option 9:

The defendant's best defense, if established, would be that he intended to kill the friend and not the daughter. According to the statutes provided, first-degree murder requires a deliberate intention to take away the life of another (Section 170), so it is specific intent crime. This means that the defendant had to have a direct intention to kill the specific victim. In this case, if he intended to kill the friend and not the daughter, then he did not have the necessary specific intent for first-degree murder of the daughter. Final Answer: A

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Question 6:

'The accused made a confession to the police, but his defense attorney needs to find out if the confession is admissible. In which of the following situations would a confession be inadmissible?', A. 'The defendant's statement was involuntary.', B. 'The defendant's statement was voluntary.', C. 'The defendant was not in custody when the statement was made.', D. 'The statement was not made in response to a known police interrogation.'

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Answer Option 1:

In the United States legal system, a statement that is involuntary is not admissible as evidence. The law states that a confession, or any incriminating statement, must be voluntary in order to be admitted into court. If it's proven that the statement was obtained through force, coercion, or deception, it will not be allowed as evidence. Final Answer: A

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Answer Option 2:

A confession is inadmissible if the defendant's statement was involuntary. This is because involuntary confessions are seen as violating the defendant's Fifth Amendment right against self-incrimination and his or her Fourteenth Amendment right to due process. Final Answer: A

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Answer Option 3:

A confession must be voluntary to be admissible in court. If the defendant's statement was involuntary - that is, if it was obtained through coercion or force - it would be inadmissible. A coerced confession infringes on a defendant's right against self-incrimination and right to due process. Final Answer: A

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Answer Option 4:

A confession would be inadmissible if it was involuntary. A defendant's rights under both the Fifth Amendment (right against self-incrimination) and Fourteenth Amendment (due process) would be violated if his confession was coerced or involuntarily obtained. The admissibility of a confession in a criminal prosecution is determined by considering the 'totality of the circumstances' to ensure that the defendant's will was not overborne by pressures and circumstances swirling around him. Final Answer: A

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Answer Option 5:

A confession is inadmissible if it is involuntary. Involuntary statements are not admissible because they are considered unreliable and because their use violates the Due Process Clause. The voluntariness of a confession can be influenced by factors such as the defendant's mental capacity, the length and nature of the questioning, and the use of physical punishment. Final Answer: A

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Answer Option 6:

A confession is inadmissible if it was involuntary. The Fifth Amendment to the U.S. Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." This means that a statement made involuntarily – out of coercion, threats, or improper inducements – cannot be used against the person who made it. Final Answer: A

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Answer Option 7:

A confession that is involuntary is typically not admissible in court. The U.S Constitution's Fifth Amendment, which includes protections against self-incrimination, and the Fourteenth Amendment, which guarantees due process, both serve as the basis for the rule excluding involuntary confessions. If a confession is not made voluntarily – that is, if it results from coercive police conduct – it may not be admitted as evidence. Final Answer: A

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Answer Option 8:

A confession is inadmissible if it was involuntary. This is because the Fifth Amendment's protection against self-incrimination guarantees that no one may be compelled in any criminal case to be a witness against himself. This applies to confessions that are coerced or compelled by authorities. The suspect must give his or her statement voluntarily for it to be admissible. Final Answer: A

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Answer Option 9:

The admissibility of a confession in a criminal trial largely depends on its voluntariness. If the accused's statement was made involuntarily, it would be deemed inadmissible because it violates the Due Process Clause of the Constitution. Therefore, the defense attorney would want to argue that the confession was made under coercion or duress, without the defendant's free will. Final Answer: A

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Question 7:

'A devastating earthquake struck a foreign country. The earthquake destroyed hundreds of homes and buildings. Thousands of residents were killed, injured, and left homeless by the earthquake. The leader of the foreign country sought the assistance of the United States in providing emergency aid. The President initially wanted to send troops from a west coast military base but learned that they were out on training maneuvers. As a result, the President issued an executive order directing members of a federal agency under the supervision of the Immigration and Naturalization Service, to travel to the foreign country to engage in emergency rescue operations. This federal agency's main function is to patrol the borders to prevent illegal aliens from entering the United States. A member of this federal agency refused to comply with the executive order and assist in the relief effort. He claimed that participating in such operations in a foreign country is beyond the scope of his job responsibilities. He brought suit in federal court challenging the validity of the President's executive order. Assuming the member of the federal agency has adequate standing, the court should rule the executive order', A. 'valid, because as commander-in-chief, the President has unfettered authority to require federal employees to participate in an international relief effort.', B. 'valid, because employees of an executive agency can be required to perform such emergency functions.', C. 'invalid, because the executive order is beyond the scope of presidential power absent congressional authorization.', D. 'invalid, because the director of the INS, not the President, has the power to issue directives to federal agencies under its supervision.'

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Answer Option 1:

The President, as the chief executive, has the power to direct the actions of executive agencies and their employees. The members of the federal agency under the supervision of the Immigration and Naturalization Service (INS) are federal employees and they can be required by the President to perform such emergency functions. Thus, the President's executive order is valid because employees of an executive agency can be required to perform such emergency functions. Final Answer: B

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Answer Option 2:

The President has the executive power to require federal employees to provide aid in international disaster relief efforts, even if it falls outside of their usual job responsibilities. The authority to direct and control governmental activities and functions, including those of the Executive Branch agencies, rests with the President. This includes the discretionary power to allocate agency resources and personnel to address urgent situations, such as natural disasters, that require immediate federal intervention to alleviate human suffering. Final Answer: B

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Answer Option 3:

The President has broad authority over foreign relations and can issue executive orders to federal agencies to carry out these responsibilities. The President does not need explicit congressional authorization to do so in an emergency situation. Therefore, the executive order should be deemed valid, and the employees of the federal agency can be required to perform these emergency functions. Final Answer: B

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Answer Option 4:

The President has broad authority in foreign relations and national security matters. The power to issue an executive order directing federal employees to engage in emergency relief operations in a foreign country would fall within the President's powers in conducting foreign relations. Additionally, as Chief Executive, the President has the authority to direct the activities of federal agencies and their employees. Therefore, the court would likely uphold the executive order as valid. Final Answer: B

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Answer Option 5:

The executive order is valid because employees of an executive branch agency can be required to perform such emergency functions. The President, as head of the executive branch, has broad discretion to utilize federal resources in an emergency situation, particularly when it involves foreign affairs. Although it's not typical for INS employees to be involved in overseas relief operations, the President's directive is within his power as long as it does not contravene any statutory authority or rights of the employees. Final Answer: B

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Answer Option 6:

The President has the power to direct the resources and personnel of the executive branch to carry out the policies and duties of the United States. In this case, the President may require federal employees, including those who normally perform duties related to immigration and border control, to assist in an international relief effort. This use of the President's executive power does not require congressional authorization, as it falls within the President's inherent powers to manage the operations of the executive branch and to conduct foreign relations. Therefore, the best answer is B: the executive order is valid, because employees of an executive agency can be required to perform such emergency functions.

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Answer Option 7:

The President does not have unfettered power to require federal employees to do anything he wants. The President's powers are limited by the Constitution and federal law. However, in this case, the executive order is likely valid because employees of an executive agency can be required to perform such emergency functions. Though their primary function may be to patrol borders, in extraordinary circumstances like these, their roles can be expanded to meet the urgent needs of the situation. This does not mean that the President can order federal employees to perform any task he desires, but in a situation such as this where immediate action is necessary, the President has the authority to direct federal resources and personnel as needed. Final Answer: B

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Answer Option 8:

The President's executive order is valid, because employees of an executive agency can be required to perform such emergency functions. The President has the power to direct federal agencies in their tasks and to repurpose them in times of emergency (such as natural disasters) to aid in efforts. In this case, although the primary function of the agency is to patrol borders, the significance of the international relief effort as directed by the President is within the scope of his authority. Final Answer: B

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Answer Option 9:

The President, as head of the executive branch, has the power to issue executive orders to manage operations within the federal government. The legal or constitutional authority for the President's executive orders stems from Article Two, Section 1 of the Constitution which vests "the executive power" in the President. Although the President does not have "unfettered authority" to order federal employees to participate in an international relief effort, it is within his power to assign federal employees to perform emergency functions, especially in situations necessitating immediate response for humanitarian reasons. While the direction may slightly deviate from the employees' usual duties, it is within the scope of the executive branch's function in responding to international crises. Final Answer: B

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Question 8:

'Which of the following is not a warrantless search exception?'; A. 'Cold pursuit', B. 'Incident to a lawful arrest', C. 'Plain view', D. 'Stop and frisk'

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Answer Option 1:

"Cold pursuit" is not a recognized exception to the warrant requirement in criminal law. The other options - searches incident to a lawful arrest, items in plain view, and stop-and-frisks - are all recognized exceptions to the warrant requirement under the Fourth Amendment. Final Answer: A

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Answer Option 2:

Cold pursuit is not considered a recognized exception to the warrant requirement for searches and seizures under the Fourth Amendment. The others, i.e., search incident to lawful arrest, stop and frisk, and plain view, are recognized exceptions where a search without a warrant is considered reasonable. Final Answer: A

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Answer Option 3:

"Cold pursuit" is not a recognized exception to the warrant requirement. The recognized exceptions include searches incident to a lawful arrest, items in plain view, and stop and frisk situations, among others.

Final Answer: A

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Answer Option 4:

"Cold pursuit" is not a recognized exception to the warrant requirement. The other options, including searches incident to a lawful arrest, plain view searches, and stop and frisk, are all recognized exceptions under the Fourth Amendment to the U.S. Constitution that do not require a warrant. Final Answer: A

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Answer Option 5:

"Cold pursuit" is not a recognized exception to the warrant requirement for searches. The other options listed—search incident to a lawful arrest, plain view, and stop and frisk—are all established exceptions to the Fourth Amendment's requirement of a warrant for searches and seizures. Final Answer: A

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Answer Option 6:

"Cold pursuit" is not a recognized exception to the warrant requirement. "Hot pursuit" is a recognized exception, allowing law enforcement to enter premises without a warrant when in immediate or continuous pursuit of a suspect. The other options listed - search incident to a lawful arrest, plain view, and stop and frisk - are all recognized exceptions to the warrant requirement. Final Answer: A

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Answer Option 7:

"Cold pursuit" is not an established exception to the requirement of a warrant for a search. The recognized exceptions include searches incident to a lawful arrest, searches justified by consent, the plain view doctrine, and stop-and-frisk procedures, among others. However, "cold pursuit," which generally refers to the pursuit of a suspect across jurisdictional lines, does not inherently provide an exception to the warrant requirement. Final Answer: A

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Answer Option 8:

"Cold pursuit" is not a recognized exception to the warrant requirement for searches. The other options listed, including searches incident to a lawful arrest, plain view searches, and stop and frisk, are all recognized exceptions to the warrant requirement under the Fourth Amendment. Final Answer: A

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Answer Option 9:

"Cold pursuit" is not a recognized exception to the warrant requirement. The term usually refers to the pursuit of a suspect from one jurisdiction into another, and it does not itself justify a warrantless search. Other options, such as "incident to a lawful arrest," "plain view," and "stop and frisk," describe scenarios where a warrantless search could potentially be justified under certain conditions. Therefore, the correct answer is A. 'Cold Pursuit'.

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Question 9:

'A grocery store purchased a large mirror to hang on a wall in the store. Along with the mirror itself, the manufacturer provided brackets and bolts to be used for hanging the mirror. The grocery store paid a local carpenter to come in and hang the mirror. A few days after the carpenter installed the mirror, the mirror suddenly fell from the wall because of a defect in the brackets. It struck a shopper on the head, causing serious injuries to him. If the shopper asserts a claim against the carpenter based on strict liability in tort, the plaintiff will', A. 'prevail, because the brackets were defective when installed.', B. 'prevail, because it would be abnormally dangerous to maintain such a large mirror on the wall of a retail outlet.', C. 'not prevail, because the carpenter was not engaged in the sale of the mirror.', D. 'not prevail, because the carpenter had no relationship of privity with the plaintiff.'

=====

Answer Option 1:

Strict liability in tort usually applies to manufacturers and sellers of defective products, not to service providers. The carpenter did not participate in the sale of the mirror and was only paid to install it, so it's unlikely that the carpenter would be held strictly liable for the defects in the brackets. Final Answer: C

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Answer Option 2:

The shopper will not prevail against the carpenter based on strict liability in tort because the carpenter was not engaged in the sale of the mirror. Strict liability typically applies to those who manufacture or sell defective products. The carpenter did not manufacture or sell the mirror or its defective brackets; he simply provided a service by installing the mirror. Thus, he would not be subject to strict liability for the defect. Final Answer: C

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Answer Option 3:

The carpenter will not be held under strict liability as he was not engaged in the sale of the mirror. In a claim based on strict liability in tort, the defendant must be engaged in the business of selling the product that caused the injury. The carpenter was merely the installer, not the manufacturer, distributor, or seller. Therefore, he cannot be held strictly liable for the defective brackets that caused the mirror to fall.

Final Answer: C.

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Answer Option 4:

Strict liability in tort generally applies to product manufacturers and sellers for selling a defective product that causes harm to a consumer or user of the product. In this case, the carpenter did not sell the mirror, but was hired only to install it. Therefore, the carpenter is not liable under strict liability in tort because he did not sell the mirror to the grocery store. Final Answer: C

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Answer Option 5:

The doctrine of strict liability generally applies to product manufacturers and sellers, not service providers. The carpenter was simply performing a service (installing the mirror) and did not participate in the manufacturing or selling of the mirror (or defective brackets). Therefore, he would not be subject to strict liability for the defect in brackets. So, the shopper's claim against the carpenter based on strict liability in tort would not prevail. Final Answer: C

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Answer Option 6:

Strict liability in tort is usually applied to those who are engaged in the business of selling or manufacturing products. The carpenter, who was merely involved in the installation of the mirror and did not sell or manufacture it, would not be held strictly liable for the defect in the mirror or brackets. Therefore, the shopper would not prevail against the carpenter on a theory of strict liability. Final Answer: C

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Answer Option 7:

Strict liability applies to a seller of a product that is in a defective condition unreasonably dangerous to the user or consumer or to his property. However, the carpenter in this case is not the seller of a product but rather a service provider. His job was to hang the mirror, not to sell it. So, the carpenter cannot be held strictly liable for the injuries of the shopper. Final Answer: C

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Answer Option 8:

Strict liability in tort applies to those involved in the chain of distribution of a defective product, including manufacturers, wholesalers, and retailers. However, this does not extend to service providers such as the carpenter who only installed the mirror. Since the carpenter was not engaged in the sale of the mirror, he cannot be held strictly liable for the defect in the brackets. Final Answer: C.

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Answer Option 9:

Strict liability in tort is mainly applied to sellers or manufacturers of products. As a service provider, the carpenter does not fall under the category of people who can be held strictly liable. The carpenter did not sell the mirror or the defective bracket that caused the accident. He merely provided a service of installing the mirror. Therefore, the shopper would not be able to assert a claim against the carpenter based on strict liability in tort. Final Answer: C

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Question 10:

'A man who was separated but never divorced from his first wife, married another woman and lived with her as husband and wife. The man and his purported second wife bought a home together as tenants by the entirety. They lived there together for a few years, when the man was accused and convicted of killing his purported wife. He was given a life sentence. The decedent's estate brought a quiet title action to declare the property forfeited to the decedent on the basis that a murderer cannot benefit from his crime. The trial court awarded the property to the estate. The man appealed from his prison cell. Under the common law, will the appellate court affirm the trial court's decision and strip the man of all ownership rights in the home?', A. 'Yes, because a murderer cannot reap the benefits of his ill-doing.', B. 'Yes, because the murderer was also a bigamist who could not take good title to the property in the first place, thus putting full title in the decedent from the date of purchase.', C. 'No, the court will as a policy matter recognize the murderer's pre-slaying right to one-half of the property as a tenant in common.', D. 'No, there is no rule of law that gives the victim or her estate any additional rights in the property that she had before the homicide.'

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Answer Option 1:

Yes, because a murderer cannot reap the benefits of his ill-doing. Common law has a long-standing principle known as the "Slayer's Rule," which holds that a person cannot benefit from his or her own wrongful acts, especially from a crime as serious as murder. This rule has been codified in many jurisdictions and in the Uniform Probate Code. When it is applied, the property is treated as if the murderer predeceased the victim, so the murderer or the murderer's estate has no claim to the property. Final Answer: A

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Answer Option 2:

Under the common law, the estate of a person murdered by a co-tenant cannot acquire the murderer's interest in the property. The common law does not recognize the doctrine of "unworthiness to inherit" or similar principles that would cause a murderer to lose his property interest. However, the issue of bigamy changes the situation significantly. Since the man was still legally married to his first wife when he "married" the second woman and bought the property with her, the second "marriage" was invalid, so the property could not have been held as tenants by the entirety, because this form of ownership requires a valid marriage. Hence, the decedent would have held the title to the property from the date of purchase. Final Answer: B

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Answer Option 3:

Yes, because a murderer cannot reap the benefits of his ill-doing. The "slayer rule" is a doctrine used in common law to prevent a murderer from inheriting property from his victim. If the man is found guilty of murder, the rule would prevent him from gaining property rights from the victim. This rule acts as a sort of "equitable forfeiture," ensuring that the murderer does not benefit from his crime. Final Answer: A

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Answer Option 4:

The answer is B. The second marriage is void ab initio because the man was still married to his first wife at the time of the second marriage. Therefore, he could not take a tenancy by the entirety with a woman to whom he was not legally married. Consequently, the entire ownership of the property vested in the second woman from the time of purchase. Final Answer: B.

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Answer Option 5:

Yes, because the murderer was also a bigamist who could not take good title to the property in the first place, thus putting full title in the decedent from the date of purchase. Under the law, a person cannot be legally married to two people at the same time. Therefore, the second "marriage" was not valid, and the man could not have properly held title to the property as a tenant by the entirety, which requires a valid marriage. Consequently, full title was in the decedent from the date of purchase. Final Answer: B

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Answer Option 6:

The appellate court will affirm the trial court's decision, but not because the murderer cannot reap the benefits of his ill-doing. The second "marriage" was invalid from the start because the man was still married to his first wife. Thus, the man and the decedent could not take title as tenants by the entirety, as that form of ownership is only available to legally married couples. The man and the decedent would instead be treated as tenants in common. However, the fact that the man was a bigamist and could not have been lawfully married to the decedent means that he could not have legally acquired a right to the property as a tenant by the entirety in the first place. This puts full title in the decedent from the date of purchase. Final Answer: B

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Answer Option 7:

The appellate court will affirm the trial court's decision because a murderer cannot reap the benefits of his ill-doing. This is based on the principle that no person should be allowed to profit from his or her own wrong. Known as the "slayer rule," this common law principle prohibits a person from inheriting or taking through the person he or she has unlawfully killed. Final Answer: A

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Answer Option 8:

Yes, because a murderer cannot reap the benefits of his ill-doing. This is known as the "slayer rule" and it prevents someone from inheriting property from a person they have murdered. The purpose behind this rule is to prevent unjust enrichment, and it's a common law principle that has been codified in many states. It holds that a person cannot benefit from his or her own wrongdoing, particularly in cases where a person has killed another and stands to inherit from the victim's estate. In this case, because the man killed his purported second wife, he should not be allowed to benefit from his crime by inheriting the property they owned together. Final Answer: A

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Answer Option 9:

Yes, because a murderer cannot reap the benefits of his ill-doing. In most jurisdictions, a slayer cannot profit from his crime and thus cannot succeed to the property of his victim. Despite the fact that the property was held as tenants by the entirety, which ordinarily would pass upon one spouse's death directly to the other, the law won't allow a person to profit from his own wrong, thus the property goes to the victim's estate. Final Answer: A

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Question 11:

'Bill, a single man, owned pasture land in Deerwoods, Florida, which he leased to a tenant. He also owned a condominium in Miami, which he held for investment. In his will, he devised the pasture land to his son Tommy and the condominium to his daughter Julie. All other assets would pass equally to Tommy and Julie. Bill met Kathy and married her after she executed a valid prenuptial agreement relinquishing all rights she might otherwise enjoy by marrying Bill. On their Miami honeymoon they drove by the condominium and Kathy declared she'd love to live there. Bill was so happy with Kathy that after the honeymoon he signed and delivered to Kathy a deed conveying the condominium to himself and Kathy as an estate by the entirety and made plans to live in the condominium as soon as the tenant vacated. Bill died the next day. How are the foregoing assets distributed?', A. 'Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate.', B. 'Due to Kathy's prenuptial agreement, Tommy receives the pasture land, Julie gets the condominium and Tommy and Julie split the rest of the estate.', C. 'Kathy gets the condominium, but because Bill had originally indicated his intent to devise equally to his children, Tommy and Julie will split the remaining estate.', D. 'Regardless of the prenuptial agreement, Kathy is a pretermitted spouse. Since Bill leaves surviving lineal descendants who are not Kathy's, Kathy receives 50% of the estate, Tommy gets the pasture land, and Tommy and Julie split the residue of the estate.'

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Answer Option 1:

Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate. By operation of law, the condominium becomes Kathy's because it was conveyed to her and Bill as an estate by the entirety. This cannot be defeated by the prenuptial agreement or by Bill's will. The pasture land would pass to Tommy according to Bill's will, and any other assets would split equally between Tommy and Julie, also according to Bill's will. The prenuptial agreement would likely be interpreted to only waive Kathy's rights in Bill's estate, not property that was conveyed to her during Bill's life. Final Answer: A

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Answer Option 2:

Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate. This is because the condominium was deeded to Kathy and Bill as an estate by the entirety, which means upon Bill's death, Kathy becomes the sole owner of the condominium regardless of the prenuptial agreement. Tommy inherits the pasture land as per Bill's will, and the remaining estate is split equally between Tommy and Julie as per the terms of the will. Final Answer: A

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Answer Option 3:

A. 'Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate.'

Even though Kathy signed a prenuptial agreement, the condominium was deeded to her and Bill as an estate by the entirety after the marriage. This creates a present vested interest in the property that supersedes any previous agreement. The pasture land goes to Tommy as per Bill's will, and any remaining assets are split between Tommy and Julie as per the will as well.

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Answer Option 4:

In Florida, a prenuptial agreement can validly waive a spouse's rights to property. Kathy had signed such an agreement before she married Bill. However, after marriage, Bill gifted the condominium to Kathy by deeding it to them as an estate by the entirety. This specific act overrules the general prenuptial agreement for this asset. Thus, Kathy gets the condominium. The pasture land goes to Tommy according to the will. The remaining assets are split between Tommy and Julie as indicated in the will. Kathy's prenuptial agreement would bar her from any other share in Bill's estate. Final Answer: A

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Answer Option 5:

A. 'Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate.'

The condominium was conveyed to Kathy and Bill as an estate by the entirety, which makes Kathy the sole owner of the property upon Bill's death, regardless of any other will or agreement. The pasture land will go to Tommy as specified in the will. The remaining assets will be divided equally between Tommy and Julie, as stipulated in the will.

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Answer Option 6:

Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate. Kathy does not have any rights in the pasture land because it was specifically devised to Tommy, and she has no rights in the remainder of the estate because of the prenuptial agreement. However, the prenuptial agreement does not bar Kathy from taking the condominium because Bill gifted it to her after their marriage. This act was separate from their prenuptial agreement and therefore not constrained by it. Final Answer: A.

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Answer Option 7:

Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate. The deed conveying the condominium to Bill and Kathy as an estate by the entirety created a present interest in the property for Kathy. Once the deed was delivered to Kathy, she became a co-owner of the property with Bill. This interest is not affected by the prenuptial agreement, which only waived Kathy's rights to Bill's estate, not to property owned by them as tenants by the entirety. The will devises the pasture land to Tommy and the rest of the estate is split equally between Tommy and Julie. Final Answer: A

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Answer Option 8:

In this scenario, Kathy becomes the sole owner of the condominium due to the deed that made her and Bill tenants by the entirety of the property. This is an instance of a non-probate transfer and it takes precedence over the will. The prenuptial agreement does not affect this as it was a subsequent voluntary act by Bill. Tommy gets the pasture land as per Bill's will. The residue of the estate is split equally between Tommy and Julie as per the terms of the will. The prenuptial agreement protects Bill's estate from claims by Kathy for a share, but it doesn't affect the transfer of the condominium. Final Answer: A

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Answer Option 9:



Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate. The deed signed by Bill conveying the condominium to himself and Kathy as an estate by the entirety is a present transfer of interest. Even though Kathy signed a prenuptial agreement relinquishing her rights, this would not apply to property gifted to her by Bill after the marriage. Even though the property was part of Bill's will previously, his deed to Kathy supersedes the will as it shows his explicit intention to gift it to her. The pasture land goes to Tommy as per the will and all other assets are split between Tommy and Julie. Final Answer: A

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Question 12:

'For many years, persons engaged in real estate transactions in a state have utilized installment land contracts. The so-called installment land contract has been popular as a substitute for the mortgage or deed of trust. Under such a contract, the seller agrees to accept, and the buyer agrees to pay, the purchase price in installments over a stipulated period of time. The vendor retains legal title as security for the payment of the purchase price; and the vendee has equitable title under the doctrine of equitable conversion. The most important characteristic of the installment land contract, however, is the forfeiture clause, which provides that if the vendee is in default for 30 days, the vendor may, at his option, declare a forfeiture of the contract, in which case all payments made shall be forfeited as "liquidated" damages and the buyer shall become a tenant at will of the seller. Over the years, many sellers of property under such installment land contracts have declared forfeitures in situations where the prospective buyers were delinquent in their payments, even when the buyer was late with a single payment after nearly all the other payments had been made. In order to remedy this inequitable situation, the state legislature enacted a statute requiring any seller attempting to declare a forfeiture of an installment land contract to do so by instituting a formal foreclosure action in the courts. The new law also provided that prior to the commencement of such a foreclosure action, the seller under such an arrangement must give the buyer a 60-day grace period to make up any delinquent installment payment with interest. The new law expressly applied both to installment land contracts entered into subsequent to its enactment and to installment land contracts already in existence at the time of its enactment. Is this new state statute likely to be held constitutional?'. A. 'Yes, because it is a reasonable regulation of the procedure to be followed in such cases and does not substantially diminish the underlying obligations of the buyer.'. B. 'Yes, because the authority to enact laws regulating real estate sales transactions occurring within the boundaries of individual states is reserved exclusively to the states by the Tenth Amendment.'. C. 'No, because application of the law to installment land contracts entered into prior to its enactment is a violation of the obligation of contracts.'. D. 'No, because application of the law to installment land contracts entered into before or after its enactment is a deprivation of a proprietary interest without due process of the law.'

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Answer Option 1:

The statute is likely to be held constitutional because it is a reasonable regulation of the procedure to be followed in such cases and does not substantially diminish the underlying obligations of the buyer. The statute does not impair the obligation of contracts because it does not extinguish the sellers right to declare a forfeiture but merely alters the method of enforcing that right. The statute provides a reasonable protective measure that does not fundamentally alter the contractual obligations. Final Answer: A

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Answer Option 2:

The application of this law to installment land contracts entered into prior to its enactment would violate the obligation of contracts. The Contract Clause of the United States Constitution (Article I, Section 10, Clause 1) prohibits states from enacting any law that retroactively impairs contract rights. The state law in question alters the terms of existing contracts by introducing a new procedure of foreclosure and a grace period, which fundamentally changes the obligations that were originally agreed upon in the contract. Therefore, the law would likely be unconstitutional as applied to existing contracts. Final Answer: C.

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Answer Option 3:

The new law would likely withstand a constitutional challenge. While it does alter the terms of contracts entered into before its enactment, it does so in a reasonable and minimal way that is likely to be seen as within the state's police power to regulate economic transactions for the public good. The U.S. Supreme Court has held that laws which adjust the rights and responsibilities of contracting parties are not automatically unconstitutional. They do not violate the Contract Clause as long as they are reasonable and necessary to serve an important public purpose. In this case, the law serves the important public purpose of preventing potential abuses of the installment land contract system. Therefore, it is not likely to be seen as a violation of the Contract Clause. Final Answer: A

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Answer Option 4:

The Constitution prohibits the passage of laws that impair the obligation of contracts. However, the Supreme Court has held that a law that makes reasonable adjustments to the rights and responsibilities of contracting parties is unlikely to violate the Contract Clause. In this case, the new state statute does not substantially alter the terms of the contract, but rather changes the procedure by which a seller may declare a forfeiture. This is likely seen as a reasonable regulation that does not impair the obligation of contracts. Final Answer: A

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Answer Option 5:

The new state statute is likely to be held constitutional. There is a well-recognized principle that a law adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption. The new state law is designed to protect vulnerable buyers from loss of their investment due to a single late payment. This is a legitimate public purpose. While the new law does change the conditions of existing contracts, it does not destroy the underlying obligations of the buyer to pay or the seller to deliver title upon payment. As such, it is a reasonable regulation and does not violate the Contracts Clause. Final Answer: A

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Answer Option 6:

The new state statute is likely to be held constitutional. Even though it does apply to contracts entered into prior to its enactment, it is not likely to be found to be a violation of the contract clause of the U.S. Constitution. The U.S. Supreme Court has held that a state can adopt legislation that interferes with contract rights if the legislation serves a significant and legitimate public purpose, such as the correction of a broad and general social or economic problem. Therefore, the most convincing argument is that the new state statute is a reasonable regulation of the procedure to be followed in such cases and does not substantially diminish the underlying obligations of the buyer. Final Answer: A

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Answer Option 7:

The new state statute can be held constitutional because it would be viewed as a reasonable regulation of the procedure to be followed in such cases, and it does not substantially diminish the underlying obligations of the buyer. The state has the power to regulate contracts and their enforcement within its jurisdiction in order to protect the welfare of its citizens. This power includes the ability to modify the remedies available for breach of contracts, even if it alters the expectations of the parties. Final Answer: A

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Answer Option 8:

The state legislation would, in all likelihood, be upheld as constitutional. Although the Contracts Clause of the Constitution prohibits a state from enacting a law "impairing the obligation of contracts," a state may enact laws affecting contracts if the laws serve an important and legitimate public purpose and the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption. The state legislation requiring formal foreclosure action and a grace period before a forfeiture can be declared clearly serves a public purpose and is an appropriate means of achieving that purpose. Thus, the statute likely would be upheld as a constitutional exercise of the state's police power. Final Answer: A  
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Answer Option 9:

The state statute is likely to be found constitutional because it is a reasonable regulation of the procedure to be followed in such cases and does not substantially diminish the underlying obligations of the buyer. The statute is an attempt by the state legislature to stop forfeiture abuses in installment land contracts and to create a more equitable situation for buyers. It modifies the procedure for declaring a forfeiture and allows a grace period for the buyer, but it does not alter the fundamental aspects of the contract. The buyers are still obligated to make their payments; they merely have more protection if they fail to do so. The statute is a reasonable exercise of the state's police power to regulate transactions and protect consumers, and it should withstand a constitutional challenge. Final Answer: A  
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Question 13:

'A man placed the following advertisement in his local newspaper:"Public Auction Sale . . . without reserve December 7, 10:00 a. m. 110 Walnut St. , City, StateEntire furnishings of home must go: antiques, piano, pool table, appliances, tables, stereo system, etc. "On the morning of December 7, a group of approximately 20 people showed up at the man's home. The first item the man put up for bid was an antique Baldwin grand piano. The man announced that the bidding would be "without reserve" and said, "What's the opening bid on this beautiful Baldwin grand piano?" A woman opened the bidding with \$100. The man then commented, "This piano is worth at least \$5,000. What other bids am I offered?" When the man did not receive any other bids, he informed the woman that he would not accept \$100 and was removing the piano from the sale. If the woman asserts an action against the man for breach of contract, the woman will most likely', A. 'prevail, because goods put up at an auction "without reserve" may not be withdrawn.', B. 'prevail, because whether or not the auction is "without reserve," goods cannot be withdrawn after the auctioneer calls for bids.', C. 'not prevail, because at an auction "without reserve," the auctioneer may withdraw goods until he announces completion of the sale.', D. 'not prevail, because at an auction "without reserve," the auctioneer invites offers, which he may accept or reject.'

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Answer Option 1:

A "without reserve" auction means the goods cannot be withdrawn once bidding has begun, and they must be sold to the highest bidder. In this case, the woman was the highest bidder, even though the man deemed her bid too low. Therefore, the man breached the contract when he withdrew the piano from the auction after the woman had placed the highest bid. Final Answer: A

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Answer Option 2:

The woman will most likely prevail, because goods put up at an auction "without reserve" may not be withdrawn after the auctioneer calls for bids. In an auction without reserve, once the auctioneer solicits bids, the item cannot be withdrawn unless no bids are made within a reasonable time. The auctioneer cannot reject a bid once it has been made in these circumstances. In this case, the woman made a bid and the auctioneer, despite his personal feelings about the value of the piano, cannot withdraw it from the auction. Final Answer: A

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Answer Option 3:

The woman is likely to prevail because goods put up at an auction "without reserve" may not be withdrawn after a bid has been received. An auction without reserve is essentially a promise to sell to the highest bidder and not to withdraw the goods from sale once a bid within a specified range has been made. In this case, when the woman placed an opening bid of \$100, she effectively accepted the man's offer, and a contract was formed. The man then breached that contract by refusing to accept her bid and withdrawing the piano from the sale. Final Answer: A

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Answer Option 4:

The woman will likely prevail, because goods put up at an auction "without reserve" may not be withdrawn once a bid has been placed. According to the Uniform Commercial Code (UCC) Section 2-328, an auction is with reserve unless the goods are put up without reserve. In an auction without reserve, after the auctioneer calls for bids on an article, the goods cannot be withdrawn unless no bid is made within a reasonable time. So, the woman has a valid contract to purchase the piano for \$100. Final Answer: A

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Answer Option 5:

At an auction "without reserve," the auctioneer may not withdraw the goods from sale after a bid has been received. By making a bid, the woman and the man entered into a contract for the sale of the piano, and the man breached this contract by withdrawing the piano from the sale. Final Answer: A

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Answer Option 6:

In an "auction without reserve", once the auctioneer calls for bids on an item, the goods may not be withdrawn unless no bid is made within a reasonable time. In an "auction without reserve", the auctioneer is making an offer to sell the goods, and a bidder makes an acceptance by bidding. Here, after a woman made a bid of \$100, the man could not withdraw the piano from the sale. Therefore, the woman will most likely prevail because goods put up at an auction "without reserve" may not be withdrawn once a bid has been made. Final Answer: A

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Answer Option 7:

In an auction without reserve, this means there is no minimum bid and the goods cannot be withdrawn once they have been put up for sale and a bid has been received. According to the Uniform Commercial Code (UCC) Section 2-328(3), in an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In this case, the woman made a bid, and thus, the man could not withdraw the piano from the auction. Therefore, the woman is likely to prevail in a breach of contract lawsuit. Final Answer: A

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Answer Option 8:

The woman will prevail since goods put up at an auction "without reserve" may not be withdrawn after a bid has been made. According to the Uniform Commercial Code (UCC) section 2-328, when an auction is advertised or announced by the auctioneer as being "without reserve," a withdrawal is not permitted once bidding has begun. Therefore, the woman's bid of \$100 constituted a valid contract that the man breached by withdrawing the piano. Final Answer: A

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Answer Option 9:

The woman will most likely prevail, because goods put up at an auction "without reserve" may not be withdrawn. According to Uniform Commercial Code Section 2-328, when goods are put up at auction without reserve, the auctioneer is not allowed to withdraw the goods from sale once there is a bid within a reasonable time. The woman's bid of \$100 was a valid offer, which, under the conditions of the auction, automatically became a contract. Therefore, when the man refused to sell, he breached this contract. Final Answer: A

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Question 14:

'A defendant offers into evidence his computer business records to show his good faith monitoring of the accounts in his business. The defendant testifies that he kept the records on a regular business basis ■■■ but did not explain the records in any other way. The government objected to the records as being hearsay and not authenticated. What will the court decide regarding the admissibility of the computer business records?'. A. 'The court will allow the records because they were kept in the ordinary course of business.'. B. 'The court will require a greater foundation to establish the reliability of the records.'. C. 'The court will dismiss the hearsay objection because the defendant, who is the declarant, is available in court.'. D. 'The court will allow the records because they are the product of a reliable computer process of data collection.'

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Answer Option 1:

The court will require a greater foundation to establish the reliability of the records. The Federal Rules of Evidence Rule 803(6) for Business Records exception requires testimony from the custodian or other qualified witness to show that the records were kept in the course of a regularly conducted activity, and that it was the regular practice of that activity to make the records. Just keeping them on a regular basis is not enough - the process used to create them also needs to be reliable. Final Answer: B

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Answer Option 2:

Admissibility of computer records under the business records exception to the hearsay rule requires a foundation showing (1) that the computer equipment is recognized as standard and (2) that the entries are routinely, systematically, and regularly made. This foundation usually involves an expert testimony or testimony from someone who is familiar with the computer system. While the defendant's testimony establishes that the records were kept in the ordinary course of business, it does not provide adequate authentication of the records. Thus, the court will require a greater foundation to establish the reliability of the records. Final Answer: B

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Answer Option 3:

The court will require a greater foundation to establish the reliability of the records. While business records are generally exempt from the hearsay rule, there needs to be a showing that the records were kept in the course of a regularly conducted business activity, and that it was the regular practice of that business to make such records. Also, under the Federal Rules of Evidence, the records need to be authenticated by a witness with knowledge of how the records were kept. The defendant merely testifying that he kept the records on a regular business basis without explaining how the records were made or maintained is not enough to meet this standard. Final Answer: B

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Answer Option 4:

The court will require a greater foundation to establish the reliability of the records. Under the Federal Rules of Evidence, Rule 803(6) provides a hearsay exception for records of a regularly conducted activity, but the proponent of the evidence must show that (1) the record was made at or near the time by, or from information transmitted by, a person with knowledge; (2) the record was kept in the course of a regularly conducted activity of a business; (3) making the record was a regular practice of that activity; (4) all these conditions are shown by the testimony of the custodian or another qualified witness; and (5) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness. Final Answer: B

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Answer Option 5:

The court will require a greater foundation to establish the reliability of the records. Under the Federal Rules of Evidence, business records are an exception to the hearsay rule, but there needs to be testimony or certification that the records were kept in the usual course of business, made at or near the time of the events recorded, and are trustworthy. Moreover, computer records have an additional requirement of showing that the computer process producing them is reliable. Without explanations about how the records were produced and maintained, and without showing the reliability of the computer system, the court will likely require more information before admitting the records into evidence. Final Answer: B

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Answer Option 6:

The court will likely require a greater foundation to establish the reliability of the records. Business records are generally admissible under the business records exception to the hearsay rule, but a proper foundation must be established. This typically includes showing that the records were made at or near the time by, or from information transmitted by, a person with knowledge, that they were kept in the course of a regularly conducted business activity, and that making the record was a regular practice of that business. Merely stating that the records were kept on a regular business basis is not enough to satisfy these requirements. Final Answer: B

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Answer Option 7:

The court will likely require a greater foundation to establish the reliability of the records. Under the business records exception to the hearsay rule, records are admissible if they are kept in the course of regularly conducted business activity and it was the regular practice of the business to make the record. However, the proponent of the evidence must also lay a foundation showing that the source of information and the method and circumstances of preparation indicate trustworthiness. Simply stating that the records were kept on a regular business basis does not sufficiently establish their reliability or authenticity. Final Answer: B.

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Answer Option 8:

While business records are often admitted under the business records exception to the hearsay rule, there are certain foundational requirements that must be met. The proponent of the evidence must show that the records were made at or near the time by, or from information transmitted by, a person with knowledge, that they were kept in the course of a regularly conducted business activity, and that making the records was a regular practice of that business. A witness who can meet these requirements must testify to these facts. Here, the defendant only testified that he kept the records on a regular business basis and did not explain the records in any other way. Therefore, the court will likely require a greater foundation to establish the reliability of the records. Final Answer: B.

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Answer Option 9:

The court will require a greater foundation to establish the reliability of the records. Under the Federal Rules of Evidence, the business records exception to the hearsay rule requires a showing that the records were kept in the course of a regularly conducted business activity, and it was the regular practice of that business to make the record. However, this alone is not sufficient for computer records. Courts often require a more detailed foundation for computer records, including information about the system used, its reliability, the process of inputting data, and the steps taken to ensure the accuracy of the input. Therefore, the court would likely need more information before admitting the computer business records into evidence. Final Answer: B

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Question 15:

'A regulation prevents persons with a drug arrest and conviction and/or those undergoing current treatment for drug abuse from working in certain state run facilities for the safety of the general public. One employee of the department of treasury brought an action claiming a denial of equal protection and due process by taking away his right to a job. It is claimed that the prohibition is necessary to protect the public from potential problems that could arise. Which test of constitutional validity would be likely applied to this regulation?', A. 'Strict scrutiny, since drug users are a special class of persons often discriminated against by the public.', B. 'Intermediate scrutiny, because, like gender, this can be a sensitive area where discrimination is common.', C. 'The rational basis test, because discrimination is generally favored with drug users or even those getting treatment.', D. 'The rational basis test, because the regulation need only be related to a legitimate state interest to be valid.'

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Answer Option 1:

The rational basis test would be applied here because the regulation need only be related to a legitimate state interest to be valid. Drug users or those currently in treatment for drug abuse are not a protected class under the Equal Protection Clause, so the regulation must only be rationally related to a legitimate state interest. Protecting the general public from potential problems related to drug use is a legitimate state interest. Final Answer: D

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Answer Option 2:

The rational basis test is used for regulatory classifications that do not involve suspect classes (like race, nationality, or religion) or fundamental rights. In this case, the regulation is related to employment restrictions based on drug arrest/conviction or current treatment for drug abuse. These are not suspect classes or fundamental rights. The state's interest in the safety of the general public and preventing potential problems would be viewed as a legitimate state interest. Therefore, the rational basis test, which requires only that the regulation be rationally related to a legitimate government interest, would be the likely standard of review. Final Answer: D

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Answer Option 3:

The rational basis test is the correct constitutional test to apply in this situation. This test is used when neither a suspect class (like race, national origin, or alienage) nor a fundamental right (like freedom of speech or religion) is involved. Drug users or those getting treatment are not a suspect class, and employment at state-run facilities is not a fundamental right. Under the rational basis test, a law is constitutional if it is rationally related to a legitimate state interest. Here, the state has a legitimate interest in protecting the safety of the general public, and the regulation could be rationally related to that interest. Final Answer: D

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Answer Option 4:

The rational basis test would be applied because the regulation need only be related to a legitimate state interest to be valid. In this case, the state likely has a legitimate interest in ensuring the safety of the general public, particularly in state-run facilities. Drug users or those in treatment aren't a protected class under the constitution, so strict scrutiny or intermediate scrutiny wouldn't apply. This test only requires a rational relation to a legitimate state interest, not that it be narrowly tailored or the least restrictive means of achieving the interest. Final Answer: D

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Answer Option 5:

The rational basis test would be the likely standard applied here because the regulation need only be related to a legitimate state interest to be valid. Strict scrutiny and intermediate scrutiny are applied to laws that affect fundamental rights or involve suspect or quasi-suspect classifications, such as race or gender. Drug users or those undergoing treatment for drug abuse do not fall into these categories.

Therefore, the court would likely apply the rational basis test and consider whether the regulation is reasonably related to a legitimate state interest - in this case, the state's interest in public safety. Final

Answer: D

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Answer Option 6:

The correct answer is D. 'The rational basis test, because the regulation need only be related to a legitimate state interest to be valid.' The rational basis test is the standard of review used in cases involving economic or social policy, such as employment regulations. Under this test, a regulation must be rationally related to a legitimate state interest. Drug users or those undergoing treatment for drug abuse are not considered a protected class under the U.S. Constitution, so the higher levels of scrutiny (strict or intermediate) would not be applied to this regulation.

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Answer Option 7:

The rational basis test applies when a law or regulation does not involve a suspect class (race or national origin) or a fundamental right. Here, the state regulation is aimed at those with a history of drug use or abuse, which are not protected classes. The regulation is a state's legitimate interest in ensuring public safety. Therefore, the court would likely apply the rational basis test, which only requires the law to be rationally related to a legitimate state interest. Final Answer: D

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Answer Option 8:

The rational basis test would likely be applied in this scenario. The U.S. Supreme Court has not classified drug users or those in treatment for drug abuse as a "suspect class" or a "quasi-suspect class," so neither strict scrutiny nor intermediate scrutiny would apply. Under the rational basis test, a regulation is valid as long as it is rationally related to a legitimate government interest. Here, the state has a legitimate interest in ensuring the safety of the public, and restricting individuals with a drug arrest and conviction or those undergoing drug treatment from working in certain state-run facilities can be seen as rationally related to that interest. Final Answer: D

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Answer Option 9:

The Rational Basis Test will likely be applied to this regulation because the court uses this test when there is no suspect classification (like race, religion, and national origin) or quasi-suspect classification (like gender or legitimacy of birth) at issue. Convicted drug users and those undergoing treatment for drug abuse do not fall into these categories. Therefore, the court will likely use the Rational Basis Test, which only requires the regulation to be related to a legitimate state interest to be valid, and protecting public safety is a legitimate state interest. Final Answer: D

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Question 16:

'A man was driving while drunk. He was speeding down a center city street, veering from lane to lane, when he lost control of his car while going over a slick puddle of water. Without realizing it, he drove his car onto the sidewalk and killed two persons. What common law crime most appropriately fits the man's situation?', A. 'Felony murder in that he killed someone while committing the felony of driving under the influence.', B. 'Voluntary manslaughter because it was an intentional killing done while acting recklessly or impulsively.', C. 'Involuntary manslaughter in that it was a killing committed while engaging in reckless activity but without the intent to kill.', D. 'First degree murder because the act of driving under the influence is legally presumed to involve premeditation and specific intent.'

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Answer Option 1:

Involuntary manslaughter is the appropriate charge in this scenario. The key component of this charge is that the perpetrator acted recklessly, or with criminal negligence, but did not intend to kill. In this case, the man was drunk and driving recklessly, but there's no evidence that he intended to kill anyone. Final Answer: C

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Answer Option 2:

Involuntary manslaughter is typically the charge resulting from an unintentional death due to criminally negligent or reckless behavior. The man's act of drunk driving is reckless and dangerous, and although he did not intend to kill the two individuals, his reckless behavior directly led to their deaths. Final Answer: C

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Answer Option 3:

The man's actions most appropriately fit the definition of involuntary manslaughter. Involuntary manslaughter is an unintentional killing resulting from recklessness or criminal negligence. The man was driving while drunk, which is reckless behavior, but there is no evidence to suggest that he intended to kill anyone. Final Answer: C.

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Answer Option 4:

The man's actions would most likely constitute involuntary manslaughter. This crime generally involves an unintentional killing resulting from recklessness or criminal negligence. The man was not intending to kill anyone, but his reckless behavior of driving drunk and speeding, resulted in the death of two people. Therefore, the man's actions fit best with the definition of involuntary manslaughter. Final Answer: C

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Answer Option 5:

The most appropriate common law crime in this situation is involuntary manslaughter. This is because it was a killing committed while engaging in a reckless activity, but there was no intent to kill. The man's behavior was reckless, as he was drunk and speeding, but there is no indication that he intended to hit and kill the two persons. Final Answer: C

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Answer Option 6:

Under common law, Involuntary Manslaughter is the unlawful killing of a human being without malice aforethought, which is caused by recklessness or criminal negligence. Here, the man did not intend to kill the individuals; however, his reckless behavior (driving while drunk and speeding) resulted in their deaths. Therefore, he could be charged with involuntary manslaughter. Final Answer: C

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Answer Option 7:

The man's actions fit the description of involuntary manslaughter. Involuntary manslaughter at common law is an unlawful killing that occurs, without intent, during the commission of an unlawful act not amounting to a felony, or a lawful act that might produce death in an unlawful manner, or without due caution and circumspection. The man's drunk driving and reckless behavior led to the deaths, but there is no indication that he intended to kill anyone. Final Answer: C

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Answer Option 8:

The man's actions most appropriately fit the common law crime of involuntary manslaughter. This crime is defined as an unintentional killing resulting from recklessness or criminal negligence. The man was engaging in reckless activity (driving while drunk and speeding), but there's no evidence to suggest that he intended to kill anyone. Final Answer: C

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Answer Option 9:

The man's actions would most likely be considered involuntary manslaughter under common law. Involuntary manslaughter involves a killing that is committed during the commission of an unlawful act not amounting to a felony, or a lawful act done in a reckless manner, or a failure to perform a duty owed which shows a reckless indifference to human life. Here, the man was driving drunk, which is reckless, but he did not intend to kill anyone. His act of driving drunk led to the death of two people, satisfying the requirements of involuntary manslaughter. Final Answer: C

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Question 17:

'The authorities arrested a man without a warrant and held him imprisoned for 14 days without a determination of probable cause. He finally saw a public defender who filed a motion to dismiss alleging an unconstitutional detention in violation of due process. The prosecution countered that the state's rules allowed for detention without a probable cause hearing for up to 30 days, and that the procedure was constitutional. Will the court most likely decide that this detention is unconstitutional?'. A. 'No, because the Supreme Court has ruled that detentions can properly last up to 30 days without a probable cause determination.'. B. 'No, because each case must be decided on its own facts and there may be many good reasons why the state has not yet provided a probable cause determination.'. C. 'Yes, because when the state arrests someone without a warrant it must provide a prompt probable cause determination.'. D. 'No, because it is constitutional to hold someone for up to 15 days without a probable cause determination.'

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Answer Option 1:

In the United States, the Constitution requires a prompt determination of probable cause following an arrest. The Supreme Court has emphasized that probable cause must be determined without unnecessary delay and typically occurs within 48 hours of arrest. The 14-day detention without a probable cause determination in this case would likely be considered unconstitutional, regardless of the state rule. Thus, the correct answer is C. 'Yes, because when the state arrests someone without a warrant it must provide a prompt probable cause determination.'

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Answer Option 2:

The court is likely to find that this detention is unconstitutional. The Fourth Amendment of the United States Constitution requires that a prompt probable cause determination be made when someone is arrested without a warrant. This requirement is usually fulfilled by a magistrate or judge shortly after the arrest. Holding someone for 14 days without such a determination is generally considered to be a violation of the arrested person's constitutional rights. Final Answer: C

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Answer Option 3:

The Supreme Court has held that when an individual is arrested without a warrant, the Fourth Amendment requires a prompt judicial determination of probable cause. The Court has found detentions of up to 48 hours to be generally reasonable, but that detentions beyond that period require a more substantial justification. The court will most likely decide that the detention in this case is unconstitutional, because holding someone for 14 days without a warrant and without a probable cause determination is not prompt and exceeds the period found reasonable by the Court. Final Answer: C.

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Answer Option 4:

The Supreme Court has interpreted the Fourth Amendment's requirement of a prompt determination of probable cause as typically meaning within 48 hours of arrest. Detaining someone for 14 days without a probable cause determination would likely be considered unconstitutional. Final Answer: C

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Answer Option 5:

Yes, because when the state arrests someone without a warrant it must provide a prompt probable cause determination. This is in accordance with the Fourth Amendment of the U.S. Constitution, which requires a prompt judicial determination of probable cause as a prerequisite for an extended pretrial detention following a warrantless arrest. Final Answer: C

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Answer Option 6:

Yes, because when the state arrests someone without a warrant it must provide a prompt probable cause determination. The U.S. Supreme Court has held that if a person is arrested without a warrant, the Fourth Amendment requires a prompt judicial determination of probable cause. This should generally occur within 48 hours of arrest. So, a 14-day detention without a probable cause determination is likely to be considered a violation of due process. Final Answer: C

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Answer Option 7:

According to the Fourth Amendment, a person arrested without a warrant must be provided with a prompt determination of probable cause. In the case of County of Riverside v. McLaughlin, 500 U.S. 44 (1991), it was held that a probable cause determination must generally be provided within 48 hours of arrest. Therefore, a detention for 14 days without a determination of probable cause is unconstitutional.

Final Answer: C

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Answer Option 8:

The Supreme Court in Gerstein v. Pugh (1975) has held that the Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest. So the court would most likely decide that this detention is unconstitutional. Final Answer: C

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Answer Option 9:

The U.S. Supreme Court has ruled that when the state arrests someone without a warrant it must provide a prompt probable cause determination, usually within 48 hours. This is based on the Fourth Amendment's requirement for a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest. Thus, detaining the man for 14 days without a probable cause hearing is likely to be found unconstitutional. Final Answer: C

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Question 18:

'A man owned land along the south side of a highway. To the south of the man's land was a lot owned by a woman who lived on it in a house. Five years ago the man conveyed a right-of-way easement over his land to the woman because it provided a more direct route between her house and the highway. The easement was evidenced by a clearly marked path. The document granting the easement was promptly recorded. Three years ago, the woman conveyed her house to the man. The man never took actual possession of the house. Two years ago, the man conveyed the house to a purchaser by a warranty deed. Two months after the purchaser moved into the house, a neighbor informed him about the easement. He then began using the path that had been marked on the man's land. When the man noticed the purchaser using the path, he erected a barricade on his land that effectively prevented the purchaser from using the path. The purchaser has sued the man, claiming that he has an easement over the man's land. Who is likely to prevail?', A. 'The man, because the easement was extinguished.', B. 'The man, because the purchaser did not have actual notice of the easement at the time of acquisition.', C. 'The purchaser, because he purchased the house by warranty deed.', D. 'The purchaser, because the easement was of public record when he acquired the house.'

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Answer Option 1:

The purchaser is likely to prevail because the easement was of public record when he acquired the house. Even though the purchaser did not have actual notice of the easement, he is deemed to have constructive notice of it because it was properly recorded. Moreover, the fact that the man never took actual possession of the house after he acquired it from the woman means that the easement was not extinguished through merger. Therefore, the purchaser, as the successor in interest to the woman, still has a valid easement over the man's land. Final Answer: D

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Answer Option 2:

The purchaser is likely to prevail because the easement was of public record when he acquired the house. The purchaser, as a subsequent bona fide purchaser, is deemed to have notice of all interests in the property that are of public record at the time of his purchase. This includes the easement in question, which was duly recorded by the woman. The man cannot claim that the easement was extinguished through merger because he never took actual possession of the house, which is typically necessary for merger to occur. Final Answer: D

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Answer Option 3:

The purchaser is likely to prevail. The easement was appurtenant and was not extinguished when the man became the owner of both the dominant and servient tenements. The easement passed with the land when the purchaser acquired the house. This is not affected by whether the purchaser had actual notice of the easement, as it was of public record when he acquired the house. The warranty deed also provides the purchaser with additional protection. Final Answer: D

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Answer Option 4:

The purchaser is likely to prevail. When the man obtained ownership of the dominant tenement (the woman's house), which benefited from the easement over his own land (the servient tenement), the easement was extinguished by merger. However, when the man sold the house to the purchaser, the easement was likely revived, especially considering it was still of public record. The purchaser, even without actual notice, would be considered to have constructive notice of the easement due to its presence in the public record at the time of acquisition. Hence, the purchaser can claim the benefit of the easement. Final Answer: D

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Answer Option 5:

The purchaser is likely to prevail. When land benefiting from an easement and the land burdened by that easement come into common ownership, the easement is extinguished. However, when the common owner conveys the benefited land, the easement is revived as long as the grantee takes with notice of the easement. Here, the easement was extinguished when the woman sold the house to the man, because the man owned both the dominant and servient estates. However, when the man sold the house (the dominant estate) to the purchaser, the easement was revived. The purchaser had constructive notice of the easement through the recorded document granting the easement, which would have been revealed in a title search. Therefore, the purchaser should prevail. Final Answer: D

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Answer Option 6:

The purchaser will likely prevail because the easement was of public record when he acquired the house. The purchaser would have constructive notice of the easement, which was properly recorded. Constructive notice is the legal presumption of knowledge, based on the ability to know, as opposed to actual knowledge. The purchaser didn't need to have actual knowledge of the easement for it to be enforceable. Final Answer: D

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Answer Option 7:

The purchaser is likely to prevail because the easement was of public record when he acquired the house. The easement was validly created, and its existence was properly recorded. When the man acquired the woman's house, the easement was extinguished. However, when the man subsequently conveyed the house to the purchaser, the easement was revived. The purchaser is deemed to have constructive notice of the easement because it was properly recorded. Therefore, the man cannot deny the purchaser's right to use the easement. Final Answer: D.

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Answer Option 8:

The purchaser is likely to prevail because the easement was of public record when he acquired the house. The easement was created and recorded in the public record. Though he did not have actual notice of the easement at the time of purchase, he had constructive notice due to the easement being recorded. Therefore, the easement was not extinguished when the man bought the woman's house and is still in effect for the purchaser to use. Final Answer: D

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Answer Option 9:

The purchaser is likely to prevail because the easement was of public record when he acquired the house. When the man conveyed the easement to the woman, it was properly recorded. Even though the purchaser did not have actual notice of the easement when he bought the property, he had constructive notice due to the recording. This means he is considered to have known about the easement. Therefore, the easement was not extinguished when the man acquired the woman's house, and it passed to the purchaser when he bought the house. Final Answer: D.

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Question 19:

'Rainmaking Lawfirm regularly purchased its office supplies from catalogs. Marty Manager saw an advertising catalog from Costco offering 10,000 envelopes for \$1,000 CIF. He immediately sent a purchase order which stated "our law firm accepts your \$1,000 offer for 10,000 envelopes for \$1,000 CIF."■ Costco then sent Rainmaking an order confirmation which stated "Envelope order acceptance conditional upon a loading charge of \$50 per thousand envelopes." If the parties disagree on the proper contract relationship, a court would likely rule:', A. 'A contract at \$1,000 because the offer terms CIF means cost, insurance and freight including all loading charges.', B. 'A contract at \$1,500 because the loading charges are to be included.', C. 'No contract because the order confirmation was a counteroffer which was not accepted.', D. 'No contract because the purchase order was the offer and, under the mirror image rule, can not be deviated from.'

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Answer Option 1:

The court would likely rule: C. 'No contract because the order confirmation was a counteroffer which was not accepted.' This is because Costco's order confirmation effectively altered the terms of the original offer, making it a counteroffer. Since Rainmaking Lawfirm did not accept this counteroffer, there is no contract.

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Answer Option 2:

The order confirmation from Costco is a counteroffer because it introduces a new term - a loading charge. The original offer by Rainmaking Lawfirm did not include this term. Thus, under the mirror image rule, which requires that an acceptance must match exactly the terms of the offer, the order confirmation did not constitute an acceptance. Therefore, unless Rainmaking Lawfirm accepts the counteroffer (which includes the loading charge), no contract exists. Final Answer: C

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Answer Option 3:

A court would likely rule no contract because the order confirmation was a counteroffer that was not accepted. Marty Manager's order was an acceptance of the original offer made by Costco in the advertisement. However, Costco's order confirmation added an additional term (the loading charge), which turned the confirmation into a counteroffer. Because the loading charge was not included in the original offer, and Marty Manager did not respond to accept the counteroffer, there would be no contract formed. Final Answer: C.

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Answer Option 4:

The answer is C. 'No contract because the order confirmation was a counteroffer which was not accepted.' Under the mirror image rule, an acceptance must be identical to the offer. If the acceptance deviates from or adds to the terms of the offer, it is considered a counteroffer, not an acceptance. In this case, Costco's order confirmation added a condition that was not present in Rainmaking's original offer, making it a counteroffer, not an acceptance. Since Rainmaking did not accept this counteroffer, no contract was formed.

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Answer Option 5:

Under the Uniform Commercial Code (UCC), the purchase order from Rainmaking Lawfirm would be considered an offer, and the order confirmation from Costco would be considered an acceptance. However, the UCC allows for additional terms to be added during the acceptance phase. The addition of a loading charge by Costco in the acceptance could be seen as a counteroffer. However, if Rainmaking does not object to this addition and continues with the transaction, it could be seen as an implicit acceptance of the terms. Given that the law firm did not already accept or decline the new terms in the confirmation and the question does not indicate any further actions, it would be reasonable to conclude that no contract has been formed. Therefore, the answer is C. 'No contract because the order confirmation was a counteroffer which was not accepted.'

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Answer Option 6:

A contract at \$1,000 because the offer terms CIF means cost, insurance and freight including all loading charges. CIF is a trade term requiring the seller to arrange for the carriage of goods by sea to a port of destination, and provide the buyer with the documents necessary to obtain the goods from the carrier. This includes all charges, including loading onto the ship, thus Costco's attempt to add a loading charge is a deviation from the original terms and is not valid. The Mirror Image Rule states that an acceptance must not change, add to, or subtract from the terms of the offer, if it does it is considered a counteroffer. Therefore, Rainmaking accepted Costco's original offer and not the counteroffer. Final Answer: A

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Answer Option 7:

The court would likely rule that there is 'No contract because the order confirmation was a counteroffer which was not accepted.' The term CIF does indeed include cost, insurance, and freight, but the additional loading charge added by Costco in their confirmation constitutes a material change to the terms, making their confirmation a counteroffer. Since Marty Manager did not accept this counteroffer, no contract was formed. Final Answer: C.

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Answer Option 8:

Under the Uniform Commercial Code, a definite and seasonable expression of acceptance is valid, even if it states terms additional to or different from the offer, unless acceptance is expressly made conditional on assent to the additional or different terms. However, when both parties are merchants, additional terms become part of the contract unless they materially alter the contract. In this case, since the additional term materially alters the contract by increasing the price by 50%, it would not be included. Therefore, the court would likely rule that the contract is at \$1,000. Final Answer: A

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Answer Option 9:

Under the Uniform Commercial Code, which governs the sale of goods, an additional or different term in an acceptance does not prevent the formation of a contract unless the offeror objects within a reasonable time. In this case, the acceptance from Costco included an additional term (a loading charge). If Rainmaking Lawfirm did not object within a reasonable time, a contract may be formed that includes the loading charge. However, the terms of the contract would depend on whether the parties are both merchants. If they are, the additional term becomes part of the contract unless the offer

expressly limits acceptance to the terms of the offer, the term materially alters the contract, or notification of objection has already been given. If they are not both merchants, the additional term is considered a proposal for addition to the contract. Therefore, the most likely outcome is that there is a contract at \$1,500 because the loading charges are included. Final Answer: B

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Question 20:

'A woman sued her former employer in state court, asserting age and sex discrimination claims under both state and federal law. The woman's attorney had recently been embarrassed in court by the judge to whom the case was assigned. Wishing to avoid difficulties with the judge, the woman's attorney promptly removed the case to federal court on the basis of federal-question jurisdiction. The employer's attorney has timely moved to remand. How is the federal court likely to proceed?', A. 'Remand the entire case.', B. 'Remand the state claims but keep the federal claims.', C. 'Retain the case to avoid the risk of bias and impropriety in having it proceed before a judge who has shown clear hostility toward the woman's attorney.', D. 'Retain the case, because it was timely removed and the woman alleges federal claims.'

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Answer Option 1:

The federal court is likely to remand the entire case. The right to remove a case from state to federal court is statutory and is generally available only to defendants. Since it was the plaintiff's attorney who removed the case, this was an improper removal and the case will be sent back to state court. Final Answer: A

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Answer Option 2:

The federal court is likely to remand the entire case. In US civil procedure, only defendants have the right to remove a case from state court to federal court. Since the woman's attorney (the plaintiff) initiated the removal, it was improperly removed, and the federal court will remand the entire case back to state court. Final Answer: A

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Answer Option 3:

The federal court is likely to remand the entire case. Removal jurisdiction is determined by the defendant, not the plaintiff. In this case, the woman, as the plaintiff, cannot remove the case to federal court. Only defendants can remove a case from state court to federal court. Therefore, the federal court would likely remand the entire case back to state court. Final Answer: A

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Answer Option 4:

The federal court is likely to remand the entire case. According to 28 U.S.C. § 1441(a), only the defendant or defendants may remove a civil action from state court to federal court if the case could have originally been filed in federal court. The woman's attorney, being the plaintiff, does not have the power to remove the case to federal court. Therefore, the federal court will likely remand the entire case back to state court. Final Answer: A

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Answer Option 5:

The court is likely to remand the entire case. According to 28 U.S.C. § 1441, only a defendant or defendants have the ability to remove a case from state court to federal court, not the plaintiff. As such, even though federal claims are involved, because the woman's attorney (the plaintiff) is the one who initiated the removal, it is not in accordance with the federal statute and the entire case is likely to be remanded to state court. Final Answer: A

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Answer Option 6:

The federal court is likely to remand the entire case. According to 28 U.S.C. § 1441(a) and (b), only the defendant or defendants may remove any civil action brought in a State court of which the district courts of the United States have original jurisdiction. Since it was the plaintiff's attorney who removed the case to federal court, the removal was improper regardless of the presence of federal claims, and the entire case will likely be remanded back to state court. Final Answer: A

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Answer Option 7:

The law generally allows a defendant to remove a civil action from state court to federal court if the plaintiff could have originally brought the action in federal court. However, the plaintiff, who is the nonremoving party, cannot remove the case to federal court. Therefore, because the woman's attorney, and not the employer, removed the case, the federal court is likely to remand the entire case back to state court. Final Answer: A

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Answer Option 8:

The federal court is likely to remand the entire case. The right of removal is limited to defendants and is not available to plaintiffs. The woman, as the plaintiff, cannot remove a case that she initiated in state court even though the complaint raises federal questions. The employer's motion to remand should be granted. Final Answer: A.

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Answer Option 9:

The federal court is likely to remand the entire case. Removal jurisdiction is only available at the option of the defendant, not the plaintiff. Since it was the woman (plaintiff) who attempted to remove the case to federal court, the procedure was improperly conducted. Consequently, the federal court will remand the case back to the state court. Final Answer: A

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Question 21:

'A city ordinance provides that it shall be unlawful for any person to litter in a public park, and that a violation of this ordinance shall be punished by a fine of not more than \$100 or imprisonment for not more than 30 days. A protestor organized a demonstration against federal governmental support to rebels in a foreign country. The rally took place in a city park, and attracted about 100 supporters. During the rally, the protestor delivered a speech to the attendees. At the conclusion of his speech, the protestor said, "I'm sick and tired of the garbage this administration is getting away with. Here's what I think about its policy of rebel aid . . ." At which point, the protestor walked over to a trash can and dumped its contents on the ground. As the crowd cheered wildly, the protestor shouted, "No more rebel aid . . . let's stop this garbage now!" After littering the park, the protestor and his supporters left without picking up the trash. As a matter of constitutional law, may the protestor be prosecuted under the aforementioned city ordinance for littering the public park?', A. 'No, because littering the park in these circumstances could be construed as symbolic speech and, thus, it is protected from government regulation by the First and Fourteenth Amendments.', B. 'No, because the facts do not indicate that the protestor's actions presented a clear and present danger that was likely to produce or incite imminent lawless action, thereby necessitating an abridgment of his freedom of speech.', C. 'Yes, because the city ordinance advances an important and legitimate public interest and is not directed at the suppression of communication.', D. 'Yes, because littering the park is conduct, not speech and, therefore, it may not be treated by the law as communication.'

Answer Option 1:

Yes, because the city ordinance advances an important and legitimate public interest and is not directed at the suppression of communication. The law is a content-neutral restriction on conduct with an incidental impact on speech—littering, which is prohibited irrespective of whether it is done as part of a protest or not. The city has a substantial interest in maintaining cleanliness in public parks, and the restriction is narrowly tailored to serve that interest. Final Answer: C

Answer Option 2:

Yes, because the city ordinance advances an important and legitimate public interest and is not directed at the suppression of communication. Although the protestor's actions were symbolic speech, the government has a significant interest in maintaining clean public parks, which outweighs the protestor's freedom of speech in this case. The government has the right to regulate actions that cause harm to public areas, even if those actions are part of a political protest. Final Answer: C.

Answer Option 3:

The city ordinance advances an important and legitimate public interest, and is not directed at the suppression of communication. While the protestor's act of littering may have been symbolically tied to his political message, the ordinance itself is content-neutral and serves the purpose of maintaining cleanliness and order in public parks. It does not seek to suppress free speech, but rather to prevent littering, which is a legitimate public interest. Therefore, the protestor can be prosecuted for violating the littering ordinance without infringing upon his First Amendment rights. Final Answer: C

Answer Option 4:

Yes, the protestor can be prosecuted under the city ordinance. While the act of littering in this context was meant to symbolize his protest, the government has the right to limit or regulate conduct that can be harmful or disturbing to the public, such as littering. The ordinance is not aimed at suppressing communication; rather, it serves a significant and legitimate public interest in maintaining cleanliness and preventing harm to the environment. The fact that the protestor used this prohibited conduct as a means of expression does not exempt him from complying with the law. Final Answer: C.

Answer Option 5:

The answer is C. The city ordinance is a content-neutral regulation, as it is aimed at the noncommunicative aspect of the protestor's conduct (the act of littering) and not the message being conveyed. It serves a significant public interest (keeping public parks clean) and leaves open ample alternative channels of communication. Therefore, the First Amendment would not prohibit the enforcement of such a regulation in this situation. Final Answer: C.

Answer Option 6:

The protestor can be prosecuted under the city ordinance because it advances an important and legitimate public interest and is not directed at the suppression of communication. The U.S. Supreme Court has held that a government regulation that has an incidental effect on speech is valid, as long as it is not aimed at suppressing the message and if it promotes a significant government interest. Here, the city's ordinance against littering is content-neutral, meaning it is not aimed at suppressing the protestor's anti-government message. Instead, it promotes the significant government interest in keeping public parks clean and safe for all users. Even though the protestor's littering was intended as a symbolic act of protest, it can still be regulated under this content-neutral ordinance. Final Answer: C.

Answer Option 7:

Yes, because the city ordinance advances an important and legitimate public interest and is not directed at the suppression of communication. The purpose of the ordinance is to prevent littering, which is a significant public interest in maintaining cleanliness, order, and aesthetics in the city park. The fact that the protestor used littering as a mode of expressive conduct does not exempt him from the application of the ordinance. The ordinance is content-neutral, applying to all littering regardless of the message intended to be communicated. It is a valid time, place, and manner restriction on speech, as it is narrowly tailored to serve the significant government interest in maintaining clean public spaces, and it leaves open other ample means of communication (protestor can express his views without littering). Final

Answer: C

Answer Option 8:

Yes, because the city ordinance advances an important and legitimate public interest and is not directed at the suppression of communication. The ordinance's purpose is to keep public parks clean, not to suppress freedom of speech. Even though the protestor used his act of littering to communicate a political message, the government can still regulate his conduct so long as it has an important reason for doing so that is unrelated to the suppression of free speech. This is a form of content-neutral regulation that is permitted under the First Amendment. Final Answer: C



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Answer Option 9:

Yes, the protestor may be prosecuted under the city ordinance because it advances an important and legitimate public interest and is not directed at the suppression of communication. While symbolic speech is protected by the First and Fourteenth Amendments, the government can regulate conduct that communicates if it has an important or substantial government interest that is unrelated to the suppression of free expression and the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. Here, the city has a substantial interest in maintaining the cleanliness of its public parks and the law is not directed at suppressing the protestor's message. Therefore, the city can constitutionally apply its ordinance to the protestor's conduct. Final Answer: C

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Question 22:

'A resident of a state was the owner of a large tract of virgin forest. The resident conveyed the tract "to the people of the state in fee simple; provided, however, that if any portion of said tract shall ever be used or developed for any commercial purpose or otherwise converted from its natural state (with exception for recreational, scientific, or educational purposes), then the grantor or his successors in interest may reenter as of the grantor's former estate. "Under state law, conveyances of real property to "the people" of the state are deemed to vest title in the state regarded as a legal entity, and custody over such property resides in an appointed official known as the director of environmental resources. The director granted a logging company the privilege to cut timber on a remote portion of the tract, together with incidental easements of way. The section that the logging company was to clear would be used for the development of a state recreational area. After the privilege was granted, the logging company proceeded to clear the timber, which he later sold for \$10,000. When the resident learned that the logging company was cutting the timber and selling it, he notified the director to desist further exploitation of the land. In an ejectment action instituted by the resident against the state to recover the tract, what result would be expected?', A. 'The resident would succeed, because the logging company's selling of the timber would entitle the resident to re-enter and terminate the grant to the state.', B. 'The resident would succeed, because the logging company's selling of the timber would constitute an automatic termination of the state's fee interest.', C. 'The resident would not succeed, because the director approved the clearing of the timber in order to develop the area for recreational purposes.', D. 'The resident would not succeed, because the reservation of the resident's right to terminate would be violative of the rule against perpetuities.'

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Answer Option 1:

The resident would not succeed, because the director approved the clearing of the timber in order to develop the area for recreational purposes. The provision in the deed allows for exceptions for recreational, scientific, or educational purposes. Since the logging and subsequent sale of timber was part of an effort to develop a state recreational area, this activity falls within the exceptions provided for in the deed. Final Answer: C

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Answer Option 2:

The resident would not succeed, because the director approved the clearing of the timber in order to develop the area for recreational purposes. The condition allows for the land to be converted from its natural state for recreational purposes. Since the director's intention was to clear the area for the development of a state recreational area, this falls within the exceptions of the condition and would not trigger the resident's right to re-enter. Final Answer: C

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Answer Option 3:

The resident would not succeed, because the director approved the clearing of the timber in order to develop the area for recreational purposes. Commercial logging for purposes of converting the land into a recreational area falls under the exceptions of the initial grant of the forest to the state, which allowed for changes for recreational, scientific, or educational purposes. Therefore, the cutting and selling of the timber for the purpose of creating a recreational area does not violate the conditions set forth in the grant. Final Answer: C

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Answer Option 4:

The resident would not succeed, because the director approved the clearing of the timber in order to develop the area for recreational purposes. The logging and sale of timber were merely incidental to the main purpose of developing the area for recreational use, which falls under the exceptions provided for in the grant. Thus, this does not constitute a conversion of the land from its natural state for a commercial purpose that would violate the terms of the grant and allow the resident to reclaim the land. Final Answer: C

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Answer Option 5:

The resident would not succeed because the director approved the clearing of the timber in order to develop the area for recreational purposes. The deed to the state clearly provides that the land can be "converted from its natural state" for "recreational, scientific, or educational purposes." Although the logging company sold the timber, the purpose of the timber cutting was to develop a state recreational area, which is a permitted use. Therefore, there has been no violation of the condition specified in the deed, and the resident has no right to reenter and terminate the grant to the state. Final Answer: C

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Answer Option 6:

The resident would not succeed because the director approved the clearing of the timber in order to develop the area for recreational purposes. The provision in the deed allowed for the forest to be used for recreational purposes, and the development of a state recreational area falls under this exception. While the logging company did profit from the sale of the timber, the primary objective was to clear the area for recreational use, not commercial exploitation. The fee simple was granted to the state with the provision that the land could be reverted if used for commercial purposes, but the logging and selling of timber here was incidental to the development of a recreational area. Final Answer: C

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Answer Option 7:

The resident would not succeed because the director approved the clearing of the timber in order to develop the area for recreational purposes. The condition in the resident's conveyance allowed for the land to be used for recreational, scientific, or educational purposes. Even though the timber was sold, the purpose of the clearing was to make way for a state recreational area, which falls within the exceptions stated in the conveyance. Therefore, there was no violation of the conditions in the conveyance that would allow the resident to reclaim the land. Final Answer: C.

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Answer Option 8:

The resident would not succeed, because the director approved the clearing of the timber in order to develop the area for recreational purposes. The resident's deed to the state allows for the land to be used for recreational purposes. Even though the timber was sold, it was part of the process of developing the land for a recreational area, which is an exception to the commercial purposes restriction in the deed.

Final Answer: C

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Answer Option 9:

The resident would not succeed, because the director approved the clearing of the timber in order to develop the area for recreational purposes. This action is in line with the exceptions mentioned in the original contract that states any activity regarding "recreational, scientific, or educational purposes" would not constitute a violation of the contract. Therefore, since the area is being cleared for the purpose of creating a recreational area, this does not constitute a breach of the contract. Final Answer: C

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Question 23:

'A company owned a night club that was built on a pier extending into a major riverbed. For several months sections of the building had been wobbling noticeably, particularly during inclement weather, when the river pounded more aggressively against the structure. Several employees and customers complained but the general manager did not respond. One windy night a section of the pier collapsed into the river, killing 28 customers and employees. It was revealed that officials had on several prior occasions cited the club for violating applicable safety regulations. The police arrested the general manager and charged him with involuntary manslaughter. He defended on the basis that his omissions to act were legally insufficient to establish manslaughter. What will the court decide?', A. 'This was not manslaughter because the omission to respond to safety citations is not enough to establish the high degree of criminal negligence that is required.', B. 'The failure to act is much less culpable than active recklessness, and therefore there was insufficient evidence to charge manslaughter.', C. 'A corporate employee cannot be prosecuted for the crime of manslaughter with respect to the performance or nonperformance of his duties on behalf of the corporation.', D. 'The charge of involuntary manslaughter is legally sufficient because the manager's omissions were reckless and unlawful under the circumstances.'

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Answer Option 1:

The charge of involuntary manslaughter is legally sufficient because the manager's omissions were reckless and unlawful under the circumstances. The manager was aware of the building's problems, aware of the safety violations, and chose not to act. This could be interpreted as gross negligence or recklessness, which is sufficient for a charge of involuntary manslaughter. Final Answer: D

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Answer Option 2:

The charge of involuntary manslaughter is legally sufficient because the manager's omissions were reckless and unlawful under the circumstances. Involuntary manslaughter typically involves a death that is the result of a reckless action, or inaction, that shows a disregard for human life or for the consequences of one's actions. Here, the general manager ignored continuing signs of a serious safety problem and did not respond to complaints from employees and customers, or to citations from officials for violating safety regulations. This behavior indicates a reckless disregard for the consequences of his inaction.

Final Answer: D

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Answer Option 3:

The charge of involuntary manslaughter is legally sufficient because the manager's omissions were reckless and unlawful under the circumstances. Involuntary manslaughter typically involves death that results from the defendant's careless or reckless behavior or from an illegal act that is a misdemeanor or a low-level felony. In this case, the manager's failure to address building safety issues, despite numerous warnings and violations, constitutes reckless disregard for human life. Final Answer: D

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Answer Option 4:

Involuntary manslaughter requires reckless or criminally negligent conduct. The key element of involuntary manslaughter involves the defendant's knowledge of the risk of his conduct. That is, the defendant must have been aware of the risk his conduct posed but nonetheless engaged in the conduct. In this case, the general manager knew the club was unsafe due to its wobbling during inclement weather, the numerous complaints from employees and customers, and the violation of safety regulations. His failure to act, despite this knowledge, could be seen as reckless behavior, thus justifying a charge of involuntary manslaughter. Final Answer: D

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Answer Option 5:

Involuntary manslaughter typically involves the unintentional killing of another person due to reckless or criminally negligent conduct. The general manager's repeated failures to respond to safety citations, especially given the visible instability of the structure and the complaints from employees and customers, could be seen as recklessness or criminal negligence. Therefore, the Court would likely find that the charges of involuntary manslaughter are legally sufficient. Final Answer: D

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Answer Option 6:

Under most jurisdictions, involuntary manslaughter is the unlawful killing that occurs when a person acts in a criminally negligent manner or significantly deviates from reasonable behavior, causing the death of another person. The manager's continuous disregard for the safety violations, in spite of the clear signs of danger, would be considered gross negligence, which is reckless behavior that constitutes involuntary manslaughter. Final Answer: D

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Answer Option 7:

The charge of involuntary manslaughter is legally sufficient because the manager's omissions were reckless and unlawful under the circumstances. Involuntary manslaughter usually refers to an unintentional killing that results from recklessness or criminal negligence, or from an unlawful act that is a misdemeanor or low-level felony. The manager's reckless disregard for the safety of the individuals at the night club, particularly after ignoring several safety citations, amounts to criminal negligence. Therefore, the charge of involuntary manslaughter is appropriate. Final Answer: D

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Answer Option 8:

Involuntary manslaughter requires a mens rea of criminal negligence, which is established when a defendant's conduct involves a high degree of risk of death or serious bodily harm, and the defendant is unaware of (but should have been aware of) that risk. Here, the general manager repeatedly ignored safety violations and complaints from employees and customers about the noticeable wobble of the club. His failure to act in this scenario, despite the obvious risk of harm to patrons and employees, is sufficient to satisfy the mens rea requirement for involuntary manslaughter. Final Answer: D

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Answer Option 9:

The court will likely decide that the charge of involuntary manslaughter is legally sufficient because the manager's omissions were reckless and unlawful under the circumstances. The general manager was aware of the safety issues and the safety citations, but he did not take any action to rectify the situation. Therefore, his omissions could be considered as grossly negligent or reckless, which are key elements

in proving involuntary manslaughter. Final Answer: D

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Question 24:

'A young man suggested to his friend that they steal a large-screen TV from a neighbor's house. The friend was angry with the young man and decided to use the opportunity to get even with him by having him arrested. The friend said he would help, and that night, he drove the young man to the neighbor's house. The young man broke in while the friend remained outside. The friend called the police on his cell phone and then drove away. Police officers arrived at the scene just as the young man was carrying the TV out the back door. The friend is guilty of what offense in a common law jurisdiction?', A. 'No crime.', B. 'Conspiracy.', C. 'Burglary.', D. 'Conspiracy and larceny.'

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Answer Option 1:

The friend is guilty of no crime. While this may appear to be a conspiracy, the friend had no intent to commit the crime, a necessary element of conspiracy. His intent was to have the young man arrested. This lack of intent absolves him of any participation in the burglary or larceny as well. Final Answer: A.

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Answer Option 2:

The friend is guilty of no crime. In common law, his conduct would be considered as part of a "feigned agreement" or trap for the purpose of causing the young man's arrest. A feigned agreement is not an agreement for the purpose of conspiracy, and the friend's mere presence at the scene of the crime and failure to stop the young man do not make him a principal in the crime. Therefore, the friend is not guilty of any crimes. Final Answer: A.

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Answer Option 3:

At common law, a person is guilty of conspiracy if he agrees with another person to commit an unlawful act. However, in this case, the friend never intended to commit the crime of theft. His intention was to get the young man arrested. Therefore, he cannot be guilty of a conspiracy. The friend also cannot be guilty of burglary or larceny because he did not enter the neighbor's house or participate in the stealing of the TV. Therefore, the best answer is that the friend is guilty of no crime. Final Answer: A

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Answer Option 4:

The friend is guilty of no crime. Although his actions may seem morally questionable, he did not commit a crime according to the common law. He did not conspire because he did not have the requisite intent to commit the offense, since he planned to turn the young man into the police all along. He also did not commit burglary or larceny because he did not enter the house with the intent to commit a felony, nor did he actually steal anything. His intention was not to commit a crime but to facilitate the young man's arrest. Final Answer: A

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Answer Option 5:

The friend is guilty of no crime. Though he drove the young man to the neighbor's house knowing the young man's intent to commit burglary, he did so with the intent of having the young man arrested, not of furthering the commission of the crime. Therefore, he did not share the young man's criminal intent, which is necessary for a conspiracy or accomplice liability. He also did not commit burglary since he did not enter the house, nor larceny since he did not take the TV. Final Answer: A

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Answer Option 6:

A. 'No crime.'

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Answer Option 7:

The friend is not guilty of any crime. Although it would initially appear that the friend was part of a conspiracy to commit burglary, his feigned agreement and immediate reporting to the police negates the necessary intent for a conspiracy charge. Additionally, the friend did not commit the actual burglary or larceny, as he did not unlawfully enter the neighbor's house or take and carry away the TV. Final Answer: A.

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Answer Option 8:

Under the common law, the friend would be guilty of no crime. He did not have the necessary mens rea (guilty mind) for the crime, as he did not intend for the burglary to succeed, but rather intended for the young man to be caught and arrested. His act of driving the young man to the scene of the crime and then calling the police does not fulfill the requirements of complicity, as he did not aid or abet the commission of the crime with the intent that the crime be committed. Final Answer: A

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Answer Option 9:

Under common law, a person who voluntarily and with the necessary intent to commit an offense, participates in its commission, is a principal in the first degree if he or she performed the acts constituting the offense or was physically present during its commission, aiding and abetting its commission. A person who aids, abets, or encourages the principal in the first degree to commit the offense, but who is not present during its commission, is a principal in the second degree. In this case, the friend was present at the scene of the crime, and his actions aided and abetted the commission of the crime, even though his motive was to have his friend arrested. Therefore, the friend could potentially be guilty of burglary. Final Answer: C.

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Question 25:

'Upon graduation from high school, a student enrolled in a college close to where he lived. However, since the student did not have a car, he rode the bus to and from the college each day. The student soon discovered that he was spending up to two hours each day to make the round trip to and from college on the bus, whereas the trip could be made in half that time if he had a car. He decided to buy a car and asked his father to accompany him as he looked for a car to purchase. After visiting a number of car lots, the son finally found a used car to his liking. However, the son only had \$2,500 in his bank account, and the price of the car was \$10,000. Since the son had not built up a credit history, the car lot was reluctant to sell the car to the son. The father then told the finance manager of the car lot, "If you will sell the car to my son and for any reason he defaults on the payments, I will pay the balance due." The finance manager then approved the deal, which required the son to pay \$2,500 down and monthly payments of \$500 for 15 months. Six months later, the son defaulted on the payment plan, and the car lot sought recovery from the father without first suing the son. With regard to the father's obligation under his promise to the finance manager, the court would most likely', A. 'relieve the father of liability, because the car lot failed to first sue the son.', B. 'relieve the father of liability, because the father was never under a duty as a surety.', C. 'not relieve the father of liability, because of the main purpose exception.', D. 'not relieve the father of liability, because parents are responsible for the debts of their children.'

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Answer Option 1:

The father is not relieved of his liability because of the main purpose exception. A promise to answer for the debt of another, such as a guaranty, is generally unenforceable unless it is in writing (under the Statute of Frauds). However, an exception exists where the main purpose of the guarantor's promise is to secure a personal benefit. If the primary purpose of the father's promise was to benefit himself (perhaps by helping his son to save time and focus more on his studies), then his oral promise to pay the debt could be enforceable even without a writing. Final Answer: C

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Answer Option 2:

The father's promise to the finance manager falls under the "main purpose rule" or "leading object rule". This exception to the statute of frauds applies when the surety's (in this case, the father's) main purpose or leading object in promising to pay the debt of another is to secure or promote his own personal or business interests. Here, the father's main purpose in making the promise was presumably to assist his son in acquiring the car, which was of personal interest to him. Therefore, the father's promise is enforceable and the court would not relieve the father of liability. Final Answer: C.

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Answer Option 3:

The main purpose exception to the rule requiring consideration applies here. The main purpose rule is an exception to the general rule requiring that a promise to pay the debt of another must be in writing in order to be enforceable. If the main purpose of the promisor is to secure a personal benefit, the promise is considered original rather than collateral, and no writing is required. Here, the father's main purpose in making the promise was arguably to benefit himself (ensuring that his son could buy the car and thus save transportation time). The court would most likely not relieve the father of liability because of the main purpose exception. Final Answer: C

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Answer Option 4:

The father's promise is a secondary obligation, contingent on the son's default. Normally, under the statute of frauds, this would need to be in writing to be enforceable. However, the "main purpose" or "leading object" exception applies when the main purpose of the guarantor's promise is to secure a personal benefit. Here, the father's main purpose in assuring the finance manager appears to be to enable his son to obtain a car, which arguably provides a personal benefit to the father (e.g., less time spent driving the son, etc.). Therefore, the court would most likely hold the father to his verbal promise and not relieve him of his liability. Final Answer: C

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Answer Option 5:

The father would most likely not be relieved of his liability due to the main purpose exception. The main purpose rule states that if a party's main purpose in guaranteeing a debt is to secure an economic advantage for himself, then the agreement is not considered a contract of suretyship and it need not be in writing. In this case, the father's main purpose in guaranteeing the debt was to assist his son in purchasing a car, which directly benefits himself by freeing up his time from accompanying his son to the car lots. Hence, the father's promise to the finance manager is enforceable, and he is liable for the son's default. Final Answer: C

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Answer Option 6:

The father's promise is an example of a suretyship promise, which is a promise to answer for the debt or duty of another. Normally, such promises must be in writing under the statute of frauds. However, the main purpose exception holds that if the surety's main purpose in making the promise was to secure a personal benefit, the promise does not need to be in writing. In this case, the father's main purpose in making the promise was to secure a personal benefit, which was to help his son buy a car. Therefore, the main purpose exception applies and the promise does not need to be in writing. Hence, the court would not relieve the father of the liability. Final Answer: C.

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Answer Option 7:

The father's obligation under his promise to the finance manager would most likely not be relieved due to the "main purpose" exception. This exception to the statute of frauds applies when the main purpose of the guarantor's promise is to further his own economic or business interests. Given the father's desire to support his son's education and reduce his commuting time, it is reasonable to infer that the main purpose of the father's guarantee was to advance his own interest. Hence, even though the father's promise was oral, it is enforceable under the main purpose exception. Final Answer: C

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Answer Option 8:

The court would most likely not relieve the father of liability, because of the main purpose exception. The main purpose rule is an exception to the statute of frauds requirement that a promise to answer for the debt of another be in writing. If the main purpose of the promisor is to secure a personal benefit, the promise is not within the statute of frauds and need not be in writing. In this case, the father's main purpose in guaranteeing the son's debt was presumably to secure a personal benefit, i.e., ensuring the son can have a car and hence save time traveling to and from college. Thus, the father's promise is enforceable

even though it was not in writing. Final Answer: C.

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Answer Option 9:

The father's promise to pay for the car if his son defaults is a secondary obligation that is dependent on the son's primary obligation to pay the car lot. This arrangement is considered a suretyship arrangement, in which the father acts as a surety. However, the "main purpose" or "leading object" rule, an exception to the Statute of Frauds, may apply. This rule states that if the main purpose of the transaction was to secure a personal benefit to the guarantor (in this case, the father), the agreement does not need to be in writing to be enforceable. Here, the father's main purpose could be seen as wanting his son to have a car to ease the burden of transportation, which benefits the father as well. Thus, the father would remain liable. The creditor (the car lot) does not need to exhaust its remedies against the principal debtor (the son) before proceeding against the guarantor (the father). Final Answer: C.

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Question 26:

'A widow owned an apartment building. Several years ago, a student, in a signed writing, entered a three-year lease agreement with the widow. The student agreed to pay \$800 monthly rent for the third-floor apartment in the widow's building. The original three-year term had long since expired, but the student had continued to pay his rent, and the widow continued to accept it. If the widow had chosen to evict the student immediately upon the end of the three-year period, and before she had accepted the next rent check, the student's strongest argument to prevent eviction, if true, would have been that', A. 'the leasehold contract was void ab initio.', B. 'the widow had not given the student requisite notice for terminating a periodic tenancy.', C. 'the widow had not given the student requisite notice for terminating a term of years.', D. 'the terms of the leasehold contract were binding on both parties.'

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Answer Option 1:

At the end of the three-year term, the leasehold estate became a periodic tenancy because the tenant held over (stayed in possession) and the landlord accepted rent. The tenant's best argument is that the landlord did not give him proper notice to terminate the periodic tenancy. Final Answer: B.

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Answer Option 2:

When the original three-year term of the lease expired, and the student continued to pay rent which the widow accepted, a periodic tenancy was created. A periodic tenancy continues for successive periods until terminated by proper notice by either party. Therefore, the student's strongest argument to prevent eviction would be that the widow had not given the student requisite notice for terminating a periodic tenancy. Final Answer: B

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Answer Option 3:

When a lease for a term of years ends but the tenant remains in the property and continues to pay rent, and the landlord continues to accept it, this creates a periodic tenancy. This type of tenancy continues for successive equivalent periods (e.g., month-to-month or year-to-year) until either the tenant or landlord gives notice of termination. Generally, the notice must be given one full period in advance. So, if the widow had not given the student the proper notice for terminating a periodic tenancy, she would not be able to immediately evict him. Final Answer: B

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Answer Option 4:

Once a lease for a term of years expires and the tenant holds over (continues to occupy the property), a periodic tenancy is typically created if the landlord accepts further rent. A periodic tenancy continues from rental period to rental period until terminated by proper notice from either party. The length of the notice must generally be equal to the length of the rental period, though never more than six months. In this case, the widow would have failed to give proper notice to terminate the periodic tenancy. Final Answer: B.

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Answer Option 5:

The strongest argument for the student would be that the widow had not given the student requisite notice for terminating a periodic tenancy. Once the original fixed-term lease expired, if the student remained in the apartment and continued to pay rent, and the widow accepted the rent, a periodic tenancy was created. The periodic tenancy would continue until either the landlord or tenant gave notice of termination. Typically, the amount of notice required is equal to the length of the rental period, but no more than six months. Thus, to evict the student, the widow would need to give him appropriate notice. Final Answer: B

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Answer Option 6:

The strongest argument for the student to prevent eviction would be that the widow had not given the student requisite notice for terminating a periodic tenancy. When a lease for a term of years has expired, but the landlord continues to accept rent from the tenant, a periodic tenancy is created. The notice requirement for termination of a periodic tenancy is generally a full period in advance, but not to exceed six months. So, if the widow wanted to evict the student immediately upon the end of the three-year period, she would have had to give him notice at least one month before the end of that period because the tenancy was month-to-month. Final Answer: B

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Answer Option 7:

At the end of the three-year lease term, if the student remained in possession and continued to pay rent, and if the widow did not object and accepted the rent, a month-to-month periodic tenancy would have been created. To terminate a periodic tenancy, the landlord generally must give the tenant notice at least equal to the length of the period, unless otherwise agreed. Thus, if the widow wanted to evict the student, she would have been required to give the student a minimum of one month's notice, given that the student was paying rent monthly. Therefore, the student's strongest argument against eviction would be that the widow had not given the student requisite notice for terminating a periodic tenancy. Final Answer: B

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Answer Option 8:

The strongest argument for the student would be that the widow had not given him the requisite notice for terminating a periodic tenancy. When the lease for a term of years expired and the student remained in possession (and the widow accepted rent), this would have created a periodic tenancy based on the period of the rental payments (month-to-month in this case). To terminate a periodic tenancy, the landlord generally must give notice equal to the length of the period (a month in this case), unless state law or the lease provides otherwise. So if the widow tried to evict immediately at the end of the term without giving requisite notice, the student could protest based on lack of proper notice. Final Answer: B

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Answer Option 9:

When a tenant holds over after the expiration of a term of years, the landlord may elect to treat the tenant as a trespasser, or to hold him for a new term. If the landlord chooses to hold the tenant for a new term, a periodic tenancy arises. This periodic tenancy will be measured by the way rent is tendered. So if the rent in the original lease was tendered monthly, the new periodic tenancy will also be a month to

month tenancy. To terminate a month-to-month periodic tenancy, a landlord must usually give a 30-day notice. So the strongest argument the student has is that the widow had not given him requisite notice for terminating a periodic tenancy. Final Answer: B

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Question 27:

'A mail clerk domiciled in State A slipped and fell on ice that had formed near the loading dock of the building in State B where the clerk's State B employer leased space for its headquarters. The building was owned and operated by a State C corporation. As a result of the fall, the clerk was injured and the employer's expensive computer he was carrying was badly damaged. The clerk sued the building owner for negligence in a federal district court in State B, seeking \$100,000 in personal-injury damages. The employer has filed a timely motion to intervene, asserting an \$80,000 negligence claim against the building owner for the damage to its computer. Is the court likely to grant the employer's motion to intervene?', A. 'No, because although the employer has an interest in the clerk's action, that interest is not likely to be impaired in the employer's absence.', B. 'No, because the clerk chose not to join the employer as a co-plaintiff in his action.', C. 'Yes, because the employer is an indispensable party.', D. 'Yes, because the employer's claim shares common questions of law and fact with the clerk's action.'

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Answer Option 1:

Yes, the court is likely to grant the employer's motion to intervene because the employer's claim shares common questions of law and fact with the clerk's action. The employer's claim arises from the same incident and will likely involve the same evidentiary matters. Therefore, it meets the prerequisites for intervention as of right under Rule 24(a) of the Federal Rules of Civil Procedure. Final Answer: D  
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Answer Option 2:

The employer's claim shares common questions of law and fact with the clerk's action. Both claims arise out of the same occurrence or transaction, i.e., the fall caused by the alleged negligence of the building owner. Both claims would involve determination of the building owner's negligence and the extent of the damages resulting from it. Therefore, the court would likely grant the employer's motion to intervene under Rule 24(b) of the Federal Rules of Civil Procedure, which permits permissive intervention where an applicant's claim or defense and the main action have a question of law or fact in common.

Final Answer: D

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Answer Option 3:

The court is likely to grant the employer's motion to intervene, because the employer's claim shares common questions of law and fact with the clerk's action. Federal Rule of Civil Procedure 24 allows for intervention when the applicant's claim shares common questions of law or fact, and if the applicant is so situated that disposing of the action may as a practical matter impair or impede the applicant's ability to protect its interest. The employer's claim and the clerk's claim both involve the building owner's alleged negligence in maintaining the premises. Final Answer: D

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Answer Option 4:

The court is likely to grant the employer's motion to intervene since the employer's claim shares common questions of law and fact with the clerk's action. The Federal Rules of Civil Procedure (Rule 24(b)) allow permissive intervention where the applicant's claim or defense and the main action have a question of law or fact in common. In this case, both the clerk and the employer are alleging negligence against the building owner and this will likely involve common issues such as the condition of the premises, the knowledge of the owner, and the owner's actions or lack of action with regard to the icy conditions. The employer's ability to intervene does not depend on the clerk's decision to join the employer as a co-plaintiff. Final Answer: D.

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Answer Option 5:

The employer's claim shares common questions of law and fact with the clerk's action. Both the clerk and the employer are alleging negligence on the part of the building owner as the cause of their respective damages, and evidence regarding the condition of the loading dock, the building owner's knowledge of and action regarding the ice, and the events surrounding the clerk's fall will be relevant to both claims. Therefore, the court is likely to grant the employer's motion to intervene. Final Answer: D

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Answer Option 6:

The court is likely to grant the employer's motion to intervene because the employer's claim shares common questions of law and fact with the clerk's action. Both of their claims are based on the same accident and allege negligence on the part of the building owner. Therefore, they share common issues such as whether the building owner was negligent in allowing the ice to form and whether that negligence caused the clerk's fall and the subsequent damage to the computer. Final Answer: D

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Answer Option 7:

The employer's motion to intervene is likely to be granted, because the employer's claim shares common questions of law and fact with the clerk's action. Both the clerk and the employer's claims are based on the same event - the slip and fall accident - and both claims would involve determining the building owner's negligence in regards to the formation of the ice. Therefore, they share common questions of law and fact. The employer's claim is not dependent on whether the clerk chose to join the employer as a co-plaintiff or not. Final Answer: D

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Answer Option 8:

The employer's motion to intervene should be granted because their claim shares common questions of law and fact with the clerk's action. Both the clerk and the employer assert negligence claims against the building owner arising from the same transaction or occurrence. The employer's claim meets the requirements for intervention as of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure because the employer claims an interest relating to the property or transaction that is the subject of the clerk's action, the employer is so situated that the disposition of the clerk's action may as a practical matter impair or impede the employer's ability to protect that interest, and the employer's interest is not adequately represented by existing parties. Final Answer: D

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Answer Option 9:

An employer's claim for damages to its computer due to the building owner's negligence shares common questions of law and fact with the clerk's action (also based on the owner's negligence). Both cases involve the building owner's duty of care, breach of duty, causation, and damages, in relation to the same incident. Federal Rule of Civil Procedure 24(a)(2) provides that the court must permit anyone to

intervene who "claims an interest relating to the . . . transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Here, the employer can argue that it fulfills these requirements. Final Answer: D

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Question 28:

'A pedestrian was crossing the street when he was hit by a car. The pedestrian suffered a neck injury. The driver of the car that hit the pedestrian had auto insurance. A claims adjuster from that insurance company contacted the pedestrian and discussed the accident with him. The insurance adjuster said, "You're not actually entitled to any compensation for these injuries, under the laws of this state; but I feel bad for you, and I'm a nice guy, so I'm willing to approve a \$1,000 payment to you. " The insurance adjuster knew that, in fact, the pedestrian would be entitled to compensation under the state's tort law. The pedestrian rejected the offer, retained an attorney, and wound up winning a \$550,000 jury verdict on negligence claims against the driver. If the pedestrian asserts a claim against the insurance adjuster for misrepresentation, will the pedestrian prevail?'. A. 'Yes, because the insurance adjuster's \$1,000 settlement offer was grossly inadequate.'. B. 'Yes, because the insurance adjuster knew that laws of the state provided for recovery in such a case.'. C. 'No, because the insurance adjuster's statements did not cause the pedestrian any monetary loss.'. D. 'No, because the insurance adjuster did not have a fiduciary relationship requiring him to protect the pedestrian's interests.'

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Answer Option 1:

B. 'Yes, because the insurance adjuster knew that laws of the state provided for recovery in such a case.'

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Answer Option 2:

B. 'Yes, because the insurance adjuster knew that laws of the state provided for recovery in such a case.'

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Answer Option 3:

Yes, the pedestrian would prevail on a claim of misrepresentation because the insurance adjuster knowingly made a false statement about the law in order to persuade the pedestrian to accept a lesser settlement. This falls under the definition of fraudulent misrepresentation, which involves an untrue assertion of fact (or law, in this case) made with the knowledge that it is false and with the intent to deceive the other party. Final Answer: B

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Answer Option 4:

The pedestrian would not likely prevail on a misrepresentation claim against the insurance adjuster because the pedestrian suffered no monetary loss as a result of the adjuster's misstatements. Under the elements of fraud and misrepresentation, the plaintiff must show that he suffered harm as a result of the misrepresentation. In this case, the pedestrian rejected the adjuster's offer and subsequently won a \$550,000 jury verdict, so he did not suffer any loss due to the adjuster's statements. Final Answer: C

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Answer Option 5:

The pedestrian will likely not prevail in a claim for misrepresentation against the insurance adjuster because the pedestrian did not rely on the adjuster's false statement to his detriment. In order to succeed on a claim for misrepresentation, the pedestrian would need to show that he relied on the false statement and that such reliance caused him financial harm. Here, the pedestrian rejected the adjuster's offer and instead retained an attorney, which resulted in a jury verdict significantly higher than the adjuster's offer. Therefore, the pedestrian did not suffer any financial loss as a result of the adjuster's false statement.

Final Answer: C

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Answer Option 6:

The pedestrian can assert a claim against the insurance adjuster for misrepresentation because the adjuster knowingly lied about the state law. The adjuster knew the pedestrian could be entitled to compensation under tort law, but falsely told the pedestrian otherwise. This constitutes a fraudulent misrepresentation, as the adjuster intentionally provided false information. Final Answer: B

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Answer Option 7:

Yes, because the insurance adjuster knew that laws of the state provided for recovery in such a case. This scenario describes a case of fraudulent misrepresentation. The adjuster knowingly made false statements regarding the pedestrian's right to compensation. Even though the pedestrian did not suffer a financial loss due to these statements, the misrepresentation itself can be a basis for legal action.

Final Answer: B.

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Answer Option 8:

Yes, the pedestrian will likely prevail in a claim for misrepresentation, because the insurance adjuster knowingly misrepresented the state's laws that provided for recovery in such a case. Misrepresentation involves making a false statement with an intent to deceive or with reckless disregard for the truth, and it leads another to rely on it to their detriment. In this case, the insurance adjuster knowingly lied about the state's laws in an attempt to settle the claim for less than it was worth. Therefore, the pedestrian has a valid claim for misrepresentation. Final Answer: B.

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Answer Option 9:

The pedestrian will prevail if he asserts a claim against the insurance adjuster for misrepresentation because the insurance adjuster had knowledge that the laws of the state provided for recovery in such a case. The adjuster intentionally misled the pedestrian about his legal rights, which amounts to fraudulent misrepresentation. This is irrespective of whether the adjuster had a fiduciary duty or not. The pedestrian's monetary loss or gain does not affect the fact that the adjuster misrepresented the law. Final Answer: B

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Question 29:

'A police officer was employed on a city's police force for 10 years. When the officer accepted the job, the city's employee benefit plan provided a death benefit to the spouse of any employee who died as a result of any job-related injury. Last year, the city amended its employee benefit plan to deny its death benefit in cases where the death "was caused by the employee's refusal to accept, for any reason other than its excessive risk to life or health, reasonably available medical care prescribed by a physician." After this amendment took effect, the officer was shot while on duty. Because of a sincerely held religious belief, the officer refused to allow a prescribed blood transfusion and, as a result, died from loss of blood. When the officer's spouse applied for the death benefit, the city denied the application on the basis of the amendment to the employee benefit plan. The officer's spouse has challenged the amendment, claiming that, as applied to the officer, it violated the officer's constitutional right to the free exercise of religion. Is the court likely to find the amendment to the employee benefit plan constitutional as applied to the officer?', A. 'No, because it effectively discriminates against a religious practice.', B. 'No, because it violates the vested contractual rights of city employees who were hired before the amendment took effect.', C. 'Yes, because it does not single out religious reasons for the denial of benefits and is a reasonable limitation on the award of such benefits.', D. 'Yes, because it imposes a condition only on the award of a government benefit and does not impose a penalty on an individual's conduct.'

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Answer Option 1:

Yes, because it does not single out religious reasons for the denial of benefits and is a reasonable limitation on the award of such benefits. The amendment applies to any employee who refuses medical treatment for any reason other than its excessive risk to health or life, and does not specifically target or single out religious reasons. Therefore, it is a neutral law of general applicability and does not violate the Free Exercise Clause. Final Answer: C

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Answer Option 2:

The amendment does not single out religious reasons for the denial of benefits and is a reasonable limitation on the award of such benefits. The amendment is neutral and of general applicability; it applies to all employees who refuse medical treatment for any reason other than its excessive risk to life or health, not just those who refuse treatment for religious reasons. It is not targeted at religious practices or beliefs. Therefore, it would likely be found constitutional as applied to the officer. Final Answer: C

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Answer Option 3:

The amendment to the employee benefit plan is likely to be found constitutional as it applies to the police officer. The amendment does not single out religious reasons for the denial of the benefit -- it applies to all refusal of medical care, except where such care presents an excessive risk to life or health. It is a neutral law of general applicability and does not target or single out a particular religion or religious practice. According to the Supreme Court's decision in *Employment Division v. Smith*, such laws do not violate the Free Exercise Clause of the First Amendment. Final Answer: C

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Answer Option 4:

The amendment to the employee benefit plan doesn't single out religious reasons for the denial of benefits. Instead, it applies to any refusal of recommended medical treatment, regardless of the underlying reason. The city can reasonably argue that it has an interest in limiting its liability for benefits in cases where an employee's death could have been avoided by accepting recommended medical treatment. Therefore, the amendment is likely to withstand a constitutional challenge, because it is neutral and generally applicable, and does not target a specific religious practice. Final Answer: C.

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Answer Option 5:

The court is likely to find the amendment to the employee benefit plan constitutional as applied to the officer. The amendment does not single out religious reasons for the denial of benefits. Instead, it applies to any refusal to accept prescribed medical care, regardless of the reason, unless the refusal is based on excessive risk to life or health. Therefore, the amendment is neutral and generally applicable, and it does not target or discriminate against any religious practice. The amendment may also be seen as a reasonable limitation on the award of benefits, given the interest in ensuring that employees take steps to mitigate job-related injuries. Final Answer: C.

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Answer Option 6:

The court is likely to find the amendment to the employee benefit plan constitutional as applied to the officer. While it may appear that the amendment restricts the officer's right to the free exercise of religion, the Supreme Court has held that a statute does not violate the free exercise clause if it is a neutral law of general applicability, which does not target any religious practice. Here, the amendment does not target any particular religion or religious practice, but applies to all employees who refuse medically necessary treatment for any reason, religious or otherwise. Given that the city has a legitimate interest in limiting its liability for death benefits, the court would likely uphold the amendment as a reasonable regulation. Final Answer: C

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Answer Option 7:

The amendment of the employee benefit plan is likely to be upheld as constitutional when applied to the officer because it does not single out religious reasons for denial of benefits and represents a reasonable limitation on the awarding of such benefits. The Free Exercise Clause of the First Amendment does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes or prescribes conduct that his religion prescribes or proscribes. The amendment is neutral and of general applicability because it applies to any refusal to accept prescribed medical treatment for any reason other than its excessive risk, not only those refusals based on religious beliefs. Moreover, the city has a valid interest in limiting its financial obligations and the amendment is a reasonable means of furthering this interest. Final Answer: C

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Answer Option 8:

The court is likely to find the amendment to the employee benefit plan constitutional as applied to the officer because it does not single out religious reasons for the denial of benefits and is a reasonable limitation on the award of such benefits. The amendment has a secular purpose and is neutral towards religion. It applies to anyone who refuses medical treatment for any reason other than its excessive risk to life or health, not just those who refuse treatment due to religious beliefs. So, while it may incidentally impact certain religious practitioners, it does not target them. The state has a legitimate interest in

placing reasonable limits on the award of benefits, especially where those limits encourage medical treatment that could save an employee's life. Therefore, it is likely to withstand scrutiny. Final Answer: C.

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Answer Option 9:

The amendment is likely constitutional as applied to the officer. The amendment does not target religious practices; rather, it applies to any refusal to accept reasonably available medical care for any reason, unless that care poses an excessive risk to life or health. Therefore, it is a neutral law of general applicability and does not violate the Free Exercise Clause even if it incidentally burdens a particular religious practice. The fact that it only imposes a condition on a government benefit, rather than directly penalizing religious conduct, also supports this conclusion. Final Answer: C

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Question 30:

'Which reason may constitute sufficient good cause or excusable neglect to enable a litigant to file a late notice of appeal past the 30-day deadline?', A. 'The district court judge assured the litigant that the late filing would be permitted.', B. 'The litigant's original attorney neglected to file notice on time, and now the litigant has retained a new attorney to file the appeal and has also sued the former attorney for malpractice.', C. 'The litigant ran a red light causing a car crash just before the judgment was rendered, and was in the hospital for two months recovering.', D. 'Opposing counsel agreed not to object to the late notice of appeal.'

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Answer Option 1:

The circumstances surrounding the litigant's accident and subsequent hospitalization would most likely be viewed as valid reasons for excusable neglect. A serious accident requiring a lengthy hospitalization could prevent the litigant from taking necessary legal actions within the prescribed deadline. Final Answer: C

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Answer Option 2:

A litigant's serious illness or hospitalization may constitute "excusable neglect" sufficient to allow a late notice of appeal, especially if the litigant was incapacitated during the appeal period. Therefore, a litigant's hospitalization for two months due to a car crash just before the judgment was rendered could be considered as a valid reason. Final Answer: C.

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Answer Option 3:

The Federal Rules of Appellate Procedure generally require that a notice of appeal be filed within 30 days of the entry of the judgment or order being appealed. However, these rules do provide for extensions in the case of "excusable neglect or good cause." A serious accident and subsequent hospitalization would likely be considered a valid reason for filing a late notice of appeal. Final Answer: C

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Answer Option 4:

If the litigant was not able to file the appeal due to a car crash and subsequent hospitalization, this could constitute good cause or excusable neglect. An unexpected accident or illness that physically prevents a litigant from filing on time is generally accepted as a valid reason for delay. Final Answer: C

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Answer Option 5:

A litigant being in the hospital for two months recovering from a car crash would likely be sufficient good cause or excusable neglect for a late filing. The other options are less likely to be considered good cause or excusable neglect because they involve errors or assurances from legal professionals or opposing counsel, rather than unforeseen and uncontrollable personal circumstances. Final Answer: C

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Answer Option 6:

One instance of excusable neglect is when a party or the party's attorney has been physically or mentally unable to file on time due to an accident, illness, or death. Therefore, if 'the litigant ran a red light causing a car crash just before the judgment was rendered, and was in the hospital for two months recovering', this would generally be considered sufficient good cause or excusable neglect for a late notice of appeal. Final Answer: C

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Answer Option 7:

An appeal must be filed within the specified time limit, but a court may extend this time upon showing of good cause or excusable neglect. In these options, the scenario that most clearly demonstrates good cause or excusable neglect is when the litigant was in the hospital for two months recovering from a car crash. This is a situation beyond the litigant's control that would prevent him from filing on time. The assurances of the district court judge or the opposing counsel do not constitute good cause or excusable neglect, and negligence by an attorney is generally not considered a valid excuse for missing a deadline. Final Answer: C

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Answer Option 8:

The litigant's hospitalization due to a car crash just before the judgment was rendered, which caused the litigant to be in the hospital for two months recovering, could constitute good cause for missing the deadline. Courts generally allow for extensions in extraordinary circumstances, such as serious illness or hospitalization. Final Answer: C

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Answer Option 9:

"The litigant ran a red light causing a car crash just before the judgment was rendered, and was in the hospital for two months recovering." embodies a situation that is generally recognized as good cause or excusable neglect. The litigant's personal circumstances (i.e., being involved in a car crash and hospitalization), which were beyond their control, prevented them from filing the notice of appeal on time. Final Answer: C

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Question 31:

'A patent holder brought a patent infringement action in federal court against a licensee of the patent. The patent holder believed that a jury would be more sympathetic to his claims than a judge, and asked his lawyer to obtain a jury trial. What should the lawyer do to secure the patent holder's right to a jury trial?'. A. 'File and serve a complaint that includes a jury trial demand.'. B. 'File and serve a jury trial demand at the close of discovery.'. C. 'File and serve a jury trial demand within 30 days after the close of the pleadings.'. D. 'Make a jury trial demand at the initial pretrial conference.'

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Answer Option 1:

To secure a jury trial in federal court, a party must serve a demand for a jury trial in writing no later than 14 days after the last pleading directed to the issue is served. This often means that the demand must be included in the complaint or answer, but it could also be a separate document. Final Answer: A

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Answer Option 2:

In federal court, the right to a jury trial is preserved by including a demand for a jury trial in the initial complaint or by serving a written demand no later than 14 days after the last pleading directed to the issue that is sought to be tried by a jury. The last pleading directed to such issue is usually the defendant's answer to the complaint. Therefore, the lawyer should file and serve a complaint that includes a jury trial demand. Final Answer: A

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Answer Option 3:

Under the Federal Rules of Civil Procedure, a party may demand a jury trial by serving the other parties with a written demand, which may be included in a pleading, no later than 14 days after the last pleading directed to the issue is served. Therefore, to secure the right to a jury trial, the attorney should file and serve a jury demand within 14 days after the close of pleadings. Final Answer: C

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Answer Option 4:

The lawyer should file and serve a complaint that includes a jury trial demand. Under the Federal Rules of Civil Procedure, a party may demand a jury trial by serving the other parties with a written demand, which may be included in a pleading, no later than 14 days after the last pleading directed to the issue is served. Typically, the demand is included in the complaint. Final Answer: A

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Answer Option 5:

According to the Federal Rules of Civil Procedure, a party may demand a jury trial by serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served. Since the complaint is normally the first pleading, the lawyer should include a jury demand in it to secure the right to a jury trial. Final Answer: A

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Answer Option 6:

The lawyer should file and serve a complaint that includes a jury trial demand. According to Rule 38(b) of the Federal Rules of Civil Procedure, a party may demand a jury trial by serving the other parties with a written demand, which may be included in a pleading, no later than 14 days after the last pleading directed to the issue is served. Demand is typically included in the complaint to ensure it is timely. Final Answer: A

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Answer Option 7:

The right to a jury trial in federal court is governed by Rule 38 of the Federal Rules of Civil Procedure, which states that a party may demand a jury trial by serving the other parties with a written demand, which may be included in a pleading, no later than 14 days after the last pleading directed to the issue is served. Therefore, the lawyer should include a jury trial demand in the complaint or should file and serve a separate document containing a jury trial demand within 14 days after service of the last pleading directed to the issue. So the correct answer is: A. 'File and serve a complaint that includes a jury trial demand.'

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Answer Option 8:

The lawyer should file and serve a complaint that includes a jury trial demand. Under Rule 38 of the Federal Rules of Civil Procedure, a party may demand a jury trial by serving the other parties with a written demand, which may be included in a pleading, no later than 14 days after the last pleading directed to the issue is served. So, it's best to include the demand for a jury trial in the complaint itself to ensure the right is preserved. Final Answer: A

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Answer Option 9:

The Federal Rules of Civil Procedure, Rule 38, provides that a party may demand a jury trial by serving the other parties with a written demand, which may be included in a pleading, no later than 14 days after the last pleading directed to the issue is served. The last pleading directed to the issue is typically an answer to a complaint. Since an answer must be served within 21 days after service of the complaint, the demand for a jury trial is essentially due within 35 days after service of the complaint. Thus, the lawyer should file and serve a jury trial demand within this period, making option C the correct answer. Final Answer: C

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Question 32:

'A man is sitting on a beach chair, peacefully and in a relaxed meditative state, when a truck racing on the sand ran down a sunbathing elderly person. The man said out loud, "Oh God, look what that truck driver did. The man driving that truck was racing and going about 100 mph. Someone call 911!" A woman, who was sitting on the beach nearby, but facing the other way, heard the man's outcry. When the case comes to trial, will the court allow both the man and the woman to testify about the man's utterances?', A. 'Yes, both the woman and the man can testify because it is an excited utterance exception to the hearsay rule that goes to the material issue of the case.', B. 'Yes, because this is not hearsay and it is not being entered for the truth of the statement by either witness so that they can both testify.', C. 'No, neither of them can testify because the man was impaired due to being too relaxed from his meditation, and the woman cannot repeat the utterances of an impaired witness.', D. 'No, neither can testify because the utterances do not fit any of the exceptions to the hearsay rule.'

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Answer Option 1:

The man's statement is likely to be admitted as an excited utterance, an exception to the hearsay rule, because he was under the stress of excitement caused by the event (the accident). He, as the declarant, can testify about his own statement, and the woman can also testify about what she heard him say. Therefore, both can testify about the man's utterance. Final Answer: A

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Answer Option 2:

The man's outburst after the shocking event is likely to be considered an excited utterance, which is an exception to the hearsay rule. An excited utterance is a statement made spontaneously or impulsively after a shocking event or condition, under the stress of excitement caused by the event or condition, and without opportunity to fabricate. The woman can testify to what she heard the man say because she is offering firsthand knowledge of the utterance, not the truth of the matter it asserts. Final Answer: A

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Answer Option 3:

The man's statement is considered an excited utterance, which is an exception to the hearsay rule. Excited utterances are statements relating to startling events or conditions made while the declarant was under the stress of excitement caused by the event or condition. Here, the man witnessed a shocking event (the truck running over the sunbather) and immediately made an exclamation about it. Thus, it qualifies as an excited utterance. The woman can also testify as to what she heard the man say.

Final Answer: A

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Answer Option 4:

The best answer is A. The excited utterance exception to the hearsay rule allows for the admission of statements relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. In this case, the man's utterance was made in response to a sudden and startling event (the truck hitting the sunbather), and he was still under the stress of the event when he made the utterance. Therefore, his statement falls under the excited utterance exception to the hearsay rule. Additionally, the woman can testify as to what she heard the man say, as it corroborates his testimony and is also considered an excited utterance.

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Answer Option 5:

Yes, both the woman and the man can testify because it is an excited utterance exception to the hearsay rule that goes to the material issue of the case. An excited utterance is a statement relating to a startling event or condition made while the declarant was under the stress of excitement that it caused. Therefore, both the man, who made the statement, and the woman, who heard it, can testify about the man's utterances under the excited utterance exception to the hearsay rule. Final Answer: A

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Answer Option 6:

The man's statement is a spontaneous reaction to a shocking event and is likely to be truthful because there was little opportunity for the man to reflect or fabricate his story. This makes it an exception to the hearsay rule known as an "excited utterance". The woman can also testify about what she heard the man say because it is also considered an excited utterance. Final Answer: A

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Answer Option 7:

The man was an eyewitness and he can testify about what he saw and say what he said during the event. The woman can also testify about what she heard the man say because it qualifies as an "excited utterance", which is an exception to the hearsay rule. An "excited utterance" is a statement made about an event while the person is still under the stress or excitement of the event, which increases the chances of the statement being reliable. It should be noted that the rate of the truck's speed is an estimation. Final Answer: A

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Answer Option 8:

The man's statement can be classified as an excited utterance, which is an exception to the hearsay rule. An excited utterance is a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. The man's reaction to the sudden and startling event of seeing the truck hit the elderly person qualifies as an excited utterance. The woman can testify about the man's utterances because she directly heard them, and her testimony about the man's utterances would not be considered hearsay. Final Answer: A

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Answer Option 9:

The appropriate answer is A. Both the man and the woman can testify because this is an excited utterance exception to the hearsay rule that is going to the material issue of the case. An excited utterance is a statement made in response to a shocking event or condition and is made while the declarant was under the stress of excitement that it caused. The utterance of the man, as evidenced by his exclamation "Oh God" and his immediate reaction to call 911, shows that he was still under the stress of the excitement caused by the shocking event. The woman, in turn, can repeat the excited utterance because she herself heard it. Therefore, their testimony can be admitted under the excited utterance exception to the hearsay rule. Final Answer: A

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Question 33:

'A landlord is the owner in fee simple of a tract of land on which is situated a large office building. The landlord leases the land and building thereon to a tenant for a term of seven years, commencing on August 1, 2001, and terminating at midnight on July 31, 2008. The lease contains the following provisions'(1) The tenant covenants to keep the building on the leased premises insured against fire in the amount of \$100,000. "After three years of the lease had expired, the tenant assigned the entire balance of the lease period to a doctor, who took immediate possession of the leased property. Then in 2005, the doctor assigned his leasehold interest to a dentist. The dentist went into possession, but failed to pay any rent for two months. Soon afterwards, a fire spread from an adjoining building to the leased property, completely destroying the building thereon. While the tenant was in possession of the leased property, he carried a fire insurance policy on the premises in the amount of \$100,000. However, the tenant allowed the policy to lapse after his assignment to the doctor. The doctor did carry insurance on the leased building, but only in the amount of \$50,000. When the dentist took possession of the building, he did not obtain any fire insurance. The landlord learned that the building was not insured at the time of the fire as per the original agreement. In an action by the landlord against the tenant to recover for the fire loss, the landlord will most probably', A. 'recover, because in accordance with the Rule in Spencer's Case, the covenant to maintain fire insurance would "touch and concern" the land.', B. 'recover, because the tenant's obligation to maintain fire insurance did not terminate after his assignment to the doctor.', C. 'not recover, because the covenant to provide fire insurance did not run with the land.', D. 'not recover, because the dentist, as assignee, would be liable for the fire loss.'

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Answer Option 1:

The tenant is still liable to the landlord for breach of the covenant to insure, because such a covenant is not extinguished by assignment of the lease. The tenant remains liable for the performance of all covenants in the lease, even though the tenant has assigned his interest to another, unless the landlord has released him. Here, the tenant violated his covenant to keep the premises insured against fire, by letting the policy lapse after his assignment of the lease to the doctor. Final Answer: B

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Answer Option 2:

The landlord will most likely recover because the tenant's obligation to maintain fire insurance did not terminate after his assignment to the doctor. The covenant to maintain fire insurance is a covenant that runs with the land, as it touches and concerns the land. Even though the tenant assigned his leasehold interest to the doctor, the tenant is still liable for the breach of covenant because the original agreement between the tenant and the landlord was not terminated or modified. Therefore, the tenant remains liable to the landlord for the breach of the covenant to maintain fire insurance. Final Answer: B

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Answer Option 3:

The tenant's obligation to maintain fire insurance did not terminate after his assignment to the doctor. The tenant assigned the lease but did not get a release from the landlord, so the tenant remains liable for the performance of all lease covenants, including that of maintaining fire insurance on the property. This obligation continues even though the tenant is no longer in possession. Final Answer: B

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Answer Option 4:

The tenant's covenant to insure the building ran with the land and was binding on subsequent assignees. The rule in Spencer's Case provides that for a covenant to run with the land, it must touch and concern the land, must be intended by the parties to run with the land, and there must be privity of estate between the parties. In this case, the covenant to insure the building touches and concerns the land since it affects the value and use of the property. The intent of the parties for the covenant to run with the land can be inferred from the terms of the lease. As for privity, the tenant and the landlord were in privity of estate at the time the lease was executed. Therefore, the landlord can recover from the tenant because the covenant to maintain fire insurance runs with the land under the Rule in Spencer's Case.

Final Answer: A

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Answer Option 5:

The landlord will most likely recover, because the tenant's obligation to maintain fire insurance did not terminate after his assignment to the doctor. According to the privity of estate doctrine, an assignor is not liable for the assignee's defaults that occur after the assignment. However, an important exception to this rule is that the assignor remains liable on any covenants in the lease that run with the land. Here, the tenant's covenant to maintain fire insurance may well be interpreted as a covenant that touches and concerns the land because it affects the landlord's economic interest in the property. Therefore, the landlord may be able to hold the tenant liable for breaching this covenant, regardless of the subsequent assignments. Final Answer: B

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Answer Option 6:

The landlord will most likely recover, because the tenant's obligation to maintain fire insurance did not terminate after his assignment to the doctor. As the original tenant, he has a duty to ensure that the terms of the lease are fulfilled, including the maintenance of fire insurance, regardless of whether he assigns the lease to another party. Final Answer: B

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Answer Option 7:

The tenant's obligation to maintain fire insurance did not terminate after his assignment to the doctor. In general, the assignor of a lease remains liable on the original lease covenants, including a covenant to insure, unless the landlord releases him from those obligations. The landlord can sue the original tenant for breach of the covenant to insure the building, despite the assignment. Final Answer: B

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Answer Option 8:

The covenant to maintain fire insurance is a real covenant because it touches and concerns the land and is not personal in nature. It is a burden that is related to the land or its use and affects the landlord as a reversioner. The doctor, as an assignee, was bound by the real covenants in the lease. However, the tenant remains liable on the real covenants in the lease to the landlord, unless the landlord released him. Therefore, the landlord will recover from the tenant, because the tenant's obligation to maintain fire insurance did not terminate after his assignment to the doctor. Final Answer: B

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Answer Option 9:

The landlord will most likely recover, because the tenant's obligation to maintain fire insurance did not terminate after his assignment to the doctor. The original tenant, who covenanted to keep the building insured against fire, would be personally liable for the breach of this covenant. The covenant to maintain fire insurance is a covenant that runs with the land and binds the original tenant as well as his assignees. It is a covenant that touches and concerns the land, and the intent to bind the assignees can be inferred from the lease agreement. But the landlord's recovery against the original tenant does not preclude recovery against the assignees. Final Answer: B

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Question 34:

'A nightclub owner applied for a required zoning permit to open a nude-dancing nightclub in the theater district of a city. An organization of influential city residents began an intensive lobbying effort to persuade the city council to deny the owner a permit to operate any type of nude- dancing facility at any time or in any place in the city. The owner has sued the city in an appropriate federal court, seeking an injunction that would prohibit the city council from considering the organization's views, on the ground that if the organization is successful in its lobbying efforts, the owner's First and Fourteenth Amendment rights would be violated. The city has moved to dismiss the action. Should the court dismiss the owner's action?', A. 'No, because nude dancing is symbolic speech and is therefore protected by the First and Fourteenth Amendments.', B. 'No, because the organization does not seek a reasonable time, place, and manner regulation of nude dancing, but instead seeks a total ban on the owner's opening any type of nude-dancing facility at any time or in any place in the city.', C. 'Yes, because the action is not ripe.', D. 'Yes, because the First and Fourteenth Amendments do not protect obscenity, and nude dancing is obscene.'

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Answer Option 1:

The court should dismiss the owner's action as it is not ripe. Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements. The nightclub owner's case is based on hypothetical harm that may occur if the organization is successful in its lobbying efforts. Until the city council actually takes action to deny the permit based on the lobbying efforts of the organization, no real controversy exists for the court to decide. Final Answer: C.

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Answer Option 2:

Yes, because the action is not ripe. The court should dismiss the owner's action because it is not ripe for adjudication. The doctrine of ripeness prevents courts from becoming entangled in abstract disagreements. In this case, the city hasn't made a decision yet on whether to grant the zoning permit or not. Right now, it is a hypothetical situation, since the city's decision could go either way. Therefore, the owner's claim is not ripe. Final Answer: C.

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Answer Option 3:

Yes, because the action is not ripe. A case is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all. In this scenario, the owner's lawsuit is speculative and contingent on future events – specifically, the success of the organization's lobbying efforts and the city council's reaction to those efforts. The city council has not yet made any decision to deny the owner's zoning permit, so any harm to the owner is purely hypothetical at this point. Therefore, the owner's case is not ripe for judicial review. Final Answer: C

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Answer Option 4:

The owner's action should be dismissed because it is not ripe for adjudication. The crux of the ripeness doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements. As of now, the owner is speculating about the outcome of the organization's lobbying efforts. There's no guarantee that the organization will be successful in its lobbying efforts or that the city council will deny the permit. Until there's an actual decision from the city council, there's no actionable harm for the court to consider. Final Answer: C

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Answer Option 5:

A legal dispute is ripe for adjudication when it presents a real, substantial controversy arising from existing facts and rights, not from future or hypothetical situations. In this case, the court should dismiss the owner's action because it is not ripe. Although the organization is lobbying the city council to deny the owner's permit application, the city council has not yet done so. Therefore, the threat to the owner's First and Fourteenth Amendment rights is hypothetical and contingent on future events that may not occur. Final Answer: C

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Answer Option 6:

Yes, because the action is not ripe. The controversy is not yet ripe because it is still uncertain whether the city council will be persuaded by the organization's views and whether the council will deny the permit on that basis. The court will not render an advisory opinion on a hypothetical situation, but will wait until the issue is actually presented when the council makes a decision. Final Answer: C

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Answer Option 7:

The court should dismiss the owner's action because it is not ripe. Ripeness doctrine requires a dispute to have matured into a controversy worthy of adjudication before it can be heard in federal court. The city council has not yet acted on the owner's permit application, so there is no decision for the court to review. It would be premature for the court to intervene at this stage, as the city council might grant the permit or deny it for reasons unrelated to the organization's lobbying efforts. Therefore, the dispute is not ripe. Final Answer: C

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Answer Option 8:

The court should dismiss the owner's action because it is not ripe. Ripeness is a justiciability doctrine designed to prevent courts from becoming involved in abstract disagreements or issuing advisory opinions. Here, the city council has not yet made a decision on whether to deny the owner a permit to operate a nude-dancing facility. The owner is seeking to enjoin the city council from even considering the organization's lobbying efforts, but such consideration does not in itself constitute a violation of the owner's constitutional rights - any potential violation would only occur if the city council subsequently acted to deny the permit on the basis of the organization's views. Therefore, until the council makes a decision, there is no concrete case or controversy for the court to adjudicate. Final Answer: C

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Answer Option 9:

The court should dismiss the owner's action because it is not ripe. A claim is not ripe for adjudication if it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all," (Texas v. United States, 523 U.S. 296, 300 (1998)). In this case, the city council has not yet made a decision and it is uncertain whether the lobbying efforts of the organization will be successful. Therefore, the owner's claim is not yet ripe for adjudication. Final Answer: C

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Question 35:

The President announced that a newly created military rapid deployment force would be engaging in joint training exercises with the military forces in a foreign country. Following the President's announcement, Congress enacted a statute that unequivocally prohibited "the U. S. Armed Forces from conducting military exercises with foreign military forces unless Congress has received notice of such intention to take such action at least three months before the joint military exercises become effective. "This statute is most likely", A. 'constitutional, because the President, in this instance, has not been called by Congress into actual service as Commander-in-Chief.', B. 'constitutional, because of Congressional power under the War Powers Act.', C. 'unconstitutional, because of the President's authority to execute the laws of the United States.', D. 'unconstitutional, because of the President's authority as Commander-in-Chief of the Armed Forces.'

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Answer Option 1:

The President has the authority as Commander-in-Chief of the Armed Forces, which allows him to direct the military forces as he sees fit in the absence of any limiting legislation. While Congress does have the power to declare war and raise and support armies, they cannot interfere with the President's direct command and control of the military. Therefore, a statute requiring Congressional notice before joint military exercises would be unconstitutional. Final Answer: D

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Answer Option 2:

The President has the constitutional authority as the Commander-in-Chief of the Armed Forces. This power is plenary unless Congress declares war, and any attempt to restrict the President's power as Commander-in-Chief is likely to be struck down as unconstitutional. Especially in modern times, courts are hesitant to limit the discretion of the President's military authority. As a result, the statute mentioned is likely unconstitutional. Final Answer: D

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Answer Option 3:

The President, as the Commander in Chief of the Armed Forces, has the authority to control the movements and deployments of the military, including joint training exercises with foreign militaries. While Congress has the power to declare war and to make rules for the government and regulation of the land and naval forces, it cannot interfere with the President's direct command of the military. Therefore, a statute requiring Congressional notice and approval for military exercises would most likely be unconstitutional. Final Answer: D

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Answer Option 4:

The President, as Commander-in-Chief, has inherent constitutional authority to deploy U.S. forces abroad and to conduct military exercises as he sees fit for the security and defense of the United States. While Congress does have significant powers related to war (such as the power to declare war, to raise and support armies, and to make rules for the government and regulation of the armed forces), the statute in question is a direct intrusion into the President's authority as Commander-in-Chief. Therefore, the statute is most likely unconstitutional. Final Answer: D

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Answer Option 5:

The correct answer is D. The statute is most likely unconstitutional because of the President's authority as Commander-in-Chief of the Armed Forces. This authority, which is granted by the U.S. Constitution, gives the President the power to direct the operations of the military. The statute enacted by Congress infringes upon this power by attempting to place restrictions on how the President can use the military. While Congress does have the power to declare war and make rules for the government and regulation of the land and naval forces, this does not extend to direct operational control of the military, which resides with the President.

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Answer Option 6:

The statute would be unconstitutional because of the President's authority as Commander-in-Chief of the Armed Forces. The President has broad powers in foreign affairs, particularly with regard to the deployment and control of the military. While Congress does have powers related to the military, such as the power to declare war and the power to fund the armed forces, it does not have the ability to micro-manage the President's conduct of military affairs. The statute in question seems to cross that line, infringing on the President's constitutional powers as Commander-in-Chief. Final Answer: D.

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Answer Option 7:

The President, as Commander-in-Chief of the Armed Forces, has the constitutional authority to decide how to use military forces that are under his control. Congress generally cannot interfere with this executive power. Therefore, a statute that attempts to control the President's management of the military would likely be unconstitutional. Final Answer: D

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Answer Option 8:

The constitution grants the President the authority to act as Commander-in-Chief of the Armed Forces. As such, Congress cannot limit the President's decision on how to use the military in the absence of a formal declaration of war. Therefore, the statute is likely unconstitutional due to the President's authority as Commander-in-Chief. Final Answer: D

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Answer Option 9:

The Constitution gives the President the power to act as Commander-in-Chief of the Armed Forces. This power is generally interpreted to include considerable discretion in how to deploy and use the military, especially in peacetime or during training exercises. While Congress can regulate some aspects of military operations through its powers to "make Rules for the Government and Regulation of the land and naval Forces," a statute that intrudes too far into the President's discretion as Commander-in-Chief can be unconstitutional. In this case, the statute is most likely unconstitutional because it infringes on the President's authority as Commander-in-Chief by attempting to micro-manage the scheduling of joint training exercises with foreign militaries. Final Answer: D

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Question 36:

'A man and a school entered into a written contract providing that the man would be employed for one year in various capacities (athletic director, teacher, football coach) in return for an annual salary of \$37,750. Shortly thereafter and prior to the July commencement date of employment, the school elected to terminate its varsity football program. The school publicly attributed the decision to economic factors. Upon hearing this news, the man sought out the headmaster of the school to inquire as to the effect, if any, of this decision on his salary and responsibilities. In order to resolve the matter, the headmaster arranged a meeting among various school officials to discuss the man's situation. Afterward, the school sent written notice to the man of its intent to terminate his employment contract. The man then commenced suit to recover the full balance of his salary calculated on the basis of the contract. At trial, the headmaster was called to testify. On direct examination, he testified that six people (including himself) attended the meeting where it was decided to terminate the man's employment contract. When asked to identify the attendees, the headmaster gave the names of four but, despite trying, was unable to remember the name of the fifth person. The attorney who called the headmaster to testify now seeks to show him her handwritten notes that the attorney prepared during her pretrial interview with the headmaster, in which he provided all five names. The trial court is likely to consider the showing of the notes taken as', A. 'a proper attempt to refresh the headmaster's recollection.', B. 'a proper attempt to introduce recorded recollection.', C. 'an improper attempt to support the headmaster's credibility.', D. 'an improper attempt to lead the witness.'

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Answer Option 1:

The trial court is likely to consider the showing of the notes taken as a proper attempt to refresh the headmaster's recollection. When a witness has difficulty remembering something on the stand, an attorney may try to jog the witness's memory by showing him a "memory refreshing" document. The headmaster had prior knowledge of the fifth person's identity but is temporarily unable to remember. In this situation, using notes from a previous interview to refresh his memory is permissible. The witness does not read from the document, but uses it to jog his memory and then testifies from that refreshed memory. Final Answer: A

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Answer Option 2:

Under the Federal Rules of Evidence, a witness may use any item to refresh their memory for the purpose of testifying. Here, the headmaster was unable to remember the name of the fifth person, so showing him the notes taken during the pretrial interview could potentially refresh his memory, allowing him to recall the name. The attorney is not trying to introduce the notes into evidence (which would be a recorded recollection under Rule 803(5)), but merely using them to jog the headmaster's memory. Therefore, this is a proper attempt to refresh the headmaster's recollection. Final Answer: A

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Answer Option 3:

Showing the notes to the headmaster is a proper attempt to refresh his recollection. When a witness has difficulty remembering a fact, it is common for an attorney to try to "refresh their recollection" by showing them something that might help jog their memory, such as notes from a previous conversation. This is not considered leading the witness because the attorney is not suggesting the answer in their question. Final Answer: A

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Answer Option 4:

The attorney's attempt to show the headmaster her notes would be considered a proper attempt to refresh the headmaster's recollection. Refreshing a witness's memory is not considered leading the witness, and it does not necessarily vouch for the witness's credibility. It is simply a tool used to assist a witness in accurately recalling information relevant to the case. The notes can be used to jog the witness's memory, but they are not entered into evidence themselves. Final Answer: A

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Answer Option 5:

The act of showing the attorney's notes to the headmaster would be considered an attempt to refresh his recollection, which is permissible under the rules of evidence. It is a common technique used when a witness has difficulty remembering certain details. After reviewing the notes, the witness can then testify from his now-refreshed memory. Final Answer: A

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Answer Option 6:

The attorney is attempting to refresh the headmaster's recollection, which is a common and permissible practice. The attorney is not trying to introduce the notes themselves as evidence (which would be the doctrine of recorded recollection), but is simply using them to help the witness remember something he has forgotten. As such, it is not a comment on the witness's credibility or an attempt to lead the witness.

Final Answer: A

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Answer Option 7:

The attorney's action of showing the notes to the headmaster is a proper attempt to refresh the headmaster's recollection. If a witness is unable, after making an effort, to recall something, he may be shown any item (like the attorney's notes) to help jog his memory. This is different from recorded recollection, which is a hearsay exception that allows a document to be read into evidence if the witness has insufficient recollection to testify fully and accurately. Final Answer: A

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Answer Option 8:

The attorney's action can be regarded as a proper attempt to refresh the headmaster's recollection. When a witness cannot remember specific information while testifying, an attorney may attempt to jog the witness's memory by showing the witness something that might help them remember. This can include notes from a prior conversation or meeting with the attorney. As long as the attorney does not suggest the answer to the witness or otherwise improperly lead the witness, the technique is considered a legitimate way to help a witness remember relevant information. Final Answer: A

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Answer Option 9:

The attorney is trying to help the headmaster remember the names of the people who attended the meeting using the attorney's handwritten notes. This is an example of a "refreshing recollection" technique, which is a common and acceptable practice in the courtroom. The attorney is not trying to introduce the notes into evidence (which would be recorded recollection), support the credibility of the witness, or lead the witness. Instead, the attorney is simply trying to help the headmaster remember the information that he previously knew. Thus, the trial court is likely to consider the showing of the notes as a proper attempt to refresh the headmaster's recollection. Final Answer: A

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Question 37:

'A baseball fan purchased two tickets for a World Series baseball game. The fan contacted his best friend and invited him to go to the game. The friend, who was a fanatic baseball fan, eagerly agreed. The fan told the friend that the game started at 7:00 p. m. and that he would pick him up at about 5:00 p. m. so they could get there early to watch batting practice. They were driving to the game together when the fan sped up to cross an intersection while the traffic signal was changing from amber to red. As he reached the intersection, the fan was traveling at 50 m. p. h. although the posted speed limit was 25 m. p. h. Simultaneously, a car entered the intersection on red and collided with the fan's vehicle. The friend suffered a broken pelvis in the collision. This jurisdiction has adopted the following "modified" comparative negligence statute: "A negligent plaintiff is entitled to obtain a recovery provided plaintiff's negligence is not equal to or greater than that of the defendant's; otherwise no recovery is permitted. "Suppose the friend brings suit against the driver of the car that entered the intersection on the red light to recover damages for his injury. A jury returned a special verdict with the following findings: (1) The fan was 55 percent negligent in speeding; (2) The driver was 45 percent negligent in driving through the red light; and (3) The friend suffered \$100,000 in damages. As a result, the court should enter a judgment for the friend in the amount of', A. '\$100,000. 00', B. '\$55,000. 00', C. '\$45,000. 00', D. 'nothing, because the fan was more negligent than the driver.'

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Answer Option 1:

In a "modified" comparative negligence system, a plaintiff can recover only if his or her percentage of fault is less than the defendant's. Since the fan's negligence (55%) is greater than the driver's negligence (45%), the friend, being a passenger of the fan's car, cannot recover anything from the driver. Therefore, the court should enter a judgment for the friend in the amount of nothing. Final Answer: D

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Answer Option 2:

According to the "modified" comparative negligence statute of this jurisdiction, the plaintiff's negligence must not be equal to or greater than the defendant's for the plaintiff to recover damages. Here, the jury found the driver to be 45% negligent, which is less than the fan's negligence (55%). This means the friend won't be able to recover under this jurisdiction's negligence laws, even though he was not at fault.

Final Answer: D

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Answer Option 3:

According to the comparative negligence statute, the plaintiff can recover as long as his negligence is not equal to or greater than that of the defendant. Although the fan (not the plaintiff) was found to be 55% negligent, the friend (the plaintiff) bore no part of the negligence. Therefore, the friend should recover the full amount of the damages from the driver (the defendant) who was 45% negligent. Final Answer: A.

\$100,000.00

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Answer Option 4:

Under a "modified" comparative negligence statute, if the plaintiff's negligence is equal to or greater than that of the defendant's, no recovery is permitted. However, in this case, the friend (plaintiff) was not negligent at all. Therefore, his recovery should not be affected by the fan's negligence. He was a passenger and had no control over the fan's driving. The negligence of the driver (defendant) is what caused the friend's injury. Therefore, the friend is entitled to recover damages for his injury based on the percentage of the driver's negligence. Hence, the judgment for the friend should be 45% of his damages (\$100,000 \* 45% = \$45,000). Final Answer: C.

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Answer Option 5:

The jurisdiction is described as having a "modified" comparative negligence statute, which dictates that a plaintiff can recover if his or her negligence is not equal to or greater than that of the defendant's; otherwise, no recovery is permitted. In this case, the friend is the plaintiff and was not negligent. However, the driver was found to be 45% negligent while the fan (not a defendant in this case) was found to be 55% negligent. Therefore, the friend should be able to recover damages based on the driver's portion of the negligence, which is 45% of the total damages. 45% of \$100,000 is \$45,000. Final Answer: C.

'\$45,000. 00'.

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Answer Option 6:

The modified comparative negligence rule allows a damaged party to recover if his percentage of fault is less than the combined negligence of all other parties involved in the incident. The friend is the damaged party here, and since he was not negligent at all, his level of fault is less than the combined negligence of the fan (55%) and the driver (45%). Thus, he can recover damages. However, the amount he can recover is reduced by the percentage of negligence attributed to the fan, because the friend was in the fan's car at the time of the accident. Therefore, the court should enter a judgment for the friend in the amount of \$45,000.00, which is 45% of his total damages. Final Answer: C.

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Answer Option 7:

According to the jurisdiction's "modified" comparative negligence statute, a negligent plaintiff can recover damages as long as the plaintiff's negligence is not equal to or greater than the defendant's. In this scenario, the friend (plaintiff) is not negligent at all. The fan's negligence does not affect the friend's claim against the driver. Therefore, the friend should be able to recover the full amount of the damages from the driver, which is \$100,000. The percentage of negligence of the fan and the driver only matters if they were to sue each other. Final Answer: A.

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Answer Option 8:

According to the "modified" comparative negligence statute described, the plaintiff (the friend in this case) can recover provided his/her negligence is not equal to or greater than that of the defendant's. In this situation, the friend is not negligent at all – the negligence lies between the fan (55%) and the driver (45%). Therefore, the friend can recover damages. However, the damages awarded would be reduced by the percentage of negligence attributed to the defendant (the driver), which is 45%. Therefore, the friend is entitled to 45% of his \$100,000 damages, which amounts to \$45,000. Final Answer: C.

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Answer Option 9:

The modified comparative negligence rule in this jurisdiction states that a plaintiff can recover as long as his negligence is not equal to or greater than the defendant's. Here, the friend is the plaintiff and he was not negligent at all. The negligence of the fan (55 percent) is greater than the negligence of the driver (45 percent). However, since the negligence of the friend is not equal to or greater than that of the driver, he can still recover damages. Therefore, he should receive a judgment of \$45,000.00, which is the total damages (\$100,000) times the driver's percentage of negligence (45 percent). Final Answer: C  
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Question 38:

Denise Developer found a near-perfect piece of property zoned commercial in the downtown area of Pleasantville. She hired an architect to design a high tech office building with an objective of attracting upscale tech-industry tenants. She approached Microhard and secured a lease agreement for over half of the available square footage. The lease was not recorded, but the agreement allowed Denise to attract other wealthy tenants. She also disclosed the Microhard lease on her application for a \$1,500,000 construction loan from Maximum Mortgage Company. Denise executed a mortgage and related promissory note in favor of Maximum. Maximum recorded the mortgage immediately. The office building was completed and Denise had more tenant demand than available space, so the building opened full. One year later, Denise ran into financial trouble and defaulted on the mortgage. Maximum took possession and immediately notified all the tenants that their leases were cancelled, that they were evicted, and that they must vacate immediately unless they were willing to sign a new lease at double the previous rent. The recording statute in the jurisdiction specified "every conveyance, encumbrance, or lease not recorded is void as against any subsequent party recording first." The tenants retained you to compel Maximum to honor the leases at the lower rents. Which of the following statements of advice is the most accurate?, A. 'All the tenants will prevail (unless otherwise in default on their leases), because Maximum loaned money to Denise with actual knowledge that she intended to enter into binding leases with the tenants.', B. 'Microhard is entitled to continue their lease because Maximum had constructive notice of their prior lease.', C. 'Microhard is entitled to continue their lease because Maximum had actual notice of their prior lease.', D. 'All the tenants should renegotiate their leases with Maximum.'

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Answer Option 1:

The recording statute in the jurisdiction specified "every conveyance, encumbrance, or lease not recorded is void as against any subsequent party recording first." While Maximum Mortgage Company had actual knowledge of the Microhard lease, it did not have actual knowledge of the other leases. Therefore, only Microhard is entitled to continue their lease because Maximum had actual notice of their prior lease. The other leases, which Maximum did not have knowledge of and which were not recorded, would be void against Maximum's earlier recorded interest. Final Answer: C.

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Answer Option 2:

In this case, the most accurate statement is that Microhard is entitled to continue their lease because Maximum had actual notice of their prior lease. The lease wasn't recorded as per the recording statute, but Maximum Mortgage Company had actual notice of Microhard's lease from Denise's loan application. Therefore, Microhard's lease takes priority over Maximum's mortgage. The other tenants, however, may not be able to prove that Maximum had actual knowledge of their leases. Thus, this rule may not apply to all tenants. Final Answer: C.

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Answer Option 3:

The jurisdiction's recording statute states that an unrecorded lease is void against a subsequent party recording first. Maximum Mortgage Company is such a party because it recorded its mortgage, which was given by Denise Developer, the lessor. Although Maximum had actual knowledge of Microhard's lease, the lease was not recorded, so it is void against Maximum. Microhard is entitled to continue their lease only because Maximum had actual notice of their prior lease. So, the most accurate advice is C. 'Microhard is entitled to continue their lease because Maximum had actual notice of their prior lease.'

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Answer Option 4:

The recording statute in the jurisdiction specifies "every conveyance, encumbrance, or lease not recorded is void as against any subsequent party recording first." Maximum recorded the mortgage immediately, while Microhard's lease was not recorded. However, Maximum had actual notice of Microhard's lease because Denise disclosed it on her application for the construction loan. Therefore, Microhard is entitled to continue their lease because Maximum had actual notice of their prior lease. Final Answer: C

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Answer Option 5:

Microhard is entitled to continue their lease because Maximum had actual notice of their prior lease. While the recording statute protects subsequent bona fide purchasers, Maximum cannot be considered a bona fide purchaser because it had actual knowledge of Microhard's lease. This actual knowledge prevents Maximum from asserting the protections of the recording statute against Microhard's unrecorded lease. The other tenants, however, may not have the same protection if Maximum had no knowledge of their leases. Final Answer: C

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Answer Option 6:

The recording statute in the jurisdiction specified "every conveyance, encumbrance, or lease not recorded is void as against any subsequent party recording first." Since Maximum Mortgage Company immediately recorded the mortgage, they have priority. However, Microhard's lease was disclosed to Maximum, and they provided the loan with actual knowledge of this lease. Thus, Maximum had actual notice of Microhard's prior lease, and Microhard is entitled to continue their lease because of this. Final Answer: C.

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Answer Option 7:

The most accurate statement would be that Microhard is entitled to continue their lease because Maximum had actual notice of their prior lease. Even though Microhard's lease was unrecorded, Maximum had actual knowledge of the lease before it lent money to Denise and recorded its mortgage. In jurisdictions that use a race-notice or notice recording act, a subsequent purchaser or mortgagee is subject to unrecorded interests of which it has actual knowledge. Therefore, Maximum's mortgage is subject to Microhard's lease. As for the other tenants, based on the information provided, there is no evidence that Maximum had actual knowledge of their leases. Final Answer: C.

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Answer Option 8:

The jurisdiction in which the property is located operates under a race-notice statute. This means that a subsequent purchaser or mortgagee is protected against prior unrecorded interests only if he bought the property for value, without notice of the prior interest, and recorded first. In this case, Maximum Mortgage Company had actual notice of Microhard's lease due to Denise Developer disclosing the lease on her application for a construction loan. Therefore, Maximum cannot disregard Microhard's lease. However, as the other tenants' leases were not mentioned, Maximum did not have actual or constructive notice of their leases. Therefore, the other tenants would not be protected. Final Answer: C.

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Answer Option 9:

The statement that Microhard is entitled to continue their lease because Maximum had actual notice of their prior lease is the most accurate. In a jurisdiction with a race-notice statute, a subsequent purchaser or mortgagee can only prevail over a prior grantee if they provided valuable consideration, took without notice of the prior interest, and recorded first. In this scenario, Maximum Mortgage Company, the subsequent grantee, had actual notice of Microhard's lease because Denise disclosed it in the application for the construction loan. Therefore, Maximum cannot terminate Microhard's lease and it remains in effect. However, since the other tenants' leases were not mentioned in the loan application, Maximum didn't have notice of them and therefore can terminate those leases. Final Answer: C.

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Question 39:

'A man conveys to his wife's cousin a property to "cousin and the heirs of his body." He then conveys the same property to his niece in fee simple. Under modern real estate laws and practice in most states today, what interest if any does his niece have?', A. 'The conveyance gives the niece nothing because the property was already conveyed in fee simple to his wife's cousin.', B. 'She gets a reversion in case the cousin has no heir of his body at his death.', C. 'A contingent remainder based upon whether or not cousin has heirs.', D. 'She has a fee simple.'

=====

Answer Option 1:

The man's conveyance to his wife's cousin creates a fee tail estate ("to cousin and the heirs of his body"). In many jurisdictions, fee tail has been abolished and would automatically convert to a fee simple, thereby giving the cousin a fee simple estate. Therefore, by the time the man tries to convey the property to his niece, he has nothing left to give, because the property was already conveyed in fee simple to his wife's cousin. Final Answer: A

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Answer Option 2:

The man's conveyance to his wife's cousin creates a fee tail ("to cousin and the heirs of his body"). In most states today, the fee tail estate has been abolished and is treated as a fee simple. This means that the cousin would actually hold the property in fee simple as of the conveyance, rather than in fee tail. Therefore, when the man attempts to convey the same property to his niece, he is conveying property he no longer owns, so the niece would acquire no interest in the property. Final Answer: A

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Answer Option 3:

Under modern real estate law, the phrase "to A and the heirs of his body" creates a fee simple absolute, not a fee tail. This is because most jurisdictions have abolished the fee tail estate. Therefore, the cousin was given a fee simple absolute in the property, and the man had no interest left to convey to the niece. The conveyance to the niece is void because the man had nothing left to convey. Final Answer:

A

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Answer Option 4:

The wife's cousin received the property "and the heirs of his body," which is known as a fee tail. However, in most jurisdictions today, a fee tail is not recognized and such a conveyance creates a fee simple estate instead. Therefore, the man's first conveyance effectively transferred the property in fee simple to the cousin. The second conveyance to the niece would not transfer any property rights because the man no longer had any property interest to transfer after the first conveyance. Final Answer: A

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Answer Option 5:

The conveyance to the wife's cousin was actually a fee tail (to cousin and the heirs of his body). However, the majority of U.S. jurisdictions have abolished the estate in fee tail and such conveyance would create a life estate for the cousin, with a reversion to the man. When the man then conveyed the property to his niece, he conveyed this reversionary interest. Therefore, upon the death of the cousin, the niece would take the property in fee simple. Final Answer: D

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Answer Option 6:

B. 'She gets a reversion in case the cousin has no heir of his body at his death.'

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Answer Option 7:

The conveyance to his wife's cousin creates a fee tail. Once a fee tail ends, it reverts back to the grantor or his heirs. If the grantor then conveys the property to his niece, she would take a reversionary interest, meaning she would receive the property after the cousin and his lineal descendants' interest in the property ends. Therefore, the niece has a reversion in case the cousin has no heir of his body at his death. Final Answer: B

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Answer Option 8:

The man appears to have tried to create a fee tail estate when he transferred the property to his wife's cousin by using the language "and the heirs of his body." However, most jurisdictions have abolished the fee tail estate. When the grantor attempts to create a fee tail, it is typically converted into a fee simple absolute. Therefore, when the man conveyed the property to his niece in fee simple absolute, he had nothing left to convey because the cousin held the property in fee simple absolute, not as a fee tail. Final Answer: A

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Answer Option 9:

The man's conveyance "to cousin and the heirs of his body" creates a fee tail estate in the cousin. Traditionally, a fee tail estate can only pass to the grantee's lineal descendants and reverts back to the grantor (or the grantor's heirs) if the grantee dies without lineal descendants. However, many U.S. states have abolished the fee tail estate and convert it into a fee simple absolute when attempted. So if the cousin's jurisdiction has such a statute, the cousin would have a fee simple absolute. The subsequent conveyance to the niece would be ineffective because the man no longer retained an interest in the property. Hence, the niece would have no interest in the property. Final Answer: A

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Question 40:

'A landlord leased an apartment to a tenant on a month-to-month basis beginning on the first of the month, with rent payable monthly. Five months into the lease, the tenant failed to pay rent. The landlord then sued the tenant for possession for nonpayment of rent. The tenant successfully defended this suit on the ground that the apartment was uninhabitable and that, accordingly, no rent was properly payable. On May 7, immediately following the court order in the tenant's favor, the landlord served the tenant with a written but not notarized notice to terminate the tenancy and to vacate the apartment on or before June 30. On July 1, the tenant was still in possession, nothing had changed, and the landlord brought an appropriate action for possession. The tenant prevailed. What is the most likely reason for the court's decision?', A. 'A six-month notice was required to terminate this periodic tenancy.', B. 'The landlord did not give the tenant a notarized notice of termination.', C. 'The landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit.', D. 'The landlord's notice to terminate was improper, because it was given to the tenant more than one month before the required termination date.'

=====

Answer Option 1:

The most likely reason for the court's decision is that the landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit. This constitutes a retaliatory eviction, which is typically prohibited by law. Final Answer: C.

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Answer Option 2:

The most likely reason for the court's decision is that the landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit. This is known as retaliatory eviction, which is not allowed in most jurisdictions. Landlords cannot terminate a lease or otherwise penalize tenants for exercising their legal rights, such as complaining about unhealthy or unsafe living conditions.

Final Answer: C

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Answer Option 3:

The most likely reason for the court's decision is that the landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit. This is known as retaliatory eviction and it is prohibited by law in most jurisdictions. When a tenant lawfully reports housing code violations or takes other legal actions against a landlord, the landlord cannot retaliate by evicting the tenant or otherwise punishing the tenant (e.g., by increasing rent or decreasing services). Final Answer: C

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Answer Option 4:

The most likely reason for the court's decision is that the landlord was attempting to terminate the tenancy as a reaction to the tenant's successful defense in the previous lawsuit. This is known as retaliatory eviction, and it is generally prohibited by law. When a tenant exercises legal rights (like defending against an eviction for nonpayment of rent due to the apartment's uninhabitability) and the landlord subsequently tries to evict the tenant, it can be seen as a retaliatory eviction. Final Answer: C

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Answer Option 5:

The most likely reason for the court's decision is that the landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit. This would fall under retaliatory eviction, which is prohibited. A landlord may not terminate a lease or refuse to renew it because a tenant has complained to the authorities about code violations, or has participated in a tenants' union, or has exercised other legal rights. Final Answer: C.

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Answer Option 6:

The most likely reason for the court's decision is that the landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit. This is known as a retaliatory eviction, and it is prohibited by law in many jurisdictions. If a tenant lawfully complains about the condition of the property or the landlord's failure to fulfill his legal obligations and the landlord subsequently tries to evict the tenant, it can be considered a retaliatory eviction. Final Answer: C

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Answer Option 7:

The most likely reason for the court's decision is that the landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit. This is called a "retaliatory eviction," and it is prohibited in many jurisdictions. When a tenant uses legal remedies to enforce rights and the landlord subsequently takes action against the tenant, it can be seen as an act of retaliation. Final Answer: C

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Answer Option 8:

The most likely reason for the court's decision is that the landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit, which is considered a retaliatory eviction. Retaliatory eviction is prohibited by statute in many states, and even where not statutorily prohibited, it is often considered impermissible. This would be the case where a landlord ends a lease, or fails to renew a lease, because the tenant complained to government authorities about housing code violations or has taken other action to assert his rights. Final Answer: C.

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Answer Option 9:

The landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit. This is known as "retaliatory eviction", which is generally not permitted. The landlord cannot terminate a lease or refuse to renew it because the tenant has complained to any governmental authority about code violations or has in good faith exercised any rights under the law. Final Answer: C.

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Question 41:

'A manufacturer created a new brand of fish tackle which they sold throughout the country. Congress now imposes a tax of 14 cents on each set of tackle sold in the United States. This tax is', A. 'unconstitutional, because the tackle is sold in interstate commerce.', B. 'unconstitutional, because it interferes with the sovereign right of state governments to engage in intrastate commerce.', C. 'constitutional, because the supremacy clause validates laws enacted by Congress.', D. 'constitutional, because it is within the power of Congress to raise revenue.'

=====

Answer Option 1:

The U.S. Constitution gives Congress the power to lay and collect taxes. The imposition of the tax on each set of tackle sold in the United States falls within the power of Congress to raise revenue. Thus, this tax is constitutional. Final Answer: D

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Answer Option 2:

The power of Congress to tax is broad and it has been recognized that Congress can tax the sale of goods in interstate commerce. Therefore, imposing a tax on each set of tackle sold in the United States is constitutional because it is within the power of Congress to raise revenue. Final Answer: D

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Answer Option 3:

The tax is constitutional because it is within the power of Congress to raise revenue. The Supremacy Clause is not relevant here, and the tax is not unconstitutional because it applies to goods sold in interstate commerce or because it interferes with the right of state governments to engage in intrastate commerce. Final Answer: D

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Answer Option 4:

Congress has broad authority under the U.S. Constitution to impose taxes as a means of raising revenue. This power extends to goods sold in interstate commerce. As long as the tax does not discriminate against out-of-state entities or unduly burden interstate commerce, it is likely to be seen as a legitimate exercise of congressional power to raise revenue. Final Answer: D

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Answer Option 5:

The power to tax is a fundamental power of Congress under the Constitution, and it extends to activities in interstate commerce. Congress has the power to lay and collect taxes, duties, imposts, and excises. As long as the tax does not discriminate against interstate commerce or violate another constitutional provision, it is typically upheld. There is no rule that excludes items sold in interstate commerce from being taxed. Therefore, the tax on each set of tackle sold in the United States is constitutional because it is within the power of Congress to raise revenue. Final Answer: D

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Answer Option 6:

The power to tax is one of the enumerated powers of Congress under the U.S. Constitution. This tax does not appear to infringe on any constitutional protections or rights. Therefore, this tax is constitutional because it is within the power of Congress to raise revenue. Final Answer: D

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Answer Option 7:

The tax imposed by Congress is constitutional, because it is within the power of Congress to raise revenue. The U.S. Constitution grants Congress the power to levy taxes in order to raise revenue. This power is quite broad and includes the ability to impose taxes on goods sold within the United States, even if they are involved in interstate commerce. Final Answer: D

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Answer Option 8:

The imposition of a tax on each set of tackle sold in the United States is constitutional because it is within the power of Congress to raise revenue. The U.S. Constitution under Article I, Section 8, Clause 1, grants Congress the power to collect taxes. As long as the tax does not discriminate against interstate commerce, it is valid. Final Answer: D

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Answer Option 9:

The power to tax is a fundamental power inherent in the sovereignty of the states and the federal government. Article 1, Section 8, Clause 1 of the U.S. Constitution explicitly gives Congress the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States. Therefore, as long as the tax does not discriminate against interstate commerce, it is constitutional. Final Answer: D

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Question 42:

'In an automobile accident case, the defendant claimed that the plaintiff was contributorily negligent by driving at an excessive speed. The defendant's attorney calls its first witness, who was standing along the side of the road when the plaintiff's and defendant's cars collided. The defendant's attorney asks the witness: "Is it a fact that in your estimation, plaintiff was traveling at a speed of 45 m. p. h. in a 35 m. p. h. speed zone at the time of the accident?" The plaintiff objects. The trial judge should', A. 'overrule the objection, because the judge may take judicial notice of the speed limit within the jurisdiction.', B. 'overrule the objection if the witness has already been shown to be an experienced driver who was able to estimate the approximate speed of moving vehicles.', C. 'sustain the objection if the witness has not been qualified as an expert witness.', D. 'sustain the objection, because the witness is not an adverse witness.'

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Answer Option 1:

The objection should be overruled if the witness has already been shown to be an experienced driver who was able to estimate the approximate speed of moving vehicles. Lay witnesses are allowed to estimate speed based on their personal observations, especially if it has been shown that they have experience in estimating the speed of moving vehicles. Final Answer: B

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Answer Option 2:

The objection should be overruled if the witness has already been shown to be an experienced driver who was able to estimate the approximate speed of moving vehicles. It's not necessary for the witness to be an expert to give an estimation of speed, they just need to have a reasonable basis for their opinion. In this case, being an experienced driver could provide a sufficient basis. Final Answer: B.

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Answer Option 3:

The objection should be overruled if the witness has already been shown to be an experienced driver who was able to estimate the approximate speed of moving vehicles. Estimating the speed of a vehicle is not something that necessarily requires expert witness qualification. An experienced driver or someone else familiar with vehicles and their speeds could make a reasonable estimate and provide admissible testimony. Final Answer: B

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Answer Option 4:

The trial judge should overrule the objection if the witness has already been shown to be an experienced driver who was able to estimate the approximate speed of moving vehicles. Estimating speed does not require expert testimony, but the witness needs to have a sufficient basis for the estimation. If the witness is familiar with judging speeds due to experience as a driver, then the witness's estimation of speed is admissible. Final Answer: B

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Answer Option 5:

The objection should be overruled if the witness has been shown to be an experienced driver who can estimate the speed of moving vehicles. The witness does not need to be an expert to give an opinion on speed if he or she has had a sufficient opportunity to observe the vehicle and is able to form a reasoned conclusion. Lay opinion testimony is admissible if it is rationally based on the witness's perception, helpful to a clear understanding of the witness's testimony or the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge. Final Answer: B.

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Answer Option 6:

A lay witness may offer an opinion on speed if the witness had a sufficient opportunity to observe the vehicle moving and is capable of forming a reasonable judgment. The witness in this scenario was present at the scene and thus presumably had an opportunity to observe the plaintiff's vehicle. So the judge should overrule the objection if the witness has already been shown to be an experienced driver who was able to estimate the approximate speed of moving vehicles. Final Answer: B

\*\*\*\*\*

Answer Option 7:

The trial judge should overrule the objection if the witness has already been shown to be an experienced driver who was able to estimate the approximate speed of moving vehicles. It is not required that a person be an expert in order to give an estimation of speed, so long as they have sufficient experience or knowledge to make a reasonably accurate estimation. Final Answer: B

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Answer Option 8:

The court should overrule the plaintiff's objection if the witness has been shown to be an experienced driver who is capable of estimating the approximate speed of moving vehicles. An expert witness is not required to testify about the speed of a car; a layperson with sufficient experience or knowledge can provide such testimony. Final Answer: B

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Answer Option 9:

The answer is B. 'overrule the objection if the witness has already been shown to be an experienced driver who was able to estimate the approximate speed of moving vehicles.' Lay witnesses may testify to their estimates of speed if they have a basis for their opinions. The witness's ability to estimate speed can be established through questions about their experience with driving or observing moving vehicles.

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Question 43:

'If certain fundamental rights are denied to some individuals but not others, then it is considered what type of problem?', A. 'Substantive due process problem', B. 'Equal protection problem', C. 'Procedural due process problem', D. 'None of these'

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Answer Option 1:

B. 'Equal protection problem'

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Answer Option 2:

B. 'Equal protection problem'

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Answer Option 3:

The denial of certain fundamental rights to some individuals but not others would be considered an Equal Protection problem. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits states from denying any person within its jurisdiction the equal protection of the laws. This means that a state must treat an individual in the same manner as others in similar conditions and circumstances. Final Answer: B

=====

Answer Option 4:

This would be considered an Equal Protection problem. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." This means that a state must treat an individual in the same manner as others in similar conditions and circumstances. Therefore, if certain fundamental rights are denied to some individuals but not others, it implies that equal protection of the law is not being provided. Final Answer: B

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Answer Option 5:

B. 'Equal protection problem'

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Answer Option 6:

This is considered an Equal Protection problem. The Equal Protection Clause of the 14th Amendment to the U.S. Constitution requires that individuals in similar situations be treated equally by the law. Denying fundamental rights to certain individuals while granting them to others would violate this principle. Final Answer: B

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Answer Option 7:

When certain fundamental rights are denied to some individuals but not others, it is considered an equal protection problem. Equal protection under the law means that the government must treat individuals in the same manner as others in similar conditions and circumstances. So, if certain fundamental rights are denied to some individuals but not others, it is a violation of this principle. Final Answer: B.

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Answer Option 8:

The denial of fundamental rights to some individuals but not others would be considered an Equal Protection problem. The Equal Protection Clause of the 14th Amendment to the U.S. Constitution prohibits states from denying any person within its jurisdiction the equal protection of the laws. This means that states must treat an individual in the same manner as others in similar conditions and circumstances.

Final Answer: B

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Answer Option 9:

B. 'Equal protection problem'

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Question 44:

'A local ordinance in Breezytown allows the mayor to decide who may get a permit to speak in the city park. The ordinance is broad, stating only that the mayor can use his discretion in granting permits. If someone just extemporaneously gives a political speech in the park without a permit and were arrested and convicted, would this be constitutional?', A. 'Yes, because the ordinance controls.', B. 'Yes, because he didn't have a permit.', C. 'No, the ordinance is void on its face.', D. 'No, because it is a public park.'

=====

Answer Option 1:

The ordinance is void on its face because it gives the mayor uncontrolled discretion to grant or deny a permit to speak in the park. The U.S. Constitution protects the freedom of speech, and a local ordinance could not grant this degree of unchecked discretion to a single individual to control who may or may not speak in a public forum. The ordinance would be considered unconstitutional as it could be used to suppress or favor certain viewpoints. Final Answer: C

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Answer Option 2:

The ordinance is void on its face because it allows the mayor unchecked discretion to grant or deny permits for speech in the park. The First Amendment prohibits government from restricting speech based on its content, and a law that allows a government official to decide who may speak and who may not, based solely on the official's discretion, is impermissibly content-based and thus unconstitutional. Final

Answer: C

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Answer Option 3:

The ordinance is not constitutional. It grants too much power to the mayor without laying out any clear standards that guide the mayor's discretion. It goes against the First Amendment's freedom of speech protection and is considered a prior restraint on speech, which is almost always unconstitutional. As such, the ordinance is void on its face. Final Answer: C

\*\*\*\*\*

Answer Option 4:

The ordinance gives the mayor an unfettered discretion to grant or deny permits for speech in the city park. This broad discretion, without clear criteria or standards, can lead to viewpoint discrimination, which is a violation of the First Amendment's free speech clause. Therefore, the ordinance would be considered unconstitutional. Final Answer: C

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Answer Option 5:

The ordinance is void on its face for vesting unbridled power in the mayor to decide who can speak in the city park. This represents a clear violation of the First Amendment's Free Speech Clause, as it allows for the possibility of viewpoint discrimination. Final Answer: C

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Answer Option 6:

The ordinance would be void on its face because it gives the mayor unbridled discretion to decide who can speak in the park. Under the First Amendment, freedom of speech protects all individuals and must not be subject to arbitrary discretion by government officials. The ordinance is therefore unconstitutional because it could lead to viewpoint discrimination and suppress free speech. Final Answer: C

\*\*\*\*\*

Answer Option 7:

The ordinance is void on its face because it gives the mayor unbridled discretion, violating the First Amendment's prohibition against content-based speech regulation. A valid permit scheme must contain narrowly drawn, reasonable, and definite standards to guide the licensing authority. The government can regulate the time, place, and manner of speech, but it cannot grant unfettered discretion to a government official to decide who can or cannot speak. Final Answer: C

\*\*\*\*\*

Answer Option 8:

The ordinance gives the mayor unrestricted authority to grant or deny a permit, which may be used to suppress speech because of its content. This kind of prior restraint is generally presumed to be unconstitutional. Such an ordinance is void on its face because it doesn't provide for objective standards or procedural safeguards to limit the discretion of the official in charge of granting permits. Final

Answer: C

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Answer Option 9:

The ordinance does not provide any specific criteria for the mayor to use in deciding who may get a permit and is, therefore, an unconstitutional restriction on free speech. Such an unrestricted grant of power to a government official to allow or disallow speech is not narrowly tailored to serve a significant government interest, does not leave open ample alternative channels for communication, and is potentially discriminatory, therefore violating the First Amendment. The ordinance could suppress speech based on its content or the speaker's viewpoint. Final Answer: C

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Question 45:

'Assume this question takes place in a "lien theory" state. A woman and her co-habiting partner share a property as joint tenants with the right of survivorship. He has run up debts that he did not tell her about, and so he uses his interest in the property to secretly get a mortgage from the bank. When he dies, the bank attempts to execute on the mortgage. Can it do so? Apply the majority view on this issue.', A. 'No, the mortgage lien could not destroy the joint tenancy, and when the partner dies, the property passes by operation of law to the surviving joint tenant.', B. 'No, although the mortgage destroyed the joint tenancy, the bank has to get a deed of trust in order to execute on jointly owned property.', C. 'Yes, the bank got title to the property by virtue of the mortgage, which destroyed the joint tenancy, and it can execute on its lien.', D. 'Yes, the mortgage was the equivalent of a deed of trust and the joint tenancy was severed by the mortgage lien, giving the bank unfettered legal authority to execute on its mortgage.'

=====

Answer Option 1:

In a "lien theory" state, the mortgage is a lien and not a transfer of title, so it would not sever a joint tenancy in the property. Therefore, when the partner died, the woman would become the sole owner by right of survivorship, and the bank would not be able to enforce the mortgage against the property. Final Answer: A

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Answer Option 2:

In a lien theory state, the mortgage does not sever the joint tenancy because it does not convey title to the bank; it merely places a lien on the property. Therefore, when the partner dies, his interest disappears, and the woman will own the property free and clear. The bank cannot execute on the mortgage because the debt was secured only by the partner's now nonexistent interest. Final Answer: A

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Answer Option 3:

The mortgage lien could not destroy the joint tenancy, and when the partner dies, the property passes by operation of law to the surviving joint tenant. A mortgage taken out by a joint tenant without the knowledge or consent of the other joint tenant would not sever the joint tenancy under the majority view because the survivorship right of the non-debtor joint tenant would take precedence. So, after the death of the joint tenant who took out the mortgage, the surviving joint tenant would take the property free of the mortgage. Final Answer: A

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Answer Option 4:

In a lien theory state, a mortgage is viewed as creating a lien on the property, not transferring title to the lender. When one joint tenant mortgaged his interest, it did not sever the joint tenancy because the mortgagee (lender) only received a lien on the property not an ownership interest. Therefore, when the joint tenant (the woman's partner) dies, the woman, as the surviving joint tenant, gets his interest and the property is free of the mortgage lien because the lien died with the joint tenant. Final Answer: A

\*\*\*\*\*

Answer Option 5:

In a lien theory state, a mortgage does not sever a joint tenancy because it does not transfer title. The mortgagee merely has a lien on the mortgagor's interest in the property. When the partner dies, his interest in the property ceases to exist, so the mortgage lien also ceases to exist. As a result, the woman becomes the sole owner of the property, free and clear of the mortgage lien. Therefore, the bank cannot execute against the property. The majority view is that a mortgage does not sever a joint tenancy. Therefore, upon the death of the debtor joint tenant, the surviving joint tenant takes the property free of the lien. Final Answer: A

\*\*\*\*\*

Answer Option 6:

In a lien theory state, the bank does not acquire title to the property when it gives a mortgage; it only gets a lien. Further, the majority view is that a lien does not destroy a joint tenancy. So, when the partner dies, the property passes by operation of law to the surviving joint tenant, leaving the bank with no interest in the property. Final Answer: A

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Answer Option 7:

In a "lien theory" state, the granting of a mortgage by one joint tenant will not sever the joint tenancy. The mortgage is simply a lien on the debtor's interest and does not transfer title to the mortgagee. When the debtor dies, the lien is extinguished because the joint tenancy continues in the survivor, who takes free of the lien. Therefore, the bank cannot execute on the mortgage. Final Answer: A

\*\*\*\*\*

Answer Option 8:

In a lien theory state, a mortgage is seen as creating a lien on the property rather than transferring title to the mortgagee (the bank). A joint tenant can legally mortgage his interest in the property without the other's consent, but this doesn't sever the joint tenancy. When the mortgaging joint tenant dies, the surviving joint tenant gets the property free and clear of the mortgage due to the right of survivorship. Final Answer: A

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Answer Option 9:

Under the common law majority view, in a lien theory state, the mortgage by one joint tenant does not sever the joint tenancy. This means the surviving joint tenant, the woman, would take the dead joint tenant's (partner's) interest and the property as a whole free of the mortgage. This is because the mortgage only applied to the partner's interest, and after his death, his interest disappeared. Therefore, the bank would not be able to execute on the mortgage. Final Answer: A.

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Question 46:

'In an action for malpractice, a plaintiff sued a doctor, claiming that the latter failed to properly diagnose his emphysema condition. The plaintiff contends that he went to the doctor for a medical examination after experiencing chest pains and shortness of breath. However, the doctor found no evidence of the disease and advised him that he was probably suffering from indigestion. Thereafter, the plaintiff was examined by another doctor who discovered that the plaintiff in fact was suffering from a chronic case of emphysema. At trial, the plaintiff calls the other doctor as his first witness. The other doctor proposes to testify the x-rays of the plaintiff's lungs showed that his respiratory organs were marked by distension, which was characteristic of emphysema. Upon objection by the defendant's attorney, the testimony should be', A. 'admitted, because a doctor is properly qualified as an expert in medical matters.', B. 'admitted, because the other doctor followed accepted medical practice in arriving at his opinion.', C. 'excluded, because his opinion is based upon facts not in evidence.', D. 'excluded, because the x-rays are the best evidence to show the distension of the plaintiff's lungs.'

=====

Answer Option 1:

The testimony should be admitted because a doctor is properly qualified as an expert in medical matters. Expert witnesses, such as doctors, are allowed to testify about their opinions on matters in their field of expertise. This can include interpreting medical images such as x-rays, even if the images themselves are not entered into evidence. Final Answer: A

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Answer Option 2:

The testimony should be admitted because a doctor is properly qualified as an expert in medical matters. The Federal Rules of Evidence allow an expert to give their opinion on a matter in which they are qualified due to their knowledge, skill, experience, training, or education. In this case, the other doctor is qualified to give his opinion on the plaintiff's medical condition based on his examination and interpretation of the x-rays, which is a standard practice in the medical field. Final Answer: A

\*\*\*\*\*

Answer Option 3:

An expert witness, in this case a doctor, is allowed to provide their professional opinions in court. The other doctor's proposal to testify about the x-rays and the conclusion he drew from them is an expert opinion based on accepted medical practice. As such, the testimony should be admitted because the other doctor followed accepted medical practice in arriving at his opinion. Final Answer: B

\*\*\*\*\*

Answer Option 4:

The other doctor's testimony should be admitted because a doctor is properly qualified as an expert in medical matters. In most jurisdictions, physicians are generally considered experts in their field, and they are allowed to give their professional opinions in court based on their expertise. The doctor does not need to rely on the x-rays to form an opinion about the plaintiff's condition. Instead, his professional judgment, based on his examination and knowledge of the plaintiff's symptoms, is sufficient. Final Answer: A

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Answer Option 5:

The other doctor's testimony should be admitted, because a doctor is properly qualified as an expert in medical matters. Expert testimony is admissible to assist the jury in matters beyond the common understanding of a layperson. Doctors are typically considered experts in their field and their testimony can be used to explain medical conditions or interpret medical results. The other doctor, in this case, can testify to the condition of the plaintiff's lungs as revealed by the x-rays, and his interpretation of those x-rays. Final Answer: A

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Answer Option 6:

The other doctor's testimony should be admitted because a doctor is properly qualified as an expert in medical matters. Most jurisdictions allow physicians to testify as experts in their field of practice. They can give an opinion on medical issues based on their knowledge and experience. The other doctor's interpretation of the x-rays and diagnosis of emphysema falls into this category. Final Answer: A

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Answer Option 7:

Expert opinions are admissible in court when the expert has specialized knowledge that can assist the jury in understanding the evidence or determining a fact in issue. Because a doctor is properly qualified as an expert in medical matters, and his testimony is relevant to a medical condition the plaintiff is alleging was misdiagnosed, the testimony should be admitted. Final Answer: A

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Answer Option 8:

The testimony should be admitted because a doctor is properly qualified as an expert in medical matters. Expert witnesses, like a medical doctor, are allowed to testify about their professional opinions in court, which can include testifying about observations from x-rays. In this case, the other doctor's expert testimony about the plaintiff's emphysema, as shown on x-rays, would be relevant and admissible evidence. Final Answer: A

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Answer Option 9:

The testimony should be admitted because a doctor is properly qualified as an expert in medical matters. The expert's testimony is based on his professional interpretation of the x-rays, and his conclusions are therefore admissible. An expert may give an opinion based on facts not personally observed but supplied to him outside the courtroom, including inadmissible facts, if those facts are of a type reasonably relied upon by experts in the field. The x-rays themselves need not be in evidence. Final Answer: A

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Question 47:

'A young lawyer worked late at her office one night. When she finally decided to go home, she headed to the elevator, got in, and pushed the button for the ground floor. The elevator went all the way to the ground floor, but then just stopped there. The doors did not open. The lawyer tried pushing each of the buttons in the elevator and tried to use the intercom in the elevator to call for help, but nothing on the elevator's control panel seemed to be functioning. The lawyer was afraid that she would be stuck in the elevator all night. She began pounding on the doors and yelling. She started to feel panicked, hyperventilated, lost consciousness, and fell to the floor of the elevator. As she fell, she struck her head on the elevator wall, causing a large bump and bruise on her head. She was unconscious in the elevator for about 30 minutes before a security guard tried to use the elevator and realized it wasn't working. The guard managed to force the doors open and found the lawyer. At that moment, the lawyer regained consciousness. An investigation revealed that the elevator stopped working because it had not been properly maintained. The owner of the building had canceled all service and maintenance work on the elevator in order to save money. If the lawyer sues the building owner for false imprisonment, she will most likely', A. 'prevail, because she was confined in the elevator for an unreasonably long period of time.', B. 'prevail, because she was injured during her confinement in the elevator.', C. 'not prevail, because the building owner did not intentionally cause the lawyer to be confined.', D. 'not prevail, because the lawyer was unconscious and unaware of what was happening for most of the confinement period.'

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Answer Option 1:

False imprisonment requires an intentional act to confine or restrain another person. In this case, the building owner's failure to maintain the elevator is negligent, but it is not an intentional act to confine the lawyer. Therefore, the lawyer will most likely not prevail on a false imprisonment claim. Final Answer: C

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Answer Option 2:

The lawyer will most likely not prevail on a claim for false imprisonment because the building owner did not intentionally cause the lawyer to be confined. False imprisonment requires an intentional act, and here, while the building owner's actions of neglecting maintenance of the elevator were negligent, they were not intentional acts to confine the lawyer. An act of negligence, even one that results in confinement, does not meet the intent requirement for false imprisonment. Final Answer: C

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Answer Option 3:

False imprisonment is the intentional infliction upon another of a confinement that is without consent and without privilege. In this case, the building owner did not intentionally cause the lawyer to be confined. The confinement was due to negligence in maintaining the elevator, not an intentional act to confine the lawyer. Therefore, the lawyer will likely not prevail in a suit for false imprisonment. Final Answer: C

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Answer Option 4:

The lawyer will most likely 'not prevail, because the building owner did not intentionally cause the lawyer to be confined.' For a false imprisonment claim to succeed, the plaintiff must prove that the defendant intentionally caused the confinement or restraint. In this case, the building owner's negligence led to the malfunction of the elevator, but there was no intentional act to confine the lawyer. Final Answer: C

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Answer Option 5:

False imprisonment requires an intentional act causing confinement, and the owner must know or have reason to know that his actions will cause confinement. In this case, while the building owner's negligence in maintaining the elevator did result in the lawyer's confinement, there was no intentional act to confine her specifically. So, the most likely outcome of a false imprisonment lawsuit would be that the lawyer will not prevail. Final Answer: C

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Answer Option 6:

The claim of false imprisonment requires an intentional act of restraint by the defendant that confines or restrains the plaintiff to a bounded area against his or her will. Although the owner of the building negligently failed to maintain the elevator, there is no indication that the owner intended to confine the lawyer. The fact that the lawyer was confined is a result of negligence, not an intentional act. Therefore, the lawyer will not prevail in a lawsuit for false imprisonment. Final Answer: C.

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Answer Option 7:

The lawyer will not prevail because the building owner did not intentionally cause the lawyer to be confined. The essential elements of a claim for false imprisonment are an intentional act, confinement for an appreciable amount of time, and the plaintiff's knowledge of the confinement. The building owner's act of cancelling the maintenance service, which led to the malfunction of the elevator, is more negligent than intentional. Thus, the necessary intent required to establish a false imprisonment claim is missing. Final Answer: C

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Answer Option 8:

The lawyer will most likely 'not prevail, because the building owner did not intentionally cause the lawyer to be confined.' The tort of false imprisonment requires an intentional act and the building owner's failure to maintain the elevator does not constitute an intentional act to confine the lawyer. The confinement was a result of negligence, not a deliberate act. Final Answer: C.

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Answer Option 9:

False imprisonment requires an intentional act causing direct restraint of freedom of movement for an appreciable length of time, however short, coupled with the awareness of the confinement. Although the owner's lack of maintenance led to the confinement, he did not intentionally cause the lawyer to be confined. Hence, the lawyer will most likely not prevail when suing the owner for false imprisonment due to the lack of intentional confinement. Final Answer: C

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Question 48:

'A famous environmentalist was the owner of a large tract of virgin forest. The environmentalist conveyed the tract "to the people of the state in fee simple; provided, however, that if any portion of said tract shall ever be used or developed for any commercial purpose or otherwise converted from its natural state (with exception for recreational, scientific, or educational purposes), then the grantor or his successors in interest may re-enter as of the grantor's former estate. "The interest of the state in the tract would be best described as a (an)', A. 'fee simple determinable.', B. 'fee simple subject to condition subsequent.', C. 'easement appurtenant.', D. 'determinable fee subject to an executory interest.'

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Answer Option 1:

The interest of the state in the tract would be best described as a "fee simple subject to condition subsequent." The key phrase here is "may re-enter." This suggests that the grantor retains a right of re-entry, which he can choose to exercise if the condition (commercial development or conversion from its natural state) occurs. This is different from a fee simple determinable, where the property automatically reverts to the grantor upon the occurrence of the stated condition. Final Answer: B

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Answer Option 2:

The language used in the conveyance ("provided, however, that if") suggests a fee simple subject to a condition subsequent. This type of estate gives the grantee (the people of the state) a fee simple interest, but allows the grantor (the environmentalist) the right to regain ownership if a stated condition occurs (the land being used for commercial purposes or converted from its natural state). However, the grantor must take action to retake the property after the condition occurs. This is contrasted to a fee simple determinable, where the property would automatically revert to the grantor upon the occurrence of the condition, without any action required by the grantor. Final Answer: B

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Answer Option 3:

The described situation fits the definition of a "fee simple subject to condition subsequent." The environmentalist's language created an estate in fee simple for the people of the state, but with a condition that, if broken, could result in the return of the property to the environmentalist or his successors. The power to terminate the estate is not automatic but requires re-entry by the grantor or his successors upon the occurrence of the specified condition. Therefore, the state holds a fee simple subject to the condition subsequent, and the grantor and his successors retain a right of re-entry. Final Answer: B

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Answer Option 4:

The interest of the state in the tract would be best described as a fee simple subject to condition subsequent. The language "provided, however, that if any portion of said tract shall ever be used or developed... then the grantor or his successors in interest may re-enter as of the grantor's former estate" is typical of a fee simple subject to condition subsequent. This is a type of estate that continues until a specified event occurs, at which time the grantor has the right of re-entry. However, the estate does not automatically end; the grantor must take some action to reclaim the property. Final Answer: B

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Answer Option 5:

The deed language creates a Fee Simple Subject to Condition Subsequent. This type of future interest is created when the grantor specifies that, upon the occurrence of a certain event, the grantor has the right to re-enter and retake the property. In this case, if the tract of land is used for any commercial purpose or otherwise converted from its natural state (except for recreational, scientific or educational purposes), the grantor or his successors in interest may re-enter. Final Answer: B

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Answer Option 6:

The state's interest in the tract would be best described as a "fee simple subject to condition subsequent." The language "provided, however, that if" followed by a condition and the ability to "re-enter" indicates a fee simple subject to a condition subsequent. The grantor (or his successors) retains a right of re-entry but must act to regain possession of the property if the condition is violated. So, the state has a fee simple subject to condition subsequent, and the grantor holds a right of re-entry. Final Answer: B.

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Answer Option 7:

The state's interest in the tract would best be described as a fee simple subject to condition subsequent. This is because the property was given to the state in fee simple, but there's a condition mentioned that if the property is used for any commercial purpose or developed, then the grantor or his successors may re-enter the property. This shows that the grantor has a right to re-enter, but it is not automatic upon the occurrence of the condition. They have to choose to exercise this right. Hence, it is a fee simple subject to condition subsequent. Final Answer: B

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Answer Option 8:

The state's interest in the tract is a 'fee simple subject to condition subsequent.' The language "provided, however, that if any portion of said tract shall ever be used or developed for any commercial purpose or otherwise converted from its natural state...then the grantor or his successors in interest may re-enter as of the grantor's former estate," creates a condition subsequent. Thus, the state has a fee simple subject to this condition. If the condition is violated, the grantor or his successors in interest have the right (but not the obligation) to re-take the property. Final Answer: B.

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Answer Option 9:

The state's interest in the tract would be best described as a "fee simple subject to condition subsequent." Terms such as "provided, however, that if" are indicative of a fee simple subject to condition subsequent, where the possibility of reverter is not automatic but requires some action on the part of the grantor or their successors. The right reserved by the grantor is a right of re-entry, not an automatic reversion, hence it is a fee simple subject to condition subsequent. Final Answer: B.

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Question 49:

'A buyer purchased a gallon of nonfat milk from a market. The milk, which was sold in a plastic container, had been processed and packaged by a dairy. That evening, the buyer was preparing dinner and poured himself a glass of milk from the container purchased at the market. He then sat down to eat his meal and proceeded to take a mouthful of milk. As he did so, the buyer felt something furry lodge in his mouth. He immediately spat out the furry object and saw that it was a dead mouse. The buyer suffered severe emotional distress but did not suffer any physical illness or injury. If the buyer asserts a claim against the dairy based on negligent manufacturing, he will most likely', A. 'recover, because he suffered severe emotional distress.', B. 'recover, under the doctrine of res ipsa loquitur.', C. 'not recover, because the dairy's negligence only caused mental disturbance.', D. 'not recover, because the buyer's proper cause of action is for intentional infliction of mental distress.'

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Answer Option 1:

Most courts require a physical injury or illness in addition to emotional distress in negligence cases. Here, the buyer suffered severe emotional distress but did not suffer any physical illness or injury.

Negligently causing someone emotional distress is typically not actionable in common law tort unless the plaintiff can also show physical harm. As such, the court will most likely hold that the buyer cannot recover from the dairy because the dairy's negligence only caused mental disturbance. Final Answer: C

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Answer Option 2:

The dairy's negligence caused mental disturbance, and under general negligence principles, a plaintiff cannot recover for negligently inflicted emotional distress unless it is accompanied by a physical injury.

The court interprets "physical injury" to mean a physical impact upon the person of the plaintiff. The buyer did not suffer any physical illness or injury; therefore, he will most likely not recover in a negligence action against the Dairy. Final Answer: C

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Answer Option 3:

While it's true that the dairy's negligence led to a disturbing situation, the buyer will likely not recover damages for negligent infliction of emotional distress because he did not suffer a physical injury or illness as a result. Generally, courts require evidence of physical harm or illness to allow recovery for negligent infliction of emotional distress. The emotional distress suffered by the buyer, while considerable, is not enough on its own to warrant recovery. Final Answer: C.

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Answer Option 4:

The dairy's negligence, if any, resulted in the buyer suffering only mental disturbance. Normally, negligence must cause physical harm to allow for a recovery. Emotional distress by itself, without accompanying physical harm or illness, is generally not sufficient to recover damages for negligence. Therefore, the buyer will most likely not recover damages. Final Answer: C

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Answer Option 5:

The buyer may have a difficult time recovering for emotional distress resulting from the dairy's negligence, as courts typically require some accompanying physical harm. Without any physical injury or illness resulting from the incident, it's less likely that the buyer will recover damages. In such cases, the law generally does not permit recovery for emotional distress caused by negligence unless it is accompanied by a physical injury or illness or a risk of physical harm. Final Answer: C

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Answer Option 6:

Negligence requires that the plaintiff suffer a physical injury or a risk of physical harm. Emotional distress alone is typically not recoverable in a negligence action unless it is accompanied by physical injury or illness, or if the plaintiff was in the zone of danger. Here, the buyer suffered severe emotional distress but did not suffer any physical illness or injury. Therefore, he will likely not recover under a negligence theory. Final Answer: C.

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Answer Option 7:

Under the principle of negligence, a plaintiff usually must show an actual damage or loss to person or property. In general, courts have not allowed recovery for negligently inflicted emotional distress in the absence of physical harm or a physical manifestation of the emotional distress. Therefore, the most likely outcome is that the buyer will not recover from the dairy based on the claim of negligent manufacturing, as the dairy's alleged negligence only caused mental disturbance. Final Answer: C

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Answer Option 8:

The law does not generally allow a person to recover for emotional distress caused by negligence unless the distress is accompanied by a physical injury. In this case, the buyer did not suffer any physical injury. Therefore, he cannot recover from the dairy for his emotional distress under a claim of negligence. Final Answer: C

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Answer Option 9:

In a negligence claim, there must be a duty of care, a breach of that duty, causation, and damages. Although the dairy may have breached a duty of care to the buyer, causing him emotional distress, most courts require plaintiffs to show physical injury in negligence cases. This is known as the "impact rule". Emotional distress alone, without accompanying or subsequent physical harm, is generally not enough to recover in a negligence claim. Thus, the buyer will most likely not recover, because the dairy's negligence only caused a mental disturbance. Final Answer: C

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Question 50:

The defendant was on a date when the victim invited him up to her apartment for coffee. The defendant and the victim began to kiss on the couch. The defendant lifted the victim's shirt, and the victim gently pushed the defendant's hand away and then left the couch to make coffee. While the victim was making coffee, the defendant picked up her solid gold ring that she had carelessly left on the living room table. Intending to give it back to her with a diamond in it, he put it into his pocket and got ready to leave. Before the defendant went home, he stopped into a bar. There he met a patron who offered to sell him a two-month-old plasma TV for \$200. The patron said that he would take only cash and that he also had some unboxed silverware and jewelry he could sell the defendant from his van, which was parked outside. The patron said, "You better decide fast, because I've got to get out of town right away. " The defendant, who knew that the TV was worth \$1,000, gave the patron \$200, and the patron gave the defendant the TV, which was not in a box. The patron did not tell the defendant he had just stolen the television from a house down the street. Based on the above facts, for which of the following crimes should the defendant be convicted?', A. 'Battery upon the victim, and larceny of the ring.', B. 'Larceny of the ring.', C. 'Embezzlement of the ring.', D. 'Receiving stolen property.'

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Answer Option 1:

The defendant should be convicted for receiving stolen property. The defendant knowingly paid significantly less than market value for a television from a man who was in a hurry to leave town and had other unboxed goods for sale, which are facts that would lead a reasonable person to believe the goods were stolen. The defendant can't be convicted of larceny of the ring because he intended to return it, and therefore lacked the intent to permanently deprive the owner of it. Final Answer: D

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Answer Option 2:

The defendant should be convicted for larceny of the ring. Larceny is the unlawful taking and carrying away of someone else's personal property with the intent to permanently deprive the owner of its possession. In this case, the defendant took the ring from the victim's apartment without her consent and with the intent to permanently deprive her of it. As to the TV, the defendant did not know it was stolen, so he could not be guilty of receiving stolen property, which requires knowledge that the property was stolen. There is no evidence of battery or embezzlement. Final Answer: B.

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Answer Option 3:

The defendant can be convicted for receiving stolen property. He knowingly purchased a plasma TV from a suspicious seller for a price much less than its actual worth, and the TV was not in its box, which should have triggered doubts about its legality. Furthermore, the seller's urgency to leave town should also have raised suspicion. However, the defendant cannot be held liable for any offenses related to the ring, as he intended to return it after enhancing its value with a diamond. His intention to return it negates the intent required for larceny or embezzlement. Thus, the defendant should only be convicted of receiving stolen property. Final Answer: D.

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Answer Option 4:

The defendant should be convicted for the crime of 'Receiving stolen property.' From the facts presented, there is no evidence supporting that the defendant's touch of the victim during their mutual kiss was harmful, offensive, or done without consent, which rules out battery. Regarding the ring, the defendant took the ring with the intent to improve it and return it to her, which does not constitute larceny as he had no intent to permanently deprive her of it. On the other hand, the defendant knowingly bought a \$1,000 TV for \$200 from a man who was acting suspiciously and who was in a rush to leave town. Given these circumstances, the defendant should have been aware that the TV was likely stolen property, making him guilty of receiving stolen property. Final Answer: D

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Answer Option 5:

The defendant can be convicted for receiving stolen property. He bought a plasma TV for \$200 from a man who had a rush sale and only accepted cash. The TV was unboxed and the man also had unboxed silverware and jewelry for sale. The man told him he had to leave town quickly. These are all classic signs of stolen property. The defendant should have suspected the TV was stolen, especially given that the TV was worth \$1,000. Final Answer: D.

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Answer Option 6:

The defendant should be convicted for larceny of the ring. Larceny occurs when someone wrongfully takes and carries away another person's personal property with the intent to permanently deprive the owner of its possession. Here, the defendant took the victim's ring without her consent and with an intention to permanently deprive her of it. As for the plasma TV, the defendant did not have knowledge that it was stolen, which is a necessary element for the crime of receiving stolen property. The battery does not apply because the touching was not harmful or offensive as it was within the context of consensual actions. Final Answer: B.

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Answer Option 7:

The defendant took the victim's ring with the intention of adding a diamond to it and giving it back to her, not with the intent of stealing it. Therefore, he should not be convicted for larceny of the ring. The defendant also did not know that the television was stolen property when he bought it from the patron, so he cannot be convicted of receiving stolen property. Given these facts, none of the options are correct. However, if one must be selected, the closest option is B, larceny of the ring, because the defendant did take the ring without asking for the victim's permission. But it is important to note that the defendant's intent was not to deprive the victim permanently of her ring, which is a key element of larceny. Final Answer: B

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Answer Option 8:

The defendant should be convicted for receiving stolen property. The defendant is guilty of receiving stolen property if he buys or aids in concealing stolen property, knowing it to be stolen. Here, the defendant bought the plasma TV from the patron, who was in a hurry to leave town and was selling the TV along with other unboxed items from his van for far less than their actual value. These are circumstances that would lead a reasonable person to believe that the goods were stolen. As for the ring, the defendant did not commit larceny because he had no intent to permanently deprive the victim of it - he intended to give it back to her with a diamond in it. The fact that he did not ask for her permission before taking the ring might be considered a civil trespass to chattels, but it does not amount to criminal

larceny. Final Answer: D.

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Answer Option 9:

The defendant should be convicted for receiving stolen property. The TV was stolen property, and the defendant bought it from the patron with knowledge that it was probably stolen due to the suspicious circumstances (i.e., the low price and the patron's urgent need to leave town). However, the defendant cannot be convicted for larceny of the ring because he didn't intend to permanently deprive the owner of it; he planned to give it back to her with a diamond in it. Final Answer: D.

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