
Question 8 - Constitutional Law - Individual Rights

The question was:

A state requires licenses of persons "who are engaged in the trade of barbering." It will grant such licenses only to those who are graduates of barber schools located in the state, have resided in the state for two years, and are citizens of the United States.

The requirement that candidates for licenses must be graduates of barber schools in the state is probably

- A:** unconstitutional as an undue burden on interstate commerce.
- B:** unconstitutional as a violation of the privileges and immunities clause of the Fourteenth Amendment.
- C:** constitutional, because the state does not know the quality of out-of-state barber schools.
- D:** constitutional, because barbering is a privilege and not a right.

The explanation for the answer is:

A is the correct answer. States may not impose restrictions that impede the flow of interstate commerce by enacting legislation that protects its institutions or residents from competition. Therefore, the requirement that a candidate must graduate from an in-state barber school is a violation of the Dormant Commerce Clause. B is incorrect because the requirement that a candidate graduate from an in-state barber school does not interfere with the rights or privileges of national citizenship. Only the statute's two year residency requirement violates the privileges and immunities clause of the Fourteenth Amendment by interfering with the right to travel. C is incorrect because barring graduates of all out-of-state schools is an impermissible burden on interstate commerce. D is incorrect because the state cannot impose unconstitutional burdens on the exercise of a privilege.

Question 9 - Constitutional Law - Individual Rights

The question was:

A state requires licenses of persons "who are engaged in the trade of barbering." It will grant such licenses only to those who are graduates of barber schools located in the state, have resided in the state for two years, and are citizens of the United States.

The requirement that candidates for licenses must be citizens is

- A:** constitutional as an effort to ensure that barbers speak English adequately.
- B:** constitutional as an exercise of the state police power.
- C:** unconstitutional as a bill of attainder.
- D:** unconstitutional as a denial of equal protection.

The explanation for the answer is:

D is the correct answer. Under the Equal Protection Clause, a state statute which uses alienage as a classification must pass strict scrutiny. Here, the classification fails strict scrutiny because the state cannot prove that limiting barber licenses to citizens is necessary to achieve a compelling state interest.

A is incorrect because there is not a sufficiently close correlation between citizenship and language proficiency to satisfy strict scrutiny. B is incorrect because exercises of police power may not violate the Fourteenth Amendment. C is incorrect because this is not a bill of attainder, which is a legislative imposition of punishment without a judicial proceeding.

Question 10 - Constitutional Law - Individual Rights

The question was:

A state requires licenses of persons "who are engaged in the trade of barbering." It will grant such licenses only to those who are graduates of barber schools located in the state, have resided in the state for two years, and are citizens of the United States.

Assume that a resident of the state was denied a license because she had graduated from an out-of-state barber school. Her suit in federal court to enjoin denial of the license on this ground would be

- A:** dismissed, because there is no diversity of citizenship.
- B:** dismissed because of the abstention doctrine.
- C:** decided on the merits, because federal jurisdiction extends to controversies between two states.
- D:** decided on the merits, because a federal question is involved.

The explanation for the answer is:

D is the correct answer. The law in question concerns a state's denial of a property right, in this case a business license. Since the state law is impinging on the right to practice a trade or profession, the Due Process Clause of the Fourteenth Amendment does provide some protection of that economic liberty. Even though the right to practice a trade is not a fundamental right, the state law must still pass a rational basis review. Since the Due Process Clause is implicated, there is a federal question and the resident's suit will be decided on the merits.

Answer A is incorrect because the issue raises a federal question, and therefore diversity is not required. Answer B is incorrect because, as a very general rule, the abstention doctrine only involves situations in which the state has a great interest in being the first to evaluate the matter. Examples include instances where a state court is interpreting a state statute not yet settled under state law, and instances where the federal suit would interfere with a pending criminal prosecution. Answer C is incorrect because the parties are not two states; they are a state and an individual.

Question 11 - Constitutional Law - Individual Rights

The question was:

A state requires licenses of persons "who are engaged in the trade of barbering." It will grant such licenses only to those who are graduates of barber schools located in the state, have resided in the state for two years, and are citizens of the United States.

Which of the following is the strongest ground on which to challenge the requirement that candidates for barber licenses must have been residents of the state for at least two years?

- A:** The privileges and immunities clause of the Fourteenth Amendment
- B:** The due process clause of the Fourteenth Amendment
- C:** The equal protection clause of the Fourteenth Amendment
- D:** The obligation of contracts clause

The explanation for the answer is:

A is the correct answer. Under the privileges and immunities clause of the Fourteenth Amendment, citizens have a fundamental right to travel. This has been interpreted to mean that state durational residency requirements must meet strict scrutiny. See *Saenz v. Roe*, 526 U.S. 489 (1999). By limiting licenses to candidates who have been residents of the state for at least two years, the state is interfering with the right to travel, and the restriction will be subject to strict scrutiny.

B is incorrect because the durational residency requirement does not limit the liberty of all persons to engage in barbering. C is not the best answer because while the restriction does classify between long-term state residents and all others, this is not a suspect classification and would only trigger a rational basis review. D is incorrect because there is no indication that this statute has a retroactive application.

Question 41 - Constitutional Law - Individual Rights

The question was:

A state entered into a contract with a construction company for construction of a four-lane turnpike. Prior to commencement of construction, the legislature, in order to provide funds for parks, repealed the statute authorizing the turnpike and canceled the agreement with the construction company. The construction company sued the state to enforce its original agreement. In ruling on this case, a court should hold that the repeal of the state statute, thereby canceling the agreement, is

- A:** valid, because under the Constitution, the state cannot be held liable except with its own consent.
- B:** valid, because the legislature is vested with constitutional authority to repeal laws it has enacted.
- C:** invalid, because a state is equitably estopped to disclaim a valid bid once accepted by it.
- D:** invalid, because of the constitutional prohibition against impairment of contracts.

The explanation for the answer is:

D is the correct answer. The Constitution severely limits states from enacting or repealing legislation that eliminates the state's pre-existing contractual burden. In this case, funding for parks was not a strong enough reason to overcome this limitation and legislatively cancel the contract; thus, the repeal of the legislation was unconstitutional. A is incorrect because the state consented to being liable to the terms of the contract by signing it. B is incorrect because the contract itself was not a law that the legislature had enacted. C is incorrect because this was not a bid but rather a signed contract.

Question 41 - Constitutional Law - Individual Rights

The question was:

A state entered into a contract with a construction company for construction of a four-lane turnpike. Prior to commencement of construction, the legislature, in order to provide funds for parks, repealed the statute authorizing the turnpike and canceled the agreement with the construction company. The construction company sued the state to enforce its original agreement. In ruling on this case, a court should hold that the repeal of the state statute, thereby canceling the agreement, is

- A:** valid, because under the Constitution, the state cannot be held liable except with its own consent.
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The explanation for the answer is:

D is the correct answer. The Constitution severely limits states from enacting or repealing legislation that eliminates the state's pre-existing contractual burden. In this case, funding for parks was not a strong enough reason to overcome this limitation and legislatively cancel the contract; thus, the repeal of the legislation was unconstitutional. A is incorrect because the state consented to being liable to the terms of the contract by signing it. B is incorrect because the contract itself was not a law that the legislature had enacted. C is incorrect because this was not a bid but rather a signed contract.

Question 42 - Constitutional Law - Separation of Powers

The question was:

The strongest constitutional basis for the enactment of a federal statute requiring colleges and universities receiving federal funds to offer students aid solely on the basis of need is the

- A:** police power.
- B:** war and defense power.
- C:** power to tax and spend for the general welfare.
- D:** power to enforce the privileges and immunities clause of the Fourteenth Amendment.

The explanation for the answer is:

C is the correct answer. Congress has plenary power to tax and spend for the general welfare, and it can impose any rational condition on the acceptance of federal funds as long as the recipient is free to reject those funds. A is incorrect because Congress has no general police power with the exception of laws regarding federal property and the military. B is incorrect because the war and defense power is only tangentially related, if at all, to grants to colleges and universities to help lower-income students. D is incorrect because the privileges and immunities clause of the Fourteenth Amendment protects the rights of national citizenship, which is irrelevant here.

Question 47 - Constitutional Law - Separation of Powers

The question was:

A former United States Ambassador is cited for contempt of the House of Representatives after she refused to answer certain questions posed by a House Committee concerning her acts while serving as an ambassador. A federal statute authorizes the Attorney General to prosecute contempts of Congress. Pursuant to this law, the House directs the Attorney General to begin criminal proceedings against the former ambassador. A federal grand jury indicts the former ambassador, but the Attorney General refuses to sign the indictment.

Which of the following best described the constitutionality of the Attorney General's action?

- A:** Illegal, because the Attorney General must prosecute if the House of Representatives so directs.
- B:** Illegal, because the Attorney General must prosecute those who violate federal law.
- C:** Legal, because ambassadors are immune from prosecution for acts committed in the course of their duties.
- D:** Legal, because the decision to prosecute is an exclusively executive act.

The explanation for the answer is:

D is the correct answer. The decision to prosecute is reserved solely to the executive branch under Article II, § 3 of the Constitution. Therefore, it is within the power of the Attorney General to decide whether to prosecute. A is incorrect because the legislative branch has no authority under the Constitution to order prosecution. B is incorrect because the Attorney General has discretion to decide how the laws shall be executed and can decide who to prosecute and who not to. C is incorrect because the acts that the former ambassador was charged for were acts before the House after her tenure as an ambassador ended.

Question 48 - Constitutional Law - Separation of Powers

The question was:

A former United States Ambassador is cited for contempt of the House of Representatives after she refused to answer certain questions posed by a House Committee concerning her acts while serving as an ambassador. A federal statute authorizes the Attorney General to prosecute contempts of Congress. Pursuant to this law, the House directs the Attorney General to begin criminal proceedings against the former ambassador. A federal grand jury indicts the former ambassador, but the Attorney General refuses to sign the indictment.

If the Attorney General signs the indictment, the strongest argument the former ambassador could urge as a defense is that

- A:** she may refuse to answer the questions if she can demonstrate that they are unrelated to matters upon which Congress may legislate.
- B:** the House may question her on matters pertaining to the expenditures of funds appropriated by Congress.
- C:** only the Senate may question her on matters that relate to the performance of her duties.
- D:** Congress may not ask questions relating to the performance of duties executed by an officer of the executive branch.

The explanation for the answer is:

A is the correct answer. Congress is limited to legislating only in specific areas, but it may exercise whichever powers are necessary and proper to serve its interests in those areas. This means that it may require people to answer questions at hearings it holds, but only if those questions are related to matters upon which it may legislate. B is incorrect because it is unclear whether the former ambassador's actions had anything to do with Congress' appropriations. C is incorrect because there is no such limitation between the House and Senate. D is incorrect because Congress may investigate the performance of duties executed by an officer of the executive branch, and the House may even impeach executive or judicial branch officers.

Question 65 - Constitutional Law - Individual Rights

The question was:

Until 1954, a state required segregation in all public and private schools, but all public schools are now desegregated. Other state laws, enacted before 1954 and continuing to the present, provide for free distribution of the same textbooks on secular subjects to students in all public and private schools. In addition, the state accredits schools and certifies teachers.

A private school offers elementary and secondary education in the state, but denies admission to all non-Caucasians. Another private school offers religious instruction.

Which of the following is the strongest argument against the constitutionality of free distribution of textbooks to the students at the school denying admission to all non-Caucasians?

- A:** No legitimate educational function is served by the free distribution of textbooks.
- B:** The state may not in any way aid private schools.
- C:** The Constitution forbids private bias of any kind.
- D:** Segregation is furthered by the distribution of textbooks to these students.

The explanation for the answer is:

D is the correct answer. The statute at issue is the state's free book program, so the Fourteenth Amendment would apply. The major issue for this question is how to best prove an intent by the government to discriminate via the book program. This can be done in one of three ways: (1) facial discrimination, (2) discriminatory application, or (3) discriminatory motive. Discriminatory motive can be shown by demonstrating that: (1) a statute will have a disproportionate impact on a protected class, and (2) the statute is a product of a discriminatory purpose. Here, the passage of the statute before desegregation is sufficient to demonstrate that the statute is a product of a discriminatory purpose. Additionally, a showing that segregation is furthered by the distribution of free textbooks to students in the segregated schools will demonstrate a disproportional impact on a protected class. Thus, it can be shown that the statute has a discriminatory motive, and a strict scrutiny review will be triggered. Therefore, D is the best argument.

A is incorrect because the distribution of free textbooks clearly serves a legitimate educational function. B is incorrect because the state can provide some aid to private schools as long as that aid is not discriminatory. C is incorrect because generally the Constitution only forbids private bias when the function being performed is a traditional and exclusive public function, or when there is significant state involvement.

Question 66 - Constitutional Law - Individual Rights

The question was:

Until 1954, a state required segregation in all public and private schools, but all public schools are now desegregated. Other state laws, enacted before 1954 and continuing to the present, provide for free distribution of the same textbooks on secular subjects to students in all public and private schools. In addition, the state accredits schools and certifies teachers.

A private school offers elementary and secondary education in the state, but denies admission to all non-Caucasians. Another private school offers religious instruction.

Which of the following is the strongest argument in favor of the constitutionality of free distribution of textbooks to these students at the school offering religious instruction?

- A:** Private religious schools, like public nonsectarian schools, fulfill an important educational function.
- B:** Religious instruction in private schools is not constitutionally objectionable.
- C:** The purpose and effect of the free distribution of these textbooks is secular and does not entangle church and state.
- D:** The free exercise clause requires identical treatment by the state of students in public and private schools.

The explanation for the answer is:

C is the correct answer. The test to analyze whether a government action violates the establishment clause of the First Amendment is 1) whether its purpose is secular, 2) whether its primary effect advances or inhibits religion, 3) and whether it fosters an excessive entanglement with religion. Therefore the strongest argument to support the constitutionality of the free distribution of textbooks to a religious institution is that its purpose and effect is secular and does not foster an excessive entanglement with religion.

A is not correct because the importance of the function of the school is irrelevant to an establishment clause analysis. B is incorrect because it is beside the point. While the Constitution does not prohibit religious instruction in private schools, the support of those schools by the state could violate the establishment clause. D is incorrect because the free exercise clause does not require the same kind of support be given to private schools as that given to public schools.

Question 80 - Constitutional Law - Individual Rights

The question was:

An assistant professor was hired by a college to teach mathematics and he is now in his third consecutive one-year contract. Under state law he cannot acquire tenure until after five consecutive annual contracts. In his third year, the assistant professor was notified that he was not being rehired for the following year. Applicable state law and college rules did not require either a statement of reasons or a hearing, and in fact neither was offered to the assistant professor.

Which of the following, if established, most strongly supports the college in refusing to give the assistant professor a statement of reasons or an opportunity for a hearing?

- A:** His academic performance had been substandard.
- B:** A speech he made that was critical of administration policies violated a college regulation concerning teacher behavior.
- C:** He worked at the college for less than five years.
- D:** He could be replaced with a more competent teacher.

The explanation for the answer is:

C is the correct answer. A person is only entitled to due process if that person is deprived of a liberty or property right by the government. Property rights are created by state law. Teachers in this state have no property rights in their jobs until after five consecutive years of employment. Moreover, the state provides no statutory protections for teachers employed for fewer than five consecutive years. Therefore the strongest argument in support of the college's refusal to give the assistant professor a statement of the reasons or an opportunity for a hearing is that he has worked there less than five years.

A is incorrect because if the assistant professor had a statutory or constitutional right to process, his substandard performance would not excuse the college's refusal to grant that process. B is not correct because the assistant professor would have a constitutional right to speak on a matter of public concern that didn't impair the government's performance of its functions. Additionally, even if it could discharge the assistant professor for this activity, it would not excuse the college from providing any process due. Similarly, D is incorrect because even if the college was justified in terminating the assistant professor, it would not be excused from providing due process unless no process was due.

Question 81 - Constitutional Law - Relations Between Federal and State Governments

The question was:

National regulation of predatory wild animals on federal lands is most likely

- A:** constitutional, because the protection of wild animals is important to the general welfare.
- B:** constitutional, because Congress has authority to make regulations respecting federal property.
- C:** unconstitutional, because wild animals as defined by state common law are not federal property.
- D:** unconstitutional, because regulation and control of wild animals is retained by the states under the Tenth Amendment.

The explanation for the answer is:

B is the correct answer. Congress has the power to make regulations to protect federal property, and wild animals on federal land fall under the Property Clause. See *Kleppe v. New Mexico*, 426 U.S. 529 (1976). A is incorrect because even though Congress has the power to spend to promote the general welfare, it cannot directly regulate to promote the general welfare. C is incorrect because state common law cannot override a federal interest protected by the Constitution. D is incorrect because the control and regulation of wild animals on federal land falls under Congress's property power.

Question 107 - Constitutional Law - Individual Rights

The question was:

A child was the illegitimate, unacknowledged child of the decedent. The decedent died intestate, leaving neither spouse nor any children other than the illegitimate child. The state's law of intestate succession provides that an unacknowledged illegitimate child may not inherit his father's property. The spouse, all other blood relations, and the state are preferred as heirs over the unacknowledged illegitimate child. The illegitimate child filed suit in an appropriate court alleging that the state statute barring an illegitimate child from sharing in a parent's estate is invalid, and that he should be declared a lawful heir to his father's estate.

The state's strongest defense of the statute would be that

- A:** the authority of a state over the disposition of decedents' property located in the state is not affected by the Constitution of the United States.
- B:** a statute prescribing the means of disposing of the property of intestate decedents does not constitute invidious discrimination.
- C:** inheritance under intestate succession laws is a privilege, not a right, and therefore is not protected as property under the due process clause.
- D:** its interest in promoting family life and in encouraging the formal acknowledgment of paternity is an important governmental interest.

The explanation for the answer is:

D is the correct choice. Legitimacy classifications are generally afforded the protection of intermediate scrutiny, meaning the classification must be substantially related to an important governmental interest, and a state statute cannot absolutely exclude illegitimate children from inheriting from their intestate fathers. Courts will look to the intent behind the policy, and will not uphold legislation designed to punish illegitimate children. Therefore, the state's best argument is that instead of punishing the illegitimate offspring, the statute protects them by encouraging formal acknowledgment.

Choice A is incorrect because it is untrue; a state's laws regarding intestate succession are subject to the limitations of the Constitution. Choice B is incorrect because it, too, is untrue; it is entirely possible that a state law regarding intestate succession could constitute invidious discrimination and violate the Constitution. Choice C is incorrect because, even if intestate succession is a privilege and not a right, a state still may not discriminate as to who is entitled to the privilege.

Question 121 - Constitutional Law - Relations Between Federal and State Governments

The question was:

In an effort to relieve serious and persistent unemployment in an industrialized state, its legislature enacted a statute requiring every business with annual sales in the state of over one million dollars to purchase goods and/or services in the state equal in value to at least half of the annual sales in the state of the business. Which of the following constitutional provisions is the strongest basis on which to attack this statute?

- A:** The due process clause of the Fourteenth Amendment
- B:** The equal protection clause
- C:** The commerce clause
- D:** The privileges and immunities clause of the Fourteenth Amendment

The explanation for the answer is:

C is the correct answer. By requiring certain businesses to spend a certain amount of money within the state, the state is impairing interstate commerce in violation of the commerce clause. A is incorrect because since there is no fundamental right at stake, the statute would only have to pass rational basis review, and requiring a certain amount of intrastate spending is rationally related to easing unemployment, which is a legitimate state interest. Likewise, B is incorrect since wealth is not a suspect classification and would only trigger a rational basis review. D is incorrect because the statute does not implicate any rights or privileges of national citizenship.

Question 125 - Constitutional Law - Individual Rights

The question was:

The owner of a milk container manufacturing firm sought to focus public attention on the milk packaging law of a certain state in order to have it repealed. On a weekday at 12:00 noon, he delivered an excited, animated, and loud harangue on the steps of the State Capitol in front of the main entryway. An audience of 200 onlookers, who gathered on the steps, heckled him and laughed as he delivered his tirade. The owner of the manufacturing firm repeatedly stated, gesturing expressively and making faces, that "the g-ddamned milk packaging law is stupid," and that "I will strangle every one of those g-ddamned legislators I can get hold of because this law they created proves they are all too dumb to live." After about fifteen minutes the owner of the manufacturing firm stopped speaking, and the amused crowd dispersed.

There is one relevant statute of the state which prohibits "all speech making, picketing, and public gatherings of every sort on the Capitol steps in front of the main entryway between 7:45 a.m.-8:15 a.m., 11:45 a.m.-12:15 p.m., 12:45 p.m.-1:15 p.m., and 4:45 p.m.-5:15 p.m. on Capitol working days."

If the owner of the milk container manufacturing firm is prosecuted under the "Capitol Steps" statute and defends on constitutional grounds, which of the following best describes the proper burden of proof?

- A:** The challenger would have to prove that the state did not have a rational basis for enacting this statute.
- B:** The challenger would have to prove that the state did not have a compelling need for this statute or that it had less restrictive means by which it could satisfy that need.
- C:** The state would have to prove that it had a rational basis for enacting this statute.
- D:** The state would have to prove that it had an important government interest for enacting this statute and that the means by which the statute satisfied that interest were narrowly tailored.

The explanation for the answer is:

Answer D is correct. Generally, the content-based regulation of speech is subject to strict scrutiny. However, where a statute regulates conduct incidental to speech, the Court has allowed the government to adopt content-neutral, time, place, and manner regulations. If the regulation involves a public forum, it will be upheld if it is narrowly tailored to achieve an important government interest. Here, the statute is a content-neutral, time, place, and manner regulation involving a public forum. Therefore, answer D correctly states the proper test and places the burden of proof on the correct party.

Answer A is incorrect because rational basis is too low of a standard to apply to a statute regulating conduct incidental to speech. Answer B is incorrect because it provides the strict scrutiny test used when a statute burdens speech because of its content, which is not occurring in this case. Additionally, it also places the burden of proof on the incorrect party. C is incorrect because not only is rational basis the wrong level of scrutiny for a statute regulating conduct incidental to speech, but under rational basis review the state does not have the burden of proof.

Question 126 - Constitutional Law - Judicial Review

The question was:

The owner of a milk container manufacturing firm sought to focus public attention on the milk packaging law of a certain state in order to have it repealed. On a weekday at 12:00 noon, he delivered an excited, animated, and loud harangue on the steps of the State Capitol in front of the main entryway. An audience of 200 onlookers, who gathered on the steps, heckled him and laughed as he delivered his tirade. The owner of the manufacturing firm repeatedly stated, gesturing expressively and making faces, that "the g-ddamned milk packaging law is stupid," and that "I will strangle every one of those g-ddamned legislators I can get hold of because this law they created proves they are all too dumb to live." After about fifteen minutes the owner of the milk container manufacturing firm stopped speaking, and the amused crowd dispersed.

There is one relevant statute of the state which prohibits "all speech making, picketing, and public gatherings of every sort on the Capitol steps in front of the main entryway between 7:45 a.m.-8:15 a.m., 11:45 a.m.-12:15 p.m., 12:45 p.m.-1:15 p.m., and 4:45 p.m.-5:15 p.m. on Capitol working days."

Which of the following possible plaintiffs other than the owner of the milk container manufacturing firm would be most likely to obtain an adjudication in a federal court on the validity of the "Capitol Steps" statute?

- A:** A state taxpayer in the highest tax bracket
- B:** A politician intending to make a campaign speech on the Capitol steps during a prohibited time
- C:** A legislator who voted against the statute because he thought it unconstitutional
- D:** An organization whose purpose was "to seek judicial invalidation of unconstitutional laws"

The explanation for the answer is:

B is the correct answer. In order to have standing, a party must have an injury that is caused by the law being challenged and that can be redressed by the relief sought--here invalidation of the statute. A politician intending to make a speech on the Capitol steps during a prohibited time would have an injury that is imminent enough to create standing. A is incorrect because taxpayers do not have the kind of concrete injury to challenge a general statute unrelated to a tax the taxpayer is subject to. C is incorrect because the legislator who voted against the statute does not have a legally cognizable injury. D is incorrect because an organization that seeks to invalidate unconstitutional laws has suffered no injury.

Question 128 - Constitutional Law - Individual Rights

The question was:

The owner of a milk container manufacturing firm sought to focus public attention on the milk packaging law of a certain state in order to have it repealed. On a weekday at 12:00 noon, he delivered an excited, animated, and loud harangue on the steps of the State Capitol in front of the main entryway. An audience of 200 onlookers, who gathered on the steps, heckled him and laughed as he delivered his tirade. The owner of the manufacturing firm repeatedly stated, gesturing expressively and making faces, that "the g-ddamned milk packaging law is stupid," and that "I will strangle every one of those g-ddamned legislators I can get hold of because this law they created proves they are all too dumb to live." After about fifteen minutes the owner of the milk container manufacturing firm stopped speaking, and the amused crowd dispersed.

There are two relevant statutes of the state. The first statute prohibits "all speech making, picketing, and public gatherings of every sort on the Capitol steps in front of the main entryway between 7:45 a.m.-8:15 a.m., 11:45 a.m.-12:15 p.m., 12:45 p.m.-1:15 p.m., and 4:45 p.m.-5:15 p.m. on Capitol working days."

A second state statute punished "any person who shall intentionally threaten the life or safety of any public official for any act which he performed as part of his public office." Which of the following statements is correct concerning the possible punishment of the owner of the milk container manufacturing firm under the second statute?

- A:** The statute is unconstitutional on its face.
- B:** The statute is constitutional on its face, but the owner of the manufacturing firm could not constitutionally be punished under it for this speech.
- C:** The owner of the manufacturing firm could constitutionally be punished under the statute for his speech.
- D:** The owner of the manufacturing firm could constitutionally be punished under the statute for his speech, but only if one or more legislators were actually present when he delivered it.

The explanation for the answer is:

B is the correct answer. The statute would be constitutional on its face because the state may criminalize threats of harm. However, the owner of the manufacturing firm could not constitutionally be punished under it for this speech because the circumstances surrounding it demonstrate that his speech was not a real threat of harm to any public official, but was instead the rantings of a frustrated protester.

A is incorrect because the state can constitutionally prohibit threats of harm. C is not correct because the owner of the manufacturing firm could not constitutionally be punished under the statute for his speech since it was clear he did not really intend to harm anyone. D is not correct because the presence of one of the legislators would not have made the speech any more of a real threat. In fact, if the owner of the manufacturing firm made the speech with the legislator present without strangling the legislator, that would only show that the speech was not really a threat of harm.

Question 129 - Constitutional Law - Individual Rights

The question was:

The owner of a milk container manufacturing firm sought to focus public attention on the milk packaging law of a certain state in order to have it repealed. On a weekday at 12:00 noon, he delivered an excited, animated, and loud harangue on the steps of the State Capitol in front of the main entryway. An audience of 200 onlookers, who gathered on the steps, heckled him and laughed as he delivered his tirade. The owner of the manufacturing firm repeatedly stated, gesturing expressively and making faces, that "the g-ddamned milk packaging law is stupid," and that "I will strangle every one of those g-ddamned legislators I can get hold of because this law they created proves they are all too dumb to live." After about fifteen minutes the owner of the milk container manufacturing firm stopped speaking, and the amused crowd dispersed.

There are three relevant statutes of the state. The first statute prohibits "all speech making, picketing, and public gatherings of every sort on the Capitol steps in front of the main entryway between 7:45 a.m.-8:15 a.m., 11:45 a.m.-12:15 p.m., 12:45 p.m.-1:15 p.m., and 4:45 p.m.-5:15 p.m. on Capitol working days."

A second state statute punishes "any person who shall intentionally threaten the life or safety of any public official for any act which he performed as part of his public office."

A third state statute, enacted in 1880, makes criminal "the utterance in any public place of any blasphemy or sacrilege." Assume that there have been only a few recorded prosecutions under the 1880 statute. The milk container manufacturing firm owner is charged with violating its proscriptions. The charge is based wholly on the speech he delivered on the steps of the State Capitol. Which of the following constitutional defenses to this prosecution under the 1880 statute would be the *LEAST* likely to succeed?

- A:** This statute is vague and, therefore, violates the due process clause of the Fourteenth Amendment.
- B:** This statute is an establishment of religion and, therefore, violates the due process clause of the Fourteenth Amendment.
- C:** Application of this statute to the owner of the manufacturing firm denies him equal protection of the laws in violation of the Fourteenth Amendment.
- D:** Application of this statute to the owner of the manufacturing firm denies him freedom of speech in violation of the Fourteenth Amendment.

The explanation for the answer is:

C is the correct answer. It is very difficult to establish an equal protection violation in selective prosecution, particularly since there have been some recorded prosecutions under the statute since its enactment. A is strong defense because the terms "blasphemy or sacrilege" would likely be considered unconstitutionally overbroad or vague. B is also strong defense because blasphemy and sacrilege are "crimes" against religion, and for the state to prosecute them would be for the state to support religion. D is strong defense because the due process clause of the Fourteenth Amendment protects the rights in the First Amendment from interference by state governments. Since the law at issue is content based, and the state cannot limit speech on the basis of content unless the limitation satisfies strict scrutiny, this defense would probably succeed.

Question 135 - Constitutional Law - Individual Rights

The question was:

A real estate company acquired a large tract of land upon which the company developed a mobile home subdivision. The tract was divided into 60 lots, appropriate utilities were installed, and a plat of the entire tract, including a Declaration of Restrictions, was properly drawn and recorded. The Declaration of Restriction included the following: "3. Ownership and/or occupancy are restricted to persons 21 years of age or over, one family per lot." As the separate lots were sold, the deed to each lot included the following provision: "As shown on recorded plat [properly identified by page and plat book reference] and subject to the restrictions therein contained." One of the lots was purchased by a man, who now resides in a mobile home on the lot together with his wife and two children, aged 11 and 13. Other lot owners in the subdivision brought action against the man to enjoin further occupancy by the children under 21 years of age. If judgment is for the man, the issue that most likely will determine the case will be whether

A: the mobile home is treated as personalty or realty.

B: the restriction constitutes an unlawful restraint on alienation.

C: enforcement of the restriction is considered a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

D: the terms of the restriction are expressly repeated verbatim in the man's deed.

The explanation for the answer is:

C is the correct answer. While normally equal protection does not apply to private conduct, if the government affirmatively facilitates unconstitutional activity, the conduct is subject to review. Therefore, if the lot owners are seeking to enforce an age-based restrictive covenant via the courts, the entanglement exception applies and an equal protection review of the classification is triggered. A is incorrect because it is irrelevant whether the mobile home is personal or real property since the restriction is on the lot, and the lot is clearly real property. B is incorrect because the man is not trying to sell or buy the property; it is his children's continued occupancy that is at issue. D is incorrect because the terms of the restriction need not be repeated verbatim in order for the restriction to apply.

Question 139 - Constitutional Law - Separation of Powers

The question was:

The Federal Automobile Safety Act established certain safety and performance standards for all automobiles manufactured in the United States. The Act creates a five-member "Automobile Commission" to investigate automobile safety, to make recommendations to Congress for new laws, to make further rules establishing safety and performance standards, and to prosecute violations of the act. The chairman is appointed by the President, two members are selected by the President pro tempore of the Senate, and two by the Speaker of the House of Representatives.

A minor United States car manufacturer seeks to enjoin enforcement of the Commission's rules.

The best argument that the car manufacturer can make is that

- A:** legislative power may not be delegated by Congress to an agency in the absence of clear guidelines.
- B:** the commerce power does not extend to the manufacture of automobiles not used in interstate commerce.
- C:** the car manufacturer is denied due process of law because it is not represented on the Commission.
- D:** the Commission lacks authority to enforce its standards because not all of its members were appointed by the President.

The explanation for the answer is:

D is the correct answer. Congress has the power to create agencies and to delegate power to those agencies. However, Congress cannot appoint members of a body with administrative or enforcement powers. Since enforcement is an executive power, the fact that some of the commission is appointed by Congress voids that power. Thus, the best argument the car manufacturer has is that the appointments by Congress would prohibit the Commission from being able to enforce its standards.

A is incorrect because Congress can delegate legislative power, and the statute provides sufficient guidelines to the Commission. B is incorrect because the commerce power would clearly reach the manufacture of automobiles, which are in the stream of interstate commerce. C is incorrect because business regulations will almost always be upheld, and representation on the Commission is not required.

Question 139 - Constitutional Law - Separation of Powers

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A is incorrect because Congress can delegate legislative power, and the statute provides sufficient guidelines to the Commission. B is incorrect because the commerce power would clearly reach the manufacture of automobiles, which are in the stream of interstate commerce. C is incorrect because business regulations will almost always be upheld, and representation on the Commission is not required.

Question 140 - Constitutional Law - Separation of Powers

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A minor United States car manufacturer seeks to enjoin enforcement of the Commission's rules.

The appropriate decision for the court is to

- A:** allow the Commission to continue to investigating automobile safety and making recommendations to Congress.
- B:** allow the Commission to prosecute violations of the act but not allow it to issue rules.
- C:** forbid the Commission to take any action under the act.
- D:** order that all members of the Commission be appointed by the President by and with the advice and consent of the Senate.

The explanation for the answer is:

A is the correct answer. The court should allow the Commission to continue investigating automobile safety and making recommendations to Congress--two legislative functions. B is incorrect because Congress cannot appoint members of a body with administrative or enforcement powers. Since enforcement is an executive power, the fact that some of the commission is appointed by Congress voids that power. C is incorrect because the Commission may exercise the powers that Congress had the ability to delegate. Congress has a broad investigatory power, and since that power is not uniquely confined to Congress, it can be delegated to the agency. Additionally, the appointment of the commission's president may be delegated to the President. D is incorrect because the court does not have the power to rewrite the Act. The court can only invalidate the portions that are unconstitutional.

Question 156 - Constitutional Law - Separation of Powers

The question was:

In 1993 a woman was appointed to a tribunal established pursuant to a congressional act. The tribunal's duties were to review claims made by veterans and to make recommendations to the Veterans Administration on their merits. Congress later abolished the tribunal and established a different format for review of such claims. The woman was offered a federal administrative position in the same bureau at a lower salary. She thereupon sued the government on the ground that Congress may not remove a federal judge from office during good behavior nor reduce her compensation during her continuance in office. Government attorneys filed a motion to dismiss the action. The court should

- A:** deny the motion because of the independence of the federal judiciary constitutionally guaranteed by Article III.
- B:** deny the motion, because the woman has established a property right to her federal employment on the tribunal.
- C:** grant the motion, because the woman lacked standing to raise the question.
- D:** grant the motion, because the woman was not a judge under Article III and is not entitled to life tenure.

The explanation for the answer is:

D is the correct answer. Congress has the power to create special Courts under Article I, and the judges for those courts do not have the protections of Article III, such as life tenure and the guarantee of no reduction in salary. The tribunal at issue here was an Article I tribunal. Thus, the woman was an Article I judge and was not entitled to life tenure. A is not correct because the woman was not an Article III judge, and because Congress can create judicial positions in special tribunals that are not Article III positions. B is incorrect because there is no general property right to government employment. C is incorrect because the woman did have standing - she had an injury caused by the abolition of her job.

Question 174 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A member of the legislature of a state is prosecuted in federal court for a violation of the Federal Securities Act arising out of the activities of a state-owned corporation. The legislator's defense includes a claim that the alleged wrongful acts were committed in the course of legislative business and are immune from scrutiny.

Which of the following is the strongest constitutional argument supporting the legislator?

- A:** Because of doctrines of federalism, federal law generally cannot be applied to state legislators acting in the course of their official duties.
- B:** State legislators enjoy the protection of the speech and debate clause of the United States Constitution.
- C:** A federal court must follow state law respecting the scope of legislative immunity.
- D:** To apply the Federal Securities Act to state legislators would violate the due process clause.

The explanation for the answer is:

A is the correct answer. One of the basic principles of federalism is that the federal government may not commandeer the state governmental process. Therefore, federal law generally cannot be applied to state legislators acting in the course of their official duties.

B is incorrect because the Speech or Debate Clause of the U.S. Constitution does not apply to state legislators. C is incorrect because under the Supremacy Clause, state law regarding legislative immunity cannot conflict with a validly enacted federal law. D is incorrect because the Act does not infringe upon any fundamental right of state legislators.

Question 175 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A member of the state legislature prosecuted in federal court for a violation of the Federal Securities Act arising out of the activities of a state-owned corporation. A legislator's defense includes a claim that the alleged wrongful acts were committed in the course of legislative business and are immune from scrutiny.

Which of the following is the strongest argument against the legislator's constitutional defense?

- A:** Congress has plenary power under the commerce clause.
- B:** Congress may impose liability on state legislators as a means of guaranteeing a republican form of government.
- C:** Congress does not significantly interfere with state government by applying this law to state legislators.
- D:** Congress may impose liability on state legislators by virtue of the necessary and proper clause.

The explanation for the answer is:

C is the correct answer. Because the potential constitutional concern with applying the law is federalism (the federal government usurping control from the individual states), the strongest argument against the constitutional defense would be that Congress does not significantly interfere with state government by applying the law to state legislators.

A is incorrect because it misstates Congress's power under the Commerce Clause - while Congress's power under the Commerce Clause might be the authority for creating the statute, it would not be a special source of authority for applying the statute to state legislators. B is incorrect because it is not necessary to a republican form of government that state legislators be liable for the violations of state-owned businesses. D is incorrect because the Necessary and Proper Clause is not an independent source of Congressional power.

Question 217 - Constitutional Law - Individual Rights

The question was:

A newly-enacted state criminal statute provides, in its entirety, "No person shall utter to another person in a public place any annoying, disturbing or unwelcome language." The defendant followed an elderly woman for three blocks down a public street, yelling in her ear offensive four-letter words. The woman repeatedly asked the defendant to leave her alone, but he refused.

In the subsequent prosecution of the defendant, the first under this statute, the defendant

A: can be convicted.

B: cannot be convicted, because speech of the sort described here may not be punished by the state because of the First and Fourteenth Amendments.

C: cannot be convicted, because, though his speech here may be punished by the state, the state may not do so under this statute.

D: cannot be convicted, because the average user of a public street would think his speech/action here was amusing and ridiculous rather than "annoying," etc.

The explanation for the answer is:

C is the correct answer. In this instance, the statute's attempt to regulate speech is unconstitutionally overbroad and vague because the terms annoying, disturbing, and unwelcome could also apply to protected speech. A is incorrect because the statute is unconstitutional. B is incorrect because the speech could be punished if the statute was more narrowly focused. D is incorrect because what an average user would think is not sufficient to prevent a conviction if the statute is constitutional.

Question 226 - Constitutional Law - Separation of Powers

The question was:

Congressional legislation authorizing marriages and divorces as a matter of federal law on prescribed terms and conditions could most easily be upheld if it

- A:** applied only to marriages and divorces in which at least one of the parties is a member of the armed forces.
- B:** applied only to marriages performed by federal judges and to divorces granted by federal courts.
- C:** implemented an executive agreement seeking to define basic human rights.
- D:** applied only to marriages and divorces in the District of Columbia.

The explanation for the answer is:

D is the correct answer. Congress has the power to make all the laws for the District of Columbia under the Constitution. A is incorrect because it is a more tenuous, implied power of Congress to raise and support the armed forces and navy. B is incorrect because federal judges and federal courts cannot exercise these powers without some kind of initial grant. C is incorrect because the executive branch does not have the power to define basic human rights, either.

Question 228 - Constitutional Law - Individual Rights

The question was:

Assume you are counsel to the state legislative committee that is responsible for real estate laws in your state.

The committee wants you to draft legislation to make all restrictions on land use imposed by deeds (now or hereafter recorded) unenforceable in the future so that public land use planning through zoning will have exclusive control in matters of land use. Which of the following is *LEAST* likely to be a consideration in the drafting of such legislation?

- A:** Compensation for property rights taken by public authority
- B:** Impairment of contract
- C:** Sovereign immunity
- D:** Police power

The explanation for the answer is:

C is the correct answer. Sovereign immunity is the principle that the state or federal government cannot be sued for damages. That is unlikely to be a consideration in drafting legislation on private land use. A is incorrect because the invalidation of restrictions is an impairment of property rights which might require compensation. B is incorrect because those restrictions are also contracts, and their legislative invalidation could be an unconstitutional impairment of contract. D is incorrect because zoning is an exercise of the state's police powers.

Question 234 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Congress provides by statute that any state that fails to prohibit automobile speeds of over 55 miles per hour on highways within the state shall be denied all federal highway construction funding. One of the richest and most highway-oriented states in the country refuses to enact such a statute.

The strongest argument that can be made in support of the constitutionality of this federal statute is that

A: the states ceded their authority over highways to the national government when the states accepted federal grants to help finance their highways.

B: the federal government can regulate the use of the state highways without limitation because the federal government paid for some of their construction costs.

C: Congress could reasonably believe that the 55 mile-an-hour speed limit will assure that the federal money spent on highways results in greater benefit than harm to the public.

D: a recent public opinion survey demonstrated that 90 percent of the people in this country support a 55 mile-an-hour speed limit.

The explanation for the answer is:

C is the correct answer. Congress has plenary spending power, and may impose reasonable conditions upon acceptance of federal funds. There is a nexus between safety, the speed limit, and the use of federal funds on the highways. Therefore the speeding limit is constitutional. A is incorrect because the states did not cede their authority over highways to the national government, although it must accept reasonable conditions attached to federal funds as long as it is free to accept or reject those funds. B is not correct because the federal government does not automatically control everything its funds help create. D is incorrect because popular support cannot validate an unconstitutional action.

Question 235 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Congress provides by statute that any state that fails to prohibit automobile speeds of over 55 miles per hour on highways within the state shall be denied all federal highway construction funding. One of the richest and most highway-oriented states in the country refuses to enact such a statute.

The federal statute relating to disbursement of highway funds conditioned on the 55 mile-an-hour speed limit is probably

- A:** unconstitutional.
- B:** constitutional only on the basis of the spending power.
- C:** constitutional only on the basis of the commerce power.
- D:** constitutional on the basis of both the spending power and the commerce power.

The explanation for the answer is:

D is the correct answer. Under the Commerce Clause, Congress may regulate the channels of interstate commerce, which would include the federal highway system. Additionally, Congress may regulate through spending as long as there is a nexus between the general welfare, the imposed condition, and the purpose of the federal funds. A speed limit of 55 miles per hour is reasonably related to highway safety, and the funds are for highway repair. Therefore, the statute is constitutional under both powers.

A is incorrect because the statute is constitutional. B is incorrect because the Commerce Clause gives Congress broad power to regulate federal highways, a means of interstate commerce. C is incorrect because the spending power gives Congress broad power to determine how federal funds are spent for the general welfare.

Question 258 - Constitutional Law - Individual Rights

The question was:

A city adopted an ordinance providing that street demonstrations involving more than 15 persons may not be held in commercial areas during "rush" hours. "Exceptions" may be made to the prohibition "upon 24-hour advance application for an approval by the police department." The ordinance also imposes sanctions on any person "who shall, without provocation, use to or of another, and in his presence, opprobrious words or abusive language tending to cause a breach of the peace." The ordinance has not yet had either judicial or administrative interpretation. Which of the following is the strongest argument for the unconstitutionality of both parts of the ordinance on their face?

- A:** No type of prior restraint may be imposed on speech in public places.
- B:** Laws regulating, by their terms, expressive conduct or speech may not be overbroad or unduly vague.
- C:** The determination as to whether public gatherings may be lawfully held cannot be vested in the police.
- D:** The right of association in public places without interference is assured by the First and Fourteenth Amendments.

The explanation for the answer is:

B is the correct answer. Laws that are overbroad or vague on their face will be struck down. This ordinance prohibiting certain demonstrations, except upon prior approval by the police, is overbroad because the terms "opprobrious words" and "abusive language" may include protected speech. A is incorrect because the ordinance is not a prior restraint, but rather a time, place, and manner restriction. C is incorrect because the police can make determinations as long as there are defined standards. D is incorrect because the right of association is not absolute, and restrictions are allowed when justified by a compelling state interest.

Question 260 - Constitutional Law - Individual Rights

The question was:

While the defendant was in jail on a pending charge, his landlord called the police because rent had not been paid and because he detected a disagreeable odor coming from the defendant's apartment into the hallways.

The police officer who responded to the call knew that the defendant was in jail. He recognized the stench coming from the defendant's apartment as that of decomposing flesh and, without waiting to obtain a warrant and using the landlord's passkey, entered the apartment with the landlord's consent. The lease to these premises gave the landlord a right of entry, at any reasonable hour, for the purpose of making repairs. The police officer found a large trunk in the bedroom which seemed to be the source of the odor. Upon breaking it open, he found the remains of the defendant's former mistress.

If the defendant undertakes to challenge the search of his apartment, he has

- A:** standing, because the items seized in the search were incriminating in nature.
- B:** standing, because he still has a sufficient interest in the apartment even while in jail.
- C:** no standing, because his landlord authorized the search.
- D:** no standing, because he was out of the apartment when it occurred and had not paid his rent.

The explanation for the answer is:

B is the correct answer. The defendant has standing because he still has a sufficient interest in his apartment even while he is in jail. He has not abandoned it or the property inside. A is incorrect because the injury for standing has to be to the expectation of privacy, not just to the damage the seized items could do. C is incorrect because the landlord could not waive the defendant's Fourth Amendment rights. D is incorrect because even though he was not there and had not paid rent, he still had a privacy interest in the apartment.

Question 271 - Constitutional Law - Individual Rights

The question was:

A high priest of a small cult of Satan worshippers lived in a small city. As a part of the practice of their religious beliefs, a cat was required to be sacrificed to the glory of Satan after a live dissection of the animal in which it endured frightful pain. In the course of such a religious sacrifice, the priest was arrested on the complaint of the local Humane Society and charged under a statute punishing cruelty to animals. On appeal, a conviction of the priest probably will be

- A:** sustained on the grounds that belief in or worship of Satan does not enjoy constitutional protection.
- B:** sustained on the grounds that sincere religious belief is not an adequate defense on these facts.
- C:** overturned on the grounds that the constitutionally guaranteed freedom of religion and its expression was violated.
- D:** overturned on the grounds that the beliefs of the cult members in the need for the sacrifice might be reasonable, and their act was religious.

The explanation for the answer is:

B is the correct answer. The priest's conviction will probably be sustained because sincere religious belief is not a defense to this statute. A statute that is neutral on religion and that has general applicability need only be rationally related to a legitimate government interest in order to be applied to a person even if it impairs a religious practice. This statute is neutral and applies equally to all members of the public. Furthermore, it is rationally related to preventing cruelty to animals, a legitimate government interest.

A is incorrect because all religions, including a belief in or worship of Satan, must be treated equally under the free exercise clause. C is incorrect because the right to free expression was not violated for the reasons stated above. D is incorrect because sincerity of religious belief is not a defense to a neutral, generally applicable state law.

Question 273 - Constitutional Law - Separation of Powers

The question was:

An appropriations act passed by Congress over the President's veto directs that one billion dollars "shall be spent" by the federal government for the development of a new military weapons system, which is available only from the Arms Corporation. On the order of the President, the Secretary of Defense refuses to authorize a contract for purchase of the weapons system. The Arms Corporation sues the Secretary of Defense alleging an unlawful withholding of these federal funds.

The strongest constitutional argument for the Arms Corporation is that

- A:** passage of an appropriation over a veto makes the spending mandatory.
- B:** Congress' power to appropriate funds includes the power to require that the funds will be spent as directed.
- C:** the President's independent constitutional powers do not specifically refer to spending.
- D:** the President's power to withhold such funds is limited to cases where foreign affairs are directly involved.

The explanation for the answer is:

B is the correct answer. While not an independent source of power, the Necessary and Proper Clause does give Congress the power to make all laws necessary and proper for carrying out any power granted to any branch of the federal government. Thus, the strongest argument that the Arms Corporation has is that Congress's power to appropriate funds to the executive branch also includes the power to direct how the funds are spent.

A is incorrect because passage of any provision over a veto does not give that provision any special effect other than that it makes the provision a law. C is incorrect because the President has implied powers as well, which may include being able to direct the spending of the executive branch. D is incorrect because, although the President has broad power to direct foreign affairs, it is not the only power that might carry an implied power to withhold funding.

Question 284 - Constitutional Law - Individual Rights

The question was:

A state has enacted a new election code designed to increase voter responsibility in the exercise of the franchise and to enlarge citizen participation in the electoral process. None of its provisions conflicts with federal statutes.

Which of the following is the strongest reason for finding unconstitutional a requirement in the state code that each voter must be literate in English?

- A:** The requirement violates Article I Section 2 of the Constitution, which provides that representatives to Congress be chosen "by the People of the several States."
- B:** The requirement violates Article I, Section 4 of the Constitution, which gives Congress the power to "make or alter" state regulations providing for the "Times" and "Manner" of holding elections for senators and representatives.
- C:** the requirement violates the due process clause of the Fourteenth Amendment.
- D:** The requirement violates the equal protection clause of the Fourteenth Amendment.

The explanation for the answer is:

D is the correct answer. Literacy requirements have been used in the past to disenfranchise minority voters as a class. English proficiency is not a perfect proxy for being politically informed, and it is more likely that political minorities will be less proficient in English. Under Equal Protection, these types of restrictions would be unconstitutional.

A is incorrect because the literacy requirement does not impair the choice of representatives by the people of the several states. B is incorrect because the literacy requirement is not a time or manner provision for holding elections. C is incorrect because the literacy requirement is essentially a classification, and so Equal Protection is the more appropriate analysis. The major factor to consider in deciding whether to apply Equal Protection analysis versus Due Process analysis is whether the law in question creates a classification. If, as in this fact pattern, the law does create a classification, Equal Protection is more appropriate.

Question 294 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A state provides by statute, "No person may be awarded any state construction contract without agreeing to employ only citizens of the state and of the United States in performance of the contract."

In evaluating the constitutionality of this state statute under the supremacy clause, which of the following would be most directly relevant?

- A:** The general unemployment rate in the nation.
- B:** The treaties and immigration laws of the United States.
- C:** The need of the state for this particular statute.
- D:** The number of aliens currently residing in the state.

The explanation for the answer is:

B is the correct answer. The supremacy clause provides that federal law will override inconsistent state laws. So in a supremacy clause analysis of this statute, the most important consideration among these four choices are the treaties and immigration laws of the United States. If they conflict with this statute, they will override it. A is incorrect because only federal laws prevail, not federal conditions. C is incorrect because the need of the state for this statute is irrelevant if it conflicts with validly enacted federal law. D is incorrect because federal laws are the only relevant consideration.

Question 295 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A state provides by statute, "No person may be awarded any state construction contract without agreeing to employ only citizens of the state and of the United States in performance of the contract."

If the state statute is attacked as violating the commerce clause, which of the following defenses is the *WEAKEST*?

- A:** The statute will help protect the workers of the state from competition by foreign workers.
- B:** The statute will help assure that workers with jobs directly affecting the performance of public contracts are dedicated to their jobs.
- C:** The statute will help assure a continuously available and stable work force for the execution of public contracts.
- D:** The statute will help assure that only the most qualified individuals work on public contracts.

The explanation for the answer is:

A is the correct answer. Where Congress has not regulated a subject, a state's regulation of local aspects of interstate commerce is valid if the regulation: (1) does not discriminate against out-of-state parties to benefit local economic interests, and (2) is not unduly burdensome. Since the negative implications of the Commerce Clause prohibit the discrimination against out-of-state interests to protect local interests, the argument that the statute protects the workers of the state from competition by foreign workers would be the weakest possible defense to a Commerce Clause attack.

B is not correct because it provides a non-discriminatory reasoning and the incidental burden created does not outweigh the statute's legitimate benefits to the state. C is incorrect because the benefit of a stable workforce is a legitimate benefit to the state that could outweigh the incidental burden on interstate commerce. D is incorrect because ensuring that qualified people perform state contracts is a legitimate benefit that could outweigh the incidental burden on interstate commerce.

Question 307 - Constitutional Law - Judicial Review

The question was:

As part of a comprehensive federal aid-to-education program, Congress included the following provisions as conditions for state receipt of federal funds: (1) Whenever textbooks are provided to students without charge, they must include no religious instruction and must be made available on the same terms to students in all public and private schools accredited by the state educational authority. (2) Salary supplements can be paid to teachers in public and private schools, up to ten percent of existing salary schedules, where present compensation is less than the average salary for persons of comparable training and experience, provided that no such supplement is paid to any teacher who instructs in religious subjects. (3) Construction grants can be made toward the cost of physical plant at private colleges and universities, provided that no part of the grant is used for buildings in which instruction in religious subject matters is offered.

A federal taxpayer challenges the provision that allows the distribution of free textbooks to students in a private school where religious instruction is included in the curriculum. On the question of the adequacy of the taxpayer's standing to raise the constitutional question, the most likely result is that standing will be

- A:** sustained, because any congressional spending authorization can be challenged by any taxpayer.
- B:** sustained, because the challenge to the exercise of congressional spending power is based on a claimed violation of specific constitutional limitations on the exercise of such power.
- C:** denied, because there is insufficient nexus between the taxpayer and the challenged expenditures.
- D:** denied, because, in the case of private schools, no state action is involved.

The explanation for the answer is:

B is the correct answer. While taxpayers generally lack standing to challenge general spending statutes, a taxpayer will have standing where the spending violates the Establishment Clause. Because the taxpayer is alleging that the provision is advancing religion, there is a possible violation of a specific limitation on Congressional spending and the taxpayer will have standing. A is incorrect because taxpayers generally do not have standing to challenge governmental expenditures. C is incorrect because in the case of Establishment Clause challenges, the taxpayer does not need to show a special nexus in order to have standing. D is incorrect because the distribution of books paid for by federal funds is state action.

Question 308 - Constitutional Law - Individual Rights

The question was:

As part of a comprehensive federal aid-to-education program, Congress included the following provisions as conditions for state receipt of federal funds: (1) Whenever textbooks are provided to students without charge, they must include no religious instruction and must be made available on the same terms to students in all public and private schools accredited by the state educational authority. (2) Salary supplements can be paid to teachers in public and private schools, up to ten percent of existing salary schedules, where present compensation is less than the average salary for persons of comparable training and experience, provided that no such supplement is paid to any teacher who instructs in religious subjects. (3) Construction grants can be made toward the cost of physical plant at private colleges and universities, provided that no part of the grant is used for buildings in which instruction in religious subject matters is offered.

A federal taxpayer challenges the salary supplements for teachers in private schools where religious instruction is included in the curriculum. On the substantive constitutional issue, the most likely result is that the salary supplements will be

- A:** sustained, because the statute provides that no supplements will be made to teachers who are engaged in any religious instruction.
- B:** sustained, because to distinguish between private and public school teachers would violate the religious freedom clause of the First Amendment.
- C:** held unconstitutional, because some religions would benefit disproportionately.
- D:** held unconstitutional, because the policing of the restriction would amount to an excessive entanglement with religion.

The explanation for the answer is:

D is the correct answer. The statute stipulates the supplements are not to be paid to a teacher who instructs in religious subjects. To enforce this restriction, the state would have to monitor the curriculum of each teacher receiving a supplement to ensure they were not instructing on a religious subject. Thus, enforcement would create an excessive entanglement with religion and violate the Establishment Clause. A and B are incorrect because the statute's provision restricting who may receive the supplements must still be enforced, and the enforcement will lead to an excessive entanglement with religion. C is incorrect because there is no indication that any religion is disproportionately benefiting because the supplements do not go to teachers of religious topics.

Question 316 - Constitutional Law - Individual Rights

The question was:

A state accredits both public and private schools, licenses their teachers, and supplies textbooks on secular subjects to all such schools. A private school that offers elementary and secondary education in the state denies admission to all non-Caucasians. In a suit to enjoin as unconstitutional the continued racially exclusionary admissions policy of the school, which of the following is the strongest argument *AGAINST* the school?

- A:** Because education is a public function, the school may not discriminate on racial grounds.
- B:** The state is so involved in school regulation and support that the equal protection clause of the Fourteenth Amendment is applicable to the school.
- C:** The state is constitutionally obligated to eliminate segregation in all public and private educational institutions within the state.
- D:** Any school with teachers who are licensed by the state is forbidden to discriminate on racial grounds.

The explanation for the answer is:

B is the correct answer. The Constitution prohibits the state from encouraging, authorizing, or participating in racial discrimination. However, this prohibition only applies to private parties in specific situations, such as the performance of a traditionally exclusive public function or where there is significant state involvement in the private action. Therefore, if the state was substantially involved in school regulation, the school would be prohibited from racial discrimination under the Fourteenth Amendment. A is incorrect because the performance of a public function does not make an institution a state actor unless the action performed has traditionally only been performed by the state. C is incorrect because the states are not constitutionally required to outlaw discrimination, they must only refrain from encouraging or authorizing discrimination. D is incorrect because licensing alone does not qualify as "significant involvement" by the state.

Question 327 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A state statute requires that all buses which operate as common carriers on the highways of the state shall be equipped with seat belts for passengers. An interstate carrier challenges the validity of the statute and the right of the state to make the requirement. What is the best basis for a constitutional challenge by the carrier?

- A:** Violation of the due process clause of the Fourteenth Amendment
- B:** Violation of the equal protection clause of the Fourteenth Amendment
- C:** Unreasonable burden on interstate commerce
- D:** Difficulty of enforcement

The explanation for the answer is:

C is the correct answer. State regulation of commerce will be unconstitutional if it is unduly burdensome on interstate commerce. If the burden on interstate commerce outweighs the legitimate local benefit created by the regulation, the regulation is unduly burdensome. Because one state is placing a limit on interstate carriers, the best argument is that the limit is a burden on interstate commerce in violation of the commerce clause. A is incorrect because the statute does not impair a fundamental right. B is incorrect because the statute does not make a classification. D is incorrect because difficulty of enforcement is not a constitutional challenge.

Question 328 - Constitutional Law - Individual Rights

The question was:

A state college instructor was discharged because of her refusal to comply with a state statute requiring public employees to swear or affirm that they will (1) "uphold and defend" the state and federal constitutions and (2) "oppose the overthrow" of the state or federal governments "by force, violence, or by any improper method." The statute had previously been held constitutional by the state supreme court. The instructor filed a complaint in federal district court alleging the unconstitutionality of the statute and seeking an injunction and damages.

Which of the following is the state's strongest argument for sustaining the validity of the statute?

- A:** Government employment is a privilege, not a right.
- B:** The oath as a whole is only a commitment to abide by constitutional processes.
- C:** The First and Fourteenth Amendments permit a state to fix the conditions of state employment.
- D:** The state has a compelling need to keep disloyal persons out of governmental positions of trust.

The explanation for the answer is:

B is the correct answer. The best argument in favor of supporting the discharge is that the oath as a whole is only a commitment to abide by constitutional processes, which the instructor was required to abide by anyway. A is incorrect because government employment cannot be conditioned on relinquishing a constitutional right. C is incorrect because the First and Fourteenth Amendments limit the ability of the state to impact its employees' rights of speech and association. D is incorrect because the state only has a compelling need to ensure that its functions are properly performed, and this interest must be balanced against the rights of its employees to speak as citizens.

Question 328 - Constitutional Law - Individual Rights

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Which of the following is the state's strongest argument for sustaining the validity of the statute?

- A:** Government employment is a privilege, not a right.
- B:** The oath as a whole is only a commitment to abide by constitutional processes.
- C:** The First and Fourteenth Amendments permit a state to fix the conditions of state employment.
- D:** The state has a compelling need to keep disloyal persons out of governmental positions of trust.

The explanation for the answer is:

B is the correct answer. The best argument in favor of supporting the discharge is that the oath as a whole is only a commitment to abide by constitutional processes, which the instructor was required to abide by anyway. A is incorrect because government employment cannot be conditioned on relinquishing a constitutional right. C is incorrect because the First and Fourteenth Amendments limit the ability of the state to impact its employees' rights of speech and association. D is incorrect because the state only has a compelling need to ensure that its functions are properly performed, and this interest must be balanced against the rights of its employees to speak as citizens.

Question 329 - Constitutional Law - Individual Rights

The question was:

All lawyers practicing in a particular state must be members of the State Bar Association, by order of the state supreme court. Several state officials serve on the Bar Association's Board of Bar Governors. The Board of Bar Governors authorizes the payment of dues for two staff members to the Cosmopolitan Club, a private dining club licensed to sell alcoholic beverages. The Cosmopolitan Club is frequented by affluent businessmen and professionals and by legislators. It is generally known that the purpose of the membership of the Bar Association staff is to enable them to go where members of the "elite" meet and to lobby for legislation in which the Bar Association is interested. The State Bar Association has numerous committees and subcommittees concerned with family law, real estate law, unauthorized practice, etc., and its recommendations often influence state policy. Some committee meetings are held at the Cosmopolitan Club. The club is known to have rules which restrict membership by race, religion, and sex.

The plaintiffs, husband and wife, who are members of the State Bar Association, petition the Board of Bar Governors to adopt a resolution prohibiting the payment of club dues to and the holding of meetings of the Bar Association or its committees at places which discriminate on the basis of race, religion, or sex. After substantial public discussion, the Board of Bar Governors, by close vote, fails to pass such a resolution. These events receive extensive coverage in the local newspapers. The plaintiffs bring an action in federal court seeking an injunction against such payments and the holding of meetings in such places as the Cosmopolitan Club.

The strongest argument for the plaintiffs is

- A:** private rights to discriminate and associate freely must defer to a public interest against discrimination on the basis of race, religion, or sex.
- B:** the failure of the State Bar Association to pass a resolution forbidding discrimination on the basis of race, religion, or sex constitutes a denial of equal protection.
- C:** the State Bar Association is an agency of the state and its payment of dues to such private clubs promotes discrimination on the basis of race, religion, and sex.
- D:** the State Bar Association's payment of dues to such private clubs promotes discrimination on the basis of race, religion, and sex.

The explanation for the answer is:

C is the correct answer. The Equal Protection Clause of the Fourteenth Amendment will apply to private action where there is significant state involvement. Because the state supreme court requires that all lawyers be members of the State Bar Association, the Bar Association and the state are so entwined that the Bar Association's actions might be subject to the Equal Protection Clause. Thus, the Bar Association's payment to the private club could be construed as improper state support of discrimination.

A is incorrect because private action will only be subject to equal protection limitations in specific situations. B is incorrect because the Bar Association does not have to affirmatively forbid discrimination. D is incorrect because, while the Bar Association's payment of dues to the private club might promote discrimination, that discrimination does not violate the Constitution unless the Bar Association's actions are considered state action due to the accompanying circumstances.

Question 342 - Constitutional Law - Judicial Review

The question was:

A state enacts the Young Adult Marriage Counseling Act, which provides that, before any persons less than 30 years of age may be issued a marriage license, they must receive at least five hours of marriage counseling from a state-licensed social worker. This counseling is designed to assure that applicants for marriage licenses know their legal rights and duties in relation to marriage and parenthood, understand the "true nature" of the marriage relationship, and understand the procedures for obtaining divorces.

A man, aged 25, contemplated marrying a woman, aged 25. Both are residents of the state. The man has not yet proposed to the woman because he is offended by the counseling requirement.

The man sues in court seeking a declaratory judgment that the Young Adult Marriage Counseling Act is unconstitutional. Which of the following is the clearest ground for dismissal of this action by the court?

- A:** The man and woman are residents of the same state.
- B:** No substantial federal question is presented.
- C:** The suit presents a nonjusticiable political question.
- D:** The suit is unripe.

The explanation for the answer is:

D is the correct answer. The man has not been injured by the state statute since he has not applied for a marriage license and been required to submit to the counseling. Without an actual or an imminent injury, the claim is not ripe. A is incorrect because the residency of the plaintiff and his potential spouse are irrelevant both under the statute and for purposes of jurisdiction over the plaintiff's claim. B is incorrect because a substantial federal question is always presented when a statute's constitutionality is at issue. C is incorrect because this is not a matter that is clearly delegated to a coordinate branch of government, nor does it lack judicially manageable standards.

Question 343 - Constitutional Law - Individual Rights

The question was:

A state enacts the Young Adult Marriage Counseling Act, which provides that, before any persons less than 30 years of age may be issued a marriage license, they must receive at least five hours of marriage counseling from a state-licensed social worker. This counseling is designed to assure that applicants for marriage licenses know their legal rights and duties in relation to marriage and parenthood, understand the "true nature" of the marriage relationship, and understand the procedures for obtaining divorces.

In a case in which the constitutionality of the Young Adult Marriage Counseling Act is in issue, the burden of persuasion will probably be on the

A: person challenging the law, because there is a strong presumption that elected state legislators acted properly.

B: person challenging the law, because the Tenth Amendment authorized states to determine the conditions on which they issue marriage licenses.

C: state, because there is a substantial impact on the right to marry, and that right is fundamental.

D: state, because there is a substantial impact in the discrete and insular class of young adults.

The explanation for the answer is:

C is the correct answer. The right to marry is fundamental, and this statute substantially impacts that right, so the statute would be subject to strict scrutiny. The state bears the burden to show that the statute will pass strict scrutiny. A is incorrect because the presumption of constitutionality is not present when a law impairs the exercise of a fundamental right. B is not correct because the Tenth Amendment does not give the states power to insulate it from other provisions of the Constitution. D is not correct because young adults are not a suspect class, nor are they discrete and insular since people are constantly moving in and out of it.

Question 348 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A state statute made it a misdemeanor to construct any building of more than five stories without an automatic fire sprinkler system.

A local construction company built in the state a ten-story federal office building. It constructed the building according to the precise specifications of a federal contract authorized by federal statutes. Because the building was built without the automatic fire sprinkler system required by state law, the state prosecuted the private contractor.

Which of the following is the company's strongest defense to that prosecution?

- A:** The state sprinkler requirement denies the company property or liberty without due process.
- B:** The state sprinkler requirement denies the company equal protection of the laws.
- C:** As applied, the state sprinkler requirement violates the supremacy clause.
- D:** As applied, the state sprinkler requirement violates the obligation of contracts clause.

The explanation for the answer is:

C is the correct answer. The contractor built the building to precise specifications of a federal contract authorized by federal statutes. If the state sprinkler requirement conflicts with the federal statutes, the state sprinkler requirement cannot be enforced under the supremacy clause. Therefore, this is the strongest defense. A is not correct because the requirement that builders install sprinklers does not implicate a fundamental right, and it is rationally related to safety, a legitimate governmental interest. B is incorrect because the sprinkler requirement has no classification. D is incorrect because the requirement did not make it impossible to perform under the contract--in fact, both parties complied with the contract.

Question 362 - Constitutional Law - Individual Rights

The question was:

A federal statute requires United States civil service employees to retire at age 75. However, that statute also states that civil service employees of the armed forces must retire at age 65.

The plaintiff, a 65-year-old service employee of the Department of the Army, seeks a declaratory judgment that would forbid his mandatory retirement until age 75.

The strongest argument that the plaintiff can make to invalidate the requirement that he retire at age 65 is that the law

A: denies him a privilege or immunity of national citizenship.

B: deprives him of a property right without just compensation.

C: is not within the scope of any of the enumerated powers of Congress in Article I, Section 8.

D: invidiously discriminates against him on the basis of age in violation of the Fifth Amendment.

The explanation for the answer is:

D is the correct answer. The statute discriminates on the basis of age in violation of the Fifth Amendment, which contains an implied equal protection provision. While this would only trigger a rational basis review, it is the only argument provided that has a chance of prevailing. Therefore, D is the strongest argument.

A is incorrect because the Privileges and Immunities Clause of the Fourteenth Amendment prevents states from interfering with a citizen's relationship to the federal government and would not apply here. B is incorrect because the plaintiff's continued employment is not a property right. C is incorrect because Article I, Section 8 gives Congress the power to not only declare war and raise armies, but to also make rules for the regulation of the armed forces.

Question 370 - Constitutional Law - Separation of Powers

The question was:

Congress passes a law regulating the wholesale and retail prices of "every purchase or sale of oil, natural gas, and electric power made in the United States." The strongest argument in support of the constitutionality of this statute is that

- A:** the Constitution expressly empowers Congress to enact laws for "the general welfare."
- B:** Congress has the authority to regulate such products' interstate transportation and importation from abroad.
- C:** Congress may regulate the prices of every purchase and sale of goods and services made in this country, because commerce includes buying and selling.
- D:** in inseverable aggregates, the domestic purchases or sales of such products affect interstate or foreign commerce.

The explanation for the answer is:

D is the correct answer. If the activity is an economic or commercial activity, Congress can regulate intrastate activity if, in aggregate, it substantially affects interstate commerce. Therefore, the strongest argument in support of the statute regulating the wholesale and retail purchase of fuels and power is that the domestic purchases or sales of these products, in aggregate, impact either interstate or foreign commerce, and therefore can be regulated by Congress.

A is incorrect because while Congress can spend to promote the general welfare, it cannot regulate for the general welfare. B is not correct because the statute would also cover intrastate sales. C is incorrect because Congress cannot regulate intrastate sales if there is no rational basis on which Congress could conclude that the activity, in aggregate, substantially affects interstate commerce.

Question 375 - Constitutional Law - Judicial Review

The question was:

Congress enacted a statute providing that persons may challenge a state energy law on the ground that it is in conflict with the federal Constitution in either federal or state court. According to this federal statute, any decision by a lower state court upholding a state energy law against a challenge based on the federal constitution may be appealed directly to the United States Supreme Court. The provisions of this statute that authorize direct United States Supreme Court review of specified decisions rendered by lower state courts are

- A:** constitutional, because congressional control over questions of energy usage is plenary.
- B:** constitutional, because Congress may establish the manner in which the appellate jurisdiction of the United States Supreme Court is exercised.
- C:** unconstitutional, because they infringe on the sovereign right of states to have their supreme courts review decisions of their lower state courts.
- D:** unconstitutional, because under Article III of the Constitution the United States Supreme Court does not have authority to review directly decisions of lower state courts.

The explanation for the answer is:

B is the correct answer. Article III defines the Supreme Court's appellate jurisdiction, but Articles I and III provide that Congress may establish by law the manner in which that appellate jurisdiction is exercised. A is incorrect because Congress has no plenary power over energy usage. C is incorrect because states have no sovereign rights related to federal issues that would be greater than the interests of the federal government. D is incorrect because Article III does not limit how the Supreme Court's appellate jurisdiction may be exercised.

Question 383 - Constitutional Law - Individual Rights

The question was:

Congress enacts a criminal statute prohibiting "any person from interfering in any way with any right conferred on another person by the equal protection clause of the Fourteenth Amendment."

Application of this statute to a private citizen, would be most clearly constitutional if the citizen, with threats of violence, coerces

A: a public school teacher to exclude black pupils from her class, solely because of their race.

B: black pupils, solely because of their race, to refrain from attending a privately owned and operated school licensed by the state.

C: the bus driver operating a free school bus service under the sponsorship of a local church to refuse to allow black pupils on the bus, solely because of their race.

D: the federal official in charge of distributing certain federal benefits directly to students to refrain from distributing them to black pupils, solely because of their race.

The explanation for the answer is:

A is the correct answer. It would be a violation of the Equal Protection Clause of the Fourteenth Amendment for a public school teacher to exclude black pupils from her class based solely on their race. By coercing this state actor with threats of violence, the defendant might become a state actor which would warrant application of the criminal statute to him. B is incorrect because the school would not become a state actor merely by virtue of its license. C is not correct because the local church is not a state actor even if it provides a free bus service. D is not correct because the Fourteenth Amendment does not apply to the federal government.

Question 392 - Constitutional Law - Separation of Powers

The question was:

A federal statute sets up a program of dental education. The statute provides that the Secretary of Health and Human Services "shall, on a current basis, spend all of the money appropriated for this purpose" and "shall distribute the appropriated funds" by a specified formula to state health departments that agree to participate in the program. In the current year Congress has appropriated \$100 million for expenditure on this program. In order to ensure a budget surplus in the current fiscal year, the President issued an executive order directing the various cabinet secretaries to cut expenditures in this year by 10 percent in all categories. He also orders certain programs to be cut more drastically because he believes that "they are not as important to the general welfare as other programs." The President identifies the dental education program as such a program and orders it to be cut by 50 percent. Assume that no other federal statutes are relevant. To satisfy constitutional requirements, how much money must the Secretary of Health and Human Services distribute for the dental education program this year?

- A:** \$50 million, because the President could reasonably determine that this program is not as important to the general welfare as other programs.
- B:** \$50 million, because as chief executive the President has the constitutional authority to control the actions of all of his subordinates by executive order.
- C:** \$90 million, because any more drastic cut for the program would be a denial of equal protection to beneficiaries of this program as compared to beneficiaries of other programs.
- D:** \$100 million, because the President may not unilaterally suspend the effect of a valid federal statute imposing a duty to spend appropriated monies.

The explanation for the answer is:

D is the correct answer. Congress has plenary power to spend for the general welfare, and that power includes the power to mandate how appropriations will be spent. The President lacks any constitutional power to override Congress's appropriations decisions. Therefore, the Secretary of Health and Human Services must distribute the entire appropriation to the program, notwithstanding the President's order.

A is incorrect because the President does not have the primary power to determine how to spend federal funds. B is incorrect because the President cannot direct his subordinates to exercise a power he lacks. C is incorrect because there is no equal protection requirement that all programs be cut by an equal amount.

Question 413 - Constitutional Law - Separation of Powers

The question was:

A federal criminal law makes it a crime for any citizen of the United States not specially authorized by the President to negotiate with a foreign government for the purpose of influencing the foreign government in relation to a dispute with the United States. The strongest constitutional ground for the validity of this law is that

- A:** under several of its enumerated powers, Congress may legislate to preserve the monopoly of the national government over the conduct of United States foreign affairs.
- B:** the President's inherent power to negotiate for the United States with foreign countries authorizes the President, even in the absence of statutory authorization, to punish citizens who engage in such negotiations without permission.
- C:** the law deals with foreign relations and therefore is not governed by the First Amendment.
- D:** federal criminal laws dealing with international affairs need not be as specific as those dealing with domestic affairs.

The explanation for the answer is:

A is the correct answer. Congress has several enumerated powers and implied within those powers is the power to preserve the federal monopoly over foreign affairs. B is incorrect because the President shares power with Congress, which has primary authority to conduct foreign affairs. C is incorrect because there is no foreign relations exception to the First Amendment. D is incorrect because there is not a more lenient standard for federal criminal laws related to international affairs.

Question 418 - Constitutional Law - Individual Rights

The question was:

Pursuant to a state statute, a student applied for tuition assistance to attend the Institute of Liberal Arts. He was qualified for such assistance in every way except that he was a resident alien who did not intend to become a United States citizen. The state's restriction of such grants to United States citizens or resident aliens seeking such citizenship is probably

- A:** valid, because aliens are not per se "a discrete and insular minority" specially protected by the Fourteenth Amendment.
- B:** valid, because the line drawn by the state for extending aid was reasonably related to a legitimate state interest.
- C:** invalid, because the justifications for this restriction are insufficient to overcome the burden imposed on a state when it uses such an alienage classification.
- D:** invalid, because the privileges and immunities clause of Article IV does not permit such an arbitrary classification.

The explanation for the answer is:

C is the correct answer. Classifications in state law based on alienage are suspect and must pass strict scrutiny. It is unlikely that whatever justification the state has for the classification will satisfy that burden. There is an exception to this standard when the state law discriminates against aliens participating in state government; in that case, rational basis is applied. However, that is not the case in this fact pattern because the individual is seeking tuition assistance, so strict scrutiny will apply. A is incorrect because not only is the classification invalid, but the class is considered a discrete and insular minority. B is incorrect because the classification must satisfy strict scrutiny, not rational basis review. D is incorrect because the privileges and immunities clause protects only United States citizens.

Question 425 - Constitutional Law - Separation of Powers

The question was:

Congress passes an act requiring that all owners of bicycles in the United States register them with a federal bicycle registry. The purpose of the law is to provide reliable evidence of ownership to reduce bicycle theft. No fee is charged for the registration. Although most stolen bicycles are kept or resold by the thieves in the same cities in which the bicycles were stolen, an increasing number of bicycles are being taken to cities in other states for resale.

Is this act of Congress constitutional?

- A:** Yes, because Congress has the power to regulate property for the general welfare.
- B:** Yes, because Congress could determine that in innumerable aggregates bicycle thefts affect interstate commerce.
- C:** No, because most stolen bicycles remain within the state in which they were stolen.
- D:** No, because the registration of vehicles is a matter reserved to the states by the Tenth Amendment.

The explanation for the answer is:

B is the correct answer. The Commerce Clause empowers Congress to regulate economic or commercial intrastate activity that, in the aggregate, has a substantial effect on interstate commerce. Because the cumulative resale of stolen bikes could rationally affect interstate commerce, the act is constitutional. A is incorrect because Congress has the power to exercise its spending power for the general welfare, but this is not a spending measure. The general welfare clause is not an independent source of power and must attach to one of Congress's enumerated powers to provide a source of Congressional authority. C is incorrect because even if most stolen bicycles stay within the state, Congress can still regulate the intrastate activity due to its aggregate effect on interstate commerce. D is incorrect because while the registration of vehicles may typically be a matter for the states, Congress may regulate economic activity that affects interstate commerce, despite any state power, as long as it does not commandeer the state government to perform a federal function.

Question 427 - Constitutional Law - Individual Rights

The question was:

A state statute flatly bans the sale or distribution of contraceptive devices to minors. A national retailer of drugs and related items is charged with violating the statute. Which of the following is the strongest constitutional argument the retailer could make in defending itself against prosecution for violation of this statute?

- A:** The statute constitutes an undue burden on interstate commerce.
- B:** The statute denies minors one of their fundamental rights without due process.
- C:** The statute denies the retailer a privilege or immunity of state citizenship.
- D:** The statute violates the First Amendment right to freedom of religion because it regulates morals.

The explanation for the answer is:

B is the correct answer. The right to use contraceptives is part of the fundamental right to privacy protected by the Fourteenth Amendment. Therefore, any statute that impairs that fundamental right must be narrowly tailored to further a compelling state interest. Moreover, the drugstore could raise the rights of the third-party minors as a defense, because it is the drugstore that is being injured by the prosecution, and there is a sufficient nexus between the minors' rights and the prosecution.

A is incorrect because the statute probably does not present an undue burden on interstate commerce given that the prohibition would be within the state's police powers if it didn't violate a separate provision of the Constitution. C is incorrect because the statute does not deny any privilege of state citizenship. D is incorrect because not every regulation of morals violates the free exercise clause. Moreover, it is not clear that the restriction is based on the regulation of morals.

Question 445 - Constitutional Law - Judicial Review

The question was:

Congress enacts a law providing that all disagreements between the United States and a state over federal grant-in-aid funds shall be settled by the filing of a suit in the federal district court in the affected state. "The judgment of that federal court shall be transmitted to the head of the federal agency dispensing such funds who, if satisfied that the judgment is fair and lawful, shall execute the judgment according to its terms." This law is

- A:** constitutional, because disagreements over federal grant-in-aid funds necessarily involve federal questions within the judicial power of the United States.
- B:** constitutional, because the spending of federal monies necessarily includes the authority to provide for the effective settlement of disputes involving them.
- C:** unconstitutional, because it vests authority in the federal court to determine a matter prohibited to it by the Eleventh Amendment.
- D:** unconstitutional, because it vests authority in a federal court to render an advisory opinion.

The explanation for the answer is:

D is the correct answer. The federal courts have jurisdiction only over cases and controversies, which means that there must be two parties with a real stake in the controversy, one of whom has been injured by the other's actions, and that the relief sought by the injured party must remedy that injury. Moreover, the court must have the power to give effect to its judgments. Here, it is unclear that the disputes over the grant-in-aid funds would involve an injury that could confer standing. But more importantly, the agency dispensing the funds is free not to follow the court's judgment. Thus, the court is doing nothing more than issuing an advisory opinion, rather than deciding a case or controversy.

A is incorrect because the presence of a federal question is not enough by itself to create a case or controversy. B is incorrect because the federal courts cannot constitutionally issue advisory opinions. C is incorrect because the Eleventh Amendment only prohibits the states from being sued in federal court without their consent.

Question 452 - Constitutional Law - Judicial Review

The question was:

The President of the United States recognizes the country of Ruritania and undertakes diplomatic relations with its government through the Secretary of State. Ruritania is governed by a repressive totalitarian government.

In an appropriate federal court, a citizen brings a suit against the President and Secretary of State to set aside this action on the ground that it is inconsistent with the principles of our constitutional form of government. The citizen has a lucrative contract with the United States Department of Commerce to provide commercial information about Ruritania.

The contract expressly terminates, however, "when the President recognizes the country of Ruritania and undertakes diplomatic relations with its government."

Which of the following is the most proper disposition of the citizen's suit by the federal court?

- A:** Suit dismissed, because the citizen does not have standing to bring this action.
- B:** Suit dismissed, because there is not diversity between the citizen and the defendants.
- C:** Suit dismissed, because it presents a nonjusticiable political question.
- D:** Suit decided on the merits.

The explanation for the answer is:

C is the correct answer. The federal courts abstain from deciding political questions, which are disputes that present issues committed by the Constitution to a coordinate branch of government. Here, the Constitution vests the power to conduct foreign relations to the President with some powers to Congress. And, therefore, a federal court would dismiss the suit as presenting a nonjusticiable political question.

A is incorrect because the citizen would have standing, since he has been injured by the recognition of Ruritania, which terminated his contract. B is incorrect because there need not be diversity since this would raise a federal question if it were justiciable. D is simply incorrect.

Question 470 - Constitutional Law - Separation of Powers

The question was:

Congress passes an Energy Conservation Act. The act requires all users of energy in this country to reduce their consumption by a specified percentage, to be set by a presidential executive order. The act sets forth specific standards the President must use in setting the percentage and detailed procedures to be followed.

The provision that allows the President to set the exact percentage is probably

- A:** constitutional, because it creates a limited administrative power to implement the statute.
- B:** constitutional, because inherent executive powers permit such action even without statutory authorization.
- C:** unconstitutional as an undue delegation of legislative power to the executive.
- D:** unconstitutional, because it violates the due process clause of the Fifth Amendment.

The explanation for the answer is:

A is the correct answer. Under the Constitution, Congress can delegate its powers to an entity within the executive branch through a statute as long as it gives that entity sufficient guidance on how to exercise that power. The statute here gives the President these powers along with specific standards the President must apply. Therefore, it is probably constitutional.

B is incorrect because the executive branch does not have the power to regulate commerce. C is incorrect because Congress can delegate its power to the executive as long as it gives sufficient guidance on how to exercise that power. D is incorrect because there has been no deprivation of a fundamental right.

Question 474 - Constitutional Law - Separation of Powers

The question was:

The federal government has complete jurisdiction over certain park land located within the state. To conserve the wildlife that inhabits that land, the federal government enacts a statute forbidding all hunting of animals in the federal park. That statute also forbids the hunting of animals that have left the federal park and have entered the state.

A hunter has a hunting license from the state authorizing him to hunt deer anywhere in the state. On land within the state located adjacent to the federal park, the hunter shoots a deer he knows has recently left the federal land.

The hunter is prosecuted for violating the federal hunting law. The strongest ground supporting the constitutionality of the federal law forbidding the hunting of wild animals that wander off federal property is that

- A:** this law is a necessary and proper means of protecting United States property.
- B:** the animals are moving in the stream of interstate commerce.
- C:** the police powers of the federal government encompass protection of wild animals.
- D:** shooting wild animals is a privilege, not a right.

The explanation for the answer is:

A is the correct answer. Article IV, §3 gives Congress the power to make regulations regarding territory or property belonging to the United States. Therefore, Congress can protect wildlife that crosses onto federal land. See *Kleppe v. New Mexico*, 426 U.S. 529 (1976). Answer B is incorrect because there is no indication that the animals are involved in interstate commerce in any meaningful way. Answer C is incorrect because any federal police-type power is only exercisable pursuant to the property power, and thus only applies to wild animals that cross into federally owned lands. Answer D is incorrect because it does not explain the constitutional basis of the power under which Congress may enact this law, which is the inquiry.

Question 481 - Constitutional Law - Individual Rights

The question was:

Three states, East Winnetka, Midland, and West Hampton, are located next to one another in that order. The states of East Winnetka and West Hampton permit the hunting and trapping of snipe, but the state of Midland strictly forbids it in order to protect snipe, a rare species of animal, from extinction. The state of Midland has a state statute that provides "Possession of snipe traps is prohibited. Any game warden finding a snipe trap within the state shall seize and destroy it." Snipe traps cost about \$15 each.

An ardent snipe trapper is a resident of West Hampton. She drove her car to East Winnetka to purchase a new snipe trap from a manufacturer there. In the course of her trip back across Midland with the trap in her car, the snipe trapper stopped in a Midland state park to camp for a few nights. While she was in that park, a Midland game warden saw the trap, which was visible on the front seat of her car. The warden seized the trap and destroyed it in accordance with the Midland statute after the trapper admitted that the seized item was a prohibited snipe trap. No federal statutes or federal administrative regulations apply.

The snipe trapper can demonstrate that common carriers are permitted to transport snipe traps as cargo across Midland for delivery to another state and that in practice the Midland statute is enforced only against private individuals transporting those traps in private vehicles. If the trapper challenges the application of the Midland statute to her on the basis only of a denial of equal protection, the application of the statute will probably be found

- A:** constitutional, because the traps constitute contraband in which the snipe trapper could have no protected property interest.
- B:** constitutional, because there is a rational basis for differentiating between the possession of snipe traps as interstate cargo by common carriers and the possession of snipe traps by private individuals.
- C:** unconstitutional, because the state cannot demonstrate a compelling public purpose for making this differentiation between common carriers and such private individuals.
- D:** unconstitutional, because interstate travel is a fundamental right that may not be burdened by state law.

The explanation for the answer is:

B is the correct answer. Because the statute does not classify on any suspect grounds, rational basis is the test that would apply. Because it is rational to differentiate between common carriers transporting snipe traps and individuals possessing them, the statute would be constitutional.

A is incorrect because the snipe trapper would have a property interest even in contraband. C is incorrect because under equal protection, the statute need satisfy only rational basis. D is incorrect because the right to travel is not implicated by the statute prohibiting possession of snipe traps.

Question 482 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Three states, East Winnetka, Midland, and West Hampton, are located next to one another in that order. The states of East Winnetka and West Hampton permit the hunting and trapping of snipe, but the state of Midland strictly forbids it in order to protect snipe, a rare species of animal, from extinction. The state of Midland has a state statute that provides "Possession of snipe traps is prohibited. Any game warden finding a snipe trap within the state shall seize and destroy it." Snipe traps cost about \$15 each.

An ardent snipe trapper is a resident of West Hampton. She drove her car to East Winnetka to purchase a new snipe trap from a manufacturer there. In the course of her trip back across Midland with the trap in her car, the snipe trapper stopped in a Midland state park to camp for a few nights. While she was in that park, a Midland game warden saw the trap, which was visible on the front seat of her car. The warden seized the trap and destroyed it in accordance with the Midland statute after the trapper admitted that the seized item was a prohibited snipe trap. No federal statutes or federal administrative regulations apply.

A valid federal administrative rule, adopted under a federal consumer product safety act, regulates the design of snipe traps. The rule was issued to prevent traps from causing injury to human beings, e.g. by pinching fingers while persons were setting the traps. No other federal law applies. Which of the following best states the effect on the Midland state statute?

- A:** The federal rule preempts the Midland state statute, because the federal rule regulates the same subject matter, snipe traps.
- B:** The federal rule preempts the Midland state statute, because the federal rule does not contain affirmative authorization for continued state regulation.
- C:** The federal rule does not preempt the Midland state statute, because the Midland state statute regulates wild animals, a field of exclusive state power.
- D:** The federal rule does not preempt the Midland state statute, because the purposes of the federal rule and the Midland state statute are different.

The explanation for the answer is:

D is the correct answer. The supremacy clause provides that federal law supersedes conflicting state laws. However, where the laws do not conflict, the federal law does not preempt the state law. Here, the federal law regulates the design of the traps to protect human safety, while the state statute prohibits their possession to protect the snipe population. Because the purposes of the regulations are different, the federal regulation does not preempt the state law.

Choice A is incorrect because the purposes of the acts must be the same. B is incorrect because the federal law need not explicitly authorize state regulation if there is no conflict. C is not correct because wild animals are not a field of exclusive state power.

Question 491 - Constitutional Law - Judicial Review

The question was:

There is a high and persistent unemployment in the industrialized state of Green. Its legislature therefore enacted a statute requiring every business with annual sales in Green of over \$1 million to purchase each year goods and/or services in Green equal in value to at least half of its sales in Green.

Which of the following parties most clearly has standing to contest the constitutionality of this statute of Green in federal court?

- A:** A business in another state that supplies from that other state 95 percent of the goods and services bought by a corporation that has annual sales in Green of \$20 million.
- B:** A corporation selling \$300,000 worth of goods in Green but presently purchasing only \$10,000 in goods and services in Green.
- C:** The governor of an adjacent state on the behalf of the state and its residents.
- D:** The owner of high-grade, secured bonds issued by a corporation with sales in Green of \$10 million that currently purchases only \$1 million in goods and services in Green.

The explanation for the answer is:

A is the correct answer. Standing requires an injury, and a business from another state that supplies from that state 95% of the goods and services bought by a corporation that has annual sales in Green of \$20 million stands to lose \$10 million in sales of those goods and services. B is incorrect because the corporation is not affected since its annual sales fall below the \$1 million threshold. C is not correct because the governor is not injured and cannot raise the issue on behalf of the state's residents without an injury. D is not correct because there is no indication that requiring the corporation to buy more of its goods and services in Green will have any impact on its bonds.

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Question 506 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A major corporation is privately owned and incorporated in State A. It contracted with the United States to construct a dam across a river in State B. State B imposed a gross receipts tax on all business conducted within the state. State B sued the corporation to collect that tax on the receipts the corporation received under this federal contract. No federal statutes or administrative rules are applicable, and the contract between the United States and the corporation does not mention state taxation.

The court should hold the state tax, as applied here, to be

- A:** constitutional, because a state has exclusive jurisdiction over all commercial transactions executed wholly within its borders.
- B:** constitutional, because private contractors performing work under a federal contract are not immune in these circumstances from nondiscriminatory state taxation.
- C:** unconstitutional, because it violates the supremacy clause.
- D:** unconstitutional, because it imposes an undue burden on interstate commerce.

The explanation for the answer is:

B is the correct answer. The state tax should be held constitutional, since it is a nondiscriminatory tax on a private company. That the company's income came from the federal government does not make the tax a tax on the federal government. A is incorrect because the state does not have exclusive jurisdiction over commercial transactions within its borders. Such transactions almost invariably impact interstate commerce, which Congress can regulate. C is incorrect because the supremacy clause does not prohibit the taxation of private entities that receive federal funds as income. D is incorrect because taxation alone almost never imposes an undue burden on interstate commerce.

Question 512 - Constitutional Law - Individual Rights

The question was:

On a wholly random basis, a state agency has given a few probationary employees who were not rehired at the end of their probationary period a statement of reasons and an opportunity for a hearing; but the agency has very rarely done so. No statute or rule of the agency required such a statement of reasons or a hearing.

The employment of a probationary employee was terminated without a statement of reasons or an opportunity for a hearing. The agency did not even consider whether it should give him either.

A suit by the employee requesting a statement of reasons and a hearing will probably be

A: successful on the grounds that failure to give the employee reasons and an opportunity for a hearing constituted a bill of attainder.

B: successful on the grounds that an agency's inconsistent practices, even if unintentional, deny adversely affected persons the equal protection of the laws.

C: unsuccessful, because the employee does not have a right to be rehired that is protected by procedural due process.

D: unsuccessful, because the conditions of state employment are matters reserved to the states by the Tenth Amendment.

The explanation for the answer is:

C is the correct answer. Probationary employees do not have any kind of statutory right to be rehired, nor do they have any statutory right to procedures surrounding the decision not to be rehired under this scenario. Choice A is incorrect because a bill of attainder is legislatively imposed punishment, which is not present here. B is incorrect because the employee is not the only person not given a statement of reasons, and there has been no classification on any suspect grounds. D is incorrect because the states have no Tenth Amendment powers to deprive state employees of other federal constitutional rights.

Question 517 - Constitutional Law - Individual Rights

The question was:

A state statute provides that only citizens of the United States may be employed by that state. In an action brought in a federal court, a resident alien who was prevented from obtaining state employment as a garbage collector solely because of his alien status challenged the statute's constitutionality as applied to his circumstances.

Which of the following statements concerning the burden of persuasion applicable to this suit is correct?

- A:** The alien must demonstrate that there is no rational relationship between the citizenship requirement and any legitimate state interest.
- B:** The alien must demonstrate that the citizenship requirement is not necessary to advance a compelling state interest.
- C:** The state must demonstrate that there is a rational relationship between the citizenship requirement and a legitimate state interest.
- D:** The state must demonstrate that the citizenship requirement is necessary to advance a compelling state interest.

The explanation for the answer is:

D is the correct answer. Alienage is a suspect class. Therefore, the state may only classify on the basis of alienage if the state can prove that the classification is narrowly tailored to promote a compelling state interest. A is incorrect because rational basis is not the correct test when dealing with a suspect classification. B is incorrect because under strict scrutiny the burden of proof is on the state. C is incorrect because rational basis does not apply to this classification, and because the state would not bear the burden under rational basis.

Question 522 - Constitutional Law - Separation of Powers

The question was:

The High National Grasslands is owned by the United States and is located in the center of a large western state. Acting pursuant to a federal statute authorizing such action, the United States Bureau of Land Management leased the grazing rights in the High National Grasslands to ranchers located nearby. A large company owns a vast amount of rangeland adjacent to the High National Grasslands and leases its land for livestock grazing purposes to the same ranchers, but at prices higher than those charged by the Bureau. The company sued the Bureau in an appropriate federal district court to restrain the Bureau from competing with that company by leasing the High National Grasslands.

Which of the following constitutional provisions may most easily and directly be used to justify the federal statute authorizing this leasing program of the Bureau of Land Management?

- A:** The general welfare clause of Article I, Section 8
- B:** The federal property clause of Article IV, Section 3
- C:** The commerce clause of Article I, Section 8
- D:** The supremacy clause of Article VI

The explanation for the answer is:

B is the correct answer. Congress has plenary power to control the territory and property of the United States. Thus, the federal property clause is the most direct and easy support for this leasing program. A is incorrect because the general welfare clause relates to Congress' spending power, and this is not a spending program. C is not correct because, although this might impact interstate commerce, that is a more tenuous relationship than Congress' power to control federal property. D is incorrect because there is no potentially conflicting state law at issue.

Question 527 - Constitutional Law - Judicial Review

The question was:

A resident of a state brought suit in federal district court against a corporation in that state. The resident seeks recovery of \$12,000 actual and \$12,000 punitive damages arising from the corporation's sale to him of a defective automobile. The resident's suit is based only on a common law contract theory.

From a constitutional standpoint, should the federal district court hear this suit on its merits?

- A:** Yes, because Article III vests federal courts with jurisdiction over cases involving the obligation of contracts.
- B:** Yes, because it is an action affecting interstate commerce.
- C:** No, because this suit is not within the jurisdiction of an Article III court.
- D:** No, because there is no case or controversy within the meaning of Article III.

The explanation for the answer is:

C is the correct answer. Common law contracts are a matter for state and not federal law. And, because the parties are not diverse, the federal courts would lack jurisdiction over this state law claim. Choice A is incorrect because this case involves a state law contract issue, and not a federal constitutional impairment of contracts issue. B is incorrect because Article III does not provide jurisdiction over every action affecting interstate commerce. D is incorrect because there is a case or controversy, since the resident has been injured by an action of the corporation.

Question 531 - Constitutional Law - Separation of Powers

The question was:

A statute authorizes a specified federal administrative agency to issue rules governing the distribution of federal grant funds for scientific research. The statute provides that, in issuing those rules, the agency must follow procedures and substantive standards contained in the statute. In a severable provision, the statute also provides the otherwise valid rules issued by the agency under authority delegated to it by this statute may be set aside by a majority vote of a designated standing joint committee of Congress.

The provision of this statute relating to the power of the designated standing joint committee of Congress is

A: constitutional, because it is a necessary and proper means of ensuring that the rules issued by this agency are actually consistent with the will of Congress.

B: constitutional, because discretionary money grants authorized by statute are privileges, not rights, and, therefore, Congress has greater freedom to intervene in their administration than it has to intervene in the administration of regulatory laws.

C: unconstitutional, because it denies equal protection of the laws to members of Congress who are not appointed to the joint legislative committee authorized to set aside rules of this agency.

D: unconstitutional, because it authorizes a congressional change of legal rights and obligations by means other than those specified in the Constitution for the enactment of laws.

The explanation for the answer is:

D is the correct answer. The provision relating to the power of the designated standing joint committee is unconstitutional because it allows Congress to affect legal rights and obligations by less than a majority vote and without the President's approval, which the Constitution requires for the enactment of laws. The rules may be set aside by a majority vote of a designated standing joint committee of Congress, rather than the majority of Congress as a whole.

A is incorrect because less than a majority of Congress cannot express the will of Congress. B is incorrect because there is no special exception for discretionary grants. C is incorrect because the individual members of Congress have no rights to committee membership.

Question 545 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A federal statute enacted pursuant to the powers of Congress to enforce the Fourteenth Amendment and to regulate commerce among the states prohibits any state from requiring any of its employees to retire from state employment solely because of their age. The statute expressly authorized employees required by a state to retire from state employment solely because of their age to sue the state government in federal district court for any damages resulting from that state action. On the basis of this federal statute, a retiree sues State X in federal district court. State X moves to dismiss the suit on the ground that Congress lacks authority to authorize such suits against a state.

Which of the following is the strongest argument that the retiree can offer in opposition to the state's motion to dismiss this suit?

- A:** When Congress exercises power vested in it by the Fourteenth Amendment, Congress may enact appropriate remedial legislation expressly subjecting the state to private suits for damages in federal court.
- B:** When Congress exercises power vested in it by any provision of the Constitution, Congress has unlimited authority to authorize private actions for damages against a state.
- C:** While the Eleventh Amendment restrains the federal judiciary, that amendment does not limit the power of Congress to modify the sovereign immunity of the states.
- D:** While the Eleventh Amendment applies to suits in federal court by citizens of one state against another state, it does not apply to such suits by citizens against their own state.

The explanation for the answer is:

A is the correct answer. Congress may enact remedial legislation under the Fourteenth Amendment, and it can subject an unconsenting state to suit in federal court under the Fourteenth Amendment. B is incorrect because Congress is limited to authorize private actions for damages against states by the Eleventh Amendment. C is incorrect because the Eleventh Amendment does limit the power of Congress to modify the sovereign immunity of the states. D is incorrect because the Eleventh Amendment has been held to bar suits by citizens against their own states.

Question 577 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Small retailers located in the state of Yellow are concerned about the loss of business to certain large retailers located nearby in bordering states. In an effort to deal with this concern, the legislature of Yellow enacted a statute requiring all manufacturers and wholesalers who sell goods to retailers in Yellow to do so at prices that are no higher than the lowest prices at which they sell them to retailers in any of the states that border Yellow. Several manufacturers and wholesalers who are located in states bordering Yellow and who sell their goods to retailers in those states and in Yellow bring an action in federal court to challenge the constitutionality of this statute.

Which of the following arguments offered by these plaintiffs is likely to be most persuasive in light of applicable precedent?

The state statute

- A:** deprives them of their property or liberty without due process of law.
- B:** imposes an unreasonable burden on interstate commerce.
- C:** deprives them of a privilege or immunity of national citizenship.
- D:** denies them the equal protection of the laws.

The explanation for the answer is:

B is the correct answer. By limiting the price at which goods in interstate commerce may be sold, the state statute imposes an unreasonable burden on interstate commerce, and would be invalid. A is incorrect because there is no fundamental right being infringed, so the law need only be rationally related to a legitimate state interest. C is incorrect because the privileges and immunities clause of the Fourteenth Amendment only applies to individual citizens, not to companies or corporations. D is incorrect because there is no suspect classification in the statute.

Question 589 - Constitutional Law - Relations Between Federal and State Governments

The question was:

An interstate bus company operates in a five-state area. A federal statute authorizes the Interstate Commerce Commission (ICC) to permit interstate carriers to discontinue entirely any unprofitable route. The interstate bus company applied to the ICC for permission to drop a very unprofitable route through the sparsely populated Shaley Mountains. The ICC granted that permission even though the interstate bus company provided the only public transportation into the region.

A man is the owner of a mountain resort in the Shaley Mountains, whose customers usually arrived on vehicles operated by the interstate bus company. After exhausting all available federal administrative remedies, the man filed suit against the interstate bus company in the trial court of the state in which the Shaley Mountains are located to enjoin the discontinuance by the interstate bus company of its service to that area. The man alleged that the discontinuance of service by the interstate bus company would violate a statute of that state prohibiting common carriers of persons from abandoning service to communities having no alternate form of public transportation.

The state court should

- A:** dismiss the action, because the man lacks standing to sue.
- B:** direct the removal of the case to federal court, because this suit involves a substantial federal question.
- C:** hear the case on its merits and decide for the man because, on these facts, a federal agency is interfering with essential state functions.
- D:** hear the case on its merits and decide for the interstate bus company, because a valid federal law preempts the state statute on which the man relies.

The explanation for the answer is:

D is the correct answer. The supremacy clause of the United States Constitution requires that where a state law conflicts with a valid federal law, the federal law preempts that state law. And because regulating interstate carriers is within Congress's commerce clause power, the federal law is valid. Answer A is incorrect because the man has standing. He has an injury to his business that was caused by the federal action, and prohibiting the discontinuance would remedy his injury. Answer B is incorrect because states have concurrent jurisdiction to decide federal questions, since state courts are courts of general jurisdiction. Answer C is incorrect because regulating interstate common carriers is not an essential state function; rather, it is a quintessential federal function.

Question 591 - Constitutional Law - Judicial Review

The question was:

A plaintiff challenged the constitutionality of a state tax law, alleging that it violated the equal protection clauses of both the United States Constitution and the state constitution. The state supreme court agreed and held the tax law to be invalid. It said: "We hold that this state tax law violates the equal protection clause of the United States Constitution and also the equal protection clause of the state constitution because we interpret that provision of the state constitution to contain exactly the same prohibition against discriminatory legislation as is contained in the equal protection clause of the Fourteenth Amendment to the United States Constitution."

The state sought review of this decision in the United States Supreme Court, alleging that the state supreme court's determination of the federal constitutional issue was incorrect.

How should the United States Supreme Court dispose of the case if it believes that this interpretation of the federal Constitution by the state supreme court raises an important federal question and is incorrect on the merits?

- A:** Reverse the state supreme court decision, because the equal protection clause of a state constitution must be construed by the state supreme court in a manner that is congruent with the meaning of the equal protection clause of the federal Constitution.
- B:** Reverse the state supreme court decision with respect to the equal protection clause of the federal Constitution and remand the case to the state supreme court for further proceedings, because the state and federal constitutional issues are so intertwined that the federal issue must be decided so that this case may be disposed of properly.
- C:** Refuse to review the decision of the state supreme court, because it is based on an adequate and independent ground of state law.
- D:** Refuse to review the decision of the state supreme court, because a state government may not seek review of the decisions of its own courts in the United States Supreme Court.

The explanation for the answer is:

Answer B is correct. The state court based its decision on its interpretation of the federal Constitution, an interpretation the state Supreme Court found to be wrong. The United States Supreme Court has jurisdiction over the case because the case raises a federal question - the constitutionality of a state statute - and the Supreme Court will exercise that jurisdiction because it has deemed the question important. However, there is a chance that the state Supreme Court might interpret its own Constitution differently than the United States Supreme Court interpreted the United States Constitution. And for that reason, the Supreme Court will remand the case to the state to give it the opportunity to interpret its own constitutional provision, knowing accurately what the United States Constitution would require.

Answer A is incorrect because the state may interpret its own Constitution in any manner it wishes. Answer C is incorrect because based on the wording that the state court used, it is unclear whether the state court would have found that its constitutional provision would be interpreted the same way as the federal constitutional provision had it interpreted the federal constitution correctly. Answer D is incorrect because the state government is like any other party, and may seek review of an adverse decision if the Supreme Court otherwise has jurisdiction.

Question 592 - Constitutional Law - Separation of Powers

The question was:

A federal statute prohibits the construction of nuclear energy plants without a license from the Federal Nuclear Plant Siting Commission. The statute provides that the Commission may issue a license authorizing the construction of a proposed nuclear energy plant 30 days after the Commission makes a finding that the plant will comply with specified standards of safety, technological and commercial feasibility, and public convenience. In a severable provision, the Commission's enabling statute also provides that the Congress, by simple majorities in each house, may veto the issuance of a particular license by the Commission if such a veto occurs within 30 days following the required Commission finding.

Early last year, the Commission found that a particular energy company, met all statutory requirements and, therefore, voted to issue the energy company a license authorizing it to construct a nuclear energy plant. Because they believed that the issuance of a license to the energy company was not in accord with the applicable statutory criteria, a majority of each of the two houses of Congress voted, within the specified 30-day period, to veto the license. On the basis of that veto, the Commission refused to issue the license. Subsequently, the energy company sued the Commission in an appropriate federal district court, challenging the constitutionality of the Commission's refusal to issue the license.

In this suit, the court should hold the congressional veto of the license of the energy company to be

A: invalid, because any determination by Congress that particular agency action does not satisfy statutory criteria violates Article III, Section 1 of the Constitution because it constitutes the performance of a judicial function by the legislative branch.

B: invalid, because Article I, Section 7 of the Constitution has been interpreted to mean that any action of Congress purporting to alter the legal rights of persons outside of the legislative branch must be presented to the President for his signature or veto.

C: valid, because Congress has authority under the commerce clause to regulate the construction of nuclear energy plants.

D: valid, because there is a compelling national interest in the close congressional supervision of nuclear plant siting in light of the grave dangers to the public health and safety that are associated with the operation of such plants.

The explanation for the answer is:

Answer B is correct. Article I, § 7, cl. 3 of the United States Constitution provides that any matter that the houses of Congress can accomplish by majority vote must be presented to the President for signature or veto before it can have effect. As part of our system of checks and balances, Congress can act alone, without the assistance of the Executive Branch when the Constitution allows it, and the Constitution allows Congress to act alone only when it can command a super-majority.

Answer A is incorrect because Congress isn't reviewing the decision of the agency; rather, Congress is part of the system deciding whether to issue the license at all. Answer C is incorrect because, although Congress does have authority under the Commerce clause to regulate the construction of nuclear energy plants, its action in acting by majority vote alone was not valid. Similarly, answer D is incorrect because Congress may have a compelling interest in regulating nuclear siting for public health and safety, but its actions were invalid because it cannot act alone without a super-majority. Additionally, Congress would not have needed a compelling state interest to regulate nuclear siting, because the facts present no deprivation of a fundamental right or classification based on a protected class.

Question 597 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Congressional hearings determined that the use of mechanical power hammers is very dangerous to the persons using them and to persons in the vicinity of the persons using them. As a result, Congress enacted a statute prohibiting the use of mechanical power hammers on all construction projects in the United States. Subsequently, a study conducted by a private research firm concluded that nails driven by mechanical power hammers have longer-lasting joining power than hand-driven nails. After learning about this study, a city council enacted an amendment to its building safety code requiring the use of mechanical power hammers in the construction of all buildings intended for human habitation.

This amendment to the city's building safety code is

- A:** unconstitutional, because it was enacted subsequent to the federal statute.
- B:** unconstitutional, because it conflicts with the provisions of the federal statute.
- C:** constitutional, because the federal statute does not expressly indicate that it supersedes inconsistent state or local laws.
- D:** constitutional, because the long-term safety of human habitation justifies some additional risk to the people engaged in their construction.

The explanation for the answer is:

Answer B is correct. The supremacy clause of the United States Constitution provides that a valid federal law controls when a state or local law conflicts with it. The law here is a valid exercise of Congress's commerce clause powers, and because the local law conflicts with it, the local law is unconstitutional.

Answer A is incorrect because the timing of enactment does not matter in a supremacy clause analysis. Answer C is incorrect because the supremacy clause does not require that a federal law expressly state that it supersedes inconsistent state or local laws. Answer D is incorrect because the city council cannot ignore the supremacy clause because it disagrees with the reasoning behind the federal statute due to new information.

Question 602 - Constitutional Law - Individual Rights

The question was:

A city has had a severe traffic problem on its streets. As a result, it enacted an ordinance prohibiting all sales to the public of food or other items by persons selling directly from trucks, cars, or other vehicles located on city streets. The ordinance included an inseverable grandfather provision exempting from its prohibition vendors who, for 20 years or more, have continuously sold food or other items from such vehicles located on the streets of the city.

A retail vendor of ice cream products qualifies for this exemption and is the only food vendor that does. A yogurt retailer has a business similar to the ice cream vendor, but the yogurt vendor has been selling to the public directly from trucks located on the streets of the city only for the past ten years. The yogurt vendor filed suit in an appropriate federal district court to enjoin the enforcement of this ordinance on the ground that it denies the yogurt vendor the equal protection of the laws.

In this case, the court will probably rule that the ordinance is

- A:** constitutional, because it is narrowly tailored to implement the city's compelling interest in reducing traffic congestion and, therefore, satisfies the strict scrutiny test applicable to such cases.
- B:** constitutional, because its validity is governed by the rational basis test, and the courts consistently defer to economic choices embodied in such legislation if they are even plausibly justifiable.
- C:** unconstitutional, because the nexus between the legitimate purpose of the ordinance and the conduct it prohibits is so tenuous and its provisions are so underinclusive that the ordinance fails to satisfy the substantial relationship test applicable to such cases.
- D:** unconstitutional, because economic benefits or burdens imposed by legislatures on the basis of grandfather provisions have consistently been declared invalid by courts as *per se* violations of the equal protection clause of the Fourteenth Amendment.

The explanation for the answer is:

Answer B is correct. The ordinance at issue regulates who may sell food from vehicles on the streets. It implicates neither a fundamental right, nor a suspect class. Therefore, the ordinance would be subject to rational basis review, and the court will defer to any economic choice made by the city as long as that choice is plausibly justifiable.

Answer A is not correct. Because the ordinance does not impact a fundamental right or a suspect class, it is not subject to strict scrutiny. Moreover, reducing traffic congestion may not be a compelling state interest. Answer C is not correct because the applicable test is not the "substantial relationship" test articulated there. Moreover, it is not clear that limitation of street vendors to those in business for twenty years is so tenuous and underinclusive that it would not satisfy a substantial relationship test. Answer D is incorrect because the opposite is true. Economic benefits or burdens imposed in any way that do not implicate a fundamental right or a suspect class are presumed to be valid under the equal protection clause of the Fourteenth Amendment.

Question 607 - Constitutional Law - Separation of Powers

The question was:

A federal statute prohibits the sale or resale, in any place in this country, of any product intended for human consumption or ingestion into the human body that contains designated chemicals known to cause cancer, unless the product is clearly labeled as dangerous.

The constitutionality of this federal statute may most easily be justified on the basis of the power of Congress to

- A:** regulate commerce among the states.
- B:** enforce the Fourteenth Amendment.
- C:** provide for the general welfare.
- D:** promote science and the useful arts.

The explanation for the answer is:

Answer A is correct. The power granted to Congress to regulate commerce has been interpreted so broadly that it encompasses almost any economic act that could conceivably have some kind of impact, even secondarily, on the stream of commerce. Because this statute prohibits the sale or resale of certain products without certain safeguards, it clearly falls under this broad power.

Answer B is incorrect because the statute seeks to regulate both private and public action, and generally the Fourteenth Amendment only applies to state action. Answer C is incorrect because while Congress can spend for the general welfare, Congress may not directly regulate for the general welfare. Answer D is incorrect because although Congress is granted the power to promote science and the useful arts, the method by which the constitution requires that Congress exercise that power is by awarding patents and copyrights, not by regulating the sale of products.

Question 627 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A federal law provides that all motor vehicle tires discarded in this country must be disposed of in facilities licensed by the federal Environmental Protection Agency. Pursuant to this federal law and all proper federal procedural requirements, that agency has adopted very strict standards for the licensing of such facilities. As a result, the cost of disposing of tires in licensed facilities is substantial.

A particular state has a very large fleet of motor vehicles, including trucks used to support state-owned commercial activities and police cars. The state disposes of used tires from both kinds of state motor vehicles in a state-owned and -operated facility. This state facility is unlicensed, but its operation in actual practice meets most of the standards imposed by the federal Environmental Protection Agency on facilities it licenses to dispose of tires.

Consistent with United States Supreme Court precedent, may the state continue to dispose of its used tires in this manner?

A: No, because a state must comply with valid federal laws that regulate matters affecting interstate commerce.

B: No, because some of the tires come from vehicles that are used by the state solely in its commercial activities.

C: Yes, because some of the tires come from vehicles that are used by the state in the performance of core state governmental functions such as law enforcement.

D: Yes, because the legitimate needs of the federal government are satisfied by the fact that the unlicensed state disposal scheme meets, in actual practice, most of the federal standards for the licensing of such facilities.

The explanation for the answer is:

Answer A is correct. A state is treated like a person for purposes of federal law, and must comply with validly enacted federal laws. This law is validly enacted because tires, which are bought and sold, are part of the stream of commerce.

Answer B is incorrect because the use to which the tires are put is irrelevant. Likewise, answer C is incorrect. The disposal of tires is not something that is part of the performance of core state governmental functions even if the use of tires is. Answer D is not correct because it is irrelevant that the state disposal scheme would meet most of the federal standards. The law requires that the disposal facility actually be licensed and that it meet all of the standards.

Question 638 - Constitutional Law - Separation of Powers

The question was:

Congress enacted a statute providing grants of federal funds for the restoration and preservation of courthouses that were built before 1900 and are still in use. The statute contains an inseverable condition requiring that any courthouse restored with the aid of such a grant must be equipped with ramps and other facilities necessary to accommodate physically handicapped people.

A law of a particular state requires public buildings in the state to have ramps and other facilities for handicapped people. It exempts from those requirements any building that is more than 70 years old if the State Board of Architects finds that the installation of such facilities would destroy the architectural integrity of the building.

The county courthouse in the state was built in 1895 and is still in use. It does not contain ramps or other special facilities for handicapped people. The State Board of Architects has determined that the installation of those facilities would destroy the architectural integrity of the building. The county board applies for a federal grant to restore and preserve that county's courthouse.

If the county board restores the courthouse with the aid of a federal restoration and preservation grant, is the board bound to install ramps and other facilities for handicapped people in that building?

A: Yes, because Congress may impose reasonable conditions related to the public welfare on grants of federal funds to public bodies when the public bodies are free to accept or reject the grants.

B: Yes, because the rights of handicapped and disabled people are fundamental rights that take precedence, as a constitutional matter, over considerations of architectural integrity.

C: No, because the Constitution does not authorize the federal government to direct the actions of the states or any of their political subdivisions with respect to matters affecting their own governmental buildings.

D: No, because any acceptance of this condition by the county board of supervisors would, as a matter of law, be considered to be under duress.

The explanation for the answer is:

Answer A is correct. Congress can condition the grant of federal funds to public bodies on compliance with measures related to the public welfare as long as the public body is free to accept or reject the grants.

Answer B is incorrect because the right of access to public buildings is not a fundamental right. Answer C is not correct because there are many ways in which the Constitution would empower Congress to regulate actions concerning state buildings under the commerce clause power. Answer D is incorrect because as long as the public body is free to reject the federal funds, the public body is not under duress.

Question 640 - Constitutional Law - Separation of Powers

The question was:

"Look-alike drugs" is the term used to describe nonprescription drugs that look like narcotic drugs and are sold on the streets as narcotic drugs. After extensive hearings, Congress concluded that the sale of look-alike drugs was widespread in this country and was creating severe health and law enforcement problems. To combat these problems, Congress enacted a comprehensive statute that regulates the manufacture, distribution, and sale of all nonprescription drugs in the United States.

Which of the following sources of constitutional authority can most easily be used to justify the authority of Congress to enact this statute?

- A:** The spending power
- B:** The commerce clause
- C:** The general welfare clause
- D:** The enforcement powers of the Fourteenth Amendment

The explanation for the answer is:

Answer B is correct. The power granted to Congress to regulate commerce has been interpreted so broadly that it encompasses almost any economic act that could conceivably have some kind of impact, even secondarily, on the stream of commerce. Because the sale of these drugs was widespread throughout the country, and the statute targeted the sale, manufacturing, and distribution of the drugs, it is properly authorized by the Commerce Clause.

Answer A is incorrect because this is not an action linked with federal spending. These products are not regulated as a condition of receipt of federal funds. Answer C is incorrect because the general welfare clause is not an independent source of authority. Answer D is incorrect because the statute seeks to regulate private and public action, and the Fourteenth Amendment applies only to the state action.

Question 641 - Constitutional Law - Relations Between Federal and State Governments

The question was:

After several well-publicized deaths caused by fires in products made from highly flammable fabrics, a state enacted a statute prohibiting "the manufacture or assembly of any product in this state which contains any fabric that has not been tested and approved for flame retardancy by the Zetest Testing Company." The Zetest Testing Company is a privately owned and operated business located the state.

For many years, a fabric mill, located in the state has had its fabrics tested for flame retardancy by a competing testing company, located in a different state. The competitor is a reliable organization that uses a process for testing and approving fabrics for flame retardancy identical in all respects to that used by the Zetest Testing Company.

Because the fabric mill wishes to continue to have its fabric tested solely by the competing testing company, the fabric mill files an action its state court challenging the constitutionality of the statute as applied to its circumstances.

In this suit, the court should hold the statute to be

- A:** constitutional, because it is reasonably related to the protection of the reputation of the fabric industry located in the state.
- B:** constitutional, because it is a legitimate means of protecting the safety of the public.
- C:** unconstitutional, because it denies to the fabric mill the equal protection of the laws.
- D:** unconstitutional, because it imposes an unreasonable burden on interstate commerce.

The explanation for the answer is:

D is the correct answer. The court should hold the statute to be unconstitutional in this case because requiring that all fabric be tested by a single company imposes an unreasonable burden on commerce where companies in neighboring states use the same testing methods.

A is incorrect because even if the statute is reasonably related to a legitimate state interest, it unduly interferes with interstate commerce. B is incorrect for the same reasons. Moreover, the safety of the public would be equally well served by requiring that a particular process be used to test fabrics rather than that a particular company do the testing. C is incorrect because the statute does not treat the fabric mill differently than any other company. Therefore, there is no equal protection issue.

Question 659 - Constitutional Law - Individual Rights

The question was:

The constitution of a state authorizes a five-member state reapportionment board to redraw state legislative districts every ten years. In the last state legislative reapportionment, the board, by a unanimous vote, divided the greater metropolitan area, composed of a large city and several contiguous townships, into three equally populated state legislative districts. The result of that districting was that 40% of the area's total black population resided in one of those districts, 45% of the area's total black population resided in the second of those districts, and 15% resided in the third district.

A registered voter, who is black and is a resident of the city, brings suit in an appropriate court against the members of the state reapportionment board, seeking declaratory and injunctive relief that would require the boundary lines of the state legislative districts in the greater metropolitan area be redrawn. His only claim is that the current reapportionment violates the Fifteenth Amendment because it improperly dilutes the voting power of the blacks who reside in that area.

If no federal statute is applicable, which of the following facts, if proven, would most strongly support the validity of the action of the state reapportionment board?

- A:** In drawing the current district lines, the reapportionment board precisely complied with state constitutional requirements that state legislative districts be compact and follow political subdivision boundaries to the maximum extent feasible.
- B:** The reapportionment board was composed of three white members and two black members and both of the board's black members were satisfied that its plan did not improperly dilute the voting power of the blacks who reside in that area.
- C:** Although the rate of voter registration among blacks is below that of voter registrations among whites in the greater metropolitan area, two black legislators have been elected from that area during the last 15 years.
- D:** The total black population of the greater metropolitan area amounts to only 15% of the population that is required to comprise a single legislative district.

The explanation for the answer is:

Answer A is correct. Race cannot be the predominant factor in drawing the boundaries of a voting district unless the district plan can survive a strict scrutiny review. Although the strange shape of a district is not necessary for strict scrutiny to apply, a district's bizarre shape can be used to show that race was the predominant factor in drawing the district's boundaries. Answer A provides the strongest support for the validity for the argument because it provides an alternate reasoning for the redistricting in which race is not a predominate factor, and would not trigger strict scrutiny.

Answers B, C, and D fail to provide any evidence that race was not the predominate factor in redrawing the state legislative districts. Answer B is not correct because the racial makeup of the reapportionment committee does not indicate that race was not used to redraw the voting districts. Answer C is incorrect because the racial makeup of elected legislators does not indicate that race was not used to redraw the voting districts. Answer D is not correct because the small size of the black population does not indicate that race was not used to redraw the voting districts. Thus, B, C, and D are incorrect.

Question 668 - Constitutional Law - Separation of Powers

The question was:

Which of the following acts by the United States Senate would be constitutionally IMPROPER?

- A:** The Senate decides, with the House of Representatives, that a disputed state ratification of a proposed constitutional amendment is valid.
- B:** The Senate determines the eligibility of a person to serve as a senator.
- C:** The Senate appoints a commission to adjudicate finally a boundary dispute between two states.
- D:** The Senate passes a resolution calling on the President to pursue a certain foreign policy.

The explanation for the answer is:

C is the correct answer. Article III of the Constitution vests the Supreme Court with the power to resolve controversies between two states. Neither Congress nor the Senate alone is given that power. A is incorrect because Congress is given the power to regulate the method of amending the Constitution. B is incorrect because the Senate can determine the qualifications of its members. D is incorrect because the Senate can pass whatever resolutions it wishes as long as they do not affect anyone's legal rights or obligations.

Question 680 - Constitutional Law - Individual Rights

The question was:

The Federal Family Film Enhancement Act assesses an excise tax of 10% on the price of admission to public movie theaters when they show films that contain actual or simulated scenes of human sexual intercourse.

Which of the following is the strongest argument against the constitutionality of this federal act?

- A:** The act imposes a prior restraint on the freedom of speech protected by the First Amendment.
- B:** The act is not rationally related to any legitimate national interest.
- C:** The act violates the equal protection concepts embodied in the due process clause of the Fifth Amendment because it imposes a tax on the price of admission to view certain films and not on the price of admission to view comparable live performances.
- D:** The act imposes a tax solely on the basis of the content of speech without adequate justification and, therefore, it is prohibited by the freedom of speech clause of the First Amendment.

The explanation for the answer is:

Answer D is correct. The federal government is regulating, through this tax, what kinds of things people can be shown. That regulation is based on content. Content-based restrictions must satisfy strict scrutiny, and there is no compelling government interest that this regulation was narrowly tailored to achieve.

Answer A is incorrect, because this is not a prior restraint. It does not prohibit these kinds of films from being made. Answer B is incorrect because rational basis is not the appropriate test here, because the regulation is content based. Answer C is incorrect because differentiation between the types of venues that can show the material is content neutral; therefore it need only be narrowly tailored to satisfy an important governmental interest.

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Question 684 - Constitutional Law - Individual Rights

The question was:

A city ordinance makes the city building inspector responsible for ensuring that all buildings in that city are kept up to the building code standards, and requires the inspector to refer for prosecution all known building code violations. Another ordinance provides that the city building inspector may be discharged for "good cause." The building inspector took a newspaper reporter through a number of run-down buildings in a slum neighborhood. After using various epithets and slurs to describe the occupants of these buildings, the building inspector stated to the reporter: "I do not even try to get these buildings up to code or to have their owners prosecuted for code violations because if these buildings are repaired, the people who live in them will just wreck them again." The reporter published these statements in a story in the local newspaper. The building inspector admitted he made the statements.

On the basis of these statements, the city council discharged the building inspector.

Is the action of the city council constitutional?

A: Yes, because the statements demonstrate that the building inspector has an attitude toward a certain class of persons that interferes with the proper performance of the obligations of his job.

B: Yes, because the building inspector is a government employee and a person holding such a position may not make public comments inconsistent with current governmental policy.

C: No, because the statements were lawful comments on a matter of public concern.

D: No, because the statements were published in a newspaper that is protected by the Fourteenth Amendment.

The explanation for the answer is:

Answer A is correct. A public employee has a First Amendment right to speak on a matter of public concern, and may not be discharged for that speech unless the employee's actions interfere with the functions of the government. While the building inspector may have been speaking on a matter of public concern - enforcement of the building code and the state of low-income housing, which was the subject of a newspaper story - the statements demonstrated that the building inspector's attitude was interfering with his job, which was enforcement of the building code.

Answer B is incorrect because government employees have a First Amendment right to comment publicly on matters of public concern. Answer C is incorrect because even when an employee's speech is on a matter of public concern, that employee may still be discharged if the employee's actions interfere with the functions of the government. Answer D is incorrect because the Fourteenth Amendment does not protect speech in newspapers.

Question 695 - Constitutional Law - Individual Rights

The question was:

Insurance is provided in a particular state only by private companies. Although the state insurance commissioner inspects insurance companies for solvency, the state does not regulate their rates or policies. An insurance company charges higher rates for burglary insurance to residents of one part of a county in the state than to residents of another section of the same county because of the different crime rates in those areas.

The plaintiff is a resident of the county who was charged the higher rate by the insurance company because of the location of her residence. The plaintiff sues the insurance company, alleging that the differential in insurance rates unconstitutionally denies her the equal protection of the law.

Will the plaintiff's suit succeed?

A: Yes, because the higher crime rate in the plaintiff's neighborhood demonstrates that the county police are not giving persons who reside there the equal protection of the laws.

B: Yes, because the insurance rate differential is inherently discriminatory.

C: No, because the constitutional guarantee of equal protection of the law is not applicable to the actions of these insurance companies.

D: No, because there is a rational basis for the differential in insurance rates.

The explanation for the answer is:

Answer C is correct. The Constitution provides for equal protection of the law, which means that it protects individuals from actions by the state (the Fourteenth Amendment) or the federal government (the Fifth Amendment). Equal protection only restricts private action in extremely specific circumstances, none of which are present in this fact pattern.

Answer A is incorrect because it assumes that the Constitution prohibits differential treatment by private companies. Moreover, the plaintiff is suing the insurance company, not the police, for a violation of equal protection. The equal protection violation in answer A would be caused by the police. Answer B is incorrect because generally private discrimination does not violate the Constitution. Answer D is incorrect because the Constitution only restricts private action in extremely specific circumstances, none of which are present in this situation.

Question 703 - Constitutional Law - Individual Rights

The question was:

A state has a statute providing that an unsuccessful candidate in a primary election for a party's nomination for elected public office may not become a candidate for the same office at the following general election by nominating petition or by write-in votes.

A woman sought her party's nomination for governor in the May primary election. After losing in the primary, the woman filed nominating petitions containing the requisite number of signatures to become a candidate for the office of governor in the following general election. The chief elections officer of the state refused to certify the woman's petitions solely because of the above statute. The woman then filed suit in federal district court challenging the constitutionality of this state statute.

As a matter of constitutional law, which of the following is the proper burden of persuasion in this suit?

- A:** The woman must demonstrate that the statute is not necessary to achieve a compelling state interest.
- B:** The woman must demonstrate that the statute is not rationally related to a legitimate state interest.
- C:** The state must demonstrate that the statute is the least restrictive means of achieving a compelling state interest.
- D:** The state must demonstrate that the statute is rationally related to a legitimate state interest.

The explanation for the answer is:

Answer C is correct. Candidate qualifications need to be narrowly tailored to protect a compelling state interest to not violate equal protection or the First Amendment right of association, and the state has the burden to prove that its regulation meets strict scrutiny. Answer A is incorrect because for strict scrutiny, the burden is not on the individual, but rather on the state. Answer B is incorrect because rational basis would not apply, since a fundamental right is at issue. Answer D is incorrect because rational basis doesn't apply, and if it did, the plaintiff would have the burden under it.

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- A:** The woman must demonstrate that the statute is not necessary to achieve a compelling state interest.
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- C:** The state must demonstrate that the statute is the least restrictive means of achieving a compelling state interest.
- D:** The state must demonstrate that the statute is rationally related to a legitimate state interest.

The explanation for the answer is:

Answer C is correct. Candidate qualifications need to be narrowly tailored to protect a compelling state interest to not violate equal protection or the First Amendment right of association, and the state has the burden to prove that its regulation meets strict scrutiny. Answer A is incorrect because for strict scrutiny, the burden is not on the individual, but rather on the state. Answer B is incorrect because rational basis would not apply, since a fundamental right is at issue. Answer D is incorrect because rational basis doesn't apply, and if it did, the plaintiff would have the burden under it.

Question 705 - Constitutional Law - Separation of Powers

The question was:

In order to provide funds for a system of new major airports near the ten largest cities in the United States, Congress levies a tax of \$25 on each airline ticket issued in the United States. The tax applies to every airline ticket, even those for travel that does not originate in, terminate at, or pass through any of those ten large cities.

As applied to the issuance in the United States of an airline ticket for travel between two cities that will not be served by any of the new airports, this tax is

- A:** constitutional, because Congress has broad discretion in choosing the subjects of its taxation and may impose taxes on subjects that have no relation to the purpose for which those tax funds will be expended.
B: constitutional, because an exemption for the issuance of tickets for travel between cities that will not be served by the new airports would deny the purchasers of all other tickets the equal protection of the laws.
C: unconstitutional, because the burden of the tax outweighs its benefits for passengers whose travel does not originate in, terminate at, or pass through any of the ten largest cities.
D: unconstitutional, because the tax adversely affects the fundamental right to travel.

The explanation for the answer is:

Answer A is correct because Congress's powers to tax and to spend funds are both very broad, and there is no requirement that what is spent be related in any way to what is taxed. Answer B is incorrect because an exemption for travelers between other cities would not deny any purchasers equal protection of the law, since such an exemption would be rationally related to the legitimate governmental purpose of funding the busier airports. Answer C is incorrect because the test is not whether the burden outweighs the benefits for the travelers. In fact, the burdens and benefits are only relevant if they make the taxing irrational. Answer D is incorrect because the tax does not infringe on the right to travel, since it applies equally to all travel, is a small part of the total cost of plane fare, and there are many other easy ways to travel between the same destinations.

Question 711 - Constitutional Law - Individual Rights

The question was:

To encourage the growth of its population, a state established a program that awarded \$1,000 to the parents of each child born within the state, provided that at the time of the child's birth the mother and father of the newborn were citizens of the United States.

A family are aliens who are permanent residents of the United States and have resided in the state for three years. When their first child was born two months ago, they applied for and were denied the \$1,000 award by state officials on the sole ground that they are not citizens of the United States. The family filed suit in federal court contending that their exclusion from the award program was unconstitutional. Assume no federal statute addresses this question.

In this case, the court should hold that the exclusion of aliens from the state award program is

A: constitutional, because the Tenth Amendment reserves to the states plenary authority over the spending of state funds.

B: constitutional, because the state has a legitimate interest in encouraging the growth of its population, and a rational legislature could believe that families in which both parents are United States citizens are more likely to stay in the state and contribute to its future prosperity than those in which one or both of the parents are aliens.

C: unconstitutional, because strict scrutiny governs judicial review of such state classifications based on alienage, and the state cannot demonstrate that this classification is necessary to advance a compelling state interest.

D: unconstitutional, because state classifications based on alienage are impermissible unless explicitly authorized by an act of Congress.

The explanation for the answer is:

Answer C is correct. State laws on alienage are subject to strict scrutiny unless they discriminate against alien participation in state government (in which case only a rational basis review would be required). Since the state cannot demonstrate that this classification is necessary to advance a compelling state interest, it will not pass a strict scrutiny review and answer C is correct. Answer A is incorrect, because any power to spend state funds is necessarily limited by the Fourteenth Amendment. Answer B is incorrect because rational basis is the incorrect level of review; since this is state law, alienage is a suspect classification. Answer D is incorrect because state statutes can make a classification based on alienage as long as the classification is necessary to advance a compelling state interest.

Question 714 - Constitutional Law - Judicial Review

The question was:

A city's police officers shot and killed a plaintiff's friend as he attempted to escape arrest for an armed robbery he had committed. The plaintiff brought suit in federal district court against the police department and the city police officers involved, seeking only a judgment declaring unconstitutional the state statute under which the police acted. That newly enacted statute authorized the police to use deadly force when necessary to apprehend a person who has committed a felony. In his suit, the plaintiff alleged that the police would not have killed his friend if the use of deadly force had not been authorized by the statute.

The federal district court should

- A:** decide the case on its merits, because it raises a substantial federal question.
- B:** dismiss the action, because it involves a nonjusticiable political question.
- C:** dismiss the action, because it does not present a case or controversy.
- D:** dismiss the action, because the Eleventh Amendment prohibits federal courts from deciding cases of this type.

The explanation for the answer is:

Answer C is correct. Article III limits the power of the federal judiciary to cases or controversies. Here, there is no case or controversy as these terms have been interpreted because the plaintiff has no standing. To have standing, a plaintiff: 1) must have suffered an injury, 2) the injury must have been caused by the action the plaintiff is challenging, and 3) it must be such that the injury can be redressed by the relief the plaintiff is seeking. Here, the plaintiff has not himself been injured, because his friend was the one shot and killed by police. That is not a close enough relationship for the law to recognize the loss as a legal injury. And, while the harm (the loss of his friend) was allegedly caused by the unconstitutional statute, his injury cannot be redressed by a declaration that the statute is unconstitutional. Declaratory actions are particularly prone to lack standing because they don't seek a more concrete remedy.

Answer A is incorrect because even if the statute's constitutionality raises a substantial federal question, a person with a real stake in the matter must challenge it in order for there to be a case or controversy. Answer B is incorrect because the statute's constitutionality does not present a political question - a question best resolved by the functions of the political process. Answer D is incorrect because the Eleventh Amendment only prohibits suits against the state, and this suit was against the city police department and individual officers. Cities are not the state for purposes of the Eleventh Amendment.

Question 717 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A shipper contracted with an interstate carrier to ship household goods from the state of Green to his new home in the state of Pink. A federal statute provides that all liability of an interstate mover to a shipper for loss of or damage to the shipper's goods in transit is governed exclusively by the contract between them. The statute also requires the interstate carrier to offer a shipper at least two contracts with different levels of liability. In full compliance with that federal statute, the interstate carrier offered the shipper a choice between two shipping agreements that provided different levels of liability on the part of the interstate carrier. The less expensive contract limited the interstate carrier's liability in case of loss or damage to less than full value. The shipper voluntarily signed the less expensive contract with the interstate carrier, fixing the interstate carrier's liability at less than the full value of the shipment.

The interstate carrier's truck was involved in an accident in the state of Pink. The accident was entirely a product of the negligence of the interstate carrier's driver. The shipper's household goods were totally destroyed. In accordance with the contract, the interstate carrier reimbursed the shipper for less than the full value of the goods. The shipper then brought suit against the interstate carrier under the tort law of the state of Pink claiming that he was entitled to be reimbursed for the full value of the goods. The interstate carrier filed a motion to dismiss.

In this suit, the court should

- A:** dismiss the case, because the federal statute governing liability of interstate carriers is the supreme law of the land and preempts state tort law.
- B:** dismiss the case, because the contractual relationship between the shipper and the interstate carrier is governed by the obligation of contracts clause of the Constitution.
- C:** deny the motion to dismiss, because the full faith and credit clause of the Constitution requires that state tort law be given effect.
- D:** deny the motion to dismiss, because it is unconstitutional for a federal statute to authorize the interstate carrier to contract out of any degree of liability for its own negligence.

The explanation for the answer is:

Answer A is correct. The supremacy clause provides that valid federal legislation supersedes conflicting state law. The statute is valid because governing liability of interstate carriers is within Congress's broad commerce clause powers.

Answer B is incorrect because, although the right to contract is protected by the contracts clause of the Constitution, that is not a reason to dismiss the case here, because the contract action does not conflict with the contracts clause claim. Answer C is incorrect because the full faith and credit clause only requires that federal courts give full faith and credit to state laws that don't conflict with federal laws. The problem does not state that the suit was brought in federal court. Additionally, there was a state law conflicting with a federal law here. Answer D is incorrect because there is no constitutional provision that would prohibit Congress from allowing the interstate carrier to contract out of liability for its own negligence. In fact, the commerce clause gives Congress that very power.

Question 719 - Constitutional Law - Individual Rights

The question was:

A city operates a cemetery pursuant to a city ordinance. The ordinance requires the operation of the city cemetery to be supported primarily by revenues derived from the sale of cemetery lots to individuals. The ordinance further provides that the purchase of a cemetery lot entitles the owner to perpetual care of the lot and entitles the owner to erect on the lot, at the owner's expense, a memorial monument or marker of the owner's choice, subject to certain size restrictions. The city ordinance requires the city to maintain the cemetery, including mowing the grass, watering flowers, and plowing snow, and provides for the expenditure of city tax funds for such maintenance if revenues from the sale of cemetery lots are insufficient. Although cemetery lots are sold at full fair market value, which includes the current value of perpetual care, the revenue from the sale of such lots has been insufficient in recent years to maintain the cemetery. As a result, a small amount of city tax funds has also been used for that purpose.

A group of city taxpayers brings suit against the city challenging the constitutionality of the city ordinance insofar as it permits the owner of a cemetery lot to erect a religious memorial monument or marker on his or her lot.

Is this suit likely to be successful?

- A:** No, because only a small amount of city tax funds has been used to maintain the cemetery.
- B:** No, because the purpose of the ordinance is entirely secular, its primary effect neither advances nor inhibits religion, and it does not foster an excessive entanglement with religion.
- C:** Yes, because city maintenance of any religious object is a violation of the establishment clause of the First Amendment as incorporated into the Fourteenth Amendment.
- D:** Yes, because no compelling governmental interest justifies authorizing private persons to erect religious monuments or markers in a city-operated cemetery.

The explanation for the answer is:

B is correct. Generally, a taxpayer does not have standing to challenge governmental spending. However, an exception exists when the spending violates the establishment clause of the First Amendment. The test to analyze whether an ordinance violates the establishment clause is: (1) whether its purpose is secular, (2) whether its primary effect advances or inhibits religion, and (3) whether it fosters an excessive entanglement with religion. Since this ordinance's purpose is secular, its primary effect neither advances nor inhibits religion. Since the ordinance does not foster an excessive entanglement with religion, it does not violate the establishment clause. Answer A is incorrect because the amount of government support is irrelevant to an establishment clause analysis. Answer C is incorrect because this type of tangential support of a religious object does not violate the establishment clause. Answer D is incorrect because strict scrutiny is not the applicable test for establishment clause issues.

Question 728 - Constitutional Law - Individual Rights

The question was:

A school board in a small city issued a rule authorizing public school principals to punish, after a hearing, students who engage in violations of the board's student behavior code. According to the rule, violators of the behavior code may be punished in a variety of ways including being required to sit in designated school confinement rooms during all school hours, with their hands clasped in front of them, for a period of up to 15 school days.

A fifth grade student in the city's elementary school was charged with placing chewed bubble gum on a classmate's chair, a violation of the student behavior code. He had never violated the code before and was otherwise an attentive and well-behaved student. After a hearing on the charges, the student's principal determined that the student had violated the behavior code in the manner charged, and ordered the student to spend the next 15 school days in the school confinement room with his hands clasped in front of him. The student's parents filed suit in federal court challenging, solely on constitutional grounds, the principal's action in ordering the student to spend the next 15 school days in the school confinement room with his hands clasped in front of him.

Which of the following arguments would be most helpful to the student's parents in this suit?

- A:** Because the school board rule limits the freedom of movement of students and subjects them to bodily restraint, it denies them a privilege and immunity of citizenship guaranteed them by Article IV, Section 2.
- B:** Because the school board rule is substantially overbroad in relation to any legitimate purpose, it constitutes a facial violation of the equal protection clause of the Fourteenth Amendment.
- C:** Because application of the school board rule in this case denies the student freedom of movement and subjects him to bodily restraint in a manner grossly disproportionate to his offense and circumstances, it violates the due process clause of the Fourteenth Amendment.
- D:** Because the school board rule is enforced initially by administrative rather than judicial proceedings, it constitutes a prohibited bill of attainder.

The explanation for the answer is:

C is the correct answer. The best argument for the parents is that their son was denied procedural due process. Here, the student lost significant freedom of action as he will be removed from class for 15 days and placed in a school confinement room. Because a legitimate liberty interest is being taken, the student is entitled the procedural due process, which requires notice of the government action and an opportunity to respond. Because the principal did not give the student an opportunity to respond to the charges leading to the disciplinary action, the Due Process Clause of the Fourteenth Amendment was violated.

Answer A is not correct because freedom of movement in this sense is protected by due process, not the privileges and immunities clause of Article IV, Section 2, which prohibits citizenship or residency classifications. Answer B is incorrect because the rule is not facially overbroad. The rule would be facially overbroad only if it could never be applied constitutionally in any situation. Finally, answer D is incorrect because this is not a bill of attainder, a law that imposes a punishment without a judicial proceeding. There is a judicial proceeding conducted by an administrative body and it is not unconstitutional for an administrative body to act in a quasi-judicial manner.

Question 728 - Constitutional Law - Individual Rights

The question was:

A school board in a small city issued a rule authorizing public school principals to punish, after a hearing, students who engage in violations of the board's student behavior code. According to the rule, violators of the behavior code may be punished in a variety of ways including being required to sit in designated school confinement rooms during all school hours, with their hands clasped in front of them, for a period of up to 15 school days.

A fifth grade student in the city's elementary school was charged with placing chewed bubble gum on a classmate's chair, a violation of the student behavior code. He had never violated the code before and was otherwise an attentive and well-behaved student. After a hearing on the charges, the student's principal determined that the student had violated the behavior code in the manner charged, and ordered the student to spend the next 15 school days in the school confinement room with his hands clasped in front of him. The student's parents filed suit in federal court challenging, solely on constitutional grounds, the principal's action in ordering the student to spend the next 15 school days in the school confinement room with his hands clasped in front of him.

Which of the following arguments would be most helpful to the student's parents in this suit?

- A:** Because the school board rule limits the freedom of movement of students and subjects them to bodily restraint, it denies them a privilege and immunity of citizenship guaranteed them by Article IV, Section 2.
- B:** Because the school board rule is substantially overbroad in relation to any legitimate purpose, it constitutes a facial violation of the equal protection clause of the Fourteenth Amendment.
- C:** Because application of the school board rule in this case denies the student freedom of movement and subjects him to bodily restraint in a manner grossly disproportionate to his offense and circumstances, it violates the due process clause of the Fourteenth Amendment.
- D:** Because the school board rule is enforced initially by administrative rather than judicial proceedings, it constitutes a prohibited bill of attainder.

The explanation for the answer is:

C is the correct answer. The best argument for the parents is that their son was denied procedural due process. Here, the student lost significant freedom of action as he will be removed from class for 15 days and placed in a school confinement room. Because a legitimate liberty interest is being taken, the student is entitled the procedural due process, which requires notice of the government action and an opportunity to respond. Because the principal did not give the student an opportunity to respond to the charges leading to the disciplinary action, the Due Process Clause of the Fourteenth Amendment was violated.

Answer A is not correct because freedom of movement in this sense is protected by due process, not the privileges and immunities clause of Article IV, Section 2, which prohibits citizenship or residency classifications. Answer B is incorrect because the rule is not facially overbroad. The rule would be facially overbroad only if it could never be applied constitutionally in any situation. Finally, answer D is incorrect because this is not a bill of attainder, a law that imposes a punishment without a judicial proceeding. There is a judicial proceeding conducted by an administrative body and it is not unconstitutional for an administrative body to act in a quasi-judicial manner.

Question 733 - Constitutional Law - Individual Rights

The question was:

A state statute declares that after five years of continuous service in their positions, all state employees, including faculty members at the state university, are entitled to retain their positions during "good behavior." The statute also contains a number of procedural provisions. Any state employee who is dismissed after that five-year period must be given reasons for the dismissal before it takes effect. In addition, such an employee must, upon request, be granted a post-dismissal hearing before an administrative board to seek reinstatement and back pay. The statute precludes any other hearing or opportunity to respond to the charges. That post-dismissal hearing must occur within six months after the dismissal takes effect. The burden of proof at such a hearing is on the state, and the board may uphold the dismissal only if it is supported by a preponderance of the evidence. An employee who is dissatisfied with a decision of the board after a hearing may appeal its decision to the state courts. The provisions of this statute are inseverable.

A teacher who had been employed continuously for seven years as a faculty member at the state university was dismissed. A week before the dismissal took effect, she was informed that she was being dismissed because of a charge that she accepted a bribe from a student in return for raising the student's final grade in her course. At that time she requested an immediate hearing to contest the propriety of her dismissal.

Three months after her dismissal, she was granted a hearing before the state administrative board. The board upheld her dismissal, finding that the charge against her was supported by a preponderance of the evidence presented at the hearing.

The faculty member did not appeal the decision of the state administrative board to the state courts. Instead, she sought a declaratory judgment in federal district court to the effect that the state statute prescribing the procedures for her dismissal is unconstitutional.

In this case, the federal district court should

A: dismiss the suit, because a claim that a state statute is unconstitutional is not ripe for adjudication by a federal court until all judicial remedies in state courts provided for by state law have been exhausted.

B: hold the statute unconstitutional because the due process clause of the Fourteenth Amendment requires a state to demonstrate beyond a reasonable doubt the facts constituting good cause for termination of a state employee.

C: hold the statute unconstitutional, because a state may not ordinarily deprive an employee of a property interest in a job without giving the employee an opportunity for some kind of a pre-dismissal hearing to respond to the charges against that employee.

D: hold the statute constitutional, because the due process clause of the Fourteenth Amendment entitles state employees who have a right to their jobs during good behavior only to a statement of reasons for their dismissal and an opportunity for a post-dismissal hearing.

The explanation for the answer is:

C is correct. The state law gives this employee a property right in her job. Therefore, she is entitled to procedural due process before she is deprived of that right. Normally, this requires notice and a hearing where the employee is given an opportunity to respond to the charges. Because the employee was not given some kind of hearing before her dismissal, the district court should hold the statute unconstitutional as a violation of the Due Process Clause of the Fourteenth Amendment. A is not correct because the controversy is ripe. A controversy is not ripe when an injury is anticipated but has not yet occurred. The teacher has been injured by being terminated, so her controversy is ripe. She does not need to wait for the state to fail to correct her termination. B is not correct because the due process clause does not require the state to prove that there is good cause beyond a reasonable doubt. Answer D is not correct because state employment is considered an important enough property right to require a pre-dismissal hearing.

Question 740 - Constitutional Law - Individual Rights

The question was:

A professional motorcycle rider put on a performance in a privately owned stadium during which he leaped his motorcycle over 21 automobiles. Spectators were charged \$5 each to view the jump and were prohibited from using cameras. However, the local television station filmed the whole event from within the stadium without the knowledge or consent of the rider and showed the film in its entirety on the evening newscast that day. The rider thereafter brought suit to recover damages from the station for the admittedly unauthorized filming and broadcasting of the act. The television station raised only constitutional defenses.

The court should

A: hold against the rider, because the First and Fourteenth Amendments authorize press coverage of newsworthy entertainment events.

B: hold against the rider, because under the First and Fourteenth Amendments news broadcasts are absolutely privileged.

C: find the station liable, because its action deprives the rider of his property without due process.

D: find the station liable, because the First and Fourteenth Amendments do not deprive an entertainer of the commercial value of his or her performances.

The explanation for the answer is:

D is correct. The rider has a property right in the commercial value of his performance, and although the television station has a First and Fourteenth Amendment right to publish information, it does not have any immunity under the Constitution for liability in tort if it deprives a person of the commercial value of that person's performance. Choice A is incorrect because the right of the press to cover newsworthy events is not an immunity from liability. Choice B is incorrect because there is no absolute privilege under the Constitution for the press. Choice C is incorrect because the Constitution only restricts the government from depriving people of property without due process of law. It does not restrict private parties. The television station does remain liable in tort, however.

Question 760 - Constitutional Law - Separation of Powers

The question was:

Congress passed a bill prohibiting the President from granting a pardon to any person who had not served at least one-third of the sentence imposed by the court which convicted that person. The President vetoed the bill, claiming that it was unconstitutional. Nevertheless, Congress passed it over his veto by a two-thirds vote of each house.

This act of Congress is

- A:** constitutional, because it was enacted over the President's veto by a two-thirds vote of each house.
- B:** constitutional, because it is a necessary and proper means of carrying out the powers of Congress.
- C:** unconstitutional, because it interferes with the plenary power of the President to grant pardons.
- D:** unconstitutional, because a Presidential veto based upon constitutional grounds may be overridden only with the concurrence of three-fourths of the state legislatures.

The explanation for the answer is:

C is the correct answer. Although Congress can usually enact laws that the President has vetoed by a two-thirds majority vote (as choice A would suggest), Congress cannot take power away from the President that the Constitution grants. Article II, § 2, cl. 1 states that the President shall have power to grant pardons except in cases of impeachment. That power is not qualified in any way, and for Congress to attempt to qualify the power is unconstitutional. B is incorrect because the power to grant pardons is not a Congressional power; rather it is solely an executive power. D is incorrect because there is no such rule for vetoes on unconstitutional grounds. The Constitution can be amended when a proposed amendment, passed by two-thirds of both houses of Congress, is ratified by three-fourths of the states, but that was not the scenario in this problem.

Question 771 - Constitutional Law - Separation of Powers

The question was:

Small retailers located in a particular state are concerned about the loss of business to certain large retailers located nearby in bordering states. In an effort to deal with this concern, the legislature of the state enacted a statute requiring all manufacturers and wholesalers who sell goods to retailers in the state to do so at prices that are no higher than the lowest prices at which they sell them to retailers in any of the states that border that state. Several manufacturers and wholesalers who are located in states bordering the state and who sell their goods to retailers in those states and in the state bring an action in federal court to challenge the constitutionality of this statute.

Which of the following arguments offered by these plaintiffs is likely to be most persuasive in light of applicable precedent?

The state statute

- A:** deprives them of their property or liberty without due process of law.
- B:** imposes an unreasonable burden on interstate commerce.
- C:** deprives them of a privilege or immunity of national citizenship.
- D:** denies them the equal protection of the laws.

The explanation for the answer is:

Answer B is correct. The strongest argument for the manufacturers and wholesalers is that regulating their prices relative to the prices they charge in other states unreasonably burdens interstate commerce. Answer A is incorrect because the state has not actually deprived the manufacturers and wholesalers of any property since they still have full use of their property without substantial interference. Answer C is incorrect because the Privileges and Immunities Clause of the Fourteenth Amendment does not apply to corporations. Finally, answer D is incorrect because there is no classification here, and thus, the statute need only be rationally related to some conceivable legitimate state interest. This review is very deferential, and it is highly unlikely that the statute lacks that minimal rationality.

Question 776 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A federally owned and operated office building in a particular state is heated with a new, pollution-free heating system. However, in the coldest season of the year, this new system is sometimes insufficient to supply adequate heat to the building. The appropriation statute providing the money for construction of the new heating system permitted use of the old, pollution-generating system when necessary to supply additional heat. When the old heating system operates (only about two days in any year), the smokestack of the building emits smoke that exceeds the state's pollution-control standards.

May the operators of the federal office building be prosecuted successfully by state authorities for violating that state's pollution control standards?

A: Yes, because the regulation of pollution is a legitimate state police power concern.

B: Yes, because the regulation of pollution is a joint concern of the federal government and the state and, therefore, both of them may regulate conduct causing pollution.

C: No, because the operations of the federal government are immune from state regulation in the absence of federal consent.

D: No, because the violations of the state pollution-control standards involved here are so *de minimis* that they are beyond the legitimate reach of state law.

The explanation for the answer is:

Choice C is correct. Under the supremacy clause, the state cannot regulate the federal government without the federal government's consent. Choice A is incorrect because even though the state has a legitimate interest in regulating pollution, and such regulation is within the state's police power, the state lacks the power to control the federal government. Choice B is incorrect for the same reason. Although the proposition it states is correct, the state simply cannot control the federal government. Choice D is incorrect because the state can regulate de minimus violations of its pollution control standards when those violations are committed by private parties. It can't regulate the federal government, however.

Question 789 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A state statute requires each insurance company that offers burglary insurance policies in the state to charge a uniform rate for such insurance to all of its customers residing within the same county in that state. So long as it complies with this requirement, a company is free to charge whatever rate the market will bear for its burglary insurance policies.

An insurance company located in the state files suit in federal district court against appropriate state officials to challenge this statute on constitutional grounds. The insurance company wishes to charge customers residing within the same county in the state rates for burglary insurance policies that will vary because they would be based on the specific nature of the customer's business, on its precise location, and on its past claims.

In this suit, the court should

A: hold the statute unconstitutional, because the statute deprives the insurance company of its liberty or property without due process of law.

B: hold the statute unconstitutional, because the statute imposes an undue burden on interstate commerce.

C: hold the statute constitutional, because the statute is a reasonable exercise of the state's police power.

D: abstain from ruling on the merits of this case until the state courts have had an opportunity to pass on the constitutionality of this state statute.

The explanation for the answer is:

C is the correct answer. The state has a legitimate interest in regulating the sale of insurance. And, because the limit the state puts on insurance companies is uniform and is very small, (that it must charge a uniform rate to all customers within the same county but may charge whatever rate that the market will bear), that limit is reasonable. Therefore, it is constitutional. A is incorrect because the state has not substantially interfered with the use of any insurance company property. B is incorrect because the treatment of all insurance companies is uniform. D is incorrect because there is no reason to abstain. This is not a situation in which the meaning of the state statute is unsettled, or that involves an area that is so fully regulated by the state that the federal court, in the interest of good relations would abstain.

Question 801 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Widgets are manufactured wholly from raw materials mined and processed in a particular state. The only two manufacturers of widgets in the United States are also located in that state. However, their widgets are purchased by retailers located in every state. The state's legislature is considering the adoption of a statute that would impose a tax solely on the manufacture of widgets. The tax is to be calculated at 3% of their wholesale value.

Which of the following arguments would be LEAST helpful to the state in defending the constitutionality of this proposed state tax on widgets?

- A:** At the time widgets are manufactured and taxed they have not yet entered the channels of interstate commerce.
- B:** The economic impact of this tax will be passed on to both in-state and out-of-state purchasers of widgets and, therefore, it is wholly nondiscriminatory in its effect.
- C:** Because of the powers reserved to them by the Tenth Amendment, states have plenary authority to construct their tax system in any manner they choose.
- D:** A tax on the manufacturer of widgets may be imposed only by the state in which the manufacturing occurs and, therefore, it is not likely to create the danger of a multiple tax burden on interstate commerce.

The explanation for the answer is:

C is the correct answer. Choice C is the least helpful to the state in defending the constitutionality of its tax. States have the authority to structure their tax system in any manner that does not violate some other portion of the constitution. Choice A would be a better argument because if the widgets have not yet entered interstate commerce when they are taxed, then the tax would not be a burden on interstate commerce. Choice B is incorrect because if the tax is passed on to all purchasers equally, then it will not violate the privileges and immunities clause, since it treats in and out-of-state purchasers the same. Choice D is incorrect because, since the state doing the taxing is the state in which the widgets are manufactured, the tax is not likely to create the danger of a multiple tax burden on interstate commerce.

Question 809 - Constitutional Law - Individual Rights

The question was:

Twenty percent of the residents of Green City are members of minority racial groups. These residents are evenly distributed among the many different residential areas of the city. The five city council members of Green City are elected from five single-member electoral districts that are nearly equally populated. No candidate has ever been elected to the city council who was a member of a minority racial group.

A group of citizens who are members of minority racial groups file suit in federal district court seeking a declaratory judgment that the single-member districts in Green City are unconstitutional. They claim that the single-member districting system diminishes the ability of voters who are members of minority racial groups to affect the outcome of the city elections. They seek an order from the court forcing the city to adopt an at-large election system in which the five candidates with the greatest vote totals would be elected to the city council. No state or federal statutes are applicable to the resolution of this suit.

Which of the following constitutional provisions provides the most obvious basis of plaintiff's claim in this suit?

- A:** The Thirteenth Amendment.
- B:** The due process clause of the Fourteenth Amendment.
- C:** The privileges and immunities clause of the Fourteenth Amendment.
- D:** The Fifteenth Amendment.

The explanation for the answer is:

D is the correct answer. The Fifteenth Amendment provides that the right to vote shall not be abridged on the basis of race or color. Because this is a challenge by minority racial groups to the way voting is conducted, the Fifteenth Amendment is the most obvious basis to their claim. A is not correct because the Thirteenth Amendment abolishes slavery. And, while the inability to vote is a badge of slavery, the Thirteenth Amendment does not focus on the vote per se. B and C are incorrect for the same reasons. The Fourteenth Amendment is designed to promote racial equality, but it does not protect the right to vote explicitly.

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D is the correct answer. The Fifteenth Amendment provides that the right to vote shall not be abridged on the basis of race or color. Because this is a challenge by minority racial groups to the way voting is conducted, the Fifteenth Amendment is the most obvious basis to their claim. A is not correct because the Thirteenth Amendment abolishes slavery. And, while the inability to vote is a badge of slavery, the Thirteenth Amendment does not focus on the vote per se. B and C are incorrect for the same reasons. The Fourteenth Amendment is designed to promote racial equality, but it does not protect the right to vote explicitly.

Question 814 - Constitutional Law - Separation of Powers

The question was:

The Sports Championship Revenue Enhancement Act is a federal statute that was enacted as part of a comprehensive program to eliminate the federal budget deficit. That act imposed, for a period of five years, a 50% excise tax on the price of tickets to championship sporting events. Such events included the World Series, the Super Bowl, major college bowl games, and similar championship sports events.

This federal tax is probably

- A:** constitutional, because the compelling national interest in reducing the federal budget deficit justifies this tax as a temporary emergency measure.
- B:** constitutional, because an act of Congress that appears to be a revenue raising measure on its face is not rendered invalid because it may have adverse economic consequences for the activity taxed.
- C:** unconstitutional, because a 50% tax is likely to reduce attendance at championship sporting events and, therefore, is not rationally related to the legitimate interest of Congress in eliminating the budget deficit.
- D:** unconstitutional, because Congress violates the equal protection component of the Fifth Amendment by singling out championship sporting events for this tax while failing to tax other major sporting events to which tickets are sold.

The explanation for the answer is:

B is the correct answer. Even though the tax is high at 50%, Congress has broad power to raise revenue through taxes. A measure that appears to be revenue raising on its face is not invalid merely because it may have adverse economic consequences for the activity being taxed. A is not correct because tax measures need not satisfy strict scrutiny. Answer C is not correct because the potential impact on attendance at sporting events does not defeat the rational relationship between the taxing and reducing the deficit. D is incorrect because a taxing provision needs to be only minimally rational to satisfy the Equal Protection Clause. It is irrelevant that championship events are singled out for taxation.

Question 830 - Constitutional Law - Relations Between Federal and State Governments

The question was:

The United States Department of Energy regularly transports nuclear materials through a particular city on the way to a nuclear weapons processing plant it operates in a nearby state. The city recently adopted an ordinance prohibiting the transportation of any nuclear materials in or through the city. The ordinance declares that its purpose is to protect the health and safety of the residents of that city.

May the Department of Energy continue to transport these nuclear materials through the city?

A: No, because the ordinance is rationally related to the public health and safety of the city's residents.

B: No, because the Tenth Amendment reserves to the states certain unenumerated sovereign powers.

C: Yes, because the Department of Energy is a federal agency engaged in a lawful federal function and, therefore, its activities may not be regulated by a local government without the consent of Congress.

D: Yes, because the ordinance enacted by the city is invalid because it denies persons transporting such materials the equal protection of the laws.

The explanation for the answer is:

C is the correct answer. Under the supremacy clause, the federal agency's activities supersede any inconsistent local law. A local body may not regulate any part of the federal government. Thus, as long as the federal agency is involved in a lawful federal function, which it is, the city may not prohibit it from performing that function without the consent of Congress.

Choice A is incorrect because even though the ordinance is rationally related to the public health and safety of the city's residents, and therefore constitutional as applied to private parties, it cannot be applied to the federal government because of the supremacy clause. Choice B is incorrect because the Tenth Amendment does not reserve to the states the power to control the federal government. Where there is a conflict between federal action and state or local law, the federal action will prevail as long as the federal action is otherwise valid. Choice D is incorrect because the ordinance does not classify among who may transfer nuclear materials. Because it is neutral, it does not deny transporters equal protection of the law.

Question 835 - Constitutional Law - Individual Rights

The question was:

The legislature of a particular state enacted a statute requiring that all law enforcement officers in that state be citizens of the United States. An alien, lawfully admitted to permanent residency five years before the enactment of this statute, sought employment as a forensic pathologist in the state coroner's office. He was denied such a job solely because he was not a citizen.

The alien thereupon brought suit in federal district court against appropriate state officials seeking to invalidate this citizenship requirement on federal constitutional grounds.

The strongest ground upon which to attack this citizenship requirement is that it

- A:** constitutes an *ex post facto* law as to previously admitted aliens.
- B:** deprives an alien of a fundamental right to employment without the due process of law guaranteed by the Fourteenth Amendment.
- C:** denies an alien a right to employment in violation of the privileges and immunities clause of the Fourteenth Amendment.
- D:** denies an alien the equal protection of the laws guaranteed by the Fourteenth Amendment.

The explanation for the answer is:

D is the correct answer. The Equal Protection Clause requires that classifications based on alienage be narrowly tailored to promote a compelling state interest. Because that is such a difficult test to satisfy, this is the strongest argument. A is incorrect because the law does not criminalize an act after that act was committed, nor does it impose a burden on a vested right; therefore it is not an *ex post facto* law. B is incorrect because employment is not a fundamental right. C is not correct because the privileges and immunities clause prohibits discrimination by states against United States citizens, and an alien is not a United States citizen.

Question 840 - Constitutional Law - Individual Rights

The question was:

The open-air amphitheater in the city park of a town has been utilized for concerts and other entertainment programs. Until this year, each of the groups performing in that city facility was allowed to make its own arrangements for sound equipment and sound technicians.

After recurring complaints from occupants of residential buildings adjacent to the city park about intrusive noise from some performances held in the amphitheater, the town's city council passed an ordinance establishing city control over all sound amplification at all programs held there. The ordinance provided that the town's Department of Parks would be the sole provider in the amphitheater of sound amplification equipment and of the technicians to operate the equipment "to ensure a proper balance between the quality of the sound at such performances and respect for the privacy of nearby residential neighbors."

Which of the following standards should a court use to determine the constitutionality on its face of this content neutral ordinance?

- A:** The ordinance is narrowly tailored to serve a substantial government interest, and does not unreasonably limit alternative avenues of expression.
- B:** The ordinance is rationally related to a legitimate government interest, and does not unreasonably limit alternative avenues of expression.
- C:** The ordinance is rationally related to a legitimate government interest and does not restrict the expressive rights involved any more than is reasonable under the circumstances.
- D:** The ordinance is substantially related to a legitimate governmental interest and does not restrict the expressive rights involved any more than is reasonable in light of the surrounding circumstances.

The explanation for the answer is:

A is the correct answer. The government may regulate the time, place, and manner of speech as long as that regulation: 1) is content neutral, 2) serves a substantial governmental interest, and 3) is narrowly tailored so that there are alternative avenues of expression open. This regulation is a time, place, and manner regulation because it affects only the volume of the expression. B, C, and D give the incorrect standards for this type of regulation.

Question 842 - Constitutional Law - Individual Rights

The question was:

A state wanted to prevent its only major league baseball team, privately owned, from moving to a rival state. After a heated political debate in the legislature, the state enacted legislation providing for a one-time grant of \$10 million in state funds to the baseball team to cover part of the projected income losses the team would suffer during the next five years if it remained in that state. The legislation required that the team remain in the state for at least ten years if it accepted the grant.

After accepting the grant, the owners of the baseball team decided to build a new \$150 million stadium in the state. As plans for the construction of the new stadium proceeded, it became evident that all of the contractors and subcontractors would be white males, and that they had been chosen by the owners of the baseball team without public bids because these contractors and subcontractors had successfully built the only other new baseball stadium in the region. Several contractors who were females or members of minority racial groups filed suit against the owners of the baseball team in federal district court to compel public solicitation of bids for the construction of its new stadium on an equal opportunity basis, and to enjoin construction of the stadium until compliance was ensured. Their only claim was that the contracting practices of the owners of the baseball team denied them the equal protection of the laws in violation of the Fourteenth Amendment.

In this suit, the court will probably rule that

A: the nexus between the actions of the owners of the baseball team and the one-time grant of monies to them by the state is sufficiently substantial to subject their actions to the limitations of the Fourteenth Amendment.

B: the intense public preoccupation with the activities of major league baseball teams coupled with the fact that baseball is considered to be our national pastime is sufficient to justify application of the Fourteenth Amendment to the activities of major league teams.

C: in the absence of additional evidence of state involvement in the operations or decisions of the owners of the baseball team, a one-time grant of state monies to them is insufficient to warrant treating their actions as subject to the limitations of the Fourteenth Amendment.

D: the issues presented by this case are nonjusticiable political questions because there is a lack of judicially manageable standards to resolve them and they are likely to be deeply involved in partisan politics.

The explanation for the answer is:

C is the correct answer. The Fourteenth Amendment only limits the power of states and state actors. The baseball franchise is a private entity, and the Fourteenth Amendment cannot reach it unless somehow it has become a state actor. The franchise can only be a state actor if it performs some traditional governmental function or if the government has become very involved in the management of the franchise. The grant of money by itself is not enough involvement, so choice A is incorrect. Therefore, the court will probably rule that the Fourteenth Amendment does not apply. Choice B is incorrect because public preoccupation with baseball and its designation as the national pastime are not enough to make baseball a traditionally governmental function. Choice D is incorrect because this does not present a political question. There are two real sides with something at stake, and the controversy is concrete enough to be justiciable.

Question 850 - Constitutional Law - Relations Between Federal and State Governments

The question was:

In response to massive layoffs of employees of automobile assembly plants located in a particular state, the legislature of that state enacted a statute which prohibits the parking of automobiles manufactured outside of the United States in any parking lot or parking structure that is owned or operated by the state or any of its instrumentalities. This statute does not apply to parking on public streets.

Which of the following is the strongest argument with which to challenge the constitutionality of this statute?

- A:** The statute imposes an undue burden on foreign commerce.
- B:** The statute denies the owners of foreign-made automobiles the equal protection of the laws.
- C:** The statute deprives the owners of foreign-made automobiles of liberty or property without due process of law.
- D:** The statute is inconsistent with the privileges and immunities clause of the Fourteenth Amendment.

The explanation for the answer is:

A is the correct answer. Congress has the sole power to regulate the trade between the United States and foreign governments. This power is similar to the internal commerce power. Because there is an effect on owners of automobiles manufactured outside of the United States, there is some effect on foreign commerce. Therefore, the state's action interferes with Congress' power in this area. This is sometimes known as the "dormant" commerce clause. B is incorrect because it is not very strong. Since the statute does not classify using any suspect class, only rational basis review would be applied, and statutes are almost never struck down on rational basis review. C is incorrect because ownership of a foreign car is not a fundamental liberty or property interest, and therefore, rational basis review would apply. Answer D is incorrect because the statute does not restrict parking only to in-state residents. Rather the classification is based on where the car was made. Thus, the statute does not interfere with national citizenship.

Question 860 - Constitutional Law - Relations Between Federal and State Governments

The question was:

The National Ecological Balance Act prohibits the destruction or removal of any wild animals located on lands owned by the United States without express permission from the Federal Bureau of Land Management. Violators are subject to fines of up to \$1,000 per offense.

After substantial property damage was inflicted on residents of a particular state by hungry coyotes, the state legislature passed the Coyote Bounty Bill, which offers \$25 for each coyote killed or captured within the state. A national forest, owned by the federal government, is located entirely within the state. Many coyotes live in this national forest.

Without seeking permission from the Bureau of Land Management, a hunter shot several coyotes in the national forest and collected the bounty from the state. As a result, he was subsequently tried in federal district court, convicted, and fined \$1,000 for violating the National Ecological Balance Act. A hunter appealed his conviction to the United States Court of Appeals.

On appeal, the Court of Appeals should hold the National Ecological Balance Act, as applied to a hunter to be

A: constitutional, because the property clause of Article IV, Section 3, of the Constitution authorizes such federal statutory controls and sanctions.

B: constitutional, because Article I, Section 8, of the Constitution authorizes Congress to enact all laws necessary and proper to advance the general welfare.

C: unconstitutional, because Congress may not use its delegated powers to override the Tenth Amendment right of the state to legislate in areas of traditional state governmental functions, such as the protection of the property of its residents.

D: unconstitutional, because Congress violates the full faith and credit clause of Article IV when it punishes conduct that has been authorized by state action.

The explanation for the answer is:

A is the correct answer. Article IV, § 3, cl. 2 of the Constitution gives Congress the power to make all necessary rules and regulations concerning the property of the United States. Therefore, the Act is within Congress's power and thus, constitutional. B is incorrect because Article I, § 8 gives Congress the power to enact laws to regulate commerce. These wild animals are not bought and sold, so they are not within the stream of commerce, subject to Congress's commerce clause power. C is incorrect because the supremacy clause provides that validly enacted federal laws supersede conflicting state laws, and the Tenth Amendment is subject to the limitation of the supremacy clause. Similarly, D is incorrect, and the full faith and credit clause is also subject to the limitations of the supremacy clause.

Question 864 - Constitutional Law - Individual Rights

The question was:

A law of a state imposed a generally applicable sales tax payable by the vendor. That law exempted from its provisions the sale of "all magazines, periodicals, newspapers, and books." In order to raise additional revenue, the state legislature eliminated that broad exemption and substituted a narrower exemption. The new, narrower exemption excluded from the state sales tax only the sale of those "magazines, periodicals, newspapers, and books that are published or distributed by a recognized religious faith and that consist wholly of writings sacred to such a religious faith."

One magazine is a monthly publication devoted to history and politics. The magazine paid under protest the sales tax due on its sales according to the amended sales tax law. The magazine then filed suit against the state in an appropriate state court for a refund of the sales taxes paid. It contended that the state's elimination of the earlier, broader exemption and adoption of the new, narrower exemption restricted to sacred writings of recognized religious faiths violates the First and Fourteenth Amendments to the Constitution.

In this case, the court will probably rule that

- A:** the magazine lacks standing to sue for a refund of sales taxes imposed by a generally applicable state law because Article III of the Constitution precludes taxpayers from bringing such suits.
- B:** the Eleventh Amendment bars the state court from exercising jurisdiction over this suit in the absence of a law of the state expressly waiving the state's immunity.
- C:** the new, narrower exemption from the state sales tax law violates the establishment clause of the First and Fourteenth Amendments by granting preferential state support to recognized religious faiths for the communication of their religious beliefs.
- D:** the new, narrower exemption from the state sales tax law violates the freedom of the press guaranteed by the First and Fourteenth Amendments because it imposes a prior restraint on nonreligious publications that are required to pay the tax.

The explanation for the answer is:

C is the correct answer. The test to analyze whether a law violates the establishment clause of the First Amendment is 1) whether its purpose is secular, 2) whether its primary effect advances or inhibits religion, 3) and whether it fosters an excessive entanglement with religion. The new sales tax exemption gives a benefit only to "recognized religious faiths" and only for the publication of their sacred writings. That exemption is effectively a subsidy of recognized religious faiths. While the tax may have a secular purpose and the advancement of religion is not its primary effect, the tax is an excessive entanglement with religion. Therefore, it violates the establishment clause.

Choice A is incorrect because, while taxpayers generally lack standing to challenge how money is spent, they have standing to challenge a tax they are subject to, and they have standing to challenge an exemption that would violate the establishment clause. Choice B is not correct because the Eleventh Amendment bars suits against states in federal courts only. It also limits the ability of Congress to abrogate states' immunity from suit under federal laws in their own state courts. However, it does not affect whether the state may be sued in its own courts directly under the Constitution. Finally, Choice D is incorrect because the tax is not a prior restraint on nonreligious publications. It is simply a burden on those publications.

Question 875 - Constitutional Law - Individual Rights

The question was:

A statute in a particular state provided state monetary grants to private dance, theater, and opera groups located in that state. The statute required recipients of such grants to use the granted monies for the acquisition, construction, and maintenance of appropriate facilities for the public performance of their performing arts. The last section of the statute conditioned the award of each such grant on the recipient's agreement to refrain from all kinds of political lobbying calculated to secure additional tax support for the performing arts.

The strongest constitutional basis for an attack upon the validity of the last section of the statute would be based upon the

- A:** commerce clause.
- B:** obligation of contracts clause.
- C:** Fifth Amendment.
- D:** First and Fourteenth Amendments.

The explanation for the answer is:

D is the answer. The strongest constitutional basis for an attack on the provision is that by conditioning the award of a grant on the recipient's agreement to refrain from all kinds of political lobbying designed to secure additional tax support, the state was prohibiting a particular kind of speech or political activity in violation of the First and Fourteenth Amendments. State actions that restrict speech or similar political activity are subject to strict scrutiny, and rarely pass. A is not correct because the state action does not impair the flow of interstate commerce, since it does not restrict a commercial activity so much as a political activity. B is incorrect because no existing contract is being impaired by the statute. C is incorrect because the Fifth Amendment applies only to the federal government, not the states.

Question 878 - Constitutional Law - Separation of Powers

The question was:

Assume that Congress passed and the President signed the following statute:

"The appellate jurisdiction of the United States Supreme Court shall not extend to any case involving the constitutionality of any state statute limiting the circumstances in which a woman may obtain an abortion, or involving the constitutionality of this statute."

The strongest argument against the constitutionality of this statute is that

A: Congress may not exercise its authority over the appellate jurisdiction of the Supreme Court in a way that seriously interferes with the establishment of a supreme and uniform body of federal constitutional law.

B: Congress may only regulate the appellate jurisdiction of the Supreme Court over cases initially arising in federal courts.

C: the appellate jurisdiction of the Supreme Court may only be altered by a constitutional amendment.

D: the statute violates the equal protection clause of the Fourteenth Amendment.

The explanation for the answer is:

A is the correct answer. The Constitution gives Congress the power to make regulations concerning the Supreme Court's appellate jurisdiction. However, Congress cannot frustrate the establishment of a supreme and uniform body of federal law. Thus, the strongest argument against the constitutionality of this statute is that by removing an entire subject of constitutional cases from the appellate jurisdiction of the Court, Congress is frustrating the establishment of a supreme and uniform body of federal law. Fifty state supreme courts could set fifty different standards for measuring the constitutionality of the laws at issue.

B is not correct because Article III does not limit Congress's power to regulate the appellate jurisdiction of the Supreme Court to cases arising out of the federal courts. C is incorrect because Article III explicitly grants Congress the power to regulate the Supreme Court's appellate jurisdiction. D is incorrect because the statute at issue is a federal one, and the Fourteenth Amendment regulates the states.

Question 879 - Constitutional Law - Judicial Review

The question was:

The federal statute admitting a particular state to the Union granted the state certain public lands, and established some very ambiguous conditions on the subsequent disposition of these lands by the state. This federal statute also required the new state to write those exact same conditions into its state constitution. One hundred years later, a statute of the state dealing with the sale of these public lands was challenged in a state court lawsuit on the ground that it was inconsistent with the conditions contained in the federal statute, and with the provisions of the state constitution that exactly copy the conditions contained in the federal statute. The trial court decision in this case was appealed to the state supreme court. In its opinion, the state supreme court dealt at length with the ambiguous language of the federal statute and with cases interpreting identical language in federal statutes admitting other states to the union. The state supreme court opinion did not discuss the similar provisions of the state constitution, but it did hold that the challenged state statute is invalid because it is "inconsistent with the language of the federal statute and therefore is inconsistent with the identical provisions of our state constitution."

If the losing party in the state supreme court seeks review of the decision of that court in the United States Supreme Court, the United States Supreme Court should

- A:** accept the case for review and determine the validity and interpretation of the federal statute if it is an important and substantial question.
- B:** ask the state supreme court to indicate more clearly whether it relied on the state constitutional provision in rendering its decision.
- C:** decline to review the case on the ground that the decision of the state supreme court rests on an adequate and independent state ground.
- D:** decline to review the case because a decision by a state supreme court concerning the proper disposition of state public lands is not reviewable by the United States Supreme Court.

The explanation for the answer is:

A is the correct answer. The Supreme Court should accept the case for review and determine the validity and interpretation of the federal statute if it is an important federal question. The Supreme Court may not review the state supreme court's interpretation of its own state constitution, but here, the state supreme court rested its decision on its interpretation of federal law. Its comment that the decision also comported with its state constitution was not an "adequate and independent" state ground that would cause the Court not to review the case. B is incorrect because asking the state Supreme Court for clarification would be completely unnecessary in this case, since the state constitution is identical to the federal statute. C is incorrect because the state constitution did not provide an adequate and independent state ground for the decision. D is incorrect because the Supreme Court can review the constitutionality of a federal statute, which is the issue presented by this case.

Question 882 - Constitutional Law - Separation of Powers

The question was:

A proposed federal statute would prohibit all types of discrimination against black persons on the basis of their race in every business transaction executed anywhere in the United States by any person or entity, governmental or private.

Is this proposed federal statute likely to be constitutional?

A: Yes, because it could reasonably be viewed as an exercise of Congress's authority to enact laws for the general welfare.

B: Yes, because it could reasonably be viewed as a means of enforcing the provisions of the Thirteenth Amendment.

C: No, because it would regulate purely local transactions that are not in interstate commerce.

D: No, because it would invade the powers reserved to the states by the Tenth Amendment.

The explanation for the answer is:

B is the correct answer. The federal statute that prohibits all discrimination on the basis of race in every business transaction could be justified as a means of enforcing the Thirteenth Amendment. Congress has the power under the Thirteenth Amendment to eradicate the badges and incidents of slavery, and discrimination against black persons in business transactions is a badge and incident of slavery. Possibly a stretch, but the best answer among these four.

A is incorrect because Congress has the power to enact laws to promote the general welfare in connection with its spending power, and this is not a spending statute. C is incorrect because the business transactions, by their nature, impact the stream of commerce. D is incorrect because the states do not have special powers to regulate business transactions under the Tenth Amendment.

Question 893 - Constitutional Law - Individual Rights

The question was:

Members of a religious group calling itself the Friends of Lucifer believe in Lucifer as their Supreme Being. The members of this group meet once a year on top of Mt. Snow, located in a U.S. National Park, to hold an overnight encampment and a midnight dance around a large campfire. They believe this overnight encampment and all of its rituals are required by Lucifer to be held on top of Mt. Snow. U.S. National Park Service rules that have been consistently enforced prohibit all overnight camping and all campfires on Mt. Snow because of the very great dangers overnight camping and campfires would pose in that particular location. As a result, the park Superintendent denied a request by the Friends of Lucifer for a permit to conduct these activities on top of Mt. Snow. The park Superintendent, who was known to be violently opposed to cults and other unconventional groups had, in the past, issued permits to conventional religious groups to conduct sunrise services in other areas of that U.S. National Park.

The Friends of Lucifer brought suit in Federal Court against the U.S. National Park Service and the Superintendent of the park to compel issuance of the requested permit.

As a matter of constitutional law, the most appropriate result in this suit would be a decision that denial of the permit was

- A:** invalid, because the free exercise clause of the First Amendment prohibits the Park Service from knowingly interfering with religious conduct.
- B:** invalid, because these facts demonstrate that the action of the Park Service purposefully and invidiously discriminated against the Friends of Lucifer.
- C:** valid, because the establishment clause of the First Amendment prohibits the holding of religious ceremonies on federal land.
- D:** valid, because religiously motivated conduct may be subjected to nondiscriminatory time, place, and manner restrictions that advance important public interests.

The explanation for the answer is:

D is the correct answer. The government may regulate the time, place, and manner of religiously motivated conduct as long as the regulation is neutral and serves an important public interest. Here, the regulation is neutral on its face and it is neutrally applied, the Superintendent's views notwithstanding. The interest of public safety is important. Therefore the denial of the permit would be valid. A is incorrect because the permit rules do not target religious practices. B is incorrect because these facts do not demonstrate purposeful and invidious discrimination against the Friends of Lucifer. No group has been allowed to camp all night or to light campfires on Mt. Snow. C is incorrect because the establishment clause does not prohibit the holding of religious ceremonies on public land as long as those ceremonies do not foster an excessive entanglement with religion.

Question 899 - Constitutional Law - Individual Rights

The question was:

The Personnel Handbook of a particular city contains all of that city's personnel policies. One section of the handbook states that "where feasible and practicable, supervisors are encouraged to follow the procedures specified in this Handbook before discharging a city employee." Those specified procedures include a communication to the employee of the reasons for the contemplated discharge and an opportunity for a pretermination trial-type hearing at which the employee may challenge those reasons. After a year of service, the secretary to the City Council was discharged without receiving any communication of reasons for her contemplated discharge and without receiving an opportunity for a pretermination trial-type hearing. The secretary files suit in federal district court to challenge her discharge solely on constitutional grounds.

Which of the following best describes the initial burden of persuasion in that suit?

- A:** The City Council must demonstrate that its personnel handbook created no constitutionally protected interest in city employment or in the procedures by which such employment is terminated.
- B:** The City Council must demonstrate that the secretary's termination was for good cause.
- C:** The secretary must demonstrate that state law creates a constitutionally protected interest in her employment or in the procedures by which her employment is terminated.
- D:** The secretary must demonstrate that she reasonably believed that she could work for the city for as long as she wished.

The explanation for the answer is:

C is the correct answer. When challenging deprivation of a constitutionally protected right without due process of law, a plaintiff first must demonstrate that she has a constitutionally protected right. Here, the secretary must first demonstrate that state law created a constitutionally protected interest either in her job or in the procedures for termination.

A is not correct because the burden is never on the defendant to demonstrate that no protected interest exists. B is incorrect because the question asks about the initial burden. The analysis does not proceed to the reason for the secretary's termination until she demonstrates that she had a constitutionally protected right. If she had no constitutionally protected right, then her employer need not have had good cause to fire her, and would not have to afford her any process. D is not correct because a person can have a constitutionally protected right in employment that is less than being able to work for as long as the person wishes. The right could be less, like a right to continued employment absent good cause for discharge or a right to hearing before termination.

Question 912 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Terrorists in a foreign country kidnapped the United States ambassador to that country. They threatened to kill her unless the President of the United States secured the release of an identified person who was a citizen of that country and was held in a prison in State A in the United States pursuant to a valid conviction by that state.

The President responded by entering into an agreement with the foreign country which provided that the country would secure the release of the United States ambassador on a specified date in return for action by the President that would secure the release of the identified person held in the state prison. The President then ordered the governor of the state to release the prisoner in question. The governor refused. No federal statutes are applicable.

Which of the following is the strongest constitutional argument for the authority of the President to take action in these circumstances requiring the governor of the state to release the state prisoner?

- A:** The power of the President to conduct the foreign affairs of the United States includes a plenary authority to take whatever action the President deems wise to protect the safety of our diplomatic agents.
- B:** The power of the President to appoint ambassadors authorizes him to take any action that he may think desirable to protect them from injury because, upon appointment, those officials become agents of the President.
- C:** The power of the President to negotiate with foreign nations impliedly authorizes the President to make executive agreements with them which prevail over state law.
- D:** The duty of the President to execute faithfully the laws authorizes him to resolve finally any conflicts between state and federal interests, making the determination of such matters wholly nonjusticiable.

The explanation for the answer is:

C is the correct answer. Many explicit grants of power have been interpreted to also empower the branch of government to do whatever is reasonable to exercise that power. Therefore, the strongest argument is that the power of the President to negotiate with foreign nations impliedly authorizes the President to make executive agreements with those nations. If this action is valid, then the supremacy clause would make the agreement prevail over state law.

A is incorrect because the power to conduct foreign affairs extends to appointing and receiving ambassadors, but not to controlling state actions to protect them. B is not correct because the power to appoint individuals generally has not been interpreted to extend beyond appointment issues, including dismissal, and even if officials become agents of the president, the Constitution is silent on the President's power to protect the agents of that office. D is not correct because the President is not the final arbiter of conflicts between federal and state interests. Rather, the Constitution itself sets the formula for resolving those conflicts.

Question 926 - Constitutional Law - Separation of Powers

The question was:

A newly enacted federal statute appropriates \$100 million in federal funds to support basic research by universities located in the United States. The statute provides that "the ten best universities in the United States" will each receive \$10 million. It also provides that "the ten best universities" shall be "determined by a poll of the presidents of all the universities in the nation, to be conducted by the United States Department of Education." In responding to that poll, each university president is required to apply the well-recognized and generally accepted standards of academic quality that are specified in the statute. The provisions of the statute are inseverable.

Which of the following statements about this statute is correct?

- A:** The statute is unconstitutional, because the reliance by Congress on a poll of individuals who are not federal officials to determine the recipients of its appropriated funds is an unconstitutional delegation of legislative power.
- B:** The statute is unconstitutional, because the limitation on recipients to the ten best universities is arbitrary and capricious and denies other high quality universities the equal protection of the laws.
- C:** The statute is constitutional, because Congress has plenary authority to determine the objects of its spending and the methods used to achieve them, so long as they may reasonably be deemed to serve the general welfare and do not violate any prohibitory language in the Constitution.
- D:** The validity of the statute is nonjusticiable, because the use by Congress of its spending power necessarily involves political considerations that must be resolved finally by those branches of the government that are closest to the political process.

The explanation for the answer is:

C is the correct answer. Congress's spending power is plenary, and Congress can choose how it spends its money so long as that choice can reasonably be said to serve the general welfare and not violate any prohibition in the Constitution. A is incorrect because Congress's creation of a polling system to allocate the funds is not an unconstitutional delegation of legislative power. The statute limits the discretion of the university presidents to specific well-recognized and generally accepted standards of academic quality, and so the power granted to the university presidents is very narrow. B is incorrect because limiting the funding to the ten best universities is a reasonable line to have drawn, given the fact that the funds are limited. D is incorrect because the validity of a statute will nearly always be justiciable and not a political question. This statute is not the type of action and is not on a subject that is clearly committed to the sole discretion of Congress by the Constitution, and ruling on the validity of a statute provides judicially manageable standards.

Question 930 - Constitutional Law - Relations Between Federal and State Governments

The question was:

State A spends several million dollars a year on an oyster conservation program. As part of that program, the state limits, by statute, oyster fishing in its coastal waters to persons who have state oyster permits. In order to promote conservation, it issues only a limited number of oyster permits each year. The permits are effective for only one year from the date of their issuance and are awarded on the basis of lottery, in which there is no differentiation between resident and nonresident applicants. However, each nonresident who obtains a permit is charged an annual permit fee that is \$5 more than the fee charged residents.

A large fishing company operates from a port in another state and is incorporated in that other state. Each of the boats of the fishing company has a federal shipping license that permits it "to engage in all aspects of the coastal trade, to fish and to carry cargo from place to place along the coast, and to engage in other lawful activities along the coast of the United States." These shipping licenses are authorized by federal statute. Assume no other federal statutes or administrative rules apply.

Although it had previously held a State A oyster permit, the fishing company did not obtain a permit in that state's lottery this year.

Which of the following is the strongest argument that can be made in support of a continued right of the fishing company to fish for oysters this year in the coastal waters of State A?

- A:** Because the state law provides higher permit charges for nonresidents, it is an undue burden on interstate commerce.
- B:** Because the state law provides higher permit charges for nonresidents, it denies the fishing company the privileges and immunities of state citizenship.
- C:** Because it holds a federal shipping license, the fishing company has a right to fish for oysters in state waters despite the state law.
- D:** Because the fishing company previously held a State A oyster permit and the state knows that the company is engaged in a continuing business operation, the refusal to grant the fishing company a permit this year is a taking of its property without due process of law.

The explanation for the answer is:

C is the correct answer. Because the supremacy clause provides that valid federal laws supersede conflicting state laws, the strongest argument for the fishing company to continue to fish for oysters is that it has a federal shipping license that allows it to fish for oysters. A is incorrect because the fishing company was denied a state permit. So the higher rate for permit charges is irrelevant to the fishing company which was denied the permit entirely. For similar reasons, B is incorrect. Additionally, the Privileges and Immunities Clause does not apply to corporations, but only to individuals. Even if the different rates charged to non-residents were to violate the privileges and immunities clause, that is not relevant to the fishing company which was denied the license entirely. Finally, D is incorrect because the permit is a property right which only lasts one year, and so there was no lasting property that the state could have taken.

Question 931 - Constitutional Law - Relations Between Federal and State Governments

The question was:

The United States Department of the Interior granted a concessionaire the food and drink concession stand in a federal park located in a particular state. The concessionaire operated his concession stand out of the federally owned facilities in the park. The federal statute authorizing the Interior Department to grant such concession stands provided that the grantees would pay only a nominal rental fee for use of these federal facilities because of the great benefit their concession stands would provide to the people of the United States.

The legislature of the state enacted a statute imposing an occupancy tax on the occupants of real estate within that state that is not subject to state real estate taxes. The statute was intended to equalize the state tax burden on such occupants with that of people occupying real estate that is subject to state real estate taxes. Pursuant to that statute, the state Department of Revenue attempted to collect the state occupancy tax from the concessionaire because the federal facilities occupied by the concessionaire were not subject to state real estate taxes. The concessionaire sued to invalidate the state occupancy tax as applied to him.

The strongest ground upon which the concessionaire could challenge the occupancy tax is that it violates the

- A:** commerce clause by unduly burdening the interstate tourist trade.
- B:** privileges and immunities clause of the Fourteenth Amendment by interfering with the fundamental right to do business on federal property.
- C:** equal protection of the laws clause of the Fourteenth Amendment because the tax treats him less favorably than federal concessionaires in other states who do not have to pay such occupancy.
- D:** supremacy clause of Article VI and the federal statute authorizing such concession stands.

The explanation for the answer is:

D is the correct answer. The supremacy clause of Article VI provides that validly-enacted federal laws supersede conflicting state and local laws. The federal concession statute is valid under the property power, which allows Congress to make rules and regulations regarding property belonging to the United States. Thus, the federal law will supersede the state law and insulate the activity taking place on federal property from state taxation.

A is incorrect because a tax on an activity does not by itself burden the interstate tourist trade as long as that tax applies to goods and services equally no matter where produced. Here there is no such distinction. B is incorrect because the tax does not differentiate between in or out-of-state residents, and therefore would not violate the privileges and immunities clause. C is not correct because the state tax does not classify on the grounds of any suspect class.

Question 934 - Constitutional Law - Judicial Review

The question was:

An ordinance of a particular city requires that its mayor have continuously been a resident of the city for at least five years at the time he or she takes office. A candidate, who is thinking about running for mayor in an election that will take place next year, will have been a resident of the city for only four and one-half years at the time the mayor elected then takes office. Before he decides whether to run for the position of mayor, the candidate wants to know whether he could lawfully assume that position if he were elected. As a result, the candidate files suit in the local federal district court for a declaratory judgment that the city's five-year-residence requirement is unconstitutional and that he is entitled to a place on his political party's primary election ballot for mayor. He names the chairman of his political party as the sole defendant but does not join any election official. The chairman responds by joining the candidate in requesting the court to declare the city's residence requirement invalid.

In this case, the court should

A: refuse to determine the merits of this suit, because there is no case or controversy.

B: refuse to issue such a declaratory judgment, because an issue of this kind involving only a local election does not present a substantial federal constitutional question.

C: issue the declaratory judgment, because a residency requirement of this type is a denial of the equal protection of the laws.

D: issue the declaratory judgment, because the candidate will have substantially complied with the residency requirement.

The explanation for the answer is:

A is the correct answer. There is no case or controversy here because the candidate lacks standing. One reason he lacks standing is that the issue is not yet ripe for review. The issue is not ripe because the candidate will not suffer an injury until he is barred from running for office or until he has won the election. At that point, an injury will either have occurred or will be so certain to occur as to confer standing. The second reason the candidate lacks standing is that the candidate has not joined the correct party to provide him the relief that will redress the injury. The chairman of his local political party would be the correct party to sue if the political party refuses to put him on the ballot due to the residency requirement. However, the candidate seems to be challenging the qualifications with the assumption that he will not be allowed to take office. The correct defendant would be whichever official enforces those qualifications and determines whether elected officials take office, presumably election officials. Finally, the mere agreement by the parties that the court should consider the issue is irrelevant; standing cannot be created by agreement.

B is incorrect because the qualifications of an elected official, even for a local election, do present a substantial federal constitutional question. C is incorrect because the court may not reach the merits of the case if the candidate lacks standing. Moreover, it is not clear that this residency requirement would deny candidates equal protection of the law. Finally, D is incorrect because the federal courts may not modify the state law by finding substantial compliance enough if the state law is otherwise constitutional.

Question 943 - Constitutional Law - Individual Rights

The question was:

A statute of a particular state prohibits the use of state-owned or state-operated facilities for the performance of abortions that are not "necessary to save the life of the mother." That statute also prohibits state employees from performing any such abortions during the hours they are employed by the state.

A citizen of the state was in her second month of pregnancy. She sought an abortion at the State Hospital, a state-owned and state-operated facility. The citizen did not claim that the requested abortion was necessary to save her life. The officials in charge of the hospital refused to perform the requested abortion solely on the basis of the state statute. The citizen immediately filed suit against those officials in an appropriate federal district court. She challenged the constitutionality of the state statute and requested the court to order the hospital to perform the abortion she sought.

In this case, the court will probably hold that the state statute is

A: unconstitutional, because a limit on the availability of abortions performed by the state employees or in state-owned or state-operated facilities to situations in which it is necessary to save the life of the mother impermissibly interferes with the fundamental right of the citizen to decide whether to have a child.

B: unconstitutional, because it impermissibly discriminates against poor persons who cannot afford to pay for abortions in privately owned and operated facilities and against persons who live far away from privately owned and operated abortion clinics.

C: constitutional, because it does not prohibit a woman from having an abortion or penalize her for doing so, it is rationally related to the legitimate governmental goal of encouraging childbirth, and it does not interfere with the voluntary performance of abortions by private physicians in private facilities.

D: constitutional, because the use of state-owned or state-operated facilities and access to the services of state employees are privileges and not rights and, therefore, a state may condition them on any basis it chooses.

The explanation for the answer is:

C is the correct answer. The standard for evaluating whether a statute affecting abortion is constitutional is whether it imposes an undue burden on the woman seeking an abortion. States are not required to fund abortions, which arguably the state would do in this hypothetical by providing the facilities to do so. This state statute would not prohibit the citizen from having an abortion or penalize her for doing so, and it does not affect her ability to get an abortion from a physician in a private facility. Additionally, the state may have a single-sided policy to encourage childbirth, and this is rationally related to that policy.

A is incorrect because it simply is not the legal test for abortion regulations. B is not correct because wealth is not a suspect class, and the Supreme Court has held that states are not required to fund abortions. D is not correct because the state may not condition access to its facilities on the relinquishing of a fundamental right.

Question 951 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Radon is a harmful gas found in the soil of certain regions of the United States. A state statute requires occupants of residences with basements susceptible to the intrusion of radon to have their residences tested for the presence of radon and to take specified remedial steps if the test indicates the presence of radon above specified levels. The statute also provides that the testing for radon may be done only by testers licensed by a state agency. According to the statute, a firm may be licensed to test for radon only if it meets specified rigorous standards relating to the accuracy of its testing. These standards may easily be achieved with current technology; but the technology required to meet them is 50% more expensive than the technology required to measure radon accumulations in a slightly less accurate manner.

The United States Environmental Protection Agency (EPA) does not license radon testers. However, a federal statute authorizes the EPA to advise on the accuracy of various methods of radon testing and to provide to the general public a list of testers that use methods it believes to be reasonably accurate.

A recently established state firm uses a testing method that the EPA has stated is reasonably accurate. The firm is also included by the EPA on a list of testers using methods of testing it believes to be reasonably accurate. The firm applies for a state radon testing license, but its application is denied because the firm cannot demonstrate that the method of testing for radon it uses is sufficiently accurate to meet the rigorous state statutory standards. The firm sues appropriate state officials in federal court claiming that the state may not constitutionally exclude the firm from performing the required radon tests in the state.

In this suit, the court will probably rule in favor of

- A:** the firm, because the full faith and credit clause of the Constitution requires the state to respect and give effect to the action of the EPA in including the firm on its list of testers that use reasonably accurate methods.
- B:** the firm, because the supremacy clause of the Constitution requires the state to respect and give effect to the action of the EPA in including the firm on its list of testers that use reasonably accurate methods.
- C:** The state, because the federal statute and the action of the EPA in including the firm on its list of testers that use reasonably accurate methods are not inconsistent with the more rigorous state licensing requirement, and that requirement is reasonably related to a legitimate public interest.
- D:** The state, because radon exposure is limited to basement areas, which, by their very nature, cannot move in interstate commerce.

The explanation for the answer is:

C is the correct answer. The federal statute is very general and does not regulate radon testers to the extent of licensing them. Therefore, the general federal statute does not conflict with the more rigorous state licensing standards, and those licensing standards are not superseded by the federal law under the supremacy clause. Furthermore, the state's licensing requirement is constitutional because it is reasonably related to a legitimate public interest.

A is not correct because the full faith and credit clause does not require a state to accept an action by the federal government that would not comport with its laws as long as those laws are not superseded by the supremacy clause or otherwise constitutionally invalid. B is incorrect because the federal statute does not conflict with the state statute. It provides less regulation of the area, rather than more. D is incorrect because the testers provide a service that is part of the stream of commerce. Additionally, the effects of radon, the process of testing for it, and remedying its effects all have commercial components. Thus, regulating radon levels is within Congress's commerce clause power.

Question 974 - Constitutional Law - Individual Rights

The question was:

A city has an ordinance that prohibits the location of "adult theaters and bookstores" (theaters and bookstores presenting sexually explicit performances or materials) in residential or commercial zones within the city. The ordinance was intended to protect surrounding property from the likely adverse secondary effects of such establishments. "Adult theaters and bookstores" are freely permitted in the areas of the city zoned industrial, where those adverse secondary effects are not as likely. A storekeeper is denied a zoning permit to open an adult theater and bookstore in a building owned by him in an area zoned commercial. As a result, the storekeeper brings suit in an appropriate court challenging the constitutionality of the zoning ordinance.

Which of the following statements regarding the constitutionality of this ordinance is most accurate?

- A:** The ordinance is valid, because a city may enforce zoning restrictions on speech-related businesses to ensure that the messages they disseminate are acceptable to the residents of adjacent property.
- B:** The ordinance is valid, because a city may enforce this type of time, place, and manner regulation on speech-related businesses, so long as this type of regulation is designed to serve a substantial governmental interest and does not unreasonably limit alternative avenues of communication.
- C:** The ordinance is invalid, because a city may not enforce zoning regulations that deprive potential operators of adult theatres and bookstores of their freedom to choose the location of their businesses.
- D:** The ordinance is invalid, because a city may not zone property in a manner calculated to protect property from the likely adverse secondary effects of adult theaters and bookstores.

The explanation for the answer is:

B is the correct answer. The city here is not prohibiting a particular type of speech entirely. Rather it is regulating where that "speech" may take place. And, the test for evaluating time, place, and manner restrictions is whether the restriction is designed to serve a substantial governmental interest in a way that does not unreasonably limit alternative avenues of communication. Preventing adverse secondary effects associated with adult theaters and bookstores is a substantial governmental interest.

Answer A is incorrect because the government may not prohibit certain types of speech based on its content. Answer C is incorrect because a government body may restrict the time, place, and manner of speech, and the speakers have no unfettered freedom of choice. Finally, D is not correct because the adverse secondary effects of adult theaters and bookstores are a neutral substantial interest that the government may seek to serve through a time, place, and manner restriction.

Question 980 - Constitutional Law - Individual Rights

The question was:

A state statute provides that assessments of real property for tax purposes must represent the "actual value" of the property. The County Tax Commission, in making its assessments, has uniformly and consistently determined the "actual value" of real property solely by reference to the price at which the particular property was last sold. In recent years, the market values of real property in the county have been rising at the rate of 15% per year.

A homeowner is required to pay real estate taxes on her home in the county that are 200% to 300% higher than those paid by many other owners of similar homes in similar neighborhoods in that county, even though the current market values of their respective homes and the homeowner's home are nearly identical. The reason the taxes on the homeowner's home are higher than those imposed on the other similar homes in similar neighborhoods is that she bought her home much more recently than the other owners and, therefore, it is assessed at a much higher "actual value" than their homes. Persistent efforts by the homeowner to have her assessment reduced or the assessments of the others raised by the County Tax Commission have failed.

The homeowner has now filed suit against the County Tax Commission, charging only that the tax assessment on her property is unconstitutional.

The strongest constitutional argument to support the homeowner's claim is that the comparative overvaluation of the homeowner's property by the County Tax Commission in making tax assessments over time

- A:** deprives the homeowner of the equal protection of the laws.
- B:** deprives the homeowner of a privilege or immunity of national citizenship.
- C:** constitutes a taking of private property for public use without just compensation.
- D:** constitutes an *ex post facto* law.

The explanation for the answer is:

A is the correct answer. The homeowner's complaint is that her taxes are higher than the taxes paid by other owners of similar homes. Because she is protesting the way that the state government is treating her compared to people who are similarly situated, she is making an equal protection claim. B is incorrect because the claim involves an assessment by the county tax commission. In no way are the homeowner's rights of national citizenship implicated, so the Privileges and Immunities Clause of the Fourteenth Amendment does not apply. C is incorrect because taxation is almost never a taking of property for public use. D is incorrect because the statute does not retroactively alter the criminal law. Therefore, equal protection is the only applicable claim the owner can make.

Question 989 - Constitutional Law - Individual Rights

The question was:

A generally applicable state statute requires an autopsy by the county coroner in all cases of death that are not obviously of natural causes. The purpose of this law is to ensure the discovery and prosecution of all illegal activity resulting in death. In the 50 years since its enactment, the statute has been consistently enforced.

A husband and wife are sincere practicing members of a religion that maintains it is essential for a deceased person's body to be buried promptly and without any invasive procedures, including an autopsy. When the couple's son died of mysterious causes and an autopsy was scheduled, the couple filed an action in state court challenging the constitutionality of the state statute, and seeking an injunction prohibiting the county coroner from performing an autopsy on their son's body. In this action, the couple claimed only that the application of this statute in the circumstances of their son's death would violate their right to the free exercise of religion as guaranteed by the First and Fourteenth Amendments. Assume that no federal statutes are applicable.

As applied to the couple's case, the court should rule that the state's autopsy statute is

A: constitutional, because a dead individual is not a person protected by the due process clause of the Fourteenth Amendment.

B: constitutional, because it is a generally applicable statute and is rationally related to a legitimate state purpose.

C: unconstitutional, because it is not necessary to vindicate a compelling state interest.

D: unconstitutional, because it is not substantially related to an important state interest.

The explanation for the answer is:

B is the correct answer. When a neutral law of general applicability impacts a religious practice, the law is subject to rational basis review. There is no inquiry into the extent of the impact or the sincerity of the religious beliefs. The law must merely be rationally related to a conceivable legitimate state interest. A is incorrect because it is not the deceased's rights that are being analyzed; rather it is the rights of the parents, who are persons protected by the Fourteenth Amendment. C is incorrect because a neutral law of general applicability need not meet strict scrutiny if it affects a religious practice. Likewise, D is incorrect because the law need not meet intermediate scrutiny either, only rational basis.

Question 993 - Constitutional Law - Separation of Powers

The question was:

A mineral is added to bodies of fresh water to prevent the spread of certain freshwater parasites. The presence of those parasites threatens the health of organisms living in rivers and streams throughout the country and imperils the freshwater commercial fishing industry. The mineral is currently mined only in one particular state.

In order to raise needed revenue, Congress recently enacted a statute providing for the imposition of a \$100 tax on each ton of the mineral that is mined in the United States. Because it will raise the cost of the mineral, this tax is likely to reduce the amount of the mineral that is added to freshwater rivers and streams and, therefore, is likely to have an adverse effect on the interstate freshwater commercial fishing industry. The mineral producers in the state have filed a lawsuit in federal court challenging this tax solely on constitutional grounds.

Is this tax constitutional?

A: No, because only producers in the state will pay the tax and, therefore, it is not uniform among the states and denies mineral producers the equal protection of the laws.

B: No, because it is likely to have an adverse effect on the freshwater commercial fishing industry and Congress has a responsibility under the clause to protect, foster, and advance such interstate industries.

C: Yes, because the tax is a necessary and proper means of exercising federal authority over the navigable waters of the United States.

D: Yes, because the power of Congress to impose taxes is plenary, this tax does not contain any provisions extraneous to tax needs or purposes, and it is not barred by any prohibitory language in the Constitution.

The explanation for the answer is:

D is the correct answer. Congress's power to tax is plenary, and this statute does not contain provisions extraneous to tax purposes, and it does not violate any other section of the Constitution. A is incorrect because the tax does not make any irrational classification. The tax is limited to one product, and while the product is mined only in one state, residents of other states could be doing the mining. The tax's limitation to one subject is not irrational and is therefore constitutional.

B is not correct because, although Congress has the power to regulate interstate commerce including the fishing industry, Congress is not required to advance particular industrial interests. Congress has the primary responsibility to weigh competing public interests and serve those interests in whatever rational way it chooses. C is incorrect because the tax can be justified under Congress's taxing power, not as a subsidiary to Congress's power to control the navigable waters of the United States.

Question 999 - Constitutional Law - Individual Rights

The question was:

An independent municipal water-supply district was incorporated under the applicable laws of a particular state. The district was created solely to supply water to an entirely new community in a recently developed area of the state. That new community is racially, ethnically, and socioeconomically diverse, and the community has never engaged in any discrimination against members of minority groups. The five-member, elected governing board of the newly created district contains two persons who are members of racial minority groups. At its first meeting, the governing board of the district adopted a rule unqualifiedly setting aside 25% of all positions on the staff of the district and 25% of all contracts to be awarded by the district to members of racial minority groups. The purpose of the rule was "to help redress the historical discrimination against these groups in this country and to help them achieve economic parity with other groups in our society." Assume that no federal statute applies. A suit by appropriate parties challenges the constitutionality of these set-asides. In this suit, the most appropriate ruling on the basis of applicable United States Supreme Court precedent would be that the set-asides are

A: unconstitutional, because they would deny other potential employees or potential contractors the equal protection of the laws.

B: unconstitutional, because they would impermissibly impair the right to contract of other potential employees or potential contractors.

C: constitutional, because they would assure members of racial minority groups the equal protection of the laws.

D: constitutional, because the function and activities of the district are of a proprietary nature rather than a governmental nature and, therefore, are not subject to the usual requirements of the Fourteenth Amendment.

The explanation for the answer is:

A is the correct answer. The set-asides classify on the basis of race, and therefore, must pass strict scrutiny; they must serve a compelling governmental interest and use the least restrictive means possible. The Supreme Court has recognized that remedying past discrimination is a compelling governmental interest. Here, there is no compelling governmental interest because there has been no history of discrimination, the community is diverse, and forty percent of the members of the governing board are members of racial minorities. Without this, the set-asides are unconstitutional discrimination against members of the majority race in violation of equal protection.

B is incorrect because the right to contract is not impaired by limiting the number of contracts available. C is incorrect because there is no history of discrimination or evidence of current discrimination that demonstrates racial minority groups are being denied equal protection. D is incorrect because the government is not treated differently for equal protection purposes when it engages in commercial or proprietary ventures.

Question 1011 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Current national statistics show a dramatic increase in the number of elementary and secondary school students bringing controlled substances (drugs) to school for personal use or distribution to others. In response, Congress enacted a statute requiring each state legislature to enact a state law that makes it a state crime for any person to possess, use, or distribute, within 1,000 feet of any elementary or secondary school, any controlled substance that has previously been transported in interstate commerce and that is not possessed, used, or distributed pursuant to a proper physician's prescription. This federal statute is

A: unconstitutional, because Congress has no authority to require a state legislature to enact any specified legislation.

B: unconstitutional, because the possession, use, or distribution, in close proximity to a school, of a controlled substance that has previously been transported in interstate commerce does not have a sufficiently close nexus to such commerce to justify its regulation by Congress.

C: constitutional, because it contains a jurisdictional provision that will ensure, on a case-by-case basis, that any particular controlled substance subject to the terms of this statute will, in fact, affect interstate commerce.

D: constitutional, because Congress possesses broad authority under both the general welfare clause and the commerce clause to regulate any activities affecting education that also have, in inseparable aggregates, a substantial effect on interstate commerce.

The explanation for the answer is:

A is the correct answer. Congress has no authority to require a state legislature to enact any specified legislation except when it is acting under its spending power. This is not a spending provision, so Congress cannot make the states enact these laws. B is incorrect because the statute only applies to drugs that were transported in interstate commerce.

C is incorrect because even though this may be within Congress's commerce clause power if it were to enact the statute it asks the states to enact, the issue is whether Congress can require the states to enact legislation. D is incorrect because Congress has no special right to regulate activities affecting education. That is primarily a state function. Moreover, this is not an exercise of Congress's spending power, so it is not supported by the general welfare clause.

Question 1015 - Constitutional Law - Judicial Review

The question was:

Congress recently enacted a statute imposing severe criminal penalties on anyone engaged in trading in the stock market who, in the course of that trading, takes "unfair advantage" of other investors who are also trading in the stock market. The statute does not define the term "unfair advantage." There have been no prosecutions under this new statute. The members of an association of law school professors that is dedicated to increasing the clarity of the language used in criminal statutes believe that this statute is unconstitutionally vague. Neither the association nor any of its members is currently engaged in, or intends in the future to engage in, trading in the stock market. The association and its members bring suit against the Attorney General of the United States in a federal district court, seeking an injunction against the enforcement of this statute on the ground that it is unconstitutional. May the federal court determine the merits of this suit?

A: Yes, because the suit involves a dispute over the constitutionality of a federal statute.

B: Yes, because the plaintiffs seek real relief of a conclusive nature--an injunction against enforcement of this statute.

C: No, because the plaintiffs do not have an interest in the invalidation of this statute that is adequate to ensure that the suit presents an Article III controversy.

D: No, because a suit for an injunction against enforcement of a criminal statute may not be brought in federal court at any time prior to a bona fide effort to enforce that statute.

The explanation for the answer is:

C is the correct answer. In order to have standing, a party must have an imminent or actual injury. Here, because the plaintiffs do not trade in the stock market and do not plan to, they have no injury. Accordingly, they lack the standing required to create a case or controversy under Article III.

A is incorrect because the presence of a constitutional question cannot make up for a lack of standing. B is incorrect because, although the remedy the plaintiffs seek will redress the injury caused others by this statute, they themselves have no injury, and lack standing. D is incorrect because a suit to enjoin enforcement of a statute can be brought before a bona fide effort to enforce the statute unless it is clear that the executive plans never to enforce it. An imminent injury is present when someone could be subject to prosecution at any time.

Question 1024 - Constitutional Law - Individual Rights

The question was:

A city enacted an ordinance banning from its public sidewalks all machines dispensing publications consisting wholly of commercial advertisements. The ordinance was enacted because of a concern about the adverse aesthetic effects of litter from publications distributed on the public sidewalks and streets. However, the city continued to allow machines dispensing other types of publications on the public sidewalks. As a result of the city ordinance, 30 of the 300 sidewalk machines that were dispensing publications in the city were removed.

Is this city ordinance constitutional?

- A:** Yes, because regulations of commercial speech are subject only to the requirement that they be rationally related to a legitimate state goal, and that requirement is satisfied here.
- B:** Yes, because the city has a compelling interest in protecting the aesthetics of its sidewalks and streets, and such a ban is necessary to vindicate this interest.
- C:** No, because it does not constitute the least restrictive means with which to protect the aesthetics of the city's sidewalks and streets.
- D:** No, because there is not a reasonable fit between the legitimate interest of the city in preserving the aesthetics of its sidewalks and streets and the means it chose to advance that interest.

The explanation for the answer is:

D is the correct answer. Commercial speech, if it is not misleading or concerning unlawful activity may only be regulated if the state shows that the regulation directly advances a substantial governmental interest in a way that is reasonably tailored to achieve that objective. Protecting the streets from litter may be a substantial interest, but forbidding machines from dispensing publications consisting wholly of commercial advertisements is not a reasonable fit, since only ten percent of the machines were removed under this scheme, and there is no evidence that publications containing solely advertising will result in more litter per publication. Therefore, the ordinance would be unconstitutional.

A is incorrect because it states the wrong test. B is incorrect because it also states the wrong test, and instead provides the strict-scrutiny standard used for content-based restrictions. C is incorrect because the means chosen need not be the least restrictive means, just a reasonable fit.

Question 1027 - Constitutional Law - Individual Rights

The question was:

A state enacted a statute providing for the closure of the official state records of arrest and prosecution of all persons acquitted of a crime by a court or against whom criminal charges were filed and subsequently dropped or dismissed. The purpose of this statute is to protect these persons from further publicity or embarrassment relating to those state proceedings. However, this statute does not prohibit the publication of such information that is in the possession of private persons.

A prominent businessman in the state was arrested and charged with rape. Prior to trial, the prosecutor announced that new information indicated that the charges should be dropped. He then dropped the charges without further explanation, and the records relating thereto were closed to the public pursuant to the state statute.

The newspaper in the state conducted an investigation to determine why the businessman was not prosecuted, but was refused access to the closed official state records. In an effort to determine whether the law enforcement agencies involved were properly doing their duty, the newspaper filed suit against appropriate state officials to force opening of the records and to invalidate the statute on constitutional grounds.

Which of the following would be most helpful to the state in defending the constitutionality of this statute?

- A:** The fact that the statute treats in an identical manner the arrest and prosecution records of all persons who have been acquitted of a crime by a court or against whom criminal charges were filed and subsequently dropped or dismissed.
- B:** The argument that the rights of the press are no greater than those of citizens generally.
- C:** The fact that the statute only prohibits public access to these official state records and does not prohibit the publication of information they contain that is in the possession of private persons.
- D:** The argument that the state may seal official records owned by the state on any basis its legislature chooses.

The explanation for the answer is:

C is the correct answer. The statute prohibits only release of the information from the government, but not publication of the same information or release of the information by private parties. There is generally no First Amendment right of access to records kept by the executive branch, and here it is only access to those records and not censorship of the information more generally that the statute accomplishes. Preventing adverse consequences from information about an arrest or charges that are later dropped or dismissed is at least a legitimate state interest, and this measure is closely related to that goal. Therefore, it would be constitutional.

A is incorrect because the challenge raised to open the records would not be an equal protection challenge. B is incorrect because citizens would not have a right of access to these records, either. D is incorrect because the state may not seal official records, if sealing them would violate some provision of the federal Constitution.

Question 1034 - Constitutional Law - Separation of Powers

The question was:

A federal statute appropriated \$7 million for a nationwide essay contest on "How the United States Can Best Stop Drug Abuse." The statute indicates that its purpose is to generate new, practical ideas for eliminating drug abuse in the United States. Contest rules set forth in the statute provide that winning essays are to be selected on the basis of the "originality, aptness, and feasibility of their ideas." The statute expressly authorizes a first prize of \$1 million, 50 second prizes of \$100,000 each, and 100 third prizes of \$10,000 each. It also states that judges for the contest are to be appointed by the President of the United States with the advice and consent of the Senate, and that all residents of the United States who are not employees of the federal government are eligible to enter and win the contest. A provision of the statute authorizes any taxpayer of the United States to challenge its constitutionality. In a suit by a federal taxpayer to challenge the constitutionality of the statute, the court should

A: refuse to decide its merits, because the suit involves policy questions that are inherently political and, therefore, nonjusticiable.

B: hold the statute unconstitutional, because it does not provide sufficient guidelines for awarding the prize money appropriated by Congress and, therefore, unconstitutionally delegates legislative power to the contest judges.

C: hold the statute unconstitutional, because its relationship to legitimate purposes of the spending power of Congress is too tenuous and conjectural to satisfy the necessary and proper clause of Article I.

D: hold the statute constitutional, because it is reasonably related to the general welfare, it states concrete objectives, and it provides adequate criteria for conducting the essay contest and awarding the prize money.

The explanation for the answer is:

D is the correct answer. While Congress cannot directly legislate for the general welfare, Congress does have a broad power to spend to promote the general welfare, which is exactly what this statute does. Moreover, the statute has concrete objectives, provides adequate criteria for conducting the essay contest and awarding the prize money, and contains safeguards ensuring Congressional input into the makeup of the decision makers. Therefore, the statute is neither beyond Congress's spending power, nor is it an unconstitutional delegation of legislative authority.

A is incorrect because the constitutionality of the statute does not involve policy questions that are committed by the Constitution to another branch of government, and the issue presents judicially manageable standards. B is incorrect because the guidelines, although broad, provide sufficient guidance to the contest judges. It mandates that the judges consider three categories: originality, aptness, and feasibility. C is incorrect because the statute is rationally related to a legitimate purpose of Congress's spending power: resolving the country's drug abuse problems.

Question 1037 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Kelly County, in State A, is located adjacent to the border of State B. The communities located in Kelly County are principally suburbs of Scarletville, a large city located in State B, and therefore there is a large volume of traffic between that city and Kelly County. While most of that traffic is by private passenger automobiles, some of it is by taxicabs and other kinds of commercial vehicles.

An ordinance of Kelly County, the stated purpose of which is to reduce traffic congestion, provides that only taxicabs registered in Kelly County may pick up or discharge passengers in the county. The ordinance also provides that only residents of Kelly County may register taxicabs in that county.

Which of the following is the proper result in a suit brought by Scarletville taxicab owners challenging the constitutionality of this Kelly County ordinance?

- A:** Judgment for Scarletville taxicab owners, because the fact that private passenger automobiles contribute more to the traffic congestion problem in Kelly County than do taxicabs indicates that the ordinance is not a reasonable means by which to solve that problem.
- B:** Judgment for Scarletville taxicab owners, because the ordinance unduly burdens interstate commerce by insulating Kelly County taxicab owners from out-of-state competition without adequate justification.
- C:** Judgment for Kelly County, because the ordinance forbids taxicabs registered in other counties of State A as well as in states other than State A to operate in Kelly County and, therefore, it does not discriminate against interstate commerce.
- D:** Judgment for Kelly County, because Scarletville taxicab owners do not constitute a suspect class and the ordinance is reasonably related to the legitimate governmental purpose of reducing traffic congestion.

The explanation for the answer is:

B is the correct answer. The ordinance classifies on the basis of county residency: only residents of Kelly County can register taxicabs there, and only registered taxicabs can pick up or drop off passengers in the county. The ordinance effectively gives Kelly residents a monopoly over the taxicab business in the guise of reducing congestion. This monopoly burdens interstate commerce, and because there is no limit on the number of taxicabs that can be registered, it is difficult to see how the ordinance will reduce congestion. Thus, the ordinance impermissibly burdens interstate commerce without adequate justification.

A is incorrect because even if the measure reduced the congestion a bit, it would be rationally related to a legitimate government interest and might be constitutional if it did not impair interstate commerce. C is incorrect because even though the ordinance classifies on the basis of county rather than state residency, it still burdens against interstate commerce because it also prohibits taxicabs owned by State B citizens to work across state lines. Because this county is on the state border, the restriction necessarily burdens interstate commerce. D is incorrect because an ordinance burdening interstate commerce must be necessary to promote a legitimate interest, and this measure is not necessary.

Question 1039 - Constitutional Law - Individual Rights

The question was:

A city ordinance requires a taxicab operator's license to operate a taxicab that city. The ordinance states that the sole criteria for the issuance of such a license are driving ability and knowledge of the geography of the city. An applicant is tested by the city for these qualifications with a detailed questionnaire, written and oral examinations, and a practical behind-the-wheel demonstration.

The ordinance does not limit the number of licenses that may be issued. It does, however, allow any citizen to file an objection to the issuance of a particular license, but only on the ground that an applicant does not possess the required qualifications. City licensing officials are also authorized by the ordinance to determine, in their discretion, whether to hold an evidentiary hearing on an objection before issuing a license.

A woman applies for a taxicab operator's license and is found to be fully qualified after completing the usual licensing process. Her name is then posted as a prospective licensee, subject only to the objection process. A licensed taxicab driver files an objection to the issuance of such a license to the woman solely on the ground that the grant of a license to the woman would impair the value of the licensed driver's existing license. The licensed driver demands a hearing before a license is issued to the woman so that he may have an opportunity to prove his claim. City licensing officials refuse to hold such a hearing, and they issue a license to the woman. The licensed driver petitions for review of this action by city officials in an appropriate court, alleging that the Constitution requires city licensing officials to grant his request for a hearing before issuing a license to the woman.

In this case, the court should rule for

A: the licensed driver, because the due process clause of the Fourteenth Amendment requires all persons whose property may be adversely affected by governmental action to be given an opportunity for a hearing before such action occurs.

B: the licensed driver, because the determination of whether to hold a hearing may not constitutionally be left to the discretion of the same officials whose action is being challenged.

C: city officials, because the licensed driver had the benefit of the licensing ordinance and, therefore may not now question actions taken under it.

D: city officials, because the licensing ordinance does not give the licensed driver any property interest in being free of competition from additional licensees.

The explanation for the answer is:

D is the correct answer. A person may not be deprived of liberty or property without procedural due process. The city ordinance is the source of the property right alleged here, but the scope of that property right is limited. Taxicab licenses do not include a right to be free of competition from additional licensees, because the ordinance does not limit the number of licenses that may be issued and provides for a hearing only when the ground alleged is a lack of qualifications. Therefore, the grant of a license to the woman does not deprive the licensed driver of any property right that would require procedures to protect it. Moreover, there is no statutory right to a hearing because the only ground for a hearing is a lack of qualification, and the decision of whether to grant a pre-termination hearing is up to the discretion of the city licensing officials.

A is not correct because there is no property right at stake and because not every right requires a pre-termination hearing. B is not correct because the right to a hearing is only implicated when a property right is threatened. The discretion of the officials over the hearing is not a problem. C is simply incorrect. A person who has the benefit of a process that grants some kind of property right can challenge the deprivation of that right.

Question 1044 - Constitutional Law - Individual Rights

The question was:

A state statute permits a person's name to appear on the general election ballot as a candidate for statewide public office if the person pays a \$100 filing fee and provides proof from the State Elections Board that he or she was nominated in the immediately preceding primary election by one of the state's two major political parties. It also permits the name of an independent candidate or a candidate of a smaller party to appear on the general election ballot if that person pays a filing fee of \$1,000, and submits petitions signed by at least 3% of the voters who actually cast ballots for the office of governor in the last state election. The state maintains that these filing requirements are necessary to limit the size of the election ballot, to eliminate frivolous candidacies, and to help finance the high cost of elections. Historically, very few of the state's voters who are members of racial minority groups have been members of either of the two major political parties. Recently, a new political party has been formed by some of these voters. Which of the following constitutional provisions would be most helpful to the new political party as a basis for attacking the constitutionality of this statute?

- A:** The First Amendment.
- B:** The Thirteenth Amendment.
- C:** The Fourteenth Amendment.
- D:** The Fifteenth Amendment.

The explanation for the answer is:

C is the correct answer. The Fourteenth Amendment prohibits a state from limiting access to the ballot to members of particular political parties unless the prohibition is narrowly tailored to promote a compelling interest. Thus, this is the provision most helpful to the new political party in its efforts to attack the constitutionality of the statute.

A is incorrect because the First Amendment does contain a right of association that is injured by this statute, but the First Amendment only applies to the states by operation of the Fourteenth Amendment, so C is the better answer. B is incorrect because the statute classifies on the basis of political party rather than race, and the party members are from several racial minority groups, not just black people, and therefore the classification may not be a badge and incident of slavery that the Thirteenth Amendment works to eradicate. D is incorrect because the classification does not limit the right of voters on the basis of race.

Question 1060 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A federal statute provides that the cities in which certain specified airports are located may regulate the rates and services of all limousines that serve those airports, without regard to the origin or destination of the passengers who use the limousines.

The cities of Redville and Greenville are located adjacent to each other in different states. The airport serving both of them is located in Redville and is one of those airports specified in the federal statute. The Redville City Council has adopted a rule that requires any limousines serving the airport to charge only the rates authorized by the Redville City Council.

A prominent limousine service has a lucrative business transporting passengers between Greenville and the airport in Redville, at much lower rates than those required by the Redville City Council. It transports passengers in interstate traffic only; it does not provide local service within Redville. The new rule adopted by the Redville City Council will require the prominent limousine service to charge the same rates as limousines operating only in Redville.

Must the prominent limousine service comply with the new rule of the Redville City Council?

A: Yes, because the airport is located in Redville and, therefore, its city council has exclusive regulatory authority over all transportation to and from the airport.

B: Yes, because Congress has authorized this form of regulation by Redville and, therefore, removed any constitutional impediments to it that may have otherwise existed.

C: No, because the rule would arbitrarily destroy a lucrative existing business and, therefore, would amount to a taking without just compensation.

D: No, because the limousine service is engaged in interstate commerce and this rule is an undue burden on that commerce.

The explanation for the answer is:

B is the correct answer. The supremacy clause provides that federal laws preempt conflicting state laws, but here, Congress gave the Redville City Council the power to set the rates. Thus, there is no conflict and no preemption under the supremacy clause. Moreover, since Congress empowered the Redville City Council to set the rates there is no discrimination by the city against interstate commerce.

A is incorrect because the city does not have exclusive authority over all transportation. Congress would have as much authority as its commerce clause power would allow. C is incorrect because there is no vested property right that the business owners are deprived of completely. D is incorrect because Congress is essentially regulating interstate commerce by allowing the City of Redville to set the rates. Therefore there can be no discrimination on interstate commerce.

Question 1065 - Constitutional Law - Separation of Powers

The question was:

A federal statute with inseverable provisions established a new five-member national board with broad regulatory powers over the operation of the securities, banking, and commodities industries, including the power to issue rules with the force of law. The statute provides for three of the board members to be appointed by the President with the advice and consent of the Senate. They serve seven-year terms and are removable only for good cause. The other two members of the board were designated in the statute to be the respective general counsel of the Senate and House of Representatives Committees on Government Operations. The statute stipulated that they were to serve on the board for as long as they continued in those positions.

Following all required administrative procedures, the board issued an elaborate set of rules regulating the operations of all banks, securities dealers, and commodities brokers. A company that was subject to the board's rules sought a declaratory judgment that the rules were invalid because the statute establishing the board was unconstitutional.

In this case, the court should rule that the statute establishing the national board is

- A:** unconstitutional, because all members of federal boards having broad powers that are quasi-legislative in nature, such as rulemaking, must be appointed by Congress.
- B:** unconstitutional, because all members of federal boards exercising executive powers must be appointed by the President or in a manner otherwise consistent with the appointments clause of Article II.
- C:** constitutional, because the necessary and proper clause authorizes Congress to determine the means by which members are appointed to boards created by Congress under its power to regulate commerce among the states.
- D:** constitutional, because there is a substantial nexus between the power of Congress to legislate for the general welfare and the means specified by Congress in this statute for the appointment of board members.

The explanation for the answer is:

B is the correct answer. The statute is probably unconstitutional because the members of federal boards must be appointed in a manner consistent with the appointments clause of Article II. They must be appointed in this manner because they are members of the executive branch. A is incorrect because Congress may not appoint members of an executive branch agency. It can create the agency, but appointment of its leaders must comport with Article II, concerning the executive branch. C is incorrect because the necessary and proper clause does not allow Congress to exercise executive branch powers. D is incorrect because the spending power does not give Congress the power to exercise executive branch powers either.

Question 1070 - Constitutional Law - Judicial Review

The question was:

A federal statute provides that the United States Supreme Court has authority to review any case filed in a United States Court of Appeals, even though that case has not yet been decided by the court of appeals. The Environmental Protection Agency (EPA), an agency in the executive branch of the federal government, issued an important environmental rule. Although the rule had not yet been enforced against them, companies that would be adversely affected by the rule filed a petition for review of the rule in a court of appeals, seeking a declaration that the rule was invalid solely because it was beyond the statutory authority of the EPA. The companies made no constitutional claim. A statute specifically provides for direct review of EPA rules by a court of appeals without any initial action in a district court. The companies filed a petition for a writ of certiorari in the Supreme Court requesting immediate review of this case by the Supreme Court before the court of appeals has actually decided the case. The EPA acknowledges that the case is important enough to warrant Supreme Court review and that it should be decided promptly, but it asks the Supreme Court to dismiss the petition on jurisdictional grounds. The best constitutional argument in support of the EPA's request is that

A: the case is not within the original jurisdiction of the Supreme Court as defined by Article III, and it is not a proper subject of that court's appellate jurisdiction because it has not yet been decided by any lower court.

B: the case is appellate in nature, but it is beyond the appellate jurisdiction of the Supreme Court, because Article III states that its jurisdiction extends only to cases arising under the Constitution.

C: Article III precludes federal courts from reviewing the validity of any federal agency rule in any proceeding other than an action to enforce the rule.

D: Article III provides that all federal cases, except those within the original jurisdiction of the Supreme Court, must be initiated by an action in a federal district court.

The explanation for the answer is:

A is the correct answer. The case is not within the original jurisdiction of the Supreme Court as defined by Article III. And, it cannot exercise appellate jurisdiction if there has been no decision to be appealed. Therefore the Supreme Court would not have jurisdiction over this case and the federal statute would be unconstitutional.

B is not correct because Article III provides jurisdiction over all cases involving a federal question, and interpretation of a federal rule would be a federal question. C is incorrect because the federal courts can review the validity of a federal agency rule in a declaratory judgment action as long as the controversy is otherwise justiciable. D is incorrect because Article III does not require that suits be initiated in federal district court. In fact, Congress need not have created district courts at all.

Question 1073 - Constitutional Law - Relations Between Federal and State Governments

The question was:

In recent years, several large corporations incorporated and headquartered in a particular state have suddenly been acquired by out-of-state corporations that have moved all of their operations out of this state. Other corporations incorporated and headquartered in this particular state have successfully resisted such attempts at acquisition. In an effort to preserve jobs in the state and to protect its domestic corporations against their sudden acquisition by out-of-state purchasers, the state legislature enacts a statute governing acquisitions of shares in all corporations incorporated in the state. This statute requires that any acquisition of more than 25% of the voting shares of a corporation incorporated in the state that occurs over a period of less than one year must be approved by the holders of record of a majority of the shares of the corporation as of the day before the commencement of the acquisition of those shares. The statute expressly applies to acquisitions of the state's corporations by both in-state and out-of-state entities. Assume that no federal statute applies. Is this state statute constitutional?

A: No, because one of the purposes of the statute is to prevent out-of-state entities from acquiring corporations incorporated and headquartered in the state.

B: No, because the effect of the statute will necessarily be to hinder the acquisition of the state's corporations by other corporations, many of whose shareholders are not residents of the state and, therefore, it will adversely affect the interstate sale of securities.

C: Yes, because the statute imposes the same burden on both in-state and out-of-state entities wishing to acquire one of the state's corporations, it regulates only the acquisition of the state's corporations, and it does not create an impermissible risk of inconsistent regulation on this subject by different states.

D: Yes, because corporations exist only by virtue of state law and, therefore, the negative implications of the commerce clause do not apply to state regulations governing their creation and acquisition.

The explanation for the answer is:

C is the correct answer. The statute does not classify corporations that can acquire one of the state's corporations, but only regulates the acquisition of those corporations. Therefore, it does not violate the privileges and immunities clause or discriminate against interstate commerce. Additionally, because corporations are created by state law, this statute does not create an impermissible risk of inconsistent regulation on this subject by different states. No other state can regulate how the state's corporations can be acquired.

A is incorrect because the statute does not treat out-of-state entities any differently than in-state entities. B is incorrect because the statute does not make it easier for in-state residents to acquire the state's corporations. The incidental effects of the statute on interstate commerce do not burden interstate commerce. D is incorrect because the negative implications of the commerce clause apply to state regulations of corporations even though those corporations are created by state law.

Question 1077 - Constitutional Law - Individual Rights

The question was:

The legislature of a state enacts a statute that it believes reconciles the state's interest in the preservation of human life with a woman's right to reproductive choice. That statute permits a woman to have an abortion on demand during the first trimester of pregnancy but prohibits a woman from having an abortion after that time unless her physician determines that the abortion is necessary to protect the woman's life or health.

If challenged on constitutional grounds in an appropriate court, this statute will probably be held

A: constitutional, because the state has made a rational policy choice that creates an equitable balance between the compelling state interest in protecting fetal life and the fundamental right of a woman to reproductive choice.

B: constitutional, because recent rulings by the United States Supreme Court indicate that after the first trimester a fetus may be characterized as a person whose right to life is protected by the due process clause of the Fourteenth amendment.

C: unconstitutional, because the state has, without adequate justification, placed an undue burden on the fundamental right of a woman to reproductive choice prior to fetal viability.

D: unconstitutional, because a statute unqualifiedly permitting abortion at one stage of pregnancy, and denying it at another with only minor exceptions, establishes an arbitrary classification in violation of the equal protection clause of the Fourteenth Amendment.

The explanation for the answer is:

C is the correct answer. The limitation on all abortions after the first trimester except when the life or health of the mother is threatened is an undue burden on women's fundamental right to reproductive choice prior to fetal viability. The state may not impose an undue burden on the ability of women to get abortions at any point in the pregnancy, although after fetal viability, most limitations will not be an undue burden as long as there is an exception for the life and the health of the mother.

A is incorrect because a statute cannot create an undue burden on the fundamental right of reproductive choice even if it is rational. B is incorrect because the Supreme Court has never held that the fetus is a person for Fourteenth Amendment purposes. D is incorrect because the differences in fetal development at different stages of pregnancy support treating different stages differently. The distinction is not arbitrary.

Question 1090 - Constitutional Law - Separation of Powers

The question was:

The vaccination of children against childhood contagious diseases (such as measles, diphtheria and whooping cough) has traditionally been a function of private doctors and local and state health departments. Because vaccination rates have declined in recent years, especially in urban areas, the President proposes to appoint a Presidential Advisory Commission on Vaccination which would be charged with conducting a national publicity campaign to encourage vaccination as a public health measure. No federal statute authorizes or prohibits this action by the President. The activities of the Presidential Advisory Commission on Vaccination would be financed entirely from funds appropriated by Congress to the Office of the President for "such other purposes as the President may think appropriate." May the President constitutionally create such a commission for this purpose?

A: Yes, because the President has plenary authority to provide for health, safety, and welfare of the people of the United States.

B: Yes, because this action is within the scope of executive authority vested in the President by the Constitution, and no federal statute prohibits it.

C: No, because the protection of children against common diseases by vaccination is a traditional state function and, therefore, is reserved to the states by the Tenth Amendment.

D: No, because Congress has not specifically authorized the creation and support of such a new federal agency.

The explanation for the answer is:

B is the correct answer. Setting up an advisory commission to encourage vaccination as a public health measure is within the scope of executive authority vested in the President by the Constitution. And, no federal statute prohibits its creation so that even if Congress shares the power to legislate in this area, it has not prohibited executive branch involvement. Thus, the commission is constitutional.

A is incorrect because the President does not have plenary authority to provide for the health, safety, and welfare of the people of the United States. Rather, Congress has primary authority, and the executive branch has the powers necessary to enforce Congress's will. C is incorrect because the protection of the public health is not a traditional state function but has always been shared by both the state and federal governments. D is incorrect because Congress need not specifically authorize the creation and support of a new federal agency if that agency exercises solely executive powers, which this one does.

Question 1101 - Constitutional Law - Individual Rights

The question was:

A city ordinance requires every operator of a taxicab in the city to have a license and permits revocation of that license only for "good cause." The city taxicab operator's licensing ordinance conditions the issuance of such a license on an agreement by the licensee that the licensee "not display in or on his or her vehicle any bumper sticker or other placard or sign favoring a particular candidate for any elected municipal office." The ordinance also states that it imposes this condition in order to prevent the possible imputation to the city council of the views of its taxicab licensees and that any licensee who violates this condition shall have his or her license revoked.

One holder of a city taxicab operator's license decorates his cab with bumper stickers and other signs favoring specified candidates in a forthcoming election for municipal offices. A proceeding is initiated against him to revoke his taxicab operator's license on the sole basis of that admitted conduct.

In this proceeding, does this license holder have a meritorious defense based on the United States Constitution?

A: No, because he accepted the license with knowledge of the condition and, therefore, has no standing to contest it.

B: No, because a taxicab operator's license is a privilege and not a right and, therefore, is not protected by the due process clause of the Fourteenth Amendment.

C: Yes, because such a proceeding threatens the license holder with a taking of property, his license, without just compensation.

D: Yes, because the condition imposed on taxicab operators' licenses restricts political speech based wholly on its content, without any adequate governmental justification.

The explanation for the answer is:

D is the correct answer. The government cannot restrict speech based on its content unless the content falls into a category of speech that is not protected for some reason. Political speech is at the core of protected speech. Therefore, the government cannot prohibit political speech based on its content. Further, the government cannot condition a right or benefit on an agreement by an individual not to engage in constitutionally protected speech. Therefore the license holder has a meritorious defense to the license revocation proceeding.

A is incorrect because the government cannot require an individual to give up a constitutional right in order to receive a government benefit. B is incorrect because government privileges cannot be conditioned on an agreement to give up a constitutional right. C is incorrect because the government may take the license, the license holder's property, as long as it affords him due process of law.

Question 1108 - Constitutional Law - Judicial Review

The question was:

A baseball fan has a fierce temper and an extremely loud voice. Attending a baseball game in which a number of calls went against the home team, the fan repeatedly stood up, brandished his fist, and angrily shouted, "Kill the umpires." The fourth time he engaged in this conduct, many other spectators followed the fan in rising from their seats, brandishing fists, and shouting, "Kill the umpires."

The home team lost the game. Although no violence ensued, spectators crowded menacingly around the umpires after the game. As a result, the umpires were able to leave the field and stadium only with the help of a massive police escort.

For his conduct, the fan was charged with inciting to riot and was convicted in a jury trial in state court. He appealed. The state supreme court reversed his conviction. In its opinion, the court discussed in detail decisions of the United States Supreme Court dealing with the First Amendment free speech clause as incorporated into the Fourteenth Amendment. At the end of that discussion, however, the court stated that it "need not resolve how, on the basis of these cases," the United States Supreme Court would decide the fan's case. Instead, the court stated, "this court has always given the free-speech guarantee of the state's constitution the broadest possible interpretation. As a result, we hold that in this case, where no riot or other violence actually occurred, the state constitution does not permit this conviction for incitement to riot to stand."

The United States Supreme Court grants a writ of certiorari to review this decision of the state supreme court.

In this case, the United States Supreme Court should

- A:** affirm the state supreme court's decision, because the fan's ballpark shout is commonplace hyperbole that cannot, consistently with the First and Fourteenth Amendments, be punished.
- B:** remand the case to the state supreme court with directions that it resolve the First and Fourteenth Amendment free-speech issue that it discussed in such detail.
- C:** dismiss the writ as improvidently granted, because the state supreme court's decision rests on an independent and adequate state law ground.
- D:** reverse the decision of the state supreme court, because incitement to violent action is not speech protected by the First and Fourteenth Amendments.

The explanation for the answer is:

C is the correct answer. The Supreme Court will not hear cases from the highest state courts if the decisions of those courts rest on independent and adequate state law. Here, the state supreme court found that its state constitution protected the fan's right to speak, and that he could not be convicted. Furthermore, the state supreme court also stated that its state constitution was interpreted in a manner different from the federal Constitution. Accordingly, the state constitution afforded an independent and adequate state ground for the decision.

A is incorrect because it is possible that the speech would not be protected under the federal Constitution if it was "fighting words" or if it posed a "clear and present danger." B is incorrect because the state court need not resolve the federal issue if it can decide the case on state grounds. D is incorrect because the speech may not be incitement to violent action, since there was some delay between the speech and the menacing of the umpires and there was no violence that broke out.

Question 1122 - Constitutional Law - Individual Rights

The question was:

A city's zoning ordinance contains provisions restricting places of "adult entertainment" to two specified city blocks within the commercial center of the city. These provisions of the ordinance define "adult entertainment" as "live or filmed nudity or sexual activity, real or simulated, of an indecent nature."

A business owner proposes to operate an adult entertainment establishment outside the two-block area zoned for such establishments but within the commercial center of the city. When his application for permission to do so is rejected solely because it is inconsistent with provisions of the zoning ordinance, he sues the appropriate officials of the city, seeking to enjoin them from enforcing the adult entertainment provisions of the ordinance against him. He asserts that these provisions of the ordinance violate the First Amendment as made applicable to the city by the Fourteenth Amendment.

In this case, the court hearing the business owner's request for an injunction would probably hold that the adult entertainment provisions of the city zoning ordinance are

- A:** constitutional, because they do not prohibit adult entertainment everywhere in the city, and the city has a substantial interest in keeping the major part of its commercial center free of uses it considers harmful to that area.
- B:** constitutional, because adult entertainment of the kind described in these provisions of the city ordinance is not protected by the free speech guarantee of the First and Fourteenth Amendment.
- C:** unconstitutional, because they prohibit in the commercial area of the city adult entertainment that is not "obscene" within the meaning of the First and Fourteenth Amendments.
- D:** unconstitutional, because zoning ordinances that restrict freedom of speech may be justified only by a substantial interest in preserving the quality of a community's residential neighborhoods.

The explanation for the answer is:

A is the correct answer. The city may limit the time, place and manner of adult businesses as long as the restrictions allow enough avenues of expression and protect against the secondary effects caused by such businesses. This ordinance does just that, and is therefore constitutional. B is incorrect because adult entertainment is protected by the First and Fourteenth Amendments. C is incorrect because the government may regulate speech that is not obscene. D is incorrect because the government is not limited to protect against secondary effects only in residential areas.

Question 1129 - Constitutional Law - Individual Rights

The question was:

A licensed barber works in a particular state. A state barber licensing statute provides that the Barber Licensing Board may revoke a barber license if it finds that the licensee has used his or her business premises for an illegal purpose.

The licensed barber was arrested by federal narcotics enforcement agents on a charge of selling cocaine in his barbershop in violation of federal laws. However, the local United States Attorney declined to prosecute and the charges were dropped.

Nevertheless, the Barber Licensing Board commenced a proceeding against the barber to revoke his license on the ground that the barber used his business premises for illegal sales of cocaine. At a subsequent hearing before the board, the only pieces of evidence against the barber were affidavits by unnamed informants, who were not present or available for cross-examination. Their affidavits stated that they purchased cocaine from the barber in his barbershop. Based solely on this evidence, the board found that the barber used his business premises for an illegal purpose and ordered his license revoked.

In a suit by the barber to have this revocation set aside, his best constitutional argument is

A: the barber's inability to cross-examine his accusers denied him a fair hearing and caused him to be deprived of his barber license without due process of law.

B: the administrative license revocation proceeding was invalid, because it denied full faith and credit to the dismissal of the criminal charges by the United States Attorney.

C: Article II requires a penalty of the kind imposed on the barber to be imposed by a court rather than an administrative agency.

D: the existence of federal laws penalizing the illegal sale of cocaine preempts state action relating to drug trafficking of the kind involved in the barber's case.

The explanation for the answer is:

A is the correct answer. A license is a property right created by state law and cannot be revoked without due process of law. Part of that process may include the ability to cross examine accusers. Thus, the strongest argument by the barber is that his inability to even know who his accusers were denied him a fair hearing which denied him his barber's license without due process of law.

B is incorrect because the decision by the United States Attorney to dismiss the criminal charges is not a law or court judgment that would provide that the state law has not been violated. Thus, the full faith and credit clause would not apply. C is incorrect because an administrative agency may exercise quasi-judicial powers such as those here. D is incorrect because the federal drug laws are not so pervasive as to preempt the entire subject from state regulation. Moreover, this state regulation is not inconsistent with the federal laws, and so it would not be preempted.

Question 1132 - Constitutional Law - Judicial Review

The question was:

The state of Red sent three of its employees to a city located in the state of Blue to consult with a chemical laboratory there about matters of state business. While in the course of their employment, the three employees of Red negligently released into local Blue waterways some of the chemical samples they had received from the laboratory in Blue.

Persons in Blue injured by the release of the chemicals sued the three Red state employees and the state of Red in Blue state courts for the damages they suffered. After a trial in which all of the defendants admitted jurisdiction of the Blue state court and fully participated, plaintiffs received a judgment against all of the defendants for \$5 million, which became final.

Subsequently, plaintiffs sought to enforce their Blue state court judgment by commencing a proper proceeding in an appropriate court of Red. In that enforcement proceeding, the state of Red argued, as it had done unsuccessfully in the earlier action in Blue state court, that its liability is limited by a law of Red to \$100,000 in any tort case. Because the three individual employees of Red are able to pay only \$50,000 of the judgment, the only way the injured persons can fully satisfy their Blue state court judgment is from the funds of the state of Red.

Can the injured persons recover the full balance of their Blue state court judgment from the state of Red in the enforcement proceeding they filed in a court of Red?

A: Yes, because the final judgment of the Blue court is entitled to full faith and credit in the courts of Red.

B: Yes, because a limitation on damage awards against Red for tortious actions of its agents would violate the equal protection clause of the Fourteenth Amendment.

C: No, because the Tenth Amendment preserves the right of a state to have its courts enforce the state's public policy limiting its tort liability.

D: No, because the employees of Red were negligent and, therefore, their actions were not authorized by the state of Red.

The explanation for the answer is:

A is the correct answer. A state court is required to give full faith and credit to judgments of sister states. Here, the state employees and the state submitted to the jurisdiction of the other state court, and raised the defense they raise now in their own state courts. There is no fundamental unfairness to the proceedings that would warrant not giving the judgment full faith and credit, and it would be enforced in full in the current proceedings.

B is incorrect because the state can constitutionally limit damage awards for torts against its agents. C is incorrect because there is no right under the Tenth Amendment that gives the individual states the unwaivable right to have their own courts decide cases involving the tort liability of the government. D is incorrect because the state was a named defendant as well, and the employees were acting within the scope of their employment, which is the relevant test for state action.

Question 1141 - Constitutional Law - Judicial Review

The question was:

A student contracted for an expensive cable television service for a period of six months solely to view the televised trial of a defendant, who was on trial for murder in a court of a particular state.

In the midst of the trial, the judge prohibited any further televising of the defendant's trial because he concluded that the presence of television cameras was disruptive.

The student brought an action in federal district court against the judge in the defendant's case asking only for an injunction that would require the judge to resume the televising of the defendant's trial. The student alleged that the judge's order to stop the televising of the defendant's trial deprived him of property--his investment in cable television service--without due process of law.

Before the student's case came to trial, the defendant's criminal trial concluded in a conviction and sentencing. There do not appear to be any obvious errors in the proceeding that led to the result in the defendant's case. After the defendant's conviction and sentencing, the opposing party in the student's case moved to dismiss the suit.

The most proper disposition of this motion by the federal court would be to

- A:** defer action on the motion until after any appellate proceedings in the defendant's case have concluded, because the defendant might appeal, his conviction might be set aside, he might be tried again, and television cameras might be barred from the new trial.
- B:** defer action on the motion until after the state Supreme Court expresses a view on its proper disposition, because the state law of mootness governs suits in federal court when the federal case is inexorably intertwined with a state proceeding.
- C:** grant the motion, because the subject matter of the controversy between the student and the defendant has ceased to exist and there is no strong likelihood that it will be revived.
- D:** deny the motion, because the student has raised an important constitutional question--whether his investment in cable service solely to view the defendant's trial is property protected by the due process clause of the Fourteenth Amendment.

The explanation for the answer is:

C is the correct answer. Article III limits the exercise of federal court jurisdiction to cases and controversies, and once the injury that gave rise to the case is incapable of remedy, the case becomes moot and no longer justiciable. Here, once the trial was over, the relief the student sought--televising the trial--was no longer possible, and his case became moot. Moreover, it is unlikely that the controversy will be revived because the case is on appeal now, and there were no obvious errors in the proceedings. Therefore, the federal court should grant the motion to dismiss.

A is incorrect because the chances that the conviction would be set aside are small enough that it is unlikely the controversy would be revived. Moreover, the court might allow cameras for the second trial if one were granted. B is simply incorrect. There is no state law of mootness. D is incorrect because a federal question cannot be considered without a case or controversy, and a moot issue is not a case or controversy.

Question 1143 - Constitutional Law - Individual Rights

The question was:

A company wanted to expand the size of the building it owned that housed the company's supermarket by adding space for a coffeehouse. The company's building was located in the center of five acres of land owned by the company and devoted wholly to parking for its supermarket customers.

City officials refused to grant a required building permit for the coffeehouse addition unless the company established in its store a child care center that would take up space at least equal to the size of the proposed coffeehouse addition, which was to be 20% of the existing building. This action of the city officials was authorized by provisions of the applicable zoning ordinance.

In a suit filed in state court against appropriate officials of the city, the company challenged this child care center requirement solely on constitutional grounds. The lower court upheld the requirement even though the city officials presented no evidence and made no findings to justify it other than a general assertion that there was a shortage of child care facilities in the city. The company appealed.

The court hearing the appeal should hold that the requirement imposed by the city on the issuance of this building permit is

- A:** constitutional, because the burden was on the company to demonstrate that there was no rational relationship between this requirement and a legitimate governmental interest, and the company could not do so because the requirement is reasonably related to improving the lives of families and children residing in the city.
- B:** constitutional, because the burden was on the company to demonstrate that this requirement was not necessary to vindicate a compelling governmental interest, and the city failed to meet its burden under that standard.
- C:** unconstitutional, because the burden was on the city to demonstrate that this requirement was necessary to vindicate a compelling governmental interest, and the city failed to meet its burden under that standard.
- D:** unconstitutional, because the burden was on the city to demonstrate a rough proportionality between this requirement and the impact of the company's proposed action on the community, and the city failed to do so.

The explanation for the answer is:

D is the correct answer. The requirement that the company construct an addition and create a child care center in it is governed by the takings clause of the Constitution. In order to justify a condition on a building permit, there must be a nexus between a legitimate state interest, here the availability of childcare facilities, and the condition. If there is a nexus, there must also be a rough proportionality between the required dedication and the impact it will have on the community. And the city bears the burden of meeting this higher test.

Here the city failed to demonstrate the rough proportionality between the requirement and the impact on the residents. The requirement would be a very large burden on the supermarket, since it would at least double the cost of the addition and would doubly reduce the amount of parking available. The addition of one daycare center, however, would have a smaller impact on the community which has a general lack of child care facilities.

A is incorrect because the rational basis test is not the appropriate test for affirmative conditions on land use permits. Moreover, the government never has the burden under rational basis. B is not correct because strict scrutiny is not the appropriate test, and plaintiffs do not bear the burden of showing that strict scrutiny was not satisfied. Similarly, C is not correct because strict scrutiny is not the appropriate test here.

Question 1146 - Constitutional Law - Individual Rights

The question was:

The governor of a state proposes to place a Christmas nativity scene, the components of which would be permanently donated to the state by private citizens, in the city's Capitol Building rotunda where the state's legislature meets annually. The governor further proposes to display this state-owned nativity scene annually from December 1 to December 31, next to permanent displays that depict the various products manufactured in the state. The governor's proposal is supported by all members of both houses of the legislature.

If challenged in a lawsuit on establishment clause grounds, the proposed nativity scene display would be held

- A:** unconstitutional, because the components of the nativity scene would be owned by the state rather than by private persons.
- B:** unconstitutional, because the nativity scene would not be displayed in a context that appeared to depict and commemorate the Christmas season as a primarily secular holiday.
- C:** constitutional, because the components of the nativity scene would be donated to the state by private citizens rather than purchased with state funds.
- D:** constitutional, because the nativity scene would be displayed alongside an exhibit of various products manufactured in the state.

The explanation for the answer is:

B is the correct answer. A state cannot display a nativity scene unless it is displayed in a context that commemorates the Christmas season as a primarily secular holiday. If a display includes religious symbols as well as other holiday decorations, the display will be deemed to have a secular purpose; however, if it is only the religious symbol in a display, it will be deemed to have a religious effect. Although this scene will be set up with other non-religious displays, those displays are not related to Christmas as a secular holiday and those displays are also permanent, rather than related to the particular Christmas season.

A is incorrect because the relevant inquiry is whether the government's display endorses religion, not whether the government owns the components of the display. C is incorrect because the use of state funds is not what makes this scene a violation of the establishment clause. Rather, it is the display itself. D is incorrect because the display of the products, while not religious, does not transform the nativity scene into a component of a display related to Christmas as a secular holiday. If anything, as permanent displays unrelated to the topic of Christmas, they would highlight the religious nature of this special Christmas nativity display.

Question 1151 - Constitutional Law - Separation of Powers

The question was:

Congress wishes to enact legislation prohibiting discrimination in the sale or rental of housing on the basis of the affectional preference or sexual preference or sexual orientation of the potential purchaser or renter. Congress wishes this statute to apply to all public and private vendors and lessors of residential property in this country, with a few narrowly drawn exceptions.

The most credible argument for congressional authority to enact such a statute would be based upon the

A: general welfare clause of Article I, Section 8, because the conduct the statute prohibits could reasonably be deemed to be harmful to the national interest.

B: commerce clause of Article I, Section 8, because, in inseverable aggregates, the sale or rental of almost all housing in this country could reasonably be deemed to have a substantial effect on interstate commerce.

C: enforcement clause of the Thirteenth Amendment, because that amendment clearly prohibits discrimination against the class of persons protected by this statute.

D: enforcement clause of the Fourteenth Amendment, because that amendment prohibits all public and private actors from engaging in irrational discrimination.

The explanation for the answer is:

B is the correct answer. The commerce clause would provide the most credible support for a statute prohibiting sexual orientation discrimination in sale or rental of housing. The rent or purchase of housing could reasonably be found to affect interstate commerce.

A is incorrect because the general welfare clause empowers Congress to take certain actions in conjunction with its spending powers. This is not a spending statute. C is not correct because the Thirteenth Amendment primarily protects African Americans since the institution of slavery in the United States was race-based. The institution was not based on sexual orientation, and so the Thirteenth Amendment would not offer the most obvious support. D is incorrect because the Fourteenth Amendment only prohibits state action, not private action, and this statute is directed at private actors as well as state actors.

Question 1155 - Constitutional Law - Individual Rights

The question was:

A city owns and operates a large public auditorium. It leases the auditorium to any group that wishes to use it for a meeting, lecture, concert, or contest. Each user must post a damage deposit and pay rent, which is calculated only for the actual time the building is used by the lessee. Reservations are made on a first-come, first-served basis. A private organization that permits only males to serve in its highest offices rented the auditorium for its national convention. The organization planned to install its new officers at that convention. It broadly publicized the event, inviting members of the general public to attend the installation ceremony at the city auditorium. No statute or administrative rule prohibits the organization from restricting its highest offices to men. An appropriate plaintiff sues the private organization seeking to enjoin it from using the city auditorium for the installation of its new officers. The sole claim of the plaintiff is that the use of this auditorium by the organization for the installation ceremony is unconstitutional because the organization disqualifies women from serving in its highest offices. Will the plaintiff prevail?

A: Yes, because the Fourteenth Amendment prohibits such an organization from discriminating against women in any of its activities to which it has invited members of the general public.

B: Yes, because the organization's use of the city auditorium for this purpose subjects its conduct to the provisions of the Fourteenth Amendment.

C: No, because the freedom of association protected by the Fourteenth Amendment prohibits the city from interfering in any way with the organization's use of city facilities.

D: No, because the organization is not a state actor and, therefore, its activities are not subject to the provisions of the Fourteenth Amendment.

The explanation for the answer is:

D is the correct answer. The Fourteenth Amendment prohibits state action but not private action. Therefore, the prohibition of women from serving as officers in this organization is not unconstitutional. A is incorrect both because the Fourteenth Amendment does not reach this private actor, and also because the private actor does not become a state actor merely by inviting the public to an activity. B is incorrect because the use of the auditorium does not discriminate on the basis of gender; women can come to the installation of new officers, and the use of the auditorium does not make the organization a state actor. C is incorrect because the city could regulate who would be allowed to use its facilities, although some regulations might have to pass strict scrutiny.

Question 1161 - Constitutional Law - Individual Rights

The question was:

A particular state has a state employee grievance system that requires any state employee who wishes to file a grievance against the state to submit that grievance for final resolution to a panel of three arbitrators chosen by the parties from a statewide board of 13 arbitrators. In any given case, the grievant and the state alternate in exercising the right of each party to eliminate five members of the board, leaving a panel of three members to decide their case. At the present time, the full board is composed of seven male arbitrators and six female arbitrators.

A female state employee filed a sexual harassment grievance against her male supervisor and the state. The state's attorney exercised all of her five strikes to eliminate five of the female arbitrators. At the time she did so, the state's attorney stated that she struck the five female arbitrators solely because she believed women, as a group, would necessarily be biased in favor of another woman who was claiming sexual harassment. Counsel for the state employee eliminated four males and one female arbitrator, all solely on the grounds of specific bias or conflicts of interest. As a result, the panel was all male.

When the panel ruled against the state employee on the merits of her case, she filed an action in an appropriate state court, challenging the panel selection process as a gender-based denial of equal protection of the laws.

In this case, the court should hold that the panel selection process is

- A:** unconstitutional, because the gender classification used by the state's attorney in this case does not satisfy the requirements of intermediate scrutiny.
- B:** unconstitutional, because the gender classification used by the state's attorney in this case denies the grievant the right to a jury made up of her peers.
- C:** constitutional, because the gender classification used by the state's attorney in this case satisfies the requirements of the strict scrutiny test.
- D:** constitutional, because the gender classification used by the state's attorney in this case satisfies the requirements of the rational basis test.

The explanation for the answer is:

A is the correct answer. The state's attorney in this case intentionally excluded arbitrators based on gender. The Supreme Court has held that peremptory challenges based solely on gender are unconstitutional as a violation of the Equal Protection Clause because they reinforce negative stereotypes against women without furthering the governmental interest of a fair trial. See *J.E.B. v. Alabama*, 511 U.S. 127 (1994). Similarly, the state's attorney in this question is making a gender-based classification, so the state would need to show that the classification is substantially related to an important government objective. Because the state's attorney's argument was that women would simply be biased toward a female claimant, the attorney failed to demonstrate how the exclusion of female arbitrators would be substantially related to the need for a fair arbitration.

B is incorrect. The constitutional right to a jury of one's peers only applies to formal jury trials, not arbitrations. C is incorrect because strict scrutiny does not apply. Since this is a gender-based classification, it is subject to intermediate scrutiny. Likewise, D is incorrect because rational basis is the improper test to apply to a gender-based classification. Instead, intermediate scrutiny applies, so the government would need to show that the classification is substantially related to an important government objective.

Question 1167 - Constitutional Law - Separation of Powers

The question was:

A senator makes a speech on the floor of the United States Senate in which she asserts that William, a federal civil servant with minor responsibilities, was twice convicted of fraud by the courts of a particular state. In making this assertion, the senator relied wholly on research done by her chief legislative assistant. In fact, it was a different man named William and not William the civil servant, who was convicted of these crimes in the state court proceedings. This mistake was the result of carelessness on the legislative assistant's part.

No legislation affecting the appointment or discipline of civil servants or the program of the federal agency for which the federal civil servant works was under consideration at the time the senator made her speech about him on the floor of the Senate.

The federal civil servant sues the senator and the legislative assistant for defamation. Both defendants move to dismiss the complaint.

As a matter of constitutional law, the court hearing this motion should

A: grant it as to the legislative assistant, because he is protected by the freedom of speech guarantee against defamation actions by government officials based on his mere carelessness; but deny it as to the senator, because, as an officer of the United States, she is a constituent part of the government and, therefore, has no freedom of speech rights in that capacity.

B: grant it as to both defendants, because the senator is immune from suit for any speech she makes in the Senate under the speech or debate clause of Article I, Section 6, and the legislative assistant may assert the senator's immunity for his assistance to her in preparing the speech.

C: deny it as to both defendants, because any immunity of the senator under the speech or debate clause does not attach to a speech that is not germane to pending legislative business, and the legislative assistant is entitled to no greater immunity than the legislator he was assisting.

D: deny it as to the legislative assistant, because he is not a legislator protected by the speech or debate clause; but grant it as to the senator, because she is immune from suit for her speech by virtue of that clause.

The explanation for the answer is:

B is the correct answer. The speech and debate clause of Article I provides that anything said in the course of the federal legislative process is immune from prosecution. Speeches outside the Senate are not covered, nor are statements made as the result of bribes. Thus, the Senator would be immune from suit for any speech she makes in the Senate and her assistant would be cloaked with immunity for his assistance to her in preparing the speech. A, C, and D are all incorrect because they misstate the law and how it would protect the Senator and her assistant.

Question 1171 - Constitutional Law - Individual Rights

The question was:

A doctor, who resides in the city of Greenville in the state of Green, is a physician licensed to practice in both Green and the neighboring state of Red. The doctor finds that the most convenient place to treat her patients who need hospital care is in the publicly owned and operated Redville Municipal Hospital of the city of Redville in the state of Red, which is located just across the state line from Greenville. For many years the doctor had successfully treated her patients in that hospital. Early this year she was notified that she could no longer treat patients in the Redville hospital because she was not a resident of Red, and a newly adopted rule of Redville Municipal Hospital, which was adopted in conformance with all required procedures, stated that every physician who practices in that hospital must be a resident of Red.

Which of the following constitutional provisions would be most helpful to the doctor in an action to challenge her exclusion from the Redville hospital solely on the basis of this hospital rule?

- A:** The bill of attainder clause.
- B:** The privileges and immunities clause of Article IV.
- C:** The due process clause of the Fourteenth Amendment.
- D:** The ex post facto clause.

The explanation for the answer is:

B is the correct answer. A state or municipality may not discriminate against citizens of other states under the privileges and immunities clause of Article IV. Such classifications must meet strict scrutiny, and there is no indication here that the state could meet that burden. A is incorrect because a bill of attainder is legislatively-imposed punishment, which is not present in this issue. C is not correct because the doctor was not deprived of a fundamental right. D is not correct because the rule did not make illegal something that was legal when it was done.

Question 1180 - Constitutional Law - Individual Rights

The question was:

A state statute prohibits any retailer of books, magazines, pictures, or posters from "publicly displaying or selling to any person any material that may be harmful to minors because of the violent or sexually explicit nature of its pictorial content." Violation of this statute is a misdemeanor.

A corner store displays publicly and sells magazines containing violent and sexually explicit pictures. The owner of this store is prosecuted under the above statute for these actions.

In defending against this prosecution in a state trial court, the argument that would be the best defense for the corner store is that the statute violates the

- A:** First Amendment as it is incorporated into the Fourteenth Amendment, because the statute is excessively vague and overbroad.
- B:** First Amendment as it is incorporated into the Fourteenth Amendment, because a state may not prohibit the sale of violent or sexually explicit material in the absence of proof that the material is utterly without any redeeming value in the marketplace of ideas.
- C:** equal protection of the laws clause, because the statute irrationally treats violent and sexually explicit material that is pictorial differently from such material that is composed wholly of printed words.
- D:** equal protection of the laws clause, because the statute irrationally distinguishes between violent and sexually explicit pictorial material that may harm minors and such material that may harm only adults.

The explanation for the answer is:

A is the correct answer. The best defense for the corner store is that the statute is excessively vague and overbroad. It is vague because the terms "harmful" and "violent or sexually explicit nature" are terms that are not concrete enough to allow most people to understand what is prohibited. The statute is overbroad because it may prohibit material that is not shown to harm minors, but would not prohibit written material describing violent and sexually explicit acts, which would be harmful to minors.

B is incorrect because the state may regulate the sale of violent or sexually explicit material, particularly to minors. The material need not be devoid of any redeeming value. C is incorrect because a classification between pictures and written words need only be rationally related to a legitimate state interest, and this probably satisfies that standard because pictures can have an impact that the written words do not. D is incorrect because a classification based on age would be subject to rational basis review, and it is difficult to conceive of a material that would harm adults but not minors.

Question 1202 - Constitutional Law - Separation of Powers

The question was:

A federal statute imposes an excise tax of \$100 on each new computer sold in the United States. It also appropriates the entire proceeds of that tax to a special fund, which is required to be used to purchase licenses for computer software that will be made available for use, free of charge, to any resident of the United States.

Is this statute constitutional?

- A:** No, because the federal government may not impose any direct taxes on citizens of the United States.
B: No, because this statute takes without just compensation the property of persons who hold patents or copyrights on computer software.
C: Yes, because it is a reasonable exercise of the power of Congress to tax and spend for the general welfare.
D: Yes, because the patent power authorizes Congress to impose reasonable charges on the sale of technology and to spend the proceeds of those charges to advance the use of technology in the United States.

The explanation for the answer is:

Answer C is correct because Article I, Section 8, Clause 1 of the Constitution gives Congress broad power to tax and to spend for the general welfare. Courts defer to reasonable congressional taxing measures, such as the statute at issue in this case, as well as to expenditures that reasonably further the general welfare.

Answer A is incorrect because Article I, Section 9, Clause 4 of the Constitution allows Congress to adopt direct taxes, provided they are in proportion to the national census.

Answer B is incorrect because, although it is true that the Fifth Amendment prohibits the taking of private property for public use without just compensation, no such taking has occurred here. A tax on the sale of a computer does not take property from those who hold patents or copyrights on computer software. Likewise, the software distributed freely under the statute will first be purchased, rather than taken, by the government.

Answer D is incorrect because although Article I, Section 8, Clause 8 of the Constitution gives Congress power to provide patent rights to inventors, this clause does not itself authorize federal taxes and appropriations.

Question 1208 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A toy manufacturer that has its headquarters and sole manufacturing plant in a particular state developed a "Martian" toy that simulates the exploration of Mars by a remote-controlled vehicle. It accurately depicts the Martian landscape and the unmanned exploratory vehicle traversing it. The toy is of high quality, safe, durable, and has sold very well. Other toy manufacturers, all located outside the state, developed similar toys that are lower in price. These manufacturers have contracts to sell their Martian toys to outlets in the state. Although these toys are safe and durable, they depict the Martian landscape less realistically than the toys manufactured in the state. Nevertheless, because of the price difference, sales of these toys have cut severely into the sales of the Martian toys manufactured in the state. The state legislature subsequently enacted a law "to protect the children of the state from faulty science and to protect in-state toy manufacturers from unfair competition." This law forbids the sale in the state of any toy that purports to represent extraterrestrial objects and does not satisfy specified scientific criteria. The Martian toy manufactured in the state satisfies all of these criteria; none of the Martian toys of the competing manufacturers meets the requirements.

Is the state law constitutional?

A: No, because it abrogates the obligations of the contracts between the other toy manufacturers and the in-state outlets who have agreed to sell their Martian toys.

B: No, because it imposes an undue burden on interstate commerce.

C: Yes, because it deals only with a local matter, the sale of toys in this particular state's stores.

D: Yes, because the state's interest in protecting the state's children from faulty science justifies this burden on interstate commerce.

The explanation for the answer is:

Answer B is correct. The commerce clause (Article I, Section 8, Clause 3 of the Constitution) gives Congress the power to regulate commerce among the states and, by negative implication, restricts the regulatory power of the states with respect to interstate commerce. Any state law that has a substantial effect on interstate commerce must not be protectionist or otherwise impose an undue burden on interstate commerce. A protectionist law benefits in-state interests at the expense of out-of-state interests. A state law that discriminates against interstate commerce is protectionist unless it serves a legitimate local interest that cannot be served by nondiscriminatory legislation. By barring the sale in the state of the Martian toys manufactured in other states, the state law has a substantial effect on interstate commerce. Although the law does not explicitly discriminate against the out-of-state toy manufacturers, it has a purely discriminatory effect against them, and the state has less discriminatory alternatives available to protect the legitimate interests cited in the law. The state law therefore violates the negative implications of the commerce clause.

Answer A is incorrect. It is true that the state law is unconstitutional, but this answer misstates the basis for this conclusion. The contracts clause (Article I, Section 10, Clause 1 of the Constitution) does not forbid state laws affecting contractual relations between private parties so long as they are reasonably related to a legitimate state interest. Because the courts typically defer to state regulations of private contracts as reasonable, the statute at issue here is not likely to be found unconstitutional under the contracts clause. As explained above, the law clearly violates the negative implications of the commerce clause (Article I, Section 8, Clause 3 of the Constitution).

Answer C is incorrect. State regulations of local matters are subject to the negative implications of the commerce clause (Article I, Section 8, Clause 3 of the Constitution) if they have a substantial effect on interstate commerce. By barring the sale in the state of the Martian toys manufactured in other states, the state law has such an effect. The law is unconstitutional under the commerce clause because it has a purely discriminatory effect against out-of-state toy manufacturers despite any number of less discriminatory alternatives available to the state to protect the legitimate interests cited in the law.

D is incorrect because although the state's interest in protecting children from faulty science is legitimate, it does not justify the law's discriminatory burden on interstate commerce because the state has less discriminatory alternatives available to protect the interest.

Question 1213 - Constitutional Law - Individual Rights

The question was:

According to a state law, state employees may be fired only "for good cause." A woman who was a resident and an employee of the state was summarily fired on the sole ground that she had notified federal officials that the state was not following federal rules governing the administration of certain federally funded state programs on which she worked. The state denied the woman's request for a hearing to allow her to contest the charge. There is no record of any other state employee having been terminated for this reason.

In a suit to enjoin the state from firing her, which of the following claims provides the LEAST support for the woman's suit?

- A:** Firing her unconstitutionally abridges her freedom of speech.
- B:** Firing her unconstitutionally denies her a privilege or immunity of state citizenship protected by Article IV.
- C:** Firing her violates the supremacy clause of Article VI because it interferes with the enforcement of federal rules.
- D:** Firing her without affording an opportunity for a hearing is an unconstitutional denial of procedural due process.

The explanation for the answer is:

Answer B is correct. The privileges and immunities clause of Article IV, Section 2, Clause 1 of the Constitution does not apply on these facts. The clause only reaches actions by a state that discriminate against citizens of other states. The woman is a citizen of the state that employed her because she was a resident of that state (Fourteenth Amendment, Section 1).

Answer A is incorrect. The state fired the woman because of her speech (notifying federal officials that the state was not following federal rules). There thus is a viable argument that the woman's firing abridged her freedom of speech.

Answer C is incorrect. The supremacy clause (Article VI, Section 1, Clause 2) invalidates any state action that is contrary to federal law. It is reasonable to argue that firing an employee for notifying federal officials that the state was not following federal rules was in furtherance of action in violation of federal law, and thus prohibited by the supremacy clause.

Answer D is incorrect. The due process clause of the Fourteenth Amendment generally prohibits states from taking property from an individual without notice and opportunity for a hearing. In the context of a government job, where state law provides that state employees can be fired only for good cause, a person has a legitimate claim of entitlement to, and thus a property interest in, his or her job. Here, the state had such a law, and the woman was therefore entitled to notice and the opportunity for a hearing before she was fired.

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Question 1221 - Constitutional Law - Separation of Powers

The question was:

Two tenured professors at a state university drafted a new university regulation prohibiting certain kinds of speech on campus. Students, staff, and faculty convicted by campus tribunals of violating the regulation were made subject to penalties that included fines, suspensions, expulsions, and termination of employment. The regulation was widely unpopular and there was a great deal of public anger directed toward the professors who drafted it. The following year, the state legislature approved a severable provision in the appropriations bill for the university declaring that none of the university's funding could be used to pay the two professors, who were specifically named in the provision. In the past, the professors' salaries had always been paid from funds appropriated to the university by the legislature, and the university had no other funds that could be used to pay them.

If the professors challenge the constitutionality of the appropriations provision, is the court likely to uphold the provision?

A: No, because it amounts to the imposition of a punishment by the legislature without trial.

B: No, because it was based on conduct the professors engaged in before it was enacted.

C: Yes, because the Eleventh Amendment gives the state legislature plenary power to appropriate state funds in the manner that it deems most conducive to the welfare of its people.

D: Yes, because the full faith and credit clause requires the court to enforce the provision strictly according to its terms.

The explanation for the answer is:

Answer A is correct. The provision is a bill of attainder in violation of Article I, Section 10, Clause 1 of the Constitution. A bill of attainder is a law that provides for the punishment of a particular person without trial. The challenged provision satisfies this definition because it deprives two named professors of their salaries, and thus, their employment.

Answer B is incorrect. It is true that the court is likely to strike down the provision, but this answer misstates the basis for this conclusion. The fact that the professors' conduct preexisted the state law would be significant if the state law provided for a criminal penalty; it would then be unconstitutional as an ex post facto law in violation of Article I, Section 10, Clause 1 of the Constitution. The ex post facto clause, however, does not apply to laws attaching civil consequences to past conduct. In this case, the provision does not alter the criminal law but provides for the punishment of particular people, without trial, by depriving the two named professors of their salaries. As such, it is an unconstitutional bill of attainder in violation of Article I, Section 10, Clause 1 of the Constitution, regardless of the timing of the professors' conduct.

Answer C is incorrect. The Eleventh Amendment provides for state sovereign immunity from certain kinds of adjudications. It does not extend legislative authority of any kind to the states. The provision in this case deprives two named professors of their salaries without affording them a trial. As such, the court will strike it down as a bill of attainder in violation of Article I, Section 10, Clause 1 of the Constitution.

Answer D is incorrect. The full faith and credit clause (Article IV, Section 1 of the Constitution) does not insulate state laws from constitutional challenge. It merely requires state courts to accord due authority to the laws of other states. The provision in this case deprives two named professors of their salaries without affording them a trial. As such, the court will strike it down as a bill of attainder in violation of Article I, Section 10, Clause 1 of the Constitution.

Question 1225 - Constitutional Law - Judicial Review

The question was:

A state constitution provides that in every criminal trial "the accused shall have the right to confront all witnesses against him face to face." A defendant was convicted in state court of child abuse based on testimony from a six-year-old child. The child testified while she was seated behind one-way glass, which allowed the defendant to see the child but did not allow the child to see the defendant. The defendant appealed to the state supreme court claiming that the inability of the witness to see the defendant while she testified violated both the United States Constitution and the state constitution. Without addressing the federal constitutional issue, the state supreme court reversed the defendant's conviction and ordered a new trial. The state supreme court held that "the constitution of this state is clear, and it requires that while testifying in a criminal trial, a witness must be able to see the defendant." The state petitioned the United States Supreme Court for a writ of certiorari.

On which ground should the United States Supreme Court DENY the state's petition?

- A:** A state may not seek appellate review in the United States Supreme Court of the reversal of a criminal conviction by its own supreme court.
- B:** The decision of the state supreme court was based on an adequate and independent state ground.
- C:** The Sixth Amendment to the United States Constitution does not require that a witness against a criminal defendant be able to see the defendant while the witness testifies.
- D:** The state supreme court's decision requires a new trial, and therefore it is not a final judgment.

The explanation for the answer is:

Answer B is correct. The Supreme Court may not review a judgment by the highest court of a state if that judgment is supported entirely by state law and is wholly independent of the interpretation and application of federal law. In this case, although the defendant claimed a violation of the Sixth Amendment of the U.S. Constitution, the state supreme court based its decision entirely on the state constitution without addressing the federal constitutional issue.

Answer A is incorrect. The Supreme Court may review a judgment of the highest court of a state if the state court's decision turns on a question arising under federal law. The reason the Supreme Court will deny the petition for certiorari is that the state supreme court based its decision entirely on state law.

Answer C is incorrect. The Supreme Court would not reach the merits of the defendant's Sixth Amendment claim. As explained above, the Supreme Court may not review a judgment by the highest court of a state if that judgment is supported entirely by state law and is wholly independent of the interpretation and application of federal law.

Answer D is incorrect. Although the Supreme Court may only review final judgments and decrees from the highest state courts, this judgment qualifies because it finally settled the confrontation issue. That issue would not arise again on re-trial, and thus, the present petition provided the U.S. Supreme Court its only opportunity to review the confrontation issue. The reason the Supreme Court will deny the petition for certiorari is that the state supreme court based its decision entirely on state law.

Question 1233 - Constitutional Law - Individual Rights

The question was:

Several public high school students asked the superintendent of the public school district whether the minister of a local church could deliver an interdenominational prayer at their graduation ceremony in the school auditorium. None of the students or their guests at graduation would be required to pray while the minister delivered the prayer.

Would the minister's delivery of such a prayer at the public high school graduation be constitutional?

- A:** No, because it would be an unconstitutional establishment of religion.
- B:** No, because it would deny attendees who are not members of the minister's denomination the right to freely exercise their religion.
- C:** Yes, because none of the students or their guests would be required to pray at the graduation ceremony.
- D:** Yes, because the idea for the prayer originated with the students and not with school officials.

The explanation for the answer is:

Answer A is correct. Prayer and Bible readings in public schools violate the Establishment Clause. It does not matter whether participation is voluntary or involuntary. The Supreme Court has held that officially sponsored prayers as part of public high school commencement ceremonies, like the prayer at issue in this case, violate the establishment clause of the First Amendment.

Answer B is incorrect. This question does not implicate the free exercise clause of the First Amendment because there is no state action here that restricts the religious beliefs or practices of those attending the commencement ceremony. Instead, the offering of the prayer as part of a public high school commencement ceremony constitutes the kind of official sponsorship of religious practice that violates the establishment clause of the First Amendment.

Answer C is incorrect. As explained above, the Supreme Court has held that officially sponsored prayers as part of public high school commencement ceremonies violate the establishment clause of the First Amendment even if the prayer at issue, like the one in this case, is voluntary in the sense that no one is compelled to pray.

Answer D is incorrect. The Supreme Court has held that officially sponsored prayers at activities of public elementary and secondary schools, like the prayer at issue in this case, violate the establishment clause of the First Amendment even if the idea for the prayer originates with the students.

Question 1236 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Congress passed a statute directing the United States Forest Service, a federal agency, to issue regulations to control campfires on federal public lands and to establish a schedule of penalties for those who violate the new regulations. The statute provided that the Forest Service regulations should "reduce, to the maximum extent feasible, all potential hazards that arise from campfires on Forest Service lands." The Forest Service issued the regulations and the schedule of penalties directed by Congress. The regulations include a rule that provides for the doubling of the fine for any negligent or prohibited use of fire if the user is intoxicated by alcohol or drugs.

Which of the following is the best argument for sustaining the constitutionality of the Forest Service's rule providing for the fines?

- A:** The executive branch of government, of which the Forest Service is part, has inherent rule-making authority over public lands.
- B:** The rule is issued pursuant to a valid exercise of Congress's power to delegate rule-making authority to federal agencies.
- C:** The rule is justified by a compelling governmental interest in safeguarding forest resources.
- D:** The rule relates directly to law enforcement, which is an executive rather than legislative function, and hence it does not need specific congressional authorization.

The explanation for the answer is:

Answer B is correct. Congress may delegate rule-making authority to federal agencies through statutes that provide an intelligible principle governing the exercise of that authority. The Supreme Court has been very deferential in applying the intelligible principle requirement, and the statute's provision of authority to the Forest Service to issue regulations controlling campfires and establishing a penalty schedule likely satisfies the requirement.

Answer A is incorrect. The executive branch does not have inherent rule-making authority over public lands. Article I, Section 8, Clause 17 gives Congress power to provide for the regulation of activity on such lands. The executive's rule-making authority over public lands is limited to that which is provided by Congress. In this case, it is Congress's proper delegation of rule-making authority to the Forest Service to issue campfire regulations and penalties that best support the Service's rule.

Answer C is incorrect. The compelling nature of the government's regulatory interest is neither necessary nor sufficient to justify the Forest Service's regulation. The constitutional requirement is that the regulation be pursuant to a valid act of Congress. In this case, it is Congress's proper delegation of rule-making authority to the Forest Service to issue campfire regulations and penalties that best support the Service's rule.

Answer D is incorrect. Although law enforcement is an executive function, the constitutional exercise of that function requires that the executive act pursuant to congressional authorization provided by law. In this case, it is Congress's proper delegation of rule-making authority to the Forest Service to issue campfire regulations and penalties that best support the Service's rule.

Question 1241 - Constitutional Law - Individual Rights

The question was:

A city zoning ordinance requires anyone who proposes to operate a group home to obtain a special use permit from the city zoning board. The zoning ordinance defines a group home as a residence in which four or more unrelated adults reside. An individual applied for a special use permit to operate a group home for convicts during their transition from serving prison sentences to their release on parole. Although the proposed group home met all of the requirements for the special use permit, the zoning board denied the individual's application because of the nature of the proposed use. The individual sued the zoning board seeking declaratory and injunctive relief on constitutional grounds.

Which of the following best states the appropriate burden of persuasion in this action?

- A:** Because housing is a fundamental right, the zoning board must demonstrate that denial of the permit is necessary to serve a compelling state interest.
- B:** Because the zoning board's action has the effect of discriminating against a quasi-suspect class in regard to a basic subsistence right, the zoning board must demonstrate that the denial of the permit is substantially related to an important state interest.
- C:** Because the zoning board's action invidiously discriminates against a suspect class, the zoning board must demonstrate that denial of the permit is necessary to serve a compelling state interest.
- D:** Because the zoning board's action is in the nature of an economic or social welfare regulation, the individual seeking the permit must demonstrate that the denial of the permit is not rationally related to a legitimate state interest.

The explanation for the answer is:

Answer D is correct. The zoning board's denial of the permit discriminated against neither a suspect class nor a quasi-suspect class. Nor did it unduly burden the exercise of a fundamental right. The denial therefore triggers rational basis scrutiny.

Answer A is incorrect. The Supreme Court has not held that housing is a fundamental right. Therefore, the zoning board's denial of the permit does not trigger strict scrutiny on that basis. The zoning board's denial of the permit discriminated against neither a suspect class nor a quasi-suspect class. Nor did it unduly burden the exercise of a fundamental right. The denial therefore triggers rational basis scrutiny.

Answer B is incorrect. The Supreme Court has not held that convicts constitute a quasi-suspect class. Therefore, the zoning board's denial of the permit does not trigger intermediate scrutiny on that basis. The zoning board's denial of the permit discriminated against neither a suspect class nor a quasi-suspect class. Nor did it unduly burden the exercise of a fundamental right. The denial therefore triggers rational basis scrutiny.

Answer C is incorrect. The Supreme Court has not held that convicts constitute a suspect class. Therefore, the zoning board's denial of the permit does not trigger strict scrutiny on that basis. The zoning board's denial of the permit discriminated against neither a suspect class nor a quasi-suspect class. Nor did it unduly burden the exercise of a fundamental right. The denial therefore triggers rational basis scrutiny.

Question 1246 - Constitutional Law - Individual Rights

The question was:

A purchaser bought land in the mountain foothills just outside a resort town and planned to build a housing development there. Soon thereafter, the county in which the land was located unexpectedly adopted a regulation that, for the first time, prohibited all construction in several foothill and mountain areas, including the area of the purchaser's property. The purpose of the county's regulation was "to conserve for future generations the unique natural wildlife and plant habitats" in the mountain areas. Since the adoption of the regulation, the purchaser has been unable to lease or sell the property at any price. Several realtors have advised the purchaser that the property is now worthless. The purchaser sued the county, claiming that the regulation has taken the purchaser's property and that the county therefore owes the purchaser just compensation.

Is the court likely to rule in favor of the purchaser?

A: No, because the county did not take title to the property from the purchaser.

B: No, because the regulation has not caused or authorized any uninvited physical invasion or intrusion onto the property.

C: Yes, because the conservation objective of the county ordinance is not sufficiently compelling to justify the substantial diminution in the property value.

D: Yes, because the effect of the county's regulation is to deny the purchaser's investment-backed expectation and essentially all economically beneficial use of the property.

The explanation for the answer is:

Answer D is correct. A government regulation that eliminates the investment-backed expectation and economic value of an individual's property is a taking within the meaning of the Fifth Amendment, as applied to the county by the Fourteenth Amendment. Because the regulation has this effect, it constitutes a taking of the purchaser's property, for which the county must pay just compensation. Because the county did not compensate the purchaser for the land, the county has violated the takings clause.

Answer A is incorrect. The government's acquisition of property is sufficient but not necessary to establish a taking within the meaning of the Fifth Amendment, as applied to the county by the Fourteenth Amendment.

Answer B is incorrect. Physical invasion or intrusion of property is sufficient but not necessary to establish a taking within the meaning of the Fifth Amendment, as applied to the county by the Fourteenth Amendment.

Answer C is incorrect. The Supreme Court does not use such a balancing test for determining whether a governmental action is a taking within the meaning of the Fifth Amendment, as applied to the county by the Fourteenth Amendment.

Question 1251 - Constitutional Law - Judicial Review

The question was:

A man bought an antique car from a car dealer in State A. Under State A law, a person who buys from such a dealer acquires good title, even if the property was stolen from a previous owner. The man showed the car at an antique car show in State B. A woman recognized the car as having been stolen from her. Under State B law, a person whose property is stolen may reclaim it, even if the current possessor is an innocent purchaser. The woman sued the man in a State B court to reclaim the car. The man defended, claiming that he had good title under the law of State A. Nevertheless, the State B court applied State B law, and the woman prevailed. The man did not appeal. The sheriff gave the woman possession of the car. Several months later, the woman drove the car to State A. The man brought a new suit against the woman, claiming that the State B court in the prior suit should have applied the State A law, which protected innocent purchasers. The woman appeared and moved to dismiss the suit.

What should the State A court do?

- A:** Apply the federal law of sale of goods, because the car has moved in interstate commerce.
- B:** Apply the State A law, because the car is currently located in State A.
- C:** Dismiss the suit, because the State A court must give full faith and credit to the State B judgment.
- D:** Remove the case to federal court, because the car has moved in interstate commerce, and therefore the case raises a federal question.

The explanation for the answer is:

Answer C is correct. The full faith and credit clause of the Constitution (Article IV, Section 1) prohibits state courts from re-litigating cases in which the courts of another state have rendered final judgment. Accordingly, the court in State A should dismiss the suit.

Answer A is incorrect. The full faith and credit clause of the Constitution (Article IV, Section 1) prevents the court in State A from hearing the man's suit. The fact that the woman drove the car to State A has no effect on the constitutional analysis of this problem.

Answer B is incorrect. The full faith and credit clause of the Constitution (Article IV, Section 1) prevents the court in State A from hearing the man's suit. The location of the car has no effect on the constitutional analysis of this problem.

Answer D is incorrect. The case arises under state law. The movement of the car across state lines does not create a federal question. Moreover, the full faith and credit clause of the Constitution (Article IV, Section 1) prevents the court in State A from hearing the man's suit.

Question 1256 - Constitutional Law - Individual Rights

The question was:

A state statute requires, without exception, that a woman under the age of 18 notify one of her parents at least 48 hours before having an abortion. A proper lawsuit challenges the constitutionality of this state statute.

In that suit, should the court uphold the constitutionality of the statute?

A: No, because a 48-hour waiting period is excessively long and, therefore, it imposes an undue burden on a woman's right to procure an abortion.

B: No, because the state law does not provide a bypass procedure that would allow a court to authorize a minor to obtain an abortion without prior parental notification under appropriate circumstances.

C: Yes, because parents' rights to supervise their minor daughter's health care outweighs any individual right she may have.

D: Yes, because such parental notification and waiting-period requirements do not impose an undue burden on a minor's right to procure an abortion.

The explanation for the answer is:

Answer B is correct. The Supreme Court has held that parental notification requirements violate a minor's right to an abortion unless there is a satisfactory judicial bypass procedure. Such a procedure must allow a court to approve an abortion for a minor without parental notification if the court finds: (1) the minor is sufficiently mature and informed to make an independent decision to obtain an abortion; or (2) the abortion would be in the minor's best interest. Because no such bypass procedure is included in the statute at issue, the court will hold the statute unconstitutional. Answer B is correct and answer D is incorrect.

Answer A is incorrect. It is true that the statute at issue is unconstitutional, but this answer misstates the basis for this conclusion. The Supreme Court has held that a short waiting period does not constitute an undue burden on a woman's right to an abortion. On the other hand, the Court has held that parental notification requirements violate a minor's right to an abortion where, as in this case, there is not a satisfactory judicial bypass procedure.

Answer C is incorrect. The rights of parents to supervise the health care of their minor children do not always prevail over the individual rights of their children. As explained above, the Supreme Court has held that parental notification requirements violate a minor's right to an abortion unless there is a satisfactory judicial bypass procedure, which is not included in the statute at issue. Accordingly, the court will hold the statute unconstitutional.

Question 1260 - Constitutional Law - Individual Rights

The question was:

A group of students at a state university's law school wished to debate the future of affirmative action in that state and at that law school. For this debate they requested the use of a meeting room in the law school that is available on a first-come, first-served basis for extracurricular student use. Speakers presenting all sides of the issue were scheduled to participate. The law school administration refused to allow the use of any of its meeting rooms for this purpose solely because it believed that "such a debate, even if balanced, would have a negative effect on the morale of the law school community and might cause friction among the students that would disrupt the institution's educational mission."

Is the refusal of the law school administration to allow the use of its meeting room for this purpose constitutional?

A: No, because the law school administration cannot demonstrate that its action was necessary to vindicate a compelling state interest.

B: No, because the law school administration cannot demonstrate that its action was rationally related to a legitimate state interest.

C: Yes, because the law school administration's only concern was the adverse effect of such a discussion of affirmative action on the immediate audience and the mission of the institution.

D: Yes, because the law students do not have a right to use a state-owned law school facility for a meeting that is not organized and sponsored by the law school itself.

The explanation for the answer is:

Answer A is correct. The law school's denial of the meeting room to the student group violates the speech clause of the First Amendment. The meeting rooms are a limited public forum because the law school made the rooms generally available for extracurricular student use. Because the meeting rooms are a limited public forum, the law students had a First Amendment right to use a room for expressive activity consistent with their purpose (i.e., extracurricular student use). Because the law school's denial of the room was based on the content of the students' expression, the denial must be tested by strict scrutiny, which requires the law school to prove that its denial was necessary to serve a compelling governmental interest. It is unusual for the courts to uphold content-based speech restrictions at strict scrutiny, and the law school's concerns here are clearly insufficient to meet that test.

Answer B is incorrect. This answer correctly states that the law school's action was unconstitutional, but it misstates the legal basis for that conclusion. Satisfying rational basis scrutiny is insufficient to justify the school's denial of the meeting room to the student group. As explained above, the court will apply strict scrutiny to evaluate the content-based restrictions. It is unusual for the courts to uphold content-based speech restrictions at strict scrutiny, and the law school's concerns here are clearly insufficient to meet that test.

Answers C and D are incorrect. The meeting rooms are a limited public forum because the law school made the rooms generally available for extracurricular student use. Because the meeting rooms are a limited public forum, the law students had a right under the speech clause of the First Amendment to use a room for expressive activity consistent with their purpose (i.e., extracurricular student use). The law school's concerns were based on feared effects stemming from the speech content of the debate (affirmative action). Because the law school's denial of the room was based on the content of the student group's expression, the denial is a presumptive violation of the speech clause of the First Amendment, and it must be tested by strict scrutiny. It is unusual for the courts to uphold content-based speech restrictions at strict scrutiny, and the law school's concerns here are clearly insufficient to meet that test.

Question 1264 - Constitutional Law - Separation of Powers

The question was:

The president issued an executive order in an effort to encourage citizens to use the metric (Celsius) system of temperatures. Section 1 of the executive order requires the United States Weather Bureau, a federal executive agency, to state temperatures only in Celsius in all weather reports. Section 2 of the executive order requires all privately owned federally licensed radio and television stations giving weather reports to report temperatures only in Celsius. No federal statute is applicable.

Is the president's executive order constitutional?

- A:** Section 1 is constitutional, but Section 2 is not.
- B:** Section 2 is constitutional, but Section 1 is not.
- C:** Sections 1 and 2 are constitutional.
- D:** Sections 1 and 2 are unconstitutional.

The explanation for the answer is:

Answer A is correct. Section 1 of the executive order is constitutional. The president, as the chief executive officer of the U.S. government, has authority to direct the actions of federal executive agencies, so long as the president's directives are not inconsistent with an act of Congress. (The facts state that there is no applicable statute here.) Section 2 of the executive order is unconstitutional. At least as a general rule, the president does not have authority to direct the actions of persons outside the executive branch unless the president's direction is authorized by an act of Congress. There are no circumstances presented in the facts (such as a sudden attack on the U.S.) that might justify an exception to this general rule.

Answer B is incorrect. Section 2 of the executive order is unconstitutional. At least as a general rule, the president does not have authority to direct the actions of persons outside the executive branch unless the president's direction is authorized by an act of Congress. There are no circumstances presented in the facts (such as a sudden attack on the U.S.) that might justify an exception to this general rule. Section 1 of the executive order is constitutional. The president, as the chief executive officer of the U.S. government, has authority to direct the actions of federal executive agencies, so long as the president's directives are not inconsistent with an act of Congress. (The facts state that there is no applicable statute here.)

Answers C and D are incorrect. As explained above, Section 1 of the executive order is constitutional, but Section 2 of the executive order is unconstitutional. Thus, answer C is incorrect because Section 2 is unconstitutional, and answer D is incorrect because Section 1 is constitutional.

Question 1273 - Constitutional Law - Relations Between Federal and State Governments

The question was:

The childhood home of a former U.S. president is part of a national park located in a city. The National Park Service entered into a contract with an independent antique collector to acquire items owned by residents of the city during the president's lifetime. According to the contract, the collector purchases items and then sells them to the Park Service at a price equal to the collector's cost plus a 10% commission. Purchases by antique collectors are ordinarily subject to the sales tax of the state in which the city is located. The collector files suit in state court to enjoin collection of the tax on these purchases, claiming that the sales tax is unconstitutional as applied to them.

Should the state court issue the injunction?

A: No, because as the purchaser of these antiques, the collector rather than the federal government is liable for the tax.

B: No, because the suit is within the exclusive jurisdiction of the federal courts.

C: Yes, because the federal government is contractually obligated to pay the amount of the sales tax when it covers the collector's cost of these antiques.

D: Yes, because under the supremacy clause, the federal program to acquire these antiques preempts the state sales tax on the purchase of these items.

The explanation for the answer is:

Answer A is correct. The incidence of the state sales tax on the collector's purchases of antiques is on the collector, who is independent of the National Park Service.

Answer B is incorrect. This answer correctly states that the court should not issue the injunction, but it misstates the legal basis for that conclusion. State courts generally have concurrent jurisdiction with federal courts over cases arising under federal law, and no exception to that general rule is presented on these facts. However, the incidence of the state sales tax on the collector's purchases of antiques is on the collector, who is independent of the National Park Service. Accordingly, the court should not issue an injunction.

Answer C is incorrect. The incidence of the state sales tax on the collector's purchases of antiques is on the collector, who is independent of the National Park Service. The fact that the collector passes the cost of the tax on to a federal agency when the collector sells an item to the agency does not change the incidence of the tax on the collector's purchase. Accordingly, the court should not issue an injunction.

Answer D is incorrect. There is no indication in the facts that the sales tax on the collector's purchases conflicts with any federal law governing the Park Service's program. Moreover, the incidence of the state sales tax on the collector's purchases of antiques is on the collector, who is independent of the National Park Service. Accordingly, the court should not issue an injunction.

Question 1280 - Constitutional Law - Judicial Review

The question was:

A federal statute required the National Bureau of Standards to establish minimum quality standards for all beer sold in the United States. The statute also provided that public proceedings must precede adoption of the standards, and that once they were adopted, the standards would be subject to judicial review. No standards have yet been adopted. Several officials of the National Bureau of Standards have indicated their personal preference for beer produced by a special brewing process commonly referred to as pasteurization. However, these officials have not indicated whether they intend to include a requirement for pasteurization in the minimum beer quality standards to be adopted by the Bureau. A brewery that produces an unpasteurized beer believes that its brewing process is as safe as pasteurization. The brewery is concerned that, after the appropriate proceedings, the Bureau may adopt quality standards that will prohibit the sale of any unpasteurized beer. As a result, the brewery sued in federal district court to enjoin the Bureau from adopting any standards that would prohibit the sale of unpasteurized beer in this country.

How should the district court dispose of the suit?

- A:** Determine whether the Bureau could reasonably believe that pasteurization is the safest process by which to brew beer, and if the Bureau could reasonably believe that, refuse to issue the injunction against the Bureau.
- B:** Determine whether the process used by the brewery is as safe as pasteurization and, if it is, issue the injunction against the Bureau.
- C:** Refuse to adjudicate the merits of the suit at this time and stay the action until the Bureau has actually issued beer quality standards.
- D:** Refuse to adjudicate the merits of the suit, because it does not involve a justiciable case or controversy.

The explanation for the answer is:

Answer D is correct. The federal courts lack power to entertain a suit that is not ripe for adjudication, because such a suit does not present a "case" or "controversy" within the meaning of Article III, Section 2, Clause 1 of the Constitution. The court should dismiss the suit because the Bureau has yet to announce the beer-quality standards, and therefore the case is not ripe. The court may not maintain jurisdiction over the suit by issuing a stay because it lacks the constitutional authority to retain control over the suit. Thus, answer D is correct, and answers A, B, and C are incorrect.

Question 1284 - Constitutional Law - Relations Between Federal and State Governments

The question was:

The United States Congress enacted a federal statute providing that any state may "require labeling to show the state or other geographic origin of citrus fruit that is imported into the receiving state." Pursuant to the federal statute, a state that produced large quantities of citrus fruit enacted a law requiring all citrus fruit imported into the state to be stamped with a two-letter postal abbreviation signifying the state of the fruit's origin. The law did not impose any such requirement for citrus fruit grown within the state. When it adopted the law, the state legislature declared that its purpose was to reduce the risks of infection of local citrus crops by itinerant diseases that have been found to attack citrus fruit. A national association of citrus growers sued to have the state law declared unconstitutional. The association claims that the law is prohibited by the negative implications of the commerce clause of the Constitution.

Which of the following is the best argument in favor of the state's effort to have this lawsuit dismissed?

- A:** Any burden on interstate commerce imposed by the state law is outweighed by a legitimate state interest.
- B:** Congress has the authority to authorize specified state regulations that would otherwise be prohibited by the negative implications of the commerce clause, and it has done so in this situation.
- C:** The state law does not discriminate against out-of-state citrus growers or producers.
- D:** The state law furthers a legitimate state interest, the burden it imposes on interstate commerce is only incidental, and the state's interest cannot be satisfied by other means that are less burdensome to interstate commerce.

The explanation for the answer is:

Answer B is correct. Congress may use its commerce power (Article I, Section 8, Clause 3 of the Constitution) to permit states to discriminate against interstate commerce. The federal statute here explicitly authorizes states to enact state-of-origin labeling requirements on imported citrus fruit.

Answer A is incorrect. This balancing test is appropriate only if: (1) Congress has not enacted a statute authorizing the state regulation at issue, and (2) the state law does not discriminate against interstate commerce. In this case, however, Congress has authorized state-of-origin labeling requirements on imported citrus fruit and the state law is discriminatory. The best argument in this case would rely on Congress's express authorization of state-of-origin labeling requirements on imported citrus fruit.

Answer C is incorrect. The state law discriminates against out-of-state citrus growers because the law requires that all citrus fruit "imported" into the state be stamped with the state of origin, while the law imposes no such requirement on citrus fruit grown within the state. The best argument in this case would be that Congress has used its commerce power (Article I, Section 8, Clause 3 of the Constitution) to explicitly authorize the states to enact state-of-origin labeling requirements on imported citrus fruit.

Answer D is incorrect. This argument paraphrases the burden on the state to justify a law that discriminates against interstate commerce. That burden is a heavy one, however, and states only rarely succeed in justifying discriminatory commercial regulations. The far better argument for the state is that the federal statute here expressly authorizes states to enact state-of-origin labeling requirements on imported citrus fruit.

Question 1295 - Constitutional Law - Individual Rights

The question was:

A man intensely disliked his neighbors, who were of a different race. One night, intending to frighten his neighbors, he spray-painted their house with racial epithets and threats that they would be lynched. The man was arrested and prosecuted under a state law providing that "any person who threatens violence against another person with the intent to cause that person to fear for his or her life or safety may be imprisoned for up to five years." In defense, the man claimed that he did not intend to lynch his neighbors, but only to scare them so that they would move away.

Can the man constitutionally be convicted under this law?

- A:** No, because he was only communicating his views and had not commenced any overt action against the neighbors.
B: Yes, because he was engaged in trespass when he painted the words on his neighbors' house.
C: Yes, because his communication was a threat by which he intended to intimidate his neighbors.
D: Yes, because his communication was racially motivated and thus violated the protections of the Thirteenth Amendment.

The explanation for the answer is:

Answer C is correct. The man communicated a threat with the intent to intimidate the recipient. The Supreme Court has held that such threats are not protected by the speech clause of the First Amendment. Because these threats are not constitutionally protected, states may outlaw them regardless of whether the speaker acts on the threat. Thus, answer C is correct, and answer A is incorrect.

Answer B is incorrect. This answer correctly states that the man may be convicted, but it misstates the legal basis for that conclusion. The state may not punish an individual for the content of his speech simply because he engages in unlawful conduct. The speech restriction itself must be consistent with the speech clause of the First Amendment. In this case, the man may be convicted because the Supreme Court has held that a threat communicated with the intent to intimidate the recipient, like the communication in this case, is not constitutionally protected speech.

Answer D is incorrect. The Supreme Court has not held racially motivated threats to violate the Thirteenth Amendment's prohibition of involuntary servitude. The reason the man may be convicted is that the Supreme Court has held that a threat communicated with the intent to intimidate the recipient, like the communication in this case, is not constitutionally protected speech.

Question 1308 - Constitutional Law - Judicial Review

The question was:

With the advice and consent of the Senate, the President entered into a self-executing treaty with a foreign country. The treaty provided that citizens of both nations were required to pay whatever torts damages were awarded against them by a court of either nation.

A man and a woman who were U.S. citizens and residents of the same state were traveling separately in the foreign country when their cars collided. The foreign court awarded the woman a judgment for \$500,000 in damages for her injuries from the accident.

In federal district court in their home state, the woman filed suit against the man to enforce the judgment. The man filed a motion to dismiss for lack of jurisdiction.

Should the court grant the motion to dismiss?

- A:** Yes, because the citizenship of the parties is not diverse.
- B:** Yes, because the traffic accident was a noncommercial transaction outside interstate commerce.
- C:** No, because the case falls within the federal question jurisdiction of the court.
- D:** No, because the treaty power is plenary and not subject to judicial review.

The explanation for the answer is:

Answer C is correct. The court has federal question jurisdiction over the case because it "arises under" a treaty of the United States, as provided for by Article III of the Constitution. The self-executing treaty is valid because it was entered into by the President and a foreign country with the advice and consent of the Senate.

Answer A is incorrect. It is true that the district court lacks diversity jurisdiction because the parties are citizens of the same state. But the court nevertheless has federal question jurisdiction over the case because it "arises under" a treaty of the United States, as provided for by Article III of the Constitution.

Answer B is incorrect. The relationship of a matter to interstate commerce is relevant to the legislative power of Congress pursuant to Article I, but not to the jurisdiction of federal courts pursuant to Article III. The court has federal question jurisdiction over the case because it "arises under" a treaty of the United States, as provided for by Article III of the Constitution.

Answer D is incorrect. The scope of the President's power to enter into treaties with the advice and consent of the Senate is quite broad, but it is irrelevant to this item, which concerns the power of a federal court to hear a case. The court has federal question jurisdiction over the case because it "arises under" a treaty of the United States, as provided for by Article III of the Constitution.

Question 1314 - Constitutional Law - Individual Rights

The question was:

A state legislature received complaints from accident victims who, in the days immediately following their accidents, had received unwelcome and occasionally misleading telephone calls on behalf of medical care providers. The callers warned of the risks of not obtaining prompt medical evaluation to detect injuries resulting from accidents and offered free examinations to determine whether the victims had suffered any injuries.

In response to these complaints, the legislature enacted a law prohibiting medical care providers from soliciting any accident victim by telephone within 30 days of his or her accident.

Which of the following is the most useful argument for the state to use in defending the constitutionality of the law?

- A:** Because the commercial speech that is the subject of this law includes some speech that is misleading, the First Amendment does not limit the power of the state to regulate that speech.
- B:** Because the law regulates only commercial speech, the state need only demonstrate that the restriction is rationally related to achieving the state's legitimate interests in protecting the privacy of accident victims and in regulating the medical profession.
- C:** The state has substantial interests in protecting the privacy of accident victims and in regulating the practice of medical care providers, and the law is narrowly tailored to achieve the state's objectives.
- D:** The law is a reasonable time, place, and manner regulation.

The explanation for the answer is:

The law regulates only commercial speech, and the First Amendment invalidates any law regulating such speech unless the law is narrowly tailored to serve a substantial government interest. The U.S. Supreme Court has held that a law barring the solicitation of accident victims within a limited time period following an accident was narrowly tailored to serve the state's substantial interest in protecting the privacy of the victims. Thus, Answer C is correct.

Answer A is incorrect. Although the law regulates only commercial speech and the First Amendment does not protect commercial speech that is misleading, the facts state that the phone calls only "occasionally" were misleading. The First Amendment protects truthful commercial speech subject to the law.

Answer B is incorrect. Although the law regulates only commercial speech, the First Amendment invalidates any law regulating such speech unless the law is narrowly tailored to serve a substantial government interest. The rational relationship between the restrictions imposed by the law and a legitimate state interest is not sufficient to satisfy this standard.

Answer D is incorrect. The law at issue is not a time, place, and manner regulation because it restricts speech based on its content. Because the law is a content-based regulation of commercial speech, it is valid only if it is narrowly tailored to serve a substantial government interest.

Question 1321 - Constitutional Law - Individual Rights

The question was:

A report released by a Senate investigating committee named three U.S. citizens as helping to organize support for terrorist activities. All three were employed by the U.S. government as park rangers.

Congress enacted a statute naming the three individuals identified in the report and providing that they could not hold any position of employment with the federal government.

Which of the following constitutional provisions provides the best means for challenging the constitutionality of the statute?

- A:** The bill of attainder clause.
- B:** The due process clause.
- C:** The *ex post facto* clause.
- D:** The takings clause.

The explanation for the answer is:

Answer A is correct. A bill of attainder is a legislative act that singles out particular individuals for punishment without a trial; bills of attainder are explicitly prohibited by the Constitution. The U.S. Supreme Court held, in *United States v. Lovett*, 328 U.S. 303 (1946), that a statute barring particular individuals from government employment qualified as punishment within the meaning of the constitutional provision prohibiting bills of attainder.

Answer B is incorrect. Although due process entitles an individual to notice and hearing before being deprived of an interest in liberty or property, these requirements do not apply to legislative acts. As explained above, it is the bill of attainder clause that imposes these requirements on Congress.

Answer C is incorrect. Although the statute at issue punishes individuals for past conduct, the *ex post facto* clause applies only to criminal or penal measures. The statute at issue does not impose a criminal penalty on the targeted individuals. It simply bars them from government employment. The U.S. Supreme Court held in *United States v. Lovett*, 328 U.S. 303 (1946) that a statute barring particular individuals from government employment qualified as punishment within the meaning of the constitutional provision prohibiting bills of attainder.

Answer D is incorrect. The takings clause prohibits the government from taking an individual's property without paying just compensation. The statute at issue does not take property owned by the targeted individuals. It simply bars the individuals from government employment. The U.S. Supreme Court held, in *United States v. Lovett*, 328 U.S. 303 (1946), that a statute barring particular individuals from government employment qualified as punishment within the meaning of the constitutional provision prohibiting bills of attainder.

Question 1328 - Constitutional Law - Individual Rights

The question was:

Several sites on a mountain within federal public lands are regarded as sacred to a group that for years has gathered there to perform religious ceremonies. The United States Forest Service recently issued a permit to a private developer to construct a ski facility in an area that includes the sites that are sacred to the group.

The group filed suit in federal district court against the Forest Service to force cancellation of the permit. The group claimed solely that the permit violated its First Amendment right to the free exercise of religion. The Forest Service conceded that the group's religious beliefs were sincere and that the ski facility would adversely affect the group's religious practices.

In order to prevail in its First Amendment claim, what must the group show?

A: Construction of the ski facility will have a discriminatory impact on the group's religious practices in relation to the practices of other religious groups.

B: The burden on the group's religious practices imposed by construction of the ski facility outweighs the government's interest in allowing the facility.

C: The Forest Service can achieve its legitimate interest in allowing the ski facility by issuing a permit that is less burdensome on the group's religious practices.

D: The permit issued by the Forest Service is aimed at suppressing the religious practices of the group.

The explanation for the answer is:

Answer D is correct. In order to prevail in its First Amendment claim, the challenger must show that the government action targeted the religious practice in question. By doing so, the court will exercise strict scrutiny over the government's actions. A court typically invalidates government action when it applies strict scrutiny. Thus, Answer D is correct.

Answer A is incorrect. The discriminatory impact of government action on a religious practice is insufficient to establish a violation of the free exercise clause. In order to establish a free exercise violation, the challenger must show that the government action targeted the religious practice in question.

Answer B is incorrect. A simple benefit-burden balance of the government action at issue does not establish a violation of the free exercise clause. In order to establish a free exercise violation, the challenger must show that the government action targeted the religious practice in question.

Answer C is incorrect. The government is required to select the least burdensome alternative only if a court exercises strict scrutiny to evaluate the action at issue. The court will exercise strict scrutiny only if the challenger can show that the government action targeted the religious practice in question.

Question 1337 - Constitutional Law - Separation of Powers

The question was:

A federal statute required that any individual or entity owning more than 100 cars had to ensure that at least 10 percent of those cars were electric-powered.

A city filed suit in federal district court against the federal official who enforced this requirement. The city sought an injunction prohibiting enforcement of the statute on the ground that it was unconstitutional.

Should the court grant the injunction?

A: No, because the statute is valid under the commerce clause and does not violate the Tenth Amendment.

B: No, because the federal government has sovereign immunity and cannot be sued without its explicit consent.

C: Yes, because the statute violates the reserved rights of the states under the Tenth Amendment.

D: Yes, because as applied to state and local governments, the statute exceeds Congress's power under the commerce clause.

The explanation for the answer is:

Answer A is correct. The statute satisfies the commerce clause because it regulates a commercial activity (the purchase of cars) that, when aggregated, has a substantial effect on interstate commerce. The statute does not violate the Tenth Amendment as applied to the city because it does not commandeer the city to regulate the conduct of others pursuant to congressional direction. Instead, it directly regulates the city on the same terms as other entities engaged in the same conduct, which is permissible under the Tenth Amendment. Thus, Answer A is correct and Answer D is incorrect.

Answer B is incorrect. Although the federal government does enjoy sovereign immunity from suit, this immunity applies only to suits seeking compensatory monetary relief and not to suits seeking only prospective injunctive relief. The suit at issue seeks only prospective injunctive relief.

Answer C is incorrect. The statute does not violate the Tenth Amendment as applied to the city because it does not commandeer the city to regulate the conduct of others pursuant to congressional direction. Instead, it directly regulates the city's conduct on the same terms as other entities engaged in the same conduct, which is permissible under the Tenth Amendment. The statute satisfies the commerce clause because it regulates a commercial activity (the purchase of cars) that, when aggregated, has a substantial effect on interstate commerce.

Question 1341 - Constitutional Law - Individual Rights

The question was:

The United States government demonstrated that terrorist attacks involving commercial airliners were perpetrated exclusively by individuals of one particular race. In response, Congress enacted a statute imposing stringent new airport and airline security measures only on individuals of that race seeking to board airplanes in the United States.

Which of the following provides the best ground for challenging the constitutionality of this statute?

- A:** The commerce clause of Article I, Section 8.
- B:** The due process clause of the Fifth Amendment.
- C:** The privileges and immunities clause of Article IV.
- D:** The privileges or immunities clause of the Fourteenth Amendment.

The explanation for the answer is:

Answer B is correct. The U.S. Supreme Court held, in *Bolling v. Sharpe*, 347 U.S. 497 (1954), that the equal protection principles of the Fourteenth Amendment apply to actions of the federal government through the due process clause of the Fifth Amendment. The new security measures presumptively violate equal protection because they contain a racial classification: the new security measures apply only to individuals of one race. A court therefore would uphold the new security measures only if the government could prove that they are necessary to serve a compelling public interest, a standard that the government typically cannot meet. Thus, Answer B is correct.

Answer A is incorrect. The commerce clause grants Congress plenary power to regulate the safety of air travel because airlines are instrumentalities of interstate commerce.

Answer C is incorrect. The privileges and immunities clause of Article IV prohibits actions by states that improperly discriminate against the citizens of other states. The clause does not apply to actions of the federal government.

Answer D is incorrect. The privileges or immunities clause of the Fourteenth Amendment prohibits states from depriving individuals of the privileges or immunities of United States citizenship. The U.S. Supreme Court has never applied the clause to actions of the federal government.

Question 1343 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Congressional committees heard testimony from present and former holders of licenses issued by state vocational licensing boards. According to the testimony, the boards had unfairly manipulated their disciplinary proceedings in order to revoke the licenses of some license holders as a means of protecting favored licensees from competition.

In response, Congress enacted a statute prescribing detailed procedural requirements for the disciplinary proceedings of all state vocational licensing boards. For example, the statute required the state boards to provide licensees with adequate notice and opportunity for an adjudicatory hearing in all disciplinary proceedings. The statute also prescribed criteria for the membership of all state vocational licensing boards that were designed to ensure that the boards were likely to be neutral.

Which of the following provides the best source of authority for this federal statute?

- A:** Section 5 of the Fourteenth Amendment.
- B:** The general welfare clause of Article I, Section 8.
- C:** The privileges and immunities clause of Article IV, Section 2.
- D:** The takings clause of the Fifth Amendment.

The explanation for the answer is:

Answer A is correct. Section 5 of the Fourteenth Amendment gives Congress the power to enforce the provisions of the Fourteenth Amendment by appropriate legislation. Congressional legislation is appropriate within the meaning of Section 5 if (1) it seeks to prevent or remedy actions by state or local governments that violate provisions of the Fourteenth Amendment, and (2) its requirements are congruent with and proportional to the Fourteenth Amendment violations it addresses. In this case, the legislation seeks to prevent actions by state agencies that violate the due process clause of the Fourteenth Amendment, and the requirements of the legislation appear to be proportional to and congruent with the Fourteenth Amendment violations Congress has sought to prevent.

Answer B is incorrect. Article I, Section 8 of the Constitution gives Congress the power to spend for the general welfare, but this power is inapplicable because the legislation at issue is not a spending measure.

Answer C is incorrect. The privileges and immunities clause of Article IV, Section 2 prohibits actions by states that improperly discriminate against the citizens of other states. The clause does not apply to actions of the federal government.

Answer D is incorrect. The takings clause of the Fifth Amendment prohibits the federal government from taking property from an individual without paying fair compensation for the property taken. The takings clause does not apply because this legislation does not authorize the taking of anyone's property.

Question 1347 - Constitutional Law - Separation of Powers

The question was:

A state legislature conducted an investigation into a series of fatal accidents in the state involving commercial trucks with trailer exteriors made of polished aluminum. The investigation revealed that the sun's glare off of these trucks blinded the drivers of other vehicles. The state's legislature then enacted a law prohibiting commercial trucks with polished aluminum trailer exteriors from traveling on the state's highways.

Litigation over the state law resulted in a final decision by the United States Supreme Court that the law impermissibly burdened interstate commerce and, therefore, was unconstitutional. Congress later enacted a statute permitting any state to enact a law regulating the degree of light reflectiveness of the exteriors of commercial trucks using the state's highways.

Is this federal statute constitutional?

A: No, because the U.S. Supreme Court has already determined that state laws of this type impermissibly burden interstate commerce.

B: No, because Article III vests the judicial power in the federal courts, the essence of judicial power is the ability to render a final judgment, and this statute overrules a final judgment of the federal Supreme Court.

C: Yes, because Article I, Section 8 grants Congress authority to enact statutes authorizing states to impose burdens on interstate commerce that would otherwise be prohibited.

D: Yes, because Article I, Section 8 grants Congress authority to enact statutes for the general welfare, and Congress could reasonably believe that state laws regulating the light reflectiveness of the exteriors of trucks promote the general welfare.

The explanation for the answer is:

Answer C is correct. The usual rule prohibiting Congress from enacting a statute overruling a constitutional decision of the U.S. Supreme Court does not apply to enactments based on Congress's commerce power because the Constitution gives Congress plenary authority to regulate conduct that is within the commerce power. Thus, Answer A is incorrect. The congressional statute permitting any state to regulate the degree of light reflectiveness of the exteriors of commercial trucks using the state's highways is a valid enactment of the commerce power because commercial trucks are instrumentalities of interstate commerce. Thus, Answer C is correct.

Answer B is incorrect. The congressional statute permitting any state to regulate the degree of light reflectiveness of the exteriors of trucks using the state's highways did not overrule the U.S. Supreme Court's judgment. Thus, for example, if the Court had awarded damages or attorney's fees to the prevailing party, those awards would remain in effect after Congress enacted the statute. Congress's statute simply changed the law for future cases, which is an action that is within the legislative power of Congress and which does not encroach on the Court's judicial power to decide cases within its jurisdiction.

Answer D is incorrect. While the Constitution gives Congress the power to appropriate money to promote the general welfare of the United States, it does not give Congress the power generally to enact statutes promoting the general welfare.

Question 1352 - Constitutional Law - Individual Rights

The question was:

A city passed an ordinance requiring individuals to obtain a license in order to care for children under the age of 12 for pay. To receive such a license, the ordinance required the individuals to complete 10 hours of instruction in child care, undergo a background check, and pay a \$100 fee. The ordinance affected women disproportionately to men, because female babysitters far outnumbered male babysitters in the city. City officials who promoted the measure said that the certification process would ensure that babysitters were adequately regulated for the health and safety of the city's children.

Is the ordinance constitutional?

A: No, because it has a disparate impact on women without a showing that the ordinance is necessary to advance a compelling government interest.

B: No, because it infringes on the freedom of contract without a compelling government interest.

C: Yes, because any burden it imposes is clearly outweighed by an important government objective.

D: Yes, because it is rationally related to a legitimate government objective.

The explanation for the answer is:

Answer D is correct. The disparate impact of a law on women, without more, does not constitute sex discrimination and thus is insufficient by itself to trigger heightened judicial scrutiny of the constitutionality of the law. In order for the ordinance to be considered discriminatory against women, a court must find that the city adopted the ordinance because it would have a disparate impact on women, and there are no facts upon which to base such a finding. The ordinance is constitutional because it is rationally related to a legitimate government objective. Thus, Answer D is correct.

Answer A is incorrect. As explained above, the disparate impact of a law on women, without more, does not constitute sex discrimination, and thus is insufficient by itself to trigger heightened judicial scrutiny of the constitutionality of the law. Even if a court would find (incorrectly) that the ordinance discriminates against women, the appropriate standard of review would require the court to examine whether the ordinance is substantially related to an important government interest, and not whether the ordinance is necessary to advance a compelling government interest. The ordinance is constitutional because it is rationally related to a legitimate government objective.

Answer B is incorrect. Although the ordinance infringes on the freedom of babysitters to contract for their services, strict judicial scrutiny of the constitutionality of the ordinance is inappropriate because the freedom of contract is not a fundamental right. The ordinance is constitutional because it is rationally related to a legitimate government objective.

Answer C is incorrect. The appropriate standard of judicial review is not whether the burdens imposed by the ordinance outweigh the benefits of the ordinance. The ordinance is constitutional because it is rationally related to a legitimate government objective.

Question 1355 - Constitutional Law - Individual Rights

The question was:

Residents of a city complained that brightly colored signs detracted from the character of the city's historic district and distracted motorists trying to navigate its narrow streets. In response, the city council enacted an ordinance requiring any "sign or visual display" visible on the streets of the historic district to be black and white and to be no more than four feet long or wide.

A political party wanted to hang a six-foot-long red, white, and blue political banner in front of a building in the historic district. The party filed suit to challenge the constitutionality of the sign ordinance as applied to the display of its banner.

Which of the following would be the most useful argument for the political party?

- A:** The ordinance is not the least restrictive means of promoting a compelling government interest.
- B:** The ordinance is not narrowly tailored to an important government interest, nor does it leave open alternative channels of communication.
- C:** The ordinance imposes a prior restraint on political expression.
- D:** The ordinance effectively favors some categories of speech over others.

The explanation for the answer is:

Answer B is correct. The political party's best argument is that the ordinance is not narrowly tailored to an important government interest, nor does it leave open alternative channels of communication. Because the ordinance is a content-neutral restriction of expression, it must satisfy intermediate scrutiny. Intermediate scrutiny requires the city to prove that the ordinance is narrowly tailored to an important government interest and that it leaves open alternative channels of communication. Thus, Answer B is correct.

Answer A is incorrect. The city must prove that the ordinance is the least restrictive means of promoting a compelling government interest only if the court exercises strict scrutiny. The city's ordinance does not trigger strict scrutiny because it restricts signs regardless of their content. Because the ordinance is a content-neutral restriction of expression, it must satisfy only intermediate scrutiny, as explained above.

Answer C is incorrect. The ordinance does not impose a prior restraint because it does not require the permission of a government official before signs may be posted. Because the ordinance is a content-neutral restriction of expression, it must satisfy only intermediate scrutiny, as explained above.

Answer D is incorrect. The text of the city's ordinance restricts signs regardless of their content, and there are no facts to support a claim that the ordinance effectively operates as a content-based restriction on expression. Moreover, even if the ordinance effectively favors some categories of speech over others, this fact by itself would be insufficient to cause a court to invalidate the ordinance. Because the ordinance is a content-neutral restriction of expression, it must satisfy only intermediate scrutiny, as explained above.

Question 1366 - Constitutional Law - Individual Rights

The question was:

In one state, certain kinds of advanced diagnostic medical technology were located only in hospitals, where they provided a major source of revenue. In many other states, such technology was also available at "diagnostic centers" that were not affiliated with hospitals.

A group of physicians announced its plan to immediately open in the state a diagnostic center that would not be affiliated with a hospital. The state hospital association argued to the state legislature that only hospitals could reliably handle advanced medical technologies. The legislature then enacted a law prohibiting the operation in the state of diagnostic centers that were not affiliated with hospitals.

The group of physicians filed suit challenging the constitutionality of the state law.

What action should the court take?

- A:** Uphold the law, because the provision of medical services is traditionally a matter of legitimate local concern that states have unreviewable authority to regulate.
- B:** Uphold the law, because the legislature could rationally believe that diagnostic centers not affiliated with hospitals would be less reliable than hospitals.
- C:** Invalidate the law, because it imposes an undue burden on access to medical services in the state.
- D:** Dismiss the suit without reaching the merits, because the suit is not ripe.

The explanation for the answer is:

Answer B is correct. The law does not trigger heightened judicial scrutiny because it neither classifies regulatory subjects on a constitutionally suspect basis nor unduly burdens the exercise of a fundamental right. The appropriate constitutional standard of review therefore is whether the law is rationally related to a legitimate government interest. The apparent legislative judgment that diagnostic centers not affiliated with hospitals would be less reliable than hospitals is rational, regardless of whether it is in fact correct. Thus, Answer B is correct.

Answer A is incorrect. Even if the provision of medical services is traditionally a matter of legitimate local concern, states do not have unreviewable authority to regulate it. State regulation is always subject to constitutional limits. As explained above, the law would be subject to rational basis review.

Answer C is incorrect. The U.S. Supreme Court has not held access to medical services to be a fundamental right. Thus, even if the law unduly burdens such access, heightened judicial scrutiny would not be appropriate. As explained above, the law would be subject to rational basis review.

Answer D is incorrect. The suit is ripe because the facts state that the physicians' group has immediate plans to open a diagnostic center in the state.

Question 1371 - Constitutional Law - Separation of Powers

The question was:

In order to reduce the federal deficit, Congress enacted a statute imposing a five percent national retail sales tax. The tax was levied upon all retail sales in the United States and applied equally to the sales of all kinds of goods.

Is this tax constitutional as applied to retail sales of newspapers?

- A:** Yes, because it is within Congress's power to tax.
- B:** Yes, because the tax is necessary to serve the compelling interest of balancing the federal budget.
- C:** No, because retail sales taxes are within the taxing power of the states.
- D:** No, because the imposition of a tax on the sale of newspapers violates the freedom of the press.

The explanation for the answer is:

Answer A is correct. The tax clause of Article I, Section 8 gives Congress plenary power to raise revenue through taxes. Application of the tax to the sale of newspapers does not violate the freedom of the press protected by the First Amendment and trigger strict scrutiny because the tax is generally applicable and in no way targets press operations. Thus, Answer A is correct, and Answers B and D are incorrect.

Answer C is incorrect. The Constitution does not reserve retail sales taxes for the states. The tax clause of Article I, Section 8 gives Congress plenary power to raise revenue through taxes.

Question 1379 - Constitutional Law - Judicial Review

The question was:

In response to the need for additional toxic waste landfills in a state, the state's legislature enacted a law authorizing a state agency to establish five new state-owned and state-operated toxic waste landfills. The law provided that the agency would decide the locations and sizes of the landfills after an investigation of all potential sites and a determination that the particular sites chosen would not endanger public health and would be consistent with the public welfare.

A community in the state was scheduled for inspection by the agency as a potential toxic waste landfill site. Because the community's residents obtained most of their drinking water from an aquifer that ran under the entire community, a citizens' group, made up of residents of that community, sued the appropriate officials of the agency in federal court. The group sought a declaratory judgment that the selection of the community as the site of a toxic waste landfill would be unconstitutional and an injunction preventing the agency from selecting the community as a site for such a landfill. The agency officials moved to dismiss.

Which of the following is the most appropriate basis for the court to dismiss this suit?

- A:** The case presents a nonjusticiable political question.
- B:** The interest of the state in obtaining suitable sites for toxic waste landfills is sufficiently compelling to justify the selection of the community as a location for such a facility.
- C:** The Eleventh Amendment bars suits of this kind in the federal courts.
- D:** The case is not ripe for a decision on the merits.

The explanation for the answer is:

Answer D is correct. The case is not ripe for adjudication because currently there is no harm, or immediate threat of harm, to the residents due to agency's inspection of the community. The residents face a risk of harm only if the agency selects their community as a site for a landfill, and as of now it is unclear whether the community would be selected.

Answer A is incorrect. While the Court will not decide political questions, the current suit does not present a political question. A political question is one whose issues are either: (1) committed by the Constitution to either the Executive or Legislative branch of government, or (2) inherently incapable of resolution and enforcement by the judicial process. No such question is presented on these facts, which concern actions by a state government.

Answer B is incorrect. There are no facts to suggest that strict judicial scrutiny of the state's site-selection decision is warranted. Therefore, the state need not show that the selection of the community is necessary to serve a compelling interest. A more appropriate basis for a court dismissing the suit would be that the case is not ripe for adjudication.

Answer C is incorrect. The Eleventh Amendment does not bar the suit because it was brought against state officers, not the state itself, and because it seeks only prospective declaratory and injunctive relief, not compensatory monetary relief.

Question 1384 - Constitutional Law - Relations Between Federal and State Governments

The question was:

National statistics revealed a dramatic increase in the number of elementary and secondary school students bringing controlled substances to school for sale. In response, Congress enacted a statute requiring each state legislature to enact a state law making it a crime for any person to sell, within 1,000 feet of any elementary or secondary school, any controlled substance that had previously been transported in interstate commerce.

Is the federal statute constitutional?

A: No, because Congress has no authority to require a state legislature to enact any specified legislation.

B: No, because the sale of a controlled substance in close proximity to a school does not have a sufficiently close nexus to interstate commerce to justify its regulation by Congress.

C: Yes, because it contains a jurisdictional provision that will ensure, on a case-by-case basis, that any particular controlled substance subject to the terms of this statute will, in fact, affect interstate commerce.

D: Yes, because Congress possesses broad authority under both the general welfare clause and the commerce clause to regulate any activities affecting education that also have, in inseverable aggregates, a substantial effect on interstate commerce.

The explanation for the answer is:

Answer A is correct. Congress's statute is unconstitutional because the U.S. Supreme Court held, in *New York v. United States*, 505 U.S. 144 (1992), that the concept of federalism embedded in the Tenth Amendment disables Congress from requiring states to enact laws or to administer federal law. Thus, Answer A is correct.

Answer B is incorrect. The commerce clause of Article I empowers Congress to regulate economic or commercial activity that, in the aggregate, has a substantial effect on interstate commerce. The sale of controlled substances is a commercial activity. The facts disclose "a dramatic increase in the number of elementary and secondary school students bringing controlled substances to school for sale," suggesting that, in the aggregate, this activity has a sufficient effect on interstate commerce to bring the regulation within Congress's commerce power. In addition, the statutory limitation requiring that any controlled substance must have been previously transported in interstate commerce may provide a sufficient jurisdictional nexus with interstate commerce to bring Congress's statute within the commerce power.

Answer C is incorrect. The statutory limitation requiring that any controlled substance must have been previously transported in interstate commerce may provide a sufficient jurisdictional nexus with interstate commerce to bring Congress's statute within the commerce power. However, as explained above, Congress's statute is unconstitutional because it violates the concept of federalism embedded in the Tenth Amendment that disables Congress from requiring states to enact laws or to administer federal law.

Answer D is incorrect. Although the spending clause of Article I gives Congress power to appropriate money for the general welfare of the United States, there is no clause of the Constitution that gives Congress power generally to regulate for the general welfare. Nor does the commerce clause of Article I give Congress power to regulate any activity that, taken in the aggregate, has a substantial effect on interstate commerce. The regulated activity must be economic or commercial in nature to trigger Congress's commerce power. Although the activity here (the sale of controlled substances in or near a school) is commercial activity and the activity, in the aggregate, likely has a substantial effect on interstate commerce, Congress's statute is unconstitutional because the U.S. Supreme Court held, in *New York v. United States*, 505 U.S. 144 (1992), that the concept of federalism embedded in the Tenth Amendment disables Congress from requiring states to enact laws or to administer federal law.

Question 1395 - Constitutional Law - Individual Rights

The question was:

In order to combat terrorism, Congress enacted a statute authorizing the President to construct surveillance facilities on privately owned property if the President determined that the construction of such facilities was "necessary to safeguard the security of the United States." The statute provided no compensation for the owner of the land on which such facilities were constructed and provided that the surveillance facilities were to be owned and operated by the United States government.

Pursuant to this statute, the President has determined that the construction of a surveillance facility on a very small, unused portion of an owner's large tract of land is necessary to safeguard the security of the United States. The construction and operation of the facility will not affect any of the uses that the owner is currently making of the entire tract of land.

The owner has filed suit to challenge the constitutionality of the construction of a surveillance facility on the parcel of land at issue without compensation.

How should the court rule?

- A:** It would be a taking of the owner's property for which the owner must be compensated.
- B:** It would single out the owner for adverse treatment in violation of the equal protection component of the Fifth Amendment.
- C:** It would not interfere with any use the owner is currently making of the entire tract of land and, therefore, would not entitle the owner to any compensation.
- D:** It would be valid without any compensation, because it has been determined to be necessary to protect a compelling government interest in national security.

The explanation for the answer is:

Answer A is correct. Any permanent physical occupation by the government of private property is a taking for which just compensation to the property owner is required. It is irrelevant that in this case the portion of the owner's tract of land to be occupied by the government is unused and very small. Thus, Answer C is incorrect. Nor is it relevant that in this case the construction and operation of the facility will not affect any of the uses that the owner is currently making of the entire tract of land. Because in this case construction and operation of the facility would constitute a permanent physical occupation by the government of the owner's land, the government would have to compensate the owner for having taken his property. Thus, Answer A is correct.

Answer B is incorrect. Constructing and operating the facility on the owner's land would not violate equal protection because the decision to do so was rationally related to the protection of national security, which is a legitimate government interest.

Answer D is incorrect. Any permanent physical occupation by the government of private property is a taking for which just compensation to the property owner is required. The takings clause does not exempt takings that are necessary to protect a compelling government interest from the obligation to provide just compensation to the property owner. Therefore, in this case, the taking would be invalid without just compensation even if the government could show that construction and operation of the facility on the owner's land are necessary to protect a compelling government interest in national security.

Question 1408 - Constitutional Law - Relations Between Federal and State Governments

The question was:

Congress enacted a statute prohibiting discrimination in the rental of residential property anywhere in the United States on the basis of sexual orientation or preference by any person or entity, public or private.

Which of the following provisions provides the strongest basis for Congress's authority to enact this statute?

- A:** The enforcement clause of the Fourteenth Amendment.
- B:** The privileges and immunities clause of Article IV.
- C:** The commerce clause of Article I, Section 8.
- D:** The general welfare clause of Article I, Section 8.

The explanation for the answer is:

Answer C is correct. The commerce clause provides authority for enactment of the statute. Congress can regulate the rental terms for residential property pursuant to the commerce clause because such rentals constitute economic activity that, in the aggregate, has a substantial effect on interstate commerce.

Answer A is incorrect. The Fourteenth Amendment's enforcement clause supports only congressional regulation of state action. The enforcement clause therefore would not support application of the statute to private individuals and entities.

Answer B is incorrect. The privileges and immunities clause of Article IV forbids certain types of discrimination by states against the citizens of other states. It is not a source of congressional power.

Answer D is incorrect. The general welfare clause applies only to taxing and spending legislation passed by Congress.

Question 1415 - Constitutional Law - Individual Rights

The question was:

A state law made it a criminal offense for any state employee to "knowingly provide educational services or extend welfare benefits" to a foreign national who was in the United States in violation of U.S. immigration laws. The principal of a public elementary school was prosecuted under the law for enrolling and providing education to several foreign nationals he knew to be in the country illegally. All of these actions took place before the new law was adopted. No federal statute applied to the principal's actions.

What constitutional provision would be most helpful to the principal's defense?

- A:** The due process clause of the Fourteenth Amendment.
- B:** The equal protection clause of the Fourteenth Amendment
- C:** The ex post facto clause of Article I, Section 10.
- D:** The privileges or immunities clause of the Fourteenth Amendment.

The explanation for the answer is:

Answer C is correct. Article I, Section 10 of the Constitution prohibits states from passing ex post facto laws. An ex post facto law punishes conduct that occurred before the law became effective. Because the principal had enrolled the foreign nationals before the state adopted the law under which he was prosecuted, it was an unconstitutional ex post facto law as applied to his prosecution.

Answer A is incorrect. Although the state law deprives the principal of his freedom to enroll foreign nationals in his school, this liberty interest is not fundamental. A court therefore might well reject a due process challenge to the state's application of the law to the principal on the ground that the application is rationally related to a legitimate government interest.

Answer B is incorrect. Although the state law classifies state employees who provide the prohibited services and subjects them to a special penalty, the classification is not constitutionally suspect. Nor does it burden a fundamental individual right. A court therefore would reject an equal protection challenge to the state's application of the law to the principal because the classification is rationally related to a legitimate government interest.

Answer D is incorrect. U.S. Supreme Court precedent limits the protections of the privileges or immunities clause of the Fourteenth Amendment to a handful of rights especially associated with national citizenship, none of which are applicable in this case.

Question 1420 - Constitutional Law - Relations Between Federal and State Governments

The question was:

An unconstrued state law prohibited the distribution within the state of "seditious propaganda." The state prosecuted United States Post Office letter carriers under this law for delivering propaganda from a foreign country to state residents.

Which of the following statements is an INACCURATE description of the state's law as applied to the letter carriers?

- A:** It is an unconstitutional bill of attainder.
- B:** It is void for vagueness.
- C:** It may not be applied to the letter carriers, because they are employees of a federal instrumentality carrying out an authorized function.
- D:** It unconstitutionally abridges rights protected by the First and Fourteenth Amendments.

The explanation for the answer is:

Answer A is correct. A bill of attainder is a legislative act that inflicts punishment on named individuals or on easily identifiable members of groups. Because the statute proscribes a type of conduct when engaged in by anyone, it is inaccurate to say that the statute is a bill of attainder.

Answer B is incorrect. A law is void for vagueness if it does not provide individuals with fair and reasonable notice of the boundaries between lawful and unlawful conduct. In this case, the statutory prohibition against "seditious propaganda" would be unconstitutionally vague under that standard, especially since the prohibition inhibits speech, a context in which the void-for-vagueness doctrine has special bite. Thus, it is accurate to say that the statute is void for vagueness.

Answer C is incorrect. Federal employees are immune from state laws that interfere with their obligation to carry out an authorized function. Thus, it is accurate to say that the state statute may not be applied to the letter carriers, because they are employees of a federal instrumentality carrying out an authorized function.

Answer D is incorrect. The state law violates the constitutionally protected freedom of speech because it prohibits subversive speech without requiring the government to prove that the speech at issue was directed to inciting imminent unlawful action and was likely to do so. Thus, it is accurate to say that the statute unconstitutionally abridges rights protected by the First and Fourteenth Amendments.

Question 1424 - Constitutional Law - Individual Rights

The question was:

A protester entered an IRS office during business hours. He denounced the income tax and set fire to pages from his copy of the Internal Revenue Code. The fire was extinguished before it caused any other damage. The protester was arrested and charged with violating a state law that prohibited igniting a fire in a public building. He claimed that his prosecution was unconstitutional under the First Amendment.

May the protester constitutionally be convicted?

- A:** No, because he was exercising his right to freedom of speech by burning a copy of the code.
- B:** No, because the copy of the code belonged to him, and thus burning it did not infringe upon a legitimate government interest.
- C:** Yes, because the burning of the code was conduct rather than speech.
- D:** Yes, because the state law is narrowly drawn to further a substantial government interest in prohibiting the noncommunicative aspects of the act in question.

The explanation for the answer is:

Answer D is correct. The protester's burning of the tax code qualifies as expressive conduct protected by the free speech clause of the First Amendment because (1) the protester intended to communicate a message and (2) the audience was likely to understand the communication. But because the state's interest underlying the law that the protester violated (preventing the burning of public buildings) is unrelated to the message communicated by the burning of the tax code, a court will not subject the state law to strict scrutiny. Instead, the court will uphold application of the law to the protester if the law is narrowly tailored to further a substantial government interest, a standard of justification that this law should satisfy easily. Thus, Answer D is correct.

Answer A is incorrect. It is correct that the protester's burning of the tax code qualifies as expressive conduct protected by the free speech clause of the First Amendment. However, as stated above, the statute under which the protester will be convicted is not aimed at curbing free speech. Thus, the mere fact that the protester engaged in an act of free speech will not prevent a prosecution under the statute. Likewise, Answer C is incorrect. Regardless of whether the protester's actions are characterized as conduct or speech, the applicable statute in this case is not designed to deter free speech.

Answer B is incorrect. The legitimacy (and substantiality) of the government's interest in preventing the burning of public buildings is not undermined by the fact that the protester burned his own copy of the tax code.

Question 1429 - Constitutional Law - Judicial Review

The question was:

A private university is owned and operated by a religious organization. The university is accredited by the department of education of the state in which it is located. This accreditation certifies that the university meets prescribed educational standards. Because it is accredited, the university qualifies for state funding for certain of its operating expenses. Under this funding program, 25 percent of the university's total operating budget comes from state funds.

A professor at the university was a part-time columnist for the local newspaper. In one of her published columns, the professor argued that "religion has become a negative force in society." The university subsequently discharged the professor, giving as its sole reason for the dismissal her authorship and publication of this column.

The professor sued the university, claiming only that her discharge violated her constitutional right to freedom of speech.

The university moved to dismiss the professor's lawsuit on the ground that the U.S. Constitution does not provide the professor with a cause of action in this case.

Should the court grant the university's motion to dismiss?

A: Yes, because the First and Fourteenth Amendments protect the right of the university to employ only individuals who share and communicate its views.

B: Yes, because the action of the university in discharging the professor is not attributable to the state for purposes of the Fourteenth Amendment.

C: No, because the accreditation and partial funding of the university by the state are sufficient to justify the conclusion that the state was an active participant in the discharge of the professor.

D: No, because the U.S. Constitution provides a cause of action against any state-accredited institution that restricts freedom of speech as a condition of employment.

The explanation for the answer is:

Answer B is correct. The protections afforded by the Fourteenth Amendment apply only to conduct that is attributable to the state. Because the professor was discharged by a private university and not by a state actor, the Fourteenth Amendment does not apply.

Answer A is incorrect. The First and Fourteenth Amendments do not grant a university any right to discharge employees who do not share and communicate the views of the university. The university's motion to dismiss nevertheless should be granted because the protections afforded by the Fourteenth Amendment apply only to conduct that is attributable to the state. Because the professor was discharged by a private university and not by a state actor, the Fourteenth Amendment does not apply.

Answer C is incorrect. The protections afforded by the Fourteenth Amendment apply only to conduct that is attributable to the state. U.S. Supreme Court precedent establishes that the accreditation, regulation, and partial funding of a university by the state does not render the university's conduct state action, and thus the Fourteenth Amendment does not apply.

Answer D is incorrect. There is no provision of the Constitution creating a cause of action against a state-accredited institution that restricts freedom of speech as a condition of employment. State accreditation of an institution does not constitute sufficient involvement by the state to make the institution's conduct state action. Therefore the protections afforded by the Fourteenth Amendment do not apply to the university's discharge of the professor.

Question 1438 - Constitutional Law - Judicial Review

The question was:

A state law that restricted abortion was challenged in state court as a violation of the due process clause of the Fourteenth Amendment to the U.S. Constitution and as a violation of a similar due process provision of the state constitution. The case made its way to the state's highest court, which ruled that the law violated the due process provisions of both the U.S. and the state constitutions.

If petitioned to do so, may the U.S. Supreme Court exercise jurisdiction to review the state court decision?

A: No, because the state court's decision in this case rests on adequate and independent state law grounds.

B: No, because the U.S. Supreme Court has appellate jurisdiction only over state court decisions that determine the constitutionality of federal laws.

C: Yes, because the U.S. Supreme Court has appellate jurisdiction over any ruling of a state's highest court based on an interpretation of federal law.

D: Yes, because the U.S. Supreme Court has appellate jurisdiction over decisions that find state laws in violation of the federal Constitution.

The explanation for the answer is:

Answer A is correct. The U.S. Supreme Court does not have appellate jurisdiction over a decision by the highest court of a state when that decision is supported by state law grounds that are (1) independent of federal law and (2) adequate to sustain the result in the case. The result in this case is fully supported by the state court's ruling that the law violated the state constitution, and this ruling is independent of any consideration of the federal constitutional claim. Accordingly, even if the U.S. Supreme Court were to reverse the state court's ruling on the federal constitutional issue, the result in the case would not change, and thus the decision is not reviewable.

Answer B is incorrect. This response correctly states that the U.S. Supreme Court may not review the decision but inaccurately states the scope of the Court's appellate jurisdiction.

Answer C and Answer D are incorrect for the same reason. The U.S. Supreme Court does not have appellate jurisdiction over a decision of the highest court of a state involving the interpretation of federal law when, as stated above, that decision is supported by state law grounds that are (1) independent of federal law and (2) adequate to sustain the result in the case.

Question 1444 - Constitutional Law - Separation of Powers

The question was:

A recently enacted federal statute requires the President to make each appointment of a United States ambassador to a foreign country from a list of three individuals. The list is to be compiled by the Senate Foreign Relations Committee and approved by the full Senate in advance of the appointment. The statute also provides that Senate confirmation of the appointment is deemed to occur automatically 30 days after the time the President names an appointee from the list, unless the full Senate determines otherwise within the 30-day period.

Is this statute constitutional?

- A:** No, because the statute violates the constitutional requirements for appointment of principal officers of the United States.
B: No, because the statute impermissibly restricts the plenary foreign affairs powers of the President.
C: Yes, because the statute is consistent with the constitutional requirement that the presidential appointment of ambassadors be with the advice and consent of the Senate.
D: Yes, because the statute is a necessary and proper measure in furtherance of Congress's power to regulate commerce with foreign states.

The explanation for the answer is:

Answer A is correct. Two provisions of the statute violate the appointments clause of the Constitution. First, the provision limiting the President to a list of three potential nominees violates the President's power to nominate principal officers. Second, the automatic confirmation provision violates the requirement that the Senate consent to the appointment of a principal officer.

Answer B is incorrect. The statute does not restrict the President's conduct of foreign affairs. It applies only to the appointment of ambassadors. As stated above, however, two provisions of the statute violate the appointments clause of the Constitution.

Answer C is incorrect. The statute represents a misapplication of the Senate's advice and consent power. The statute replaces the President's power to nominate ambassadors rather than provide the President with the Senate's advice on who to appoint, or its consent to appoint an ambassador.

Answer D is incorrect. The statutory scheme for the nomination and confirmation of ambassadors is not "necessary" because it is not reasonably related to furthering any congressional statute regulating foreign commerce. Moreover, the statutory scheme is not "proper" because two provisions of the statute violate the appointments clause of the Constitution, as stated above.

Question 1455 - Constitutional Law - Separation of Powers

The question was:

A state owned a large natural gas field and took bids for its exploitation. The highest bid came from an interstate pipeline company that distributed natural gas to providers throughout the country. A local gas company submitted the next highest bid, which included the commitment that it would pass along to local customers any savings if it was awarded the contract. The state awarded the contract to the local company. The interstate company sued to overturn this decision.

Should the interstate company prevail?

- A:** No, because the state has a compelling interest in reducing the cost of gas for state citizens.
- B:** No, because the state acted as a market participant.
- C:** Yes, because the state acted irrationally by not choosing the highest bidder and thus denied the interstate company due process of law.
- D:** Yes, because the state discriminated against interstate commerce.

The explanation for the answer is:

B is correct. When the state participates in the economic marketplace, it may decide with whom it wishes to contract without regard to the restrictions of the dormant commerce clause. Here the state is a market participant because it is selling the rights to exploit a natural gas field that it owns. The usual rules of the dormant commerce clause restricting the power of the state to prefer local economic actors over interstate companies therefore do not apply.

Answer A is incorrect. The state does not need to demonstrate a compelling interest in order to justify its decision to accept the local company's bid because it is acting as a market participant, not a market regulator.

Answer C is incorrect. The commitment by the local company that it would pass along to local customers any savings if it was awarded the contract provided a rational basis for the state's selection of the local company, even though the local company's bid was lower than that of the interstate pipeline company.

Answer D is incorrect. Although the state selected the local company's bid over that of the interstate pipeline company, its action did not violate the dormant commerce clause. As discussed above, when the state participates in the economic marketplace, it may decide with whom it wishes to contract without regard to the restrictions of the dormant commerce clause.

Question 1466 - Constitutional Law - Individual Rights

The question was:

Congress enacted a statute authorizing the denial of all federal funding to public school districts in which a specified percentage of the students enrolled in the public schools fail to pass a national achievement test. According to the terms of the federal statute, the first national achievement test was scheduled for administration five years from the effective date of the statute.

After reviewing then-current levels of public school student performance, the officials of a state became concerned that several of its public school districts would lose their federal funding after the administration of the first national achievement test. Then-current levels of private school student performance were substantially higher.

In order to improve the chances of those school districts retaining their federal funding, the state recently enacted a law that requires all children of elementary and secondary school age to attend the schools operated by their respective local public school districts. The law is to take effect at the beginning of the next school year.

Parents of children enrolled in private schools within the state have filed suit to challenge the constitutionality of this state law.

Should the court uphold the law?

- A:** Yes, because it is rationally related to a legitimate state interest.
- B:** Yes, because it is necessary to further a compelling state interest.
- C:** No, because it is not rationally related to a legitimate state interest.
- D:** No, because it is not necessary to further a compelling state interest.

The explanation for the answer is:

Answer D is correct. U.S. Supreme Court precedent establishes that a state law requiring children to attend public schools infringes on the right of parents to control the upbringing of their children. Supreme Court precedent also establishes that this right is a fundamental aspect of liberty protected by the due process clause of the Fourteenth Amendment. A state law that infringes on that right must therefore undergo strict judicial scrutiny, which requires the state to prove that the law is necessary to further a compelling state interest. In this case, the state cannot satisfy strict scrutiny, because requiring private school students to attend public schools in order to raise the test scores in public school districts is not necessary to further a compelling state interest. Thus, Answer D is correct.

Answers A and C are incorrect because they state the incorrect standard of review. Although the state law is rationally related to a legitimate state interest, the court will apply a strict scrutiny standard of review because the law infringes upon parents' fundamental right to control the upbringing of their children.

Answer B is incorrect. Even though this response states the proper standard of review, it misstates the court's likely finding using that standard. As explained above, the law is not necessary to further a compelling state interest.

Question 1473 - Constitutional Law - Separation of Powers

The question was:

Congress enacted a statute establishing a program to protect areas in the United States that are rich in biological diversity. The program is consistent with the terms of an environmental treaty that the President objected to and did not sign.

The statute creates an executive agency and authorizes it to designate parts of federal lands for inclusion in the program in accordance with criteria taken from the treaty. In an inseverable provision, the statute further provides that the agency must report each designation to a committee of Congress and that the committee may overturn the agency's designation by a majority vote.

Why is the statute unconstitutional?

- A:** It constitutes an invalid delegation of legislative authority to an executive agency.
- B:** It interferes with the exercise of the President's paramount authority in foreign affairs.
- C:** It requires an executive agency to report its decisions to Congress.
- D:** It authorizes a committee of Congress to overturn an executive decision.

The explanation for the answer is:

Answer D is correct. The provision of the statute authorizing a congressional committee to overturn the agency's designations of federal lands is an unconstitutional legislative veto. Congress may overturn the action of an executive agency only by enacting a statute. Thus, Answer D is correct.

Answer A is incorrect. The statute's grant of authority to the agency does not violate the non-delegation doctrine because the statute's incorporation of the treaty criteria provides intelligible principles sufficient to guide the agency's designations of federal lands.

Answer B is incorrect. Congress has power to legislate regarding the control of federal lands, and the statute does not affect the President's conduct of foreign affairs.

Answer C is incorrect. The necessary and proper clause authorizes Congress to require that executive agencies report their decisions to Congress if such a requirement reasonably implements a statutory program.

Question 1478 - Constitutional Law - Individual Rights

The question was:

A city ordinance prohibited individuals from picketing in residential neighborhoods unless the picketing related to the neighborhood zoning requirements. This exception to the ordinance was adopted in response to local citizens' strong views about proposed rezoning of residential neighborhoods.

A group that wished to picket in front of a business owner's home because of the business owner's employment practices challenged the ordinance as unconstitutional under the First Amendment.

Will the group's challenge likely prevail?

- A:** No, because the ordinance is a content-neutral regulation of speech.
- B:** No, because the ordinance regulates conduct rather than speech.
- C:** Yes, because the ordinance irrationally discriminates between different types of protesters.
- D:** Yes, because the ordinance is a content-based regulation of speech.

The explanation for the answer is:

Answer D is correct. The ordinance is a content-based regulation of speech because it permits an expressive activity (picketing) on one subject (neighborhood zoning requirements) and prohibits it on all other subjects. Such a content-based restriction on expression presumptively violates the freedom of speech protected by the First Amendment. To justify a content-based restriction, the government must satisfy strict judicial scrutiny, proving that the restriction is necessary to serve a compelling government interest. The city would be unable to meet that burden in this case. Thus, Answer D is correct, and Answer A is incorrect.

Answer B is incorrect. Although picketing is conduct, U.S. Supreme Court precedent establishes that it is expressive conduct because (1) the picketer intends to communicate a message, and (2) the audience is likely to understand the message. Expressive conduct is protected by the free speech clause of the First Amendment. As stated above, the ordinance in this scenario is a content-based regulation of speech. To justify a content-based restriction, the government must satisfy strict judicial scrutiny, proving that the restriction is necessary to serve a compelling government interest. The city would be unable to meet that burden in this case.

Answer C is incorrect. The distinction in the city ordinance between picketing in residential neighborhoods that is related to the neighborhood zoning requirements and picketing in residential neighborhoods on other subjects is rational in light of local citizens' strong views about proposed rezoning of residential neighborhoods. However, as stated above, because the ordinance in this case is a content-based restriction on speech, a rational basis for the distinction would not be sufficient to sustain the ordinance.

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Answer B is incorrect. Although picketing is conduct, U.S. Supreme Court precedent establishes that it is expressive conduct because (1) the picketer intends to communicate a message, and (2) the audience is likely to understand the message. Expressive conduct is protected by the free speech clause of the First Amendment. As stated above, the ordinance in this scenario is a content-based regulation of speech. To justify a content-based restriction, the government must satisfy strict judicial scrutiny, proving that the restriction is necessary to serve a compelling government interest. The city would be unable to meet that burden in this case.

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Question 1483 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A state law prohibits the withdrawal of groundwater from any well within the state for use in another state. The express purpose of the law is to safeguard the supply of water for state citizens. Adoption of this state law followed enactment of a federal statute providing that "the transport of groundwater from one state to another may be restricted or prohibited in accordance with the laws of the state in which the water originates."

An association of water users in a neighboring state has filed suit to have the state law declared unconstitutional and enjoined on the ground that it violates the negative implications of the commerce clause.

Which of the following is the best argument supporting a motion to dismiss the lawsuit?

- A:** The law promotes a compelling state interest that outweighs any burden on interstate commercial activity that might result from this state regulation of its groundwater.
- B:** Groundwater located within a state is not itself an article of interstate commerce, and therefore state regulation of the withdrawal of such groundwater does not implicate the commerce clause.
- C:** The Tenth Amendment reserves to the states plenary authority over the regulation of the natural resources located within their respective borders.
- D:** The federal statute explicitly consents to a state's regulation of its groundwater in a way that would otherwise violate the negative implications of the commerce clause.

The explanation for the answer is:

Answer D is correct. Congress may exercise its authority under the commerce clause to permit a state regulation that would otherwise violate the negative implications of the commerce clause, as long as the congressional legislation unmistakably grants such permission. The federal statute that permits states to restrict or prohibit the transport of groundwater from one state to another qualifies as such legislation. Thus, Answer D is correct.

Answer A is incorrect. A state law prohibiting the withdrawal of groundwater from any well within the state for use in another state discriminates against interstate commerce because it establishes a preference for in-state uses of groundwater over out-of-state uses. This response incorrectly describes the state's burden in justifying a state law that discriminates against interstate commerce. In order to justify such a law, the state must prove that it promotes a legitimate state interest and that there is no nondiscriminatory alternative. In this case, however, the state need not shoulder that burden because a federal statute explicitly permits preferences for in-state uses of groundwater.

Answer B is incorrect. Any item that can be bought, sold, or transported across state lines is an article of interstate commerce. The state law is constitutional because a federal statute permits preferences for in-state uses of groundwater.

Answer C is incorrect. The Tenth Amendment does not protect state laws that violate a provision of the federal Constitution. A state law prohibiting the withdrawal of groundwater from any well within the state for use in another state discriminates against interstate commerce because it establishes a preference for in-state uses of groundwater over out-of-state uses. A court likely would hold such a discriminatory state law to be unconstitutional under most circumstances; in this case, however, a federal statute explicitly permits preferences for in-state uses of groundwater.

Question 1491 - Constitutional Law - Separation of Powers

The question was:

Congress passed a statute providing that parties could no longer seek review in the U.S. Supreme Court of final judgments in criminal matters made by the highest court in each state.

What is the best argument supporting the constitutionality of the statute?

- A:** Congress has the power to make exceptions to the appellate jurisdiction of the Supreme Court.
- B:** Criminal matters are traditionally governed by state law.
- C:** The proper means of federal judicial review of state criminal matters is by habeas corpus.
- D:** The review of state court judgments is not within the original jurisdiction of the Supreme Court.

The explanation for the answer is:

Answer A is correct. The text of the exceptions clause of Article III does not limit congressional power to strip the U.S. Supreme Court of its appellate jurisdiction to hear particular types of cases, and the Court's own decisions arguably support the view that the exceptions clause grants Congress this power. Thus, Answer A is correct.

Answer B is incorrect. While it is true that criminal matters are traditionally governed by state law, a decision of the highest court of a state in a criminal case is subject to appellate review in the U.S. Supreme Court if the case includes a claim arising under federal law or if the case otherwise is within the federal judicial power.

Answer C is incorrect. A habeas corpus petition is not a means of direct federal judicial review of a state criminal case but rather constitutes a separate civil suit for the release of a prisoner who has been unlawfully imprisoned.

Answer D is incorrect. While it is true that the review of state court judgments is not within the original jurisdiction of the U.S. Supreme Court, the Court can review such judgments by exercising its appellate jurisdiction.

Question 1497 - Constitutional Law - Individual Rights

The question was:

A state adopted a rule denying admission to its bar to anyone who was currently or had previously been a member of a subversive group. The state's bar application form was modified to ask applicants whether they were or had previously been members of any subversive organization. An applicant refused to answer the question and was denied bar admission on that basis. The applicant challenged the decision, arguing that the question infringed upon his freedom of association.

Is the applicant likely to prevail?

A: No, because membership in a subversive group constitutes endorsement of the group's illegal activities.

B: No, because the Constitution does not apply to the bar.

C: Yes, because denying bar admission based on any association with a subversive organization violates the First Amendment.

D: Yes, because denying bar admission based solely on past membership in a subversive organization violates the First Amendment.

The explanation for the answer is:

Answer D is correct. The U.S. Supreme Court has held that the freedom of association protected by the First Amendment prohibits a state from inquiring about an individual's associations in order to withhold a right or benefit because of the individual's beliefs. Although the state has a legitimate interest in determining the character and professional competence of bar applicants, the Court has held that the state has other means of making these determinations that are less restrictive of First Amendment freedoms. Thus, Answer D is correct.

Furthermore, the U.S. Supreme Court has held that an individual's membership in an association may not be deemed an endorsement of the illegal activities of the association unless the individual has a specific intention to further those illegal activities. Thus, Answer A is incorrect.

Answer B is incorrect. The rule at issue in this case was adopted by the state, and thus it constitutes state action and must comply with the First Amendment. As stated above, the U.S. Supreme Court has held that the freedom of association protected by the First Amendment prohibits a state from inquiring about an individual's associations in order to withhold a right or benefit because of the individual's beliefs.

Answer C is incorrect. The U.S. Supreme Court has held that states may deny bar admission to individuals who are members of subversive organizations if, but only if, they have a specific intention to further the illegal activities of the organization. The applicant is still likely to prevail, however, because the Court also has held that the freedom of association protected by the First Amendment prohibits a state from inquiring about an individual's associations in order to withhold a right or benefit because of the individual's beliefs.

Question 1501 - Constitutional Law - Separation of Powers

The question was:

A federal civil statute prohibited fishing in any body of water that was located within a national park and contained a particular endangered species of fish. The statute authorized federal district courts to enjoin knowing violators of the statute from the use of all national park facilities for up to two years. After a vacationer was found by a federal district court to have knowingly violated the statute, the court issued an injunction against his use of all national park facilities for two years. The vacationer appealed.

Before the appeals court heard the vacationer's case, Congress repealed the statute by a law that expressly made the repeal effective retroactive to a date one month before the vacationer's violation of the statute. The law also directly cited the vacationer's case and stated that it was intended to "repeal all the statutory prohibitions that formed the basis for decisions" such as that rendered against the vacationer.

On the basis of this law, the vacationer has asked the appeals court to vacate the injunction issued against him. Counsel for the United States has objected, contending that, as applied to the specific case pending in the appeals court, the law is unconstitutional.

How should the appeals court rule?

A: For the United States, because Congress defied the constitutional prohibition against ex post facto laws by retroactively changing the consequences for violating the statute after the violation was proved in a trial court.

B: For the United States, because the law's citation to the vacationer's case demonstrates that Congress intended to compel the appeals court to reach a particular result and, therefore, sought to exercise judicial powers vested exclusively in the courts by Article III.

C: For the vacationer, because Congress has the power to determine the laws to be applied by the federal courts and to require retroactive application of those laws to any specifically identified case that it chooses.

D: For the vacationer, because Congress is authorized to make substantive changes to federal civil statutes and to direct that those changes be applied by the courts to all actions in which a final judgment has not yet been rendered.

The explanation for the answer is:

A is incorrect. The constitutional prohibition against ex post facto laws applies only to retroactive changes in statutes that result in the punishment of individuals for conduct that was legal before the changes. Congress's retroactive repeal of the statute in this case had the opposite effect. The appeals court should rule for the vacationer, because the vacationer's appeal of the district court's injunction was pending when Congress repealed the statute that authorized the injunction. Congress may change federal civil statutes and may direct federal courts to apply those changes in all actions in which a final judgment has not been rendered.

B is incorrect. Congress may not direct the outcome of a particular case under existing law, but Congress may effect a change in the law with retroactive application to pending actions. The appeals court should rule for the vacationer, because the vacationer's appeal of the district court's injunction was pending when Congress repealed the statute that authorized the injunction. Congress may change federal civil statutes and may direct federal courts to apply those changes in all actions in which a final judgment has not been rendered.

C is incorrect. Although Congress may change the laws to be applied in federal courts, Congress may not direct federal courts to apply the new laws to reverse final judgments in already-decided actions. While it is correct that the appeals court should rule for the vacationer, it should do so because the vacationer's appeal of the district court's injunction was pending when Congress repealed the statute that authorized the injunction. Congress may change federal civil statutes and may direct federal courts to apply those changes to all actions in which a final judgment has not been rendered.

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Before the appeals court heard the vacationer's case, Congress repealed the statute by a law that expressly made the repeal effective retroactive to a date one month before the vacationer's violation of the statute. The law also directly cited the vacationer's case and stated that it was intended to "repeal all the statutory prohibitions that formed the basis for decisions" such as that rendered against the vacationer.

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B: For the United States, because the law's citation to the vacationer's case demonstrates that Congress intended to compel the appeals court to reach a particular result and, therefore, sought to exercise judicial powers vested exclusively in the courts by Article III.

C: For the vacationer, because Congress has the power to determine the laws to be applied by the federal courts and to require retroactive application of those laws to any specifically identified case that it chooses.

D: For the vacationer, because Congress is authorized to make substantive changes to federal civil statutes and to direct that those changes be applied by the courts to all actions in which a final judgment has not yet been rendered.

The explanation for the answer is:

A is incorrect. The constitutional prohibition against ex post facto laws applies only to retroactive changes in statutes that result in the punishment of individuals for conduct that was legal before the changes. Congress's retroactive repeal of the statute in this case had the opposite effect. The appeals court should rule for the vacationer, because the vacationer's appeal of the district court's injunction was pending when Congress repealed the statute that authorized the injunction. Congress may change federal civil statutes and may direct federal courts to apply those changes in all actions in which a final judgment has not been rendered.

B is incorrect. Congress may not direct the outcome of a particular case under existing law, but Congress may effect a change in the law with retroactive application to pending actions. The appeals court should rule for the vacationer, because the vacationer's appeal of the district court's injunction was pending when Congress repealed the statute that authorized the injunction. Congress may change federal civil statutes and may direct federal courts to apply those changes in all actions in which a final judgment has not been rendered.

C is incorrect. Although Congress may change the laws to be applied in federal courts, Congress may not direct federal courts to apply the new laws to reverse final judgments in already-decided actions. While it is correct that the appeals court should rule for the vacationer, it should do so because the vacationer's appeal of the district court's injunction was pending when Congress repealed the statute that authorized the injunction. Congress may change federal civil statutes and may direct federal courts to apply those changes to all actions in which a final judgment has not been rendered.

D is correct. The appeals court should rule for the vacationer, because the vacationer's appeal of the district court's injunction was pending when Congress repealed the statute that authorized the injunction. Congress may change federal civil statutes and may direct federal courts to apply those changes in all actions in which a final judgment has not been rendered.

Question 1505 - Constitutional Law - Judicial Review

The question was:

The United States had long recognized the ruling faction in a foreign country as that country's government, despite an ongoing civil war. Throughout the civil war, the ruling faction controlled the majority of the country's territory, and the United States afforded diplomatic immunity to the ambassador representing the ruling faction.

A newly elected President of the United States decided to recognize a rebel group as the government of the foreign country and notified the ambassador from the ruling faction that she must leave the United States within 10 days. The ambassador filed an action in federal district court for a declaration that the ruling faction was the true government of the foreign country and for an injunction against enforcement of the President's order that she leave the United States. The United States has moved to dismiss the action.

If the court dismisses the action, what will be the most likely reason?

- A:** The action involves a nonjusticiable political question.
- B:** The action is not ripe.
- C:** The action is within the original jurisdiction of the U.S. Supreme Court.
- D:** The ambassador does not have standing.

The explanation for the answer is:

A is correct. The action likely satisfies the political question doctrine and therefore should be dismissed as nonjusticiable. The President's Article II power to receive foreign ambassadors is likely a textually demonstrable commitment by the Constitution of exclusive authority to recognize foreign governments. Moreover, Article II provides no judicially manageable standards by which a court could review the constitutionality of a President's decision on whether to recognize a foreign government. Finally, because the action involves the President's administration of foreign affairs, the prudential elements of the political question doctrine also indicate that the court should dismiss the action as nonjusticiable.

B is incorrect. The action is ripe for adjudication even though the ambassador may remain in the United States for 10 days. The ambassador has suffered immediate harm because she no longer represents the foreign country in the United States, she has lost her diplomatic immunity, and she is facing expulsion within a very short period of time. Also, the constitutional issues are fit for review without waiting for the ambassador's expulsion.

The reason the action should be dismissed is that it likely is nonjusticiable under the political question doctrine. The President's Article II power to receive foreign ambassadors is likely a textually demonstrable commitment by the Constitution of exclusive authority to recognize foreign governments. Moreover, Article II provides no judicially manageable standards by which a court could review the constitutionality of a President's decision on whether to recognize a foreign government. Finally, because the action involves the President's administration of foreign affairs, the prudential elements of the political question doctrine also indicate that the court should dismiss the action as nonjusticiable.

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Question 1505 - Constitutional Law - Judicial Review

D is incorrect. The ambassador has standing, because she has been injured by the President's decision that her faction is no longer the government of her country, her injury is fairly traceable to this decision, and the injury is likely redressable by a court order invalidating the decision.

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B is incorrect. The action is ripe for adjudication even though the ambassador may remain in the United States for 10 days. The ambassador has suffered immediate harm because she no longer represents the foreign country in the United States, she has lost her diplomatic immunity, and she is facing expulsion within a very short period of time. Also, the constitutional issues are fit for review without waiting for the ambassador's expulsion.

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Question 1505 - Constitutional Law - Judicial Review

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Question 1515 - Constitutional Law - Separation of Powers

The question was:

An employer owed an employee \$200 in unpaid wages. A law of the state in which the employer and the employee reside and in which the employee works provides that the courts of that state must decide claims for unpaid wages within 10 days of filing.

After the employee filed a claim in state court pursuant to this law, the employer filed a voluntary bankruptcy petition in federal bankruptcy court. In the bankruptcy proceeding, the employer sought to stay further proceedings in the unpaid wages claim on the basis of a federal statute which provides that a person who files a federal bankruptcy petition receives an automatic stay of all proceedings against him or her in all federal and state courts. No other federal laws apply.

In addition to the supremacy clause of Article VI, what is the most obvious constitutional basis for the imposition of a stay of the unpaid wages claim in the state court?

- A:** Congress's power to provide for the general welfare.
- B:** Congress's power to provide uniform rules of bankruptcy.
- C:** Congress's power to regulate the jurisdiction and procedures of the courts.
- D:** Congress's power to regulate commerce among the states.

The explanation for the answer is:

A is incorrect. Congress's power to provide for the general welfare authorizes only taxing and spending laws. Because the statute requiring the imposition of a stay of the unpaid wages claim concerns neither taxing nor spending, it is not authorized by the general welfare clause.

Congress's power to provide uniform rules of bankruptcy offers the most obvious constitutional basis for a federal statute requiring a stay of court proceedings against a person who has filed a federal bankruptcy petition.

B is correct. Congress's power to provide uniform rules of bankruptcy offers the most obvious constitutional basis for a federal statute requiring a stay of court proceedings against a person who has filed a federal bankruptcy petition.

C is incorrect. The constitutional provisions that give Congress the power to regulate the jurisdiction and procedures of federal courts do not authorize Congress to regulate state courts.

Congress's power to provide uniform rules of bankruptcy offers the most obvious constitutional basis for a federal statute requiring a stay of court proceedings against a person who has filed a federal bankruptcy petition.

D is incorrect. A federal statute providing for a stay of court proceedings against a person who has filed a federal bankruptcy petition is not authorized by the commerce clause, because it is not a regulation of the channels or instrumentalities of interstate commerce, nor does it regulate an economic or commercial activity.

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Question 1522 - Constitutional Law - Separation of Powers

The question was:

Congress enacted a statute directing U.S. ambassadors to send formal letters to the governments of their host countries, protesting any violations by those governments of international treaties on weapons sales. The President prefers to handle violations by certain countries in a less formal manner and has directed ambassadors not to comply with the statute.

Is the President's action constitutional?

A: No, because Congress has the power to implement treaties, and therefore the statute is binding on the President.

B: No, because Congress has the power to regulate commerce with foreign nations, and therefore the statute is binding on the President.

C: Yes, because Congress has no jurisdiction over matters outside the U.S. borders.

D: Yes, because the President and his subordinates are the exclusive official representatives of the United States in foreign affairs.

The explanation for the answer is:

A is incorrect. Although Congress has the power, under the necessary and proper clause, to enact legislation in support of treaties, the President's action is constitutional, because the U.S. Supreme Court has ruled that the President alone has the authority to represent the United States in foreign affairs. Because the statute intrudes on that authority, it is unconstitutional and has no effect.

B is incorrect. Congress has the power to regulate commerce with foreign nations, but this statute does not concern commercial relationships between the United States and foreign nations. The President's action is constitutional, because the U.S. Supreme Court has ruled that the President alone has the authority to represent the United States in foreign affairs. Because the statute intrudes on that authority, it is unconstitutional and has no effect.

C is incorrect. Article I of the Constitution gives Congress several powers concerning matters outside the U.S. borders, including the power to declare war and the power to regulate commerce with foreign nations. However, because the U.S. Supreme Court has ruled that the President alone has the authority to represent the United States in foreign affairs, the President's action is constitutional. Because the statute intrudes on the President's authority, it is unconstitutional and has no effect.

D is correct. The President's action is constitutional, because the U.S. Supreme Court has ruled that the President alone has the authority to represent the United States in foreign affairs. Because the statute intrudes on the President's authority, it is unconstitutional and has no effect.

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D is correct. The President's action is constitutional, because the U.S. Supreme Court has ruled that the President alone has the authority to represent the United States in foreign affairs. Because the statute intrudes on the President's authority, it is unconstitutional and has no effect.

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D is correct. The President's action is constitutional, because the U.S. Supreme Court has ruled that the President alone has the authority to represent the United States in foreign affairs. Because the statute intrudes on the President's authority, it is unconstitutional and has no effect.

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D is correct. The President's action is constitutional, because the U.S. Supreme Court has ruled that the President alone has the authority to represent the United States in foreign affairs. Because the statute intrudes on the President's authority, it is unconstitutional and has no effect.

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D is correct. The President's action is constitutional, because the U.S. Supreme Court has ruled that the President alone has the authority to represent the United States in foreign affairs. Because the statute intrudes on the President's authority, it is unconstitutional and has no effect.

Question 1526 - Constitutional Law - Separation of Powers

The question was:

Congress enacted a statute that authorized the construction of a monument commemorating the role of the United States in liberating a particular foreign nation during World War II. Another statute appropriated \$3 million for the construction. When the United States became involved in a bitter trade dispute with the foreign nation, the President announced that he was canceling the monument's construction and that he would not spend the appropriated funds. Although the actual reason for the President's decision was the trade dispute, the announcement stated that the reason was an unexpected rise in the federal deficit.

Assume that no other statutes apply.

Is the President's decision constitutional?

- A:** No, because the President failed to invoke his foreign affairs powers in his announcement.
- B:** No, because the President is obligated to spend funds in accordance with congressional directions.
- C:** Yes, because the President is vested with inherent executive power to control federal expenditures.
- D:** Yes, because the President's decision is a valid exercise of his foreign affairs powers.

The explanation for the answer is:

A is incorrect. The constitutionality of the President's decision does not depend on whether he invoked a constitutional power to support the decision. While it is correct that the decision is unconstitutional, it is so because Article II of the Constitution obligates the President to take care that the laws are faithfully executed. Because the appropriations statute is a valid exercise of Congress's spending power, the President must abide by the requirements of the statute.

B is correct. The President's decision is unconstitutional, because Article II of the Constitution obligates the President to take care that the laws are faithfully executed. Because the appropriations statute is a valid exercise of Congress's spending power, the President must abide by the requirements of the statute.

C is incorrect. The Constitution does not give the President power to control federal expenditures by refusing to authorize spending directed by Congress. The President's decision is unconstitutional, because Article II of the Constitution obligates the President to take care that the laws are faithfully executed. Because the appropriations statute is a valid exercise of Congress's spending power, the President must abide by the requirements of the statute.

D is incorrect. The President's foreign affairs powers do not justify his refusal to authorize spending directed by Congress. The President's decision is unconstitutional, because Article II of the Constitution obligates the President to take care that the laws are faithfully executed. Because the appropriations statute is a valid exercise of Congress's spending power, the President must abide by the requirements of the statute.

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Question 1535 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A motorist who resided in State A was severely injured in a traffic accident that occurred in State B. The other vehicle involved in the accident was a truck owned by a furniture manufacturer and driven by one of its employees. The manufacturer's headquarters are in State B. Its products are sold by retailers in State A, but it has no office, plant, or agent for service of process there.

The motorist brought an action against the manufacturer in a state court in State A. The manufacturer appeared specially to contest that court's jurisdiction over it. The court ruled that it had jurisdiction over the manufacturer by virtue of State A's long-arm statute.

At trial, the court instructed the jury to apply State A law, under which a plaintiff's contributory negligence is a basis for reducing an award of damages but not for denying recovery altogether. Under State B law, contributory negligence is a complete defense. The jury found that the manufacturer was negligent and that its negligence was a cause of the motorist's injuries. It also found that the motorist was negligent, though to a lesser degree than the manufacturer, and that the motorist's negligence contributed to the accident. It returned a verdict in favor of the motorist and awarded her \$1 million in damages.

The manufacturer appealed the judgment entered on this verdict, asserting error in the court's ruling on jurisdiction and in its application of State A law instead of State B law. The manufacturer raised all federal constitutional claims pertinent to these claims of error. The highest court in State A affirmed the trial court's judgment, and the U.S. Supreme Court denied the manufacturer's petition for a writ of certiorari.

The motorist has brought an action against the manufacturer in a state court in State B to collect on the judgment. The manufacturer has defended on all relevant federal constitutional grounds.

How should the State B court rule?

- A:** For the manufacturer, because a judgment entered by a court that lacks jurisdiction over one of the parties is not entitled to full faith and credit, and the State A court could not constitutionally assert jurisdiction over the manufacturer because of the manufacturer's lack of a presence in that state.
- B:** For the manufacturer, because the State A court was bound by the full faith and credit clause to apply State B law to an accident that occurred in State B and in which a State B company was involved.
- C:** For the motorist, because the manufacturer litigated the issues of jurisdiction and choice of law in the State A court, and the final judgment of that court is entitled to full faith and credit in the State B court.
- D:** For the motorist, because the Supreme Court's denial of certiorari to review the judgment of the highest court in State A conclusively establishes that the manufacturer's federal constitutional claims are invalid.

The explanation for the answer is:

A is incorrect. The jurisdiction of the State A court was litigated in the State A court, and the ruling by that court in favor of jurisdiction is final and must be recognized by the State B court. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

B is incorrect. The full faith and credit clause of the Constitution obligates states to recognize laws enacted by other states, but it does not obligate a state court to apply the laws of another state in cases before it. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

C is correct. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

Question 1535 - Constitutional Law - Relations Between Federal and State Governments

D is incorrect. The Supreme Court's denial of certiorari is not a ruling on the merits of the case; it is simply a decision not to review the case. The State B court should rule for the motorist, however, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

Question 1535 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A motorist who resided in State A was severely injured in a traffic accident that occurred in State B. The other vehicle involved in the accident was a truck owned by a furniture manufacturer and driven by one of its employees. The manufacturer's headquarters are in State B. Its products are sold by retailers in State A, but it has no office, plant, or agent for service of process there.

The motorist brought an action against the manufacturer in a state court in State A. The manufacturer appeared specially to contest that court's jurisdiction over it. The court ruled that it had jurisdiction over the manufacturer by virtue of State A's long-arm statute.

At trial, the court instructed the jury to apply State A law, under which a plaintiff's contributory negligence is a basis for reducing an award of damages but not for denying recovery altogether. Under State B law, contributory negligence is a complete defense. The jury found that the manufacturer was negligent and that its negligence was a cause of the motorist's injuries. It also found that the motorist was negligent, though to a lesser degree than the manufacturer, and that the motorist's negligence contributed to the accident. It returned a verdict in favor of the motorist and awarded her \$1 million in damages.

The manufacturer appealed the judgment entered on this verdict, asserting error in the court's ruling on jurisdiction and in its application of State A law instead of State B law. The manufacturer raised all federal constitutional claims pertinent to these claims of error. The highest court in State A affirmed the trial court's judgment, and the U.S. Supreme Court denied the manufacturer's petition for a writ of certiorari.

The motorist has brought an action against the manufacturer in a state court in State B to collect on the judgment. The manufacturer has defended on all relevant federal constitutional grounds.

How should the State B court rule?

- A:** For the manufacturer, because a judgment entered by a court that lacks jurisdiction over one of the parties is not entitled to full faith and credit, and the State A court could not constitutionally assert jurisdiction over the manufacturer because of the manufacturer's lack of a presence in that state.
- B:** For the manufacturer, because the State A court was bound by the full faith and credit clause to apply State B law to an accident that occurred in State B and in which a State B company was involved.
- C:** For the motorist, because the manufacturer litigated the issues of jurisdiction and choice of law in the State A court, and the final judgment of that court is entitled to full faith and credit in the State B court.
- D:** For the motorist, because the Supreme Court's denial of certiorari to review the judgment of the highest court in State A conclusively establishes that the manufacturer's federal constitutional claims are invalid.

The explanation for the answer is:

A is incorrect. The jurisdiction of the State A court was litigated in the State A court, and the ruling by that court in favor of jurisdiction is final and must be recognized by the State B court. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

B is incorrect. The full faith and credit clause of the Constitution obligates states to recognize laws enacted by other states, but it does not obligate a state court to apply the laws of another state in cases before it. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

C is correct. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

Question 1535 - Constitutional Law - Relations Between Federal and State Governments

D is incorrect. The Supreme Court's denial of certiorari is not a ruling on the merits of the case; it is simply a decision not to review the case. The State B court should rule for the motorist, however, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

Question 1535 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A motorist who resided in State A was severely injured in a traffic accident that occurred in State B. The other vehicle involved in the accident was a truck owned by a furniture manufacturer and driven by one of its employees. The manufacturer's headquarters are in State B. Its products are sold by retailers in State A, but it has no office, plant, or agent for service of process there.

The motorist brought an action against the manufacturer in a state court in State A. The manufacturer appeared specially to contest that court's jurisdiction over it. The court ruled that it had jurisdiction over the manufacturer by virtue of State A's long-arm statute.

At trial, the court instructed the jury to apply State A law, under which a plaintiff's contributory negligence is a basis for reducing an award of damages but not for denying recovery altogether. Under State B law, contributory negligence is a complete defense. The jury found that the manufacturer was negligent and that its negligence was a cause of the motorist's injuries. It also found that the motorist was negligent, though to a lesser degree than the manufacturer, and that the motorist's negligence contributed to the accident. It returned a verdict in favor of the motorist and awarded her \$1 million in damages.

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The motorist has brought an action against the manufacturer in a state court in State B to collect on the judgment. The manufacturer has defended on all relevant federal constitutional grounds.

How should the State B court rule?

- A:** For the manufacturer, because a judgment entered by a court that lacks jurisdiction over one of the parties is not entitled to full faith and credit, and the State A court could not constitutionally assert jurisdiction over the manufacturer because of the manufacturer's lack of a presence in that state.
- B:** For the manufacturer, because the State A court was bound by the full faith and credit clause to apply State B law to an accident that occurred in State B and in which a State B company was involved.
- C:** For the motorist, because the manufacturer litigated the issues of jurisdiction and choice of law in the State A court, and the final judgment of that court is entitled to full faith and credit in the State B court.
- D:** For the motorist, because the Supreme Court's denial of certiorari to review the judgment of the highest court in State A conclusively establishes that the manufacturer's federal constitutional claims are invalid.

The explanation for the answer is:

A is incorrect. The jurisdiction of the State A court was litigated in the State A court, and the ruling by that court in favor of jurisdiction is final and must be recognized by the State B court. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

B is incorrect. The full faith and credit clause of the Constitution obligates states to recognize laws enacted by other states, but it does not obligate a state court to apply the laws of another state in cases before it. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

C is correct. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

Question 1535 - Constitutional Law - Relations Between Federal and State Governments

D is incorrect. The Supreme Court's denial of certiorari is not a ruling on the merits of the case; it is simply a decision not to review the case. The State B court should rule for the motorist, however, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

Question 1535 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A motorist who resided in State A was severely injured in a traffic accident that occurred in State B. The other vehicle involved in the accident was a truck owned by a furniture manufacturer and driven by one of its employees. The manufacturer's headquarters are in State B. Its products are sold by retailers in State A, but it has no office, plant, or agent for service of process there.

The motorist brought an action against the manufacturer in a state court in State A. The manufacturer appeared specially to contest that court's jurisdiction over it. The court ruled that it had jurisdiction over the manufacturer by virtue of State A's long-arm statute.

At trial, the court instructed the jury to apply State A law, under which a plaintiff's contributory negligence is a basis for reducing an award of damages but not for denying recovery altogether. Under State B law, contributory negligence is a complete defense. The jury found that the manufacturer was negligent and that its negligence was a cause of the motorist's injuries. It also found that the motorist was negligent, though to a lesser degree than the manufacturer, and that the motorist's negligence contributed to the accident. It returned a verdict in favor of the motorist and awarded her \$1 million in damages.

The manufacturer appealed the judgment entered on this verdict, asserting error in the court's ruling on jurisdiction and in its application of State A law instead of State B law. The manufacturer raised all federal constitutional claims pertinent to these claims of error. The highest court in State A affirmed the trial court's judgment, and the U.S. Supreme Court denied the manufacturer's petition for a writ of certiorari.

The motorist has brought an action against the manufacturer in a state court in State B to collect on the judgment. The manufacturer has defended on all relevant federal constitutional grounds.

How should the State B court rule?

- A:** For the manufacturer, because a judgment entered by a court that lacks jurisdiction over one of the parties is not entitled to full faith and credit, and the State A court could not constitutionally assert jurisdiction over the manufacturer because of the manufacturer's lack of a presence in that state.
- B:** For the manufacturer, because the State A court was bound by the full faith and credit clause to apply State B law to an accident that occurred in State B and in which a State B company was involved.
- C:** For the motorist, because the manufacturer litigated the issues of jurisdiction and choice of law in the State A court, and the final judgment of that court is entitled to full faith and credit in the State B court.
- D:** For the motorist, because the Supreme Court's denial of certiorari to review the judgment of the highest court in State A conclusively establishes that the manufacturer's federal constitutional claims are invalid.

The explanation for the answer is:

A is incorrect. The jurisdiction of the State A court was litigated in the State A court, and the ruling by that court in favor of jurisdiction is final and must be recognized by the State B court. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

B is incorrect. The full faith and credit clause of the Constitution obligates states to recognize laws enacted by other states, but it does not obligate a state court to apply the laws of another state in cases before it. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

C is correct. The State B court should rule for the motorist, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

Question 1535 - Constitutional Law - Relations Between Federal and State Governments

D is incorrect. The Supreme Court's denial of certiorari is not a ruling on the merits of the case; it is simply a decision not to review the case. The State B court should rule for the motorist, however, because the full faith and credit clause of the Constitution obligates the courts of each state to recognize the final judgments of the courts of every other state. Because the judgment of the State A court is final, it is entitled to full faith and credit in the State B court.

Question 1538 - Constitutional Law - Individual Rights

The question was:

Congress recently enacted a statute creating a program that made federal loans available to family farmers who had been unable to obtain loans from private lenders. Congress appropriated a fixed sum of money to fund loans made pursuant to the program and gave a designated federal agency discretion to decide which applicants were to receive the loans.

Two weeks after the program was established, a family farmer applied to the agency for a loan. Agency officials promptly reviewed her application and summarily denied it.

The farmer has sued the agency in federal district court, claiming only that the denial of her application without the opportunity for a hearing violated the due process clause of the Fifth Amendment. The farmer claims that she could have proved at such a hearing that without the federal loan it would be necessary for her to sell her farm.

Should the court uphold the agency's decision?

- A:** No, because due process requires federal agencies to provide a hearing before making any factual determination that adversely affects an identified individual on the basis of his or her particular circumstances.
B: No, because the denial of a loan may deprive the farmer of an established liberty interest to pursue her chosen occupation.
C: Yes, because the applicable statute gives the farmer no legitimate claim of entitlement to receive a loan.
D: Yes, because the spending clause of Article I, Section 8, gives Congress plenary power to control the distribution of appropriated funds in any manner it wishes.

The explanation for the answer is:

A is incorrect. The due process clause obligates agencies to provide an individual with an opportunity for a hearing only when the agency makes an adjudicatory decision that deprives the individual of a property or liberty interest that is protected by the clause. The court should uphold the agency's decision, because the due process clause does not require the government to provide the farmer an opportunity for an administrative hearing on her loan application. The farmer had no legitimate claim of entitlement to a loan, because the statute gave the agency discretion to decide which applicants were to receive the loans. The agency's denial of the farmer's application therefore did not deprive her of a property or liberty interest protected by the due process clause.

B is incorrect. The farmer's decision to pursue her chosen occupation does not qualify as a liberty interest protected by the due process clause. The court should uphold the agency's decision, because the due process clause does not require the government to provide the farmer an opportunity for an administrative hearing on her loan application. The farmer had no legitimate claim of entitlement to a loan, because the statute gave the agency discretion to decide which applicants were to receive the loans. The agency's denial of the farmer's loan application therefore did not deprive her of a property or liberty interest protected by the due process clause.

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D is incorrect. Although Congress has broad authority to control the distribution of appropriated funds, that authority is subject to many constitutional limitations on the legislative power, including the due process clause of the Fifth Amendment. While the court should uphold the agency's decision, it should do so because the due process clause does not require the government to provide the farmer an opportunity for an administrative hearing on her loan application. The farmer had no legitimate claim of entitlement to a loan, because the statute gave the agency discretion to decide which applicants were to receive the loans. The agency's denial

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Question 1540 - Constitutional Law - Individual Rights

The question was:

A state law provides that only U.S. citizens may serve as jurors in the state courts of that state. A woman who is a lawful resident alien and who has resided in the state for many years was summoned for jury duty in a state court. The woman's name was selected from a list of potential jurors that was compiled from a comprehensive list of local residents. She was disqualified from service solely because she is not a U.S. citizen.

The woman has filed an action for a declaratory judgment that the state law is unconstitutional.

Who should prevail in this action?

- A:** The state, because a state may limit to U.S. citizens functions that are an integral part of the process of self-government.
- B:** The state, because jury service is a privilege, not a right, and therefore it is not a liberty interest protected by the due process clause of the Fourteenth Amendment.
- C:** The woman, because the Constitution gives Congress plenary power to make classifications with respect to aliens.
- D:** The woman, because the state has not articulated a legitimate reason for prohibiting resident aliens from serving as jurors in the state's courts.

The explanation for the answer is:

A is correct. The state should prevail, because the law excluding aliens from jury service is rationally related to the state's legitimate interest in ensuring that only citizens perform functions that are central to self-government. Although strict scrutiny generally applies to state laws that discriminate against aliens, rational basis scrutiny is appropriate when alienage classifications restrict the right to participate in functions that are central to self-government, such as voting, running for office, or serving on a jury.

B is incorrect. Application of the due process clause no longer turns on whether the individual interest involved is a right or a privilege. In any event, the woman's constitutional challenge to the state law should be based on the equal protection clause rather than on the due process clause. While the state should prevail, it is because the law excluding aliens from jury service is rationally related to the state's legitimate interest in ensuring that only citizens perform functions that are central to self-government. Although strict scrutiny generally applies to state laws that discriminate against aliens, rational basis scrutiny is appropriate when alienage classifications restrict the right to participate in functions that are central to self-government, such as voting, running for office, or serving on a jury.

C is incorrect. Although the Constitution gives Congress plenary power to control immigration, states may exercise their police powers to regulate the conduct of aliens within their borders unless the regulation is preempted by federal law or otherwise violates the Constitution. While strict scrutiny generally applies to state laws that discriminate against aliens, rational basis scrutiny is appropriate when alienage classifications restrict the right to participate in functions that are central to self-government, such as voting, running for office, or serving on a jury. The state should prevail here, because the law excluding aliens from jury service is rationally related to the state's legitimate interest in ensuring that only citizens perform functions that are central to self-government.

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- B:** The state, because jury service is a privilege, not a right, and therefore it is not a liberty interest protected by the due process clause of the Fourteenth Amendment.
- C:** The woman, because the Constitution gives Congress plenary power to make classifications with respect to aliens.
- D:** The woman, because the state has not articulated a legitimate reason for prohibiting resident aliens from serving as jurors in the state's courts.

The explanation for the answer is:

A is correct. The state should prevail, because the law excluding aliens from jury service is rationally related to the state's legitimate interest in ensuring that only citizens perform functions that are central to self-government. Although strict scrutiny generally applies to state laws that discriminate against aliens, rational basis scrutiny is appropriate when alienage classifications restrict the right to participate in functions that are central to self-government, such as voting, running for office, or serving on a jury.

B is incorrect. Application of the due process clause no longer turns on whether the individual interest involved is a right or a privilege. In any event, the woman's constitutional challenge to the state law should be based on the equal protection clause rather than on the due process clause. While the state should prevail, it is because the law excluding aliens from jury service is rationally related to the state's legitimate interest in ensuring that only citizens perform functions that are central to self-government. Although strict scrutiny generally applies to state laws that discriminate against aliens, rational basis scrutiny is appropriate when alienage classifications restrict the right to participate in functions that are central to self-government, such as voting, running for office, or serving on a jury.

C is incorrect. Although the Constitution gives Congress plenary power to control immigration, states may exercise their police powers to regulate the conduct of aliens within their borders unless the regulation is preempted by federal law or otherwise violates the Constitution. While strict scrutiny generally applies to state laws that discriminate against aliens, rational basis scrutiny is appropriate when alienage classifications restrict the right to participate in functions that are central to self-government, such as voting, running for office, or serving on a jury. The state should prevail here, because the law excluding aliens from jury service is rationally related to the state's legitimate interest in ensuring that only citizens perform functions that are central to self-government.

D is incorrect. The state should prevail, because the law excluding aliens from jury service is rationally related to the state's legitimate interest in ensuring that only citizens perform functions that are central to self-government. Although strict scrutiny generally applies to state laws that discriminate against aliens, rational basis scrutiny is appropriate when alienage classifications restrict the right to participate in functions that are central to self-government, such as voting, running for office, or serving on a jury.

Question 1545 - Constitutional Law - Individual Rights

The question was:

Congress enacted a statute that made it illegal for "any employee, without the consent of his or her employer, to post on the Internet any information concerning the employer." The purpose of the statute was to prevent employees from revealing their employers' trade secrets.

Is the statute constitutional?

- A:** No, because it is not narrowly tailored to further a compelling government interest.
- B:** No, because it targets a particular medium of communication for special regulation.
- C:** Yes, because it leaves open ample alternative channels of communication.
- D:** Yes, because it prevents employees from engaging in unethical conduct.

The explanation for the answer is:

A is correct. The statute violates the freedom of speech protected by the First Amendment. The statute targets speech based on its content, because it prohibits employees from posting only "information concerning the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to further a compelling government interest. Even if the government's interest in preventing employees from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive means to protect trade secrets.

B is incorrect. The statute does target one medium of communication--Internet postings--and this focus may cause a court to look more closely at the restriction when evaluating its constitutionality. However, a statute does not violate the First Amendment simply because it targets a particular medium. In this case, the statute violates the freedom of speech protected by the First Amendment because it targets speech based on its content; it prohibits employees from posting only "information concerning the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to further a compelling government interest. Even if the government's interest in preventing employees from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive means to protect trade secrets.

C is incorrect. The statute leaves open channels of communication other than the Internet, but this fact does not save the statute. The availability of ample alternative channels of communication is an element of the First Amendment test for evaluating speech restrictions that are content-neutral, but it is not as important with respect to content-based restrictions. In this case, the statute violates the freedom of speech protected by the First Amendment because it targets speech based on its content; it prohibits employees from posting only "information concerning the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to further a compelling government interest. Even if the government's interest in preventing employees from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive means to protect trade secrets.

D is incorrect. The statute may prevent employees from engaging in unethical conduct, but this fact does not save the statute. The statute violates the freedom of speech protected by the First Amendment because it targets speech based on its content; it prohibits employees from posting only "information concerning the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to further a compelling government interest. Even if the government's interest in preventing employees from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive means to protect trade secrets.

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B is incorrect. The statute does target one medium of communication--Internet postings--and this focus may cause a court to look more closely at the restriction when evaluating its constitutionality. However, a statute does not violate the First Amendment simply because it targets a particular medium. In this case, the statute violates the freedom of speech protected by the First Amendment because it targets speech based on its content; it prohibits employees from posting only "information concerning the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to further a compelling government interest. Even if the government's interest in preventing employees from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive means to protect trade secrets.

C is incorrect. The statute leaves open channels of communication other than the Internet, but this fact does not save the statute. The availability of ample alternative channels of communication is an element of the First Amendment test for evaluating speech restrictions that are content-neutral, but it is not as important with respect to content-based restrictions. In this case, the statute violates the freedom of speech protected by the First Amendment because it targets speech based on its content; it prohibits employees from posting only "information concerning the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to further a compelling government interest. Even if the government's interest in preventing employees from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive means to protect trade secrets.

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C is incorrect. The statute leaves open channels of communication other than the Internet, but this fact does not save the statute. The availability of ample alternative channels of communication is an element of the First Amendment test for evaluating speech restrictions that are content-neutral, but it is not as important with respect to content-based restrictions. In this case, the statute violates the freedom of speech protected by the First Amendment because it targets speech based on its content; it prohibits employees from posting only "information concerning the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to further a compelling government interest. Even if the government's interest in preventing employees from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive means to protect trade secrets.

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Question 1553 - Constitutional Law - Individual Rights

The question was:

A state law imposed substantial regulations on insurance companies operating within the state with respect to their rates, cash reserves, and financial practices.

A privately owned insurance company operating within the state advertised that it wanted to hire a new data processor. After reviewing applications for that position, the company hired a woman who appeared to be well qualified. The company refused to consider the application of a man who was better qualified than the woman, because he was known to have radical political views.

The man sued the company, alleging only a violation of his federal constitutional right to freedom of expression.

Is the man likely to prevail?

- A:** No, because hiring decisions are wholly discretionary and thus are not governed by the First Amendment.
- B:** No, because the company is not subject to the provisions of the First and Fourteenth Amendments.
- C:** Yes, because the company is affected with a public interest.
- D:** Yes, because the company is substantially regulated by the state, and thus its employment decisions may fairly be attributed to the state.

The explanation for the answer is:

A is incorrect. The First Amendment applies to discretionary decisions of governments and government officials. The man is unlikely to prevail, but it is because the First and Fourteenth Amendments generally apply only to the actions of governments and government officials, not to the actions of privately owned companies such as the insurance company.

B is correct. The man is unlikely to prevail, because the First and Fourteenth Amendments generally apply only to the actions of governments and government officials, not to the actions of privately owned companies such as the insurance company.

C is incorrect. The question whether the First and Fourteenth Amendments apply to the actions of a privately owned company does not turn on whether the company is affected with a public interest. The man is unlikely to prevail, because the First and Fourteenth Amendments generally apply only to the actions of governments and government officials, not to the actions of privately owned companies such as the insurance company.

D is incorrect. The fact that the company is substantially regulated by the state does not make the company's actions subject to the First and Fourteenth Amendments. The man is unlikely to prevail, because the First and Fourteenth Amendments generally apply only to the actions of governments and government officials, not to the actions of privately owned companies such as the insurance company.

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Question 1559 - Constitutional Law - Individual Rights

The question was:

In order to foster an environment conducive to learning, a school board enacted a dress code that prohibited all public high school students from wearing in school shorts cut above the knee. Because female students at the school considered it unfashionable to wear shorts cut at or below the knee, they no longer wore shorts to school. On the other hand, male students at the school regularly wore shorts cut at or below the knee because they considered such shorts to be fashionable.

Female students sued to challenge the constitutionality of the dress code on the ground that it denied them the equal protection of the laws.

Should the court uphold the dress code?

- A:** No, because the dress code is not necessary to further a compelling state interest.
- B:** No, because the dress code is not substantially related to an important state interest.
- C:** Yes, because the dress code is narrowly tailored to further an important state interest.
- D:** Yes, because the dress code is rationally related to a legitimate state interest.

The explanation for the answer is:

A is incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

B is incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

C is incorrect. While the court should uphold the dress code, it should do so because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

D is correct. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

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B is incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

C is incorrect. While the court should uphold the dress code, it should do so because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

D is correct. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

Question 1559 - Constitutional Law - Individual Rights

The question was:

In order to foster an environment conducive to learning, a school board enacted a dress code that prohibited all public high school students from wearing in school shorts cut above the knee. Because female students at the school considered it unfashionable to wear shorts cut at or below the knee, they no longer wore shorts to school. On the other hand, male students at the school regularly wore shorts cut at or below the knee because they considered such shorts to be fashionable.

Female students sued to challenge the constitutionality of the dress code on the ground that it denied them the equal protection of the laws.

Should the court uphold the dress code?

- A:** No, because the dress code is not necessary to further a compelling state interest.
- B:** No, because the dress code is not substantially related to an important state interest.
- C:** Yes, because the dress code is narrowly tailored to further an important state interest.
- D:** Yes, because the dress code is rationally related to a legitimate state interest.

The explanation for the answer is:

A is incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

B is incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

C is incorrect. While the court should uphold the dress code, it should do so because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

D is correct. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

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- C:** Yes, because the dress code is narrowly tailored to further an important state interest.
- D:** Yes, because the dress code is rationally related to a legitimate state interest.

The explanation for the answer is:

A is incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

B is incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

C is incorrect. While the court should uphold the dress code, it should do so because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

D is correct. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

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The explanation for the answer is:

A is incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

B is incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

C is incorrect. While the court should uphold the dress code, it should do so because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

D is correct. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

Question 1563 - Constitutional Law - Individual Rights

The question was:

A company owned a large tract of land that contained coal deposits that the company intended to mine. The company acquired mining equipment and began to plan its mining operations. Just as the company was about to begin mining, Congress enacted a statute that imposed a number of new environmental regulations and land-reclamation requirements on all mining operations within the United States. The statute made the company's planned mining operations economically infeasible. As a result, the company sold the tract of land to a farmer. While the sale price allowed the company to recover its original investment in the land, it did not cover the additional cost of the mining equipment the company had purchased or the profits it had expected to earn from its mining operations on the land.

In an action filed against the appropriate federal official, the company claims that the statute effected a taking of its property for which it is entitled to just compensation in an amount equal to the cost of the mining equipment it purchased and the profits it expected to earn from its mining operations on the land.

Which of the following is the most appropriate result in the action?

- A:** The company should prevail on its claims for the cost of the mining equipment and for its lost profits.
- B:** The company should prevail on its claim for the cost of the mining equipment, but not for its lost profits.
- C:** The company should prevail on its claim for lost profits, but not for the cost of the mining equipment.
- D:** The company should not prevail on its claim for the cost of the mining equipment or for its lost profits.

The explanation for the answer is:

A is incorrect. The company should not prevail on any aspect of its claim for just compensation. The statute did not effect a taking of the company's land or of the mining equipment, because the new regulations did not deny all economically viable use of the land. The company recovered its original investment in the land by selling it to the farmer, and the land is economically viable as farmland. The company may sell the mining equipment or use it for mining on other land. Finally, the profits the company expected to earn from its mining operations do not constitute a property interest subject to the takings clause.

B is incorrect. The company should not prevail on any aspect of its claim for just compensation. The statute did not effect a taking of the company's land or of the mining equipment, because the new regulations did not deny all economically viable use of the land. The company recovered its original investment in the land by selling it to the farmer, and the land is economically viable as farmland. The company may sell the mining equipment or use it for mining on other land. Finally, the profits the company expected to earn from its mining operations do not constitute a property interest subject to the takings clause.

C is incorrect. The company should not prevail on any aspect of its claim for just compensation. The statute did not effect a taking of the company's land or of the mining equipment, because the new regulations did not deny all economically viable use of the land. The company recovered its original investment in the land by selling it to the farmer, and the land is economically viable as farmland. The company may sell the mining equipment or use it for mining on other land. Finally, the profits the company expected to earn from its mining operations do not constitute a property interest subject to the takings clause.

D is correct. The company should not prevail on any aspect of its claim for just compensation. The statute did not effect a taking of the company's land or of the mining equipment, because the new regulations did not deny all economically viable use of the land. The company recovered its original investment in the land by selling it to the farmer, and the land is economically viable as farmland. The company may sell the mining equipment or use it for mining on other land. Finally, the profits the company expected to earn from its mining operations do not constitute a property interest subject to the takings clause.

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C is incorrect. The company should not prevail on any aspect of its claim for just compensation. The statute did not effect a taking of the company's land or of the mining equipment, because the new regulations did not deny all economically viable use of the land. The company recovered its original investment in the land by selling it to the farmer, and the land is economically viable as farmland. The company may sell the mining equipment or use it for mining on other land. Finally, the profits the company expected to earn from its mining operations do not constitute a property interest subject to the takings clause.

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C is incorrect. The company should not prevail on any aspect of its claim for just compensation. The statute did not effect a taking of the company's land or of the mining equipment, because the new regulations did not deny all economically viable use of the land. The company recovered its original investment in the land by selling it to the farmer, and the land is economically viable as farmland. The company may sell the mining equipment or use it for mining on other land. Finally, the profits the company expected to earn from its mining operations do not constitute a property interest subject to the takings clause.

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C is incorrect. The company should not prevail on any aspect of its claim for just compensation. The statute did not effect a taking of the company's land or of the mining equipment, because the new regulations did not deny all economically viable use of the land. The company recovered its original investment in the land by selling it to the farmer, and the land is economically viable as farmland. The company may sell the mining equipment or use it for mining on other land. Finally, the profits the company expected to earn from its mining operations do not constitute a property interest subject to the takings clause.

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In an action filed against the appropriate federal official, the company claims that the statute effected a taking of its property for which it is entitled to just compensation in an amount equal to the cost of the mining equipment it purchased and the profits it expected to earn from its mining operations on the land.

Which of the following is the most appropriate result in the action?

- A:** The company should prevail on its claims for the cost of the mining equipment and for its lost profits.
- B:** The company should prevail on its claim for the cost of the mining equipment, but not for its lost profits.
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A is incorrect. The company should not prevail on any aspect of its claim for just compensation. The statute did not effect a taking of the company's land or of the mining equipment, because the new regulations did not deny all economically viable use of the land. The company recovered its original investment in the land by selling it to the farmer, and the land is economically viable as farmland. The company may sell the mining equipment or use it for mining on other land. Finally, the profits the company expected to earn from its mining operations do not constitute a property interest subject to the takings clause.

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C is incorrect. The company should not prevail on any aspect of its claim for just compensation. The statute did not effect a taking of the company's land or of the mining equipment, because the new regulations did not deny all economically viable use of the land. The company recovered its original investment in the land by selling it to the farmer, and the land is economically viable as farmland. The company may sell the mining equipment or use it for mining on other land. Finally, the profits the company expected to earn from its mining operations do not constitute a property interest subject to the takings clause.

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Question 1567 - Constitutional Law - Individual Rights

The question was:

A number of psychotherapists routinely send mailings to victims of car accidents informing the victims of the possibility of developing post-traumatic stress disorder (PTSD) as the result of the accidents, and offering psychotherapy services. Although PTSD is a possible result of a car accident, it is not common.

Many accident victims in a particular state who received the mailings complained that the mailings were disturbing and were an invasion of their privacy. These victims also reported that as a result of the mailings, their regard for psychotherapists and for psychotherapy as a form of treatment had diminished. In response, the state enacted a law prohibiting any licensed psychotherapist from sending mailings that raised the concern of PTSD to any car accident victim in the state until 30 days after the accident. The state justified the law as an effort to address the victims' complaints as well as to protect the reputation of psychotherapy as a form of treatment.

Is this law constitutional?

- A:** No, because the law singles out one type of message for prohibition while allowing others.
- B:** No, because the mailings provide information to consumers.
- C:** Yes, because mailings suggesting the possibility of developing PTSD as the result of an accident are misleading.
- D:** Yes, because the law protects the privacy of accident victims and the public regard for psychotherapy without being substantially more restrictive than necessary.

The explanation for the answer is:

A is incorrect. It is true that the law singles out one type of message for prohibition while allowing other types. Such content-based restrictions on speech typically are subjected to strict judicial scrutiny and are invalidated. This law, however, is subject to a less exacting form of judicial scrutiny because it restricts commercial speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings qualify as commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

B is incorrect. The fact that the mailings provide information to consumers entitles the mailings to First Amendment protection. However, because the mailings advertise the services of psychotherapists, they contain commercial speech and therefore are entitled to less constitutional protection than other forms of speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

C is incorrect. Misleading commercial speech is not protected by the First Amendment, and governments therefore are free to restrict such speech. The mailings in this case are not misleading, however, because the facts state that "PTSD is a possible result" of car accidents.

Question 1567 - Constitutional Law - Individual Rights

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings qualify as commercial speech because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

D is correct. The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings contain commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

Question 1567 - Constitutional Law - Individual Rights

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A number of psychotherapists routinely send mailings to victims of car accidents informing the victims of the possibility of developing post-traumatic stress disorder (PTSD) as the result of the accidents, and offering psychotherapy services. Although PTSD is a possible result of a car accident, it is not common.

Many accident victims in a particular state who received the mailings complained that the mailings were disturbing and were an invasion of their privacy. These victims also reported that as a result of the mailings, their regard for psychotherapists and for psychotherapy as a form of treatment had diminished. In response, the state enacted a law prohibiting any licensed psychotherapist from sending mailings that raised the concern of PTSD to any car accident victim in the state until 30 days after the accident. The state justified the law as an effort to address the victims' complaints as well as to protect the reputation of psychotherapy as a form of treatment.

Is this law constitutional?

A: No, because the law singles out one type of message for prohibition while allowing others.

B: No, because the mailings provide information to consumers.

C: Yes, because mailings suggesting the possibility of developing PTSD as the result of an accident are misleading.

D: Yes, because the law protects the privacy of accident victims and the public regard for psychotherapy without being substantially more restrictive than necessary.

The explanation for the answer is:

A is incorrect. It is true that the law singles out one type of message for prohibition while allowing other types. Such content-based restrictions on speech typically are subjected to strict judicial scrutiny and are invalidated. This law, however, is subject to a less exacting form of judicial scrutiny because it restricts commercial speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings qualify as commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

B is incorrect. The fact that the mailings provide information to consumers entitles the mailings to First Amendment protection. However, because the mailings advertise the services of psychotherapists, they contain commercial speech and therefore are entitled to less constitutional protection than other forms of speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

C is incorrect. Misleading commercial speech is not protected by the First Amendment, and governments therefore are free to restrict such speech. The mailings in this case are not misleading, however, because the facts state that "PTSD is a possible result" of car accidents.

Question 1567 - Constitutional Law - Individual Rights

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D is correct. The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings contain commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

Question 1567 - Constitutional Law - Individual Rights

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A number of psychotherapists routinely send mailings to victims of car accidents informing the victims of the possibility of developing post-traumatic stress disorder (PTSD) as the result of the accidents, and offering psychotherapy services. Although PTSD is a possible result of a car accident, it is not common.

Many accident victims in a particular state who received the mailings complained that the mailings were disturbing and were an invasion of their privacy. These victims also reported that as a result of the mailings, their regard for psychotherapists and for psychotherapy as a form of treatment had diminished. In response, the state enacted a law prohibiting any licensed psychotherapist from sending mailings that raised the concern of PTSD to any car accident victim in the state until 30 days after the accident. The state justified the law as an effort to address the victims' complaints as well as to protect the reputation of psychotherapy as a form of treatment.

Is this law constitutional?

A: No, because the law singles out one type of message for prohibition while allowing others.

B: No, because the mailings provide information to consumers.

C: Yes, because mailings suggesting the possibility of developing PTSD as the result of an accident are misleading.

D: Yes, because the law protects the privacy of accident victims and the public regard for psychotherapy without being substantially more restrictive than necessary.

The explanation for the answer is:

A is incorrect. It is true that the law singles out one type of message for prohibition while allowing other types. Such content-based restrictions on speech typically are subjected to strict judicial scrutiny and are invalidated. This law, however, is subject to a less exacting form of judicial scrutiny because it restricts commercial speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings qualify as commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

B is incorrect. The fact that the mailings provide information to consumers entitles the mailings to First Amendment protection. However, because the mailings advertise the services of psychotherapists, they contain commercial speech and therefore are entitled to less constitutional protection than other forms of speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

C is incorrect. Misleading commercial speech is not protected by the First Amendment, and governments therefore are free to restrict such speech. The mailings in this case are not misleading, however, because the facts state that "PTSD is a possible result" of car accidents.

Question 1567 - Constitutional Law - Individual Rights

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings qualify as commercial speech because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

D is correct. The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings contain commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

Question 1567 - Constitutional Law - Individual Rights

The question was:

A number of psychotherapists routinely send mailings to victims of car accidents informing the victims of the possibility of developing post-traumatic stress disorder (PTSD) as the result of the accidents, and offering psychotherapy services. Although PTSD is a possible result of a car accident, it is not common.

Many accident victims in a particular state who received the mailings complained that the mailings were disturbing and were an invasion of their privacy. These victims also reported that as a result of the mailings, their regard for psychotherapists and for psychotherapy as a form of treatment had diminished. In response, the state enacted a law prohibiting any licensed psychotherapist from sending mailings that raised the concern of PTSD to any car accident victim in the state until 30 days after the accident. The state justified the law as an effort to address the victims' complaints as well as to protect the reputation of psychotherapy as a form of treatment.

Is this law constitutional?

- A:** No, because the law singles out one type of message for prohibition while allowing others.
- B:** No, because the mailings provide information to consumers.
- C:** Yes, because mailings suggesting the possibility of developing PTSD as the result of an accident are misleading.
- D:** Yes, because the law protects the privacy of accident victims and the public regard for psychotherapy without being substantially more restrictive than necessary.

The explanation for the answer is:

A is incorrect. It is true that the law singles out one type of message for prohibition while allowing other types. Such content-based restrictions on speech typically are subjected to strict judicial scrutiny and are invalidated. This law, however, is subject to a less exacting form of judicial scrutiny because it restricts commercial speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings qualify as commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

B is incorrect. The fact that the mailings provide information to consumers entitles the mailings to First Amendment protection. However, because the mailings advertise the services of psychotherapists, they contain commercial speech and therefore are entitled to less constitutional protection than other forms of speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

C is incorrect. Misleading commercial speech is not protected by the First Amendment, and governments therefore are free to restrict such speech. The mailings in this case are not misleading, however, because the facts state that "PTSD is a possible result" of car accidents.

Question 1567 - Constitutional Law - Individual Rights

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings qualify as commercial speech because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

D is correct. The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings contain commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

Question 1567 - Constitutional Law - Individual Rights

The question was:

A number of psychotherapists routinely send mailings to victims of car accidents informing the victims of the possibility of developing post-traumatic stress disorder (PTSD) as the result of the accidents, and offering psychotherapy services. Although PTSD is a possible result of a car accident, it is not common.

Many accident victims in a particular state who received the mailings complained that the mailings were disturbing and were an invasion of their privacy. These victims also reported that as a result of the mailings, their regard for psychotherapists and for psychotherapy as a form of treatment had diminished. In response, the state enacted a law prohibiting any licensed psychotherapist from sending mailings that raised the concern of PTSD to any car accident victim in the state until 30 days after the accident. The state justified the law as an effort to address the victims' complaints as well as to protect the reputation of psychotherapy as a form of treatment.

Is this law constitutional?

- A:** No, because the law singles out one type of message for prohibition while allowing others.
- B:** No, because the mailings provide information to consumers.
- C:** Yes, because mailings suggesting the possibility of developing PTSD as the result of an accident are misleading.
- D:** Yes, because the law protects the privacy of accident victims and the public regard for psychotherapy without being substantially more restrictive than necessary.

The explanation for the answer is:

A is incorrect. It is true that the law singles out one type of message for prohibition while allowing other types. Such content-based restrictions on speech typically are subjected to strict judicial scrutiny and are invalidated. This law, however, is subject to a less exacting form of judicial scrutiny because it restricts commercial speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings qualify as commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

B is incorrect. The fact that the mailings provide information to consumers entitles the mailings to First Amendment protection. However, because the mailings advertise the services of psychotherapists, they contain commercial speech and therefore are entitled to less constitutional protection than other forms of speech.

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

C is incorrect. Misleading commercial speech is not protected by the First Amendment, and governments therefore are free to restrict such speech. The mailings in this case are not misleading, however, because the facts state that "PTSD is a possible result" of car accidents.

Question 1567 - Constitutional Law - Individual Rights

The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings qualify as commercial speech because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

D is correct. The law is constitutional, because it satisfies the First Amendment standards for government restrictions on commercial speech. The mailings contain commercial speech, because they advertise services provided by the psychotherapists. A restriction on commercial speech is subject to a form of intermediate judicial scrutiny, requiring the government to show that the restriction directly advances an important government interest and that the restriction is not substantially more extensive than necessary to protect that interest. The law here satisfies that standard; the 30-day waiting period for the psychotherapists' mailings narrowly serves the government's substantial interests in protecting both the privacy of accident victims and the public regard for psychotherapy.

Question 1574 - Constitutional Law - Individual Rights

The question was:

A clerical employee of a city water department was responsible for sending out water bills to customers. His work in this respect had always been satisfactory.

The employee's sister ran in a recent election against the incumbent mayor, but she lost. The employee had supported his sister in the election campaign. After the mayor found out about this, she fired the employee solely because his support for the sister indicated that he was "disloyal" to the mayor. The city's charter provides that "all employees of the city work at the pleasure of the mayor."

Is the mayor's action constitutional?

- A:** No, because public employees have a property interest in their employment, which gives them a right to a hearing prior to discharge.
B: No, because the mayor's action violates the employee's right to freedom of expression and association.
C: Yes, because the employee has no property interest in his job since the city charter provides that he holds the job "at the pleasure of the mayor."
D: Yes, because the mayor may require members of her administration to be politically loyal to her.

The explanation for the answer is:

A is incorrect. A public employee has a property interest in his or her employment if the employee can be fired only for cause. Because the city's charter provides that "all employees of the city work at the pleasure of the mayor," the clerical employee does not have a property interest in his employment.

Nevertheless, the mayor's action is unconstitutional, because it violates the employee's right to freedom of expression and association protected by the First Amendment. The U.S. Supreme Court has held that the government may not fire an employee because of the employee's political views or affiliations unless certain political views or affiliations are required for the effective performance of the employee's job. The political views or affiliations of a clerical employee of a city water department are not relevant to the employee's job, and thus the employee may not be fired because of them.

B is correct. The mayor's action is unconstitutional, because it violates the employee's right to freedom of expression and association protected by the First Amendment. The U.S. Supreme Court has held that the government may not fire an employee because of the employee's political views or affiliations unless certain political views or affiliations are required for the effective performance of the employee's job. The political views or affiliations of a clerical employee of a city water department are not relevant to the employee's job, and thus the employee may not be fired because of them.

C is incorrect. It is true that the employee has no property interest in his job, and therefore he is not entitled to the constitutional protections of procedural due process. Nevertheless, the mayor's action is unconstitutional, because it violates the employee's right to freedom of expression and association protected by the First Amendment. The U.S. Supreme Court has held that the government may not fire an employee because of the employee's political views or affiliations unless certain political views or affiliations are required for the effective performance of the employee's job. The political views or affiliations of a clerical employee of a city water department are not relevant to the employee's job, and thus the employee may not be fired because of them.

D is incorrect. The mayor may require members of her administration to be politically loyal to her only if political loyalty is required for the effective performance of the job in question. The U.S. Supreme Court has held that the government may not fire an employee because of the employee's political views or affiliations unless certain political views or affiliations are required for the effective performance of the employee's job. The political views or affiliations of a clerical employee of a city water department are not relevant to the employee's job, and thus the employee may not be fired because of them. The mayor's action is unconstitutional, because it violates the employee's right to freedom of expression and association protected by the First Amendment.

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A clerical employee of a city water department was responsible for sending out water bills to customers. His work in this respect had always been satisfactory.

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A clerical employee of a city water department was responsible for sending out water bills to customers. His work in this respect had always been satisfactory.

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Question 1574 - Constitutional Law - Individual Rights

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A clerical employee of a city water department was responsible for sending out water bills to customers. His work in this respect had always been satisfactory.

The employee's sister ran in a recent election against the incumbent mayor, but she lost. The employee had supported his sister in the election campaign. After the mayor found out about this, she fired the employee solely because his support for the sister indicated that he was "disloyal" to the mayor. The city's charter provides that "all employees of the city work at the pleasure of the mayor."

Is the mayor's action constitutional?

- A:** No, because public employees have a property interest in their employment, which gives them a right to a hearing prior to discharge.
- B:** No, because the mayor's action violates the employee's right to freedom of expression and association.
- C:** Yes, because the employee has no property interest in his job since the city charter provides that he holds the job "at the pleasure of the mayor."
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A is incorrect. A public employee has a property interest in his or her employment if the employee can be fired only for cause. Because the city's charter provides that "all employees of the city work at the pleasure of the mayor," the clerical employee does not have a property interest in his employment.

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The employee's sister ran in a recent election against the incumbent mayor, but she lost. The employee had supported his sister in the election campaign. After the mayor found out about this, she fired the employee solely because his support for the sister indicated that he was "disloyal" to the mayor. The city's charter provides that "all employees of the city work at the pleasure of the mayor."

Is the mayor's action constitutional?

- A:** No, because public employees have a property interest in their employment, which gives them a right to a hearing prior to discharge.
B: No, because the mayor's action violates the employee's right to freedom of expression and association.
C: Yes, because the employee has no property interest in his job since the city charter provides that he holds the job "at the pleasure of the mayor."
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The explanation for the answer is:

A is incorrect. A public employee has a property interest in his or her employment if the employee can be fired only for cause. Because the city's charter provides that "all employees of the city work at the pleasure of the mayor," the clerical employee does not have a property interest in his employment.

Nevertheless, the mayor's action is unconstitutional, because it violates the employee's right to freedom of expression and association protected by the First Amendment. The U.S. Supreme Court has held that the government may not fire an employee because of the employee's political views or affiliations unless certain political views or affiliations are required for the effective performance of the employee's job. The political views or affiliations of a clerical employee of a city water department are not relevant to the employee's job, and thus the employee may not be fired because of them.

B is correct. The mayor's action is unconstitutional, because it violates the employee's right to freedom of expression and association protected by the First Amendment. The U.S. Supreme Court has held that the government may not fire an employee because of the employee's political views or affiliations unless certain political views or affiliations are required for the effective performance of the employee's job. The political views or affiliations of a clerical employee of a city water department are not relevant to the employee's job, and thus the employee may not be fired because of them.

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D is incorrect. The mayor may require members of her administration to be politically loyal to her only if political loyalty is required for the effective performance of the job in question. The U.S. Supreme Court has held that the government may not fire an employee because of the employee's political views or affiliations unless certain political views or affiliations are required for the effective performance of the employee's job. The political views or affiliations of a clerical employee of a city water department are not relevant to the employee's job, and thus the employee may not be fired because of them. The mayor's action is unconstitutional, because it violates the employee's right to freedom of expression and association protected by the First Amendment.

Question 1580 - Constitutional Law - Individual Rights

The question was:

An environmental organization's stated mission is to support environmental causes. The organization's membership is generally open to the public, but its bylaws permit its officers to refuse to admit anyone to membership who does not adhere to the organization's mission statement.

In a recent state administrative proceeding, the organization opposed plans to begin mining operations in the mountains surrounding a small town. Its opposition prevented the mine from being opened on schedule. In an effort to force the organization to withdraw its opposition, certain residents of the town attended a meeting of the organization and tried to become members, but the officers refused to admit them. The residents sued the organization, claiming that the refusal to admit them was discriminatory and violated a local ordinance that prohibits any organization from discriminating on the basis of an individual's political views. The organization responded that the ordinance is unconstitutional as applied to its membership decisions.

Are the residents likely to prevail in their claim?

A: No, because the membership policies of a private organization are not state action.

B: No, because the organization's right to freedom of association allows it to refuse to admit potential members who do not adhere to its mission statement.

C: Yes, because the action of the officers in refusing to admit the residents as members violates equal protection of the laws.

D: Yes, because the ordinance serves the compelling interest of protecting the residents' free speech rights.

The explanation for the answer is:

A is incorrect. It is true that the membership policies of a private organization are not state action. The local ordinance on which the residents base their suit is state action, however, and it is subject to the requirements of the First Amendment.

The residents are not likely to prevail in their claim, because it would violate the environmental organization's First Amendment right to freedom of association if the state were to force the organization to accept the residents as members. The U.S. Supreme Court has held that the forced inclusion of an unwanted person in a group violates the group's freedom of association if including that person would significantly affect the group's ability to express its viewpoints. The freedom of association entitles the environmental organization to refuse membership to the residents, because admitting them would effect a change in the organization's viewpoint on the mining operations.

B is correct. The residents are not likely to prevail in their claim, because it would violate the environmental organization's First Amendment right to freedom of association if the state were to force the organization to accept the residents as members. The U.S. Supreme Court has held that the forced inclusion of an unwanted person in a group violates the group's freedom of association if including that person would significantly affect the group's ability to express its viewpoints. The freedom of association entitles the environmental organization to refuse membership to the residents, because admitting them would effect a change in the organization's viewpoint on the mining operations.

C is incorrect. The action of the officers in refusing to admit the residents as members is not subject to the equal protection clause, because the environmental organization is a private entity, and therefore the conduct of the organization's officers does not constitute state action.

The residents are not likely to prevail in their claim, because it would violate the environmental organization's First Amendment right to freedom of association if the state were to force the organization to accept the residents as members. The U.S. Supreme Court has held that the forced inclusion of an unwanted person in a group violates the group's freedom of association if including that person would significantly affect the group's ability to express its viewpoints. The freedom of association entitles the environmental organization to refuse membership to the residents, because admitting them would effect a change in the organization's viewpoint on the mining operations.

Question 1580 - Constitutional Law - Individual Rights

D is incorrect. The U.S. Supreme Court has held that even statutes that support compelling interests do not justify the severe burden on an organization's freedom of association that would result from forcing an organization to accept members who would significantly affect the organization's ability to express its viewpoints.

The residents are not likely to prevail in their claim, because it would violate the environmental organization's First Amendment right to freedom of association if the state were to force the organization to accept the residents as members. The U.S. Supreme Court has held that the forced inclusion of an unwanted person in a group violates the group's freedom of association if including that person would significantly affect the group's ability to express its viewpoints. The freedom of association entitles the environmental organization to refuse membership to the residents, because admitting them would effect a change in the organization's viewpoint on the mining operations.

Question 1580 - Constitutional Law - Individual Rights

The question was:

An environmental organization's stated mission is to support environmental causes. The organization's membership is generally open to the public, but its bylaws permit its officers to refuse to admit anyone to membership who does not adhere to the organization's mission statement.

In a recent state administrative proceeding, the organization opposed plans to begin mining operations in the mountains surrounding a small town. Its opposition prevented the mine from being opened on schedule. In an effort to force the organization to withdraw its opposition, certain residents of the town attended a meeting of the organization and tried to become members, but the officers refused to admit them. The residents sued the organization, claiming that the refusal to admit them was discriminatory and violated a local ordinance that prohibits any organization from discriminating on the basis of an individual's political views. The organization responded that the ordinance is unconstitutional as applied to its membership decisions.

Are the residents likely to prevail in their claim?

A: No, because the membership policies of a private organization are not state action.

B: No, because the organization's right to freedom of association allows it to refuse to admit potential members who do not adhere to its mission statement.

C: Yes, because the action of the officers in refusing to admit the residents as members violates equal protection of the laws.

D: Yes, because the ordinance serves the compelling interest of protecting the residents' free speech rights.

The explanation for the answer is:

A is incorrect. It is true that the membership policies of a private organization are not state action. The local ordinance on which the residents base their suit is state action, however, and it is subject to the requirements of the First Amendment.

The residents are not likely to prevail in their claim, because it would violate the environmental organization's First Amendment right to freedom of association if the state were to force the organization to accept the residents as members. The U.S. Supreme Court has held that the forced inclusion of an unwanted person in a group violates the group's freedom of association if including that person would significantly affect the group's ability to express its viewpoints. The freedom of association entitles the environmental organization to refuse membership to the residents, because admitting them would effect a change in the organization's viewpoint on the mining operations.

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C is incorrect. The action of the officers in refusing to admit the residents as members is not subject to the equal protection clause, because the environmental organization is a private entity, and therefore the conduct of the organization's officers does not constitute state action.

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Question 1580 - Constitutional Law - Individual Rights

D is incorrect. The U.S. Supreme Court has held that even statutes that support compelling interests do not justify the severe burden on an organization's freedom of association that would result from forcing an organization to accept members who would significantly affect the organization's ability to express its viewpoints.

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Question 1580 - Constitutional Law - Individual Rights

The question was:

An environmental organization's stated mission is to support environmental causes. The organization's membership is generally open to the public, but its bylaws permit its officers to refuse to admit anyone to membership who does not adhere to the organization's mission statement.

In a recent state administrative proceeding, the organization opposed plans to begin mining operations in the mountains surrounding a small town. Its opposition prevented the mine from being opened on schedule. In an effort to force the organization to withdraw its opposition, certain residents of the town attended a meeting of the organization and tried to become members, but the officers refused to admit them. The residents sued the organization, claiming that the refusal to admit them was discriminatory and violated a local ordinance that prohibits any organization from discriminating on the basis of an individual's political views. The organization responded that the ordinance is unconstitutional as applied to its membership decisions.

Are the residents likely to prevail in their claim?

A: No, because the membership policies of a private organization are not state action.

B: No, because the organization's right to freedom of association allows it to refuse to admit potential members who do not adhere to its mission statement.

C: Yes, because the action of the officers in refusing to admit the residents as members violates equal protection of the laws.

D: Yes, because the ordinance serves the compelling interest of protecting the residents' free speech rights.

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Question 1588 - Constitutional Law - Relations Between Federal and State Governments

The question was:

A fatal virus recently infected poultry in several nations. Some scientific evidence indicates that the virus can be transmitted from poultry to humans.

Poultry farming is a major industry in several U.S. states. In one such state, the legislature has enacted a law imposing a fee of two cents per bird on all poultry farming and processing operations in the state. The purpose of the fee is to pay for a state inspection system to ensure that no poultry raised or processed in the state is infected with the virus.

A company that has poultry processing plants both in the state and in other states has sued to challenge the fee.

Is the fee constitutional?

A: No, because although it attaches only to intrastate activity, in the aggregate, the fee substantially affects interstate commerce.

B: No, because it places an undue burden on interstate commerce in violation of the negative implications of the commerce clause.

C: Yes, because it applies only to activities that take place wholly within the state, and it does not unduly burden interstate commerce.

D: Yes, because it was enacted pursuant to the state's police power, which takes precedence over the negative implications of the commerce clause.

The explanation for the answer is:

A is incorrect. Having a substantial effect on interstate commerce does not make the fee unconstitutional. The fee in this case is constitutional, because it does not violate the negative implications of the commerce clause: it does not discriminate against interstate commerce, and its burden on interstate commerce is not clearly excessive in relation to the legitimate public health benefit the inspection system will bring to the state.

B is incorrect. The fee does not violate the negative implications of the commerce clause, because it does not discriminate against interstate commerce, and its burden on interstate commerce is not clearly excessive in relation to the legitimate public health benefit the inspection system will bring to the state. The fee is therefore constitutional.

C is correct. The fee does not violate the negative implications of the commerce clause, because it does not discriminate against interstate commerce, and its burden on interstate commerce is not clearly excessive in relation to the legitimate public health benefit the inspection system will bring to the state.

D is incorrect. The fee was enacted pursuant to the state's police power, but the supremacy clause of the Constitution prohibits state laws that violate federal constitutional limits on state authority. The fee is constitutional, nonetheless, because it does not violate the negative implications of the commerce clause: it does not discriminate against interstate commerce, and its burden on interstate commerce is not clearly excessive in relation to the legitimate public health benefit the inspection system will bring to the state.

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