The State Bar of California

California Bar Exam
Multiple-Choice Question (MCQ) Exam
Student Guide

Revised February 6, 2025

Contents

This student guide is provided to California Bar Exam applicants as they prepare for the exam.

CALIFORNIA BAR EXAM
MULTIPLE-CHOICE QUESTION EXAM CONTENT MAP
CIVIL PROCEDURE

The topics listed below are illustrative of those covered in Federal Civil Procedure, but are not exhaustive. Applicants should assume that the Federal Rules of Civil Procedure and the provisions of Title 28 of the U.S. Code relating to jurisdiction and venue have been adopted and apply, unless the question specifies otherwise. Applicants should assume that all references to the Constitution, including the term "constitutional," are to the federal Constitution unless otherwise specified. The percentages listed next to each section represent the approximate percentage of questions on the exam that will be drawn from this subject.

I. Federal Subject-Matter Jurisdiction – 4%
- A. Diversity Jurisdiction
- B. Federal-Question Jurisdiction
- C. Supplemental Jurisdiction

II. Personal Jurisdiction – 4%
- A. Specific and General Jurisdiction
- B. Traditional Bases for Personal Jurisdiction
  1. Consent
  2. Service
  3. Domicile
- C. Modern Due Process or Constitutional Tests
  1. Long-arm statutes
  2. Minimum contacts test
  3. Substantial business

III. Removal and Remand – 4%
- A. Removal to Federal Court
- B. Remand to State Court

IV. Notice and Service of Process – 4%
- A. Due Process Notice Requirements
- B. Service of Process
- C. Waiver of Service

V. Venue – 4%
- A. Venue
- B. Transfer
- C. *Forum non conveniens*

VI. State Law Applied in Federal Courts – 9%
- A. *Erie* Doctrine
- B. Federal Common Law

VII. Pretrial Procedures – 22%
- A. Pleadings
  1. Complaint
  2. Answer
  3. Counterclaims
  4. Crossclaims
  5. Other pleadings

B. Amendment of Pleadings
C. Multiple Parties and Claims
    1. Joinder of claims
    2. Joinder of parties
    3. Class actions
D. Discovery
    1. Initial disclosures
    2. Devices
    3. Scope of discovery
    4. E-Discovery
    5. Privileges
    6. Inadvertent disclosure
    7. Sanctions
E. Rule 11
F. Pretrial Conferences and Orders
G. Disposition without Trial
    1. Voluntary dismissal
    2. Involuntary dismissal
    3. Summary judgment
    4. Default judgment
    5. Preliminary injunctions, permanent injunctions, and temporary restraining orders

VIII. Motions – 22%

A. Pretrial Motions
    1. Motion for judgment on the pleadings
    2. Motion for more definite statement
    3. Motion to strike
    4. Motions to dismiss
    5. Summary judgment motion
B. Trial and Post-Trial Motions
    1. Motion for Judgment as a Matter of Law
    2. Renewed Motion for Judgment as a Matter of Law
    3. Motion for relief from judgment or order
    4. Motion for new trial
    5. Remittitur/additur

IX. Trial – 9%

A. Right to Jury Trial
B. Demand for Jury Trial
C. Jury Selection
D. Jury Instructions

X. Judgments and Verdicts – 9%

A. Types of Jury Verdicts
B. Judicial Findings and Conclusions
C. Issue and Claim Preclusion
D. Defaults
E. Dismissals

XI. Appeal and Review – 9%

A. Interlocutory Review
    1. Final judgment rule
B. Finality of Judgment
C. Scope of Review

CALIFORNIA BAR EXAM
MULTIPLE-CHOICE QUESTION EXAM CONTENT MAP
CONSTITUTIONAL LAW

The topics listed below are illustrative of those covered in Constitutional Law, but are not exhaustive. Applicants should assume that all references to the Constitution, including the term "constitutional," are to the federal Constitution unless otherwise specified. The percentages listed next to each section represent the approximate percentage of questions on the exam that will be drawn from this subject.

I. Separation of Powers – 17%

- A. Legislative Branch
  1. Taxing and spending power
  2. War power
  3. Commerce power
  4. "Necessary and Proper" Clause power
  5. Investigatory power
  6. Property power
  7. Thirteenth, Fourteenth, and Fifteenth Amendments
  8. Delegation Clause
- B. Executive Branch
  1. Commander-in-chief
  2. Chief executive
  3. Treaties and foreign affairs
  4. Appointment and removal
  5. Veto
  6. Pardon
  7. Executive privilege
  8. Executive immunity
- C. Interbranch Checks and Balances
  1. Impeachment and other Congressional limits on executive
  2. Veto and similar powers
  3. Executive, congressional, and judicial privileges and immunities
     a. Speech and Debate Clause

II. Judicial Review – 17%

- A. Organization of Courts
  1. Constitutional basis
  2. Organization
- B. Jurisdiction of Courts
  1. Constitutional limitations and justiciability
     a. Standing
     b. Ripeness
     c. Mootness
     d. Adequate and independent state grounds
     e. Abstention
     f. Political questions
     g. Advisory opinions
  2. Congressional limitations
     a. Eleventh Amendment

III. The Federal-State Relationship – 16%

- A. Preemption and Consent
- B. Intergovernmental Immunities
- C. Supremacy Clause

D. Tenth Amendment and the Scope of State Authority
    1. Tenth Amendment
    2. Dormant Commerce Clause
    3. State taxation

IV. Individual Rights – 50%

A. State Action Requirement
B. Due Process Clause
    1. Incorporation of Bill of Rights through the Fourteenth Amendment
    2. Substantive due process
        a. Fundamental rights
    3. Procedural due process
C. Equal Protection Clause
    1. Fundamental rights
    2. Establishing discrimination
    3. Strict scrutiny (suspect) classifications
    4. Intermediate scrutiny (*quasi*-suspect) classifications
    5. Rational basis review classifications
D. Privileges and Immunities of Citizens
    1. Privileges or Immunities Clause of the Fourteenth Amendment
    2. Privileges and Immunities Clause of Article IV, Section 2
E. First Amendment Protections
    1. Freedom of religion
        a. Prohibition against the establishment of religion
        b. Free exercise of religion
    2. Freedom of speech and expression
        a. Content-based / content-neutral
        b. Public forum / non-public forum
        c. Time, place, and manner regulation
        d. Vagueness / overbreadth
        e. Prior restraint
        f. Symbolic expression
        g. Political speech
        h. Compelled / coerced speech
        i. Regulation of commercial speech
        j. Regulation of unprotected speech
            (1) Obscenity
            (2) Incitement to illegal activity
            (3) Fighting words
            (4) Defamation
            (5) Fraud and perjury
            (6) Speech integral to criminal conduct (“true threats”)
        k. Regulation of speech by public employees
        l. Regulation of sexual speech
        m. Regulation of public schools and student speech
    3. Freedom of the press
    4. Freedom of association
        a. Public employment
F. Other Protections
    1. Bills of attainder
    2. *Ex post facto* laws
    3. Contracts Clause
    4. Eminent domain—Takings Clause

CALIFORNIA BAR EXAM
MULTIPLE-CHOICE QUESTION EXAM CONTENT MAP
CONTRACTS

The topics listed below are illustrative of those covered in Contracts, but are not exhaustive. Applicants should assume that the rules of Articles 1 and 2 of the Uniform Commercial Code have been adopted and apply. These rules will account for approximately 25% of the questions on the exam related to contracts. The percentages listed next to each section represent the approximate percentage of questions on the exam that will be drawn from this subject.

I. Introductory Principles / Applicable Law – 5%
- A. Sources of Law
  - 1. Uniform Commercial Code (UCC)
    - a. Merchants
  - 2. Common law
- B. Types of Agreements
  - 1. Bilateral contract
  - 2. Unilateral contract

II. Formation – 25%
- A. Mutual Assent
  - 1. Offer
    - a. Requirements of valid offer
    - b. Duration of offer
    - c. Termination of offer
    - d. Limitation on power to revoke
  - 2. Acceptance
    - a. Requirements for effective acceptance
    - b. Effective date of acceptance
    - c. Methods of acceptance
    - d. Termination of power of acceptance
    - e. Rejection
    - f. Counteroffer
- B. Consideration
  - 1. Bargain and exchange
  - 2. Illusory promises
  - 3. Requirement and output contracts
  - 4. Preexisting duty
  - 5. Sufficiency of consideration
- C. Promissory Estoppel
- D. Implied-in-fact contracts
- E. Implied-in-law contracts

III. Defenses to Formation or Enforcement – 13%
- A. Lack of Capacity
- B. Illegality
- C. Unconscionability
- D. Statute of Frauds
- E. Ambiguity
- F. Mistake / Lack of Mutual Assent
- G. Duress
- H. Misrepresentation / Fraud
- I. Undue Influence
- J. Public Policy

IV. Gap-Fillers, Interpretation, and the Parol Evidence Rule – 6%

A. Gap-Fillers
B. Interpretation
C. Parol Evidence Rule

V. Performance, Breach, and Excuse – 25%

A. Conditions
    1. Covenants
    2. Conditions
B. Modifications
C. Performance
D. Breach
    1. Material v. Minor
    2. Perfect Tender Rule
    3. Anticipatory repudiation
E. Discharge of Contracts
F. Excuse of Condition/Discharge of Duty
    1. Impossibility
    2. Impracticability
    3. Frustration of purpose
    4. Waiver
    5. Estoppel
    6. Discharge by subsequent agreement
    7. Accord and satisfaction
    8. Novation

VI. Remedies – 13%

A. Damages
    1. Expectation damages
    2. Reliance damages
    3. Consequential damages
    4. Incidental damages
    5. Liquidated damages
    6. Nominal damages
    7. Duty to mitigate
B. Legal Restitution
    1. Legal Restitution
    2. Replevin
C. Equitable Remedies
    1. Equitable Restitution
        a. Resulting Trust
        b. Constructive Trust
        c. Equitable Lien
    2. Rescission
    3. Reformation
    4. Specific performance
    5. Injunctions
        a. Temporary Restraining Order
        b. Preliminary
        c. Permanent

VII. Nonparties to Contract – 13%

A. Third-Party Beneficiary Contracts
B. Assignment of Rights
C. Delegation of Duties

CALIFORNIA BAR EXAM
MULTIPLE-CHOICE QUESTION EXAM CONTENT MAP
CRIMINAL LAW AND PROCEDURE

The topics listed below are illustrative of those covered in Criminal Law and Procedure, but are not exhaustive. The percentages listed next to each section represent the approximate percentage of questions on the exam that will be drawn from this subject.

CRIMINAL LAW

I. General Principles – 6%
- A. Sources of Criminal Law
  - 1. Common law
  - 2. Modern law
  - 3. Model Penal Code
- B. Classification of Crimes
- C. Elements of Crimes
  - 1. *Actus reus*
  - 2. *Mens rea*
  - 3. Causation
- D. Merger Doctrine

II. Crimes against the Person – 12%
- A. Homicide
  - 1. Murder
    - a. Common-law murder
      - (1) Intent to kill
      - (2) Intent to inflict serious bodily harm
      - (3) Reckless disregard for risk to human life
      - (4) Felony murder
    - b. Statutory murder
      - (1) First-degree murder
      - (2) Second-degree murder
  - 2. Manslaughter
    - a. Voluntary manslaughter
    - b. Involuntary manslaughter
- B. Assault
- C. Battery
- D. False imprisonment
- E. Kidnapping
- F. Mayhem
- G. Rape

III. Crimes against Property – 12%
- A. Larceny
- B. Larceny by trick
- C. False pretenses
- D. Robbery
- E. Embezzlement
- F. Extortion
- G. Forgery

H. Possession offenses
    1. Receipt of stolen property
    2. Controlled substances
    3. Firearms
I. Arson
J. Burglary

IV. Inchoate Offenses – 6%
A. Solicitation
B. Conspiracy
C. Attempt
D. Defenses

V. Parties to Crime – 7%
A. Principals
B. Accomplices
C. Accessories
D. Scope of liability

VI. Defenses – 7%
A. Excuse Defenses
    1. Responsibility
        a. Insanity
        b. Diminished capacity
        c. Intoxication
    2. Infancy
    3. Mistake
        a. Mistake of fact
        b. Mistake of law
    4. Impossibility
        a. Factual impossibility
        b. Legal impossibility
    5. Entrapment
    6. Consent
B. Justification Defenses
    1. Self-defense
    2. Imperfect self-defense
    3. Defense of others
    4. Defense of dwelling
    5. Defense of property
    6. Duress
    7. Necessity

CRIMINAL PROCEDURE

I. Fourth Amendment – 9%
A. Arrest and Detention
B. Searches and Seizures
    1. Warrant requirement
    2. Exceptions to warrant requirement

II. Fifth and Sixth Amendments—Statements, Confessions, and Identifications – 9%

A. Statements and Confessions
   1. Voluntary statements
   2. Waiver
B. Identifications
C. Right to Confrontation
D. Double Jeopardy
   1. Attachment
   2. Underlying Offense
   3. Separate Sovereignties Doctrine
   4. Retrial after Attachment
   5. Effect on Sentencing

III. Sixth Amendment—Other Rights of the Accused – 8%

A. Right to Jury Trial
B. Right to Speedy Trial
C. Right to Public Trial
D. Right to Counsel
E. Right to Fair Trial
F. Rights during Discovery

IV. Exclusionary Rule – 8%

V. Post-Trial Rights – 8%

A. Eighth Amendment
B. Rights during Sentencing
C. Appeal
D. Writ of *Habeas Corpus*

VI. Other Considerations – 8%

A. *Ex Post Facto* Crimes
B. Retroactivity of Later Decisions
C. Fourteenth Amendment Identifications
D. Competency

CALIFORNIA BAR EXAM
MULTIPLE-CHOICE QUESTION EXAM CONTENT MAP
EVIDENCE

The topics listed below are illustrative of those covered in Evidence, but are not exhaustive. Applicants should assume that the Federal Rules of Evidence have been adopted and apply to all questions. The percentages listed next to each section represent the approximate percentage of questions on the exam that will be drawn from this subject.

I. Presentation of Evidence – 25%

- A. General Provisions
  1. Roles of judge and jury
  2. Burden of production and burden of persuasion
  3. Presumptions and inferences
  4. Materiality and probative value
  5. Offers of proof
  6. Judicial notice
  7. Preliminary questions
  8. Rule of completeness
- B. Objections and Motions to Strike
  1. Trial judge's discretion to control order and presentation of evidence
  2. Common objections to questions
  3. Nonresponsive answers
- C. Types of Evidence
- D. Witnesses
  1. Mode and order of witnesses
  2. Form and scope of examination
  3. Lay opinion testimony
  4. Competency
  5. Personal knowledge
  6. Truthfulness
  7. Refreshing recollection
- E. Impeachment
  1. Use of impeachment material
  2. Prior inconsistent statement
  3. Bias
  4. Conviction of crime
  5. Opinion or reputation

II. Relevance – 32%

- A. Definition
- B. Laying a Foundation
- C. Exclusion of Relevant Evidence
  1. Probative value
  2. Discretionary exclusion (undue prejudice, confusion, waste of time)
- D. Character Evidence
  1. Forms of character evidence
     a. Character traits of defendants
     b. Victim character evidence
        (1) Rape shield law
  2. Prohibited uses of character evidence

3. Exceptions allowing character evidence
    a. Mercy rule
    b. Character in issue
    c. Accused character trait of sexual offenses
4. Specific acts for noncharacter purposes
5. Cross-examination and rebuttal of character witnesses

E. Habit or custom practice
F. Similar occurrences and contracts
G. Authentication and Identification
H. Expert Testimony
    1. Acceptable testimony
    2. Qualification of experts
    3. Basis of expert testimony
    4. Opinion on ultimate issue
    5. Disclosure of underlying facts or data

III. Privileges and Public Policy Exclusions – 9%

A. Sources and Scope of Privileges and Policy Exclusions
B. Particular Privileges
    1. Spousal Privileges
    2. Marital Communications Privilege
    3. Physician-patient
    4. Psychotherapist-patient
    5. Attorney-client
        a. Work-product doctrine
    6. Clergy and penitent
C. Public Policy Exclusions
    1. Subsequent remedial measures
    2. Settlement negotiations and offers of compromise
    3. Plea negotiations and withdrawn plea offers
    4. Liability insurance
    5. Payment of medical expenses

IV. Hearsay – 25%

A. In General
    1. Hearsay rule
    2. Conduct as hearsay
    3. Multiple hearsay
    4. Unavailability of declarant as necessary or unnecessary for specific exceptions
B. Hearsay Exemptions
    1. Prior statement of witness
        a. Prior sworn inconsistent statement
        b. Prior consistent statement
        c. Prior identification
    2. Statement by opposing party
        a. Adoptive statements
        b. Authorized statements
        c. Vicarious statements
        d. Co-conspirator's statements
    3. Statements used for non-hearsay purposes
        a. Effect on listener
        b. Evidence of declarant's or victim's state of mind
        c. Legally operative facts and verbal acts
        d. Statements showing declarant's knowledge
        e. Statements showing absence of mistake or showing *mens rea*

C. Hearsay Exceptions
    1. Requiring unavailability of declarant
        a. Former testimony
        b. Statement against interest
        c. Dying declaration
        d. Statement of personal or family history
        e. Forfeiture by wrongdoing
    2. Not requiring unavailability of declarant
        a. Business records
        b. Present sense impression
        c. Excited utterance
        d. Statements of mental, emotional, or physical condition
        e. Statement made for medical diagnosis or treatment
        f. Past recollection recorded
        g. Public records and reports
        h. Learned treatises
        i. Ancient documents
        j. Commercial lists or similar compilations
        k. Prior judgments
        l. Residual exception
        m. Rule of completeness
D. Confrontation Clause

V. Contents of Writings, Recordings, and Photographs – 9%

A. Requirement of the Original
    1. Best evidence rule
B. Duplicates
C. Missing or lost documents
D. Summaries

CALIFORNIA BAR EXAM
MULTIPLE-CHOICE QUESTION CONTENT MAP
REAL PROPERTY

The topics listed below are illustrative of those covered in Real Property, but are not exhaustive. The percentages listed next to each section represent the approximate percentage of questions on the exam that will be drawn from this subject.

I. Nature and Ownership of Land – 20%

- A. Present Possessory Interests in Land
  1. Fee simple absolute
  2. Defeasible fees
  3. Life estates
- B. Future Interests
  1. Contingent and vested remainders
  2. Reversions
  3. Executory interests
  4. Possibility of reverter
  5. Power of termination
- C. Concurrent Estates
  1. Joint tenancy
  2. Tenancy in common
  3. Rights and duties of co-tenants
  4. Partition and severance
- D. Landlord and Tenant
  1. Types of tenancies
  2. Duties and remedies
     a. Landlord's duties
     b. Tenant's duties
     c. Remedies for breach of duty
  3. Retaliatory evictions
  4. Assignments and subletting
  5. Termination, including surrender and mitigation
- E. Problems with Interests in Land
  1. Waste
  2. Gifts to classes
  3. Rule Against Perpetuities
  4. Restraints on alienation

II. Non-Possessory Rights and Interests in Land – 20%

- A. Easements
  1. Nature and Type
  2. Creation
  3. Scope
  4. Transferability
  5. Termination and Modification
- B. Profits
- C. Licenses
- D. Real Covenants
  1. Running with the land
     a. Burden
     b. Benefit
  2. Termination

E. Equitable Servitudes / Restrictive Covenants
    1. Implied from common scheme
    2. Running with the land
    3. Equitable defenses
    4. Termination
F. Fixtures
    1. Definition
    2. Ownership
    3. Removal
G. Zoning
    1. Nonconforming use
    2. Variances and special exceptions
H. Takings
    1. Actual Takings
    2. Regulatory
I. Support Rights
    1. Lateral
    2. Subjacent

III. Real Property Contracts – 20%

A. Land-Sale Contracts
    1. Creation
    2. Essential terms
    3. Time for performance
B. Options and Rights of First Refusal
C. Marketable Title
D. Risk of Loss and Equitable Conversion

IV. Titles, Deeds, and Conveyancing – 20%

A. Adverse Possession
    1. Requirements
    2. Mistaken boundaries
    3. Title acquired
B. Conveyance by Deed
    1. Requirements for valid deed
    2. Statute of Frauds
    3. Delivery and acceptance
    4. Types of deeds
        a. Quitclaim Deed
        b. Warranty Deed
    5. Covenants of title
        a. Present Covenants
        b. Future Covenants
    6. Estoppel by deed
    7. After-acquired title
    8. Forged instruments
C. Conveyance by Operation of Law and Will
D. Recording Acts
    1. Common law rule
    2. Types of statutes
        a. Notice
        b. Race-notice
        c. Race
    3. *Bona fide* purchaser

4. Types of notice
    a. Actual notice
    b. Inquiry notice
    c. Constructive / record notice
5. Indexes
6. Priorities

V. Mortgages and Security Devices – 20%

A. Types of Security Interests
    1. Mortgage
    2. Purchase-money mortgage
    3. Future-advance mortgage
    4. Installment land-sale contract
    5. Equitable mortgage
    6. Deed of trust
    7. Liens
B. Mortgage Theories
    1. Lien theory
    2. Title theory
    3. Intermediate theory
C. Pre-Foreclosure Rights and Obligations
    1. Duty to pay principal and interest
    2. Enforcement of Contract Provisions
    3. Possession and title
D. Transfers of Interest
    1. Transfers by mortgagor
    2. Transfers by mortgagee
E. Discharge of the Mortgage
    1. Payment, including prepayment
    2. Deed in lieu of foreclosure
F. Foreclosure
    1. Procedure
    2. Right to Redemption
        a. Equitable right
        b. Statutory right
    3. Parties and priorities
        a. Senior interests
        b. Junior interests
        c. Modification and its effect on priority
        d. Notice and participation requirements
    4. Proceeds
        a. Deficiency and surplus
        b. Order of distribution
        c. Deficiency judgment

CALIFORNIA BAR EXAM
MULTIPLE-CHOICE QUESTION CONTENT MAP
TORTS

The topics listed below are illustrative of those covered in Torts, but are not exhaustive. Applicants should assume that the jurisdiction allows for survival actions and wrongful death claims and that joint and several liability and pure comparative fault apply unless a question indicates otherwise. The percentages listed next to each section represent the approximate percentage of questions on the exam that will be drawn from this subject.

I. Intentional Torts – 18%

A. Intentional Torts to the Person
   1. Assault
   2. Battery
   3. False imprisonment
   4. Intentional infliction of emotional distress

B. Intentional Torts to Property
   1. Trespass to land
   2. Trespass to chattel
   3. Conversion

C. Transferred Intent

D. Defenses to Intentional Torts

E. Privileges

II. Negligence – 50%

A. Duty
   1. In general
   2. Foreseeable plaintiffs
   3. Foreseeable and unreasonable risk
   4. Affirmative duties to act

B. Standard of Due Care
   1. Duty of reasonable prudent person in prevailing circumstances
   2. Particular standards of care
      a. Standard of care owed by owners and occupiers of land (including invitees, licensees, and trespassers)
      b. Common carriers / innkeepers
      c. Professionals and tradespersons
      d. Children
   3. Negligent infliction of emotional distress

C. Breach
   1. Falling below the standard of care
   2. Negligence *per se*
   3. Custom
   4. *Res ipsa loquitur*

D. Causation
   1. Cause in fact (actual cause)
   2. Proximate (legal) cause
      a. Foreseeability of harm
      b. Intervening and superseding causes

E. Damages

F. Defenses
   1. Assumption of risk
   2. Contributory negligence
   3. Comparative negligence

III. Products Liability – 8%

A. Strict Products Liability
B. Negligence Theory
C. Warranty Theory
    1. Express warranties
    2. Implied warranties
D. Defenses

IV. Strict Liability – 8%

A. Abnormally Dangerous Activities
B. Possession of Animals
C. Defenses

V. Other Torts – 8%

A. Nuisance
    1. Public
    2. Private
B. Misrepresentation
C. Economic Torts
    1. Interference with contractual relations
    2. Interference with prospective advantage
    3. Injurious falsehood (trade libel)
D. Defamation, Privacy, and Reputation Torts
    1. Defamation
        a. Defenses
    2. Invasion of privacy
    3. Malicious prosecution
    4. Abuse of process
    5. Wrongful institution of civil proceedings

VI. Other Considerations – 8%

A. Vicarious Liability for Acts of Others
    1. Independent contractor and nondelegable duties
B. Joint Tortfeasors
    1. Joint and several liability
    2. Satisfaction and release
    3. Contribution and indemnity
    4. Apportionment of damages
C. Wrongful Death and Survival Actions
D. Loss of Consortium

SAMPLE MCQs

Question 1

A U.S. naval base located on the coast of State A suffered a sudden attack launched by a foreign nation that resulted in several casualties and significant damage to the ships docked at the base. The base was one of the largest in the country and served as an artery for all inland military operations. Within an hour of the attack, and without prior congressional authorization, the President responded by increasing air defenses and naval presence at all U.S. military bases and deploying forces domestically to retaliate and ward off further attacks.

Was the President's initial action of deploying U.S. forces constitutional?

(A) No, because Congress alone may determine any military action.

(B) No, because Congress must authorize any military action by the President within one hour of the action.

(C) Yes, because the President has the power to repel sudden attacks.

(D) Yes, because the President has the plenary power granted as commander-in-chief to protect U.S. soil.

Question 2

State A enacted a new law to discourage price-gouging during environmental catastrophes. The law sought to prevent the inflation of gasoline and hotel prices frequently seen during the aftermath of a hurricane or forest fire. A gas station owner in State A believed that the law violated the Commerce Clause as well as various individual rights guaranteed under the U.S. Constitution. The gas station owner has filed a suit directly with the U.S. Supreme Court challenging the constitutionality of the law.

Is the Supreme Court likely to hear the case?

(A) No, because the suit did not take the proper route to the Supreme Court.

(B) No, because the suit presents a nonjusticiable political question.

(C) Yes, because the suit implicates individual rights and therefore falls under the Supreme Court's original jurisdiction.

(D) Yes, because the suit implicates the Commerce Clause and therefore falls under the Supreme Court's original jurisdiction.

Question 3

A public high school football player painted “Smoke Pot!” on his school-issued jersey. The football player wore the jersey during a practice that took place at the school during his lunch hour. The school principal attended the practice and had the football player removed from the field upon seeing his jersey. The principal alerted the football player that he was being suspended because his message promoted illegal drug use, violated the school's policy against drug use, and undermined the school’s authority. The football player sued the school district, claiming that his suspension violated his right to free speech under the First Amendment.

Did the football player’s suspension violate his right to free speech?

(A) No, because the football player’s jersey caused a substantial and material disruption to the school’s educational environment.

(B) No, because the school has the authority to regulate student speech that promotes illegal drug use.

(C) Yes, because the First Amendment guarantees freedom of speech, even among high school students.

(D) Yes, because the football practice was a recreational activity that did not take place in a classroom.

Question 4

A car dealer sent in an order form to a tire manufacturer for 200 premium tires at $50 per tire, with delivery at the dealer's location in 30 days. Upon checking its inventory the next day, the manufacturer realized that it had only 180 premium tires in stock. The manufacturer then shipped 180 premium tires to the dealer 20 days later, along with a notice indicating that it was shipping the tires for accommodation only. The dealer received the shipment and placed the tires in its warehouse. The dealer then contacted the manufacturer and stated that, although the tires met the terms of the order, the dealer intended to sue the manufacturer for breach of contract in failing to ship 200 premium tires.

Would the dealer prevail in a lawsuit?

(A) No, because the manufacturer made a counteroffer for 180 premium tires by shipping the tires for accommodation only.

(B) No, because the 30-day time for delivery has not yet passed.

(C) Yes, because the dealer may reject a nonconforming tender.

(D) Yes, because the shipment of 180 premium tires constituted an acceptance of the offer and a breach of the contract.

Question 5

On January 1, a department store emailed a purchase order to a manufacturer of steel drinking canteens for the purchase of 1,000 steel drinking canteens at a price of $35 per canteen. The manufacturer was to have the canteens to the store, which was located in State A, by January 5. The manufacturer, located in State B, responded immediately by email accepting the offer and stating that it would ship the 1,000 canteens "F.O.B. State B." The next day, the manufacturer indicated to the store that it had delivered the canteens to a shipper. While in transit, the shipper's truck was involved in an accident which destroyed all of the canteens.

Who bears the risk of loss for the destruction of the canteens?

(A) The store, because the term "F.O.B." indicates a shipment contract.

(B) The store, because the manufacturer delivered the goods to the shipper in State B.

(C) The manufacturer, because it entered into a destination contract.

(D) The manufacturer, because it chose the shipper.

Question 6

An employee signed an employment contract with a manufacturer. The contract included a noncompete clause. The contract also included a liquidated damage clause: (1) specifying that, if the employee were to breach the noncompete clause, the employee would pay $50,000 in liquidated damages; (2) stating that the amount of liquidated damages was reasonable; and (3) declaring that liquidated damages did not constitute a penalty. Sometime later, the employee voluntarily terminated his employment with the manufacturer and took a job with a competitor. The manufacturer then brought a breach of contract action against the employee, seeking to enforce the $50,000 liquidated damages clause. At a bench trial, to support the liquidated damages amount, the manufacturer did not offer any evidence of the actual damages from the employee's breach. Instead, the manufacturer offered evidence of the cost of subsequent litigation involving enforcement of an employment contract with a noncompete clause with another employee and the cost of hiring and training that employee's replacement. At the close of the manufacturer's case, the employee moved for judgment as a matter of law, claiming that the liquidated damages clause was unenforceable.

How should the court rule on the employee's motion?

(A) Deny the motion, because the contract declares that liquidated damages did not constitute a penalty.

(B) Deny the motion, because the amount of liquidated damages was reasonable.

(C) Grant the motion, because liquidated damages were limited to the breach of the noncompete clause.

(D) Grant the motion, because the amount of liquidated damages was not reasonable in relation to the actual damages from the breach of the noncompete clause.

Question 7

A minor worked at a fast-food restaurant. While on the job, the minor was injured while using a vegetable slicing machine. As a result of the injury, the minor quit her job. The minor then brought suit against the fast-food restaurant alleging negligence. At the time that the minor began her employment, she had signed a contract agreeing that any claims against the fast-food restaurant, including for negligence, would be resolved in binding arbitration. Prior to trial, the fast-food restaurant moved to compel arbitration. The minor filed an opposition to the motion to compel, in which she asserted that the agreement to arbitrate was void.

How should the court rule on the fast-food restaurant's motion to compel arbitration?

(A) Deny the motion, because the minor effectively disaffirmed the agreement to compel arbitration.

(B) Deny the motion, because the minor lacked capacity to agree to binding arbitration.

(C) Grant the motion, because the minor did not expressly disaffirm the agreement to arbitrate before filing suit.

(D) Grant the motion, because the minor had capacity to agree to binding arbitration.

Question 8

A defendant and a co-felon decided to go to a local drug dealer's home in order to buy drugs. On the way, the defendant and the co-felon decided to rob the drug dealer of any money he had on hand from other drug sales instead of buying drugs. Unbeknownst to the co-felon, the defendant had concealed a loaded revolver that he planned to use to threaten the drug dealer. Upon arriving, the defendant and the co-felon approached the drug dealer and asked to buy drugs. As the drug dealer reached into his pocket, the defendant suddenly shot and killed him. The defendant and the co-felon then fled, without taking any of the drug dealer's money. Shortly after, the two were arrested.

Which of the following is the most appropriate crime for which the co-felon may be convicted?

(A) Depraved-heart murder.

(B) Felony murder.

(C) Intent-to-inflict-serious-bodily-injury murder.

(D) Intent-to-kill murder.

Question 9

A police officer was angry with a neighbor for continuously playing loud music at all hours of the day. One evening, the police officer decided to put an end to the noise. The police officer knocked on the neighbor's door, and when the neighbor opened it, the police officer drew his service revolver and pointed it at the neighbor, saying, "I've had enough of this noise!" The police officer then pulled the trigger, but the gun misfired. The neighbor responded by laughing and closing the door.

May the police officer be convicted of common law assault?

(A) No, because the gun misfired.

(B) No, because the neighbor was not put in fear by the police officer's conduct.

(C) Yes, because the police officer intended to commit a battery.

(D) Yes, because the police officer was reckless in pointing the revolver at neighbor.

Question 10

A man was arrested after leading police on a foot chase following the armed robbery of a convenience store. The man was given his *Miranda* warnings before being placed in the back seat of a police car, at which point he demanded to have his lawyer present before any questioning. Before leaving the scene, the officers reported to their precinct that they had made the arrest, but had not found the handgun used in the robbery. Their supervisor responded back that she was sending several patrol cars to the area to start searching for it, because the chase went past an elementary school and she was concerned that a child might find the handgun before the officers did. The man, overhearing this conversation, stated that he did not know there was a school nearby, and told the officers where to find the gun. Before the man's trial for armed robbery, his defense lawyer made a motion to suppress the man's statement about the gun.

Should the court grant the motion to suppress the man's statement about the gun?

(A) No, because the man's statement involved the safety of children.

(B) No, because the conversation was not intended to elicit incriminating information.

(C) Yes, because the conversation between the police officers occurred while the man was in custody.

(D) Yes, because the conversation between the police officers amounted to unlawful questioning of the man.

Question 11

A salesman had long been employed at a department store. The store recently hired a new manager. The manager was openly hostile to the salesman. The manager frequently insulted the salesman, often ignored him, and refused to speak directly to him unless another employee was present. The salesman had an exemplary employment record with no disciplinary action ever taken against him in the years that he had worked at the store. The manager eventually terminated the salesman, giving no reason for doing so. The salesman then brought an employment discrimination claim in federal court against the manager. At the trial, the salesman offered testimony from a store employee who would state that the salesman was known as an honest, dedicated, and exemplary employee when he worked at the store. The manager objected to this testimony.

How should the court rule on the objection?

(A) Overruled, because the salesman may offer evidence of his good character.

(B) Overruled, because the testimony is evidence that there was no cause to terminate the salesman.

(C) Sustained, because character evidence is inadmissible in civil cases.

(D) Sustained, because this type of testimony is inadmissible in an employment discrimination case.

Question 12

A motorcyclist was injured when a driver's car collided with the motorcycle. Shortly after the collision, a police officer arrived on the scene. The police officer observed the damage to both vehicles and also interviewed both the motorcyclist and the driver. Several weeks later, the motorcyclist filed suit against the driver in federal court. During discovery, the police officer gave testimony at a deposition describing the accident scene and her interviews of the motorcyclist and the driver. The driver's attorney had a full opportunity to question the police officer at the deposition. Prior to trial, the police officer suffered serious injuries on the job. When the police officer was called at trial as a witness by the motorcyclist, the police officer testified that the injuries she had received rendered her unable to recall any of the details of her investigation of the collision. The motorcyclist then offered into evidence the deposition testimony of the police officer. The driver objected.

How should the court rule on the objection?

(A) The court should overrule the objection, because the police officer has no memory of her investigation of the collision.

(B) The court should overrule the objection, because the police officer's testimony at the deposition was given under oath.

(C) The court should sustain the objection, because the police officer is available as a witness at the trial.

(D) The court should sustain the objection, because the police officer's testimony at the deposition is hearsay.

Question 13

A police officer was on patrol when he saw the defendant threatening a victim with a knife. The police officer ordered the defendant to drop the knife, but the defendant showed no response. When the defendant took a step toward the victim while brandishing the knife, the police officer shot the defendant. The defendant then brought an action in federal court against the police officer. After the shooting and before the trial, the police officer sought counseling from a licensed clinical social worker due to symptoms of depression that he was experiencing related to the shooting. At trial, the defendant called the social worker as a witness and asked about conversations the social worker had with the police officer during the counseling sessions. The social worker refused to answer those questions. The defendant made an application to the court to compel the social worker to answer the questions.

How should the court rule on the application to compel the social worker to answer the questions?

(A) The court should deny the application, because the conversations are protected by the psychotherapist-patient privilege.

(B) The court should deny the application, because the conversations were presumably intended to remain confidential.

(C) The court should grant the application, because no privilege exists between a licensed clinical social worker and a patient.

(D) The court should grant the application, because the conversations are relevant to the police officer's state of mind when he shot the defendant.

Question 14

A security guard at a retail business hatched a scheme in which he would disable a security camera and then leave the door to the business office unlocked so that an accomplice could enter, force open a safe, and steal its contents. The next day, the security guard ended his shift and left the door to the business office unlocked but forgot to disable the security camera. That night, the accomplice entered the unlocked business office but was surprised to see the business manager inside. The accomplice then struck the business manager with a paperweight and emptied the safe. The accomplice was arrested shortly thereafter and immediately confessed, implicating the security guard. The security guard was arrested and charged with burglary. At trial in federal court, the prosecution offered an unaltered digital copy of the videotape taken by the security camera on the night of the burglary. The security guard objected, claiming only that the original videotape had to be produced.

How should the court rule on the objection?

(A) The court should overrule the objection, because digital copies of an original are admissible *per se*.

(B) The court should overrule the objection, because the security guard did not question the authenticity of the original videotape.

(C) The court should sustain the objection, because the digital copy is not the original.

(D) The court should sustain the objection, because the original videotape is the best evidence of what occurred.

Question 15

A traffic accident occurred in State Y involving a driver from State X and a citizen of a foreign country who had been admitted to permanent residence in the United States and was domiciled in State Y. The State X driver brought a negligence action against the foreign citizen in state court in State Y alleging $80,000 in damages. The foreign citizen filed a timely notice of removal in the federal court in State Y. The State X driver moved to remand the action back to state court in State Y state court.

How should the court rule on the motion for remand?

(A) The court should deny the motion, because complete diversity exists between the parties.

(B) The court should deny the motion, because the driver alleges $80,000 in damages.

(C) The court should grant the motion, because the action was filed in state court in State Y.

(D) The court should grant the motion, because the federal court lacks subject-matter jurisdiction in actions involving a citizen of a foreign country.

Question 16

On a stormy day, when visibility was low and the rain was falling hard, an author from State A was stopped at a red light in State B. Behind the author, a bookkeeper from State B rear-ended the author's car. Behind the bookkeeper, a cashier from State B then rear-ended the bookkeeper's car. All of the events happened in quick succession. The author sued the bookkeeper in the federal district court in State B, seeking damages of $180,000. The bookkeeper then impleaded the cashier, seeking damages of $150,000. The cashier counterclaimed against the bookkeeper, seeking damages of $30,000.

Does the federal court have jurisdiction to hear the claim against the cashier and the counterclaim against the bookkeeper?

(A) There is jurisdiction to hear the claim against the cashier, but not the counterclaim against the bookkeeper.

(B) There is jurisdiction to hear the counterclaim against the bookkeeper, but not the claim against the cashier.

(C) There is jurisdiction to hear both the claim against the cashier and the counterclaim against the bookkeeper.

(D) There is jurisdiction to hear neither the claim against the cashier nor the counterclaim against the bookkeeper.

Question 17

An employee sued a corporation in federal court claiming he was denied compensation under his employment contract. During discovery, the employee gave notice that he intended to depose the corporation and thereafter met and conferred with the corporation concerning the matters about which he wished to examine the corporation, i.e., financial records relating to his compensation. Thereafter, the corporation designated one of its managers to appear and give testimony at the deposition, and the employee served her with a subpoena. During the deposition, the manager testified that she was unfamiliar with the corporation's financial records relating to the employee's compensation, and that the corporation failed to disclose any such records to the manager prior to the deposition. The employee then made a motion for sanctions against the corporation.

How should the court rule on the employee's motion?

(A) Deny the motion, because the employee had an obligation to identify an appropriate witness to appear at the deposition.

(B) Deny the motion, because the employee should first make a motion to compel disclosure.

(C) Grant the motion, because the corporation had an affirmative obligation to designate an appropriate employee to appear at the deposition.

(D) Grant the motion, because the employee will incur additional expense in scheduling another deposition.

Question 18

A law student signed a written three-year lease with a landlord to rent a one-bedroom apartment. After the first year, the law student decided to take some time off from law school and travel the world. The law student subleased the apartment to a nurse for one year. The landlord was aware of the sublease and did not object. The nurse paid the rent for six months. After six months, she was transferred out-of-state and left the apartment without paying any further rent. When the law student returned to the apartment after being away for one year, the landlord demanded that the law student pay the last six months' unpaid rent. The law student refused and told the landlord to sue the nurse for the unpaid rent.

Who, if anyone, is liable for the unpaid rent?

(A) Neither the law student nor the nurse is liable, because the landlord did not insist on a novation of the lease.

(B) The law student is liable to the landlord, and the nurse is liable to the law student.

(C) The law student and the nurse are jointly liable to the landlord.

(D) The nurse alone is liable to the landlord.

Question 19

A buyer wanted to buy an affordable lot on which to place a manufactured home. The buyer found a neighborhood of more than 120 small lots, each of which had a manufactured home on it. The buyer noticed that none of the lots had a garage, but that each lot had a driveway and a side yard. None of the lots belonged to the original subdivider of the land. However, a recorded plat showed that the lots were meant for one-story manufactured homes without garages. The buyer did not review the recorded plat. Neither did the buyer review any of the recorded deeds to the lots, more than half of which contained express restrictions prohibiting garages. The buyer purchased a lot, and obtained a deed containing no restrictions. The buyer began construction on the lot of a manufactured home and a garage, which would have taken up the entire lot, leaving no yard space. The neighbors saw the construction and brought an action to obtain an injunction to stop the construction of the garage.

Will the neighbors prevail in their action to stop the construction of the garage?

(A) No, because none of the lots belongs to the original subdivider.

(B) No, because the buyer's deed contained no restriction prohibiting a garage.

(C) Yes, because a covenant running with the land covers all the lots.

(D) Yes, because an equitable servitude covers all the lots.

Question 20

A buyer was looking to buy an already existing and operating chemical plant for a reasonable price. After 18 months of searching among comparable chemical plants, the buyer finally found one at a reasonable price in an economically depressed area. The buyer entered into a contract with the seller, agreeing on price, terms, and a closing date. The seller soon discovered that the buyer had religious beliefs to which the seller was opposed. The seller contacted the buyer, stated that he would never sell to him, and repudiated the contract. The buyer nevertheless appeared on the closing date, ready, willing, and able to close at the agreed-upon price. The seller did not appear. The buyer has initiated a suit for specific performance.

Is it likely that the buyer will prevail?

(A) No, because comparable chemical plants were available.

(B) No, because rescission is the only available remedy for breach of a real estate contract.

(C) Yes, because each piece of real estate is unique.

(D) Yes, because the seller had an improper reason for repudiating the contract.

Question 21

A bookstore owner believed that printed books would again become popular, even as digital books were becoming more popular. Consequently, the bookstore owner decided to enlarge his store, which sat on a parcel that he owned in fee simple. He took out a mortgage of $300,000 in order to enlarge the store. After the construction was complete, the bookstore owner filled the new space with more printed books. However, customers became fewer and fewer, and the bookstore owner lost money every month. He soon defaulted on his mortgage payments, still owing $300,000, and the mortgagee began foreclosure proceedings. The bookstore owner offered the mortgagee a deed in lieu of foreclosure, but the mortgagee refused it and foreclosed. The bookstore and its parcel were auctioned off at the foreclosure sale, bringing in only $100,000.

Can the mortgagee obtain a deficiency judgment against the bookstore owner for the unpaid $200,000?

(A) No, because the bookstore and its parcel were sold at the foreclosure sale, which resulted in the extinguishment of the mortgage.

(B) No, because the bookstore owner made an offer of a deed in lieu of foreclosure.

(C) Yes, because part of the original debt remains unpaid.

(D) Yes, because the bookstore owner should have known that enlarging his store would not succeed financially.

Question 22

A customer went to a diner for lunch and approached a counter with a row of stools. Each stool had a metal base bolted to the floor and a wooden seat attached to the top of the base with screws. When the customer sat on a stool, the seat came off the base, causing the customer to fall, hit the floor, and suffer a back injury. An examination revealed that each of the screws that held the seat to the base was broken. The customer brought a negligence action against the diner. In a deposition, the customer acknowledged that he did not know when, why, or how the screws broke. In her deposition, the diner's manager testified that she regularly inspected the stools and had found no problems with any of them. After discovery, the diner filed a motion for summary judgment, arguing that the customer had not presented any direct evidence showing that the diner had been negligent.

How should the court rule on the diner's motion for summary judgment?

(A) The court should deny the motion, because a genuine issue of material fact exists about whether the diner was negligent *per se*.

(B) The court should deny the motion, because a jury could infer that negligence occurred even if the customer offers no direct evidence.

(C) The court should grant the motion, because the customer had not presented any direct evidence showing that the diner had been negligent.

(D) The court should grant the motion, because the customer voluntarily chose to assume the risk of sitting on the stool.

Question 23

A shopper drove to a shopping mall and went inside to shop at several stores. When the shopper returned to her car, she found that a parking "boot," i.e., a device to immobilize the car, had been attached to one of her car's wheels. The shopper went to the mall's security director, who told her that a mall security guard had attached the boot because the shopper's license plate was in the mall's database of vehicles that had repeatedly violated parking rules and restrictions at the mall in the past. The shopper said this was the first time she had ever visited the mall. The security director checked the mall's database and determined that the security guard had misread the shopper's license plate number. The security director apologized and had the boot promptly removed. The shopper was delayed at the mall for 40 minutes. The shopper has filed an action for false imprisonment against the mall.

What is the strongest argument the mall can make to avoid liability for false imprisonment?

(A) The security guard's misreading of the shopper's license plate number was not intentional.

(B) The security guard's misreading of the shopper's license plate number did not cause appreciable harm.

(C) The shopper was delayed at the mall for only 40 minutes.

(D) The shopper was not confined at the mall.

Question 24

A homeowner had a pet squirrel. The squirrel never left the homeowner's house, so no one in the neighborhood knew that the homeowner had a squirrel. The squirrel was generally playful and had never injured anyone, but it occasionally displayed aggressive behavior when encountering an unfamiliar person for the first time. A neighbor was expecting an important letter in the mail, and when it was late, she thought the letter might have been inadvertently delivered to the homeowner. The homeowner's front door was slightly ajar, so when the neighbor knocked on the door, it swung open. The neighbor called out to see if anyone was home but got no response. The neighbor saw some mail piled on a table in a hall, so she decided to step inside to see if her letter was there. As she looked through the mail, the squirrel entered the hall and bit the neighbor's leg. The neighbor sued the homeowner in strict liability.

Is the neighbor or the homeowner likely to prevail?

(A) The homeowner, because the squirrel had no prior history of biting people.

(B) The homeowner, because the neighbor did not have permission to enter the house.

(C) The neighbor, because a person who keeps a wild animal is strictly liable for any harm caused by the animal.

(D) The neighbor, because she had no reason to know that the homeowner had a pet squirrel.

Question 25

A shopper in a drug store wanted to purchase shampoo. The shopper saw that the store had several bottles of the brand of shampoo he preferred, but they were on the top shelf of a display case, too high for the shopper to reach. He did not see any employee in the area who could assist him. That being so, he stepped on the lowest shelf of the display case in order to climb to reach a bottle of the shampoo on the top shelf. When he stepped on the shelf, it gave way under his weight, and he fell and injured his hip. The shopper has brought an action against the store for strict products liability claiming that the display case was defective in design and/or manufacture.

Will the shopper or the store prevail?

(A) The store will prevail, because the shopper was negligent for stepping on the display case's lowest shelf in order to climb to reach a bottle of shampoo.

(B) The store will prevail, because the store does not sell display cases.

(C) The shopper will prevail, because a store can be subject to strict products liability for a defective product even if it did not design or manufacture the product.

(D) The shopper will prevail, because the store should have had an employee available to assist the shopper.

QUESTION EXPLANATIONS AND ANSWER KEYS

Explanation: Question 1

The correct answer is: (C) Yes, because the President has the power to repel sudden attacks.

The President, as commander-in-chief, has the constitutional authority to repel sudden attacks on the United States without needing prior approval from Congress. (*See Prize Cases*, 67 U.S. 635 (1862).) In the *Prize Cases*, the Supreme Court reiterated that the President has no power to initiate or declare a war. The Court further found that the President can call out military forces in the case of invasion by a foreign nation and to "suppress insurrection against the government of a State or of the United States." (*See id.*) Here, a U.S. naval base in State A was attacked by a foreign nation. This attack resulted in casualties and damage. The President was authorized to immediately act through the President's power to repel without the authorization of Congress. The call of the question focuses on the initial repel action, which was constitutional under the President's commander-in-chief powers.

(A) Incorrect. This answer misstates the law. Congress holds the power to declare war under Article I, Section 8 of the Constitution. However, the President, as commander-in-chief, has the constitutional authority to repel sudden attacks on the United States without needing prior approval from Congress. (*See Prize Cases*, 67 U.S. 635 (1862).) Here, the call of the question focuses on the President's initial act of deploying military forces. This act is supported by the long-standing interpretation of the *Prize Cases*. This answer fails to recognize the President's authority to repel sudden attacks without waiting for congressional authorization and incorrectly states that Congress alone can determine all military action.

(B) Incorrect. There is no requirement that the President request an authorization within one hour of the deployment. The War Powers Act of 1973 (50 U.S.C. §§ 1541–1550) is a congressional enactment that provides that the President must notify Congress within 48 hours of military action, not within one hour. The President must continue to "report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months." (50 U.S.C. § 1543(c).) The War Powers Act does not require the President to notify Congress within one hour of using the repel power. In addition, the question is asking about whether the President's action was constitutional, not about whether it complied with the War Powers Act. Therefore, this answer choice is an incorrect statement of law.

(D) Incorrect. Article II, Section 2, of the U.S. Constitution provides: "The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." While this power is broad and substantial, it is not plenary, meaning that it is not without limitation. This remains true even in the face of an attack on U.S. soil. Therefore, the use of the word "plenary" mischaracterizes the extent of the commander-in-chief power.

Explanation: Question 2

The correct answer is: (A) No, because the suit did not take the proper route to the Supreme Court.

Under the U.S. judicial system, a case generally must proceed through the lower courts before it is entitled to U.S. Supreme Court review. A plaintiff must first file the lawsuit in a state court or a federal district court, where the case will be heard and decided. If the plaintiff is not successful in the lower court, they can appeal the decision through the appropriate federal or state appellate courts. Only after these lower courts have ruled on a substantial federal issue can the case potentially be reviewed by the U.S. Supreme Court upon a grant of writ of certiorari. The U.S. Supreme Court primarily functions as an appellate court. Article III, Section 2 of the U.S. Constitution provides that the Supreme Court has original jurisdiction "in all cases affecting ambassadors, other public ministers and consuls and those in which a state shall be a party." Congress cannot enlarge or restrict the Supreme Court's original jurisdiction. (*Marbury v. Madison*, 5 U.S. 137 (1803).) Here, the gas station owner has filed suit to challenge this State A law. A challenge to a state law, such as the one advanced here by the gas station owner, would not fall under the Supreme Court's original jurisdiction. Therefore, the gas station owner did not follow the proper legal procedure for bringing the case before the Supreme Court.

(B) Incorrect. Federal courts cannot hear cases involving political questions, which are issues assigned to another branch of government by the Constitution or inherently beyond judicial resolution. The Supreme Court has outlined key factors to determine whether a case presents a political question. These include: (1) whether the Constitution explicitly commits the issue to a political branch; (2) whether judicial standards exist to resolve it; (3) whether it requires a policy decision suited for nonjudicial discretion; and (4) whether court involvement would undermine respect for other branches of government. (*See Baker v. Carr,* 369 U.S. 186 (1962).) If any of these factors apply, the case falls outside the courts' jurisdiction. None of these factors applies here. Constitutional challenges to state laws, even one like the case at issue here that is steeped in the Commerce Clause and individual rights, are commonly reviewed by courts, including the Supreme Court. This issue is therefore not a nonjusticiable political question.

(C) Incorrect. Article III, Section 2 of the U.S. Constitution provides that the Supreme Court has original jurisdiction "in all cases affecting ambassadors, other public ministers and consuls and those in which a state shall be a party." Congress cannot enlarge or restrict the Supreme Court's original jurisdiction. (*Marbury v. Madison*, 5 U.S. 137 (1803).) This matter involves a private citizen challenging a law and does not properly fall under original jurisdiction. The gas station owner would need to bring this challenge in either state or federal court and follow the appellate process for Supreme Court review. This answer choice also suggests that any case involving individual rights allows for direct appeal to the Supreme Court. This statement is not correct. The

Supreme Court has no obligation to hear all cases involving a challenge to individual rights.

(D) Incorrect. An issue implicating the Commerce Clause does not automatically fall under the Supreme Court's original jurisdiction. Article III, Section 2 of the U.S. Constitution grants the Supreme Court original jurisdiction only in specific cases involving ambassadors, public ministers, consuls, and cases in which a state is a party. Congress cannot enlarge or restrict the Supreme Court's original jurisdiction. (*Marbury v. Madison*, 5 U.S. 137 (1803).) Generally, the Supreme Court exercises appellate jurisdiction, not original jurisdiction, for cases involving the Commerce Clause or any other constitutional matter. This means the case must first proceed through the lower courts, including federal district courts or state courts, before it can be appealed to the Supreme Court. This answer choice misrepresents the Court's constitutional and procedural role in the judicial process. While it is theoretically possible for a Commerce Clause or individual rights issue to fall under original jurisdiction, this would only occur if the case met the narrow criteria defined in the Constitution. This is not implicated with these facts.

Explanation: Question 3

The correct answer is: (B) No, because the school has the authority to regulate student speech that promotes illegal drug use.

The right to free speech is not absolute. Schools are considered, at times, to stand *in loco parentis* (in place of a parent) and as such, have a limited right to control the speech of students. (*See Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986)). Specifically, the Supreme Court has ruled that schools have an interest in safeguarding those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use. (*See Morse v. Frederick*, 551 U.S. 393 (2007)). Like the *Morse* case, these facts feature a statement that is a clear reference to smoking marijuana. "Pot" is a common nickname for marijuana, a drug that is illegal under federal law. The jersey would likely be deemed to advocate for drug use, specifically after the suggestion that they "smoke pot". This seems to suggest that the team advocates marijuana use. Therefore, the school had the right to take disciplinary action for a violation of school policies regarding the prevention and promotion of drug use. Therefore, this answer is correct because the principal did not violate the football player's constitutional rights when levying a suspension against the football player for a violation of this policy.

(A) Incorrect. This answer choice correctly states that disruptive behavior can be regulated by schools. (*See Tinker v. Des Moines Indep. Cmty. Sch. Dist*., 393 U.S. 503 (1969)). It does not, however, accurately reflect the facts outlined here. This question is similar to the situation in *Morse v. Frederick* (551 U.S. 393 (2007)), where the Supreme Court ruled in favor of the school and the decision focused on the promotion of illegal drug use rather than disruption of the educational environment. Schools can limit

speech that disrupts the educational environment, and it is possible that the message on the jersey is disruptive. If the message on the football player's shirt promotes illegal drug use, it does not need to also be a significant disruption. *Morse* establishes the premise that schools have a broader interest in regulating speech that promotes illegal drug use. (*Id.*).

(C) Incorrect. This answer incorrectly suggests that students should have unfettered rights to express their opinions, even if those opinions conflict with school policies. The *Morse v. Frederick* ruling (551 U.S. 393 (2007)) established that student speech can be limited if it is inconsistent with the school's educational mission or promotes illegal drug activity. The language used for this answer choice comes from Justice John Paul Stevens' dissent in the *Morse* case. It was not the view supported by a majority of the Court.

(D) Incorrect. The Supreme Court has ruled that student speech can be subject to school authority if it affects the school environment. In *Morse v. Frederick* (551 U.S. 393 (2007)), the Court emphasized that speech could be viewed as school-sponsored when it occurred at an event that was school-sanctioned and school-supervised. The Supreme Court has even ruled that a school's authority can extend to off-campus speech as well if it substantially disrupts the school environment. (*See Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180 (2021)). The football practice in this fact pattern is on-campus and during school hours. The Supreme Court has held that schools have a special interest in regulating on-campus speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." (*Tinker v. Des Moines Indep. Cmty. Sch. Dist*., 393 U.S. 503 (1969)). Here, the football practice was school-sanctioned and school-supervised. The facts mention the principal was in attendance. While the practice occurred during the lunch hour, there is no question this was still contained within the school day and well within school regulation.

Explanation: Question 4

The correct answer is: (A) No, because the manufacturer made a counteroffer for 180 premium tires by shipping the tires for accommodation only.

Under UCC Article 2, the shipment of nonconforming goods will not constitute acceptance if the seller notifies the buyer that the shipment is offered only as an "accommodation" to the buyer. (U.C.C. § 2-206.) In such circumstances, the shipment constitutes a counteroffer, which the buyer is free to accept or reject. Here, although the car dealer ordered 200 premium tires, the manufacturer only sent 180, along with a notice of accommodation. Consequently, the shipment of the tires will be deemed a counteroffer that the car dealer can accept or reject. Under the facts in the question, the car dealer accepted the 180 premium tires. At that moment, the car dealer is considered to have accepted the manufacturer's counteroffer of 180 premium tires, and a contract for 180 premium tires was formed. No contract therefore existed for the remaining 20 tires, and the car dealer cannot seek a breach of contract remedy for them. Accordingly,

the car dealer cannot sue for breach of contract for the non-delivery of the 20 premium tires.

(B) Incorrect. This answer choice ignores the fact that a new contract for only 180 premium tires was created by the parties, and that this contract has been completely fulfilled. A shipment of nonconforming goods will not constitute acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an "accommodation" to the buyer. (U.C.C. § 2-206.) Here, while the car dealer ordered 200 premium tires, the manufacturer only shipped 180, along with a notice of accommodation. When the car dealer chose to accept the nonconforming shipment, this created a new, fulfilled contract for 180 premium tires. Consequently, although the 30 days for delivery have not yet passed, it does not create an opportunity for the car dealer to sue the manufacturer or a need for the manufacturer to "cure" any nonconforming shipment. This is so because the manufacturer has already completed the agreed-upon delivery of 180 premium tires.

(C) Incorrect. This answer choice does not make the important distinction between a nonconforming tender and a shipment of nonconforming goods that are offered only as an accommodation to the buyer where the buyer has been seasonably notified of the distinction. Under UCC Article 2, the shipment of nonconforming goods will not constitute acceptance if the seller notifies the buyer that the shipment is offered only as an "accommodation" to the buyer. (U.C.C. § 2-206.) In such circumstances, the shipment constitutes a counteroffer, which the buyer is free to accept or reject. While it is true that a buyer may reject a nonconforming tender, two circumstance weigh against this result here. First, the facts of the question indicate that the car dealer accepted the 180 premium tires and placed them in the car dealer's warehouse. Second, the shipment was not a nonconforming tender because it was shipped for accommodation only. The accommodation rule is intended to cover situations where a seller cannot (or does not) ship a conforming tender, but ships for accommodation only. Instead, the shipment is considered a counteroffer. This allows a seller to avoid a claim of breach of contract by the buyer. When the car dealer accepted the 180 premium tires, a contract was formed only as to those tires.

(D) Incorrect. This answer choice misstates the law of formation for contracts for the sale of goods under the Uniform Commercial Code. Under UCC Article 2, the shipment of nonconforming goods will not constitute acceptance if the seller notifies the buyer that the shipment is offered only as an "accommodation" to the buyer. (U.C.C. § 2-206.) In such circumstances, the shipment constitutes a counteroffer, which the buyer is free to accept or reject. Here, although the car dealer ordered 200 premium tires, the manufacturer sent only 180 tires along with a notice of accommodation. Consequently, the shipment of the tires is deemed a counteroffer that the car dealer can accept or reject. Under the facts in the question, the car dealer accepted the 180 premium tires. At that moment, when car dealer accepted the manufacturer's counteroffer of 180 premium tires, a contract for 180 premium tires was formed. No contract existed for the remaining 20 tires, and car dealer cannot seek a breach of contract remedy for them.

Explanation: Question 5

The correct answer is: (B) The store, because the manufacturer delivered the goods to the shipper in State B.

When a contract specifies that delivery is free on board ("F.O.B."), the location listed after F.O.B. is the delivery point. If the contract is F.O.B. the seller's place of shipment, the seller need only, at their expense and risk, put the goods in the possession of the carrier. The risk of loss then passes to the buyer when the seller delivers the goods to the carrier. (U.C.C. § 2-319(1)(a).) Here, the contract is F.O.B. State B. The risk of loss passed to the department store once the goods were given to the carrier (the shipper) in State B. The canteen manufacturer's responsibility thus ended once the goods were shipped, and the department store bore the risk of loss during transit. As such, when the goods were destroyed in transit, the risk had already shifted to the department store.

(A) Incorrect. This answer choice incorrectly concludes that the term "F.O.B." implicates only a shipment contract. This is not correct. When a contract specifies that delivery is free on board ("F.O.B."), the location listed after F.O.B. is the delivery point. The location that is listed after F.O.B. will designate if the contract is a shipment contract or a destination contract. (U.C.C. § 2-319.) Therefore, this answer choice fails to observe that F.O.B. can also indicate a destination contract.

(C) Incorrect. A destination contract means that the seller is responsible for delivering the goods to a specified destination (in this case, State A) and bears the risk of loss until delivery is made to that location. Here, the term "F.O.B. State B" indicates a shipment contract, not a destination contract. The canteen manufacturer is located in State B and will be delivering the canteens to a carrier for shipment to State A. The language indicates a shipment contract and the risk of loss passed to the department store once the goods were given to the carrier (shipper) in State B.

(D) Incorrect. The purpose behind shipping terms is to allocate the risk of loss between the buyer and the seller. Where the contract requires or authorizes the seller to ship the goods by carrier, the risk of loss, in the absence of breach by the seller, passes to the buyer when the goods are delivered to the carrier. (U.C.C. § 2-509(1)(a).) The parties may agree otherwise, if they so choose. (U.C.C. § 2-509(4).) Here, the parties did not agree otherwise, there was no breach by the seller, and their contract authorized the manufacturer to ship the goods by carrier. This means that the manufacturer was allowed to choose the carrier (the shipper) without changing the risk allocation that the parties had agreed to. Consequently, when the manufacturer chose the shipper, it did not change the risk. Instead, the risk of loss passed to the department store, as soon as the canteens were properly loaded onto the truck in State B.

Explanation: Question 6

The correct answer is: (D) Grant the motion, because the amount of liquidated damages was not reasonable in relation to the actual damages from the breach of the noncompete clause.

The test for determining whether a clause in a particular contract is a valid liquidated damages provision has three prongs: (1) whether the parties intend for the clause to operate as a liquidated damages clause or as a penalty; (2) whether the clause was reasonable at the time of contracting in relation to the anticipated harm; and (3) whether the clause was reasonable in relation to the harm and losses that actually occurred due to the breach. A reviewing court is not bound by contractual language that the liquidated damages clause is not a penalty. The reasonableness of the amount fixed as liquidated damages is to be determined from the standpoint of the parties at the time the contract was made. Generally, the parties may fix an amount for liquidated damages when the actual damages upon a breach are difficult to calculate. Here, the fact that the contract states that the liquidated damages clause is not a penalty is not determinative. No reasonable method was used in affixing the amount of liquidated damages. At the time of contracting, neither anticipated nor actual damages were considered. Instead, the manufacturer calculated damages based on earlier litigation involving a different former employee, and the cost of training the employee in the present case. Absent a rational relationship to anticipated actual damages, and without any evidence of actual damages, the liquidated damage amount was an unenforceable penalty. Therefore, the employee's motion should be granted.

(A) Incorrect. The reasonableness of the amount fixed as liquidated damages is to be determined from the standpoint of the parties at the time the contract was made. Generally, the parties may fix an amount for liquidated damages when the actual damages upon a breach are difficult to calculate. Here, the fact that the contract states the liquidated damages clause is not a penalty is not determinative. No reasonable method was used in affixing the amount of liquidated damages. At the time of contracting, neither anticipated nor actual damages were considered. Instead, the manufacturer calculated damages based on earlier litigation involving a different former employee, and the cost of training the employee in the present case. Absent a rational relationship to anticipated actual damages, and without any evidence of actual damages, the liquidated damage amount was an unenforceable penalty. Therefore, the employee's motion should be granted.

(B) Incorrect. The reasonableness of the amount fixed as liquidated damages is to be determined from the standpoint of the parties at the time the contract was made. Generally, the parties may fix an amount for liquidated damages when the actual damages upon a breach are difficult to calculate. Here, the fact that the contract states the liquidated damages clause is not a penalty is not determinative. No reasonable method was used in affixing the amount of liquidated damages. At the time of contracting, neither anticipated nor actual damages were considered. Instead, the manufacturer calculated damages based on earlier litigation involving a different former

employee, and the cost of training the employee in the present case. Absent a rational relationship to anticipated actual damages, and without any evidence of actual damages, the liquidated damage amount was an unenforceable penalty. Therefore, the employee's motion should be granted.

(C) Incorrect. Generally, the parties may fix an amount for liquidated damages when the actual damages upon a breach are difficult to calculate, which is true here. However, this is just the starting point of the analysis. The court must determine whether the liquidated damages were reasonable and not a penalty. The reasonableness of the amount fixed as liquidated damages is to be determined from the standpoint of the parties at the time the contract was made. Here, the fact that the contract states the liquidated damages clause is not a penalty is not determinative. No reasonable method was used in fixing the amount of liquidated damages. At the time of contracting, neither anticipated nor actual damages were considered. Instead, the manufacturer calculated damages based on earlier litigation involving a different former employee, and the cost of training the employee in the present case. Absent a rational relationship to anticipated actual damages, and without any evidence of actual damages, the liquidated damage amount was an unenforceable penalty. Therefore, the court should grant the motion.

Explanation: Question 7

The correct answer is: (A) Deny the motion, because the minor effectively disaffirmed the agreement to compel arbitration.

In the majority of states, minors have the ability to enter a contract before they reach the age of majority, but they also have the power to disaffirm such contracts that they enter into (the power of avoidance). The power of avoidance means that the minor has the option of voiding the contract. Here, the minor signed an agreement to arbitrate any disputes against the fast-food restaurant. However, by terminating her employment, filing suit, and filing an opposition to the motion to compel, the minor disaffirmed the agreement to arbitrate. (*See Dairyland Cnty. Mut. Ins. Co., v. Roman*, 498 S.W.2d 154 (Tex. 1973)). Therefore, the agreement to arbitrate is void, and the motion to compel arbitration should be denied.

(B) Incorrect. In the majority of states, minors have the ability to enter a contract before they reach the age of majority, but they also have the power to disaffirm such contracts they enter into (the power of avoidance). Here, the minor signed an agreement to arbitrate any disputes against the fast-food restaurant. The minor had the ability to enter into such a contract, but also had the power to disaffirm it before or within a reasonable time after reaching the age of majority. The issue here is not that the minor lacked capacity, but rather, whether her actions amounted to a disaffirmance of the contract. As such, this answer choice focuses on the wrong issue.

(C) Incorrect. In the majority of states, minors have the ability to enter a contract before they reach the age of majority but they also have the power to disaffirm such contracts they enter into (the power of avoidance). The power of avoidance means that the minor has the option of voiding the contract. Here, the minor signed an agreement to arbitrate any disputes against the fast-food restaurant. However, by terminating her employment, filing suit, and filing an opposition to the motion to compel, the minor disaffirmed the agreement to arbitrate. (*See Dairyland Cnty. Mut. Ins. Co., v. Roman*, 498 S.W.2d 154 (Tex. 1973)). It is not required that the minor expressly disaffirm the agreement to arbitrate prior to filing her lawsuit. Therefore, the motion to compel arbitration should be denied.

(D) Incorrect. In the majority of states, minors have the ability to enter a contract before they reach the age of majority, but they also have the power to disaffirm such contracts they enter into (the power of avoidance). The power of avoidance means that the minor has the option of voiding the contract. Here, the minor signed an agreement to arbitrate any disputes against the fast-food restaurant. The minor had the ability to enter into such a contract. However, by terminating her employment, filing suit, and filing an opposition to the motion to compel, the minor disaffirmed the agreement to arbitrate. (*See Dairyland Cnty. Mut. Ins. Co., v. Roman*, 498 S.W.2d 154 (Tex. 1973)). Therefore, the agreement to arbitrate is void, and the motion to compel arbitration should be denied.

Explanation: Question 8

The correct answer is: (B) Felony murder.

A defendant commits felony murder if that person intended to commit an inherently dangerous felony (or a predicate felony as defined by statute) and, during the commission or attempted commission of the felony, proximately causes another person's death, whether intentionally or not, and whether through their own actions or those of another felon. The resulting death must be a foreseeable outgrowth of the defendant's actions. The most common felonies for felony murder are burglary, arson, rape, robbery, and kidnapping. Here, the defendant and the co-felon intended to rob the drug dealer. Although they did not end up stealing the drug dealer's money, they attempted to rob him by use of a gun. Robbery and attempted robbery are inherently dangerous felonies. It is foreseeable that attempted robbery by use of a gun may result in death. Additionally, the majority of jurisdictions limit the application of felony murder by following the agency theory of felony murder. Pursuant to this theory, only a death caused by the defendant or the defendant's co-felon can be the basis for a felony murder conviction. Here, although the co-felon did not intend the death of drug dealer, intent to kill is not a necessary element of felony murder. Even unintended killings that result from the attempted commission of an inherently dangerous felony amount to felony murder. Therefore, the co-felon is guilty of felony murder.

(A) Incorrect. Depraved-heart murder is an example of an unintentional killing. A person commits depraved-heart murder when they engage in extremely reckless conduct that causes another person's death. The mental state for depraved-heart murder is extreme recklessness. A person acts with extreme recklessness when their conduct is characterized by a wanton indifference to human life and a conscious disregard of an unusually high risk of death or serious bodily injury. Here, there are no facts to suggest that the co-felon ever intended or expected the gun to be used except to frighten the drug dealer. Moreover, in the absence of the gun being fired, it cannot be said that the co-felon engaged in conduct characterized by a wanton indifference to human life and a conscious disregard of an unusually high risk of death or serious bodily injury. Therefore, the co-felon is not guilty of depraved-heart murder.

(C) Incorrect. Intent-to-inflict-serious-bodily-injury murder is an example of an unintentional killing. A person who, with an intent to inflict serious bodily injury upon another human being, causes the death of that human being has committed intent-to-inflict-serious-bodily-injury murder. Here, although the co-felon intended to rob the drug dealer, he did not intend to cause him any serious bodily injury. Therefore, the co-felon is not guilty of intent-to-inflict-serious-bodily-injury murder.

(D) Incorrect. A person who, without legal justification or excuse, intentionally causes the death of another human being has committed intent-to-kill murder. An intent to kill exists when a defendant purposely or knowingly kills—that is, when the defendant consciously desires to kill another person or makes the resulting death inevitable. Here, although the co-felon intended to rob the drug dealer, he did not intend to kill him. Therefore, the co-felon is not guilty of intent-to-kill murder.

Explanation: Question 9

The correct answer is: (C) Yes, because the police officer intended to commit a battery.

At common law, assault is committed when a person attempts to commit a battery. This is the only type of assault at common law. A person is guilty of this type of assault when they purposely try to cause a harmful or offensive contact with the victim's person. A person's reckless or criminally negligent conduct cannot lead to an assault conviction based upon an attempt to batter. Here, the police officer intended to shoot (cause harmful contact to) the neighbor. This conduct fulfils the elements for assault at common law. Therefore, the police officer may properly be convicted of assault.

(A) Incorrect. At common law, assault is committed when a person attempts to commit a battery. This is the only type of assault at common law. A person is guilty of this type of assault when they purposely try to cause a harmful or offensive contact with the victim's person. A person's reckless or criminally negligent conduct cannot lead to an assault conviction based upon an attempt to batter. Here, the police officer intended to shoot the neighbor. This is an attempted battery regardless of whether the gun fired or

not. The crime was completed when the police officer intended a harmful contact and engaged in conduct intending to bring about that result. It is irrelevant that the gun misfired. Therefore, the answer choice is incorrect.

(B) Incorrect. Although some jurisdictions recognize assault as conduct intended to cause the victim to feel reasonable apprehension of imminent harm, this type of criminal assault did not exist at common law. At common law, assault is committed when a person attempts to commit a battery. This is the only type of assault at common law. A person is guilty of this type of assault when they purposely try to cause a harmful or offensive contact with the victim's person. A person's reckless or criminally negligent conduct cannot lead to an assault conviction based upon an attempt to batter. Consequently, it is irrelevant in a common law jurisdiction whether the victim was placed in fear by another person's conduct. Therefore, this answer choice is incorrect.

(D) Incorrect. At common law, a person's reckless or criminally negligent conduct cannot lead to an assault conviction based upon an attempt to batter. An attempt to batter must be intentional. Consequently, even if the police officer's conduct was both reckless and criminally negligent, there would be no assault liability at common law on this basis. Rather, the officer's culpability for assault stems from his attempt to cause a harmful or offensive contact with the neighbor.

Explanation: Question 10

The correct answer is: (B) No, because the conversation was not intended to elicit incriminating information.

The United States Supreme Court dealt with similar facts in *Rhode Island v. Innis*. (446 U.S. 291 (1980)). There, the police had apprehended the defendant as a murder suspect but had not found the weapon used. While he was being transported to police headquarters in a squad car, the defendant, who had been given the *Miranda* warnings and had asserted he wished to consult a lawyer before submitting to questioning, was not asked questions by the officers. However, the officers engaged in conversation between themselves, in which they indicated that a school for handicapped children was near the crime scene and that they hoped the weapon was found before a child discovered it and was injured. The defendant then took them to the weapon's hiding place. The Court held that the term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. However, the Court concluded that the conversation between the officers was "nothing more than a dialogue between the two officers to which no response from the defendant was invited." (*Id.*). That, combined with a lack of evidence on the record that the officers were aware that the defendant may have been particularly susceptible to an appeal to his conscience or that the defendant was unusually disoriented or upset, led the Court to find that this was not the functional equivalent of an interrogation. Consequently, as

here, the conversation between the officers and their supervisor was not the functional equivalent of interrogation that occurred after *Miranda* warnings were given and after the defendant asked for an attorney. Accordingly, the man's statement about the gun should not be suppressed.

(A) Incorrect. This answer choice comes to the correct conclusion, but does not do so based on a valid rationale. There is no specific exception to the *Miranda* protections for a statement that involves the safety of children. Here, the man invoked his *Miranda* rights, particularly his right to have an attorney present for any police questioning. The police officers then engaged in a conversation with their supervisor that resulted in the man voluntarily telling them where to find the gun he had used to commit the armed robbery. Because the police did not know of any particular susceptibility of the man when they had their conversation, and the statements were not directed at the man and intended to make him respond, this will not be considered an interrogation of the man by the police officers. (*Rhode Island v. Innis*, 446 U.S. 291 (1980)). As such, the man's statement would be considered a voluntary one, waiving his *Miranda* rights as to the statement, and so the motion to suppress should not be granted.

(C) Incorrect. This is an incorrect statement of the law. A suspect in custody who waives their *Miranda* rights may be interrogated by the police without violating the Fifth Amendment. This was the case here, because the man voluntarily made the incriminating statement while he was not undergoing the functional equivalent of interrogation. (*Rhode Island v. Innis*, 446 U.S. 291 (1980)). The key issue here is whether or not the actions of the police officers amounted to the functional equivalent of an interrogation, not whether or not the statement was made while the man was in custody.

(D) Incorrect. This answer choice comes to an incorrect conclusion. The United States Supreme Court dealt with similar facts in *Rhode Island v. Innis*. (446 U.S. 291 (1980)). The Court held that the term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. However, the Court concluded that the similar conversation between the officers in *Innis* was "nothing more than a dialogue between the two officers to which no response from the defendant was invited." (*Id.*). That, combined with a lack of evidence on the record that the officers were aware that the defendant may have been particularly susceptible to an appeal to his conscience or that the defendant was unusually disoriented or upset, led the Court to find that this was not the functional equivalent of an interrogation. Consequently, as here, the conversation between the officers and their supervisor was not the functional equivalent of interrogation that occurred after *Miranda* warnings were given and after the defendant asked for an attorney. Accordingly, the man's statement about the gun should not be suppressed.

Explanation: Question 11

The correct answer is: (D) Sustained, because this type of testimony is inadmissible in an employment discrimination case.

Generally, character evidence is not relevant and thus inadmissible. However, four exceptions apply. First, evidence of a pertinent character trait of the accused, or offered by the prosecution to rebut the same is admissible. (Fed. R. Evid 404(a)(1).) Second, evidence of a pertinent character trait of the victim of the crime offered by the accused or by the prosecution to rebut the same is admissible. (Fed. R. Evid. 404(a)(2).) Likewise, evidence of a character trait of peacefulness of the victim by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor is admissible. (*Id.*) Third, evidence of the truthful character of a witness whose character for truthfulness has been attacked is admissible. (Fed. R. Evid. 404(a)(3), 607–609.) Finally, when a person's character is an essential element of a charge, claim, or defense, character evidence is admissible. (Fed. R. Evid. 405(b).) Here, the salesman attempted to offer evidence of his good character as an employee. None of the four exceptions to the introduction of character evidence applies in this case. Rules 404(a)(1) and (2) are inapplicable because this is a civil case. Rule 404(a)(3) is also inapplicable because this case does not involve a witness's character for truthfulness. Finally, Rule 405(b) is inapplicable because character is not an essential element of an employment discrimination claim. (*See, e.g., Keene v. Sears Roebuck & Co., Inc.,* 2007 U.S. Dist. LEXIS 65103, 74 Fed. R. Evid. Serv. (Callaghan) 494 (2007).) Therefore, the evidence is inadmissible, and the objection should be sustained.

(A) Incorrect. Generally, character evidence is not relevant and thus inadmissible. However, four exceptions apply. First, evidence of a pertinent character trait of the accused, or offered by the prosecution to rebut the same is admissible. (Fed. R. Evid 404(a)(1).) Second, evidence of a pertinent character trait of the victim of the crime offered by the accused or by the prosecution to rebut the same is admissible. (Fed. R. Evid. 404(a)(2).) Likewise, evidence of a character trait of peacefulness of the victim by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor is admissible. (*Id.*) Third, evidence of the truthful character of a witness whose character for truthfulness has been attacked is admissible. (Fed. R. Evid. 404(a)(3), 607–609.) Finally, when a person's character is an essential element of a charge, claim, or defense, character evidence is admissible. (Fed. R. Evid. 405(b).) Here, the salesman attempted to offer evidence of his good character as an employee. None of the four exceptions to the introduction of character evidence applies in this case. Rules 404(a)(1) and (2) are inapplicable because this is a civil case. Rule 404(a)(3) is also inapplicable because this case does not involve a witness's character for truthfulness. Finally, Rule 405(b) is inapplicable because character is not an essential element of an employment discrimination claim. (*See, e.g., Keene v. Sears Roebuck & Co., Inc.,* 2007 U.S. Dist. LEXIS 65103, 74 Fed. R. Evid. Serv. (Callaghan) 494 (2007).) Therefore, the evidence is inadmissible, and the objection should be sustained.

(B) Incorrect. Although evidence that is relevant to the reason for firing the salesman may be admissible, evidence to prove a person's character is generally not admissible to prove action in conformity with that trait on a particular occasion. (Fed. R. Evid. 404(a).) However, four exceptions apply. First, evidence of a pertinent character trait of the accused, or offered by the prosecution to rebut the same is admissible. (Fed. R. Evid 404(a)(1).) Second, evidence of a pertinent character trait of the victim of the crime offered by the accused or by the prosecution to rebut the same is admissible. (Fed. R. Evid. 404(a)(2).) Likewise, evidence of a character trait of peacefulness of the victim by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor is admissible. (*Id.*) Third, evidence of the truthful character of a witness whose character for truthfulness has been attacked is admissible. (Fed. R. Evid. 404(a)(3), 607–609.) Finally, when a person's character is an essential element of a charge, claim, or defense, character evidence is admissible. (Fed. R. Evid. 405(b).) Here, the salesman attempted to offer evidence of his good character as an employee. None of the four exceptions to the introduction of character evidence applies in this case. Rules 404(a)(1) and (2) are inapplicable because this is a civil case. Rule 404(a)(3) is also inapplicable because this case does not involve a witness's character for truthfulness. Finally, Rule 405(b) is inapplicable because character is not an essential element of an employment discrimination claim. (*See, e.g., Keene v. Sears Roebuck & Co., Inc.,* 2007 U.S. Dist. LEXIS 65103, 74 Fed. R. Evid. Serv. (Callaghan) 494 (2007).) Therefore, the evidence is inadmissible.

(C) Incorrect. Although character evidence is generally inadmissible, it may be admissible in civil cases where a person's character is an essential element of a charge, claim, or defense. (Fed. R. Evid. 405(b).) However, Rule 405(b) is inapplicable here because character is not an essential element of an employment discrimination claim. (*See, e.g., Keene v. Sears Roebuck & Co., Inc.,* 2007 U.S. Dist. LEXIS 65103, 74 Fed. R. Evid. Serv. (Callaghan) 494 (2007).) This answer choice incorrectly states that character evidence is inadmissible in civil cases.

Explanation: Question 12

The correct answer is: (A) The court should overrule the objection, because the police officer has no memory of her investigation of the collision.

As a general rule, an out-of-court statement that is now being offered for the truth of the matter asserted is considered inadmissible hearsay, unless an exception or exemption applies. (Fed. R. Evid. 801.) Under the former testimony exception, testimony given at a deposition is admissible as an exception to the hearsay rule if: (1) the declarant is unavailable as a witness at trial; and (2) the opponent party had an opportunity and similar motive to develop the testimony by direct, cross-, or redirect examination at the deposition. (*See* Fed. R. Evid. 804(b)(1).) A declarant is considered unavailable as a witness if the declarant testifies to not remembering the subject matter. (Fed. R. Evid. 804(a)(3).) Here, the driver's attorney had a full opportunity and similar motive to question the police officer at the deposition. At trial, the police officer testified that, due

to her injuries, she could not remember anything about her investigation of the collision. She will thus be considered unavailable as a witness pursuant to the Federal Rules of Evidence. Consequently, her deposition testimony is admissible under the former testimony exception to the hearsay rule. The objection should be overruled on that basis.

(B) Incorrect. Under the former testimony exception, testimony given at a deposition is admissible as an exception to the hearsay rule if: (1) the declarant is unavailable as a witness at trial; and (2) the opponent party had an opportunity and similar motive to develop the testimony by direct, cross-, or redirect examination at the deposition. (*See* Fed. R. Evid. 804(b)(1).) A declarant is considered unavailable as a witness if the declarant testifies to not remembering the subject matter. (Fed. R. Evid. 804(a)(3).) Here, the driver's attorney had a full opportunity and similar motive to question the police officer at the deposition. At trial, the police officer testified that, due to her injuries, she could not remember anything about her investigation of the collision. Therefore, she is unavailable as a witness pursuant to the Rules. The key to admissibility of the police officer's former testimony here is not that it was given under oath, but that the police officer is now considered unavailable as a witness at trial. In other words, the fact that she testified under oath at the deposition is insufficient, by itself, to admit the deposition testimony, because the police officer did also testify during the present trial. Instead, the dispositive fact is that she will now be considered an unavailable witness due to her inability to remember the prior investigation.

(C) Incorrect. When a declarant's out-of-court statement is offered at trial for its truth, it is hearsay. (Fed. R. Evid. 801(c).) Hearsay is not admissible unless a federal statute, the Federal Rules of Evidence, or the rules of the Supreme Court provide otherwise. (Fed. R. Evid. 801–802.) Under the former testimony exception, testimony given at a deposition is admissible as an exception to the hearsay rule if: (1) the declarant is unavailable as a witness at trial; and (2) the opponent party had an opportunity and similar motive to develop the testimony by direct, cross-, or redirect examination at the deposition. (*See* Fed. R. Evid. 804(b)(1).) A declarant is considered unavailable as a witness if the declarant testifies to not remembering the subject matter. (Fed. R. Evid. 804(a)(3).). Here, the driver's attorney had a full opportunity and similar motive to question the police officer at the deposition. At trial, the police officer testified that, due to her injuries, she could not remember anything about her investigation of the collision. It is true that she is present at the trial, but her lack of memory renders her unavailable for the purpose of Rule 804(a)(3). Consequently, her deposition testimony is admissible under the former testimony exception to the hearsay rule.

(D) Incorrect. When a declarant's out-of-court statement is offered at trial for its truth, it is hearsay. (Fed. R. Evid. 801(c).) Hearsay is not admissible unless a federal statute, the Federal Rules of Evidence, or the rules of the Supreme Court provide otherwise. (Fed. R. Evid. 801–802.) Under the former testimony exception, testimony given at a deposition is admissible as an exception to the hearsay rule if: (1) the declarant is unavailable as a witness at trial; and (2) the opponent party had an opportunity and similar motive to develop the testimony by direct, cross-, or redirect examination at the

deposition. (*See* Fed. R. Evid. 804(b)(1).) A declarant is considered unavailable as a witness if the declarant testifies to not remembering the subject matter. (Fed. R. Evid. 804(a)(3).) Here, the driver's attorney had a full opportunity and similar motive to question the police officer at the deposition. At trial, the police officer testified that, due to her injuries, she could not remember anything about her investigation of the collision. Consequently, she is unavailable as a witness pursuant to the Federal Rules of Evidence, and her deposition testimony is admissible under the former testimony exception to the hearsay rule.

Explanation: Question 13

The correct answer is: (A) The court should deny the application, because the conversations are protected by the psychotherapist-patient privilege.

A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made for the purpose of diagnosis or treatment of his physical, mental, or emotional condition, including alcohol or drug addiction. While there is no federally recognized physician-patient privilege, there is a recognized psychotherapist-patient privilege, and this privilege extends to communications a patient has with a licensed clinical social worker. (*See* Fed. R. Evid. 501; *Jaffee v. Redmond*, 518 U.S. 1 (1996); *Trammel v. United States*, 445 U.S. 40 (1980).) Therefore, because the police officer was meeting with the social worker in order to address symptoms of depression he had been experiencing related to the shooting, the privilege would attach to those counseling session and conversations. Accordingly, the court should deny the application due to privilege.

(B) Incorrect. It is true that both the police officer and the social worker most likely intended their counselling sessions to remain confidential based on the topic and purpose of the sessions. However, this is not sufficient by itself to protect the conversations from disclosure. Instead, the conversations must fall within a recognized privilege. The federal courts recognize a psychotherapist-patient privilege, pursuant to which a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made for the purpose of diagnosis or treatment of his physical, mental, or emotional condition, including alcohol or drug addiction. (*See* Fed. R. Evid. 501; *Jaffee v. Redmond*, 518 U.S. 1 (1996); *Trammel v. United States*, 445 U.S. 40 (1980).) This privilege extends to communications the patient has with a licensed clinical social worker. Therefore, the intent of the parties to keep the conversations confidential is irrelevant absent a recognized privilege. Here, these conversations are protected by the psychotherapist-patient privilege.

(C) Incorrect. This answer choice misstates the law. A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made for the purpose of diagnosis or treatment of his physical, mental, or emotional condition, including alcohol or drug addiction. This privilege extends to communications the patient has with a licensed clinical social worker. (*See* Fed. R.

Evid. 501; *Jaffee v. Redmond*, 518 U.S. 1 (1996); *Trammel v. United States*, 445 U.S. 40 (1980).) The conversations between the police officer and the social worker are privileged, and as such, the application should be denied by the court.

(D) Incorrect. It may be true that the conversations between the police officer and the social worker are relevant to the police officer's state of mind when he shot the man. However, these communications are privileged, and, therefore, inadmissible. A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made for the purpose of diagnosis or treatment of his physical, mental, or emotional condition, including alcohol or drug addiction. This privilege extends to communications the patient has with a licensed clinical social worker. (*See* Fed. R. Evid. 501; *Jaffee v. Redmond*, 518 U.S. 1 (1996); *Trammel v. United States*, 445 U.S. 40 (1980).) Therefore, because the police officer was meeting with the social worker in order to address symptoms of depression he was experiencing related to the shooting, the privilege would attach to those counseling sessions and conversations. The application should therefore be denied by the court.

Explanation: Question 14

The correct answer is: (B) The court should overrule the objection, because the security guard did not question the authenticity of the original videotape.

An original writing, recording, or photograph is required in order to prove its content unless the Federal Rules of Evidence or a federal statute provides otherwise. (Fed. R. Evid. 1002.) This best evidence rule applies not only to documents, but to recordings (including audio and video recordings) and photographs as well. However, a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or circumstances make it unfair to admit the duplicate. (Fed. R. Evid. 1003.). Here, an unaltered duplicate of the original videotape was offered by the prosecution. The security guard offered no evidence challenging the authenticity of the original videotape or suggesting that unfairness would result if the copy was admitted. Therefore, the digital copy is admissible, and the objection should be overruled.

(A) Incorrect. An original writing, recording, or photograph is required in order to prove its content unless the Federal Rules of Evidence or a federal statute provides otherwise. (Fed. R. Evid. 1002.) This best evidence rule applies not only to documents, but to recordings (including audio and video recordings) and photographs as well. However, a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or circumstances make it unfair to admit the duplicate. (Fed. R. Evid. 1003.) There is no blanket rule of evidence that freely allows admission of digital copies of documents. This answer choice, therefore, misstates the basis for admitting the digital copy.

(C) Incorrect. An original writing, recording, or photograph is required in order to prove its content unless the Federal Rules of Evidence or a federal statute provides otherwise. (Fed. R. Evid. 1002.) This best evidence rule applies not only to documents, but to recordings (including audio and video recordings) and photographs as well. However, a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or circumstances make it unfair to admit the duplicate. (Fed. R. Evid. 1003.) Here, an unaltered duplicate of the original videotape was offered by the prosecution. The security guard offered no evidence challenging the authenticity of the original videotape or suggest that unfairness would result if the copy was admitted. Therefore, the digital copy is admissible, and the objection should be overruled.

(D) Incorrect. An original writing, recording, or photograph is required in order to prove its content unless the Federal Rules of Evidence or a federal statute provides otherwise. (Fed. R. Evid. 1002.) This best evidence rule applies not only to documents, but to recordings (including audio and video recordings) and photographs as well. However, there is no general rule that requires a party produce the best evidence available to prove a fact. Therefore, the answer choice misstates of the best evidence rule.

Explanation: Question 15

The correct answer is: (C) The court should grant the motion, because the action was filed in state court in State Y.

As a general rule, a case that was originally brought in state court may be removed to federal court if the plaintiff could have originally brought the case in federal court. (28 U.S.C. § 1441.) The defendant in such a situation has a right to remove (or shift) that case from state court to federal court. However, a defendant who is a citizen of the state in which the case was filed may not seek removal if the basis for removal is diversity. (28 U.S.C. § 1441(b).) This is also known as the home-state defendant rule. Here, the case could have been originally filed in federal court under diversity jurisdiction. The driver is a State X citizen, and the foreign citizen is domiciled in State Y. For diversity purposes, if a foreign citizen is admitted to permanent residence in the United States (i.e., that person has a green card), they are considered a citizen of the state in which they are domiciled. Consequently, there is complete diversity between the State X driver and the State Y foreign citizen. In addition, the State X driver has alleged damages in excess of $75,000, meeting the amount-in-controversy requirement for diversity jurisdiction. However, the home-state defendant rule under Section 1441(b) applies, because the foreign citizen is domiciled in State Y, the state in which the lawsuit was filed. Therefore, the removal to federal court was improper. The motion for remand should be granted and the case remanded to state court in State Y.

(A) Incorrect. This answer choice is incorrect because it fails to take into account an exception to when removal is proper. As a general rule, a case that was originally brought in state court may be removed to federal court if the plaintiff could have

originally brought the case in federal court. (28 U.S.C. § 1441.) The defendant in such a situation has a right to remove (or shift) that case from state court to federal court. Here, it is true that the case could have been originally filed in federal court under diversity jurisdiction. The driver is a State X citizen, and the foreign citizen is domiciled in State Y. For diversity purposes, if a foreign citizen is admitted to permanent residence in the United States, they are a citizen of the state in which they are domiciled. Consequently, there is indeed complete diversity between the State X driver and the State Y foreign citizen. However, a defendant who is a citizen of the state in which the case was filed may not seek removal if the basis for removal is diversity. (28 U.S.C. § 1441(b).) This is also known as the home-state defendant rule. Because the foreign citizen is domiciled in State Y, the state in which the lawsuit was filed, the home-state defendant rule will apply, even though complete diversity exists between the parties. As such, the initial removal was improper, and the motion for remand should be granted and the case remanded back to state court in State Y.

(B) Incorrect. This answer choice is incorrect because it fails to take into account an exception to when removal is proper. As a general rule, a case that was originally brought in state court may be removed to federal court if the plaintiff could have originally brought the case in federal court. (28 U.S.C. § 1441.) The defendant in such a situation has a right to remove (or shift) that case from state court to federal court. Here, it is true that the case could have been originally filed in federal court under diversity jurisdiction. The State X driver is alleging $80,000 in damages, which is enough to satisfy the amount-in-controversy requirement for diversity jurisdiction. However, a defendant who is a citizen of the state in which the case was filed may not seek removal if the basis for removal is diversity. (28 U.S.C. § 1441(b).) This is also known as the home-state defendant rule. Because the foreign citizen is domiciled in State Y, the state in which the lawsuit was filed, the home-state defendant rule will apply, even though the amount-in-controversy requirement is met for diversity jurisdiction. As such, the initial removal was improper, and the motion for remand should be granted and the case remanded back to state court in State Y.

(D) Incorrect. For diversity purposes, if a foreign citizen is admitted to permanent residence in the United States (i.e., that person has a green card), they are considered a citizen of the state in which they are domiciled. There is no rule that bars a permanent resident from being a party to a lawsuit filed in federal court. Therefore, the foreign citizen is a proper party to the lawsuit here, and this answer choice provides an incorrect statement of law.

Explanation: Question 16

The correct answer is: (C) There is jurisdiction to hear both the claim against the cashier and the counterclaim against the bookkeeper.

Supplemental jurisdiction is needed when a federal district court does not have federal-question or diversity jurisdiction over an additional claim. Supplemental jurisdiction is

available in civil actions over claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same case or controversy. Supplemental jurisdiction includes claims that involve the joinder, impleader, or intervention of additional parties. (28 U.S.C. § 1367(a).) Here, the claim by the bookkeeper against the cashier and the counterclaim by the cashier against the bookkeeper are not based on any federal question, so there is no federal-question jurisdiction over the claims. Likewise, the bookkeeper and the cashier are both from State B, so there is no diversity jurisdiction over their claims. Supplemental jurisdiction is needed. The claims are both part of the same case or controversy. They share a "common nucleus of operative facts," because all the damages arose from the same chain-reaction car crash. (*See United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).) Consequently, supplemental jurisdiction will cover the direct claim by the bookkeeper against the cashier, and the same is true for the counterclaim by the cashier against the bookkeeper. Both the claims will be heard under supplemental jurisdiction.

(A) Incorrect. Supplemental jurisdiction is needed when a federal district court does not have federal question jurisdiction or diversity jurisdiction over an additional claim. Supplemental jurisdiction is available in civil actions over claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same case or controversy. (28 U.S.C. § 1367(a).) Here, the claim against the cashier and the counterclaim against the bookkeeper are both part of the same case or controversy. They share a "common nucleus of operative facts," because all the damages arose from the same chain-reaction car crash. (*See United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).) Consequently, supplemental jurisdiction will cover both the direct claim by the bookkeeper against the cashier, regardless of diversity or amount in controversy, and the same is true for the counterclaim by the cashier against the bookkeeper.

(B) Incorrect. Supplemental jurisdiction is needed when a federal district court does not have federal question jurisdiction or diversity jurisdiction over an additional claim. Supplemental jurisdiction is available in civil actions over claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same case or controversy. (28 U.S.C. § 1367(a).) Here, the claim against the cashier and the counterclaim against the bookkeeper are both part of the same case or controversy. They share a "common nucleus of operative facts," because all the damages arose from the same chain-reaction car crash. (*See United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).) Consequently, supplemental jurisdiction will cover both the direct claim by the bookkeeper against the cashier, regardless of diversity or amount in controversy, and the same is true for the counterclaim by the cashier against the bookkeeper.

(D) Incorrect. Supplemental jurisdiction is needed when a federal district court does not have federal question jurisdiction or diversity jurisdiction over an additional claim. Supplemental jurisdiction is available in civil actions over claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same

case or controversy. (28 U.S.C. § 1367(a).) Here, the claim against the cashier and the counterclaim against the bookkeeper are both part of the same case or controversy. They share a "common nucleus of operative facts," because all the damages arose from the same chain-reaction car crash. (*See United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).) Consequently, supplemental jurisdiction will cover both the direct claim by the bookkeeper against the cashier, regardless of diversity or amount in controversy, and the same is true for the counterclaim by the cashier against the bookkeeper.

Explanation: Question 17

The correct answer is: (C) Grant the motion, because the corporation had an affirmative obligation to designate an appropriate employee to appear at the deposition.

Depositions of corporations are permitted. When a corporation is deposed, the corporation must designate an appropriate person to testify on its behalf, and that person must testify about information known or reasonably available to the organization. (Fed. R. Civ. P. 30(b)(6).) The corporation is under an obligation to make an investigation, including review of readily available records, to identify an appropriate witness for Rule 30(b)(6) purposes. (*See Resolution Tr. Corp. v. S. Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993).) If that witness is not knowledgeable about relevant facts, and the corporation has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all. Here, the corporation did not make a meaningful effort to acquit its duty to designate an appropriate witness. Therefore, sanctions should be imposed.

(A) Incorrect. This answer choice is the opposite of the correct rule. When an organization is deposed, the Federal Rules of Civil Procedure specify that the organization must designate an appropriate person to testify on its behalf. (Fed. R. Civ. P. 30(b)(6).) Because this answer improperly places that burden on the employee, it is incorrect.

(B) Incorrect. A deposed corporation must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. (Fed. R. Civ. P. 30(b)(6).) The corporation is under an obligation to make an investigation, including review of readily available records, to identify an appropriate witness for Rule 30(b)(6) purposes. (*See Resolution Tr. Corp. v. S. Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993).) If that witness is not knowledgeable about relevant facts, and the corporation has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all. Therefore, sanctions are appropriate immediately, and a motion to compel disclosure is not required. (*See id.*)

(D) Incorrect. Although the employee will incur additional expense, that is not, by itself, the reason to impose sanctions. Instead, the reason is because the corporation's witness was not knowledgeable about the matters involved in the deposition. The corporation is under an obligation to make an investigation, including review of readily available records, to identify an appropriate witness for Rule 30(b)(6) purposes. (*See* Fed. R. Civ. P. 30(b)(6); *Resolution Tr. Corp. v. S. Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993).) If that witness is not knowledgeable about relevant facts, and the corporation has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all. Here, the corporation did not make a meaningful effort to acquit its duty to designate an appropriate witness. Therefore, sanctions should be imposed.

Explanation: Question 18

The correct answer is: (B) The law student is liable to the landlord, and the nurse is liable to the law student.

A landlord can hold another party liable for unpaid rent through either privity of contract or privity of estate. A lessor and the lessee come into privity of contract when they execute the lease. At that time, the lessee gains the right to possess the property (the estate), so the lessor and the lessee also come into privity of estate. When the lessee subleases the property to a sublessee, the sublessee does not enter into privity of contract with the lessor because the sublessee is contracting with the lessee (the current tenant), not the landlord. Likewise, the sublessee is not in privity of estate with the landlord, because the sublessee has not gained all of the rights that belong to the lessee (as they would in the case of an assignment). Thus, only the lessee remains in privity of contract and privity of estate with the lessor, and, for any breach of the lease, the lessor can only sue the lessee. However, the lessee can sue the sublessee for breach of contract, because the lessee and the sublessee are in privity of contract with each other. Here, the law student only subleased to the nurse; there was not an assignment of the lease. This means that the law student remained liable for the entire amount of the rent to be paid on the three-year lease, regardless of who was living there, or even if no one was living there. The law student will owe the unpaid rent to the landlord under the three-year lease, but the law student will be able to recover the unpaid rent from the nurse under the sublease agreement.

(A) Incorrect. This answer choice comes to an incorrect conclusion as to liability. A novation occurs when a contract, such as a lease, is amended to change the parties. Here, the landlord was aware of the sublease and did not object to it, but the landlord also did not insist on amending the lease to change the parties and name the nurse as the new lessee. This means that the law student remains liable to the landlord as an original contracting party to the lease agreement. However, the nurse will also be liable to the law student for the unpaid rent under the sublease agreement. Thus, this answer choice is incorrect, because the law student remains liable to the landlord for the unpaid rent and the nurse remains liable to the law student for the same.

(C) Incorrect. This answer choice is incorrect because the nurse is only in privity of contract and privity of estate with the law student, so the nurse's liability runs only to the law student. This is because the nurse only subleased the apartment from the law student, taking less than all of the law student's rights and interests in the existing lease. The law student, meanwhile, remains in privity of contract (under the three-year lease) and privity of estate (because the law student retains the right to completely possess the apartment) with the landlord. Thus, the law student owes any unpaid rent to the landlord. The nurse owes nothing to the landlord, but does owe the unpaid rent to the law student under their sublease.

(D) Incorrect. This answer choice is incorrect because the nurse is only in privity of contract and privity of estate with the law student, so the nurse's liability runs only to the law student. This is because the nurse only subleased the apartment from the law student, taking less than all of the law student's rights and interests in the existing lease. The law student, meanwhile, remains in privity of contract (under the three-year lease) and privity of estate (because the law student retains the right to completely possess the apartment) with the landlord. Thus, the law student owes any unpaid rent to the landlord. The nurse owes nothing to the landlord, but does owe the unpaid rent to the law student under their sublease.

Explanation: Question 19

The correct answer is: (D) Yes, because an equitable servitude covers all the lots.

An equitable servitude creates benefits and burdens that run with the land, but it does so without meeting all of the requirements for covenants that run with the land, including privity. The written intent to create an equitable servitude is often shown via a common scheme of development in a subdivision. If a sufficient number of lots in the subdivision are burdened by the same covenant, a court may find that a common scheme binds all of the lots in the subdivision, including those that do not have the restriction written into the deed. The following factors may show a common scheme: (1) a large percentage of lots expressly burdened; (2) oral representations to buyers; (3) statements in written advertisements, sales brochures, or maps given to buyers; or (4) recorded plat maps or declarations. Here, a common scheme exists in the subdivision, and it was established in the recorded plat. The recorded plat shows that the subdivision was intended for one-story mobile or manufactured homes without garages or other large outbuildings. In addition, more than half of the deeds in the subdivision contain express restrictions against garages and large outbuildings. Consequently, an equitable servitude will likely be found to exist in the neighborhood. The buyer's deed did not contain the restriction, but she will still be bound by the equitable servitude that exists for the entire neighborhood. Therefore, she will not be able to build a garage, and the neighbors will prevail.

(A) Incorrect. This answer choice attempts to place a requirement of privity on an equitable servitude, but equitable servitudes do not require either horizontal privity or

vertical privity in order for them to be enforced. An equitable servitude can be enforced by any purchaser who is benefitted by the servitude. The factors in a subdivision that may show the existence of an equitable servitude through a common scheme that expresses a written intention for the restrictions to run with the land include: (1) a large percentage of lots expressly burdened; (2) oral representations to buyers; (3) statements in written advertisements, sales brochures, or maps given to buyers; or (4) recorded plat maps or declarations. Here, the original subdivider recorded the plat that contained the restriction on garages. The original subdivider was likely also responsible for the large number of deeds that contain the express restriction on garages. However, it is not necessary for the original subdivider to be part of the sales transaction with the buyer in order for the buyer to be bound by the prohibition on garages. This is so because the buyer will be bound by the equitable servitude that covers the entire neighborhood, even without being in horizontal privity with the original subdivider or in vertical privity with their assignees. The equitable servitude can be enforced by any neighbor who is benefitted by the servitude. Thus, the neighbors will prevail without the need for the original subdivider.

(B) Incorrect. This answer is incorrect because, if an equitable servitude can be established, it will bind all of the lots covered by it, even the lots having deeds that do not contain the servitude's express provisions. Here, an equitable servitude is established by the common scheme that was used in creating the subdivision. The plat and the majority of the deeds show that the common scheme is to prohibit garages and other large outbuildings. The buyer will be bound by the servitude that covers that entire neighborhood, even though her own deed does not have the restriction written into it.

(C) Incorrect. This answer choice is incorrect because a covenant running with the land requires horizontal and vertical privity, which are absent under these facts but not necessary for the creation of an equitable servitude. A covenant running with the land requires: (1) a writing sufficient to satisfy the Statute of Frauds; (2) intent for the benefit/burden to run with the land; (3) horizontal privity between the original covenantor and covenantee, plus vertical privity between those parties and their successors in interest; (4) a benefit/burden that touches and concerns the land; and (5) notice. An equitable servitude often exists where a covenant does not, because equitable servitudes do not require privity in order to be enforceable. Here, the servitude is established through a common scheme for the subdivision, which was done through writings (the plat and the deeds) that expressed the appropriate intent, and which gave notice to all future parties of the restriction that would both benefit and burden the lot owners. Privity appears to be missing, and it is possible that the original subdivider sold an entire block of lots to a third party without the necessary restrictions. However, privity is not needed for an equitable servitude. Thus, here, the neighbors will prevail after establishing the equitable servitude, not a covenant that runs with the land.

Explanation: Question 20

The correct answer is: (C) Yes, because each piece of real estate is unique.

Specific performance is an extraordinary equitable remedy in contract law, because money damages are generally assumed to adequately compensate the aggrieved party. However, specific performance may be available where legal (monetary) damages are inadequate. This is generally considered the case in situations involving either real property or unique or custom goods. Each parcel of real estate is treated as unique under the law, because no two parcels can be the same. (*See, e.g., Payne v. Clark*, 187 A.2d 769 (Pa. 1963).) Thus, if the seller breaches the contract, the buyer may enforce the contract in equity to compel specific performance. Here, the chemical plant would be unique because it involves the sale of the land. As such, monetary damages may not be sufficient compensation, and specific performance can be granted for the seller's breach.

(A) Incorrect. Each parcel of real estate is treated as unique under the law, because no two parcels can be the same. (*See, e.g., Payne v. Clark*, 187 A.2d 769 (Pa. 1963).) Here, the chemical plant would be unique because it involves the sale of land. Thus, the buyer does not have to prove that that he could not find a comparable chemical plant elsewhere.

(B) Incorrect. This answer choice misstates the law. In a situation where a contract for the purchase of real property has been breached by the seller, the available remedies for the buyer are: (1) expectation damages, plus foreseeable consequential damages and reliance damages; (2) rescission, including the return of the down payment money; or (3) specific performance. Here, the buyer is interested in obtaining specific performance.

(D) Incorrect. This answer choice misapplies equity and specific performance. Where a contract for the purchase of real property has been breached by the seller, the available remedies for the buyer are: (1) expectation damages, plus foreseeable consequential damages and reliance damages; (2) rescission, including the return of the down payment money; or (3) specific performance. Specific performance is an equitable remedy. Consequently, it is the buyer, as the aggrieved party, who must come to a court of equity with "clean hands," not the seller, who is the breaching party. Here, the buyer has acted in good faith, and he would approach a court of equity with "clean hands." He was ready, willing, and able to close at the agreed-upon price on the agreed-upon date. Thus, he is entitled to any of the available remedies, whether in law or in equity. The seller's improper rationale will not change the options available to the buyer, who could still seek specific performance.

Explanation: Question 21

The correct answer is: (C) Yes, because part of the original debt remains unpaid.

A mortgage is evidenced by two documents: (1) the mortgage deed, which gives the mortgagee a lien on the property for the stated amount of the debt; and (2) the promissory note, which operates as a personal pledge to repay the debt to the mortgagee. The promissory note contains the terms of the debt, such as the amount, the interest rate, the due date, and the payment terms. When a mortgagee forecloses on the property that is the security for the debt, and the property is sold at auction, the lien is extinguished. If the mortgagee did not receive sufficient funds from the foreclosure sale to cover the amount of the debt, the mortgagee can obtain a deficiency judgment against the debtor (the mortgagor), based on the promissory note, for whatever remains unpaid. Here, the proceeds from the foreclosure sale were only $100,000, leaving $200,000 still owed under the promissory note. The mortgagee can thus obtain a deficiency judgment against the bookstore owner personally for this amount.

(A) Incorrect. This answer choice correctly states that the mortgage was extinguished, but the promissory note that underlies the mortgage was not extinguished. A mortgage is evidenced by two documents: (1) the mortgage deed, which gives the mortgagee a lien on the property for the stated amount of the debt; and (2) the promissory note, which operates as a personal pledge to repay the debt to the mortgagee. When a mortgagee forecloses on the property that is the security for the debt, and the property is sold at auction, the lien is extinguished. If the mortgagee did not receive sufficient funds from the foreclosure sale to cover the amount of the debt, the mortgagee can obtain a deficiency judgment against the debtor (the mortgagor), based on the promissory note, for whatever remains unpaid. Thus, while the mortgage on the property was extinguished, the outstanding debt remains and the mortgagee can seek repayment through a deficiency judgment.

(B) Incorrect. This answer choice references what amounts to a settlement offer, made by the bookstore owner, that the mortgagee rejected. A deed in lieu of foreclosure can be offered to a mortgagee, who would then take title to the property. If the mortgagee takes title to the property in lieu of foreclosure, there is no need for a foreclosure sale, and the foreclosure process ends. Additionally, both the mortgage and the underlying promissory note will be extinguished. However, on these facts, the mortgagee did not accept the bookstore owner's offer of the deed in lieu of foreclosure, instead preferring to complete the foreclosure process. Because of this, the mortgagee still has the option of pursuing a deficiency judgment against the bookstore owner.

(D) Incorrect. This answer choice attempts to use tort terminology in a contract situation. Here, the bookstore owner and the mortgagee bargained for a mortgage in the amount of $300,000. Presumably, the mortgagee did its due diligence and believed, along with the bookstore owner, that the expansion would either succeed financially or at least raise the value of the improved premises significantly. However, whether the

bookstore owner should have known that the expansion of his store would not succeed does not change his legal liability on the promissory note that he signed. Because the foreclosure sale did not bring in sufficient funds to pay off the promissory note, the mortgagee can still obtain a deficiency judgment against the bookstore owner personally for the remaining amount of the unpaid debt.

Explanation: Question 22

The correct answer is: (B) The court should deny the motion, because a jury could infer that negligence occurred even if the customer offers no direct evidence.

The court should deny the motion and allow the case to go to trial because the customer might be able to prevail on his negligence claim under the doctrine of *res ipsa loquitur*. A plaintiff asserting a negligence claim generally must prove what the defendant did that was negligent, but *res ipsa loquitur* enables the jury to infer that the defendant was negligent in some manner if: (1) the accident is one that ordinarily would not have occurred without negligence; (2) the incident or instrumentality causing the injury was under the defendant's control; and (3) the accident was not the result of the plaintiff's own negligence. (Restatement (Third) of Torts: Liability for Physical Harm § 17; *see also Ybarra v. Spangard*, 154 P.2d 687 (Cal. 1944).) In a similar situation in *Howe v. Seven Forty Two Co.* (189 Cal. App. 4th 1155 (Cal. Ct. App. 2010)), the court held that *res ipsa loquitur* could apply because a stool's seat ordinarily would not fall off unless someone was negligent, and the diner had exclusive control of the stool. The summary judgment motion therefore should be denied, because the jury might infer that there was negligence and rule in the customer's favor at trial.

(A) Incorrect. This answer choice relies on a legal doctrine that is not relevant. Negligence *per se* exists when a defendant violates a statute, and that violation is used in a civil action for negligence to establish that the defendant failed to exercise reasonable care. Negligence *per se* is not relevant for this question because the facts do not mention anything about a violation of a statute. Rather, *res ipsa loquitur* is the relevant doctrine here.

(C) Incorrect. This answer choice reaches the wrong conclusion because it overlooks the doctrine of *res ipsa loquitur*. Although a plaintiff asserting a negligence claim generally must prove what the defendant did that was negligent, *res ipsa loquitur* enables the jury to infer that the defendant was negligent in some manner if: (1) the accident is one that ordinarily would not have occurred without negligence; (2) the incident or instrumentality causing the injury was under the defendant's control; and (3) the accident was not the result of the plaintiff's own negligence. (Restatement (Third) of Torts: Liability for Physical Harm § 17; *see also Ybarra v. Spangard*, 154 P.2d 687 (Cal. 1944).) In a similar situation in *Howe v. Seven Forty Two Co.* (189 Cal. App. 4th 1155 (Cal. Ct. App. 2010)), the court held that *res ipsa loquitur* could apply because a stool's seat ordinarily would not fall off unless someone was negligent, and the diner had

exclusive control of the stool. The summary judgment motion therefore should be denied, because the jury might infer that there was negligence and rule in the customer's favor at trial, even though the customer admits he cannot explain exactly what happened that was negligent.

(D) Incorrect. Express assumption of risk occurs when the plaintiff agrees to waive the defendant's liability, but there is no indication in this question that the customer agreed not to hold the diner liable. Implied assumption of risk occurs when the plaintiff voluntarily chooses to encounter a known danger, but this question does not involve a known danger because the customer had no reason to think it was dangerous to sit on a stool at the diner. Assumption of risk therefore would not support the diner's motion for summary judgment here, and instead, the court should deny the motion and let the case proceed to trial.

Explanation: Question 23

The correct answer is: (D) The shopper was not confined at the mall.

False imprisonment occurs where the defendant commits an act that was intended to confine the plaintiff within a bounded area, and the plaintiff was either aware of the confinement or harmed by it. (Restatement (Second) of Torts § 35 (1965).) The plaintiff must actually be confined within a limited area, and "[i]t is not enough that the other's freedom of movement has been improperly restricted." (*Id.* § 36, cmt. d.) A person can be confined through duress, such as where the defendant prevents a person from leaving a place by making "a threat to inflict harm upon a member of the other's immediate family, or his property." (*Id.* § 40A, cmt. a. However, confinement through duress exists only if the defendant uses a threat as a means of confining the plaintiff. Confinement of the plaintiff is thus a crucial requirement for a false imprisonment claim, and false imprisonment does not occur where a plaintiff's vehicle is immobilized but the plaintiff's ability to move was not otherwise restricted. For example, in *Gable v. Universal Acceptance Corp.* (338 F. Supp. 3d 943 (E.D. Wis. 2018)), a tow truck blocked the plaintiff's car, but there was no liability for false imprisonment because the tow truck was intended to prevent movement of the car, not to prevent movement of the plaintiff. Likewise, in this question, the shopper's car was immobilized, but the shopper was not confined. The shopper was free to leave the mall by some other means, such as calling a taxi or just walking away. Therefore, the shopper was not confined to a bounded area and can make no claim for false imprisonment. This is therefore the mall's strongest defense.

(A) Incorrect. False imprisonment occurs where the defendant commits an act that was intended to confine the plaintiff within a bounded area, and the plaintiff was either aware of the confinement or harmed by it. (Restatement (Second) of Torts § 35 (1965).) If there is a reasonable means of escape from the area, it is not bounded. Although the security guard unintentionally misread the license plate number, the security guard's act of placing the boot on the car's wheel was intentional. Nevertheless, the shopper was

not confined to a bounded area and was free to leave the mall by some other means, such as calling a taxi or just walking away. Therefore, the mall's best defense is not that its act was unintentional, but that the shopper was not confined to a bounded area.

(B) Incorrect. Actual damage is not an element of a false imprisonment claim. False imprisonment occurs where the defendant commits an act that was intended to confine the plaintiff within a bounded area, and the plaintiff was either aware of the confinement or harmed by it. (Restatement (Second) of Torts § 35 (1965).) Therefore, the fact that the shopper suffered no specific harm, other than being delayed for some time, will not help the mall to avoid liability for false imprisonment. The amount of harm suffered may be relevant to the determination of the amount of damages, but will not bar the shopper's claim.

(C) Incorrect. False imprisonment can occur where the plaintiff was confined "for an appreciable period of time, however brief." (*Easton v. Sutter Coast Hosp.*, 80 Cal. App. 4th 485, 496 (Cal. Ct. App. 2000).) An appreciable length of time is a period that is capable of being noticed or appreciated. Confinement might not be noticed or appreciated if it lasted only a fraction of a second, but 40 minutes would be an appreciable period of time. The mall therefore would not be able to avoid liability for false imprisonment by arguing that the length of the alleged confinement was too short.

Explanation: Question 24

The correct answer is: (B) The homeowner, because the neighbor did not have permission to enter the house.

A person who possesses a wild animal is strictly liable for harm done by the animal even if the person exercised "the utmost care to confine the animal, or otherwise prevent it from doing harm." (Restatement (Second) of Torts § 507.) However, "[a] possessor of land is not subject to strict liability to one who intentionally or negligently trespasses upon the land, for harm done to him by a wild animal." (Restatement (Second) of Torts § 511.) The neighbor did not have permission to enter the house, so the neighbor was trespassing. Therefore, the neighbor's strict liability claim will fail.

(A) Incorrect. This answer choice correctly states that the homeowner will prevail, but provides a legally irrelevant justification for that outcome. A person who keeps a wild animal on their property can be held strictly liable for harm caused by the animal. (Restatement (Second) of Torts § 507.) It is irrelevant whether the wild animal had a history of harming others.

(C) Incorrect. This answer overlooks an exception to the rule that a person who keeps a wild animal is strictly liable for harm caused by the animal. "[A] possessor of land is not subject to strict liability to one who intentionally or negligently trespasses upon the land, for harm done to him by a wild animal." (Restatement (Second) of Torts § 511.)

The neighbor did not have permission to enter the house, so the neighbor was trespassing. Therefore, the neighbor's strict liability claim will fail.

(D) Incorrect. The application of strict liability for the squirrel bite would not depend on whether the neighbor knew or reason to know about the presence of the squirrel in the house. A person who possesses a wild animal generally will be strictly liable for harm done by the animal. (Restatement (Second) of Torts § 507.) The strict liability claim will not be barred by the fact that the injured person was aware of the animal or failed to exercise reasonable care to discover the presence of the animal. (Restatement (Second) of Torts § 515, cmt. b.) The strict liability claim will fail, however, if the person was trespassing. (Restatement (Second) of Torts § 511.) The neighbor did not have permission to enter the house, so the neighbor was trespassing, and her strict liability claim about the squirrel bite would fail for that reason.

Explanation: Question 25

The correct answer is: (B) The store will prevail, because the store does not sell display cases.

Strict liability for a defective product applies only to defendants engaged in the business of selling the defective product. (Restatement (Second) of Torts § 402A.) If the display case had a shelf that was defectively designed or manufactured, a seller of the display case could be held strictly liable for that defect. The drug store, however, would not be strictly liable for the alleged defect in the display case, because the store is not engaged in the business of selling display cases. Therefore, the shopper will not prevail on his strict liability claim against the store.

(A) Incorrect. This answer choice states a reason why the damages might be reduced through comparative fault. Comparative fault will not be relevant, however, because the shopper will not be able to prove the elements of his claim. Strict products liability applies only to defendants who engage in the business of selling a defective product. (Restatement (Second) of Torts § 402A.) The store does not sell the allegedly defective product (the display case), so the strict products liability claim against it will fail. The store therefore will not need to assert a defense, like comparative fault, that might reduce the damages awarded.

(C) Incorrect. This answer choice overlooks a crucial requirement for a strict products liability claim. Strict products liability applies only to defendants who engage in the business of selling a defective product. (Restatement (Second) of Torts § 402A.) The store does not sell the allegedly defective product (the display case), so the strict products liability claim against it will fail. While it is true that a seller of a product that is not the manufacturer may be strictly liable, that seller must nevertheless be in the chain of distribution of the product. Here, the store is not in the chain of distribution, and so cannot be strictly liable for the shopper's injury.

(D) Incorrect. This answer misstates the nature of the shopper's claim. His claim sounds in strict liability, not negligence. Strict products liability applies to defendants who engage in the business of selling a defective product. (Restatement (Second) of Torts § 402A.) In such a claim, the negligence of the store is irrelevant. Therefore, the failure of the store to safeguard the premises is irrelevant to the shopper's strict liability claim.